

**DEDICATION OF
CLARA SHORTRIDGE FOLTZ CRIMINAL JUSTICE CENTER**

Remarks by
Sandra Day O'Connor, Associate Justice
Supreme Court of the United States

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Thank you President-Elect Krinsky, Chief Justice George, Judges and Justices and Supervisor Burke. I am honored to have the opportunity to tell you today about a truly extraordinary woman. Clara Shortridge Foltz, who at age 29 became the first woman to join the California Bar, was a pioneer whose efforts gained women access not only to California's courtrooms, but also to the state's law schools and voting booths. And those are just some of her accomplishments. But let me start at the beginning.

Clara was born to Elias and Talitha Shortridge on July 16, 1849, in Indiana. At that time, Elias worked as a lawyer. Shortly before the Civil War, he also became a minister and moved the family to Iowa. In Iowa, Clara received her only formal education -- three years of study at Howe's Academy. Recognizing that Clara was scholarly and eloquent, Elias told her: "It is too bad, daughter, that you are a girl, for if you were a boy I would educate you for the law -- you would make a great lawyer."¹ Clara instead worked briefly as a teacher until at age 15 she eloped

with Jeremiah Foltz, a Union soldier. She and Jeremiah had three children by the time Clara was 19.²

The Foltz family moved to Portland, Oregon in 1872, and then to San Jose California in 1875. Within a few years, they had five children. Jeremiah was unable to make enough money to support the family. He was also frequently absent, taking many trips to Portland. It turned out that his trips were to visit another woman whom he eventually married. Clara needed a job that would allow her to support her five children. She asked a prestigious lawyer, Francis Spencer, whether she could study law in his offices. Spencer replied in this letter:

“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 if 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.”³

Undeterred, Foltz arranged to study in the more modest law offices of C. C. Stevens, another friend of her father's. Clara faced another formidable hurdle to practicing law, however. Under California law, only white male citizens over the age of 21 could join the Bar. Foltz therefore drafted what became known as "The Woman Lawyer's Bill," simply substituting the word "person" for "white male" in the California Code provision. She convinced a friend in the state Senate, Barney

Murphy, to introduce the bill. General Murphy has been the Mayor of San Jose and Clara had worked with him in a successful effort to establish a paid San Jose fire department.⁴ Foltz then spent several months lobbying for the bill. To do so she took frequent night journeys from San Jose to Sacramento in the caboose of a cattle train. Once in Sacramento, she lived on next to nothing so she could stay as long as possible, cooking her food on a tiny alcohol lamp.⁵ Foltz described her lobbying efforts in the Legislature as follows: "I coaxed, I entreated, I would have reasoned had they been reasonable men.... I had to beg -- not for a living, but to be allowed to earn a living."⁶ Foltz was supported in her efforts by another woman who wished to be a lawyer, Laura deForce Gordon. Gordon was a press correspondent for her own newspaper, the Oakland Daily Democrat, and had lobbied for women's suffrage when the movement was just starting in California. She had become discouraged with the newspaper business and was planning to study law because she believed it would offer a better living and would be a more impressive platform for urging women's rights.⁷

In lobbying for the Woman Lawyer's Bill, Foltz and Gordon encountered fears that practicing law would move women into the public sphere, "unsexing" them and making them unfit for domestic life. Foltz and Gordon attempted to reduce the male legislators' fears that this would affect them personally by explaining to the Legislators that their own wives, so well provided for, would not have to be lawyers. The Bill passed the Senate in mid-January of 1878 by a vote of 23 to 11.⁸ In the assembly, however, the Bill was initially voted

down. Foltz renewed her lobbying efforts and gathered signatures on supporting petitions from hundreds of men and women and virtually the entire Sacramento Bar. The Bill was reconsidered on the second to last day of the legislative session, and it passed by a vote of 37 to 35. Foltz then forced her way into the governor's office and personally urged him to sign it, which he did in the last hours of the last day of the legislative session.

