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Bridget J. Crawford

Elisabeth Haub School of Law at Pace University

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*Bridget J. Crawford**

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In the face of discouragement and disaster, under the frown of professional distrust, sustained by the courageous and unselfish toil of men who have devoted their best years to her interests, [the Law Department of the University of Pennsylvania] has silently but steadily forced her way, urged onward by the weight and value of the principles she teaches, until she now securely rests upon the confidence of the bench and the respect of the bar. . . . Her halls are thronged, her reputation is penetrating into distant places, her usefulness increases with her years. . . . We have seen that the founding of our Law School was coeval with the Constitution of the United States and the first true Constitution of Pennsylvania. She was the daughter of Liberty wedded to Law, and her sisters

were Union and Self-government.¹

INTRODUCTION

Writing in 1882, Philadelphia lawyer Hampton Carson characterized the Law Department of the University of Pennsylvania as a valiant and principled woman, "silently but steadily" working against odds to eventually gain the respect of the legal profession. His comments alluded to the school's difficulties in getting started during a period in which legal education was primarily organized around the practical training of a law office apprenticeship. Only in the 1870s, when the nature of legal practice itself began to change, did school-based education become more popular. Curiously, Carson spoke of the law school as female in an era when masculine terms defined law students and the legal profession. Indeed, law itself was anthropomorphized as a man to whom the school was "wedded." For the most part, during the nineteenth century, future lawyers cultivated the admired characteristics of an athlete or knight-in-training—bravery and a sense of responsibility. Like a classic Republican Mother,² the law school was a female figure whose role was to nurture these values in her male students. In turn, the men who "thronged" in the feminine school rendered it more masculine in its "penetrating" reputation.³

Yet when Carson made his observations in 1882, the Law Department was in the middle of its first experience with co-education. Carrie Burnham Kilgore, member of the class of 1883, had finally succeeded in becoming enrolled as a student, despite being denied admission ten years prior.⁴ Her presence at the law school challenged the conception of legal education as an exclusively male sphere. Although the classroom experience and

* Lecturer-in-Law, University of Pennsylvania Law School; Attorney, Milbank, Tweed, Hadley & McCloy LLP; J.D. 1996 University of Pennsylvania Law School; B.A. 1991 Yale University. In memory of Elizabeth B. Clark.

1. HAMPTON L. CARSON, AN HISTORICAL SKETCH OF THE LAW DEPARTMENT OF THE UNIVERSITY OF PENNSYLVANIA 34-37 (speech delivered at University of Pennsylvania on Oct. 10, 1882).

2. See LINDA K. KERBER, WOMEN OF THE REPUBLIC: INTELLECT AND IDEOLOGY IN REVOLUTIONARY AMERICA 8-30, 229 (1980). A republican mother "dedicated [herself] to the service of civic virtue: she educated her sons for it, she condemned and corrected her husband's lapses from it . . . [T]he creation of virtuous citizens was dependent on the presence of wives and mothers who were informed, 'properly methodical,' and free of 'invidious and rancorous passions'" *Id.* at 229. See generally Linda K. Kerber, *The Paradox of Women's Citizenship in the Early Republic: The Case of Martin vs. Massachusetts*, 1805, 97 AM. HIST. REV. 349 (1992). For a discussion of Republican Motherhood's origins in civic republicanism, and its twentieth century adoption by liberal theorists, see Anne Dailey, *Federalism and Families*, 143 U. PA. L. REV. 1787 (1995).

3. *Id.*

4. Margaret C. Klingelsmith, *Woman Lawyers in Pennsylvania*, 5 WOMEN L.J. 22, 230 (1917) [hereinafter Klingelsmith, *Woman Lawyers*].

extracurricular activities during her era continued to emphasize the maleness of a legal career, the role of women in the law was a contested issue that student members of the Law Academy of Philadelphia frequently debated.

After a long period in which no other females enrolled, women finally began attending the Law Department in greater numbers during the 1890s.⁵ Excluded from student activities by their male counterparts, the women students formed their own groups; their presence at the Law Department was thereby institutionalized.⁶ This is not to say that the school, or legal education, became any less a place considered principally for men in the 1890s. In Carson's words, the school remained an establishment "sustained by the courageous and unselfish toil of men."⁷ Even when the Law Department began its modern era in its current location in West Philadelphia, leaders of the school were self-conscious of its past and glorified the role of individual male legal scholars and lawyers who provided the school with its intellectual roots. Between 1870 and 1900, women made some inroads into legal education, yet the Law Department of the University of Pennsylvania continued to cultivate and inculcate masculine virtues.

Using the University of Pennsylvania's Law Department and, to some extent, the figure of Carrie Burnham Kilgore as lenses, this article examines a thirty year period of major changes in legal education.⁸ In Part I, I describe the historical roots of the school and its halting establishment not so much in the face of "discouragement and disaster," as Carson described, but in light of the predominant role individual lawyers played in training students through law office clerkships. Part II details several related changes in the legal profession in the 1870s: the law office declined in prominence; bar associations became more active; and law schools developed rigorous requirements. In particular, I describe the reasons for the decline of clerkships as important vehicles for student learning. In Part III, I turn to the experience of students at the Law Department in the 1880s, particularly

⁵ *Id.* at 230-31

⁶ See *infra* notes 120-23 and accompanying text

⁷ Carson, *supra* note 1, at 34-35.

⁸ I have endeavored in this article to avoid writing what William Johnson calls "celebratory" history. In his view,

most historians have viewed the emergence of the twentieth-century university-sponsored law schools as a logical, almost preordained event. Therefore, researchers so far have focused their energies upon understanding the internal institutional development of important and prestigious individual law schools; and their interpretations have stressed the contributions that such schools and their prominent professors and deans have made to our present-day notions of what constitutes proper legal training. At their worst, such histories are entirely celebratory; at their best, these histories continue to analyze the past largely through the lens of present professional concerns and assumptions.

WILLIAM R. JOHNSON, *SCHOOLED LAWYERS: A STUDY IN THE CLASH OF PROFESSIONAL CULTURES* xi (1978).

during the time Kilgore became the school's first female student. Although the transformations of the 1870s had the apparent effect of making law school more accessible to women, the Law Department at the University of Pennsylvania remained a uniquely male sphere whose hallmark was the inculcation of masculine virtues. Part IV discusses the transition to the modern era of the Law Department, marked most notably by the physical relocation of this "daughter of liberty wedded to law" to a new building in West Philadelphia.

I. SETTING THE STAGE: LAW OFFICE DOMINANCE AND LAW SCHOOL FAILINGS

A Participant-Observer and Son-in-Law

In 1871, Carrie Burnham applied for admission to the Law Department at the University of Pennsylvania.⁹ Even though enrollment was at an all-time low (down to forty nine students in 1869-70 from sixty three in 1868-69¹⁰), the Law Department was not so desperate for students that it would accept women. The dean at the time, E. Spencer Miller, "very gruffly told the applicant that if the Board of Trustees admitted a woman as a law student, he would resign, adding, 'for I will neither lecture to niggers nor women.'"¹¹ Miller's reaction, described by one commentator as "more emphatic than gentlemanly,"¹² succinctly reflected that legal education at the University of Pennsylvania—indeed in America—was the exclusive domain of white men.

Miller's comment, while indicative of his own views on women, also revealed the belief that legal education was not something the school provided to anyone who asked. In fact, the majority of legal education in the 1870s took place outside the Law Department. Clerkships and private study with lawyers already admitted to the bar were the principal modes of legal education.¹³ For example, before applying to law school, Burnham had

9. Klingelsmith, *Woman Lawyers*, *supra* note 4, at 22 (citing 1902 correspondence with Kilgore).

10. Margaret C. Klingelsmith, *History of the Department of Law*, in UNIVERSITY OF PENNSYLVANIA DEPARTMENT OF LAW: PROCEEDINGS AT THE DEDICATION OF THE NEW BUILDING 213, 224 (G. E. Nitzsche ed., 1900) [hereinafter, Klingelsmith, *History*].

11. *Cancer Kills Female Lawyer*, PHILADELPHIA INQUIRER, June 30, 1909, at 2.

