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Alma Mater: Clara Floltz and Hastings College of Law

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When Foltz wanted to become a lawyer, the basic statute was her first hurdle. She knew about Nellie Tator, a suffragist from nearby Santa Cruz, who had passed the Bar in 1872, but was refused admission because of the code's restriction to white males. Tator had even drafted a woman lawyer's bill but it had died in the Senate. Since she had not appealed the adverse court ruling, there was no definitive Supreme Court decision against women lawyers in California.⁴

Foltz probably considered going through the courts to gain the right to practice. She knew that an Iowa court had admitted Arabella Mansfield, the first woman to become an American lawyer, in the face of a statute which restricted admission to men. Yet nearly a decade after Mansfield's success in 1869, there were few similar appellate rulings.⁵

The precedents the other way had started the next year when the well-qualified Myra Bradwell, editor of the *Chicago Legal News*, was rejected by the highest Court in Illinois. The main argument against Bradwell however was not the words of the code, but the idea that a married woman was incapable of making contracts on her own (including contracts for employment as a lawyer) and was not ultimately liable for her debts.⁶

Bradwell appealed to the U.S. Supreme Court, arguing that free choice of occupation was one of the "privileges or immunities of citizens of the United States" guaranteed by the newly enacted Fourteenth Amendment. But the Court disagreed and left it to each state to decide whether to admit women.⁷ For its own Bar, the Court turned down the application of Belva Lockwood in 1875. State courts tended to follow the high court's example.⁸

In addition to the precedents against her, Foltz had to consider the slow pace of court adjudication. It could be a year before there was a final decision and she might lose and need to seek a bill anyway. Unwilling to risk defeat and delay, Foltz decided to proceed straight to the 1878 session of the legislature for a bill to eliminate the statutory exclusion of women from law practice. She could count on the help of the suffragists, who had learned how to lobby by this time.

Foltz drafted the measure simply, replacing the words "white male" in the Code section, so it read:

4. See generally 3 HISTORY OF WOMAN SUFFRAGE 757 (E. Stanton, S. Anthony & M. Gage ed. 1881); and GEORGIANA BRUCE KIRBY, GEORGIANA: FEMINIST REFORMER OF THE WEST 45 (C. Swift & J. Steen eds., 1987) (discussing Tator's efforts).

5. Teresa Federer, *Belle A. Mansfield: Opening the Way for Others*, <http://www.law.stanford.edu/library/womenslegalhistory/papers/MansfieldB-Federer02.pdf> (last visited Nov. 14, 2009).

6. *In re Bradwell*, 55 Ill. 535 (1870).

7. *Bradwell v. Illinois*, 83 U.S. (16 Wall) 130 (1873).

8. Lockwood's petition was denied without opinion. Martha Strickland, *Right of Woman to Office*, 17 AM. L. REV. 670, 678 (1883) (citing Supreme Court refusal of Lockwood).

Any citizen or person resident of this state who has bona fide declared his or her intention to become a citizen . . . of the age of twenty-one years, of good moral character, and who possesses the necessary qualifications of learning and ability, is entitled to admission as attorney and counselor in all the Courts of this state.⁹

Thus, under the Woman Lawyers Bill, the Bar was also to become racially integrated.

No one remarked on the omission of the “white” qualification for Bar membership. Perhaps it was generally recognized as unconstitutional under the Fourteenth Amendment, passed a decade earlier. Leaving in the “whites only” phrase would, moreover, be inconsistent with the woman suffrage demand and create a situation in which black men would be able to vote but not practice law, white women could practice law but not vote, and black women could do neither. Though the wording opened the possibility of a multi-racial Bar, the debate was all about women as equals in public life.¹⁰

It was an extremely heated debate. Clara Foltz and Laura Gordon, soon to be the second woman lawyer in the state, and their suffrage friends spent days in Sacramento lobbying the legislature. The session was unusually busy because the following year was set for a constitutional convention, so that any measures not passed in 1878, would have to wait until 1880 to be considered.¹¹

Setting up a law department for the University of California and admitting women to the Bar were seen by some proponents to both be measures that would improve the quality of lawyering in the state. But the opponents objected that women lawyers would degrade and un-sex themselves and skew the justice system. In 1878, just as Foltz and her friends were pushing for the Woman Lawyers Bill, one of the most popular humor magazines in the country published a poem about public women, especially those who tell a tale of “fancied wrongs” before the justice seat. They are fit, the poem concluded “to herd with them whose love is bought and sold / For these have hearts as empty and as cold / And all their lives are like them: incomplete / unfruitful and unbeautiful and bold.”¹²

Like the poem, the debates over women at the Bar were crude and denunciatory. The aspersions seemed especially hard to Clara Foltz who wanted to be a lawyer in order to support her five children, ranging in age from two to eleven, as well as to fulfill her personal ambitions and advance the cause of women’s rights. Jeremiah Foltz had deserted her earlier in the

9. CAL. CIV. PROC. § 275 (Fairall 1916).

10. Barbara Allen Babcock, *Clara Shortridge Foltz: Constitution-Maker*, 66 IND. L.J. 849-50, 865-70 (1991) [hereinafter Babcock, *Constitution-Maker*].

