University of Kansas Law Review, Volume 49, No. 4, p. 719 - 731 (May 2001).

The University of Kansas Law Review

Foreword: A Real Revolution

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On the eve of this symposium, the lead story in the *New York Times* announced that by fall 2002, women would probably be a majority of the nation's law students.[1] It was a slow news day that brought this event to page one; yet even so, it was a peculiarly empty piece. Why was it important that women are becoming lawyers in unparalleled numbers? What difference does, or could, or should, it make to women, to the profession, to the country? The long article never really said.

That question is the one behind this symposium, and at the heart of an outpouring of scholarly and popular publications on the phenomenon of women lawyers.[2] The methodologies, approaches, and perspectives of

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* Judge John Crown Professor of Law, Stanford Law School. Special thanks to the staff of the Robert Crown Library (especially Paul Lomio and Erika Wayne) for their enthusiasm and support. Thanks also to Melinda Evans, Stanford 2001, for her assistance with the course and everything else.

1. Jonathan D. Glater, *Women Are Close to Being Majority of Law Students*, N.Y. TIMES, Mar. 26, 2001, at A1.

2. For numerous examples of scholarly attention to women lawyers, see Barbara Allen Babcock, *Feminist Lawyers*, 50 STAN. L. REV. 1689, 1706-08 nn.84-88 (1998) [hereinafter *Feminist Lawyers*] (reviewing VIRGINIA DRACHMAN, SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY (1998)). *See also* ABA COMM'N ON WOMEN IN THE PROFESSION, THE UNFINISHED AGENDA: WOMEN AND THE LEGAL PROFESSION (2001). In addition, the following publications illustrate how women's issues have continued to receive attention in the last few years.

For articles on the goals, accomplishments, and challenges of gender task forces, see Maryann Jones, *And Miles to Go Before I Sleep: The Road to Gender Equity in the California Legal Profession*, 34 U.S.F. L. REV. 1 (1999) (outlining the historical and contemporary problems of gender bias in California law schools, firms, and courtrooms); *Commentaries on Bias in the Federal Courts*, 32 U. RICH. L. REV. 645 (1998) (assembling essays from gender bias task forces of eleven federal circuits); Lynn Hecht Schafran, *Will Inquiry Produce Action? Studying the Effects of Gender in the Federal Courts*, 32 U. RICH. L. REV. 615 (1998) (noting how various circuits have responded to evidence of gender discrimination); Myra C. Selby, *Examining Race and Gender Bias in the Courts: A Legacy of Indifference or Opportunity?*, 32 IND. L. REV. 1167 (1999) (summarizing the

the articles in this issue illustrate the variety of the discourse. The first is by "our sociologist," Professor Cynthia Fuchs Epstein,[3] who has earned this title by her path-breaking studies of women lawyers. When she started in the 1960s, she had about seven thousand subjects; today, she maps the progress of 260,000 women at the bar.

Karen Clanton discusses a unique publication, *Dear Sisters, Dear Daughters: Words of Wisdom from Multicultural Women Attorneys Who've Been There and Done That*, which began as a simple idea to find out the personal stories of multicultural woman attorneys who had been practicing for a while. Author guidelines and a survey were posted online, and 180 women responded to the survey.[4] The stories and statistics she presents are powerful evidence of both the difference and the sameness of women's experiences as lawyers. Professor Nancy Levit writes a political statement rather than the usual law review piece—what I would call, as a positive appellation, advocacy scholarship.[5] She looks

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findings of various state court task forces on race and gender bias and calling for a study of bias in Indiana courts).

