The First Women Members of the Supreme Court Bar, 1879-1900

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The First Women Members of the Supreme Court Bar, 1879-1900

MARY L. CLARK*

I. INTRODUCTION

In 1879, Belva A. Lockwood of Washington, D.C., became the first woman member of the bar of the U. S. Supreme Court. Lockwood had applied for admission to the bar three years earlier, but had been refused on the ground that no woman had ever been admitted and thus there was no precedent for women’s admission. Not easily defeated, Lockwood lobbied Congress to amend the rules governing admission of attorneys to the Supreme Court bar to allow for women as well as men. In February, 1879, Congress adopted “an Act to relieve certain legal disabilities of women,” which authorized women to be admitted to practice before the Court.¹ Lockwood promptly reapplied for admission, which was granted, making her the first woman member of the Supreme Court bar.

Over the course of the next twenty years, from 1880 to 1900, nineteen other women joined Lockwood as members of the Supreme Court bar. Prior to joining the high court’s bar, these women had achieved many other “firsts” for women in the legal profession, by being the first women to attend, or graduate from, their law schools, the first women to

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join their states' bars, or the first women to hold particular positions within the legal profession, such as law school dean and master of chancery. In breaking barriers to women's entry into the legal profession, and achieving a high degree of professional success while doing so, these women were recognized as leading women lawyers of their day.

These early female Supreme Court bar members were well known to one another. They worked together in the woman suffrage movement, were active in the same professional and voluntary associations, and corresponded with one another about personal and professional issues. In time, they began to move each other's admission in the Supreme Court bar. For example, in 1890, Ada M. Bittenbender, the third woman member of the Supreme Court bar, moved the admission of Emma M. Gillett, the seventh woman member of the Supreme Court bar. Then in 1891, Gillett moved the admission of Marilla Ricker, the ninth woman member of the Supreme Court bar. Ellen Spencer Mussey of Washington, D.C., the thirteenth woman member, moved the admission of over twenty women in the Supreme Court bar between 1897 and 1920.2

Following highlights of the Supreme Court activities of the first women bar members, this Article focuses specifically upon the backgrounds, activities, and thoughts of thirteen of the first twenty women members, about whom most is found in the primary and secondary sources, in an effort to learn what motivated them to join the Supreme Court bar. These women are: Ada Bittenbender, Myra Bradwell, Clara Shortridge Foltz, J. Ellen Foster, Emma Gillett, Laura DeForce Gordon, Carrie Burnham Kilgore, Belva Lockwood, Catharine Waugh McCulloch, Alice Minick, Ellen Spencer Mussey, Marilla Ricker, and Lelia Robinson-Sawtelle. In exploring why these women wanted to join the bar, this Article examines four points of commonality shared by them: (1) their similarities in educational, professional, personal, and law practice experiences; (2) their active involvement in, and leadership of, the woman suffrage movement; (3) their membership in the Equity Club, a correspondence society of women lawyers, formed in the late 1880s, through which they brainstormed about issues confronting them as women lawyers; and (4) their consciousness of being first women lawyers, both as role models for other women and examples for society generally.

2. See "Women Admitted to Practice in the Supreme Court of the United States," available in the Supreme Court file, Supreme Court Library (listing 97 women admitted to practice before the Supreme Court by 1920 and noting that Mussey sponsored 25 of them).
This Article concludes with some thoughts about what motivated these women to join the Supreme Court bar in the last two decades of the nineteenth century. In light of the fact that most of them did not brief or argue cases in the Supreme Court, and a number were not engaged in litigation generally, why did they want to join the bar? Were they genuinely interested in and expecting to litigate in the Supreme Court, but were prevented from doing so by pervasive sex discrimination, which denied them opportunities for clients and cases in the high court? Were they motivated to join the Supreme Court bar by the professional prestige membership conferred? Were they motivated by the ability to sponsor others’ membership in the bar as a means to bolster their standing in the legal community, or as a way of fostering an “old girls” network of Supreme Court bar members? Or were they motivated to join the Supreme Court bar as a further step toward breaking down barriers to women’s entry into the legal profession?

II. LOCKWOOD’S PIONEERING EFFORTS TO JOIN THE SUPREME COURT BAR

Belva Lockwood had been a member of the bar of the Supreme Court of the District of Columbia for three years when she first applied for membership in the bar of the United States Supreme Court in 1876. Her application was denied on November 6, 1876, in an order authored by Chief Justice Morrison Waite, which declared:

By the uniform practice of the court, from its organization to the present time, and by the fair construction of its rules, none but men are admitted to practise [sic] before it as attorneys and counsellors. This is in accordance with immemorial usage in England, and the law and practice in all the States until within a recent period; and the Court does not feel called upon to make a change, until such a change is required by statute, or a more extended practice in the highest courts of the States.

3. As in the present day, an applicant for membership in the Supreme Court bar in the late nineteenth century was required to demonstrate a minimum of three years’ membership in good standing in the bar of her state’s highest court, and to have her application sponsored by a current member of the Supreme Court bar. If her application was approved, admission would then be moved and granted in open court. It was not until the 1970s that applications for admission to the Supreme Court bar were processed by mail. See KEVIN T. McGuire, THE SUPREME COURT BAR: LEGAL ELITES IN THE WASHINGTON COMMUNITY 135 (1993) (noting that “[i]n 1970, ... under the leadership of Chief Justice Burger, the Court changed its rules to allow application and admission by mail, an increasingly popular option.”).

4. Supreme Court Order of November 6, 1876, in Summary of Events, 11 AM. L.
Thus, the Court refused to admit Lockwood on the ground that there was no precedent for women’s admission to that Court’s bar. In effect, the Court deferred the issue of women’s admission by looking to Congress and the state supreme courts to lead the way.

In response, Lockwood lobbied Congress over the course of the next three years to amend the statute governing membership in the Supreme Court bar to include women as well as men. Lockwood’s formal petition to Congress stated as follows:

To the Senate and House of Representatives of the United States in Congress assembled:

Your Petitioner would respectfully represent that she is a citizen of the District of Columbia and has been a resident therein for the past two years.

That your petitioner graduated with honor from Genesee College, N.Y. in 1857, received her second degree from Syracuse University in 1870, and was admitted to the National Law University of Washington, D.C. the same year. That she duly passed through the curriculum of study of the last named University and received her diploma therefor May 1873 with the degree of Bachelor of Laws.

That your petitioner was duly admitted in accordance with its rules to the bar of the Supreme Court of the District of Columbia Sept. 24th 1873; that since that time now more than three years she has had a large practice before the said Court, as well as a large and varied practice before the several Departments of the General Government.

That it has been the custom hitherto to admit on motion and taking the oath of office, to the Supreme Court of the United States, such members of the Supreme Court of the District of Columbia as have been for three years in practice before said Court.

That your petitioner has been debarred from admission to the United States Supreme Court on the ground that she is a woman, and that fact has been largely published over the country much to the detriment of her law practice upon which your petitioner and her family are dependant [sic] for support.

Wherefore your petitioner prays your Honorable Body for the passage of an Act enabling her or any other woman similarly situated to be admitted to the said United States Supreme Court on the same terms as men are admitted, and thus your petitioner will ever pray.7

Her petition was signed “Belva A. Lockwood.”6

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5. Lockwood’s original petition to Congress is on file with the Congressional Records Division of the National Archives (emphasis in original).
6. Id.
Several aspects of Lockwood’s petition are of particular interest. First, she insisted in her petition that women be admitted to the Supreme Court bar on the same terms as men. She also made reference to the broad publicity given the denial of her application for admission to the Supreme Court bar. In addition, she claimed that the Supreme Court’s refusal to admit her, and the publicity generated thereby, had a detrimental effect upon her practice, thereby suggesting that she lost cases or clients otherwise available to her as a result of the refusal. Finally, Lockwood asserted that her family was dependent upon her law practice for support. On this last point, Lockwood was married to her second husband, Ezekiel Lockwood, at the time that she originally applied for, and was denied, admission to the Supreme Court bar. Ezekiel died in 1877, shortly after Lockwood’s petition to Congress. As for the publicity that Lockwood’s struggle engendered, Myra Bradwell’s Chicago Legal News, among others, covered the story extensively. Indeed, Emma Gillett attributed her decision to become a lawyer in part to Lockwood’s struggle to join the Supreme Court bar, which Gillett learned of through its broad publicity.

Lockwood’s lobbying efforts succeeded in securing women’s admission to the Supreme Court bar on February 15, 1879, when Congress enacted “an Act to relieve certain legal disabilities of women,” which largely tracked the language of the bill that Lockwood had drafted, when it provided:

Be it enacted... That any woman who shall have been a member of the bar of

7. See Belva Lockwood, My Efforts to Become a Lawyer, LIPPINCOTT'S MONTHLY MAG., Feb. 1888, at 227, reprinted in 1 WOMEN IN AMERICAN LAW: FROM COLONIAL TIMES TO THE NEW DEAL 259, 264 (Marlene Stein Wortman ed., Holmes & Meier Publishers 1985) [hereinafter WOMEN IN AMERICAN LAW].

8. See, e.g., Women's Right to Practice in the U.S. Courts, CHI. LEGAL NEWS 169 (Feb. 10, 1877) (reporting introduction in House of Representatives of “Bill to Relieve the Legal Disabilities of Women”); Women as Lawyers, CHI. LEGAL NEWS 271-72 (May 11, 1878) (reporting House debate on bill); see also Summary of Events, 12 AM. L. REV., 1877-1878, at 391 (Samuel Hoar & Moorfield Storey eds., 1878) (reporting introduction in House of bill “providing that women should be admitted on the same terms as men to practise [sic] in all the Federal courts.”).


10. See 1 WOMEN IN AMERICAN LAW, supra note 7, at 264 (setting forth language of draft bill that she succeeded in having introduced in House in December, 1877).
the highest court of any State or Territory or of the Supreme Court of the District of Columbia for the space of three years, and shall have maintained a good standing before such court, and who shall be a person of good moral character, shall, on motion, and the production of such record, be admitted to practice before the Supreme Court of the United States."

Reapplying for admission, Lockwood became the first woman to join the Court's bar on March 3, 1879. Lockwood's 1879 application was moved by Albert G. Riddle, a white professor at Howard Law School who was the Corporation Counsel for the District of Columbia. Riddle had presented Lockwood to the Court at the time that her first application for membership was denied. He subsequently moved the admission of at least two other women to the Supreme Court bar, Laura DeForce Gordon and Carrie Burnham Kilgore. Marilla Ricker, another early member of the Supreme Court bar, read law with Riddle in preparation for the bar examination and was admitted to the District of Columbia bar in 1882, "having passed the bar examination with the highest grade of all who were admitted at the time." A year after joining the Supreme Court bar, Lockwood moved the admission of Samuel R. Lowery of Huntsville, Alabama, the first southern black to be admitted to that Court's bar.

III. THE FIRST TWENTY WOMEN MEMBERS OF THE SUPREME COURT BAR

Following Lockwood, the next nineteen women members of the Supreme Court bar, in order of their admission, were (2) Laura DeForce Gordon of San Francisco, California, (3) Ada Bittenbender of Lincoln, Nebraska, (4) Carrie Burnham Kilgore of Philadelphia, Pennsylvania, (5) Clara Shortridge Foltz of San Diego, California, (6) Lelia Robinson-

Table 1 sets forth the date of admission to the Supreme Court bar for each of the first twenty women members, the state and year of their admission to the bar of their state's highest court, the state and year of their birth, their place of residence at the time of admission to the Supreme Court bar, and the name and affiliation of their movant.

The table allows for several initial observations about these first twenty women. To begin with, they were in the vast minority as members of the Supreme Court bar, where 250 to 350 attorneys joined each term and, of those, just a few were women. For example, in the 1883 Term, there were 279 new admittees and no women. In the 1889 Term, there were 322 new admittees, with five women. Second, they represent two age groupings, or generations, of women—one born between 1830 and 1838 and another born between 1848 and 1862—and ranged in age from 36 to 61 at the time of their Supreme Court bar admission. Third, they were geographically concentrated in Washington, D.C., and Chicago. Eight of the women practiced in these two cities, while three practiced in Nebraska, two in California, two in Boston, and the four members of the Pier family—mother, Kate Pier, and her three daughters, Kate H. Pier, Caroline H. Pier, and Harriet H. Pier—practiced in Wisconsin with their husband/father, Colonel C.K. Pier. Fourth, their Supreme Court bar admissions were not infrequently

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18. See Table 1, "First Twenty Women Members of the Supreme Court Bar," infra at 95; see also Supreme Court Attorney Rolls, Vols. 3-5 (1870 Term-1916 Term) (on file with the National Archives).
19. See Supreme Court Attorney Rolls, Vol. 3 (1870 Term-1883 Term) (on file with the National Archives).
20. See Supreme Court Attorney Rolls, Vol. 4 (1884 Term-1897 Term) (on file with the National Archives).
21. See Ada M. Bittenbender, Woman in Law, in WOMAN'S WORK IN AMERICA 218, 240 (Annie Nathan Meyer ed., 1891) [hereinafter Bittenbender, WOMAN'S WORK IN
moved by members of Congress.\textsuperscript{22}

The following table also reveals that these first twenty women began to move each others’ applications for admission to the Supreme Court bar. This occurred for the first time in 1890 when Ada Bittenbender, the third woman member of the Supreme Court bar, moved the admission of Emma Gillett, the seventh woman member of the Supreme Court bar.

This was quickly followed in 1891 when Gillett moved the admission of Marilla Ricker, the ninth woman member of the Supreme Court bar. Thereafter, Belva Lockwood moved the admission of Alice Minick in 1897, and Kate H. Pier moved the admission of her sister, Caroline H. Pier, in 1897, as well as her mother, Kate Pier, and other sister, Harriet H. Pier, in 1900. Finally, Ellen Spencer Mussey moved the admission of J. Ellen Foster in 1897, as well as that of over twenty other women between 1900 and 1920.

