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Taunya Lovell Banks

University of Maryland School of Law, tbanks@law.umaryland.edu

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SETTING THE RECORD STRAIGHT: MARYLAND'S FIRST BLACK WOMEN LAW GRADUATES

TAUNYA LOVELL BANKS*

INTRODUCTION

Until 1888, twenty years after the ratification of the Fourteenth Amendment,¹ the State of Maryland, by statute, restricted the practice of law to *white males*.² Thus, both race and gender posed insurmountable barriers to black women, white women, and black men who wanted to practice law in Maryland. Yet black and white women and black men did practice law in other states. In 1844, Macon Bolling Allen became the first known black lawyer when he was admitted to practice law in the State of Maine.³

Before the Civil War, no Southern state had admitted black Americans to practice law.⁴ Even after the War ended, Maryland, like other Southern states, continued to bar all blacks from the practice of law.⁵ Nevertheless, a few black male lawyers practiced before Mary-

* Jacob A. France Professor of Equality Jurisprudence, University of Maryland School of Law. The author thanks her colleague David Bogen for access to his earlier research on black law students at the University of Maryland School of Law, Assistant Dean James Forsyth, and research assistant Marianne Koch, class of 2005, for their assistance with this Article.

1. U.S.C.S. CONST. amend. XIV, explanatory notes (2004) (citing July 9, 1868 as the date of ratification of the Fourteenth Amendment). Section I of the Fourteenth Amendment reads:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States

U.S. CONST. amend. XIV, § 1. The question raised by the early bar admission cases was whether access to the practice of law constituted a privilege and immunity of citizenship guaranteed by the Fourteenth Amendment. David S. Bogen, *The Transformation of the Fourteenth Amendment: Reflections from the Admission of Maryland's First Black Lawyers*, 44 MD. L. REV. 939, 1020, 1032-33 (1985).

2. Bogen, *supra* note 1, at 1033.

3. J. CLAY SMITH, JR., EMANCIPATION: THE MAKING OF THE BLACK LAWYER, 1844-1944, at 8 (1993).

4. *Id.* Smith notes that the only other known black lawyers prior to the Civil War were Robert Morris, Sr., admitted to the Massachusetts bar in 1847, *id.* at 96; Aaron Alpeoria Bradley, admitted in Massachusetts in 1856, *id.* at 191; George Boyer Vashon, admitted in New York in 1848, *id.* at 152; and John Mercer Langston, admitted to the Ohio bar in 1854, *id.* at 407.

5. David Skillen Bogen, *The First Integration of the University of Maryland School of Law*, 84 MD. HIST. MAG. 39, 39 (1989). Professor Bogen noted that as recently as 1884 the Maryland General Assembly had considered and rejected a bill that would have eliminated the

land federal courts as early as 1875.⁶ In 1885, a Baltimore Supreme Court judge admitted Everett J. Waring, a black lawyer, to practice in the Baltimore Supreme Bench.⁷

Despite Waring's admission to practice before the Baltimore Supreme Court, his ability to practice law in other state courts was in question based on an 1877 Court of Appeals of Maryland decision, *In re Taylor*,⁸ denying blacks admission to practice law in state courts.⁹ It took three more years before the Maryland legislature removed the racial restriction from the bar admission statute. In 1888, the Maryland legislature, at the urging of the Maryland Law School Dean, John Prentiss Poe, lifted the racial restriction from the bar admission statute,¹⁰ thus removing any questions about the legality of Waring's ability to practice law in Maryland state courts.¹¹ Nevertheless, the gender

racial restriction on the practice of law. *Id.* Editorials in the *Baltimore Sun* supported ending the racial restriction. *Id.* n.4.

6. See *In re Taylor*, 48 Md. 28, 28-29 (1877). The Court of Appeals of Maryland noted that a black applicant for admission to the Maryland State Bar was already admitted to practice in the federal circuit and district courts in Baltimore. *Id.* Blacks could be admitted to federal courts but not state courts based on the notion of dual sovereignty and the fact that each sovereign, federal and state, has control over admission to practice in its courts. *Id.* at 33-34; see also Stuart O. Simms, *The Bicentennial of the United States District Court for the District of Maryland, 1790-1990: V. Integration of the Bar and Bench and Civil Rights Litigation*, 50 MD. L. REV. 40, 57-58 (1991) (reporting that in 1875, James Harris Wolff, a Harvard Law School graduate, became the first black lawyer admitted to practice before the federal courts in Maryland, followed shortly by Charles S. Taylor).

7. Bogen, *supra* note 1, at 1041. But see Simms, *supra* note 6, at 57.

In 1857, Judge Z. Collins Lee of the Baltimore Superior Court examined Edward Garrison Draper, a black graduate of Dartmouth College who had studied law in the offices of a retired Baltimore lawyer. Judge Lee furnished Draper with a certificate attesting that he was "qualified in all respects to be admitted to the Bar in Maryland, if he was a free white citizen of the State."

Id.; see also SMITH, *supra* note 3, at 142 (indicating that Draper nevertheless received a certificate of competence to take to Africa where he emigrated to practice law).

8. 48 Md. 28 (1877).

9. *Id.* at 33-34. Charles Taylor, a black lawyer licensed to practice in Massachusetts, moved to Baltimore and was admitted to practice law in the Circuit and District Courts of the United States in the City of Baltimore. *Id.* at 28-29. However, Taylor's application for admission to practice in the state courts was denied solely because of his race. *Id.* at 31. The court reasoned that the legislature's intent to limit the practice of law to white men was clearly evidenced by its reenactment of the provision including racial restriction in both 1872 and 1876, after the ratification of the privileges and immunities clause of the Fourteenth Amendment. *Id.* at 30-31; see also Bogen, *supra* note 1, at 941 (noting that Taylor was denied admission to the bar based on his race).

10. Bogen, *supra* note 1, at 1043.

11. See *id.* (noting that Waring was admitted to practice before the Court of Appeals that same year). No doubt the impetus for Dean Poe's advocacy was the Law School's admission of two black students. See *infra* notes 31-32 and accompanying text (examining the admission, in 1887, of the first black students to the University of Maryland School of Law).

restriction on bar admission remained unchanged. In 1888, the practice of law in Maryland, and most states, remained the domain of men, a position approved by the highest court of the land in *Bradwell v. Illinois*.¹²

I. THE ADMISSION OF WOMEN TO THE MARYLAND BAR

In *Bradwell*, an 1872 decision, the United States Supreme Court upheld the State of Illinois' denial of Myra Bradwell's application to practice law, ruling that admission to the practice of law was not a privilege and immunity of citizenship.¹³ Nevertheless, women did practice law in the late nineteenth century, even before *Bradwell*. In 1869, Bell Babb Mansfield, commonly believed to be the first woman lawyer of any race in the United States, was admitted to practice law in Iowa.¹⁴ Three years later, a black woman named Charlotte E. Ray became the first known black woman lawyer when she was admitted to practice law in the District of Columbia.¹⁵ Ironically, Ray was admitted to the bar in 1872,¹⁶ the same year that the Supreme Court handed down the *Bradwell* decision.

Although Illinois' law was gender neutral, the state court concluded that the legislature never intended women to practice law.¹⁷ In contrast, Maryland's law specifically limited the practice of law to men.¹⁸ Despite the statutory male-only restriction on bar admission, one of the earliest women lawyers in the United States, Margaret Brent, lived and practiced in Maryland.¹⁹ Although Margaret Brent was not admitted to the Maryland bar, she was an *attorney-in-fact*, a person designated as the legal representative for a spouse, or absentee property owner, or as an executrix or a *femme sole*, acting to protect

12. 83 U.S. 130, 139 (1872).