Recent conferences for women in the law include the Annual Feminist Legal Theory Lecture Series of the Washington College of Law's Gender, Work & Family Project, inaugurated in 2000 to create and sustain an intellectual community for feminist scholarship and activism. Symposium, *Gender, Work & Family Project Inaugural Feminist Legal Theory Lecture*, 8 AM. U. J. GENDER SOC. POL'Y & L. 1 (2000); *see also Panel Three: New Directions in Feminist Legal Theory*, 49 AM. U. L. REV. 943 (2000) (discussing work-family struggles imposed on many women lawyers early in their careers and arguing that the market's constructed notions of an "ideal worker" create problematic caretaker issues particularly relevant to many women lawyers). *See generally* JOAN WILLIAMS, UNBENDING GENDER: WHY FAMILY AND WORK CONFLICT AND WHAT TO DO ABOUT IT (2000) (offering a broad discussion of caretaker issues for women and providing a springboard for the Washington College of Law symposium of the same name).

Commentators also continue to reconstruct the traditional legal curriculum in order to account for gender issues. *See, e.g.*, Andrew E. Taslitz, *What Feminism Has to Offer Evidence Law*, 28 SW. U. L. REV. 171 (1999) (viewing evidence law as a set of gender-coded social practices as well as a set of legal rules); Debora L. Threedy, *Feminists & Contract Doctrine*, 32 IND. L. REV. 1247 (1999) (challenging traditional notions of market transactions and examining how gender influences freedom of contract). For broader perspectives, see JUDITH A. BAER, OUR LIVES BEFORE THE LAW: CONSTRUCTING A FEMINIST JURISPRUDENCE (1998) (outlining what she views as errors of commission and omission in modern feminist jurisprudence); HILAIRE BARNETT, INTRODUCTION TO FEMINIST JURISPRUDENCE (1998) (surveying feminist legal theory from Plato to post-modernism); Cynthia Grant Bowman & Elizabeth M. Schneider, *Feminist Legal Theory, Feminist Lawmaking, and the Legal Profession*, 67 FORDHAM L. REV. 249 (1998) (studying the impact of feminist legal theory on the way substantive law is formed and the way law is practiced).

3. Cynthia Fuchs Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors*, 49 U. KAN. L. REV. 733 (2001).

4. Karen Clanton, *Glass Ceilings and Sticky Floors: Minority Women in the Legal Profession*, 49 U. KAN. L. REV. 761 (2001); *see also* DEAR SISTERS, DEAR DAUGHTERS: WORDS OF WISDOM FROM MULTICULTURAL WOMEN ATTORNEYS WHO'VE BEEN THERE AND DONE THAT (Karen Clanton ed., 2000).

5. Nancy Levit, *Keeping Feminism in Its Place: Sex Segregation and the Domestication of Female Academics*, 49 U. KAN. L. REV. 775 (2001).

behind the striking increase in the number of women law professors to show that in fact they are seldom at the top of the hierarchical world of legal academia, and examines why this may be so.

A striking stylistic aspect of Professor Levit's piece is also present in Professor Ann Bartow's: the use of personal anecdote and the first-person pronoun. I (intentionally "I") believe, by the way, that women law professors are mainly responsible for bringing this sometimes superior vantage point into general scholarly use. Professor Bartow reflects on the changes in women's experience in the law a decade after she was involved in the study that resulted in the book, *Becoming Gentlemen: Women, Law School, and Institutional Change*.[6] Frustrated by the difficulty of knowing what is really happening, she calls for new ways to report and release data on gender issues.[7]

All of the pieces in this symposium grow from the astonishing change in the demographics of the legal profession. My own approach to the phenomenon is biographical/historical. I am writing and teaching about the pioneers in the field, and what we can make of our history. I offer a few pages about this work, as both introduction and background to the issues raised here.

I. THE PERSONAL AS POLITICAL

I have lived the changes in the legal profession that now make front-page news (albeit on a slow news day in a pointless story). In 1963, I graduated from Yale Law School without ever having had a woman teacher (of high or low status). Nor did I hear even a minute in class devoted to women's position in the legal profession, or indeed anywhere else.[8] We women were a tiny band—less than four percent of the nation's law students.[9] Upon graduation, we faced open and rank discrimination.