When she finally won the right to join the Bar, Foltz's need to do so was stronger than ever. Jeremiah had deserted her, and she needed money desperately. She studied intensely, and applied for admission to the bar at the court's first sitting in September. She passed with the committee's unanimous certification, and on September 5, 1878, she became California's first female lawyer.⁹

Although Foltz immediately had clients, she was concerned about her lack of formal education, and decided to apply to the newly created Hastings College of the Law. She and Laura Gordon both attempted to take classes during the semester beginning in January, 1879, but the registrar informed them in a letter that the Directors of the school had "resolved not to admit women into the Law School."¹⁰ After unsuccessful efforts to try to convince school officials to change their minds, Foltz and Gordon turned to litigation. Foltz filed a petition for a writ of mandamus against the Hastings directors on February 10, 1879 in the 4th District Court in San Francisco. Hastings' attorneys sought and received a number of continuances, allowing more of the semester to pass before the case was even

argued. Judge Morrison eventually heard arguments on February 24, 1879 in a packed courtroom. When Judge Morrison opened the session by instructing "proceed gentlemen," Foltz, who was representing herself and Gordon, looked astonished and confused until the judge corrected himself. She then did proceed -- with "force and polish," as the Daily Alta California reported it the next day.¹¹ Foltz argued that she and Gordon met all of the requirements for admission to Hastings; that Hastings was part of the University of California, which welcomed women students; and that given the passage of the Woman Lawyer's Bill, it would be an "anomaly to enact that women might practice in all the law courts of the state, and yet in the same session establish a law school from which they were excluded."¹² Hastings' attorneys argued that the Board had appropriately exercised its discretion in finding that law study was not proper for women and that courts should not second-guess its judgment. They urged that women should not be lawyers at all, claiming 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."¹³ Foltz prevailed -- 10 days after the argument, Judge Morrison issued a writ directing the women's admission.

Hastings immediately appealed to the California Supreme Court, however, delaying even longer Foltz's possible admission to the law school. Foltz practiced law while she waited and prepared for her California Supreme Court argument. There, she again represented herself and Gordon. In late December, 1879, the high court issued an opinion in Foltz's favor. It was too late at that point

for Clara to study at Hastings, because she was leaving for Sacramento to become the first woman to serve as counsel to the Assembly Judiciary Committee.¹⁴ But her victory paved the way for the many women law students to come.

During Foltz's successful legal career, she often faced hostility from her male adversaries in the courtroom. As Barbara Babcock, whose biographical work on Foltz has contributed much of the knowledge we have of Foltz today, recounts, one opposing counsel told the jury that “she is a woman... she cannot be expected to reason; God Almighty decreed her limitations, but you can reason, and you must use your reasoning faculties against this young woman.”¹⁵ Foltz responded:

If your Honor please and gentlemen of the jury:

... Counsel opened his argument with the astounding revelation that I am a woman.... I am that formidable and terrifying object known as a woman -- while he is only a poor, helpless, defenseless man, and he wants you to take pity on him and give him a verdict in this case. I sympathize with counsel in his unhappy condition. True, the world is open to him. He is the peer of all men -- he can aspire to the highest offices, he can carry a torch over our streets during a political campaign and sell his vote for a dollar and a half on election Day, and yet he isn't satisfied. He [also] wants a verdict, and in order to awaken your sympathy for him he tells you that I am a woman and he is only a man....

But counsel insists that I am a woman. Gentlemen of the jury, of the atrocious crime I plead guilty. Into this world I have brought five healthy children. By my industry I have supported them. ... In the name of the mothers who nursed you, and of the wives and maidens who look love into your eyes, I resent this hidden appeal to a supposed prejudice of this jury. I resent this ill-concealed slur and covert innuendo that the presence of a woman in a lawsuit contaminates her and that her sex must militate against her client. And I resent for you gentlemen, whose mouths are closed, the implication that you are small enough and narrow enough to bring prejudice into the jury box, and the insulting inference that you could be induced to visit punishment upon this defendant in violation of your solemn oaths. . . .

