

# EXCHANGE.

## A FEMINIST FOR SEARS

### New York City

When Jon Wiener asked to interview me for an article on the Sears, Roebuck & Company discrimination case, I did not expect him to be sympathetic but I did expect him to be fair ["Women's History on Trial," Sept. 7]. I was shocked, therefore, to read his biased and inaccurate article. His presentation of my role in the case seriously misrepresented both my motive and the substance of the testimony I gave. And his treatment of the facts showed either ignorance of or disregard for the trial record.

I was prompted to consider testifying in the case when I learned there were no complainants, which I found remarkable in a discrimination case. After reviewing the records, I concluded that the Equal Employment Opportunity Commission had based its case on a faulty assumption for which there appeared to be no evidence. The commission had assumed that men and women applying for sales positions at Sears were equally interested in commission sales, despite the working conditions and the nature of the products involved. I agreed to give testimony in the belief that it would expose the naïveté of the E.E.O.C. assumption. I never said, as Wiener claims, that history proves women don't want commission sales jobs. I did not say that women do not want good jobs or that the economic disadvantages women suffer are simply a function of their own choices. I certainly never used history as a justification for current instances of employer discrimination against women.

Rather, I used history to explain the roots of women's labor force experience in the 1970s. Touching briefly on early American history but concentrating on the recent past, I said that many factors have gone into shaping the contemporary female labor force, including socialization, family responsibilities, cultural attitudes, educational practices, government policies and employer discrimination. I stated further that because of the multiple factors at work in shaping women's participation in the labor force, statistical disparities alone—which is all the E.E.O.C. presented as evidence—cannot by themselves prove discrimination on the part of the employer.

Most of the historians I know agree with my multicausal view of the past. Many scholars are concerned, however, that in this day of conservative backlash, a public voicing of the multicausal view will be used by conservatives to hurt women. It may be. But if we insist on pretending that no factors other than employer discrimination play a significant role in shaping women's role in the work force, we will do women more harm than good.

The most troubling aspect of this whole trial is that it illustrates the ease with which

fidelity to careful scholarship is abandoned in politically troubled times. I have warned elsewhere of the dangers of allowing the concept of women's culture to take on greater significance than the evidence warrants, and all my work has challenged the belief that there is something inherent in women that makes them think or behave differently from men. And yet to argue that women have never failed to accept opportunity when it has been offered and that employer discrimination is the sole explanation for statistical disparities in employment is to foster a myth that will endanger the cause of women's rights long after the Sears case has passed, forgotten, into the law reporters.

Even though I firmly believe that discrimination by employers is only one of many factors shaping the labor force, I would not have testified if I had thought Sears was guilty of discrimination. I believe that the evidence shows not only that Sears was not discriminating against women but that it was successfully recruiting women into nontraditional jobs through a vigorous affirmative action program. Wiener has no obligation to agree with that view, but he does have an obligation to get the facts right and at least present fairly the argument with which he disagrees. He did neither.

The trial began a year ago and lasted ten months, producing more than 20,000 pages of trial transcript and roomfuls of depositions, expert reports and pleadings, the contents of which Wiener seems not to have reviewed. If he had been familiar merely with the transcript, he would have known that Sears's affirmative action program began voluntarily in 1968, not under government pressure in 1973. Since he is mistaken about such a fundamental and easily verifiable fact, one should perhaps not be surprised by what he does with statistics: his 27 percent hiring rate for women in commission sales conveniently neglects part-time female employees (the hiring rate for all women was 37 percent, according to testimony); the 29 percent figure he gives for incumbents in commission sales is true but irrelevant (especially during a recession) in a case having to do with hiring and promotion; etc. Sometimes it is not clear whether his misrepresentations derive from his ignorance of the record or from a fundamental failure to meet the elementary standards of fairness. A reporter writing about a trial must distinguish between facts that are stipulated and allegations that are not. For example, his statement that "40 percent of those qualified for commission sales posts were women" is not an agreed upon "fact" but the allegation of an E.E.O.C. witness, which was hotly contested by a number of other witnesses.

Wiener compounds his errors in his discussion of interviewing, testing, compensation practices and work schedules at Sears.

He alleges that Sears had "subjective hiring practices," "no written guidelines" and "no checks on interviewer bias." Apparently he is unaware that the overwhelming majority of Sears interviewers were women and that as part of their training they were instructed to seek women for commission sales jobs as well as other nontraditional jobs. By 1973 the company went so far as to promulgate a mandatory quota system, which required that 50 percent of nontraditional jobs go either to women or to minority males. And by 1975 the hiring rate for women in commission sales had passed 40 percent.

