

Children, enhanced women's role as mother. At the same time, these programs irrevocably altered women's relationships with their husbands, often forcing the husband into secrecy if not total abandonment. During the '30s "the economic and affective ties that bound black women and men together were severed at a faster rate than in previous years."

New Deal policy effects were reinforced and expanded during the 1960s and '70s with affirmative action and equal opportunity legislation. Some black women could now enter the better paying world of pink collar work and, for the first time, aspire to individual economic advancement. Women who remained unskilled and uneducated, however, felt the increasing "weight of a faltering economy descend upon them, as the need for a marginal work force dissipated." By the 1970s poverty was no longer simply ghettoized, it was also feminized. In trying to describe present conditions, however, Jones is at her weakest. In an attempt to cover everything from the New Left and Black Power to black feminism, Reaganomics and the political gender gap, her discussion ranges widely but superficially over current problems and dilemmas.

Despite these shortcomings, Jones' book can serve as a reference point for information and further studies of black women. *Labor of Love* is also graced with wonderful photographic sections that depict, in some cases better than the text, the quality of life and spirit among black women.

Neither Jones nor Lebsock ultimately resolve the tension between women's culture and class or gender. Both frame their discussions in terms of a commonly shared female experience. But both also give abundant evidence for a lack of affinity between women of different class and racial backgrounds. Women's culture, to be a meaningful category of analysis, needs to be carefully situated in time and place, and needs to be discussed in the context of a particular culture or class. Perhaps it is time to inject a notion of conflict into the consensus surrounding women's culture.

HISTORY  
ON TRIAL

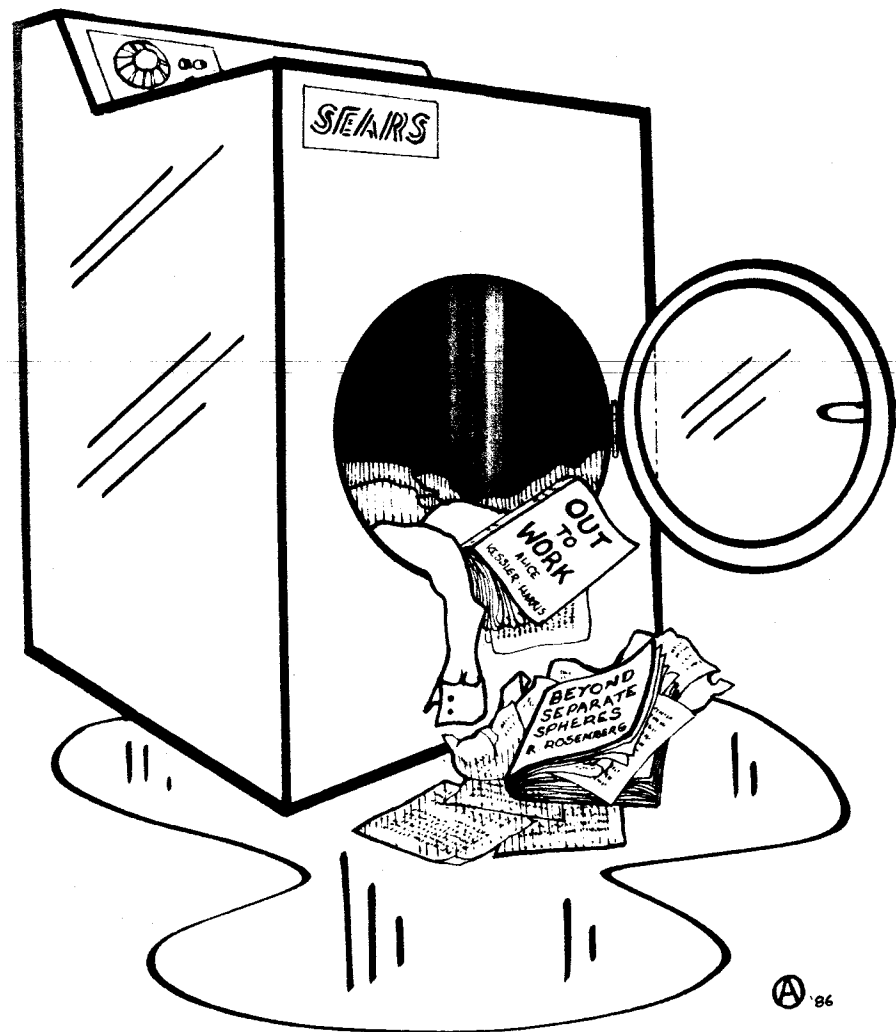


## Equal Employment Opportunity Commission v. Sears, Roebuck and Company: A Personal Account

Alice Kessler-Harris

The case exploded into my life in early September of 1984. Had I heard of the suit against Sears, Roebuck, said the lawyer for the Equal Employment Opportunity Commission on the telephone? Did I know that it was the last of the class action cases and that Sears was the largest employer of women outside the Federal government? Discrimination, retail sales, a female work force — would I be willing to testify for the EEOC? But why, I asked, confusedly processing bits of information, do you need a historian to testify? "Well they've got one," came the answer, "and we want you to rebut her testimony. She argues that women were not interested in commission sales, and she cites your work as evidence that Sears was not guilty of discrimination. Do you agree?"

No, I thought, I did not agree that women's lack of "interest" could absolve a company of charges of discrimination. Nor could I accept that the complex reality embodied in the notion of "interest" could be so readily simplified. I did think that there was some as yet some undefined difference between men and women. I had argued as much myself. But I had not yet figured out what that meant in terms of historical analysis. And to equate different "interests" with an acceptance of the current distribution of rewards from wage work was, in my judgement, to misunderstand the



process by which women struggled for change, as well as to simplify the way difference and inequality have played themselves out historically.

Layers peeled back in the months that followed and the clarity that now seems possible only slowly became visible. A female historian, identified as a feminist, had taken a position in a political trial. She was prepared to testify that other women — working class women, poor women, non-white women — had not wanted well-paying jobs, and would not willingly make the kinds of compromises she herself had made in order to succeed at them. What was to be gained by such testimony? A successful argument would damage women who worked at Sears as well as past and future applicants. Worse, it would set a legal precedent that would inhibit affirmative action cases in the future. For if defendants could justify the absence of women in certain kinds of jobs on the grounds that insufficient numbers of women possessed any interest in them, one could foresee the resulting cycle. Expectations and aspirations conditioned by generations of socialization and labor market experience would now be used to justify continuing discrimination against women. The potential consequences were terrifying. The absence of women from the ranks of plumbers, automobile mechanics or airline pilots could become evidence of their lack of interest in preparing for these jobs. Neither employers nor unions could be held responsible for their absence. Women were themselves to blame. And, finally, what would a victory for this kind of argument do to the remnants of the EEOC? Granted that it was now a Reagan appointed and controlled body, still, this case was left over from the Nixon and Carter years. If some of its lawyers were still fighting on behalf of policies this administration had abandoned, and with tactics it repudiated, should they not be supported?

