

2017

The Noteworthy Absence of Women Advocates at the United States Supreme Court

Jennifer Crystal Mika

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/jgspl>



Part of the [Supreme Court of the United States Commons](#)

Recommended Citation

Jennifer Crystal Mika (2017) "The Noteworthy Absence of Women Advocates at the United States Supreme Court," *American University Journal of Gender, Social Policy & the Law*: Vol. 25 : Iss. 1 , Article 2.

Available at: <http://digitalcommons.wcl.american.edu/jgspl/vol25/iss1/2>

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University Journal of Gender, Social Policy & the Law by an authorized editor of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

THE NOTEWORTHY ABSENCE OF WOMEN ADVOCATES AT THE UNITED STATES SUPREME COURT

JENNIFER CRYSTAL MIKA (NÉE MULLINS)*

I. Introduction	31
II. Methodology	32
A. 2015-2016 Term Data.....	33
B. Frequent Advocates Since 2010	34
III. Results	35
A. 2015-2016 Term Data.....	35
1. Clerkship Experience and Gender	35
2. Employment and Gender	36
B. Frequent Advocates Over the Last Six Terms	37
1. Clerkship Experience and Gender	38
2. Office of the Solicitor General Experience	38
IV. Discussion	39
V. Conclusion	42

I. INTRODUCTION

Arguing before the United States Supreme Court is considered one of the most prestigious accomplishments in a litigator’s career. Those who make regular appearances before the Court are part of an even more elite group of advocates. In 2012, Kedar Bhatia collected information about advocates who had argued more than five times before the Court between 2000 and the end of the 2011-2012 term.¹ Bhatia specifically noted that only 18% of

* Assistant General Counsel to the District of Columbia Department on Disability Services. The views and opinions expressed in this article are those of the author and do not necessarily express the views and opinions of the District of Columbia government or the Department on Disability Services. Thank you to my husband, Nancy Leong, and all the women advocates before the Supreme Court.

1. See Kedar S. Bhatia, *Top Supreme Court Advocates of the Twenty-First Century*, 2 J. L. 561, 569 (2012).

this elite club were women.² He also noted that 63% of the advocates had served as a law clerk for a Supreme Court Justice and 75% had current or previous experience in the Office of the Solicitor General (OSG).³

This article seeks to follow up on Bhatia's work to determine if women have become a larger subset of this elite club and the larger Supreme Court advocate community over the past five terms. To do so, it discusses data collected on all of the advocates who argued before the Supreme Court in the 2015-2016 term as well as data collected on the advocates who argued more than once in a given term since 2010. Section II describes the methodology used to collect this data. Section III presents the resulting data. Section IV discusses the noticeable trends and briefly explores the possible causes in the continued deficit in women advocates. In sum, this article strives to start a dialogue about how the gender gap in Supreme Court advocacy can be closed.

II. METHODOLOGY

For the purpose of this article, I collected and reviewed two specific data sets. First, I collected data on all cases argued during the 2015-2016 term. This data set was selected to capture a snapshot of the advocate demographic at the end of the 2015-2016 term. I recognize that a given term can be comprised of a myriad of different cases that may not provide a full picture of current trends. As a result, the second data set I collected is based on the data collected by SCOTUSblog on advocates who appeared more than once in a given term, which is included its Stat Pack⁴, for the last six complete terms.⁵ This data as a whole is not intended to specifically analyze who is classified as a "Supreme Court Expert."⁶ Instead, this data set is intended to capture both those advocates who could be termed experts as well as those who are in the process of developing the credentials for that distinction. This will provide a picture of how the Supreme Court Bar is evolving since Bhatia's initial work.

2. *See id.* at 575.

3. *See id.* at 579.

4. *See generally Stat Pack Archive*, SCOTUSBLOG, <http://www.scotusblog.com/reference/stat-pack/> (last visited Sep. 16, 2016). Notably, Bhatia is credited as the author of the Stat Packs for 2010 through 2015. *See also* Kedar Bhatia, *Final October Term 2015 Stat Pack*, SCOTUSBLOG (June 29, 2016, 11:25 PM), <http://www.scotusblog.com/2016/06/final-october-term-2015-stat-pack/>.

5. The 2010, 2011, 2012, 2013, 2014, and 2015 terms.

6. *See* Bhatia, *supra* note 1, at n.12 (defining an expert as an advocate who has argued at least five times before the Supreme Court since October 2000). *See generally* Richard J. Lazarus, *Advocacy Matters Before and Within the Supreme Court: Transforming the Court by Transforming the Bar*, 96 GEO. L. J. 1487 (2008).

2017] NOTEWORTHY ABSENCE OF WOMEN ADVOCATES 33

A. 2015-2016 Term Data

For the first data set, I reviewed the argument list for every month of the 2015-2016 term. This information is readily available on the Court's website.⁷ I cross referenced this list with the Granted & Noted List for the term.⁸ For each case, I pulled the names of the attorney scheduled to appear and noted the name of the party represented. I cross referenced this information with the advocates identified on the case page on SCOTUSblog to account for any instances where the person listed to argue did not actually argue.

