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Assistant US Attorney Ella Mae Backus: “A most important figure in the legal profession in the Western District of Michigan”

By
Ruth S. Stevens

Ella Mae Backus, described by the *Flint Daily Journal* while still in the early years of her career as “one of Michigan’s best known women attorneys,” worked for the United States Attorney’s Office for the Western District of Michigan from 1903 to 1938.¹ After she died in 1938, at age 75, her life was celebrated with a memorial at the federal court in Grand Rapids, where leading members of the federal court and Grand Rapids bar bore witness to her importance both to the US Attorney’s Office and the Grand Rapids legal community. Yet, despite the widespread respect she enjoyed while she was alive, her life has received only brief mention in historical accounts.²

Backus’ accomplishments were remarkable, especially for a woman who came of age in the nineteenth century. Women were first admitted to the bar in Michigan in 1871, eight years after she was born, and these early female attorneys had to overcome numerous hurdles.³ Their presence in the legal profession was seen as a direct challenge to the prevalent “separate spheres” ideology and notions of appropriate feminine behavior. They often faced overt discrimination because of their

¹ “Fred C. Wetmore is Removed,” *Flint Daily Journal*, 31 December 1913.

² Ellen Arlinsky and Marg Ed Conn Kwapil, *A Grand Profession, A Grand Tradition: A History of the Grand Rapids Bar* (Grand Rapids, MI: Grand Rapids Bar Association, 1995), 31; “History of the Western District of Michigan,” Office of the United States Attorney for the Western District of Michigan, www.justice.gov/usao-wdmi/about/history.

³ For more on early female attorneys in the United States see Virginia G. Drachman, *Sisters in Law: Women Lawyers in Modern American History* (Cambridge, MA: Harvard University Press, 2001); Jill Norgren, *Rebels at the Bar* (New York, NY: New York University Press, 2013); Mary Jane Mossman, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Portland, OR: Hart Publishing, 2006); Virginia D. Drachman, *Women Lawyers and the Origins of Professional Identity in America: The Letters of the Equity Club, 1887 to 1890* (Ann Arbor, MI: University of Michigan Press, 1993); Karen Berger Morello, *The Invisible Bar: The Woman Lawyer in America: 1638 to the Present* (Boston, MA: Beacon Press, 1986).

sex and battled stereotypes about the type of legal work appropriate for women. The first female attorneys often concentrated their practices more on office work, and they were instructed to avoid litigation, the courtroom, and especially criminal law, which was thought to involve matters too coarse for females.⁴ Difficulties were even greater for those who entered the legal profession without the support of a husband.⁵

Backus came from a family of limited means. Unlike most early female attorneys in Michigan, whose families had the financial resources to send them to law school, she acquired her legal knowledge solely through self-study. She came to a legal career indirectly after she was hired as a stenographer in a Traverse City law office. There she began to study law simply to make herself more useful to her employers, but with their encouragement she decided to continue the course of study and become a lawyer. In 1895, after four years of working full-time as a stenographer and reading law, she was admitted to practice law, joining the very small number of women in the United States in the 1890s who overcame existing legal and social barriers to enter the legal profession.

Backus' admission to the bar and practice in Traverse City were just a prelude to a long career in government service. In 1903 she was appointed to the position of Clerk of the United States Attorney's Office for the Western District of Michigan in Grand Rapids. Over the course of her thirty-five-year career there she became the backbone of the office, a person depended on for her knowledge of federal procedure and practice who was widely known as an authority on federal law. In 1923 she was promoted and became the first female attorney to serve as Assistant US Attorney in Michigan, one of only a small group of female attorneys serving in this role nationally at the time.⁶ Though working in an environment that made her vulnerable to the whims of the political

⁴ Drachman, *Sisters in Law*, 86-89, 259, and *Women Lawyers*, 29; Morello, *Invisible Bar*, 173-76, 181-86; Virginia G. Drachman, "Entering the Male Domain: Women Lawyers in the Courtroom in Modern American History," *Massachusetts Law Review* 77.1 (March 1992): 44-50.

⁵ Drachman, *Sisters in Law*, 99.

⁶ Assistant US Attorneys serve the field offices of the US Department of Justice that are located in each federal judicial district. They report to the US Attorney for the district, who in turn reports to the US Attorney General in Washington, DC. Michigan is divided into the Western District and the Eastern District by a line that starts roughly where Lake Huron and Lake Michigan meet and continues south to the Ohio border, following the outlines of county borders. At the time Backus started work in the US Attorney's Office for the Western District of Michigan, the Western District also included all of Michigan's Upper Peninsula. For more on the creation of the federal districts and maps of the districts see Russell R. Wheeler and Cynthia Harrison, *Creating the Federal Judicial System* (Washington, DC: Federal Judicial Center, 2005), 20.

appointees to whom she reported, she made herself indispensable and held the US Attorney's office together as administrations changed. She worked in that office until her death in 1938, through five Republican and two Democratic presidencies and for six different US Attorneys. This success in government service would have been impressive for a person of any gender but was even more so because of the challenges she faced as a woman in a "man's profession."

Backus' career is of interest not only because of her individual accomplishments but also because of how the trajectory of her life both coincides and conflicts with the historiography of early female attorneys. Scholars note that women's success in the field of law was often due in part to the help received from supportive male colleagues, and this was certainly the case for her. In addition, like some other early female attorneys, she endorsed the ideal of a "lady lawyer," someone who was competent professionally while retaining traditional feminine qualities. Yet in other respects Backus did not follow conventional paths for a female attorney. While many were actively involved in suffrage and other political movements, she was decidedly apolitical. Whether this was by choice or by necessity is unclear; certainly her position in the US Attorney's office would have been at risk if she had participated in political advocacy. Nonetheless, there is no evidence that she had any inclination towards public activism. Her record thus contrasts with that of many other educated women of the Progressive Era, who used the platforms they acquired through their professions or their memberships in organized groups to press for social change.

Backus both embraced and defied stereotypes about the type of legal work best suited for women. She expressed a preference for office work, which was typically considered the most appropriate work for women, but still handled matters in court and rose to a high level of responsibility and influence within her office. Her practice included representing the United States in the prosecution of criminal cases, an area of law in which few women were engaged, and one which exposed her to the sordid aspects of human behavior that many thought were better dealt with by men. While she insisted that female attorneys should not try to act like men, her actions show that she was willing to reject gender stereotypes and act boldly and decisively when the need arose.

Backus' career illustrates how a woman who was drawn to the intellectual challenge of a legal career could achieve a level of success without openly challenging entrenched discrimination against women. She earned wide recognition for her legal prowess, her dedication to public service, and her ability to negotiate the intricacies of working in an

office led by a changing cast of political appointees. Her impact on her office and the legal profession came from her native ability, her hard work, and the high standards she set for herself. Through the respect she gained, she broke down barriers to acceptance of women in the legal profession and established a precedent for how a woman could succeed in the legal profession, becoming part of the group of early female attorneys who often worked in isolation from each other but collectively helped change attitudes about women's fitness for professional careers.

Born during the Civil War in rural Michigan, Backus emerged from a family of modest means. Her father, Joseph Backus, came to the United States from England with his parents when he was sixteen. His family ultimately settled northwest of Detroit in Oakland County. Backus' mother, Helen Smith Backus, was a native of Michigan. Joseph and Helen married in 1849, and they had three children who survived to adulthood, of which Ella Mae, the youngest, was born 22 April 1863 in Royal Oak Township.⁷

Joseph Backus had helped on his father's farm in Oakland County in his younger years and relied on his own hard work as a farmer to support his new family. In 1857, Joseph, now a father with two children, bought 160 acres in Gratiot County's Arcada Township, on the outskirts of the current city of Alma.⁸ In moving to Arcada, he and his family became part of a migration of settlers who claimed cheap land in the undeveloped inland counties of central Michigan. They were among the pioneer settlers of Gratiot County, and Joseph was actively involved in public life in Alma Township, serving as township clerk in 1861 and township treasurer in 1862.⁹ His sons, William and Emery, initially helped on the Gratiot County farm, but by 1880 both sons had moved out and Ella Mae, aged

⁷ Oakland County Clerk, Marriage Record, Joseph Backus and Helen Smith, both of Pine Lake Township of West Bloomfield, 22 September 1849; US Census (1880), Gratiot County, Michigan, population schedule, Township of Arcada, p. 115, dwelling 877, family 920, Joseph Backus household; US Census (1870), Gratiot County, Michigan, population schedule, Arcada, p. 15, dwelling 91, family 91, Joseph Backus household. Backus' birth certificate is not available, but a birth year of 1863 is consistent with the 1870 and 1880 US census records and the record of her marriage. The age given on her death certificate and in her obituaries suggests an 1862 birth date. Her birth year is also recorded as 1868 in personnel records kept by the US Attorney's Office for the Western District of Michigan.

