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Reconstructing the Person: The Case of Clara Shortridge Foltz

Clara Shortridge Foltz (1849-1934) was not a private person. Craving recognition, wealth and power, she publicized herself with uncommon energy and enthusiasm. During her long lifetime, she achieved at least one of her goals: recognition. For many years, her name was familiar to Californians as the state's "first woman"—first woman lawyer; first woman to attend law school; first woman notary public; first woman counsel to a legislative committee; first woman deputy district attorney. She was the first to conceive the idea of a public defender for indigents accused of crime and worked to implement the concept through legislation in thirty states. The first American constitutional clauses guaranteeing women access to education and employment were in large part Foltz's achievement. An early feminist, Foltz crusaded for suffrage and founded women's improvement organizations. Even a summary life account must note that she also practiced law continuously for fifty years.

Wherever she went-to San Diego during the 1887-88 real estate boom where she published a daily paper; to New York in 1895 where she lectured for the Lyceum Bureau, practiced law, and sued a restaurant that refused service to unescorted women; to Denver at the turn of the century where she specialized in mining law and helped publish a weekly magazine; to Los Angeles for the last third of her life-she was "prominent." The word recurs in contemporary descriptions: a "prominent" Californian, a "prominent" lawyer, a "prominent" suffragist. From her promontory, she ran in 1930 for Governor of California. Naturally, she was the first woman to offer herself for that post.

Foltz wanted her fame to endure. From 1916 to 1918, when she was

in her sixties, she wrote "The Struggles and Triumphs of a Woman Lawyer," a serial published in her monthly magazine, *The New American Woman*. In each issue of the magazine, she spent a page or two on memories from her lawyer life. She told of her admission to the bar, of her suit against Hastings Law School for admission of women, and of some of her cases. Acknowledging that her narrative was "brief and hastily recorded," Foltz wrote of her hope that someday "an inquisitive biographer" would use her scrapbooks and papers to "write the history of the first woman to practice law on the Pacific Coast. Modesty should hardly prevent me from suggesting that my name must necessarily 'go over the top'."

I am that "inquisitive biographer," eager to revive her fame, and to find in her life an example for generations of lawyers, and women, and women lawyers. The task is complicated, however, because Foltz did not take the steps necessary to fulfill her yearning for immortality. Although she spoke of devoting the last years of her life to an autobiography, she never published it, and her papers were apparently discarded at her death. Her biography thus depends upon the public record, which consists of her own publications, newspaper accounts, the papers of contemporaries, legal documents and biographical indexes. Also, Clara Foltz always moved to the action, so that her story is found, for example, in histories of the Western suffrage campaigns, the development of the California oil industry, and Progressive era politics.

In this essay, I offer a sample of how I intend to write about the life of Clara Shortridge Foltz from the public sources. Taking a central event in her life, I can construct with some certainty its outer dimensions: that it occurred, when and how. But I would like also to reconstruct its meaning for her and perhaps for us, and that is more problematic. The event being constructed and reconstructed is her divorce from Jeremiah Foltz in 1879.

An immediate obstacle to the task is that Clara Foltz did some reconstructing of her own. As early as 1878, and continuously from 1885 on, she referred to herself as a widow, though Jeremiah was very much alive. She did not drape her story in simple black but added frills, making it one "of her romantic marriage at fifteen, of her widowhood when scarcely out of her teens." And she proclaimed that "it was to enable [women] in some degree to protect themselves and their children when the shadow of death had fallen upon the head of the household that formed the nucleus of my determination to open the way for women in the profession of law in California".

Foltz's reconstruction was quite successful. Almost all newspaper articles and biographical entries in her lifetime, as well as *The New York Times* obituary, record her as a widow. But in the basement of the San Jose courthouse are the handwritten pleadings in *Foltz v. Foltz*, which reveal that she had married in 1864 in Iowa and was divorced fifteen years later when she was thirty. There were five children ranging in-age from thirteen to three years old, "who all have been *for the last two years* and are now under the sole custody and control of the plaintiff."

The two years, 1877 to 1879, were the same ones in which Clara Foltz turned from obscure housewife and mother into the renowned "Portia of the Pacific." Is there a connection between her entry into the legal profession and her divorce? Self-presentation as a widow prevented people from thinking that her decision to be a lawyer had destroyed her marriage. The question, of course, is whether it did. We are thrown upon the public record for the answer.

