

THE FOUNDING OF THE WASHINGTON COLLEGE OF LAW: THE FIRST LAW SCHOOL ESTABLISHED BY WOMEN FOR WOMEN

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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 historical and personal factors motivated them to found WCL? Second, why did they adopt a coeducational 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 does one explain the absence of African Americans as WCL students before 1950, given the school's generally progressive mission? Lastly, what lessons can educators learn from WCL's history pertaining to female legal education 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 single-sex, format when they founded WCL mainly because they believed that coeducation symbolized gender equality. Moreover, by including men as WCL students, Mussey and Gillett ensured a sizable applicant pool from which to draw their enrollment, thereby securing WCL's ongoing viability, financial and otherwise. 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 that WCL would surely receive. Despite WCL's founding mission to provide legal educational opportunities for women, men constituted more than half of WCL's student population within fifteen years of its incorporation. This occurred for several reasons: rapid expansion in WCL's student body; there were more men than women who were willing and able to attend law school; and two all-white, all-male Washington law schools began to admit women at this time, thereby reducing WCL's supply of female applicants.¹

WCL's progressivism with respect to gender was not mirrored in its treatment of race.² 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 Article 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 Article concludes that Mussey and Gillett's experiences in founding a law school primarily for women should be of special interest today as law schools assess their success in serving the needs and interests of female law students. Mussey and Gillett succeeded, at least initially, in creating a feminist, or female-friendly, environment through the involvement of female deans, faculty, and students in significant numbers that produced notable firsts for women in the legal profession. By contrast, even though women constitute nearly half of the law student population today, they are not represented in substantial numbers on law school faculties or in dean's offices. Female 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.³ Thus, although much has improved in women's legal

1. See *infra* notes 236-39 and accompanying text (discussing rise in number of male students).

2. See *infra* Part II.C (detailing WCL's failure to admit African-Americans in its early years).

3. See Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 3, 32 (1994); see also *infra* note 355 and accompanying text.

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.⁴

I. 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.⁵ Mussey refused. Instead, she agreed to teach Jackson about the law if Jackson could find two additional women who wanted to study law and persuade Emma Gillett to join Mussey as a teacher.⁶ Jackson succeeded on both counts, and the Woman's Law Class had its inaugural meeting on February 1, 1896.⁷ Thereafter, Mussey and Gillett worked together to promote the educational and professional opportunities of female lawyers specifically, and the legal and political status of women generally.⁸ Who were these dynamic women? What brought them together? What motivated them to found a law school for women?

A. *Ellen Spencer Mussey*

In May 1850, Ellen Spencer Mussey was born Ellen Spencer, the tenth child of two abolitionist temperance advocates in Geneva, Ohio.⁹ Her father created the Spencerian system of penmanship.¹⁰ She attended grade school in Oberlin, Ohio, a progressive community.¹¹ Following her mother's death in 1862, she helped her father run his penmanship school, the Spencerian Business College.¹² 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.¹³ Mussey paid for her tuition and board by teaching penmanship.¹⁴

4. See *infra* Conclusion (reviewing experiences of female law students today).

5. 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 (2d ed. 1985).

6. See GRACE HATHAWAY, *FATE RIDES A TORTOISE: A BIOGRAPHY OF ELLEN SPENCER MUSSEY* 106 (1937). Authored within months after Mussey's death, and published by the Washington College of Law, Hathaway's biography is in the form of a tribute to Mussey.

7. See *id.*

8. See *id.* at 108.

9. See *id.* at 6.

10. See *id.* at 4.

11. See *id.* at 15.

12. See *id.* at 19.

13. See *id.* at 25-27.

14. See Florence C. Bell, *A Law Pioneer*, *THE WOMAN CITIZEN* (June 1925) (on file with WCL

In 1869, Mussey moved to Washington, D.C. at the age of nineteen to lead the women's division of the local branch of the Spencerian Business College.¹⁵ She attended her first women's suffrage meeting soon after moving to Washington.¹⁶ On June 14, 1871, she married General Reuben Delavan Mussey ("R.D."), a well-connected Washington lawyer.¹⁷ R.D. was born in Hanover, New Hampshire to a Dartmouth Medical School professor and surgeon in 1833, and graduated from Dartmouth College in 1854.¹⁸ He campaigned for Abraham Lincoln in 1860 and led African-American troops as a general in the Union army during the Civil War.¹⁹ Following the war, he conducted a solo law practice and served as an adjunct instructor at Howard Law School.²⁰ When he married Mussey, R.D. recently had been widowed with two young daughters.²¹

From all accounts, the Musseys had a successful, mutually supportive marriage. Upon their engagement in 1871, Ellen's sister, Sara

Archives).

15. See DAWN BRADLEY BERRY, *THE FIFTY MOST INFLUENTIAL WOMEN IN AMERICAN LAW* 68 (1996). The Women's Division of the Spencerian Business College trained young women for government work.

16. See Bell, *supra* note 14. 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. See AILEEN KRADITOR, *THE IDEAS OF THE WOMAN SUFFRAGE MOVEMENT, 1890-1920*, at 3-4 (1965); see also *infra* note 197 and accompanying text. By contrast, the American Woman Suffrage Association ("AWSA") supported the Fourteenth Amendment. See *id.*

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. It was then that 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 6, at 41-42); see also *infra* notes 87-98 and accompanying text.

17. See Ellen Spencer Mussey, *WHO'S WHO IN THE NATION'S CAPITAL 1934-1935*, at 670, 670-71 (on file with WCL Archives). R.D. was an active member of the Swedenborgian Church, which Mussey joined upon marriage, having been raised as a Baptist. He 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 & Lewis B. Spears eds., 1898) [hereinafter *DARTMOUTH HISTORY*] (on file with WCL Archives).

18. See *DARTMOUTH HISTORY*, *supra* note 17, at 49 (describing R.D. Mussey's law career).

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

20. See Dorothy Thomas, *Ellen Spencer Mussey*, in 2 *NOTABLE AMERICAN WOMEN 1607-1950*, at 606 (Edward T. James ed., 1971) [hereinafter *NOTABLE AMERICAN WOMEN*].

21. See HATHAWAY, *supra* note 6, at 48-51.

Spencer, wrote to R.D., expressing her happiness for their engagement and thanking him for his tender watchful care of Ellen's health.²² The Musseys soon had two sons, born in 1872 and 1874.²³ They were active in Washington society and attended parties at the White House.²⁴

Mussey enjoyed discussing her husband's law cases with him.²⁵ Nevertheless, as a newlywed, Mussey believed it inappropriate for women to practice law, and instead accepted the prevailing belief that men and women should occupy separate spheres.²⁶ Despite this belief, Mussey conducted her husband's law practice while he was ill with malaria between 1876 and 1878.²⁷

22. See Letter from Sara Spencer to R.D. Mussey (Apr. 8, 1871) (on file with WCL Archives). Mussey's health was fragile and she experienced at least one nervous breakdown in her lifetime. See *Emma M. Gillett*, 17 THE NATIONAL CYCLOPEDIA OF AMERICAN BIOGRAPHY 280 (asserting that Mussey retired as WCL dean following nervous breakdown); see also HATHAWAY, *supra* note 6, at 200 (stating that Mussey suffered a nervous breakdown at age 80). Mussey's sister was a dynamic career woman. In 1870, Sara Spencer owned the Spencerian Business College, where Mussey managed the Women's Division. See GLORIA MOLDOW, WOMEN DOCTORS IN GILDED-AGE WASHINGTON: RACE, GENDER, AND PROFESSIONALIZATION 214 n.1 (1987). 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 Letter to Lucretia Garfield from Sara Spencer (June 19, 1870), in President James A. Garfield Papers, Library of Congress).

23. See HATHAWAY, *supra* note 6, at 51.

24. The Musseys received invitations to an inaugural ball in 1873, see Inaugural Ball Invitation (Mar. 4, 1873) (on file with WCL Archives), and to a White House party from President and Mrs. Rutherford B. Hayes in the late 1870s, see Invitation from President Hayes (undated) (on file with WCL Archives). As a widow in 1903, Mussey received an invitation to a White House party from President Theodore Roosevelt. See Invitation from President Roosevelt to Ellen Spencer Mussey (Jan. 22, 1903) (on file with WCL Archives).

25. See HATHAWAY, *supra* note 6, at 59.

26. See *id.* at 62 (noting that Mussey believed that law was not for women and her presence in law office would cost her husband business).

27. 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 seventy-five by 1880. See ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850'S TO THE 1980'S, at 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, at 3 (1993) [hereinafter WOMEN LAWYERS]; 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 that many early female entrants to the legal profession were married and gained opportunity to study and practice law through lawyer-husbands; observing that approximately one-third of all women lawyers in 1890 were married women and more than half 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) (noting that working in family law firm was only option for women, due to discrimination).

Working for a family member also helped to resolve the conflict between femininity and professionalism encountered by early women lawyers. In 1886, a network of women lawyers, calling themselves the Equity Club, 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, *supra*, at 1-3, 16-17.

The conflict experienced by women lawyers was greater than that experienced by early

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 generating her family's only source of income.²⁸ Upon assuming responsibility for her husband's law practice, Mussey moved her family to a new house located near the courts, and set aside the first floor as a law office.²⁹ By conducting the law practice at home, Mussey could confer with her husband about cases as he lay on a sofa in the back parlor³⁰ while she met with his

women doctors because women had entered these professions on different grounds, with women lawyers using arguments based on gender equality while women doctors used arguments based on gender differences. 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 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.

Ada M. Bittenbender, *Woman in Law*, in *WOMAN'S WORK IN AMERICA* 218, 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:

[P]racticing 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 Woman*, 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 father than to assert an independent professional identity. See DRACHMAN, *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. See *id.*

28. See HATHAWAY, *supra* note 6, at 62:

[N]othing 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.

29. See *id.* (noting that Mussey moved their home and law office to near Judiciary Square, where the Washington, D.C. court houses are located).

30. See *Ellen Spencer Mussey: Founder of the Washington College of Law*, *WOMAN'S HOME COMPANION* (June 1914) (on file with WCL Archives).

clients in the front parlor. All the while, Mussey remained near her children, who were attended by a live-in maid called Miss Lizzie.³¹

Following his recovery from malaria in 1878, R.D. asked Mussey to continue working in the law practice.³² Initially, Mussey refused, still believing it inappropriate for a woman to practice law.³³ She eventually agreed to practice with her husband and they worked together for fourteen years until his death in May 1892.³⁴ Mussey, who was forty-two at the time of R.D.'s death, did not remarry.³⁵ Rather, she assumed full responsibility for running the law practice.³⁶ Following his death, Mussey reassured her husband's clients that their legal needs would continue to be met by sending them a printed announcement, stating:

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. 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.³⁷

Mussey looked to Lichliter to handle the necessary court appearances until she became a member of the bar.³⁸

Because Mussey had not become a member of the Washington bar during the sixteen years that she had worked in her husband's law office, she was required to become a member upon his death in order to maintain the law practice.³⁹ Because graduation from law school

31. See HATHAWAY, *supra* note 6, at 61.

32. See *id.* at 65 (explaining that R.D. told Mussey that she demonstrated her legal ability and was needed in his practice).

33. See *id.* (commenting that her husband's suggestion to remain at law firm was "radical").

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

35. See HATHAWAY, *supra* note 6, at 80. Hathaway asserts 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." *Id.*

36. 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, "[t]he 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 (undated) (on file with WCL Archives). Mussey also noted, "Brain must command instincts, then he gets a perspective." *Id.*

37. Announcement of Ellen Spencer Mussey (June 13, 1892) (on file with WCL Archives).

38. See HATHAWAY, *supra* note 6, at 81.

39. See *id.* (noting that Mussey had not become member of bar during 16 years she practiced with her husband).

brought automatic admission to the bar at that time,⁴⁰ Mussey sought admission to the law schools of Columbian College and National University in 1892.⁴¹ Both schools were exclusively male at that time and rejected Mussey on the basis of her sex.⁴² Sally Spencer, Mussey's

40. 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. See STEVENS, *supra* note 27, at 94.

41. See HATHAWAY, *supra* note 6, at 81-82.

42. Although 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 became the first to open their doors to women in 1869. See WOMEN IN LAW: A BIO-BIBLIOGRAPHICAL SOURCEBOOK 5 (Rebecca Mae Salokar & Mary L. Volcansek eds., 1996) [hereinafter WOMEN IN LAW SOURCEBOOK]. The University of Michigan followed in 1870. See *id.* 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 5, 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. See Bittenbender, *supra* note 27, 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. See EPSTEIN, *supra* note 27, at 50; J. CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844-1944, at 84 n.222 (1993). 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. See 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 at the time that she was admitted to the bar of the District of Columbia. See *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 other African-American women graduates from Howard Law School until 1916 when Caroline E. Hall Mason and Lillian B. Wright Page completed their legal studies. See *id.* at 84-85 n.222.

At approximately the same time that law schools were growing in number, a small band of elite lawyers seeking to improve the legal profession founded the American Bar Association ("ABA") 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 27, at 112 (quoting *Report of the Committee on Legal Education and Admission to the Bar*, 2 ABA REP. 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. 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. See *id.* The resolution also recommended that all states give credit toward apprenticeship for time spent in law school. See *id.* at 92-93 (citing *Report of the Committee on Legal Education and Admission to the Bar*, 2 ABA REP. 209, 212, 216-17, 220, 223 (1879); *Report on Committee on Legal Education*, 4 ABA REP. 237 (1881)). "Having made a fairly vigorous start," Stevens observed, "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

sister-in-law, brought Mussey's plight to the attention of Judge Arthur MacArthur, formerly Associate Justice of the Supreme Court of the District of Columbia.⁴³ MacArthur was surprised to learn that Mussey was not already a member of the bar because she had been active in the Washington legal community for sixteen years.⁴⁴ He 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 joining the bar. In March 1893, Mussey passed an oral bar examination administered in her home, and was admitted to the bar.⁴⁵ Lichliter left the partner-

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 & 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, "[i]t 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 (1971)). Columbia University Law School did not admit women until 1927. See KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA 1638 TO THE PRESENT* 96 (1986). Harvard Law School admitted women for the first time in 1950. *See id.* at 100. The last law schools to admit women were Notre Dame in 1966 and Washington and Lee in 1972. See Tere E. Foster, *West Virginia's Pioneer Women Lawyers*, 97 W. VA. L. REV. 703, 705 (1995).

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." See STEVENS, *supra* note 27, at 74. 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. See 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. *See id.* This difference in composition of the part-time law schools may be explained in part by the significantly lower tuition rates part-time law schools charged. *See 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. *See id.* 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, 50% of law schools still did not require high school diplomas in 1904. *See infra* note 281 and accompanying text.

43. See HATHAWAY, *supra* note 6, at 83.

44. *See id.*

45. 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 Bittenbender, supra* note 27, 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:

[W]e 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 takes 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.

Lemma Barkaloo was the second woman to join a state bar, having been admitted to the

ship that same year.

Missouri bar in 1870. See *id.* J. Ellen Foster was admitted to the Iowa bar in 1872. See *id.* Foster went on to become a WCL trustee and faculty member. See 1898-99 CATALOGUE OF THE WASHINGTON COLLEGE OF LAW [hereinafter 1898-99 CATALOGUE] (on file in WCL Archives) (listing Foster as a lecturer).