Based on this list, I used internet searches to verify the gender of a given advocate.⁹ I also used internet searches to gather information about whether or not the advocate had clerked either for a Supreme Court Justice or any other state or federal judge.¹⁰ The vast majority of Supreme Court advocates have an internet presence, be it from one of the many legal blogs or websites or from a law firm biography. Even government attorneys have a presence through profiles on websites like LinkedIn or due to articles on law school websites. Because a clerkship with a Supreme Court Justice is generally considered a prestigious credential, it is reasonable to assume that if it was not included on one of these forums then the advocate did not have such a clerkship experience. Once I collected this data, I used basic sorting and counting functions in Microsoft Excel to analyze the data.

I also used internet searches to identify the employer of each advocate.¹¹

7. See *Argument Calendars – Term 2015*, SUPREME COURT OF THE UNITED STATES, https://www.supremecourt.gov/oral_arguments/argument_calendars2015.aspx (last visited Oct. 25, 2016).

8. See *Granted & Noted List Cases for Argument in October Term 2015*, SUPREME COURT OF THE UNITED STATES, <https://www.supremecourt.gov/grantednotedlist/15grantednotedlist> (last visited Oct. 25, 2015).

9. As my colleague, Nancy Leong, and I did in our previous work, I acknowledge that this methodology accepts and reinforces a binary conception of gender with which I do not agree. I have chosen to use conventional binary thinking about gender because it is otherwise difficult to catalogue broad trends such as those examined herein. Out of an abundance of caution and out of respect for the advocates and their ability to self-identify now or in the future differently than how they may be identified on the internet, the appendices do not include a listing of genders. See Jennifer C. Mullins & Nancy Leong, *The Persistent Gender Disparity in Student Note Publication*, 23 YALE J.L. & FEMINISM 385, 395 (2011).

10. Although not specifically used in this article, I intend to do further analysis of the correlation between different types of clerkship experience and advocacy before the Supreme Court with this data.

11. This was cross referenced with any employment information included on pleadings, which would mitigate the possibility that the employment information available online did not reflect where the advocate worked when s/he argued before the

I classified the employers into four categories: Office of the Solicitor General, other government entities (state's attorney offices and public defenders), private practice (including private defense attorneys), and other (advocacy groups and universities). A complete chart of this data is included at Appendix A.

B. Frequent Advocates Since 2010

For the second data set, I pulled the "Oral Argument - Advocates" pages from the annual Stat Pack produced by the editors of SCOTUSblog for the last six completed terms.¹² For each year, the SCOTUS blog has included a chart titled "Advocates Who Appeared More than Once." These charts have always included the position for each advocate; denoting whether or not an advocate works for the OSG.¹³ Again I used internet searches to verify the gender of each advocate listed.¹⁴ It has only been in the last three years¹⁵ that this chart has included information about an advocate's Supreme Court clerkship experience, if any. As a result, if an advocate was only included on the lists for years prior, I used internet searches in the same manner described above to verify whether or not an advocate had

Supreme Court.

12. See Kedar Bhatia, *Final October Term 2015 Stat Pack*, SCOTUSBLOG 38-39 (June 29, 2016), http://www.scotusblog.com/wp-content/uploads/2016/06/SB_argument-advocates_OT15.pdf [hereinafter Bhatia, *Stat Pack 2015*]; Kedar S. Bhatia, *Stat Pack for October Term 2014*, SCOTUSBLOG 39-40 (June 30, 2015), http://sblog.s3.amazonaws.com/wp-content/uploads/2015/07/SB_advocates_OT14.pdf [hereinafter Bhatia, *Stat Pack 2014*]; Kedar S. Bhatia, *Stat Pack for October Term 2013*, SCOTUSBLOG 37-38 (July 3, 2014), http://sblog.s3.amazonaws.com/wp-content/uploads/2014/07/SCOTUSblog_advocates_OT13.pdf [hereinafter Bhatia, *Stat Pack 2013*]; Kedar S. Bhatia, *Stat Pack for October Term 2012*, SCOTUSBLOG (June 27, 2013), http://scotusblog.com/wp-content/uploads/2013/06/argument-advocates_OT12.pdf [hereinafter Bhatia, *Stat Pack 2012*]; Kedar S. Bhatia, *Stat Pack for October Term 2011*, SCOTUSBLOG (June 30, 2012), http://sblog.s3.amazonaws.com/wp-content/uploads/2012/06/SB_advocates_OT11_final.pdf [hereinafter Bhatia, *Stat Pack 2011*]; Kedar S. Bhatia, *Stat Pack for October Term 2010*, SCOTUSBLOG 16-17 (June 28, 2011) http://sblog.s3.amazonaws.com/wp-content/uploads/2011/06/SB_OT10_stat_pack_final.pdf [hereinafter Bhatia, *Stat Pack 2010*].

13. Before the 2011 term, this chart only noted an advocate's position at OSG or that s/he was in private practice. For the 2012 term and subsequent terms, the chart also included the law firm or state office represented by advocates who were not from the OSG.