Wiener goes on to credit a few "key questions" on Sears's 140-question hiring test as responsible for identifying "promising commission salespeople." But interviewers did not look at answers to individual questions, only at overall scores; scores were normalized at least as early as 1960 to avoid any prejudicial effect on women; and the scores were disregarded when they stood in the way of filling the 50 percent affirmative action quota. Finally, a point Wiener conspicuously fails to note, the alleged bias in the testing is not even an E.E.O.C. claim in this case.

On the issues of pay and hours, Wiener accepts Alice Kessler-Harris's version of practices at Sears. Kessler-Harris is wrong, however, in stating that commission selling at Sears guaranteed more income than non-commission selling, at no greater risk. She is wrong as well in suggesting that noncommission and commission salespeople have the same obligation to work extended hours, evenings, weekends and out of the store.

For many reasons, not just the two that Wiener seizes on, women were less likely than men either to seek or to accept positions in commission sales. Wiener denies this, but he has no evidence. And faced with hundreds of instances, sworn to at trial, of women who declined offers of work in commission sales, he can do no better than protest that many of these women were not refusing "genuine offers" but were merely indicating "a lack of interest" in commission sales, as if interest in a job is not usually a prerequisite for accepting it. Wiener's quotation of Kessler-Harris that Sears never identified women who turned down offers in commission sales simply reveals that he has examined neither the two volumes of Exhibit 25 nor the trial testimony. The names are there for all to see.

If Sears had systematically discriminated against women, the E.E.O.C. should have been able to find, from among the hundreds of thousands of women employed at Sears, at least one who would testify that she had been discriminated against. That was certainly tried. There was what one judge has called a "massive search for victims." All to no avail. Wiener tries to excuse the failure by claiming that it is "difficult to find com-

(Continued on Page 410)

lent revolution the Reagan Administration professes to oppose. Yet the White House's intransigence on economic sanctions furthers the self-fulfilling prophecy that black radicals are committed to violence and hostile to American interests.

Most opponents of apartheid say that both the violence of the A.N.C. and the economic power of the unions are necessary to defeat apartheid. They differ, though, on which struggle will predominate, the armed or the economic. Clive Thompson says, "The next time unrest and political organizations peak, the trade unions will finally

be at the point where the state and big capital will be overwhelmed."

To delay such a day means the A.N.C. will see itself forced to spill more and more white blood. The government will retaliate with even greater violence, pushing the society closer to chaos. Older A.N.C. leaders warn that if South Africa follows the more violent road, when the day of change arrives, the A.N.C. lawyers and professionals with Witwatersrand and Cambridge degrees will be old or dead. They will have ceded power to their younger comrades, the guerrillas trained in the Soviet Union and Cuba. □

## EXCHANGE.

(Continued From Page 394)

plainants in sex discrimination suits," but that excuse merely reveals how little he knows about Title VII litigation. Not only are complainants plentiful, but judges expect to see them at a trial to buttress statistical evidence. Even the E.E.O.C. finally recognized the absurdity of claiming a nationwide pattern and practice of discrimination without presenting any victims. In the final weeks of the trial it presented two sales applicants to shore up its claim that there were women who were interested in selling on a commission basis who had been denied the opportunity. But the first applied for a full-time position at a store that had no full-time openings, and the second learned on the witness stand that two commission salespeople had been hired who had applied for the same job on the same day she did. One was a white woman and the other a black woman. The E.E.O.C. should have discovered those facts before putting its witnesses on the stand, but Wiener knew (or should have known) what happened at the trial. To present these two women as victims of discrimination at Sears is inexcusable.

Rosalind Rosenberg

### THE VOICE OF REASON

Houston

In what I hope was only a momentary rage for simplification, Professor Jon Wiener misled *Nation* readers about the Equal Employment Opportunity Commission's case against Sears, Roebuck & Company, did a disservice to the history profession and was unfair to Professor Rosalind Rosenberg.

The central question in the Sears case is whether numbers speak for themselves, a question one would have thought historians decided in the negative long ago. The E.E.O.C.'s case was based not on the testimony of complainants but almost entirely on the crude fact of statistical disparity between the number of men and the number of women in commission sales jobs.

Such a statistical discrepancy could be the result of discrimination, but it could

equally well be the result of applicant preference and socialization. In other cases the E.E.O.C. has been able to resolve the inherent ambiguity of the numbers by presenting substantial independent evidence of discriminatory practices. In this case it did not do so. In spite of the consequent void of amplifying testimony, Rosenberg's critics claim to be certain that it was discrimination that produced the disparity. Let us not kid ourselves: what convinces them of their power to distinguish between the effects of discrimination and socialization in this particular set of statistics is dogma, not logic, reason or evidence.

Rosenberg's confidence that Sears did not discriminate may be wrong too, of course, for in the absence of complainant testimony no one can be certain about what went on in the job interviews. But at least her position is based on unrefuted evidence presented by Sears about its affirmative action program. Moreover, her position is compatible, as her critics' views are not, with the principle of our legal system that places the burden of proof on the accuser. Even corporations are innocent until proved guilty.