From a few newspaper interviews published early in her career, when Foltz spoke about her marriage and even mentioned her divorce, we learn that Jeremiah Foltz, a young German farmer, eloped with Clara Shortridge, whose parents did not approve of the match. One story recounts that "when she had come to realize the gravity of her course, cherishing as she did the most childlike devotion to her parents, she resolved to bend all the energies of her young being to the promotion of marital happiness, not so much for her own sake, as for that of her father and mother."

In lectures and interviews, Foltz often told of her very early ambitions to be a lawyer, but "as she drifted into young ladyhood, her ideas became more romantic, and her dreams were not of oratory, or fame, or political recognition. With a purely feminine ideal, she dreamed of a handsome noble husband, who would cherish her and keep her sheltered from the unknown world in a happy little home."

"In the springtime of married life," Clara later wrote, husband and wife "fly to each other's sides like steel to magnet." But in her own case ardor quickly faded:

The life of the child-wife was a troubled one. Upon an Iowa farm, the greater part of her time which could be spared from the cares of maternity was devoted to manual labor, necessitated by family needs. Her husband removing to Portland, Oregon, she rejoined him there in January, 1872, with a babe of nine weeks. She found him clerking at starvation wages, and immediately went to making dresses and keeping boarders. She had to bear the entire burden of her own and her children's mainte-

nance, and barely managed to do so. Her husband coming to California, she again followed.¹¹

Not only Clara, but also her parents and four brothers, followed Jeremiah to Oregon and then to California. We do not know why Jeremiah Foltz moved to San Jose, California; perhaps he was drawn by the large German community there. Nor do we know what he made of his wife's entire family's joining them. Whatever he made of it, the presence of her family enabled Clara Foltz to do more than keep house, raise her children and augment their income in traditional ways. She later credited her father with encouraging her to study law, and her mother assumed much of the child care while Foltz was busy doing things women did not do.

A few years after the divorce, Clara Foltz described her marriage as a struggle to "maintain not only the little ones that came so fast, but also the man who should have stood between her and the great unknown world." In her own and others' later accounts, the husband drops out entirely. Thus a friend recommending her to the governor for an appointment in 1891 wrote of a woman alone seizing on law study in desperation:

When I first met Mrs. Foltz she was a dressmaker . . . working her life out to support herself and her little family. Recognizing the futility of such a struggle against the growing needs of her children [he says nothing of the growing number] she determined to fit herself for a more remunerative calling and so devoted herself to the study of law with that end in view. ¹³

Jeremiah Foltz was an unsuccessful provider. He was also probably an unfaithful husband. Within two weeks of the divorce decree, he was remarried to a woman he had met in Oregon, to whom he apparently made frequent visits during 1878-79. The divorce papers state not only that the five children were in the sole custody of their mother during this period, but also recount, in the common yet poignant pleading of the time, that as of July 1879, and "for more than a year last past, defendant has willfully failed and neglected to provide plaintiff with the common necessaries of life" and "that she and her said children would have gone hungry, homeless, unclothed and destitute had it not been for plaintiff's personal exertions and the assistance of her friends and relations."

"Plaintiff's personal exertions" during this period while her marriage was falling apart were extraordinary. First, she read law with a San Jose attorney; realizing that even if she were admitted to the Bar she would be unable to practice, she prevailed on a local state senator to introduce the Woman Lawyer's Bill, which she drafted herself. The bill provided that any person of good moral character might be admitted to the bar, eliminating the prior restriction to "white males." Clara Foltz went to Sacramento, lobbied the bill through, and then became, in September 1878, the first woman lawyer in the state.

Foltz and her friend, Laura DeForce Gordon, the second woman lawyer in California, decided that formal education would enhance their legal careers. In January 1879, they tried to enter Hastings College of the Law, California's first law school. When they were denied admission because they were women, they brought suit. As a direct result of the women's case and their other efforts, the California constitutional convention of 1879 enacted two clauses that were unprecedented in the history of American organic law: one provided access for women to all departments of the state university and the other that "No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession."

Aided by the constitutional provisions whose passage they had spearheaded, Foltz and Gordon won their case against Hastings in the trial court. Foltz then joined the bar of the California Supreme Court and successfully argued the Hastings appeal.¹⁵ As with her admission to the bar, there was nationwide publicity.