The elements of the case fell into place slowly. Accused of discriminating against women by failing to hire either new applicants or present employees into commission sales jobs, and by paying managerial women less than men in the same jobs, the company did not dispute the essential facts of the case. Before 1973 (when the EEOC, acting on the complaints of scores of women, and in the wake of the A.T.&T. decision, first brought charges), few women worked in Sears' well-paying commission sales categories.<sup>1</sup> Between 1974 and 1979, under pressure from the EEOC's threatened action, Sears had made some progress in some commission sales categories nationwide. Women had begun to sell such items as sewing machines and draperies, furniture and shoes. In one of the five regional territories into which Sears stores were divided progress had been substantial.<sup>2</sup> But everywhere, the most lucrative jobs in automotive accessories, large appliances, home

entertainment, sporting goods and installed home improvements remained stubbornly resistant to female workers. Overall, the EEOC argued, the proportion of women hired or promoted into such jobs was fifty per cent lower than they estimated it should have been.<sup>3</sup> Efforts to reach an agreement with the company on an enforceable affirmative action plan failed, and in 1980 the EEOC determined on court action.

In court, the EEOC relied on statistical methods to prove its case. Producing a few complainants among the more than one million people who had applied for jobs over the seven-year period in contention would, lawyers feared, create vulnerability if the company could undermine the character of one or two witnesses. Aware that statistical data had been successfully used in the past to demonstrate discrimination in cases involving both women and minorities, EEOC lawyers chose what they thought would be a sure path. They attempted to demonstrate that the absence of women in certain kinds of jobs revealed a pattern of discrimination. Using elaborate statistical techniques that took account of the general and specific work-force experience and educational background of men and women who applied for sales jobs at Sears, the EEOC contended that Sears had fallen far short of good faith efforts at placing women in commission sales jobs. Particularly in contention were the most lucrative jobs selling "big ticket" items such as installed home improvements, carpets, home appliances and auto parts.

Sears' lawyers countered by challenging the notion that a pool of women was available for the jobs it had to offer. The company, they argued, should not be held responsible for the relatively low numbers of women hired in certain categories. Sears had tried, and failed, to find women willing to take those jobs. They were simply not interested in them. A team of lawyers from the Washington based firm of Charles Morgan and Associates<sup>4</sup> presented a series of Sears personnel officials to the court, all of whom testified that even after 1973, when Sears presumably had a goal-oriented affirmative action program, they had had great difficulty in persuading women to take commission sales jobs. As one affirmative action officer testified, "Sears tried very hard to get women into commission selling, despite women's general reluctance to accept these positions."<sup>5</sup> Women, personnel officers agreed, would not willingly undertake the greater competition and financial risk involved in such jobs. And besides, women preferred not to sell items such as men's clothing, fencing equipment, appliances and autoparts because they had no "interest" in them. "Women had to be persuaded to accept commission sales positions. . . ." claimed one personnel officer. "Women were very reluctant to accept positions in the large appliances, installed home improvements, and automotive divi-

sions because they were uncomfortable with selling those product lines or felt they lacked the capacity for the technical aspects of the job."<sup>6</sup>

To prove there was no pool of women available for commission sales jobs, Sears' lawyers drew on the expertise of survey researchers and economists who cited national opinion polls taken in the '50s and '60s that unanimously indicated the prevalence of "traditional" attitudes among women and men regarding the family and women's role within it. And, finally, Sears called on historian Rosalind Rosenberg to provide the broader picture. Women, born and reared before the onset of the contemporary women's movement, she testified, were likely to have internalized traditional values and would thus be less likely than men to accept certain kinds of jobs, even when they carried substantial increases in income.<sup>7</sup>

The EEOC, in rebuttal, contended that Sears had never really tried to find women. The company's affirmative action program was a sham; its personnel people, who kept meticulous records about everything else, could not recall the name of any female job applicant who had actually turned down a job; its interviewing tests for commission sales people were biased.<sup>8</sup> In short, Sears was blind to its own discrimination. "The reasonable inference," argued the EEOC, "to be drawn from the consistent pattern of disparities between the expected and actual female proportion of promotions from full and part time noncommission sales positions to full and part time commission sales positions is that such disparities resulted from discrimination in Sears practices, policies and positions."<sup>9</sup> When only women who had in fact applied for jobs at Sears were counted, EEOC counsel argued, Sears had hired less than fifty per cent of the expected number of women overall. In some departments and regions the figures were much worse, even after the Company was under EEOC investigation.

Sears, drawing once again on Rosalind Rosenberg and others, replied that the EEOC's figures were flawed: the commission incorrectly assumed that men and women were alike and would seek the same kinds of jobs. Sears had tried. Its failure was a result of social circumstances beyond its control. It was, as Rosenberg argued, "naive to believe that the natural effects of these differences was evidence of discrimination by Sears."<sup>10</sup>

How important was the historical evidence in the context of a case that used the expertise of economists, sociologists and survey research experts? To exonerate itself from the charge of discrimination, Sears had to demonstrate that the disproportionately low numbers of women in its most lucrative commission sales jobs could be explained by some factor other than discrimination. A statistical pattern alone would not prove discrimination if Sears could come

up with some logical explanation for the absence of women. Sears chose to try to convince the court of three things: that commission sales jobs in fact required competitive, aggressive and risk-oriented personalities; that Sears had made enormous attempts to induce women to take these jobs; and finally, that women's family values and domestic roles had undermined Sears' efforts. It was in this third category that the historical testimony played a role, for an important part of the company's defense rested on whether lawyers could demonstrate that an exceedingly limited pool of women willing to take commission sales jobs had been available in the years before 1973 when charges were first brought, and between 1973 and 1979 when the suit was filed.

