

The Founding of the Washington College of Law: The First Law School Established By Women For Women

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I. INTRODUCTION

When Ellen Spencer Mussey and Emma Gillett founded the Washington College of Law (“WCL”) one hundred years ago principally for the education of women in the law, it became the first law school established by and for women in the United States. As WCL’s first and second deans, Mussey and Gillett were the first two women to lead an American law school. This article addresses several questions that are raised by Mussey and Gillett’s pioneering achievement in establishing a law school primarily for women: first, what factors, both historical and personal, motivated them to found WCL; second, why did they adopt a coeducational, rather than all women’s, format given WCL’s mission to provide legal educational opportunities for women, and why did men constitute the majority of WCL’s students within fifteen years of its founding; third, how to explain the absence of African Americans as WCL students before 1950 given WCL’s

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generally progressive mission; and, lastly, what lessons can educators learn from WCL's history so as to improve the experience of women in law school today?

This article concludes that Mussey and Gillett's decision to found a law school primarily for women was shaped by three nineteenth century developments in the lives of American women: the expansion of women's higher education opportunities; the growth of women's voluntary associations; and the rise of the women's suffrage movement. Mussey and Gillett's personal experiences of being refused admission to Washington's all-white, all-male law schools and of confronting gender inequality as early women lawyers also motivated them to found a law school chiefly for women.

Mussey and Gillett adopted a coeducational, rather than a single-sex, format when they founded WCL mainly because they believed that coeducation symbolized gender equality. They also chose to include men as WCL students, faculty, and administrators in order to promote the status and long-term survival of their progressive educational enterprise. By including men at all levels of WCL, Mussey and Gillett sought to limit the gender-based criticism to which WCL would surely be exposed. By including men as WCL students, in particular, Mussey and Gillett ensured a sizeable applicant pool from which to draw their enrollment, thereby securing WCL's ongoing viability, financial and otherwise. Despite WCL's founding mission primarily to provide legal educational opportunities for women, men comprised more than half of WCL's student population within fifteen years of its incorporation. This was because WCL rapidly expanded its student body at this time, there were more men than women willing and able to attend law school, and two of the all-white, all-male Washington law schools began to admit women at this time, thereby reducing WCL's supply of female applicants.

WCL's progressivism with respect to gender was not mirrored in its treatment of race. Indeed, there were no African American students at WCL before 1950 and WCL's early catalogues emphasized the importance of educating white women in the law and underscored WCL's distinction as the only law school in Washington, D.C., that catered to the interests of white women. This paper explores several hypotheses as to why African Americans were excluded from WCL at the time of its founding, most importantly whether it was emblematic of discriminatory animus on the part of Mussey and Gillett or whether Mussey and Gillett simply ignored the interests of African Americans in favor of those of white women.

This paper concludes that Mussey and Gillett's experiences in founding a law school primarily for women should be of special interest as law schools assess their success in serving the needs and interests of women law students today. Mussey and Gillett succeeded, at least initially, in creating a "feminist," or woman-friendly, environment through the presence of female deans, faculty, and students that produced notable firsts for women in the profession. By contrast, even though women constitute a significant proportion of the law student population today, they are not represented in substantial numbers on law school faculties or in dean's offices. Women law students express alienation from the legal educational enterprise, participate in classroom discussions at a lesser rate than men, and are under-represented in the top of their classes at some law schools. Thus, while much has improved for women in legal education since WCL was founded one hundred years ago, Mussey and Gillett's goal of gender equality, embodied in WCL's coeducational format, has yet to be realized.

II. THE EARLY LIVES OF ELLEN SPENCER MUSSEY AND EMMA GILLETT AND THE FOUNDING OF THE WOMAN'S LAW CLASS IN 1896

In 1895, Delia Jackson approached Ellen Spencer Mussey, seeking an apprenticeship in Mussey's law office.² Mussey refused. Instead, she agreed to teach Jackson about the law as long as Jackson could, first, find two additional women who wanted to study law and, second, persuade Emma Gillett to join Mussey as a teacher. Jackson succeeded on both counts and the Woman's Law Class had its inaugural meeting on February 1, 1896. Thereafter, Mussey and Gillett worked together to promote the educational and professional opportunities of women lawyers, specifically, and the legal and political status of women, generally. Who were these dynamic women? What brought them together? And what motivated them to found a law school for women?

A. Ellen Spencer Mussey

² At that time, apprentices either paid for the opportunity to obtain legal training or received small wages in exchange for their labor. See Lawrence M. Friedman, *A History of American Law* 606 (1985).

Ellen Spencer Mussey was born Ellen Spencer in May 1850, the tenth child of abolitionists and temperance advocates in Geneva, Ohio.³ Her father had invented the Spencerian system of penmanship. She attended grade school in Oberlin, Ohio, a progressive community. Following her mother's death in 1862, she helped her father run his penmanship school, the Spencerian Business College. After her father's death in 1864, she lived with several siblings and attended, but did not graduate from, several all-female seminaries -- the Lake Erie Seminary, Rockford Seminary, and Rice's Young Ladies Seminary. Mussey paid for her tuition and board by teaching penmanship.⁴

³ Grace Hathaway, *Fate Rides a Tortoise: A Biography of Ellen Spencer Mussey* 6 (1937). Authored within months of Mussey's death, and published by the Washington College of Law, Hathaway's biography is in the form of a tribute to Mussey.

⁴ Florence C. Bell, "A Law Pioneer," *The Woman Citizen* (undated), on file in the WCL Archives.

Mussey moved to Washington, D.C. in 1869, at the age of nineteen, to lead the women's division of the local branch of the Spencerian Business College, which trained young women for government work.⁵ She attended her first women's suffrage meeting soon after moving to Washington.⁶ On June 14, 1871, she married General Reuben Delavan Mussey ("R.D."), a well-connected Washington lawyer.⁷ R.D. was born in Hanover, New Hampshire to a Dartmouth Medical School professor and surgeon in 1833 and graduated from Dartmouth College in 1854. He campaigned for Abraham Lincoln in 1860 and led African American troops as a general in the

⁵ Dawn Bradley Berry, *The Fifty Most Influential Women in American Law* 68 (1996).

⁶ Bell, *supra* note 4. Mussey described her first suffrage meeting as follows:

Susan B. Anthony presided, with nearly all the leading women of that day on the platform. I sat next to Lucretia Mott, the Quakeress, and before long she turned to me and said, 'Thee is frightened,' and I had to admit that I was.

Id. It is likely, although not certain, that this suffrage meeting was of the National Woman Suffrage Association ("NWSA") since Susan B. Anthony was a NWSA leader. As is discussed more fully below, NWSA was opposed to the Fourteenth Amendment because it "inserted the word *male* into the United States Constitution for the first time." Aileen Krador, *The Ideas of the Woman Suffrage Movement, 1890-1920* 3-4 (1965) (emphasis in original); *see infra* text at 41. By contrast, the American Woman Suffrage Association ("AWSA") supported the Fourteenth Amendment.

Although Mussey was acquainted with Susan B. Anthony, Elizabeth Cady Stanton, and Lucretia Mott as early as the 1870s, she did not become active in the women's suffrage movement until 1909 when she joined the National American Woman Suffrage Association ("NAWSA"), which had been formed by the merger of NWSA and AWSA. *See* Catherine M. Rottier, "Ellen Spencer Mussey and the Washington College of Law," *Maryland Historical Magazine* 361, 380 (citing Hathaway, *supra* note 3, at 41-42); *see also infra* text at 81.

⁷ "Ellen Spencer Mussey," *Who's Who in the Nation's Capital* 670-71 (1934-35). R.D. was an active member of the Swedenborgian Church, which Mussey joined upon marriage, having been raised as a Baptist. R.D. worked to establish the Swedenborgian Church's first African mission. *See A History of the Class of 1854 in Dartmouth College* 49-51 (Henry A. Hazen and S. Lewis B. Spears, eds. 1898), on file in the WCL Archives.

Union army during the Civil War.⁸ Following the war, he conducted a solo law practice and served as an adjunct instructor at Howard Law School. At the time that he married Mussey, R.D. had been recently widowed with two young daughters.

⁸ *See* Certificate of Records of Soldiers and Sailors Historical and Benevolent Society No. 180017 (Oct. 13, 1903) (noting that R.D., who was white, was said “to have been the first regular army officer to ask permission to raise Negro troops. In the winter of 1862-63, he submitted to the War Department a plan, the essential feature of which, that of enlisting them not as state troops but as United States troops, was adopted by the government.”), on file in the WCL Archives.

From all accounts, the Musseys had a successful, mutually supportive marriage. Upon their engagement in 1871, Ellen's sister, Sara Spencer, wrote to R. D., expressing her happiness for their engagement and thanking him for "his tender watchful care" of Ellen's health.⁹ The Musseys soon had two sons, in 1872 and 1874. The Musseys were active in Washington society and attended parties at the White House.¹⁰

⁹ April 8, 1871 letter from Sara Spencer to R.D. Mussey, on file in the WCL Archives. Mussey's health was fragile and she experienced at least one nervous breakdown in her lifetime. See "Emma M. Gillett," *The National Cyclopaedia of American Biography Vol. 17* 280 (asserting that Mussey retired as WCL dean following a nervous breakdown); see also Hathaway, *supra* note 3, at 200 (asserting that Mussey retired from her law practice following a nervous breakdown). Sara Spencer, was a dynamic career woman. In 1870, she owned the Spencerian Business College, see Gloria Moldow, *Women Doctors in Gilded-Age Washington: Race, Gender, and Professionalization* 214 n.1 (1987), where Mussey, her sister, managed the women's division. An optimist on women's rights, Spencer once remarked, "The new era with its larger richer life for women is already here. We cannot, if we would, set back the wheels of time." *Id.* at 162 (quoting Sara Spencer's June 19, 1870 letter to Lucretia Garfield in President James A. Garfield Papers, Library of Congress).

¹⁰ The Musseys received invitations to an inaugural ball in 1873 and to a White House party from President and Mrs. Rutherford B. Hayes in the late 1870s. As a widow in 1903, Mussey received an invitation to a White House party from President Theodore Roosevelt. White

House Invitations, on file in the WCL Archives.

Mussey enjoyed discussing her husband's law cases with him. Nevertheless, as a newlywed, Mussey believed it inappropriate for women to practice law, instead accepting the prevailing belief that men and women should occupy separate spheres.¹¹ Despite this belief, Mussey ran her husband's law practice while he was ill with malaria between 1876 and 1878.¹²

¹¹ Hathaway, *supra* note 3, at 62.

¹² When Mussey assumed control of her husband's law practice in 1876, women were beginning to enter the legal profession in modest numbers. There were five women lawyers in 1870 and 75 by 1880. See Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* 83 (1983). Most of these early women lawyers entered the profession by apprenticing in law offices rather than graduating from law schools. See Virginia G. Drachman, *Women Lawyers and the Origins of Professional Identity in America: The Letters of the Equity Club, 1887 to 1890* 3 (1993) [hereinafter *Letters of the Equity Club*]; see also D. Kelly Weisberg, "Barred from the Bar: Women and Legal Education in the United States 1870-1890," 28 *J. Legal Educ.* 485, 494-95 (1977) (noting, "[M]any of the first women to gain entrance to the legal profession were married women for whom the opportunities of law study and later, law practice, were availed to them by their lawyer-husbands. In 1890 approximately one-third of the total number of women lawyers were married women and more than half this number were married to lawyers."). Aspiring women lawyers often chose to apprentice in the law offices of their husbands or fathers because they were excluded from other legal opportunities. See Cynthia Fuchs Epstein, *Women in Law* 33 (2d ed. 1993).

Working for a family member also helped to resolve the conflict between femininity and professionalism experienced by early women lawyers. In 1886, a network of women lawyers, calling themselves the Equity Club, was formed to correspond about issues affecting their lives as professional women. Their letters illustrate the conflict experienced between their roles as women and professionals. See Drachman, *Letters of the Equity Club, supra*, at 1-3, 16-17.

The conflict experienced by women lawyers was greater than that experienced by early women doctors because women had entered these professions on different grounds. Unlike medicine, where women employed arguments based on gender differences to gain admission to the profession, women seeking to gain admission to the legal profession used arguments based on gender equality. Some states accepted these gender equality arguments in admitting women to the bar of their courts; others did not. For example, in denying Lavinia Goodell's application for admission in 1875, the Wisconsin Supreme Court declared:

The peculiar qualities of womanhood, its gentle graces, its quick sensibility, its

Mussey reconciled running her husband's law practice with her belief that it was inappropriate for women to practice law by emphasizing the necessity of her work as her family's

tender susceptibility, its purity, its delicacy, its emotional impulses, its subordination of hard reason to sympathetic feeling, are surely not qualifications for forensic strife. Nature has tempered woman as little for the juridical conflicts of the court room, as for the physical conflicts of the battle-field. Womanhood is molded for gentler and better things. And it is not the saints of the world who chiefly give employment to our profession. It has essentially and habitually to do with all that is selfish and malicious, knavish and criminal, coarse and brutal, repulsive and obscene, in human life.

Woman's Work in America 226-27 (Annie Nathan Meyer, ed. 1891).

With regard to the different grounds upon which women entered the legal and medical professions, one commentator has observed:

Practicing law was even more incompatible with nineteenth-century ideas about women than was practicing medicine. Female doctors could claim that their careers were natural extensions of women's nurturant, healing role in the home and that they protected female modesty by ministering to members of their own sex. By contrast, women lawyers were clearly intruding on the public domain explicitly reserved to men.

Barbara J. Harris, *Beyond Her Sphere: Women and the Professions in American History* 110 (1978). Likewise, Barbara Babcock has noted:

As the paradigmatic public profession, law had little connection with the domestic sphere, or with the ideal world of nurturance and tender feeling that nineteenth century women were supposed to inhabit. Nothing could be more inconsistent with the social image of the true woman than the type of the good lawyer: bold, brilliant, aggressive, incisive, and ruthless in the interests of justice or of a client.

Barbara Allen Babcock, "Clara Shortridge Foltz: First Women," 28 *Val. U. L. Rev.* 1231, 1284 (1994). In light of the conflicting roles confronting women lawyers, it was considered more "ladylike" to work for one's husband or other than to assert an independent professional identity. Drachman, *Letters of the Equity Club*, *supra*, at 27-30. Again, due to the different bases for entry into the professions, women doctors were less likely than women lawyers to practice with family members.

only source of income.¹³ On assuming responsibility for her husband's law practice, Mussey moved her family to a new house, located near the courts, and set the first floor aside as a law office. By conducting the law practice at home, Mussey could confer with her husband as he lay on a sofa in the back parlor¹⁴ while she met with his clients in the front parlor and also be near her children, who were attended by "Miss Lizzie,"¹⁵ the Mussey's live-in housekeeper.

¹³ Hathaway, *supra* note 3, at 62 (observing, "But nothing save such dire necessity as this could have induced Ellen Spencer Mussey to go into a law office. Indeed, so firmly embedded was her belief that the law was not for women, she was even afraid her own presence in her husband's law office might be detrimental to his profession. And to guard against this, to make it clearly understood that she was not one of those bold women attempting to usurp man's rightful place, she painstakingly explained to everyone that she was merely looking after her husband's law practice until he should be well again.").

¹⁴ "Ellen Spencer Mussey: Founder of the Washington College of Law," *Woman's Home Companion* (June 1914).

¹⁵ Hathaway, *supra* note 3, at 61.

Following his recovery from malaria in 1878, R.D. asked Mussey to continue working in the law practice. Initially, Mussey refused, still believing it inappropriate for a woman to practice law. She eventually agreed to practice with her husband and they worked together for fourteen years until his death in May 1892.¹⁶ Mussey, who was 42 at the time of R.D.'s death, did not remarry.¹⁷ Rather, she assumed full responsibility for running the law practice.¹⁸ Mussey reassured R.D.'s clients that their legal needs would continue to be met following his death by sending them a printed announcement in June 1892, which stated:

I have been associated with my husband, Gen. R.D. Mussey, for the past sixteen years in the conduct of a general law business, and he has, by will, left it to me.

She continued:

I have secured as my associate Mr. J.H. Lichliter, a member of the Bar of the Supreme Court of the District of Columbia, and a successful practitioner in the courts, and before the Departments.¹⁹

¹⁶ See Certificate of Records of Soldiers and Sailors Historical and Benevolent Society No. 180017 (Oct. 13, 1903) (regarding R.D. Mussey), on file in the WCL Archives.

¹⁷ Hathaway, *supra* note 3, at 80 (asserting that Mussey's decision not to remarry was not caused by her dislike of men: "In fact, she was very fond of their society. But there were other things beside marriage to be considered now.").

¹⁸ Mussey had a tremendous capacity for overcoming significant setbacks as demonstrated by her assumption of the law practice upon her husband's death. Other potential setbacks that Mussey overcame were the deaths of both of her parents by the time that she was fourteen and the death of a step-daughter in 1880. In addition to her husband's death, Mussey also suffered the deaths of a son and a brother in 1892. A 1906 diary entry by Mussey provides insight into her capacity to rebound from tragedy. Paraphrasing Arnold Bennett, she wrote, "The essential business of life is to make use of environment for the stuff of life. That is the particular environment in which one happens to be." *Diary of Ellen Spencer Mussey*, on file in the WCL Archives. Mussey also noted, "Brain must command instincts, then he gets a perspective." *Id.*

¹⁹ Ellen Spencer Mussey, Note (June 13, 1892), on file in the WCL Archives.

Mussey looked to Lichliter to handle the necessary court appearances until she became a member of the bar.²⁰

²⁰ Hathaway, *supra* note 3, at 81.

Because Mussey had not become a member of the Washington bar during the sixteen years that she had worked in her husband's law practice, she was required to become a member of the Washington bar upon his death in order to maintain the law practice. Since graduation from law school brought automatic admission to the bar,²¹ Mussey sought admission to the law schools of Columbian College and National University in 1892 as a means to join the bar. Both schools were exclusively male at that time and rejected Mussey on the basis of her sex.²² Sally Spencer,

²¹ This practice, known as the "diploma privilege," began to diminish in the early 1890s as states sought to impose tougher bar admission requirements and the ABA lobbied against the privilege. Stevens, *supra* note 12, at 94.

²² While four of the five Washington law schools excluded women at the time of Mussey's application, other law schools, especially those in the midwest, had begun to admit women well before the 1890s. The law schools at the University of Iowa and Washington University in St. Louis were the first to open their doors to women, in 1869. The University of Michigan followed in 1870. *See Women in Law: A Bio-bibliographical Sourcebook 5* (Rebecca Mae Salokar and Mary L. Volcansek, eds. 1996). Law schools had grown in number and reputation in the last quarter of the nineteenth century, ultimately replacing apprenticeships as the dominant route of entry into the legal profession. In 1850, there were fifteen law schools in the United States. By 1860, there were twenty-one; thirty-one in 1870; fifty-one in 1880; sixty-one in 1890, and 102 by 1900. *See Friedman, supra* note 2, at 607. As an illustration of the impact that law schools had upon women's entry into the legal profession, Ada M. Bittenbender reported that thirty-one of fifty-six women lawyers in July 1882 had graduated from law school. *Woman's Work, supra* note 12, at 231.

The earliest recorded female law school graduate was Ada H. Kepley, who graduated from Union Law College, now Northwestern Law School, in 1870. J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer 1844-1944* 84 n.222 (1993); *see also* Epstein, *supra* note 12, at 50. Charlotte Ray received an LL.B. degree from Howard Law School in 1872, becoming the first female African American law school graduate in the United States. Smith, *supra*, at 55. Ray was also the first African American woman to be admitted to the bar of any state in the United States when she was admitted to the bar of the District of Columbia. *Id.* Following Ray's graduation in 1872, the next African American woman to graduate from Howard Law School was Mary A. Shadd Carey in 1883. Smith's study indicates that there were no further African American women graduates from Howard Law School until 1916 when Caroline E. Hall Mason and Lillian B. Wright Page completed their legal studies. *Id.* at 84-85 n.222.

At approximately the same time that law schools were growing in number, the American

Bar Association (“ABA”) was founded by a small band of elite lawyers for the “improvement” of the profession in 1878. The ABA’s early efforts at raising the admission standards for the bar proved unsuccessful. In 1879, the ABA formed a Committee on Legal Education and Admission to the Bar, which advocated replacing apprenticeships with law school training in an effort to elevate the profession’s reputation. The Committee’s report announced:

[T]here is little, if any, dispute now as to the relative merits of education by means of law schools and that gotten by mere practice or training in apprenticeship as an attorney’s clerk. Without disparagement of mere practical advantages, the verdict of the best informed is in favor of the schools.

Stevens, *supra* note 12, at 112 (quoting “Report of the Committee on Legal Education and Admission to the Bar,” 2 *ABA Reports* 209-36 (1879)). The Committee recommended requiring a law degree before admission to practice. The Committee also proposed improving the quality of education offered by existing law schools by calling for the adoption of a scientific, rather than practical, study of law. The Committee’s report was not adopted, however. Instead, the ABA’s House of Delegates passed a resolution in 1881 recommending, but not requiring, attendance at law school for three years prior to admission to the bar. The resolution also recommended that “all states give credit toward apprenticeship for time spent in law school.” *Id.* at 92-93 (citing “Report of the Committee on Legal Education and Admission to the Bar,” 2 *ABA Reports* 209, 212, 216-17, 220, 223 (1879); “Report on Committee on Legal Education,” 4 *ABA Reports* 237 (1881)). “Having made a fairly vigorous start,” Stevens observes, “the ABA settled down during the eighties to being little more than the social organization of the nation’s leading lawyers.” *Id.* at 94.