[G]entlemen, I came into the practice of my profession under the laws of this State, regularly and honestly, and... I have come to stay. I am neither to be bullied out nor worn out. I ask no special privileges and expect no favors, but I think it only fair that those who have had better opportunities than I, who have had fewer obstacles to surmount and fewer difficulties to contend with, should meet me on even ground, upon the merits of law and fact.¹⁶

The jury returned a not guilty verdict without leaving the jury box.

In addition to being a very successful trial lawyer, Foltz also made enormous contributions as a law reformer. Because she had quickly gained the reputation as a humane and sympathetic counselor, many poor, desperate people sought her out. Many of these people were charged with crimes. As an outsider, representing the accused, Foltz felt the unfairness personally and imagined a high-status officer of the court with the title and the resources to do the work that she was doing for free.¹⁷ She developed the idea of a public defender and advocated at the 1893 Chicago World's Fair and in many state legislatures for the creation of public defender services.¹⁸ An article she wrote on the subject in 1897 gives a sense of her persuasiveness and passion. I quote:

Innumerable innocent boys and girls and men and women are recorded as pleading guilty and railroaded into jail because too dazed to understand their rights and legal position.... Others plead guilty and suffer punishment by fine because it is cheaper than counsel and they can better stand the disgrace than the money loss. Others are ruined by payment of counsel fees in order to be protected from malicious prosecution. Others are robbed by shysters, and still others are neglected by irresponsible court appointees. The patriotism and love of country of all these dies and their hearts are filled with bitterness, to the destruction of the happiness of the individuals and the detriment of the state. . . .

[The accused] cannot act for himself. The labyrinth of legal technicalities is an unknown land to him. He could not lay the foundation of an expert's testimony or impeach a witness and does not know what is competent or proper evidence. But he does know that to go into court without counsel would be equivalent to an invitation to convict, which a jury would readily accept. In this condition, when he is utterly unable to act for himself, when before him stands all the menacing machinery of the penal law, when he is deserted by friends, assailed by foes and dazed by his surroundings, counsel is absolutely necessary to secure justice. In a country whose primary function and highest duty is to protect and defend its people, one would expect to find courts provided with all the essentials of justice. But they are not. The prisoner is merely told that he may buy this essential and thus buy justice in a land that boasts that justice is free. . . .

The State has no desire to wrong its people. Its citizens are not its enemies. It is not interested in convicting the innocent. It is not interested in the impoverishment or disgrace of its people. Their full protection is its legitimate care, and in giving it, the State will not only perform its duty but will promote exact and equal justice, protect the poor, save the innocent, and remove an unjust burden from a generous profession.¹⁹

These words and Foltz's other campaigning were eventually successful. In 1921, the California Legislature adopted Foltz's public defender plan.²⁰

Foltz was responsible for other criminal justice reforms as well. In San Francisco, she successfully campaigned to abolish the practice of confining prisoners in iron cages in courtrooms during their trials.²¹ She also worked to improve the treatment of prisoners in jails and to separate incarcerated juveniles from adults.²² She also procured passage of California law creating a parole system for state prisoners. 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.²³

These are not the only nor the last of Foltz's accomplishments. Foltz moved to Los Angeles after the 1906 San Francisco earthquake destroyed her home and office, and, in 1910, when she was 61 years old, she became the first woman deputy district attorney for the city of Los Angeles.

While she was in Los Angeles, Foltz intensified her efforts for women's suffrage, a cause she had worked on since the 1880's. She became president of the Los Angeles Votes for Women Club, serving from 1906 to 1911. On October 10, 1911, the suffrage amendment was approved by the voters of California by a close margin. Foltz became perhaps one of the only original suffragists who would live to cast a legal ballot.