IV. THE SUPREME COURT ACTIVITIES OF THE FIRST TWENTY WOMEN BAR MEMBERS

Four of the first twenty women members of the Supreme Court bar actually litigated in the high court. These were Bittenbender, Foltz, Lockwood, and Mussey. How they got their high court clients, especially in solo representation cases, is not known, with the exception of Bittenbender, who represented her own temperance interests in the Supreme Court. Of these four women, Bittenbender and Foltz filed briefs in one action each, while Lockwood and Mussey presented oral argument in at least one case in addition to filing briefs in multiple cases.

Bittenbender filed a brief, co-signed by her attorney-husband, on behalf of her and her husband in \textit{Nebraska ex rel. Bittenbender v. Excise Board}\textsuperscript{23} during the Supreme Court’s 1916 Term. The case involved the question of whether an 1858 act of the Nebraska territorial legislature had repealed an 1855 act of the same legislature prohibiting the manufacture and sale of intoxicating liquor. In filing the action, the Bittenbenders sought a declaration that the 1858 act did not repeal the earlier act.\textsuperscript{24} They also sought a writ of mandamus directing the Excise

\textsuperscript{22} This practice of members of Congress moving applications for admission to the Supreme Court bar was not uncommon, as reflected in the Supreme Court bar admission records, which are on file with the National Archives.

\textsuperscript{23} 244 U.S. 645 (1917).

\textsuperscript{24} See Relators Motion for a Writ of Mandamus at 3, \textit{Nebraska ex rel. Bittenbender v. Excise Board}, 244 U.S. 645 (No. 18719). The motion was filed by Bittenbender in the District Court of Lancaster County, Nebraska. The district court case was not published but the motion is contained in the Supreme Court records for the case,
### Table 1. First 20 Women Members of the Supreme Court Bar

<table>
<thead>
<tr>
<th>Name</th>
<th>Date of Admission to Supreme Court Bar</th>
<th>Original State and Year of Admission</th>
<th>State and Year of Birth</th>
<th>Residence at Time of Admission to Supreme Court Bar</th>
<th>Name and Affiliation of Movant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Laura D. Gordon</td>
<td>2/2/1885</td>
<td>California 1879</td>
<td>Pennsylvania 1838</td>
<td>San Francisco</td>
<td>Albert Riddle Howard Law</td>
</tr>
<tr>
<td>Ada M. Bittenbender</td>
<td>10/15/1888</td>
<td>Nebraska 1883</td>
<td>Pennsylvania 1848</td>
<td>Lincoln NE</td>
<td>Henry Blair U.S. Senate</td>
</tr>
<tr>
<td>Carrie B. Kilgore</td>
<td>1/8/1890</td>
<td>Pennsylvania 1886</td>
<td>Vermont 1838</td>
<td>Philadelphia PA</td>
<td>Albert Riddle Howard Law</td>
</tr>
<tr>
<td>Lelia Robinson-Sawtelle</td>
<td>4/8/1890</td>
<td>Massachusetts 1882</td>
<td>Massachusetts 1850</td>
<td>Boston MA</td>
<td>George Hearn U.S. Senate</td>
</tr>
<tr>
<td>Kate Kane</td>
<td>5/19/1890</td>
<td>Wisconsin 1878</td>
<td>New Hampshire 1840</td>
<td>Chicago IL</td>
<td>Robert Ingersoll</td>
</tr>
<tr>
<td>Fannie O’Linn</td>
<td>10/17/1893</td>
<td>Nebraska 1890</td>
<td></td>
<td>Chadron NE</td>
<td>W.J. Bryan U.S. House</td>
</tr>
<tr>
<td>Kate H. Pier</td>
<td>1/31/1894</td>
<td>Wisconsin 1894</td>
<td></td>
<td>Milwaukee WI</td>
<td>W.F. Vilas U.S. Senate</td>
</tr>
<tr>
<td>Alice A. Minck</td>
<td>1/18/1897</td>
<td>Nebraska 1897</td>
<td></td>
<td>Lincoln NE</td>
<td>Belva Lockwood</td>
</tr>
<tr>
<td>Caroline H. Pier</td>
<td>1/18/1897</td>
<td>Wisconsin 1897</td>
<td></td>
<td>Milwaukee WI</td>
<td>Kate H. Pier</td>
</tr>
<tr>
<td>J. Ellen Foster</td>
<td>12/20/1897</td>
<td>Iowa 1897</td>
<td>Massachusetts 1840</td>
<td>Washington, D.C.</td>
<td>Ellen Mussey</td>
</tr>
<tr>
<td>Catharine W. McCulloch</td>
<td>2/1/1898</td>
<td>Illinois 1865</td>
<td>New York 1862</td>
<td>Chicago IL</td>
<td>Charles Beale</td>
</tr>
<tr>
<td>Clara L. Power</td>
<td>4/3/1899</td>
<td>Massachusetts 1865</td>
<td></td>
<td>Boston MA</td>
<td>Attorney General</td>
</tr>
<tr>
<td>Kate Pier</td>
<td>2/1/1900</td>
<td>Wisconsin 1899</td>
<td></td>
<td>Milwaukee WI</td>
<td>Kate H. Pier</td>
</tr>
<tr>
<td>HARRIET H. Pier</td>
<td>2/1/1900</td>
<td>Wisconsin 1899</td>
<td></td>
<td>Milwaukee WI</td>
<td>Kate H. Pier</td>
</tr>
</tbody>
</table>

which are on file in the National Archives.
Board of Lincoln, Nebraska, to perform its duties in regulating the manufacture and sale of intoxicating liquor. The Nebraska district court had ruled against them, with the Nebraska Supreme Court affirming. On May 21, 1917, the Supreme Court dismissed their appeal for want of jurisdiction.

Foltz co-signed a brief with Mr. A. C. Searle, which was filed on behalf of Alfred Clarke, the plaintiff-in-error in Clarke v. McDade, during the Court’s 1896 Term. The appeal involved a California Superior Court’s adjudication of Clarke’s insolvency. It is unclear at what stage of the litigation Foltz became involved. On January 25, 1897, the Supreme Court dismissed the writ of error on the ground that it had no jurisdiction to consider the matter where there was neither a final judgment nor a federal question presented.

Lockwood was considerably more active in the Supreme Court bar than either Bittenbender or Foltz, filing briefs in several cases and presenting oral argument in at least one case, making her the first woman ever to do so. Lockwood co-signed a brief with Michael L. Woods on behalf of the appellants Henry and Caroline Kaiser in Kaiser v. Stickney during the Court’s 1880 Term. The United States Supreme Court affirmed the judgment of the Supreme Court of the District of Columbia that a deed for property owned by Mrs. Kaiser, in her individual capacity as a wife, was a valid conveyance in trust to secure a debt so long as the deed was also executed by the husband. In an action initiated in the trial court by Lockwood, the Kaisers had sought to set aside the deed on the ground that “it was executed by the wife alone for the conveyance of her general property, and, therefore, not binding.” The Court rejected this argument, instead holding for the bank in ruling the deed valid “because it was executed by both the

25. See id.
26. See Bittenbender, 244 U.S. at 645.
27. 165 U.S. 168 (1897).
28. See id. at 169.
29. See id. at 168, 174.
30. New research suggests that Lockwood may have presented argument in the Supreme Court on two occasions, the first being in Kaiser v. Stickney in 1880, one year after Lockwood joined the Supreme Court Bar. See Clare Cushman, Belva Lockwood’s First Appearance at the Supreme Court, 20 Sup. Ct. Hist. Soc. Q., No. 1, at 3 (1999).
31. 131 U.S. app. clxxxvii (1880).
32. See id. at clxxxviii.
33. See Plaintiffs’ Bill of Complaint at 1-5, Kaiser v. Stickney (equity doc. 15, No. 4552). The action was filed by Lockwood in the Supreme Court of the District of Columbia on August 6, 1875. The bill of complaint is contained in the Supreme Court records for this case (131 U.S. app. clxxxvii), which are on file in the National Archives.
34. Kaiser, 131 U.S. app. at clxxxviii.
husband and wife.\textsuperscript{35}

Next, Lockwood was the sole legal representative of the claimant-petitioner in \textit{Friend v. United States},\textsuperscript{36} filed during the Court's 1895 Term. This was an appeal from a Court of Claims judgment in favor of the United States in an Indian depredation suit involving John Friend's allegations of personal injury and property damage by the Comanche Indians.\textsuperscript{37} It appears from the petition filed in the Court of Claims that Friend was represented by Attorney N. B. Coggeshall below and that Lockwood assumed representation of Friend in the Supreme Court.\textsuperscript{38} The Supreme Court dismissed Friend's appeal on September 19, 1895, in light of the parties' mutual agreement to dismiss.\textsuperscript{39}

Lockwood also submitted a brief on behalf of claimants-petitioners, Joseph Nesbitt and Charles Moore in \textit{Nesbitt v. United States}\textsuperscript{40} in the Court's 1901 Term. This was an appeal from a Court of Claims judgment involving an Indian depredation claim for recovery of eighteen mules and twenty-nine horses seized from the claimants by the Sioux Indians.\textsuperscript{41} The Supreme Court did not reach the merits of the case, but considered only the question of what constituted proper evidence in support of an Indian depredation claim filed originally with the Interior Department pursuant to the governing statute. Deciding the appeal without oral argument, the Court affirmed the Court of Claims judgment dismissing Nesbitt and Moore's claim on the ground that they had not submitted sufficient evidence to establish their Indian depredation claim.\textsuperscript{42}

\begin{flushright}
\textsuperscript{35} Id.  \\
\textsuperscript{36} 163 U.S. 687 (1895).  \\
\textsuperscript{37} See Claimants' Petition at 1, \textit{Friend} (Indian Depredation, No. 3379). The petition was filed by Attorney N. B. Coggeshall on July 20, 1891. It describes the property damage alleged to have been suffered by Friend at the hands of the Comanche Indians. Although this petition was filed in the action before the Court of Claims, it is contained in the Supreme Court records for this case (163 U.S. 687), which are on file in the National Archives.  \\
\textsuperscript{38} See id.  \\
\textsuperscript{39} See \textit{Friend}, 163 U.S. at 687. The parties' stipulation of dismissal, signed by Lockwood and the Assistant Attorney General "in charge of the defense of Indian Depredations," is contained in the Supreme Court records for this case, on file in the National Archives.  \\
\textsuperscript{40} 186 U.S. 153 (1902).  \\
\textsuperscript{41} See Claimants' Petition at 1, \textit{Nesbitt v. United States} (Indian Depredation, No. 2735). The petition was filed in the Court of Claims on June 23, 1891. It is contained in the Supreme Court records for this matter (186 U.S. 153), which are on file in the National Archives.  \\
\textsuperscript{42} See \textit{Nesbitt}, 186 U.S. at 155-57.
\end{flushright}
Lastly, Lockwood filed a brief and presented oral argument as the sole legal representative of the Eastern and Emigrant Cherokees in the Court's 1905 Term in *United States v. Cherokee Nation.* This appeal followed protracted legislative and executive branch proceedings concerning payment to the Cherokee Nation of a substantial sum in consideration for its cession of territory east of the Mississippi as part of the federal government's forced relocation scheme. The Supreme Court affirmed the Court of Claims judgment, awarding over one million dollars with interest against the United States government and specifying that payment be made to the Secretary of the Interior for disbursement to the individual claimants, rather than to the Cherokee Nation directly. The Court denied the Eastern and Emigrant Cherokees' petition, filed by Lockwood, for payment of one-quarter of the total sum directly to the Eastern and Emigrant Cherokees. The Court instead held that "they are only entitled to receive the *per capita* payment with the Eastern Cherokees, and should obtain that payment accordingly."  

Mussey briefed at least three cases and argued one before the Supreme Court. She was the only one of the four early female Supreme Court litigators to succeed in persuading the Court to rule in her favor, and did so in each of her cases before the Court. In *Glavey v. United States,* heard during the Court's 1900 Term, Mussey was joined on the brief filed on behalf of Glavey by Robert D. Benedict, who presented oral argument to the Court. This case, originally filed in the Court of Claims, involved Glavey's claim for recovery of unpaid salary due him as a steam vessel inspector commissioned by the U.S. Secretary of Treasury. The Court of Claims dismissed Glavey's claim, holding for the defendant United States on the ground that Glavey's commission had never become effective. On May 27, 1901, the Supreme Court reversed and remanded the Court of Claims judgment, holding that Glavey was entitled to compensation for services performed for the government as an appointed special investigator of foreign steam vessels. 