12. Klingelsmith, *Woman Lawyers*, *supra* note 4, at 22.

13. "Clerkships" resembled what would today be called "apprenticeships." W. Hamilton Bryson states that:

The term apprentice was not used at the time, for it applied to a person learning a trade; the correct appellation was clerk or pupil. A person who had already been called to the bar but wished to work

already been studying for more than six years with Damon Kilgore, a local Philadelphia lawyer and the man that would later become her husband.¹⁴

Legal education at that point was highly individualized, if somewhat haphazard. One Philadelphia lawyer described his first day as a student in a law office as follows:

I shall never forget my first day in a law office. I was given Sharswood's Blackstone to read, and sundry writs and praecipies to prepare from forms, the very names of which I had never heard before. This was our daily routine. We filed papers in the Prothonotary's office, drew deeds and mortgages, mechanic's liens and many other things *ejusdem generis*; we attended sheriff's sales; we went to the offices of the Recorder of Deeds and the Register of Wills and prepared briefs of title; we obtained judgment searches, conveyance and mortgage searches, for the title insurance companies were then almost unknown and little used.¹⁵

Other than Blackstone, the student did not begin his legal education with textbooks. Rather, he learned by doing: preparing forms, filing papers, and executing judgment searches.¹⁶ The law student was the lawyer's helper; he was expected to learn as he went along. In return for the privilege of becoming a participant-observer in the law office, the clerk paid the lawyer a fee.¹⁷ In return, the lawyer "gave of his time and resources to educate the younger man."¹⁸ Typically, a practicing attorney had only one clerk who "observed very closely every stage of every case in his master's office. The lawyer would explain every legal step taken. As the student progressed he would be given more responsibility for the legal research and the out-of-court preparation of the cases of his master's clients."¹⁹

Because the clerkship was highly individualized, the quality of legal education depended on the nature and amount of instruction the clerk received from the practicing lawyer. Therefore, historians of nineteenth century legal education have made three principal critiques of the law-office clerkships. First, the busy lawyer did not devote enough attention to the law

under the supervision of an older lawyer was said to devil for him; this position was similar to that of the modern associate in a firm of lawyers

W. HAMILTON BRYSON, *LEGAL EDUCATION IN VIRGINIA 1779-1979: A BIOGRAPHICAL APPROACH* 4 (1982) (emphasis in original)

14 Dorothy Thomas, *Carrie Burnham Kilgore*, in 2 *NOTABLE AMERICAN WOMEN: 1607-1950*, A BIOGRAPHICAL DICTIONARY 329, 330 (Edward T. James ed., 1971).

15 JOHN MARSHALL GEST, *LEGAL EDUCATION IN PHILADELPHIA FIFTY YEARS AGO* 16 (May 12, 1929) (annual address delivered before the Law Academy of Philadelphia).

16 *Id.*

17 BRYSON, *supra* note 13, at 3

18 *Id.*

19 *Id.*

student.²⁰ Second, the lawyer's work was the driving force behind a student's substantive learning, such that there was no systematic approach to the acquisition of knowledge.²¹ Third, the senior lawyer's office did not have all the academic resources that a student needed to fill in gaps in his learning.²²

Despite these drawbacks, the inherently private nature of clerkships meant that women could obtain legal education relatively easily if they found a sympathetic mentor. Women whose fathers, brothers, or husbands were lawyers could study with their male relatives without fighting a formal institution to gain access to legal education.²³ At the same time, however, women like Carrie Burnham who did not have a sympathetic male relative had to appeal to individual lawyers whose social, political, or personal leanings would dispose them to accept a female clerk.²⁴ Because there were only five women lawyers in the United States in 1870,²⁵ prospective female law students had to turn overwhelmingly to men—most of whom were not supportive of the notion of women as attorneys, or would only accept female lawyers in limited circumstances. For example, in 1872, George C. Sill, a Connecticut lawyer and later lieutenant-governor of Connecticut from 1873-1877, wrote to a professor at Yale Law School seeking advice on how to

20. JOHNSON, *supra* note 8, at 52 ("[T]oo often the lawyer was too busy or too indifferent to provide the explanations needed.")

21. *Id.* ("[T]he problem of unsystematic study was inherent in the nature of apprenticeship itself. The flow of office work tended to determine the order in which the beginning law student first approached many legal concepts. . . . Clerical and research duties of widely varying kinds might be required of a law student in the course of a single day.")

22. BRYSON, *supra* note 13, at 4 ("[T]he master's law library might be inadequate.")

23. See, e.g., Virginia G. Drachman, "My 'Partner' in Law and Life": Marriage in the Lives of Women Lawyers in Late 19th and Early 20th Century America, 14 LAW & SOC INQUIRY 221, 228-30 (1989) (stating that most 19th century women who chose to study law did so with their husbands or fathers)

24. Damon Kilgore seemed to meet all of these criteria. He was an advocate of temperance, women's rights, and public education on reproductive functions. E.g., DAMON Y. KILGORE, THE DANGERS WHICH THREATEN THE REPUBLIC 33 (1869) [hereinafter KILGORE, THE DANGERS WHICH THREATEN THE REPUBLIC] ("Oh my countrymen! How the heart sickens at the ravages of intemperance! Who can look without trembling for the future liberties of a people already enslaved by strong drink?"); DAMON Y. KILGORE, THE QUESTIONS OF TO-DAY: AN ORATION DELIVERED BEFORE THE WESLEYAN ACADEMY ALUMNI ASSOCIATION 19 (1870) ("If, after twenty centuries of masculine legislation, so many legal disabilities dishonor the statute-books of the most advanced nations on the globe, is it not high time for woman to demand the ballot?"); DAMON Y. KILGORE, MORAL DEFENCE OF THE PASTOR OF THE FIRST PROGRESSIVE CHRISTIAN CHURCH 31 (1870) ("You cannot have healthy, beautiful, moral, high-minded, parent loving and God-honoring children, until both parents understand and obey these laws of God in the highest and holiest functions of the organs of generation"); see also Thomas, *supra* note 14, at 330; Elizabeth K. Maurer, *The Sphere of Carrie Burnham Kilgore*, 65 TEMP. L. REV. 827, 830-31 (1992). Burnham's early association with Kilgore, "a man separated from his wife and sons and a Spiritualist as well, caused considerable local gossip." Thomas, *supra* note 14, at 330. Because Burnham later married Damon Kilgore, it is not an unreasonable speculation that the law student and teacher may have had some romantic interest in one another.

25. ROBERT STEVENS, LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S, at 83 (1983)

respond to a woman who applied to be Sill's clerk:

A young lady has applied to me for permission to become a student of law in my office. I advised her to seek admission into Yale Law School for one year and then enter my office. Are you far advanced enough to admit young women to your school? In theory I am in favor of their studying & practising law, provided they are *ugly*, but I should fear a handsome woman before a jury. Please let me know whether she could be admitted if she should desire to do so. . . .²⁶

Instead of making an individual decision to accept a female student, Sill looked to other members of the bar, indeed the legal academy itself, for guidance on how to respond to female applicants. Individual preceptors were not an absolute haven for women law students; they could be as unwelcoming of women as the law schools themselves.

The structure and nature of the clerk-mentor relationship developed in such a way that women could never conform to the image of the ideal law student. A clerk was one who shadowed and assisted a senior lawyer, both in business and personal affairs. Students often became quite involved in the lives of their teachers. For example, students "ate at their tables, and not infrequently married their daughters."²⁷ The law student was one who developed a likeness to his mentor in a professional and personal sense. Unable to completely perfect the likeness in a sexual sense, by marrying his teacher's wife, the male student then married his teacher's daughter. Kinship, through marriage, was the ultimate masculine camaraderie. In the mentor-student relationship, women were prizes for anointed students, and thus, by definition, could not be the students themselves.

B "Useful Entertainment to Gentlemen": Early School-Based Legal Education

Because clerkships were the traditional manner for educating law students, institutionalized legal education in Philadelphia began haltingly. Although Associate Supreme Court Justice James Wilson delivered the city's first lectures in law in 1790, the University did not have a continuous program of instruction until much later.²⁸ Wilson's lectures were discontinued after two seasons, and the University had no professor of law until 1817 when Charles Willing Hare lectured for one season.²⁹ There was

26. Letter from George G. Sill, practicing attorney, to Simeon E. Baldwin, Professor, Yale Law School (Mar. 9 1872), in FREDERICK C. HICKS, *YALE LAW SCHOOL: 1869-1894*, at 72 (1937) (emphasis in original).

27. Gary B. Nash, *The Philadelphia Bench and Bar, 1800-1861*, in *THE LEGAL PROFESSION: MAJOR HISTORICAL INTERPRETATIONS* 486, 489-90 (Kermit L. Hall ed., 1987).

28. See generally Klingelsmith, *History*, *supra* note 10.

29. Walter Cazenove Douglas, Jr., *The Law Department of the University of Pennsylvania*. 4

no law professor again until 1850 when George Sharswood was appointed.³⁰ Historians have offered two general explanations for the failure of early efforts like these at school-based, legal training. First, in light of the strength of the apprentice system, students did not feel a need for formal training which tended toward the abstract. For example, early law schools such as the University of Pennsylvania began with the purpose of introducing "the general student body to those principles of law and politics with which every educated man in a free society should be acquainted—to make them better citizens by instructing them concerning their particular position in the American body politic."³¹ Elevated lectures on the nature of citizenship did not seem relevant to the student who struggled to master fundamental legal principles.³² Second, especially in Philadelphia, individual lawyers resisted erosion of their dominant role in educating future members of the profession.³³ Lawyers liked the ability to screen applicants, thus preserving the upper-class male and non-ethnic quality of the bar.³⁴

From their very origins, law schools like the University of Pennsylvania fashioned themselves as places for men. In stating his plan for a series of law lectures, James Wilson stated in 1789 that he wished "to furnish a rational and useful entertainment to *gentlemen* of all professions, and in particular to assist in forming the legislator, the Magistrate and the Lawyer."³⁵ Thus, Wilson planned to discuss topics which would be of interest to men.³⁶ Yet along with the President of the United States, cabinet members, and national and local legislators and judges, present at Wilson's first lecture were several "stately and powdered dames."³⁷ It is likely that these women went to the lectures as companions to their husbands, yet their presence in the audience meant that the first experience of formal legal education in Pennsylvania was literally coeducational, even if the organizers' expectations may have been different. The concept of "student" was gendered male.