While in Los Angeles, Foltz also served as the first female member of the State Board of Charities and Corrections.²⁴ And in 1916, at age 67, Foltz began

publication of a periodical entitled *New American Woman*, which featured a column that advised women on the use of their newly acquired right to vote. *New American Woman* contained a column entitled "The Struggles and Triumphs of a Woman Lawyer," in which Foltz sketched the story of her career.²⁵

Foltz ran unsuccessfully for governor of California in 1930, when she was 81 years old. In 1934, her plan to enter the governor's race for a second time was cut short by a heart attack, and she died in Los Angeles on September 2nd, 1934, at the age of 85.²⁶

Today, the majority of students at many of our nation's law schools are female.²⁷ 48 states have public defender services.²⁸ Indeed, Clara Shortridge Foltz's numerous contributions have had such a pervasive impact that it is hard not to take them for granted. The new name of the Criminal Courts Building should remind us never to take these developments for granted. Foltz's pioneering victories were hard fought, and they continue to benefit us greatly. I hope you agree with me that there is no one more deserving of having her name engraved on the Criminal Courts Building than Clara Shortridge Foltz.

¹Virginia Elwood-Akers, *Clara Shortridge Foltz, California's First Woman Lawyer*, 18 THE PACIFIC HISTORIAN 23, 23.

²Deborah H. King, *Clara Shortridge Foltz: Angel and Revolutionary*, 11 HASTINGS WOMEN'S L. J. 179, 184 (2000).

³Barbara Allen Babcock, *Clara Shortridge Foltz: "First Woman"*, 30 ARIZ. L. REV. 673, 685 (1988).

⁴*Id.*, at 685-86.

⁵*Id.*, at 686.

⁶*Id.*, at 687 (*quoting* Clara Shortridge Foltz, *Struggles and Triumphs of a Women Lawyer*, *The New American Woman*, Aug. 1916).

⁷*Ibid.*

⁸*Id.*, at 689.

⁹*Id.*, at 697.

¹⁰*Id.*, at 700.

¹¹Mortimer D. Schwartz, Susan L. Brandt, & Patience Milrod, *The Battles of Clara Shortridge Foltz*,

¹ CALIFORNIA DEFENDER 7, 9 (1985).

¹²Babcock, *supra* note 3, at 710.

¹³*Id.*, at 711.

¹⁴*Id.*, at 714-15; *see also* King, *supra* note 2, at 189.

¹⁵Barbara Allen Babcock, *Western Women Lawyers*, 45 STANFORD L. REV. 2179, 2185 (1993) (*quoting* Clara Shortridge Foltz, *Struggles and Triumphs of a Women Lawyer*, THE NEW AMERICAN WOMAN, Jan. 1918, at 4).

¹⁶*Id.*, at 2185-2186.

¹⁷Barbara Allen Babcock, *Forward: A Real Revolution*, 49 U. KAN. L. REV. 719, 729 (2001).

¹⁸Western Women Lawyers, 45 Stanford L. Rev. 2179, 2183.

¹⁹Clara Foltz, *Public Defenders*, 31 AMERICAN L. REV. 393, 393, 397, 403 (1897).

²⁰Mortimer D. Schwartz, Susan L. Brandt, & Patience Milrod, *Clara Shortridge Foltz: Pioneer in the Law*, 27 HASTINGS L. J. 545, 557 (1976).

²¹*Id.*, at 558.

²²*Ibid.*

²³*Ibid.*

²⁴Elwood-Akers, *supra* note 1, at 27.

²⁵*Id.*, at 28.

²⁶*Id.*, at 29.

²⁷Jonathan D. Glater, *Women Are Close to Being Majority of Law Students*, N.Y. TIMES, Mar. 26, 2001, at A1.

²⁸*See Indigent Defense in the United States*,

<http://www.nlada.org/Defender/States/State_Fees_Table> (December 21, 2001).