Sears apparently counted on finding historical support from the beginning. The case went to trial in Chicago (company headquarters) in early September 1984. It concluded at the end of the following June, the longest case to be tried to date in the seventh circuit. Rosenberg prepared an "offer of proof," a summary of the evidence she was to present in court, sometime before July 1984. On the basis of this, she was deposed (examined by the opposing side as to the content of her testimony) in early July 1984, before the trial began. I do not know when the EEOC decided it needed a historian to rebut her testimony. I was first contacted in the fall of 1984, and deposed in April 1985, after Rosenberg had testified, and it was clear that my rebuttal would be needed. Because the case was lengthy and drawn out, Judge John Nordberg, a Reagan appointee who was relatively new on the bench, decided about halfway through the trial to ask all witnesses to prepare their direct testimony in writing. This was intended to save time at the trial itself and to facilitate cross-examination. Rosenberg's slightly modified and annotated offer of proof served as her written testimony. Because my offer of proof was prepared under extreme pressure of time, it presented only a two-page outline of my position, on which the written testimony I prepared in May elaborated. After my court appearance in early June, Rosenberg prepared a "sur-rebuttal" on the basis of which she was cross-examined in late June. Neither the EEOC nor I had a chance to respond to this sur-rebuttal, except under the restricted conditions of cross-examination. The unusual circumstance of having two written testimonies (about twenty pages from each of us), as well as Rosenberg's rebuttal, provides a set of documents that lay out the two historical positions in a relatively coherent way, as court proceedings go.<sup>(11)</sup>

These documents pose a series of challenges to historians of women, the most important of which is why the documents came into existence at all. Historians and other social scientists frequently serve as expert witnesses, and even the unusual circumstance of

testifying as to general ideology rather than to particular cases has precedent. According to anthropologist Lawrence Rosen, the 1949-1954 school desegregation cases relied heavily on the expertise of anthropologists who testified that there was no rational basis for keeping schoolchildren of different races apart.<sup>12</sup> But the testimony in the Sears case raises two hotly debated issues. First is the nature of truth and the possibility of claiming it in a case of this kind, and under the conditions that a court of law offers. Given the nature of adversarial proceedings, the historian who does not acknowledge (as C. Vann Woodward did in 1954) that he is "constrained by the limits of his craft" must wonder whether expertise is not merely a cover for more complicated rationalizations of our own values.<sup>13</sup> This raises a second issue: the politics of history. Lawrence Rosen argues that experts must set their own standards for the form of the argument used in a court of law as opposed to those "employed when writing for a scholarly or popular audience," implying what nearly everyone suggests: that witnesses who engage themselves in an adversarial situation necessarily take on the mission of their side. Historian Charles Bolton put this clearly when he described his testimony in a case involving creationism. "Since I was interested in the case and sympathetic to the plaintiff's position, I agreed to investigate the subject and to testify if my findings suited the needs of the attorneys," he said.<sup>14</sup>

Rosenberg studied the data that Sears' lawyers provided and concluded on the basis of it, as well as, presumably, on the basis of her general knowledge of the history of women, that the company was not guilty of discrimination.<sup>15</sup> I looked at the same material (or at any rate at the material that the EEOC provided) and concluded in the light of my work on wage-earning women that an absence of women was more likely to be a consequence of discrimination than of any other cause. There is no point in obscuring these essentially political perceptions or the political decisions that followed from them. Neither of us would have been selected as expert witnesses had we come to the opposite conclusions. Rosenberg later defended her participation in the case on the grounds that discrimination alone could not account for the absence of women. Of course not. But this was never the issue. The point is that, in a case that is about discrimination, to argue that discrimination was not the likely explanation is to lend one's expertise to the argument that other explanations are more plausible. What followed was to be expected. Rosenberg marshalled evidence to demonstrate that the absence of women was consistent with a lack of discrimination. I marshalled evidence to demonstrate that the absence of women was probably a result of it.

The capacity to take opposing positions on such a crucial issue

deserves scrutiny. How does it happen that two feminist historians faced with the same question could come to such different conclusions? The answer may lie in different understandings of why and how we study the past. For many of us, history is about exploring the nature of social change. We engage in it as professional historians not to explore the past for its own sake but to explain how change happened. Some of us go one step further. In this respect I identify with a comment of Natalie Zemon Davis: "I want to show that even when times were hard, people found ways to cope with what was happening and maybe to resist it. . . . Especially I want to show that it could be different, that it was different, that there are alternatives."<sup>16</sup> As feminist historians, we are particularly concerned to discover what women's lives were like because we know that they simultaneously lived within oppressive systems and found ways to search for the elusive goal of equality. So we are drawn to write the biographies of all kinds of women not because they mirrored the social realities of their worlds, but because they transcended them. We use our knowledge to try to figure out how, despite the overwhelming weight of tradition, change occurs.

The attempt to understand mechanisms of change, then, requires questions about how women have pushed at the boundaries of opportunity. Under what historical circumstances did culture operate to inhibit change and under what circumstances to enhance opportunity? Recent historiography of wage-earning women has involved a search for answers to such questions. We began with the knowledge that most women worked at relatively poor jobs that they sought for a variety of reasons and in a variety of ways. We quickly rejected the biases of an early twentieth-century literature that accepted the values of domesticity, moving beyond its descriptions and illustrations of women's repeated victimization. Instead, we turned to sorting out how particular groups of women were constrained by force (economic and physical) as well as by self-justifying belief systems, and how they took advantage of unique moments to make incremental gains in their positions.

These concerns for the mechanisms of change are negated in the testimony offered by Rosenberg. Sears, seeking to justify the status quo, had set the terms of the discourse. Were there plausible alternative explanations other than discrimination, lawyers asked, for the absence of women in some jobs? Rosenberg had responded with what she later described as a "multicausal" view of history: one in which socialization, family responsibilities, educational practices, government policies, cultural attitudes and employer discrimination all played a part in shaping the contemporary labor force.<sup>17</sup> But, far from explaining the absence of women in certain sectors of the labor market, throwing out a variety of causes merely begs

the question of how to order and assess them. As we shall see, Rosenberg had done precisely that. Having accepted the issues as Sears, Roebuck and Co. had chosen to define them, she had responded by presenting a plausible array of alternatives that together added up to a defense of the status quo.

