

Clara Shortridge Foltz: Pioneer in the Law

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Clara Shortridge Foltz watched the district attorney as he presented his closing argument to the San Francisco jury. He concluded with an attempt to discredit her as attorney for the defendant:

She is a WOMAN, she cannot be expected to reason; God Almighty decreed her limitations ... this young woman will lead you by her sympathetic presentation of this case to violate your oaths and let a guilty man go free.¹

Foltz was angry, but having listened to similar accusations in other courtrooms, she was not surprised.² Rising to address the court, she demolished both the legal and *ad hominem* arguments of the prosecutor and won her case.³

She was California's first woman attorney.⁴ Facing opposition from both sexes, she fought for entrance to the state bar and, later, for fair treatment within it. She opened the profession to future generations of California women, and throughout her long and successful practice she used a lawyer's expertise to work for legal reform and women's rights. In this article we will chronicle Foltz's struggle to gain admission to law school and the bar in the late 1870s. We will also note the most important of her legal and social contributions, for which credit is long overdue her.⁵

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¹Foltz, *Struggles and Triumphs of a Woman Lawyer*, *New Am. Woman*, Jan. 1918, at 4, 10 [hereinafter cited as *Struggles*].

²*Id.* at 15-16.

³*Id.*, Feb. 1918, at 9. For the entire argument in this case, see *id.* Jan. 1918, at 4.

⁴C. Gilb, 1 *Notable American Women* 641 (E. James ed. 1971) [hereinafter cited as *Notable American Women*].

⁵Although we have done extensive research into Foltz's life and accomplishments, we have found little written about her. Her contributions have been incompletely cataloged in a few biographical encyclopedias, but her pioneering achievements have been overlooked in most California histories.

Early Years

Foltz was a fighter by nature. Raised in the Midwest, she boasted, "I am descended from the heroic stock of Daniel Boone and never shrank from contest nor knew a fear. I inherit no drop of craven blood."⁶ She had come to San Jose, California, with her husband and five small children⁷ in 1874.⁸ Two years later, she divorced Jeremiah Foltz⁹ and faced the responsibility of supporting her young family. She was twenty seven years old at that time¹⁰ and already well known within her community. She had been the impetus behind the paid city fire department,¹¹ and she was an active suffragist¹² and a "brilliant and logical" speaker on sexual equality.¹³ While her work experience had been along traditional lines,¹⁴ she had developed a fascination with the law in her childhood,¹⁵ and she decided to try a legal career. She later observed, "I had no thought of the hardships to be encountered, the humiliation, and the thousand torments to be suffered!"¹⁶

⁶*Struggles*, *supra* note 1, Jan. 1918, at 4, 10.

⁷Clara Virginia, Samuel Courtland, David Milton, Bertha May, Trella Evelyn. *Notable American Women*, *supra* note 4, at 642.

⁸S.F. Evening Post, Aug. 12, 1882, at 2, col. 1.

⁹In a conversation with Theresa Viscoli, a personal acquaintance of Foltz in the 1930s, we learned that Foltz divorced her husband. Telephone interview with Theresa Viscoli, Aug. 11, 1975. This report is borne out by an article in the San Francisco Evening Post. S.F. Evening Post, Aug. 12, 1882, at 2, col. 1. Nevertheless, Foltz herself in her writings and correspondence always referred to herself as a widow.

¹⁰Foltz was born on July 16, 1849 to Elias and Talitha Shortridge in Lafayette, Indiana. *National Cyclopedia of American Biography* 308 (Current Vol. C 1930) [hereinafter cited as *National Cyclopedia*]. According to her Los Angeles death certificate, she died on September 2, 1934.

¹¹*Struggles*, *supra* note 1, May 1916, at 16.

¹²San Jose Pioneer, Nov. 8, 1879, at 3, col. 1.

¹³*Id.*, Oct. 6, 1877, at 3, col. 2. Some attributed Foltz's oratorical style to the influence of her lawyer-minister father, who had stumped the state of Indiana campaigning for Abraham Lincoln. *N.Y. Times*, Sept. 3, 1934, at 13, col. 3.

¹⁴At the age of fifteen, Foltz (then Shortridge) took a job as a teacher near Keithsburg, Illinois. She left this job, however, to elope with Jeremiah Foltz. *Notable American Women*, *supra* note 4, at 642. Soon after, she and her husband moved to Portland, Oregon, where they lived for about a year before moving to San Jose, California. In Portland, she was a dressmaker, according to the recollections of newspaperman Wills Drury in a letter recommending her for a notary public commission in 1891. Letter from Wills Drury to H. H. Markham, April 10, 1891, on file in California State Archives, Sacramento, California. *Struggles*, *supra* note 1, Apr. 1916, at 10-11.

¹⁵*Struggles*, *supra* note 1, Apr. 1916, at 10-11.

¹⁶*Id.*, June 1916, at 5.

Bolstered by her parents, and brothers' encouragement,¹⁷ she asked a prominent local attorney whether she could read law with him. The response was discouraging:

My dear young friend,

Excuse my delay in answering your letter asking permission to enter my law office as a student. My high regard for your parents, and for you, who seem to have no right understanding of what you say you want to undertake, forbid encouraging you in so foolish a pursuit,--wherein you would invite nothing but ridicule f not contempt.

A woman's place is at home, unless it is as a teacher. If you would like a position in our public schools I will be glad to recommend you, for I think you are well-qualified.

Very respectfully,
Francis Spencer¹⁸

Disappointed, she "silently went about preparing to do battle against all comers who would deny to women any right or privilege that men enjoyed."¹⁹ She finally secured a place to study in a neighborhood law office²⁰ and began preparing for her career. She continued to lecture to maintain a source of income.²¹

The Woman Lawyer's Bill

Foltz realized, however, that her years spent reading law would serve no purpose as long as women were excluded from the California bar. To remedy the situation she wrote an amendment to section 275 of the Code of Civil Procedure, which set out qualifications for lawyers in California. The proposed amendment deleted the words "any white male citizen" and substituted "any citizen or person," so that the new section read:

Any citizen or person resident of this state who has bona fide declared his or her intention to become a citizen in the manner required by law, of the age of twenty-one years, of good moral character, and who possesses the necessary

¹⁷The Shortridge family had also moved to San Jose, where Foltz's brother Charles later published and edited the San Jose Mercury newspaper. R. Davis, *California Women: A Guide To Their Politics* 151 (1967).