The measure of Foltz's early achievement was taken a few years later:

[I]t was genius only that could step from cradleside into the ranks of one of the profoundest professions and without education or learning, burdened with the cares of a large family and against the prejudice of sex, rise in six short years to the position of a first rate lawyer in a metropolitan city.¹⁶

The spectacular successes that opened her career all occurred while Foltz's marriage was deteriorating, making it hard for her to counter the constant contention that women could and should not be both lawyers and wives. In the grip of a peculiarly male hysteria, her opponents urged that if women were lawyers the institutions of marriage and home would be destroyed. Foltz had, moreover, to contend with the formidable U.S. Supreme Court precedent denying Myra Bradwell of Illinois the privilege of practicing law, and in a concurring opinion observing that the "harmony of. . . the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband."

Such sentiments defeated Myra Bradwell even though her husband was at her side encouraging her to practice law. It is not surprising that Clara Foltz decided as her career rose and her marriage declined, to present herself as a widow. A widow left with five children to support, who has already tried traditional women's work, does not choose, but is forced into, man's sphere. Her story as she told it to the *New York Times* in 1897 was that she "was left a window while she was still young with five children to support. She bravely declined offers of aid from her relatives and declared her intention to study law." 19

There is evidence in the public record that she did not lightly don widow's weeds, but made at least one major effort to save her marriage. In February 1878, Clara Foltz left California while the Woman Lawyer's Bill was pending in the legislature in order to see Jeremiah, who was in Portland on one of his frequent and extended trips. An Oregon paper reported that she planned to return and practice law there—surely an optimistic fantasy about re-uniting with Jeremiah since she would have faced anew in Oregon all the obstacles to joining the bar that she had not yet overcome in California. ²¹

She said that she wanted the marriage to survive, and perhaps she meant it. In one of her lady-lawyer interviews, given before the final break, she maintained:

A great many women have consulted me in regard to getting a divorce. They naturally come to me when in trouble of that kind. I always try to discourage the pursuit and persuade them to go back and give the husband another trial and see if it isn't possible to get along without separation. I deem the marriage relation too high and holy to be broken except for the very gravest of causes.²²

Jeremiah Foltz, too, may have made at least one effort to prevent the final split. He was back in San Jose early in 1879, and a suffrage friend wrote to Laura Gordon: "I am sorry to hear that Mrs. Foltz's husband is here. . . . She will rue the day that she goes back to him as his submissive slave—for what does he care about woman's freedom or personal liberty?" ²³

The timing of Jeremiah's return was not good for re-establishing a typical nineteenth-century household. Clara Foltz was in the midst of her suit against Hastings, and had actually moved for a few months to San Francisco, taking the older children with her. The press was following her every move in the suit; among the numerous articles appeared an item in the *Sacramento Record Union* that is summary and portent of the Foltz marriage. It is a letter on the front page from an unnamed "Oregon correspondent," with a Portland dateline:

Seven or eight years ago a young woman with four children already under her wings came to Oregon in search of her husband. She was twenty years of age at that time, and was very self-possessed, besides being rather attractive. Her husband was clerking in a store here [and was unpopular]. The wife proved to be energetic and rather capable. She was a ready advocate of woman suffrage. *The husband was not of much force and whatever became of himI cannot tell*. I see that the woman, Mrs. Carrie S. Foltz, has been admitted to the bar as a practicing attorney in your State. She has no timidity or shrinking delicacy to prevent her success in that profession and, on the contrary, is a ready talker, sharp and quick witted.²⁴

Clara did not return to Jeremiah, or he to her in March 1879. Instead he left San Jose to move permanently to Portland, and she filed divorce papers. ²⁵ Her emotional state at this time was apparent. Soon after Jeremiah left, a friend wrote, "I am a little troubled about our beloved Clara, others will love her, whose love will not blight. . . . Well be it if our gentle, magnetic friend is poised against it a11."

Three years after the divorce, Clara Foltz explained that "incompatibilities of temperament had rendered their conjugal life unhappy." Forty years later she elaborated:

I believe that most of the heart-breaking of married life are due to the lack of a common center of thought between husband and wife. . . . [A]s years go on indifference creeps over the pleasant surface of their lives, the tender courtesies begin to be forgotten. She is either engrossed with household cares or the gayeties of fashion, and he has a field of thought entirely foreign to either one or the other.