43. 202 U.S. 101 (1906). Lockwood's oral argument was reported in the Washington Post. See Mrs. Lockwood Argues Before Supreme Tribunal, WASH. POST, Jan. 18, 1906, at 9 (reporting, "First Time in History that the Justices Have Listened to an Oral Argument From a Member of the Gentler Sex, Spoke Rapidly, but with Clearness"). New research suggests that Lockwood's 1906 argument may have been her second before the high court, the first being in *Kaiser* in 1880. See Cushman, supra note 30, at 3.  
44. *Cherokee Nation,* 202 U.S. at 132 (italics in original).  
45. 182 U.S. 595 (1901).  
46. See Plaintiff's Petition at 1-2, *Glavey* (No. 20790). Mussey filed the petition on Glavey's behalf in the Court of Claims on May 22, 1897. The petition is contained in the Supreme Court records for this case, which are on file in the National Archives.  
47. See id.  
48. See *Glavey,* 182 U.S. at 610.
Next, Mussey filed a brief as sole legal representative of Jose Casuela Geigel during the Supreme Court’s 1905 Term in *La Compania de Los Ferrocarriles v. Geigel.*49 This case involved a contract claim filed by Geigel in the U.S. District Court for the District of Puerto Rico. Mussey’s Supreme Court brief argued that the appeal should be dismissed for want of jurisdiction because the claim involved less than the required minimum amount in controversy.50 The Supreme Court dismissed the appeal, with costs granted to Geigel, on December 6, 1905.51

Lastly, Mussey briefed and argued *Shelton v. King*52 in the Court’s 1912 Term. This was Mussey’s first oral argument, and the second presented by a woman in the Supreme Court. Several national newspapers reported Mussey’s achievement as the second woman oralist.53 In this case, the Court upheld the validity of a testamentary trust in favor of Mussey’s client.54

Of all the early female Supreme Court bar members, Mussey was the most active in moving the admission of other women, having moved the Supreme Court bar applications of over twenty women between 1897 and 1920,55 many of them affiliated with the Washington College of Law, which she had founded together with Emma Gillett in 1898.56

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49. 199 U.S. 615 (1905); see Defendant in Error’s Motion to Dismiss or to Affirm, *Geigel*, 199 U.S. 615 (1905) (No. 280) (on file in the National Archives); Brief of Defendant in Error in Support of Motion (on file in the National Archives).
50. See Defendant in Error’s Motion to Dismiss or to Affirm at 4, *Geigel*, 199 U.S. 615 (1905) (No. 280) (on file in the National Archives) (stating that “[t]he motion to dismiss the writ of error should be granted because the amount involved does not give this Court jurisdiction, the judgment below being for a sum less than five thousand dollars.”).
51. See *Geigel*, 199 U.S. at 616.
52. 229 U.S. 90 (1913).
53. See, e.g., *Second Learned Portia to Argue Before the U.S. Supreme Court*, WASH. POST, Mar. 13, 1913, at 2 (“Mrs. Ellen Spencer Mussey, who is dean of the Washington College of Law, yesterday won the distinction of being the second fair Portia to argue a case before the United States Supreme Court.”); *Second Woman to Argue at Supreme Court Bar*, N.Y. TELE., Mar. 12, 1913; *Second to Gain Distinction*, L.A. TIMES, Mar. 13, 1913, at 3. Several local newspapers also covered the story. See, e.g., *Ellen Spencer Mussey Makes Oral Argument Before Supreme Court*, WASH. HERALD, Mar. 13, 1913; *Distinction for Portia*, WASH. STAR, Mar. 13, 1913.
54. See *Shelton*, 229 U.S. at 101.
55. See “Women Admitted to Practice in the Supreme Court of the United States,” available in the Supreme Court file, Supreme Court Library (listing 97 women admitted to practice before the Supreme Court by 1920 and noting that Mussey sponsored 25 of them).
56. See Clark, supra note 9, at 634.
V. HIGHLIGHTS OF PROFESSIONAL ACTIVITIES AND ACHIEVEMENTS OF EARLY WOMEN MEMBERS OF THE SUPREME COURT BAR

What follows are highlights of the professional activities and achievements of the first twenty women members of the Supreme Court bar, with a particular focus on the thirteen women about whom most is known from primary and secondary sources. These women are Ada Bittenbender, Myra Bradwell, Clara Shortridge Foltz, J. Ellen Foster, Emma Gillett, Laura DeForce Gordon, Carrie Burnham Kilgore, Belva Lockwood, Catharine Waugh McCulloch, Alice Minick, Ellen Spencer Mussey, Marilla Ricker, and Lelia Robinson-Sawtelle. These women were recognized, in their day and thereafter, as leading women lawyers both in terms of their professional accomplishments and strides in breaking down barriers to women's entry into the legal profession.57

Bittenbender was the first woman to join the Nebraska bar, in 1882, and was an active courtroom litigator in partnership with her husband. Bittenbender served as General Secretary of the Woman's International Bar Association, the purposes of which were to open law schools to women, remove all disabilities to admission of women to the bar, secure their eligibility to the bench, disseminate knowledge concerning woman's legal status, and secure better legal conditions for women.58 Bittenbender was also active in the women's temperance movement, serving as legislative director of the Nebraska chapter of the Woman Christian Temperance Union ("WCTU")59 and as legal adviser to the Department of White Cross and White Shield of the WCTU's national organization.60 In both positions, she was responsible for drafting

57. See, e.g., Bittenbender, WOMAN'S WORK IN AMERICA, supra note 21, at 222-44 (describing achievements of Bradwell, Foltz, Gordon, Kilgore, Lockwood, and McCulloch); Ada M. Bittenbender, Woman in Law, in 2 CHI. LAW TIMES 301-09 (Catharine V. Waite ed., 1888) (same) [hereinafter Bittenbender, CHI. LAW TIMES]; Belva A. Lockwood, Women of the American Bar, in 1 MONTHLY ILLUS. AM. 45-47 (1891-92) (addressing achievements of early women lawyers, with particular focus on first seven women members of Supreme Court bar); Ellen Martin, Admission of Women to the Bar, in 1 CHI. LAW TIMES 76-92 (Catharine V. Waite ed., 1887) (chronicling efforts of Bradwell, Foltz, Foster, Gordon, Kilgore, Lockwood, McCulloch, and Robinson-Sawtelle to join their states' bars); Lelia J. Robinson, Women Lawyers in the United States, in 2 THE GREEN BAG 10 (Horace W. Fuller ed., 1890) (noting achievements of many of these early women lawyers). These women's achievements were also chronicled in Myra Bradwell's Chicago Legal News. See, e.g., Mrs. Lockwood's Case, CHI. LEGAL NEWS, June 20, 1874, at 315; Women as Lawyers, CHI. LEGAL NEWS, May 11, 1878, at 271-72.
58. See Bittenbender, CHI. LAW TIMES, supra note 57, at 305.
59. See Jane E. Larson, "Even a Worm Will Turn At Last": Rape Reform in Late Nineteenth-Century America, 9 YALE J.L. & HUMAN. 1, 35-36 (1997) (noting some of Bittenbender's legislative activities on behalf of the women's temperance movement).
60. See Frank L. Byrne, Ada Matilda Cole Bittenbender, in 1 NOTABLE AMERICAN WOMEN, supra note 15, at 154 (hereinafter Byrne, Bittenbender).
legislation and testifying before legislative bodies. Bittenbender ran for a judgeship on the Nebraska Supreme Court on the Prohibition party ticket in 1891, garnering five percent of the vote. She authored the "Woman in Law" chapter of Annie Nathan Meyer's important study, Woman's Work in America, published in 1891, which was an expanded version of her earlier article by the same title, published in Catharine V. Waite's Chicago Law Times in 1888. In both pieces, Bittenbender highlighted the activities of early women lawyers.

Bradwell is famous primarily for her unsuccessful efforts to join the Illinois bar in the late 1860s and for the Supreme Court's 1873 decision in her case, in which it declared that membership in a state's bar was not a privilege of citizenship protected by the recently ratified Fourteenth Amendment. In an unpublished decision in 1869, the Illinois Supreme Court refused to admit Bradwell to its bar on the grounds that, as a married woman, she could neither make, nor be bound by, contracts with her clients, and therefore could not represent them as an attorney. Bradwell pressed her bar application further, and the Illinois Supreme Court issued a written opinion in 1870, asserting more broadly that Bradwell had no right to practice law because she was a woman. The United States Supreme Court affirmed that decision in 1873, concluding that the Illinois Supreme Court's refusal to admit Bradwell to its bar did not violate the Privileges and Immunities Clause of the Fourteenth Amendment because admission to a state's bar was not a privilege of citizenship protected by the U.S. Constitution. Concurring in the judgment, Justice Bradley declared it unnatural for a woman to pursue a profession:

[T]he civil law, as well as nature herself, has always recognized a wide

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61. See id.
63. See Bittenbender, WOMAN'S WORK IN AMERICA, supra note 21, at 218.
64. See Bittenbender, CHI. LAW TIMES, supra note 57, at 301.
65. See Bradwell v. Illinois, 83 U.S. (16 Wall.) 130, 139 (1873).
66. The Illinois Supreme Court's unpublished decision is summarized in that court's subsequent published opinion in the same case. See In re Bradwell, 55 Ill. 535 (1869).
68. See Bradwell, 55 Ill. at 535.
69. See Bradwell, 83 U.S. (16 Wall.) at 139.
difference in the respective spheres and destinies of man and woman. Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood.  

Thus, Bradley relied upon the then-popular separate spheres ideology to justify Bradwell's exclusion from the bar.

During the pendency of Bradwell's appeal to the Supreme Court, Alta Hulett, another Illinois woman, successfully lobbied the Illinois legislature to enact a statute, in 1872, authorizing women's admission to that state's bar. Hulett then became the first woman to join Illinois' bar. Bradwell did not join her state's bar until 1890. Indeed, she did not practice law following the Supreme Court's ruling in her case. Instead, she concentrated on publishing and editing the *Chicago Legal News*, which she had founded in 1868.

Foltz and Gordon successfully lobbied for enactment of a "woman lawyer's bill" in California in 1878, which authorized women to practice law in that state. Thereafter, they were the first two women to attend the Hastings College of Law, registering for classes in 1879. Upon being informed that Hastings had "resolved not to admit women," Foltz and Gordon secured admission by suing the University of California over Hastings' exclusion of women. In ruling that Hastings was obliged to admit women, the California Supreme Court declared that "[f]emales are entitled, by law, to be admitted as attorneys and counsellors in all the courts of this State, upon the same terms as males." In reaching its decision, the Court reasoned as follows:

The College was founded for the purpose of affording instruction to those who desire to be admitted, as well as those who have been admitted, to practice as attorneys and counsellors. It was affiliated with the University, and thus became an integral part of it, and in our opinion became subject to the same general provisions of the law, as are applicable to the University; and the same general policy which admitted females as students of the University, opened to them as well the doors of the College of the Law.

70. *Id.* at 141 (Bradley, J., Swayne, J., and Field, J., concurring in judgment).
72. *See id.* at 61 (noting founding of *Chicago Legal News* in 1868).
75. *Foltz*, 54 Cal. at 35.
76. *Id.*
Foltz became California's first woman lawyer when she joined that state's bar in 1878, having studied for the exam while her lawsuit was pending against the University of California.77 Gordon followed Foltz into the California bar in 1879.78 Both women became active litigators, with significant criminal defense practices.

Foster was one of the first women members of the Iowa bar, joining in 1872.79 She was active in promoting women's causes, serving, for example, as General Treasurer of the Woman's International Bar Association.80 She was also involved in the women's temperance movement and in Republican party politics. In the 1890s, Foster moved to Washington, D.C., where she served on a number of presidential commissions, worked briefly as an associate in Mussey's law office, and became affiliated with Mussey and Gillett's Washington College of Law, acting as both a trustee and an instructor.81

Kilgore was the first woman to attend the University of Pennsylvania Law School, entering in 1881 and graduating in 1883 after originally being denied admission in 1871.82 She was also the first woman to join the Pennsylvania bar in 1886, after having begun to read the law in 1865 with her future husband, Damon Kilgore.83 In 1865, Kilgore had become the first woman to earn an M.D. in New York.84 She became the first female master in chancery when she was appointed to that position in Philadelphia in 1886.

Lockwood was one of the first two women to graduate from National University Law School in Washington, D.C., in 1873, having petitioned President Ulysses S. Grant, who also served as President of National University, to issue her diploma.85 Three days after joining the Supreme

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77. See, e.g., Babcock, supra note 73, at 1261.
78. See id.
79. Shortly before, Arabella Mansfield had joined the Iowa bar in 1869, thereby becoming the first woman member of any state's bar. See Bittenbender, woman's work in america, supra note 21, at 221-22.
80. See Bittenbender, Chi. law times, supra note 57, at 305.
81. See Minutes of Washington College of Law Board of Trustees 3 (Apr. 2, 1898) (on file with the Washington College of Law Archives), cited in Clark, supra note 9, at 661 n.266.
82. See Bittenbender, woman's work in america, supra note 21, at 236.
83. See id.
84. See Karen Berger Morello, the invisible bar: the woman lawyer in america; 1638 to the present 223 (1986).
85. See Virginia G. Drachman, women lawyers and the origins of professional identity in america: the letters of the equity club, 1887 to 1890, 243 (1993). National University Law School, founded in 1869, was merged with George
Court bar, Lockwood became the first woman admitted to practice before the bar of the U.S. Court of Claims, where she had an active practice. Lockwood's business stationery emphasized her Court of Claims and Supreme Court practices as follows:

Belva A. Lockwood, Attorney and Solicitor, 619 F Street, N.W. Practice before the United States Supreme Court, and Court of Claims. PENSION, BOUNTY AND LAND CLAIMS A SPECIALTY, PATENTS OBTAINED.

The Supreme Court denied Lockwood's 1894 petition for a writ of mandamus to compel the Supreme Court of Appeals of Virginia to admit her to practice law, declaring that the state court was best situated to construe the terms of its statute governing admission of attorneys to its bar. Lockwood was the first woman to present oral argument in the Supreme Court when she argued on behalf of the Eastern and Emigrant members of the Cherokee Nation in United States v. Cherokee Nation in 1906. Lockwood's trail-blazing oral argument was reported in the


86. Lockwood originally applied for membership in the Court of Claims bar in 1874. The Court of Claims refused to rule on her motion, however, holding that it had no jurisdiction to do so because women, and, in particular, married women, were not fit to practice law. The court stated:

It is to be understood that the decision of this court does not rest upon those grounds which would make its judgment final. We do not, in legal effect, pass upon the individual application before us, but refuse to act upon it for want of jurisdiction. . . . The position which this court assumes is that under the laws and Constitution of the United States a court is without power to grant such an application, and that a woman is without legal capacity to take the office of attorney.

May 11, 1874 Opinion of Court of Claims regarding bar membership application of Belva A. Lockwood, CHI. LEGAL NEWS, May 23, 1874, at 277-78 (citing the opinion of the Court of Claims, May 11, 1874, regarding the bar application of Belva A. Lockwood).