The law schools located in the western and midwestern states and those affiliated with public universities admitted women long before the private Ivy League law schools did. Many of the elite law schools remained hostile to the concept of women as students until well into the twentieth century. For example, Yale Law School did not admit women until 1918. *See* Catherine Weiss and Louise Melling, “The Legal Education of Twenty Women,” 40 *Stan. L. Rev.* 1299, 1314 n.66 (1988). Weiss and Melling reveal that Yale accidentally awarded an LL.B. to a woman in 1886, when Alice Rufie Jordan, “[n]oting that nothing in the catalog barred women, . . . appeared at registration and refused to be turned away.” *Id.* After the Jordan incident, Yale promptly amended its university catalog to read, “It is to be understood that the courses of instruction are open to persons of the male sex only except where both sexes are specifically included.” *Id.* (citing “Women at the Law School, 17 *Yale L. Rep.* 7 (Spring 1971) (quoting F. Hicks, *The History of the Yale Law School* (1937))). Columbia did not admit women until 1927, *see* Karen Berger Morello, *The Invisible Bar: The Woman Lawyer in America 1638 to the Present* 96 (1986), and Harvard Law School admitted women for the first time in 1950. *Id.* at 100. The last law schools to admit women were Notre Dame in 1966 and Washington and Lee in 1972. *See* Teree E. Foster, “West Virginia’s Pioneer Women Lawyers,” 97 *W. Va. L. Rev.* 703, 705 (1995).

Mussey's sister-in-law, brought Mussey's plight to the attention of Judge MacArthur, formerly Associate Justice of the Supreme Court of the District of Columbia. MacArthur was surprised to learn that Mussey was not already a member of the bar since she had been active in the Washington law business for sixteen years.²³ MacArthur arranged for the Washington bar examiners to waive the written examination requirement for Mussey, which, at that time, was the only alternative to receiving a law school degree as a means of entering the bar. In March 1893, Mussey passed an oral bar examination, which was administered in her home, and was admitted to the bar.²⁴ Lichliter left the partnership in 1893. Mussey was finally on her own.²⁵ She had a

Those women who attended law school were likely to enroll on a part-time basis at night rather than on a full-time basis during the day. Stevens observes that the part-time law schools "opened up a whole new sector of the legal education market." Stevens, *supra* note 12, at 74. Many of the early part-time law schools were established in the 1860s in Washington, D.C. and catered to students who worked full-time in the civil service, which "had grown rapidly during the Civil War." *Id.* Many women who attended law school on a part-time basis "worked either prior to or during the time they studied law, most frequently as clerical workers or teachers." Ronald Chester, *Unequal Access: Women Lawyers in a Changing America* 9 (1985). Students at the part-time law schools were disproportionately female, ethnic minorities, and/or members of the working class as compared with the overall law student population. This difference in composition of the part-time law schools may be explained in part by the significantly lower tuition rates charged by part-time law schools. *Id.* at 9-10. Chester also ascribes the disproportionate representation of women and ethnic minorities at part-time schools to their lack of college training. His analysis on this point is flawed, however, because most law schools did not require any college training until well into the twentieth century. In fact, fifty percent of law schools still did not require high school diplomas in 1904. *See infra* note 170.

²³ Hathaway, *supra* note 3, at 83.

²⁴ In 1869, Iowa became the first state to allow a woman into its bar, admitting Arabella Mansfield, who had apprenticed in a law office. *See Woman's Work, supra* note 12, at 221. In recommending Mansfield's admission to the bar under a statute providing only for the admission of "white male citizens," the examining committee reported:

we feel justified in recommending to the court that construction [of the statute] which we deem authorized, not only by the language of the law itself, but by the demands and necessities of the present time and occasion. Your committee take

unusual pleasure in recommending the admission of Mrs. Mansfield, not only because she is the first lady who has applied for this authority in this State, but because in her examination she has given the very best rebuke possible to the imputation that ladies cannot qualify for the practice of law.

Id. at 221-22. Mansfield was followed by Lemma Barkaloo, who was admitted to the Missouri bar in 1870, and J. Ellen Foster, who was admitted to the Iowa bar in 1872. *Id.* Foster went on to become a WCL trustee and faculty member. See *1898-99 Catalogue of the Washington College of Law*, on file in the WCL Archives.

Also in 1869, the Illinois Supreme Court refused to admit Myra Bradwell to its bar on the grounds that, as a married woman, she could neither make, nor be bound by, contracts with her clients. Morello, *supra* note 22, at 16. By pressing her application further, Bradwell compelled the Illinois Supreme Court to issue a written opinion in 1870, which asserted more broadly that Bradwell had no right to practice law because she was a woman. *Id.* at 17-18. The United States Supreme Court affirmed that decision in 1873, reasoning that the Illinois Supreme Court's refusal to admit Bradwell did not violate the Privileges and Immunities Clause of the Fourteenth Amendment because admission to a state's bar was not a privilege of citizenship protected by the U.S. Constitution. *Bradwell v. State of Illinois*, 83 U.S. 130, 139 (1873). Concurring in the judgment, Justice Bradley declared it unnatural for a woman to pursue a profession:

[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood.

83 U.S. at 141.

Despite the Supreme Court's opinion in *Bradwell*, other women succeeded in joining their states' bars in the 1870s. For example, Clara Shortridge Foltz became California's "first woman lawyer" when she joined that state's bar in 1878. See Babcock, "First Woman," *supra* note 12, at 1261.

On November 6, 1876, three years after the Supreme Court's decision in *Bradwell*, Belva A. Lockwood of Washington, D.C. was denied admission to the bar of the Supreme Court on the basis of sex. In denying Lockwood's application, the Court reasoned as follows:

By the uniform practice of the Court from its organization to the present time, and

dynamic law practice following her husband's death and her subsequent admission to the bar.²⁶

Rather than practicing in areas traditionally occupied by women lawyers, such as trusts and

by the fair construction of its rules, none but men are admitted to practice before it as attorneys and counselors. This is in accordance with immemorial usage in England, and the law and practice in all the States, until within a recent period, and that the Court does not feel called upon to make a change until such a change is required by statute or a more extended practice in the highest courts of the States.

Text of Supreme Court order, dated November 6, 1876, denying Lockwood's application for admission to the bar of the Supreme Court, in "Women in the Supreme Court" file, Supreme Court Library.

In 1879, Lockwood succeeded in lobbying Congress to amend the statute governing membership in the Supreme Court bar to include women as well as men. Approved on February 15, 1879 as "an Act to relieve certain legal disabilities of women," the statute provided:

Be it enacted . . . That any woman who shall have been a member of the bar of the highest court of any State or Territory or of the Supreme Court of the District of Columbia for the space of three years, and shall have maintained a good standing before such court, and who shall be a person of good moral character, shall, on motion, and the production of such record, be admitted to practice before the Supreme Court of the United States.

An Act to Relieve Certain Legal Disabilities of Women, 20 Stat. 292 (1879). Reapplying for admission to the Court in 1879, Lockwood became the first woman to join the Court's bar. Lockwood's 1879 application for admission to the Supreme Court bar was moved by Albert G. Riddle, a white professor at Howard Law School. Smith, *supra* note 22, at 85 n.224.

After these modest beginnings, the number of women in the law began to grow steadily. In 1880, there were 75 women lawyers, but by 1900, there were over 1000. Stevens, *supra* note 12, at 83.

²⁵ Hathaway, *supra* note 3, at 84. Mussey may have formed a brief partnership with Ellen Foster in 1896. See Dorothy Thomas, "Ellen Spencer Mussey," *Notable American Women 1607-1950* at 606 (1971). Foster subsequently became a WCL instructor.

²⁶ Mussey's later statements suggest that she remained active following her husband's death because inactivity was neither restful nor helpful for overcoming grief. In 1904, she noted in her diary, "Absence of occupation is not rest." *Diary of Ellen Spencer Mussey*, on file in the WCL Archives. Mussey described her mid-life period as a great one, observing, "Age is no barrier to success. The best time of a woman's life is between 30 and 60." "Dr. Mussey to

estates or family law,²⁷ Mussey specialized in private and public international law and business law. She succeeded her husband as counsel to the American Red Cross and served as counsel to the Swedish and Norwegian legations for twenty-five years.²⁸ In addition to inheriting her husband's clients, Mussey had clients referred to her by other attorneys. She was admitted to the Supreme Court bar in 1896.²⁹ Mussey became an active member of that bar, arguing and winning ten cases³⁰ and sponsoring the membership of twenty-five women.

Witness Tablet Unveiling," *Washington Herald* (April 12, 1931).

²⁷ Mussey may not have practiced in traditional female specialties in part because she inherited her husband's clients and caseload.

²⁸ "Dr. Ellen Mussey Rites Tomorrow," *Washington Evening Star* (April 22, 1936).

²⁹ Mussey's membership in the Supreme Court bar was sponsored by W. J. Newton, with whom Emma Gillett practiced law. Mussey was the thirteenth woman to join the Supreme Court bar, following Lockwood, Foltz, Gillett, and Bradwell, among others. See "Women Admitted to Practice in the Supreme Court of the United States," in "Women in the Supreme Court" file, Supreme Court Library.

³⁰ "Dr. Mussey to Witness Tablet Unveiling," *Washington Herald* (April 12, 1931) (noting that Mussey never lost a case in the Supreme Court). Mussey argued her first Supreme

court case in 1913, making her the second woman, after Lockwood, to argue a case in the Supreme Court. The argument involved a dispute over a female client's will.

Mussey also became active in politics on behalf of women's and children's rights. She proposed legislation establishing a married woman's right to own property. This legislation, known as the Mussey Act, became law in 1896,³¹ the same year that Mussey and Gillett formed the Woman's Law Class. Mussey may have come to know Gillett by working on this married women's property legislation since Gillett had worked on earlier versions of the same legislation along with Mussey's husband.³²

B. Emma Gillett

Emma Millinda Gillett was born to Wisconsin homesteaders in July 1852.³³ Her father was English and her mother was a Pennsylvania Quaker. Following her father's death in 1854, Gillett moved with her mother to Pennsylvania where she was raised by her mother's family. In 1870, Gillett graduated from Lake Erie Seminary in Painesville, Ohio, an all-female seminary

³¹ "Dr. Ellen Mussey Rites Tomorrow," *Washington Evening Star* (April 22, 1936).

Mussey's work on behalf of married women's property rights in the District of Columbia was consistent with the efforts in other states and reflects an important stage in the expansion of women's rights. The introduction of married women's property legislation in the 1830s and 1840s had signaled a significant step forward for women's legal and economic status. *See generally* Richard H. Chused, "Married Women's Property Law: 1800-1850," 71 *Geo. L. J.* 1359 (1983) (describing property reform initiatives that preceded married women's property laws, which were first introduced in 1830s and 1840s); Nancy F. Cott, *The Grounding of Modern Feminism* 186 (1987) (noting that, by early twentieth century, most states granted married women statutory rights to "make contracts, to sue and be sued, to own and convey property, and to keep their own earnings, as though they were not married.").

³² *See infra* text at 21-22 (Emma Gillett); Hazen, *supra* note 7, at 49-51 (R.D. Mussey). It is unclear whether Mussey had worked with her husband, and, for that matter, with Gillett, on this earlier married women's property legislation.

³³ Drachman, *Letters of the Equity Club*, *supra* note 12, at 222.

primarily concerned with training women to be teachers.³⁴ Following graduation, Gillett taught in the Pennsylvania public schools for ten years, during which time she became increasingly frustrated with the meager wages that were paid to single women teachers.³⁵

Gillett became interested in studying law in the late 1870s. Her interest was sparked in part by her role in the settlement of her mother's estate and by her desire for a profession that paid more than teaching. Gillett appeared to have been particularly inspired by the example of Belva Lockwood, who had gained national attention in the late 1870s through her efforts to join the Supreme Court bar.

³⁴ Even though Mussey and Gillett attended Lake Erie Seminary at approximately the same time, it is uncertain whether they knew each other as students there. Because Lake Erie Seminary has closed, housing and class records are no longer available. That Mussey and Gillett both attended the same school may have been a shared experience that later served as a bond between the two women. Gillett's Equity Club letters demonstrate that she maintained her ties to Lake Erie Seminary, attending her twentieth class reunion in June 1890. Drachman, *Letters of the Equity Club*, *supra* note 12, at 184.

³⁵ Drachman, *Letters of the Equity Club*, *supra* note 12, at 96, 223.

Relying upon savings and a small inheritance from her mother's estate, Gillett moved to Washington, D.C. to study law in 1880. She lived temporarily in Lockwood's home, studying pension law as an apprentice in Lockwood's law office and attending Howard Law School at night.³⁶ At the time that Gillett enrolled at Howard, every other Washington law school excluded females. It is unclear whether Gillett had applied to, and been rejected on the basis of her sex by, some or all of these white Washington law schools before deciding to attend Howard. Gillett was one of two white women students at Howard Law in the early 1880s.³⁷ Gillett's fellow white female student had been rejected by Washington's white law schools when she chose to attend Howard.³⁸ In 1881, President Garfield appointed Gillett to be the first female notary public in the

³⁶ Dorothy Thomas, "Emma Millinda Gillett," *Notable American Women 1607-1950 Vol. II 37* (1971).

³⁷ Chester reports that Gillett attended Howard "somewhat, it seems, to her discomfort." Chester, *supra* note 22, at 12. Chester does not provide any detail, however. Smith notes that at least seven white women, including Gillett, graduated from Howard Law School between 1882 and 1904: two in 1882, one in 1886, one in 1897, two in 1899, and one in 1904. Smith, *supra* note 22, at 54. During this same period, only one African American woman graduated from Howard Law School, in 1883. *Id.* at 84-85 n.222. The proportion of whites in the overall student body declined throughout the 1880s. In 1887, Howard had twelve law students -- eight African Americans and four whites. Stevens, *supra* note 12, at 81.

³⁸ The other white woman who attended law school with Gillett was Ruth G. D. Havens. Smith, *supra* note 22, at 54. Havens worked as a government clerk while attending Howard Law School at night. Havens explained that she attended Howard in the face of rejection by the white Washington law schools:

I had written to the four law schools here, seeking a door of admission. One had opened my letter, resealed it, noted, stamped it "unclaimed," and returned it to me. One had stated females were not admitted. One had maintained a discreet silence; and the fourth had sent a professor to my house to invite me cordially to membership in its classes. This was Howard University

Speech by Ruth G. D. Havens, "Emma M. Gillett," *reprinted in The College Grit* (Oct. 22, 1922), on file in the WCL Archives.

United States.³⁹ In 1882, Gillett graduated from Howard, receiving an LL.B. She subsequently received an LL.M. from Howard in 1883. Gillett became a member of the Washington bar in June 1883 by passing the written bar exam.⁴⁰

³⁹ "Memorial to Emma M. Gillett," *The College Grit* 1 (May 12, 1928), on file in the WCL Archives.

⁴⁰ Bureau of Vocational Information, questionnaire # 83, folder 186, Bureau of Vocational Information Collection, Schlesinger Library.

Upon graduation from Howard, Gillett joined the law office of Watson J. Newton, working as an associate. A Washington attorney, Newton later served as a teacher at, and trustee of, WCL. Gillett met Newton through her work as a notary public.⁴¹ She served as Newton's associate for eighteen years before forming a law partnership with him in 1900.⁴² Like Mussey, Gillett did not practice conventionally female legal specialties. Instead, she had a profitable practice in real estate and pension law,⁴³ making three to four times her earnings as a teacher. She neither married nor had children.

⁴¹ Speech by Ruth G. D. Havens, "Emma M. Gillett," reprinted in *The College Grit* (Oct. 22, 1922), on file in the WCL Archives.

⁴² Later, when Gillett was asked whether she had served a law clerkship and whether it could "have been made more valuable to you," she replied, "Think lawyer I was with did all in his power." Bureau of Vocational Information, questionnaire # 83, folder 186, Bureau of Vocational Information Collection, Schlesinger Library.

⁴³ Despite her pursuit of nontraditional legal specialties, Gillett played a conventional

Gillett became the seventh woman member of the Supreme Court bar in 1890. Her membership was sponsored by Ada M. Bittenbender, the third woman to have joined the Supreme Court's bar.⁴⁴ As such, Gillett was the first woman to be admitted to the Supreme Court bar on the motion of another woman.⁴⁵ Gillett did not argue any cases in the Supreme Court and sponsored only one woman's membership in its bar.

female role by performing office work, rather than courtroom work, in her law practice with Newton. Weisberg observes, "Of Miss Emma Gillet [sic] it was said, her work has been principally in the office line -- the drawing of papers, taking testimony in equity causes and probate business, together with a large amount of notarial and some financial work." Weisberg, *supra* note 12, at 496 (providing no attribution for this observation).

⁴⁴ Ada Bittenbender authored the "Woman in Law" chapter of Annie Nathan Meyer's seminal work, *Woman's Work in America* (1891). With an introduction by noted suffragist Julia Ward Howe, *Woman's Work* is an important study of women's experience in higher education, the professions, and voluntary associations in the late nineteenth century.

⁴⁵ See *Woman's Work*, *supra* note 12, at 225.

In 1890, Gillett founded the Wimodaughsis,⁴⁶ an all-women's club committed to "helping younger working women further their education."⁴⁷ Gillett also became interested in politics on behalf of women's rights at this time. For example, her Equity Club letters reveal her growing concern about married women's property rights.⁴⁸ In 1893, Gillett drafted unsuccessful married woman's property legislation for the District of Columbia.⁴⁹ She worked with Mussey and Lockwood on subsequent married women's property legislation, which was enacted in 1896,⁵⁰ the same year that Mussey founded the Woman's Law Class with Gillett as her co-teacher. As for why Mussey insisted upon Gillett as her co-teacher in founding the Woman's Law Class, it is clear that the two women must have been familiar with each other's work since they were two of only a

⁴⁶ The name "Wimodaughsis" stands for "wives-mothers-daughters-sisters." Dorothy Thomas, "Emma Millinda Gillett," *Notable American Women 1607-1950, Vol. II* at 37 (1971).

⁴⁷ Dorothy Thomas, "Emma Millinda Gillett," *Notable American Women 1607-1950, Vol. II* at 37 (1971). Wimodaughsis was later folded into the Young Women's Christian Association. *Id.* See also Moldow, *supra* note 9, at 140-42 (describing Gillett's activities as board member of Wimodaughsis and noting that Gillett was joined on the board by Ruth G.D. Havens, the white female who attended Howard Law School at the same time as Gillett, and by Anna Howard Shaw, who was Anthony's successor as head of NAWSA).

⁴⁸ Drachman, *Letters of the Equity Club*, *supra* note 12, at 185. Gillett reported:

I have been investigating the status of married women in the District lately, and find the laws most unsatisfactory. A married woman cannot give a note, make a contract, (except in relation to her separate estate) nor is she entitled to her earnings. She cannot carry on business as she cannot contract and her time is her husband's, etc. A bill has been introduced into Congress correcting this but, legislation is slow and, with Silver Bills, Tariff Bills, Force Bills, and other political moves the women can wait.

⁴⁹ Dorothy Thomas, "Emma Millinda Gillett," *Notable American Women 1607-1950, Vol. II* at 37 (1971).

⁵⁰ Dorothy Thomas, "Emma Millinda Gillett," *Notable American Women 1607-1950, Vol. II* at 37 (1971).

handful of women attorneys in Washington at this time and had worked together on the married women's property legislation of 1896. Additionally, Mussey may have come to know Gillett because Mussey was friendly with Newton, Gillett's colleague,⁵¹ and Mussey's husband taught at Howard Law School at approximately the same time that Gillett was a student there.⁵²

C. Mussey and Gillett as Prototypes of Early Women Lawyers

⁵¹ See Hathaway, *supra* note 3, at 86.

⁵² Because Howard Law School does not maintain its class registration lists from the 1870s and 1880s, it is impossible to determine whether Gillett was enrolled in a course taught by Mussey's husband. See notes of January 2, 1997 telephone conversation with Professor J. Clay Smith to Mary L. Clark (underscoring that Gillett was one of only five students in her law class at Howard), on file with the author. Given the small size of the classes at Howard, it seems likely that Gillett would have come to know R.D. as a student there.

As their biographies reveal, Mussey and Gillett adopted different approaches to the question of balancing their personal and professional interests as women lawyers.⁵³ As a single woman, Gillett pursued her professional interests without a husband or family to compete for her attention.⁵⁴ Her Equity Club letters of the 1888-90 period reveal that she was an intensely-

⁵³ Drachman notes that women lawyers of the 1880s and 1890s had three principle options for balancing their personal and professional lives: they could remain unmarried and pursue their legal career singlemindedly; they could marry another lawyer, preferably one with whom they could form a law practice or join an already established practice, and balance their personal and professional lives together; or they could marry and forego their professional interests altogether, focussing instead on the domestic realm. Virginia G. Drachman, "My Partner in Law and Life': Marriage in the Lives of Women Lawyers in the Late 19th- and Early 20th-Century America," 14 *Law & Social Inquiry* 221, 231 (Spring 1989) [hereinafter "My Partner"]. Approximately one-half of the Equity Club's members were married. Those Equity Club members who were married and continued to practice law did so primarily in their husband's law practices. The other members remained single, believing they could succeed in the legal profession only through singledminded devotion to it. *Id.*

⁵⁴ Gillett did, however, live with a sister and niece starting in 1908. See Dorothy Thomas, "Emma Millinda Gillett," *Notable American Women 1607-1950 Vol. II* at 37 (1971).