¹⁸*Struggles, supra* note 1, June 1916, at 5.

¹⁹*Id.*

²⁰She obtained a place in the offices of C. C. Stephens of San Jose. 1 *The Bay of San Francisco* 670 (1892). Law schools were not to become major training grounds for lawyers until almost two decades later. At this time, would-be attorneys studied in the offices of those already admitted to practice until they themselves could pass the bar examinations.

²¹2 *Appleton's Cyclopaedia of American Biography* 493 (J. Wilson & J. Fiske eds. 1898).

qualifications of learning and ability, is entitled to admission as attorney and counselor in all the Courts of this state.²²

In February of 1876, she persuaded a state senator²³ to present it to the legislature.²⁴

The amendment, Senate Bill 66, became popularly known as the Woman Lawyer's Bill. There was little public concern over the deletion of the racial restriction; the debate focused on the elimination of the code's sex qualification. As Foltz reported:

The bill met with a storm of opposition such as had never been witnessed upon the floor of a California Senate. Narrow-gauge statesmen grew as red as turkey gobblers mouthing their ignorance against the bill, and staid old grangers who had never seen the inside of a courthouse seemed to have been given the gift of tongues and they delivered themselves of maiden speeches pregnant with eloquent nonsense.²⁵

Yet Senate Bill 66 passed the senate handily by a vote of 22-11²⁶ and moved to the assembly a few days later. There, the term "eloquent nonsense" seems no exaggeration, according to the account of the assembly debate in the *Sacramento Union*, February 26, 1878. One opponent of the bill²⁷ spoke of the omnipotent power which had defined the walks of life from which women should not be drawn. Another²⁸ kindly allowed that "the sphere of women was infinitely more important than that of men, and that sphere was home." Still another²⁹ lamented the embarrassing situations which might arise in court, when a woman attorney would have to listen to or elicit indelicate evidence. In her later years, Foltz would echo a suffragist comment: "Men are the sentimentalists ... they become so tearfully emotional that it all spills out over 'home and mother' every time you offer a suffrage argument."³⁰

²²Cal. Stat. 1878, ch. 600, §§ 1-3, at 99.

²³Barney Murphy, Democrat, Santa Clara.

²⁴3 History of Woman Suffrage 757-58 (E. C. Stanton, S. B. Anthony & M. J. Gage eds. 1969).

²⁵*Struggles*, *supra* note 1, Aug. 1916, at 11.

²⁶Sacramento Union, Jan. 11, 1878, at 1, col. 5.

²⁷William F. Anderson, Democrat, San Francisco.

²⁸W. M. DeWitt, Democrat, Yolo.

²⁹Byron Waters, Democrat, San Bernardino.

³⁰*Struggles*, *supra* note 1, July 1916, at 14, *quoting* Dr. Anna Howard Shaw, a prominent minister and suffragist.

The amendment also had some supporters among the assemblymen. One³¹ spoke twice in its favor, stating that he saw no reason to deny a woman the right to earn her living in this manner. He pointed out that the eastern states allowed the practice, and that certainly no woman would have to take advantage of the bill. Another assemblyman³² cited the contributions of women in the medical profession.³³

A vote was called and the bill was defeated 33-30.³⁴ A quick-thinking proponent thereafter changed his aye to no and moved to reconsider the vote the following day;³⁵ his motion passed 39-33.³⁶ Foltz had been conspicuously absent during the assembly debate and vote, having been called to Oregon to address that state's Woman Suffrage Association.³⁷ Fortunately, she returned in time to lobby that evening for the reconsideration vote, coaxing and entreating on behalf of her amendment. She later stated, "I would have reasoned had they been reasonable men."³⁸ The bill was passed in the morning by a majority of two.³⁹

But the fight was not over. The legislature was in the last day of its session and, as midnight approached, the governor had not yet signed the Woman Lawyer's Bill. The bill's opponents were trying to convince him that the duty of a law career should not be thrust upon the women of California. The fate of Senate Bill 66 was uncertain.

As Foltz later reported, she was among those milling outside the closed doors to the governor's chambers. When a politician emerged and stated,⁴⁰ "That Woman Lawyer's Bill's dead and buried," she decided to speak to Governor Irwin herself: "Finding that I could not convince the Sergeant-at-Arms that, his orders to the

³¹Grove Johnson, Republican, Sacramento.

³²R. W. Murphy, Republican, San Francisco.

³³At this time women had been practicing medicine in California for over twenty years; the California Board of Medical Examiners began issuing licenses to physicians under the Medical Practice of 1867. Cal. Stat. 1867, ch. 68, §§ 1-14, at 792. Women were among the first certified. H. Harris, California's Medical Story 209 (1932).

³⁴Sacramento Union, Mar. 30, 1878, at 8, col. 2-3.

³⁵"On the day succeeding that on which a final vote on any bill or resolution has been taken, said vote may be reconsidered on the motion of any member, *provided*, notice of intention to move such reconsideration shall have been given on the day on which such final vote was taken, by *a member voting with the majority*." Legislature of The State of California, Journal of The Assembly, 22d Sess., 1877-78, at 150. (Standing Rule 60) (emphasis added).

³⁶Sacramento Union, Jan. 11, 1878, at 1, col. 4.

³⁷History of The Bench and Bar of California 831 (O. Shuck ed. 1901).

³⁸*Struggles*, *supra* note 1, Aug. 1916, at 11.

³⁹Sacramento Union, Jan. 11, 1878, at 1, col. 4.

contrary, I must and I would see the Governor about The Woman Lawyer's Bill, I stooped to conquer, and slid through the door and landed in the middle of the big room with hat awry and hair disheveled.⁴¹

The governor sat at a large table in the center of the room, surrounded by legislators. Foltz came through the crowd and politely asked him to sign Senate Bill 66. "The governor continued to lift up bill after bill in that huge stack of discarded ones and finally, aided by a clerk, the bill was fished out and laid all but dead before him." He then signed it, just before the clock struck twelve.⁴²

Foltz returned to San Jose to complete her course of reading for the bar, and subsequently took the examination for admission to the 20th District Court Bar.⁴³ She passed it with "highly colored compliments"⁴⁴ and took her professional oaths in early September, 1878,⁴⁵ the first woman admitted to the California bar pursuant to the code amendment which she had drafted and promoted.

