



2012

A Section Memoir

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Automated Citation

Patricia A. Cain, *A Section Memoir*, 80 UMKC L. REV. 727 (2012),

Available at: <http://digitalcommons.law.scu.edu/facpubs/652>

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A SECTION MEMOIR

Patricia A. Cain*

WLE Chair—1987

I was Chair of the Section in 1987, a full thirteen years after joining the faculty at the University of Texas and two years after I had chaired the then recently created Section on Gay and Lesbian Legal Issues, as it was called at that time. I'm not sure why it took me so long to step up to the plate and provide leadership service to the Section on Women in Legal Education. The Section was certainly important to me as I learned how to become a law professor during an era when there were not many female role models. I had served on its executive committee for some years and I had been very active over the years in the now defunct Women and the Law Conference. I had supported the teaching of Women and the Law at the University of Texas when many of my male colleagues were skeptical about the need for such a course and I taught the very first course called Feminist Legal Theory at that institution. In other words, I was "out" as a feminist and so think it unlikely that chairing the Women in Legal Education Section would in any way have diminished my already possibly diminished reputation on feminism grounds. But, as I read Myrna Raeder's essay for this symposium about the early 1980s and her year as Chair of the Section, I have to admit that it did ring true.¹ Being active in this particular AALS Section, even though it was a national organization, brought no kudos from colleagues. In that regard, it was not like serving as Chair of the Section on Taxation. And that of course was all the more reason for someone like me, quite used to the absence of kudos for my feminist activities, to agree to serve the Section as its Chair for a year. Besides, there was still much feminist work to be done in the academy.

By the 1980s, conditions had improved from my earliest law professor days. I entered law teaching in the fall of 1974. I was the first female tenure track hire at the University of Texas. But, fortunately for me, the hiring committee had had the wisdom to offer Barbara Aldave² a visiting offer that same year and so I wasn't alone.

My first AALS annual meeting was in December of 1975, my second year of teaching. In those days the meeting was held at the end of December rather than in early January. I remember it was International Women's Year (IWY), officially named as such by the United Nations. Because of some work I had done with the Texas Women's Political Caucus, I happened to have a gold whistle with the emblem for IWY stamped on it that I wore on a chain around my neck. I knew virtually no one at the meeting, but my colleague Barbara Aldave

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¹ Myrna S. Raeder, *Reflections About Who We Were When Joining Conveyed a Message*, 80 UMKC L. REV. 703 (2012).

² Barbara Aldave is currently a member of the faculty of the University of Oregon. Prior to that (and after her tenure at the University of Texas) she served as dean of St. Mary's School of Law in San Antonio.

did. She insisted that we attend a party hosted by the dean of Boalt Hall (her old alma mater, where she had recently visited as a professor). Boalt had female faculty members then, but none of them were at this party. And all the guys got a kick out of my whistle and thought it would be cool to blow it. I must say, this did not feel like a professional meeting.

In December 1976, the meeting was in Houston. What I remember most about this meeting is that the gals from UC-Davis had a suite and hosted a cocktail party for female law professors. There were two memorable things about this event. First, UC-Davis at that time had four female faculty members—probably the highest percentage of any law school in the country for years to come. That fact alone was cause for hope that situations at male-dominated schools like my own could change. Second, the four Davis women, Carol Bruch, Jean Love, Susan French, and Emma Jordan, had rented a suite at the conference hotel. Word quickly passed that there was a room full of female law professors and before long the Hiring Chairs of many law school faculties appeared. By the end of the party, I had something close to visiting offers at three schools. One of them actually turned into a reality and so, in my fourth year of teaching, I became a visiting professor at the University of Wisconsin. That was an important time for me. Learning how other schools operate and getting to know professors beyond my own institution was a huge benefit professionally. The Section then became active in trying to encourage women to visit other institutions. For a time, we kept a register of people who would be willing to visit and institutions that were looking for visitors. All of that has become more formal now. And, by the 1980s, institutions were regularly advertising teaching positions in the Section newsletter.