In her Equity Club letters, Gillett revealed her belief that women lawyers could succeed even though they were married, but not if they were mothers. She observed:

A glance through the Annual would seem to indicate that the majority of the practitioners who are sticking to their work and plodding on in the only sure and safe way to win success are unmarried. The care of children must necessarily interfere with any thing so sensitive to interruptions as a law practice. I do not believe the relation of wife alone should do so. Nor do I sympathize very deeply if it does for no woman has any right to give up her health, happiness and future prospects in life for the mere gratification of her husband, but in the marital relation as in every other relation should insist on equal rights to self-gratification or restraint. I have found that advice of this kind given to wives has almost invariably resulted in increased respect and happiness in the home and improved health on the part of the wife Should one attempt to illustrate that either the married or unmarried woman is capable of doing distinguished work she would not be at a loss for examples. Either state, rightly lived, should not handicap a woman in her attainments in any department of the world's work it is her deliberate choice to take up.

focussed and hard-working lawyer.⁵⁵ Believing that women lawyers carried sufficient burdens in conducting their law practices without also assuming responsibility for charitable legal cases and that volunteer work distracted a lawyer from a narrow focus upon career advancement, Gillett eschewed charitable legal work for herself and all women lawyers.⁵⁶ Similarly, Gillett believed

Drachman, *Letters of the Equity Club*, *supra* note 12, at 162.

⁵⁵ Gillett submitted her first letter to the Equity Club in 1888. She may have learned of the Club through Lockwood, who was a member of the Club since 1887. *See* Drachman, *Letters of The Equity Club*, *supra* note 12, at 96-97. In her letters, Gillett expressed a consciousness of needing to succeed and set an appropriate model as one of the first women lawyers:

I have endeavored to do thoroughly and conscientiously whatever I have had to do, to stick to my profession and not be lured into any class of philanthropic or other work, knowing the law to be a jealous mistress and believing that I could do no better work than to prove what a woman could by persistent application earn a competency at the law as one of the many who are doing it, and to avoid notoriety. To a faithful adherence to these rules, I owe the modicum of success I have attained.

Id.

When asked in a 1920 Bureau of Vocational Information survey what she thought “of the law as a vocation for women,” Gillett responded, “The opportunities are excellent.” When asked, “How do the chances for men and women compare,” she replied, “A little in favor of the man.” When asked, “Approximately what percentage of your clients are women,” Gillett noted, “Should say 75%.” Finally, when asked, “How, in your judgment, should women solve the seeming paradox between vocation and marriage,” she declared, “Let each individual mark out the matter as *her* conscience dictates. I see no great interference unless there are children. In that event it may be the father dies or fails in his duties. What then?” Bureau of Vocational Information, questionnaire # 83, folder 186, Bureau of Vocational Information Collection, Schlesinger Library (emphasis in original).

⁵⁶ *See* Drachman, *Letters of the Equity Club*, *supra* note 12, at 161 (quoting Gillett’s April 27, 1889 letter to the Equity Club as advising:

Charity clients should be shunned unless in extreme cases. They have no more right to a lawyer’s services for nothing than a washer-woman’s, and when one takes charity clients to any extent she lowers her professional tone besides using her capital of time and strength. If she uses all of her income for charity that is her

that women lawyers should reject housework in order to safeguard their free time and preserve their energy for work.⁵⁷ In place of housework, Gillett advocated that women should pursue vigorous exercise to promote their physical and mental well-being for work.⁵⁸ In this vein, Gillett declared, “Work done when weary is usually below the standard, which we cannot afford.”⁵⁹ Essentially, Gillett advocated that women lawyers should follow a traditional male model by which to attain success in the legal profession. Accordingly, Gillett advised her fellow Equity Club members, “If we take up work that has been monopolized by men we should study the

matter but if she drives herself beyond her strength and fails in her work it concerns us all.

⁵⁷ See Drachman, *Letters of the Equity Club*, *supra* note 12, at 161 (again quoting Gillett as asserting, “A further matter of importance is how we spend our leisure hours. If we have home work pressing on us during office hours and hurry home to assume cares of various kinds we cannot expect a fine nervous condition. Men go home to their dinner, evening paper, a stroll down town, or a chat over the fence with a neighbor.”).

⁵⁸ See Drachman, *Letters of the Equity Club*, *supra* note 12, at 159-62.

⁵⁹ Drachman, *Letters of the Equity Club*, *supra* note 12, at 160.

manner in which they have accomplished the work and how they have spent the hours not occupied by their profession, and follow the general line of their experience.”⁶⁰

⁶⁰ Drachman, *Letters of the Equity Club*, *supra* note 12, at 161-62.

Unlike Gillett, who remained consistently devoted to her career throughout her lifetime, Mussey moved through distinct stages of her life in terms of balancing her personal and professional interests. At first, Mussey was a single career woman, managing a women's business college. Then, as a newlywed, she quit working in favor of the domestic realm, raising four young children. Only in response to her husband's serious illness did she resume working. Mussey balanced home and work by moving her husband's law office into their home so that she could care for her ill husband and young children, while also addressing her client's needs. Following R.D.'s recovery, Mussey practiced with her lawyer-husband, just as many of the early Equity Club members had. As such, the Musseys balanced their personal and professional lives together. Upon R.D.'s death, Mussey became a solo woman lawyer, singlemindedly devoting herself to the promotion of women's legal and political status through her work, political activism, and founding of the first law school primarily for women.⁶¹

⁶¹ In 1920, Mussey was asked, "How, in your judgment, should women solve the seeming paradox between vocation and marriage." She replied enigmatically, "Give it up! - an individual problem." Bureau of Vocational Information, questionnaire # 85, folder 187, Bureau of Vocational Information Collection, Schlesinger Library.

In essence, Mussey and Gillett represented two prototypes of early women lawyers: one who entered the legal profession by marrying a lawyer and working in his practice; and the other who remained single and entered the profession on her own by graduating from law school.⁶² In following these two different prototypes, Mussey and Gillett resembled the early women's rights leaders, Stanton and Anthony. Stanton had married and raised children in addition to pursuing her women's rights advocacy, while Anthony remained single, devoting herself to her work.⁶³

Even though Mussey and Gillett represented two different prototypes of women lawyers during much of their formative years, both women were single when they became members of the Washington, D.C. and Supreme Court bars and established the Woman's Law Class and WCL. Their status as single women allowed them to pursue their professional interests in a determined manner, without husbands and children to distract them, and lessened the conflict between their roles as women and professionals.⁶⁴

⁶² Mussey and Gillett also represented two prototypes of lawyers generally -- one who entered the profession by apprenticing and the other who entered the profession by graduating from law school.

⁶³ See generally Lois W. Banner, *Elizabeth Cady Stanton: A Radical for Woman's Rights* (1980).

⁶⁴ Slightly less than half of the Equity Club members, fifteen out of thirty-two, were single when they pursued their professional lives. See Drachman, *Letters of the Equity Club*, *supra* note 12, at 26-27. Drachman notes that these women saw marriage as incompatible with a law career:

Single members of the Equity Club typically chose not to marry precisely because they believed that marriage imposed too many domestic obligations on women and was, therefore, incompatible with a serious career Believing that they had to make a choice between marriage and career, single women sacrificed the former in hopes of establishing productive professional lives.

Id. at 26. The Club's single members included women who had been widowed and did not remarry:

Even Marion Todd, who had been married once but was a widow by the time she joined the Equity Club, insisted that she had no intention of remarrying, declaring that, from her experience, marriage was too great a responsibility.⁷

Id. Mussey, like Todd, was widowed and did not remarry during the time of her greatest professional and political achievement.

While Gillett was more liberated from traditional gender roles at an earlier age than was Mussey, Mussey's ideas about gender roles evolved to a considerable extent such that, in the end, Mussey played a more significant role than Gillett in pioneering women's legal educational opportunities and assuming leadership roles in legal and political causes for women.⁶⁵ For example, it was Mussey who conceived of the idea of the Woman's Law Class and recruited Gillett to help her lead it. Similarly, Mussey served as WCL's first dean and was followed in this position by Gillett. Mussey may have preceded Gillett in these and other leadership positions on behalf of women's causes because Mussey was more socially prominent than Gillett⁶⁶ and her reputation and connections would have served to bolster the prestige of the organizations with which she was affiliated.⁶⁷

III. THE HISTORY OF THE WOMAN'S LAW CLASS AND THE FOUNDING OF THE WASHINGTON COLLEGE OF LAW IN 1898

The Woman's Law Class met for the first time on February 1, 1896 in Mussey's law office. Initially, the program was all female. During its first semester, the Law Class had three students - Delia Jackson, Helen Malcolm, and Nanette Paul -- and two instructors -- Mussey and Gillett.

⁶⁵ For a discussion of whether the early women lawyers were necessarily suffragists or women's rights activists, see Weisberg, *supra* note 12, at 501-03. On this point, Barbara Babcock observes that many of the famous first women lawyers were suffragists. Babcock, "First Woman," *supra* note 12, at 1285 n.223. She states further, "By virtue of their efforts to join the profession, all of the first women lawyers were, in effect, members of the women's movement. Rejection of separate spheres was inherent in the project." *Id.*

⁶⁶ It is unclear the extent to which Mussey's social prominence was due to her marriage to R.D. Clearly, this played a role since R.D. was active on Washington's legal and political scenes. However, Mussey's sister, Sara Spencer, and her sister-in-law, Sally Spencer, were also socially prominent. *See supra* note 9 and text at 13.

⁶⁷ It is unlikely that Mussey preceded Gillett in these roles merely because of her seniority

In the 1897-98 term, there was one male student, Paul Sperry, in addition to the women students.
Sperry dropped out after one year to pursue the ministry.

since she was only two years older than Gillett.

The *1897-98 Catalogue of the Woman's Law Class* described the course of study as “the equivalent of other Law Schools,”⁶⁸ with Mussey teaching constitutional law and Gillett teaching the common law subjects after Blackstone.⁶⁹ This same catalogue also noted that none of the Washington law schools that confined their “membership to white persons” admitted women,⁷⁰ suggesting that the Woman’s Law Class was intended to fill that gap.

Following the Law Class’ first semester in 1896, Mussey attended a summer course at Cornell Law School, which had been coeducational since 1887.⁷¹ Mussey was the only woman in

⁶⁸ *1897-98 Catalogue of the Woman's Law Class* 1, on file in the WCL Archives.

⁶⁹ Stevens, *supra* note 12, at 90 n.79.

⁷⁰ *1897-98 Catalogue of the Woman's Law Class* 1, on file in the WCL Archives. This reference to the Law Class’ mission to train white women lawyers is discussed more fully at Part III section C below.

⁷¹ Barbara Miller Solomon, *In the Company of Educated Women: A History of Women and Higher Education in America* 131 (1985).

her class of seventy-five students that summer.⁷² This one course was the only formal legal education that Mussey ever received.⁷³

⁷² Hathaway, *supra* note 3, at 90. Hathaway does not indicate the subject matter of Mussey's law course at Cornell.

⁷³ Mussey stated in response to a 1920 Bureau of Vocational Information survey question about her legal education, "Never had a law course. No school open to women in D.C. Studied with my husband General R. D. Mussey." Bureau of Vocational Information, questionnaire #85, folder 187, Bureau of Vocational Information Collection, Schlesinger Library.

In 1898, after instructing the Woman's Law Class students for two years, Mussey and Gillett began planning for their students' graduation from a degree-granting institution. Rather than establishing a new law school with degree-granting authority, Mussey and Gillett sought to integrate their students into a pre-existing law school. They approached the administrators of the law school at Columbian College, which enrolled only white men, to persuade them to admit their Woman's Law Class students. Columbian refused, informing Mussey that "conservative members [of the school] still insisted that women had not the mentality for law."⁷⁴

In the face of this rejection, Mussey and Gillett incorporated the Woman's Law Class as a degree-granting institution on April 2, 1898, renaming it the Washington College of Law. WCL's certificate of incorporation set forth its primary goal as "provid[ing] such a legal education for women as will enable them to practice the legal profession."⁷⁵ As such, WCL became the first law school in the United States founded by and for women.⁷⁶

⁷⁴ Hathaway, *supra* note 3, at 107.

⁷⁵ Minutes of WCL Board of Trustees of April 2, 1898 at 3, on file in the WCL Archives.

⁷⁶ Despite the ground-breaking nature of Mussey and Gillett's achievement in establishing the first law school by and for women, the *Washington Evening Star*, one of Washington's major newspapers, did not run an article on WCL until 1904, at which time it reported on WCL's commencement. See *Washington Star Index 1894-1909*, on microfilm in the Washingtonia Division of the District of Columbia Public Library.

Six years before Mussey and Gillett established their Woman's Law Class, a Woman's Law Class was established at New York University in 1890, which presented lectures in law and awarded certificates, rather than diplomas, upon successful completion of an exam. See Phyllis Eckhaus, "Restless Women: The Pioneering Alumnae of New York University School of Law," 66 *N.Y.U. L. Rev.* 1996, 1998-99 (1991). Later that year, NYU's governing council "voted unanimously to accept women as degree candidates." *Id.* at 1999. NYU's law professors "sought to ensure that many women would enter the school, deeming it highly important for any valuable result that enough women should unite in attendance to render one another aid and encouragement." *Id.* A 1905 graduate recalled NYU's dean visiting her graduating class at Bryn

Mawr College “in an effort to recruit women students.” *Id.* Despite NYU’s efforts to attract women students, the class of 1896 included only six women among 140 graduates. *Id.* at 1999-2000. Despite their small numbers, women earned two of the top three prizes that year. *Id.* at 2000. Many of the women graduates of NYU Law went on to work with other women lawyers either as clerks or by forming practices together. *Id.* at 2001. Mussey may have been familiar with NYU’s Woman’s Law Class and its modest successes, and may have sought to emulate it when she established her Woman’s Law Class in 1896.

At about the same time that NYU’s Woman’s Law Class was formed, another law school for women was established in New York City, which “succeeded in connecting itself with the University of the City of New York,” in the words of its founder, Emile Kempin-Spyri. Kempin-Spyri stated further, “The Law School for women was a private undertaking, but founded with the aim to connect it with an already existing institution after having proven its vitality. With the help of the Women’s Legal Education Society, an incorporated body of women interested in the higher education of their sex,” the law school merged with CUNY insofar as CUNY’s law department agreed to admit women on the same basis as men. Along with the merger, CUNY agreed to establish a lectureship for Kempin-Spyri. While Kempin-Spyri asserts that she was “selected as a lecturer on the same footing as other lecturers in the Law Department,” it is noteworthy that her lectureship was especially intended “to instruct classes of non-matriculating students who desire a knowledge of law for practical guidance and general culture,” suggesting that women lecturers were marginalized by teaching courses outside of the law degree program. *Woman’s Work, supra* note 12, at 235 n.*.

Ten years after WCL’s founding, Portia Law School was established in 1908 by Arthur W. MacLean as an all women’s law school in Boston. Portia was the only American law school established exclusively for women. Despite this fact, Portia did not have the same “feminist” origins as WCL. Instead, Portia was a for-profit venture, drawing upon those women in Boston’s burgeoning immigrant population, who sought economic advancement through the law. MacLean had been inspired to found a law school for women when he was asked to tutor two women for the Massachusetts bar exam. His law partner, Gleason Archer, founded Suffolk Law School, which excluded women until the 1930s. Initially, Portia only provided tutoring for the bar exam. Portia was a part-time night school, requiring four years of study for graduation. It had a predominantly working class population. In 1916, Portia charged \$60 per year in tuition. It was incorporated in 1918, received degree-granting status in 1919, opened a day program in 1920, admitted men in 1938, and was renamed the New England School of Law in 1969. *See* Chester, *supra* note 22, at vi, 4, 9; *see also* “The Founding of Portia Law School,” *New England School of Law Bulletin* 5-7, in “Women in the Legal Profession” file, Supreme Court Library.

Then, in 1915, the Cambridge Law School was established in Cambridge, Massachusetts as a part-time night school exclusively for women. Solomon, *supra* note 71, at 131. It was established by Professor Beale of Harvard Law School after Harvard refused to admit women that year. Cambridge was founded with ten students, including Beale’s daughter, at whose urging the

school had been established. Cambridge only accepted women who had previously earned a bachelor's degree, and so "its market was severely limited." Chester, *supra* note 22, at 12. The school closed after one year when Beale's daughter lost interest. *Id.*

A. Factors Shaping Mussey and Gillett's Decision to Found a Law School Primarily for Women

Mussey and Gillett's decisions to found the Woman's Law Class and WCL were shaped by three nineteenth century developments in the lives of American women: the expansion of women's higher education opportunities; the growth of women's voluntary associations; and the rise of the women's suffrage movement.

1. The expansion of women's higher education opportunities

The second half of the nineteenth century saw a tremendous expansion in women's higher education opportunities.⁷⁷ In the 1848 Declaration of Sentiments, women's rights activists

⁷⁷ See generally Helen Lefkowitz Horowitz, *Alma Mater: Design and Experience in the Women's Colleges from Their Nineteenth Century Beginnings to the 1930s* 95-104, 134-42, 237-61 (1984); see also Solomon, *supra* note 71, at 54-55.

Following the birth of the American republic in the late eighteenth century, women were newly perceived as instrumental in instilling citizenship values in their nation's children. This concept of "republican motherhood" accorded new importance to women's roles as moral leaders. Nineteenth century women reformers employed the republican motherhood ideal to expand women's opportunities in education as both teachers and students. Solomon, *supra* note 71, at xviii, 12, 15-16. These reformers asserted that women were well-suited to teach because of their elevated moral character. In order to teach effectively, it followed that women needed greater access to higher education.

Economic and demographic changes in the nineteenth century also led to an expansion of women's higher education opportunities. The shift from an agrarian to an industrial economy rendered young women's work within the family less demanding of their time and energy. Solomon, *supra* note 71, at 16-17. As a consequence, young women were freer than before to leave home prior to marriage. See Thomas Dublin, ed., *Farm to Factory: Women's Letters, 1830-1860* 16 (1981). While some young women went to work in the mills, others looked to seminaries and colleges for training as teachers. At the same time, the opening of the frontier and the rise in the maritime trade resulted in a shortage of single men who were available for marriage and a concomitant rise in the average marriage-age of both men and women. Parents who were concerned about their daughters' marriage prospects and financial security saw training for a teaching career as an appealing solution. Solomon, *supra* note 71, at 16-17. Finally, westward expansion created a significant demand for new teachers to staff frontier schools. That demand

proclaimed a woman's right to higher education, observing that man "has denied her the faculties for obtaining a thorough education, all colleges being closed against her."⁷⁸ The Declaration of Sentiments effectively linked the importance of women's access to higher education to the cause of women's rights.

led in turn to an increased interest in establishing seminaries and colleges for the training of teachers, at which women enrolled in significant numbers.

⁷⁸ Patricia Smith Butcher, *Education for Equality: Women's Rights Periodicals and Women's Higher Education, 1849-1920* x (1989) (quoting 1848 Declaration of Sentiments).

By 1870, 11,000 women were enrolled in female seminaries, which were the forerunners to the women's colleges, or in colleges, both single-sex and coeducational.⁷⁹ Twenty-two hundred of the three thousand women enrolled in colleges at this time attended women's colleges.⁸⁰ This sex-segregation in education grew out of the "separate spheres" tradition, which taught, in part, that women's delicate physical and moral natures necessitated that they be educated separately from men.⁸¹ The sex-segregation also reflected the fact that elite men's colleges refused to admit women. Harvard did not officially recognize women as university students until Radcliffe College was founded in 1893. Yale began to admit women to its graduate program in the 1890s, but continued to exclude women from its undergraduate program.⁸² Princeton and Brown limited their involvement with women students to the establishment of coordinate relationships with nearby women's colleges, and Columbia prohibited women from obtaining instruction, but permitted women to sit for university exams.⁸³ Administrators at the

⁷⁹ See Horowitz, *supra* note 77, at 56. Several of the early women's rights agitators attended female seminaries, including Elizabeth Cady Stanton, who attended, but did not graduate from, the Emma Willard School, known at that time as the Troy Female Seminary. See Banner, *supra* note 63, at 12-13.

⁸⁰ See Horowitz, *supra* note 3, at 56.

⁸¹ Solomon, *supra* note 71, at 47. As women's higher education opportunities were expanding, some educators warned that too much learning harmed women's reproductive capacities. In 1873, Professor Edward H. Clarke of Harvard University published a highly influential book, *Sex in Education; or, A Fair Chance for Girls*, which warned that too much education for girls would damage "the reproductive system that is the cradle of the race." Excerpt from Edward H. Clarke, *Sex in Education; or, A Fair Chance for Girls* (1873) reprinted in *Root of Bitterness: Documents of the Social History of American Women* 330-33 (Nancy Cott, ed. 1996).

⁸² See Solomon, *supra* note 71, at 54.