13. *Id.* The State of Illinois denied Bradwell's application to the bar because she was married and, therefore, lacked the legal capacity to enter into a contract with her clients. *Id.* at 131.

14. KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA 1638 TO THE PRESENT* 11 (1986).

15. *Id.* at 146.

16. *Id.*

17. *Bradwell*, 83 U.S. at 140 (Bradley, J., concurring).

18. See The Honorable John Carroll Byrnes, *Commemorative Histories of the Bench and Bar: In Celebration of the Bicentennial of Baltimore City 1797-1997*, 27 U. BALT. L.F. 5, 17 (1997) (referring to the provision of the Maryland Constitution that excluded blacks and females from the Maryland Bar).

19. Sophie H. Drinker, *Women Attorneys of Colonial Times*, 56 MD. HIST. MAG. 335, 349-50 (1961).

her own property interests.²⁰ Brent's name appears in Maryland court records 124 times between 1642 and 1650.²¹

Despite the Brent precedent, Maryland did not formally allow women to practice law until Etta H. Maddox was admitted to the bar in 1902.²² Her admission was not easily won. First, the Court of Appeals of Maryland denied Maddox, and women generally, the right to practice law in the State of Maryland, citing *In re Taylor* and *Bradwell*.²³ Rather than foreclose the question of women as lawyers, as had the Supreme Court in *Bradwell*, the Court of Appeals of Maryland said: "If the General Assembly thinks, at its approaching session, that females ought to be admitted to the bar[,] it can so declare."²⁴ It took another year, and a bitter legislative debate, before the General Assembly enacted a bill permitting women to practice law in Maryland.²⁵

Etta Maddox was admitted to practice in Maryland state courts only after the state legislature changed the bar admission law.²⁶ Still, over four decades passed before the first known black woman, Jane Cleo Marshall Lucas, was admitted to practice law in Maryland.²⁷ Like Everett Waring, the first known black lawyer licensed in Maryland,²⁸ neither Etta Maddox nor Jane Cleo Marshall Lucas was a University of

20. *Id.* at 349-51.

21. *Id.* at 349. Brent was an untrained attorney-in-fact, whose conspicuousness and professionalism approached the standards set by trained licensed lawyers of the time. *Id.* at 349-50. There was nothing unusual about women acting in this capacity during the colonial era when some states prohibited lawyers from practicing and colonial wives frequently acted as attorneys for their husbands. *Id.* at 336; see also Larry Berkson, *Women on the Bench: A Brief History*, 65 JUDICATURE 286, 287 (1982) (explaining that Brent was not the only Maryland woman acting as an attorney-in-fact during the colonial era, and that in 1650 Gertrude James of Kent Island litigated two property cases, while in 1680 Sarah Bland "began her legal career by settling her husband's estate").

22. MORELLO, *supra* note 14, at 37.

23. *In re Maddox*, 93 Md. 727, 728, 736, 50 A. 487, 487, 490 (1901).

24. *Id.* at 736; see also Peter Wallenstein, "These New And Strange Beings": *Women in the Legal Profession in Virginia, 1890-1990*, 101 VA. MAG. HIST. & BIO. 193, 202 (1993) (discussing Maddox).

25. Wallenstein, *supra* note 24, at 202.

26. Berkson, *supra* note 21, at 290.

27. J. Clay Smith, Jr., *Black Women Lawyers: 125 Years at the Bar; 100 Years in the Legal Academy*, 40 HOW. L.J. 365, 376 (1997). Shortly after passing the bar, Lucas was hired as the first woman to teach full-time at Howard Law School. Jane Cleo Marshall Lucas, *Breaking New Ground with Grace: The University of Michigan's First Black Woman Law Graduate*, in REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS 88 (J. Clay Smith, Jr., ed., 1998).

28. Smith, *supra* note 3, at 144.

Maryland School of Law graduate.²⁹ Maryland lagged behind other states on matters of race and gender.³⁰

II. THE ADMISSION OF AFRICAN-AMERICAN MEN TO THE MARYLAND SCHOOL OF LAW

The racial integration of the University of Maryland School of Law was a tortured process. In 1887, the Law School admitted, for the first time, two black men.³¹ The two students, Harry Sythe Cummings and Charles W. Johnson, graduated in 1889, the same year that two more black students, William Ashbie Hawkins and John L. Dozier, were admitted to the University of Maryland School of Law but excluded a year later.³² It took a lawsuit in 1935, *Murray v. University of Maryland*, before another black male, Donald Gaines Murray, was admitted to the Law School.³³ According to Law School catalogues, following Murray's graduation in 1938, only three other blacks graduated from the Law School between 1939 and 1949, none of whom were women.³⁴ A turning point was the class that entered the

29. Lucas graduated from the University of Michigan Law School. *See id.* at 88. The University of Maryland may have a tenuous connection with Etta Maddox. The historical sketch in the 1913 University of Maryland catalogue states that the Baltimore Law School and the Baltimore University School of Law merged in 1911 under the name of the Baltimore Law School and then merged into the University of Maryland School of Law at the beginning of the 1913-14 academic year. *Historical Sketch, CATALOGUE AND ANNOUNCEMENT: THE LAW SCHOOL OF THE UNIVERSITY OF MARYLAND 1913*, at 8. But that history is contested. *See* Byrnes, *supra* note 18, at 20. Judge Byrnes writes that the Baltimore Law School later became the Mount Vernon School of Law and ultimately became the University of Baltimore School of Law. *Id.* Perhaps both accounts are correct and Judge Byrnes assumes, incorrectly, that the Baltimore University School of Law was really the forerunner of the University of Baltimore School of Law.

30. *See, e.g.,* *Loving v. Virginia*, 388 U.S. 1, 6 n.5 (1967) (noting that Maryland still prohibited whites and blacks from marrying and only "[a]fter the initiation of this litigation, [did] Maryland repeal[] its prohibitions against interracial marriage, Md. Laws 1967, c. 6, leaving Virginia and 15 other States with statutes outlawing interracial marriage"). In contrast, Maryland is one of a handful of states whose constitution contains an equal rights amendment. *See* MD. CONST. art. 46 ("Equality of rights under the law shall not be abridged because of sex."); *see also* *State v. Burning Tree Club, Inc.*, 315 Md. 254, 269, 554 A.2d 336, 374 (1989) (stating that Maryland's equal rights amendment "render[s] state-sanctioned sex-based classifications suspect.").

31. Bogen, *supra* note 5, at 39-40.

32. *Id.* at 39-40, 42. Hawkins and Dozier were excluded because the regents feared their presence would cause enrollment losses. *Id.* at 42-43.

33. *Univ. of Md. v. Murray*, 169 Md. 478, 182 A. 590 (1935).

34. Records of David Bogen (on file with author). The graduates were Calvin Douglas, a Shaw College graduate, in 1940; Ernest Lee Perkins, a Lincoln graduate, in 1944; and William Murphy, an Oberlin graduate, in 1947, although Murphy claims he graduated in 1946. *The History Makers: Honorable William Murphy, Sr.*, at <http://www.thehistorymakers.com/biography/biography.asp?bioindex=79&category=lawM> (last visited Aug. 30, 2004).