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. See MORELLO, *supra* note 42, 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. See *In re Bradwell*, 55 Ill. 535, 540 (1869), *aff'd*, 83 U.S. 130 (1873); MORELLO, *supra* note 42, 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 Fourteenth Amendment. See *Bradwell v. 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 (Bradley, J., concurring).

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, *supra* note 27, 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 Supreme Court bar 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 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 (Nov. 6, 1876) (denying Lockwood's application for admission to the bar of the Supreme Court) (located 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).

Following her successful reapplication for admission in 1879, Lockwood became the first woman to join the Court's bar. Albert G. Riddle, a white professor at Howard Law School, moved Lockwood's 1879 application for admission to the Supreme Court bar. See SMITH, *supra* note 42, at 85 n.224.

From 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 more than 1000. See STEVENS, *supra* note 27, at 83.

Mussey was finally on her own.⁴⁶ She had an active law practice following her admission to the bar.⁴⁷ Rather than practicing in areas traditionally occupied by women lawyers, such as trusts and estates or family law,⁴⁸ 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.⁴⁹ Mussey also had clients referred to her by other attorneys.⁵⁰ She was admitted to the U.S. Supreme Court bar in 1896,⁵¹ and became an active member of that bar, arguing and winning ten cases⁵² and sponsoring the membership of twenty-five women.⁵³

Mussey also became active in politics on behalf of women's and children's rights.⁵⁴ She proposed legislation establishing a married woman's right to own property. This legislation, known as the Mussey Act, became law in 1896,⁵⁵ the same year that Mussey and Gil-

46. See HATHAWAY, *supra* note 6, at 84. Mussey may have formed a brief partnership with Ellen Foster in 1896. See Thomas, *supra* note 20, at 606. Foster subsequently became a WCL instructor. See 1898-99 CATALOGUE, *supra* note 45 (on file with WCL Archives).

47. Mussey's later statements suggest that she remained active following her husband's death because inactivity was neither restful nor helpful for overcoming grief. See DIARY OF ELLEN SPENCER MUSSEY, *supra* note 36. In 1904, she noted in her diary, "[a]bsence of occupation is not rest." DIARY OF ELLEN SPENCER MUSSEY, *supra* note 36. 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 Witness Tablet Unveiling*, WASH. HERALD, Apr. 12, 1931.

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

49. See *Dr. Ellen Mussey Rites Tomorrow*, WASH. EVENING STAR, Apr. 22, 1936, at A9.

50. See HATHAWAY, *supra* note 6, at 86 (noting that Watson J. Newton, among others, referred clients and cases to Mussey).

51. Watson J. Newton, with whom Emma Gillett practiced law, sponsored Mussey's membership in the Supreme Court bar. 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 [hereinafter WOMEN ADMITTED TO PRACTICE] (available in Women in the Supreme Court file, Supreme Court Library).

52. See *Dr. Mussey to Witness Tablet Unveiling*, WASH. HERALD, Apr. 12, 1931 (noting that Mussey never lost a U.S. Supreme Court case). 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. See *Shelton v. King*, 229 U.S. 90 (1913).

53. See WOMEN ADMITTED TO PRACTICE, *supra* note 51 (listing 97 women admitted to practice before the Supreme Court by 1920 and noting that Mussey sponsored 25 of them).

54. See *infra* notes 324-28, 336-40, 345 and accompanying text.

55. See *Dr. Ellen Mussey Rites Tomorrow*, *supra* note 49, at A9. 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 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"); 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 in-

lett formed the Woman's Law Class.⁵⁶ Mussey may have come to know Gillett by working on this married women's property legislation or because Gillett had worked on earlier versions of the same legislation with Mussey's husband.⁵⁷

B. Emma Gillett

Emma Millinda Gillett was born to Wisconsin homesteaders in July 1852.⁵⁸ Her father was English and her mother was a Pennsylvania Quaker.⁵⁹ Following her father's death in 1854, Gillett moved with her mother to Pennsylvania, where she was raised by her mother's family.⁶⁰ In 1870, Gillett graduated from Lake Erie Seminary in Painesville, Ohio, an all-female seminary concerned primarily with training women to teach.⁶¹ Following graduation, Gillett taught in the Pennsylvania public schools for ten years and became increasingly frustrated with the meager wages paid to single women teachers.⁶²

Gillett developed an interest in studying law during the late 1870s. Her interest was sparked in part by the role she played in the settlement of her mother's estate as well as by her desire for a profession that paid more than teaching.⁶³ Gillett appears 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.⁶⁴

Relying upon savings and a small inheritance from her mother's estate, Gillett moved to Washington, D.C. to study law in 1880.⁶⁵ She

roduced in 1830s and 1840s).

56. See HATHAWAY, *supra* note 6, at 82.

57. See *infra* notes 88-90 and accompanying text (detailing background of property initiatives); DARTMOUTH HISTORY, *supra* note 17, at 49-51 (recalling involvement of R.D. Mussey in property initiatives). It is unclear whether Mussey had worked with her husband or Gillett on this earlier married women's property legislation.

58. See DRACHMAN, *supra* note 27, at 222.

59. See 17 THE NATIONAL CYCLOPEDIA OF AMERICAN BIOGRAPHY, *supra* note 22, at 280.

60. See *id.*

61. 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. See DRACHMAN, *supra* note 27, at 223 (stating that Gillett graduated from Lake Erie Seminary in 1870); see also HATHAWAY, *supra* note 6, at 25-27 (stating that Mussey attended Lake Erie Seminary). 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. See DRACHMAN, *supra* note 27, at 184.

62. See DRACHMAN, *supra* note 27, at 96, 223.

63. See Thomas, *supra* note 20, at 36.

64. See *id.*

65. See 17 THE NATIONAL CYCLOPEDIA OF AMERICAN BIOGRAPHY, *supra* note 22, at 280.

lived temporarily in Lockwood's home, studying pension law as an apprentice in Lockwood's law office and attending Howard Law School at night.⁶⁶ Gillett was one of two white women students at Howard Law in the early 1880s; at that time, every other Washington law school excluded females.⁶⁷ It is unclear whether Gillett had applied to some or all of the white Washington law schools and been rejected on the basis of her sex before deciding to attend Howard. What is known is that Gillett's fellow white female law student at Howard had been rejected by Washington's white law schools when she chose to attend Howard.⁶⁸

In 1881, President Garfield appointed Gillett to be the first female notary public in the United States.⁶⁹ In 1882, Gillett graduated from Howard with an LL.B. She subsequently received an LL.M. from Howard in 1883.⁷⁰ Gillett became a member of the Washington bar in June 1883, by passing the written bar exam.⁷¹

Upon graduation from Howard, Gillett joined the law office of Watson J. Newton as an associate.⁷² A Washington attorney, Newton later served as a WCL trustee and teacher. Gillett met Newton through her work as a notary public.⁷³ She served as Newton's associ-

66. See Thomas, *supra* note 20, at 37.

67. Chester reports that Gillett attended Howard "somewhat, it seems, to her discomfort." CHESTER, *supra* note 42, at 12. Chester does not, however, provide any details. 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. See SMITH, *supra* note 42, at 54. During this same period, only one African-American woman graduated from Howard Law School, in 1883. See *id.* at 84-85 n.222. The proportion of whites in the overall student body declined throughout the 1880s. See STEVENS, *supra* note 27, at 81. In 1887, Howard had twelve law students—eight African Americans and four whites. See *id.*

68. The other white woman who attended law school with Gillett was Ruth G. D. Havens. See SMITH, *supra* note 42, 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 with WCL Archives).

69. See *Memorial to Emma M. Gillett*, THE COLLEGE GRIT 1 (May 12, 1928) (on file with WCL Archives).

70. See *id.*

71. Bureau of Vocational Information, Questionnaire # 83, folder 186, Bureau of Vocational Information Collection, Schlesinger Library, Radcliffe College [hereinafter Questionnaire #83].

72. See DRACHMAN, *supra* note 27, at 223 (noting that Gillett went to work in Newton's law office in 1883 after her admission to the District of Columbia bar); Thomas, *supra* note 20, at 37 (stating that Gillett worked for Newton until they formed a partnership in 1900, which lasted until Newton's death in 1913).

73. See Speech by Ruth G. D. Havens, Emma M. Gillett, *reprinted in* THE COLLEGE GRIT

ate for eighteen years before forming a law partnership with him in 1900.⁷⁴ Like Mussey, Gillett did not practice conventionally female legal specialties.⁷⁵ Instead, she had a profitable practice in real estate and pension law,⁷⁶ making three to four times her earnings as a teacher.⁷⁷ She neither married nor had children.⁷⁸

Gillett became the seventh woman member of the Supreme Court bar in 1890.⁷⁹ Her membership was sponsored by Ada M. Bittenbender,⁸⁰ the third woman to have joined the Supreme Court bar.⁸¹ As such, Gillett had the distinction of being the first woman to be admitted to the Supreme Court bar on the motion of another woman.⁸² Gillett did not argue any cases in the Supreme Court⁸³ and sponsored only one woman's membership in its bar.

In 1890, Gillett founded the Wimodaughsis,⁸⁴ an all-women's club committed to "helping younger working women further their education."⁸⁵ Gillett also became interested in politics on behalf of

(Oct. 22, 1922) (on file with WCL Archives).

74. 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, "[I] think [the] lawyer I was with did all in his power." Questionnaire # 83, *supra* note 71.

75. Despite her pursuit of non-traditional legal specialties, Gillett played a conventional female role by performing office work, rather than courtroom work, in her law practice with Newton. Weisberg observes, "[o]f 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 27, at 496 (providing no attribution for this observation).

76. See Thomas, *supra* note 20, at 37; see also 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 L. & SOC. INQUIRY 221, 233 (1989) (indicating Gillett's areas of specialization).

77. See DRACHMAN, *supra* note 27, at 96 (quoting Gillett's letter stating that her financial situation improved considerably when she entered legal profession).

78. See *id.* at 162 (quoting Gillett's letter expressing her view that maternal and marital roles necessarily interfere with successful career).

79. See Bittenbender, *supra* note 27, at 225 (recognizing Gillett as one of first women admitted to practice before Supreme Court Bar in 1890); Thomas, *supra* note 20, at 37 (noting that Gillett joined the Supreme Court bar in 1890).

80. See MORELLO, *supra* note 42, at 37 (recognizing that, in 1881, Bittenbender became first woman to practice law in Nebraska); Bittenbender, *supra* note 27, at 225 (noting that Bittenbender was the third woman admitted to the Supreme Court bar and that she subsequently sponsored Gillett's membership).

81. See Bittenbender, *supra* note 27, at 218. Ada Bittenbender authored the *Woman in Law* chapter of *Woman's Work in America* by Annie Nathan Meyer. With an introduction by noted suffragist Julia Ward Howe, *Woman's Work in America* is an important study of women's experience in higher education, the professions, and voluntary associations in the late nineteenth century.

82. See *id.* at 225 (stating that Bittenbender's sponsorship of Gillett was "the first instance of one woman moving the admission of another to the highest court in the country").

83. See DRACHMAN, *supra* note 27, at 159. In a letter, Gillett professed to doing minimal courtroom work because of her anxiety. See *id.* All of Gillett's active court work was in probate court. See *id.* at 96.

84. The name "Wimodaughsis" stands for "Wives-Mothers-Daughters-Sisters." See Thomas, *supra* note 20, at 37.

85. *Id.* Wimodaughsis was later folded into the Young Women's Christian Association. See

women's rights at this time.⁸⁶ For example, her Equity Club letters reveal her growing concern about married women's property rights.⁸⁷ In 1893, Gillett first drafted married women's property legislation for the District of Columbia.⁸⁸ She worked with Mussey and Lockwood on subsequent married women's property legislation,⁸⁹ which finally was enacted in 1896,⁹⁰ the same year that Mussey founded the Woman's Law Class with Gillett as her co-teacher.⁹¹

It seems fairly clear how Mussey came to know Gillett. The two women must have been familiar with each other's work because they were two of only a handful of women attorneys in Washington at the time and had worked together on the 1896 married women's property legislation. Additionally, Mussey may have come to know Gillett because Gillett had worked on earlier versions of the married women's property legislation with Mussey's husband, Mussey was friendly with Newton, Gillett's colleague,⁹² and Mussey's husband taught at Howard Law School at approximately the same time that Gillett attended the school.⁹³ What is less clear is why Mussey insisted on Gillett as her co-teacher. One factor could be that Mussey and Gillett had practiced in Washington for approximately the same length of time. Another reason could be that Mussey had taken note of Gillett because Gillett had linked herself with Lockwood. A further possibility is that Mussey thought Gillett's areas of specialization complemented her own in terms of teaching students about the law.

id.; see also MOLDOW, *supra* note 22, at 140-41 (describing Gillett's activities as board member of Wimodaughsis and noting that Gillett was joined on board by Ruth G. D. Havens, the white female who attended Howard Law School with Gillett, and by Anna Howard Shaw, who was Anthony's successor as head of NAWSA).

86. See Drachman, *supra* note 76, at 234 (noting that Gillett advanced several feminist issues, including suffrage, property rights, and an equal rights amendment).

87. See DRACHMAN, *supra* note 27, at 185. Gillett reported to the Equity Club:

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.

Id.

88. See Thomas, *supra* note 20, at 37.

89. See *id.*; see also MORELLO, *supra* note 42, at 75 (acknowledging successful drafting of Mussey Act, which expanded married women's rights).

90. See Thomas, *supra* note 20, at 37.

91. See *infra* note 128 and accompanying text.

92. See HATHAWAY, *supra* note 6, at 86.

93. It is impossible to determine whether Gillett was enrolled in a course taught by Mussey's husband because Howard Law School does not maintain its class registration lists from the 1870s and 1880s. See Telephone Interview with Professor J. Clay Smith, Howard Law School (Jan. 2, 1997) (notes on file with author) (underscoring that Gillett was one of only five students in her law class at Howard). 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.

C. *Mussey and Gillett as Prototypes of Early Women Lawyers*

As their biographies reveal, Mussey and Gillett adopted different approaches toward balancing their personal lives and professional interests as women lawyers.⁹⁴ As a single woman, Gillett pursued her professional interests without a husband or family to compete for her attention.⁹⁵ Her Equity Club letters of the 1888-90 period reveal that she was an intensely focused and hard-working lawyer.⁹⁶ Believing

94. Drachman notes that female lawyers of the 1880s and 1890s had three principal options for balancing their personal and professional lives: they could remain unmarried and pursue their legal career single-mindedly; they could marry another lawyer, preferably one with whom they could form a law practice or join an established practice, and balance their personal and professional lives together; or they could marry and forego their professional interests altogether, focusing instead on the domestic realm. See Drachman, *supra* note 76, at 231. Approximately one-half of the Equity Club's members were married. See *id.* at 235. 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 that they could succeed in the legal profession only through single-minded devotion to it. See *id.* at 231-32.

95. Gillett did, however, live with a sister and niece starting in 1908. See Thomas, *supra* note 20, at 37.

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 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.

DRACHMAN, *supra* note 27, at 162.