Following the Court of Claims' refusal to act upon her bar membership application, Lockwood petitioned Congress "to pass a declaratory act or joint resolution to the effect "that no woman otherwise qualified shall be debarred from practice before any United States court on account of sex or coverture."" Mrs. Lockwood's Case, CHI. LEGAL NEWS, June 20, 1874, at 315.

In My Efforts to Become a Lawyer, Lockwood provided an engaging account of her efforts to join the Court of Claims bar. See WOMEN IN AMERICAN LAW, supra note 7, at 262. Lockwood ultimately joined the Court of Claims bar three days after joining the Supreme Court bar, on March 6, 1879. See id. at 265.

87. Lockwood's business stationery is in the Supreme Court case records, on file with the National Archives.

88. See In re Lockwood, 154 U.S. 116, 118 (1894).

89. 202 U.S. 101 (1906).
McCulloch graduated from the Union College of Law, now Northwestern University Law School, in 1886. Frustrated at her inability to find legal work in Chicago, McCulloch moved to Rockford, Illinois, where she established her own practice. While in Rockford, she obtained her B.A. and M.A. at the Rockford Female Seminary, having written her master’s thesis on women’s wages. Following her marriage in 1890, McCulloch returned to Chicago, where she and her husband opened a two-person law practice. McCulloch was active with the International Council of Women and the International Women’s Bar Association, both formed in Washington, D.C., in 1888. She was also president of the Illinois Women’s Bar Association from 1916 to 1920.

McCulloch became the first female justice of the peace when she was elected to that position in Evanston, Illinois, in 1907, serving until 1913.

Minick entered the legal profession following the death of her husband. She attended the University of Nebraska Law School, graduating in 1892. Like Bittenbender, who also hailed from Nebraska, Minick was active in the women’s temperance movement, serving as a delegate to the International Women’s Christian Temperance Union.

Mussey and Gillett founded the first law school by and for women in the United States when they incorporated the Washington College of Law ("WCL") in 1898, after teaching law to women for two years under the auspices of the Woman’s Law Class, established in 1896. Mussey was the first dean of WCL, and Gillett the second. Together, they were the first two female deans of an American law school.

91. Ada Kepley, the first American woman to obtain a law degree, graduated from the Union College of Law in 1870. See Cynthia Fuchs Epstein, Women in Law 50 (2d ed. 1993).
92. See Drachman, supra note 85, at 252-53.
94. See Boyer, McCulloch, supra note 93, at 460.
95. See Morello, supra note 84, at 111.
96. See Washington College of Law Board of Trustees, Certificate of Incorporation of the Washington College of Law (Apr. 2, 1898) (on file with Washington College of Law Archives).
97. See Clark, supra note 9, at 633.
98. See, e.g., Minutes of Washington College of Law Board of Trustees 8 (Aug. 3, 1898) (naming Mussey as first dean of the law school) (on file with Washington College Archives).
Gillett worked on behalf of married women’s property rights, helping to draft married women’s property legislation for Washington, D.C., in 1893 and continuing to work on it until its enactment in 1896.99 Gillett founded the Wimodaughsis (“Wives-Mothers-Daughters-Sisters”), an all women’s club, in 1890, which was committed to “helping younger working women further their education ....”100 Gillett served on the Wimodaughsis board with Dr. Anna Howard Shaw, the woman’s suffrage leader and minister, who was Susan B. Anthony’s successor as head of the National American Woman Suffrage Association (NAWSA).101

Like Gillett, Mussey advocated married women’s property rights, which she helped to secure through the 1896 enactment of a statute in Washington, D.C., known as the Mussey Act.102 Much later, Mussey advocated women’s right to serve on juries.103 In 1927, a bill was enacted allowing women to serve on juries, but “allow[ing] women to be excused from jury service merely upon their request to be excused.”104

Ricker obtained the highest score on the bar examination when she joined the District of Columbia bar in 1883, after reading law with Riddle.105 In 1884, Ricker became the first woman to serve as a U. S. Commissioner in Washington, D.C., a quasi-judicial role.106 Ricker practiced law with Lockwood for several years in Washington. In the 1890s, Ricker became the first woman to practice law in New Hampshire.

Robinson-Sawtelle was the first woman graduate of Boston University Law School, in 1881, and the first woman to join the Massachusetts bar, in 1882.107 When the Massachusetts’ Supreme Judicial Court refused

99. See Dorothy Thomas, Emma Millinda Gillett, in 2 NOTABLE AMERICAN WOMEN, supra note 15, at 37 [hereinafter Thomas, Gillett].
100. Id.
102. See Dr. Ellen Mussey Rites Tomorrow, WASH. EVE. STAR, Apr. 22, 1936, at A9.
103. See Founder of First Women’s School of Law in Capital Seeks Equal Jury Rights, N.Y. EVE. TELE., Mar. 2, 1922 (reporting Mussey’s fight to make women eligible for jury service).
105. See id.
106. See MORELLO, supra note 84, at 222.
107. See Bittenbender, WOMAN’S WORK IN AMERICA, supra note 21, at 228-29.
Robinson-Sawtelle's original application for admission, she successfully lobbied the Massachusetts legislature to enact a statute providing for women's membership in that state's bar on the same terms as men, just as Lockwood had done for the Supreme Court bar. She then reapplied for admission, becoming Massachusetts' first woman lawyer. Along with Boston University law student Mary Greene, Robinson-Sawtelle lobbied the Massachusetts legislature to enact a statute authorizing women to serve as commissioners, thereby allowing women to "take affidavits, and to issue summonses for witnesses." Soon thereafter, Robinson-Sawtelle became Massachusetts' first woman commissioner. In 1886, Robinson-Sawtelle published a primer on basic legal principles for laypersons, entitled Law Made Easy, which she publicized by travelling throughout the United States on a speaking circuit. In 1889, Robinson-Sawtelle published a book on family law, entitled The Law of Husband and Wife. She served as the U.S. Secretary to the Woman's International Bar Association.

In addition to these thirteen women, the Pier family of lawyers, consisting of a mother and her three daughters, practiced law with their husband/father, Colonel C.K. Pier, in Milwaukee, Wisconsin. The Pier women had embarked upon their legal careers by combining apprenticeships with attendance at law school. Likewise, Kate Kane combined reading law in an attorney's office with attendance at the University of Michigan Law School. Kane originally practiced law in Janesville and Milwaukee, Wisconsin, but subsequently moved to Chicago, where she continued to practice.

108. See Robinson's Case, 131 Mass. 376, 376 (1881) (holding that "an unmarried woman is not entitled to be examined for admission as an attorney and counsellor of this court.").
109. See Robinson, supra note 57, at 30 (describing her own efforts in Massachusetts legislature).
110. Letter from Mary A. Greene to the Equity Club (May 22, 1889), reprinted in Drachman, supra note 85, at 163.
111. LELIA JOSEPHINE ROBINSON, LAW MADE EASY: A BOOK FOR THE PEOPLE (1886).
112. LELIA JOSEPHINE ROBINSON, THE LAW OF HUSBAND AND WIFE (1889).
113. See Bittenbender, CHI. LAW TIMES, supra note 57, at 305.
114. See “Attorneys at Law,” The Woman's Journal, at C-2 (Feb. 17, 1900) (highlighting the achievements of the Pier family of lawyers of Milwaukee, Wisconsin, including the February, 1900 Supreme Court bar admission of Kate Pier and her daughter Harriet H. Pier).
115. See Bittenbender, WOMAN'S WORK IN AMERICA, supra note 21, at 240.
116. See Martin, supra note 57, at 84. As for Clara L. Power, it would appear that
There are at least four points of commonality that help to shed light on these women’s reasons for joining the Supreme Court bar. These points of commonality are their similarities in educational, professional, personal, and law practice experiences, their active involvement in the woman suffrage movement, their membership in the Equity Club and common themes addressed in their correspondence, and their consciousness of being first women lawyers and their thoughts about the unique issues and obligations which that status conferred. These themes will be explored in the balance of this Article.

VI. SIMILARITIES IN EDUCATIONAL, PROFESSIONAL, PERSONAL, AND LAW PRACTICE EXPERIENCES

The backgrounds of these women parallel one another in significant respects in terms of their educational, professional, personal, and law practice experiences.

A. Parallels in Educational and Professional Experiences Prior to Entering the Legal Profession

1. Attendance at Female Seminaries or Normal Schools and Service as Teachers

In keeping with the growth in women’s higher education opportunities in the mid to late nineteenth century, nine of these early Supreme Court bar members attended female seminaries or normal schools117 prior to entering the legal profession. These women were Bittenbender, Bradwell, Foltz, Foster, Gillett, Lockwood, Mussey, McCulloch, and Ricker. Likewise, nine of these women—Bittenbender, Bradwell, Foltz, Foster, Gillett, Kilgore, Lockwood, Mussey, and Ricker—taught school before becoming lawyers.

Their educational experiences were as follows. Bittenbender attended normal schools in Pennsylvania and Washington, D.C., and taught at a normal school in Pennsylvania, later serving as principal of the normal school’s model school. She also taught in a normal school upon moving

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117. “Normal schools” were high schools devoted to teacher training. See generally Barbara Miller Solomon, In the Company of Educated Women xviii, 12, 15-16 (1983); see also Christopher J. Lucas, American Higher Education: A History 187 (1994).
to Nebraska following her marriage. Like Bittenbender, Bradwell taught school upon first graduating from a female seminary. Partially in response to the low wages paid her as a woman teacher, Bradwell quit teaching and entered the legal profession by apprenticing in her husband’s law office. Foltz attended a female seminary between the ages of eleven and fourteen, and then taught school briefly before marrying at age fifteen. Foster attended the Charlestown Female Seminary, followed by the Genesee Wesleyan Seminary. She taught school briefly thereafter.

Gillett taught in the Pennsylvania public schools for ten years before becoming a lawyer. Like Bradwell, Gillett left teaching in frustration over the low wages paid single women teachers. Gillett was motivated to enter the legal profession in part by Lockwood’s efforts to join the Supreme Court bar in the late 1870s, which garnered national attention.

Kilgore began teaching school when she was fifteen. Soon thereafter, she continued her education at a female seminary, “where she was one of two girls who took the classical course.” Following seminary, Kilgore taught for five years in several Wisconsin schools, “where she held classes in physiology and drawing as well as in the classics.” She received her medical degree in 1865, and worked for one summer as an assistant physician. Thereafter, she moved to Philadelphia, where she taught gymnastics in the local schools and ran a “French School for Young Ladies.”

Lockwood attended a female seminary and taught school, while McCulloch graduated from a female seminary, but did not teach. Mussey attended, but did not graduate from, several female seminaries. Thereafter, Mussey served as an administrator of the Women’s Department at the Spencerian Business College of Washington, D.C.,

118. See Byrne, Bittenbender, supra note 60, at 153-54.
120. See Corinne L. Gilb, Clara Shortridge Foltz, in 1 NOTABLE AMERICAN WOMEN, supra note 15, at 641 (hereinafter Gilb, Foltz).
121. See Frank L. Byrne, Judith Ellen Horton Foster, in 1 NOTABLE AMERICAN WOMEN, supra note 15, at 651 (hereinafter Byrne, Foster).
122. See Thomas, Gillett, supra note 99, at 36-37.
123. Dorothy Thomas, Carrie Burnham Kilgore, in 2 NOTABLE AMERICAN WOMEN, supra note 15, at 329 (hereinafter Thomas, Kilgore).
124. Id. at 330.
125. Id.
founded by her father. Finally, Ricker began teaching when she was sixteen, and attended a teacher training academy for one year in her early twenties.\textsuperscript{126}

Their attendance at female seminaries, normal schools, and other teacher training academies, along with their service as teachers, was consistent with the experiences of many women in the mid to late nineteenth century.

2. Experience as Journalists

As distinct from the substantial number of women who taught prior to entering the law, only three served as journalists before becoming lawyers. These women were Bittenbender, Gordon, and Robinson-Sawtelle. That they were journalists suggests an engagement with contemporary events. Indeed, they used their publications to further the cause of woman suffrage through editorials and news reportage.

Bittenbender was active in journalism in Nebraska, editing a newspaper owned by her husband before apprenticing in his law office.\textsuperscript{127} Gordon was active in journalism in California throughout the 1870s, publishing and editing two newspapers, which she used to further the cause of woman suffrage.\textsuperscript{128} Gordon met Foltz in 1878 when Gordon covered Foltz's efforts on behalf of the woman lawyer's bill in California. Finally, Robinson-Sawtelle worked for several Boston newspapers before entering Boston University Law School.\textsuperscript{129}

B. Parallel Themes in Personal Lives

Like many early women lawyers, a significant number of the early female Supreme Court bar members practiced with their lawyer-husbands, either as apprentices or upon graduation from law school.\textsuperscript{130} Aspiring women lawyers might have chosen to apprentice in the law offices of their husbands or fathers at this time because they were excluded from other legal apprenticeship opportunities.\textsuperscript{131} Additionally,

\begin{itemize}
\item \textsuperscript{126} See Thomas, supra note 15, at 154.
\item \textsuperscript{127} See DRACHMAN, supra note 85, at 211.
\item \textsuperscript{128} See Babcock, supra note 73, at 1248-49; see also DRACHMAN, supra note 85, at 226.
\item \textsuperscript{129} See DRACHMAN, supra note 85, at 257.
\item \textsuperscript{130} Noting that many of the first women lawyers entered the legal profession by studying and practicing with their lawyer-husbands, D. Kelly Weisberg has observed, "In 1890 approximately one-third of the total number of women lawyers were married women and more than half this number were married to lawyers." D. Kelly Weisberg, Barred from the Bar: Women and Legal Education in the United States, 1870-1890, 28 J. LEGAL EDUC. 485, 494-95 (1977).
\item \textsuperscript{131} See EBSTEIN, supra note 91, at 33.
\end{itemize}
working for a family member helped to resolve potential conflicts between femininity and professionalism experienced by early women lawyers, including issues of working outside of the home in the public sphere. Of this early group, Bittenbender, Bradwell, Kilgore, McCulloch, and Mussey practiced law with their husbands, who were supportive of their wives’ legal careers.