AM. U. MAG 330, 337, 371 (1896).

30. Klingelsmith, *History*, *supra* note 10, at 218, 221-22; *see also* Douglas, *supra* note 29, at 372.

31. 2 ANTON-HERMANN CHROUST, *THE RISE OF THE LEGAL PROFESSION IN AMERICA* 220 (1965); *see also* JOHNSON, *supra* note 8, at 9 ("Students simply did not find attractive an abstract appeal to political virtue as a reason to attend a series of lectures on the law").

32. *Id.*

33. LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 607 (1985).

34. *See generally* Nash, *supra* note 27, at 214-19.

35. Klingelsmith, *History*, *supra* note 10, at 214 (emphasis added).

36. One historian claims that Wilson's lectures failed because his audience disagreed with him substantively: "His violent criticism of Blackstone as well as his ultra-Federalist views concerning the powers of national government did not meet with general approval on the part of his audience." CHROUST, *supra* note 31, at 178.

37. CARSON, *supra* note 1, at 14; *see also* Klingelsmith, *History*, *supra* note 10, at 216; UNIVERSITY OF PENNSYLVANIA DEPARTMENT OF LAW: PROCEEDINGS AT THE DEDICATION OF THE NEW BUILDING 7 (G.E. NITZCHE ed., 1990) [hereinafter DEDICATION OF THE NEW BUILDING].

After a period of latency, when Sharswood began delivering his lectures in 1850,³⁸ the criteria for admission to the law department were minimal. Candidates were not expected or required to have attended college; in fact, in the first ten years of the modern law school at the University of Pennsylvania, less than twenty percent of students had formal education beyond high school.³⁹ Lectures were the principal method of instruction⁴⁰ and students paid ten dollars in tuition for each full course.⁴¹ In order to receive the degree of Bachelor of Laws, students were required to attend courses for two academic years (a total of sixteen months), taking a course from each of four professors each term.⁴² Oral examinations were optional, and moot courts were held at the discretion of the individual professor.⁴³

In light of these seemingly minimal requirements, George Sharswood, during his tenure in the Law Department from 1850-1868, mapped out a justification for formal legal education.⁴⁴ He tried to address questions about the relevance of school-based learning and the role of the individual lawyer in the legal education.⁴⁵ Sharswood's vision was that learning in the Law Department supplemented, but did not substitute for the law office:

It is hoped that, while this course will not interfere with the reading which may be prescribed by their private preceptors, it will be a useful auxiliary to their progress—assist them in a frequent recurrence to elementary principles, illustrate their application to practice in cases actually occurring, and serve thus to fasten them firmly in the memory.⁴⁶

In Sharswood's view, the proper function of the University was to offer a foundation in the "elementary principles" of the law.⁴⁷ The law school had an instructional aspect, but its primary mission was inspirational:

To the younger members of the bar [the school lecture] may be found a most valuable auxiliary in that methodical, determined, and persevering pursuit of the knowledge of their profession,

38 For a discussion of the reasons that Wilson and Hare did not continue their lectures and a general history of the Law Department to 1850, see, e.g., CARSON, *supra* note 1, at 5-20; Douglas, *supra* note 29, at 335-37, 371-72; Klingelsmith, *History*, *supra* note 10, at 213-20

39 Nash, *supra* note 27, at 491

40 Klingelsmith, *History*, *supra* note 10, at 223

41 Nash, *supra* note 27, at 491

42 CARSON, *supra* note 1, at 23; Klingelsmith, *History*, *supra* note 10, at 223

43 CARSON, *supra* note 1, at 22; Klingelsmith, *History*, *supra* note 10, at 222

44 See generally GEORGE SHARSWOOD, LECTURES INTRODUCTORY TO THE STUDY OF LAW 1870

45 *Id*

46 *Id* at 3

47 *Id*

which can alone qualify then to fill with honor the places of the eminent men who have given such lustre to our bar, and who are now fast passing, one by one, from the stage of action. May such examples animate them to aim at the same lofty attainments, to maintain the same unsullied purity and honor which have placed their name and fame in every mouth.⁴⁸

What the law school could do more effectively than an individual clerkship, then, was instill a sense of professional history, an awareness of the "eminent men who have given such lustre to our bar."⁴⁹ Formal legal education had a group ethic influence which the law office internship could affect much more slowly, if at all. This aspect of formal legal education had also been mapped out earlier by Harvard's president, John Quincy, in 1832 when he remarked, "[t]here is no room for question, that here unite all happy coincidences to excite, instruct and animate the law student . . . and to bring him within the influence of the highest motives and best models of professional merit and distinction."⁵⁰

Although Sharswood did not intend that the University would usurp the function of the individual lawyers, the need for formal training arose precisely because those clerkships gave rise to the "dangers of a cursory and tumultuous reading, which doeth ever make a confused memory, a troubled utterance, and an uncertain judgment."⁵¹ Formal legal education was meant to train the student to "repress everything like excitability or irritability. When passion is allowed to prevail, the judgment is dethroned."⁵² Thus, law schools had the explicit function of removing excessive emotion from legal argumentation. "Excitability" and "passion," qualities typically associated with women, had no place in the law.⁵³ The emphasis was on rationality and reason. Under Sharswood's rubric, law schools were no less places for women than offices of individual lawyers.

II. PROFESSIONALIZATION OF LEGAL EDUCATION: TRANSFORMATIONS IN THE 1870S

A. *Big City Life and the Decline of the Law Office*

Beginning in the 1870s, office-based education lost its dominance in

48 *Id.* at 65-66

49 *Id.*

50 CHROUST, *supra* note 31, at 222

51 SHARSWOOD, *supra* note 44, at 34 (emphasis omitted)

52 GEORGE SHARSWOOD, A COMPEND OF LECTURES ON THE AIMS AND DUTIES OF THE PROFESSION OF LAW 16 (1854).

53 *Id.*

legal education.⁵⁴ Although the historians disagree as to the exact causes of this decline, four related explanations emerge from major studies of the legal profession in the nineteenth century: (1) the demise of the judicial circuit; (2) specialization of legal practice; (3) changes in technology; and (4) increased demand for education from previously underrepresented groups.

First, it was after 1870 when many lawyers abandoned frontier judicial "circuit riding" in favor of establishing offices in a fixed locale.⁵⁵ An itinerant lifestyle was less necessary in an era of the urban center: "[a] denser population provided a concentration of legal business in one area which made it possible for lawyers—especially eminent ones—to leave the circuit permanently."⁵⁶ As lawyers settled in a particular area, "the opportunities for professional companionship and therefore the voluntary imposition of group standards began to disappear."⁵⁷ Lawyers in a given city grouped as a local bar association and "in an effort to regulate professional conduct more formally . . . they began to establish more stringent admission requirements" for the bar and for law schools.⁵⁸ In the crowded urban environment, a lawyer in the 1870s was less likely to know everyone in his community than in the preceding decades. In an effort to close ranks to unknown outsiders, legal education became more regularized.

Related to the growth of the urban center was the increasing specialization of legal practice after 1870. After the Civil War, corporations, "in an effort to monopolize the finest legal talent available, retained lawyers on a long-term basis . . . [l]awyers now began to be expected to devise ways to keep their clients out of court."⁵⁹ If more and more lawyers were retained full-time by corporations, fewer attorneys would be available to provide the broad-based legal education that a young clerk would need. Ironically, then, lawyers themselves, in "developing the necessary instruments and . . . helping to organize the major organizational innovation in American society, the large corporation," undercut their own power in the area of legal education.⁶⁰ One historian explains this in terms of a failure of self-perception on the part of lawyers:

One reason for this failure was that, although they recognized American society was increasingly composed of functional groups rather than atomist individuals, lawyers were unwilling to admit the possibility that the law itself and the bench and bar where

54. See generally JOHNSON, *supra* note 8.

55. *Id.* at 68.

56. *Id.*

57. *Id.* at xiii.

58. *Id.*

59. *Id.* at 62.

60. WAYNE K. HOBSON, *THE AMERICAN LEGAL PROFESSION AND THE ORGANIZATIONAL SOCIETY 1890-1930*, at 67 (1986).

themselves simply another competing functional group or set of groups. Lawyers insisted on continuing to see themselves as somehow transcendent.⁶¹

In this sense then, lawyers did not consciously cede professional control in favor of corporate control. Rather, their false sense of exceptionalism misled them.

Although lawyers were becoming more specialized in the decades after the 1870s, they began to have less of a practical need for law clerks. Prior to the widespread use of typewriters in offices, an experienced student who was close to his mentor drafted legal documents and correspondence.⁶² With mechanical assistance, lawyers had less need for scribes and instead "needed secretaries and typists—young women, more and more, in jobs that were sealed off permanently from the professional ladder to success."⁶³ Telephones and stenographers also became increasingly common in the decades that followed.⁶⁴ Functionally speaking, students were no longer in demand, and so they had to go somewhere else for their training. The institutional law school was the sole additional possibility.