14. See *supra* note 10.

15. The 2013, 2014, and 2015 terms.

2017] NOTEWORTHY ABSENCE OF WOMEN ADVOCATES 35

Supreme Court clerkship experience.¹⁶ Once I collected this data, I used basic sorting and counting functions in Microsoft Excel to analyze the data. A complete chart of this data is included at Appendix B.

III. RESULTS

The following results are an aggregate of the data collected.¹⁷ For each data set, there is specific data regarding the gender composition as a whole as well gender composition as it relates to clerkship experience and employer.

A. 2015-2016 Term Data¹⁸

A total of 117 different advocates appeared during the 2015-2016 term. Only twenty advocates (17%) were women. This is similar to the number of women advocates for the last six terms.¹⁹ With regards to clerkships, there were only fourteen advocates (12%) for whom no information about their clerkship experience could be found. Overall, forty-four advocates (38%) had clerked for a Supreme Court Justice.

1. Clerkship Experience and Gender

Table 1 details clerkship experience for the advocates in the 2015 term based on gender.

Table 1. 2015 Term Advocate Clerkship Experience by Gender

Gender	Supreme Court Clerkship		
	Total	Percentage of all advocates	Percentage within gender subset
Women	8	7%	40%
Men	37	32%	38%

Women advocates were slightly more likely to have clerked for a Supreme Court Justice. However, as a whole, fewer women advocates had Supreme Court clerkship experience compared to their male counterparts.

16. Luckily, there is significant overlap from year to year. So, the data from the last three terms could be used to fill in the gaps.

17. Raw data is on file with the author and available upon request.

18. The Tables and Charts in this subsection are derived from the data included in Appendix A.

19. See Bhatia, *Stat Pack 2015*, *supra* note 12, at 40.

2. *Employment and Gender*

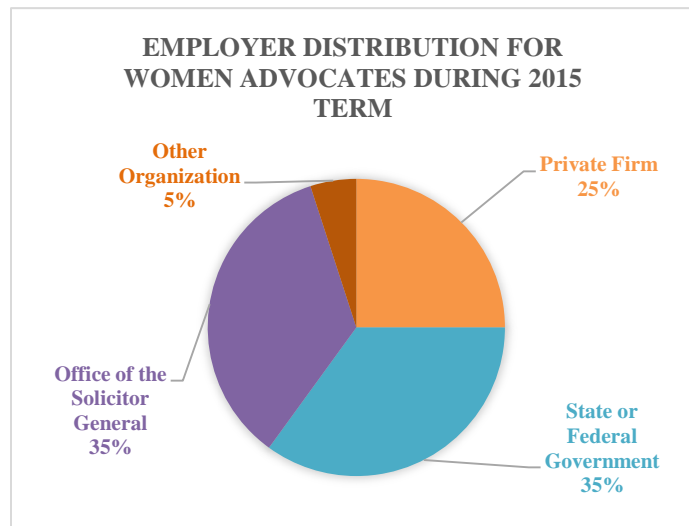
Table 2 summarizes the distribution of advocates based on employer.

Table 2. 2015 Term Advocates by Employer

Employer	Number	Percentage
Private Firm	67	57%
State or Federal government	22	19%
Office of the Solicitor General	19	16%
Other organization	10	8%

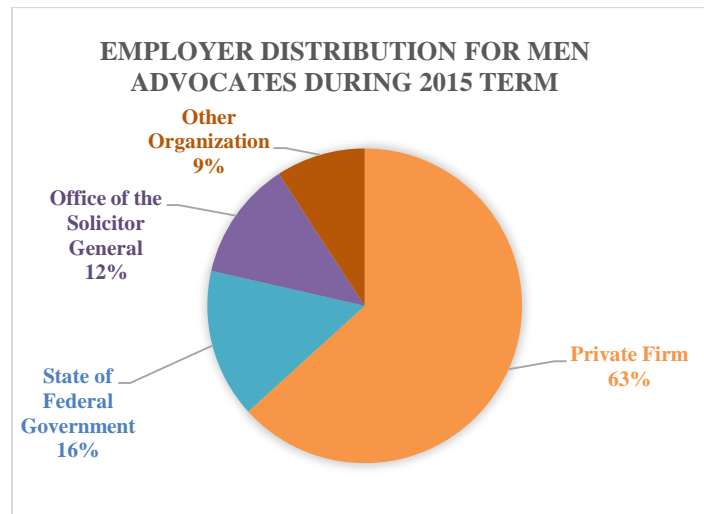
Charts 1 and 2 provide a side by side comparison of how employment is distributed based on gender.

Chart 1. Employer Distribution for Women Advocates during 2015 Term



2017] NOTEWORTHY ABSENCE OF WOMEN ADVOCATES 37

Chart 2. Employer Distribution for Men Advocates during 2015 Term



When compared side by side, these charts reveal that women advocates were far more likely to be employed by the government either as an Assistant to the Solicitor General or as an attorney for a state government or public defender service compared to their male counterparts. Conversely, while nearly two thirds of male advocates were from private firms, only five woman advocates (4% of all the advocates for the term) were from private firms.

