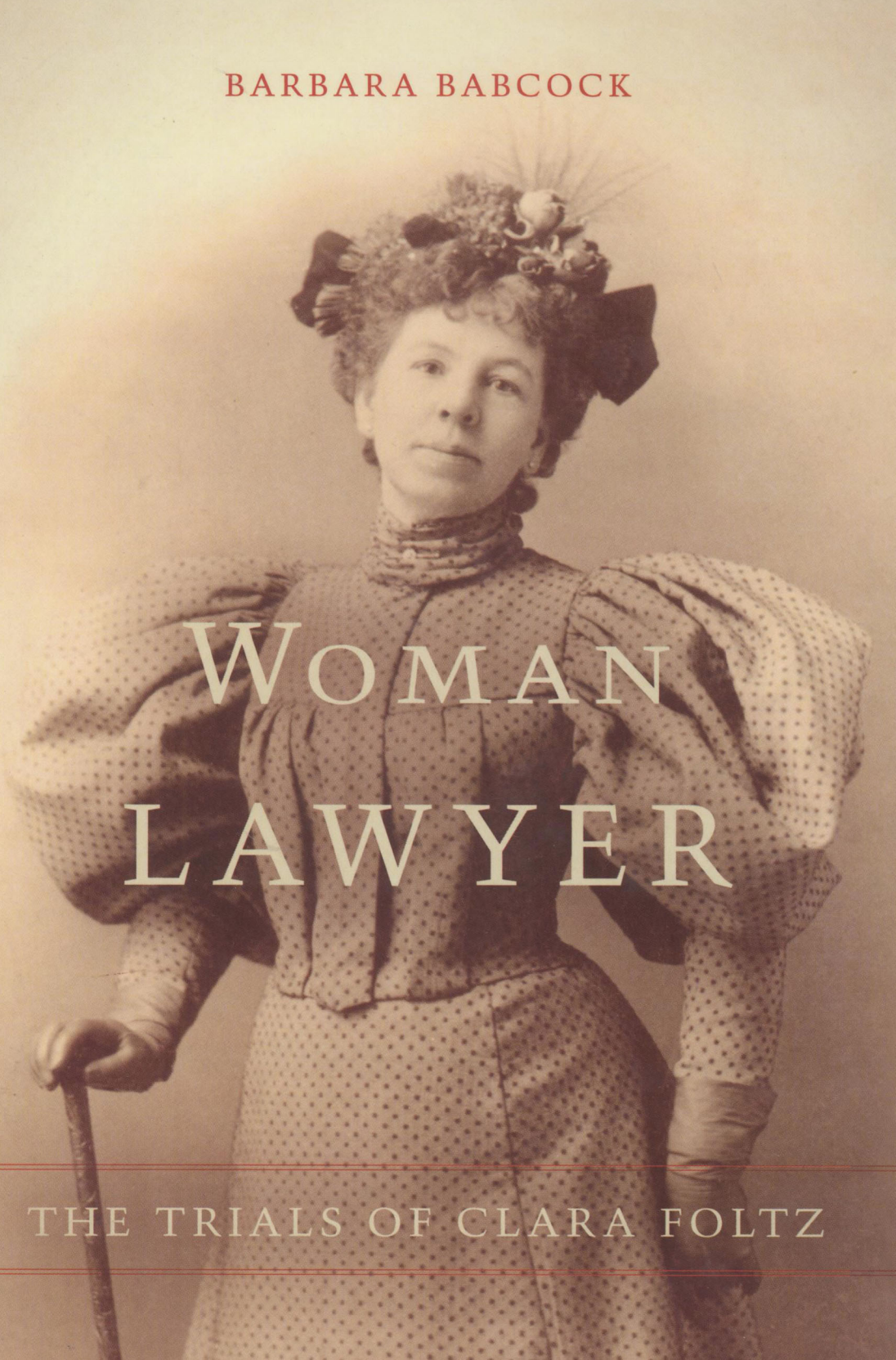


BARBARA BABCOCK



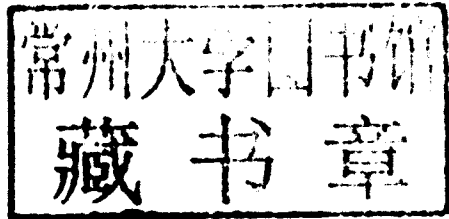
WOMAN
LAWYER

THE TRIALS OF CLARA FOLTZ

Woman Lawyer

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Barbara Babcock



STANFORD UNIVERSITY PRESS
STANFORD, CALIFORNIA

Stanford University Press
Stanford, California

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Tel: (650) 736-1782, Fax: (650) 736-1784

Printed in the United States of America on acid-free, archival-quality paper

Library of Congress Cataloging-in-Publication Data

Babcock, Barbara Allen.

