

# SHE BLAZED THE TRAIL

Clara Foltz opened a major door for women in 1878, when she became the first female member of the State Bar.

By Barbara Babcock  
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**P**hoebie Yang from Arkansas, 2L at Stanford, was telling me recently about her summer job at the White House. One high point was introducing the attorney general, who had just been named in a national poll as second most popular American lawyer of all time. First was Abraham Lincoln, then Janet Reno.

On the wall behind Phoebe and me was a portrait of Clara Shortridge Foltz, the first woman lawyer in the West, as she looked in 1878 when she joined the California Bar. I imagined her listening in amazement and satisfaction to an Asian woman at an elite California law school talk to the original female professor at that school about the phenomenal first woman attorney general of the United States.

Yet as much as Clara Foltz would approve the scene I have just described, what would please her most is the election of Margaret Morrow as president of the California Bar. Acceptance into the governance, the genre of the profession, was what Foltz sought for 50 years of active practice and never came close to achieving. Early on, Clara Foltz learned that first is not always foremost.

She could read law as an apprentice, but not in the fancy, uptown firm of San Jose's pre-eminent practitioner; she could pass a rigorous examination, but not be admitted to California's first law school; she could become a great trial attorney and still face the constant charge that her very presence in the courtroom would skew the processes of justice.

As she won grudging admission to the outward forms, but was denied access to the inner reaches of the profession, Clara Foltz had no one to look back to, no one who had been there first to lay the groundwork.

She became determined to make things easier for the women who followed her, and would deeply appreciate Margaret Morrow's words soon after her election: "This is a victory to be shared by all those women who came before and made it possible."

Let us take a moment here to celebrate the first of those women who came before, as well as the profession's progress.

When Margaret Morrow heads the organized Bar of the largest state, it is hard to believe how women struggled to become lawyers at all. Access to all the professions was one of the early goals of the women's movement, but though medicine and teaching opened quickly, the law proved second only to the ministry in its resistance to women. Opponents urged that law was too subtle, too profound and too public a profession for women.

Both sides argued and deeply believed that once women became lawyers, they would exert all on justice, and then be judges, and finally win fame, freedom and power.

Clara Foltz reached the high point of her fame just a hundred years ago, in 1893, when she spoke at the World's Fair in Chicago as the representative of the California Bar. Her very presence on the stage as a legal expert was a novelty, but even more unusual was what she said.

Drawing on her own early experience when the only clients desperate enough to seek out a woman lawyer were poor (innocent, she said) people accused of crime, she called for a new system of public defenders.

She said, with the grand gestures and intense style that characterized her speeches, that instead of putting all its money into training prosecutors who counted their success in the number, not the justice, of their convictions, the government should even the playing field and pay for the defense as well.

It was a radical idea then, and is today too, for that matter. Foltz wrote about it in law reviews, lobbied for it in 30 states, and drafted the legislation that established the first such office in California.

How she was chosen to represent the California Bar at the World's Fair is lost to history.

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ry, but I would bet that she created the opportunity herself, and hustled to get it, using all her force and charm in the process. It was, at that time, the only way to be first. Speaking at the World's Fair on behalf of the California Bar was a long, long road from her initial dealings with the establishment of the legal profession. That happened when she wanted to be the first woman to attend California's first law school, Hastings College of the Law. It is Clara Foltz's paradigmatic pioneering lawyer story — one that she always called "her greatest case."

Not many law schools in the country were admitting women in 1878, when Clara Foltz attempted matriculation at Hastings. When she registered in January, for the second term of the school's existence, Foltz was 30 years old, the mother of five children under

12 years, and a few months earlier had become the first woman lawyer in California. In the school's early days, it was common for lawyers already in practice to take advantage of the new school to study formally.

Clara Foltz's desire for law study was unusual, however, because it involved grave personal sacrifice. At the moment of her application, her husband, on the brink of desertion, was in Oregon visiting a woman who was later to become the second Mrs. Foltz. Having tried already to support her family by sewing, taking in boarders, even lecturing for money, she knew that law practice was her only hope for keeping her children together and with her in the fearful economic depression of the '70s.

Yet first she wanted to learn more than her harried reading of law by "a coal lamp

amidst the cries of her populous nursery," had afforded.