... The society of each becomes irksome to the other and they long for different conditions all because there is not common ground between them. If husband and wife would blend in the harmony of a complete union they must pursue some common theme.²⁸

Clara Foltz wrote abstractly, yet the account seems close to her own story, except that it was neither the "gayeties of fashion" nor "household cares" that engrossed her. Rather, she was occupied with becoming California's "first woman."

This is the reconstruction from the available sources of Clara Foltz's marriage and divorce. None of the evidence shows directly that her grand personal ambitions caused the estrangement. Jeremiah might have been an inadequate husband even to a woman who remained in the domestic sphere. Or perhaps none but the most unusual nineteenth-century man could have tolerated living in the shadow of Clara's splendid entrance into the legal profession. Finally, it is possible that her decision to be a lawyer occurred when the mar-

riage was already troubled, and was only one factor among many that drove them apart. Foltz herself implied that divorce is the end of a process of degeneration: "the civil court only gives legal sanction to a decree that nature has already entered in the hearts."

I believe, however, that there is a causal connection between the collapse-of her marriage and her choice of a career-that Clara Foltz's story is not simply the old tale of desertion and infidelity. Jeremiah Foltz had married a girl of fifteen. Fifteen years later he-whose name never appeared in the newspapers—found himself with a famous wife. She was a person of stunning energy, force, ambition; he was barely able to make a living. As long as she supplemented the family income by sewing and taking in boarders, the marriage survived. Once she took the dramatic and much-publicized actions that launched her career, Jeremiah defected. And Clara Foltz argued for the rest of her life that women could be both laudable lawyers and examplary wives. The constancy of the theme is telling, since she had removed herself from criticism on this point by claiming widowhood. Always, she sounded as if responding to unseen accusers:

But we are told that if women go into the legal profession, it will destroy our homes. Convince me of that and I will assign my cases before sunrise and abandon the profession forever; for I realize the supreme importance of the institution of home and I will not by example or by precept do anything which will in the remotest degree injure that portion of our social fabric, on which rests the people's happiness and our country's destiny. Think you that knowledge of law will destroy our homes? That is not the legitimate effect of knowledge of any kind. On the contrary, a knowledge of the law of our land will make women better mothers, better wives and better citizens.³⁰

Clara Foltz never had the opportunity to demonstrate how a knowledge of the law would make her a better wife, nor did she ever openly acknowledge a conflict between marriage-family-home and career. Rather, she strove, usually successfully, to present herself as in this typical press portrait: "Here [in "her beautiful home . . . in San Francisco"] she lives, a standing demonstration that a woman may be a lawyer, an orator, may take an active and earnest interest in her country and the welfare of her people, and not for a moment lose the graces, or sweetness or beauty that crowns and glorifies woman in the home." 31

Her public treatment of her failed marriage accords with Clara Foltz's character. Romantically, she conceived the death of love as physical, leaving her a widow. Practically, this self-presentation protected her from the recognition by her public, and perhaps even by herself, that she was unable to play devoted wife to a limited man.

Disjunction-between what she said and did, what she aspired to and achieved, and even between what she most fervently proclaimed at one point and another-is typical in Foltz's life. In her speeches and writing, she pledges allegiance to the idea of woman at the center of the home sphere: noble, serene, learned, raising manly sons and virtuous daughters. Yet she saw her own existence as an unending battle on far fields. At the same time, she insisted that her life was exemplary for the "new woman," never hinting at how she or others could be at once in the home and on the field.

Because of her ambivalence about what women should do and be, and because she tried so many things professionally and personally, her life and thought have a fractured, sometimes even frantic quality that contrasts with the lives of the archetypal figures in the women's movement. She had no overarching sense of mission so pure that it overrode all personal ambition. Nor in Clara Foltz was there some unifying characteristic serving to direct (or now to explain) her thought and action-such as Susan B. Anthony's single-mindedness; Elizabeth Cady Stanton's driving intellect; Carrie Chapman Catt's judgment; Abigail Scott Duniway's certitude. Clara Foltz's life was confused, her vision clouded, her name a misnomer.