The structure of the argument made to the court followed logically from this essentially political perspective. Rosenberg's position was deceptively simple. Men and women had "different interests, goals and aspirations regarding work," she wrote.<sup>18</sup> The EEOC ignored the fact that "many workers, especially women, have goals and values other than realizing maximum economic gain. . . . values shaped in earlier eras."<sup>19</sup> These different goals and values, reinforced by government policies, had led women to emphasize traditional, family-oriented roles, and to make choices about wage work from that perspective. Rosenberg wrote:

Even the semi-subsistence, farming families in seventeenth-century America divided work according to sex. Women cared for the children, prepared the food, nursed the sick, made the clothes, and tended the garden. Men worked the fields, cared for the livestock, and represented the family in the outside world. Many of the jobs that men and women perform in the labor force today are the modern equivalents of traditional male and female tasks. For women these modern equivalents are simply added on to traditional tasks, especially if the woman is a wife and mother. Even as they have entered the labor force in increasing numbers, women have retained their historic commitment to the home. Women's role in American society and in the American family unit has fostered the development of 'feminine' values that have been internalized by women themselves and reinforced by society, through its customs, its culture, and its laws.<sup>20</sup>

For a "multicausal" view of women's condition, these observations reflect a singularly monocausal view of history. They take into account only the suppliers of labor — women — and offer up their domestic roles as the central explanation for the continuation of occupational segregation in the work force. Women had chosen not to look for jobs in non-traditional areas such as commission sales, Rosenberg concluded. Their absence from these jobs was consistent with a finding that there had been no discrimination at Sears.

Given the difficulty of presenting a nuanced historical argument before a court of law (a difficulty I was to experience later), I don't want to debate here the details of the evidence offered. Still, the absence of nuance exposes clearly the structure of the argument on both sides, and it is the outlines of the two positions and their implications that deserve scrutiny. Rosenberg's position lent itself

to the uses that Sears' lawyers, Morgan and Associates, made of it.

The case turned on whether Sears employment practices reflected female preferences and values as opposed to those of employers. Lawyers for Sears emphasized women's goals and values, focused on the desire of individuals to fulfill their interests at work, and asserted employers' willingness to hire anyone qualified. Similarly, Rosenberg's testimony assumed the existence of genuine choice for women within an unrestricted labor market. "Because housework and child care continue to affect women's labor force participation even today," she wrote, "many women choose jobs that complement their family obligations over jobs that might increase and enhance [sic] their earning potential."<sup>21</sup> This vision of a labor market operating in response to the needs of women and the family pervades a testimony that lacks any sense that employers, too, make choices in terms of their preconceptions about workers. While no one would want to argue that employers alone discriminate, the decisions made by employers take into account the real costs of equity, and are often buttressed by an ideology that obscures discrimination in which employers and workers alike participate. Rosenberg's position implicitly holds women responsible for the sexual division of labor, offering the reality of a segmented labor market as though it were the product of women's will, but failing to acknowledge that women must confront it whether or not their own inclinations are family oriented.<sup>22</sup>

Such a vision of the labor market suggests that higher wages are incompatible with family responsibilities, an idea affirmed by Rosenberg's statement that "Many workers, especially women, have goals and values other than realizing maximum economic gain."<sup>23</sup> On one level, this statement is of course accurate. Recent research indicates that neither men nor women are interested *solely* in maximizing income. Men tend to choose between work and leisure; women between work, housework and leisure. In the neoclassical paradigm, a rise in wages tips the balance in favor of wage work, so it is hardly radical to view higher wages or available opportunity as responsible for women's willingness to trade housework for a job.<sup>24</sup>

In this context, the notion that some workers have goals and values other than realizing maximum economic gain reveals the essential issue at Sears. According to the EEOC's undisputed calculations, the median salary of full-time commission salespeople in their first year at Sears averaged between three and four dollars an hour more than the average salary of full-time non-commission salespeople.<sup>25</sup> Gaining this wage involved little or no risk. Between 1973 and 1977, Sears paid commission sales people a "draw" against commissions, but the company made up the difference if after one

week the employee had not earned the rate of draw. After 1977, Sears guaranteed a minimum salary (estimated on the basis of sales performance) to all commission sales people and salespeople retained their commissions.<sup>26</sup> Personnel officers testified in court that they could recall few people ever fired for failing to make their base salaries. To believe Sears, in short, we would have to believe not only that women were not interested in maximizing income, but that the competition involved in such jobs and their lack of interest in the products sold would deter them from nearly doubling their wages. Since the hours in both non-commission and commission jobs were substantially the same and since earning income is seen by most wage-earning women as a way of meeting family needs, women's objections to commission sales jobs are reduced to the ideological sphere.

Who, then, were the women who preferred to avoid competition and were uninterested in non-traditional jobs? In Rosenberg's testimony, they were women for whom the nineteenth-century prescription of domesticity had become a reality. "Throughout American History," wrote Rosenberg, "there has been a consensus, shared by women, that, for women, working outside the home is subordinate to family." Rosenberg wrote as if all women were middle class. Black, immigrant, and poor women existed only at the periphery of the labor market, instead of at the center of most past and present decisions about wage work. Conceptions such as "traditional" and "non-traditional" work were never defined, and "family life" was reified, wiping out the diverse forms women had adopted to sustain themselves and their dependents.

The result was a conception in which "non-traditional" work and family life appeared as opposites, while "traditional" work was located not in labor market terms but in jobs that sustained notions of the "ideal" family — nursing, part-time, etc.<sup>27</sup> The evident tautology here (if women are doing the job, it must be consistent with family life; if it was consistent with family life, women would do it), was resolved in this schema by the assumption that women, after all, wanted these, and only these jobs. Women's interest in family life led them, with the encouragement of government and educational institutions, to seek out jobs that sustained their family roles and so on in a circular pattern that neatly fit the needs of employers and reaffirmed family life. One can admit the half truth here, namely that many women have accepted prevailing stereotypes about their roles, without negating the ways in which change in women's roles as a whole has resulted from the efforts of a minority of women to break down restrictive barriers. All women have not needed to be construction workers, telephone linemen or tool and dye makers to demonstrate that those options

are available to other women.

What is at issue, then, is a conception that is so unalterably middle class and white that the notion of "family needs" is separable from the productive labor of women, inside or outside the home. Historically, women have met the needs of their families where, and as, necessity has required and opportunity has existed. To offer a view of history that suggests that working outside the home is somehow an evasion of family responsibility is to invoke turn-of-the-century middle class condemnation of poor working women.