⁸³ See Solomon, *supra* note 71, at 54-55.

leading men's colleges were opposed to coeducation because they believed that women would distract men from their studies, men would be uncomfortable with women in their midst, women would weaken the colleges' reputations for scholarship, and the admission of women would undermine the founders' plans.⁸⁴

Several women's colleges were established in the mid to late nineteenth century that offered instruction equivalent to that found at the leading men's colleges. These included Mount Holyoke (founded in 1837), Vassar (1865), Smith (1875), Wellesley (1875), and Bryn Mawr (1885). These colleges were dedicated to providing rigorous academic instruction for women within the context of separate but equal spheres.

⁸⁴ See Mable Newcomer, *A Century of Higher Education for American Women* 31 (1959).

Upon graduation, students of women's colleges and female seminaries were confronted with the dilemma of choosing between domesticity and work outside of the home. Many chose to become teachers, a respectable means by which women could support themselves.⁸⁵ Others chose to enter historically male professions, like law or medicine. Thus, the expansion of women's higher education opportunities produced a concomitant rise in women's expectations for careers outside of the home, which in turn created a demand for access to professional training.

⁸⁵ While teaching was a respectable profession by which women could gain independence, the low wages paid single women teachers prompted some women, like Gillett, to quit in search of better-paid professions. Like Gillett, Susan B. Anthony had quit teaching because she was "dissatisfied with the inequities heaped on a woman teacher . . . [and] went back to the family farm." Eleanor Flexner and Ellen Fitzpatrick, *Century of Struggle: The Woman's Rights Movement in the United States* 80 (1996).

Also like Gillett, Myra Bradwell went into teaching after attending a female seminary. She quit teaching and went into the law partially in response to the low wages. Unlike Gillett, and more like Mussey, Bradwell entered the legal profession by apprenticing in her husband's law office rather than attending law school. See Jane M. Friedman, *America's First Woman Lawyer: The Biography of Myra Bradwell* 17, 47 (1993).

This expansion in women's higher education opportunities was an important factor shaping WCL's founding. Like many women who attended female seminaries or women's colleges, Mussey and Gillett elected to support themselves as teachers thereafter. Mussey's experience as an administrator at the Spencerian Business School was likely one factor shaping her decision, many years later, to establish a law school primarily for women.⁸⁶ Gillett's teaching experience was a precursor to her entering the legal profession insofar as she was frustrated with the low wages that were paid to single women teachers and sought a profession with higher salary and status. More importantly, the expansion of women's higher education opportunities served as a significant backdrop for WCL's founding because women's entry into college simultaneously reflected and stimulated women's growing interests in opportunities outside of the home.⁸⁷ As women became interested in pursuing professions beyond the traditional sphere of teaching, such as law and medicine, they sought the necessary training. This rise in women's professional expectations is an important backdrop to Mussey and Gillett's establishment of the Woman's Law Class and incorporation of WCL.⁸⁸

⁸⁶ Mussey was conscious of making history for women in education when she founded WCL. She noted in her diary in 1904, "Aspasia established a club for the education of women at Athens nearly 500 years before the birth of Christ." *Diary of Ellen Spencer Mussey*, on file in the WCL Archives. This entry suggests that Mussey was aware of the historical significance of founding a law school for women and was placing herself and WCL in the larger context of the history of women.

⁸⁷ See Solomon, *supra* note 71, at 115-40 (describing female college graduates' sense of independence and search for satisfying careers outside of the home). More specifically, Solomon observes with respect to the law-related ambitions of these female college graduates, "Although lawyering had the most masculine connotations, those who wanted to improve women's status knew that they must begin with the laws." *Id.* at 130.

⁸⁸ Although the establishment of professional schools for women, including law and medical schools, can be seen to flow naturally from the rise of the women's colleges, the

professional schools did not, by and large, share the same educational mission or serve the same student populations as the women's colleges.

With regard to educational mission, many female seminaries and women's colleges trained their graduates to teach, a traditional female career, while the professional schools, including law and medical schools, trained women for male-dominated professions.

With regard to the composition of the student body, women law students had different backgrounds from those of the college students. College degrees were not required for admission to most law schools until well into the twentieth century. For example, WCL did not require any attendance at college for admission to the law school until 1939. *See infra* text at 76-77. As a result, most women law students had not attended college. While students at the women's colleges came from the burgeoning middle and upper-middle classes and were financially supported by their parents, *see* Solomon, *supra* note 71, at 64-67, women law students were of more modest means, often self-supported by working full-time as clericals during the day while attending law school at night. *See* Chester, *supra* note 22, at 9. Many of the women students at WCL were federal government workers, *id.* at 14, and most of the students at Portia were working-class ethnic minorities, mainly of Irish, Italian, or Eastern European Jewish descent. *Id.*

Mussey and Gillett may have had these differences in mind when they founded WCL as a coeducational, rather than a single-sex, institution. *See infra* text at 47-61.

2. The growth of women's voluntary associations

Another development that influenced WCL's founding was the growth in women's voluntary associations in the second half of the nineteenth century. These voluntary associations were both the precursors to, and the products of, the expansion of opportunities for women in higher education. Many of the voluntary associations were formed or joined by newly educated women who were confronted with the dilemma of choosing between domesticity and employment outside of the home.⁸⁹ Some of the women who sought alternatives to domesticity were not interested in paid employment and chose to become involved in women's voluntary associations as an alternative. At the same time, some of the women who had come together in the early voluntary associations, like the abolitionist societies of the early to mid nineteenth century, went on to join the growing women's rights movement, which in turn supported the expansion of women's higher education opportunities as women sought to enter the world outside of the home.

⁸⁹ Having noted that women composed thirty-five percent of the undergraduate population in 1890, one commentator highlighted the dilemma confronting women upon college graduation as follows:

After receiving B.A. degrees, these educated young women faced a dilemma concerning their after-college life. They aspired to more stimulating occupations than that of reclining in fern-filled parlors discussing the latest fashions or laboring over a needlework project. However, the societal role of an educated woman was in flux and a deep disjunction between college life and cultural expectations existed. *After College, What*, a popular advice manual published in 1896, urged new alumnae to overcome the "blank nothingness" that often followed four stimulating collegiate years by adopting some useful activity, "something to do." Women's rights papers were more explicit in their advice and encouraged women graduates to venture into the professions or to attend graduate school.

Butcher, *supra* note 78, at 82. Butcher's study underscores the connection between the expansion of women's higher education opportunities, on the one hand, and increased participation in women's voluntary associations, on the other hand, as well as the link between the

Voluntary associations became the loci for much female activity outside of the home as waves of newly educated women sought to apply their recently-acquired knowledge and skills to social reform causes. These newly educated women also joined voluntary associations because they wanted to pursue the kinds of intimate female friendships that they had experienced at single-sex seminaries and colleges. Most of the voluntary associations that women joined were all-female, consistent with the separate spheres tradition that had shaped the all-female seminaries and colleges.

growing number of female college graduates and the increased interest in professional education.

Women's voluntary associations served as springboards for women's nascent political activity. First, many of the associations were organized around particular political and social issues.⁹⁰ Second, women's coming together in these associations to unite around certain causes often led to other political activity and, ultimately, to the women's suffrage movement.⁹¹

⁹⁰ Drachman notes the connection between the growth of women's voluntary associations and the rise in women's political activity as follows:

Through local, state, and ultimately national women's clubs and associations, they organized to work for social and political reforms including park beautification, kindergartens, women's suffrage, and pure food and drug legislation. Wrapped in the banner of Woman's Place, they argued that as women it was their responsibility to reform society to make it like the home.

Drachman, "My Partner," *supra* note 53, at 227.

⁹¹ The connection between women's participation in voluntary associations and the women's suffrage cause should not be overstated. For example, some women who joined the Woman's Christian Temperance Union ("WCTU") for its war on whisky did not support the women's rights movement generally nor the cause of women's suffrage specifically.

Women's first significant forays into the voluntary associations were through the abolitionist societies of the early to mid nineteenth century.⁹² This was followed by the formation of temperance organizations, most notably, the Woman's Christian Temperance Union ("WCTU"), and by the rise of the settlement house movement, exemplified by Jane Addams' Hull House in turn-of-the-century Chicago.

⁹² In response to the refusal of some abolitionist societies to allow women to speak publicly, women formed their own all-female abolitionist societies. Sarah and Angelina Grimke, perhaps the most famous female abolitionists, struggled against the separate spheres tradition by addressing mixed audiences of men and women. *See* Flexner, *supra* note 85, at 39-46.

Mussey and Gillett were actively involved in a number of women's voluntary associations.⁹³ One aspect of Mussey's social prominence was her involvement in a range of women's social and professional clubs that advocated reform for women. Despite Gillett's outspokenness against charitable work for women lawyers, she, like Mussey, participated in a number of voluntary associations outside of her law practice.⁹⁴ WCL's founding is a natural outgrowth of the rise of women's voluntary associations insofar as Mussey and Gillett were devoted to WCL out of social and political, rather than pecuniary, interest.⁹⁵ Because WCL charged only \$50 per year for tuition in WCL's early days,⁹⁶ Mussey and Gillett largely volunteered their efforts to the cause of women in legal education.

⁹³ Mussey was involved in a wide range of voluntary associations throughout her life, including the American Association of University Women, American Bar Association, Daughters of the American Republic, National American Woman Suffrage Association, National Women Lawyer's Association, Women's Bar Association of the District of Columbia, and the Women's City Club. *See* "Ellen Spencer Mussey," *Who's Who in the Nation's Capital* 670-71 (1934-35).

Likewise, Gillett was active in a number of voluntary associations despite her disavowal of charitable legal work in her Equity Club letters. These included the American Bar Association, District of Columbia Equal Suffrage Association, National American Woman Suffrage Association, National Woman Suffrage Association, National Woman's Party, Wimodaughsis, and the Woman's Bar Association of the District of Columbia. *See* Dorothy Thomas, "Emma Millinda Gillett," *Notable American Women 1607-1950 Vol. II* at 37 (1971). The Equity Club might also be included on Gillett's list of voluntary associations.

⁹⁴ To Gillett's mind, there appeared to be a clear distinction between women's voluntary associations, which were a worthwhile pursuit, and charitable legal clients, for whom women lawyers should not squander their time.

⁹⁵ When asked to describe her present employment, Gillett responded that she was "Dean [of the] Washington College of Law as matter of interest in legal education. Had nominal salary of \$50 to \$100 per month." Bureau of Vocational Information, questionnaire # 83, folder 186, Bureau of Vocational Information Collection, Schlesinger Library.

⁹⁶ *1898-99 Catalogue of the Washington College of Law* 7, on file in the WCL Archives. WCL's tuition was significantly less than that charged by Georgetown, as an example. *See infra*

3. The rise of the women's suffrage movement

note 174.

The growth in women's voluntary associations contributed directly to the rise of the women's suffrage movement in the second half of the nineteenth century, which in turn supported the expansion of women's higher education opportunities.⁹⁷ Officially christened at the 1848 Seneca Falls Convention,⁹⁸ the women's suffrage movement slackened during the Civil War period as many women's rights supporters set their causes aside to focus their efforts on supporting the republic and the abolition of slavery. As a consequence, no women's rights conventions were held during the war years. After the war, women's rights activists expected to be rewarded for their loyal support of the republic by being given the vote. Instead, they were told that this was the "Negro hour" and that women must wait. The government's failure to recognize women's wartime support, taken together with the Fourteenth Amendment's introduction of the word "male" into the United States Constitution, split the women's suffrage movement in two directions. This split was embodied in two women's suffrage organizations that were both founded in 1869, the National Woman Suffrage Association ("NWSA"), which opposed the enfranchisement of freedmen through the Fourteenth Amendment in the absence of votes for women, and the American Woman Suffrage Association ("AWSA"), which supported the enfranchisement of freedmen through the Fourteenth Amendment as an important step toward universal suffrage, even absent votes for women.⁹⁹ In 1890, NWSA and AWSA were merged to

⁹⁷ See generally Anne Firor Scott and Andrew MacKay Scott, *One Half the People: The Fight for Woman Suffrage* (1982).

⁹⁸ The 1848 Seneca Falls Convention's Declaration of Sentiments highlighted, *inter alia*, the need for women's greater access to education and the professions. Elizabeth Cady Stanton, "Address Delivered at Seneca Falls" (July 19, 1848), reprinted in *Elizabeth Cady Stanton, Susan B. Anthony: Correspondence, Writings, Speeches* 29, 35-36 (Ellen DuBois, ed. 1981).

⁹⁹ One commentator has described NWSA as an organization advocating radical social

form the National American Woman Suffrage Association (“NAWSA”), which focussed exclusively upon votes for women and adopted a “states rights” approach to the fractious issue of racial equality in 1903, thereby delegating that issue to the state chapters.¹⁰⁰

change and AWSA as a more moderate group. *See* Butcher, *supra* note 78, at 9.

¹⁰⁰ *See* Krador, *supra* note 6, at 165.

The women's suffrage movement affected WCL's founding in two respects. First, Mussey and Gillett had dabbled in the suffrage movement before WCL was founded, attending NWSA meetings before NWSA and AWSA merged to form NAWSA in 1890. Like the suffragists who opposed the Fourteenth Amendment because it excluded women, Mussey and Gillett put the interests of women, and white women in particular, before all others to the extent of failing to include African Americans as students at WCL. Second, the women's suffrage movement strengthened the push for women's access to higher education on the grounds that the right to vote carried with it the responsibility to know how to use one's vote, *i.e.*, to be informed about the social and political affairs of the day.¹⁰¹ Some suffragists believed that women must demonstrate their educational acumen first in order to earn the right to vote.¹⁰²

These three developments -- the expansion in women's higher education opportunities, the growth of women's voluntary associations, and the rise of the women's suffrage movement -- were highly interconnected and served as important backdrops to the founding of both the Woman's Law Class and WCL. In essence, the expansion of women's access to higher education created waves of newly educated women who sought opportunities for involvement in the world beyond mere marriage and motherhood. Increasingly, these women formed, or joined, voluntary

¹⁰¹ On this point, Stevens observes, "the rise of the suffragist movement increased the pressure on the law schools" to admit women. Stevens, *supra* note 12, at 83. As the flip side to this rationale, some states, including Massachusetts, refused to admit women to the bars of their courts on the ground that admission was limited to citizens and women were not citizens since they were not allowed to vote. See *Woman's Work*, *supra* note 12, at 229.

¹⁰² See generally Kraditor, *supra* note 6, at 22 (observing, "Having the right to vote imposed the duty of exercising that right competently, which required doing whatever was necessary to become politically intelligent. At the very least it meant that women must become informed on political issues . . .").

associations. Their coming-together in voluntary associations provided the organizational framework from which the women's suffrage movement gained strength. The suffrage movement in turn led to a push for greater educational opportunities as women recognized the need to arm themselves with education so as to earn the right to vote and use it effectively.

4. Mussey and Gillett's personal struggles to obtain legal instruction in Washington, D.C.

Mussey and Gillett were specifically prompted to found the Woman's Law Class and WCL by their personal struggles to obtain legal instruction in Washington and by their experiences in striving for gender equality as early women lawyers. Even though women could become members of the bars of all of the local and federal courts in Washington in the 1890s, they could enroll at only one of Washington's law schools and at none of Washington's white law schools.¹⁰³

¹⁰³ Nor could women join Washington's official bar association at this time. In fact, women could not join the Bar Association of the District of Columbia until 1941. It was in large part a response to this exclusion from the official bar association that Mussey and Gillett established the Women's Bar Association of the District of Columbia in 1917. *See infra* text at 84.

There were five law schools in Washington at this time:¹⁰⁴ Catholic University of America (established in 1895),¹⁰⁵ Columbian College (established in 1865 and merged with George

¹⁰⁴ A growing number of practicing lawyers had attended law school by the late 1890s, although a significant number still received their training as apprentices in small law offices:

Thousands of the lawyers practicing in 1900 still had come from this rough school of experience. But slowly the gap between law school and clerkship was closing. Fewer would-be lawyers studied or clerked in law offices, selling their labor cheaply or giving it free in exchange for practical experience. Of the rest, some combined clerkship with halfhearted or short attendance at a law school. A growing number simply went to school.

Friedman, *supra* note 2, at 606. In contrast with the legal profession, almost all physicians entered practice through formal study by 1891. Richard Abel, *American Lawyers* 41 (1989).

In 1896, the ABA “approved the requirement of a high school diploma and two years of law study for bar admission, which it increased to three years in 1897. Abel, *supra*, at 96. In 1899, the ABA responded to pressure from legal academicians “for the establishment of an organization of reputable’ law schools” by forming the Association of American Law Schools (“AALS”) with twenty-five charter members. *Id.* To become a charter member of the AALS, a law school had to certify that its students possessed high school diplomas, that the course of study was at least two years, and that the library contained United States and local state reports. In 1905, the AALS required a three year course of study for membership and, in 1919, moved to exclude all part-time schools. *Id.* at 96-97, 115.

A significant force driving elite lawyers to regulate the training of the profession at the turn of the century was concern about the diversification of the profession as ethnic minorities, recent immigrants, and members of the working class sought to enter the field and part-time law schools proliferated in response to this new demand. Stevens, *supra* note 12, at 100-01; Abel, *supra*, at 6. As Stevens observes, “A new group of students had arrived. They saw, even more clearly than those with better qualifications, that law school was essentially the gateway to a professional career with the attendant prospects of social advancement and economic improvement, rather than primarily an educational experience.” Stevens, *supra* note 12, at 75. Most of these new students attended the part-time law schools and the profession’s elite were alarmed by “the success of the part-time schools.” *Id.*

Nevertheless, the ABA and the AALS did not exercise substantial influence over the training of the legal profession until the 1920s. See Smith, *supra* note 22, at 6; see also Albert J. Harno, *Legal Education in the United States* 71-121 (1953). For example, the ABA and the AALS were unable to get state legislatures to enact any of their proposed reforms with the result

Washington University between 1899 and 1912),¹⁰⁶ Georgetown University (established in 1870),¹⁰⁷ Howard Law School (established in 1869),¹⁰⁸ and National University (established in 1869 and merged with George Washington University in 1954).¹⁰⁹ With the exception of Howard, which had been coeducational and racially integrated since its 1869 founding,

that, in 1923, no state required law school attendance for admission to the bar. Stevens, *supra* note 12, at 99; Abel, *supra*, at 42. This lack of influence can be explained in part by the failure of the ABA and the AALS to work in concert to articulate standards for the profession. Stevens, *supra* note 12, at 98, 102. During the first two decades of the twentieth century, the AALS represented a steadily shrinking proportion of the law school population. *Id.* at 97-98. In an era of significant growth in the number of law schools, the AALS grew from 25 to 32 member schools in 1901, less than one-third of the 108 existing law schools. *Id.* at 107 n.35. Abel notes that “the number of law schools doubled in the twenty years between 1889-90 and 1909-10, while the number of law students increased more than fourfold.” Abel, *supra*, at 41. Stevens notes that the number of students attending AALS member schools between 1901 and 1916 rose by 24.9 percent while the number of students attending nonmember schools “rose by more than 100 percent.” Stevens, *supra* note 12, at 108 n.46. The influence of the ABA and the AALS grew in and around 1920 following the publication of three reports on the status of the legal profession: the 1914 Redlich report on the use of the case method in law school; the 1920 Root report, representing the elite of legal academia, advocating the requirement of two years of college study before enrolling in law school; and the 1921 Reed report, sponsored by the Carnegie Foundation, on the growing pluralism of the legal profession. *Id.* at 112-19; *see also* Alfred Zantzinger Reed, *Training for the Public Profession of the Law: Historical Development and Principal Contemporary Problems of Legal Education in the United States* (1921).

¹⁰⁵ Jean S. Schade, “The Washington College of Law -- A History From the Founding of the College Until Its Merger With the American University, 1896-1949” 4 (unpublished Master’s Thesis, Catholic University (1969)); *see also* Reed, *supra* note 104, at 423-30 (listing dates of founding of all American law schools through 1920).

¹⁰⁶ Smith, *supra* note 22, at 162. Abel notes that Columbian College was established “to serve federal employees whose workday ended at 3 P.M.” Abel, *supra* note 104, at 53.

¹⁰⁷ 1995-96 *Georgetown University Law Center Bulletin* 4.

¹⁰⁸ Smith, *supra* note 22, at 47. While Howard admitted women long before the other Washington law schools did, it was not a law school primarily for women because its primary mission was the training of African American lawyers and the number of women at Howard, both African American and white, was quite small.

Washington's law schools admitted only white males. National had at one time admitted white women, including Belva Lockwood, who graduated in 1873,¹¹⁰ but it no longer did so at the time the Woman's Law Class and WCL were established.¹¹¹

¹⁰⁹ Smith, *supra* note 22, at 162; *see also* Stevens, *supra* note 12, at 85 n.15.

¹¹⁰ Drachman, *Letters of the Equity Club*, *supra* note 12, at 223.

¹¹¹ When Burnita Shelton Matthews was a student at National University Law School in 1917, one of her law professors told a story about Lockwood, a National graduate, that implied that Lockwood was an incompetent lawyer:

Matthews recalled that professors told little jokes that would put women in their place, so to speak, ' . . . She even recounted a story told in one of her classes about Belva Lockwood, another graduate of National University Law School and first woman admitted to the Bar of the U.S. Supreme Court, that implied that Lockwood was an incompetent lawyer. She noted that later she was to learn more about Lockwood from other women and came to have a much better opinion of Belva Lockwood than I was led to believe was justified when I was going to law school.'