In the 1970s we female law professors tended to see each other at the Section breakfast, but rarely were we on panels. Although I have not done a systematic empirical analysis, my memory on this point is clear. I remember a particular meeting, I am not sure of the date, but it was in the 1980s, when I said out loud: I am finally at a meeting of the AALS where the panels are lively and interesting to me. It was the year that Martha Minow³ was on a panel and talked about feminist history and Myra Bradwell.⁴ Almost every panel I attended that year had at least one female speaker.

Those Section breakfasts, and later the lunches, were always a soul-saver for those of us who had little contact with female law professors because our faculties remained male-dominated. I knew hardly any other female law professors in my primary discipline, federal taxation. I knew of Babette Barton (Boalt) and Deborah Schenk (then at Brooklyn, now at NYU). But they weren't active in the Section on Women in Legal Education. Mary Moers Wenig,

³ Minow was then an assistant professor at Harvard Law School and is currently serving as its dean. How things have changed!

⁴ For the law review version of this talk, see Martha Minow, 'Forming Underneath Everything That Grows': *Toward a History of Family Law*, 1985 WIS. L. REV. 819.

initially a tax professor at St. John's and later at Bridgeport/Quinnipiac, more than made up for their absence. Mary was an early Chair of the Section (1975), a committed feminist and always loyal to the Section. She and I talked about feminist tax issues often, including the tax treatment of unmarried couples, something that she wrote about even before I did.⁵ Mary could often talk until you couldn't listen anymore, but I wouldn't trade all those early conversations with her for a moment of silence.

I learned firsthand from her about the serious trials and tribulations of community property wives who were being assessed tax liability on community income attributable to their husbands that they never saw. She worked tirelessly behind the scenes for these women. And she proudly told me, once she understood that I was a lesbian, that her daughter, a rabbi, had been conducting same-sex unions well before anyone thought those unions could become legal. Thumbing through a book the other day, *Feminists Who Changed America, 1963-1975*,⁶ I found an entry for Mary. She began teaching in 1971, the year I started law school. Before that she had spent twenty years practicing law in New York. She left the first two law firms that she had joined in 1951-60 because they did not provide maternity leave. She became the first female lawyer at Skadden Arps in 1960. I felt connected to Mary, not only because she was a tax professor, but also because we shared the same alma mater, Vassar College, albeit two decades apart.⁷

Several important things happened during my year as Chair. My records are less complete than I would like, so I may miss a few points, but I do have a partial file. During 1987 I was in three different locations and so it is not surprising that my files are incomplete.⁸ In fact it is surprising that I was able to locate any files at all.

⁵ See Mary Moers Wenig, *Marital Status and Taxes*, in GRAHAM DOUTHWAITE, UNMARRIED COUPLES AND THE LAW 189 (1979).

⁶ FEMINISTS WHO CHANGED AMERICA, 1963-1975 (Barbara J. Love ed., 2006).

⁷ Another early Chair of the Section, Nancy Erickson, who was also the long-time newsletter editor, was also a Vassar graduate. Interestingly all three of us (Mary, Nancy, and I) are listed in the same book, FEMINISTS WHO CHANGED AMERICA, 1963-1975. See *id.* at 68, 135-36, 488. Other early Chairs of the Section are similarly included in this book. See *id.* at 67 (Shirley Bysiewicz), 174-75 (Ruth Bader Ginsburg), 361 (Jane Picker). Clearly the early leaders of the Section were all "out" as feminists like I was and that was probably important to the early history of the Section. The book itself omits many early feminist law professors, probably because the editor was collecting information through activist networks that did not include legal academic organizations or institutions. As a result the law professors listed were identified for their activism beyond the legal academy.