B. Frequent Advocates Over the Last Six Terms²⁰

A total of eighty different advocates have appeared more than once in a given term over the last six terms. Only fifteen different women appear on this list; comprising only 19% of the entire list of advocates. Ten of these women were Assistants to the Solicitor General. Only four women (less than 5%) were from private practice.²¹ Table 3 provides a summary of the

20. The Tables in this subsection are derived from the data included in Appendix B.

21. There are five women who are not from OSG; Erin Murphy (Bancroft), Katherine Menendez (formerly of the Minnesota Office of the Federal Defender), Patricia Millett (formerly of Akin Gump), Lisa Blatt (Arnold & Porter), and Allyson Ho (Morgan Lewis). See Bhatia, *Stat Pack 2015*, *supra* note 12; Bhatia, *Stat Pack 2014*, *supra* note 12; Bhatia, *Stat Pack 2012*, *supra* note 12; Bhatia, *Stat Pack 2011*, *supra* note 12. Notably, Ms. Menendez and Ms. Millett have become federal judges. See Press Release, D. Minn., Katherine M. Menendez Selected to Serve as next U.S. Magistrate Judge (Feb. 25, 2016), <http://www.mnd.uscourts.gov/Notices/2016/2016->

38 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 25:1
gender breakdown per year.

Table 3. Frequent Advocates for OT 2010-2015 by Gender

Gender	Year					
	2010	2011	2012	2013	2014	2015
Women	6	7	6	6	8	8
Men	24	27	22	25	29	30

Most notable from Table 3 is the consistency with which women represent less than 30% of these frequent advocates.

1. Clerkship Experience and Gender

Table 4 details clerkship experience for the frequent advocates based on gender.

Table 4. Frequent Advocates for OT 2010-2015 Clerkship Experience by Gender

Gender	Supreme Court Clerkships		
	Total	Percentage of all advocates	Percentage within gender subset
Women	8	10%	53%
Men	42	53%	65%

These frequent advocates were more likely on the whole to have clerked for a Supreme Court Justice. However, unlike the advocates during the 2015 term, the male advocates reflected in this data set were more likely to have clerked for a Supreme Court Justice.

2. Office of the Solicitor General Experience

Table 5 provides more detailed information about the advocates from the OSG in this data set.

0225-K-Menendez-Next-Magistrate-Judge.pdf; Biography of Judge Patricia A. Millet, D.C. CIR., <https://www.cadc.uscourts.gov/internet/home.nsf/content/VL++Judges++PAM> (last visited Sep. 5, 2016).

2017] NOTEWORTHY ABSENCE OF WOMEN ADVOCATES 39

Table 5. Frequent Advocates for OT 2010-2015 from the Office of the Solicitor General

Gender	Assistants to the Solicitor General			Assistants to the Solicitor General who also had a Supreme Court Clerkship		
	Total	Percentage of all advocates	Percentage within gender subset	Total	Percentage of all advocates	Percentage within gender subset at OSG
Women	10	13%	67%	6	8%	60%
Men	21	26%	32%	17	21%	81%

As previously mentioned, over two thirds of the women on the list of frequent advocates were from the OSG. Comparatively, only about one third of the male advocates in this data set were from the OSG.

IV. DISCUSSION

This data suggests that women, especially those in private practice, continue to struggle to break into the elite club of frequent Supreme Court advocates. It is clear from both the 2015 term data as well as the frequent advocate data that women remain consistently underrepresented in Supreme Court advocacy. Over the past six years, women consistently made up less than 20% of all advocates before the Supreme Court in a given year²² and less than 30% of the advocates who have argued more than one case in a given term.²³ Although the latter number does suggest that women are gaining ground in becoming Supreme Court experts, the list only includes three new women who could now meet Bhatia's definition of Supreme Court expert.²⁴

22. See Bhatia, *Stat Pack 2015 supra* note 12. .

23. See Table 3; see also *supra* note 12.

24. These women are Ann O'Connell (OSG), Elaine Goldenberg (OSG), and Sarah Harrington (OSG). Compare Bhatia, *Stat Pack 2015, supra* note 12, and Bhatia, *Stat Pack 2014, supra* note 12, and Kedar S. Bhatia, *Stat Pack for October Term 2013: Oral Argument – Advocates* SCOTUSBLOG (Jul. 3, 2014), http://sblog.s3.amazonaws.com/wp-content/uploads/2014/07/SCOTUSblog_advocates_OT13.pdf, and Bhatia, *Stat Pack 2012, supra* note 12, and Bhatia, *Stat Pack 2011, supra* note 12, and Kedar S. Bhatia, *Stat Pack for October Term 2013: Oral Argument – Advocates*, SCOTUSBLOG (Jun. 28, 2011), http://sblog.s3.amazonaws.com/wp-content/uploads/2011/06/SB_oral_arguments_advocate_OT10_final.pdf, with Appendix B. It is also worth noting that at least two women from Bhatia's list – Patricia Millett and Elena Kagan – have ascended to judgeships, meaning that the overall number of women that could be considered Supreme Court Experts has stayed

From the outset, this article did not intend to prove any specific cause for such a consistent disparity. Indeed, a host of different hypotheses in combination could serve to explain these results.²⁵ However, the data does suggest some possible causes that are worth further discussion here; the correlation between clerkship experience and gender, and the continuing struggle for women in private practice.