Wiener strove mightily to make it appear that Rosenberg is an isolated eccentric whose views enjoy no support among historians of women. The exact reverse is true. In the portions of the trial testimony that I read, Rosenberg's comments conformed scrupulously to all the complexities and nuances of the body of scholarship she was called on to discuss. Indeed, as becomes clear by the end of his article, what really offends Wiener is not a deviation from mainstream scholarly opinion but Rosenberg's candid admission of the complexity of that opinion. His objection is strictly political. He fears that "all arguments about distinctive female values play into the hands of conservatives." Rosenberg's sin is that she was willing to say in court what she and dozens of other historians (including the E.E.O.C.'s expert witness) had said unhesitatingly in print: that for women, even more than for men, the "economic man" model of motivation is hopelessly inadequate. It is not true that men or women rise reflexively to the bait of higher salary, like fish to a lure; only if that simplistic model of motivation were true would the Sears statistics constitute in themselves sufficient proof of discrimination.

To those who claim that all talk of complexity constitutes covert opposition to women's equality, one can only reply that justice is better served by truth than zealotry. It is not feminism but certain shallow backwaters of Marxism and neoclassical economics that have a vested interest in simplistic theories of motivation. The intellectual subtlety and sophistication that marks the best work in women's history poses no threat to the legitimate interests of women, and historians who seek to suppress that work in public forums display little faith in their cause and scant respect for the intellectual values of their profession. Thomas L. Haskell

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### WIENER REPLIES

New York City

Rosalind Rosenberg writes not just as a historian of women but also as a member of the Sears, Roebuck & Company legal defense team. What her letter describes as her own conclusions are also the official Sears positions, argued in court by company attorneys. Sears tried to get other historians of women to take on this role, but all of them refused. Rosenberg's letter goes beyond defending her own testimony; she responds to virtually every one of the E.E.O.C. criticisms of Sears's employment practices. And she goes further, asserting that the E.E.O.C. case against Sears "endangers the cause of women's rights." It's hard to understand how an experienced feminist like Rosenberg can make such a claim.

Rosenberg says Sears established its affirmative action program in 1968, not in 1973 as I reported. That is not an agreed upon fact; Rosenberg is repeating a claim that appears in Sears's legal documents. This "program" did not even mention hiring or promoting women to commission sales positions, the higher-paying jobs which are at issue in the case. It established no mechanism to reach the program's goals. Only in 1974 did Sears implement a genuine affirmative action program, which specified the obligations of managers and established what Rosenberg calls a "50 percent affirmative action quota." But she acknowledges that this quota was not for women. It reserved half of the new jobs for white men and the other half for women or minority

men. Rosenberg also neglects to report that although the program succeeded for minority men, it failed to reach its goals for women. That failure is at issue in this trial.

Rosenberg writes that she never said history proves "women don't want commission sales jobs." Her written testimony, summing up the relevant historical evidence, concluded that men and women differ in, among other things, "the types of jobs they prefer." In the context of this case that can mean only that Sears didn't hire more women for their good jobs because women "prefer" not to take them.

Why didn't the E.E.O.C. present complainants? E.E.O.C. attorneys explained that given the hundreds of thousands of women who have worked at Sears since 1973 and the 1 million-plus female applicants for jobs, Sears could have argued—correctly—that twenty-five or thirty complainants were insignificant. The only good evidence of a pattern of discrimination is statistical: How many qualified women applied? How many were hired and promoted? Rosenberg calls this argument an "absurdity," and Thomas L. Haskell calls it "crude," but statistics provide the basis for every sex or race discrimination suit and every settlement.

When Rosenberg and Haskell criticize the E.E.O.C.'s reliance on statistics to demonstrate bias, they are not just arguing an academic point. Attorney General Edwin Meese 3d recently proclaimed that statistical cases don't prove anything because the victims of discrimination are not groups but individuals. That argument serves as the Reagan Administration's rationale in its attack on all affirmative action, including voting rights and job quotas. Do Rosenberg and Haskell really want to ally themselves with this effort?

Discussing the E.E.O.C. case against Sears, Rosenberg quotes a judge referring to a "massive search for victims." In fact, the judge in question was not referring to an E.E.O.C. search. He was referring to an effort made by the National Organization for Women and other feminist groups, which had organized their own protest against Sears earlier in the 1970s. The E.E.O.C. never made any search for victims. In this case Rosenberg appears to have used a quotation provided to her by Sears attorneys without understanding its context.