⁸ This was during the period in my personal history when Jean Love and I had fallen in love and were trying our best to find a way to be in the same location rather than having me live in Austin, Texas, and her live in Davis, California. Our friends in the Section were very helpful in this regard. During our seven years of being at different home institutions we rarely had to make the commute from Austin to Davis. Instead I found visiting positions in California or we were sometimes presented visiting opportunities that allowed us to be in the same city. During 1987, I started the year as a scholar in residence at UC-Davis, spent the summer teaching in Austin, Texas, and spent the following academic year as a visitor at the University of Southern California. Because e-mail

The contents of my file document that we were working with AALS staff in those days to get the names of new women law professors who attended the New Law Teachers Workshop, generally held by the AALS over the summer after teachers had been hired and before they started teaching. I was keenly supportive of this program, remembering that my early AALS meetings were not friendly affairs as I didn't know enough people to feel at home. Making connections with other female law professors had been helpful to me and I hoped our Section could continue to offer support to new teachers in this way. Tracie Thomas, whom I have worked with for years at the AALS, actually sent me a handwritten note that included the names and addresses of twenty-eight new female law professors who attended the conference. I then sent the list to Nancy Erickson to be sure that they received a fall newsletter with information about how to join the Section. It is stunning to me looking at this file twenty-five years later to see the handwritten note. In our move to electronic communication, I worry about how much real history may be lost because people just don't print out emails and file them away these days.

I also have correspondence relating to one of the two panels we were planning for the January 1988 meeting, which was to be in Miami. The two-panel choice was in accord with several years of offering one current topic on a substantive issue of import to women and one panel that would focus on sex discrimination in the teaching of certain law school courses. As Marina Angel reported in the November 1986 Section Newsletter, the Section had sponsored one panel jointly with the Section on Criminal Law that focused on Sex Bias in the Teaching of Criminal Law. At the 1987 meeting, the Section on Women in Legal Education co-sponsored a panel with the Torts Section on Sex Bias in the Teaching of Tort Law. Jean Love,⁹ as Chair-Elect of the Torts Section and a past Chair of the Section on Women in Legal Education, had been pivotal in putting together the co-sponsorship of that panel.

From my notes, it appears that we were not able to complete the joint sponsorship plans for a similar panel at the 1988 meeting dealing with contract law (more on that a bit later). But we did plan a presentation on what was in 1987-88 a very important and timely substantive topic, the legal and ethical issues that surround the use of Assisted Reproductive Technology ("ART"). My commitment was to make this an interdisciplinary panel that would include speakers outside the field of law. Key law professors who committed to participating were Martha Field (Harvard), who was writing a book on the

was not a part of our lives then, I was able to locate copies of letters involving correspondence about the Section that seem to have made it into a Texas file that I then took to USC with me.

⁹ Jean Love was then at UC-Davis, later at the University of Iowa, and currently is at Santa Clara Law. It is probably worth reporting that I fell in love with Jean at the annual meeting of the AALS the year that she was chairing the Section. I will never forget her performance at the Section luncheon as she warmly, conscientiously, and correctly rephrased a winding (and interesting) question posed by Mary Moers Wenig so that whoever listened to the recorded tape would know what had been asked. Jean was an impressively responsible Chair of the Section. Today she is my spouse.

topic,¹⁰ Marjorie Shultz (Boalt), who was actively teaching and writing in the field,¹¹ Margaret Jane Radin (then at the University of Southern California),¹² whose article, *Market-Inalienability*, was published in 1987,¹³ and Isabel Marcus (Buffalo), who was at the time preparing a similar interdisciplinary panel discussion of the same issue at her institution¹⁴ and who, as a political scientist, would bring her own interdisciplinary focus to the panel. I had recently become familiar with the work of Rosemarie (Rosie) Tong, a philosophy professor at Williams, and later at Davidson,¹⁵ whose work was at the intersection of feminist theory and ethics¹⁶ and who was at the time working on ethical issues related to ART.¹⁷

The snowstorm in Atlanta that year prevented the interdisciplinary feature from being fully realized. In fact, it almost derailed the entire panel. It was early January 1988 and the first ever AALS meeting in Miami was about to occur. To reach Miami many of us had to fly through Atlanta. When Jean and I reached the Atlanta airport from my parents' home in Columbus, Georgia, we were told the Atlanta airport was moments away from shutting down altogether. No, I thought, no one is going to keep me away from this great workshop on ART that I have planned for the first ever AALS meeting in Miami. The workshop was scheduled for the next day.