Law School in 1946. It contained twenty African Americans, three of whom were black women.³⁵

III. THE ADMISSION OF WOMEN TO THE MARYLAND SCHOOL OF LAW

A historical sketch of the Law School first appeared in the 1913–1914 Law School catalogue.³⁶ The catalogue touts all the arrangements “affording to every young *man*,” with the requisite training, the opportunity to qualify for the bar.³⁷ The phrase “young man” was used in all the Law School catalogues until 1925, when the term was changed to “students.”³⁸ The change in terms reflects the reluctant acknowledgement by the Law School of women’s presence within the student body.³⁹

In 1917, Sarah Rosenberg Burke, a white woman, was denied admission to the University of Maryland School of Law because there were no toilet facilities for women.⁴⁰ When the Law School admitted its first women students in 1920,⁴¹ the women had to use the toilets in the hospital across the street from the Law School.⁴² By 1946, how-

35. Records of David Bogen (on file with author).

36. *Historical Sketch*, CATALOGUE AND ANNOUNCEMENT: THE LAW SCHOOL OF THE UNIVERSITY OF MARYLAND 1913, at 8. According to the catalogue entry, although the first faculty of law of the University of Maryland was appointed in 1813, no regular law school was operated until 1823. *Id.* In 1836 operation of the school was suspended until the Law School was reorganized in 1869, and regular instruction began again in 1870. *Id.*

37. *Id.* at 8-9.

38. *See Announcement of Important Changes*, CATALOGUE AND ANNOUNCEMENT OF THE SCHOOL OF LAW 1925, at 10 (highlighting educational opportunities available for students at the law school).

39. *See generally id.* at 10-13 (using the term “student” instead of the term “male,” but nonetheless using the masculine adjective “his” when discussing the students).

40. Byrnes, *supra* note 18, at 20. Several of the early women law graduates who pressed to get women the right to serve on juries were told that the courthouse had no toilets for women. Lacy Carter, *Two Lady Lawyers Carry On The Fight For Women's Rights*, BALT. (EVE.) SUN, June 19, 1970, at B2. Maryland was not alone in linking the admission of women law students to access to toilet facilities. Specifically, “[i]n 1973, Harvard Divinity School ‘reluctantly agreed that a limited number of women could sit for entrance exams,’ but the administration refused to let the women use the only bathroom in the building. Instead, they were offered facilities across the street, a 15 minute trip.” Taunya Lovell Banks, *Toilets As A Feminist Issue*, 6 BERKELEY WOMEN'S L.J. 263, 284 (1990-91). In 1992, at the urging of former State Senator Barbara Hoffman, the General Assembly, after three tries, enacted a “potty parity” law requiring, at a minimum, an equal number of toilets for women and men in all new buildings intended for public entertainment. Karl Vick, *What A Relief! A Welcome Perk For Female Fans*, WASH. POST, Sept. 12, 1997, at B1.

41. *Commencement*, CATALOGUE AND ANNOUNCEMENT OF THE SCHOOL OF LAW 1923, at 24. The first women admitted were Olive Cole, Fannie Kurland, Ida Clare Lutzky, Marie White Pressman, and Helen I. Sherry. *Id.*

42. Byrnes, *supra* note 18, at 20. Furthermore, according to Jeanette Rosener Wolman, a 1924 law student, “in those days women could only take courses in the night school.” Fred Rasmussen, *Sarah Burke, pioneering lawyer*, BALT. (EVE.) SUN, Mar. 20, 1994, at 4B.

ever, the Law School accommodated both black male and white female law students.

In 1942, Emily Orchard, a Morgan State graduate,⁴³ became the first known black woman admitted to the Law School but she did not graduate.⁴⁴ No black woman enrolled in the Law School after Orchard until 1946, when three black women were admitted.⁴⁵

The three black women came from diverse backgrounds. Elaine Carsely Davis, a Baltimore native and graduate of Douglass High School, attended Coppin State and Morgan State, receiving her degree in 1943.⁴⁶ She entered law school as a married twenty-five-year-old mathematics teacher at Douglass High School.⁴⁷ Virginia Elizabeth Jones was a single case worker with the Department of Public Welfare.⁴⁸ Juanita Jackson Mitchell was a married thirty-three-year-old characterized by *The Afro-American* as “a housewife and civic worker”⁴⁹—an understatement.

Mitchell, who came from a well known activist family, had a reputation as a civil rights activist in her own right.⁵⁰ Born in Hot Springs, Arkansas but raised in Baltimore, she attended Morgan State College after graduating from Douglass High School in Baltimore, earning her bachelor’s degree from the University of Pennsylvania in 1931 at the age of eighteen.⁵¹ Returning to segregated Baltimore, and unemployment, she decided that the young adults of the city needed a place to discuss current issues and problems.⁵² By the fall she had

Prior to 1925, all law classes were held in the evening from 6-8 p.m. See, e.g., “Course of Instruction,” CATALOGUE AND ANNOUNCEMENT OF THE SCHOOL OF LAW 13 (1925).

43. *Charm and Brains Combined*, AFRO AM. LEDGER (Balt.), June 20, 1936, at 19. Emily V. Orchard was a 1930 graduate of Douglass High School, a 1934 graduate of Morgan College, and in 1936 she received a master’s degree in sociology from the University of Pennsylvania. *Id.*

44. Orchard’s name only appears in the law school for one year, 1942. Records of David Bogen (on file with author).

45. *20 Attending University of Maryland Law School*, AFRO-AM. LEDGER (Balt.), Oct. 19, 1946, at 20.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*; see also *Maryland Women’s Hall of Fame: Juanita Jackson Mitchell*, MARYLAND STATE ARCHIVES, at <http://www.mdarchives.state.md.us/msa/educ/exhibits/womenshall/html/mitchell.html> (2001) (last visited Aug. 30, 2004).

50. *Juanita Mitchell, An Activist for Life!*, THE AFRICAN AMERICAN REGISTRY (Jan. 2, 2002), at http://www.aaregistry.com/african_american_history/2147/Juanita_Mitchell_an-activist_for-life.

51. *Id.*

52. *Maryland Women’s Hall of Fame*, *supra* note 49.

convened the first meeting of the City-Wide Young People's Forum.⁵³ Mitchell also helped her activist mother, Lillie M. Carroll Jackson, president of the Baltimore Chapter of the National Association for the Advancement of Colored People (NAACP), and the charismatic religious figure Prophet Kiwah Costonie, organize a street-level campaign called "Buy Where You Can Work," that boycotted white-owned business in black neighborhoods that refused to hire black Americans.⁵⁴ Based no doubt on her work with black youth in Baltimore, Juanita Mitchell was hired as a special assistant to Walter White, Executive Secretary for the national NAACP.⁵⁵ From 1935 until 1938, she worked for the organization as its first national youth director.⁵⁶

Of the three black women admitted to the Law School in 1946, only Elaine Odeal Carsley Davis expressed no desire to practice law. She is quoted in a 1946 article from *The Afro-American* newspaper as saying that her aim in attending law school was "to gain a general working knowledge of law."⁵⁷ Davis and her husband, Clarke Davis, a housing project manager, both enrolled in the evening division of the Law School.⁵⁸ A photograph published in the October 26, 1946, issue of *The Afro-American* shows the couple sitting next to each other in class.⁵⁹ There is no record of Clarke Davis graduating from Law School.