⁸ Joseph Backus, Land Patent, 10 March 1857, US Department of the Interior, Bureau of Land Management, Accession No. MI2810_162, Doc. 12448; Gregory A. Boyd, *Family Maps of Gratiot County, Michigan* (Norman, OK: Arphax Publishing Co., 2006), 105.

⁹ Willard D. Tucker, *Gratiot County, Michigan. Historical, Biographical, Statistical* (Saginaw, MI: Press of Seemann & Peters, 1913), 206.

17, remained on the farm with her parents.¹⁰ Like other rural residents, the Backus family suffered the hardships and uncertainty of farm life, including the famine of 1858 which was caused by wide-spread crop failure in Gratiot County.¹¹

Ella's determination and capacity for hard work were undoubtedly fostered by the experience of growing up on Michigan's frontier. In this harsh environment, everyone in her family had to contribute to survival. Ella did her share, learning how to raise crops, care for livestock, and tend to fruit trees. Perhaps the hardships of her early life also influenced her drive to further her education and escape the grueling physical labor required by life on a farm.

Although they remained in Gratiot County for over twenty years, the Backus family did not make their final home there. In 1881 they relocated to Readmond Township in Emmet County, becoming part of the tide of settlers who moved to the northern-most counties of the lower peninsula at a time when the small fishing villages of Emmet County were being transformed by the developing lumber industry and tourism, which were aided by the county's railroad access and its scenic and protected harbors along Lake Michigan. Even after her move to Grand Rapids in 1903, Ella maintained strong ties to northern Michigan. Her parents continued to live in the Harbor Springs area until their deaths in 1903 and 1905, as did her brother William until his death in 1896. Her other brother, Emery, lived on his own farm in Emmet County until he died in 1935 at age 79. She also had a number of nieces and nephews in Emmet County and regularly vacationed there in the summer, though by the time she died there was only one nephew left in the area.¹² Backus and all of the members of her immediate family are buried in Lakeview Cemetery in Harbor Springs.

There is little information about Ella Mae Backus' early school years; she completed eight years of elementary education and four years of high school and therefore it is likely she was motivated to learn and was supported in that effort by her parents. In the late 1860s, when she became of school age, public education was in its infancy in Michigan, and students in rural areas like Gratiot County were served by a system of one-room school houses. As a high school graduate, Backus was highly-educated compared to the general population of the United States; in

¹⁰ US Census (1880), Gratiot County.

¹¹ Gratiot County, Famine Relief Recipients, 5, Gratiot County Historical Society, Alma, MI.

¹² Estate of Ella Mae Backus, Petition for Probate of Will, 27 September 1938, Kent County, MI, Probate Court, file no. 64346.

1880, less than three out of a hundred seventeen-year-olds had even graduated from high school.¹³ Her high school degree was sufficient as a first step towards her later career as a lawyer, as neither a college degree nor a law school degree were required for admission to practice law in Michigan until well into the twentieth century.

One chapter of Backus' early life remains a mystery. Although all records after 1884 refer to her as "single," not "married" or "divorced," she was married for a brief time as a young adult. In March 1881, shortly before her eighteenth birthday, she married William B. Burtch in Elm Hall, a small settlement in Gratiot County.¹⁴ Her brother, Eugene, and his wife, Sarah, were witnesses to the marriage. Census records suggest that Burtch was living with and working for Eugene and Sarah on their Emmet County farm before his marriage to Ella.¹⁵ By 1884, Ella was living apart from Burtch with her parents on their farm in Harbor Springs.¹⁶ The cause of their separation after only three years of marriage is unknown. They were divorced in 1885, and though he later remarried, she remained single for the rest of her life.¹⁷

Living as a married woman could easily have changed the course of Backus' life. If she had remained married, and especially if she had had children, it would have been much less likely that she would have had a career as a lawyer. Between 1890 and 1920, only 4.6 to 9 percent of married women worked, compared to a third of all single women.¹⁸ Backus' divorce put her in a position where she had to work to support herself and freed her from social conventions that discouraged married women from working outside the home.

Backus' first recorded job was as a teacher in the Harbor Springs area, a common occupation for young, unmarried women, for which she was

¹³ National Center for Educational Statistics, *120 Years of American Education: A Statistical Portrait*, ed. Thomas D. Snyder (Washington, DC: US Department of Education, 1993), 55.

¹⁴ Ella M. Backers [sic], Marriage Records, 1867-1952, Michigan Department of Community Health, Division for Vital Records and Health Statistics. Several alternate spelling of William Burtch's name appears in some records, including "Butcher" and "Bartch."

¹⁵ US Census (1880), Gratiot County, Michigan, population schedule, Arcada, p. 19, dwelling 149, family 153, Eugene Backus household.

¹⁶ Michigan Department of State, *Census of the State of Michigan, 1884*, Schedule I, Inhabitants in Readmond, in the County of Emmet, 39.

¹⁷ Decree of Divorce, 28 October 1885, Office of the County Clerk, Emmet County, Michigan, 89.

¹⁸ United States Bureau of the Census, *The Statistical History of the United States* (New York, NY: Basic Books, 1976), Series D 49-62, Marital Status of Women in the Civilian Labor Force: 1890 to 1970, 133.

well qualified. In Michigan there were no specific educational requirements for teachers, and often young women or men without high school diplomas were pressed into service as one-room school house teachers.¹⁹ Teachers were poorly paid and often had to take on the heating and cleaning of the school house, and other manual labor, in addition to teaching.²⁰ For these reasons it was a less than desirable job both for the short and long term, especially for a woman who needed to support herself. It is not surprising, therefore, that Backus decided to pursue other opportunities.

As other careers were opened to women in the 1880s an increasing number of them abandoned traditional occupations, such as teaching, and entered office jobs. The emerging field of stenography was attractive because it offered relatively high wages compared to other occupations, with clerical workers earning three times what public school teachers were paid.²¹ Many women sought out these better paid positions, filling a growing need for trained office workers and gaining acceptance among employers who needed their skills. Though it was rare in 1880 to find a woman working in an office position as a stenographer, by 1900 women filled over 77 percent of stenography positions.²² Backus was one of the women who left teaching for this new field.

She needed further training in order to make the transition to office work. In the fall of 1887 she enrolled in the Northern Indiana Normal School (NINS) in Valparaiso, undaunted by its distance from her home. Demand for office workers was rapidly expanding and students came to NINS from all over the country to receive business training.²³ The school marketed its programs by emphasizing the relatively low cost of its classes and the high demand for its graduates. This strategy was quite successful. At the time Backus began her studies, over two thousand students were enrolled at NINS. Her graduating class in the Phonographic Department, and the class that followed, had students from nine different counties in Michigan and from states as far away as California, Louisiana, and

¹⁹ For more on early public education see "One Room Schools," Central Michigan University, www.cmich.edu/library/clarke/ResearchResources/Michigan_Material_Statewide/One_Room_Schools/Pages/default.aspx.

²⁰ Ibid.

²¹ United States Bureau of the Census, *The Statistical History of the United States* (New York, NY: Basic Books, 1976), Series D 779-793, Average Annual Earnings in All and Selected Industries and in Occupations: 1890 to 1926, 168.

²² Christine E. Bose, *Women in 1900: Gateway to the Political Economy of the 20th Century* (Philadelphia, PA: Temple University Press, 2001), 55-56.

²³ Richard Baepler, *Flame of Faith, Lamp of Learning: A History of Valparaiso University* (St. Louis, MO: Concordia Publishing House, 2001), 52.