The Hastings Lawsuit

Recalling her feelings upon entering into the practice of law,⁴⁶ Foltz remarked: "I had many secret misgivings as to my ability to cope with men who had a thousand years advantage over me." Nevertheless, within a few months she had a growing practice in San Jose and was a successful advocate in even her earliest cases. Never one to be guilty of false modesty, she remembered one of her first triumphs:

I kept my wits fairly well, though I trembled, and certainly was dreadfully scared lest I should fail to serve my trusting client as capably as a man lawyer might have done. No one, not even the astute experienced Registrar himself--as he told me later--regarded me as a novice in his department--so intelligently and effectively did I guard the interests of my client by the skillful manner in which I handled the contestant and his witnesses.⁴⁷

⁴⁰*Struggles, supra* note I, Sept. 1916, at 10.

⁴¹*Id.*

⁴²*Id.*

⁴³*Id.*, Oct. 1916, at 11. According to the California Code of Civil Procedure in effect at that time, an attorney could be admitted to practice in all courts of the state by showing proof of good moral character and passing an oral examination in open court before the justices of the supreme court. An attorney could gain admission to practice before a particular district or county court by showing proof of good moral character and passing an oral exam in that court. Cal. Stat. 1861, ch. 1, §§ 275-77 at 64 (repealed 1931).

⁴⁴*Struggles, supra* note 1, Oct. 1916, at 11.

⁴⁵1 The Bay of San Francisco 670 (1892).

⁴⁶*Struggles, supra* note 1, Feb. 1917, at 10, 11.

⁴⁷*Id.*, June 1917, at 12, 13.

Foltz believed, however, that a formal legal education would enable her to serve her clients with greater skill and confidence. She applied for admission to Hastings College of the Law in San Francisco.⁴⁸

The Hastings law school had been established as a department of the University of California, pursuant to a generous grant from Judge S. Clinton Hastings, who was also the college's first dean. A board of directors and Dean Hastings determined the law college's policies, including admissions standards. Those standards, however, did not include any reference to the candidate's sex, perhaps because the board of directors had never considered the possibility that a woman would be so audacious as to try to enroll in a law school. The admissions qualifications simply required that an applicant be over the age of twenty-one years, of good moral character, and a citizen and resident of California.⁴⁹ Foltz met all these requirements.

She paid the ten dollar tuition fee and started classes on January 9, 1879. When she returned to school the following day, she was met at the door by a janitor: "Miss, this is a law school. I'm ordered not to let you come in here."⁵⁰ Undaunted, she obtained from founder Judge Hastings a note directing the janitor to admit her. The judge advised her that his was a conditional admission only, subject to approval by the board of directors of the college.

Armed with this ticket, Foltz returned to school to find that resistance to a woman law student was not confined to the school administrators:

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 over a leaf in my note book every student in the class did likewise. If I moved my chair--hitch went every chair in the room. I don't know what ever became of the members of that class. They must have been an inferior lot, for certain it is, I have never seen nor heard tell of one of them from that day to this.⁵¹

Her tenure as a law student was short-lived. On January 11, two days after she had started classes, Foltz was notified that the Board of Directors of Hastings College of the Law had decided to deny her application for admission at their meeting the

⁴⁸Foltz applied to Hastings College of the Law in October, 1878. *Minutes of the Meetings of the Board of Directors of Hastings College of the Law*, Oct. 18, 1878, in 1 Record, Hastings College of Law 31 (on file at Hastings College of the Law) [hereinafter cited as *Hastings Directors' Minutes*].

⁴⁹See Transcript on Appeal at 2, *Foltz v. Hoge*, 54 Cal. 28 (1879).

⁵⁰*Struggles*, *supra* note 1, July 1917, at 18.

⁵¹*Id.*, Nov. 1916, at 12.

previous day. The minutes of that meeting noted,⁵² "The following resolution was adopted, Resolved that women be not admitted to the Hastings College of the Law. Carried unanimously."

Foltz was not the only woman whom the board's actions affected. At the same meeting, the directors rejected the application of Laura de Force Gordon, an able journalist and active women's rights advocate, who had founded and edited newspapers in Stockton and Oakland.⁵³ She had also helped to achieve passage of the Woman Lawyer's Bill and was now intent on pursuing a legal career.⁵⁴

The two women decided to challenge the college's admission policy. Gordon applied to the California Supreme Court for a writ of mandamus to compel the board of directors to admit the women, and on February 10, Foltz made the same application to Judge R. F. Morrison of the Fourth District Court in San Francisco. The supreme court returned Gordon's petition to the district court for consolidation with Foltz's suit.⁵⁵

At its February 13 meeting in 1879, the Hastings board of directors resolved that T. B. Bishop and Delos Lake should represent it in "the case of Clara S. Foltz v. J. P. Hoge et al Directors of Hastings College of the Law."⁵⁶ Both men were members of the board of directors, and Lake was a former supreme court justice. W. W. Cope, another board member and ex-supreme court justice, later joined the ranks of respondents' counsel.⁵⁷

In her petition, Foltz maintained that she had been wrongfully excluded from Hastings College of the Law, since she met all University of California requirements for admission.⁵⁸ Judge Morrison granted the alternative writ, requiring that the board admit her "upon the same terms and conditions as other citizens of the State of California"⁵⁹ or show cause why not.

The respondents claimed in their answer that the board of directors reserved to itself complete discretion to exclude from the college any and all persons whose presence there it believed would be "useless to such persons themselves, or

⁵²*Hastings Directors' Minutes*, Jan. 10, 1879, *supra* note 48, at 31-32.

⁵³2 National Encyclopedia, *supra* note 10, at 235.

⁵⁴*Id.*

⁵⁵3 History of Woman Suffrage 757-58 (E. C. Stanton, S. B. Anthony & M. J. Gage eds. 1969).