Kate Greene, "Torts Over Tempo: The Life and Career of Judge Burnita Shelton Matthews," *The Journal of Mississippi History*, Vol. LVI, No. 3 at 181, 186 (Aug. 1994) (quoting "Burnita Shelton Matthews: Pathfinder in the Legal Aspects of Women," trans. of interview by Amelia R. Fry, April 29, 1973, Suffragists Oral History Project, Bancroft Library, University of California-Berkeley at 13-14).

Matthews also noted that her fellow students at National, all male, were critical of suffragists. Greene, *supra*, at 186 (quoting Matthews as recalling "that she heard many criticisms of the suffragists from her fellow students, most of whom were former soldiers" (citing trans. at 14)). Matthews' recollections suggest that, even after National admitted women as law students for the second time, it did not encourage their studies, instead denigrating women lawyers as role models.

The *1897-98 Catalogue of the Woman's Law Class* highlighted the paradoxical nature of women's legal opportunities in Washington when it declared in its first sentence:

Women are admitted to practice before all the Courts of the District of Columbia, the Court of Claims, the Supreme Court of the United States, and the Executive Departments, but they are denied admission to such Law Schools of the District as confine their membership to white persons.

The catalogue then explained:

The Woman's Law Class was opened February 1, 1896, to afford women the opportunity for a thorough course of legal study which will increase their intellectual grasp, be useful to them in business life, and fit them for the practice of law.¹¹²

Given that this explanation immediately followed the declaration, the catalogue effectively asserted that a woman's right of access to formal legal education flowed naturally from her access to bar membership, thereby muting the controversial nature of WCL's mission to provide legal instruction to women.

B. Mussey and Gillett's Adoption of a Coeducational Format

Although WCL was established primarily for the legal education of women, Mussey and Gillett adopted a coeducational, rather than single-sex, format in founding the school because of their commitment to the ideal of gender equality. WCL's 1898-99 catalogue declared, "As co-education is believed to be the true method, men are admitted to the College on an equal footing with women."¹¹³ WCL's 1899-1900 catalogue also spoke in coeducational terms in explaining why legal education was important:

¹¹² *1897-98 Catalogue of the Woman's Law Class* at 1, on file in the WCL Archives.

¹¹³ *1898-99 Catalogue of the Washington College of Law* 1, on file in the WCL Archives. It is noteworthy that WCL's catalogue reassured men that they would be placed on equal footing with women, rather than the reverse, since men's experience traditionally defined the norm.

The reasons advanced as to the importance of men pursuing this study apply equally to women. Both are amenable to the law, and ignorance of the law excuses neither. Both are governed by the law in all business matters including the descent of property. Both find the knowledge valuable either as a means of caring more advantageously for their own property or of earning a livelihood.¹¹⁴

In essence, WCL asserted the importance of legal education for women by demonstrating why law study was important for everyone. WCL's 1899-1900 catalogue stated further:

A demand exists in law offices for stenographers and typewriters having a legal training, and higher wages are paid for such services. In the departments many men take a course in law in order to obtain promotions, and it is but reasonable to believe that the same results will be secured by women.¹¹⁵

Again, by enumerating practical reasons for studying law that applied to everyone, including expanded job opportunities and access to promotions, WCL's founders used gender equality arguments to demonstrate why law study was valuable for women as well as men.¹¹⁶

¹¹⁴ *1899-1900 Catalogue of the Washington College of Law* 8, on file in the WCL Archives.

¹¹⁵ *1899-1900 Catalogue of the Washington College of Law* 8-9, on file in the WCL Archives.

¹¹⁶ Mussey reiterated this reasoning in 1920 when she was asked to enumerate the legal profession's "advantages and limitations." She observed, "A knowledge of the law is not only a wonderful discipline for the mind, but the law is the key to all social problems and the guide in commerce." When asked, "How do the chances for men and women compare," Mussey responded, "A woman must show that she can make good with a man it is presumed." Bureau of Vocational Information, questionnaire #85, folder 187, Bureau of Vocational Information Collection, Schlesinger Library.

In 1900, Isabella Pettus, a lecturer in law at New York University, explained the importance of women's legal education in terms similar to those of Mussey and WCL's catalogues: "Thus the various Acts which have given to women property rights, power over wages, and power to make wills, have been so many new responsibilities urging them to study to be worthy." She continued:

Every argument which would sustain the position, that a man should know the

laws he lives under, would equally apply to a woman. Some of the largest estates are held to-day by women heirs; some of the most momentous questions of the modern law concern their status. It is impossible to put woman back into the seclusion of the Pauline period, where her only source of information was to ask her husband at home.' With increased responsibility, as given her by the trend of modern law, she must be taught her position, as woman, as property-holder, as litigant, and as citizen. A man, in his business, must know the laws: a woman, in her environment, is equally under their power, and must therefore know her place in the body politic.

Isabella Pettus, "The Legal Education of Women," *Journal of Social Sciences* 234 (1990) (lecture presented at New York University on May 11, 1990).

Subsequently, WCL ran an advertisement that used gender neutral terms to explain the importance of legal education for women. Captioned, "Why Women Should Study Law," the advertisement declared:

WHY WOMEN SHOULD STUDY LAW

To Fit Them to Become Active Members of a Learned and Honorable Profession. -- The law leads to political and judicial honors.

To Fit Them for Universal Service. -- The law trains for the many activities needing the volunteer worker.

To Fit Them for Better Positions and Better Pay. -- There is a strong demand for intelligent service without regard to sex.

To Qualify Them to Protect Their Personal and Property Rights. -- Ignorance of the law excuses no one.

To Give Mental Training While Pursuing a Course of Intense Human Interest. -- Law is the perfection of reason.

The advertisement proceeded to assert that WCL had succeeded in demonstrating women's acumen for the study of law through its coeducational format:

For nearly a quarter of a century the **Washington College of Law** has stood for legal co-education. It proudly points to its men and women graduates who are successful in their profession and have attained positions of trust and responsibility. Legal education for women has passed the experimental stage and the value of the woman lawyer is recognized. That so many are ready at this world crisis to do efficient work is to a large extent due to this college where women always have been welcome. The percentage of our graduates passing the bar examinations is unusually high.

Women, including the many who desire to avail themselves of opportunities for education during their stay as war workers in Washington, are invited to visit the college and to join the classes, all of which meet after office hours. They will find a friendly and helpful faculty and congenial associates among the students.

For further information and catalog apply to

WASHINGTON COLLEGE OF LAW

CO-EDUCATIONAL

1317 New York Avenue

Washington, D.C.¹¹⁷

¹¹⁷ While this advertisement is undated, its reference to “world crisis” and “war workers,” along with its citation of WCL’s New York Avenue address, indicate that it ran during World War I. WCL moved to a new home on K Street after the war.

Mussey and Gillett's choice of a coeducational format was shaped primarily by their belief in gender equality.¹¹⁸ As such, their decision to educate women and men together was consistent with their overall approach to the law.¹¹⁹ Mussey and Gillett did not follow a separate spheres, or

¹¹⁸ The belief that coeducation best embodied the ideal of gender equality was reflected in May Wright Sewall's 1891 essay on women and higher education in *Woman's Work in America*:

That a general impression that women were intellectually inferior to men formerly prevailed cannot be disputed. If their work in co-educational colleges has been, on an average, better than that of their male classmates, the young men who for four years have witnessed daily this exhibition of an intellectual vigor and interest equal to their own, will not be likely to entertain the doctrine of women's natural and therefore necessary inferiority. The minds of the women in these colleges will be correspondingly affected; they will acquire a respect for themselves and for their sex greater than was formerly characteristic of women.

Supra, note 12, at 83. Continuing, Sewall expresses a hope and desire similar to that which was motivating Mussey and Gillett:

The intellectual association of men and women on a plane of accepted equality, begun in college, will continue after leaving it, and will modify the social life of every circle into which graduates of co-educational colleges enter.

Id.

¹¹⁹ Mussey and Gillett's choice of a coeducational format also reflected the rhetoric of the women's rights press of that era. Butcher demonstrates that coeducation was one of the central themes of the women's rights press in the second half of the nineteenth century. See Butcher, *supra* note 78, at 33-48. Butcher quotes Elizabeth Cady Stanton as declaring in the *Revolution*, which was the voice of the NWSA:

It is the isolation of the sexes that breeds all this sickly sentimentality, these romantic reveries, these morbid appetites, the listlessness and lassitude of our girls. They need the companionship of boys to stimulate them to more active exercise and vigorous thought.

Id. at 9, 38. Butcher also notes Lucy Stone's 1870 declaration in the *Woman's Journal*, the voice of the AWSA, that "Women's educational institutions of whatever pretensions, wherever they exist, whether legal, medical, or collegiate, hold inferior rank to those of men, and always will We did not believe in colleges for women along, anymore than for men alone." *Id.* at 9, 41.

sex-segregated, approach to the legal profession. Even though Mussey initially believed it inappropriate for women to practice law, she evolved into a major figure on Washington's legal scene, arguing Supreme Court cases, proposing legislation, and establishing and presiding over a law school. Likewise, Gillett had a prominent legal career. Rather than pursuing traditional female legal specialties, such as family and matrimonial law or trusts and estates, Mussey and Gillett practiced business law. Just as Mussey and Gillett rejected the separate spheres approach to the practice of law by working in fields that were not traditionally female, they rejected the separate spheres approach to legal education. In choosing a coeducational format, they chose not to follow the model of the female seminaries and women's colleges, even though these institutions had played an important role in creating the women's rights milieu in which WCL was born. Instead, Mussey and Gillett aspired to demonstrate women's equal intellectual acumen for the law by educating women alongside men.¹²⁰

Mussey and Gillett's choice of a coeducational format was largely a symbolic one. It was critical to their belief in gender equality that men and women be educated together as equals rather than in sex-segregated spheres, which might be subject to interpretation as signifying

¹²⁰ In choosing coeducation as the format by which to embody their gender equality ideal, Mussey and Gillett could look to the success of women at other coeducational law schools in demonstrating women's acumen for the law. For example, the dean of the University of Michigan Law School expressed his belief that the women students there had "compared favorably in the matter of scholarship with the men." *Woman's Work*, *supra* note 12, at 234. The dean further asserted that women were "just as capable of acquiring legal knowledge as men are." *Id.*

women's inferior intellectual ability. Mussey and Gillett thought that coeducation, as a symbol, was central to their mission even if it meant, in practical terms, that only one male student enrolled in the WCL's years.

Because their significance stemmed from their symbolic, or potential, presence, WCL's early male students were not that significant as individuals. WCL's archives are replete with reports of noteworthy achievements on the part of its early female students, but are largely silent on the achievements of its early male students. News clippings of the era, including articles from *The College Grit*, the school newspaper, feature the path-breaking accomplishments of WCL's female graduates, faculty, and administrators, but are silent as to the men. Likewise, Hathaway, in chronicling the achievements of WCL's early graduates,¹²¹ is nearly silent as to the men. This silence suggests two possibilities: that WCL's early male students were not as academically able as the women;¹²² or that the men's achievements were simply not as vital to WCL's mission as the women's and were not publicized as a result. The answer lies in the combination of these two factors. Given that WCL's male students could apply to any of the Washington law schools, those who chose to attend WCL may have done so because they were refused admission by the other law schools on the basis of their academic ability. At the same time, because men were important to WCL's mission as a symbolic matter, WCL may have been willing to admit male candidates who were being rejected elsewhere. In effect, WCL did not expect these men to do as

¹²¹ See *infra* text at 74.

¹²² This suggestion raises the question of whether the men who attended WCL did so because they were not accepted by other Washington law schools. On this point, one news article reveals that WCL's female graduates outscored the men on the bar examination. Another suggestion is that men attended WCL because of its low tuition. See Hathaway, *supra* note 3, at 167.

well as its women students and their achievements, if any, were not that important to WCL's mission. By contrast, WCL had a vested interest in seeing its women students succeed and in trumpeting their successes in order to promote its mission of demonstrating women's intellectual acumen for the law.

In addition to its symbolic value, Mussey and Gillett may have adopted a coeducational format in order to prepare their women students for entry into a predominantly male profession. By placing males in positions as students, teachers, and administrators, Mussey and Gillett provided their women students with an opportunity to learn to work with men. Especially in light of Mussey and Gillett's formative experiences of working in the law offices of men, they likely believed it important for women to study alongside men in order to gain entry into the mainstream of the legal profession.

Furthermore, Mussey and Gillett may have adopted a coeducational format because they were familiar with the troubled fate of the all-women's medical schools in the latter part of the nineteenth century and wished to avoid the same for their progressive educational enterprise. Unlike women's entry into the legal profession, which drew upon principles of gender equality,¹²³ women's entry into the medical profession drew upon separate spheres principles, asserting women's natural predisposition to medicine as a healing profession.¹²⁴ Women were considered

¹²³ One need only look to the arguments made by Myra Bradwell or Belva Lockwood in an effort to enter the mainstream of the legal profession to see the invocation of gender equality principles. *See supra* note 24.

¹²⁴ Carrie Menkel-Meadow has written extensively about how women entered the medical

naturally disposed towards medicine because of their nurturing qualities.¹²⁵ In particular, women were predisposed to gynecological, obstetric, and pediatric specialties because of their

and legal professions in very different ways. In essence, women's medical schools grew out of the separate spheres tradition and most women doctors were educated in single-sex environments, reflecting the notion that women's nurturing skills predisposed them to certain fields of medicine, such as women's and children's health. By contrast, women advocated their admission into law schools and the legal profession on the basis of equality, *i.e.*, women were just as capable as men. As a natural consequence of this equality theory, most women law students attended coeducational, as opposed to single-sex, law schools. *See, e.g.*, Carrie Menkel-Meadow, "Women's Ways of Knowing' Law: Feminist Legal Epistemology, Pedagogy, and Jurisprudence," in *Knowledge, Difference, and Power* at 57 (Nancy Goldberger, ed. 1996); Carrie Menkel-Meadow, "Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers," in *Lawyers in Society* at 224-29 (R. Abel and P. Lewis, eds. 1995); Carrie Menkel-Meadow, "Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change," *Law and Social Inquiry*, 14(2), 289, 298-304 (1989).

Nevertheless, some gender difference arguments were made on behalf of women's entry into the legal profession, and sometimes by women themselves. For example, in her chapter on women in the law in *Woman's Work in America*, Bittenbender asserted:

Woman's influence in the court room as counsel is promotive of good in more than one respect. Invectives against opposing counsel, so freely made use of in some courts, are seldom indulged in when woman stands as the opponent. And in social impurity cases, language, in her presence, becomes more chaste, and the moral tone thereby elevated perceptibly. But there should be one more innovation brought into general vogue, that of the mixed jury system. When we shall have women both as lawyers and jurors to assist in the trial of cases, then, and not until then, will woman's influence for good in the administration of justice be fully felt.

Supra note 12, at 243-44.

¹²⁵ Writing in 1891, Mary Putnam Jacobi, M.D., asserted that women were naturally gifted at medicine because of their nurturing qualities, but that they needed greater educational opportunities in order to succeed fully as doctors:

The special capacities of women as a class for dealing with sick persons are so great, that in virtue of them alone hundreds have succeeded in medical practice, though most insufficiently endowed with intellectual or educational qualifications. When these are added, when the tact, acuteness, and sympathetic insight natural to women become properly infused with the strength more often found among men, success may be said to be assured.

reproductive and familial associations. The women's medical schools had thrived in the mid to late nineteenth century such that there were 544 women doctors in 1870 and more than 4550 by 1890.¹²⁶ These medical schools were all but extinguished by the rise of the American Medical Association ("AMA") at the turn of the century, which brought with it increased regulation of medical education and practice.¹²⁷ As Stevens reports, the new regulations "drove out of

Woman's Work, *supra* note 12, at 177.

¹²⁶ Stevens, *supra* note 12, at 91 n.90. There were many fewer women lawyers at approximately the same time: 5 in 1870, 75 in 1880, and 1010 in 1900. *Id.* at 83.

¹²⁷ See generally Virginia G. Drachman, "The Limits of Progress: The Professional Lives of Women Doctors, 1881-1926," 60 *Bulletin of the History of Medicine* 58 (1986). In the last decades of the nineteenth century, there were fourteen all-female medical schools. *Id.* at 59. The increased regulation of the medical profession that was ushered in by the rise of the AMA significantly reduced women's participation in traditionally female specialities, such as gynecology

existence most of the women's medical colleges and the mixed' medical schools retrenched on the number of women" with the result that women's percentage representation in the medical profession fell.¹²⁸

Because women's entry into the legal profession was predicated upon different grounds than that into medicine -- gender equality as compared with gender difference, it is consistent with this difference that Mussey and Gillett adopted a coeducational format in founding WCL. By including men as students, administrators, and faculty, Mussey and Gillett may have also sought to safeguard WCL from the troubled fate of the all-female medical schools by giving WCL more

and obstetrics, and precipitated the closing of the women's medical schools. *Id.*; see also Richard W. Wertz and Dorothy C. Wertz, "Lying-In: A History of Childbirth in America," reprinted in Richard Chused and Wendy Williams, *Course Materials for Gender and the Law in American History Seminar* [hereinafter "*Course Materials*"], Chapter V at 14 (Fall 1996); Stevens, *supra* note 12, at 91 n.90 (describing effect of Flexner report on the status of medical education in driving women's medical colleges out of business). In addition to the rise of the AMA, and its concomitant regulation of medical schools and practice, the demise of the women's medical schools was due to the so-called "triumph of science" as the profession became increasingly medicalized and less healing-oriented. One all-female medical school that remained was the Women's Medical College of Pennsylvania, which had been founded in 1850 as the first medical school for women. See Butcher, *supra* note 78, at 71; see also Epstein, *supra* note 12, at 51.

¹²⁸ Stevens, *supra* note 12, at 91 n.90.

credibility and acceptability as a coeducational school. Men's participation on almost every level at WCL made the otherwise unconventional educational enterprise seem less radical. Because women were relative newcomers to the legal profession, Mussey and Gillett may have anticipated that WCL, with its mission of training women lawyers, would be perceived as a radical enterprise and a threat to the legal establishment. Had WCL been founded as an all women's law school, it surely would have been discredited by those in the mainstream who believed it inappropriate for women to study law. The presence of men safeguarded, or, at a minimum, cushioned, WCL from these gender-based attacks. Mussey and Gillett's decision to found WCL as a coeducational school may have been critical to the school's ability to survive over time by contrast with the women's medical schools and with the small number of women's law schools.

Finally, Mussey and Gillett may have adopted a coeducational format in founding WCL because they recognized that the population of students willing and able to attend law school was predominantly male. By admitting men as well as women, Mussey and Gillett protected WCL's long-term viability, financial and otherwise, by ensuring that WCL had a sizeable pool of students from which to compose its enrollment. Ultimately, Mussey and Gillett's idealism about gender equality coexisted with their pragmatic desire to ensure WCL's ongoing ability to pursue its mission of educating women in the law.

Despite Mussey and Gillett's choice of a coeducational format primarily as a symbol of gender equality, the proportion of male students at WCL grew steadily over the years such that

men comprised more than half of WCL's student population for the first time in 1909 and then consistently between 1914 and 1981.¹²⁹ There are two reasons for this phenomenon.

¹²⁹ WCL's ability to attract a growing number of male students during World War I is remarkable. By contrast with WCL's experience during World War I, Abel notes that some law schools began to accept women in significant numbers only as a result of the shortage of males caused by the two world wars. Abel observes, "during World War I, the number of male students fell from 7477 to 2443 between the fall of 1916 and the fall of 1918 in the 41 schools admitting women, while the number of women rose from 397 to 503 and their proportion increased from 5 to 17 percent of total enrollment." Abel, *supra* note 104, at 91.

First, women's willingness and ability to attend law school did not grow at the same pace as WCL's student body with the result that, as WCL expanded its student body beginning in 1910, women's percentage representation shrank.¹³⁰ This was due in part to the retrenchment on

¹³⁰ Despite evidence that women's willingness and ability to attend law school did not grow at the same pace that WCL's overall enrollment expanded, Portia's all-female enrollment grew substantially:

| <i>Year</i> | <i>Number of Students</i> |
|-------------|---------------------------|
| 1908-09 | 2 |
| 1910-11 | 24 |
| 1912-13 | 32 |
| 1914-15 | 40 |
| 1916-17 | 76 |
| 1918-19 | 106 |
| 1920-21 | 177 |

Stevens, *supra* note 12, at 90 n.84 (citing *1925-26 Catalogue of Portia Law School*). Clearly, Portia was able to attract a growing number of women at the same time that the ratio of female to

women's rights issues that occurred during World War I and following passage of the Nineteenth Amendment. As one commentator observed of women lawyers generally, "Despite [their] encouraging start . . . , the number of women lawyers grew slowly in the thirty years before the passage of the Nineteenth Amendment."¹³¹ As a result, "although women constituted 47 percent of the total college enrollment" in 1920, "only 3 percent of the legal profession was female."¹³² Taken together with WCL's expanding student enrollment, the slow growth in the number of women attending law school resulted in WCL's student body becoming increasingly male.

male students at WCL was shrinking.

¹³¹ Harris, *supra* note 12, at 112. By contrast with Harris, Abel reports that "the number of women law students enrolled increased from 205 in 1909 to 1171 in 1920." Abel, *supra* note 104, at 90.