96. Gillett submitted her first letter to the Equity Club in 1888. See *id.* at 96-97. She may have learned of the Club through Lockwood, who had been a member of the Club since 1887. See *id.* In her letters, Gillett expressed an awareness 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, "[t]he opportunities are excellent." When asked, "[h]ow do the chances for men and women compare[?]," she replied, "[a] little in favor of the man." When asked, "[a]pproximately what percentage of your clients are women[?]," Gillett tersely noted, "[s]hould say 75%." Finally, when asked, "[h]ow, in your judgment, should women solve the seeming paradox between vocation and marriage[?]," she declared, "[l]et 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?"

that women lawyers carried sufficient burdens in conducting their law practices without also assuming responsibility for charitable legal cases, and further believing that volunteer work distracted a lawyer from a narrow focus upon career advancement, Gillett eschewed charitable legal work for herself and all women lawyers.⁹⁷ Similarly, Gillett believed that women lawyers should reject housework in order to safeguard their free time and preserve their energy for work.⁹⁸ In place of housework, Gillett advocated that women should pursue vigorous exercise to promote their physical and mental well-being for work.⁹⁹ In this vein, Gillett declared, “[w]ork done when weary is usually below the standard, which we cannot afford.”¹⁰⁰ Essentially, Gillett advocated that women lawyers follow a traditional male model to attain success in the legal profession.¹⁰¹ Accordingly, Gillett advised her fellow Equity Club members, “[i]f we take up work that has been monopolized by men we should study the 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.”¹⁰²

Unlike Gillett, who was devoted to her career throughout her lifetime,¹⁰³ 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.¹⁰⁴ Then, as a newlywed, she quit work to turn to the domestic realm,

Questionnaire # 83, *supra* note 71.

97. Gillett’s April 27, 1889, letter to the Equity Club advised:

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

DRACHMAN, *supra* note 27, at 161.

98. In explaining her avoidance of domestic responsibilities, Gillett asserted:

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.

Id.

99. *See id.* at 159-62 (quoting Gillett’s letter declaring that exercise provides necessary respite from severe mental demands of legal work).

100. *Id.* at 160.

101. *See id.* at 161-62 (quoting Gillett’s letter emphasizing that professional women should conduct their lives in the same manner as successful men).

102. *Id.*

103. *See id.* at 162 (quoting Gillett’s letter stating that she avoided responsibilities outside of work and that devotion to work is “the only sure and safe way to win success”).

104. Mussey took over the Women’s Division of the Spencerian Business College after moving to the District of Columbia in 1869. *See* Thomas, *supra* note 20, at 606.

raising four young children.¹⁰⁵ Only in response to her husband's serious illness did she resume working in public.¹⁰⁶ 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 clients' needs.¹⁰⁷ Following R.D.'s recovery, Mussey practiced with her lawyer-husband,¹⁰⁸ like many early members of the Equity Club.¹⁰⁹ In this way, the Musseys were able to balance their personal and professional lives together.¹¹⁰ With R.D.'s death, Mussey became a solo woman lawyer, single-mindedly devoting herself to the promotion of women's legal and political status through her lawyering,¹¹¹ political activism,¹¹² and founding of the first law school for women.¹¹³

In essence, Gillett and Mussey represented two prototypes of early women lawyers: one remained single and entered the profession on her own by graduating from law school and the other entered the legal profession by marrying a lawyer and working in his practice.¹¹⁴ In following these two different prototypes, Mussey and Gillett resembled the early women's rights leaders Elizabeth Cady Stanton¹¹⁵ and Susan B. Anthony;¹¹⁶ Stanton had married and raised children in addition to pursuing her women's rights advocacy, while Anthony remained single, devoting herself to her work.¹¹⁷

105. Mussey married in 1871 and raised two sons and two step-daughters. *See id.*

106. *See id.*

107. *See supra* notes 29-30 and accompanying text.

108. *See Thomas, supra* note 20, at 606 (indicating that Mussey continued to work in her husband's law practice for sixteen years).

109. *See Drachman, supra* note 76, at 235 (noting that majority of married, working members practiced with their husbands).

110. *See id.* (asserting that opportunity for women to work with their husbands allowed them to "blend successfully marriage with a career in law").

111. Mussey struggled to improve married women's property rights and advocated on behalf of other issues concerning women. *See Thomas, supra* note 20, at 607.

112. Mussey belonged to numerous women's organizations and was influential in both local and federal politics. *See id.*

113. In 1920, Mussey was asked, "[h]ow, in your judgment, should women solve the seeming paradox between vocation and marriage[?]" She replied enigmatically, "[g]ive it up!—an individual problem." Bureau of Vocational Information, Questionnaire # 85, Bureau of Vocational Information Collection, Schlesinger Library, Radcliffe College [hereinafter Questionnaire # 85].

114. Mussey and Gillett also represented two prototypes of turn-of-the-century lawyers generally—those who entered the profession by apprenticing and those who entered the profession by graduating from law school. *See generally* EPSTEIN, *supra* note 27, at 49-50 (noting that, during first 100 years of formal legal education, some women became lawyers through apprenticeship while others chose professional education).

115. Elizabeth Cady Stanton was an influential women's rights leader. *See Alma Lutz, Elizabeth Cady Stanton, in* 3 NOTABLE AMERICAN WOMEN, *supra* note 20, at 342-47.

116. *See* Alma Lutz, *Susan Brownell Anthony, in* 1 NOTABLE AMERICAN WOMEN, *supra* note 20, at 51-57.

117. *See* LOIS W. BANNER & ELIZABETH CADY STANTON: A RADICAL FOR WOMAN'S RIGHTS 60-61 (Oscar Handlin ed., 1980) (contrasting Stanton's domesticity with Anthony's devotion to

Even though Mussey and Gillett represented two different prototypes of women lawyers during much of their formative years, both women were single by the time they became members of the Washington, D.C.¹¹⁸ and Supreme Court bars,¹¹⁹ and established the Woman's Law Class and WCL.¹²⁰ Their status as single women allowed them to pursue their professional interests in a determined manner, without husbands and children to distract them, thus lessening the conflict between their roles as women and professionals.¹²¹

It should be noted that although Gillett was liberated from traditional gender roles at an earlier age than was Mussey,¹²² Mussey's ideas about gender roles evolved¹²³ so considerably that, in the end, she 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.¹²⁴ 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 succeeded by Gillett.¹²⁵ Mussey may have preceded Gillett in these and other leadership positions on behalf of women's

reform).

118. Gillett joined the District of Columbia bar in 1883. See DRACHMAN, *supra* note 27, at 96. Mussey was admitted to the District of Columbia bar in 1893 after passing an oral examination. See Thomas, *supra* note 20, at 606.

119. Gillett was admitted to the Supreme Court bar in 1890, see Thomas, *supra* note 20, at 37, and Mussey was admitted in 1896, see *id.* at 606.

120. The Woman's Law class, established by Gillett and Mussey in 1896, was incorporated as the Washington College of Law in 1898. See CHESTER, *supra* note 42, at 12; see also *infra* Part II (detailing history of WCL).

121. Slightly less than half of the Equity Club members, fifteen out of thirty-two, were single when they pursued their professional lives. See DRACHMAN, *supra* note 27, at 26-27. Drachman notes that these women saw marriage as incompatible with a law career. See *id.* at 26 ("Believing that they had to make a choice between marriage and career, single women sacrificed the former in hopes of establishing productive professional lives."). The Club's single members included women who had been widowed and did not remarry: "[e]ven 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.'" *Id.* Mussey, like Todd, was widowed and did not remarry during the time of her greatest professional and political achievement. See Thomas, *supra* note 20, at 606.

122. See Thomas, *supra* note 20, at 37 (explaining that Gillett was concerned with women's issues at an early age due in part to her mother's support of women's rights).

123. See *id.* at 606-07 (noting that Mussey became a vital social reformer with regard to women's rights despite her prior conservative ideas about married women and work).

124. For a discussion of whether early women lawyers were necessarily suffragists or women's rights activists, see Weisberg, *supra* note 27, at 501-03. On this point, Barbara Babcock observes that many of the famous first women lawyers were suffragists. See Babcock, *supra* note 27, at 1285 n.223. She states further, "[b]y 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.*

125. Mussey served as the first Dean from incorporation until 1913, at which time she stepped down due to ill health. Gillett then served as Dean for ten years. See Babcock, *supra* note 27, at 1285 n.223.

causes because Mussey was more socially prominent than Gillett¹²⁶ and her reputation and connections would have served to bolster the prestige of the organizations with which she was affiliated.¹²⁷

II. 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.¹²⁸ Initially, the program was composed entirely of women.¹²⁹ During its first semester, the Law Class had three students—Delia Jackson, Helen Malcolm, and Nanette Paul¹³⁰—and two instructors—Mussey and Gillett.¹³¹ In the 1897-98 term, the program included one male student, Paul Sperry,¹³² in addition to ten women students. Sperry dropped out after one year to pursue the ministry.¹³³

The *1897-98 Catalogue of the Woman's Law Class* described the course of study as "the equivalent of other Law Schools,"¹³⁴ with Mussey teaching constitutional law¹³⁵ and Gillett teaching the common-law subjects after the model of Blackstone.¹³⁶ The catalogue also noted that none of the Washington law schools that confined their "membership to white persons" admitted women,¹³⁷ 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 1887.¹³⁸ Mussey was the only woman in her class of seventy-five students that summer,¹³⁹ and this one course was the only formal legal education that Mussey ever received.¹⁴⁰

126. The extent to which Mussey's social prominence was due to her marriage to R.D. is unclear. This relationship likely played a role because R.D. was active in Washington's legal and political scenes. Mussey's sister, Sara Spencer, and her sister-in-law, Sally Spencer were also socially prominent. See *supra* note 22 (reviewing work and beliefs of Sara Spencer).

127. It is unlikely that Mussey preceded Gillett in these roles merely because of her seniority given that she was only two years older than Gillett.

128. See CHESTER, *supra* note 42, at 12.

129. See *id.*

130. See MORELLO, *supra* note 42, at 73.

131. See CHESTER, *supra* note 42, at 12.

132. WCL was coeducational despite its aim to educate women in the law. See *id.* at 13; see also *infra* notes 217-48 and accompanying text.

133. See CHESTER, *supra* note 42, at 13.

134. 1897-98 CATALOGUE OF THE WOMAN'S LAW CLASS 1 [hereinafter 1897-98 CATALOGUE] (on file with WCL Archives).

135. See STEVENS, *supra* note 27, at 90 n.79.

136. See *id.*

137. See 1897-98 CATALOGUE, *supra* note 134, at 1.

138. See BARBARA MILLER SOLOMON, IN THE COMPANY OF EDUCATED WOMEN 131 (1985) (noting that Cornell was fourth institution to open its law school to women).

139. See HATHAWAY, *supra* note 6, at 90. Hathaway did not identify the subject matter of Mussey's law course at Cornell.

140. Mussey responded to a 1920 Bureau of Vocational Information survey question about

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.¹⁴¹ 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.¹⁴² 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.¹⁴³ Columbian refused, informing Mussey that "conservative members [of the school] still insisted that women had not the mentality for law."¹⁴⁴

In the face of this rejection, Mussey and Gillett incorporated the Woman's Law Class as a degree-granting institution on April 2, 1898,¹⁴⁵ renaming it the "Washington College of Law."¹⁴⁶ WCL's certificate of incorporation¹⁴⁷ set forth its primary goal as "provid[ing] such a legal education for women as will enable them to practice the [l]egal profession."¹⁴⁸ As such, WCL became the first law school in the United States founded by, and for, women.¹⁴⁹

her legal education by writing that she "[n]ever had a law course. No school open to women in D.C. Studied with my husband General R.D. Mussey." Questionnaire # 85, *supra* note 113.

141. See STEVENS, *supra* note 27, at 90 n.79 (stating that original idea behind Woman's Law Class was to prepare women for admission to Columbian College).

142. See *id.*

143. See *id.*

144. See HATHAWAY, *supra* note 6, at 107.

145. WCL Board of Trustees, Certificate of Incorporation of the Washington College of Law (Apr. 2, 1898) (on file with WCL Archives).

146. See *id.*

147. See *id.*

148. *Id.* ¶ 3.

149. Despite the ground-breaking nature of Mussey and Gillett's achievement in establishing the first law school by and for women, the *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 *Women Lawyers: Seven Graduates Receive Degrees from Washington College*, EVENING STAR (Washington), May 23, 1904, at 15 (describing WCL's graduation exercises) (on microfilm with the District of Columbia Public Library, Washingtonia Division).

Six years before Mussey and Gillett established their Woman's Law Class, a Woman's Law Class was established at New York University ("NYU"), 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. See *id.* at 1999-2000. Notwithstanding their small numbers, women earned two of the top three prizes that year. See *id.* at 2000. Many of the women graduates of NYU Law School went on to work with other women lawyers either as clerks or by forming law practices together. See *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.

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

Mussey and Gillett's decision 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.¹⁵⁰ In the 1848

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 ("CUNY")," in the words of its founder, Dr. Emile Kempin-Spyri. See Bittenbender, *supra* note 27, at 235, n.*. Dr. Kempin-Spyri stated further, "[t]he 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. See *id.* Along with the merger, CUNY agreed to establish a lectureship for Kempin-Spyri. Although 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. See *id.*

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. See CHESTER, *supra* note 42, at 9. Despite this fact, Portia did not have the same "feminist" origins as WCL, i.e., it was not founded primarily for the quasi-political purpose of training women in the law. See *id.* Portia's founders had a different animating purpose than Mussey and Gillett. Unlike WCL, Portia was a for-profit venture, drawing upon those women in Boston's burgeoning immigrant population who sought economic advancement through the law. See *id.* at 9, 17, 20. MacLean had been inspired to found a law school for women when he was asked to tutor two women for the Massachusetts bar exam. See MORELLO, *supra* note 42, at 70. His law partner, Gleason Archer, founded Suffolk Law School, which excluded women until the 1930s. See CHESTER, *supra* note 42, at 20. Initially, Portia only provided tutoring for the bar exam. See MORELLO, *supra* note 42, at 70. It was a part-time night school, requiring four years of study for graduation, and was composed of a predominantly working class population. See CHESTER, *supra* note 42, at 16-17. 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 42, at 9; MORELLO, *supra* note 42, at 70; see also *The Founding of Portia Law School*, NEW ENG. SCH. OF L. BULL. 5-7 (on file in the Supreme Court Library, Women in the Legal Profession file).

Then, in 1915, the Cambridge Law School was established in Cambridge, Massachusetts as a part-time night school exclusively for women. See SOLOMON, *supra* note 138, at 131 (noting that part-time institutions offered an alternative route to women seeking legal education). 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 42, at 12. The school closed after one year when Beale's daughter lost interest. See *id.*

150. See generally HELEN LEFKOWITZ HOROWITZ, *ALMA MATER: DESIGN AND EXPERIENCE IN THE WOMEN'S COLLEGES FROM THEIR NINETEENTH CENTURY BEGINNINGS TO THE 1930S*, at 95,

Declaration of Sentiments,¹⁵¹ women's rights activists proclaimed a woman's right to higher education.¹⁵² They observed that men "ha[d] denied her the faculties for obtaining a through [sic] education, all colleges being closed against her."¹⁵³ The Declaration of Sentiments effectively linked the importance of women's access to higher education to the cause of women's rights.¹⁵⁴

By 1870, 11,000 women were enrolled in female seminaries,¹⁵⁵ which were the forerunners to women's colleges, or in colleges. Twenty-two hundred of the three thousand women enrolled in colleges at this time attended women's colleges.¹⁵⁶ This sex segregation grew out of the "separate spheres" tradition,¹⁵⁷ which taught, in part,

237-61 (1984) (discussing formation of Cambridge Annex, later Radcliffe College, where women studied under Harvard professors; recognizing Radcliffe and Barnard as exemplifying the power of women's colleges in the early twentieth century); *see also* SOLOMON, *supra* note 138, at 54-55 (describing establishment of female annexes as compromises in battle for coeducation).