Bittenbender’s lawyer-husband, Henry C. Bittenbender, trained her in the law and encouraged her to engage in courtroom litigation. In a letter to the Equity Club, Bittenbender described the understanding that she and her husband had reached to pursue a companionate, celibate marriage, thereby avoiding the threat of unwanted pregnancies which might undermine her physical stamina for working in the law. Bittenbender and her husband had no children.1

While Bradwell did not practice law following the Supreme Court’s 1873 decision in her case, she had entered the legal profession by apprenticing in her husband’s law office. Her husband, James Bradwell, was also supportive of her legal publishing endeavors with the Chicago Legal News.2

Kilgore entered the legal profession by apprenticing in her husband’s office before they were married. In anticipation of their marriage, they entered into an “ante-nuptial contract,” or pre-nuptial agreement, through which they agreed not to be bound by any laws handicapping married women’s property rights. Kilgore’s husband, Damon Kilgore, was supportive of her law practice and her efforts to overcome barriers to women’s opportunities in the legal profession in Pennsylvania.

McCulloch’s husband, Frank McCulloch, a fellow graduate of the Union College of Law, was supportive of her legal career and suffrage activities.3 Together, they practiced law at McCulloch & McCulloch in Chicago, commuting together from their home in Evanston, Illinois, where they shared housekeeping duties and responsibilities for their four children.

Like Bittenbender, Bradwell, and Kilgore, Mussey entered the practice of law by apprenticing in her husband’s law practice. Ellen and R. D. Mussey practiced law together for approximately sixteen years between

132. See Byrne, Bittenbender, supra note 60, at 153.
133. See Dorothy Thomas, “Myra Colby Bradwell,” in 1 Notable American Women, supra note 15, at 224 (hereinafter Thomas, Bradwell).
134. See Letter from Catharine Waugh McCulloch to the Equity Club (Nov. 8, 1890), reprinted in Drachman, supra note 85, at 192.
1876 and 1892, with Mussey running the law practice from their home between 1876 and 1878 while nursing her husband who was ill with malaria. Unlike most of the lawyer-husbands of the other early female Supreme Court bar members, Mussey's husband was active in the Supreme Court bar, filing briefs and sponsoring the membership of other attorneys. He served as counsel of record in at least sixteen cases between 1871 and 1892, and sponsored the membership of at least seven men between 1885 and 1892. He died before Mussey became a member of the District of Columbia bar, and therefore did not move her application for admission to the Supreme Court bar. Indeed, it would appear that Mussey did not feel compelled to join any bar until her husband died in 1892, at which time she assumed full responsibility for running the law practice and joined the District of Columbia bar.

In an effort to join the local bar without taking a written examination, Mussey applied for admission to several Washington, D.C., law schools, where graduation from law school provided a "diploma privilege" at that time, securing admission to the bar without the need to take a bar exam. Mussey's law school applications were rejected because of her sex, and she instead arranged an oral administration of the bar examination in her home, which she passed. Mussey's most active and successful years as a lawyer followed her husband's death.

By contrast, Foltz, Foster, Gordon, and Robinson-Sawtelle entered the legal profession after being divorced. Foltz married at age fifteen and quickly had five children. She divorced her husband in 1879—following his affair with another woman—although she is recorded in some official documents as having been widowed. While her divorce

135. R. D. Mussey was listed as counsel of record in the following Supreme Court cases: Philip v. Nock, 80 U.S. (13 Wall.) 185 (1871); Railroad Co. v. Church, 86 U.S. (19 Wall.) 62 (1873); Philip v. Nock, 84 U.S. (17 Wall.) 460 (1873); Trist v. Child, 88 U.S. (21 Wall.) 441 (1874); Wright v. Tebbotts, 91 U.S. 252 (1875); Baltimore & Potomac Railroad Co. v. Trustees of Sixth Presbyterian Church, 91 U.S. 127 (1875); Ford v. Surget, 97 U.S. 594 (1878); Bank of the Republic v. Millard, 154 U.S. 656 (1899); Hitz v. National Metropolitan Bank, 111 U.S. 722 (1884); Gilbert v. Moline Plough Co., 119 U.S. 491 (1886); Winthrop Iron Co. v. Meeker, 122 U.S. 635 (1887); Benziger v. Robertson, 122 U.S. 211 (1887); Hitz v. Jenks, 123 U.S. 297 (1887); In re Chateaugay Ore and Iron Co., 128 U.S. 544 (1888); Bradford v. Miller, 140 U.S. 674 (1890); and Chateaugay Ore & Iron Co. v. Blake, 144 U.S. 476 (1892).

136. See Supreme Court Attorney Rolls, Vol. 4 (1884 Term-1897 Term) (on file with the National Archives).

137. Until such time as she could be admitted to the District of Columbia bar, Mussey hired a male associate, Jacob H. Lichliter, who handled the necessary court appearances in her stead. See Announcement of Ellen Spencer Mussey (June 13, 1892) (on file with Washington College of Law Archives), quoted in Clark, supra note 9, at 620.

138. See, e.g., Clark, supra note 9, at 624 & n.47.

139. See Babcock, supra note 73, at 1259.
was proceeding, Foltz briefly apprenticed and then attended the Hastings College of Law, with her parents looking after her children. Like Foltz, Gordon divorced her husband in 1878 upon discovering his affair with another woman. Gordon did not have any children by this marriage.140

Subsequent to the demise of their first marriages, Foster and Robinson-Sawtelle both married men who were supportive of their legal careers.141 Foster married a lawyer, who supervised her as she read law for admission to the Iowa bar.142 Robinson-Sawtelle divorced her first husband for adultery in 1877 and enrolled in law school the following year. She remarried in 1890 and took her honeymoon vacation in Washington, D.C., where she was admitted to the Supreme Court bar.143 Robinson-Sawtelle noted in a letter to the Equity Club, “My husband is proud of my professional ambition and does everything that a husband can do to encourage and sustain me in it. His wedding present was a fine new roll-top desk for my office...”144 Robinson-Sawtelle died one year after her remarriage at the age of forty-one.145

As for the others, Lockwood was twice widowed, once before she attended law school and once after she had been practicing law for several years.146 Ricker was also widowed, in 1868, long before joining the District of Columbia bar in 1882.147 At age 23, Ricker had married a man more than thirty years her senior. Upon his death five years later, Ricker inherited $50,000. Without any children to limit her, Ricker traveled in Europe for four years, where she was exposed to ideas of political equality and birth control and became an adherent of the free thought movement.148 Minick was widowed at age 43, and soon thereafter entered law school.149 Gillett neither married nor had children. Instead, she moved to Washington, D.C., to study law as a single woman in 1880, lived temporarily in Lockwood’s home, studied pension law as an apprentice in Lockwood’s office, and attended Howard Law School
Thus, of these thirteen women, one remained single throughout her professional life (Gillett); four were widowed when they achieved their greatest successes in the legal profession (Lockwood, Minick, Mussey, and Ricker); six were married to men who apprenticed them and/or served as their law partners (Bittenbender, Bradwell, Foster, Kilgore, McCulloch, and Mussey); and four were divorced when they entered the legal profession (Foltz, Foster, Gordon, and Robinson-Sawtelle). As these biographical highlights reveal, these women were able to achieve success in the legal profession at least in part because their personal lives and marital statuses allowed them to concentrate on their careers in a manner akin to the traditional male model.

Also contributing to their ability to pursue their careers with concentrated energy and drive was the relative absence of children. Four of these women had no children (Bittenbender, Gillett, Ricker, and Robinson-Sawtelle); two had one child apiece (Gordon, who adopted her nephew, and Lockwood, whose daughter was grown by the time Lockwood entered the legal profession); and two had two children each (Bradwell and Kilgore). Only Foltz, Foster, McCulloch, and Mussey had more than two children: Foltz had five; Foster had a total of four children by two husbands, with each of her two daughters dying at the age of five; McCulloch had four; and Mussey had four, including two children from her widower-husband's prior marriage. Two of Mussey's four children had died, however, by the time she joined the District of Columbia bar after her husband's death. As for Minick, it is unclear whether she had any children, but she did not enter law school until after her husband's death, following twenty-four years of marriage. If Minick had had any children, they likely would have been grown by the time she entered law school. This relative absence of children, as compared with the circumstances of women generally, enabled these women to devote time and energy to pursuing their careers in conformity with the traditional male model of lawyering.

C. Similarities of Experience in Entering the Legal Profession

1. Reasons for Entering the Legal Profession

These women entered the legal profession for at least three main reasons. First, they entered the law as a rebellion against separate

150. See Thomas, Gillett, supra note 99.
151. See Clark, supra note 9, at 620 & n.36.
152. See Morello, supra note 84, at 111.
spheres ideology, which had isolated them in the domestic realm or in “feminine” professions, such as teaching, that paid low wages and relegated them to low status. Second, they discovered that they enjoyed the practice of law by working in their lawyer-husbands’ offices. Third, they were passionate about women’s rights issues and saw law as a means to further their feminist goals. These parallels in their animating impulses for entering the legal profession—rejection of separate spheres ideology, identification with their lawyer-husbands, and commitment to women’s rights—help to shed light on why they later sought to join the Supreme Court bar.

2. Attendance at Law School

It is not surprising that most of these women attended female seminaries and taught school prior to entering the legal profession, given the expansion of women’s higher education opportunities in the mid to late nineteenth century and growth in teaching as an acceptable field for women wishing to engage in a career. Teaching was a means by which to work outside of the home, but still remain within the feminine sphere, where separate, gendered spheres prevailed in the nineteenth century American/Victorian ideology. Nor is it surprising that these women later rejected the separate spheres ideology in turning to the law as a profession.

What is surprising, however, is that eight of these Supreme Court women attended law school between 1870 and 1891, at a time when most individuals entered the legal profession by apprenticing in a law office rather than by attending law school. These eight were Foltz, Gillett, Gordon, Kilgore, Lockwood, McCulloch, Minick, and Robinson-Sawtelle. Law schools were just beginning to be established at this time, and the first law schools to admit women, the University of Iowa and Washington University in St. Louis, did not do so until 1869. Thus, when Lockwood enrolled at National University Law School in 1871, and graduated in 1873, she was breaking new ground. In addition to being one of the first two women to graduate from National, she was also on the cutting edge of women’s attendance at law schools generally.

155. See DRACHMAN, supra note 85, at 243.
The rise of the law school in the second half of the nineteenth century had a tremendous impact upon women's entry into the legal profession. Writing about women in the law in 1891, Bittenbender reported that thirty-one of fifty-six women lawyers in July, 1882, or approximately fifty-five percent, had graduated from law school. Thus, women were more likely to enter the legal profession by attending law school than by apprenticing. In this light, the experience of these early Supreme Court bar members is consistent with the overall pattern of women's attendance at law school.

As a general matter, women entered the legal profession in this early period by pursuing an egalitarian, integrationist model, while their analogues in the medical profession adopted a gendered, separate spheres approach. In other words, women broke into the legal profession by invoking gender equality principles, while women broke into the medical profession by following a gender-difference model. Women sought access to law schools on the ground that women were just as capable as men, while women gained admission to medical schools on the theory that women's nurturing skills predisposed them to certain fields of medicine, such as women's and children's health. As an outgrowth of the different ideologies informing women's participation in these two professions, women who attended law school did so at coeducational law schools, while women who attended medical school primarily attended single-sex medical schools. Attending law school constituted a break with the past, both in terms of women's roles in

156. In 1850, there were fifteen law schools in the United States. By 1860, there were twenty-one; thirty-one in 1870; fifty-one in 1880; sixty-one in 1890, and 102 by 1900. See Friedman, supra note 153, at 607.

157. See Bittenbender, Woman's Work in America, supra note 21, at 231.

158. More women than men may have attended law school because they did not have the same access to apprenticeship opportunities as men. Those women who did not have fathers or husbands in the legal profession likely faced sex discrimination in seeking apprenticeships. Moreover, women may have also been more likely than men to enter the legal profession by attending law school because they were breaking with tradition by becoming lawyers in the first place and their mode of entry reflected that break.


society and the traditions of the legal profession. Ultimately, their attending law school was consistent with their overall pioneering spirit in expanding opportunities for women in the legal profession.

3. *Apprenticeship in Law Offices*

Four of these women entered the legal profession solely by apprenticing in their husband’s law offices: Bittenbender, Bradwell, Foster, and Mussey. Another woman, Ricker, read law with Riddle, the white Howard law professor who moved the admission of several of the early female Supreme Court bar members. Four women—Foltz, Gillett, Kilgore, and McCulloch—combined attendance at law school with apprenticeships. Foltz briefly apprenticed with a male attorney before attending, although not graduating from, the Hastings College of Law. Gillett attended Howard Law School at night while apprenticing with Lockwood during the day. Kilgore attended the University of Pennsylvania Law School after having apprenticed in her future husband’s law office for approximately fifteen years. McCulloch read law in an office for one year before matriculating at the Union College of Law.

As noted above, that only five of these women entered the legal profession solely through apprenticeships, suggests the extent to which this group broke with the traditional mode of entry into the legal profession. Other than this difference in mode of entry, however, it is difficult to discern how the legal careers of the women who apprenticed differed from those who attended law school. For example, those who apprenticed were not distinguished in age from those who attended law school. Thus, their reliance on the traditional mode of entering the law cannot be explained by their membership in an earlier generation. Moreover, their careers did not take different paths once they entered the law. With regard to the four who combined apprenticeships with attendance at law schools, their pattern may suggest a transition in women’s entry into the legal profession from one prevailing mode to another.