Elaine Davis' grades at the end of her first year were high enough that she and Juanita Jackson Mitchell were invited to apply for the Law Review.⁶⁰ After her first year, Davis seemed to lose interest in law school. Davis' grades declined a bit each successive year until her graduation.⁶¹

53. Genna Rae McNeil, *Youth Initiative in the African American Struggle for Racial Justice and Constitutional Rights: The City-Wide Young People's Forum of Baltimore, 1931-1941*, in *AFRICAN AMERICANS AND THE LIVING CONSTITUTION* 56, 60 (John Hope Franklin & Genna Rae McNeil eds., 1995). The forums, held every Friday evening, attracted large crowds of youth from all socio-economic levels. *Id.* Some of the speakers attracted thousands of people, including whites from Johns Hopkins and Goucher College. *Id.* at 63-64.

54. Andor Skotnes, "Buy Where You Can Work": Boycotting for Jobs in African-American Baltimore, 1933-34, 27 *J. SOC. HIST.* 735, 735, 751 (Summer 1994).

55. Juanita Mitchell, *An Activist for Life!*, *supra* note 50.

56. *Mitchell Family of Civil Rights Activists Gives Papers to the Library of Congress*, at <http://www.loc.gov/today/pr1997/97-037> (last visited Aug. 30, 2004).

57. *20 Attending University of Maryland Law School*, *supra* note 45, at 20.

58. *Id.*

59. *20 In U. of Md. Law Classes*, *AFRO-AM. LEDGER* (Balt.), Oct 26, 1946, at 20.

60. *Honored at Law School*, *AFRO-AM. LEDGER* (Balt.), Dec. 6, 1947, at 3.

61. Law School Transcript (on file with author).

The law school environment did not seem overly hostile to the three black women.⁶² An article from the May 12, 1948, *Baltimore Sun* reprinted in the Congressional Record says that there were twenty-four African Americans enrolled in the Law School student body of 400, and the "13-year-old experiment in inter-racial public education is working so quietly . . . that the State is hardly aware of it."⁶³ Juanita Mitchell is quoted as saying of the atmosphere in law school: "There is no segregation at all, and relations are completely good."⁶⁴ Ever the social activist, Mitchell added: "All the American people need is leadership, but sometimes the colored people have to take the initiative, as they did in the *Murray* case Just by way of contrast I can look out of a classroom and see a hospital sign across the street; colored entrance."⁶⁵

The May 12 article also says that Juanita Mitchell and Elaine Davis were on the Law Review contributing articles.⁶⁶ There is no record of Elaine Davis being a journal member. Juanita Mitchell, however, is listed as a member of the 1949 *Maryland Law Review* editorial board.⁶⁷ Further, Mitchell, the only woman of any race listed on the editorial board for those years, published an article. Not surprisingly, the article was about civil rights.⁶⁸

In 1947, Mitchell, Davis, and Jones were joined by another woman, Alabama-born⁶⁹ Lena King Lee.⁷⁰ Lee came to Maryland in 1927, teaching first in the Annapolis public schools until she moved to Baltimore in 1931.⁷¹ Lee continued teaching in the Baltimore City Public School system, eventually becoming a principal.⁷² She entered the University of Maryland School of Law at the urging of her hus-

62. *Races Mingle Smoothly 13 Years at University of Maryland*, BALT. (EVE.) SUN, May 12, 1948, reprinted in CONG. REC., App. A3547 (1948).

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. See Student Editorial Board, 10 MD. L. REV. 335, 335 (1949) (listing the Student Editorial Board).

68. *Unenforceability of Racial Restrictive Covenants*, 10 MD. L. REV. 263 (1949). During this period, authors of student pieces were unidentified, but anecdotal information indicates that Mitchell told people that this was her article.

69. Eric L. Clark, "Yes I Can" Profile: Attorney Lena S. King Honored for Life's Work, CRISIS, Feb.-Mar. 1996, at 32.

70. Robert Hilson, Jr., *Community's Voice, Lena Lee*, BALT. SUN., Feb. 6, 1996, at 1B. Lee graduated from the University of Maryland School of Law in 1951, "becoming only the third African American woman to receive a law degree from the school." Clark, *supra* note 69, at 32.

71. Betty Lynne Leary, *Her Spirit Moves Many*, JD MAG., Summer 2002, at 54.

72. *Id.*

band, Robert Lee, while maintaining her employment in the public schools.⁷³

Baltimore, in 1946, was still a very racially segregated community with segregated schools and colleges. Mitchell and Lee, however, had prior experience with integrated classrooms where they were in the distinct minority. As mentioned previously, Mitchell was a graduate of the University of Pennsylvania,⁷⁴ and Lee attended the predominately white public schools in New Kensington, Pennsylvania before earning degrees from Cheyney Training School for Teachers and Morgan State, and a master's degree from New York University.⁷⁵ It is unclear whether their prior experiences in integrated learning environments explain the seeming ease of their acculturation to law school. In contrast, Elaine Davis and Virginia Jones received their education at racially segregated institutions. Both completed their undergraduate education at Morgan State College.⁷⁶ Davis performed well and graduated,⁷⁷ but Jones withdrew by the fall of 1948 due to poor grades.⁷⁸

In 1948, Verda Welcome, a Morgan State graduate with a Masters degree from New York University,⁷⁹ was part of the first year day class, but had withdrawn by Fall 1950,⁸⁰ leaving Lena Lee as the sole black woman in law school after the graduation of Mitchell and Davis in 1950.⁸¹ In 1951, Norma Jackson, a Fisk University graduate,⁸² entered the first year day class and remained the sole black woman law student at Maryland until she graduated in 1955.⁸³ There were no black women enrolled in the law school between 1955 and 1957 when Helen Estes Baker, a Virginia State graduate, entered the first year day class.⁸⁴ She switched to the evening class graduating in 1962.⁸⁵ In

73. *Id.*

74. *Juanita Jackson Mitchell (1913-1992): Biography*, ARCHIVES OF MARYLAND, at <http://www.mdarchives.state.md.us/megafile/mas/speccol/sc3500/sc3520/002300/002306/html/msa02306.html> (last visited Aug. 30, 2004).

75. Leary, *supra* note 71, at 53-54.

76. Records of David Bogen (on file with author).

77. *Id.*

78. *Id.*

79. *Maryland Women's Hall of Fame: Verda Freeman Welcome*, ARCHIVES OF MARYLAND, at <http://www.mdarchives.state.md.us/msa/educ/exhibits/womenshall/html/welcome.html> (last visited Aug. 30, 2004).

80. Records of David Bogen (on file with author).

81. *Id.*

82. *Id.*

83. Jackson switched to the evening division at the beginning of her second year of law school. She was scheduled to graduate with the May 1955 class, but Faculty Council minutes indicate that she was ineligible to graduate. She successfully completed a deficiency examination in September to graduate.

84. Records of David Bogen (on file with author).

1960 Jacqueline Spencer enrolled in the evening program, and in 1961 Hildegardis Boswell, entered the first year day class.⁸⁶ Both women were Morgan State graduates,⁸⁷ and both stayed only one year.⁸⁸ Helen Baker was the last black woman law graduate until the 1970s.⁸⁹

IV. PROFESSIONAL LIFE AFTER LAW SCHOOL

Even after women were admitted to practice law in Maryland, the traditional state bar organizations did not welcome them. It took Rose Zetzer, an early white female Maryland Law School graduate, from 1927 until 1946 to gain admission to the Maryland State Bar Association.⁹⁰ The year of her admission is significant. In particular, 1946 was the same year that Maryland admitted a black woman to practice law in the state courts,⁹¹ and the same year that three black women were admitted to the University of Maryland School of Law.⁹² Maryland, the last state in the country to admit women to its state bar association,⁹³ finally succumbed to the pressure to admit not only white women like Rose Zetzer, but also black women including civil rights activist Juanita Jackson Mitchell.