Thus, applications to law schools began to rise in the 1870s, increasing dramatically especially in the 1890s.⁶⁵ Although the increased specialization and advent of communications technology explain part of this increase, a legal career began to be sought out by more people. Law was particularly attractive to immigrants.⁶⁶ Historian Gary Nash explains this appeal in terms of the financial and reputational benefits of a legal career, as well as the fact that the legal profession "was relatively free of organizational impediments—the hierarchical structuring characteristic of business or civil service—which would have constricted the flow of aspirants from the lower levels of society."⁶⁷ This is not to suggest that access to the legal profession was effortless. Indeed, the individualized nature of the apprenticeships meant that the legal profession could easily exclude prospective clerks who were female, foreign, black, or any combination thereof. Rather, Nash suggests that if an immigrant did secure a position in a law firm, once he became a lawyer he had more professional freedom and likelihood of

61 *Id.*

62 Klingelsmith, *History*, *supra* note 10, at 247.

63 FRIEDMAN, *supra* note 33, at 607.

64 HOBSON, *supra* note 60, at 151. At Sullivan & Cromwell in New York, "a wall phone was installed in 1881 and desk phones about 1900; stenographers were introduced into the office in the late 1890s, to replace the occasional male stenographer who had been called in previously when one of the partners fell behind in his correspondence." *Id.*

65 *Id.* at 108-09.

66 Nash, *supra* note 27, at 487.

67 *Id.*

success than a similarly situated civil servant⁶⁸

In reaction to these immigrant lawyers, elite lawyers organized into local bar associations which advocated more stringent admissions criteria at law schools "[i]n an attempt both to 'cleanse' the bar of immigrant lawyers who, they believed, engaged in unethical practices and in an attempt to control economic competition within the profession."⁶⁹ Beyond the anti-immigrant sentiment, which may have motivated the establishment of more stringent admissions requirements, historians disagree as to the causes of the growth of bar associations. Robert Stevens sees this growth as the result of "a natural urge to stratify coupled with a natural (and acceptable) mechanism for differentiation."⁷⁰ Wayne Hobson, on the other hand, rejects the notion of any such "natural" or inevitable transformation:

Such professionalization activities as strengthening professional associations, rationalizing, raising, and enforcing entrance rules for the profession . . . all can be seen as responses to particular historical and situational problems faced by an occupation or by a stratum within the occupation. These problems often had as much to do with matters of the wealth, status, power, and cultural orientation of the profession and its practitioners as they do with the 'natural' consequences of increased specialization or with a fixation on technical knowledge.⁷¹

Inevitable or not, support of local lawyers made it easy for the University of Pennsylvania to raise its standards for admission to the law department

*B. To Study Systematically and Scientifically Law School As Exclusive
End to Legal Thinking*

Formal legal education at the University of Pennsylvania rose to a new level of complexity and prominence in the years after 1870. In 1874, the Board of Trustees enlarged the faculty and made examinations, as well as an

68 *Id.*

69 Johnson, *supra* note 8, at xiv

Openly advertising for business and creating unnecessary litigation, these lawyers threatened to undermine the code of professional ethics, and more important, the fundamental values of American life. In an effort to preserve professional values from what they believed to be the eroding influence of foreigners, then, the leaders of the metropolitan bar became the first group of practitioners to support higher academic standards governing admission to the legal profession

Id. Many cities reestablished bar associations or set them up for the first time in the 1870s: New York (1870), Cleveland (1873), and Boston (1877). HOBSON, *supra* note 60, at 214.

70 STEVENS, *supra* note 25, at 20

71. HOBSON, *supra* note 60, at 21

extended writing project, required for all students.⁷² Prior to this time, teaching responsibilities were divided among three professors over three general subject areas: (1) Institutes of Law; (2) Practice and Pleading at Law and In Equity; and (3) Real Estate Conveyancing and Equity Jurisprudence.⁷³ With the reorganization of 1874, two professors were added in Personal Relations; Personal Property; and Medical Jurisprudence.⁷⁴ Instead of holding their discretionary moot courts after the individual lectures, professors began to conduct the activity on designated evenings.⁷⁵ Despite the more stringent requirements, enrollment increased from below seventy to ninety-two students in 1875-1876, perhaps due in part to the fact that the Court of Common Pleas and the Orphans Court of Philadelphia granted diploma privileges to graduates of the University of Pennsylvania Law Department.⁷⁶

The new emphasis on rigor and the growth of the importance of school-based education may have been a partial reaction to the development of the case method at Harvard Law School in 1871.⁷⁷ Christopher C. Langdell, of Harvard Law School published *A Selection of Cases on the Law of Contracts*, a book that purported to bring together in one location all of the cases a student needed to master the fundamentals of the subject matter:

Law, considered as a science, consists of certain principles or doctrines. To have such a mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs, is what constitutes a true lawyer; and hence to acquire that mastery should be the business of every earnest student of law. . . . [T]he number of fundamental legal doctrines is much less than is commonly supposed. . . . If these doctrines could be so classified and arranged that each should be found in its proper place, and nowhere else, they would cease to be formidable from their number. It seemed to me, therefore, to be possible to take such a branch of the law as Contracts, for example, and, without exceeding comparatively moderate limits, to select,

72 CARSON, *supra* note 1, at 32-33; Klingelsmith, *History*, *supra* note 10, at 226-27. As an incentive to students, prizes for the best student essays were established in 1875 and 1879. Klingelsmith, *History*, *supra* note 10, at 229-30. The Sharswood Prize for best essay brought an award of fifty dollars in 1875. *Id.* The Meredith Prize, established in 1879, and awarded to the second best essay, brought twenty-five dollars to the winner. *Id.*

73 Klingelsmith, *History*, *supra* note 10, at 222.

74 *Id.* at 226-27.

75 *Id.* at 228.

76 *Id.* at 224, 228.

77 Although this is the date typically given for the "birth" of the case method of legal education, there is some indication that a type of case book had been employed as early as 1810 by a Judge Swift in Connecticut and at New York University Law School in 1865-67. ALBERT J. HARNØ, *LEGAL EDUCATION IN THE UNITED STATES* 54 (1953).

classify, and arrange all the cases which had contributed in any important degree to the growth, development, or establishment of any of its essential doctrines; and that such a work could not fail to be of material service to all who desire to study that branch of law systematically and in its original sources.⁷⁸

If all materials which comprised the foundation of a legal subject were pulled together in one book, as Langdell claimed to do, students would no longer have the need for the practical, hands-on training of the law office.⁷⁹ If effective learning could result from applied studies, the university was the place to go if a student wanted to become a lawyer.

Casebooks, with their orderly division of laws into sections and subsections,⁸⁰ were the ultimate outgrowth of the view that law was a science one could master through a systematic study. Such an idea had been popular at least from the time of James Wilson⁸¹ and became increasingly prominent in the nineteenth century.⁸² Just as a student of biology would

78 C.C. LANGDELL, *Introduction A SELECTION OF CASES ON THE LAW OF CONTRACTS* (Boston, 1871), reprinted in JOSEF REDLICH, *THE COMMON LAW AND THE CASE METHOD IN AMERICAN LAW SCHOOLS* 11 (1914).

79 See HARNO, *supra* note 77, at 59 Langdell's

dictum was that all the available materials of the law were contained in printed books, and that the printed books from which and only from which a legal education was to be had were casebooks consisting of selected decisions of the appellate courts on each of the main topics of the law. Disregarded were the broad premises for the study of law conceived by those men who held the initial professorships of law.

Id.; see also REDLICH, *supra* note 78, at 24 (Langdell "was concerned simply with the establishment of the principles in separate law cases, and with nothing else. The law consists, he believes, only in these principles. Through the analytic treatment of the cases under the direction of the teacher, the student gains knowledge of the law.")

80 Josef Redlich described:

[Case books] are generally very carefully arranged in such manner that the material of the whole field of law appears systematically organized in the choice and order of the cases, this organization being also clearly indicated by the titles of the separate parts of the book and the headings of subordinate sections. In each section or subdivision the cases themselves are again so chosen as to form a well-conceived pedagogic whole, since regularly the case which illustrates the main principle—the so-called 'leading case'—comes first, and the immediately following cases are intended to show individual extensions or limitations of the principle.

REDLICH, *supra* note 78, at 26.

81 "A science according to Wilson, is 'best formed into a system, by a number of instances drawn from observation and experience, and reduced gradually into general rules' because 'the natural progress of the human mind, in the acquisition of knowledge, is from particular facts to general principles.'" WILLIAM P. LAPIANA, *LOGIC AND EXPERIENCE: THE ORIGIN OF MODERN AMERICAN LEGAL EDUCATION* 30 (1994).

82 For example, in 1815, Isaac Parker, Chief Justice of the Supreme Court of Massachusetts said in his opening law lecture that "[a] science like [law] is worthy to be taught, for it cannot be understood without instruction." HARNO, *supra* note 77, at 35-36 (quoting Isaac Parker). George

study constituent parts of a plant to understand the scientific principles of photosynthesis, the law student was meant to deduce legal rules "step by step . . . by a purely analytical process out of the original material of the common law."⁸³ To learn the science of law, students read and studied cases for their facts and holdings; ensuing class discussions resembled a modern law school class. As Josef Redlich described in his study of the use of the case law method in American law schools,

The students study thoroughly a number of cases at home and strive to master the actual facts involved as well as the rule of law; usually they prepare a very brief abstract of each separate case, which they bring with them to class. In the actual class exercise the professor calls on one of the students, and has him state briefly the content of the case. Then follows the interchange of question and answer between teacher and student; in the course of the discussion other students are brought in by the teacher, and still others interject themselves in order to offer objections or doubts or to give a different answer to the original question.⁸⁴

Learning law then was no longer the work of memorizing treatises. Students had to work to deduce the principles underlying the primary texts. They were required to put it in scientific terms, to discover the periodic elements of the law.