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. *See* SOLOMON, *supra* note 138, at 12, 15-16. These reformers asserted that women were well-suited to teach because of their elevated moral character. It followed that, in order to teach effectively, women needed greater access to higher education. *See id.* at 16.

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. *See id.* at 16-17. As a consequence, young women were freer to leave home prior to marriage. *See* FARM TO FACTORY: WOMEN'S LETTERS, 1830-1860, at 16 (Thomas Dublin ed., 1981) (stating that growth of textile industry "undermined the position of women in farming families"). 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. *See* SOLOMON, *supra* note 138, at 16-17. Finally, westward expansion created a significant demand for new teachers to staff frontier schools. That demand led in turn to an increased interest in establishing seminaries and colleges for the training of teachers, at which women enrolled in significant numbers.

151. *See* Elizabeth Cady Stanton, Declaration of Sentiments (1848), in *WOMEN'S AMERICA* 529-31 (Linda K. Kerber & Jane S. De Hart eds., 1982) [hereinafter *WOMEN'S AMERICA*].

152. *See* PATRICIA SMITH BUTCHER, *EDUCATION FOR EQUALITY: WOMEN'S RIGHTS PERIODICALS AND WOMEN'S HIGHER EDUCATION, 1849-1920*, at x (1989) (noting that equality in education was included in the Declaration of Sentiments).

153. *Id.* (quoting Declaration of Sentiments).

154. *See id.* (stating that women's rights activists pursued equitable reform in higher education).

155. *See* HOROWITZ, *supra* note 150, at 56. Several early women's rights agitators attended female seminaries, including Elizabeth Cady Stanton, who attended the Emma Willard School from 1830 to 1833 (known at that time as the Troy Female Seminary). *See* BANNER, *supra* note 117, at 12-13.

156. *See* HOROWITZ, *supra* note 150, at 56.

157. *See* SOLOMON, *supra* note 138, at 47 (stating that early female colleges were publicly accepted because they provided a "separate female sphere").

that women's delicate physical and moral natures necessitated that they be educated separately from men.¹⁵⁸ Such sex segregation also reflected the fact that elite men's colleges refused to admit women.¹⁵⁹ Harvard did not officially recognize women as university students until Radcliffe College was founded in 1893.¹⁶⁰ Yale began to admit women to its graduate program in the 1890s, but continued to exclude women from its undergraduate program.¹⁶¹ Princeton and Brown limited their involvement with women students to the establishment of coordinate relationships with nearby women's colleges,¹⁶² and Columbia prohibited women from obtaining instruction, but permitted women to sit for university exams.¹⁶³ Administrators at the leading men's colleges were opposed to coeducation because they believed that women would be distracting, men would be uncomfortable with women in their midst, women would weaken the colleges' reputations for scholarship, and admission of women would undermine the founders' plans.¹⁶⁴

With regard to women's expanding higher education opportunities, 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).¹⁶⁵ These colleges were dedicated to providing rigorous academic instruction for women within the context of separate but equal spheres.¹⁶⁶

Upon graduation, students of women's colleges and female seminaries were confronted with the dilemma of choosing between do-

158. In 1873, Professor Edward H. Clarke of the Harvard Medical School published a highly influential book, *Sex in Education; or, A Fair Chance for Girls*, which warned that too much education for girls would damage their reproductive system that is "the cradle of the race." EDWARD H. CLARKE, *SEX IN EDUCATION; OR, A FAIR CHANCE FOR GIRLS* 11-14, 125-34 (1873), reprinted in *ROOT OF BITTERNESS: DOCUMENTS OF THE SOCIAL HISTORY OF AMERICAN WOMEN* 330, 331 (Nancy F. Cott et al. eds., 1996).

159. See SOLOMON, *supra* note 138, at 53-54 (explaining that, even after many state universities began accepting women, elite men's colleges such as Harvard, Yale, Princeton, and University of Pennsylvania continued to exclude women).

160. See *id.* at 55.

161. See *id.* at 54.

162. See *id.* at 54-55 (noting that Princeton established short-lived relationship with Evelyn College, and Brown accommodated women at Pembroke College).

163. See *id.* at 55.

164. See *id.* at 61; see also MABLE NEWCOMER, *A CENTURY OF HIGHER EDUCATION FOR AMERICAN WOMEN* 31 (1959) (noting that founders had intended their colleges for men, and because there was not enough money for both sexes to attend college, women should be excluded).

165. See SOLOMON, *supra* note 138, at 47.

166. See *id.* at 48.

mesticity and work outside of the home.¹⁶⁷ Many chose to become teachers, a respectable means by which women could support themselves.¹⁶⁸ Others chose to enter historically male professions, like law or medicine.¹⁶⁹ 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.

This expansion in women's higher education opportunities was an important factor in shaping WCL's founding. Like many women who attended female seminaries or women's colleges, Mussey and Gillett elected to support themselves as teachers afterwards. Mussey's experience as an administrator of the Women's Department at the Spencerian Business College of Washington was likely one factor influencing her decision, many years later, to establish a law school primarily for women.¹⁷⁰ 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.¹⁷¹ More important, the expansion of women's higher education opportunities served as a significant backdrop to WCL's founding because women's entry into college simultaneously reflected and stimulated women's growing interests in opportunities outside of the home.¹⁷² As women became

167. See *id.* at 116-17 (observing that a woman's choice between staying home, finding a job, or volunteering depended largely on familial obligations to her parents, marital choices, and financial considerations).

168. Although teaching was a respectable profession by which women could gain independence, the low wages paid to single women teachers prompted women like Gillett to quit in search of better-paid professions. See DRACHMAN, *supra* note 27, at 273.

Susan B. Anthony also left teaching because she was "[d]issatisfied with the inequities heaped on a woman teacher . . . [and] went back to the family farm." ELEANOR FLEXNER & ELLEN FITZPATRICK, *CENTURY OF STRUGGLE: THE WOMAN'S RIGHTS MOVEMENT IN THE UNITED STATES* 80 (1996).

Similarly, Myra Bradwell went into teaching after attending a female seminary. She left teaching for a legal career partially in response to the low wages she received as a teacher. 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 (1993).

169. See SOLOMON, *supra* note 138, at 47 (noting there were nearly nine thousand female physicians in United States in 1910).

170. 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*, *supra* note 36. This entry suggests that Mussey was aware of the historical significance of founding a law school for women. Mussey may have believed that her achievement placed both herself and WCL in the larger context of women's history.

171. See DRACHMAN, *supra* note 27, at 223 (noting that financial and legal complexities Gillett encountered in settling her mother's estate in 1875 also inspired Gillett to pursue legal career).

172. See generally SOLOMON, *supra* note 138, at 115-40 (describing female college graduates'

interested in pursuing professions beyond the traditional sphere of teaching, 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 the incorporation of WCL.¹⁷³

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 precursors to, and products of, the expansion of opportunities for women in higher education.¹⁷⁴ Many 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.¹⁷⁵ Some of the women who sought alternatives to domesticity

sense of independence and search for satisfying careers outside of the home). More specifically, Solomon observed 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.

173. Although the establishment of professional schools for women can be seen to flow naturally from the rise of 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. Many female seminaries and women's colleges trained their graduates to teach, a traditional female career. Conversely, 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* note 311. As a result, most female law students had not attended college. Moreover, 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 138, at 64-67. In contrast, female law students were of more modest means and often worked full-time as clericals during the day while attending law school at night. *See CHESTER, supra* note 42, at 9. Many of the women students at WCL were federal government workers, *see id.* at 14, and most of the students at Portia were working-class ethnic minorities, mainly of Irish, Italian, or Eastern European Jewish descent. *See 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* Part II.B (examining coeducational format of WCL).

174. *See SOLOMON, supra* note 138, at 123 (noting that college graduates found volunteerism, a traditionally accepted activity for women, to be a useful "vehicle for expanding their interests and for involving themselves in current social, cultural or political issues").

175. Having noted that women composed thirty-five percent of the undergraduate population in 1890, one commentator highlighted the dilemma confronting female graduates upon graduation:

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 ex-

were not interested in paid employment and chose to become involved in women's voluntary associations as another alternative.¹⁷⁶ At the same time, some of the women who had built the early voluntary associations, like the abolitionist societies of the early-to-mid nineteenth century,¹⁷⁷ went on to join the growing women's rights movement.¹⁷⁸ This development further encouraged the expansion of women's higher education opportunities as women sought to enter the world outside of the home.¹⁷⁹

Voluntary associations became the focus 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.¹⁸⁰ 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.

These voluntary associations served as springboards for women's nascent political activity. First, many of the associations were organized around particular political and social issues.¹⁸¹ Second, joining these associations to advocate certain causes often led to other politi-

PLICIT in their advice and encouraged women graduates to venture into the professions or to attend graduate school.

BUTCHER, *supra* note 152, at 82 (citations omitted). Butcher's study underscores the connection between the expansion of women's higher education opportunities and increased participation in women's voluntary associations, as well as the link between the growing number of female college graduates and the increased interest in professional education.

176. See SOLOMON, *supra* note 138, at 123 (noting that society disapproved of careers that demanded much time outside the home, thus rendering voluntary associations more appealing).

177. See Lillie B. Chace Wyman, *Work of Anti-Slavery Women*, in *WOMEN'S WORK IN AMERICA*, *supra* note 27, at 397 (recalling how women in abolitionist societies helped raise money, assisted run-away slaves, circulated petitions, and wrote articles).

178. See SOLOMON, *supra* note 138, at 41 (stating that Lucretia Mott and Elizabeth Cady Stanton resolved to form a women's rights society in their hometown after being refused admission into the International Anti-Slavery Convention in 1840).

179. See BUTCHER, *supra* note 152, at 11-12 (recalling that many advocates for women's movement believed the only way to achieve equality with men was to "improve the mind of their sex" through education).

180. See *infra* notes 184-85 and accompanying text (regarding women's involvement in temperance movement and settlement houses).

181. Drachman described 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, *supra* note 76, at 227.

cal activity, and, ultimately, to the women's suffrage movement.¹⁸² Women's first significant forays into the voluntary associations were through the abolitionist societies of the early to mid nineteenth century.¹⁸³ This was followed by the formation of temperance organizations, most notably, the Woman's Christian Temperance Union ("WCTU"),¹⁸⁴ and the rise of the settlement house movement, exemplified by Jane Addams' Hull House.¹⁸⁵

Mussey and Gillett were actively involved in a number of women's voluntary associations.¹⁸⁶ One aspect of Mussey's social prominence was her involvement in a range of women's social and professional clubs that advocated reform of laws affecting 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.¹⁸⁷ WCL's founding was 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.¹⁸⁸ Because WCL charged only \$50 per year for

182. See FLEXNER & FITZPATRICK, *supra* note 168, at 38-39 (describing how many organizations were originally formed as church sewing groups to raise money for charity or literary groups, later adopting political causes).

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

183. 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 Grimké, perhaps the most famous female abolitionists, struggled against the separate spheres tradition by addressing mixed audiences of men and women. See *id.* at 39-46.

184. See *id.* at 174. The temperance issue became a large concern to women reformers in the mid-nineteenth century because many men tended to be heavy drinkers and "the law placed married women so much at the mercy of their husbands." *Id.*

185. See JANE ADDAMS, *TWENTY YEARS AT HULL-HOUSE 201-02* (1910) (noting that jobs in settlement houses attracted many educated women because it gave them opportunities to work in professions ordinarily closed to females).

186. Mussey was involved in a wide range of voluntary associations throughout her life, including the American Association of University Women, the American Bar Association, Daughters of the Revolution, the Dames Loyal Legion, the National American Woman Suffrage Association, the National Women Lawyers' Association, the 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. See DRACHMAN, *supra* note 27, at 223. These included the American Bar Association, the District of Columbia Equal Suffrage Association, the National American Woman Suffrage Association, the National Woman Suffrage Association, National Woman's Party, Wimodaughsis, and the Women's Bar Association of the District of Columbia. See Thomas, *supra* note 20, at 36, 37. The Equity Club might also be included on Gillett's list of voluntary associations.

187. 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, which women lawyers should seek to avoid. See DRACHMAN, *supra* note 27, at 223-24.

188. 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 nomi-

tuition in the school's early days,¹⁸⁹ Mussey and Gillett largely volunteered their efforts to the cause of women in legal education.

3. *The rise of the women's suffrage movement*

As previously suggested, 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.¹⁹⁰ Officially christened at the 1848 Seneca Falls Convention,¹⁹¹ the women's suffrage movement slackened during the Civil War period as many women's rights advocates set their causes aside to focus their efforts on supporting the Union and abolishing slavery.¹⁹² As a consequence, no women's rights conventions were held during the Civil War.¹⁹³ After the war, women's rights activists expected the Republican Party to reward their loyal support of the Union by giving them the right to vote.¹⁹⁴ Instead, they were told that this was the "Negro hour," and that women must wait.¹⁹⁵

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,¹⁹⁶ split the women's suffrage movement in two directions.¹⁹⁷ This split was em-

nal salary of \$50 to \$100 per month." Questionnaire # 83, *supra* note 71.

189. See 1898-99 CATALOGUE, *supra* note 45, at 7 (on file with WCL Archives). WCL's tuition was significantly less than that charged by other law schools, such as Georgetown. See *infra* note 287.

190. See ANNE FIROR SCOTT & ANDREW MACKAY SCOTT, ONE HALF THE PEOPLE: THE FIGHT FOR WOMAN SUFFRAGE 20-22 (1982) (explaining that voluntary associations helped women organize their interests and develop both management and public speaking skills, thereby facilitating the growth of women suffrage movement).

191. The 1848 Seneca Falls Convention's Declaration of Sentiments highlighted, *inter alia*, the need for women's greater access to education and the professions. See Elizabeth Cady Stanton, *Address Delivered at Seneca Falls, July 19, 1848*, reprinted in ELIZABETH CADY STANTON & SUSAN B. ANTHONY CORRESPONDENCE, WRITINGS, SPEECHES 27, 32-35 (Ellen Carol DuBois ed., 1981).

192. See SOLOMON, *supra* note 138, at 45 (recalling that many women joined labor force as nurses, factory workers, and property managers to compensate for absence of men who had joined army).

193. See KRADITOR, *supra* note 16, at 3.

194. See *id.*

195. See *id.* at 3 n.2 (noting that most Republicans, even if they supported women's rights, feared that advocating women's suffrage would jeopardize their efforts to enfranchise southern black men).

196. See U.S. CONST. amend. XIV, § 2 ("But when the right to vote at any election . . . is denied to any of the *male* inhabitants . . . the basis of representation therein shall be reduced in the proportion which the number of such *male* citizens shall bear to the whole number of *male* citizens . . .") (emphasis added).