Gender disparity in clerkship experience may be impacting how many women gain the experience necessary to become a frequent Supreme Court advocate and, by extension, a Supreme Court expert. Women have consistently only comprised one-third of the clerks selected by the Justices for a given term every year since 2010.²⁶ A wealth of research already highlights the issues in law school that play into this persistent disparity including disparity in selection for publication and self-selection out of activities necessary to be viable candidates.²⁷ While Supreme Court clerkship experience does not appear to directly impact an advocate's likelihood of becoming a Supreme Court advocate generally, it does appear to be an important experience for attorneys interested in becoming a frequent Supreme Court advocate and, by extension, a Supreme Court expert. Specifically, it is particularly notable that frequent male advocates

nearly the same since Bhatia's work. See Press Release, *supra* note 21.

25. See, e.g., Mullins, *supra* note 9, at 417-423.

26. See David Lat, *Supreme Court Clerk Hiring Watch: Who Is NOT Retiring From SCOTUS?*, ABOVE THE LAW (Jul. 8, 2015, 5:41 PM), <http://abovethelaw.com/2015/07/supreme-court-clerk-hiring-watch-who-is-not-retiring-from-scotus/>; see also David Lat, *Supreme Court Clerk Hiring Watch: The Official List For OT 2014, Plus More OT 2015 Hires*, ABOVE THE LAW (Jul. 8, 2014, 5:00 PM), <http://abovethelaw.com/2014/07/supreme-court-clerk-hiring-watch-the-official-list-for-ot-2014-plus-more-ot-2015-hires/>; David Lat, *Supreme Court Clerk Hiring Watch: The Official List For October Term 2013*, ABOVE THE LAW (Jul. 25, 2013, 5:54 PM), <http://abovethelaw.com/2013/07/supreme-court-clerk-hiring-watch-the-official-list-for-october-term-2013/?rf=1>; David Lat, *Supreme Court Clerk Hiring Watch: The Justices Are Done for October Term 2012*, ABOVE THE LAW (Jun. 14, 2012, 3:35 PM), <http://abovethelaw.com/2012/06/supreme-court-clerk-hiring-watch-the-justices-are-done-for-october-term-2012/>; David Lat, *Supreme Court Clerk Hiring Watch: The Official List for October Term 2011*, ABOVE THE LAW (Jul. 13, 2011, 12:27 PM), <http://abovethelaw.com/2011/07/supreme-court-clerk-hiring-watch-the-official-list-for-october-term-2011/>; David H. Kaye & Joseph Gastwirth, *Where Have All the Women Gone? The Gender Gap in Supreme Court Clerkships*, 49 JURIMETRICS J. 411, 414 (2009).

27. See Hannah Brenner & Renee Newman Knake, *Gender and the Legal Profession's Pipeline to Power*, 2012 MICH. ST. L. REV. 1419, 1427-28 (2012); see also Jennifer C. Mullins, *Reactions to the Persistent Gender Disparity in Student Note Publication*, 2012 MICH. ST. L. REV. 1685, 1687-89 (2012); Dara E. Purvis, *Female Law Students, Gendered Self-Evaluation, and the Promise of Positive Psychology*, 2012 MICH. ST. L. REV. 1693, 1693-1703 (2012).

2017] NOTEWORTHY ABSENCE OF WOMEN ADVOCATES 41

were far more likely to have had a Supreme Court clerkship than their female counterparts. Similarly notable is the number of advocates from OSG with clerkship experience. Clerkship experience clearly reflects an interest and aptitude in appellate law, which makes candidates attractive to firms with strong and distinguished practices before the Supreme Court as well as the OSG. The fact that women continue to be less likely to obtain this experience places potential women Supreme Court advocates at a disadvantage. As a result, it appears that advocacy before the Supreme Court is yet another milestone further down the pipeline impacted by the legal profession's struggle to best support the advancement of capable women attorneys.

The significant lack of women in private practice who advocate frequently before the Supreme Court also likely reflects the ongoing challenges women face in private practice generally. Despite the significant increase in female attendance and graduation rates from law school,²⁸ the number of women equity partners at private firms has only increased by 2% in the last ten years.²⁹ Again, this is an area in which much has been written, but, it seems, little has changed. Further, of the few women who are frequent advocates, many, understandably, are being selected for judgeships. While this may help to solve other issues faced by the legal profession,³⁰ it may also serve to perpetuate the persistent lack of women as advocates before the Supreme Court.

Nonetheless, the data does suggest that state and federal government agencies are providing women with the opportunities needed to become successful Supreme Court advocates. It is striking that of the sixty-seven advocates from the last term who were from private practice, only five were women. Indeed, only four advocates from the list of eighty frequent advocates were women from private practice. By contrast, three-fourths of the women who argued during the 2015 term were from state and federal government agencies or independent advocacy groups. Meanwhile, nearly two-thirds of male advocates from the same term were from private practice.