Reflecting the continued resistance to women lawyers, the Bar Association of Baltimore City was closed to women lawyers until 1957 when it admitted Jeanette R. Wolman, a white woman lawyer, and three black men.⁹⁴ Prior to 1957, the city bar also excluded black male lawyers.⁹⁵ The admission of three black lawyers to the Bar Association of Baltimore City was noted by *The Afro-American*, which commented on the dropping of the race bar, but failed to comment about the dropping of the gender bar.⁹⁶ A year later Lena Lee became the

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. Fred Rasmussen, *Rose Zetzer, 94, founded 1st all-female law firm in Md.*, BALT. SUN, Apr. 9, 1998, at 11B.

91. *Id.*

92. *20 Attending University of Maryland Law School*, *supra* note 45, at 20.

93. Rasmussen, *supra* note 90, at 11B.

94. *Woman, 3 Negroes Notified of Admission to the Bar*, BALT. (EVE.) SUN, Aug. 20, 1957, at 40. The three black male attorneys admitted with Wolman were People's Court Judge E. Everett Lane; John R. Hargrove, the first black assistant United States Attorney for Maryland; and Dallas F. Nicholas, president of the Monumental City Bar Association. *Id.*

95. *Id.* (indicating that membership previously included only whites).

96. *Lane Hargrove, Nicholas Admitted to Bar Assn.*, AFRO-AM. LEDGER (Balt.), Aug. 31, 1957, at 18 (quoting a letter from the Bar Association of Baltimore City announcing the membership of three black male attorneys).

first black woman lawyer admitted to the Bar Association of Baltimore.⁹⁷ Once more, black women were the last to gain entry to a legal institution. Race coupled with gender put them behind both black men and white women. Even the Monumental Bar Association, an organization of black lawyers, did not admit women until 1952.⁹⁸

Predictably, there were few opportunities for the early Maryland women lawyers, whether white or black. White women "could go into the big firms" only as secretaries.⁹⁹ Even in the late 1950s, the big Baltimore City law firms still did not hire women of either race as lawyers.¹⁰⁰ The federal government hired only a few women lawyers, most of whom were probably white.¹⁰¹

Following their graduation in 1950, Juanita Mitchell and Elaine Davis successfully passed the July Maryland bar examination and were admitted to practice law.¹⁰² True to her word, Elaine Davis never practiced law.¹⁰³ Two years after completing Law School, Davis gave birth to a child, R. Clarke Davis, Jr., and five years later was reported as expecting another child.¹⁰⁴ The following year, Davis was initiated into Phi Beta Kappa and awarded a Ph.D. from Johns Hopkins University.¹⁰⁵ She went on to have an outstanding career in education, working for thirty years in the Baltimore City public school system before becoming an associate professor of education in the Johns Hopkins School of Continuing Education in 1974.¹⁰⁶

In 1950 when Juanita Mitchell and Elaine Davis graduated from the Law School and were admitted to the Maryland Bar,¹⁰⁷ the United States Census listed 159 women lawyers in Maryland, none of whom

97. AFRO-AM. LEDGER (Balt.), Apr. 26, 1958, at 20. The brief note, accompanied by a photo of Mrs. Lee, touts her as "the first woman lawyer" admitted to the city bar. Implicit in the first designation is first black woman, since among her sponsors for membership was Judge Helen E. Brown, a white woman. Her other sponsors were Walter V. Harrison, an Equity Court Examiner, and Lee's employer, Dallas F. Nicholas. *Id.*

98. *Monumental Bar Association Drops Its Jane-Crow Policy*, AFRO-AM. LEDGER (Balt.), Nov. 22, 1952, at 12.

99. Charles V. Flowers, *Making a Case For Women*, BALT. SUN MAG., Dec. 5, 1982, at 8 (quoting Anna B. Carton, who graduated from the University of Baltimore in 1933).

100. *Id.* at 9.

101. *See id.*

102. *164 Admitted To State Bar*, BALT. SUN, Sept. 26, 1950 at 13; *2 Women Lawyers Admitted to the Bar*, AFRO-AM. LEDGER (Balt.), Nov 25, 1950, at 2. The *Afro-American* article notes that four black men were also admitted to the Bar. *Id.*

103. *See More People and Things . . .*, AFRO-AM. LEDGER (Balt.), Aug. 17, 1957, at 18.

104. *Id.*

105. *Phi Beta Kappa*, AFRO-AM. LEDGER (Balt.), May 24, 1958, at 16.

106. Catherine Pugh, *Blacks in the Boardroom*, BALT. (EVE.) SUN, May 8, 1986, at 8. Dr. Davis was also on the board of The Rouse Company. *Id.*

107. *2 Women Lawyers Admitted to the Bar*, AFRO-AM. LEDGER (Balt.), Nov. 25, 1950, at 2.

were African-American women.¹⁰⁸ In 1952 Mitchell was a member of the NAACP Legal Redress Committee.¹⁰⁹ By 1960 she had litigated several civil rights cases at the trial and appellate level,¹¹⁰ including several school desegregation cases,¹¹¹ along with standard civil cases.¹¹²

Even though the 1960 census also listed no African-American women lawyers in Maryland,¹¹³ Juanita Jackson Mitchell was openly practicing law in Baltimore,¹¹⁴ and Lena Lee was engaged in part-time law practice.¹¹⁵ Thus, the accuracy of the census records is in doubt.

Many of the accomplishments of Maryland's first black woman civil rights lawyer, Juanita Jackson Mitchell, are well known. She served as legal counsel in suits to desegregate Baltimore's public swimming pools, restaurants, Fort Smallwood Municipal Park Beach, and tried the infamous "Veney Raid" cases, challenging mass searches of private homes by the police.¹¹⁶ As historian Genna Rae McNeil noted in her memorial to Mitchell, "[s]he spoke with considerable satisfaction about how she combined her practice with other volunteer activities."¹¹⁷ Active into the 1980s until incapacitated by a stroke, Mitchell's watch words for African Americans were: "Mobilization!

108. U.S. CENSUS: THE NUMBER OF WOMEN LAWYERS BY RACE AND NATIONALITY IN EACH STATE/SELECT TERRITORIES AND THE COMBINED TOTAL OF MALE LAWYERS (ALL RACES), 1950-90, *reprinted in* REBELS IN LAW: VOICES IN HISTORY OF BLACK WOMEN LAWYERS, app. C, at 285 (J. Clay Smith Jr. ed., 1998).

109. *NAACP Surveys School Facilities*, AFRO-AM. LEDGER (Balt.), June 21, 1952, at 28.

110. *See, e.g.*, Taylor v. Brotherhood of Ry. & S.S. Clerks, 106 F. Supp. 438, 439 (D. Md. 1952) (employment discrimination); Williams v. State, 204 Md. 55, 58, 102 A.2d 714, 715 (1954) (racial prejudice by jury).

111. *E.g.*, Hart v. Bd. of Educ., 164 F. Supp. 501, 502 (D. Md. 1958) (Charles County, Maryland); Moore v. Bd. of Educ., 146 F. Supp. 91, 92 (D. Md. 1956) (Harford County, Maryland); Robinson v. Bd. of Educ., 143 F. Supp. 481, 483 (D. Md. 1956) (St. Mary's County, Maryland).