The unstated assumption of this testimony is that the social root of ideological change lay within the family, as opposed to the sphere of production. Alterations in family demography and inflationary pressures on the family accounted for the surge of interest in jobs in the 1970s. Denying the impact of greater accessibility of jobs through affirmative action plans and legislative intervention, Rosenberg argued that women themselves have been forced, in consequence of demographic and family changes, to seek jobs. Still, they chose to work in areas consistent with her conception of family roles, and thus she could account for the flood of women into the workforce while holding that Sears could not be held responsible for failing to hire women in jobs they and she deemed inconsistent with an unchanging conception of women's roles. In this interpretation, the family was, and remained, the source of women's perceptions of the world around them. Avoiding this pattern was possible, according to the testimony, largely for educated women, who constituted the vanguard of change in the past as in the present.<sup>28</sup> Gone the tradition of radical womanhood embodied in the anarchist experience, or in the lives of black women. Gone too the legion of female trade union activists whose struggles to create opportunity for women highlight the pages of nineteenth- and twentieth-century history. Those were women who often identified with women's "sphere" and nevertheless attempted to fight their disadvantaged status at work. Gone too any conception of consciousness in which the production of household and factory formed a unity in women's minds.

The testimony lacked any conception that the job market and the world of work could and did influence how young girls thought about themselves and how women assessed their possibilities. Failure to understand that aspirations are themselves conditioned by perceptions of available opportunity (that Sears was an important part of this world and complicit in the socialization process) or to put it another way, that ideology and consciousness are both rooted in an everyday experience of which the family is a form as well as a creator, provided the curious gap in perception that allowed Rosenberg to acknowledge on the stand that black women might have

had goals and aspirations that varied from those of white women without altering the direction of her testimony a notch.

There was another particularly disturbing problem from the perspective of women's history, however. Rosenberg's testimony offered an interpretation to which many of us had come. Namely, that women's social and cultural differences from men could and should be the subject of historical analysis. And yet, no student of the history of working women that I knew of inferred from that interpretation what was suggested by Rosenberg. What, then, was the level of truth in the argument? That women of all classes and racial groups had had a special relationship to home and family, no one would deny. But the circumstances surrounding that relationship were not merely minor details in an otherwise homogeneous past. An enormous variety of specific experiences divided women and encouraged them to make dramatically different assessments of their work and home options. Granted the differences between men and women, women themselves had understood and used them in varied ways.

Indeed, one of the tensions in women's history that arguably described much of the dynamic of change in women's lives over time was the tension between women's own conception of "difference" and the objective condition of inequality. We had all observed that women, to live, had participated in, even colluded in, their own oppression. But that was not the sum total of their perceptions and understandings of the world around them. Nor did that truth wipe out the ways in which women had continually exerted themselves (in ways consonant with their access to money, resources and education) in a centuries-long struggle for emancipation. If women had sometimes accepted difference as a justification for inequality, they had frequently used it to reach for opportunity when it appeared, and to struggle for political and social change. Changing understandings of cultural difference over time had provided the entering wedges in what could only be interpreted as an effort to achieve greater equality: the domestic feminism of the mid-nineteenth century, the battles for suffrage, and the struggle for protective legislation are cases in point. To use the notion that women had "different" interests to justify their absence from the workplace was to assume that "difference" inevitably affirmed the traditional family.

Historians of working class women have generally not used the idea that way. The notion that women brought with them to the workforce a sense of self and an orientation that was not identical to that of men offered a way of distinguishing their behavior, their values, their commitments and their aspirations from those of men.<sup>29</sup> It helped us to think about workers in gendered terms,

as we had earlier learned to think of them in ethnic and racial terms. But gender was one among many patterns that influenced how women worked. To think about women as workers who make choices, conditioned by and responsive to their life experiences, is to say one thing. To think about the generic constraints of a universal female experience defining work orientation is to say something entirely other.

Rosenberg had turned on its head the position to which most students of the subject had come — namely, that women's behavior could be interpreted in light of their own constraints. Instead, she had chosen to universalize her assumptions about what those constraints were likely to be — to saddle all women with a particular interpretation of the domestic code. The result was a series of conclusions that trapped women within a domestic ideology isolated from class, race, ethnicity or region. She had then taken the next step which was to assert that the mechanism of entrapment lay within their own power to remove. Sears was not responsible for women's choices; women were. By implication, corporations that did not hire women were merely responding to women's own needs and interests. This linear and deterministic view of history had inexorably placed responsibility on women's own shoulders — a classic example of blaming the victim.

Reconciling the notion that women could simultaneously operate within and against their society posed little problem for me. Women were part of the society in which they lived, and they continually pushed at the boundaries of opportunity within the contexts of their class and race positions. It was not difficult to explain the existence of simultaneous, seemingly opposite directions in individuals. People could and did have a range of needs and experiences, as well as a range of social understanding within which to place them. Women's behavior was, as much as anything else, a function of their social experience. Change the context, and people would respond in different ways.

A large theoretical literature is consistent with this understanding of the past. Raymond Williams' notion of emergent and residual cultures enabled us to understand how some people could hang on to tradition, while their peers moved into the modern world. Charles Sabel's proposition that the multiple world views of workers allowed for a single individual to identify as a member of an ethnic group, as a participant in a family, and as a wage-earner, explained the sometimes conflicting political positions that workers with seemingly identical interests could take. Current empirical literature confirms these speculations. Cynthia Epstein's research on women lawyers points to the importance of opportunity; Brian Greenberg's study of nineteenth-century Albany demonstrates that workers who

espouse the idea of free labor also defend their class interests when necessary. Sallie Westwood's explorations of women's factory work reveal the care with which they protect privileges at work while they assign domestic meaning to them.<sup>30</sup>

Rosenberg's testimony lent itself to precisely the purposes for which it was used. That this was no accident is confirmed by the language of the first paragraph of Rosenberg's sur-rebuttal. "It is my professional opinion," she wrote,

that the overwhelming weight of modern scholarship in women's history and related fields supports the view that other Sears experts and I have put forward — namely, that disparities in the sexual composition of an employer's workforce, as well as disparities in pay between men and women in many circumstances, are consistent with an absence of discrimination on the part of the employer.<sup>31</sup>

Well, yes, but they are also consistent with the presence of discrimination. And if so, why would one want to place one's services at the disposal of, at best, a potentially discriminatory employer?

Rosenberg provided, as her own explanations, two puzzling answers to this question. She had studied Sears' affirmative action program and found it satisfactory; she believed that a successful defense by Sears would encourage other employers to develop good programs. And, she thought, not telling what she had become persuaded was the truth about women would do them "more harm than good."<sup>32</sup> Neither of these is convincing. Whatever we think of the Sears affirmative action program, by its own admission, in a period when goals and targets were widely met by other employers, it failed to meet even its own goals. If her position was based on a study of Sears, why generalize, and why not give women, rather than employers, the benefit of the doubt? Were we to revert to the position that only the slow passage of time would reap change? Rosenberg had never made it clear how women would be harmed by the discussion of a more complex truth.