11. *Id.* at 865; Babcock, *First Woman*, *supra* note 2, at 686-87.

12. “Sonnet,” PUCK, Jan. 1878, at 8-9, *as cited in* Babcock, *Constitution-Maker*, *supra* note 10, at 866.

year, apparently for another woman in Portland. She had previously tried dressmaking, taking in boarders and school teaching, and knew she could not make enough at these women's occupations to keep her family together.¹³

Within months of the successful struggle to get the Women Lawyer's Bill passed, Foltz applied to the district court, as the main trial courts were then called, in San Jose, and passed the oral bar examination. To nationwide publicity, she became the Portia of the Pacific. Though she set up her office, complete with a diminutive rolltop desk and had some clients right away, Foltz was quickly dissatisfied with the local nature of her practice, mostly small matters for desperate people, many who could not pay a fee.¹⁴

She had higher aspirations, even beyond making a good living and keeping her family together. Foltz wanted to become a thinker, a law reformer, and a famous advocate — to be on a plane with the greatest lawyers of the day. For this ambition, she was seriously under-educated — several years at a Midwestern academy, and reading law for a few months in the office of a male suffrage supporter. She decided that the first woman lawyer in the state should attend the first law school and turned her energies to making that happen in 1879. Her suffragist friends put together the money for a scholarship, and Foltz moved to San Francisco with her three older children, leaving the little girls in San Jose with her mother. Taking an office in a remote attic of the Montgomery Block, now the site of the TransAmerica Pyramid, Foltz proposed to practice in the hours she was not attending law school classes.¹⁵

Early in January 1879, Clara Foltz stood in line at the Registrar's office and offered her ten dollars tuition for the first term. A woman in line was not so unusual because mothers and sisters sometimes paid for their male relatives. But when the Registrar realized that Clara Foltz was enrolling herself, he hesitated, but took her money and referred the issue to the Board of Directors.¹⁶

She did not anticipate the amount of opposition she would face. Even men who thought she should be allowed to earn a living for her children by practicing law balked at her attending the state's new law school. The founders and students of Hastings resented a woman's intrusion on their enterprise, arguing that her very presence made it seem

13. Barbara Allen Babcock, *Reconstructing the Person: The Case of Clara Shortridge Foltz*, 12 *BIOGRAPHY* 5, 8 (Winter 1989) (describing Foltz's marriage and divorce).

14. Babcock, *First Woman*, *supra* note 2, at 698-700.

15. Hastings was on the same street as the Montgomery Block, which was a landmark building, resting on huge wooden timbers floating in the marshy ground. Housing a law library used by the Hastings students, it was also a center for writers and actors. *See generally* IDWAL JONES, *ARK OF EMPIRE* (1951) (history of the building).

16. Babcock, *First Woman*, *supra* note 2, at 700-02.

less impressive. Others feared the competition, and some perhaps guessed correctly that women would draw all the public attention.

Foltz would later make her experience at Hastings into an amusing public lecture, but her first day was both terrifying and humiliating. She left the dubious Registrar and slipped into the lecture hall. Over a hundred young men were seated at the feet of the great law professor from the East, John Norton Pomeroy, who had come to design and teach the Hastings curriculum.

“The first day I had a bad cold and was forced to cough. To my astonishment every young man in the class was seized with a violent fit of coughing. You would have thought the whooping cough was a raging epidemic among the little fellows. If I turned a leaf in my notebook, every student in the class did likewise. If I moved my chair — hitch went every chair in the room.”¹⁷

Though she took the hazing bravely in public, that night, as Clara Foltz would often tell the story, she “stole into the room where my little ones slept and cried myself to sleep.” At this point she would explain: “I often refreshed myself by a good cry, which a woman could enjoy without getting out of her sphere.”¹⁸

On the third day of classes, Laura Gordon joined Foltz at law school. But at the end of that day, Clara Foltz received a “Dear Madam” letter from the Registrar: “I am instructed to inform you that at a meeting of the Directors, it was resolved not to admit women to the Law School.”¹⁹ There was no written explanation for the exclusion, but Dean Hastings told them that their presence, particularly their rustling skirts, was bothering the other scholars. Kindly, he offered to furnish them books from his private library to study on their own.

Little did Serranus Hastings realize how resourceful and how determined these two women were. After a lobbying campaign to try to convince the Directors individually, and a visit to the great Pomeroy himself, Foltz did what any lawyer in her position would do. She sued the Directors of Hastings College of the Law.

Joined by Laura Gordon, she brought an action for mandamus to force the directors to admit duly qualified students. For the next semester the two women waged legal war on Hastings. They had the best of the argument. Hastings was founded as part of the University of California, which had been coeducational from its inception.

But their opponents had in their arsenal a fatal weapon. If they delayed enough, the semester would be over, and the women’s admission a

17. Clara Shortridge Foltz, *The Struggles and Triumphs of a Woman Lawyer*, THE NEW AMERICAN WOMAN, Nov. 1915.

18. *Id.*

19. *Woman at the Bar, The First Female Lawyer of the Pacific Coast*, S.F. CHRON, Jan. 30, 1879, at 3.

moot point. Even if they won, Foltz and Gordon might be too exhausted to start over in the fall. The prestigious establishment lawyers representing Hastings used this weapon mercilessly.