⁵⁶*Hastings Directors' Minutes*, Feb. 13, 1879, *supra* note 48, at 32.

⁵⁷*See id.*

⁵⁸Transcript on Appeal at 3, *Foltz v. Hoge*, 54 Cal. 28 (1879).

⁵⁹*Id.* at 6.

detrimental to said college, or likely to impair or interfere with the proper discipline and instruction of the students ..."⁶⁰ The board averred that it acquired this discretion in its role as sole manager and executor of a trust created by Judge Hastings upon the passage of the act establishing Hastings College of the Law and the founder's payment of \$100,000 into the state treasury.⁶¹ The board maintained that the law college was therefore administered independently of the University of California and was in fact associated with it only for the purpose of dispensing degrees.⁶² Judge Morrison heard the oral arguments on February 24, 1879. By all accounts, the case had aroused much interest: the courtroom was full, "the younger and more gallant members of the profession being present in large numbers."⁶³ Newspaper reports, more concerned with the novelty of the petitioners' claims than with the legal arguments, focused on the dress and demeanor of the two applicants. The *San Francisco Chronicle* headlined its report of the case "Two Lady Lawyers Who Demand Admission to the Hastings Law College--How They Dress." The writer commented on every detail of their dress and jewelry and noted that Foltz's "profuse hair was done in braids, which fell backward from the crown of her head like an Alpine glacier lit by a setting sun." Laura de Force Gordon's appearance was given equal scrutiny, the journalist remarking that she "had curls enough to supply half the thin-haired ladies of San Francisco with respectable switches."⁶⁴

Judge Morrison instructed the attorneys, "Proceed, gentlemen." Upon noting Foltz's look of astonishment and confusion, he immediately corrected his slip.⁶⁵ She did proceed, presenting her case "with both force and polish," as the *Daily Alta California* reported it the next day.⁶⁶

She cited the 1868 act which created the University of California to show that the legislature had contemplated affiliation of medical and law colleges with the university and had intended that those departments be governed by the same admission standards as the rest of the university.⁶⁷ She then cited the act of 1878 creating the Hastings law college and pointed out that it required no special

⁶⁰*Id.* at 10. Foltz later wrote that the reason given her to justify excluding women from the college was that "The rustle of the ladies' garments would distract the attention of the young gentlemen." Foltz "was hardly able to appreciate their argument as a legal proposition." *Struggles*, *supra* note 1, Nov. 1916, at 12.

⁶¹Transcript on Appeal at 7, *Foltz v. Hoge*, 54 Cal. 28 (1879).

⁶²S.F. Chronicle, Feb. 25, 1879, at 1, col. 1.

⁶³*Id.*

⁶⁴*Id.*

⁶⁵*Struggles*, *supra* note 1, Aug. 1917, at 22.

⁶⁶Daily Alta California, Feb. 25, 1879, at 1, col. 5.

⁶⁷An Act to Create and Organize the University of California, Cal. Stat. 1868, ch. 244, § 8, at 250-51.

qualifications for admission to law study.⁶⁸ Nor did it indicate that the board of directors had any discretion to make rules governing the law college which were inconsistent with the rules governing the university as a whole. She concluded that the law college was a department of the University of California, bound by its rules and without authority to exclude her on the basis of her sex.⁶⁹ By Foltz's own account, "I closed my argument conscious that I had won my case. I could not then nor at any time since understand how [the counsel for respondents] could take up the time of the court in urging their foolish objections to my petition for a peremptory writ."⁷⁰

Opposing counsel first urged that the law school was not subject to the laws governing the university as a whole because it was created and managed as a special trust. Furthermore, they maintained that no court could review the decisions of the board of directors and that therefore no writ could issue. Mr. Lake then left legal argument behind. According to the *Chronicle*, "He repeated the usual objections to the enlargement of woman's sphere. He complemented the grace and beauty of the applicant, and said that lady lawyers were dangerous to justice inasmuch as an impartial jury would be impossible when a lovely woman pleaded the case of the criminal."⁷¹ The respondents also quoted at length from a Wisconsin decision denying a woman admission to that state's bar.⁷² In that decision, Judge Ryan had declared his fervent opposition of the idea of women practicing law:

The law of nature destines and qualifies the female sex for the bearing and nurture of the children of our race and for the custody of the homes of the world and their maintenance in love and honor. And all life-long callings of women, inconsistent with these radical and sacred duties of their sex, as is the profession of the law, are departures from the order of nature; and when voluntary, treason against it... Reverence for all womanhood would suffer in the public spectacle of woman so instructed and so engaged.⁷³

Foltz replied to these assertions of the board of directors, "commiserating them if they thought a broader education would make a woman less womanly."⁷⁴ She

⁶⁸An Act to Create Hastings College of the Law in the University of the State of California, Cal. Stat. 1878, ch. 351, §§ 1-15, at 533.

⁶⁹S.F. Chronicle, Feb. 25, 1879, at 1, col. 1.

⁷⁰*Struggles*, *supra* note 1, Aug. 1917, at 22.

⁷¹S.F. Chronicle, Feb. 25, 1879, at 1, col. 1.

⁷²*Id.*

⁷³*Matter of Goodell*, 39 Wis. 232, 245-46 (1875).

⁷⁴Daily Alta California, Feb. 25, 1879, at 1, col. 2.

objected to the arguments regarding "woman's sphere" and remarked that she had expected counsel to focus on the legal aspects of the case.⁷⁵

On March 5, 1879, Judge Morrison delivered a judgment in favor of Foltz and Gordon.⁷⁶ An interview the same day with the founder, Judge Hastings, indicated that in his view the law was solidly behind the women applicants.⁷⁷ He did not favor an appeal of the district court decision, though on this point he and the directors disagreed.⁷⁸

The board of directors pursued an appeal of Judge Morrison's decision, perhaps in the hope that if Foltz's determination would not give out, her money would. During the months that the supreme court appeal was pending, she studied for and passed the exam for admission to the state supreme court bar, though she was not formally admitted until December of 1879.⁷⁹ She represented herself before the court, facing substantially the same arguments advanced by the directors in the district court, and won her case.⁸⁰ In later years, Foltz recalled the case as "the greatest in my more than half century before the bar."⁸¹

Soon after the supreme court's decision in November 1879, she took her place among the law students at Hastings, where she remained for two years, "until my increasing practice and increasing family made further attendance difficult."⁸²

Legal Reforms

Foltz had begun her career as a lawyer specializing in probate and divorce cases.⁸³ She soon found, however, that her reputation as a humane and sympathetic counselor brought many indigent clients into her office: "I kept myself continually

⁷⁵*Id.*

⁷⁶Transcript on Appeal at 12, *Foltz v. Hoge*, 54 Cal. 28 (1879).

