

Making History

Barbara Allen Babcock

Professor Babcock introduces an important early work on women in the law, Lelia J. Robinson, *Women Lawyers in the United States*, 2 GREEN BAG 10 (1890). Robinson's piece is an example not only of her own industry and creativity, but also of one of the original *Green Bag's* distinctive features: its willingness to publish work by women. Lelia Robinson's article appears following Professor Babcock's introduction, at page 68.

– *The Editors*

IN 1890 WOMEN LAWYERS were less than one-half of one percent of the profession (208 women out of 89,422 total lawyers according to the census). One of these unusual souls, Lelia Robinson, set out to locate the others and published the results of her research in the second issue of the *Green Bag*.

Her project was original. Although individual women lawyers were featured regularly in the various suffrage organs, and though Myra Bradwell, editor of the influential *Chicago Legal*

News and the petitioner in *Bradwell v. Illinois*,¹ constantly printed stories about women at the Bar, there had not before been a systematic effort to locate and correspond with them all. Robinson's only exemplar was the Equity Club letters, an exchange promoted by a group of women lawyers and law students at the University of Michigan. Thirty-two women lawyers wrote 60 letters from 1886-1890 telling each other about their personal and professional lives.²

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¹ 83 U.S. (16 Wall.) 130 (1872).

² Virginia G. Drachman, *WOMEN LAWYERS AND THE ORIGINS OF PROFESSIONAL IDENTITY IN AMERICA: THE LETTERS OF THE EQUITY CLUB, 1887 TO 1890* (1993), reprints all the letters with useful biographical and other commentary. Ellen Martin (a Michigan law graduate and member of the Equity Club) published an essay in 1879 on "Admission of Women to the Bar" that dealt mainly with the legal cases of women to that point. ¹¹ *CHICAGO LEGAL NEWS* (1879). See also Ada M. Bittenbinder, *Woman in Law*, 2 *CHICAGO LAW TIMES*, at 301-02 (1888).

Robinson, who was an Equity Club member herself, started with that list. She also “preserved every scrap of information which I could gather on the subject for more than a dozen years past.” In addition, she wrote to all the law school deans asking about women students and seeking names and addresses. She then contacted the women whose names she received, and they led her to others. But she despaired of an accurate count, declaring that “the newspapers publish and republish little floating items about women lawyers along with those of the latest sea-serpent, the popular idea seeming to be that the one is about as real as the other.”

In the end, she located and described 120 women lawyers (counting herself) – more than half of the number captured by the 1890 census. The women were from 21 states, plus Washington, D.C., and Hawaii, with by far the most from Illinois and Michigan, where there were law schools friendly to their admission. Three-fourths of the respondents attended law school, with the 25 from Michigan, and 14 (including Ada Kepley, who in 1870 became the first woman to obtain a law degree) from Union Law School in Chicago, later re-named Northwestern. Boston University (Robinson’s alma mater) also claimed 14; other schools with multiple women graduates were Iowa (8), Hastings in California (8), Howard University (6), Washington University in St. Louis (3), and Wisconsin (4 – all in the same family). Forty or so of Robinson’s women read law in the offices of their husbands, fathers or brothers, and in several instances, of other women lawyers or unrelated men.

The high proportion of law school attendance in Robinson’s survey is somewhat misleading because the apprenticeship system was the more usual route to the law for both men and women throughout the nineteenth century. There were few law schools to begin with (only 21 in 1890), and some of the most

prestigious discriminated against women. Robinson’s contrary picture arises from her use of the Equity Club list and law school deans as her major informants. On the other hand, the survey probably locates most of the women who attended law school, and these in turn were likely the most successful since both admission and acceptance at the Bar were enhanced by formal law study.