Thus, casebooks, which were attempts to "rearrange" the "architecture of law,"⁸⁵ had the effect of rearranging the nature of legal education. Students of Langdell, and those who followed the case method, began to claim that the study of cases did more than facilitate the student's discovery of scientific principles—cases taught the students to think like lawyers.⁸⁶ Although Langdell's stated goal had been to facilitate the systematic study of law, the case method came to stand for the idea that "the real purpose of

Sharswood characterized law as several related branches of the same science:

[W]hen the principle of a decision has been long acquiesced in, when it has been applied in numerous cases and become a landmark in the branch of science to which it relates, when men have dealt and made contracts on the faith of it—whether it relate to the right of property itself or the evidence by which that right may be substantiated—to overrule it is an act of positive injustice, as well as a violation of law, and a usurpation by one branch of the government upon the powers of another

SHARSWOOD, *supra* note 52, at 45-46; see also MORTON J. HORWITZ, *THE TRANSFORMATION OF AMERICAN LAW 1870-1960*, at 17 (1992) ("Nineteenth century legal thought was overwhelmingly dominated by categorical thinking—by clear, distinct, bright-line classifications of legal phenomena. Late nineteenth century legal reasoning brought categorical modes of thought to their highest fulfillment.")

83. REDLICH, *supra* note 78, at 13.

84. *Id.* at 27.

85. HORWITZ, *supra* note 82, at 13.

86. REDLICH, *supra* note 78, at 24.

scientific instruction in law is not to impart the content of the law, not to teach the law, but rather to arouse, to strengthen, to carry to the highest possible pitch of perfection a specifically legal manner of thinking."⁸⁷

Furthermore, case books had the effect of making the law teacher supreme in the system of legal education. Professors like Langdell who developed and wrote casebooks could claim that they knew what the "science of law" was; through their method, a student could economically learn the law and learn how to think like a lawyer. Students did not have to rely heavily on lecture notes⁸⁸ or treatises. The key was the interchange with the professor who knew the science of law; mere practitioners who by definition could not study the law full-time were rendered inferior instructors.⁸⁹

As long as all that was required of a professor was general information on legal subjects, any able and well-informed lawyer who was fond of the work could give instruction. But the moment training by the teacher, as well as information, became necessary, that moment the law professor must not only know the law, but be an experienced teacher. . . . The busy lawyer cannot, except in rare instances, give the time necessary to solve teaching problems. The successful modern teacher of law, therefore, is in the great majority of cases either a man who is devoting practically his entire time to the work of teaching.⁹⁰

In claiming that law was a science that only they had the time to study, professors effectively displaced the practitioner as instructor of students, and thus guaranteed his own dominance in American legal education.⁹¹ Toward this end, schools like the Law Department at the University of Pennsylvania began filling their faculties with instructors who could devote all of their professional time to teaching law.⁹²

In the ten years between Carrie Burnham's first application to the Law

87 *Id*

88 LAPIANA, *supra* note 81, at 97

89 JOHNSON, *supra* note 8, at 102 ("Indeed, the scientific rhetoric that surrounded the introduction of case study served to integrate a new occupational group—career law professors—into the university community.")

90 Klingelsmith, *History*, *supra* note 10, at 245

91 See, e.g., JOHNSON, *supra* note 8, at 102 "Indeed, the scientific rhetoric that surrounded the introduction of case study served to integrate a new occupational group—career law professors—into the university community. The result would be to reassert even more vigorously the primacy of theory in the law school curriculum." *Id*

Not unexpectedly, the case method had its greatest detractors among practitioners who suggested that all students learned in law schools was a limited repertoire of cases to cite in court documents. HOBSON, *supra* note 60, at 130. The American Bar Association opposed the case method well into the 1890s. LAPIANA, *supra* note 81, at 135-42; see, e.g., STEVENS, *supra* note 25, at 57-60

92 Klingelsmith, *History*, *supra* note 10, at 245-46

Department in 1871 and her second demand in 1881, major innovations had occurred in legal education. Due to professional and technological changes, the law office could no longer effectively educate the number of students who desired to enter the legal profession.⁹³ Possibly in reaction to the increase in applicants, the University of Pennsylvania's Law Department had tightened its admissions and graduation requirements.⁹⁴ Even though Langdell's case method did not filter into classrooms in Philadelphia (where it was known as the "seminar method") until approximately twenty years after the publication of Langdell's casebook,⁹⁵ prospective students regarded the university more and more as the preferred option for legal training. With diploma privileges⁹⁶ and prestige in the legal community upon graduation, a degree from the Law Department had great value.

The shift from the apprenticeship method of legal training to the case-study method had a far-reaching impact for women and others who historically had excluded from legal training. If all of law's lessons could be contained in one casebook, it was no longer essential for a prospective student to find a professional mentor willing to train him. Legal education in a sense, became more democratic and available to all. At the same time, however, law schools actively resisted any heterogeneity in the student body. Although legal education was in theory more accessible to women, law schools were not any more welcoming than law offices had been.

III. "A JEALOUS MISTRESS": THE LAW DEPARTMENT IN THE 1880S

A. *"To Form a Tie Among Men" The Visions of Legal Education Articulated in School-wide Addresses*

Although the decision to admit a female law student was undoubtedly a landmark event in the history of the University of Pennsylvania,⁹⁷ Carrie

93 See generally Stevens, *supra* note 25, and accompanying text.

94 See, e.g., Klingelsmith, *History*, *supra* note 10, at 228.

95 Klingelsmith, writing in 1900 observed, "Looking over the period of the last ten years, there is noticeably a distinct drift away from lectures and text books and towards that method of instruction perhaps best known to all advanced scholars as the seminar method, though among law teachers it is sometimes miscalled the case system." *Id.* at 244.

96 See *supra* note 76 and accompanying text.

97 Kilgore later described her first day at the law school in these terms:

On the same day I was handed, just as I left the building, a letter from the Board of Trustees, who had convened meanwhile, saying they thought it proper to inform me that if I attended the entire course and passed all the examinations it was not at all sure that the University would graduate me, or confer upon a woman its diploma. I replied that I should at least get the knowledge and the matter of the diploma could be determined later.

Burnham Kilgore's⁹⁸ presence at the Law Department in the early 1880s was, to a certain extent, more of an anomaly than a transforming agent. During her time as a law student, the experience of legal education remained very much a male one. As articulated in school-wide addresses made during Kilgore's student days and shortly thereafter, law students and the profession they hoped to enter were defined in masculine terms.⁹⁹ For example, in his speech to the student body at the opening of Kilgore's second year of law school, Judge Craig Biddle referred to his audience as "gentlemen."¹⁰⁰ He praised their decision to attend law school in contrast to the individual clerkships which did little to foster professional identity:

Students graduating from the offices of their various preceptors are generally strangers to each other. They have none of that feeling which the French call "Esprit de Corps," no friendship for, or confidence in each other, no interest in their common success in life, and hardly sufficient acquaintance even to recognize one another as members of the same profession. The result is that our Bar, as a Bar, has never exercised the influences to which it is entitled. . . . The effect of early association in the same school, college or university, you have all felt; it seems to form a tie among men which binds them together, more or less closely, all their lives.¹⁰¹

In Biddle's view, law school benefited the individual man and the group.¹⁰² Camaraderie, in which men were "bound together" "more or less closely," resulted from their attendance at the same institution.¹⁰³ Having been united by a sense of "common success," Biddle envisioned that university-trained lawyers would act in concert to "exercise" their "entitled" influence, thereby dominating the legal profession.¹⁰⁴

In describing the skills necessary for a successful legal career, Biddle employed imagery of sports and combat. Conducting a jury trial, for

Klingelsmith, *Woman Lawyers*, *supra* note 4, at 22. Kilgore claimed that official membership in the Class of 1883 was uncertain. Yet, in a contemporaneous list of students published by the Law Department, Kilgore's name appeared with no qualifying remarks or any other indication that she was not considered by the school administration to be officially enrolled. Craig Biddle, *Introductory Lecture to the Study of the Law Delivered Before the Students of the Law Department of the University of Pennsylvania* 34 (Oct. 2, 1892) (Philadelphia, J.M. Power Wallace 1882). This would indicate that at least within one year of her demand, Kilgore was considered a regular degree student.

98 Carrie Burnham married her mentor Damon Kilgore in 1876. Thomas, *supra* note 14, at 330.

99 Biddle, *supra* note 97, at 5.

100 *Id.*

101 *Id.* at 5-6.

