

CLARA FOLTZ: PIONEER LAWYER FOR WOMEN, CRIMINAL DEFENDANTS AND ALL CALIFORNIANS

By John S. Caragozian

We would expect that capable and courageous people fought for the right of women to practice law, for the right of women to vote, and for the right of criminal defendants to have competent counsel. What may be extraordinary is that, in California, one woman, Clara Shortridge Foltz, led the fight for all of these rights.

Clara Shortridge was born in 1849 in Indiana. At age 15, she eloped with Jeremiah Foltz, a 25-year-old Union Army veteran. They moved to Salem, Oregon, and ran a boarding house where a boarder gave Clara Foltz law books to read. In 1874, the couple moved to San Jose, California; there, four years later, Jeremiah deserted his wife and their five children. At age 29, Foltz found herself a divorced single mother who needed to raise and support her five children.

Foltz's difficulties were compounded because California was in the midst of a recession from repeated crop failures and high unemployment. This recession gave rise to a populist movement, the Workingmen's Party of California, which scapegoated Chinese for competing against native-born labor. Foltz proved to be a talented orator, and the WPC paid her to speak. In her speeches, Foltz rarely mentioned the Chinese, but, instead, supported other WPC proposals for free public education, an eight-hour workday, and regulation of railroads.

Foltz also spoke on behalf of women's suffrage and decided to try to parlay her advocacy skills into practicing law. She had worked in a San Jose law firm and, in 1877, was the first woman to join a law club (which, in those days before law schools existed in California, provided education and training for would-be lawyers).

California, however, restricted the practice of law to men. Undeterred, Foltz lobbied the California legislature to allow women as lawyers by extending bar eligibility from "white male citizen[s]" to "any citizen or person." In 1878, the state senate approved the extension bill, but the assembly defeated it. Foltz continued to lobby, and the assembly acquiesced, approving the bill, 37-35. On the legislative session's last day, after an in-person plea from Foltz, the governor signed the bill. See Barbara Babcock, "Woman Lawyer: The Trials of Clara Foltz," 22-30 (2011).

That same year, Foltz passed the bar exam, which consisted of answering questions posed by a three-lawyer panel. Foltz thus became the first woman lawyer in California and, indeed, on the entire Pacific coast.

Despite the statewide and national newspaper coverage of Foltz's admission, no lawyer would hire or associate with her. She opened her own practice, taking small cases, often on behalf of women.

To improve her legal skills, Foltz tried in 1879 to enroll in the newly opened Hastings Law School, the first law school in the American West. The school's benefactor and dean, Serranus

Hastings, favored her admission, but the school's trustees overruled him because Foltz was a woman.

Foltz challenged her exclusion from the law school. She represented herself in a mandamus petition, and the California Supreme Court ruled in her favor. The court held that the school was part of the University of California, which, in turn, was open to men and women. *Foltz v. Hoge*, 54 Cal. 28, 32-35 (1879). Unfortunately for Foltz personally, her victory was too late; the school's semester ended, and she could not afford tuition for another. Still, throughout her life, Foltz referred to the Hastings case as her greatest victory. *Babcock*, supra, at 47-50, 55, 57.

Foltz fought another major battle at the same time that she lobbied to extend bar membership to women and litigated against Hastings Law School. In 1878, the WPC succeeded in calling for a convention to propose a new California constitution. Foltz lobbied the convention to include voting rights for women in this constitution. If the convention was unwilling to do so, Foltz's fallback request was to allow a future legislature to enact the women's vote without amending the constitution. Foltz's efforts failed, and the proposed constitution restricted voting to men.

Foltz, however, succeeded in lobbying the convention for the right of women to engage in any profession. When voters approved the new constitution in 1879, California became the first state to guarantee equal professional rights to women.

After enactment of the new constitution, Foltz continued to speak and write on behalf of women's rights and tried civil and criminal cases. During the 1880s, Foltz also earned money on three nationwide lecture tours. Nevertheless, she struggled financially and searched for better business opportunities. She and her family moved from San Jose to San Francisco, back to San Jose, and then to San Diego, where she helped to organize the local bar association, founded a local law library, published a newspaper, and brokered real estate, but none of these ventures provided steady earnings. *Id.* at 95, 100, 121.

In 1893, Foltz visited the World's Fair in Chicago, where she met with other prominent women from across the country. After these meetings, Foltz moved again to San Francisco. There, she founded the Portia Law Club to bridge the gap between professional and society women. Foltz taught legal principles to club members and led them to local courtrooms to observe trials.

Still seeking to become financially secure, Foltz moved to New York City in 1895. There, she downplayed her women's rights work in the hope of attracting corporate clients. Her hope was not realized, and, in 1899, Foltz moved once again to San Francisco.

During Foltz's years in California and New York, she remained active in politics – especially as a public speaker – some years as a Republican and some as a Democrat, depending on which party was more progressive and supported women's rights, especially the right to vote.

California women, however, remained without the vote. In 1892, the state legislature approved a bill for "school suffrage" (that is, allowing women to vote in school board elections), but the governor pocket vetoed the bill.

In 1896, the legislature approved a ballot referendum to amend the California constitution to allow women to vote in all elections, but the male electorate voted down the referendum. In 1911, the state legislature – with Foltz and others lobbying – again approved a ballot referendum for women to vote. Foltz campaigned for the referendum, and this time the electorate approved it, albeit narrowly.

Foltz's last major effort was to protect the rights of criminal defendants. As early as 1892, Foltz objected to defendants being caged in court, and her efforts ended the practice. More importantly, Foltz saw the importance of defense lawyers in curbing prosecutorial misconduct. *E.g., People v. Wells*, 100 Cal. 459 (1893) (Foltz succeeded in reversing a conviction and obtaining a new trial after the prosecutor had asked improper questions that could have prejudiced the jury).

Accordingly, Foltz repeatedly spoke and wrote to urge the creation of paid full-time public defenders. *See, e.g.,* 55 Alb. L. J. 66-69 (1897) (reporting on Foltz's proposal for public defenders in New York). Previously, indigent criminal defendants in the U.S. were often unrepresented in trials. Even when judges appointed defense counsel, these attorneys were often incompetent and unpaid. In 1912, Foltz succeeded in persuading Los Angeles County to establish the nation's first office of public defender. Babcock, *supra*, at 289-317.

Foltz's legal and political achievements were especially striking, given the longstanding hostility against professional women, especially lawyers. Per the 1890 census, the U.S. had 250,000 women teachers, 4,500 women doctors, and 1,000 women clergy, but only 208 women lawyers.

Foltz died in 1934, at the age of 85. Her lifetime of law practice gave her little material success. She also bore personal tragedies, most grievously the deaths of four of her five children. Too, for half a century, she hid her divorce and claimed to be a widow, lest her opponents cite her as proof that, for women, marriage and career were incompatible.

In 1991, Hastings Law School, at the urging of its women students, awarded Foltz a J.D. Ten years later, L.A. County renamed its main criminal courthouse the Clara Shortridge Foltz Criminal Justice Building. These honors, while deserved, seem small in comparison to what Foltz accomplished for women, criminal defendants, and, truly, all of us.

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