I preferred to argue that we would never know what women wanted until the doors of opportunity were fully opened. The historical evidence viewed from the perspective of what women had been able to achieve, suggested that given available opportunity, sufficient numbers of women had never been lacking for jobs offered at good pay, even when those jobs were defined as male. An occupationally segregated labor force provided only a description of the labor market constraints, not an explanation of labor market behavior. Labor force needs and the socialization process together explained the structure of the labor force. Neither was independent of the other, I testified, and therefore notions of women's socializa-

tion and culture had to be seen in the context of the whole picture. I suggested that women had not "internalized" values and goals. Rather, they had continually modified and altered them as circumstances made it possible to do so.

I acknowledged what all my work had indicated—namely, that women had operated within social constraints that varied for different groups of women as they varied between men and women.<sup>33</sup> But, I argued, those constraints were not unrelated to available opportunities. The existence of something called female culture was not in dispute; its function was. Rosenberg had presented its role as preserving the status quo. I saw it as malleable, as part of the process of change. The key in court would be to demonstrate that sex roles were not rigid as Rosenberg had portrayed them; that women differed widely among themselves; and, crucially, that employers, who used all kinds of differences to discriminate among workers, certainly used gender as well.

These goals were more easily developed than executed. One intuits the difference between working in a library and participating in a court room drama, but until one has experienced it, the disjunction between the two remains abstract. Accustomed to developing the subtle distinctions of an argument, to negotiating about fine points of interpretation, the historian quickly discovers that these skills must be abandoned in testifying. Maintaining a position is as important as the position taken. Consistency is not merely a virtue but evidence of one's expertise. Yet the temptation to over-generalize or to state a case in its sharpest form must also be resisted. I discovered to my sorrow that either one can be quickly penetrated in a cross-examination.

My written testimony emerged out of an attempt to avoid these two danger points, the product of a two-day ordeal in deposition, and of negotiation with the EEOC lawyer over how much to say and how to say it. Of the two, the deposition was clearly the stronger influence. There, I got my first taste of the clear distinction made by the legal profession between learning the truth and constructing a case; between understanding and persuading. And there, I also learned for the first time, that precisely what I as a historian cared most about would most surely destroy my testimony if I pursued it. My job, I was told, was to answer all questions, but to provide no more information than was demanded. The job of the examining lawyer, Denise Leary, an employee of the firm defending Sears, was to find out as much as she could about what I would testify in writing, and at the trial. Any attempt I made to introduce controversy, disagreement and analysis merely revealed that history was an uncertain tool and invalidated both its findings and my conclusions. She was interested in authority, clarity and weaknesses

what exactly  
was statement? 73

in my level of knowledge. The basis of both questions and answers was the "offer of proof": in my case a two page statement defining the boundaries within which I was prepared to testify.

I had begun my "offer of proof" with two statements: the first negating the value of prescriptive literature in understanding the behavior of wage-earning women; and the second attacking Rosenberg's testimony for its "numerous omissions and misunderstandings." What, the lawyer wanted to know were these omissions and misunderstandings? What were the areas where I disagreed? Over a two day period, we moved item by item through Rosenberg's testimony as the lawyer asked about, and I responded to, every item. Sometimes the exchanges were funny. More often, they were brutal. Did I not agree that Nancy Cott was a well-respected historian? Well, yes, of course. Then it followed that this point of Rosenberg's for which she had cited Cott as a source must be correct. No, as I understood Cott's position, it did not sustain Rosenberg's argument. Had not Mary Beth Norton argued that women in the revolution knew little about family finances? Yes, but. . . . Did not this support the notion that women's roles were restricted? Not necessarily—after all, Kerber had said X and Berkin said Y, and even Norton in other places modified the argument. Besides, I wanted to scream, this was all irrelevant.

I wanted to explain that history was about change; that to drag the American revolution into today's labor market practices had no meaning at all. That the women those historians had studied, pre-industrial, pre-urban, and white, had little in common with contemporary women workers. But my job was to answer questions. When I tried to introduce diversity, my answers were demeaned. What percentage of married women in 1890 were black or immigrants? What percentage of those worked? Was not the total a relatively small proportion of women as a whole? It depended on how you defined work, I countered: agricultural work, home work, boarders, those added up to significant numbers. And besides, wasn't this case about women *in* the workforce, not about women who could afford to stay out of it? She would ask the questions, thank you. This case was about statistics, she kept reminding me. And when I retreated behind the scattered information that historians possess, she sneered; you just don't know. Oh, for the opportunity to explain what it was that historians did, and how they generalized from limited data!

Rosenberg had cited more than a dozen historians and sociologists in support of points with which I disagreed. Over a weekend break between questions, I looked up as many as I could to see whether and how the citations supported her generalizations. Again and again, I pinpointed misinterpretations, discovered

quotes out of context, and arguments made from evidence that pointed in contrary directions.<sup>34</sup> By the second day, I had the hang of it. My answers were more precise, my evidence more targeted, my rebuttals more positive. To refute Rosenberg's argument, I found myself constructing a rebuttal in which subtlety and nuance were omitted, and in which evidence was marshalled to make a point while complexities and exceptions vanished from sight.

In the end, it did not matter. It was not history but its use that went on trial. Just as so much of what we do is not about what is true and what false, what happened and what did not, so the issue here was not about who had correctly interpreted the past, but about how that interpretation was presented in different contexts. Testimony had a double-edged quality. In this case, once given and written, it had a life of its own, at the mercy of cross-examining lawyers, and not subject to qualification. Because it constituted the boundaries within which examination could happen, it had to encompass the totality of my expertise: broad enough to meet the needs of the plaintiff, and yet sufficiently restrained as to offer few loopholes that the defendants could use to undermine it. What sorts of claims to truth could be justified by such expertise? The speculation and tentativeness of an article or a lecture had no place in the courtroom. In a statement of one's own making, one had both leisure and time to play out an argument, to present the negative in order to come to the positive. In a judicial proceeding, not only was there no such time, but doing so jeopardized the case, because it could be and, in my limited experience was, so often cited out of context.