Montana.²⁴ Almost half of the graduates in her class were women.²⁵

Although she could have sought employment immediately after graduating from NINS, Backus continued her studies for a short time at the new Ferris Industrial School in Big Rapids, Michigan. She may have chosen Ferris for its unique courses or perhaps for its proximity to her family. Woodbridge Ferris founded the school in 1884 to serve residents of Michigan who were “lumber jacks, miners, farmers’ sons and daughters, [and] girls who worked in Michigan factories,” a demographic that Backus fit. Business courses, including shorthand, comprised a large part of the Ferris curriculum.²⁶ In her brief time at the school, Backus took additional classes preparing her to work as a stenographer and secretary.²⁷

Shortly after she completed her studies at Ferris, Backus was hired as a stenographer by attorneys Edwin S. Pratt and Harry C. Davis of the firm of Pratt & Davis in Traverse City. When she started at Pratt & Davis, she had no intention of becoming an attorney; she was simply seeking a job where she could use her newly-acquired office skills. Only a very small number of women were practicing law at the time, and she may never have met or heard of any female attorneys. Yet her placement in a law office was fortuitous because she proved to be very adept at legal work. Pushed by a desire to do the best possible job for her employers and fascinated by the intricacies of law, Backus sought to deepen her knowledge. Her choice was Blackstone, the course of study widely used by individuals preparing to become attorneys, though she did not immediately set her sights on that goal. Her later description of her transformation from a woman exploring law to a prospective lawyer reveals her work ethic and intellectual curiosity.

I did not become an attorney through any definite plan, but simply used opportunities as they appeared and followed where my work seemed to lead me. I never did believe in a makeshift, clock-watching policy. I soon discovered that there were many little points of law that

²⁴ Northern Indiana Normal School, *Quarterly Catalogue of the Northern Indiana Normal School, and Business Institute* (Valparaiso, IN: Messenger Steam Printing House, 1889), 48, Valparaiso University Archives & Special Collections.

²⁵ *Ibid.*

²⁶ Woodbridge Ferris, *The Autobiography of Woodbridge N. Ferris* (Big Rapids, MI: Ferris State University Press, 1995), 132-33.

²⁷ Ella Mae Backus, “Personal History Statement,” Government Printing Office, Standard Form No. 6, Feb. 19, 1927, US Attorney’s Office for the Western District of Michigan, Grand Rapids, MI.

might add to my usefulness [to Pratt and Davis] if I knew them. Gradually I began reading law, even then without definite plan of becoming a barrister. I found Blackstone not at all uninteresting and when one of the members of the firm asked me why I did not read the full course and try for an admission to the bar I decided that the plan might be worthwhile.²⁸

A long road still lay ahead. For four years Backus worked at her clerical job at Pratt & Davis while studying law on the side to prepare for the bar examination, which consisted of an interrogation before a Circuit Court judge who tested her knowledge and understanding of legal principles.²⁹ Her hard work and determination paid off, and she was admitted to the bar in Traverse City on 20 August 1895.³⁰

It is interesting to note that both Pratt and Davis encouraged Backus to become an attorney even though it was a non-traditional path for women and there was much opposition to women's entry into this male-dominated field. Their support suggests that they recognized her intellectual interest and ability and it was not unusual; other nineteenth-century women who aspired to become attorneys also reported being assisted by their male colleagues.³¹ Indeed, Backus' advancement in her later career was made possible by the support of the male US Attorneys for whom she worked. These islands of support from men, who saw the potential of their female colleagues, helped smooth the path for women like Backus but they did not remove the formidable barriers women faced

²⁸ "In the Realm of Womankind," *Grand Rapids Press*, 12 December 1907. For a general discussion of reasons why women chose to study law see Norgren, *Rebels at the Bar*, 25.

²⁹ The practice of "reading the law" as preparation for admission to the bar was common in the nineteenth century and continued to be a path to admission to the bar in Michigan until 1949. Paul Finkelman and Martin J. Hershock, eds., *The History of Michigan Law* (Athens, OH: Ohio University Press, 2006), 256. In 1895, when Backus was admitted to the bar, individuals twenty-one and older could be admitted to practice law in Michigan without having a law school degree if they passed an examination before a Circuit Court judge and demonstrated good moral character. *The compiled laws of the state of Michigan* (Lansing, MI: Hosmer & Kerr, 1857), vol. II, Title 28, Chapter 119 (4032).

³⁰ Ella Mae Backus, Attorney at Law, County of Grand Traverse, MI, 20 August 1895, Grand Rapids Public Library Ephemera Collection #216-7. Although State Bar admission was not compulsory, Backus was a member of the Michigan State Bar Association beginning as early as 1896. *Proceedings of the Seventh Annual Meeting of the Michigan State Bar Association, Grand Rapids, Mich., May 13-14, 1896* (Detroit, MI: Detroit Legal News, 1896), xxxi.

³¹ Deborah H. King, "Clara Shortridge Foltz: Angel and Revolutionary," *Hastings Women's Law Journal* 11 (2000): 197-8.

in the legal profession. Often, even sympathetic male colleagues failed to recognize the entrenched sex discrimination in society and in their own legal institutions.

As a new female member of the Michigan bar, Backus followed a mostly uncharted path. Although Sarah Killgore Wertman had achieved the distinction of being the first woman to graduate from the University of Michigan Law School and to be admitted to the Michigan Bar in 1871, very few women followed her.³² In 1900, the US Census recorded only twenty-seven female attorneys in Michigan, less than one percent of the state's attorneys.³³ In joining this group, Backus became one of the earliest female lawyers admitted to practice in the state, an achievement that came at a time when a substantial number of other states still did not even permit women to become attorneys.³⁴

After her admission to the bar, Backus' work at Pratt & Davis consisted of a hybrid between her former work as a stenographer and the new opportunities opened up to her as a licensed attorney. Backus noted that, in the combined attorney and stenographer position at Pratt & Davis, she

did all the typing, drafted and prepared legal documents in Law, Equity and Chancery, examined abstracts, drafted deeds and mortgages, declarations, bills of complaint and other legal papers. Appear[ed] in open Court and presented cases and took decrees.³⁵

By choosing to appear in court, Backus assumed a role that some early female attorneys rejected. Some women lawyers feared that their clients would be disadvantaged by being represented in court by a woman, while others wished to avoid controversy.³⁶ Backus' choice to engage in courtroom

³² Drachman, *Women Lawyers*, 5, 271-72. According to legal historian Lawrence M. Friedman, at the end of the nineteenth century "women and blacks continued to be rare beasts in the [legal] profession." Friedman, *American Law in the Twentieth Century* (New Haven, CT: Yale University Press, 2002), 32.

³³ Hollis W. Field, "The Law as a Profession," *The Law Student's Helper* 19 (1911): 74.

³⁴ "Ella M. Backus," *Michigan State Bar Journal* 17 (1938): 458; Larry Berkson, "Women on the Bench: A Brief History," *Judicature* 65.6 (December-January 1982): 290.

³⁵ Ella M. Backus, US Personnel Classification Board Form No. 14 – Field Questionnaire, 6 September 1928, US Attorney's Office for the Western District of Michigan, Grand Rapids, MI.