¹³² Harris, *supra* note 12, at 112.

Second, two of the white Washington law schools began to admit women at this time, thereby reducing WCL's supply of female applicants. While Georgetown did not admit women until 1951,¹³³ George Washington, formerly known as Columbian College, admitted women in 1912 and National University admitted women shortly thereafter.¹³⁴ By 1918, "there were 177 women studying law in D.C.," with 98 at WCL, 58 at George Washington, eighteen at National, and three at Howard.¹³⁵ While there were more women students at WCL than at any other area law school in 1918, the proportion of women at WCL declined as women's choices of law schools to attend expanded.¹³⁶

¹³³ Georgetown University Law Center, *The First 125 Years: An Illustrated History of the Georgetown University Law Center* 119 (1995).

¹³⁴ Schade, *supra* note 105, at 15. For example, Burnita Matthews, a WCL instructor, enrolled at National in 1917. It is unclear whether these law schools admitted women because they had proven to be successful at WCL.

¹³⁵ Stevens, *supra* note 12, at 84 n.88 (citing 9 *Women Lawyers' Journal* 6 (1919)).

¹³⁶ Hathaway suggests a third reason why men came to dominate WCL's student body -- that they "were quick to take advantage of" WCL's low tuition and outstanding faculty. Hathaway, *supra* note 3, at 167.

That men came to constitute more than half of WCL's student body between 1914 and 1981 raises a question about the success of Mussey and Gillett's coeducational strategy.¹³⁷ Did their rejection of the separate spheres model in favor of coeducation backfire as WCL expanded its enrollment and women had a wider choice of law schools to attend?¹³⁸

This question should be answered with a qualified no. WCL maintained its focus on promoting the interests of women in the legal profession so long as it was led by female deans.

¹³⁷ A parallel between WCL and Howard Law School's experiences should be noted at this point. Established as a racially integrated school, which had as its primary mission the education of African Americans, Howard became predominantly African American within twenty years of its founding, while WCL, established as a coeducational school with the primary mission of educating women, became predominantly male within twenty years of its founding.

What do Howard and WCL's experiences of crumbling integration and diminishing coeducation say about their lofty missions? Are they illustrative of "tipping," a demographic phenomenon where the percentage of one group, defined by race or sex, grows beyond a certain point thereby causing the percentage of their demographic counterpart to plummet? Tipping occurs, for example, in the housing market when the percentage of African Americans in a neighborhood rises above the comfort level of the whites in that particular neighborhood, causing the whites to move out in significant numbers such that the neighborhood becomes predominantly African American.

Applying this tipping concept to Howard, once the percentage of African Americans in the student body rose above a certain level, whites may have become uncomfortable and enrolled in shrinking numbers, thereby rendering Howard's student body predominantly African American. Likewise, once the percentage of men in WCL's student body crossed a certain level, men felt more comfortable and enrolled in greater numbers while women felt less comfortable and enrolled in smaller numbers, with the result that WCL's student body became predominantly male. The problem with applying this theory to WCL is that the actual number of women students grew. Just their percent representation declined.

¹³⁸ Hathaway answers this question in the negative, asserting that Mussey and Gillett succeeded in demonstrating gender equality through coeducation because, as the number of men in WCL's student body grew, "it became increasingly evident that the old argument that men would not study law in the same classes with women had had no basis whatever in fact, but was a mere figment of prejudiced minds." Hathaway, *supra* note 3, at 167.

WCL's appointment of its first male dean in 1947,¹³⁹ taken together with its merger into American University, which did not share WCL's mission to provide equal educational opportunities to women, and with the growing percentage of male students threatened to transform WCL from a law school founded by and for women into simply another Washington law school. Today, however, women comprise a substantial portion of WCL's student population and express great satisfaction with WCL's treatment of women in legal education.¹⁴⁰

¹³⁹ WCL has had male deans ever since. *See supra* text at 79.

¹⁴⁰ WCL was ranked eighth in the United States in a 1995 compilation of the top thirty-five law schools for women. *The National Jurist* 24 (Oct./Nov. 1995) (basing ranking on: (1) women as a percentage of student body and faculty; (2) "how many women occupy leadership positions on student bar associations and law reviews;" and (3) "how women perceived they are treated on each campus.").

C. The Absence of African Americans at WCL

In sharp contrast with its coeducational character, which was present from its inception, WCL had no African American students in its first fifty years. WCL's earliest known African American graduate was James Taylor of Prince Georges County, Maryland, in 1953.¹⁴¹ WCL's first foreign-born student, Josefa Larroque Harriague of Uruguay, graduated in 1905, and its first American student of color, Marie Louise Bottineau Baldwin, a Native American woman, graduated in 1914.¹⁴²

¹⁴¹ See Student Records, on file in the WCL Archives. Presumably, Taylor was accepted in the spring of 1950 and matriculated in the fall of that year.

¹⁴² See Student Records, on file in the WCL Archives.

The absence of African American students before 1950, taken together with certain statements in WCL's early catalogues underscores WCL's primary purpose as the education of white women. For example, in observing that women "are denied admission to such Law Schools of the District as confine their membership to white persons," the *1897-98 Catalogue of the Woman's Law Class* signalled Mussey and Gillett's intention to attend to the interests of white women.¹⁴³ WCL's *1898-99 Catalogue* was even more explicit in its focus on the interests of white women when it declared, "the Washington College of Law is the only school in the District, confining its membership to white persons, which admits women as law students."¹⁴⁴ Then, in a 1907 letter seeking financial support from the General Education Board in New York City, the WCL Board of Trustees stated, "That the Capital City, with a population of over three hundred

¹⁴³ *1897-98 Catalogue of the Woman's Law Class 1*, on file in the WCL Archives. The catalogue goes on to say, "The Woman's Law Class was opened February 1, 1896, to afford *women* the opportunity for a thorough course of legal study . . ." *Id.* (emphasis added).

¹⁴⁴ *1898-99 Catalogue of the Washington College of Law 1*, on file in the WCL Archives. This language was retained in WCL's catalogues through at least the 1909-10 edition. Starting with its 1906-07 catalogue and continuing through its 1926-27 catalogue, WCL also declared, "While the College was established primarily for women because the other law schools for white students did not admit them, yet its doors are open with catholic liberality to students without distinction of sex." In 1927-28, WCL's catalogue contained a historical statement, which read, in part:

. . . Miss Gillett's determination to become a lawyer resulted in her entering in 1880 the Howard University, a school for colored students, it being the only school in Washington willing to admit women. When serious minded, earnest women year after year were denied the privilege of entering the white schools, these two pioneers realized that out of their experience a service to others was possible and they decided to do what they could to open the door of opportunity in the legal profession to women.

Catalogues, on file in the WCL Archives.

thousand, has no other college for the legal education of white women. It [WCL] is the only school south of Philadelphia which offers this course to women."¹⁴⁵

¹⁴⁵ Letter from WCL Board of Trustees to the General Education Board, 54 Williams Street, New York City (1907) (emphasis in original), on file in the WCL Archives. This letter is in Mussey's handwriting.

How to explain the absence of African American students at WCL before 1950 and the emphasis upon white women's interests at the time of WCL's founding? Was the absence of African American students a product of Mussey and Gillett's neglect of racial equality issues in focussing upon gender equality issues, or a reflection of their racial bias or of that of their clientele?¹⁴⁶ Following an exploration of their potential motives, this paper concludes that Mussey

¹⁴⁶ In "Clara Shortridge Foltz: Constitution Maker," 66 *Ind. L. J.* 849, 853 & n.14, 908 (1991), Barbara Allen Babcock addresses the issue of a biographer's response to the racist attitudes of her historical subject. Babcock reveals Foltz' virulent anti-Chinese prejudice and demonstrates how Foltz, along with some of her women's rights colleagues, played upon anti-Chinese sentiment, which was prevalent in California in the 1870s, to promote women's constitutional interests at the California Constitutional Convention of 1879. According to Babcock, Foltz' bigotry:

forces her biographer to recognize that the tale is not the unadulterated triumph that she (and I) might have wished. The biographer's method -- making the subject the main historical witness -- also reveals the ignoble side of her success. The political support that gave Foltz and her colleagues their chance from 1877 to 1879 drew on an anti-Chinese racism of such virulence that the women's complicity in it is impossible to ignore.

Id. at 853. In response to this evidence of Foltz' bigotry, Babcock declares, "No rhetoric of historical relativism can justify their failure to recognize the common humanity they shared with the Chinese immigrants." *Id.* Later, Babcock observes:

[T]he coalition politics of 1878 to 1879 had its tragic aspects as well -- the women's alliance with the Workingmen meant complicity for them in a peculiarly extreme version of anti-Chinese racism. It tied the women's unprecedented victory to a world view that failed to recognize either common oppressors or common humanity. Women claimed their own rights on the basis of citizenship and ignored the injustice of denying immigrant Chinese the opportunity to become Americans.

Id. at 908.

Likewise, the absence of African Americans at WCL reflects Mussey and Gillett's failure to recognize "either common oppressors or common humanity." Rather than recognizing the united interests of white women and African Americans in seeking to overcome the exclusion foisted upon them by Washington's white male law schools, Mussey and Gillett perpetuated the oppression of African Americans by neglecting or rejecting their interests.

and Gillett's neglect or exclusion of African American interests was not that surprising, albeit objectionable, given their particular women's rights agenda.¹⁴⁷ Even though Mussey and Gillett's neglect or exclusion of African American interests conflicts with the progressive elements of their biographies,¹⁴⁸ and with WCL's bold mission to provide equal educational opportunities to an

For a discussion of the intersectionality of race and gender and the need for coalition-building between women and people of color to challenge social injustice, *see generally* Bettina Aptheker, *Woman's Legacy: Essays on Race, Sex, and Class in American History* 3, 50-52, 81 (1982) (arguing that white suffragists should have united with African American women for greater success); Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color," 43 *Stan. L. Rev.* 1241, 1252 (1991) (addressing intersectionality of race and gender in identity politics and coalition-building); Mari Matsuda, "Beside my Sister, Facing the Enemy: Legal Theory Out of Coalition," 43 *Stan. L. Rev.* 1183, 1188 (1991) (emphasizing importance of recognizing intersections of race and gender and building coalitions); Susan Sturm, "From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession," 4 *Duke J. Gender L. & Pol'y* 119, 124 (1997) (emphasizing need for coalition-building along race and gender lines in reforming today's legal educational system). These concepts of intersectionality and coalition-building raise the question of whether WCL would not have become majority male within fifteen years of its founding if Mussey and Gillett had instead joined forces with other oppressed groups to challenge the dominant white male hierarchy, rather than neglecting or excluding the oppressed groups in trying to join the white male legal establishment.

¹⁴⁷ As bell hooks observes in *Ain't I a Woman?: Black Women and Feminism* 124 (1981), "The racial apartheid social structure that characterized 19th and early 20th century American life was mirrored in the women's rights movement. The first white women's advocates were never seeking social equality for all women; they were seeking social equality for white women." Likewise, Nancie Caraway underscores how white women betrayed the interests of African American women in pursuing their women's rights agenda. *See Segregated Sisterhood: Racism and the Politics of American Feminism* 120-22, 156-57 (1991).

¹⁴⁸ Briefly, as noted earlier, Mussey was the daughter of abolitionists and grew up in Oberlin, Ohio, a progressive community. Her husband led African American troops during the Civil War and taught as an adjunct instructor at Howard Law School. Gillett was the daughter of a Quaker and was raised in the Quaker tradition, which was generally progressive on issues of social and political importance. Finally, Gillett was a Howard Law School graduate.

According to Ruth G.D. Havens, Gillett's fellow white female student at Howard, Gillett had been grateful that Howard admitted her. In a tribute to Gillett that was published in *The*

under-served group, it was consistent with their particular focus on promoting the equality of white women vis a vis white men.¹⁴⁹

College Grit, WCL's newspaper, Havens observed:

Miss Gillett looked upon this open door [Howard's willingness to admit women] with as grateful a heart as mine had been, and so we were soon classmates.

Miss Gillett was then, as you know her now, a woman of purpose, of decision, unprejudiced, and unafraid.

"Our Dean," *The College Grit* at 2 (October 23 1922), on file in the WCL Archives.

¹⁴⁹ A question is raised as to whether Mussey and Gillett's race-blindness or overt racism in neglecting or excluding African American interests rendered them non-feminist. To some present-day theorists, feminism is defined as a type of humanism, dedicated to promoting the interests of all oppressed groups in abolishing patriarchal hierarchies. *See generally* "Introduction: Feminist Jurisprudence and the Nature of Law," in *Feminist Jurisprudence* 4, 9 (Patricia Smith, ed. 1993) (noting that one strain of feminism has as its primary goal the rejection of patriarchy and the assurance of equal opportunity for all). To these theorists, the success of a so-called feminist movement is measured by how well it addresses the needs of the most oppressed group. If the needs of this group are recognized and served, then the movement is adjudged an authentic feminist movement. If the movement neglects the needs of this group, then it is not an authentic feminist movement. Seen through this perspective, a movement that is focussed on the interests of white women to the neglect of African American interests, like Mussey and Gillett's efforts to establish a school for white women lawyers, would not be an authentic feminist movement.

To others, feminism is defined as a movement dedicated to promoting the interests of all women, including women of color and white women. *See generally* "Introduction: Feminist Jurisprudence and the Nature of Law," in *Feminist Jurisprudence* 4 (Patricia Smith, ed. 1993) (noting that another strain of feminism has as its focus the interests of all women). To these theorists, the success of a so-called feminist movement is measured by how well the movement addresses the needs of the most oppressed group of women. If the needs of these women are recognized and served, then the movement is adjudged an authentic feminist movement. If their needs are neglected, then the movement is not authentically feminist. Seen through this perspective, a movement that is narrowly focussed on the interests of white women to the neglect of African American women, again, like Mussey and Gillett's founding of WCL, would not be adjudged an authentic feminist movement.

While these definitions of feminism may be appropriate standards by which to judge the

modern feminist movement, they are not appropriate standards by which to judge whether Mussey and Gillett were feminists. The problem with applying these definitions to Mussey and Gillett's actions in founding WCL is that they embody a modern consciousness that does not reflect how women's rights activists and suffragists conceived of themselves and their agenda at the turn of the century. The terms "feminist" and "feminism" had not been coined by the time of WCL's founding. Instead, women who participated in the so-called "woman's suffrage" movement were "suffragists." See *The History of Woman Suffrage, Vol. IV* (Susan B. Anthony and Ida Husted Harper, eds. 1902) (referring to "woman's suffrage" movement and to its participants as "suffragists"); but see Ellen Carol DuBois, *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America, 1848-1869* (1980) (using terms "feminism," "women's rights," and "suffragism" interchangeably). Mussey and Gillett, and many of their WCL female faculty and students, were ardent women's rights activists and suffragists, who placed the cause of gender equality before all others, including that of racial equality. In this respect, there is no question but that Mussey and Gillett were "feminists" in their time.

To the extent, if any, that Mussey and Gillett merely neglected African American interests in focussing on white women's interests, their narrow focus on white women's interests may be seen as a product of "identity politics."¹⁵⁰ In essence, by promoting the legal educational interests of white women, a cause with which Mussey and Gillett were personally identified, they neglected the interests of African Americans, a cause with which they did not identify. In neglecting these interests, and thereby perpetuating the oppression of African Americans, Mussey and Gillett may not have been discriminatorily motivated.¹⁵¹ Instead, they may simply have been acting upon their primary "political identity" or interest -- the promotion of women's rights.

¹⁵⁰ For more on identity politics, *see generally*, Martha Minow, "Not Only for Myself: Identity, Politics, and Law," 75 *Or. L. Rev.* 647, 648 (1996) (defining "identity politics" as "the mobilization around gender, racial, and similar group-based categories in order to shape or alter the exercise of power to benefit group members").

¹⁵¹ Mussey and Gillett may have believed that African American interests had been sufficiently addressed by the founding of Howard Law School and that there was a need for an institution that served the interests of women, albeit white women, just as Howard served the interests of African Americans.

The history of the abolitionist and women's rights movements of the nineteenth century amply demonstrates this phenomenon of identity politics. Even before the Civil War amendments introduced sex into the Constitution and fractured the women's rights movement, women's rights supporters had expressed frustration with the abolitionist movement's focus upon the rights of African Americans to the neglect of women's rights.¹⁵² Despite the moral fervor with which abolitionists railed against the oppression of African Americans, they did not recognize, or speak out against, the oppression of women.

Following the war, women's rights activists who had supported the abolitionist cause were gravely disappointed when they were told that "it was the Negro's hour" and that votes for women must wait. Certain suffragists, like AWSA's Lucy Stone, nevertheless supported the enfranchisement of freedmen, despite women's exclusion from the franchise, because they believed that some expansion of the vote was better than none. Other suffragists, like NWSA's Stanton and Anthony, opposed the enfranchisement of freedmen when it involved the exclusion of women and broke with their abolitionist roots. Mussey and Gillett's identification with women's interests, or more specifically, with white women's interests, to the exclusion of African American interests may be seen as a by-product of this split in the post-Civil War women's rights movement. Although Mussey and Gillett were latecomers to the suffragist movement, Mussey had attended meetings of Stanton and Anthony's suffrage faction. To the extent that Mussey and Gillett

¹⁵² See, e.g., J. Elizabeth Jones, "The Wrongs of Woman" (speech delivered at the Ohio Women's Convention on April 19, 1850), *printed in Course Materials, supra* note 127, Chapter II at 64-76.

adopted this faction's emphasis upon gender equality above racial equality, their narrow focus on white women's interests at WCL is consistent with this outlook.

On the other hand, to the extent, if any, that the absence of African American students at WCL was due to an affirmative, and exclusionary, choice by Mussey and Gillett, then Mussey and Gillett's choice may be seen as symptomatic of Washington's increasing racial bias in the 1890s.¹⁵³

Although significant progress had been made in race relations in Washington after the war, as illustrated by Howard's founding as a racially integrated institution in 1869, there was a marked return of racial bias in the post-Reconstruction era, prompted in part by the economic downturn of the early 1890s. Moreover, Washington was a distinctly southern city in the 1890s, where separate but equal racially segregated facilities were the rule. The Supreme Court condoned separate-but-equal facilities for whites and African Americans¹⁵⁴ the same year that the Woman's Law Class was founded. Despite their non-southern roots, Mussey and Gillett had lived most of their adult lives in Washington by the time of WCL's founding. Thus, the deliberate exclusion of African Americans may reflect Mussey and Gillett's adoption of Washington's racist, or segregationist, mores.

¹⁵³ See generally Kraditor, *supra* note 6, at 164 n.1 (noting "the universality of racism in the 1890s").

¹⁵⁴ *Plessy v. Ferguson*, 163 U.S. 537 (1896).

Similarly, to the extent that the absence of African Americans at WCL was the product of a deliberate choice to exclude, then it may be seen as an effort on the part of Mussey and Gillett to placate their predominantly white female clientele, who were thought to prefer studying apart from African Americans, generally, and African American males, in particular.¹⁵⁵ Stevens observes that white middle-class women who attended “Negro” law schools at the time that white law schools excluded women did so “to the discomfort of their families.”¹⁵⁶ Mussey and Gillett may have sought to redress this “discomfort” and cater to the feelings of white women students. WCL remained the only all-white Washington law school open to women until 1912, when Columbian began to admit women.

IV. WCL’S FORMATIVE YEARS UNDER MUSSEY: 1898-1913

Mussey served as WCL’s first dean from its incorporation in 1898 to 1913.¹⁵⁷ As such, Mussey was the first woman dean of an American law school. WCL’s first board of trustees was

¹⁵⁵ After all, this was the period during which African American males were lynched in the South in the hysteria to protect white females’ sexual purity.

¹⁵⁶ Stevens, *supra* note 12, at 90 n.79. Stevens’ observation that white women attended Howard to their families’ discomfort raises the question of who paid for the law school tuition -- the student or parents? If the tuition was paid by the parents, then they could influence, or even control, the student’s choice of school, steering the student away from a school to which the parents objected. If the tuition was instead paid by the student, then he or she would have more autonomy in choosing what school to attend. While it is not certain who paid the tuition at WCL, it is likely that WCL’s students paid their own way since many of them worked full-time and WCL’s tuition was set purposefully low in light of women’s lower earnings. *See* Chester, *supra* note 22, at 14. This would suggest a degree of autonomy on the part of WCL’s students in selecting what law school to attend.

¹⁵⁷ Minutes of WCL Board of Trustees of August 3, 1898 at 8, on file in the WCL Archives.

comprised of seven individuals, of whom four were female, including Mussey and Gillett.¹⁵⁸ The other trustees were: Chief Justice Edward F. Bingham of the Supreme Court of the District of Columbia; J. Ellen Foster, who was the first woman admitted to the Iowa bar in 1872 and who was admitted to the Supreme Court bar on Mussey's motion in 1897; Justice Charles B. Hoary of the United States Court of Claims; Watson J. Newton, with whom Gillett practiced law; and Cecilia F. Sherman, wife of the Secretary of the Treasury of the United States. Delia Jackson, one of three students in the Woman's Law Class' first term, was appointed secretary of WCL's board of trustees.¹⁵⁹

WCL's certificate of incorporation provided for at least three faculty members as follows:

The number of professorships to be established shall be at least three, to wit:

A professorship of Common Law and the Law of Real Property;

A professorship of Statute Law and the Law of Personal Property;

A professorship of Criminal Law, the Law of Torts, and Pleadings and Practice.