112. *E.g.*, Suttleman v. Board of Liquor License Comm'rs for Baltimore City, 209 Md. 134, 120 A.2d 388 (1956) (Mitchell represented Morning Star Baptist Church in opposing a change of location application); Aaron v. City of Baltimore, 207 Md. 401, 114 A.2d 639 (1955) (Mitchell represented her mother and Florence L. Snowden in a zoning case); Kappelman v. Bowie, 201 Md. 86, 87, 93 A.2d 266, 266 (1952) (Mitchell wrote the appellate brief for appellees in real estate case).

113. U.S. CENSUS, *supra* note 108, at 287. The 1960 census lists 193 white women lawyers in Maryland. *Id.*

114. *See supra* notes 110-112 and accompanying text (citing cases litigated by Mitchell in the 1950s).

115. *See infra* notes 123-124 and accompanying text (explaining that Lena Lee began practicing law after graduating law school in 1951).

116. Genna Rae McNeil, *In Memoriam: Juanita Jackson Mitchell*, 52 MD. L. REV. 509, 512 (1993).

117. *Id.* at 512. For example, she succeeded her mother as president of the NAACP's Baltimore branch. NAACP Baltimore City Branch, *Our History: Baltimore Branch History* (2001), at <http://www.naacpbaltimore.org/history.html> (last visited Aug. 30, 2004).

Legislation! Litigation! Education! The Ballot!"¹¹⁸ She died in 1992.¹¹⁹

Juanita Jackson Mitchell was an extraordinary woman, working as a civil rights lawyer in the 1950s when few women of any race practiced law, and those who did were not welcomed by their male peers.¹²⁰ The Honorable Nathaniel Jones, Circuit Judge, United States Court of Appeals for the Sixth Circuit, in his memoriam to Mitchell, noted: "For a black woman in those days of the pre-Sixties to be in the vanguard of the struggle for the liberation of black people—male and female—required a rare brand of courage."¹²¹

Lena King Lee graduated in 1951,¹²² and was admitted to the Maryland Bar in 1953.¹²³ After law school, Lena Lee joined Nicholas & Goznell, a black law firm, at their office on 14 North Pleasant Street in Baltimore, "and began a career that included not only a law practice but also a variety of civic work and political campaigning for friends."¹²⁴ In 1964, Lee, upon her retirement from the Baltimore City School System, went into full-time practice with the firm of Hughes, Calvin, Douglass and McAllister.¹²⁵ When W.A.C. Hughes died, Lee entered into a law partnership with Leonard Briscoe at the new Charles Center Complex.¹²⁶

118. Nathaniel R. Jones, *In Memoriam: Juanita Jackson Mitchell*, 52 Md. L. Rev. 503, 503 (1993).

119. McNeil, *supra* note 116, at 514.

120. See *supra* notes 110-112 and accompanying text (citing cases in which Juanita Jackson Mitchell participated during the 1950s).

121. Jones, *supra* note 118, at 503; see also GERALDINE R. SEGAL, *BLACKS IN THE LAW: PHILADELPHIA AND THE NATION* 1 (1983) ("Throughout the first half of the twentieth century, and even beyond, to become a black lawyer in America required an extraordinary measure of courage, determination, and vision.").

122. Leary, *supra* note 71, at 54.

123. Clark, *supra* note 69, at 32.

124. Leary, *supra* note 71, at 54. It appears that Lee continued to work as a principal in the Baltimore Schools until she retired after thirty-six years in 1964. *Lady on the Move*, *AFRO-AM. LEDGER* (Balt.), Jan. 18, 1964, at 5; *Mrs. Lena K. Lee Retires, Milbourne Named Successor*, *AFRO-AM. LEDGER* (Balt.), Jan. 18, 1964, at 3. Based on correspondence in the files of Attorney Dallas F. Nicholas, it appears that Lee practiced law on the side. Letter to Lee from Nicholas dated Sept. 3, 1958 (copy on file with the author).

125. ARCHIVES OF MARYLAND (BIOGRAPHICAL SERIES, LENA K. LEE, at <http://www.mdarchives.state.md.us> (last visited Aug. 30, 2004).

126. Robert Hilson Jr., *Community's Voice; Lena Lee*, *BALT. SUN*, Feb. 6, 1996, at 4B. Briscoe, now a retired juvenile Court judge recalls that Lee

once defended a client in a murder trial against seemingly insurmountable odds. Their client had fatally shot another man from the window of a two-story West Baltimore house. Throughout the trial, Ms. Lee mesmerized the jury with oratory. "And they agreed with her," . . . "You don't get too many people shot out of a second-story window and then get acquitted on self-defense. The prosecutor was amazed and dumbfounded."

In 1967, at the age of sixty, Lee was elected to the House of Delegates, becoming the first black woman lawyer to serve in the state legislature.¹²⁷ In 1970 she co-founded the Maryland Legislative Black Caucus.¹²⁸ Lee served in the House of Delegates until health concerns forced her retirement in 1982.¹²⁹ After leaving the legislature, Lee returned to full-time law practice, working primarily on domestic relations and contract cases with a sprinkling of criminal cases.¹³⁰

V. COMPARING WHITE AND BLACK WOMEN'S EXPERIENCES

Race and gender intersect when investigating the struggle of black and white women and black men to gain admission to the Maryland Bar. When the Court of Appeals of Maryland denied Charles Taylor, a black man, admission to the Maryland Bar in 1877, it cited the *Bradwell* decision, a case about a white woman, to counter Taylor's claim that admission to practice law was a privilege and immunity of citizenship.¹³¹ Further, when the Court of Appeals of Maryland denied Etta Maddox's application for admission to the Maryland Bar, unsurprisingly, the court cited the *Bradwell* case upholding the denial of women's admission to practice law.¹³² The Court of Appeals also cited *In re Taylor*, a case involving a black man, in ruling that admission to the practice of law is not a privilege and immunity of citizenship.¹³³

Similarly, in 1907, the Baltimore Law School, where Etta Maddox earned her law degree in 1900, decided to exclude women.¹³⁴ The School's rationale was surprisingly similar to the rationale used by the University of Maryland when it excluded the two black law students, Ashbie Hawkins and John L. Dozier, in 1890.¹³⁵ Judge Alfred S. Niles,

Id.

127. Leary, *supra* note 71, at 54. In 1958 Verda Welcome, the former law student, and Irma Dixon became the first black women elected to the General Assembly. GEORGE H. CALLCOTT, *MARYLAND AND AMERICA: 1940-1980*, at 154 (1985).

128. Clark, *supra* note 69, at 32. Lee raised two girls and a boy while working outside the home. *Id.* at 33.

129. Leary, *supra* note 71, at 54.

130. *Id.*

131. *In re Taylor*, 48 Md. 28, 32-33 (1877) (explaining *Bradwell* as holding that the right to admission to practice law was not protected by the Fourteenth Amendment but instead depended upon the laws of the individual state).

132. *In re Maddox*, 93 Md. 727, 728-29, 50 A. 487, 487-88 (1901).

133. *Id.* at 728, 50 A. at 487.

134. *Woman Student Barred*, BALT. SUN, Oct. 5, 1907, at 7.