³⁶ Mary Hall, the first female attorney admitted to practice law in Connecticut, generated controversy among female attorneys because of her belief that they should not appear in court. Norgren, *Rebels at the Bar*, 134-42. Her belief was shared by other early female attorneys. For a fuller discussion see Drachman, "Entering the Male Domain," 44-



Ella Mae Backus

Source: US Attorney's Office for the Western District of Michigan

practice lifted her from the relatively anonymous realm of a legal scrivener into the public sphere. The first trial she handled in Traverse City drew state-wide attention, reflecting the novelty of a woman practicing law at the time.³⁷ The tongue-in-cheek tone of the trial's coverage in the *Detroit Free Press* illustrates the attitudes that confronted female attorneys when they stepped into the limelight of the courtroom. While recognizing that Backus was "well known to the members of the Benzie county bar," the paper described the shock of her male adversary when he entered the courtroom and found a female attorney sitting at the opposing counsel's table with her client, a "pretty school ma'am" who was suing the board of

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³⁷ "Stories of the State: Sidelights on Michigan News: Mere Man Wasn't in It," *Detroit Free Press*, 9 June 1902.

education. The *Free Press* reported that counsel “feared the susceptibility of his honor to ladies’ charms,” and that his fears proved true when he lost the case and had to slink to the back of the courtroom, where he “couldn’t find a seat far enough back upon which to sit.”³⁸ The paper also noted that, although her male opponent was fearful that the judge would be swayed simply by the presence of “ladies,” “the face and form of Miss Backus are not exactly those like a photo of Venus.”³⁹ Simply by being a woman who was a pioneer in the legal field, Backus was subject to public commentary that attacked her identity as an attorney and added gratuitous and hurtful comments about her appearance. Such press coverage may have helped shape her preference for office work, which shielded her from public attention. “I have tried a number of chancery cases and a few divorce cases,” she noted in a 1907 interview. “I have taken testimony and done some court work, but I prefer the office work.”⁴⁰

Backus’ own description of the first divorce case she ever handled in Traverse City testifies to her visibility in that small community and her keen awareness of the image she presented. She recalled how she “came near to furnishing amusement for [her] colleagues in the profession” when her client insisted on the stand that she had no plans to remarry, but then did so a week later.⁴¹ The apparent perjury on the part of Backus’ client threatened both Backus’ standing with the court and her professional reputation. “It was a hard blow to my professional pride,” she recalled. “[A]nd the other lawyers did not lose the opportunity to laugh at me for permitting myself to be so easily fooled.”⁴² After she found out about the client’s supposed deception, Backus met with the woman and took her to task for lying in court, but she softened her views when she found out that the client had not met her new husband until two days after her divorce was finalized. Although Backus felt “vindicated” by the news that she had not actually been deceived by her client, the experience made her want to avoid future divorce cases.⁴³ Her description of the incident showed her awareness of being under scrutiny as a female attorney and her desire to avoid setting an example that would damage her reputation, sentiments she shared with other early female

³⁸ *Ibid.* This article is consistent with other media portrayals of female attorneys who did courtroom work. It was argued that women should be banned from the courtroom because judges would be unfairly influenced by their feminine charms. Drachman, “Entering the Male Domain,” 45.

³⁹ “Stories of the State,” *Detroit Free Press*, 9 June 1902.

⁴⁰ “In the Realm of Womankind.”

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ *Ibid.*

lawyers, one of whom noted: “I was more in the public eye, being the only woman lawyer, and therefore could not learn by mistakes, but must learn everything first.”⁴⁴ While men, to a certain extent, had the luxury of learning on the job, female attorneys often felt the need to avoid any show of weakness that could be used as evidence of their lack of fitness for the legal profession.

Backus continued her practice at Pratt & Davis until 1902 when she accepted a position with attorney Charles A. Withey in Reed City. Withey, a graduate of the University of Michigan Law School in 1879, had a career in real estate before building a successful practice in Reed City, then a commercial center and transportation hub.⁴⁵ It is not clear what motivated Backus to join Withey’s firm. By 1902 she had been a practicing attorney for seven years and had acquired valuable legal skills. Accepting the position presumably offered advantages in terms of location, pay, or professional challenge. But her practice in Reed City proved to be short-lived after a new opportunity that was to transform her career arose; within a year, Backus accepted an appointment as Clerk of the Office of the US Attorney for the Western District of Michigan in Grand Rapids.⁴⁶ This is where she would spend the bulk of her legal career and where her reputation as a skilled and competent professional would be solidified.

When Backus came to the US Attorney’s office, the structure of the office and its relationship to the US Department of Justice were still evolving. Prior to 1861, US Attorneys in each state had operated virtually without supervision. US Attorneys began reporting directly to the US Attorney General in Washington, DC, in 1861.⁴⁷ This was a step towards professionalizing the US Attorneys’ offices and addressing ethical issues that had arisen, such as conflicts of interest. When the US Department of Justice was formed in 1870, the US Attorneys, who were responsible for representing the interests of the United States in both civil and criminal cases that arose in their districts, were brought under its umbrella, and they continued to report to the US Attorney General, the head of the

⁴⁴ Beatrice Doerschuk, *Women in the Law: An Analysis of Training, Practice, and Salaried Positions* (New York, NY: Bureau of Vocational Information, 1920), 64, quoting an anonymous survey participant.

⁴⁵ For a biography of Withey see Thomas M. Cooley and James B. Angell, *Bench and Bar of Michigan: A Volume of History and Biography* (Chicago, IL: Century Pub. and Engraving Co., 1897), 450-52.

⁴⁶ W. A. Day to George C. Covell, 4 June 1903, US Attorney’s Office for the Western District of Michigan, Grand Rapids, MI.

⁴⁷ Sara Sun Beale, “Rethinking the Identity and Role of United States Attorneys,” *Ohio State Journal of Criminal Law* 6 (2009): 395.

Department of Justice.⁴⁸ They were paid from fees generated by cases until reforms enacted in 1896 established a fixed salary range for US Attorneys, Assistant US Attorneys, and their clerks.⁴⁹ Salaries for all of these positions were determined by the US Attorney General, based primarily on the volume of work and the cost of living in a particular district.⁵⁰ US Attorneys were political appointees chosen by the US Attorney General on behalf of the President and, as such, wielded influence by awarding patronage positions within their offices. Depending on the district workload, a US Attorney could appoint one or more Assistant US Attorneys, typically young and well-connected attorneys who would serve during the term of the US Attorney and then move on to other positions. Family and political connections were also very useful for those seeking other positions; Stephen L. Newnham, the clerk who preceded Backus, had no legal training but his father, Richard L. Newnham, was serving as an Assistant US Attorney at the time Stephen was appointed.

Backus had no familial or political connections that gave her an entry into federal employment. Her appointment as clerk was based on her knowledge and her abilities.⁵¹ As one of the few female attorneys in Michigan, she had established a state-wide reputation and was an ideal candidate for the position. She had twelve years of experience working in law offices, and she had both legal expertise and clerical skills. The position offered her a steady (although small) salary, the challenge of new responsibilities, and the opportunity to do primarily office work—her preferred type of work. Contemporary accounts indicate that US Attorney George C. Covell “brought” Backus into the office, but it is not clear whether he sought her out or whether she took the initiative after Stephen Newnham resigned from his position as clerk.⁵²

The scope of cases handled by the US Attorney’s office in Grand Rapids was quite limited when Backus was first hired. There were

⁴⁸ John A. Fairlie, “The United States Department of Justice,” *Michigan Law Review* 3 (1904-1905): 358. For a discussion of the role of US Attorneys and the operation of their offices see Albert Langeluttig, *The Department of Justice of the United States* (Baltimore, MD: Johns Hopkins Press, 1927), 68-81.

⁴⁹ *Ibid.*, 68.

⁵⁰ *Ibid.*, 68-72.

⁵¹ “In the Matter of Resolutions Passed by the Grand Rapids Bar Association relative to the death of Ella M. Backus,” United States District Court for the Western District of Michigan, Southern Division (Grand Rapids), 24 October 1938, Journals, 1863-1966, Journal M-1, 173, Records of District Courts of the United States, RG 21, NARA Great Lakes Region (Chicago).