Judges of incandescent liberal credentials declared themselves uneasy about employing female clerks (they liked to work in their shirt-sleeves; to tell dirty jokes; to work late at night; to do all three of these things at once). Law firms were doubtful about our staying power and

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6. Lani Guinier, Michelle Fine, Jane Balin, Ann Bartow & Deborah Lee Stachel, *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, *in* LANI GUINIER ET AL., BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE 27 (1997).

7. Ann Bartow, *Still Not Behaving Like Gentlemen*, 49 U. KAN. L. REV. 809 (2001).

8. Ellen Ash Peters, now on the Supreme Court of Connecticut, was the first and sole woman law professor at Yale at the time, but she was on leave for much of my career there.

9. CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW 53 tbl. 3.1 (2d ed. 1993).

intellectual drive. Civil litigation was considered too demanding and criminal litigation too demeaning for women to engage in.

I managed to clerk, however, for the first federal judge to hire a woman law clerk (not I) and also the first to hire an African-American clerk. Judge Henry Edgerton was a senior judge on the United States Court of Appeals for the District of Columbia when I went to work for him. If I had had the choices open to a man with my record, I might have worked for an active, younger judge. That would have resulted in missing a major mentoring experience. I still live on what I learned from that great old man. There is a lesson here—about silver linings, perhaps.

After clerking, I practiced in a small private firm specializing in criminal defense for a few years, and then moved to a public agency providing indigent defense. Ultimately that agency became the Public Defender Service for the District of Columbia, and I became its first director. Note that this is not the usual career path for a law professor.[10]

In the sixties, like all good liberals, I was deeply sympathetic with the civil rights movement. Nevertheless, I was startled when the movement took on an added dimension. Women's rights became an issue, and suddenly women were flocking to law school. I now realize that this is what women do when they begin a new movement: they become lawyers.

The percentage of women students in law school rose from four to nearly twenty percent in less than a decade.[11] Women students flooded into law schools that were singularly unprepared to make them welcome, much less to teach them what they needed to know. Though virtually all law schools had accepted women students by the early twentieth century, they continued to discriminate against them in the higher realms of theory and practice. Many law schools had never hired a woman professor; none had any significant female presence. In 1972, I came to Stanford Law School as its first woman on the tenure track. For five years I was the only one, then one of two or three, as the percentage of women students continued to increase.[12]

In the Carter administration, I went to head up the Civil Division in the Department of Justice—a direct result of the President's campaign promise to place women in high positions. It was a heady experience, to

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10. *See* Barbara Allen Babcock, *Defending the Guilty*, 32 CLEV. ST. L. REV. 175 (1983-1984) (describing public defender experiences).

11. CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW 53 tbl.3.1 (2d ed. 1993).

12. *See* Barbara Allen Babcock, *Clara Shortridge Foltz: Constitution-Maker*, 66 IND. L.J. 849, 849-50 (1991) [hereinafter *Constitution-Maker*] (describing my experience in academia).

be one of a number of women in government, to be in effect the senior partner of one of the world's largest law firms. When I first came to Washington, I was often asked what it "felt like to get my job because I was a woman." I developed a stock answer: "It's far better than *not* getting it because I'm a woman." [13]

Today I teach on a Stanford faculty, almost a third women, all stars, led by a famous woman dean. Our women students, almost fifty percent of the total, will not face the sort of sex discrimination common only a little while ago. Women's issues are everywhere in the curriculum, and the law itself—both in doctrine and theory—has changed almost overnight (measured in legal time).

Not only are gender issues presented regularly in many courses on many subjects, but specialty courses still abound. The first such courses were often called, in an older and simpler day, *Women and the Law.* Now a glance down most law school catalogues reveals offerings that range from Sex Discrimination to Feminist Theory, from Sexual Harassment Law to Women's Legal History. At Stanford in the next academic year, we will have two courses on Gender, Law, and Public Policy, and I will teach a seminar entitled Women in the Legal Profession.