"Law involved the interests and welfare of other people, no one should practice without an ample knowledge of its principles," she said at the time she applied to Hastings.

For three days after she registered without incident, Foltz sat far in the back of a hall filled with young men listening to the great Professor Pomerooy. Even as she attended, though, she felt that she was an outsider, watching, she later wrote, as "the students hurried up the steps, their faces aglow with enthusiasm — all the world opened its arms to them, law schools were built and endowed for men. Every opportunity for service to the State, for personal achievement was theirs."

After only three days, there came a "Dear Madam" letter from the Registrar: "At a meeting of the Directors it was resolved not to admit women to the law school."

This was the only formal explanation she ever received. Informally, Seranus Clinton Hastings told her that the rustling of women's skirts would disturb the men students.

The rejection was the more bitter because it was unexpected. Only the previous spring, Foltz with her friend Laura Gordon (the second woman lawyer in California) had won the right to practice law by their personal lobbying of the Woman Lawyer's Bill. Foltz, who had been reading law in the offices of her father, was the first to use the new bill. Amid nationwide publicity dubbing her the "Portia of the Pacific," she joined the Bar in September, 1878. When she registered at Hastings, it never occurred to her that women might be allowed to practice, but not learn, the law.

The message Clara Foltz received from the Hastings rejection was intended: A few odd women might scramble into the profession but they could not participate in the higher reaches, could not theorize, could not teach, could not join the profession's aristocracy. When the Hastings directors, the most eminent lawyers in Northern California, responded to neither pleas nor reasoning, Foltz sued them in the San Francisco Superior Court.

Rich and respected leaders of the establishment, the Hastings directors were not model litigants in the Foltz case. First they delayed, knowing that each passing day of the term would turn to ashes any eventual victory for her. The trial judge, a former law partner of one of the directors, granted every continuance and also refused to accept Foltz's bar admission certificate so that she had to take a second examination. But he ruled in her favor, though he took two weeks

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to issue his decision. It was March 5. The directors paused, and then despite the fact that Hastings himself said he thought the women were right on the law, they appealed.

Not until December 1879, long after the term, and long after Foltz had by necessity become deeply engaged in practice, did she argue the case in the California Supreme Court, after taking her third bar examination to be admitted there.

Again, she won decisively and the doors of Hastings were finally opened to her, but it was too late. She never had time again to attend law school, and never won any degree until 1901 when, at the urging of its women law students, Hastings granted her the J.D. posthumously.

Though gaining nothing for herself in her greatest case, Foltz paved the way for other women, and she wrote in her exuberant style to the first woman who graduated from Hastings:

You scored one for your sex... As a sort of mother of the institution I rejoice... that of the first public graduating exercise, a bright and beautiful young girl comes off with the honors of the class.

This generosity of spirit lives today in the responses of those women who went before Margaret Morrow more recently than Clara Foltz. I think particularly of the quotations in the Daily Journal from Judy Johnson and Catherine Sprinkles, earlier contenders for first woman president when Morrow was elected.

Margaret Morrow's election marks a place on a gender time-line. At one end are Clara Foltz and the other early women lawyers for whom gender was an obstacle to true professional achievement. Then there came a very brief period when it counted in woman's favor. Now, and Ms. Morrow's election is a harbinger, we may be entering the promised day when we pick our leaders for their qualities alone, and whether they are men or whether they are women makes no difference in the initial choice.



**PIONEER** — Stanford law professor Barbara Babcock, at left, recounts how Clara Shortridge Foltz, photo at right, became the first female member of the California State Bar in 1878 and made her mark in the law despite the opposition of the male legal establishment and the directors of Hastings College of the Law.



## California Catches Up

California, more often than not a national trend-setter, especially on legal issues, is on its way to catching up with most other states in electing Margaret M. Morrow of Los Angeles as its first female president of the State Bar. Only a handful of states, mostly in the Deep South, have yet to elect a woman to serve as president of their mandatory state bar groups, according to an American Bar Association survey.

**■ Harvets:** Bar groups that already have had a woman hold their top leadership post are: Alaska, Arizona, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia.

**■ Have not:** The following state bar associations have not yet elected female bar presidents: Alabama, Arkansas, Georgia, Louisiana, Mississippi, Nebraska, North Carolina, North Dakota, Pennsylvania, South Dakota, Tennessee, Wyoming.