And such number of other professors or lecturers on special branches of

¹⁵⁸ Minutes of WCL Board of Trustees of April 2, 1898 at 3, on file in the WCL Archives.

¹⁵⁹ Minutes of WCL Board of Trustees of August 3, 1898 at 6, on file in the WCL Archives.

the Law as may be necessary or desirable.¹⁶⁰

Mussey, Gillett, and Newton served as WCL's first faculty. Mussey was appointed "professor of Statutes and Constitutional Law, the Law of Personal Property and Contracts," Gillett was appointed "professor of Common Law and the Law of Real Property," and Newton served as "professor of Criminal Law, the Law of Torts, Pleading and Practice."¹⁶¹ They were joined by twelve instructors, of whom eleven were male.¹⁶²

¹⁶⁰ Certificate of Incorporation of the Washington College of Law (April 2, 1898), on file in the WCL Archives.

¹⁶¹ Minutes of WCL Board of Trustees of August 3, 1898 at 7, on file in the WCL Archives.

¹⁶² *1898-99 Catalogue of the Washington College of Law* 1-2, on file in the WCL Archives.

That WCL was founded by and for women did not affect its curriculum. This is evidenced by the wide range of courses offered from the outset, including equity, federal courts, legal history, international law, corporations, medical jurisprudence, and moot court practice.¹⁶³ Like other law schools of its time, WCL employed a professor of quizzes, who engaged students in rigorous examinations on a periodic basis. WCL assigned the reading of casebooks as well as treatises and adopted a modified Harvard case-study method.¹⁶⁴

¹⁶³ *1898-99 Catalogue of the Washington College of Law 1-2*, on file in the WCL Archives.

¹⁶⁴ The case-study method was introduced by Christopher Columbus Langdell, who was appointed dean of Harvard Law School in 1870. Langdell conceived of the classroom and library as laboratories in which students should pursue the scientific analysis of the law. Soon, most law schools, especially the elite ones, employed Langdell's case method, thereby replacing the earlier emphasis upon learning the substantive law.

That WCL adopted the Harvard case-study method should not be overemphasized since

Although WCL's early curriculum and pedagogical techniques appear uninfluenced by the fact that its founders, administrators, faculty, and students were primarily female, one of its early advertisements emphasized that WCL had "a friendly and helpful faculty and congenial associates among the students,"¹⁶⁵ a characterization which may have been intended to appeal to its predominantly female clientele.

WCL continued to rely upon lectures and textbooks as well. *1897-98 Catalogue of the Woman's Law Class 1* (stating, "Modern text-books have been adopted; quizzes and study of cases are a part of regular class instruction."), on file in the WCL Archives; *see also* Chester, *supra* note 22, at 14 ("WCL stressed the textbook and lecture system, combined with periodic quizzes, just as Portia did. However, perhaps in reflection of the school's more elite origins, more room was found for the Harvard case method. Casebooks were sometimes used and illustrative cases assigned to supplement textual study of the more important subjects.' Also in contrast to Portia, there was more practical training, including moot court and the use of legal forms.").

¹⁶⁵ WCL Advertisement entitled, "Why Women Should Study Law," on file in the WCL Archives. For the full text, *see supra* text at 49-50.

WCL attracted many government workers as students, as did the other Washington law schools. Washington had experienced an explosive growth in the civil service after the Civil War. Young men and women poured into Washington, seeking employment with the government. Presumably to attract these new civil servants, WCL scheduled all of its classes to meet after work hours.¹⁶⁶ Likewise, WCL's catalogue emphasized the desirability of law study as a means of promotion within the government.¹⁶⁷

WCL operated as a part-time night school, awarding LL.B. degrees after three years of study, as did the other Washington law schools. WCL's part-time format was typical of many law schools at that time,¹⁶⁸ but its night-time format was not.¹⁶⁹ Like most law schools of its time, WCL did not require its applicants to possess college degrees.¹⁷⁰ Instead, WCL required its

¹⁶⁶ Columbian, Georgetown, and Howard also offered only evening classes in the 1890s. See Friedman, *supra* note 2, at 619 (Columbian); *1995-96 Georgetown University Law Center Bulletin* 4 (noting that Georgetown required three years of evening classes beginning in 1897); Smith, *supra* note 22, at 47-48 (Howard). It is unclear whether National was limited to evening classes.

¹⁶⁷ *1899-1900 Catalogue of the Washington College of Law*, on file in the WCL Archives.

¹⁶⁸ Harvard Law School was a notable exception to this part-time practice. Harvard required three years of full-time study beginning in 1876, "though the third year did not have to be spent in residence." Friedman, *supra* note 2, at 612. In 1899, Harvard mandated that the full three years must be spent in residence for the LL.B. degree. *Id.*

¹⁶⁹ Friedman, *supra* note 2, at 619 ("In 1889-90, there were nine pure night schools, as against fifty-one day schools. In the 1890s the number of night schools doubled. In 1900 there were twenty, as against 77 pure day schools, and five schools which . . . mixed day and night."); see also Stevens, *supra* note 12, at 75.

¹⁷⁰ Indeed, WCL did not require a high school diploma for admission until 1908. In this regard, WCL was on track with most law schools. In 1896, only 7 out of 74 schools required a high school diploma. By 1904, that number had risen to 51 out of 111 "as high school education became more widespread." Abel, *supra* note 104, at 43.

applicants to possess “good moral character” and pass an English examination to qualify for entrance.¹⁷¹

¹⁷¹ *1898-99 Catalogue of the Washington College of Law* 6 (“Applicants for admission must be not less than eighteen years of age, of good moral character, and must pass a satisfactory examination in English, except graduates of Universities, Colleges, High Schools, and Academies of approved standing, who will be admitted without examination.”), on file in the WCL Archives.

Many of WCL's early students were drawn from outside of the Washington area, including some from as far away as Georgia, Illinois, Iowa, Minnesota, Ohio, and Texas.¹⁷² While most WCL students moved to Washington for job opportunities in the civil service and only later enrolled at WCL, one WCL advertisement, highlighting the advantages of legal education for women, appeared in a mid-western women's periodical, suggesting that WCL expected to attract students to Washington independent of employment opportunities in the government.¹⁷³

WCL was not endowed and did not own its own home when it was incorporated. In its first decade of operation, WCL had six locations, having moved out of Mussey's law office when the Woman's Law Class was incorporated as WCL. WCL's tuition was set purposefully low at \$50 per year¹⁷⁴ in light of the lower earnings of its predominantly female student body.¹⁷⁵

¹⁷² See Student Records, on file in the WCL Archives.

¹⁷³ WCL Advertisement entitled, "Why Women Should Study Law," on file in the WCL Archives. See *supra* text at 49-50.

¹⁷⁴ *1898-99 Catalogue of the Washington College of Law* 7, on file in the WCL Archives. By comparison, the law school at Georgetown charged \$50 per year for tuition when it was established in 1870. *1995-96 Georgetown University Law Center Bulletin* 4.

¹⁷⁵ *1897-98 Catalogue of the Woman's Law Class* 2 (reflecting that tuition was set at five

Because WCL had no financial support other than tuition in its early years, Mussey and Gillett largely volunteered their services as deans and teachers.

dollars per month from October 1, 1897 through May 30, 1898), on file in the WCL Archives. WCL's alumni association established a scholarship for women students in 1903, at which time there were twenty-seven WCL graduates, of whom twenty-two were female.

WCL conducted its first commencement on May 31, 1899,¹⁷⁶ at which it conferred LL.B. degrees upon six students, all female. These graduates included Delia Jackson and Helen Malcolm, two of the first three students of the Woman's Law Class.¹⁷⁷ By 1910, the overall number of WCL graduates and the percentage representation of men had grown such that WCL conferred LL.B. degrees upon six men and six women that year. In her tribute to Mussey, Hathaway describes WCL's early female graduates as follows:

. . . . Jubilantly, Mrs. Mussey watched over the unfolding careers of her girls.

Because they were making new records. They were not only winning success before the bar but they were going into fields never before entered by women, they were piling up a long list of firsts for their sex.

There was Miss Caroline Griesheimer, the first woman to be detailed as Civil Service Examiner; Miss Adele Stewart, the first woman to be appointed National Bank Examiner; Miss Pearl McCall, the first woman Assistant United States District Attorney in the District of Columbia; Miss Agnes O'Neil, the first woman Assistant Solicitor of the Department of State; Mrs. Flora Warren Seymour, the first woman on the Board of Indian Commissioners; Miss A. Viola Smith, the first woman appointed as American Trade Commissioner; Miss Annabel

¹⁷⁶ Announcement of WCL Annual Commencement on May 31, 1899, on file in the WCL Archives.

¹⁷⁷ Minutes of WCL Board of Trustees of May 25, 1899 at 9, on file in the WCL Archives. Nanette B. Paul, the third of the original Woman's Law Class students, graduated in 1900. Minutes of WCL Board of Trustees of June 5, 1900 at 15-16, on file in the WCL Archives.

Matthews, the first woman on the United States Board of Tax Appeals; Miss Alice M. Birdsall, the first woman to be reporter of the supreme Court of a state, appointed to this office in Arizona; and Miss Katharine Pike, the first woman of the law in the United States Customs Service and the first woman to go to sea as a customs officer.¹⁷⁸

¹⁷⁸ Hathaway, *supra* note 3, at 186-87. Hathaway's treatment of WCL's male graduates is far more cursory, merely observing, "Mrs. Mussey was proud of her boys.' They did excellent work and they went forth to creditable records in the profession." *Id.* at 186. WCL's Archives are largely silent about the achievements of WCL's early male graduates. *See supra* text at 52-53.

Hathaway's list, while impressive, is not exhaustive. Other outstanding female graduates include: Mary O'Toole, a 1904 graduate, who became the first woman judge on the Supreme Court of the District of Columbia in 1921;¹⁷⁹ Kathryn Sellers, a 1913 graduate, who became the first woman judge on the District of Columbia Juvenile Court in 1918;¹⁸⁰ Helen Reed, a 1914 graduate, who served as an assistant U.S. Attorney; and Alice Paul, a 1922 graduate, who was a prominent suffragist and was active in the National Woman's Party, serving as its vice president in 1922.¹⁸¹

¹⁷⁹ Hathaway, *supra* note 3, at 192.

¹⁸⁰ Hathaway, *supra* note 3, at 189.

¹⁸¹ Alice Paul moved to Washington in 1912 to lead NAWSA's Congressional Committee. The Committee later became the National Woman's Party, in which Paul was active. Paul helped to organize women's suffrage pickets of the White House. Her picketing ultimately earned her a stiff jail sentence, during which she engaged in a hunger strike. Paul had observed the militant activities of the English suffragettes, like Emmeline Pankhurst, when she was a student in England. As a Quaker pacifist, Paul did not replicate the English women's more violent methods, such as throwing themselves in front of horses, but she adopted their use of the hunger strike as a form of political protest. See Minna Morse, "Jailed for Freedom Pin in the National Museum of American History," *Smithsonian* (March 1993) at 28.

Following graduation, many WCL students remained in Washington, while others returned to their home states. Some WCL graduates were employed in government service, occasionally receiving appointments to federal commissions. Others were employed as judges. A few WCL graduates served as instructors at WCL. Mussey sponsored the membership of many female WCL graduates to the Supreme Court bar.¹⁸²

V. **WCL'S SUBSEQUENT GROWTH UNDER GILLETT AND HER SUCCESSORS: 1914-1950**

¹⁸² Mussey sponsored the Supreme Court membership of twenty-five women. *See supra* text at 17. It is uncertain how many of these women were WCL graduates. There are no records indicating whether Mussey sponsored the membership of any men in the Supreme Court, particularly male WCL graduates.

Following Mussey's retirement in 1913, Gillett served as WCL dean until 1923.¹⁸³ During the first years of her leadership, WCL's enrollment expanded rapidly and WCL reincorporated.¹⁸⁴ Despite these early successes, WCL continued to experience financial hardship and considered merging with George Washington University. With the help of its alumnae, WCL raised an endowment, thereby staving off the merger. WCL purchased its first home in 1920 -- a townhouse at 1315 K Street, N.W. There were more male students than female for the first time in 1914 -- a pattern that continued uninterrupted until 1981.

¹⁸³ Gillett's partnership with Newton lasted until 1913, at which time she was appointed WCL dean. *See* Minutes of WCL Board of Trustees of July 26, 1913 at 1, on file in the WCL Archives. Gillett returned to private practice following her retirement from the deanship in 1923.

¹⁸⁴ Articles of Reincorporation of the Washington College of Law (March 21, 1918), on file in the WCL Archives.

Gillett retired as WCL dean in 1923. She was succeeded by Elizabeth C. Harris, a 1917 WCL graduate, WCL instructor, and skilled courtroom attorney. Harris served as dean for the 1923-24 term.¹⁸⁵ Harris was followed by Laura H. Halsey, a 1921 WCL graduate.¹⁸⁶ Grace Hays Riley, a 1908 WCL graduate, succeeded Halsey as WCL dean, serving from 1925 to 1943.¹⁸⁷ During Riley's leadership, WCL introduced a day division in 1930 and was reincorporated by a joint resolution of Congress in 1938.¹⁸⁸ In 1939, WCL adopted the ABA's standards for law school admission, requiring two years of college work at an approved university and three years of study in the law school's day division or four years in the evening division to earn the LL.B degree.¹⁸⁹ WCL conferred an honorary LL.B degree upon First Lady Eleanor Roosevelt in 1933.

¹⁸⁵ Schade, *supra* note 105, at 15. Harris was the daughter and granddaughter of United States Representatives from Massachusetts. Her father was President of the Board of Trustees of Portia Law School. See "The Founding of Portia Law School," *New England School of Law Bulletin* 6, in "Women in the Legal Profession" file, Supreme Court Library.

¹⁸⁶ Schade, *supra* note 105, at 18.

¹⁸⁷ Schade, *supra* note 105, at 18.

¹⁸⁸ H. Rep. No. 1891, 75th Cong., 3d Sess. 1 (1938).

¹⁸⁹ "Law College Adopts A.B.A. Standards," *Washington Post* (Sept. 10, 1939).

Beginning in the 1910s, the ABA and the AALS worked together to exert quality control over the growing number of law schools. They sought to regulate law school admission standards and curriculum with an eye to:

get rid of schools that did not follow orthodox methods or that admitted students who had not followed a conventional educational pattern. The professionals hoped to accomplish this by urging state legislatures to raise prelaw and law school structural requirements so high that these law schools would be deprived of their natural markets, the lower socioeconomic groups.

Stevens, *supra* note 12, at 102.

In 1941, Associate Justice William O. Douglas addressed WCL's forty-fifth anniversary banquet.¹⁹⁰ WCL's last female dean was Helen B. Arthur, a member of WCL's faculty since 1939, who served briefly as dean from 1943 to 1947.¹⁹¹

In essence, the ABA and the AALS sought to do what the AMA had already succeeded in doing, that is, to regulate schools' admission and other standards in such a way as to drive the marginal schools out of the market, thereby raising the profile of the profession overall. Stevens, *supra* note 12, at 102-03. Whereas the AMA succeeded in eliminating the so-called marginal medical schools by 1917, "the ABA and AALS would not achieve their aim until the late 1940s." Gene R. Shreve, "Book Review: History of Legal Education," 97 *Harv. L. Rev.* 597, 601 (1983).

¹⁹⁰ "Washington College of Law Observes 45th Anniversary: Justice Douglas Delivers Main Talk at Dinner Attended by 400," *Washington Star* (Feb. 9, 1941).

¹⁹¹ Schade, *supra* note 105, at 21.

One of WCL's faculty members during this period, Burnita Shelton Matthews, went on to become the first female federal district court judge. Matthews taught evidence at WCL from 1942 to 1948. In 1949, she was appointed to the United States District Court for the District of Columbia by President Truman. Matthews was the second female Article III judge, after Florence Allen, who was named to the United States Court of Appeals for the Sixth Circuit in 1934. *See* Sarah Wilson, "Florence Ellinwood Allen," *Women in Law: A Bio-bibliographical Sourcebook*, *supra* note 22, at 17. As a judge, Matthews hired only women law clerks "in order to show [her] confidence in women."

Prior to her appointment as a WCL instructor, Matthews had been instrumental in the National Woman's Party with Alice Paul, serving as its general counsel, and had formed her own law practice with two other women lawyers, Laura Berrien and WCL instructor, Rebekah Greathouse.

As a law student at National in 1918-20, Matthews participated in the women's suffrage pickets of the White House, which were led by Paul. She did not tell her fellow law students, all male, of her picketing activities. Shortly thereafter, Matthews assisted Paul in researching and publicizing each state's laws that discriminated against women. *See* National Woman's Party, "The Denial of Justice to Women: A Summary of Discriminations," on file with the Federal Judicial Center's History Office. Matthews was an early proponent of the Equal Rights Amendment, testifying regularly before Congress on women's political rights and issuing pamphlets on the same. *See* Burnita Shelton Matthews, "The Equal Rights Amendment," speech at General Federation of Women's Clubs (May 1934), on file with the Federal Judicial Center's History Office. *See also* Burnita Shelton Matthews, "Women Should Have Equal Rights with Men: A Reply," *ABA Journal* 117 (Feb. 1926), on file with the Federal Judicial Center's History

Office. Matthews drafted legislation for the National Woman's Party, providing women with the right to serve on juries in the District of Columbia, which was soon thereafter enacted.

See generally Federal Judicial Center's History Office, "Excerpts from an Interview with Judge Burnita Shelton Matthews of the United States District Court for the District of Columbia," in *The Court Historian* 1 (June 1994); Kate Greene, "Torts over Tempo: The Life and Career of Judge Burnita Shelton Matthews," in *The Journal of Mississippi History* 181 (Aug. 1994); Cynthia Harrison, "Burnita Shelton Matthews," in *Women in Law: A Bio-bibliographical Sourcebook* at 150.

Between 1942 and 1948, WCL actively negotiated a merger with American University.¹⁹² In 1947, WCL appointed its first male dean, Horatio Rodman Rogers,¹⁹³ shortly before finalizing its merger with American in 1949.¹⁹⁴ The merger was likely motivated by two concerns: financial

¹⁹² American University was founded in 1896, the same year as the Woman's Law Class. "American University is Established," *Washington Evening Star* (October 21, 1896).

¹⁹³ Rogers was a graduate of Harvard Law School. *1947-48 Bulletin of the Washington College of Law*, on file in the WCL Archives.

At the same time that WCL appointed its first male dean, Harvard Law School appointed its first female faculty member, a visiting professor, Soia Mentschikoff, in 1948. HLS admitted women for the first time in 1950 and tenured its first female faculty member, Elisabeth Owens, in 1971. See *Harvard Law Bulletin* 40 (Summer 1997).

¹⁹⁴ "College of Law and American U. Merger Accepted," *Times-Herald* (April 24, 1949).

stability and AALS accreditation.¹⁹⁵ WCL's financial plight was an ongoing problem. Even though WCL had been accredited for the first time in 1947, shortly before the merger with American¹⁹⁶ and almost fifty years after its founding,¹⁹⁷ AALS accreditation was an ongoing process and WCL's leadership could have reasonably believed that WCL would be in a more secure position in terms of obtaining continued AALS accreditation if it was affiliated with a larger, better-financed institution.

¹⁹⁵ WCL's merger with American mirrored the mergers of other independent law schools with well-established universities in this period. For example, National merged with George Washington University in 1954. Stevens, *supra* note 12, at 85 n.15.

¹⁹⁶ Abel notes that "a number of unapproved schools were absorbed by approved schools" at this time. Abel, *supra* note 104, at 55. His observation raises the question of whether WCL secured its AALS accreditation in 1947 only because of its prospective merger with American, which was finalized in 1949.

¹⁹⁷ Ronald Chester, "A Survey of WCL Women Graduates: The 1920's Through the 1940's," 32 *Am. U. L. Rev.* 627 (1983).

WCL's appointment of a male dean in 1947 ended forty-nine years of leadership by female deans. The appointment was likely motivated by a desire to assuage American's trustees as well as the AALS accreditors.¹⁹⁸ WCL has been led by male deans ever since its merger with American. WCL's acceptance of its first African American student in the spring of 1950¹⁹⁹ may have also been a consequence of this merger.

VI. MUSSEY AND GILLETT AFTER WCL'S FOUNDING

In addition to founding and leading WCL, Mussey and Gillett were involved in numerous other legal and political affairs after 1898. Gillett became active in the suffrage movement at the time of WCL's founding, serving as recording secretary of the District of Columbia Equal Suffrage Association from 1898 to 1906 and as a delegate to NAWSA conventions.²⁰⁰ Gillett also served on NAWSA's finance committee in 1903-04 and on its congressional committee in 1903, subsequently chairing it in 1911.²⁰¹

¹⁹⁸ Herma Hill Kay, "A Symposium on Women in Legal Education: The Future of Women Law Professors," 77 *Iowa L. Rev.* 5, 5 (1991) (noting that WCL's leadership by women deans ended in 1947 "when the school was accepted for membership in the Association of American Law Schools").

¹⁹⁹ See *supra* text at 61.

²⁰⁰ Dorothy Thomas, "Emma Millinda Gillett," *Notable American Women 1607-1950 Vol. II* at 37 (1971).