28. See Mullins, *supra* note 9, at 392-94 (noting that this generality does not always apply to higher ranked schools).

29. See Lauren S. Rikleem, *Women Lawyers Continue to Lag Behind Male Colleagues*, Nat'l Ass'n of Women Lawyers (2015), <http://www.nawl.org/p/cm/ld/fid=506>; see also, Bryan L. Olson, *Perspective: Men and the Law Firm Math Problem*, BLOOMBERG LAW: BIG LAW BUSINESS LEGAL COMMUNITIES (May 18, 2016), <https://bol.bna.com/perspective-men-and-the-law-firm-math-problem/>.

30. See generally Alexandra G. Hess, *The Collapse of the House that Ruth Built: The Impact of the Feeder System on Female Judges and the Federal Judiciary, 1970-2014*, 24 AM. U. J. GENDER SOC. POL'Y & L. 61 (2015).

42 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 25:1

Women Supreme Court advocates would be nearly extinct, but for the female Assistants to the Solicitor General. What is it about the OSG and state's attorneys' offices that attracts and keeps talented women advocates? Certainly some are drawn to such positions out of a passion for public service. But, there are likely other factors at play that allow women in these offices to advance with greater frequency than women in law firms. These could include workplace culture, work life balance, and structure for advancement that are allowing more women advocates to thrive. Private firms may do well to explore this further.

V. CONCLUSION

The noteworthy absence of women advocates before the Supreme Court highlights that the pipeline to success for women in the legal profession remains a work in progress. Women continue to make up a fraction of the advocates that frequently argue before the Supreme Court. The data presented in this article suggests that the disparities seen in other areas of the legal profession may be part of the cause. However, further research and discussion is needed to fully understand why women consistently are far less likely to appear before the highest Court in the land.

2017] NOTEWORTHY ABSENCE OF WOMEN ADVOCATES 43

Appendix A. OT 2015-2016 Advocates

Person	Employer	SCOTUS Clerkship
Adam G. Unikowsky	Jenner & Block	Scalia Ginsburg
Allen Winsor	Florida Office of the Solicitor General	None
Allon Kedem	Office of the Solicitor General	Kagan Kennedy
Amir Ali	Jenner & Block	None
Andrew Pincus	Mayer Brown	None
Ann O'Connell	Office of the Solicitor General	Roberts
Anthony Shelley	Miller & Chevalier	None
Anthony Yang	Office of the Solicitor General	Scalia
Barry Levenstam	Jenner & Block	None
Bert Rein	Wiley Rein	Harlan
Beth Burton	Georgia Office of the Attorney General	None
Brian Fletcher	Office of the Solicitor General	Ginsburg
Brian Wolfman	Stanford Law School	None
Bridget Asay	Vermont Office of the Solicitor General	None
Carolyn E. Shapiro	Illinois Office of the Solicitor General	Breyer
Carter Phillips	Sidley Austin	None
Catherine M.A. Carroll	WilmerHale	Souter
Charles A. Rothfeld	Mayer Brown	Blackmun
Christian Vergonis	Jones Day	None
Christopher Landau	Kirkland & Ellis	Thomas Scalia
Clifton Elgarten	Crowell & Moring	Brennan
Curtis Gannon	Office of the Solicitor General	Scalia
Dale Schowengerdt	Montana Office of the Solicitor General	Unknown
Daniel T Hansmeier	Defense attorney	Unknown
David Frederick	Kellogg	White
Dennis Jones	Defense attorney	None
Derek L. Schmidt	Kansas Office of the Attorney General	None
Donald Verrilli	Office of the Solicitor General	Brennan
E. Joshua Rosenkranz	Orrick	Brennan
Edward C. DuMont	California Office of the Solicitor General	None
Edward Zas	Defense attorney	None
Edwin Kneedler	Office of the Solicitor General	None

44 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 25:1

Person	Employer	SCOTUS Clerkship
Elaine Goldenberg	Office of the Solicitor General	None
Elizabeth Prelogar	Hogan Lovells	Ginsburg Kagan
Eric Murphy	Ohio Office of the State Solicitor	Kennedy
Erik Jaffe	Erik S. Jaffe P.C.	None
Erin E Murphy	Bancroft	Roberts
Ethan P Davis	King & Spalding	None
Fred Rowley Jr	Munger, Tolles & Olson	None
Frederick Liu	Hogan Lovells	None
Garrard R Beeney	Sullivan & Cromwell	None
Geoffrey Strommer	Hobbs	None
Ginger Anders	Office of the Solicitor General	Ginsburg
Gregory G. Katsas	Jones Day	Thomas
Gregory G. Garre	Latham & Watkins	Rehnquist
H. Bartow Farr	Bancroft	Rehnquist
Helgi Walker	Gibson Dunn	Thomas
Howard Srebnick	Black Srebnick Kornspan & Stumpf	None
Ian Gershengorn	Office of the Solicitor General	Stevens
Ilana Eisenstein	Office of the Solicitor General	None
James D. Smith	Smith Adams Law Feehan	None
Jeffrey A. Lamken	MoloLamken	O'Connor
Jeffrey Fisher	Stanford Law School	Stevens
Jeffrey T Green	Sidley Austin	None
Jeffrey Wall	Sullivan & Cromwell	Thomas
Joan Watt	Salt Lake Legal Defender Association	Unknown
John F Bash	Office of the Solicitor General	Scalia
John M. Duggan	DSDK	None
Jonathan F. Mitchell	Stanford Law School	Scalia
Jonathan Hacker	O'Melveny	None
Juan C. Basombrio	Dorsey	None
Julia Doyle Bernhardt	Maryland Office of the Public Defender	Unknown
Kannon K. Shanmugam	Williams & Connolly	Scalia
Kathryn Keena	Dakota County Attorney's Office	None
M. Reed Hooper	Pacific Legal Foundation	None

