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Speech on Early Women Lawyers (April 7, 2003)

Arthur Landever

Cleveland Marshall College of Law

1. Thank you all for coming. I hope my talk will be worthwhile for you. Your handout is about Judge Mary Grossman, our graduate of 1912, referred to sometimes as "Hard Boiled Mary." She is one of the 4 Ohio Women Lawyers I talked about in my paper. We have her stately portrait, on the left as you go toward the law library. That portrait misses some of her feistiness and spirit in presiding over the Cleveland Municipal Court for so many years, the nation's first woman municipal court judge—she would serve for thirty years. Grossman was one of the first two women lawyers to be accepted into the American Bar Association.
2. At the end of my handout you will find a copy of Judge Grossman's Cleveland Law School application form. There is also a selected bibliography of works on early women lawyers and on the state of women's contributions to law today. Parenthetically, the law school a couple of years ago made a quite delightful video on our first 100 women to graduate from the law school. I commend that video to your attention. Happily, it seems, from the beginning of our predecessor law schools we have opened our doors without any gender discrimination.
3. I want to thank the WLSA and in particular Lana Mobydeen and Alssa Hicks for supporting this program, as well as Dean Steinglass, Michael Slinger, and Louise Mooney. I also want to thank our great librarians Marie Rehmar, Schuyler Cook, Denise Carpenter and Laura Ray, and other staff, for their help to me.
4. I am honored that the relatives of Judge Grossman, the Garvers—Edith, Joe and Jonathan—have graced us with their presence.
5. Most materials on the subject of women lawyers are written by women. You may wonder how I came to consider the subject. Well, I have such a great group of women in my life—my wife, my daughters who are professionals, one, a graduate of C-M, and a brand new daughter-in law who is a lawyer. Those women probably have helped to raise "my consciousness."
6. I do not pretend to know the obstacles and challenges that women lawyers face today, given the present culture, or perhaps more accurately the differing cultures, and the differing perceptions about women's role and work. But you may find, enlightening, the 2001 Report on the Status of Women, prepared by the ABA Commission on Women in the Profession.

7. In my study, I certainly have not engaged in a scientific enterprise. I have not tested any hypothesis or studied in a double blind enterprise my subjects. But I do offer some vignettes which give rise to a hypothesis:

8. My thought is that during the late 19th century and early 20th century, women lawyers were as rare as a two dollar bill. The male-dominated culture, on the one hand, was the Elephant in the living room. That culture posed an ever present challenge. Yet, it could be nudged if one had the will and help. That nudging could result in a marked change and people might take the new state of affairs as perfectly natural. It took a willingness to take on the challenge. It took a great deal of lawyering skill. A woman lawyer had to be better. It took courage to enter the field since the culture kept telling you that you belonged at home. It took persistence to convince men you could do the job, with clients slowly coming in. It took allies, female and male. It took effective strategies. It would be easier if men could rationalize that the woman possessed so-called men's attributes: toughness, mental alertness, a keen mind, and influential friends. The excuses: Married woman's disability (Bradwell), restroom facilities (Goetz), the tenderness of women (Bradwell), the innate inability of women to deal with analytical complexities (Florence Allen).

9. Today, women face many of the same discriminations, and such discrimination calls for much the same efforts. Just as in the early period, there is need for men to become involved in the study and implementation of measures to assure equal treatment for women. Not because men are better, but only because they are obviously part of the problem. The problem of care of children and the home: In a two-profession home, do men and women sufficiently see a mutual responsibility? Who should sit on formal commissions or assume law firm study? Too often, men either choose not to get involved in such efforts or are not invited to join in. I was surprised and disappointed that the 2001 ABA commission, making a 2001 report on the status of women in the profession was almost totally peopled by women.

10. That there are advances is obvious. From a time early in the 20th century where women lawyers were a mere handful in major cities, now they comprise about 30% of the bar. When Mary Grossman graduated from Cleveland Law School in 1912, she was only the third woman lawyer in Cleveland.