It was no surprise, for example, when the cross-examining lawyer challenged not the substance of my testimony, but the language in which it was phrased in a sometimes successful attempt to reduce it to its absurd extremes. So, for example, "women had never failed to take jobs when opportunities presented themselves" (which I had written to mean that sufficient numbers of women were available to fill any job opportunity) got turned into a query about whether it could possibly be true that all women availed themselves of opportunity. An argument that the need for income rather than the pursuit of interest drove women into certain kinds of jobs led to a dispute about whether "interest" played any role at all in the kinds of jobs women would take. Though I gathered that such attempts to attack the credibility of witnesses and reduce statements to absurdity were routine parts of every cross-examination, I was nevertheless astonished at how easy it was, within the yes or no format demanded by the court, to agree with statements simply because I could not deny them, not because they represented my understanding of the issues involved.

Deposition, written testimony, cross examination: if I had not fully understood before, they taught me now that with whatever virtue and justice I entered the lists, skill in the fight would tell the tale. What then was a feminist doing in the courtroom at all? I had reacted viscerally to seeing my own work, badly distorted, put to the service of a politically destructive cause. I believed that the success of Sears' lawyers would undermine two decades of affirmative action efforts and exercise a chilling effect on women's history as a whole. To allow the tale told by Sears to pass unchallenged as women's view of their history would encourage others to use it to rationalize an unequal past.

It did not surprise me that history was brought to trial. We have long appealed to the past to justify and rationalize present beliefs and behavior. But I continue to be disturbed that a feminist historian should fail to see the implications of her testimony for working women and for women's history. Rosenberg argued after the trial that she was serving the cause of "careful scholarship." "If we insist on pretending that no factors other than employer discrimination play a significant role in shaping women's role in the workforce, we will do women more harm than good," she wrote. But, in fact, she had offered as "careful scholarship" a single-minded interpretation that played down the role of discrimination. She had done this, not in the cause of ordinary women, but in the name of an employer accused of denying women jobs. The past had once again become the creature of conserving ideology — ideology all the more dangerous for remaining unspoken.

The case has been instructive for me. Excited by the possibility of exploring working women's conceptions of gender in order to find a way of probing the pressures to retain and alter tradition, I began, several years ago, to explore the language and symbols with which wage-earning women described their own experiences. I believed — I still believe — that the self-experience of work, as it changes over time, could provide clues about women's relationship to work in the past and in the future. Such symbols were not themselves explanatory, nor could they be interpreted outside the context of material pressures and other social needs. Yet in the search for the dynamism of change, they demanded attention. This would be my way of challenging the particular universalism of labor history. We would, for the first time, have to write books in which "workers" meant women as well as men. One could argue (as I have) that such distinctions, such a breakdown of the universal male would enable women to fight for working conditions that met the legitimate needs of workers who were not male. It could therefore become a political rallying point. But if understanding the way difference can move us toward change offers one way to think about

the past, understanding how difference reinforces tradition and legitimizes inequality suggests another. This case reminds us that whether we will or not, writing history is a political act. For my part, then, I am troubled less by the question of how easily careful scholarship is abandoned than by how readily it is distorted and misinterpreted when placed in the service of a political cause.

This case, then, should not serve to stifle our thoughts but to heighten awareness of their political context. Feminist historians have struggled for more than a decade and a half now, not merely to include the experiences of women in history books, but to explore how history itself would be altered by their inclusion. To do that required new frameworks for thought, new ways of thinking. What historical theory, in its vaunted universalism, could not provide we hungrily absorbed from psychology, philosophy, sociology and anthropology. But this case demonstrates that historians have something to return to these disciplines: the empirical evidence that demonstrates that culture is not a static framework, but a moving force. Among the lessons we should learn from this experience is what happens when one historian forgets that history is about change and makes claims to value-free evidence in order to demonstrate that past behavior justifies present injustice. Not the politics but the ethics of history is then called into question.

I don't think that means we should abandon the effort to explore "women's culture" nor should we fail to use the concept to help define the parameters within which a sex-gender system works. Surely there is something useful to the notion that women are somehow "different" from men: such a conception has led us to begin to think of non-universal methodologies in anthropology and psychology; to identify research questions and issues in which distinctions become ways of pursuing knowledge about how and where and when they are created and overcome. The notion has led us to the highest reaches of critical and philosophical speculation.<sup>35</sup> But I think it does mean that we have to remember and articulate, explicitly and consciously, the historical context of the culture about which we speak, for as Ellen Dubois warned us several years ago, what is offered as explanation, can also be used as justification.<sup>36</sup>

The use of historical argument in the Sears case affirms the degree to which historical interpretation is subject to the whims of time. In a period when the politics of the family and efforts to reassert traditional sex roles are in the forefront of a new morality, it illustrates yet again the ease with which political positions are rationalized in the name of scholarship.

*Editor's Note: On February 3, 1986, U. S. District Court Judge John A. Nordberg ruled that the EEOC had failed to show that Sears, Roebuck and Company discriminated against women in hiring and promotion for commission sales jobs.*

#### Notes

I very much appreciate the comments and insights of the following friends who willingly helped to sort out the issues involved: Karen Baker, Blanche Wiesen Cook, Eric Foner, Doris Friedensohn, Bert Silverman, Amy Swerdlow, Carole Turbin, and Marilyn Young, as well as RHR's editors. The taped discussion of the faculty seminar in the History and Society program at the University of Minnesota was enormously helpful, as was the commitment of a very special group of graduate students at SUNY Binghamton who, in the Spring of 1985, learned first-hand something of the meaning of Marc Bloch's poignant question, "What is the use of history?"

1. Percentages of women varied by commission sales category. In 1973, 73.5 per cent of Sears' 14,794 full time non-commission sales employees were women, but only 15.4 per cent of its 23,867 full time commission sales people were women. Plaintiff's Proposed Finding of Fact and Conclusions of Law — Commission Sales, p. 9; This document like the other court documents cited below was filed in the United States District Court for the Northern District of Illinois, Eastern Division; File No. 79-C-4373, John A. Nordberg, District Judge.

2. Figures for the Midwest were substantially higher than for the four other regions in all commission sales categories. One can speculate that this means that midwestern women were more willing to take such jobs, or that management in this region was more amenable to hiring them.

3. Plaintiff's Pre-trial Brief — Commission Sales Issues (Revised November 19, 1984), p. 50. The EEOC expected that 53.1 per cent of new hires in commission sales would be female; as compared to 27 per cent actually hired.

4. Charles Morgan was a well-known civil rights lawyer in the 1960s. His turn against affirmative action seems to be a consequence of a commitment to fighting for unpopular causes, rather than to the issues involved. See Morgan's piece "Bad for Lawyers, Bad for Lawyering," in the *New York Times* October 11, 1985, p. A 35.