The trials of Clara Foltz / Barbara Babcock.

p. cm.

Includes bibliographical references and index.

ISBN 978-0-8047-4358-7 (cloth : alk. paper)

1. Foltz, Clara Shortridge, 1849–1934. 2. Lawyers—California—Biography. 3. Women lawyers—California—Biography. I. Title.

KF368.F585B33 2011

340.092—dc22

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2010037262

Typeset by Bruce Lundquist in 10.5/14 Adobe Garamond

Woman Lawyer

For Tom Grey, bird photographer

They called me the “lady lawyer,” a pretty soubriquet which did much for me, for . . . I was bound to maintain a dainty manner as I browbeat my way through the marshes of ignorance and prejudice which beset me on every hand.

Clara Foltz, *Struggles and Triumphs of a Woman Lawyer*, Oct. 1916

Preface

Clara Foltz was one of the first women lawyers in the United States, and for a time one of the most famous. From the day of her admission to the bar in 1878, she was often in the news—arguing to all-male juries, stumping in political campaigns, and working for woman suffrage, penal reform, and other causes. She had a large part in the adoption of the first guaranties of equal access to employment and education in U.S. constitutional history, pioneered the public defender movement, and practiced law continuously for fifty years. In everything she did, Foltz enjoyed remarkable celebrity, partly because of the human interest of her personal situation. She was a single mother of five children and became a lawyer in order to support them as well as to find personal fulfillment and advance women's rights.

Despite the lavish attention during her lifetime, however, Foltz was largely forgotten until recently. The revival of her reputation started with the rise of the second women's movement in the 1970s, which brought a surge in the number of women attending law school. Almost overnight, the percentage of female students rose from 3 to 20 percent, and today it is nearly 50 percent. When all at once they became a large part of this important profession, women found themselves without a history to guide and to inspire.

Clara Foltz was one of the first beneficiaries of the interest these students and their male allies took in finding models and perhaps heroines for the new generations of women lawyers. In 1976, almost one hundred years after she successfully sued California's first law school for refusing to admit women, its law review featured an article about her extraordinary life, coauthored by a male professor and two female law students (Mortimer D. Schwartz, Susan L. Brandt, and Patience Milrod, "Clara Shortridge Foltz: Pioneer in the Law," 27 *Hastings Law Journal* 545). In 2002, the revival of interest in this pioneer woman lawyer reached a new level, when the central criminal court building in Los Angeles was renamed the Clara Shortridge

Foltz Criminal Justice Center. Justice Sandra Day O'Connor was the lead speaker at the dedication ceremony, which honored the accomplishments of women lawyers, and Foltz as first among them. My pleasure on behalf of my subject was only slightly dimmed by the query in the *Los Angeles Times*: "Clara Who?" In this book, I try to answer that question, and to examine the full dimensions of her achievement.

Though Foltz's personal papers did not survive—a serious loss to a biographer—she left behind an extensive public record. Her story is in court records, her own publications, biographical indexes, and perhaps most of all in news accounts and interviews. Most of her publicity was favorable, largely because, long before public relations became a recognized occupation, Foltz was a genius at managing her image. With confidence in her abilities and belief in her destiny, she was a true western character: larger than life and prodigious in her enjoyment of the moment and in her ambitions for the future.

Her distinctive voice—optimistic, figurative, hyperbolic, elevated but humorous—comes through not only in interviews and profiles, but also in the twenty-eight magazine columns she wrote when she was in her sixties titled "The Struggles and Triumphs of a Woman Lawyer." Foltz took her title from the book *Struggles and Triumphs: The Recollections of P. T. Barnum* (1882). Like the famous circus impresario, she lived a life of great highs and considerable lows, and also like him, she was an open and tireless self-promoter.

Though often speaking of her sacrifices for women's causes, Foltz never quite fit the mold of selfless crusader. Unwilling to relinquish any possibility, she was determined to be an inspiring movement leader, a successful lawyer and legal reformer, a glamorous and socially prominent woman, an influential public thinker, and a good mother. The result of these often conflicting desires was a life so frantic and scattered that it resists a logical, well-formed narrative. Yet these very qualities make her biography particularly relevant now, both as cautionary and heroic tale.