11. Judge Grossman's career reflected her success in taking on the culture. Let's look at Mary Grossman, "Hard Boiled Mary." I would suggest that one element in the early period was to convince men that you shared some of their traits. I suspect the reason Grossman was referred to as "Hard Boiled Mary" was that it reflected her toughness, said to be a male trait.

12. Grossman not surprisingly learned the art of group politics by getting women, who had recently gotten the vote, to support her. The newspapers did too, but initially the bar associations opposed her. A tiny woman, she couldn't even see above the bench without sitting on several phone books and law books.

Handwritten notes:
Here are some stories - HBM, SM, YM, FM Flo, Lydia Guly - NA, Tenn Farnes, Margaret, Myra Br, Aelia, Gerty, Ft Allen, Elean
Clevelandian Kegan

13. At first her cousin, a lawyer, said to her when she broached the subject of becoming a lawyer, "women can't be good lawyers." But after she became a member of the bar, he hired her for his firm. Apparently, though, he treated her more like a secretary. She advised women to establish their own firms after a couple of years, observing that "women do not get opportunities in a law office that a young man does." Nonetheless, she was enthusiastic about women's opportunities in law, declaring, "[i]f anything, men are more willing than women to employ a woman lawyer." Not only could women succeed in handling legal matters, "[there] is no reason why a woman should not succeed as a magistrate, prosecuting attorney or judge...[or] hold the same public offices as a man."

14. As to gaining the right to vote, she said: "After we got the right to vote, nobody ever made a fuss about it again. People just took it as the most natural thing in the world that women vote...Time was, women didn't have any rights, no voice in anything. But times change and so do people's minds."

15. Grossman was known as a "severe, rigidly honest judge." She tells the story of a male classmate and friend who served on her campaign committee. "I gave him a picture of me which he hung in his office. Whenever he lost a case in my court, he would always throw my picture into the wastebasket, but he always picked it out again."

16. "In 1927, when Judge Grossman took a day off for the Jewish holiday, 39 bail jumpers for whom warrants were out surrendered...secure in the knowledge that they would not have to face her..." Said Chief Judge Griffin, "I am perfectly aware that any lawyer who can succeed in getting an affidavit of prejudice can make about \$500.00 when prisoners learn that they will not have to face Judge Grossman." As for the ploy of seeking a jury trial. "The policy boys and gamblers may ask for jury trials, but they're [sic] not going to get away from [her] that easily...[She is] to preside over juries requested ...in prostitution, gambling and petting larceny cases."

17. Grossman's tough approach to trying vice cases led then Cleveland Safety Director Edwin Barry to describe her as "equal to adding 100 men to the police force."

18. She would not let men off lightly in prostitution cases. Medical examinations were arranged for prisoners arrested on vice charges, and the city soon found this meant *men* too. Men arrested at night in vice raids had to stay in jail until they could be examined the next day.

19. What really infuriated Judge Grossman were instances of wife-beating. In language that evidenced her upset, she instructed, "Don't let your husband beat you. Beat him up instead. Use weapons if necessary." Indeed, at one time she apparently called for the "public flogging of wife beaters."

20. However tough, Grossman had the reputation of assuring that a defendant's rights were protected. "If the defendant's rights have been jeopardized in any way, regardless of whether he has an attorney, she will throw the case out." In one instance an African-American was being tried for possessing illegal liquor. The police had had no search warrant but protested that they had a "long list of arrests against this [person] at that place. Judge Grossman inquired of the police officer testifying as to whether there were any convictions. When he answered in the negative, she replied, "Well, you'd better add this [dismissal] to your list." She urged broader public defender availability to the public. The need was great. Beyond expanded availability of counsel, she called for substantial use of medical doctors, psychiatrists, and psychologists, both in courts and in prisons. Especially in vice cases, the problems involved were not only legal, but medical and social. As the years went by she was looked upon as an ombudsperson for individuals unable to afford a lawyer. She would make the necessary telephone calls to enable a person to get help on a particular problem.