5. Testimony of Carolyn Rogers, May 7, 1985, p. 6; cf also, pp. 22, 38, 55, 64, 65

6. Testimony of J. Richard Howie, May 7, 1985; pp. 4-5

7. Offer of Proof concerning the Testimony of Dr. Rosalind Rosenberg, items 18, 19, 20. The annotated version, which became Rosalind Rosenberg's written testimony, and which I cite herein, was filed in court on March 11, 1985. The document is not paginated.

8. Plaintiff's Proposed Finding of Fact, pp. 21-22 and 15-18.

9. Plaintiff's Pre-trial Brief, p. 15.

10. Rosenberg, Offer of Proof, item 24.

11. All of these documents as well as the transcripts of both depositions and the trial testimonies are available from the Clerk of the Court, United States District Court for the Northern District of Illinois, Eastern Division, and will soon be on deposit in the Schlesinger Library in Cambridge, Mass. Rosenberg has claimed that Sears' lawyers wrote the Offer of Proof that was the basis for her deposition and was submitted to the court on March 11, 1985 as her written testimony. Whether or not she actually penned the words, Rosenberg certainly testified to the specific and general contents of the document, as the court transcript makes clear. See pp. 10345-10347.

12. Lawrence Rosen, "The Anthropologist as Expert Witness," *American Anthropologist*, 79 (September, 1978), p. 560.
13. Woodward is cited in Paul Soifer, "The Litigation Historian: Objectivity, Responsibility," *The Public Historian*, 5 (Spring, 1983), p. 51.
14. S. Charles Bolton, "The Historian as Expert Witness: Creationism in Arkansas," *The Public Historian*, 4 (Summer, 1982), p. 61.
15. On March 11, 1985 toward the end of her first cross examination, Rosenberg admitted that discrimination was a possible explanation for the data. Asked in re-direct questioning if she thought this was likely, she answered that it was not. Cf. trial transcript pp. 10453, 10459, 10463.
16. Natalie Zemon Davis, "Politics, Progeny, and French History: An Interview with Natalie Zemon Davis," *Radical History Review*, 24 (Fall, 1980), p. 133.
17. "A Feminist for Sears," *The Nation*, October 26, 1985, p. 394.
18. Rosenberg, Offer of Proof, item 1.
19. *Ibid.*, item 2.
20. *Ibid.*, items 5, 10, 16.
21. *Ibid.*, item 11.
22. In the event, this turned out to be one of the most interesting historical issues. Rosenberg characterized my attempt to assert the other side of the dialectical process as "monocausal." I claimed, she held, that employers were solely responsible for discrimination. In charging that my depiction of limited choice for women, within the framework of available opportunity, assumed them to be passive and dependent, she concluded (Written Rebuttal Testimony of Dr. Rosalind Rosenberg, June 25, 1985, p. 11), that I was guilty of portraying them as victims. I take this attack as demonstration of the validity of my assertion here, and as evidence of the value of a dialectical view of history.
23. Rosenberg, Offer of Proof, item 2.
24. See, for example, Jacob Mincer, "Labor Force Participation of Married women: A Study of Labor Supply," in Gregg Lewis, ed., *Aspects of Labor Economics*, Report of the National Bureau of Economic Research (Princeton: Princeton University Press, 1962), 63-105.
25. According to the EEOC's undisputed figures, the median wage of all full time non-commission salesclerks at Sears in 1979 was \$3.50 an hour. In contrast, the average pay of a first year commission sales person was \$7.50 an hour. Plaintiff's Pre-trial Brief, p. 27. These figures varied year to year, but the average difference was never less than \$2.70 an hour.
26. Plaintiff's Proposed Finding of Fact, p. 11. Before 1973, commissions were held against a four week draw before the lack of earnings was forgiven.
27. Rosenberg, Offer of Proof, item 4; Deposition of Rosalind Rosenberg, July 2, 1984, p. 44; and July 3, 1984, p. 54.
28. Offer of Proof, item 23, Rosenberg Deposition, July 3, 1984, p. 6.
29. See Carole Turbin, "Reconceptualizing Family, Work and Labor Organizing: Working Women in Troy, 1860-1890," *Review of Radical Political Economics*, 16 (Spring, 1984), 1-16; Ardis Cameron, "Bread and Roses Revisited: Women's Culture and Working-class Activism in the Lawrence Strike of 1912," in Ruth Milkman, ed., *Women, Work and Protest: A Century of Women's Labor History* (Boston: Routledge and Kegan Paul, 1985), 42-61; and Alice Kessler-Harris, "The Debate over Equality for Women in the Workplace: Recognizing Differences," in Laurie Larwood et al., eds., *Women and Work: An Annual Review* vol. 1 (Beverly Hills, CA: Sage Publications, 1985), 141-161.
30. Charles Sabel, *Work and Politics* (Cambridge: Cambridge University Press, 1980); Cynthia Epstein, Brian Greenberg, *Worker and Community* (Albany: SUNY Press, 1985); and Sally Westwood, *All Day, Every Day: Factory and Family in the Making of Women's Lives* (Champagne/Urbana: University of Illinois Press, 1985).
31. Rosenberg, Written Rebuttal Testimony, p. 1.
32. "A Feminist for Sears," p. 394.

33. Rosenberg's use of my work to make her case deserves attention. Accusing me of contradicting my own written work in court, she cited twelve pages of examples from my writing that purportedly supported the idea that women operated in obedience to certain kinds of social constraints, never acknowledging that in virtually every instance I had played out both sides of a dialectical process, and repeatedly misquoting, and quoting out of context to make her case.

34. See, for example, the following examples in Alice Kessler-Harris, Deposition, April 15, 1985, pp. 384-85 on the use of Blumstein, Pepper and Schwartz; pp. 473-478 on prescriptive literature; pp. 448 ff. on ideology; pp. 470 ff. on male/female differences.

35. See Myra Jehlen, "Archimedes and the Paradox of Feminist Criticism," *Signs* 6 (Summer, 1981), 575-601; and Iris Young, "Socialist Feminism and the Limits of Dual Systems Theory," *Socialist Review*, 50/51 (March/June, 1980), 169-188.

36. Ellen DuBois, "Politics and Culture in Women's History: A Symposium," *Feminist Studies*, 6 (Spring, 1980), 28-36.

## Cultural Critique

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#### No. 3, Spring 1986

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