

CLARA SHORTRIDGE FOLTZ PROFESSORSHIP[†]

BARBARA J. COX

INTRODUCTION BY SCOTT B. EHRLICH^{*}

Barb and I have skied, hiked in Zion National Park, and roller bladed together for around twenty years. If you've seen Barb in her many casts and crutches, you would know that participating in these activities is generally not a good idea but, typical of Barb, she pursues everything with zeal, even at great risk to herself.

When Barb asked me to make some comments, she mentioned that she thought I could give some perspective from the "queer point of view." Yes, Barb is a lesbian. A very powerful, motherly, proud, and queer lesbian. For those of you who are not steeped in gay and lesbian activism, "queer" is a positive term developed from within the culture as a tool of self-empowerment. It's a term that accepts who we are and announces without shame that we exist. Queer unites us with its neutrality and disregard for distinctions based on "sex," "gender," and "sexual orientation."

It is not easy being lesbian, gay, bisexual, transgendered, or queer. I do not think it is really possible to describe growing up gay or lesbian in a straight world, especially in Kentucky. Barb stands as a beacon of queerness for all of us. In the twenty years I have known her, she's never backed down or tried to hide who she is (alright, she'd have a hard time hiding at six feet tall and as a dead-ringer for Garrison Keeler). She does not hesitate to answer questions like "are you married?" and "what's your husband's name?" with the truth. She has taken a queer stance for decades, well before the term was used.

[†] Accepted by Barbara J. Cox on May 1, 2008, at California Western School of Law.

^{*} Professor of Law, California Western School of Law.

She has proudly placed herself in the public eye as she pursues her quest for recognition and equality for all, regardless of gender, sex, or sexual orientation.

Her scholarship and educational work have been part of the development of queer theory and she stands at the forefront of intelligent conversation on the issue of gay marriage. Shortly after her arrival at California Western School of Law, Barb and I worked together on bringing domestic partner benefits to California Western employees. Barb was outraged by the lack of equality for married employees and long-term same-sex couples. With Barb's typical insistence on fairness, California Western ended up being the third law school in the entire country to offer domestic partner benefits. It serves all of us, straight or queer, to have people like Barb at our institution and in our lives. She is brilliant, principled, honest, impassioned, fair, and supportive. This honor she is receiving today is well earned.

CLARA SHORTRIDGE FOLTZ PROFESSORSHIP

ACCEPTANCE BY BARBARA J. COX*

I am so grateful to be here today with my colleagues, students, friends, and family.

It is a wonderful step forward for the faculty at California Western School of Law to have these endowed professorships established. I am excited and humbled to have been selected as one of the first five members of our faculty to hold a professorship and as the first to occupy the Clara Shortridge Foltz Professorship.

I want to thank Dean Steven Smith, Jeff Lewin and the rest of the Board of Trustees, David Bowers, Alan Lewenstein, and the development office staff who have together created a way to recognize the incredible work that the members of this faculty do. I find it difficult to see how I fit in this inaugural group because I cannot hope to match the scholarship done by my colleagues: John Noyes, Mike Belknap, Tom Barton, and Bryan Liang. I also know it must have been a difficult selection process for Dean Smith because so many of my colleagues are equally deserving of this recognition, and I hope we will continue to create new professorships so they too will receive the recognition that they deserve.

I also find it difficult to sit easy in a professorship named for Clara Shortridge Foltz. I've read quite a lot about Clara lately, and she was a truly amazing person. As Barbara Babcock, Stanford law professor and Clara's biographer summarized:

She was the first woman lawyer in California, first woman to attend law school, first woman notary public, first woman counsel to a legislative committee, and the first woman deputy district attorney. She was the first person to conceive of the idea of a public defender for indigents accused of crime and worked to implement the concept through legislation in thirty states. The first American

* Clara Shortridge Foltz Professor of Law, California Western School of Law.

Constitutional clauses guaranteeing women access to education and employment were largely due to Foltz. She crusaded for suffrage and was one of the few original suffragists who lived to cast a ballot. She practiced law continually for 50 years.¹

And she accomplished many of these things very quickly. During the two years from 1877 to 1879, she turned from obscure housewife, with five children by age twenty-five, into the renowned “Portia of the Pacific.”² She read law, passed three bar exams before being admitted, argued her case for admission to the bar all the way to the California Supreme Court, lobbied for both the “Women Lawyers Bill” and the constitutional provisions, and started working for the legislative committee.

I hope Clara would consider me a fitting person to fill her chair, the first we believe to exist in the United States. My career, especially at California Western, has focused on three areas. As my colleagues will attest, I’m pretty single-minded and I’m sure annoyingly so, about the continuing need to diversify our faculty, staff, and student body. I’m the only remaining member of the faculty who first developed our diversity program (although Christine Hickman is also here today); I wrote one of the first articles on efforts to end sexual orientation discrimination in legal education, and I’ve been one of the people pushing diversity in my service on the Association of American Law Schools and American Bar Association accreditation committees. I feel so strongly about this issue, and as we look around this room today we can see that our efforts are paying off.