II. WOMEN'S LEGAL HISTORY/BIOGRAPHY PROJECT

Women in the Legal Profession is a course that grows out of my work on Clara Shortridge Foltz, the first woman lawyer on the West Coast, known as the "Portia of the Pacific." Each student chooses a biographical subject, a pioneer woman lawyer, and writes a chapter of her life. These are then posted on our Women's Legal History Biography Project Website ("the Website").[14] Also on the Website are other articles about pioneer women lawyers, including the main ones I have written about Clara Foltz along my biographical way.[15]

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13. Barbara Allen Babcock, *Defending the Government: Justice and the Civil Division*, 23 J. MARSHALL L. REV. 181, 183 (1990).

14. ROBERT CROWN LAW LIBRARY, STANFORD LAW SCHOOL, WOMEN'S LEGAL HISTORY BIOGRAPHY PROJECT, *at* http://www.stanford.edu/group/WLHP (last visited Apr. 28, 2001). This website features biographical chapters and archival information on hundreds of pioneering women lawyers in the United States.

15. *See* Barbara Allen Babcock, *Commentary*, 70 N.Y.U. L. REV. 707 (1995); Barbara Allen Babcock, *Clara Shortridge Foltz: "First Woman,"* 28 VAL. U. L. REV. 1231 (1994) [hereinafter *First Woman*]; Barbara Allen Babcock, *A Place in the Palladium: Women's Rights and Jury Service*, 61 U. CIN. L. REV. 1139 (1993) [hereinafter *Palladium*]; Barbara Allen Babcock, *Western Women Lawyers*, 45 STAN. L. REV. 2179 (1993); Barbara Allen Babcock, *Remarks on the Occasion of the*

The heart of the Website is the student chapters, which may be an introduction to a life, or cover some particular phase or event of a career. Each paper has a standard bibliography, and also a list of leads for further investigation. Later students in the course and visitors to the Website from everywhere may build directly and indirectly on the previous work. For example, take Belva Lockwood, the first woman to be a lawyer in the federal courts. On the Website, a visitor would find two student biographical chapters, one an introduction and overview of her public career as lawyer, suffragist, and peace leader.[16] A second student chapter deals with Lockwood's representation of and aid to Mormon women—who had the vote without being part of the suffrage movement after the Utah territorial legislature granted them the right.[17] In addition, there is a chapter by Professor Jill Norgren on Lockwood's practice in the U.S. Supreme Court, whose bar she joined in 1879: the first woman member.[18]

Compare the Website display of papers to what happened in the olden days (of a decade or so ago). Though occasionally a student might publish a paper, only professors saw most of the work; troves of research were buried in dusty files. The Website offers this original research to the world, and in a mode that can be easily indexed and rapidly searched. The collaborative design of the course might even be considered an example of feminist pedagogy, enabled by new technology.

There are two curious aspects to the course-cum-Website. First, after four years the amount of information on the Website has increased to the point where, in a post-modern move, the course has become its own text. I use the Website itself to instruct on methods and techniques of archival research and on the historical themes that emerge from the individual lives displayed here. Another curiosity is how quickly the course turns the students into Biographers (note the capital B). In the short span of a semester, they take on the full set of peculiar traits and

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Publication of Called from Within: Early Women Lawyers of Hawaii, 16 BIOGRAPHY 222 (1993); *Constitution-Maker, supra* note 12; Barbara Allen Babcock, *Reconstructing the Person: The Case of Clara Shortridge Foltz*, 12 BIOGRAPHY 5 (1989).

16. Frances A. Cook, *Belva Ann Lockwood: For Peace, Justice, and President*, *at* http://www.stanford.edu/group/WLHP/papers/lockwood.htm (May 13, 1997).

17. Melinda Evans, *Belva Lockwood and the Mormon Question*, *at* http://www.stanford.edu/group /WLHP/papers/Mevans_lockwood.pdf (Autumn 1999).

18. Jill Norgren, *Before It Was Merely Difficult: Belva Lockwood's Life in Law and Politics*, 23 J. SUP. CT. HIST. 1 (1999), *available at* http://www.stanford.edu/group/WLHP/articles/Bnorgren.pdf.

attitudes that set the biographer apart from the regular historian, or even the usual feminist legal scholar.