In my research and writing about Clara Foltz, I have come to admire her courage and charisma. At the same time, I have confronted her flaws and mistakes in judgment, which I try to portray accurately and fully—to mix the hag with the hagiography. But in a sense, full detachment is not really possible; I have necessarily interpreted Foltz's life through my own experiences—as a trial lawyer, a public defender, a first woman, and a feminist. Though I cannot wholly follow her direction to her anticipated biographer

to “let wreaths of triumph my temples twine,” I think she would approve of what I have done here.

The book is published at a moment when women lawyers have made gains that would have seemed incredible to most people in the past. Not to Clara Foltz, however; she predicted that women would win an equal place in the legal profession—and even sooner than it has actually happened. Foltz also believed that women would change the profession for the better and hoped that her own busy career promoting constitutional rights for the criminally accused and civil rights for women would inspire and instruct. I hope so too.

Acknowledgments

So many people have contributed to this book that naming names puts me in fear of omitting someone. But I must risk it. In the past few months as I have been organizing and arranging old files, I have thought fondly of the long line of wonderful student research assistants who have been companions in reconstructing Clara Foltz's life. Our work began before the golden age of search engines, and my early helpers worked in library archives and courthouse basements, reading old newspapers on microfiche and yellowing legal documents: Judith Carrithers, Lucy Carter, Mary Erickson, Ilana Hollenberg, John Ingrassia, Linden Joesting, Lisa Lindalef, Kara Mikulich, Catherine Ruckelshaus, Frances Scibelli, Paula Solario, and Karen Zobell.

With the advent of the Internet, many assistants have been particularly skilled in its use, and many have also had a knack for organizing the ever-growing mass of Foltziana. In those categories fall Frances Cook, Melinda Evans, Joanna Grossman, Menaka Kalascar, Karie Lew, Maureen Lewis, Hilary Ley, Kate Mann, Kim Mueller, Thomas Nosewicz, Jessica Oats, Katerina Rakowsky, Lisa Sitkin, Lauren Willis, and Rae Woods.

Some students worked closely on particular aspects of the research and did a superb job of organizing wide-ranging sources. On Foltz's Los Angeles years, Katherine McCarron; on public defense, Michael Evans, Julie Loughran, Angela Schwartz, and Michael Subit. Samantha Barbas was a great help on the form and organization of the online notes and other documentation. As the book went to press, Jenny Kim, Jenna Sheldon-Sherman, and Laura Zapain joined in shepherding it there, and Maggie McKinley helped immensely with the supplemental website.

In addition to the Stanford law students listed above, a number of former students and friends have helped with specific areas and locales. Darrin Hostetler took time out from practicing law to delve into old San Diego

real estate transactions. Genevieve Leavitt investigated the activities of Elias Shortridge in Arizona; and Janet Hoeffel, Joyce Sterling, and their students pursued Foltz's Colorado activities. Alan Simon, a former Los Angeles public defender, took an interest when the courthouse was dedicated to Foltz. Jill Knuth, a genealogist, was a great help in tracking down family members. Paul Herman brought the trained historian's skills to the search and turned up many valuable resources

The staff members of the Robert Crown Library at Stanford Law School have been critical in writing and producing the book. To Paul Lomio and to Erika Wayne I owe the women's legal history website, and both of them, with Alba Holgado, have maintained and improved it over the years. Erika has joined me at every step, especially in coteaching the seminar on women's legal history; she inspired and helped with the papers that give substance to the website. Alba has done artistic work on presenting and improving the images of Clara Foltz and other pioneer women lawyers. Rich Porter and Sonia Moss have been indefatigable on locating hard-to-find sources. Indeed, the whole library staff has contributed to the work, including temporary workers such as Cynthia Goehler and college students Katharine Loh, Rita Lomio, and Nicola Perlman. Barbara Adams was my earliest helper in organizing and digitizing the news stories and other material found in our initial researches and brought exceptional skills and patience to the job. After Barbara retired, I was very fortunate in having Donna Fung as my chief assistant on presenting and organizing the work. She, too, encouraged me by finding Foltz fascinating, as did Arline Wyler, who was also involved for a period.

A grant from the National Endowment for the Humanities allowed me to accept a fellowship from the Stanford Humanities Center where I first laid my research plans. Throughout, I have had the interest and support of many colleagues, especially Dean Paul Brest, who sometimes doubted the project but never doubted me. For almost a decade, Diane Middlebrook and I sponsored a "Biographer's Seminar" for those engaged in this kind of work. The help of colleagues from other disciplines, especially Estelle Freedman, and regular vetting of work in progress were useful features of the seminar. Philip Ethington, who was a doctoral student at Stanford University and writing about the same period when I first met him, offered many insights into the Gilded Age politics of San Francisco.