At the trial court, they moved for several continuances so that it was well into February before the case was argued. The judge took the case under advisement for ten days before ruling decisively in the women's favor. In defeat, the Hastings Board remained ungracious, and Clara Foltz thought, unethical. The Board decided almost immediately to appeal to the California Supreme Court. Foltz's bitterness was unrelieved many years later as she wrote: "They knew that though I had much law I had little money, and they hoped . . . to wear out my courage or cool my ardor."²⁰

The appeal turned Clara Foltz's personal victory to ashes. It would be months before the case could be briefed and argued and she had to take another examination to be admitted in that Court. Ultimately, she won decisively there but it was too late for Foltz to study law free of the burden of making a living.²¹ Over the next few years she attended lectures at Hastings, but did not finish the regular course or graduate.

But as Foltz herself often noted, her suit blazed a path for all women. The first woman to graduate from Hastings was Mary McHenry in 1882. She was chosen to give a graduation address and Clara Foltz wrote congratulating her:

[Y]ou scored one for your sex in carrying off the honor of an institution that but recently scanted the idea of a woman aspiring to be a lawyer. . . . As a sort of mother of the institution [citing *Foltz v. Hoge*], I rejoice in your success . . . that at the first public graduating exercises of Hastings College of Law, a bright and beautiful young girl comes off with the honors of the class.²²

Clara Foltz went on to win the fame, if not the fortune, she sought and to make a name as a leader in woman suffrage and a law reformer. She earned many first woman titles — first to hold statewide office, first to be a deputy district attorney, first to be a Notary Public (when it was an important government function). Most important, she launched the public defender movement on a platform with eminent legal scholars at the Chicago World's Fair.²³

But she always regretted her "imperfect education" and repeatedly sought an honorary or other special degree from Hastings on the basis of the attendance she had managed and her role in opening the law college to women. The school, however, maintained its distance. A history of

20. Babcock, *First Woman*, *supra* note 2, at 712-13.

21. *Foltz v. Hoge*, 54 Cal. 28, 33-35 (1879).

22. Letter from Clara Foltz to Mary McHenry, *supra* note 1.

23. Barbara Allen Babcock, *Inventing the Public Defender*, 43 AM. CRIM. L. REV. 1267 (2006).

Hastings, published in 1978, was almost as unkind to its first woman as the original Board of Directors. While acknowledging Foltz's impact and importance in the school's founding days, it attacks her "pugnacity" and "assertiveness," calling her "a massive egotist" and downplaying her career accomplishments.²⁴

Almost a hundred and fifty years after Foltz struggled to attend Hastings, however, things have changed dramatically. At last, the school has become her alma mater. The modern era started with the rise of the second women's movement in the 1970s, and the attendant great increase in the number of women lawyers. In just a few years, the law school population went from three percent to twenty percent female, and today women are nearly half the nation's law students and constitute a majority at Hastings.

The tremendous increase in the numbers of women in law school happened rather suddenly in legal time. Women students and women lawyers found themselves without the guide of a professional history. Clara Foltz was one of the first beneficiaries of the search for models, and perhaps even heroines.

In 1976, Professor Mortimer Schwartz with two students, Susan Brandt and Patience Milrod, published an article about her achievements, which captures her range and spirit. The article involved a lot of inventive digging, since Foltz's personal papers are not preserved. Modern generations have accorded Foltz more honors: The women's law society at Hastings is named for her; and in 1991, at the behest of its women students, Hastings granted her a J.D. degree, posthumously.²⁵

In 2002, the revival of interest in this pioneer woman lawyer reached beyond Hastings to a new level, when the main criminal court building in Los Angeles was renamed the Clara Shortridge Foltz Criminal Justice Center. Justice Sandra Day O'Connor spoke at the ceremony, honoring California women lawyers and Foltz as first. In many ways, the courthouse, standing on the site of the one in which she practiced, is an especially fitting remembrance of Clara Foltz.²⁶

It has been made into a memorial for her by the installation of panels and tapestries that tell about her life, and with benches which serve a humane as well as a decorative purpose. The other day an e-mail from a friend told of winning a habeas corpus case releasing a woman who was confined unjustly under the three strikes law. Justice in the Clara Foltz

24. THOMAS GARDEN BARNES, *HASTINGS COLLEGE OF THE LAW: THE FIRST CENTURY* 47-48 (Hastings College of the Law Press 1978); Babcock, *Constitution-Maker*, *supra* note 10, at 889-91.

25. Mortimer D. Schwartz, Susan L. Brandt & Patience Milrod, *Clara Shortridge Foltz: Pioneer in the Law*, 27 *HASTINGS L. J.* 545 (1976).

26. The programs from the ceremonies dedicating the courthouse and the artwork are available at <http://www.law.stanford.edu/library/womenslegalhistory/csf08.html> (last visited Nov. 14, 2009).

courthouse is a fitting legacy for the first woman law student and first woman lawyer of California.