⁷⁷S.F. Chronicle, Mar. 6, 1879, at 3, col. 2.

⁷⁸*Id.*

⁷⁹*See* Notable American Women, *supra* note 4, at 643; S.F. Evening Post, Aug. 12, 1882, at 2, col. 1.

⁸⁰*Foltz v. Hoge*, 54 Cal. 28 (1879).

⁸¹Estcourt, *Ladies of Law: Victors Over Custom*, S.F. Chronicle, July 2, 1939, § S. at 5, col. 1.

⁸²*Id.*

⁸³*See* Woman's Herald of Industry, Oct. 1882, at 4, col. 4. In this advertisement, Foltz described herself as "Clara S. Foltz, Attorney and Counselor at Law... Probate and Divorce Matters a Specialty." The Rules of Professional Conduct, which forbid advertising by attorneys, were not adopted by the California Supreme Court until May 24, 1928, forty- six years after this advertisement. *See* Cal. R. Professional Conduct 2-101.

impoverished by what my friends declared was unwise generosity."⁸⁴ She slowly acquired a criminal practice, which exposed her to the inequities of criminal justice administration in California. She became an energetic advocate of penal reform, responsible for several major pieces of legislation still in effect today.

Probably the most significant of Foltz's legislative achievements was the creation of the public defender system,⁸⁵ which ensured adequate legal representation for the indigent accused criminal. She began to promote this concept while in her early thirties, soon after her admission to the bar. At that time, any impoverished criminal defendant had to rely on court-appointed counsel for his defense, and this practice imposed a hardship on both defendant and attorney. The attorney had no guarantee of payment and received no compensation from the state. Furthermore, the court-appointed attorneys were not usually those with thriving practices who could afford to support a few *pro bono* cases with their other earnings.⁸⁶ Rather, they were generally young lawyers "from the kindergartens of the profession... anxious to learn the practice"⁸⁷ or lawyers too unsuccessful to maintain practices of their own. Because these attorneys had few financial resources, investigations on behalf of the defendants were often perfunctory. In many cases, a defendant's conviction became almost a matter of course.⁸⁸ Moreover, the defendant, though indigent, had a legal obligation to pay for the attorney's services and was liable to have his property seized in payment.⁸⁹

On the other hand, public prosecutors were usually skilled and experienced and were well paid.⁹⁰ In many jurisdictions the prosecutors were offered a bonus for each conviction.⁹¹ In addition, they had access to the manpower and investigative skills of law enforcement organizations.⁹² Foltz believed that unless an accused had comparable representation, which could be furnished by a public defender, his constitutional presumption of innocence was worthless.⁹³

⁸⁴*Struggles*, *supra* note 1, May 1918, at 9.

⁸⁵Cal. Stat. 1921, ch. 245, §§ 1-8, at 354.

⁸⁶*See* Sacramento Bee, Feb. 15, 1879, at 2, col. 2.

⁸⁷Foltz, *Public Defenders--Rights of Persons Accused of Crime--Abuses Now Existing*, 48 Albany L. J. 248, 249 (1893) [hereinafter cited as Foltz, *Rights of Persons Accused*].

⁸⁸*See* Foltz, *Public Defenders*, 31 Am. L. Rev. 393, 399 (1897) [hereinafter cited as Foltz, *Public Defenders*].

⁸⁹Foltz, *Rights of Persons Accused*, *supra* note 86, at 249.

⁹⁰*Id.* at 248.

⁹¹Foltz, *Public Defenders*, *supra* note 87, at 396.

⁹²Foltz, *Rights of Persons Accused*, *supra* note 86, at 248.

⁹³*See* Foltz, *Rights of Persons Accused*, *supra* note 86, at 248.

In the 1890s she began working in earnest for adoption of the public defender concept. She wrote a model bill, which set out the qualifications, salary, duties, and term of office of a county officer who would "defend, without expense to them, all persons who are not financially able to employ counsel and who are charged with the commission of any contempt, misdemeanor, felony or other offense."⁹⁴ She wrote articles in legal periodicals explaining and advocating the idea.⁹⁵ When she was forty-four, she represented the California bar at the 1893 Congress of Jurisprudence and Law Reform, held in conjunction with the Chicago World Columbian Exposition, and there worked to convert others to her position.⁹⁶ She personally introduced her model bill, which became known as the "Foltz Defender Bill," in thirty-two states, where it "caused a great sensation."⁹⁷ The California legislature finally adopted Foltz's public defender plan in 1921, after much legislative wrangling.⁹⁸

One of the chief factors which spurred her interest in the public defender idea was the extensive abuse of justice she saw in most district attorneys' offices. In an article published in the *Criminal Law Magazine and Reporter*⁹⁹ she cataloged the prosecutors' prejudicial methods, which, she claimed, spawned "an evil brood of appeals that choke the courts, irritate the public mind and waste the public funds."¹⁰⁰ Foltz wrote that as a rule, district attorneys were overzealous in their pursuit of convictions, often sacrificing truth and objectivity to win a case. She attributed this excessive zeal to a system which rewarded successful prosecutions with public acclaim and, often, money bonuses, but which subjected the losing prosecutor to public criticism. Furthermore, the district attorneys themselves held attitudes which interfered with the proper execution of their duties. Some came to believe that the accused was always guilty, even though the statistics disproved this notion.¹⁰¹ Others looked upon every conviction as a personal triumph rather than a public service. Many were anxious to "uphold a friendly police in its frequent blunders."¹⁰² In 1910, at the age of sixty-one, Foltz was offered an opportunity to

⁹⁴Cal. Stat. 1921, Ch. 245, § 5, at 354.