2017] NOTEWORTHY ABSENCE OF WOMEN ADVOCATES 45

Person	Employer	SCOTUS Clerkship
Malcolm Stewart	Office of the Solicitor General	Unknown
Marc E. Elias	Perkins Cole	None
Mark Brnovich	Arizona Office of the Attorney General	None
Mark C. Fleming	WilmerHale	Souter
Mark F. Hearne, II	Arent Fox	None
Mark Frost	Mark B. Frost & Associates	Unknown
Mark Plaisance	Louisiana Office of the Public Defender	Unknown
Matthew D. McGill	Gibson Dunn	None
Matthew Guadagno	The Law Office Matthew Guadagno	None
Matthew T. Findley	Ashburn & Mason	None
Michael A. Carvin	Jones Day	None
Michael D. Pospisil	Edgar Law Firm	None
Michael Dreeben	Office of the Solicitor General	None
Michael Kimberly	Mayer Brown	None
Neal Katyal	Hogan Lovells	Breyer
Nicole Saharsky	Office of the Solicitor General	None
Noel Francisco	Jones Day	Scalia
Paul D. Clement	Bancroft	Scalia
Paul M. Smith	Jenner & Block	Powell
Paul W. Hughes	Mayer Brown	None
Peter Stris	Stris & Maher	None
Rachel Kovner	Office of the Solicitor General	Scalia
Richard D. Bernstein	Wilkie Farr & Gallagher	Scalia
Roman Martinez	Latham & Watkins	Roberts
Ronald Eisenberg	Philadelphia Office of the District Attorney	None
Roy T. Englert Jr.	Robbins Russell Englert Orseck Untereiner Sauber	None
Ruth Botstein	Alaska Office of the Attorney General	Unknown
S. Kyle Duncan	Schaerr Duncan	None
Sarah Harrington	Office of the Solicitor General	None
Scott A. Keller	Texas Office of the Solicitor General	Kennedy
Scott A.C. Meisler	Office of the Solicitor General	Unknown
Scott H. Strauss	Spiegel & McDiarmid	None
Seth P. Waxman	WilmerHale	None
Shay Dvoretzky	Jones Day	Scalia

46 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 25:1

Person	Employer	SCOTUS Clerkship
Stephanie Toti	Center for Reproductive Rights	None
Stephanos Bibas	University of Pennsylvania Law School	None
Stephen Bright	Yale Law School	None
Stephen McAllister	University of Kansas School of Law	White Thomas
Steven C. Babcock	Office of the Federal Public Defender	Unknown
Steven Sullivan	Maryland Office of the Attorney General	Unknown
Stuart A. Raphael	Virginia Office of the Attorney General	None
Stuart Lev	Office of the Federal Public Defender	Unknown
Theodore B. Olson	Gibson Dunn	None
Thomas A. Saenz	MALDEF	None
Thomas Goldstein	Goldstein & Russell	None
Thomas R. McCarthy	Consovoy McCarthy Park	None
Thomas Saunders	WilmerHale	Ginsburg
Timothy Crooks	Office of the Federal Public Defender	Unknown
Tyler Green	Utah Office of the Solicitor General	Unknown
Virginia Villa	Office of the Federal Public Defender	Unknown
William S. Consovoy	Consovoy McCarthy Park	Thomas
Zachary Tripp	Office of the Solicitor General	Ginsburg