D. *Similarities in Law Practice Experiences*

By and large, these women had remarkably similar practice experiences. Consistent with law practices of the time generally, they worked in one or two person law offices, conducting individual client
representation in contract, estate, family, or property law matters, with
some criminal representation included.

As an example, Lockwood conducted a small law practice in
Washington, D.C., sometimes on a solo basis and at other times with
two women, including Ricker. The small size of their office was typical
of that era, although the all-female format was not. Like many attorneys
of their day, Lockwood represented clients in contract and property law
matters, while Ricker specialized in criminal law. What distinguished
Lockwood’s practice from others was her active involvement in Court of
Claims litigation.\textsuperscript{161}

Foltz was a solo practitioner, whose docket included contract, family,
and property law disputes, as well as criminal defense matters.\textsuperscript{162}
Gordon was a solo practitioner, representing clients in contract disputes
and criminal matters.\textsuperscript{163} Like Foltz and Gordon, McCulloch represented
clients in contract and property matters.\textsuperscript{164} Distinct from Foltz and
Gordon, however, McCulloch practiced in a two-person partnership with
her lawyer-husband.

Mussey’s practice was typical in its small scale, though distinct in its
subject matter. Following her husband’s death, she temporarily engaged
the services of an associate, Jacob Lichliter, until she became a member
of the District of Columbia bar.\textsuperscript{165} Then, in 1896, she formed a brief
partnership with Foster. Otherwise, Mussey practiced on her own. Her
practice was distinctive in terms of types of cases. Having inherited the
law practice from her husband, Mussey’s representation largely involved
private and public international law and commercial law matters. For
example, Mussey was counsel to the Norwegian and Swedish legations

\begin{footnotes}
\footnote{161. See text accompanying notes 31-44, 87.}
\footnote{162. Generalizations about Foltz’s docket are derived in part from an analysis
of California Supreme Court opinions in cases in which Foltz was listed as counsel of
record. Foltz was listed as counsel of record in the following cases: \textit{People v. Morrow},
60 Cal. 142 (1882); \textit{Taylor v. Bidwell}, 4 P. 491 (Cal. 1884); \textit{Newman v. Smith}, 18 P. 791
(Cal. 1888); \textit{Feeney v. Howard}, 21 P. 984 (Cal. 1889); \textit{People v. Wells}, 34 P. 1078 (Cal.
1893); \textit{Matthai v. Kennedy}, 84 P. 37 (Cal. 1906); \textit{City of Los Angeles v. Los Angeles
Independent Gas Co.}, 93 P. 1006 (Cal. 1908); \textit{Tubby v. Tubby}, 260 P. 294 (Cal. 1927);
and \textit{Scott v. Beck}, 266 P. 951 (Cal. 1928).}
\footnote{163. Information about Gordon’s law practice is partially derived from an analysis
of California Supreme Court opinions in cases in which she appeared as an attorney.
Gordon was listed as counsel of record in the following cases: \textit{People v. Marshall}, 59
Cal. 391 (1881); and \textit{Steele v. Board of Supervisors of Merced County}, 62 Cal. 6 (1882).
See also Bittenbender, \textit{WOMAN’S WORK IN AMERICA}, supra note 21, at 239 (describing
Gordon’s handling of criminal law matters).}
\footnote{164. Information about McCulloch’s docket is gleaned in part from Illinois
Supreme Court opinions in appeals in which McCulloch was listed as counsel of record.
McCulloch was listed as counsel of record in the following cases: \textit{Pool v. Phillips}, 47
N.E. 758 (Ill. 1897); and \textit{Wiedeman v. Keller}, 49 N.E. 210 (Ill. 1897).}
\footnote{165. See Announcement of Ellen Spencer Mussey (June 13, 1892), cited in Clark,
\textit{supra} note 9, at 620 & n.37.}
\end{footnotes}
and to the American Red Cross. Like Mussey, Kilgore distinguished herself in terms of the types of cases she handled, representing clients in securities, bankruptcy, and trust matters, in addition to the more typical disputes over contracts and wills.

Consistent with the experience of early women lawyers, and distinct from that of lawyers generally, many of these women primarily drafted documents within the confines of their law offices. They rarely represented clients in court, as court appearances were principally handled by their male law partners. For example, upon graduation from Howard Law School, Gillett became an associate in the law office of Watson J. Newton, whom she had met through her work as a notary public. She served as Newton’s associate for eighteen years before forming a law partnership with him in 1900, and played a fairly traditional female role within the law firm by performing office-based drafting rather than courtroom representation.

While these women’s law practices were generally consistent with that of most attorneys of their day in terms of size and nature of practice, and while their likelihood of drafting documents in the office, rather than litigating in court, was consistent with the experience of most women attorneys, four of these women engaged in courtroom litigation at a rate disproportionate to the experience of most early women attorneys: Bittenbender, Foltz, Lockwood, and Mussey, the same four who filed briefs in the Supreme Court. That these four, and no others, filed briefs in the Supreme Court may reflect their greater engagement in litigation generally. Foltz had an active trial practice, with expertise in criminal defense representation, while Lockwood and Mussey’s Supreme Court

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166. See 4 HISTORY OF WOMAN SUFFRAGE, supra note 62, at 574.
167. Generalizations about Kilgore’s law practice are partially derived from an examination of Pennsylvania Supreme Court opinions in cases in which Kilgore was listed as counsel of record. Kilgore was listed as counsel of record in the following cases: In re Harmony Lodge, 18 A. 10 (Pa. 1889); In re Foster, 21 A. 798 (Pa. 1891); Germantown Brewing Co. v. Booth, 29 A. 386 (Pa. 1894); In re Harker, 31 A. 553 (Pa. 1895); In re Harker, 34 A. 927 (Pa. 1896); Weber v. Aschbacker, 55 A. 534 (Pa. 1903); and Kase v. Burnham, 55 A. 1028 (Pa. 1903).
169. As Weisberg has observed, “Of Miss Emma Gillet [sic] it was said, ‘her work has been principally in the office line—the drawing of papers, taking testimony in equity causes and probate business, together with a large amount of notarial and some financial work.’” Weisberg, supra note 130, at 496 (providing no attribution for this observation).
170. See Gilb, Foltz, supra note 120, at 642.
litigation distinguished them from all other early women lawyers, and from most lawyers generally. It should be noted, however, that Mussey's 1913 oral argument in the Supreme Court represented a significant advance in her law practice, which had consisted of counseling clients and drafting documents within the confines of her law office throughout her husband's tenure, in keeping with conventional expectations of women's place outside of the public sphere.\footnote{171}

VII. ACTIVE INVOLVEMENT IN THE WOMAN SUFFRAGE MOVEMENT

Each of the thirteen Supreme Court bar members was active in the woman suffrage movement\footnote{172}, with ten playing leadership roles: Bittenbender, Foltz, Foster, Gillett, Gordon, Kilgore, Lockwood, McCulloch, Mussey, and Ricker. Their leadership of the movement is evidenced, for example, by the frequency with which they are noted in Volume IV of the *History of Woman Suffrage*, which covers the period from 1883 to 1900, during which these first women joined the Supreme Court bar.\footnote{173}

Officially christened at the 1848 Seneca Falls Convention, the woman suffrage movement slackened during the Civil War period as many women's rights supporters set their cause aside to support the republic and the abolition of slavery. After the war, women's rights activists expected to be rewarded for their loyal support by obtaining the right to vote. Instead, women were told that this was the "Negro hour," and that they must wait.\footnote{174} The government's failure to recognize women's wartime support, taken together with the Fourteenth Amendment's introduction of the word "male" into the Constitution, caused the woman suffrage movement to splinter in two directions. This fracture was embodied in two organizations, both founded in 1869, the National

\footnote{171. See Clark, supra note 9, at 671 n.335.}
\footnote{173. See generally 4 *History of Woman Suffrage*, supra note 62 (describing activities of, and quoting, Bittenbender, Bradwell, Foster, Gillett, Gordon, Kilgore, Lockwood, McCulloch, Mussey, Ricker and Robinson-Sawtelle). *History of Woman Suffrage* is the official history of the woman suffrage movement, authored by its leaders. Barbara Babcock has observed that many of the early women lawyers were suffragists, stating, "By virtue of their efforts to join the profession, all of the first women lawyers were, in effect, members of the women's movement. Rejection of separate spheres was inherent in the project." Babcock, supra note 73, at 1285 n.223.}
\footnote{174. See Kradiator, supra note 172, at 3 n.2.}
Woman Suffrage Association ("NWSA"), led by Elizabeth Cady Stanton and Susan B. Anthony, which opposed the Fourteenth Amendment’s enfranchisement of freedmen in the absence of votes for women, and the American Woman Suffrage Association ("AWSA"), led by Lucy Stone and Julia Ward Howe, which supported the enfranchisement of freedmen as an important step toward universal suffrage, even absent votes for women.\(^ {176} \)

In 1890, NWSA and AWSA merged to form the National American Woman Suffrage Association ("NAWSA"), which focused exclusively upon votes for women, leaving to its state affiliates the question of black suffrage as a compromise to placate its southern members. While the woman suffrage movement was primarily grounded upon a commitment to gender equality,\(^ {176} \) it was nevertheless infected with racism, as reflected in the NWSA/AWSA split and in NAWSA’s compromise position on black suffrage.\(^ {177} \) The movement was also infected with nativism and classism, as some suffragists argued that immigrant men, who were largely members of the working class, should not get the vote before native-born middle- and upper-class women.

As for the thirteen early women members of the Supreme Court bar, Bittenbender was active in the woman suffrage movement as a founder and president of the Nebraska Woman Suffrage Association.\(^ {178} \) Likewise, Foltz was a pioneering suffragist who lobbied for suffrage bills in California, was president of the California Woman Suffrage Association in the early 1880s, and served as an elector on Lockwood’s Equal Rights ticket in 1884.\(^ {179} \)

Foster was active in speaking at woman suffrage meetings on behalf of the Republican party,\(^ {180} \) and is cited several times in Volume IV of the History of Woman Suffrage.\(^ {181} \) Likewise, Gillett was active in the

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175. See generally FLEXNER & FITZPATRICK, supra note 172, at 145-48.
176. See, e.g., DuBois, supra note 172, at 20 (describing NWSA as “dedicated first and foremost to securing political equality with men”); KRADTOR, supra note 172, at 2 (suffrage was part of “movement for women’s equality with men”).
177. See KRADTOR, supra note 172, at 255-56 (noting racism in suffrage movement).
178. See Byrne, Bittenbender, supra note 60, at 154.
180. See Byrne, Foster, supra note 121, at 652.
181. See, e.g., 4 HISTORY OF WOMAN SUFFRAGE, supra note 62, at 19 (describing
woman suffrage movement, but most of her suffrage activities post-date her admission to the Supreme Court bar in 1890. Thus, her suffrage activities do not necessarily shed light on her reasons for joining the Supreme Court bar. For example, Gillett served as recording secretary of the District of Columbia Equal Suffrage Association from 1898 to 1906, as a delegate to NAWSA's national conventions, and on NAWSA's finance committee in 1903-04 and congressional committee in 1903 (chairing it in 1911). After passage of the Nineteenth Amendment in 1920, guaranteeing women's right to vote, Gillett joined the National Woman's Party and campaigned on behalf of a proposed equal rights amendment. In 1928, The College Grit, the Washington College of Law's student newspaper, described Gillett as "an ardent feminist, closely identified with the suffrage organizations, both local and national, and a supporter of many movements tending to bring about greater opportunities for women."

Like Foltz, Gordon was active in the suffrage movement in California, beginning in the 1870s. Her suffrage activities included lobbying the state legislature and using her two newspapers to promote the cause. Gordon followed Foltz as president of the California women's suffrage organization in 1884, serving in that role for ten years. Gordon also served as California's delegate to NWSA conventions.

Kilgore actively supported woman suffrage, both by representing Philadelphia's women's suffrage organization at NWSA's conventions in the 1870s, and by attempting to vote in Philadelphia in 1871. Kilgore argued her own case before the Pennsylvania Supreme Court after her ballot was rejected on the basis of sex, despite her having registered to vote and paid the poll tax.

Lockwood was active on the suffrage stump, frequently traveling to speak in favor of woman suffrage. Lockwood ran for president on the Equal Rights ticket in 1884 and again in 1888, garnering a small, but not

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182. See Thomas, Gillett, supra note 99, at 37.
183. See id.
184. See id.
186. See 4 HISTORY OF WOMAN SUFFRAGE, supra note 62, at 57 (reporting on Gordon's speech on suffrage efforts in California at NWSA's 1885 convention).
187. See id. at 478.
188. See Corrine L. Gilb, Laura DeForce Gordon, in 2 NOTABLE AMERICAN WOMEN, supra note 15, at 69.
189. See Thomas, Kilgore, supra note 123, at 330.
190. See, e.g., 4 HISTORY OF WOMAN SUFFRAGE, supra note 62, at 640 (describing Lockwood speaking in Kansas); id. at 939 (describing Lockwood speaking in Utah).
inconsignificant, percentage of the vote.191 Lockwood is referenced throughout Volume IV of the History of Woman Suffrage, beginning with her speech at the NWSA Convention in 1884.192

McCulloch was actively engaged in the woman suffrage movement, both in Illinois and nationally. She was president of the Illinois Equal Suffrage Association in 1899.193 She also served as NAWSA’s auditor,194 as well as its legal advisor from 1904 to 1911.195 McCulloch frequently served as the Illinois delegate or spokesperson at national suffrage meetings, where she was known for her speaking ability.196 McCulloch’s address at the 1900 NAWSA convention is excerpted at length in Volume IV of the History of Woman Suffrage:

Women need the ballot not only for the honor of being esteemed peers among freemen, but they want it for the practical value it will be in protecting them in the exercise of a citizen’s prerogatives. . . .