I also have spent much of my time since 1983 working on a “little project” that a lesbian activist in Madison, Wisconsin, asked me to take on: seeking legal rights for same-sex couples. Clara obviously was much more persuasive than I am; it took her only about two years to open up the California legal profession to women and obtain constitutional protections for women in employment and education—

1. Barbara Allen Babcock, *Reconstructing the Person: The Case of Clara Shortridge Foltz*, 12 BIOGRAPHY: AN INTERDISC. Q. 5 (1989) [hereinafter Babcock, *Reconstructing the Person*]; see also Barbara Allen Babcock, *Clara Shortridge Foltz: “First Woman,”* 30 ARIZ. L. REV. 673 (1988); Barbara Allen Babcock, *Clara Shortridge Foltz: Constitution-Maker*, 66 IND. L.J. 849 (1990).

2. Babcock, *Reconstructing the Person*, *supra* note 1, at 7.

I, on the other hand, have been doing this work for over twenty-five years. When I started working on these issues in 1983 and writing about them in 1986, there was no recognition of our relationships and only five employers in the country that provided health insurance benefits to same-sex couples. Today, we have marriage in Massachusetts and five countries, domestic partnerships or civil unions in seven states and countless European and other countries (including Uruguay, the first in South America), thousands of employers that provide health insurance benefits, and several state courts, including the California courts, that are considering challenges against laws banning same-sex couples from marrying.

I have also tried to be a good teacher: fair, rigorous, and caring. I'm delighted that some of my students are here today. I try to be the type of teacher who fulfills the saying: "The teacher opens the door, but the student must walk through it." I hope I can open the door for my students and push them to embrace the need for them to make the knowledge their own. I have learned so much from my students, and I hope I have pushed them to embrace the quest for knowledge that I so enjoy.

And I have had many blessings that Clara did not. When Clara's father realized she was both scholarly and eloquent, he was reported to have said: "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."³

Unlike Clara's parents, my parents and my sisters have always been more than supportive of my education and going to law school. In fact, my mother will tell you I've been demanding due process since I was two years old and she and my father thought it would be great for me to go to law school so I could earn my living demanding the fairness that I have been insisting on since age two.

It has been a difficult year for my family, because my father was diagnosed with cancer last spring and passed away this summer, and it has been particularly difficult for my mother to have lost him after fifty-six years of marriage. He would have loved this ceremony and would have recognized how special it is to me. My mother and sisters

3. Sandra Day O'Connor, Dedication of Clara Shortridge Foltz Criminal Justice Center (Feb. 8, 2002).

are here, as well as my aunt and uncle, and they have all supported me as I pursued my education and my career.

I haven't always made it easy for them—it can be difficult to be the family member of a recovering addict/alcoholic, outspoken feminist, and out lesbian activist. But they've stayed with me every step of the way, and there's nothing I can say to adequately thank them for everything they've given me.

Another difference is that Clara married at fifteen, eloping to marry Jeremiah Foltz. She had five children, but Jeremiah had difficulty supporting the family. He took many trips to Oregon where it turned out he was visiting another woman whom he married within two weeks after Foltz divorced him. For many years, Clara described herself as a widow with five children to support even though her husband was still alive and able-bodied.⁴

Unlike Clara, I have had complete support from my partner, Peg Habetler. We have been together since November 1990; had a private commitment ceremony in Madison and San Diego in 1992, which many of you attended; and were married in Canada in July 2003. Peg agreed to leave Wisconsin after living there for forty-two years and move to San Diego in 1992, and she arrived here sixteen years ago on May 1, 1992, as the riots and fires were consuming Los Angeles. She has supported my work on behalf of same-sex couples and has withstood countless narratives describing our relationship in various articles and editorials.

The Appalachian ladder-back chair she just presented to me is handcrafted; it was made during this past fall and spring, and she spent hundreds of hours crafting it for me and having it laser-engraved with my name, the name of the professorship, and California Western's logo. I hope you'll come up after the ceremony and see what a marvelous chair it is. I'm thrilled to receive it.

Thanks to my dear friends who are here today. Your love and support means the world to me.

I was reading a review of the book, *Things Fall Apart*, by Chinua Achebe, about the Igbo land in Nigeria. He quoted his father as saying "whenever something stands, something else stands beside it."⁵ For

4. Babcock, *Reconstructing the Person*, *supra* note 1, at 6-8.

5. CHINUA ACHEBE, *THINGS FALL APART* (Everyman's Library 1995) (1958).

me, that is so true—all of the people in this room and many who are not here have been instrumental in allowing me to receive this professorship today.

Thank you to California Western, my friends, my family, and my colleagues who are here today helping me celebrate this professorship. Linking Clara's name with mine is a great honor, and I will try in some small way to fulfill the professorship's responsibilities and, by doing so, commemorate Clara's amazing accomplishments.