The incoherence of her life, as much as the missing papers, may explain her failure before now to attract a biographer. Paradoxically, perhaps, the unheroic aspects of her story add to her appeal for a modern chronicler. Refusing to admit either hard choices or mistakes, Clara Foltz pursued professional achievement and recognition, power and wealth, a deeply conceived maternal role, a passionate and beauty-filled life. The degree of confusion and conflict that resulted was unusual in the late nineteenth century; it is familiar today. For the end of the twentieth century, Clara Shortridge Foltz is, at last, a representative heroine.

STANFORD LAW SCHOOL

NOTES

1. Clara Shortridge Foltz, "The Struggles and Triumphs of a Woman Lawyer," *The New American Woman*, March 1918 [hereafter Struggles.]

With its focus on her early career, *Struggles* is a major source for this article. Its value, however, is somewhat diminished because the columns bear the disorganized mark of haste. Many of them were written late at night, when Foltz was tired and sad. Others are, as she acknowledged, "embroidered with flow-

- ers of fancy," as well as embellished with pieces of past lectures and bits of poetry. Nevertheless, used with caution and subjected to factual confirmation, *Struggles* is an invaluable reference, both for her feelings and for her actions during the years 1878-79.
- 2. In the only extensive modern piece about Clara Foltz, the authors cite a telephone interview with the housekeeper of Virginia Foltz Catron, the only child to survive Foltz. The housekeeper asserted that after Foltz's death, Virginia sold her mother's furniture and destroyed her papers because "Virginia was never a saver." Schwartz, Brandt and Milrod, "Clara Shortridge Foltz: Pioneer in the Law," 27 Hastings Law Review, 545, no. 150 (1976). This is an excellent article that saved Foltz from the historical oblivion into which she had fallen.

In March 1988, investigators in my employ interviewed a man who was Foltz's neighbor in Los Angeles, and who helped to clean out the house when she died in 1934. He reported that there was a big auction of her furniture and that "tons of papers," including letters, pictures, scrapbooks, and portfolios of oil stocks, were "chucked out."

Foltz was a publisher four times. In 1887-88, she put out a daily newspaper, *The* San Diego Bee. It offers a wealth of information about her activities and interests, and reflects her thought in editorials.

In 1898-99, she practiced in Denver, as well as New York, and helped start a weekly magazine, *The Mecca* (because Colorado, having accorded women suffrage in 1893 was a "mecca for all civilized men and women"). My research to date indicates that she did not stay with this enterprise long enough for it to be a major source of information about her.

Returning to San Francisco around the turn of the century, Foltz became an oil and gas lawyer and published the monthly magazine *Oil Fields and Furnaces*. Amidst advertisements and engineering reports of promising oil fields are lively accounts of Foltz's visits to sites, and her opinions on other people in the industry.

Finally, she published *The New American Woman* in Los Angeles from 1916-1918. It started as a newsletter to her friends but almost immediately grew into a monthly magazine, crammed with Foltz's opinions on everything from Wilson's war policies to the future of moving pictures.

- 4. Newspapers are a major source of biographical information about Clara Foltz. There were hundreds of newspapers in her day and she was a famous person who appeared in print regularly. The nineteenth-century newspapers did not espouse objectivity, or demarcate reporting and commentary. Many insights, into the newswriters', the public's and Foltz's own assessment of events can be found in the numerous stories about her activities.
- 5. Many of Foltz's friends, colleagues, associates, and allies were well-documented people. Because she was a lawyer, court papers, bar listings and biographical indexes, transcripts of trials and reported appellate opinions record factual data and enable an assessment of her professional reputation and the nature and quality of her practice.
- 6. "A Sketch of Clara Shortridge Foltz," West Coast Magazine 13 (Oct. 1912), pp. 43-44.
- 7. Struggles (August 1916).
- 8. San Jose Mercury, (reprinted from the San Francisco Post, Aug. 20, 1882), p. 5.