But, it is asked, “Have not women had some sort of protection without the ballot?” Yes, but it has been only such protection as the caprice or affection of the voting class has given, gratuities revocable at will. The man of wealth or power defends his wife, daughter or sweetheart because she is his, just as he would defend his property. His own opinions, not her views, decide him concerning the things from which she should be protected. Should she ever need protection against “her protector,” there is no one to give it. . . .

Entrance into remunerative employments in many instances has been denied women. In many of the States the professions of law, medicine, dentistry and all the elective offices are closed by statute. Appointive positions, also, which women might legally hold are practically withheld from them because of their lack of the ballot. The appointing power—president, governor, mayor, judge or commissioner—all owe their own positions to voters who expect some minor appointment in acknowledgment of service.197

McCulloch’s speech demonstrated not only the symbolic value of the vote, but also its instrumental value as a means to elect representatives who would promote women’s interest in the professions. Immediately

192. See 4 History of Woman Suffrage, supra note 62, at 18.
193. See id. at 598.
194. See id. at 602.
195. See Boyer, McCulloch, supra note 93, at 459.
196. See, e.g., 4 History of Woman Suffrage, supra note 62, at 630 (describing McCulloch speaking in Iowa); id. at 697 (describing McCulloch speaking in Maryland); id. at 989 (describing McCulloch speaking in Wisconsin).
197. Id. at 378-79.
following her marriage ceremony, which was officiated by Dr. Anna Howard Shaw, the woman suffrage leader and minister, McCulloch stumped for suffrage in South Dakota with her husband as their honeymoon vacation. She observed in a letter to the Equity Club:

I had promised to go up to South Dakota to speak in the suffrage campaign and so that will be my honeymoon with visiting of friends added at the close. That will be about as practical as Mrs. Sawtelle’s [who traveled to Washington, D.C., to be sworn in to the Supreme Court bar during her honeymoon]. It strikes me as funny even now, but I guess it will be just as sensible as a fashionable watering place.

While Mussey was also active in the woman suffrage movement, like Gillett, most of her suffrage activities post-dated her admission to the Supreme Court bar in 1896. Although Mussey attended her first woman suffrage meeting soon after moving to Washington, D.C., in 1869, and was acquainted with Susan B. Anthony, Elizabeth Cady Stanton, and Lucretia Mott as early as the 1870s, she did not become active in the woman suffrage movement until 1909. It was then that she joined NAWSA. In 1910, Mussey testified before a Senate committee on the importance of women’s suffrage. Her testimony began as follows: “From childhood I was reared by my Father, Platt R. Spencer, as an ardent suffragist. I married General R. D. Mussey[,] another ardent suffragist—and I have reared two children, a daughter and a son[,] as ardent suffragists.”

She concluded her testimony by declaring that “[w]omen did not make the conditions from which they suffer—but they ask for the ballot as the lever to help lift these burdens in some degree.” In 1912, suffragists from Boston and Washington, D.C., endorsed both Mussey and Gillett as nominees to the Supreme Court bench following Justice Harlan’s death. Neither woman was nominated for this vacancy by President

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199. Id.
201. See Catherine M. Rottier, Ellen Spencer Mussey and the Washington College of Law, MD. HIST. MAG., at 361, 380.
202. See Mrs. Ellen Spencer Mussey, Testimony before Senate Committee (1910) (on file in the Washington College of Law Archives).
203. Id.
204. Id.
205. See If Women Could Go on The Bench, BALT. AM., Feb. 12, 1912 (on file in the Washington College of Law Archives) (featuring pictures of Mussey and Gillett and reporting on suffragists’ recommendation of Mussey and Gillett for Supreme Court bench); Aspire to Supreme Bench, BIRM. LEDGER, Feb. 14, 1912 (on file in the Washington College of Law Archives). The Birmingham Ledger features photographs of Mussey and Gillett and declares:
Taft, however. Mussey subsequently led the lawyers' division of the March, 1913, woman suffrage parade in Washington, D.C., which was staged on the eve of Woodrow Wilson's inauguration.

Ricker was active in the suffrage movement, beginning in the early 1870s, when she, like Kilgore in Pennsylvania, attempted to vote in New Hampshire. Ricker served as an elector on Lockwood's Equal Rights ticket in 1884, and attempted to run for governor of New Hampshire in 1910, but her fee to register to appear on the ballot was refused on the ground of sex. Ricker was a member of both NWSA and NAWSA and served as the New Hampshire delegate to their conventions. She also traveled on the suffrage circuit, giving speeches to state suffrage associations. Finally, Robinson-Sawtelle spoke in favor of suffrage in Massachusetts in the 1880s.

Many people will agree that President Taft might—and probably will—do a whole lot worse than to appoint a woman as a justice of the supreme court in the late Justice Harlan's place. Here are two candidates for the place, proposed by the woman suffragists of Washington. On the left is Miss Emma M. Gillett, L.L.D., who has practiced law before the supreme court for ten years. On the right is Mrs. Ellen Spencer Mussey, L.L.D., who has practiced in Washington for twenty years, and who has been active in securing legislation advantageous to women.

Id. See also Urge Mrs. Mussey for Judge: Massachusetts Women Want Her on Supreme Bench, WASH. EVE. STAR, Feb. 19, 1912 (on file in the Washington College of Law Archives) (reporting on efforts of Boston suffragists to advocate Mussey for newly vacant seat on Supreme Court); Winnifred Harper Cooley, At the Bar: American Portias Are Rapidly Increasing in Number and Influence, According to the Feminine Leaders of the Profession, N. Am., Mar. 24, 1912 (on file in the Washington College of Law Archives):

A WOMAN seriously suggested to the president of the United States for a place on the supreme bench! How times are changing! ... Not that any one expected President Taft to heed the suggestion made him by an organization in Washington to recognize one of our great women lawyers; still, the possibility shows that "the world do move."

Id.

206. As Morello reports:

Beginning in 1870 and continuing every year until her death, Ricker would appear before the selectmen of the town of Dover and, as a law-abiding and tax-paying citizen, demand the right to vote. Each time she was prevented from casting a ballot, she vowed she would only pay her taxes under protest and would be back to vote the following year.

MORELLO, supra note 84, at 222.

207. See id.

208. See Thomas, Ricker, supra note 15, at 155.

209. See 4 HISTORY OF WOMAN SUFFRAGE, supra note 62, at 478 (noting Ricker's speech at suffrage meetings on west coast in 1888).

210. See, e.g., id. at 722.
Thus, these early Supreme Court bar members were actively involved in the woman suffrage movement. Their leadership activities on behalf of the movement included public speaking, organizing groups of women, and lobbying state and national legislatures, which provided them with excellent training for breaking into the legal profession.

VIII. MEMBERSHIP IN THE EQUITY CLUB AND THEMES REFLECTED IN THE CORRESPONDENCE

Six of these early Supreme Court bar members were also members of the Equity Club, a correspondence society of early women attorneys formed in 1887 at the University of Michigan Law School, one of the first law schools to admit women. The Club was formed to address issues uniquely confronting them as women attorneys. It operated for four years, and had approximately thirty members, each of whom submitted one letter per year to the corresponding secretary, who then copied and circulated the letters to everyone in a compilation called the Equity Club Annual. The members paid annual dues to cover the costs of copying and mailing the Annual.  

The six women who were members of both the Supreme Court bar and the Equity Club were Bittenbender, Gillett, Gordon, Lockwood, McCulloch, and Robinson-Sawtelle. Even though the other early Supreme Court bar members were not also Equity Club members, their activities were referenced in the Equity Club correspondence. The letters of the six Supreme Court bar members reveal that they valued the Club as an important source of connectedness with other women attorneys. The value that they placed upon this connection, along with their references to each other as “sisters in law,” suggest an “old girls network” of women attorneys who supported each other’s progress in the legal profession.

One theme running throughout these women’s Equity Club correspondence is their concern with how to define themselves as women attorneys. Robinson-Sawtelle warned her “sisters” not to be “lady lawyers.”  

211. See generally DRACHMAN, supra note 85, at 1-18.
212. Letter from Lelia J. Robinson [Sawtelle] to the Equity Club (Apr. 9, 1887), reprinted in DRACHMAN, supra note 85, at 66.
213. Id. (emphasis in original).
equality principles in breaking down barriers to women's participation in the legal profession.

On a related matter, that of proper courtroom attire for women lawyers—specifically, whether to wear one's hat in court, Robinson-Sawtelle wrote:

One problem is not yet settled entirely to my satisfaction, and that is: Shall the woman attorney wear her hat when arguing a case or making a motion in court, or shall she remove it? I decided the point for myself, temporarily at least, when I went into court with my first case. I had always been accustomed, like the majority of women, to wear my hat or bonnet in public places, and as my chief idea was to feel as much at ease as I could, I determined to wear a small hat which set back from the face, knowing that if I should uncover my head there would be an added sense of unaccustomedness besides that which the place and the business must create. The same feeling has led me to wear hat or bonnet ever since on similar occasions.²

Thus, Robinson-Sawtelle advised her sisters-in-law to adhere to dress conventions so as to facilitate male attorneys' acceptance of women's presence in the courtroom. She observed: "And it seems to me well that when our object is to accustom judge, jury, clients and the public to the presence of women attorneys in court, there should be as few minor variations from the usual customs and appearance of women in public places as may be."²¹ In essence, Robinson-Sawtelle was pragmatic in advocating conscious manipulation of social conventions regarding women's appearance as a means to further the ultimate goal of expanded opportunities for women in the legal profession.

Their Equity Club letters also addressed the question of how women attorneys should balance their personal and professional lives. For example, Robinson-Sawtelle inquired, "Is it practicable for a woman to successfully fulfill the duties of wife, mother and lawyer at one and the same time? Especially a young married woman?"²¹⁶ She requested that "some of our members would discuss this question in its pros and cons."²¹⁷ In response, Bittenbender revealed that she and her husband had an understanding that they would be celibate, and thereby avoid the risk of pregnancy, so as to preserve her physical well-being for the practice of law. Bittenbender noted, "I talked the matter over frankly

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215. Id.
216. Letter from Lelia J. Robinson [Sawtelle] to the Equity Club (May 22, 1889), reprinted in DRACHMAN, supra note 85, at 171 (emphasis in original).
217. Id.
with my husband as I do all other interests of life, and since have received his hearty co-operation in this as in all other efforts I make. I gladly impart the knowledge which came to me to others as I have the opportunity."^218 She continued:

Marital excesses, I... believe mainly cause the disarrangement of the "physical organs pertaining to womanhood." I also believe that they were not "made to get out of order" any more than those pertaining to manhood. The laws of nature must be obeyed in sexual intercourse by human beings as they are by dumb animals . . . . I would recommend the occupying of separate beds, and also of bed-chambers when convenient, by married people.^219

For Bittenbender, liberation from the threat of repeated pregnancies allowed her to pursue her legal and political activities in a concentrated manner, without family or the possibility of ill-health to distract her.

On this theme of balancing personal and professional lives, Gillett noted that a glance through the Equity Club's 1888 Annual suggested that a single woman had a better chance of success in the legal profession than a married woman: "A glance through the Annual would seem to indicate that the majority of the practitioners who are sticking to their work and plodding on in the only sure and safe way to win success are unmarried."^220

Echoing Bittenbender’s advice, Gillett advocated that married women “insist on equal rights to self-gratification or restraint,” stating:

The care of children must necessarily interfere with any thing so sensitive to interruptions as a law practice. I do not believe the relation of wife alone should do so. Nor do I sympathize very deeply if it does for no woman has any right to give up her health, happiness and future prospects in life for the mere gratification of her husband, but in the marital relation as in every other relation should insist on equal rights to self-gratification or restraint. I have found advice of this kind given to wives has almost invariably resulted in increased respect and happiness in the home and improved health on the part of the wife.^221

Thus, Gillett believed that married women could succeed as well as single women in the legal profession, so long as they did not have children:

Should one attempt to illustrate that either the married or unmarried woman is capable of doing distinguished work she would not be at a loss for examples. Either state, rightly lived, should not handicap a woman in her attainments in

^218. Letter from Ada Bittenbender to the Equity Club (May 10, 1889), reprinted in DRACHMAN, supra note 85, at 152.
^219. Id. at 152-53.
^220. Letter from Emma M. Gillett to the Equity Club (Apr. 27, 1889), reprinted in DRACHMAN, supra note 85, at 162.
^221. Id.
any department of the world’s work it is her deliberate choice to take up.222

As these Equity Club letters well illustrate, making the right choices about how to balance personal and professional lives was key to these women’s potential for success in the legal profession.

McCulloch responded to Robinson-Sawtelle’s question whether a woman could successfully pursue multiple roles as wife, mother, and lawyer, by asserting that it was critical who one married. McCulloch declared that “it makes all the difference in the world who one marries, and I should never again oppose a woman lawyer marrying, if she devotedly loved her husband and he was clean and brilliant and honorable and progressive enough to be proud that his wife was a lawyer.”223 Noting that her husband was very supportive of her legal career, McCulloch’s letters detailed how they balanced their personal and professional lives together by sharing their law practice as well as their housekeeping duties.