197. See KRADITOR, *supra* note 16, at 3-4 (acknowledging that Susan B. Anthony and Elizabeth Cady Stanton led one group that sought to defeat the Fourteenth Amendment, while Lucy Stone led another group that supported the Amendment as important step towards racial equality).

bodied in two women's suffrage organizations, both founded in 1869. The National Woman Suffrage Association ("NWSA") opposed the enfranchisement of freedmen through the Fourteenth Amendment in the absence of votes for women.¹⁹⁸ The American Woman Suffrage Association ("AWSA"),¹⁹⁹ on the other hand, supported the enfranchisement of freedmen through the Fourteenth Amendment as an important step toward universal suffrage, even absent votes for women.²⁰⁰ In 1890, NWSA and AWSA merged to form the National American Woman Suffrage Association ("NAWSA"), which focused exclusively upon obtaining voting rights for women.²⁰¹ In 1903, NAWSA adopted a "states rights" approach to the fractious issue of racial equality whereby each state chapter could choose whether to publicly endorse white supremacy, or equality between the races.²⁰²

The women's suffrage movement affected WCL's founding in two respects. First, Mussey and Gillett dabbled in the suffrage movement before WCL's founding.²⁰³ They attended NWSA meetings before NWSA and AWSA merged to form NAWSA in 1890. Like those suffragists who opposed the Fourteenth Amendment because it excluded women, Mussey and Gillett put the interests of women—specifically, white women—before all others by 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, that is, to be informed about the social and political affairs of the day.²⁰⁴ Some suffragists believed that women would have to demonstrate their educational acumen first in order to earn the right to vote.²⁰⁵

198. *See id.*

199. *See id.*

200. One commentator has described NWSA as an organization that advocated radical social change and AWSA as a more moderate group. *See* BUTCHER, *supra* note 152, at 9; *see also* SCOTT & SCOTT, *supra* note 190, at 17 (explaining that two groups also disagreed on whether suffrage movement's main focus should be on securing constitutional amendment or securing voting power on state-by-state basis).

201. *See* KRADITOR, *supra* note 16, at 4.

202. *See id.* at 165 (explaining that, by not endorsing national platform, NAWSA could keep northern and southern chapters of its organization together).

203. *See* DRACHMAN, *supra* note 27, at 224 (noting that Gillett campaigned for women's voting rights as member of NWSA).

204. On this point, Stevens observed, "[t]he rise of the suffragist movement increased the pressure on the law schools" to admit women. *See* STEVENS, *supra* note 27, at 83. At the same time, some states such as 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* Bittenbender, *supra* note 27, at 229.

205. *See generally* KRADITOR, *supra* note 16, at 22.

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. These women formed or joined voluntary associations in increasing numbers. By banding together in voluntary associations, they created an organizational framework from which the women’s suffrage movement could gain strength. The suffrage movement in turn led to a push for greater educational opportunities as women recognized the need to arm themselves with knowledge and training 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 a legal education in Washington and by their experiences in striving for gender equality as early female 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 only enroll at one of Washington’s law schools, Howard University, and at none of Washington’s white law schools.²⁰⁶

Five law schools were operating in Washington, D.C. at this time:²⁰⁷

206. See STEVENS, *supra* note 27, at 83 (reporting that Columbian College law faculty, which included two Supreme Court Justices, refused in 1883 to admit women and suggested that they attend Howard Law School instead). Women were also ineligible to join the official Bar Association of the District of Columbia until 1941. The establishment of the Women’s Bar Association in 1917 by Mussey and Gillett was in part a response to this exclusion. See *infra* notes 338-39 and accompanying text.

207. 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 5, at 606. In contrast to the legal profession, almost all physicians entered practice through formal study by 1891. See RICHARD ABEL, *AMERICAN LAWYERS* 41 (1989).

In 1896, the ABA approved the requirement of a high school diploma and two years of legal studies for bar admission. See *id.* at 96. In 1897, the ABA increased the requirement to three years of legal studies. See *id.* In 1899, the ABA formed the Association of American Law Schools (“AALS”) with twenty-five charter members in response to pressure from legal acade-

Catholic University of America (established in 1895),²⁰⁸ Columbian College (established in 1865 and merged with George Washington University between 1899 and 1912),²⁰⁹ Georgetown University (established in 1870),²¹⁰ Howard Law School (established in 1869),²¹¹

micians to establish an organization of "reputable" law schools. *See 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 lasted at least two years, and that the library contained United States and local state reports. *See id.* In 1905, the AALS required a three year course of study for membership, and in 1919, it moved to exclude all part-time schools. *See 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. *See STEVENS, supra* note 27, at 100-01; ABEL, *supra*, at 6. Ethnic minorities, recent immigrants, and members of the working class sought to enter the legal profession. *See STEVENS, supra* note 27, at 100-01. Part-time law schools proliferated in response to this new demand. *See id.* As Stevens observed: "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." *Id.* at 75. Most of these new students attended the part-time law schools and the success of the part-time schools alarmed the legal profession's elite. *See id.*

Nevertheless, the ABA and the AALS did not exercise substantial influence over the training of the legal profession until the 1920s. *See STEVENS, supra* note 27, at 98-99. *See generally* ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 71-121 (1953) (tracing the development of the ABA and AALS and their impact on legal education). For example, the ABA and the AALS were unable to get state legislatures to enact any of their proposed reforms in part because most lawmakers did not share the view of "elite" legal education that ABA and AALS members possessed. *See STEVENS, supra* note 27, at 99. For example, even by 1923, no state required law school attendance as a prerequisite for admission to the bar. *See id.*; 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. *See STEVENS, supra* note 27, at 98, 102. During the first two decades of the twentieth century, the AALS represented a steadily shrinking proportion of the law school population. *See 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, however, this number still represented less than one-third of the 108 existing law schools. *See id.* at 107 n.35. "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.

The number of students attending AALS member schools between 1901 and 1916 rose by 24.9%, while the number of students attending nonmember schools rose by more than 100%. *See STEVENS, supra* note 27, at 108 n.46 (citation omitted). The influence of the ABA and the AALS began to grow around 1920 following the publication of three reports on the status of the legal profession. In 1914, Josef Redlich published *The Common Law and the Case Method in American University Law Schools*. *See id.* In 1920, Elihu Root, representing the elite of legal academia, published a report advocating the requirement of two years of college study before enrolling in law school. *See id.* Finally, in 1921, Alfred Z. Reed published *Training for the Public Profession of Law*, which described the growing pluralism of the legal profession. The Carnegie Foundation sponsored the Reed report. *See id.* at 112-19. *See generally* 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).

208. *See* 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* (Apr. 1969) (unpublished manuscript); *see also* Reed, *supra* note 207, at 406-513 (listing founding dates, admission requirements, and other relevant statistics of American law schools through 1920).

209. *See* Smith, *supra* note 42, at 162. Abel notes that Columbian College was established "to serve federal employees whose workday ended at 3 P.M." ABEL, *supra* note 207, at 53.

210. 1995-96 GEORGETOWN UNIV. L. CTR. BULL. 4.

211. *See* Smith, *supra* note 42, at 43, 54-55. Although Howard Law School admitted women long before the other Washington law schools, its primary mission was the training of African-American lawyers. *See id.* The number of women at Howard Law School, both African Ameri-

and National University (established in 1869 and merged with George Washington University in 1954).²¹² With the exception of Howard, which had been coeducational and racially integrated since its 1869 founding, Washington's law schools admitted only white males. National had at one time admitted white women, including Belva Lockwood, who graduated in 1873,²¹³ but it no longer did so at the time that the Woman's Law Class and WCL were established.²¹⁴

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."²¹⁵ The catalogue then explained that "[t]he 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."²¹⁶

Given that this explanation immediately followed the preceding observation, WCL's 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, while at the same time making clear that this mission was limited to white women.

can and white, was quite small. *See id.*

212. *See* SMITH, *supra* note 42, at 162; STEVENS, *supra* note 27, at 85 n.15.

213. *See* DRACHMAN, *supra* note 27, at 223.

214. 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*, LVI THE J. OF MISS. HIST., 181, 186 (Aug. 1994) (quoting Interview Transcript by Amelia R. Fry with Burnita Shelton Matthews: Pathfinder in the Legal Aspects of Women, Suffragists Oral History Project, Bancroft Library, University of California-Berkeley at 13-14 (Apr. 29, 1973)). Matthews also noted that her fellow students at National, all male, were critical of suffragists. *See* Greene, *supra*, at 186 (citing trans. at 14) (quoting Matthews as recalling "that she heard many criticisms of the suffragists from her fellow students, most of whom were former soldiers"). Matthews' recollections suggest that, even after National admitted women as law students for the second time, the school continued to treat female students with little respect.

215. 1897-98 CATALOGUE, *supra* note 134, at 1.

216. *Id.*

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."²¹⁷ It spoke in co-educational terms in explaining why legal education was important:

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.²¹⁸

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

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.²¹⁹

By enumerating practical reasons for studying law applicable to everyone, such as expanded job opportunities and access to promotions, WCL's founders used gender equality arguments to demonstrate why the study of law was valuable for women as well as men.²²⁰

217. 1898-99 CATALOGUE, *supra* note 45, at 1. It is noteworthy that WCL's catalogue reassured men that they would be placed on equal footing with women, rather than the reverse, because men's experiences traditionally defined the norm.

218. *Id.* at 8.

219. *Id.* at 8-9.

220. 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, "[h]ow 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." Questionnaire # 85, *supra* note 113.

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 today 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

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.²²¹

The advertisement proceeded to assert that WCL had succeeded in demonstrating women's acumen for the study of law through its co-educational 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.²²²

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*, J. OF SOC. SCI. 234 (1900) (lecture presented at New York University on May 11, 1900).

221. See *Why Women Should Study Law* (on file with WCL Archives) (undated).

222. Although this advertisement is undated, its reference to "world crisis" and "war work-

Mussey and Gillett's choice of a coeducational format was shaped primarily by their belief that the sexes were equal.²²³ Their decision to educate women and men together was consistent with their overall approach to the law.²²⁴ Mussey and Gillett did not follow a separate spheres, or sex-segregated, approach to the law in their own professional lives. Even though Mussey initially believed it inappropriate for women to practice law, she became a major figure on Washington's legal scene, practicing non-traditionally female specialties, arguing Supreme Court cases,²²⁵ proposing legislation,²²⁶ and founding 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, Gillett practiced business law. Just as Mussey and Gillett rejected the separate spheres approach to the practice of law by working in fields that

ers," along with its mention of WCL's New York Avenue address, indicates that it ran during World War I. WCL moved to a new home on K Street after the War.

223. 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.

MAY WRIGHT SEWALL, in *WOMAN'S WORK IN AMERICA*, *supra* note 27, at 82.

Continuing, Sewall expressed a hope and desire similar to that which motivated 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.*

224. Mussey and Gillett's choice of a coeducational format also reflected the rhetoric of the women's rights press of that era. Butcher demonstrated 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 152, at 33-48. Elizabeth Cady Stanton used her paper, *The Revolution*, as a voice for the NWSA, while Lucy Stone and others financed *The Woman's Journal* as a voice for AWSA. Butcher quotes Stanton as declaring in the January 29, 1869, edition of *The Revolution*, "[i]t 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 38. Butcher also recounted Lucy Stone's July 16, 1870, declaration in the *Woman's Journal*, that "[w]omen'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 alone, anymore than for men alone." *Id.* at 41.

225. See, e.g., *Shelton v. King*, 229 U.S. 90 (1913) (upholding validity of testamentary trust in favor of Mussey's client); *Glavey v. United States*, 182 U.S. 595, 609-10 (1901) (holding that Mussey's client was entitled to compensation for services performed for government as appointed special inspector of foreign steam vessels).

226. See Act of June 1, 1896, ch. 303, 29 Stat. 193 (granting mothers in District of Columbia same rights over their children as fathers, and providing married women control over their earnings).

were not traditionally open to women, they rejected the separate spheres approach to legal education when they founded and presided over WCL. In adopting 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 into which WCL was born. Instead, Mussey and Gillett aspired to demonstrate women's equal intellectual acumen for the law by educating women alongside men.²²⁷

At the time of WCL's founding, 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 interpreted as signifying women's inferior intellectual ability. Mussey and Gillett believed that coeducation as a symbol was central to their mission even if it meant, in practical terms, that only one male student enrolled in WCL's first several years.

Perhaps because the significance of WCL's early male students stemmed from their symbolic 'or potential' presence and *not* from their actual presence, it appears that the 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 they are largely silent as to 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, is nearly silent as to the men.²²⁸

This silence suggests two possibilities: that WCL's early male students were not as academically able as the women and therefore did not have "newsworthy" accomplishments, or that the men's achievements were simply not as vital to WCL's mission as the women's and thus were not publicized. The answer probably lies in a combination of these factors. Given that WCL's male students could have applied to any of the Washington law schools, those who chose to attend

227. 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." Bittenbender, *supra* note 27, at 234. The Dean further asserted that women were "just as capable of acquiring legal knowledge as men are." *Id.*

228. See *infra* notes 293-97 and accompanying text (recognizing accomplishments of school's early female graduates).

WCL may have done so because they were refused admission by the other law schools on the basis of their academic ability or qualifications.²²⁹ 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 not being admitted elsewhere. In effect, WCL did not expect these men to do as well as the female students, and the men's achievements, if any, were not that important to WCL's mission. By contrast, WCL had a vested interest in seeing its female students succeed and in trumpeting their successes in order to promote its mission of demonstrating women's intellectual acumen for the law.

Mussey and Gillett may have also adopted a coeducational format to prepare their female students for entry into a predominantly male profession. By placing males in positions as students, teachers, and administrators, Mussey and Gillett provided their female students with an opportunity to experience working with, and competing against, 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 strove to avoid the same for their progressive educational enterprise. Unlike women's entry into the legal profession, which drew upon principles of gender equality,²³⁰ women's entry into the medical profession drew upon separate spheres principles, asserting women's natural ability for medicine as a healing profession.²³¹

229. It is interesting to note that one news article reveals that WCL's female graduates outscored its male graduates on the bar examination. See *Four Young Women to Enter Law, Distancing 77 Men Students*, WASH. POST, Oct. 6, 1912. Another suggestion is that men attended WCL because of its low tuition. See HATHAWAY, *supra* note 6, at 167.

230. One need only look to the arguments made by Myra Bradwell or Belva Lockwood in an effort to enter the mainstream legal profession to witness the invocation of gender equality principles. See *supra* notes 42 and 45 (illustrating struggles of Bradwell, Lockwood, and other female applicants).

231. Carrie Menkel-Meadow has written extensively about how women entered the medical and legal professions in very different ways. In essence, female medical schools grew out of the separate spheres tradition and most women doctors were educated in single-sex environments. This reflected 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 argued for admission into law schools on the premise that women were just as capable as men. As a natural consequence of this equality theory, most female 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 57 (Nancy Goldberger ed., 1996); Carrie Menkel-Meadow, *Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers*, in LAWYERS IN SOCIETY 221, 224-29 (Richard L. Abel &

Women were considered naturally disposed towards medicine because of their nurturing qualities.²³² In particular, women were qualified for gynecological, obstetric, and pediatric specialties because of their reproductive and familial associations. The women's medical schools had so thrived in the mid-to-late nineteenth century that there were 544 women doctors in 1870 and more than 4550 by 1890.²³³ 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.²³⁴ As Robert Stevens reported, the new regulations

Philip S.C. Lewis eds., 1995) (providing overview of women's history in the profession); Carrie Menkel-Meadow, *Exploring a Research Agenda of the Feminization of the Legal Profession: Theories of Gender and Social Change*, 14 L. & SOC. INQUIRY 289, 298-304 (1989) (illustrating difference in women's entry into legal and medical professions).