- 9. Ella Sterling Cummins, "Clara Shortridge Foltz," San Franciscan Magazine (ca. 1883). A reprint of the Cummins article, undated and without a source for the reprint, is in a "Foltz Biographical" file at the California State Library, Sacramento. The ages of her children, mentioned in the article, place it at about 1883. Cummins, one of the leading women journalists of the West Coast, seems to have inspired Foltz's confidence and reports details of her marriage and divorce that are not included in later interviews and official biographical entries. Parts of the Cummins story about Foltz were widely reprinted in newspapers. See e.g., San Jose Mercury, Oct. 15, 1884 at 2.
- Struggles (August 1916). For the full context of the quotation, see text at footnote 28.
- 11. Cummins, n. 9.
- 12. Ibid.
- 13. Wells Drury to Governor H. H. Markham, April 10, 1891 (on file in the archives of the California Secretary of State, Sacramento).
- California Constitution, Article 9, Section 9 (education clause); Article 20, Section 18 (employment clause) 1879.
- 15. Foltz v. Hoge, 54 Cal. Rep. 28 (1879).
- 16. San Jose Times Mercury, January 1, 1885, p. 1.
- 17. Bradwell v. Illinois, 83 U.S. (16 Wall) 130 (1873) (Justice Bradley concurring).
- 18. There are explanations, other than giving a more acceptable rationale for her career, for her lie about being a widow. Perhaps she grew to dislike the position of deserted wife and felt that the title of widow was more dignified, or required less explanation. Perhaps she lied for social status reasons, although divorce was not as socially unacceptable in the West as elsewhere in the country.
- "A Prominent Woman Lawyer of New York," The New Times Illustrated Magazine, (July 11, 1897) p. 4.
- 20. Sun Jose Mercury, (March 14, 1878) p. 4. "Mrs. Clara Foltz and her daughter, Trella E." went to Oregon "to visit their husband and father at Portland, and Mrs. Foltz to attend the Oregon State Woman Suffrage Convention." She also "addressed large audiences in Albany, Salem. and Portland; and the press generally speak in the highest terms of her efforts in behalf of the cause of woman's enfranchisement."
 - The City Directory of San Jose for 1878 lists Clara Foltz as a widow. She may have assumed this designation after her trip to Portland, although she did not file for divorce until July 1879.
- 21. New Northwest (March 1, 1878) p. 1. "We learn that she expects to return to Oregon in the Autumn to practice her chosen profession."
- 22. "Mrs. Foltz as a Lawyer," *New Northwest* (reprinted in part from the *San Francisco Chronicle*, Feb. 6, 1879) p. 2.
- 23. Sarah Wallis to Laura Gordon (March 7, 1879), Papers of Laura DeForce Gordon (Stein collection) Bancroft Library, University of California at Berkeley. Wallis also said of Jeremiah Foltz: "he will be no benefit to her in her noble efforts to place her sex upon an equal plane with men politically and civilly."
- 24. "Correspondence of the Record Union," *Sacramento Record Union*, Feb. 25, 1879, p. 1, emphasis supplied.
- 25. "Finding her burdens heavier than she could bear, [Clara Foltz] applied for and

received a divorce and the custody of her children. In two weeks time, Mr. Foltz had married again." Cummins, n. 9.

- 26. Josephine Woolcott to Laura Gordon (April 19, 1879), Gordon papers, n. 23.
- 27. San Francisco Post, n. 8.
- 28. Struggles (August 1916).
- New York World, (ca. 1897). (This clipping was in an undated batch of newspaper clippings on Foltz in the San Diego Law Library.)
- 30. Struggles (August 1916).
- 31. "Women at the Bar: Clara Foltz of San Francisco," *The Students Helper*, 1 (Oct. 1893) pp. 263-265.

Repeatedly, press accounts and interviews stress Foltz's feminine virtues: her home's tasteful decor, her beautiful dress, her womanly manner. This happens so often that she, rather than many different interviewers, must have placed this emphasis. The story quoted in the text was written in 1893, just after she returned from speaking at the Chicago Worlds Fair on the subject of Public Defenders. The article concludes:

But, after all, it is as hostess that Mrs. Foltz is at her best, which is demonstrated to all who call on her at her beautiful home on Van Ness Avenue, in San Francisco. Here, with her mother and two daughters still at home, she lives, a standing demonstration that a woman may be a lawyer, an orator, may take an active and earnest interest in her country and the welfare of her people, and not for a moment lose the graces, or sweetness, or beauty that crowns and glorifies woman in the home.

*The research assistance of Stanford law students Judith Carrithers, Lisa Lindalef, and Karen Zobell was made possible by a bequest from the Dorothy Redwine estate.