21. What about "Suitcase Mary"? She was Margaret Bartelme, a juvenile court judge in Chicago. She "insisted that young girls leaving detention homes be given a satchel filled with new clothes to help them make a fresh start. Batelme was an outspoken advocate for the right ~~so~~ ^{to} adolescents and children, and was an 1894 graduate of Northwestern University Law School." Morello, Invisible Bar, pictures after 144.

22. What about lawyer "Yellin Mary Ellen" Lease of Kansas? She was "one of the greatest orators of the Populist period, who rallied farmers into political action with the words, "What you farmers need is to raise less corn and more hell!" She was also called the "Wichita Cyclone" the Ironjawed Woman of Kansas" ~~to~~ ^{and} the "Red Dragon." She commanded "the attention of crowds up to 20,000." She was also called the "Old Mother Lease, the she-lawyer." Farmers began to organize to fight the railroads and the banks. Ibid. 118-120. A senator, who opposed her positions declared: She had "better be home mending her children's stockings." (121).

23. When the noted legal reformer Roscoe Pound found out that there was a woman guest of a Harvard Law School student in Pound's class, he "thundered..." I don't permit women in my classes, get out! 101.

24. When the Dean of the Harvard Law School, Erwin Griswold welcomed the new class of 1950, with several women, for the first time as students, he made it clear he opposed the idea.

25. It was ^{it's today it's a deal} announced Thursday April 3, 2003 that the new Harvard Law School Dean was ^{a woman} Elena Kagan. She had graduated magna cum laude from the Harvard Law School. Stanford Law School has a woman dean too, Kathleen Sullivan. Columbia earlier had a woman dean, Barbara Black. As did Cleveland Marshall, Interim Dean Lizabeth Moody. Women comprise the majority now on the Ohio Supreme Court.

26. "Lyda Burton Conley, the first native American woman lawyer. She studied law while camped out on her ancestral burial grounds in order to prevent the land from being used for commercial development, and she argued her own case before the Supreme Court." Morello pictures after 144.

27. Tiera Farrow, graduate of Kansas City School of Law in 1903. She went on to be come a successful criminal defense lawyer, but complained that her male colleagues viewed her as 'just another woman freak.'" She was told to skip her criminal Law classes at Kansas City School of Law "on the grounds the subject to be discussed might shock my maidenly modesty." 181.

28. Florynce Kennedy, Foul Mouth Flo: "frequently told students, 'If you want to know where apathy is, you're probably sitting on it.'" As an African-American woman seeking to get into Columbia Law School, the Associate Dean, Willis Reese, told me I had been rejected not because I was Black, but because I was a woman. So I wrote him a letter saying that whatever the reason was, it felt the same to me, and that some of my more cynical friends thought I had been discriminated against because I was Black...She went to see the Dean. I said" If you have admitted any white man with lower grades than mine, than I want to get in too." That was probably the first time I used what I call the 'testicular approach.'" Morello 163.

29. Margaret Brent. The first woman lawyer in America. She was a cousin of Lord Baltimore. In his letter to the Colonial Governor Calvert he asked the governor to assure that she be able to acquire land in Maryland on more favorable terms than others. She came to Maryland Colony in 1638. She figured in 124 court cases in eight years. She was the attorney for the Governor Calvert and the Administrator of his estate. But when she sought a vote in the Maryland Assembly, her application was rejected.

30. Myra Bradwell was denied admission to the Illinois Bar in 1869 because the relevant legislation used masculine pronouns. Soon afterward, the legislation was changed and an woman was admitted to the bar in 1873, the very year that the U.S. Supreme Court was rejecting Bradwell's appeal. Before her death in the 1890s, even without her renewed application, she was granted membership nunc pro tunc.