⁵² *Ibid.*

relatively few federal criminal statutes and federal government regulation of industries was in its infancy. During her tenure, the nature of work changed as the role of the federal government in regulating businesses and individuals expanded significantly. Federal criminal and civil jurisdiction had grown after the Civil War, with the adoption of statutes regulating mail fraud and interstate commerce and the adoption of the Sherman Antitrust Act of 1890. The enlargement of federal jurisdiction continued with passage of the Pure Food and Drug Act and the Meat Inspection Act, as well as other protective legislation. While these laws expanded US Attorneys' responsibilities, the Eighteenth Amendment instituting prohibition and the National Prohibition Act of 1920 (known as the Volstead Act) had the most significant impact on the office during Backus' career there.⁵³

As clerk, Backus was responsible for keeping the financial records of the office and making detailed reports to the Department of Justice in Washington. She was also in charge of records and files relating to pending and closed cases, and she was involved in drafting correspondence and other documents. Due to the nature of the matters handled by the office, accuracy and thoroughness were of the utmost importance. In 1903, most of the clerks in US Attorneys' offices nationwide were men and no women had yet been appointed to serve in the position of Assistant US Attorney in any federal district.⁵⁴

While clerks were not typically attorneys, Backus' legal knowledge and experience were clearly assets to the office, and she performed work that might otherwise have been assigned to an Assistant US Attorney. When newly-appointed US Attorney Fred C. Wetmore was interviewed by the press in 1910, he referred to her as "one of the few women attorneys in the state," and noted her thorough knowledge of the work of the US attorney's office.⁵⁵ In 1911 the office handled a highly-publicized case involving musician Felix Wagner, who was accused of opium smuggling. Backus appeared at Wagner's initial hearing representing the government, something only a licensed attorney was permitted to do.⁵⁶ Years later, in 1922, US Attorney Edward J. Bowman stressed the value of Backus' legal training to the office. "She is a lawyer admitted to practice in all the Courts of Michigan and the United States District Court of this

⁵³ For a further discussion of the development of federal criminal jurisdiction see Sara Sun Beale, "Federalizing Crime: Assessing the Impact on the Federal Courts," *Annals, AAPS* (January 1996): 40-42.

⁵⁴ US Department of Justice, *Annual Report of the Attorney-General of the United States* (Washington, DC: GPO, 1903).

⁵⁵ "Is Not Disturbed," *Grand Rapids Press*, 16 November 1910.

⁵⁶ "Wagner Case On," *The Evening News* (Sault Ste. Marie, Michigan), 15 June 1911.

District,” he wrote. “[A]nd because of her professional training, is more than a clerk and stenographer, performing much of the work of an assistant [US attorney].”⁵⁷

In 1907 Backus was featured in the *Grand Rapids Press* under the headline “In the Realm of Womankind.” She was heralded as “the only woman member of the Michigan Bar Association,” and her background, education, and thoughts on being a female attorney were described in detail.⁵⁸ The article was particularly significant because it quoted her at length discussing the role of women in the practice of law:

A woman’s province in the profession of law is limited, but there still remains much which she can do with credit both to herself and the profession. There are few women, I believe, who would care to go into the criminal courts and try the cases which some of the men do. A woman may be intellectually the equal of the average man in the profession and still shrink from the work that comes within the practice of the criminal lawyer. I have little patience with the woman who seeks to forget her sex and who wastes her energy trying to convince the world that she is just as big a man as any of them. No matter how brilliant she may be she forfeits the respect of both men and women.⁵⁹

Backus publically claimed her place, and the place of women in general, as intellectual equals of men while at the same time suggesting that there were distinct gender roles within the legal profession. It is tempting to speculate whether her comment about women who “forget their sex” was a reference to her contemporary in Grand Rapids, attorney Elizabeth Eaglesfield, an outspoken woman who defied conventions. Eaglesfield, believed to be the first woman to practice law in Grand Rapids, was the only other female lawyer in the city and also frequently found herself in the public eye.⁶⁰ She and Backus must have been aware

⁵⁷ Edward J. Bowman to The Attorney General, 26 June 1922, US Attorney’s Office for the Western District of Michigan, Grand Rapids, MI.

⁵⁸ The newspaper’s statement that Backus was “the only woman member of the Michigan Bar” is not accurate but reflects how unusual it was for a woman to be practicing law at the time.

⁵⁹ “In the Realm of Womankind.”

⁶⁰ Elizabeth Eaglesfield graduated from the University of Michigan Law School and began practicing in Grand Rapids in 1878. She returned for a period of time to her home state of Indiana, but by 1886 she had re-established her practice in Grand Rapids. A bold

of each other, yet there is no evidence that they were well-acquainted, or even that they dealt with each other professionally.

Backus' views on the role of women in law clearly set her apart from some early female attorneys and women's rights advocates who demanded equality with men on all fronts, but the ideas she expressed were not totally outside the mainstream for professional women during the period. Assistant Attorney General Mabel Walker Willebrandt, a woman who held one of the highest posts in the Justice Department and who led the Justice Department's Prohibition efforts from 1921 to 1929, called on women to fight against sex discrimination, but she cautioned them to do so "[n]ot by mannishness, that only confesses weakness. . . . It is preposterous because it is a parody."⁶¹ Like Backus, Willebrandt publicly rejected the idea that women should strive for success by trying to be like men. Other early female attorneys rejected gendered notions about proper conduct (like those expressed by Backus and Willebrandt) and argued that women should view themselves as simply lawyers, not female lawyers.⁶² The debate regarding the proper role of female attorneys would continue for years.

Regardless of their beliefs on that issue, Backus and her sister attorneys faced the clash between the reality of their lives as professional women and the separate spheres ideology which pervaded the culture in which they had been raised.⁶³ As one attorney, Martha Pearce, wrote in 1887, such conflict led to "double consciousness," an awareness among the women of both their non-traditional roles as attorneys and society's

and determined woman, Eaglesfield also captained a boat on the Great Lakes and started her own literary club in Grand Rapids. Over time, she found herself at the center of public disputes arising from these endeavors. According to Eaglesfield's obituary, she retired from practicing law around 1916 and moved to Benton Harbor to concentrate on her shipping business. After Eaglesfield left Grand Rapids, Backus remained the only female attorney in Grand Rapids until the arrival of Gale Saunders in 1933. See University of Michigan, "The Chronicle," 21 December 1878, 89; Dwight Goss, *History of Grand Rapids and its Industries*, vol. 2 (Chicago, IL: C. F. Cooper & Co., 1906), 797; "Mrs. E. Eaglesfield," *New York Times*, 25 June 1940; "Attorney Saunders Establishes Offices," *Grand Rapids Legal News*, 9 September 1936.

⁶¹ "Ignore Sex in Jobs Women Are Told," *New York Times*, 30 September 1929.

⁶² Mossman, *First Women Lawyers*, 53-54; Barbara Allen Babcock, "Book Review, *Sisters in Law: Women Lawyers in Modern American History*, by Virginia Drachman," *Stanford Law Review* 50 (May 1998): 1700-01.

⁶³ For a discussion of "separate spheres" ideology in the context of women lawyers see Audrey Wolfson Latourette, "Sex Discrimination in the Legal Profession: Historical and Contemporary Perspectives," *Valparaiso University Law Review* 39 (Summer 2005): 861; King, "Clara Shortridge Foltz," 190-93.



Backus in the US Attorney's Office, Grand Rapids

Source: US Attorney's Office for the Western District of Michigan

expectations of them as women.⁶⁴ Attorney Clara Shortridge Foltz, one of the first female attorneys in California, resolved this dilemma by fashioning herself as a “lady lawyer,” a woman who was at home in the legal realm while still retaining her lady-like qualities.⁶⁵ Backus’ description of her views on the practice of law suggests that, like Foltz and others, she endorsed the view that female attorneys should be professionally competent while still retaining “feminine” qualities.

Her work on a 1912 divorce case, described by the *Grand Rapids Press* as “a most unusual sight,” exemplified Backus’ success in navigating the tightrope between being a “lady” and being a successful practicing

⁶⁴ The phrase “double consciousness” comes from a letter written by Pearce, who was secretary of The Equity Club, a group of women lawyers who had graduated from the University of Michigan Law School and who corresponded about their personal and professional lives beginning in 1887. “The time will come when no ‘double consciousness’ will disturb a *woman* who wishes to be a *lawyer*.” Martha K. Pearce to Equity Club, 1887, cited in Drachman, *Women Lawyers*, 63; Drachman, *Sisters in Law*, 65.