American, United, and Delta counter workers all told us that there was likely no way to get to Miami that day but that we could approach the gates and try there. Obviously this would not be possible under current airport operation with all the additional levels of security. As it turns out, Jean and I heard from an airline worker that at least one plane would make it out to Miami because it had a heart transplant organ scheduled to fly there—the actual heart, not the patient—and the patient was in Miami waiting for the heart. For what must have been two or three hours, we followed that heart package around the airport. We greeted other planes as they landed to see if there were other AALS folks also trying to reach Miami. I found Isabel Marcus (thank goodness) and her colleague Marjorie Girth (later to become dean at Georgia State) from Buffalo and explained our plan to follow the heart to Miami. It worked. The four of us made

¹⁰ MARTHA A. FIELD, *SURROGATE MOTHERHOOD* (1990).

¹¹ See Marjorie Maguire Shultz, *Reproductive Technology and Intent-Based Parenthood: An Opportunity for Gender Neutrality*, 1990 WIS. L. REV. 297.

¹² Later she was on the faculty at Stanford, and is now at Michigan.

¹³ Margaret Jane Radin, *Market-Inalienability*, 100 HARV. L. REV. 1849 (1987).

¹⁴ See Isabel Marcus (moderator), *Looking Toward the Future: Feminism and Reproductive Technologies*, 37 BUFF. L. REV. 203 (1988-89) (edited transcript of the discussion).

¹⁵ Tong was the first director of medical humanities at Davidson. She is currently the Distinguished Professor of Health Care Ethics, a Professor of Philosophy, and Director of the Center for Professional and Applied Ethics at the University of North Carolina, Charlotte.

¹⁶ See ROSEMARIE TONG, *ETHICS IN POLICY ANALYSIS* (1986); ROSEMARIE TONG, *WOMEN, SEX, AND THE LAW* (1984).

¹⁷ See Rosemarie Tong, *The Legacy of Baby M*, 6 WOMEN'S REV. BOOKS 17-18 (1988).

it. So did my other law professor panelists, but unfortunately Rosie Tong did not. Still, we had a great panel discussion of the issues.

Probably one of the most important things that happened on my watch was the attempt to institute the next in line for the “Sex Bias in the Teaching of ___” panels. We thought Contracts would be the logical next choice after our first two such panels on Criminal and Tort law. Mary Joe Frug (New England) had just written about this issue and seemed the right choice as an anchor for the panel. I wrote to her in the summer of 1987 and she had great enthusiasm about the project. She did suggest, however, that we modify the title from Sex Bias in the Teaching of Contracts to Sex Bias in Contract Law—concerned about appearing to step on the feet of contracts professors and casebook authors who might be offended if they thought the critique was about them rather than about the law.

How prescient. I thought we could put this panel together easily since I was to be visiting at the University of Southern California the following year and the Chair of the Contracts Section was a professor there, David Slawson. As it turned out, Slawson was totally opposed to such a program and would not agree to co-sponsor. We worked on the possibility of co-sponsorship for a few months, but in the end David consulted his advisory committee and recommended strongly against it. Some background about these events is contained in a posthumously published law review article, written by Mary Joe Frug and published by her husband.¹⁸ The panel did take place, but one year later, and without the co-sponsorship of the Contracts Section.

The most important thing I remember from the 1988 meeting was that we had over one hundred women sign up for the Section breakfast. That was a huge increase from the 1970s. Yes, there was great progress on the role of female law professors at the AALS meetings from the 1970s to the 1980s. But, as it turned out, feminism was still a topic for derision by mainstream participants. I am privileged to have been a part of the early history of the Section and I am thankful for its contribution to my own professional career.

¹⁸ Mary Joe Frug, *Rescuing Impossibility Doctrine: A Postmodern Feminist Analysis of Contract Law*, 140 U. PA. L. REV. 1029, 1029-30 (1992) (“In a publicly circulated letter, the Chair explained his decision by elaborating his view that the topic of the relationship between feminist theory and contract law was not ‘developed . . . to a point where it is ready for such a sponsorship,’ that it does not yet have ‘a respectable basis.’ ‘In contrast,’ he wrote, the topic upon which the Contracts Section would focus its program, ‘excuse of performance, adjustment of contract and limitation of remedy on account of unexpected events,’ ‘has been thoroughly developed in the literature.’”).