Nevertheless, some gender difference arguments were made on behalf of women's entry into the legal profession, 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.

WOMAN'S WORK IN AMERICA, *supra* note 27, at 243-44.

232. 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.

WOMAN'S WORK IN AMERICA, *supra* note 27, at 177.

233. See STEVENS, *supra* note 27, at 91 n.90 (providing statistics of female physicians for 1870, 1890 and 1910). There were many fewer female lawyers at approximately the same time: 5 in 1870, 75 in 1880, and 1010 in 1900. See *id.* at 83 (discussing the number of women lawyers reported by census in 1870, 1880, and 1900).

234. See generally Virginia G. Drachman, *The Limits of Progress: The Professional Lives of Women Doctors, 1831-1926*, 60 BULL. HIST. MED. 58 (1986). In the last decades of the nineteenth century, there were fourteen all-female medical schools. See *id.* at 59. The increased regulation of the medical profession ushered in by the rise of the American Medical Association significantly reduced women's participation in traditionally female specialties such as gynecology and obstetrics, and precipitated the closing of the women's medical schools. See *id.*; see also Richard W. Wertz & Dorothy C. Wertz, *Lying-In: A History of Childbirth in America*, reprinted in RICHARD CHUSED & WENDY WILLIAMS, COURSE MATERIALS FOR GENDER AND THE LAW IN AMERICAN HISTORY SEMINAR, ch. V, at 14 (Fall 1996) [hereinafter COURSE MATERIALS]; STEVENS, *supra* note 27, at 91 n.90 (describing effect of Flexner report on 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

“drove out of 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.²³⁵

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 not surprising that Mussey and Gillett adopted a coeducational format in founding WCL. By including men as students, administrators, and faculty, Mussey and Gillett may have sought to safeguard WCL from the troubled fate of the all-female medical schools by giving WCL more 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. Indeed, viewed in contrast with the women’s medical schools and with the small number of women’s law schools, 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.

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 sizable pool of applicants from which to compose its enrollment. Ultimately, Mussey and Gillett’s idealism about gender equality coexisted with their pragmatic desire to ensure WCL’s viability, i.e., its ongoing ability to pursue the mission of educating women in the law.

Despite Mussey and Gillett’s adoption of a coeducational format primarily as a symbol of gender equality, the proportion of male stu-

Women’s Medical College of Pennsylvania, which had been founded in 1850 as the first medical school for women. See BUTCHER, *supra* note 152, at 71 (discussing the Women’s Medical College of Pennsylvania and the training it made available); see also EPSTEIN, *supra* note 27, at 51.

235. STEVENS, *supra* note 27, at 91 n.90.

dents at WCL grew steadily in its early years. In fact, men comprised more than half of WCL's student population for the first time in 1909 and then consistently between 1914 and 1981.²³⁶ There are two reasons for this phenomenon. First, women's willingness and ability to attend law school did not grow at the same pace that WCL's student body grew, with the result that, as WCL expanded its enrollment beginning in 1910, women's percentage representation shrank.²³⁷ As one commentator observed, "despite [their] encouraging start . . . , the number of women lawyers grew slowly in the thirty years before the passage of the Nineteenth Amendment."²³⁸ As a result, "although women constituted 47 percent of the total college enrollment [in 1920] only 3 percent of the legal profession was female."²³⁹ 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.

Second, two of the white Washington law schools began to admit women at this time, thereby reducing WCL's supply of female applicants. Although Georgetown did not admit women until 1951,²⁴⁰

236. WCL's ability to attract a growing number of male students during World War I is remarkable. By contrast with WCL's experience, Abel noted 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 reported the following figures:

[D]uring 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 207, at 91.

237. Despite evidence that women's willingness and ability to attend law school did not grow at the same pace as WCL's overall enrollment, 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

See STEVENS, *supra* note 27, at 90 n.84 (citing 1925-26 PORTIA LAW SCHOOL CATALOG). Clearly, Portia was able to attract a growing number of women at the same time that the ratio of female to male students at WCL was shrinking.

238. HARRIS, *supra* note 27, at 112. In contrast, Abel reports that "[t]he number of women law students [enrolled] increased from 205 in 1909 to 1171 in 1920." ABEL, *supra* note 207, at 90.

239. HARRIS, *supra* note 27, at 112.

240. GEORGETOWN UNIVERSITY LAW CENTER, THE FIRST 125 YEARS: AN ILLUSTRATED HISTORY OF THE GEORGETOWN UNIVERSITY LAW CENTER 119 (1995).

George Washington, formerly known as Columbian College, admitted women in 1912, and National University admitted women shortly thereafter.²⁴¹ "By 1918, there were 177 women studying law in D.C.,"²⁴² with ninety-eight at WCL, fifty-eight at George Washington, eighteen at National, and three at Howard.²⁴³ There were more women students at WCL than at any other area law school in 1918, but the proportion of women at WCL declined as women's choices of law schools expanded.²⁴⁴

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.²⁴⁵ 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?²⁴⁶

This question should be answered with a qualified "no." WCL succeeded in maintaining its focus on promoting the interests of women in the legal profession so long as it was led by female deans. Several developments threatened this focus. One was the appointment of its first male dean in 1947.²⁴⁷ Another was WCL's merger into American University, which did not share the law school's mission to provide equal educational opportunities to women. A third factor was the growing percentage of male students. Today, however, women comprise a substantial portion of WCL's student population and express

241. See Schade, *supra* note 208, at 15. For example, Burnita Mathews, a WCL instructor, enrolled at National in 1917. See Ruth Bader Ginsberg & Laura W. Brill, *Women in the Federal Judiciary: Three Way Pavers on the Exhilarating Change President Carter Wrought*, 64 *FORDHAM L. REV.* 281, 284 (1995). It is unclear whether these law schools admitted women because they had proven to be successful at WCL. See Schade, *supra* note 208, at 27-29 (recalling several early female WCL graduates who went on to become quite successful in their legal careers).

242. STEVENS, *supra* note 27, at 84.

243. *Id.* at 84 n.88 (citing 9 *WOMEN LAWS*, J. 6 (1919)).

244. Hathaway suggested 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 6, at 167.

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

246. Hathaway answered 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 no basis whatever in fact, but was a mere figment of prejudiced minds." HATHAWAY, *supra* note 6, at 167.

247. WCL has had male deans ever since. See *infra* note 320 and accompanying text (noting possible causes for the appointment of the first male dean).

great satisfaction with WCL's treatment of women in legal education.²⁴⁸

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 George's County, Maryland, in 1953.²⁴⁹ 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* signaled Mussey and Gillett's intention to attend to the interests of white women.²⁵⁰ 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."²⁵¹ 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

248. See *Top 35 Law Schools For Women*, NAT'L JURIST, Oct.-Nov. 1995, at 24 (ranking WCL eighth in the United States in 1995 compilation of top thirty-five law schools for women). The ranking was based on: (1) women as a percentage of student body and faculty; (2) the number of women occupying leadership positions on student bar associations and law reviews; and (3) how women perceived they are treated on each campus. See *id.*

249. See 1953 Class List (on file with WCL Archives). Presumably, Taylor was accepted in the spring of 1950 and matriculated in the fall of that year. See *id.* WCL's first foreign-born student, Josefa Larroque Harriague of Uruguay, graduated in 1905, see 1905 Class List (on file with WCL Archives), and its first American student of color, Marie Louise Bottineau Baldwin, a Native American woman, graduated in 1914. See 1914 Class List (on file with WCL Archives).

250. 1897-98 CATALOGUE, *supra* note 134, at 2. The catalogue continued, "[t]he Woman's Law Class was opened February 1, 1896, to afford women the opportunity for a thorough course of legal study." *Id.* (emphasis added).

251. 1898-99 CATALOGUE, *supra* note 45, at 5 (on file with WCL Archives). This language was retained in WCL's catalogues through at least the 1909-10 edition. See 1909-10 CATALOGUE OF THE WASHINGTON COLLEGE OF LAW 7 (on file with WCL Archives). Starting with its 1906-07 catalogue and continuing through its 1926-27 catalogue, WCL also declared, "[w]hile the College was established primarily for women because the other law schools for white students did not admit them, . . . its doors are open with catholic liberality to students without distinction of sex." 1918-19 CATALOGUE OF THE WASHINGTON COLLEGE OF LAW 5 (on file with WCL Archives). 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.

1927-28 CATALOGUE OF THE WASHINGTON COLLEGE OF LAW 7 (on file with WCL Archives).

Capital City, with a population of over three hundred thousand, has no other college for the legal education of white women. [WCL] is the only school south of Philadelphia which offers this course to women."²⁵²

How can one explain the absence of African-American students at WCL before 1950 and the emphasis on 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 focusing upon gender equality issues, or a reflection of their racial bias or of that of their clientele?²⁵³ Following an exploration of

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

253. In *Clara Shortridge Foltz: Constitution Maker*, Barbara Allen Babcock addressed the issue of a biographer's response to the racist attitudes of her historical subject. See Barbara Allen Babcock, *Clara Shortridge Foltz: Constitution Maker*, 66 IND. L.J. 849, 853 n.14 (1991). Babcock revealed Foltz' virulent anti-Chinese prejudice and demonstrated how Foltz, along with some of her women's rights colleagues, played upon popular 1870s anti-Chinese sentiment to promote women's constitutional interests at the California Constitutional Convention of 1879. See *id.* at 853-54. According to Babcock, Foltz's 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. In response to this evidence of Foltz's bigotry, Babcock declared, "[n]o rhetoric of historical relativism can justify their failure to recognize the common humanity they shared with the Chinese immigrants." *Id.* at 854. Later, Babcock observed:

[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 908-09.

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.

There has been considerable 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 J. 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 P. 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). The concepts of intersectionality and coalition-building beg the question of whether WCL would still have become mostly male within fifteen years of its founding if Mussey and Gillett had joined forces with other oppressed groups to

their potential motives, this Article concludes that Mussey and Gillett's neglect or exclusion of African-American interests was objectionable but not that surprising given their particular women's rights agenda.²⁵⁴ Even though Mussey and Gillett's neglect or exclusion of African-American interests conflicts with the progressive elements of their biographies,²⁵⁵ and with WCL's bold mission to provide equal educational opportunities to an under-served group, it was consistent with their particular focus on promoting the equality of white women vis-à-vis white men.²⁵⁶

challenge the dominant white male hierarchy, rather than neglecting or excluding the oppressed groups in trying to join the white male legal establishment.

254. As Bell Hooks observed, "[t]he 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." BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* 124 (1981). Likewise, Nancie Caraway underscores how white women betrayed the interests of African-American women in pursuing their women's rights agenda. See NANCIE CARAWAY, *SEGREGATED SISTERHOOD: RACISM AND THE POLITICS OF AMERICAN FEMINISM* 120-22, 156-57 (1991).

255. 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. See Schade, *supra* note 208, at 6-8. 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 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." Alice Paul, *Our Dean*, *THE COLLEGE GRIT*, Oct. 23, 1922, at 2 (on file with WCL Archives).

256. Did Mussey and Gillett's race-blindness or overt racism in neglecting or excluding African-American interests render 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. 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 focused 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. See generally *Introduction: Feminist Jurisprudence and the Nature of Law*, in *FEMINIST JURISPRUDENCE* 4, 9 (Patricia Smith ed., 1993) (noting that one form of feminism has as its primary goal rejection of patriarchy and assurance of equal opportunity for all).

To others, feminism is defined as a movement dedicated to promoting the interests of all women, including women of color and white 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 focused 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. See *id.* at 4 (noting that another strain of feminism has as its focus interests of all women).

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

To the extent, if any, that Mussey and Gillett merely neglected African-American interests, their narrow focus on white women's interests may be seen as a product of "identity politics."²⁵⁷ In essence, by promoting the legal educational interests of white women, a cause with which Mussey and Gillett 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.²⁵⁸ Instead, they may simply have been acting upon their primary "political identity" or interest—the promotion of women's rights.

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 gender 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.²⁵⁹ 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

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 4 THE HISTORY OF WOMAN SUFFRAGE 1-13 (Susan B. Anthony & 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. See *Memorial to Emma M. Gillett*, THE COLLEGE GRIT, May 12, 1928, at 1.

257. 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").

258. 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. But see CHESTER, *supra* note 42, at 13 (noting that the mostly African-American Howard Law School was the only institution in Washington, D.C. to admit women).

259. See J. Elizabeth Jones, *The Wrongs of Woman*, Address at the Ohio Women's Convention (Apr. 19, 1850), in COURSE MATERIALS, *supra* note 234, at 64-76.

“it was the Negro’s hour” and that votes for women would have to wait. Certain suffragists, like AWSA’s Lucy Stone, 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 the 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 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 that choice can be seen as symptomatic of Washington’s increasing racial bias in the 1890s.²⁶⁰ Although significant progress had been made in race relations in Washington after the war, as illustrated by Howard University’s founding as a racially integrated institution in 1869, there was a marked reflowering 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 Americans the same year that the Woman’s Law Class was founded.²⁶¹ 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 mores.

Similarly, to the extent that African Americans were deliberately excluded from WCL, Mussey and Gillett may have been bowing to a desire on the part of their predominantly white female clientele to study apart from African Americans, generally, and African-American

260. See KRADITOR, *supra* note 16, at 164 n.1 (acknowledging “universality of racism in the 1890’s”).

261. See *Plessy v. Ferguson*, 163 U.S. 537 (1896); see also CHESTER, *supra* note 42, at 12 (acknowledging the opening of the Women’s Law Class on Feb. 1, 1896).

males, in particular.²⁶² 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.”²⁶³ Mussey and Gillett may have sought to redress this “discomfort” and cater to the feelings of white women students by excluding African Americans. WCL remained the only all-white Washington law school open to women until 1912, when Columbian began to admit women.²⁶⁴

III. WCL'S FORMATIVE YEARS UNDER MUSSEY: 1898-1913

Mussey served as WCL's first dean from its incorporation in 1898 to 1913.²⁶⁵ As such, Mussey was the first woman dean of an American law school. WCL's first board of trustees was comprised of seven individuals, of whom four were female, including Mussey and Gillett.²⁶⁶ 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.²⁶⁷

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:

262. 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. See MALDWIN A. JONES, *THE LIMITS OF LIBERTY: AMERICAN HISTORY 1607-1992*, at 269 (2d ed. 1995) (discussing this era of lynching and southern whites' rationale of protecting white women against sexual assault by African-American males).

263. STEVENS, *supra* note 27, 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. Although it is not certain who paid students' tuition at WCL, it is likely that students paid their own bills because 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 42, at 13-14. This would suggest a degree of autonomy on the part of WCL's students in selecting which law school to attend.