31. Cecelia Goetz. In order for Goetz to join the prosecution team at the Nuremberg trial of Krupp, Telford Taylor had to sign a waiver of disability—the disability was that she was a woman. ~

32. The 1897 edition of the Bench and Bar of Ohio lists 391 lawyers, providing quite flattering accounts of them. Only two are female, the Cronise sisters of Tiffin, Ohio. Nettie Cronise Lutes of Tiffin, Ohio was admitted to the Ohio bar in 1873, the first Ohio woman lawyer. Her grandfather, who had served in the Ohio house and Senate, could trace his roots to Revolutionary War days, his ancestor among Washington's forces at Valley Forge. Nettie took special training in communicating

with the deaf. Perhaps this explains why she would enter the firm of Warren Noble, administrator of her grandfather's estate, to "read the law." Clerking in the firm at that time was Nelson Lutes, a person growing increasingly deaf from Civil War wounds.

Nettie's application to be admitted to the Ohio bar was supported by a committee of the leading lawyers of Tiffin. She married Lutes. He was offered a partnership with his mentors while she had no choice but to open her own practice.

Her sister Florence was admitted several months later and the two sisters opened their own practice, perhaps the first sister law partnership in America. After Nelson had become totally deaf, she opened a practice with her husband, and was so adept at communicating with him as he argued cases at trial that observers could not even tell her role in his advocacy. Upon his death, Nettie practiced on her own until her daughter Evelyn was admitted to the bar in 1905. Thereupon Lutes and Lutes was back in business. Said the Bench and Bar of Nettie in 1897: She has "undaunted courage...[and] the most perfect self-control...[She] puts truth and right above all other considerations and scorns to take an unfair advantage. This is recognized and acknowledged by all, and of itself begets confidence in any proposition maintained by her." Nettie was elected first president of the national Women Lawyers' Association. The Cleveland Press, in 1923, on her death: ...[T]his brave one woman, then in her mental and physical prime at the age of 30, faced prejudice fearlessly."

To the editor of the 1897 publication, the love affair between Nettie and Nelson was captured by the inspired lines of the poet:

"For woman is not undeveloped man,
But diverse. Could we make her as the man,
Sweet love were slain, whose dearest bond is this—
Not like to like, but like with difference.
Yet in the long years like must they grow;
The man be more of a woman, she of man.
He gain in sweetness and in moral height,
Nor lose the wrestling thews that throw the world—
She, mental breadth, nor fail in childward care;
More of the double-natured poet each;
Till at last she set herself to man.
As perfect music unto noble words,
And so these twain upon the skirts of Time,
Sit side by side, full summed in all their powers.
Self-reverent each, and reverencing each,
Distinct in individualities,
But like each other even as those who love."

Nettie's younger sister Florence also started as a teacher, graduating from Heidelberg College. First she became principal of the local high school but angrily abandoned the field when the board of education refused to give her the same salary of male teachers. She began reading law in another Tiffin law firm. The two sisters, when in partnership were such effective litigators "that every year they handled more than fifty state and federal cases on the court dockets for the Northern District of Ohio. Of Florence's skills one judge declared: "I think probably there is not a better woman lawyer than she in the whole country." Said another judge "her position at the bar is second to none...[S]he has a clientage and success [placing] her on a level with the foremost in the profession." It was noted by one judge that unlike other females, she was said to have taken "most interest in mathematics and languages, and paid less attention to the trifling and effeminate studies in the course." Florence considered herself a "lawyer—not a "woman lawyer."" "In the early days our work came chiefly from men, women having but little confidence in the ability of women. All this, however has changed, and my clients are as frequently one as the other...I don't want you to think that my professional life has been one of unceasing pleasures and successes, for it has not. It has its ups and downs today, as it had years ago. Sometimes I have thought that the downs prevailed, but then everything would brighten again and the result is a comfortable income and a success comparing favorably with that of the young men entering the profession at the same time. Though denied the opportunity to give the valedictory at her 1865 graduation from Heidelberg, she accepted the invitation to give the Alumni Oration a couple of decades later. She practiced law for fifty years.

"My experience has taught me that a woman can go along by the side of men in the same profession, receiving from all the same professional courtesy that they extend to the brotherhood, and we must ask for no more."