⁶⁵ Latourette, “Sex Discrimination in the Legal Profession,” 859-61.

attorney.⁶⁶ Backus “is recognized as one of the best woman lawyers in the country,” the paper proclaimed. “[S]he conducted the case as well as it could have been handled by any man. Sitting with her hat on, she directed her questions to her client on the witness stand and established the cause for divorce in a quiet, dignified and most efficient manner.”⁶⁷

Some scholars suggest that early female attorneys were quite calculating in their decisions to adopt the persona of a “lady lawyer,” and that they used it to their own advantage.⁶⁸ Deborah H. King argues that, because attorney Clara Shortridge Foltz was a public figure, it is difficult to know whether her statements about the proper role of female attorneys are what she actually believed or what she thought others wanted to hear.⁶⁹ Similarly, without additional evidence, it is impossible to determine whether Backus’ publicly-stated opinions about proper conduct for female lawyers actually represented her true beliefs. During her formative years she may have consciously or unconsciously embraced the cultural norms of the late nineteenth century. At the same time, it was in her professional interest to avoid challenging the status quo. Although she was highly respected, her employment at the US Attorney’s office was dependent on the good will of the US Attorney, and, as a single woman, she needed the income from her job to support herself. She also may have believed she could be more effective in her job by being non-confrontational and conforming to the expectations of proper female behavior. Also, even if the views she expressed in 1907 were genuine, they may have evolved over the course of her career, as she gained more experience and the acceptance of women in the legal profession grew.

One incident that occurred early in Backus’ tenure at the US Attorney’s office shows how her actions did not always coincide with her publicly-expressed views on appropriate gender roles. In June 1906, she was shopping in downtown Grand Rapids when William Muirhead, an “insane printer” who was known to the store clerks, came into the shop.⁷⁰ After the clerks fled to get help, Backus calmly started a conversation with Muirhead, and by the time police officers arrived, they were surprised to find her posing as a doctor and pretending to take Muirhead’s pulse. Backus was credited with detaining Muirhead long enough for help to arrive, though when asked about the incident later she downplayed her

⁶⁶ “Easily Wins Case,” *Grand Rapids Press*, 8 January 1912.

⁶⁷ *Ibid.*

⁶⁸ King, “Clara Shortridge Foltz,” 209-12; Babcock, “Book Review, *Sisters in Law*,” 1701. Babcock notes that “women seeking access did not want either to criticize or to augur great changes.”

⁶⁹ King, “Clara Shortridge Foltz,” 182-83.

⁷⁰ “Woman’s Nerve Curbs Madman,” *Grand Rapids Press*, 6 June 1906.

role: "If he was dangerous I knew he ought not to be at large and might do some one an injury. So, I just entertained him. That's all there was to it. Nothing to make a fuss about that I can see."⁷¹ Although Backus' comments show modesty, a "womanly" virtue, her actions that day did not comport with typical appropriate womanly behavior. She directly confronted a man who was thought to be dangerous and, instead of fleeing, took control of the situation and got him to calm down. She allowed the unknown "dangerous" man to take her hand and even kiss her on the cheek, rather than let him escape. Overall, her concern seemed to be to protect Muirhead, who was threatening to commit suicide, and others who might be endangered by him. Backus' description of her role in this incident hints at the personal qualities that led to her success. She was confident and level-headed, but careful not to be perceived as aggressive or boastful.

Backus' participation in mainstream life in Grand Rapids, and her adoption of some aspects of traditional female roles, was also evidenced by her membership in various community organizations and her participation in a campaign to register women to support the war effort during World War I. In Traverse City she was a member and secretary of the Woman's Club.⁷² Later, in Grand Rapids, she was a member of the Women's City Club, which provided social and intellectual outlets for women in the community, and she supported charity work through the federated charities of Grand Rapids.⁷³ But Backus appeared to have been involved only on the periphery of local women's organizations; although she became a member of the Women's City Club shortly after it was organized in 1923, there is no record of her having served in a leadership role or on a committee for the organization. It is likely that the demands of her job prevented her from greater involvement with this and other groups.

Backus did participate in a national women-led effort to mobilize the talents of women to perform needed work during World War I. In 1918, when the Women's Committee of the Council for National Defense called for women in Grand Rapids and throughout the country to register their skills and volunteer their talents, Backus responded and filled out a registration card, joining 20,000 other women in the Grand Rapids area

⁷¹ Ibid.

⁷² *Polk's Traverse City and Grand Traverse County Directory, 1901-1902, Vol. II* (Detroit, MI: R. L. Polk & Co.), 38.

⁷³ Women's City Club of Grand Rapids, Michigan, "Bulletin for October, 1930," Vol. 8, No. 2, 11. For more on the nineteenth-century women's club movement see Drachman, *Women Lawyers*, 12.

supporting the war effort.

One area that was definitely closed to Backus was explicit political advocacy. Although she was a practicing attorney before women gained the right to vote, and at a time when a number of female attorneys aligned themselves with the suffrage movement, any such activity on her part would have put her job at the US Attorney's office in jeopardy.⁷⁵ After Backus died, the *Grand Rapids Herald* noted that her longevity in that office was due in part to her "wisdom to say little and to keep out of entangling political alliances."⁷⁶ Maintaining this level of discretion may have been difficult at times for a woman of her intellect and accomplishment. However, even if she had not been barred from political advocacy due to her employment, it is not a given that she would have been an outspoken advocate for women's equality simply because she was a female lawyer. While some female lawyers of her time did challenge the status quo, others were not at all politically active.⁷⁷ Backus' career shows that the willingness on the part of women to break down professional barriers did not always equate to a desire to openly challenge laws and practices that kept women from full equality with men.⁷⁸

Backus not only was embraced by the Grand Rapids community, she also established herself as a highly-valued employee early in her career at the US Attorney's office. In 1909 US Attorney George C. Covell, who by then had worked with her for six years, described her work as "highly satisfactory," noting that "[s]he keeps the records, books and files of this office in excellent condition." Covell also recognized her "good working knowledge of law and legal procedure."⁷⁹

Although she handled a wide variety of matters and the quality of her work was praised, Backus' pay lagged far behind the pay for Assistant US Attorneys. She was hired at \$750 per year, the same salary as the non-attorney clerk who preceded her, but far short of the \$2,000 per year given to Assistant US Attorneys in the district.⁸⁰ Ultimately, the pressure

⁷⁵ King, "Clara Shortridge Foltz," 196; Mary L. Clark, "The First Women Members of the Supreme Court Bar," *San Diego Law Review* 36 (Winter 1999): 120.

⁷⁶ "A Woman Who Made Good," *Grand Rapids Herald*, 30 July 1938.

⁷⁷ Mossman, *First Women Lawyers*, 62-63; D. Kelly Weisberg, "Barred from the Bar: Women and Legal Education in the United States, 1870-1890," *Journal of Legal Education* 28 (1976-77): 501.

⁷⁸ For a further discussion of the role of female attorneys in political and social causes see Mossman, *First Women Lawyers*, 54-65.

⁷⁹ US Attorney to Attorney General, 11 February 1909, US Attorney's Office for the Western District of Michigan, Grand Rapids, MI.

⁸⁰ US Department of Justice, *Annual Report of the Attorney-General of the United States* (Washington, DC: GPO, 1903), 308.

Backus' supervisors placed on the US Attorney General's office to compensate her more fairly became the impetus for her appointment as Assistant US Attorney for the Western District of Michigan.

By 1922, Backus had received a series of small raises but still made less than the Assistant US Attorney in the office, the value of her wages eroded significantly by postwar inflation. Newly-appointed US Attorney Edward J. Bowman recognized that Backus, by then a nineteen-year employee of the Department of Justice, was not receiving a salary commensurate with her experience and qualifications. While on a trip to Washington, DC, Bowman met with Assistant Attorney General Rush L. Holland and pressed for an increase to \$1,800 a year for Backus. Holland considered the matter and responded by letter that though only clerks in the largest districts earned salaries of \$1,800, the Department of Justice would approve the amount for Backus if she were promoted to the position of Assistant US Attorney, while also retaining her job as clerk.⁸¹

Backus was hesitant to accept the appointment because she was concerned that a change in job classification would cause her to lose credit for her years of service and jeopardize her chance of receiving a pension.⁸² Once it was established that she would retain her potential pension eligibility, she agreed to the arrangement. Effective 1 September 1923, Backus became Assistant US Attorney and Clerk of the Western District of Michigan, the first woman to hold the position of Assistant US Attorney in the state's history.⁸³

By this time female attorneys had made some advances in obtaining employment in the Department of Justice in Washington, DC, but very few had attained the position of Assistant US Attorney in a regional office. Assistant Attorney General Mabel Walker Willebrandt indicated that only six women nationwide, including Backus, were serving as Assistant US

⁸¹ Rush L. Holland, Assistant Attorney General to Edward J. Bowman, United States Attorney, 22 June 1923, US Attorney's Office for the Western District of Michigan, Grand Rapids, MI.