Another theme addressed in the Equity Club letters was whether and how the members valued the Club, each other, and associations of women attorneys generally. Robinson-Sawtelle underscored the moral support that she gained from participation in the Equity Club when she thanked her fellow club members “for your kind words of sympathy and appreciation for my book. They are very sweet to me, believe me.”224 Likewise, in one of her first Equity Club letters, Gordon underscored the value she derived from coming together with other women attorneys:

There is a certain “moral support” in the confiding sympathy of brave-souled, warm-hearted women, who have dared and suffered in kind with ourselves, which becomes a tower of strength to nerve the heart and sustain the brain when both are taxed to the utmost as is often the case in the practice of our grand profession. I became convinced years ago, that the few women lawyers of the country should become better acquainted for their mutual benefit, and acting upon such conviction, wrote to several of my sisters in the profession, from which resulted a correspondence both pleasant and profitable. That the excellent motto selected by the Equity Club may be fully realized, is my earnest desire, and it would give me great pleasure to correspond with such individual members of the Club with whom this feeling may be mutual.225

Conscious of their potential for influencing reform within the legal

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222. Id.
223. Letter from Catharine Waugh McCulloch to the Equity Club (Nov. 8, 1890), reprinted in DRACHMAN, supra note 85, at 192.
224. Letter from Robinson [Sawtelle], supra note 212, at 63.
225. Letter from Laura D. Gordon to the Equity Club (Apr. 26, 1887), reprinted in DRACHMAN, supra note 85, at 50-51 (emphasis in original).
profession, Gillett, McCulloch, and other Equity Club members formed a subcommittee to discuss women attorneys' relations to the established bar associations.226

Gordon's reference to "the excellent motto" of the Equity Club, in emphasizing the importance of associations of women lawyers, raises a question as to which sense of the term "equity" she intended to invoke. Was she referring to equity in its traditional legal sense, as that system of dispute resolution based on principles of fairness and justness that served to moderate the harsh effects of rigidly applied legal doctrines, and was thought to be more feminine in nature?227 Or was she referring to equity in its common meaning, as the absence of bias and prejudice?228 For the Club's founding members, the motto of "equity" signified both the feminine realm of law and the absence of prejudice. In the particular context of Gordon's letter, it would appear that she used the term "equity" in the second sense (i.e., as the absence of bias).

In addition to highlighting the moral support that membership in the Equity Club provided as an organization sympathetic to women's endeavors in the law, Gordon emphasized that it was important for women attorneys to come together to lobby for expanded rights for all women:

I think it would be a most desirable object, if the Club could arrange for a Grand Annual Reunion of the Lady Lawyers of America, that we might be able, by personal acquaintance and the discussion of topics of grave importance to all women, not only benefit ourselves as members of a profession, but do much good for all woman kind. Our laws are, in many instances, inimical to the well being and interests of women, and to those of the Legal Profession must our sisters thus discriminated against, look for relief.229

As such, Gordon emphasized women attorneys' obligations to help all women through education and reform of the laws. Likewise, Lockwood wrote about the importance of educating girls and women about the law:

In this day and age of the World, when so many avenues of trade, and so many professions are opening to women, the ground principles of the laws of each State (and they should be uniform) should be taught to the girls of the public schools. Women have always been the chief sufferers of bad legislation, and if being the weaker physically it is harder for them to acquire a fortune, the more

226. See Report of Martha Pearce, Corresponding Secretary, the Equity Club (Summer 1888), reprinted in DRACHMAN, supra note 85, at 84 (describing procedures for distribution of Equity Club letters and attaching Club's constitution).
227. See BLACK'S LAW DICTIONARY 280 (5th ed. 1983) (defining "equity" as "[j]ustice administered according to fairness as contrasted with the strictly formulated rules of common law").
228. See WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 421 (1983) (defining "equity" as "justice according to natural law or right; specif. freedom from bias or favoritism").
229. Letter from Gordon, supra note 225, at 51.
need of the legal knowledge of how to keep it. There is plenty of room to-day for women who are willing to apply themselves in the law.

It is an old maxim in England that every gentleman’s son should know the law. We ought to reverse that in our Country and expect every lady’s daughter to be versed in the law, that she may be early schooled to a necessary protection of herself and children.230

Not only did Lockwood suggest that every girl be taught the law, but that law was an appropriate profession for women to become armed with the means of self-protection.

It is striking the extent to which the themes discussed in the Equity Club letters of the 1887-90 period continue to concern women attorneys today.

IX. CONSCIOUSNESS OF BEING FIRST WOMEN LAWYERS

Many of these early Supreme Court bar members had achieved firsts for women both within and without the legal profession, as noted in Part V above. These experiences as first women simultaneously raised and reflected their awareness of the existence of barriers to equality for women generally and women lawyers specifically, and of the need to break them. Their active involvement in the suffrage movement was an outgrowth of this awareness.

The Equity Club letters of Gillett, Gordon, Lockwood, and Robinson-Sawtelle reveal that these early Supreme Court bar members possessed a heightened consciousness of their status as first women attorneys. They were aware that their successes or failures would impact other women’s efforts to enter the legal profession insofar as they served both as role models for women specifically and examples for society generally. Gillett and Robinson-Sawtelle both advocated a narrow focus on career success to safeguard women attorneys from potential gender-based attacks that might use any failures by women as evidence of their inability to serve as lawyers.

Gillett’s consciousness of needing to succeed as a woman lawyer and, hence, to set a good example for other women and society generally, is demonstrated in the following letter to the Equity Club:

I have endeavored to do thoroughly and conscientiously whatever I have had to

do, to stick to my profession and not be lured into any class of philanthropic or other work, knowing the law to be a jealous mistress and believing that I could do no better work than to prove what a woman could by persistent application earn a competency at the law as one of the many who are doing it, and to avoid notoriety.

To a faithful adherence to these rules, I owe the modicum of success I have attained.231

Gillett’s Equity Club letters reveal that, as a single woman without husband or children to distract her, she was able to pursue her professional interests in an intensely-focused manner, which she recommended to other women lawyers as the means to attaining career success.

Gillett advised her fellow women lawyers to follow an essentially male model by refusing to do volunteer lawyering during their office hours and housework during their free time. She advocated against charitable legal work because she believed that women already carried heavy burdens in conducting their law practices given their status as first, and thereby model, women attorneys. Accordingly, Gillett believed that women attorneys should not undermine their ability to succeed in the profession by devoting any of their resources to charitable work, which might distract from a narrow focus upon career advancement.232 On this theme, Gillett’s April 27, 1889 letter to the Equity Club advised:

Charity clients should be shunned unless in extreme cases. They have no more right to a lawyer’s services for nothing than a washer-woman’s, and when one takes charity clients to any extent she lowers her professional tone besides using her capital of time and strength. If she uses all of her income for charity that is her matter but if she drives herself beyond her strength and fails in her work it concerns us all.233

Gillett’s reference to the potential for failure that “concerns us all” clearly demonstrates her consciousness of the need for the first wave of women attorneys to be cautious and purposeful in their pursuit of career success so as to safeguard opportunities for later women attorneys.

Similarly, Gillett believed that women lawyers should reject housework in order to preserve their energy for office work and safeguard their free time for relaxation.234 She advised as follows:

A further matter of importance is how we spend our leisure hours. If we have home work pressing on us during office hours and hurry home to assume cares

231. Letter from Emma M. Gillett to the Equity Club (Apr. 18, 1888), reprinted in DRACHMAN, supra note 85, at 96-97.
232. See Letter from Gillett, supra note 220, at 161.
233. Id.
234. See id.

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of various kinds we cannot expect a fine nervous condition. Men go home to their dinner, evening paper, a stroll down town, or a chat over the fence with a neighbor.\footnote{235}

In place of housework, Gillett advocated that women engage in vigorous exercise to promote their physical and mental well-being for work.\footnote{236} In this vein, she declared, “Work done when weary is usually below the standard, which we cannot afford.”\footnote{237} Again, Gillett’s reference to the problem of work performed below the standard, “which we cannot afford,” demonstrates her belief that the first wave of women lawyers must be conscious of the ramifications of their choices and actions upon the legal professional opportunities of future generations of women. Ultimately, Gillett advocated that women follow the male model of lawyering in order to flourish within their chosen profession: “If we take up work that has been monopolized by men we should study the manner in which they have accomplished the work and how they have spent the hours not occupied by their profession, and follow the general line of their experience.”\footnote{238}

Like those of Gillett, Robinson-Sawtelle’s Equity Club letters emphasized the unique obligations that befell the first women lawyers. For example, Robinson-Sawtelle asserted that women lawyers had a special duty to practice law once they joined the bar so as to prove themselves worthy of membership in the profession. Despite having taken time off from the practice of law to promote her book on basic legal principles for laypeople, Robinson-Sawtelle observed:

> [T]he one thing I wanted to say was that now women had proven themselves entirely capable of studying law, it was all essential for them to prove themselves capable of practicing law, and that it was the duty of every woman who had been admitted to the bar to get into active practice as quickly as possible, and to stay there, working her way, rapidly or slowly, as other lawyers work theirs.\footnote{239}

Like Gillett, Robinson-Sawtelle was conscious of her status as a model woman lawyer, upon whom other women’s opportunities in the legal profession would depend. Indeed, Robinson-Sawtelle advertised free consultations for women on Saturdays, beginning in 1889.\footnote{240}
As for the others, Gordon’s Equity Club letters reveal a heightened consciousness of the need for women lawyers to unite to lobby for legal reforms, and Lockwood advocated teaching girls and women about the law so as to encourage more women to enter, and thereby change, the law.  

Though not a member of the Equity Club, Foltz’s activities reveal a sharpened consciousness of being in the first wave of women lawyers and wanting to assist other women join the profession. For example, Foltz organized the Portia Law Club in San Francisco in 1893, helped found the Women Lawyers Club in 1918, and taught law to women students for several years in her Los Angeles law office.  

Publications by these early women members of the Supreme Court bar also reveal an awareness of the significance of their being among the first wave of women lawyers in the United States. For example, Bittenbender demonstrated this awareness when she wrote an article entitled “Woman in Law” for Catharine Waite’s Chicago Law Times, which was then reproduced in expanded form as the “Woman in Law” chapter of Annie Nathan Meyer’s 1891 book, Woman’s Work in America. Likewise, Lockwood’s and Robinson-Sawtelle’s articles on early women lawyers, with Lockwood’s particular focus on the first seven women members of the Supreme Court bar, reveal a heightened awareness of the significance of the woman lawyer phenomenon.  

Finally, Mussey and Gillett revealed their consciousness of the dilemmas confronting early women lawyers when they chose a coeducational, rather than single-sex, format for establishing the Washington College of Law. Even though WCL was founded primarily for women, Mussey and Gillett adopted a coeducational format partly in light of their belief that it signified gender equality. Thus, Mussey and Gillett employed a different model from that of the women’s medical schools, which were premised upon gender difference ideology, in order to create an environment in which women could demonstrate that their intellectual acumen was equal to men’s. Indeed, the Washington College of Law Catalogue, 1898-99, at 1. The same catalogue speaks in co-educational terms in explaining why legal education is important:  

241. See text accompanying notes 229-230.
242. See Gilb, Foltz, supra note 120, at 642.
243. See Bittenbender, Chi. Law Times, supra note 57, at 301 (describing achievements of Bradwell, Foltz, Gordon, Kilgore, Lockwood, and McCulloch); Bittenbender, Woman’s Work in America, supra note 21, at 218 (same).
244. See Lockwood, supra note 57, at 43-47 (addressing achievements of Bittenbender, Gillett, Gordon, Kilgore, Lockwood, and Robinson-Sawtelle); Robinson, supra note 57, at 10 (noting achievements of many of these early women lawyers).
245. See Clark, supra note 9, at 647-56. Here, the author draws upon the Washington College of Law’s 1898-99 Catalogue, which states, "As co-education is believed to be the true method, men are admitted to the College on an equal footing with women." Washington College of Law Catalogue, 1898-99, at 1.
College of Law graduated successful women lawyers, including Judge Mary O'Toole of the District of Columbia municipal court, Judge Kathryn Sellers of the District of Columbia juvenile court, and Alice Paul, President of the National Woman's Party.  

X. CONCLUSION

Why did these women join the Supreme Court bar, given that many of them were not courtroom litigators and only a small number actually filed briefs or argued in the Supreme Court? The backgrounds, activities, and thoughts of thirteen of the first twenty female members reveal that they joined the bar at least in part as a further step in breaking down barriers to women's entry into the legal profession.

To further their feminist mission, these early women attorneys moved each other's admission in the Supreme Court bar, as, for example, when Ada Bittenbender moved the admission of Emma Gillett in 1890, the first time one woman moved the admission of another. This practice of supporting each other's applications for admission suggests the efforts of an "old girls' network" of "sisters in law" who promoted each other's opportunities in the legal profession.

Of course, these women may have also joined the Supreme Court bar because they genuinely wanted, and expected, to practice there, but pervasive sex discrimination prevented them from doing so, where few clients or male colleagues were willing to hire them to file briefs or present argument in the high court. Indeed, there continue to be very few female Supreme Court advocates. One recent study estimated women's representation in the Supreme Court bar as 7.3 women per one hundred members. Another study estimated the percentage of women among those who actually argued before the Court during one term at

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The reasons advanced as to the importance of men pursuing this study apply equally to women. Both are amenable to the law, and ignorance of the law excuses neither. Both are governed by the law in all business matters, including the descent of property. Both find the knowledge valuable either as a means of caring more advantageously for their own property or of earning a livelihood.

Id. at 8.

246. See, e.g., Washington College of Law Founded by Women, WASH. POST, Nov. 20, 1921, at 2 (announcing, "Many Graduates of This Coeducational Institution Have Attained Prominence—Steady Growth Since Earliest Years Has Put College Among Foremost Schools of Its Kind—Alumni and Students Loyal and Enthusiastic.").

247. See McGuire, supra note 3, at 35.
Of those women briefing and arguing cases in the Court today, a disproportionate number are employed by local, state, or federal agencies by comparison with the composition of the bar generally, where the government has historically provided women lawyers with better employment and advancement opportunities than private practice.

Regardless of their aspirations to practice in the Supreme Court, these women were motivated to join the bar at least in part by their commitment to furthering opportunities for women. This commitment guided them into, and through, their legal careers, differentiating them from other women professionals, most notably, women doctors, insofar as women lawyers pursued an integrationist, rather than a separate spheres, approach to the profession. Their roles as "first women" in the law—attending and establishing law schools, holding positions within the legal profession previously closed to women, and joining bars—reflected and refined their consciousness of breaking down barriers for women in the legal profession. For them, joining the Supreme Court bar was another in a series of steps towards eliminating impediments to women's participation in the legal profession.

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249. See, e.g., McGuire, supra note 3, at 36.