135. Bogen, *supra* note 5, at 42-43. Professor Bogen details how Hawkins and Dozier were excluded from school a year after they were admitted allegedly at the behest of their fellow classmates. *Id.* at 42. Professor Bogen noted that "[w]hite students from the law, medical and dental schools petitioned the faculty against the admission of black students

the Dean of the Baltimore Law School faculty at the time said: "Neither of the other law schools in the city has ever admitted women, and it seemed to us that it would be better to conform to the general custom in this matter."¹³⁶

As was the case with Hawkins and Dozier, the news story regarding the school's decision reported that there was a rumor that the exclusion of women was the result of a petition from the male students.¹³⁷ No reasons were given for such a petition, and the news report indicated that four women had graduated from the law school, all of whom had performed outstandingly as students.¹³⁸ Thus, gender bias and fear of competition from white women might have triggered the white male students' petition, much as racial bias and fear of competition from black male lawyers seventeen years earlier resulted in the exclusion of African Americans from the University of Maryland School of Law.¹³⁹

The exclusion of all blacks and white women from Maryland law schools and the practice of law is unsurprising. Access to the full spectrum of educational opportunities was a key in the battle by white women and blacks for "broader opportunities" and full citizenship.¹⁴⁰ In Maryland, and many states, during the late nineteenth and early twentieth centuries both blacks and white women were not considered *full* citizens.¹⁴¹ Women were barred from the political community and denied access to the ballot.¹⁴² Black men, although eligible for the

to the law school." *Id.* Professor Bogen also speculated that hostility toward the admission of blacks to the law school was influenced both by the growing power of the regular Democrats who were openly hostile to blacks, and the likelihood that the first black law school graduates, would be elected to a Baltimore City Council seat. *Id.* Finally, with the opening of a second law school in the city, the Baltimore University Law School, in 1890, white students who did not want to attend school with blacks had another option. *Id.*

136. *Woman Student Barred*, *supra* note 134, at 7.

137. *Id.*

138. *Id.* The news report reads: "The woman graduates of the Baltimore Law School are Miss Etta Maddox, Miss A. Grace Kennedy, Miss Emlie A. Doetsch, and Miss Marie E.K. Coles. Miss Kennedy took every prize that could be taken in her class, Miss Doetsch took the prize for scholarship in hers, and Miss Coles took an honorable mention. Miss Maddox was a distinguished student." *Id.*

139. *See* Bogen, *supra* note 5, at 42-43.

140. D. Kelly Weisberg, *Barred From the Bar—Women and Legal Education In the United States 1879-1890*, 28 J. LEGAL ED. 485, 500 (1977) (discussing white women's entry into the legal profession following the Civil War).

141. *See id.* at 505 (noting that women, blacks, Jews, and immigrants all suffered from discrimination in the legal profession).

142. *Id.* at 502. Although some western states and territories gave full suffrage rights to women, it took the enactment and ratification of the Nineteenth Amendment to the U.S. Constitution before the right to vote for women was constitutionally protected. *Id.* at 501. Weisberg argues that there is a connection between the presence of women as lawyers and

franchise by virtue of the Fifteenth Amendment,¹⁴³ were effectively denied the right to vote in Maryland and many other states.¹⁴⁴

Opening the practice of law to people considered outside the political community threatened to challenge that community as well. Many of Maryland's early white women lawyers fought for women's suffrage.¹⁴⁵ Black lawyers, first men, and later women like Juanita Jackson Mitchell, fought for equal rights.¹⁴⁶ Thus, the courts and the legislature understood that the admission of blacks and white women to the legal profession posed a danger to the status quo.

There are some differences, however, between the early black women lawyers and their white counterparts. Most of the early white women law graduates were unmarried, whereas all three early black women law graduates were married with established careers before they entered law school.¹⁴⁷ Cynthia Fuchs Epstein wrote: "The first women lawyers in the United States, whose names are remembered for having battled for the right to legal education or to practice at the bar, were married women who sought to join lawyer-husbands in practice."¹⁴⁸ When the State of Illinois denied Myra Bradwell a license to practice law in 1869, one reason it gave was that she was a married

the early twentieth century women's rights movement, because many women lawyers were suffragettes. *Id.* at 502.

143. U.S. CONST. amend. XV, § 1 ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.").

144. See ROBERT J. BRUGGER, MARYLAND: A MIDDLE TEMPERAMENT, 1634-1980, at 420 (1988) (noting unsuccessful attempts at the beginning of the twentieth century, aided by then Maryland Law School Dean Poe, to enact a state constitutional amendment that would disenfranchise black voters). The General Assembly also passed a bill prohibiting party reference on the ballot that only applied to counties with large black populations and which were intended to disenfranchise black voters, a larger percentage of whom were illiterate. *Id.* at 421. Although these measures did not result in complete disenfranchisement, blacks in Maryland also had their voting power undermined by the malapportionment of electoral districts. *Id.* at 420.

145. *Jeanette R. Wolman, 96, Lawyer for Seven Decades*, BALT. SUN, Jan. 20, 1999, at 6B (stating that at age twelve Jeanette Wolman's father "entered her in a suffragist parade in Birmingham, Ala."). Rose Zetzer "marched with the suffragettes as a child." Carter, *supra* note 40, at 28.

146. See *supra* notes 110-114 and accompanying text (describing Mitchell's desegregation and other civil rights cases).

147. Because the *Afro-American Ledger* refers to Virginia Jones as "Miss Virginia Jones," it appears that she was unmarried. See *20 Attending University of Maryland Law School*, *supra* note 45, at 20. For the same reason, the marital status of Emily Orchard is assumed to be single. *Charm and Brains Combined*, *supra* note 43, at 19.

148. Cynthia Fuchs Epstein, *WOMEN IN LAW* 33 (2d ed. 1993). Fuchs mentions that Myra Bradwell "had been asked by her husband to learn the law and assist him in his practice." *Id.* (citing Weisberg, *supra* note 140, at 495 n.39). According to Weisberg, approximately one-third of women lawyers in 1890 were married and over fifty percent of married women lawyers were married to a lawyer. *Id.* at 494-95. Because women's employment opportuni-

woman.¹⁴⁹ Supreme Court Justice Bradley, concurring in the Court's affirmance of the Illinois decision, wrote:

The harmony . . . to the family institution is *repugnant to the idea of a woman adopting a distinct and independent career from that of her husband*. So firmly fixed was this sentiment in the founders of the common law that it became a maxim of that system of jurisprudence that a woman had no legal existence separate from her husband, . . . a married woman is incapable, without her husband's consent, of making contracts which shall be binding on her or him. This very incapacity was one circumstance which the Supreme Court of Illinois deemed important in rendering a married woman incompetent fully to perform the duties and trusts that belong to the office of an attorney and counsellor.

It is true that many women are unmarried and not affected by any of the duties, complications, and incapacities arising out of the married state, but these are exceptions to the general rule. *The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother.*¹⁵⁰

Many of Maryland's early white women lawyers did not have the family legal connections that would open opportunities for them to practice law in traditional fashion.¹⁵¹ Early black women lawyers, although married, similarly could not rely on family connections to ensure employment opportunities.¹⁵² Like other early women lawyers, some early Maryland women lawyers of both races drifted into other fields where they would encounter less prejudice.¹⁵³

Thus, the difference in marital status of early black women as opposed to white women law graduates may simply reflect the difference between the status of women at the beginning of the twentieth century and their status immediately following the end of World War II. Because most able-bodied young men had been drafted by the armed services, more women started working outside the home to supplement the family income, and to help the Nation's industries operate

ties were limited, work in a family law practice often was their only opportunity to practice their craft. Fuchs, *supra*, at 33.