⁸² Backus' concern about preserving her pension eligibility would have stemmed from her hope that employees of the US Attorneys' offices would be brought under the coverage of the Federal Employees Retirement Act of 1920. One year after it went into effect, 58.7 percent of civil service employees were covered by the act, but coverage was never extended to employees with Backus' status until after she died. Ruth Reticker, "Benefits and Beneficiaries Under the Civil Service Retirement Act," *Social Security Bulletin*, April 1941, 31.

⁸³ Harry M. Daugherty, Attorney General, to Ella M. Backus, 1 September 1923, US Attorney's Office for the Western District of Michigan, Grand Rapids, MI; "Michigan Happenings," *Cass City Chronicle*, 12 October 1923.

Attorneys in 1924.⁸⁴ That number would double to twelve by 1931.⁸⁵ Backus' appointment placed her among this very small group of early female attorneys who broke through barriers to government employment in Department of Justice field offices.⁸⁶

Five years after Backus' appointment, the Grand Rapids Bar Association (GRBA) opened its doors to her.⁸⁷ Although she had been a member of the Michigan Bar Association since shortly after her admission to the bar, other organized bar associations were not as welcoming to women. At the national level, the American Bar Association, a voluntary association of lawyers, did not admit its first female member until 1918.⁸⁸ The GRBA was formed in 1902 and the absence of female members before it admitted Backus in 1928 appears to have resulted from the lack of female attorneys in Grand Rapids, rather than from an official policy. According to all available records, at the time Backus joined the GRBA she was the only female attorney practicing in Grand Rapids, Elizabeth Eaglesfield having retired by then. Her new membership in the GRBA was duly recorded in the minutes, and there is no record of any opposition to her joining the organization. The timing of her acceptance into the GRBA does suggest, however, that the change of her title to Assistant US Attorney, a non-clerical role, played a role in her entry into the group.

Backus had achieved the distinction of being appointed Assistant US Attorney but still faced the challenge of performing two jobs at once—clerk and Assistant US Attorney—at a time when government caseloads were expanding due to Prohibition. In 1927 she described her work as an Assistant US Attorney:

⁸⁴ "Women in National Affairs," *Indiana Evening Gazette*, 17 April 1924. The first woman to serve as an Assistant US Attorney in any district in the United States was Annette Abbott Adams, who was appointed for the Northern District of California in 1914. The first woman to hold that position in the Eastern District of Michigan, the only other federal district in the state, was Janet Kinnane of Bay City, appointed in 1945. Michigan Bar Association, "Appointments to Public Office," *Michigan State Bar Journal* 24.4 (April 1945): 320. Kinnane was the daughter of John E. Kinnane, who served as US Attorney for the Eastern District of Michigan from 1916 to 1921.

⁸⁵ Mary Connor Myers, "Women Lawyers in Federal Positions," *Women Lawyers' Journal* 19 (1931-32): 29.

⁸⁶ Although the appointment of women as Assistant US Attorneys signaled progress, there was widespread discrimination against women in federal government service in the post-World War I era, which included assigning female attorneys to lower-paid clerical positions rather than to professional positions for which they were qualified.

⁸⁷ Arlinksky and Kwapil, *A Grand Profession, A Grand Tradition*, 31.

⁸⁸ Friedman, *American Law in the Twentieth Century*, 41.

Draft and prepare indictments and informations in Prohibition cases, and in other cases for violations of Federal Statutes, prepare and present libels, petitions, and other papers in criminal and civil matter [sic], prepare complaints and other papers. Has charge of suits to cancel certificates of naturalization, prepares petitions and presents them to the court; presents civil matters to the Court and takes decrees. Prepares petitions for sale of automobiles seized under Prohibition Act. Assists in presenting criminal cases to the Grand Jury. Presents criminal cases to the Court for arraignments and sentence. Attends hearings before U.S. Commissioners, when necessary, Issues praecipe for witnesses and discharges witnesses, civil and criminal cases. Does all legal work assigned to her upon her own responsibility. Acts as Law Clerk in looking up law for violations of U.S. Statutes. Gives opinions on violations. Attends all terms of Court in Northern Division as well as Southern Division.⁸⁹

Her description suggests that, although she appeared in court, she did not do trial work in criminal cases on a regular basis. This did not significantly limit her contributions to the office, as the majority of criminal cases it handled were resolved without a trial.⁹⁰ Backus was involved with all other aspects of criminal prosecutions, including drafting indictments and informations (the documents used to set out the basis for the criminal prosecution), arraignments, preliminary hearings, and sentencings. She also drafted complaints and other documents necessary

⁸⁹ Ella Mae Backus, "Personal History Statement," 1927. Backus' appointment to the position of Assistant US Attorney occurred in the same year that Congress enacted the Personnel Classification Act (PCA) of 1923, a step in the federal government's effort to classify civil service employees according to their job duties and responsibilities and to assign employees with similar job duties and responsibilities to similar pay classifications. The act mandated a survey of federal employees in "field" offices to determine their job duties. As a result of this and later classification efforts, Backus recorded detailed information about her job responsibilities in her 1927 "Personal History Statement" and 1928 "Field Questionnaire." These forms provide a wealth of information about Backus' job responsibilities both as clerk and as Assistant US Attorney.

⁹⁰ For example, records of the US District Court for the Western District of Michigan for the year ending on 30 June 1927 show 69 terminated civil cases to which the US was a party, 63 of which involved jury trials, while during the same time the US terminated 285 criminal cases, 36 of which involved jury trials. US Department of Justice, *Annual Report of the Attorney-General of the United States* (Washington, DC: GPO, 1928), 135.

to commence civil cases and attended pre-trial hearings related to these cases. Although perhaps not as exciting and dramatic as some trial work, this was particularly significant work because a case could be thrown out of court if there were errors or omissions in these documents.⁹¹

Because of her dual role in the office, Backus' responsibilities also included the duties of the clerk, which she described as:

Performs clerical work, keeps all books and records in the office, including civil and criminal dockets, complaint books, Grand Jury dockets, and General Register of cases. Has charge of all clerical and stenographic work in office. Supervises the work done by the Junior Stenographer and Typist in the office of U.S. Attorney. Types all indictments, informations and other papers which she drafts and prepares. Prepares and supervises all reports, and at times assists in typing same. Examines all U.S. Commissioners Accounts, approves same and present to court for Order. Has general charge and supervision of all routine and clerical matters; performs all duties usually performed by Clerks, secretaries and stenographers. . . . Does all the filing of cases and other papers in the office.⁹²

Backus' importance to the office is clear from these two job descriptions. She had intimate knowledge of federal court practice and procedure, and she carried out the work of prosecuting civil and criminal matters while also handling the details of office administration, record-keeping, and preparing reports to the Department of Justice. Because other Assistant US Attorneys were typically inexperienced attorneys, who worked in the office for four years or less, the US Attorneys in charge of the office depended on her wealth of knowledge and experience. In 1920, after the appointment of yet another new Assistant US Attorney, Backus noted, "I think I am entitled to an increase [in salary] for being teacher as well as clerk."⁹³

⁹¹ Backus is not listed as attorney of record in any of the cases that are listed in the results of a Westlaw search for the period from 1923 to 1938 for reported opinions from the Western District of Michigan in cases in which the United States was a party. The reported opinions represent less than one percent of the total cases involving the United States, so it is possible that she was attorney of record in other cases. The only federal case associated with Backus in available news reports was the Wagner case in 1911.

⁹² Ella Mae Backus, "Personal History Statement," 1927.