264. See Schade, *supra* note 208, at 15.

265. Minutes of WCL Board of Trustees 8 (Aug. 3, 1898) (on file with WCL Archives).

266. Minutes of WCL Board of Trustees 3 (Apr. 2, 1898) (on file with WCL Archives).

267. Minutes of WCL Board of Trustees 6 (Aug. 3, 1898) (on file with WCL Archives).

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 the Law as may be necessary or desirable.²⁶⁸

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."²⁶⁹ They were joined by twelve other instructors, of whom eleven were male.²⁷⁰

That WCL was founded by and for women did not affect its curriculum or pedagogical techniques. This is evidenced by the traditional range of courses offered from the outset, including equity, federal courts, legal history, international law, corporations, medical jurisprudence, and moot court practice.²⁷¹ Like other law schools of its time, WCL employed a professor of quizzes, who engaged students in rigorous examinations on a periodic basis.²⁷² Likewise, WCL assigned the reading of casebooks as well as treatises and adopted a modified Harvard case-study method.²⁷³ One apparent attempt to appeal to its predominantly female clientele was an advertisement emphasizing WCL's "friendly and helpful faculty and congenial asso-

268. Certificate of Incorporation of the Washington College of Law (Apr. 2, 1898) (on file with WCL Archives).

269. Minutes of WCL Board of Trustees 7 (Aug. 3, 1898) (on file with WCL Archives).

270. See 1898-99 CATALOGUE, *supra* note 45, at 1-2.

271. See *id.*

272. See 1905-06 WASHINGTON COLLEGE OF LAW CATALOGUE 4 (on file with WCL Archives).

273. 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 in favor of the earlier emphasis upon learning the substantive law. See Gene R. Shreve, *Book Review: History of Legal Education*, 97 HARV. L. REV. 597, 599-600 (1983) (discussing Langdell's methods). That WCL adopted the Harvard case-study method should not be overemphasized because the school continued to rely upon lectures and textbooks as well. See 1897-98 CATALOGUE, *supra* note 134, at 1 ("[m]odern text-books have been adopted; quizzes and study of cases are a part of regular class instruction"); see also CHESTER, *supra* note 42, 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.

ciates among the students."²⁷⁴

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 the city seeking employment with the government.²⁷⁵ Presumably to attract these new civil servants, WCL scheduled all of its classes to meet after work hours.²⁷⁶ Likewise, WCL's catalogue emphasized the desirability of law study as a means of promotion within the government.²⁷⁷

WCL functioned much like other Washington law schools with some minor exceptions. It operated as a part-time night school and awarded LL.B. degrees after three years of study, as did the other Washington law schools.²⁷⁸ WCL's part-time format was typical of many law schools at that time,²⁷⁹ but its night-time format was not.²⁸⁰ Like most law schools of its time, WCL did not require its applicants to possess college degrees.²⁸¹ Instead, WCL required its applicants to possess "good moral character" and pass an English examination to qualify for entrance.²⁸²

Many of WCL's early students were drawn from outside the Washington area, including some from as far away as Georgia, Illinois,

274. WCL Advertisement, *Why Women Should Study Law* (on file with WCL Archives). See *supra* notes 221-22 and accompanying text (providing full text of advertisement).

275. See FRIEDMAN, *supra* note 5, at 186-87 (discussing civil service in Washington, D.C. in late 1800s); Ronald Chester, *Women Lawyers in the Urban Bar: An Oral History*, 18 NEW ENG. L. REV. 521, 529-30 (1983) (describing government service in Washington, D.C. in early 1900s).

276. Columbian, Georgetown, and Howard also offered only evening classes in the 1890s. See FRIEDMAN, *supra* note 5, at 619 (describing Columbian's class schedule); 1995-96 GEORGETOWN UNIVERSITY LAW CENTER BULLETIN 4 (noting that Georgetown required three years of evening classes beginning in 1897); SMITH, *supra* note 42, at 47-48 (detailing Howard's class organization). It is unclear whether National was limited to evening classes.

277. See 1899-1900 CATALOGUE, *supra* note 45, at 1-2.

278. See 1897-98 CATALOGUE, *supra* note 134, at 1-2.

279. 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 5, at 612. In 1899, Harvard mandated that the full three years must be spent in residence to earn the LL.B. degree. See *id.*

280. See *id.* at 619 ("In 1889-90, there were nine pure night schools, as against fifty-one day schools. In the 1890's 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 27, at 75.

281. Indeed, WCL did not require a high school diploma for admission until 1908. See CHESTER, *supra* note 42, at 13. WCL was consistent with most law schools in this regard. See ABEL, *supra* note 207, at 43-44. 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." *Id.* at 43.

282. 1898-99 CATALOGUE, *supra* note 45, at 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.").

Iowa, Minnesota, Ohio, and Texas.²⁸³ Although most WCL students moved to Washington principally to pursue 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.²⁸⁴

WCL was not endowed and did not own its own home when it was incorporated.²⁸⁵ 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.²⁸⁶ WCL's tuition was set purposefully low at \$50 per year²⁸⁷ in light of the lower earnings of its predominantly female student body.²⁸⁸ As previously mentioned, because WCL had no financial support other than tuition in its early years, Mussey and Gillett largely volunteered their services as deans and teachers.²⁸⁹

WCL conducted its first commencement on May 31, 1899, at which it conferred LL.B. degrees upon six female students.²⁹⁰ These graduates included Delia Jackson and Helen Malcolm, two of the first three students of the Woman's Law Class.²⁹¹ 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.²⁹² In her tribute to Mussey, Hathaway describes Mussey's pride in WCL's early female graduates as follows:

283. See Student Records (on file with WCL Archives).

284. WCL Advertisement, *Why Women Should Study Law* (on file with WCL Archives); see also *supra* notes 221-22 and accompanying text (elucidating full text of advertisement).

285. See Chester, *supra* note 275, at 528-29.

286. See, e.g., 1897-98 CATALOGUE, *supra* note 134, at 2 (stating that classes were held at Mussey's office, 470 Louisiana Ave., N.W.); 1899-1900 Catalogue, *supra* note 45, at 2 (stating that classes were held at 627 E St., N.W.); 1900-01 CATALOGUE OF THE WASHINGTON COLLEGE OF LAW I (on file with WCL Archives) (stating that classes were held at LeDroit Building, 8th & F St., N.W.).

287. 1898-99 CATALOGUE, *supra* note 45, at 7. By comparison, the law school at Georgetown University charged \$50 per year for tuition when it was established in 1870. See 1995-96 GEORGETOWN UNIV. L. CTR. BULL. 4.

288. 1897-98 CATALOGUE, *supra* note 134, at 2 (reflecting that tuition was set at five dollars per month from October 1, 1897, through May 30, 1898). In 1903, WCL's alumni association established a scholarship for women students. At that time, there were twenty-seven WCL graduates, of whom twenty-two were female.

289. See Chester, *supra* note 275, at 529 (discussing Mussey and Gillett).

290. Announcement of WCL Annual Commencement on May 31, 1899 (on file with WCL Archives).

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

292. See 1911-12 CATALOGUE OF THE WASHINGTON COLLEGE OF LAW 18 (listing class of 1910 as consisting of 13 graduates; one graduate, Jessica Huner was listed as deceased).

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 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.²⁹³

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;²⁹⁴ Kathryn Sellers, a 1913 graduate, who became the first woman judge on the District of Columbia Juvenile Court in 1918;²⁹⁵ Helen Reed, a 1914 graduate, who served as an assistant U.S. Attorney;²⁹⁶ 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 1922.²⁹⁷

Following graduation, many WCL students remained in Washing-

293. HATHAWAY, *supra* note 6, at 186-87. Hathaway's treatment of WCL's male graduates was 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. As noted, WCL's Archives are largely silent about the achievements of the school's early male graduates. See *supra* text accompanying note 228.

294. See HATHAWAY, *supra* note 6, at 192.

295. See *id.* at 189.

296. See *A Respected Portia Receives Award*, SUN. STAR, May 19, 1963, at E9.

297. The 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, helping 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 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 on public streets, 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, Mar. 1993, at 28.

ton, 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.²⁹⁸

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

Following Mussey's retirement in 1913, Gillett served as WCL dean until 1923.²⁹⁹ WCL's enrollment expanded rapidly and WCL reincorporated³⁰⁰ during the first years of her leadership. Despite these early successes, the school continued to experience financial hardship and considered merging with George Washington University.³⁰¹ With the help of its alumnae, WCL raised an endowment, thereby staving off the merger.³⁰² Under Gillett's leadership, there were more male students than female by 1914³⁰³—a pattern that continued uninterrupted until 1981. In 1920, WCL purchased its first home, a townhouse at 1315 K Street, N.W.³⁰⁴

Gillett retired as WCL dean in 1923.³⁰⁵ She was succeeded by Elizabeth C. Harris, a 1917 WCL graduate, instructor at the school, and skilled courtroom attorney.³⁰⁶ Harris served as dean for the 1923-24 term³⁰⁷ before being succeeded by a 1921 WCL graduate, Laura H.

298. Mussey sponsored the Supreme Court membership of twenty-five women. *See supra* text accompanying note 53. 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.

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

300. Articles of Reincorporation of the Washington College of Law (Mar. 21, 1918) (on file with WCL Archives).

301. *See* Schade, *supra* note 208, at 15 (recognizing that some alumnae and trustees advocated closing WCL and turning remaining funds over to George Washington University).

302. *See id.* (stating that Mussey began campaign to raise funds and rallied alumnae to raise funds to halt merger); *see also* HATHAWAY, *supra* note 6, at 185-86.

303. *See* 1915-16 CATALOGUE OF THE WASHINGTON COLLEGE OF LAW 16-21 (listing WCL students) (on file with WCL Archives).

304. *See id.* (explaining that Dean Gillett thought WCL should have its own building, prompting purchase of former residence of Robert Ingersoll).

305. *See* Schade, *supra* note 208, at 15.

306. 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 ENG. SCH. L. BULL. 6 (located in Women in the Legal Profession file, Supreme Court Library); *see also* Schade, *supra* note 208, at 18 (stating that Harris taught evidence and contracts at WCL).

307. *See* Schade, *supra* note 208, at 18.

Halsey.³⁰⁸ Grace Hays Riley, a 1908 WCL graduate, followed Halsey as WCL dean, serving from 1925 to 1943.³⁰⁹ During Riley's leadership, WCL introduced a day division in 1930 and was reincorporated by a joint resolution of Congress in 1938.³¹⁰ 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.³¹¹ WCL conferred an honorary LL.B degree upon First Lady Eleanor Roosevelt in 1933. In 1941, Associate Justice William O. Douglas addressed WCL's forty-fifth anniversary banquet.³¹² 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 1947.³¹³

308. See *id.* (noting that Halsey was graduate of the Class of 1921 and staff member of Women's Bureau of the United States Department of Labor).

309. See *id.*

310. H.J. Res. 582, 75th Cong., 1 (1938).

311. See Schade, *supra* note 208, at 20; see also *Law College Adopts A.B.A. Standards*, WASH. POST, Sept. 10, 1939, at F4 (announcing WCL's adoption of ABA standards). 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 in order 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 27, at 102.

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 to drive the marginal schools out of the market, thereby raising the profile of the profession overall. See *id.* at 102-03; see also Shreve, *supra* note 273, at 601 (stating that, whereas AMA had succeeded in eliminating so-called marginal medical schools by 1917, "the ABA and AALS would not achieve their aim until the late 1940s").

312. *Washington College of Law Observes 45th Anniversary: Justice Douglas Delivers Main Talk at Dinner Attended by 400*, WASH. STAR, Feb. 9, 1941, at 321.

313. See Schade, *supra* note 208, at 21 (discussing Helen Arthur). One of WCL's faculty members during this period, Burnita Shelton Matthews, went on to become the first female federal district court judge. See *WOMEN IN LAW*, *supra* note 27, at 150. Matthews taught evidence at WCL from 1942 to 1948. In 1949, President Truman appointed her to the United States District Court for the District of Columbia. See *id.* at 150-53. 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 *id.* As a judge, Matthews hired only female law clerks "in order to show [her] confidence in women." See *id.* at 155.

Prior to her appointment as a WCL instructor, Matthews had been instrumental in the National Woman's Party with Alice Paul (who headed the organization and was a 1922 WCL graduate), serving as its general counsel, and had formed her own law practice with two other women lawyers, Laura Berrien and WCL instructor Rebekah Greathouse. See *id.* at 153.

As a law student at National in 1918-20, Matthews participated in the women's suffrage pickets of the White House led by Paul, but she did not tell her fellow law students, all male, of her picketing activities. See *id.* at 151-52. Shortly thereafter, Matthews assisted Paul in researching and publicizing each state's laws that discriminated against women. See *id.*; see also National Woman's Party, *The Denial of Justice to Women: A Summary of Discriminations* (on file with Federal Judicial Center's History Office).

Matthews was an early proponent of the Equal Rights Amendment, testifying regularly be-

Between 1942 and 1948, WCL actively negotiated a merger with American University.³¹⁴ In 1947, WCL appointed its first male dean, Horatio Rodman Rogers,³¹⁵ shortly before finalizing its merger with American in 1949.³¹⁶ The merger was likely motivated by two concerns: financial stability and AALS accreditation.³¹⁷ WCL's financial plight was an ongoing problem. Even though WCL had been accredited for the first time in 1947, shortly before its merger with American³¹⁸ and almost fifty years after its founding,³¹⁹ AALS accreditation was an ongoing process. It is quite possible that WCL's leadership believed that future accreditation could be secured by affiliating itself with a larger, better-financed institution.

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.³²⁰ WCL has been led by male deans ever since its merger with American. WCL's admission of its first African-American stu-

fore Congress on women's political rights and issuing pamphlets on the same. See *WOMEN IN LAW*, *supra* note 27, at 152; see also Burnita Shelton Matthews, *Speech Regarding Equal Rights Amendment, Address at General Federation of Women's Clubs* (May 1934) (on file with Federal Judicial Center's History Office); Burnita Shelton Matthews, *Women Should Have Equal Rights with Men: A Reply*, ABA J. 117 (Feb. 1926) (on file with Federal Judicial Center's History Office). Matthews drafted legislation for the National Woman's Party that provided women with the right to serve on juries in the District of Columbia, a right which was soon thereafter enacted. See *WOMEN IN LAW*, *supra* note 27, at 152. 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); Greene, *supra* note 214, at 181; *WOMEN IN LAW*, *supra* note 27, at 150-58 (discussing Burnita Shelton Matthews).

314. See Schade, *supra* note 208, at 21.

315. 1947-48 BULLETIN OF THE WASHINGTON COLLEGE OF LAW 5 (on file with WCL Archives) (stating Rogers was graduate of Harvard Law School). At the same time that WCL appointed its first male dean, Harvard Law School appointed its first female faculty member, visiting professor Soia Mentschikoff, in 1948. Harvard admitted women for the first time in 1950 and tenured its first female faculty member, Elisabeth Owens, in 1971. See SUMMER 1997 HARVARD LAW BULLETIN 40 (discussing Harvard history).

316. *College of Law and American U. Merger Accepted*, TIMES-HERALD, Apr. 24, 1949.

317. See STEVENS, *supra* note 27, at 207-08 (discussing WCL's merger with American University). WCL's merger with American mirrored the mergers of other independent law schools with well-established universities during this period. For example, National merged with George Washington University in 1954. See *id.* at 85 n.15.