149. MORELLO, *supra* note 14, at 16. The Illinois court's denial was based upon the common law English and French doctrine that married women could not enter into contracts and therefore would not be bound by attorney-client obligations. *Id.* at 16-17.

150. *Bradwell*, 83 U.S. at 141 (1872) (emphasis added).

151. See generally MORELLO, *supra* note 14, at 3-38 (discussing the first women lawyers in the U.S.).

152. See *id.*

153. See *id.*

during wartime.¹⁵⁴ Women's increased presence in the workplace during the war caused the Nation to reconsider the limited notion of women's proper place in American society.¹⁵⁵

154. Amy Bentley, *Wages of War: The Shifting Landscape of Race and Gender in World War II* (Baltimore, 88 MD. HIST. MAG. 420, 421 (1993) (stating that an estimated 200,000 Marylanders, or approximately ten percent of the state's population, left the state civilian labor force to join the armed services, resulting in a severe labor shortage). Perhaps it is more accurate to say that more native-born white women and women who either did not or could not get jobs during the Depression because of one-job, one-family policies worked outside the home during the war. In contrast, black women were able to get "better" jobs than they had had, but often because they migrated to the major war production zones, such as the California shipyards; Portland; Seattle; Chicago; Washington, D.C.; and Baltimore. Moreover, often there was little income "supplement" because many women workers were heads of households, either formally or informally as the wives of soldiers. See generally KAREN ANDERSON, *WARTIME WOMEN: SEX ROLES, FAMILY RELATIONS, AND THE STATUS OF WOMEN DURING WORLD WAR II* (1981). See also MAUREEN HONEY, *CREATING ROSIE THE RIVETER: CLASS, GENDER AND PROPAGANDA DURING WORLD WAR II* 20-24 (1984) (explaining how the war impacted women's employment); Karen Tucker Anderson, *Last Hired, First Fired: Black Women Workers During World War II*, 69 J. AM. HIST. 82 (1982) (explaining that despite overall job discrimination against black women during the war, some areas did provide greater employment opportunities than others for these women); SUSAN ESTABROOK KENNEDY, *IF ALL WE DID WAS WEEP AT HOME: A HISTORY OF WHITE WORKING-CLASS WOMEN IN AMERICA* (1979) (stating that many women who were expected to remain at home before the war joined the labor force as the need for war workers grew); RUTH MILKMAN, *GENDER AT WORK: THE DYNAMICS OF JOB SEGREGATION BY SEX DURING WORLD WAR II* 49-64 (1987) (describing the changes in the sexual division of labor during the war).

155. See Bentley, *supra* note 154, at 433-34. In Baltimore, "[w]omen replaced 11,000 of the 14,000 jobs lost to the men entering the military and other jobs." *Id.* at 434.

While historians generally agree that women and blacks—entering the workforce in large numbers [during World War II]—challenged stereotypes and broke down social and economic barriers, not all these gains proved lasting. Some . . . view the war as having marked only 'a temporary retreat' from the prevailing view of women's proper roles. Others argue that the war actually helped solidify conventional notions of gender.

Id. at 420. Regardless of the longevity and end result, the war enabled women to expand both in the workplace and, for white women, in the social arena. *Id.* at 432. For example, women were hired for the first time by the Baltimore Symphony Orchestra during the war because of a shortage of male musicians. *Id.*

War causes reconceptualization—redefinitions of gender and gender roles. In fact, reconceptualizations of "women's" place in U.S. society have occurred during every major war. See generally DREW GILPIN FAUST, *MOTHERS OF INVENTION: WOMEN OF THE SLAVEHOLDING SOUTH IN THE AMERICAN CIVIL WAR* (1996) (arguing beginning with the Civil War, women's roles in post-war society was continuously redefined). In the early 1940s, black and white feminist labor activists viewed World War II as an opportunity to re-configure women's roles, particularly in the workplace, but also in the domestic economy. See, e.g., ELAINE TYLER MAY, *HOMeward BOUND: AMERICAN FAMILIES IN THE COLD WAR ERA* (1988) (explaining potential for change in the female role during World War II); Nancy Gabin, *Women Workers and the UAW in the Post-World War II Period: 1945-1954*, in *THE LABOR HISTORY READER* 407-32 (Daniel J. Leab ed., 1985) (describing difficulties women workers encountered after World War II when asserting their rights within the United Automobile Workers union); Nancy Gabin, "They Have Placed a Penalty on Womanhood": *The Protest Actions of Women Auto Workers in Detroit-Area UAW Locals, 1945-1947*, 8 *FEMINIST STUDIES* 373 (1982)

Another possible explanation for the difference between white and black women lawyers is that the vast majority of black women, whether married or not, had to work outside the home to contribute to the household income because stable employment was always an issue for black families.¹⁵⁶ The reality of black family life also explained why Mitchell, Davis, and Lee all raised children while working outside the home.¹⁵⁷ The bottom line is that all three were high-achieving women, although in different fields. In other ways, however, the stories of the three sets of law students, black men, white women, and black women intersect, at least in the eyes of the law.

CONCLUSION

It seems fitting to review the various stages of integration of the University of Maryland School of Law, and the school's resistance, as the United States Supreme Court reaffirms the diversity rationale of *Regents of University of California v. Bakke*.¹⁵⁸ If Juanita Jackson Mitchell were alive today, she would be quite pleased to know that the faculty, staff, and student body at the University of Maryland School of Law reflects the racial diversity of the country. She also might be surprised to know that there are equal numbers of women and men law students. The dramatic change in the composition of faculty, staff, and students from 1946 to 2003 is consistent with her philosophy. She is quoted as saying: "Some people don't want to live in an integrated society, . . . but they don't understand the irreparable damage that

(noting women workers in Detroit area auto plants continued protests to retain employment in the postwar labor force).

156. See Bentley, *supra* note 154, at 431. "During the Depression blacks comprised a disproportionately large percentage of the unemployed. As the wartime economy picked up, [Baltimore] companies still resisted hiring blacks." *Id.* at 423. Bentley adds, "Black women, who found it especially hard to break into lucrative war jobs, worked overwhelmingly as domestics or held clerical or teaching positions in black businesses and schools." *Id.* at 424. The need for two incomes to support black families was not a product of the 1930s and 1940s. Noted sociologist W.E.B. DuBois in his book, *THE PHILADELPHIA NEGRO* made a similar observation in 1898. W.E.B. DuBois, *THE PHILADELPHIA NEGRO*, 102-04 (1898) (listing the occupations of black women).

157. See Bentley, *supra* note 154, at 423-24.

158. 438 U.S. 265 (1978). On June 24, 2003 the United States Supreme Court, in a split decision, reaffirmed that the government has a compelling interest in using race as a factor to achieve a diverse student population. *Grutter v. Bollinger*, 539 U.S. 306 (2003).

happens to people who live separately.”¹⁵⁹ Whether diversity can be maintained in a post *Gratz*¹⁶⁰ and *Grutter* world remains to be seen.

159. *Juanita Jackson Mitchell*, BALT. SUN, May 16, 1972, at B1.

160. In *Gratz v. Bollinger*, 539 U.S. 244 (2003), the Court held that the undergraduate point admission system at the University of Michigan allocating points according to race was not sufficiently narrowly tailored and therefore violated the Equal Protection Clause. *Id.*