The presentations I have given on Clara Foltz and her work are too numerous to mention here, but many audiences have helped me maintain

my sense that this subject was interesting and important. My seminar in Women's Legal History has been a special muse as I saw many students affirm in their own work the usefulness of studying individual lives closely. I came to know Jill Norgren as a fellow biographer of a pioneer woman lawyer (Belva Lockwood), and we have shared research, ideas, and inspirations as well as frustrations. Finally, Ticien Sassoubre was the first person to read the work all the way through and helped me immensely in seeing it as a whole. At Stanford University Press, Norris Pope was a model of patience and support; Carolyn Brown and Jessie Dolch delivered first-rate editorial assistance.

The book is dedicated to my husband, Tom Grey, whose generosity and tolerance have benefited both Clara Foltz and me over the years. He has been a faithful editor even when it required adverse criticism—a hard thing for him to do. And he has brought his cool intelligence and warm encouragement to the struggles and triumphs involved in writing and living this life.



Installation of portrait at the Clara Shortridge Foltz Criminal Justice Center. Photograph by Susan Schwartzberg, 2008.



Portrait of Clara Shortridge Foltz as it appears over the courthouse entrance. Map detail is of Los Angeles where Foltz served as the first woman deputy district attorney and saw the enactment of the Foltz Defender Bill. Photograph by Susan Schwartzberg, 2008.

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Introduction

Clara Foltz was born Carrie Shortridge in Indiana in 1849 and grew up in a bucolic Iowa village. She eloped with a Union Army soldier at age fifteen, became a farm wife, and bore three children in five years. In any other period in history and place in the world, child-rearing and back-breaking labor would have been her permanent fate. Instead, Foltz left the farm and never looked back—like the United States itself. Within her lifetime the railroad, the steamship, the streetcar, the telegraph, the telephone, electrical lighting, the motor car, and the moving picture transformed America from a rural and parochial nation to one that was urban, industrial, and cosmopolitan. Foltz's personal story reflected what she called "the inventions of an active age." She thought of herself as unusually present to history, speaking of "startling points of contact with a world I seek to serve."¹

Foltz found her main inspiration in the movement for women's rights, which had its official start at a meeting in Seneca Falls, New York, in 1848. Three hundred reformers gathered to consider the stark subordination of the female sex in the legal and political arenas. In most places in the United States, women could not own property after marriage, gain custody of their children upon divorce, attend institutions of higher learning, join the

professions, vote, or hold public office. As a girl, Carrie Shortridge heard Lucy Stone, one of the best orators of the early women's movement, assail the gender ideology that assigned females to the home while reserving public action exclusively to males. Into her old age, Foltz would describe this speech as a life-altering event. But it took a while for Stone's words to have their effect. On the political stage, the Civil War absorbed reformist energy; women activists put aside their own demands for the duration of the conflict. They emerged from the war expecting to receive the vote along with the former slaves whose cause many had linked with their own. Instead, it would be a long battle for political equality. Like countless others, Foltz spent most of her adult life petitioning, lobbying, leafleting, speaking, rallying, writing, pleading, and importuning for full rights as a citizen.

Paralleling the suffrage campaigns were women's efforts to enter the legal profession. In some places, they were readily accepted and practiced in the local fashion of most attorneys. But in California, Clara Foltz met tremendous resistance, and in overcoming it she became well-known within the various reform movements and to the general public in the West and beyond. After joining the bar, she continued to make headlines both in her suffrage activities and in her practice, especially her jury trials. At the same time, Foltz established herself on the lecture circuit and became deeply involved in the raucous legislative and electoral politics of the day. She was a paid orator in the presidential elections of the 1880s, speaking for hours to huge crowds on subjects far removed from women's rights—the protective tariff was one of her specialties, for instance. In her party affiliation, she followed family tradition (her father had been an early supporter of Abraham Lincoln) and was a Republican for most of her life. For a time starting in the late 1880s, she was a convert to the utopian socialism of Bellamy Nationalism, which enjoyed a short but stirring political moment before it merged into the Populist (and ultimately the Progressive) movement.

The 1890s were the most important years of Foltz's public life. She reached the high point of her career as a lawyer and law reformer by her promotion of the public defender through speeches, writing, and lobbying nationwide. In her last years, Foltz practiced law in Los Angeles, where she began losing influence within the suffrage movement to a younger generation of college-educated women. Still, she played a significant role in the final victory in California in 1911. Luckier than most of the pioneers, she not only voted but experienced firsthand the achievement of virtually all the goals set forth at Seneca Falls the year before she was born. She also saw