⁹⁵See, e.g., Foltz, *Rights of Persons Accused*, *supra* note 86, at 248; Foltz, *Public Defenders*, *supra* note 87, at 393; Foltz, *Public Defenders*, 25 Chicago Legal News 431 (1893). Foltz wrote several of the articles in New York between 1896 and 1898, while she was practicing in that state.

⁹⁶R. Davis, *California Women: A Guide To Their Politics* 151 (1967).

⁹⁷13 W. Coast Magazine, 43, 44 (1912).

⁹⁸Cal. Stat. 1921, ch. 245, § 5, at 354.

⁹⁹Foltz, *Duties of District Attorneys in Prosecutions*, 18 Crim. L. Magazine 415 (1896).

¹⁰⁰*Id.* at 417.

¹⁰¹Foltz, *Public Defenders*, *supra* note 87, at 402.

¹⁰²Foltz, *Duties of District Attorneys in Prosecutions*, 18 Crim. L. Magazine 415 (1896).

improve the situation which she had criticized: she was appointed deputy district attorney in Los Angeles and served as the first woman to hold that post.¹⁰³

Foltz was also responsible for numerous penal reforms on both state¹⁰⁴ and local levels. In San Francisco, she agitated to abolish the iron cages in which prisoners were confined in the courtrooms during their trials. She argued that such confinement before judge and jury violated the constitutional presumption of a defendant's innocence, and she succeeded in convincing the San Francisco Board of Supervisors that the cages should be removed.¹⁰⁵ She also worked for better treatment for prisoners in San Francisco jails, obtaining segregation of the juvenile inmates from the adult prisoners and appointment of a matron in the county jail.¹⁰⁶

At the state level, Foltz drafted and procured passage of the act creating a parole system for California prisoners.¹⁰⁷ This law, adopted in 1893, provided that any prisoner, other than one convicted of first or second degree murder, might be paroled after serving at least one year of his or her term.¹⁰⁸ Like many other penal reformers of her time, she also advocated adoption of the indeterminate sentence as a tool to rehabilitate the convicted criminal.¹⁰⁹

Feminist Activities

Foltz's interests as attorney and feminist often overlapped: "I was bent on correcting things generally where women were concerned."¹¹⁰ She became particularly involved in the suffrage movement, maintaining that women had a constitutional right to vote.¹¹¹ She was determined to secure legislative action which would recognize this right.

In 1880, not long after her admission to the bar, she wrote and lobbied energetically for a bill to give women the vote in state school elections. The bill

¹⁰³S.F. Call, Jan. 3, 1911, at 2, col. 2.

¹⁰⁴In recognition of her activity and expertise in the area of penal reform, Foltz was appointed to the California State Board of Charities and Corrections at the age of sixty. She was the first woman to serve on the board, where she was active for two years. Notable American Women, *supra* note 4, at 643.

¹⁰⁵Foltz, *Struggles*, *supra* note 1, June 1918 at 9, 10.

¹⁰⁶Notable American Women, *supra* note 4, at 643.

¹⁰⁷S.F. Call, Mar. 13, 1910, at 27, col. 4.

¹⁰⁸Cal. Stat. 1893, ch. 153, § 1, at 183. The statute restricted parole to defendants who had had no prior felony convictions and who had not otherwise served time in a penal institution. *Id.*

¹⁰⁹Foltz, *What We Stand For*, New Am. Woman, Feb. 1916, at 3.

¹¹⁰*Struggles*, *supra* note 1, Jan. 1917, at 26.

¹¹¹S.F. Call, Jan. 3, 1911, at 2, col. 2.

failed, but her efforts to have it enacted established her as a "leader of woman suffrage on the Pacific Coast."¹¹² The following year, at the age of thirty-one, she was elected president of the California Woman Suffrage Association.¹¹³ Her activism, at a time when women were expected to be retiring and demure, made her an easy target for the satirist press. The San Francisco Saturday magazine *Wasp* ran the following "report" on a Suffrage Association meeting in 1881. Entitled "The Sexless Impracticables," it began:

On Tuesday last the antique hens of the Incorporate California State Woman's Suffrage Association gathered one another together at Charter Oak Hall for business. Mrs. Clara Foltz presided like a little man. She has a fine baritone voice and a pleasant pug nose, and wore a single red rose in the hip pocket of her trousers. The first business of importance was the election of officers for the ensuing week--seventeen in number.¹¹⁴

Over the next thirty years, Foltz continued to work for suffrage in California, making slow progress. She found herself in demand throughout the state as a speaker on the issue,¹¹⁵ but her flourishing law practice, now in Los Angeles,¹¹⁶ prevented her from accepting most invitations. She regretted that her busy schedule limited her opportunities to promote suffrage, since she believed that

I can win the cause in this state whenever I get the money sufficient to pay my way a winter's season at the Capitol and at the same time take care of the interests that are in my office and meet the heavy demands of my home affairs.¹¹⁷

Finally, in 1909 or 1910, she reclaimed her active suffragist role. She became president of the Los Angeles Votes For Women Club, one of the largest and most vocal groups of its kind, and once again became an active personality in the suffrage cause.¹¹⁸

¹¹²National Cyclopedia, *supra* note 10, at 308.

¹¹³Notable American Women, *supra* note 4, at 642.

¹¹⁴San Francisco Wasp, Sept. 16, 1881, at 183.

¹¹⁵Letter from Clara Foltz to Clara Colby, June 26, 1908, at 4, on file in the Huntington Library, San Marino, California.

¹¹⁶She moved her practice to Los Angeles in 1906. Notable American Women *supra* note 4, at 642.

¹¹⁷Letter from Clara Foltz to Clara Colby, Apr. 8, 1909, at 4, on file in the Huntington Library, San Marino, California.

¹¹⁸Notable American Women, *supra* note 4, at 642.