III. BIOGRAPHICAL ATTITUDES: BIOGRAPHICAL THEMES

One of these attitudes is a serious identification with the subject. Students pick someone they think they will like—the first woman lawyers in their own home states, for instance. This initial affinity turns quickly into admiration and affection. On the other hand, and again in keeping with biographic tradition, an occasional student writer grows to hate her subject. All the students agree, though, that entering the lives of these pioneers not only exposes the obstacles they faced, but also marks the progress we have made. In the examples and discussion below, I will draw upon my own biographical work, as well as the other material on the Website.

Clara Foltz confronted discrimination of a type no modern woman will ever experience. Direct insults delivered in person were part of even her best days. When Foltz lobbied for a bill allowing women to be lawyers, a legislator charged that she was a free lover. On the day she was admitted to the bar, a fellow lawyer cheerfully predicted she would fail because women could not maintain confidences. In one of her first trials, the prosecutor argued to the jury that her sex rendered her incapable of reason.[19]

Though Clara Foltz won that jury trial and though she became an excellent lawyer, the insults formed part of her memory of these successes.[20] All of the early women lawyers had such darkened moments, which make good stories but also tempt us (we biographers) into exaggerating their successes by measuring them against the obstacles they overcame. One of these obstacles was a profound social prejudice against their project. The archetype of the good lawyer—bold and brilliant—was the opposite of the true woman—nurturing and tender.

Of all the professions that movement women sought to enter, the law was the most intransigent. Women could explain and excuse their

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19. *Feminist Lawyers*, *supra* note 2, at 1700 nn.51-53 (using these same examples to show typical instances of discrimination).

20. When Foltz herself related these stories, she always included the insults as part of the total picture. *See* Clara Shortridge Foltz, *The Struggles and Triumphs of a Woman Lawyer*, NEW AM. WOMAN, June 1916, at 5, *cited in Feminist Lawyers*, *supra* note 2, at 1699 n.50 ("*Struggles and Triumphs of a Woman Lawyer* was the title of Foltz's monthly autobiographical column in her magazine, *The New American Woman*, published in Los Angeles from 1916 to 1918.").

presence in other professions by reference to their womanly natures. Doctors could treat other women, thus preserving female modesty. Teachers were only extending the role of mothers as moral instructors. Even ministers could build on beliefs about women's special spirituality. But there was no way to sugarcoat the meaning of being a lawyer. Recognizing the huge difficulties the pioneer women faced raises a second temptation toward biographic exaggeration.

We have a sense of being on a rescue mission to save these women, who suffered so much, from their present oblivion. This leads to a certain gloss, to relating the upbeat stories without the dark sides. Yet, as I tell the students, and try to enact in my own work, we must reveal the flaws, failings, and losses as well as the triumphs. Otherwise, we will not fully understand the achievement of these first women. In short, we must put the hag back into hagiography.

Even as we biographers acknowledge the whole (incomplete, imperfect) subject, we seek also to give the life meaning and coherence. This is the pact between biographer and subject by which both seek to mitigate the human sentence of mortality. Several themes emerge from the stories of these early women lawyers, which give their lives and practices significance. First is their feminism. I mean by this that they placed women's interests at the center of their thought and activity.

Our work in the seminar has revealed a self-conscious feminist in virtually every early woman lawyer. The act of joining the bar was in itself a forceful political statement about the rightful place of women, partly because access to the professions was a main goal of the women's movement. Suffrage and jury service were two others; all three were tied to the idea of participation in the public and political life of the community.[21]

Of course, women had non-ideological reasons as well for becoming lawyers, the same reasons men had: the interest of the work and the need to make a living. Clara Foltz was a single mother of five, who had tried acceptable women's occupations (teaching, dressmaking, boarding) and found she could not support her family. Yet I doubt that even a woman driven by necessity, as Foltz was, could have sustained being a lawyer unless she was also a feminist.

Her feminism enabled her to withstand attacks that would have destroyed the non-ideological. It also elevated and ennobled her efforts.