Rosenberg says Sears presented evidence, "sworn to at trial, of women who declined offers" of the jobs at issue. None of the sworn testimony, however, came from the women in question; all of it came from Sears managers and officials, and most of it consisted of their own anecdotes and opinions. The Sears corporate director of equal opportunity, for instance, testified that women declined jobs selling tires because they didn't like going outside when "it's snowing or raining or whatever." This statement was indeed sworn to at trial, but does it really tell us anything about women? In fact, it is evi-

dence of Sears executives' sexist attitudes, evidence which supports the E.E.O.C. claim of sex bias at Sears

Rosenberg argues that evidence that women don't want good jobs can be found in Sears's Exhibit 25, which listed 680 women who Sears claimed turned down promotions. She is right that "the names are there," but the lists don't prove her point. The E.E.O.C. complaint is limited to the issue of hiring women and promoting them from noncommission to commission sales between 1973 and 1979. Sears's lists include a great deal of irrelevant information about offers of nonsales jobs, which were not at issue; offers to women, such as secretaries and managers, who were not covered by the complaint; and offers of promotions before 1973 and after 1979, years not applicable to the suit. They include statements by managers that various women weren't interested in promotions to jobs for which there were no openings at the time. Sears attorneys had the resources to organize their data to focus on relevant women who turned down real offers of the jobs at issue in this case, but Sears refused to do so. The refusal suggests that their purpose in presenting Exhibit 25 was not to inform but to mislead.

On the statistical issues, Rosenberg says the fact that 29 percent of Sears's commission sales positions were held by women in 1980 is "irrelevant." But the 1980 statistics are essential to the lawsuit, which covers the years 1973 to 1979. And because Sears's goal for women had been 38 percent, the 29 percent figure is highly relevant evidence of Sears's failure to meet its own goal.

Rosenberg challenges my account of bias in the questionnaire Sears used in its hiring process. She does not deny that applicants were asked whether they liked boxing, swore often, enjoyed an event more when they bet on it or spoke with a low voice. Those items made up the "vigor" dimension, which the Sears testing manual identified as the best predictor of success in commission sales. Other dimensions on the test had separate standards for women and men, but the manual recommended the same cutoff point on the vigor dimension for women and men in big-ticket commission sales; applicants with low scores, predominantly women, were not recommended for hiring. Yet Sears never presented evidence that this kind of "vigor" had anything to do with selling on commission.

Rosenberg's account in her concluding paragraph of the two sales applicants who appeared in court is simply wrong. The E.E.O.C. never claimed Sears should have hired the two women. At issue was the argument Rosenberg and Sears made throughout the trial: women do not want the good jobs at Sears. The women in question were identified not by the E.E.O.C. but by Sears attorneys, who presented their applications as evidence that women didn't want commission sales jobs. The E.E.O.C. managed to find them. Each said she had indeed been in-

terested and showed she was also qualified  
Rosenberg's loyalty to Sears is evident in that she has not uttered a word of dissent from the summation of the case presented by Charles Morgan, Sears's chief attorney and the man for whom Rosenberg worked on this case. He told the judge that men don't discriminate against women at all: "Strange, isn't it, that we live in a world where there is supposed to be a monopoly of white men who somehow get up every morning trying to find a way to discriminate against their wives, their daughters, their mothers, their sisters." How an experienced feminist like Rosenberg could have become such a fierce defender of this cause remains a mystery.

Haskell has gotten lost in the complexities and nuances of history. What was at issue in U.S. District Court in Chicago was not the adequacy of various models of human motivation but sex bias at Sears. Rosenberg's testimony turned most of American women's history into evidence that Sears did not discriminate against women. She had to do that, or else her testimony would have been irrelevant. That is what leading historians of American women have objected to. If Rosenberg represents "mainstream scholarly opinion," as Haskell says, why were Sears attorneys unable to persuade any other historian of women to join her in testifying for the company? Why do the historians she cited in her brief object to her treatment of their work? Why is he unable to name any prominent historians of women who agree with her?

Haskell's letter repeats a fundamental falsehood of Rosenberg's about the case: that the E.E.O.C.'s evidence against Sears is purely statistical. Although the E.E.O.C. did not present individual complainants, it did present a great deal of evidence about Sears's discriminatory practices, evidence that went far beyond statistics. It included evidence about Sears's biased testing of applicants (the notorious question, Do you like boxing?); Sears's problematic interview procedure, with its lack of controls against interviewer bias and lack of training for interviewers; and Sears's discriminatory practice of basing promotions on unwritten, subjective criteria. The Sears defense, explaining why the company failed to hire more women, itself suggested the existence of biased attitudes and practices—the most memorable example being the testimony of the Sears director of equal opportunity, who reported that women don't like to go out in the rain.

Haskell writes that the historians who disagree with Rosenberg are tied to "dogma" rather than "reason or evidence," that they are zealots who seek to "suppress" the truth and that they inhabit "certain shallow backwaters of Marxism." It's notable that Rosenberg's critics have not resorted to Haskell's kind of name-calling. Let's not kid ourselves: these aren't arguments; this is

Get Haskell's letter (prev. page)