102 *Id.*

103 *Id.*

104 *Id.*

example, was an initiation right for all lawyers:

The conduct of a jury trial is a part of your profession, which you cannot acquire theoretically. The swimmer must take his plunge into the water, no matter how often the proper motions have been shown to him, before he can master the art. In both cases, the best advice to be given, is not to lose your head and the results of your previous instruction can be relied on to carry you safely through.¹⁰⁵

Biddle advocated trial work for all young lawyers, but cautioned against too much advocacy and not enough study.¹⁰⁶ Both academic and active work were the realm of the lawyer, and ignoring one meant that "the athlete who neglects no precaution and never intermits his training will get the better of you in the end."¹⁰⁷ Biddle also insisted that lawyers had the obligation to participate in the civic life of their community and nation.¹⁰⁸ He exhorted his audience: "While you will find the law a jealous mistress, claiming almost your exclusive devotion, you must never forget, when paying it, that you are the citizen of a free country, and an essential part of its government."¹⁰⁹ He counseled students to "[v]indicate your title to citizenship, not by childish lamentations, but by manly action."¹¹⁰ Women, unable to vote or hold office, let alone engage in "manly action," were not the kind of law students Biddle had in mind when addressing the Classes of 1882 and 1883.

That a woman had attended the Law Department at the University of Pennsylvania did not seem to widen the conception of law students and lawyers held by those who addressed classes immediately subsequent to Kilgore's. In fact, in years after 1883, the date of Kilgore's graduation from the Department of Law, public addresses at the school made clear that many lawyers believed that women, even if educated in the same program as men, would never achieve a high level of success. For example, in 1886, Professor George Tucker Bispham renewed many of Biddle's comments about the connection between the profession of law and the obligations of citizenship.¹¹¹ He claimed that "the duty of answering . . . living questions in jurisprudence, can be properly effected only by mixing with one's fellow citizens . . . I would have you become politicians in the best sense of the

105. Biddle, *supra* note 97, at 20

106. *Id.*

107. *Id.* at 28.

108. *Id.*

109. *Id.*

110. *Id.* at 32

111. George Tucker Bispham, *The Progressive Capacity of Unwritten Law: An Introductory Address Delivered Before the Law Department of the University of Pennsylvania* 33-34 (Oct. 1, 1886) (Philadelphia, J M Power Wallace 1886)

term—students of the body politic—knowing its form, its constitution, its forces and its weaknesses."¹¹² Legal education was incomplete without some participation in civic life. Yet women were denied participation in the most obvious form of suffrage. No matter how much formal study or even practical legal training that women might have, they would always remain inferior to male students and lawyers.

Speaking to students in 1889, the Chief Justice of the Pennsylvania Supreme Court, lamented the end of an era, remarking that "[t]he age of chivalry has long since passed away."¹¹³ Without chivalry, which "elevated both male and female character far above what it would have been without it," civilization was in decline.¹¹⁴ The only ones who could restore a sense of dignity to human relations were the lawyers:

Is there no analogy between a young man about to enter the honored profession of the law and a candidate for knighthood? It is true the career of the one is widely different from the other. The pursuit of one is arms, the other peace. Yet there are striking points of similarity. One of the vows of the knight was to protect the rights of the weak, such as widows and orphans. Surely the profession of the law in the nineteenth century ought to aim as high as chivalry did in the eleventh. If the fierce warrior of a barbarous age felt it his knightly duty to protect the weak, we would discredit our manhood and our civilization were we to neglect to do it now.¹¹⁵

Within Paxson's analogy are the strains of a social responsibility doctrine. Lawyers, like knights, should defend those who cannot defend themselves. Yet, lawyers, because they are like knights, are then necessarily not female. True, the characters of men and women were "elevated in the age of chivalry," but the elevation came because men protected and women were the protected.

B. The Student Experience in the Era of Carrie Burnham Kilgore

During the time that Kilgore was a student, lectures and quizzes were the principle methods by which students learned law at the University of Pennsylvania.¹¹⁶ Yet the traditional lecture was declining in popularity, precisely because professors began to see the object of legal education as

¹¹² *Id.*

¹¹³ Edward M. Paxson, Address Delivered Before the Law School of the University of Pennsylvania 5 (Oct. 2, 1889).

¹¹⁴ *Id.* at 6.

¹¹⁵ *Id.* at 9-10.

¹¹⁶ GEST, *supra* note 15, at 18.

training a student to think in a legal way.¹¹⁷ Quizzing, the "more or less purely mechanical testing of the knowledge learned by the student,"¹¹⁸ supplemented lectures of the professors. Students also grouped together in "slate clubs" (a version of today's study groups) and took turns writing out lecture notes for the benefit of other members of the group.¹¹⁹ Individually, students might maintain a commonplace book, a kind of personalized dictionary *cum* study guide on major topics of law.¹²⁰ They often supplemented their classroom study by visits to the Philadelphia courts.¹²¹

Substantively, law students in the era of Carrie Burnham Kilgore pursued a curriculum that was taught by five professors. The faculty at the time consisted of P. Pemberton Morris, (Professor of Practice, Pleading, and Evidence at Law and Equity); Judge J.I. Clark Hare, (Professor of Institutes of Law);¹²² E. Coppee Mitchell (Dean and Professor of Real Estate, Conveyancing, and Equity Jurisprudence); James Parsons (Professor of Personal Relations and Personal Property);¹²³ and Dr. John J. Reese (Professor of Medical Jurisprudence).¹²⁴ Except for courses in Medical Jurisprudence,¹²⁵ students were required to attend each professor's classes.¹²⁶ Although the individual instructor set the tuition fee for his class,

117 Klingelsmith states that:

lecture instruction is the only method possible where the duty of the teacher ends when he had imparted information; but where the primary object is, not only to see that the student obtains information, but to train the student so that he may apply his knowledge, then the didactic lecture, while a possible means of accomplishing this result, is one which the majority of modern teachers of law, as well as of other branches of knowledge, believe they have found to be radically defective.

Klingelsmith, *History*, *supra* note 10, at 243.

118 REDLICH, *supra* note 78, at 8.

119. GEST, *supra* note 15, at 18.

120. BRYSON, *supra* note 13, at 6. Commonplace books extant from the period are located in Biddle Law Library at the University of Pennsylvania.

121. GEST, *supra* note 15, at 19. One commentator, waxing nostalgic for his student days, recalled his visits to the court: "Proceedings then were more dignified than in later years. Frock coats and silk hats were generally worn." *Id.*

122. Institutes of Law encompassed the general subjects of International Law, Constitutional Law, Conflicts, Criminal Law, and Contracts. Klingelsmith, *History*, *supra* note 10, at 226.

123. The topic Personal Relations and Personal Property included Corporations, Partnership, Insurance, Pledges, and Chattel Mortgages. *Id.*

124. CARSON, *supra* note 1, at 4.

125. Classes in Medical Jurisprudence were optional. *Id.* at 35-36; Klingelsmith, *History*, *supra* note 10, at 227-28. In the period 1875 to 1882, only four students chose to take this course. Klingelsmith, *History*, *supra* note 10, at 228. A contemporary of Kilgore's observed, "[t]he position of the professor is embarrassing. To be a king without a subject is an empty honor. To be a teacher without a pupil is humiliating in the extreme. It is to be hoped that at no distant day this want will be supplied, and this wrong corrected." CARSON, *supra* note 1, at 36.

126. Klingelsmith, *History*, *supra* note 10, at 227-28.

the money was turned over to the Dean who divided the funds pro rata according to the number of lectures each professor had delivered.¹²⁷

For the most part, professors were not full time instructors of law. Professor Hare, for example, was a judge in the Philadelphia Court of Common Pleas. Although judges as faculty members were becoming less common, judges were regarded as desirable members of a law school faculty.¹²⁸ E. Coppeé Mitchell, Dean of the Law Department from 1874 to 1887,¹²⁹ was also a practitioner in addition to a teacher.¹³⁰ He was highly respected as Dean, particularly because he "possessed that practical capacity to deal with his associates, and when he came in contact with them, of impressing them with his convictions by his persuasion."¹³¹ "Practical" skills were still more highly regarded than academic brilliance for its own sake. The day of the full time professor, and his product the case method, were still a few years away for the University of Pennsylvania Law Department.¹³²

Some further details about Professors Mitchell and Hare, the Dean and the senior most faculty member, respectively, provide some depth to the analysis of the Law Department's atmosphere in its first years as a coeducational institution. Mitchell was acutely aware of history and, in particular, maintained somewhat of an antiquarian interest in the important events in the Law Department's history.¹³³ It was not likely lost on Dean Miller that the admission of a female student was a landmark event. Yet, historic curiosity or not, a woman was not welcomed at the law school by all professors. Judge Hare, for example, did not take Kilgore seriously as a student.¹³⁴ When Kilgore first applied for admission in 1871, he treated her request "with some curiosity."¹³⁵ He asked, "What was the effect of [her] desires to attend the lectures?"¹³⁶ According to Kilgore, "[i]t apparently did not seem possible to him that she might really desire to actively practice

127. *Id.*, at 226-27

128. See, e.g., BRYSON, *supra* note 13, at 37. "Students were attracted to these teaching judges because of their high legal reputations. Many of their students also probably anticipated practicing before them later on." *Id.*

129. DEDICATION OF THE NEW BUILDING, *supra* note 37, at 159

130. Douglas, *supra* note 29, at 140

131. *Id.*

132. See *supra* notes 88-91 and accompanying text

133. In 1882, Mitchell possessed as a sort of "collector's item" one of the invitations to James Wilson's first law lecture in 1790. CARSON, *supra* note 1, at 14 n 2. He also owned a letter dated 1782 from George Washington to James Wilson promising to pay Wilson for serving as the preceptor of Washington's nephew. *Id.* at 16 n 1

134. *Id.*

135. Klingelsmith, *History*, *supra* note 10, at 22

136. *Id.*

law."¹³⁷ Even though Kilgore in fact became one of Hare's students ten years later, she did not persuade him that women could be effective attorneys.¹³⁸ No demonstration of female mental acumen could persuade him. According to Hare, a woman's legal status prevented her from becoming a lawyer.¹³⁹ When Kilgore applied after graduation to practice before his court in December 1883, Hare said, "[A] married woman is by law relieved of responsibility, and has not all the responsibility which devolves upon a man."¹⁴⁰ A woman law student might have been permissible; a woman lawyer was impossible.