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21. *See First Woman*, *supra* note 15, at 1233-36 (discussing women's suffrage); *see also Palladium*, *supra* note 15, at 1160-74 (discussing the history of women on juries).

Even in the ordinary and everyday practice of law, she had a greater cause than her own advancement. She was working for the betterment of all women. Clara Foltz is a prime example of a general truth about the ideology of these early women lawyers. Sometimes it takes a little biographical scratching of the life surface to discover the feminist, but so far, she is always there.[22]

Perhaps the best evidence of the feminism of these pioneers is the aid they gave to other women, particularly in helping them to become and to be lawyers. Foltz always said that her efforts were made to smooth the path for future women. Lelia Robinson, the first woman lawyer in Massachusetts, sought to bring all the women lawyers in the country into communication, and published an extraordinary article in 1890 about these efforts.[23] Other choice examples from the Website include the description of Myra Bradwell's support in the influential *Chicago Legal News* of young attorney Catherine G. Waugh.[24] Ellen Spencer Mussey founded law classes and then a law college for women.[25] The first woman federal judge, Florence Allen, worked tirelessly (albeit unsuccessfully) to promote other women for the bench.[26]

A second overarching theme that has emerged from the gathering of many women's stories on the Website is the importance of male allies to their successes. Sometimes, the allies were fathers, brothers, or husbands, enabling both the study of law and its practice. There were, for instance, husband-wife teams, in which the woman did the office

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22. Lelia Robinson, the first woman lawyer in Massachusetts, is a good example of a feminist whose dedication to women's rights emerges only through extended biographical work. *See* Sarah Killingsworth, *Lelia Robinson*, *at* http://www.stanford.edu/group/WLHP/papers/robinson.html (last visited Apr. 20, 2001) (providing an overview of Robinson's life); Mary Nicol, *Lelia Robinson Sawtelle: A Second Look*, *at* http://www.stanford.edu/group/WLHP/papers/robinson.pdf (last visited Apr. 16, 2001) (focusing on Robinson's experiences in the Washington Territory and interactions with the Equity Club).

23. Lelia J. Robinson, *Women Lawyers in the United States*, 2 GREEN BAG 10 (1890), *available at* http://www.stanford.edu/group/WLHP/articles/greenbagreal.pdf; *see also* Barbara Allen Babcock, *Making History*, 2 GREEN BAG 2D 65 (1998), *available at* http://www.stanford.edu/group/WLHP/articles/makinghistory.htm (outlining Robinson's efforts to gather information on women lawyers); Julia Steele, *All the Allies of Each: Lelia Robinson's Portrait of Early Women Lawyers in America*, *at* http://www.stanford.edu/group/WLHP/papers/steelereport.pdf (last visited Apr. 20, 2001) (providing an historical context for and elaboration on Robinson's *Green Bag* article).

24. Jeanine Becker, *Myra Colby Bradwell: Sisterhood, Strategy & Family*, *at* http://www.stanford.edu/group/WLHP/papers/Bradwell.pdf (last visited Apr. 20, 2001).

25. Jaclyn C. Fink, *Beyond the Washington College of Law: Ellen Spencer Mussey's Efforts on Behalf of Women* 10-11, *at* http://www.stanford.edu/group/WLHP/papers/mussey. fink.pdf (Apr. 3, 2000).

26. John A. Russ IV, *Florence Ellinwood Allen*, *at* http://www.stanford.edu/group/WLHP/papers/flo.html (last visited Apr. 20, 2001).

work and the man went to court.[27] Clara Foltz read law with her father and his partner, who was an advocate of women's rights.[28] Her brother Charles, also a lawyer, was always especially helpful to her. Generally, male progressive lawyers took up women's causes, and even practiced law with them.[29] Our study so far shows that early women lawyers who succeeded without male aid were as rare as early women lawyers who were anti-feminists.