33. Florence Allen, a Clevelander. She would become America's preeminent woman jurist in the first part of the 20th century: There were many firsts as a woman: first woman to be an assistant county prosecutor; first to be a common pleas judge, first to be a state supreme court judge, first to be a federal circuit court judge, first to be the chief judge of a federal circuit, and the first to be the subject of a campaign to be nominated to sit on the US Supreme Court. Indeed, there was support for her candidacy in three Presidential administrations. Her father Clarence, a brilliant classical scholar, had achieved some celebrity in college, as the star pitcher on the Western Reserve baseball team. he beat all comers with the new "curve" ball in 1876 despite objections by a university physics teacher that "as a matter of physical law a curve could not be pitched." In addition to his prowess on the mound, he was an early advocate of woman's rights. Her mother, an accomplished pianist, and a political reformer, speaking out against polygaming while living in Utah., was in the first class admitting women at Smith College. Florence Allen, despite graduating second in her class at NYU Law School, she couldn't get a job with a law firm, so she became a solo practitioner. After five years, she was hired by the county prosecutor, who said, Allen "will do a man's job for us." Elected to the common pleas bench, the other judges sought to establish a divorce division with Allen in

*shunted aside
which women do*

charge. She would have none of that. She then ran successfully for the state supreme court. It helped to have as a grandfather, Jacob Tuckerman, who could trace his Puritan roots back to the 17th Century in America. Indeed, Lafayette's army was mustered under a tree on Isaac Tuckerman's father's estate in Sterling, Connecticut. A newspaper, supporting her candidacy, declared, "Judge Allen is physically as well as mentally a big woman, hearty and wholesome looking...cares little for frills...[H]er voice has a masculine depth and she has the courage of her convictions." She was successful. The second time, she won by an overwhelming margin, 350,000 votes. About this time, her sister Helen penned a humorous poem about her increasingly famous sister:

"Now Florence is a lovely wench,
To charm upon a dreary bench.
And were she not a worthy judge,
I'm sure she'd sometimes say, 'O fudge.'
Must I go through these mental fogs?
"T were better romping with the dogs.
And though I know it is a sin,
To throw spit balls or use a pin,
It would be fun—of a sort,
If such things happened in court."

On her run for Congress, the Railroad Brotherhood urged its membership to vote for her: "...Labor is supporting Allen because she is comparably the best and biggest man available for the job. In brains, character and experience, she towers head and shoulders above the field."

*they had
women
opponents*

Nominated by Franklin Roosevelt to sit on the 6th Circuit Court, she was supported by Judge Will Stephenson, a justice of the Ohio Supreme Court, who admitted that at one time he had been opposed to the idea of a woman judge on the Ohio Supreme Court. Upon her confirmation, the sitting members were not happy, "I am told that when it was announced [that she would be a circuit court judge] one of them went to bed for two days." One of them at first "seemed to avoid looking at me." She won them over. While the male judges were reluctant to have her sit in patent cases, she then came to write many of the opinions. Although originally aghast at the idea of a woman dealing with the subject, the Cleveland Patent Lawyers Association would come to honor her at the end of her career. Three Presidents—FDR, Truman, and Ike—considered nominating her for a Supreme Court seat. FDR would have been moving ahead of public opinion. Truman said he would be glad to nominate her, but he gave the Chief Justice (Vinson) a veto. Vinson said the justices opposed her: "They [said that they wouldn't be able to] sit around with their robes off and their feet up and discuss the problems." One version is that the justices replied that they wouldn't be able to use their spittoons.

*She just
thru there mind*

Conclusion: Several vignettes of early pioneering women lawyers who in the main overcame the obstacles of culture to distinguish themselves. Obviously, in the

present, women have come far toward the goal of equality, but we have a long ways
to go, of course. Now at least the formal goal recognized is equality of opportunity
for women in the profession. That goal will make it more difficult for men and
women to satisfy themselves with anything less. The effort must continue so that
private firms, government agencies, and non profit organizations must be
committed to that ideal.

all
are
Thank you.