318. See ABEL, *supra* note 207, at 55 (noting that "a number of unapproved schools were absorbed by approved schools" at this time). Abel's 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.

319. Ronald Chester, *A Survey of WCL Women Graduates: The 1920's Through the 1940's*, 32 AM. U. L. REV. 627, 627 (1983) (discussing WCL's founding).

320. Herma Hill Kay, *The Future of Women Law Professors*, 77 IOWA L. REV. 5, 5 (1991) (noting that WCL's leadership by female deans ended in 1947 "when the school was accepted for membership in the Association of American Law Schools").

dent in the spring of 1950³²¹ may have also been a consequence of this merger.

V. MUSSEY AND GILLETT'S LIVES 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.³²² Gillett also served on NAWSA's finance committee in 1903-04 and on its congressional committee in 1903, subsequently chairing the congressional committee in 1911.³²³

Mussey was elected to be a member of the Washington Board of Education from 1906 to 1912, serving as its vice president from 1909 to 1912.³²⁴ In this capacity, she proposed policies promoting child welfare, including compulsory education, introduction of kindergartens, and establishment of public playgrounds.³²⁵

321. See *supra* note 249 and accompanying text (noting James Taylor was first African-American student at WCL).

322. See Thomas, *supra* note 20, at 37 (reporting that Gillett served as recording secretary of District of Columbia Equal Suffrage Association and delegate to NAWSA's conventions).

323. See *id.* 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, May 12, 1928, at 1 (on file with WCL Archives).

Alice Paul 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.

Paul, *supra* note 255.

324. See BERRY, *supra* note 15, at 70 (reporting that Mussey served on Washington, D.C. Board of Education).

325. See *Dr. Ellen Mussey Rites Tomorrow*, *supra* note 49, at A9 (reporting that Mussey advocated establishment of playgrounds and aided in obtaining first kindergarten appropriations for Washington, D.C.).

Mussey became active in the women's suffrage movement in 1909, joining NAWSA.³²⁶ She testified before a Senate committee on the importance of women's suffrage in 1910³²⁷ and led the lawyers' division of the March 1913 suffrage parade in Washington, which was staged on the evening of Woodrow Wilson's inauguration.³²⁸

A group of Washington suffragists endorsed both Mussey and Gillett as nominees to the Supreme Court bench following Justice Harlan's death in 1912,³²⁹ but neither woman was nominated for this vacancy by President Taft. 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:

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.³³⁰

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 Colum-

326. See Rottier, *supra* note 16, at 380 (describing how Mussey joined NAWSA in 1910).

327. See Ellen Spencer Mussey, *Testimony Before Senate Committee* (1910) (on file with WCL Archives) (urging Senate to give women "the ballot" and expressing viewpoint that ballot's ability to protect rights of motherhood intensified her activity in suffrage movement). 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, "[w]omen 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.*

328. See Rottier, *supra* note 16, at 380 (describing how Mussey appeared before a Senate Committee in support of women's right to vote and led a March 1913 suffrage parade). Rottier noted that "[i]t was [Mussey's] involvement in 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. *See id.*

329. See *If Women Could Go to the Bench*, BALTIMORE AM., Feb. 12, 1912 (featuring pictures of Mussey and Gillett and reporting on suffragists' recommendation of Mussey and Gillett for Supreme Court bench) (on file with WCL Archives); see also Winnifred Harper Cooley, *The Women at the Bar: American Portias Are Rapidly Increasing in Number and Influence, According to the Feminine Leaders of the Profession*, N. AM., Mar. 24, 1912 (on file with WCL Archives):

A WOMAN seriously suggested to the [P]resident 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."

330. *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*, WASH. HERALD, Apr. 28, 1912.

bia 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.³³¹

Again, Mussey did not receive the nomination for this judgeship.³³²

Following her retirement as WCL dean in 1913,³³³ Mussey was named honorary dean for life.³³⁴ Mussey presented her first Supreme Court argument in 1913.³³⁵ 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.³³⁶ This legislation was enacted after World War I as the Cable Act of 1922.³³⁷

Mussey and Gillett founded the Women's Bar Association of Washington, D.C. ("WBA"), in May 1917,³³⁸ in response to women's exclusion from Washington's official bar organization, the District of Columbia Bar Association.³³⁹ Mussey served as the WBA's first president from 1917 to 1919 and Gillett served as WBA president in 1921.³⁴⁰

When the American Bar Association began to admit women in 1918,³⁴¹ Gillett was the first woman to become active in the Section on

331. *Woman May be Juvenile Judge—Dean Mussey is Proposed for Position as Judge of Washington Juvenile Court*, MORNING J., Feb. 1913 (on file with WCL Archives).

332. See HATHAWAY, *supra* note 6, at 163.

333. 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 CYCLOPEDIA OF AMERICAN BIOGRAPHY, *supra* note 22, at 280 (explaining that Gillett "became dean of the college in 1913 when Mrs. Mussey suffered a breakdown").

334. *Dr. Ellen Mussey Rites Tomorrow*, WASH. EVENING STAR, Apr. 22, 1936, at A9 (reporting that Mussey served as honorary dean at WCL until her death in 1936).

335. See *id.* (reporting that Mussey argued ten cases before U.S. Supreme Court). 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 within the confines of her law office.

336. Mussey testified to the Senate about this legislation in 1910. See *Ellen Spencer Mussey, Testimony at Senate Hearing (1910)*, *supra* note 327. Mussey also published a letter to the editor in support of this legislation. See *Ellen Spencer Mussey, Letter to the Editor, WOMAN CITIZEN*, Oct. 5, 1918 (writing as Chairman of the Committee on the Legal Status of Women of the National Council of Women) (on file with WCL Archives).

337. See *Thomas*, *supra* note 20, at 607 (noting that Cable Act passed in 1922). Passage of the Cable Act garnered press attention for Mussey, "the veteran Washington woman lawyer." See *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 with WCL Archives).

338. See *Dr. Ellen Mussey Rites Tomorrow*, *supra* note 49, at A9 (reporting that Mussey was a founding member of the Washington, D.C. Chapter of the ABA); *Thomas*, *supra* note 20, at 27 (reporting that Emma Gillett was a founding member of the Washington, D.C. Chapter of the ABA).

339. Women were not admitted to the Bar Association of the District of Columbia until the early 1940s. See *CHESTER*, *supra* note 42, at 81.

340. See *Thomas*, *supra* note 20, at 37 (reporting that Gillett served as president of the Women's Bar Association of Washington, D.C. in 1921).

341. See *STEVENS*, *supra* note 27, at 84 (stating that women were admitted to ABA in 1918).

Legal Education.³⁴² 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.³⁴³ Gillett was elected vice-president of the ABA's District of Columbia section in 1920, serving a one-year term.³⁴⁴ In 1922, Mussey proposed legislation establishing a woman's right to serve on a jury.³⁴⁵

Gillett retired as WCL dean in 1923, resuming her law practice.³⁴⁶ She died on January 23, 1927, at the age of seventy-five.³⁴⁷ Mussey remained active in the practice of law until 1930, when she retired at the age of eighty following what appears to have been a nervous breakdown.³⁴⁸ 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.

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.

342. See SMITH, *supra* note 42, at 84 n.219 (reporting that Gillett was the first woman to be active in ABA's Section on Legal Education). 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. See Schade, *supra* note 208, at 20.

343. See Thomas, *supra* note 20, at 37 (stating that, after passage of suffrage amendment, Gillett joined National Woman's Party and worked for proposed equal rights amendment).

344. See *id.* (stating that Gillett was elected vice president of ABA's Washington, D.C. section).

345. See *Founder of First Women's School of Law in Capital Seeks Equal Jury Rights*, N.Y. EVENING TELEGRAM, Mar. 2, 1922 (reporting Mussey's fight to make women eligible for jury service) (on file with WCL Archives). 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 6, at 198. Like Mussey, Clara Foltz, a pioneer suffragist and early female lawyer, advocated that women be allowed to serve on juries in California. See Barbara Allen Babcock, *A Place in the Palladium: Women's Rights and Jury Service*, 61 U. CIN. L. REV. 1139, 1166-72 (1993) (describing Foltz's effort to secure women the right to serve on juries, and public's resistance to such efforts).

346. See Schade, *supra* note 208, at 15, 18 (stating that Gillett was succeeded as WCL Dean by Elizabeth Harris, graduate of WCL in 1923, and opened new law offices thereafter). 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 male representation in the student body increased.

347. See 17 THE NATIONAL CYCLOPEDIA OF AMERICAN BIOGRAPHY, *supra* note 22, at 200 (reporting that Gillett died on January 3, 1927).

348. See HATHAWAY, *supra* note 6, at 200.

According to a Report of the ABA Commission on Women in the Profession, women comprised 44% of first-year law students as of 1994.³⁴⁹ 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.³⁵⁰ In 1988, women constituted 20% of full-time law faculty positions,³⁵¹ but "the majority of women law school professors [were] clustered in lower paying, nontenure track positions such as legal writing instructors and clinical advisors."³⁵² In fact, "40% of clinical teaching positions

349. See BARBARA A. CURRAN, AMERICAN BAR ASSOCIATION, WOMEN IN THE LAW: A LOOK AT THE NUMBERS 6 (Dec. 1995) (reporting that women constituted 44% of first-year law students in 1993-94). Ten years earlier, women comprised only 20% of first-year law students. See *id.* In 1988, women constituted over 40% of graduating law students. See COMMISSION ON WOMEN IN THE PROFESSION, AMERICAN BAR ASSOCIATION, 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].

350. See ABA REPORT ON THE STATUS OF WOMEN, *supra* note 349, at 5 ("[T]ime 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.").

351. See *id.* at 6 (finding that 20% of full time faculty positions in 1988 were held by women); cf. Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U. PA. L. REV. 537 (1988) (finding that women constituted only 20% of law school faculty, but that number was growing). Chused noted 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. See *id.* at 538. He also reported that "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 represented "an improvement of approximately fifty percent within six years." *Id.* at 548. Chused observed that "women now constitute over one-third of untenured faculty who are in tenure track positions." *Id.*

352. See ABA REPORT ON THE STATUS OF WOMEN, *supra* note 349, at 6; see also Chused, *supra* note 351, at 539:

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 & 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. See *id.* at 258-67. The study found that "[m]en (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 nine job characteristics we explored: after controlling for academic credentials, work experience, and personal characteristics, white women and men of color obtained

and over 70% of legal writing positions [were] held by women."³⁵³ At the end of 1995, women constituted 19.3% of tenured law faculty, 17% of law professors, and 8% of law school deans.³⁵⁴ Thus, the substantial presence of women in the law student body is not reflected in the composition of the faculty and administration. Standing in sharp contrast to the composition of law schools today, WCL was led by women deans, staffed by women faculty, and attended by a majority-female student body more than 100 years ago.

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."³⁵⁵ 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.³⁵⁶

These studies documented that women law students express feelings of alienation from the legal educational enterprise³⁵⁷ and participate at disproportionately lower rates than men in classroom discussions.³⁵⁸ The University of Pennsylvania study revealed that women students are significantly underrepresented in the top echelons of their law school classes when ranked by grade point average.³⁵⁹

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.

353. See ABA REPORT ON THE STATUS OF WOMEN, *supra* note 349, at 6.

354. See CURRAN, *supra* note 349, at 38-39 (finding that 17% of full professors and 8% of law school deans were women in 1994).

355. See Guinier et al., *supra* note 3, at 2 (reporting findings of survey of men's and women's experiences as students at University of Pennsylvania Law School). See generally COMMISSION ON WOMEN IN THE PROFESSION, AMERICAN BAR ASSOCIATION, ELUSIVE EQUALITY: THE EXPERIENCES OF WOMEN IN LEGAL EDUCATION 1 (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).

356. See Guinier et al., *supra* note 3, at 2, 3, 32; Weiss & Melling, *supra* note 42, at 1.

357. See Weiss & Melling, *supra* note 42, 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 3, at 3 ("[M]any 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.") (emphasis in original).

358. See Guinier et al., *supra* note 3, 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 & Melling, *supra* note 42, at 1363 (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, in which the survey found that men asked considerably more questions and volunteered more answers to professors' questions).

359. See Guinier et al., *supra* note 3, at 3 (reporting that authors' study of women's experiences at University of Pennsylvania Law School found "strong academic differences between

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 as men to succeed academically.³⁶⁰ Despite this comparable academic performance and the relatively high percentage of women among the students (45%), tenured faculty (37%), and full-time faculty (45%),³⁶¹ women students at Brooklyn Law School reported that they participated in class less often than men and did so with less comfort.³⁶² Other schools are currently conducting gender bias studies.³⁶³ The initial findings of some composite studies reveal that the existence and extent of gender disparities in academic performance vary widely among law schools.³⁶⁴

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 groundbreaking study at the University of Pennsylvania, "[a]lthough 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

graduating men and women"). The study stated 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. (footnotes omitted). *But see* LINDA F. WIGHTMAN, WOMEN IN LEGAL EDUCATION: A COMPARISON OF THE LAW SCHOOL PERFORMANCE AND LAW SCHOOL EXPERIENCES OF WOMEN AND MEN 11-12 (Law School Admissions Council Research Report Series 1996) (stating that academic performance of men and women at law school was "not so dramatic as Guinier et al.'s" and discovering no practical difference in average performance of men and women during first year of law school, only some practical differences in certain grade ranges).

360. *See* Marsha Garrison et al., *Succeeding in Law School: A Comparison of Women's Experiences at Brooklyn Law School and the University of Pennsylvania*, 3 MICH. J. GENDER & L. 515, 525-26 (1996) (finding that women's representation in various "academic performance" categories such as honors graduates, law review, and top 50% ranking was roughly equal to men's at Brooklyn Law School).

361. *See id.* at 518 (noting that women at Brooklyn Law School comprised 37% of tenured and tenure-track faculty and 45% of full faculty). 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.

362. *See id.* at 526 (reporting that women at Brooklyn Law School were significantly less likely than men to participate voluntarily in classroom discussions).

363. 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* LEGAL TIMES, Apr. 1997, at 1 (reporting on potential gender disparity in grades at Georgetown University Law Center).

364. *See generally* UCLA Study (Richard Sanders & Kristine Knaplund eds., forthcoming) (compiling data on approximately twenty law schools).

should change."³⁶⁵

One obvious recommendation for change, highlighted in the Yale study, is the hiring of more women faculty members.³⁶⁶ 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.³⁶⁷

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 serve as a courageous example and bolster law schools in their efforts to meet the goal of gender equality set forth by these women so long ago, a goal that remains elusive today.

365. Guinier et al., *supra* note 3, at 6. Guinier's study ultimately concludes, "it 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." *Id.* at 100.

366. See Weiss & Melling, *supra* note 42, at 1356 (discussing how over half of women in Yale study recommended adding more female professors to faculty). During academic year 1985-86, the second year of the Yale study, 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). See *id.* at 1336-37 n.108 (including clinical faculty in figures).

367. See generally *Women in Legal Education—Pedagogy, Law, Theory, and Practice*, 38 J. LEGAL EDUC. 61-193 (Mar./June 1988) (collecting numerous articles proposing reform of legal education for benefit of women).