IV. THE PHASES OF WOMEN AT THE BAR

Feminism, and the importance of male allies—these are the biographical themes that emerge from the first period of women's history at the bar—extending from roughly 1870 to 1930. Breaking into law, the most male, the most resistant of the professions, was the great accomplishment for women in this first period. Only thirty years after the U.S. Supreme Court held in Myra Bradwell's case that practicing law was not a privilege of citizenship accorded by the federal Constitution, women had nevertheless gained admission to the majority of America's law schools and bars.[30] Often this was done after considerable struggle in judicial, legislative, and social forums. These are the stories we are collecting on the Website.

In summary, we see in this first period that when women joined the profession, this, in and of itself, advanced the cause of political and social equality. Some women lawyers aimed at other, grander contributions, and a second aspect of our work is to recover and assess their accomplishment. For instance, I claim that Clara Foltz invented the

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27. VIRGINIA G. DRACHMAN, SISTERS IN LAW: WOMEN LAWYERS IN MODERN AMERICAN HISTORY 102-12 (1998) (describing husband and wife lawyer teams).

28. *First Woman*, *supra* note 15, at 1246 n.58 (describing C.C. Stephens, the male supporter of women's rights with whom Clara Foltz read law).

29. *See* Sarah Killingsworth, *Lelia Robinson*, *at* http://www.stanford.edu/group/WLHP/papers/robinson.html (last visited Apr. 20, 2001) (noting that Lelia Robinson's trial experience in Washington Territory came about partly due to her helpful friend and mentor, Judge Greene). For a time, Lelia practiced law in Seattle with prestigious attorney Colonel C.J. Haines. During that same period, Haines assisted another woman, Mary Leonard, as she read law and sat for the bar exam. *See* Kerry Abrams, *Folk Hero, Hell Raiser, Mad Woman, Lady Lawyer: What Is the Truth About Mary Leonard?*, *at* http://www.stanford.edu/group/WLHP/papers/leonard.pdf (last visited Apr. 20, 2001).

30. Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1872). Because of *Bradwell*'s holding that there was no federal right of a citizen to practice law, there are hundreds, maybe thousands, of vivid particular stories about women's efforts to become lawyers: stories of "their displays of nerve and courage, personality and character, idealism and eccentricity." *Feminist Lawyers*, *supra* note 2, at 1691; *see also* DRACHMAN, *supra* note 27, at 8 (noting that despite the lack of a federal right, women prevailed over the "most engendered of all the male-dominated professions").

public defender as an institution, and that the idea grew out of her experiences as a woman lawyer. This idea, and how she came to it, gives her life coherence and special meaning. It is the organizing principle of my biography.

Pinpointing the birth of an idea (as compared, say, to a scientific invention) is delicate and difficult. But I think I can show that Clara Foltz was the first in print with a fully developed case for a public defender.[31] Though the whole story must await a later telling, I want here to illustrate my larger point about women's contributions to the profession by outlining how it happened that Clara Foltz, who started as an obscure housewife, devised a new and original idea about the practice of law.

Foltz's invention was a combination of three elements. First, because she was a woman lawyer, poor, desperate people sought her out, assuming that she would be both charitable and nurturing. (Other lawyers also sent their losing or non-paying cases, and judges appointed her to represent indigents.) Many of these poor people were charged with crimes, and Clara Foltz became one of the few pioneer women lawyers to go to court and to try their cases. As an outsider, representing the underdog accused, she felt the unfairness personally and imagined a high-status officer with a title and the resources to do the work she was doing for free. This, in sum, is how the idea of that radical institution, the Public Defender, was born.

Perhaps it will turn out that many of the other early women lawyers made comparable contributions to the development of the law. As Clara Foltz's biographer, I find myself a little emotionally torn here because I want her to be unique, first among all women. At the same time, I would like to think there are a host of great women whose similar achievements we will recover. Realistically, though, it appears from the evidence so far that when all the biographic burrowing is done, the result will be that the accomplishment of most pioneer women lawyers lay in joining the profession as feminists. Once in, they practiced in the local, unremarkable, yet socially useful fashion of most lawyers.