The deans (“save two”) were courteous in replying but not all considered the admission of women a point of pride. Robinson notes that among “prominent law schools which do not admit women as students are those of Harvard, Columbia and Yale.” Though one Alice Jordan had actually graduated from Yale in the mid-80’s, the Dean sent Robinson an excerpt from the catalogue limiting future courses to “persons of the male sex only,” a clause inserted “to prevent a repetition of the Jordan incident.”

Lelia Robinson embarked on her unique undertaking – to list and describe all the women lawyers in the United States – for the purpose of showing that she and her sisters were neither freakish nor frightening, that it was possible to be both a normal woman and a good lawyer. She hastens to note, for instance, that many of her respondents (about half) are in the “married state” so that “it cannot be charged” against the woman lawyer “that she does not marry.” Only five of the married women wrote that they had children, however – and since the desire to appear normal was nearly universal, it is unlikely that any mother-lawyer failed to mention her offspring. Among the five were Myra Bradwell, whose son and daughter were both lawyers, and the remarkable “Mrs. Piers” of Janesville, Wisconsin, who attended law school with one of her daughters, practiced with her husband, and had two other daughters currently studying law.

Robinson modeled her work on the “Bench and Bar” collections of biographies and pic-

tures of lawyers and judges which were common in the nineteenth century. The pictures, information, and often the prose itself in these publications were furnished by the subjects, and were, to say the least, uncritical. In similar style, Robinson glosses unpleasant facts, and the entire piece has the cheerful optimism typical of the nineteenth century, and of Lelia Robinson herself, surely one of the most interesting of the article's subjects.

Eight years before writing the *Green Bag* article, Robinson had become the first woman at the Massachusetts Bar. She was also the first to graduate from Boston University Law School. In the sequence followed by other first women she initially tried for court admission, but was refused. Then she turned to the legislature and lobbied through a woman lawyer's bill, which passed unanimously.

Even duly licensed, she was unemployable in Boston. So she hung out her shingle, and found, as she later wrote, that the "embarrassments and difficulties" she encountered without prior experience "in an established office are such as none but those who have experienced them can ever realize."³ Frustrated because the little business she had was office work, and feeling that "the public judges a woman lawyer, as it does a man, largely by his success in court," Robinson set out for the West. Washington Territory had adopted woman suffrage, and women served on juries there. She figured on courtroom opportunities in a place so liberal on the "woman question."

Very quickly, she was trying cases, and

delighted in the "quick-sighted and keen-scented" women jurors, who were as "true as steel in their findings. If they failed in either direction, it was in sometimes being a trifle too logical, not allowing sweet pity to have its fair influence." She gave as example a woman juror who "thought my Chinaman client to be guilty. ... Whereas he was really quite innocent. [T]he following week on another case, my first peremptory challenge was expended on this lady, whom I did not dare trust again."⁴ Thus, in Washington Territory in 1885, Lelia Robinson became not only the first woman lawyer to argue to a mixed jury, but the first to strike a woman from the panel.

She returned to Boston after several years, married and practiced successfully until her accidental death at age 41, shortly after publishing the *Green Bag* article. There is much more to Lelia Robinson's story, as indeed there is to the stories of many of the 120 women she strives to present bathed in the light of normality.

Her second purpose in writing was to inspire future generations of women lawyers. In this goal also, she succeeded. I know this because for the past several years I have been teaching a course centered on what we can learn from the lives of pioneer women lawyers. The students each write a biographical piece and we are building a website of their papers, my own biographical work, and related research.⁵ Lelia Robinson's life and her article are prime illustrations of our central insight – when it comes to women lawyers, the personal is indeed political.



3 The quotes in this paragraph and the next are all from Robinson's 1888 letter to the Equity Club, Drachman at 117-127.

4 Lelia Robinson, *Women Jurors*, 1 CHICAGO LAW TIMES 22 (1886).

5 Biography Project, <<http://www.leland.stanford.edu/group/WLHP>>. See also Barbara Allen Babcock, *Feminist Lawyers*, 50 STAN. L. REV. 1689 (1998).