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FOREWORD

FIRST WOMEN: THE CONTRIBUTION OF AMERICAN WOMEN TO THE LAW

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This issue of the *Valparaiso University Law Review* is devoted to the contributions of some "firsts" among women in the law. Each of these women was the first to engage in a wide variety of activities previously thought to be impossible or improper for women to do. All of us owe a great debt of gratitude to our determined predecessors who, despite daunting obstacles, made possible the professional and other opportunities women lawyers enjoy today. As another woman who was the first to serve in a position formerly held only by men, I can appreciate with particular sensitivity the strength of character and the determination these adventurous women demonstrated in pursuing their career goals against far more formidable barriers.

These earlier legal pioneers faced a profession and a society that espoused what has been called "the cult of domesticity," a view that women were by nature different from men, suited only for motherhood and homelife—compassionate, selfless, gentle, moral, and pure. Their minds were attuned to art and religion, not logic. Men, on the other hand, were thought to be fitted by nature for competition and intellectual discovery in the world—battle-hardened, shrewd, authoritative, and tough-minded. A male attorney of the period commented, "[A] woman can't keep a secret, and for that reason if no other, I doubt if anybody will ever consult a woman lawyer."¹

The four women honored in this volume had more spunk, spirit, and wit than they were given credit for by their male contemporaries. One of the first American women to seek admission to the bar, Myra Bradwell of Chicago,

* Associate Justice, United States Supreme Court.

1. Virginia Elwood-Akers, *Clara Shortridge Foltz, California's First Woman Lawyer*, 28 PAC. HISTORIAN 23, 25 (1984).

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studied law under her husband and applied to the Illinois bar in 1869. Despite the fact that she had passed the necessary examination with credit, she was refused admission. The Illinois Supreme Court reasoned that, as a married woman, her contracts were not binding, and that contracts were the essence of an attorney-client relationship. The court also proclaimed that "God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply and execute the laws."² The Supreme Court of the United States agreed. Justice Bradley, concurring in the Court's opinion, cited the natural differences between men and women as the reason Bradwell could not be admitted: "Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life."³ Bradwell did not again apply for admission, instead devoting herself to women's suffrage and legislative reforms to remove other legal disabilities imposed upon women, including the prohibition on women retaining their own earnings. In 1890, when Bradwell was fifty-nine, the Illinois Supreme Court, acting on her original motion filed twenty-one years earlier, admitted her to practice law in the state; two years later, she was admitted to the bar of the United States Supreme Court.

A few years after Myra Bradwell finally succeeded in her campaign for admission to the bar of Illinois, Antoinette Dakin Leach petitioned for admission to the bar of Indiana. Thirty-four years old in 1893, Leach had received a law degree in Tennessee. The Supreme Court of Indiana granted her petition, despite a provision of the Indiana Constitution which limited bar membership to persons with the power to vote. After her admission, there was some hostility from the male members of the profession, one of whom commented that "no one seriously thought that a woman could be admitted. . . . There was not prejudice against her admission, but simply an understanding that it was impossible."⁴ Despite this negative sentiment among her colleagues, Leach practiced law in Indiana for the remainder of her life, and she was one of the first to use a typewriter for preparing legal filings. After her death in 1922, a memorial at the Indiana State Bar Association remarked on her fine personality and described the breadth of her law library, noting that she "'knew how to find therein the decisions which supported her theory of a case."⁵

Clara Shortridge Foltz was truly a "first" among women: the first woman to study law at the Hastings College of Law; among the first women admitted to the bar of California; the first woman lawyer in San Diego; the first woman

2. *In re Bradwell*, 55 Ill. 535, 539 (1869).

3. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 442, 446 (1873).

4. James E. Farmer, *Women in the Law: A Centennial Legacy of Antoinette Dakin Leach*, 37 RES GESTAE 106, 108 (Sept. 1993).

5. *Id.* at 110.

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in California to serve as a deputy district attorney; and the founder of the *San Diego Bee*. She was thwarted early in her professional ambitions when she asked a prominent local attorney whether she could study law in his office. He responded:

My high regard for your parents, and for you . . . 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.⁶

Foltz could give as good as she got, however. When an opposing attorney once suggested in open court that she had better be at home raising children, Foltz retorted: "A woman had better be in almost any business than raising such men as you."⁷

Crystal Eastman of New York, pacifist, feminist, and ardent reformer, used her law degree and master's degree in sociology as a lifelong fight against a broad range of social ills, which she saw as suppressing human freedom. One of her early endeavors was a comprehensive study of the effect of industrialization on urban workers, *Work Accidents and the Law*, published in 1910. She was appointed by Governor Charles Evans Hughes to be the only woman member of the New York State Employer's Liability Commission, and she helped obtain the passage of one of the first worker's compensation laws. Always true to her convictions, when she divorced her first husband she refused to accept any alimony, asserting that "[n]o self-respecting feminist would accept alimony. It would be her own confession that she could not take care of herself."⁸ She spent much of her life working for women's suffrage, and she lived to see the passage of the Nineteenth Amendment in 1920.

It is through the courageous and determined efforts of these woman and the many like them that aspiring young women of today can more easily attend law school, join the bar, and participate in our legal system. Women today represent nearly thirty percent of attorneys in this country and over forty percent of law school graduates. They also represent over seven percent of judges, eighteen percent of state legislators, seventeen percent of state executives, six percent of Members of Congress, and just over twenty-two percent of United

6. Mortimer Schwartz et al., *The Battles of Clara Shortridge Foltz*, 1 CAL. DEFENDER 7 (Spring 1985).

7. Nicholas C. Polos, *San Diego's "Portia of the Pacific": California's First Woman Lawyer*, 2 J. SAN DIEGO HIST. 185, 189 (1980) (quoting Clara Shortridge Foltz).

8. NOTABLE AMERICAN WOMAN 1607-1950, at 544 (Edward T. James et al. eds., 1971) (quoting Crystal Eastman).

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States Supreme Court Justices. Until the percentages approach fifty percent, perhaps we cannot say we have succeeded. Nonetheless, the progress of the last century has been astounding. And it is due in large part to the explosion of the myth of the "true" woman through the efforts of *real* women such as those described in this volume.