Whatever the ultimate interpretation of the first period, however, it is clear that a long post-feminist phase followed the attainment of suffrage. For at least forty years (from 1930—maybe earlier—until 1970), the

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31. Clara Foltz, *Public Defenders*, 31 AM. L. REV. 393 (1897); Clara Foltz, *Public Defenders—Rights of Persons Accused of Crime—Abuses Now Existing*, 48 ALB. L.J. 248 (1893).

numbers of women at the bar remained miniscule,[32] and the sense of being part of a movement all but disappeared. This too is a story that requires more investigation, but here is the Ur-tale as it presently stands.[33]

Generally, the women's movement, having achieved suffrage, fell off because there was no agreement on an agenda to be achieved by the vote. The lawyers, in particular, had placed too much faith in what suffrage would mean for professional women. When it turned out that political equality (signified by the vote) did not produce any change in women's professional status, the first real divergence between feminism and professionalism was born. Instead of the special concern for women that defines feminism, women lawyers placed their trust in what Professor Nancy Cott calls the "neutral and meritocratic ideology" of the professions.[34]

Putting aside feminism, women lawyers focused instead on the professional ideal of objective and verifiable merit as the basis of individual achievement. Rapidly assimilating to the male model of a lawyer, they put aside concerns about the progress of all women as an indicator of success. Though women struggled to combine domestic and professional responsibilities, as few men did, none would ask for individual favors or even collective recognition.

This gloomy post-feminist period among women lawyers stretched from the 1930s to the opening of the renewed women's movement in the early 1970s. The percentage of women in the profession hovered between one and three percent for many years.[35] But out of the civil unrest of the '60s came people who once again described themselves as feminists, and who once more raised concerns for the rights of all women. Like their nineteenth-century sisters, these women saw law as the platform for social change. This second offensive of women on the law has led to the astonishing increase in numbers and prestige described elsewhere in this symposium. Now we are prepared for the next phase; the real revolution, which extends beyond self-interested promotion and

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32. CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW 4 tbls.I.1, I.2 (2d ed. 1993).

33. *See* DRACHMAN, *supra* note 27, at 215-49 (focusing on this story, especially Chapter 9: "Girl Lawyer Has Small Chance for Success").

34. NANCY F. COTT, THE GROUNDING OF MODERN FEMINISM 233-34 (1987). Professor Cott posits that the struggle for suffrage masked the conflict between feminism and professionalism, but that the "potent" promise of professionalism, to "judge practitioners on individual merit as persons (not as men or women) in the dispassionate search for truth," was always appealing. *Id.* at 237.

35. CYNTHIA FUCHS EPSTEIN, WOMEN IN LAW 4 tbls.I.1, I.2 (2d ed. 1993).

the quest for formal equality. The real revolution only starts with numbers and integration.

We must now force the practice on every level truly to accommodate the lives of women. And that process, in turn, will take us a long way toward restoring the abandoned public service and redemptive ideals of the profession itself. But first, we must deal with the skeptic who asks: "Why now? Women have been lawyers for a hundred-plus years without making much of an impression on practice. What is so different today?"

First, I believe timing is the key; the profession is open to change now, as never before. Lawyers, though never popular, have hit an all-time low in public esteem. Books and bar speeches, articles, and valedictories abound on the subjects of failing faith and lost lawyers. Greed and inhumanity in the forms of needless aggression and soulless unconcern about societal consequences—such is the indictment from the outside. Internally, the complaint is that our learned profession has become a bottom-line business. The legal workplace is built on the ten-hour day, the six-day week, an atmosphere of extreme hierarchy, constant testing, and all-out competition. Everyone from the freshest associate to the graying partner works too hard, leaving no time for family and communal life, pleasure, or pro bono publico.

In short, the profession is psychically reeling. Public dissatisfaction mingles with agonized self-criticism about the meaning of a life in the law. The male-created and male-centered model is under attack, as never before. Add to this timing the sheer numbers of women and their male allies—in the hundreds of thousands now—and the scene is set for revolutionary change. Law is where we always start.