Despite the fact that Kilgore was permitted to attend classes at the Law School does not mean that all extracurricular activities were coeducational. During this period, one of the most important activities at the law school, beyond classes and individual study, was the all-male Law Academy of Philadelphia.¹⁴¹ Founded in 1783, the stated purpose of the Law Academy was to "afford to student of law, and young members of the Bar, the means of improving themselves in legal and forensic accomplishments."¹⁴² Membership was limited to members of the Bar and law students.¹⁴³ New members were elected by a two-thirds vote of current members.¹⁴⁴ Student moot courts were held in an actual courtroom and presided over by faculty members such as J.I. Clark Hare, E. Coppeé Mitchell, and members of the Philadelphia and Pennsylvania judiciary such as George Sharswood, Russell Thayer, and Clement Penrose.¹⁴⁵ Membership in the Law Academy was a way for students to gain exposure to the other professionals before whom they would appear after admission to the bar. It was also a camaraderie-building social opportunity. One member described the post-argument activities of several students:

After our adjournment some of us were apt, in walking home, to stop for a *quantum sufficit* of liquid refreshment, which was like manna to the shorn lamb, and take sweet counsel together at one of

137. *Id.*

138. *Application of Mrs. Kilgore*, 14 WKLY NOTES OF CASES 30, 30 (C.P. Pa. 1883).

139. *Id.*

140. *Id.*

141. CONSTITUTION AND BY-LAWS OF THE ACADEMY OF PHILADELPHIA 3 (Philadelphia, Exchange Printing Office 1875) [hereinafter LAW ACADEMY CONSTITUTION].

142. CARSON, *supra* note 1, at 25; LAW ACADEMY CONSTITUTION, *supra* note 141.

143. Law Academy Constitution, *supra* note 141.

144. *Id.* at 6.

145. See, e.g., GEST, *supra* note 15, at 22; ARGUMENT LIST OF THE LAW ACADEMY OF PHILADELPHIA: SESSION OF 1868-1869 *passim* (1868); ARGUMENT LIST OF THE LAW ACADEMY OF PHILADELPHIA: SESSION OF 1869-1870 *passim* (1869); ARGUMENT LIST OF THE LAW ACADEMY OF PHILADELPHIA: SESSION OF 1882-1883 *passim* (1882) [hereinafter ARGUMENT 1882-1883]; ARGUMENT LIST OF THE LAW ACADEMY OF PHILADELPHIA: SESSION OF 1883-1884 *passim* (1883); ARGUMENT LIST OF THE LAW ACADEMY OF PHILADELPHIA: SESSION OF 1885-1886 *passim* (1885).

the quiet saloons, which then adorned Sansom Street, or stop at Finelli's for a half-dozen of his incomparable fried oysters washed down with a mug of ale.¹⁴⁶

This exercise of what Craig Biddle called "esprit de corps" did not include Kilgore as she was never a member of the Law Academy,¹⁴⁷ and even if she had been, convention and personal conviction would have likely kept her from joining her fellow students in the excursion.¹⁴⁸ This important aspect of legal education and student life remained the exclusive sphere of men, even though the school itself officially welcomed (or perhaps tolerated) a female student.

Although neither Kilgore nor any other women were members of the Law Academy, women were very much present to the students who did belong. The kinds of cases students argued indicate that gender relations were at the center of their legal discourse. A survey of the argument lists from the school year 1882-1883 (Kilgore's second year of law school) reveals that gender relations or the status of women was a primary issue in eight out of thirty-nine cases. If this number of cases is expanded to include those in which women figured as plaintiff or defendant without there being an explicit issue of gender in the matter, the Law Academy considered cases involving women in approximately one out of every three arguments that year.¹⁴⁹ Although on the one hand this figure merely indicates that cases students argued reflected a real world in which women sued and were sued, many of the arguments can be read as efforts made by the law students, indeed the legal system, to respond to changes in women's legal roles. Cases treated issues which ranged from the power of an abandoned wife to sue in her own name for breach of contract,¹⁵⁰ a woman's responsibility to pay for goods bought on credit where her husband later went bankrupt¹⁵¹ and the legality of divorce where a woman had separated herself from her husband for more than six months.¹⁵² In honing male skills of oral advocacy, men debated the legal status of women. So, even if admitting a woman to the University of Pennsylvania's Law Department did not seem to effect the institution in any substantive way, Kilgore's presence at the school was a constant reminder to her classmates that debate over the role of women in the law was not merely academic.

146. Gest, *supra* note 15, at 23-24.

147. Kilgore does not appear on the Law Academy's list of "Active Members and Their Addresses." ARGUMENT 1882-1883, *supra* note 145, at 5-11

148. Kilgore's husband was a strident temperance advocate. See generally KILGORE, DANGERS WHICH THREATEN THE REPUBLIC, *supra* note 24

149. ARGUMENT 1882-1883, *supra* note 145, *passim*

150. *Id.* at 18.

151. *Id.* at 19.

152. *Id.* at 26.

In Kilgore's first year at the University of Pennsylvania, 1881, students formed a school-based club like the Law Academy.¹⁵³ Named after Professor George Sharswood, the Sharswood Club was organized to help students hone skills of brief writing and oral advocacy—a kind of early moot court club.¹⁵⁴ All students were eligible for membership, but the group did not have an "open door" policy. Rather, three-quarters approval from current members was required to admit a new one.¹⁵⁵ That students at the University of Pennsylvania Law Department formed an exclusive club designed to develop skills of legal argumentation suggests the premium placed on practical preparation for their chosen profession.¹⁵⁶ This emphasis, according to historian Michael Grossberg, was a stress on masculine characteristics. Of nineteenth century lawyers, Grossberg writes:

[P]ractically served as the standard. Lawyers who penned tracts useful for practice, or elegant treatises that educated their brethren, won accolades. It was the impractical that elicited the dismissive professional epithets of the scholarly and bookish. Attorneys able to move a jury with a clever phrase or apt literary allusion won professional renown. Utility separated the manly advocate from the effete intellectual.¹⁵⁷

If debate was seen largely in terms of its preparatory value (as distinguished from debate for its own sake), a female law student could not participate in an activity like the Sharswood Club. That is, for those who believed as Judge Hare did, that women could not practice law,¹⁵⁸ a female member would be preparing without a specific, practical end—a highly wasteful activity.

IV. CHIVALROUS SPIRIT(S): THE TRANSITION TO THE MODERN ERA

The Law Department was not changed radically in any short-term sense by the admission of the first female student. From the time that she

153 CONSTITUTION AND LIST OF MEMBERS OF THE SHARSWOOD LAW CLUB OF THE UNIVERSITY OF PENNSYLVANIA 1881-1912 at 4 (1912)

154 *Id.*

155 *Id.*

156 Compare, for example, the club established by law students at the University of Wisconsin two years later. That group, the E. G. Ryan Society, resembled more a debating club and had no particular legal focus. JOHNSON, *supra* note 8, at 64-65.

157 Michael Grossberg, *Institutionalizing Masculinity: The Law as a Masculine Profession*, in MEANINGS FOR MANHOOD, CONSTRUCTIONS OF MANHOOD IN VICTORIAN AMERICA 133, 134 (Marc C. Carnes & Clyde Griffen eds., 1990). It is precisely the lack of practicality that would have been the reason for the difficulty the E. G. Ryan Society at the University of Wisconsin had in finding members. JOHNSON, *supra* note 8, at 64-65. Johnson, however, claims that the difficulty was because "law students even then may have been questioning the image of the lawyer as advocate." *Id.* at 65.

158 See *supra* notes 137-07 and accompanying text.

graduated in 1883 until 1895, no other women followed in Kilgore's path.¹⁵⁹ By 1898, two more women could be counted as alumnae of the Law Department.¹⁶⁰ By 1901, "the co-ed at Penn's Law School [had] . . . become a permanent fixture."¹⁶¹ Yet, fixtures or not, women remained unintegrated into the established student groups. Writing in 1901, one commentator observed:

On several occasions women have been nominated for membership in the various students' clubs and law societies. These clubs being organized for social purposes as well as for the discussion of legal problems, have never seen fit to elect a woman to membership; indeed, it is doubted whether a woman ever seriously desired to become a member, or whether a name has ever been presented by a member with the hope that his nominee would be elected. The gentlemanly and serious spirit with which each of these nominations were considered, however, has never resulted in the candidate being "black balled," as is invariably done with undesirable nominees. The delicacy displayed by the men whenever one of these nominations has been considered again shows the chivalrous spirit which prompts them to postpone action, to lay the nominations on the table, or dispose of it in some other way without giving offence to anyone.¹⁶²

But with the model of a successful, active female lawyer like Kilgore, who had won a protracted battle to practice in the Pennsylvania courts,¹⁶³ brief writing and oral arguments could no longer be considered impractical preparatory actions for female students. Yet male students consistently excluded their female counterparts.¹⁶⁴ That women did indeed want to belong to a club like the Sharswood Club is clear in their reaction to the "chivalrous spirit" of the men.¹⁶⁵ Female students formed their own moot court club, known as the John Marshall Law Club, and held the same kind of mock trials that the men did.¹⁶⁶ Denied equal participation in the law school,

159 Klingelsmith, *History*, *supra* note 10, at 230-31. Isabel Darlington graduated at the top of her class in 1897. "This brilliant young woman, like her predecessor, had to overcome many obstacles before she was admitted to the local Bar of her county, and only succeeded after a bitter and prolonged contest." *Advantage of Women Law Students in Philadelphia*, PHILADELPHIA EVENING NEWS, Oct. 26, 1901, at 2; see also Maurer, *supra* note 24, at 849.