⁹³ Ella M. Backus to O.E. Pagan, Special Assistant to the Attorney General, 29

The US Attorney General's annual reports to Congress for the years before, during, and after Prohibition show the magnitude of the increase in work in the Western District of Michigan created by the adoption of the Eighteenth Amendment and the Volstead Act, as well as the general growth in the volume of work during the time that Backus was employed. In 1903, the year before her first year as clerk, the Western District of Michigan reported closing four civil suits and twenty-five criminal prosecutions. But by 1926, six years into the Prohibition era, the office reported terminating 69 civil cases and 241 criminal prosecutions, and commencing 49 civil cases and 224 criminal prosecutions.⁹⁴ This exponential increase was due largely to the surge in the number of criminal prosecutions of individuals charged with violating the Volstead Act and the large number of civil cases involving forfeiture of contraband seized in government raids. In 1938, five years after Prohibition had ended, new filings for civil cases remained at a fairly constant 54, while criminal cases decreased significantly to 105.⁹⁵ Even with the decrease in criminal prosecutions due to the end of Prohibition, the caseload was still much higher in 1938 than it was when Backus joined the office, influenced in part by new federal criminal statutes enacted during the Roosevelt administration.

After Fred Wetmore was reappointed US Attorney for the Western District of Michigan in 1930, he recognized that Backus was handling both a greater volume of work and had a wider variety of responsibilities than when he had worked with her between 1910 and 1914. He wrote to Charles P. Sisson, Assistant Attorney General, asking that Backus be promoted to a higher grade so that she could get a pay increase:

A considerable part of her time is devoted to duties which ordinarily and properly would be performed by an assistant United States Attorney, such as preparing indictments, petitions in automobile confiscation cases, petitions in padlock cases, petitions in naturalization cases, informations in misdemeanor cases, and complaints before Commissioners. She has entire charge of naturalization cases, including Court proceedings, and

January 1920, US Attorney's Office for the Western District of Michigan, Grand Rapids, MI.

⁹⁴ US Department of Justice, *Annual Report of the Attorney-General of the United States* (Washington, DC: GPO, 1903), 142, 148, and *Annual Report of the Attorney-General of the United States* (Washington, DC: GPO, 1927), 126.

⁹⁵ US Department of Justice, *Annual Report of the Attorney-General of the United States* (Washington, DC: GPO, 1938), 219.

also appears in Court frequently in other matters, and at times assists in the presentation of cases to the Grand Jury. She, in addition to her work as Assistant United States Attorney, also has charge of the books and records of the office, and of the making of all reports.⁹⁶

Interestingly, in contrast to the 1927 description of Backus' work, Wetmore emphasized her frequent court appearances. It is not clear whether this was due to an actual increase in her courtroom responsibilities or whether Wetmore was simply trying to convey to Sisson that Backus should be considered on par with other Assistant US Attorneys, but his comments confirm the transformation of her role in the office from clerk to attorney.

Sisson was receptive to Wetmore's pleas and helped facilitate the final step in recognizing Backus as an attorney rather than a clerical employee. He informed Wetmore that she had reached the ceiling of wages for a clerk, but that her wages could be increased if she were paid from the appropriation for salaries for Assistant US Attorneys.⁹⁷ He proposed that Backus' title of "Clerk and Assistant US Attorney" be changed to "Assistant US Attorney," with the caveat that Backus would still have to perform all of the duties of clerk.⁹⁸ Wetmore and Backus agreed to this plan, and on 1 July 1930, Backus officially became solely an Assistant US Attorney and moved to the professional ranks of government service. She continued in this position for the rest of her career.

Ultimately, Backus worked through six different changes in the office of US Attorney for the Western District of Michigan and served with more than a dozen different Assistant US Attorneys who came and went as administrations changed. After her death, the *Grand Rapids Press* explained that her success in this highly politicized environment was "[b]ecause she was hard working, faithful, able, and attended to her

⁹⁶ Fred C. Wetmore to Attorney General, 28 May 1930, US Attorney's Office for the Western District of Michigan, Grand Rapids, MI. For purposes of pay, Backus had been assigned to field grade 9, equivalent to grade 5 of the Clerical, Administrative, and Fiscal (CAF) service. However, her position was exempted from the competitive civil service due to a provision in an 1896 law which allowed each US Attorney to hire one clerk who was not subject to civil service hiring requirements. Act of May 28, 1896, 20 Stat. 183, section 15.

⁹⁷ Charles P. Sisson to Fred C. Wetmore, 6 June 1930, US Attorney's Office for the Western District of Michigan, Grand Rapids, MI. Apparently in 1930 Backus was still being paid out of the federal appropriation for clerks, even though her title had changed in 1923.

⁹⁸ *Ibid.*

business, because she had become an institution in the US District Court, because none felt they cared to try to get on without her.”⁹⁹

Backus kept working full-time as she aged and her health worsened. In her fifties she had reported health problems that limited her activities, and she suffered from a heart condition throughout her later life.¹⁰⁰ In 1937 she was forced to take thirty-five sick days because of her poor health; however, she continued her employment even after work became “a painful effort.”¹⁰¹ Her dedication to the job in the face of recurring illness only enhanced the respect she received from her colleagues.

After Backus failed to show up for work on 28 July 1938, Assistant US Attorney Vincent Martineau went to her apartment and found her dead.¹⁰² Her loss was felt keenly not just by her colleagues in the US Attorney’s office but also in the community as a whole. By the time of her death, she had been a fixture in the Grand Rapids legal community for thirty-five years, outlasting many of the attorneys with whom she had worked. Her friends and colleagues responded with a special ceremony in federal court, where US District Court Judge Fred Raymond, GRBA President Harold W. Bryant, several former US Attorneys, and many others paid tribute to her.¹⁰³ A resolution read at the ceremony praised Backus as “a most important figure in the legal profession in the Western District of Michigan” and extolled her “loyalty, fidelity, and unselfish devotion” to government service.¹⁰⁴ The resolution also noted that Backus “came to be recognized as an authority on Federal Court procedure, especially in criminal cases. She was not protected by civil service, nor did she depend upon political prestige or influence. She continued in the government service because of merit and efficiency, and she gave at all times to the Department of Justice the very best she had.”¹⁰⁵

During her long career in the US Attorney’s office, Ella Mae Backus impacted her community and profession by remaining devoted to her work and demonstrating that women were capable of succeeding in an

⁹⁹ “A Woman Who Made Good.”

¹⁰⁰ “Backus, Ella M.,” 4 May 1918, Grand Rapids Public Library, Collection 174; “Ella M. Backus Is Found Dead,” *Grand Rapids Press*, 28 July 1938.

¹⁰¹ “Death Takes Ella Backus at Age of 76,” *Grand Rapids Herald*, 28 July 1938.

¹⁰² Her death certificate notes that the cause of death was coronary thrombosis.

¹⁰³ “Memorial Services Held for Miss Backus,” *Grand Rapids Herald*, 25 October 1938.

¹⁰⁴ “In the Matter of Resolutions Passed by the Grand Rapids Bar Association relative to the death of Ella M. Backus,” United States District Court for the Western District of Michigan, Southern Division (Grand Rapids), 24 October 1938, Journals, 1863-1966, Journal M-1, 173, Records of District Courts of the United States, RG 21, NARA Great Lakes Region (Chicago).

¹⁰⁵ *Ibid.*

intellectually challenging public career. For thirty-five years she was the one constant in a changing cast of employees in the US Attorney's Office for the Western District of Michigan. However, Backus was not just another talented and dedicated public servant. She was a woman who achieved a high level of success in a career that was still largely closed to women even upon her death in 1938. Writing about women who, like Backus, were in the "first generation of women attorneys," legal scholar Audrey Latourette argues that "it was their ability to establish a presence in the male stronghold of law, in itself, that contributed to an enlarged notion of a woman's place."¹⁰⁶ After Backus' death the *Grand Rapids Herald* confirmed her impact as a pioneering female attorney:

Not so many women make good in public office. The odds are against them from the start. Not so many women make good as lawyers, although there are outstanding examples. The odds are against them in general practice. One woman, a lawyer and a public official made good in a manner that should prove an inspiration to women aspiring to the legal profession and to public service. That woman was Ella Backus.¹⁰⁷

¹⁰⁶ Latourette, "Sex Discrimination in the Legal Profession," 880.

¹⁰⁷ "A Woman Who Made Good."