Her brand of suffragism, however, often brought her into conflict with her contemporaries. She strongly disagreed with the tactics of the "pink tea brigade,"¹¹⁹ the "rich women who have taken possession of the cause and have got into the bandwagon ... a few women who are known only as Mrs. Col ... or Mrs. Gen ... or Mrs. U.S. Senator ... and so on ad nauseum."¹²⁰ In a letter to a friend, she accused the California suffrage leaders of being disorganized and incapable of successfully promoting the suffrage cause:

In closing, dear, let me say that I am not disgruntled. I simply say, and I reiterate it and emphasize it, that the women at the head of the suffrage question are incompetent; that the suffrage cause cannot be won until leaders of ability are chosen...¹²¹

In 1911, when she was sixty-two, she drafted a suffrage amendment which stated simply, "Women citizens of this state who comply with elections laws and are twenty-one years old shall be entitled to vote at all elections."¹²² In November of that year, the California electorate approved a similar amendment, after a campaign in which Foltz was an energetic participant.¹²³ On the day of its passage, she stood for hours receiving the congratulations of supporters and well-wishers.¹²⁴

Foltz also worked for passage of the nineteenth amendment, which guaranteed all American women the right to vote in federal elections. Many of her views on national suffrage tactics were expressed in the *New American Woman*, a monthly magazine which she edited and published in Los Angeles from 1916 to 1918.¹²⁵ She strongly disagreed with those whose advocacy of suffragism diverted energy from the United States effort in World War I. In 1917, she wrote:

Enthusiasm in the suffrage cause takes a fall when Congresswoman [Jeannette] Rankin states to a half dozen reporters who sought to know her position on various great and vital problems of the hour, which vex the President and Congress of the United States, that she "had determined to devote her time exclusively to the cause of woman suffrage."¹²⁶

¹¹⁹S.F. Call, Jan. 3, 1911, at 2, col. 2.

¹²⁰Letter from Clara Foltz to Clara Colby, June 26, 1908, at 4, on file in the Huntington Library, San Marino, California.

¹²¹*Id.* at 6.

¹²²S.F. Call, Jan. 3, 1911 at 2, col. 2.

¹²³13 W. Coast Magazine 43, 44 (1912).

¹²⁴*Id.*

¹²⁵National Cyclopedia, *supra* note 10, at 308.

¹²⁶Foltz, *Votes for Women Not an Issue*, New Am. Woman, May 1917, at 14.

Foltz also used the *New American Woman* as a forum to encourage women to participate in the movement for equal rights. Emphasizing the importance of women in political life, she wrote an article entitled "What We Stand For" for the magazine's opening issue. In it she urged, "Women must have a voice in the nation's affairs; they must acknowledge no political or other limitation; they must prepare to think intelligently upon great matters of state, and cease to regard themselves as a second-rate power ..."¹²⁷

She herself was enthusiastically involved in politics throughout her life.¹²⁸ She ran for governor of California in 1930, when she was eighty-one years old, and polled 3,570 votes in the Republican primary.¹²⁹ Running on a women's rights platform, she wrote a friend during the campaign, "This being a candidate for governor is no small job ... Of course, I have no illusions as to the outcome of this last courageous effort of mine--I simply must go right on demonstrating our great cause."¹³⁰

Foltz believed that all women should know the law, whether or not they intended to practice before the bar.¹³¹ In the *New American Woman* she wrote a column entitled "Law of the Case," in which she explained simple legal principles to her readers.¹³² She often included bits of advice to young women contemplating legal careers:

If any of my young lady friends want to study law and some anti tells you nobody will marry you if you do, don't you believe it. It isn't so. You will be all the better for knowing something of the law, and infinitely more in demand by any young man worth having.¹³³

¹²⁷Foltz, *What We Stand For*, *New Am. Woman*, Feb. 1916, at 3.

¹²⁸She campaigned across California for the Republican party in 1880, 1882, and 1884. In 1886, she supported a Democrat, Washington Bartlett, when his Republican opponent for governor, John F. Swift, expressed the opinion that a woman had no right to be a lawyer. Bartlett won, and he appointed Foltz to a State Normal School trusteeship, the only state office then open to women. *S.F. Call*, Nov. S. 1911, at 45, col. 4. With her active support, her brother Samuel M. Shortridge ran for the United States Senate, winning a seat which he occupied from 1921 to 1932. *Id.*

¹²⁹*Statement of the Vote at Primary Election Held on August 4, 1930*, at 4, in *California Secretary of State, Statement of The Vote 1929-1939*.

¹³⁰Letter from Clara Foltz to Alice Park, Mar. 20, 1930, at 1, on file in the Huntington Library, San Marino, California.

¹³¹Foltz, *Law of the Case*, *New Am. Woman*, Feb. 1916, at 10.

¹³²*Id.* The periodical also included a section called "Law Briefs," which was a collection of one-line legal aphorisms such as: "A city or town cannot pass an ordinance punishing people for getting on and off moving trains;" and "A wife is liable on a note to which her husband attached her name by her authority." Foltz, *Law Briefs*, *New Am. Woman*, Mar. 1916, at 12.

¹³³*Struggles*, *supra* note 1, July 1916, at 14.

Foltz encouraged the entrance of more women into the legal profession. She taught law to women students in her offices and established women lawyers' clubs in San Francisco and Los Angeles.¹³⁴ In the *New American Woman* she published a monthly autobiographical serial called "The Struggles and Triumphs of a Woman Lawyer," in which she described some of her successful battles with the (male) legal establishment.¹³⁵ Committed to expanding women's legal rights, she was responsible for California laws allowing qualified women to act as administrators, executors, and notaries public.¹³⁶

Yet Foltz's progressive legal and feminist activities subjected her to much ostracism, and often ridicule, from the very women who benefited from her labors. Remembering the slights she had received, Foltz wrote, "I hesitate to lift from oblivion the memory of the hurts and wounds which women inflicted upon me ... women who could not understand WHY a woman lawyer, WHY bills for the enlargement of their privileges ... who even refused friendly recognition of my efforts."¹³⁷

Much of the general public also criticized Foltz for attempting to expand woman's domestic role. The popular attitude was expressed by the Wisconsin Supreme Court in an opinion denying women admission to that state's bar:

This is the first application for admission of a female to the bar of this court. And it is just a matter for congratulation that it is made in favor of a lady whose character raises no personal objection: something perhaps not always to be looked for in women who forsake the ways of their sex for the ways of ours.¹³⁸

The press occasionally echoed this disapproval of Foltz¹³⁹ and women lawyers in general, especially in the earliest days of her legal career. During the Hastings lawsuit, a *Chronicle* journalist decried the impropriety of men and women sharing the legal classroom:

The friction of studious silk with contemplative broadcloth was not to be thought of. It was a wild imagining... The legal carpenter might be instructed to erect a gilt-edged and golden-railed balcony, a gallery with gilt and pearl-inlaid lattice in the style of Turkish harems, a pagoda with minarets, or a

¹³⁴Notable American Women, *supra* note 4, at 642.