160 *Advantage of Women Law Students in Philadelphia*, *supra* note 159, at 2; see also Maurer, *supra* note 24, at 850.

161 *Advantage of Women Law Students in Philadelphia*, *supra* note 159, at 2.

162 *Id.*

163 See generally Maurer, *supra* note 24, at 841-49.

164 *Id.*

165 *Id.*

166 *Advantage of Women Law Students in Philadelphia*, *supra* note 159, at 2.

women created opportunities for themselves.

By the time women made this kind of organizational mark on the school, the Law Department as an institution had begun to resemble the Law School as it exists today. In 1888, the educational program was lengthened to three years.¹⁶⁷ In 1895, admissions standards were raised, and students had to show that "their previous training has been such as to admit them to the college department."¹⁶⁸ In 1896, applicants had to take an examination administered by the Law Department which covered subjects such as history, math, and geography.¹⁶⁹ Furthermore, the effects of the case law method began, at last, to be felt at the Law School. Between 1887 and 1891, Professor A. Sydney Biddle abandoned the lecture method of teaching for a more case-based format.¹⁷⁰ By 1900, Biddle's approach to teaching with its emphasis on the "concrete problems which would meet [the student] in the practice of the profession" had become "the attitude of the present teaching force."¹⁷¹ The teaching force expanded from five in Kilgore's time to seventeen in 1900.¹⁷² Four of these seventeen were full-time academics.¹⁷³ The hiring trend shifted away from the judge and practitioner and in favor of the professor who devoted all of his attention to the Law Department.

Among the faculty members in 1900 was William Draper Lewis, the school's first full-time dean.¹⁷⁴ Lewis was a graduate of the "modern" Law Department. A member of the Class of 1891, Lewis experienced first-hand the heightened admission standards, the new teaching methods implemented by A. Sidney Biddle and the three-year program. Lewis was a proponent of the modern law school and wanted to make legal education even more rigorous.¹⁷⁵ He believed that law schools should impose a strict preparatory "prelaw" program on prospective applicants.¹⁷⁶

167. Klingelsmith, *History*, *supra* note 10, at 233.

168. *Id.* at 236.

169. Douglas, *supra* note 29, at 145.

170. Klingelsmith, *History*, *supra* note 10, at 245.

171. *Id.*

172. *Id.* One contemporary lawyer noted that

the inductive or case system as taught at Pennsylvania has proved exceedingly satisfactory, and appears to be attended with the best results. . . . [The case method] has fixed most firmly in [the student's] mind the principles thus learned, and this method of learning has best accustomed him to legal reasoning and modes of thought.

Douglas, *supra* note 29, at 145-46.

173. *Id.*

174. Klingelsmith, *History*, *supra* note 10, at 236.

175. HARNØ, *supra* note 77, at 91-92.

176. *Id.*

One of the most significant events under the leadership of Lewis was the physical transformation of the Law Department.¹⁷⁷ Instead of its downtown location at Sixth and Chestnut Streets, the Law Department was relocated in 1900 to a brand new building in West Philadelphia at Thirty-Fourth and Chestnut.¹⁷⁸

The movement to the new building near the main campus of the University of Pennsylvania related to two changes in the Law Department. First, the case law's companion emphasis on law as a science¹⁷⁹ made law seem much more like the disciplines of biology and chemistry.¹⁸⁰ Geographic affiliation with these departments would therefore have seemed logical to the Law Department's faculty and trustees.¹⁸¹ Second, changes in the student body meant that students were no longer being drawn exclusively from Philadelphia.¹⁸² By 1900, an estimated fifty percent of students came from outside the city, many from other states.¹⁸³ The closer geographic affiliation reflected the notion of:

the duty of a University towards a student coming from a distance [which] does not end even with providing him with instruction and a place to study. It should provide him for the time being with a home. For this reason it became necessary that the Law Department's building should be near the other University buildings, where the student could be insensibly drawn into the life of the University and have healthy occupation for his hours of leisure.¹⁸⁴

Underlying this theory, one can detect that the vision of the law student had radically changed from 1871 when Kilgore first applied for admission to the Law Department. No longer were students' lives centered on the law offices

Lewis recognized the significance of the movement to require college work as a condition to entering upon the study of law. He did not disparage this development. He assumed that college work was essential. His address centered on the substance of the college work. He contended that law schools should do more than set up prelegal requirements; that they should also specify courses and fields of knowledge that had meaning and educational content for the prospective law student.

Id. at 91.

¹⁷⁷ Douglas, *supra* note 29, at 146-47.

¹⁷⁸ *Id.*; see also Klingelsmith, *History*, *supra* note 10, at 235-36.

¹⁷⁹ See *supra* notes 77-87 and accompanying text.

¹⁸⁰ See generally Douglas, *supra* note 29.

¹⁸¹ Cf. Douglas, *supra* note 29, at 147 ("It is believed that even to a greater extent than now the science of the law will be taught as other University subjects are taught, and that the main burden of the teaching will rest upon men who do nothing else.")

¹⁸² Klingelsmith, *History*, *supra* note 10, at 246.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 246-47.

and that kind of practical training. Instead, by 1900 the preponderance of a student's learning (and life) occurred at the University. Where students had no other ties to the city, perhaps even no other responsibilities, the school then had some kind of obligation to provide the student with "healthy occupation for leisure."¹⁸⁵

Although the movement of the Law Department to a new spacious building in West Philadelphia marked, in a sense, a historical departure as well as a physical one, the school remained linked to its history by the very building itself. A committee consisting of representatives from the Law Department's faculty and board of trustees chose a number of names to be inscribed in medallions on the outside of the new building.¹⁸⁶ Judge Hare, Kilgore's teacher and foe in her struggle to practice in the Philadelphia courts,¹⁸⁷ was the one who determined the placement of the names on the various sides of the building. Not only did the medallions contain names like Tribonian and Justinian, but Blackstone, Kent, and Story as well.¹⁸⁸ Near the entrance to the law school were the inscriptions "Law Department of the University First Professor James Wilson 1790" and "Law Department of the University Reorganized by George Sharswood 1850."¹⁸⁹ Quite literally, these inscriptions reminded students, faculty, and all passers-by of Law Department's intellectual and historical ties.

CONCLUSION

Despite many changes in the substance and style of legal education along with a transformation in the student body which received it, the University of Pennsylvania Law Department in 1900 was permanently bound to the history of the legal profession as well as its own institutional past. Seventeen years after Carrie Burnham Kilgore graduated, and twenty seven years after she had made her first demand, women were not represented in the law school in any great number.¹⁹⁰ The conception of law, indeed legal education, as a male pursuit which was a hallmark of Kilgore's era continued into the twentieth century. Only when women began attending the school in great enough numbers to form their own moot court clubs and the like did they begin to actively challenge the fairness of this premise. In establishing

185. *Id.* at 247.

186. DEDICATION OF THE NEW BUILDING, *supra* note 37, at 205. The members of the Joint Committee who represented the Board of Trustees were: Mr. Samuel Dickson, the Chairman, Mr. John B. Gest, Mr. Samuel W. Pennypacker, Mr. Joseph G. Rosengarten and Mr. Walter George Smith. Mr. George Wharton Pepper, Mr. Hampton L. Carson, and Mr. William Draper Lewis represented the Faculty of the Department of Law. *Id.*

187. *See supra* notes 135-07 and accompanying text.

188. DEDICATION OF THE NEW BUILDING, *supra* note 37, at 206-07.

189. *Id.* at 208.

190. *See supra* notes 123-25 and accompanying text.

an organization such as the John Marshall Club, women in the Law Department took responsibility for their own educational experience when the structure of the institution itself failed to provide the same learning for men and women. Implicit in women's increased enrollment and involvement was their collective answer to a question posed by a toasting guest at the new building's dedication: "The names of the great Philadelphia lawyers of the past have fittingly been identified with the new building. May we not anticipate that their mantle will fall upon those to whom will be committed the name and fame of the . . . lawyer for the century that is to come?"¹⁹¹ Bearing the mantle of their male predecessors, the first female law students were more than mere progeny of the "daughter of liberty wedded to law."¹⁹² In challenging the masculine nature of legal education, women like Kilgore rightfully became shapers of the law itself and defenders of liberty in their own right.

191. *Id.* at 183.

192. CARSON, *supra* note 1, at 37.