²⁰¹ Dorothy Thomas, "Emma Millinda Gillett," *Notable American Women 1607-1950 Vol. II* at 37 (1971). *The College Grit* described Gillett as "an ardent feminist, closely identified with the suffrage organizations, both local and national, and a supporter of many movements tending to bring about greater opportunities for women." "Memorial to Emma M. Gillett," *The College Grit* 1 (May 12, 1928), on file in the WCL Archives.

Alice Paul, head of the National Woman's Party and a 1922 WCL graduate, offered the following tribute to Gillett's activism on behalf of women's rights, generally, and suffrage, specifically:

Every woman who is represented here to-night feels that she owes a big debt to Miss Gillett. That is the reason we are all assembled, but I think probably no group represented here owes as much as do the women who have been engaged in the suffrage fight. We feel that Miss Gillett is almost the mother of our campaign. When I first began to hear of the national suffrage work, I turned to Miss Gillett. She was working here almost alone with very few aids, holding aloft the suffrage banner.

I feel that every woman who votes to-day in the United States owes a debt to Miss Gillett for the courage, devotion, and wisdom that made her a leader in those early suffrage days. I remember so well when I first came to Washington in 1913 that the first woman I went to see was Miss Gillett, because I had read of her and heard of her

And from that day until suffrage was won she stood by us, and then when suffrage was finally won she was one of the first women in the country to come forward and speak for our new endeavor to get rights for women in all other lines. You can see then what Miss Gillett has meant to this movement.

From the bottom of my heart I feel that every woman living in this country to-day, every little girl that is growing up, has a better position, has a better hope and right because of what Miss Gillett has done for all women in this country.

Speech by Alice Paul, "Our Dean," *reprinted in The College Grit* (Oct. 22, 1922), on file in the WCL Archives.

Mussey was elected a member of the Washington Board of Education from 1906 to 1912, serving as its vice president from 1909 to 1912.²⁰² In this capacity, she proposed policies promoting child welfare, including compulsory education, introduction of kindergartens, and establishment of public playgrounds.²⁰³

²⁰² Berry, *supra* note 5, at 70.

²⁰³ “Dr. Ellen Mussey Rites Tomorrow,” *Washington Evening Star* (April 22, 1936).

Mussey became active in the women's suffrage movement in 1909, joining NAWSA.²⁰⁴

She testified before a Senate committee on the importance of women's suffrage in 1910²⁰⁵ and led

²⁰⁴ See Rottier, *supra* note 6, at 380.

²⁰⁵ "Speech of Mrs. Ellen Spencer Mussey," testimony before Senate Committee (1910), on file in the WCL Archives. Mussey began her testimony as follows:

From childhood I was reared by my Father, Platt R. Spencer, as an ardent suffragist. I married General R.D. Mussey another ardent suffragist - and I have reared two children, a daughter and a son as ardent suffragists.

Id. She concluded her testimony by declaring, "Women did not make the conditions from which they suffer - but they ask for the ballot as the lever to help lift these burdens in some degree." *Id.*

the lawyers' division of the March 1913 suffrage parade in Washington, which was staged on the evening of Woodrow Wilson's inauguration.²⁰⁶

A group of Washington suffragists endorsed both Mussey and Gillett as nominees to the Supreme Court bench following Justice Harlan's death in 1912.²⁰⁷ Neither woman was nominated for this vacancy by President Taft, however. In April 1912, Mussey's name was put forward by a group of Washington women for appointment to the bench of the Juvenile Court of the District of Columbia. The *Washington Herald* reported:

²⁰⁶ Rottier, *supra* note 6, at 380 (asserting, "It was [Mussey's] involvement in the latter activity [the March 1913 suffrage parade] that resulted in the ill-health which forced her resignation as dean of the Washington College of Law" in 1913).

²⁰⁷ See *Baltimore American* (February 12, 1912) (featuring pictures of Mussey and Gillett and reporting on suffragists' recommendation of Mussey and Gillett for Supreme Court bench); see also Winnifred Harper Cooley, "At the Bar: American Portias Are Rapidly Increasing in Number and Influence, According to the Feminine Leaders of the Profession" (remarking, "A WOMAN seriously suggested to the president of the United States for a place on the supreme bench! How times are changing! . . . Not that any one expected President Taft to heed the suggestion made him by an organization in Washington to recognize one of our great women lawyers; still, the possibility shows that the world do move.") (unidentified periodical), on file in the WCL Archives.

The announcement of the candidacy of Mrs. Mussey, head of the Washington College of Law, was at first received as a sort of joke, but the women who brought forward her name are working hard and the boom seems to be flourishing. There is no provision in the act for the establishment of the court, which prevents a woman from being appointed a judge of the tribunal.²⁰⁸

In February, 1913, the *Morning Journal* reported that Mussey was a strong candidate for the juvenile court position. It observed:

Dean Ellen Spencer Mussey of the Washington College of Law is, according to report, the strongest opponent of Judge Lacey for the position as judge of the juvenile court of the District of Columbia Dr. Mussey is the only woman dean of a law school in the world, and has nearly as many men as women in attendance at the Washington College of Law. She has received the endorsements of many prominent persons.²⁰⁹

Again, Mussey did not receive the nomination for this judgeship.²¹⁰

²⁰⁸ "Three Hats Are in Ring for Juvenile Judgeship: Friends of Mrs. Ellen Spencer Mussey Waging Strong Boom, While DeLacy and Given Are Both Running Strong," *Washington Herald* (April 28, 1912).

²⁰⁹ "Woman May be Juvenile Judge - Dean Mussey is Proposed for Position as Judge of Washington Juvenile Court," *Morning Journal* (February, 1913).

²¹⁰ Hathaway, *supra* note 3, at 163.

Following her retirement as WCL dean in 1913,²¹¹ Mussey was named honorary dean for life.²¹² Mussey presented her first Supreme Court argument in 1913.²¹³ Prior to World War I, Mussey proposed legislation guaranteeing a woman's right to retain her United States citizenship upon marriage to a non-United States citizen.²¹⁴ This legislation was enacted after World War I as the Cable Act of 1922.²¹⁵

Together, Mussey and Gillett founded the Women's Bar Association of Washington, D.C. ("WBA"), in May, 1917,²¹⁶ in response to women's exclusion from Washington's official bar

²¹¹ Mussey may have retired as WCL dean because of a nervous breakdown experienced shortly after the 1913 suffrage parade in Washington. See "Emma M. Gillett," *The National Cyclopaedia of American Biography Vol. 17* 280 (noting that Gillett "became dean of the college in 1913 when Mrs. Mussey suffered a breakdown").

²¹² "Dr. Ellen Mussey Rites Tomorrow," *Washington Evening Star* (April 22, 1936).

²¹³ That Mussey argued in the Supreme Court demonstrates a significant advance in her legal career. Her practice had previously consisted of counseling clients and drafting documents.

²¹⁴ Mussey testified to the Senate about this legislation in 1910. "Speech of Mrs. Ellen Spencer Mussey, Lawyer and Dean of the Washington College of Law, At Senate Hearing 1910," on file in the WCL Archives. Mussey also published a letter to the editor in support of this legislation. Ellen Spencer Mussey, Letter to the Editor, *The Woman Citizen* (October 5, 1918) (writing as Chairman of the Committee on the Legal Status of Women of the National Council of Women), on file in the WCL Archives.

²¹⁵ Passage of the Cable Act garnered press attention for Mussey, "the veteran Washington woman lawyer." See, e.g., "Meaning of Separate Citizenship For Women Explained by Lawyer: New Law, Mrs. Mussey Says, Gives a Wife Independent Political Status for First Time in History of Country" (Feb. 17, 1923) (unidentified periodical), on file in the WCL Archives.

²¹⁶ "Dr. Ellen Mussey Rites Tomorrow," *Washington Evening Star* (April 22, 1936).

organization, the District of Columbia Bar Association.²¹⁷ Mussey served as the WBA's first president from 1917 to 1919 and Gillett served as WBA president in 1921.²¹⁸

²¹⁷ Women were not admitted to the Bar Association of the District of Columbia until 1941.

²¹⁸ Dorothy Thomas, "Emma Millinda Gillett," *Notable American Women 1607-1950 Vol. II* 37 (1971).

When the ABA began to admit women in 1918,²¹⁹ Gillett was the first woman to become active in the Section on Legal Education.²²⁰ After passage of the Nineteenth Amendment in 1920, Gillett joined the National Woman's Party and campaigned on behalf of a proposed equal rights amendment.²²¹ Gillett was elected vice-president of the ABA's District of Columbia section in 1920, serving a one-year term.²²² In 1922, Mussey proposed legislation establishing a woman's right to serve on a jury.²²³

Gillett retired as WCL dean in 1923, resuming her law practice instead.²²⁴ She died on January 23, 1927 at the age of seventy-five.²²⁵ Mussey remained active in the practice of law until 1930, when she retired at the age of 80 following what appears to have been a nervous

²¹⁹ See Stevens, *supra* note 12, at 84.

²²⁰ Smith, *supra* note 22, at 84 n.219. Despite Gillett's involvement with the ABA's Commission on Legal Education beginning in 1918, WCL did not adopt the ABA's standards for law school admission until 1939.

²²¹ Dorothy Thomas, "Emma Millinda Gillett," *Notable American Women 1607-1950*, Vol. II 37 (1971).

²²² Dorothy Thomas, "Emma Millinda Gillett," *Notable American Women 1607-1950* Vol. II 37 (1971).

²²³ "Founder of First Women's School of Law in Capital Seeks Equal Jury Rights," *New York Evening Telegram* (March 2, 1922). In 1927, a bill was enacted allowing women to serve on juries, but also "allow[ing] women to be excused from jury service merely upon their request to be excused." Hathaway, *supra* note 3, at 198. Like Mussey, Clara Foltz advocated that women be allowed to serve on juries in California. See generally, Barbara Allen Babcock, "A Place in the Palladium: Women's Rights and Jury Service," 61 *U. Cin. L. Rev.* 1139 (1993).

²²⁴ Schade, *supra* note 105, at 18. That Gillett continued to work after her retirement as WCL dean begs the question of whether she retired early from the deanship in frustration over WCL's changing complexion as men's representation in the student body increased.

²²⁵ "Emma M. Gillett," *The National Cyclopaedia of American Biography* Vol. 17 280.

breakdown.²²⁶ Mussey attended every WCL commencement through 1933, after which point her health was too fragile to attend. She died in April 1936, just shy of eighty-six years old.

VII. CONCLUSION: WCL'S LEGACY FOR WOMEN IN LEGAL EDUCATION TODAY

Mussey and Gillett broke a significant barrier to women's entry into the legal profession when they founded WCL as a law school primarily for women and adopted a coeducational format to symbolize gender equality. One hundred years later, women have broken nearly every barrier to participation in legal education and the profession. Having broken these barriers, it is appropriate to take stock of how women fare in legal education today.

²²⁶ Hathaway, *supra* note 3, at 200.

According to a December 1995 Report of the ABA Commission on Women in the Profession, women now comprise 44% of first-year law students.²²⁷ Despite their significant, and steadily-growing, numbers within the student body, the presence of women on the tenured non-clinical and non-legal writing faculty has grown slowly.²²⁸ In 1988, women constituted 20% of full-time law faculty positions,²²⁹ but “the majority of women law school professors [were] clustered in lower paying, nontenure track positions such as legal writing instructors and clinical advisors.”²³⁰ In fact, “40% of clinical teaching positions and over 70% of legal writing positions

²²⁷ ABA Commission on Women in the Profession, *Basic Facts from Women in the Law: A Look at the Numbers* 1 (Dec. 1995) [hereinafter *ABA Basic Facts*]. In 1988, women constituted over 40% of graduating law students. ABA Commission on Women in the Profession, *Report to the ABA House of Delegates on the Status of Women in the Legal Profession* 4 (approved by ABA House of Delegates on August 10, 1988) [hereinafter *ABA Report on the Status of Women in the Profession*].

²²⁸ See, e.g., *ABA Report on the Status of Women in the Profession* 5 (stating, “time alone is unlikely to alter significantly the under representation of women in . . . tenured faculty positions. Entry of women into these positions at a rate proportionate to their numbers out of law school requires serious examination of the structures, practices and attitudes of the profession.”).

²²⁹ *ABA Report on the Status of Women in the Profession* 6; cf. Richard H. Chused, “The Hiring and Retention of Minorities and Women on American Law School Faculties,” 137 *U. Pa. L. Rev.* 537 (1988) [hereinafter *Hiring and Retention*]. Chused notes that 20% of the full-time faculty were female in the 1986-87 academic year, and that this figure was up over six percent from six years earlier. *Id.* at 538. He also reports “the growth in the proportion of women in tenured or tenure track positions from 10.8 percent to 15.9 percent” between 1981 and 1987, “an improvement of approximately fifty percent within six years.” *Id.* at 548. Chused observes, “women now constitute over one-third of untenured faculty who are in tenure track positions.” *Id.*

²³⁰ *ABA Report on the Status of Women in the Profession* 6; see also Chused, *Hiring and Retention*, *supra* note 229, at 539 (observing, “Women are entering law school teaching in non-tenure track contract positions to teach legal writing at very high rates, about a fifth of the reporting schools are not moving at an appropriate pace to add women to their regular teaching staffs, slightly under two-fifths of the ‘high prestige’ institutions are significantly behind the national pace in adding women to their faculties, and some schools are denying tenure to women at disproportionate rates.”).

A recent study of the effect of sex and race on law faculty hiring for tenure-track positions reveals that men “begin teaching at significantly higher ranks than do women with comparable credentials and work experience.” Deborah Jones Merritt and Barbara F. Reskin, “Sex, Race, and Credentials: The Truth About Affirmative Action in Law Faculty Hiring,” 97 *Colum. L. Rev.* 199, 258 (1997). The study also reveals a disparity in the course assignments given male and female professors, with men receiving the more prestigious assignments like constitutional law and women receiving the less prestigious assignments like estate planning and legal writing. The study found, “Men (both white and minority) were significantly more likely than women to teach constitutional law, while women (both white and minority) were significantly more likely to teach trusts and estates or skills courses.” *Id.* at 258-59. The study did not find a statistically significant difference in the rates of hiring of white women, women of color, men of color, or white men:

We found little statistically significant evidence that law schools preferred white women, women of color, or men of color over white men in this population. We identified a modest preference for white women and minority men on just one of

[were] held by women."²³¹ At the end of 1995, women constituted 19.3% of tenured law faculty, 17% of law professors, and 8% of law school deans.²³² Clearly, the substantial presence of women in the law student body is not reflected in the faculty and administration. By contrast with law schools today, WCL was led by women deans, staffed by women faculty, and attended by a majority-female student body in its early years.

nine job characteristics we explored: after controlling for academic credentials, work experience, and personal characteristics, white women and men of color obtained tenure-track jobs at slightly more prestigious institutions than did white men with equivalent credentials. The preferences, however, were small and did not play any special role at the top sixteen law schools.

Id. at 205.

²³¹ *ABA Report on the Status of Women in the Profession* 6.

²³² *ABA Basic Facts* 4-5.

Additionally, recent data suggests that, despite their substantial presence in the student body, “the law school experience of women in the aggregate differs markedly from that of their male peers.”²³³ Studies conducted at the law schools of the University of Pennsylvania and Yale University revealed pronounced dissatisfaction and alienation on the part of women law students. These studies documented that women law students express feelings of alienation from the legal educational enterprise²³⁴ and participate at disproportionately lower rates than men in classroom discussions.²³⁵ The University of Pennsylvania study revealed that women students are significantly under-represented in the top echelons of their law school classes when ranked by grade point average.²³⁶

²³³ Lani Guinier, Michelle Fine, and Jane Balin, “Becoming Gentlemen: Women’s Experiences at One Ivy League Law School,” 143 *U. Pa. L. Rev.* 1, 2 (1994) (reporting findings of survey of men’s and women’s experiences as students at the University of Pennsylvania Law School). *See generally* ABA, Commission on Women in the Profession, *Elusive Equality: The Experiences of Women in Legal Education* (1996) (reporting that women continue to experience barriers to full and equal participation in law school despite their growing numbers in the student body and on the faculty).

²³⁴ Weiss and Melling, *supra* note 22, at 1 (describing female law students’ alienation “from [them]selves, from the law school community, from the classroom, and from the content of legal education.”); *see also* Guinier, *et al.*, *supra* note 233, at 3 (observing, “many women are alienated by the way the Socratic method is used in large classroom instruction, which is the dominant pedagogy for almost *all* first-year instruction.”).

²³⁵ Guinier, *et al.*, *supra* note 233, at 32. Guinier’s study reveals that “female law students are significantly more likely than male law students to report that they ‘never’ or ‘only occasionally’ ask questions or volunteer answers in class.” *See also* Weiss and Melling, *supra* note 22, at 1363 (Appendix B) (calculating that male students at Yale Law School participated in class 1.63 times more often than women); *cf.* Janet Taber, *et al.*, “Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates,” 40 *Stan. L. Rev.* 1209, 1237-40 (1988) (finding few significant differences between male and female, current and former Stanford Law students, aside from class participation, for which survey found that men ask considerably more questions and volunteer more answers to professors’ questions).

²³⁶ Guinier, *et al.*, *supra* note 233, at 3. Guinier’s study of women’s experiences at the

University of Pennsylvania Law School reports “find[ing] strong academic differences between graduating men and women.” *Id.* She states further:

Despite identical entry-level credentials, this performance differential between men and women is created in the first year of law school and maintained over the next three years. By the end of their first year in law school, men are *three times more likely* than women to be in the top 10% of their law school class.

Id. (emphasis in original). See also Linda F. Wightman, *Women in Legal Education: A Comparison of the Law School Performance and Law School Experiences of Women and Men* 11 (LSAC Research Report Series 1996) (finding no practical difference in average performance of men and women during first year of law school, but finding some practical differences in certain grade ranges).

Other law schools have performed so-called “gender bias studies” similar to that at the University of Pennsylvania and have not found disparities in academic performance between men and women. For example, a study at Brooklyn Law School revealed that women were as likely to succeed academically as men.²³⁷ Despite this comparable academic performance and the relatively high percentage of women among the students (45%), tenured faculty (37%), and full-time faculty (45%),²³⁸ women students at Brooklyn Law School reported that they participated in class less often than men and did so with less comfort.²³⁹ Other schools are currently conducting gender bias studies.²⁴⁰ The initial findings of some composite studies reveal that the existence and extent of gender disparities in academic performance vary widely among law schools.²⁴¹

In light of this data about women’s experiences in law school today, legal educators should evaluate their commitment to, and success in, serving women law students’ needs and interests. As Lani Guinier, Michelle Fine, and Jane Balin observed in their ground-breaking study

²³⁷ Marsha Garrison, Brian Tomko, and Ivan Yip, “Succeeding in Law School: A Comparison of Women’s Experiences at Brooklyn Law School and the University of Pennsylvania,” 3 *Mich. J. Gender & Law* 515, 525-26 (1996).

²³⁸ One question raised by the results of the study at Brooklyn Law School is the extent to which the comparable academic performance of men and women can be attributed to the significant representation of women on the faculty.

²³⁹ Garrison, *et al.*, *supra* note 237, at 525-26.

²⁴⁰ For example, Georgetown University Law Center recently formed a committee to study gender issues within the law school community in response to an informal survey revealing that men were far more likely than women to graduate in the top ten percent of the class at Georgetown. See April 1997 article in *Legal Times* at 1 (reporting on potential gender disparity in grades at GULC).

²⁴¹ See generally UCLA study (Richard Sanders and Kristine Knapland, eds. 1997) (compiling data on approximately twenty law schools) [forthcoming].

at the University of Pennsylvania, “Although some have said in response to our data that perhaps women are not suited to law school or should simply learn to adapt better to its rigors, we are inclined to believe that it is law school -- not the women -- that should change.”²⁴²

²⁴² Guinier, *et al.*, *supra* note 233, at 6. Guinier’s study ultimately concludes, “[I]t is not enough just to add women and stir. These data plead instead for a reinvention of law school, and a fundamental change in its teaching practices, institutional policies, and social organization.”

One obvious recommendation for change, highlighted in the Yale study, is the hiring of more women faculty members.²⁴³ Other suggestions for reforming legal education to better serve the interests of women students include: altering the manner in which courses are taught, especially first year courses; introducing practical, or client-oriented, case discussions into the course work; altering course materials that currently reflect gender biases; and striving for fuller participation in class discussion by all students, especially women.²⁴⁴

Mussey and Gillett's creation of a "feminist" law school, where female deans, trustees, faculty, and students abounded, produced significant firsts for women in the legal profession and demonstrated the benefits of a woman-friendly law school environment. Mussey and Gillett's early successes in training women lawyers should bolster law schools in their efforts to meet the goal of gender equality set forth by Mussey and Gillett one hundred years ago, a goal that remains elusive today.

²⁴³ Weiss and Melling, *supra* note 22, at 1356. During the second year of the Yale study (1985-86), 5.13% of the tenured faculty were women (2 out of 39) and 10.2% of the tenured and tenure-track faculty were women (5 out of 49). *Id.* at 1336 n.108.

²⁴⁴ See generally "Women in Legal Education -- Pedagogy, Law, Theory, and Practice," 38 *J. Legal Educ.* 61-193 (May/June 1988) (collecting numerous articles proposing reform of legal education for benefit of women).