¹³⁵*Struggles*, *supra* note 1, Apr. 1916, at 10.

¹³⁶National Encyclopedia, *supra* note 10, at 308.

¹³⁷*Struggles*, *supra* note 1, June 1917, at 12.

¹³⁸Matter of Goodell, 39 Wis. 232, 240-41 (1875).

¹³⁹Foltz felt, however, that the "gentlemen of the press" generally treated her very well. *Struggles*, *supra* note 1, June 1917, at 12.

simple Oregon pine platform in one corner with plush furniture, sheet-iron door, and the legend "All hope (of marriage) abandon ye who enter here."¹⁴⁰

The San Francisco *Wasp* printed a two-page cartoon of the "debutante" women attorneys, in which a clear caricature of Foltz danced across a stage to the tune of "Hastings' Music."¹⁴¹

Despite her reputation as a vocal feminist, many of Foltz's views on woman's role were quite traditional. While she insisted on equality for the sexes in the professional sphere, she believed that there were many jobs for which women were unsuited, especially those calling for physical labor. During World War I, when to further the war effort many women took over jobs requiring heavy work, Foltz wrote that "the tasks that are now performed by women in war-stricken Europe are not naturally theirs and when the war is over they will gladly surrender them to men."¹⁴² She believed that woman was of such value as a moral teacher and homemaker that it was man's duty to support and protect her.¹⁴³

Editorializing in the *San Diego Bee*, a daily newspaper which she founded, edited, and published from 1887 to 1890,¹⁴⁴ Foltz revealed clearly her view of woman as teacher: "Men cannot succeed without the aid of women, nor can women be more truly working for the advancement of their own sex than when seeking to uplift, dignify, and purify men. Women compel men to think. Their mission is to ennoble the race" ...¹⁴⁵

¹⁴⁰S.F. Chronicle, Mar. 6, 1879, at 7, col. 2.

¹⁴¹6 San Francisco Wasp, Feb. 19, 1881, at 120-21.

¹⁴²Foltz, *Certain Kinds of Labor For Women Wrong and Unnatural*, New Am. Woman, Dec. 1916, at 19.

¹⁴³*Id.* Yet Foltz supported herself very well. Along with her legal practice, she developed extensive business interests. In 1905 she organized a women's department for the United Bank and Trust Company in San Francisco and began to publish a monthly magazine, *Oil Fields and Furnaces*, in the same city. She headed Foltz Oil Producers Syndicate from 1921 to 1922. This venture came to an end in August of 1922 when State Corporations Commissioner E. M. Daugherty suspended sales of shares in the corporation, for reasons he did not disclose. The San Francisco Examiner speculated that Foltz's venture may not have complied with the corporations commission regulation that 80% of money invested in oil drilling companies must be spent on development. S.F. Examiner, Aug. 12, 1922, at 3, col. 1. Foltz also apparently operated a Los Angeles real estate agency, the American Woman's Little Farms Company. See New Am. Woman, June 1916, at back cover (advertisement).

¹⁴⁴Notable American Women, *supra* note 4, at 642.

¹⁴⁵San Diego Bee, May 16, 1887, at 2, col. 1. She continued: "and no better field for the exercise of her influence can be found than is offered in the publication of a daily paper." *Id.* Many early issues of the *Bee* were filled with diatribes against a shady Mexican land sale scheme, over which her newspaper fought a bitter journalistic duel with its chief rival, the *San Diego Union*. Foltz frequently editorialized on the themes of women's rights and sexual politics: "[W]hen a wronged sister applied to her for the privilege of obtaining a hearing before the public, she readily consented to throw open the columns of the Bee for that purpose." *Id.*, July 17, 1887, at 2, col. 1.

She encouraged women not to overlook their natural domestic role.¹⁴⁶ Extolling the duties of motherhood, she bitterly regretted that her busy career had kept her away from her children so much of the time in their early years. She felt that in practicing law and lobbying for women's rights she had sacrificed "all of the pleasure of my young motherhood ... having lost more for myself than I have gained for all women."¹⁴⁷

Conclusion

Foltz believed that she should receive credit for her struggles and achievements as California's first woman lawyer: "What I have sacrificed and what I have accomplished must be told."¹⁴⁸ She began to write her own account of her life¹⁴⁹ and made reference to the scrapbooks which would aid her future biographers. Unfortunately, the comprehensive biography she envisioned is impossible, because her autobiography-in-progress and personal papers were destroyed after her death.¹⁵⁰

Looking back on her extraordinary life, Clara Foltz wrote:

Everything in retrospect seems weird, phantasmal, and unreal. I peer back across the misty years into that era of prejudice and limitation, when a woman lawyer was a joke ... but the story of my triumphs will eventually disclose that though the battle has been long and hard-fought it was worth while.¹⁵¹

¹⁴⁶*Id.*, May 25, 1887, at 2, col. 1.

¹⁴⁷*Struggles*, *supra* note 1, Mar. 1918, at 9.

¹⁴⁸Letter from Clara Foltz to Clara Colby, June 26, 1908, at 2, on file in the Huntington Library, San Marino, California.

¹⁴⁹Letter from Clara Colby to Alice Park, Dec. 18, 1923, at 1, on file in the Huntington Library, San Marino, California.

¹⁵⁰Theresa Viscoli asserted that after Foltz's death, Virginia Foltz Gatron, the only surviving child, sold all of her mother's furniture and destroyed her papers. Viscoli said, "Virginia was never a saver." Telephone interview with Theresa Viscoli, Aug. 11, 1975.

¹⁵¹*Struggles*, *supra* note 1, Mar. 1918, at 9.