2017] NOTEWORTHY ABSENCE OF WOMEN ADVOCATES 47

Appendix B. Frequent Advocates Over the Last Five Years

Name	OSG	SCOTUS Clerkship	SCOTUS Term					
			2015	2014	2013	2012	2011	2010
Aaron Linstrom	N	N	N	Y	N	N	N	N
Aaron Panner	N	Y	N	N	N	N	Y	N
Allon Kedem	Y	Y	Y	N	N	N	N	N
Allyson Ho	N	Y	N	Y	N	N	N	N
Andrew Brasher	N	N	N	Y	N	N	N	N
Andrew Pincus	N	N	N	N	N	Y	N	N
Ann O'Connell	Y	Y	Y	Y	Y	N	Y	Y
Anthony Yang	Y	N	Y	Y	Y	Y	Y	Y
Benjamin Horwich	Y	Y	N	N	Y	Y	Y	Y
Bert Rein	N	Y	N	N	N	N	N	Y
Brian Fletcher	Y	Y	Y	Y	N	N	N	N
Bryan Stevenson	N	N	N	N	N	N	Y	N
Carter Phillips	N	Y	Y	Y	Y	Y	Y	N
Charles Rothfeld	N	Y	N	N	N	N	Y	Y
Christopher Landau	N	Y	Y	N	N	N	N	N
Curtis Gannon	Y	Y	Y	Y	Y	Y	Y	Y
David Frederick	N	Y	Y	Y	N	Y	Y	Y
Donald Verrilli	Y	Y	Y	Y	Y	N	Y	Y
Douglas Hallward-Driemeier	N	N	N	Y	N	N	N	N
E. Joshua Rosenkranz	N	Y	Y	Y	N	Y	N	N
Edwin Kneedler	Y	N	Y	Y	Y	Y	Y	Y
Elaine Goldenberg	Y	N	Y	Y	Y	N	N	N
Elizabeth Prelogar	Y	Y	Y	N	N	N	N	N
Eric Feigin	Y	Y	N	Y	Y	N	Y	Y
Eric Miller	Y	Y	N	N	N	Y	Y	N
Eric Schnapper	N	N	N	Y	Y	N	N	N
Erin Murphy	N	Y	Y	N	N	N	N	N
Ginger Anders	Y	Y	Y	Y	Y	Y	Y	Y
Gregory Garre	N	Y	Y	N	N	N	Y	Y
Ian Gershengorn	Y	Y	Y	Y	Y	N	N	N
Ilana Eisenstein	Y	N	Y	N	N	N	N	N

48 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 25:1

Name	OSG	SCOTUS Clerkship	SCOTUS Term					
			2015	2014	2013	2012	2011	2010
Jeffrey Fisher	N	Y	N	Y	Y	Y	Y	Y
Jeffrey Green	N	N	Y	N	N	N	N	N
Jeffrey Wall	Y	Y	N	N	N	Y	Y	Y
John Bash	Y	Y	Y	Y	Y	N	N	N
John Bursch	N	N	N	N	Y	N	Y	Y
John Duggan	N	N	Y	N	N	N	N	N
John Elwood	N	Y	N	Y	N	N	N	N
John Neiman	N	Y	N	N	N	N	Y	N
Jonathan Blackman	N	N	N	N	Y	N	N	N
Jonathan Hacker	N	N	N	Y	N	N	N	N
Jonathan Mitchell	N	Y	N	N	Y	N	N	N
Joseph Palmore	Y	Y	N	N	Y	Y	Y	Y
Kannon Shanmugam	N	Y	N	Y	N	N	N	Y
Katherine Menendez	N	N	N	Y	N	N	N	N
Kevin Russell	N	Y	N	N	Y	N	N	N
Leondra Kruger	Y	Y	N	N	N	Y	Y	N
Lisa Blatt	N	N	N	N	N	Y	N	Y
Malcolm Stewart	Y	N	Y	Y	Y	Y	Y	Y
Mark Perry	N	Y	N	N	Y	N	N	N
Matthew Roberts	Y	Y	N	N	N	Y	N	N
Melissa Sherry	Y	Y	N	N	Y	Y	Y	Y
Michael Carvin	N	N	Y	N	N	N	N	N
Michael Dreeben	Y	N	Y	Y	Y	Y	Y	Y
Neal Katyal	N	Y	Y	Y	Y	Y	N	Y
Nicole Saharsky	Y	N	Y	Y	Y	Y	Y	Y
Noel Francisco	N	Y	Y	N	N	N	N	N
Patricia Millett	N	N	N	N	N	N	Y	N
Paul Clement	N	Y	Y	Y	Y	N	Y	Y
Paul Smith	N	Y	Y	N	N	N	N	N
Peter Keisler	N	Y	N	N	Y	N	N	N
Peter Stris	N	N	Y	N	N	N	N	N
Pratik Shah	Y	Y	N	N	N	Y	Y	N
Rachel Kovner	Y	Y	Y	Y	N	N	N	N
Roman Martinez	Y	Y	Y	Y	N	N	N	N

2017] NOTEWORTHY ABSENCE OF WOMEN ADVOCATES

49

Name	OSG	SCOTUS Clerkship	SCOTUS Term					
			2015	2014	2013	2012	2011	2010
Roy Englert	N	N	N	N	N	Y	N	N
Roy McLeese	Y	Y	N	N	N	Y	N	N
Sarah Harrington	Y	N	N	Y	Y	Y	Y	Y
Scott Keller	N	Y	Y	Y	N	N	N	N
Scott Nelson	N	Y	N	N	N	N	Y	N
Seth Waxman	N	N	Y	Y	Y	Y	Y	Y
Sri Srinivasan	Y	Y	N	N	N	N	Y	Y
Stephen McAllister	N	Y	Y	Y	N	N	N	N
Theodore Olson	N	N	N	N	N	Y	N	Y
Thomas Goldstein	N	N	Y	Y	Y	N	Y	Y
Thomas Horne	N	N	N	N	N	N	N	Y
William Consovoy	N	Y	Y	N	N	N	N	N
William Jay	N	Y	N	Y	N	Y	Y	N
William Messenger	N	N	N	N	Y	N	N	N
Zachary Tripp	Y	Y	Y	N	N	N	N	N