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# The National

September 7, 1985 \$1.25; U.K. 65p

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## EDITORIAL

### THE FINKING OF THE PRESIDENT

In the spring of 1980, candidate Ronald Reagan told Robert Scheer of the *Los Angeles Times*, "There was no blacklist of Hollywood." At the time, one attributed that astounding assertion less to a lapse of memory than to a political reflex, a replay of the official industry line during the blacklist years, when studio moguls denied that this intimidating instrument existed but enforced it secretly.

Now it turns out that Reagan was covertly helping the F.B.I., and by extension the House Un-American Activities Committee, compile the list whose existence he would later deny. The *San Jose Mercury News* reported that he was a Bureau informant from 1943 to 1947.

The past few months have seen the death of Albert Maltz, Alvah Bessie and Lester Cole, three of the original Hollywood Ten, who went to prison rather than submit to the anti-democratic forces of the cold war. Another Hollywood figure who died recently, Gale Sondergaard, was the widow of director Herbert Biberman, also a member of the Ten, and was herself subpoenaed as a witness to appear before the House committee. When she wrote the Screen Actors Guild asking it to denounce the committee's attempt to impose a blacklist, Reagan, for SAG's board of directors, replied, "All participants in the international Communist Party conspiracy against our nation should be exposed."

Latter-day cold-warriors are already trying to justify Reagan's betrayal of his fellow guild members as a patriotic act. But anyone interested in the moral lessons of the blacklist years is advised to study the resistance of people like the Hollywood Ten rather than the opportunism of Ronald Reagan.

**PRETORIA AGAINST THE TOWNSHIPS**  
Eric Rieder

**RACISM IN FRANCE—I**  
Daniel Singer

**SAVING DOROTHY SIX**  
David Morse

**THE PRESS & NICARAGUA**  
George Black

**U.S. TERROR STRATEGY**  
Aryeh Neier

**NICARAGUA ROUNDUP**  
Holly Sklar

## THE SEARS CASE

### WOMEN'S HISTORY ON TRIAL

JON WIENER

At its trial in June for sex discrimination, Sears, Roebuck & Company offered a novel defense. Attorneys for the nation's largest retailer presented a prizewinning scholar in women's history, Rosalind Rosenberg, as an expert witness. She told the court that history shows women don't want the better-paying jobs at Sears—selling big-ticket goods on commission—because those positions conflict with deeply held values centering on home and family. To rebut Rosenberg's testimony, the Equal Employment Opportunity Commission enlisted another prizewinning expert on women's history, Alice Kessler-Harris, who argued that despite the existence of an ideology of domesticity, women have consistently taken better-paying jobs when those have been available.

The suit, filed in 1979, is the last of the major antidiscrimination actions brought by the pre-Reagan E.E.O.C. Other big firms charged during the Carter years with sex bias—notably, A.T.&T., General Motors and General Electric—settled out of court, awarding back pay to those discriminated against and pledging to do better. Sears decided to fight.

The complaint covers the years 1973 through 1980. During that period, 60 percent of the applicants for all sales jobs at Sears and 40 percent of those qualified for commission sales posts were women. Only 27 percent of those hired for commission jobs were women, however. Although 72 percent of Sears noncommission salespeople were women, they received only 40 percent of the promotions.

The source of this pattern of discrimination, (Continued on Page 176)

ference members realize that the problem of disinvestment is regional, affecting parts of western Pennsylvania, West Virginia and Ohio, so for four years they have pushed for a regional Steel Valley Authority. When Duquesne shut down and U.S. Steel announced its decision to demolish Dorothy Six, the Tri-State Conference was ready to play a leading role in the campaign to save the plant.

The plan it came up with is a fairly simple one. Dorothy Six would be taken over by the Steel Valley Authority, which would pay U.S. Steel a fair market value for the property. Once acquired, the plant could be brokered to a third party—an outside buyer committed to upgrading the facility—or it could be operated by workers under an employee stock ownership plan (ESOP). In the case of the latter, articles of incorporation would be drawn up and capital for start-up expenses would be provided by banks and other investors, under a financial arrangement drawn up by an investment firm with credibility in the business community. The Steel Valley Authority might exist solely to administer Dorothy Six, or it might have a broader regional mission and perform similar rescue operations as the public interest warrants, much as the Tennessee Valley Authority does.

The plan opens up myriad possibilities for saving plants that are economically viable but that a company chooses to shut down for a tax write-off or for other reasons of its own. In Aliquippa, Pennsylvania, not far from Duquesne, the troubled L.T.V. Corporation is shutting down its relatively new coke batteries; and in neighboring Swissvale, WABCO/Union Switch and Signal, a division of American Standard which makes air brakes, has announced that it will relocate in Canada to satisfy the Canadian government's domestic-content restrictions. Workers from both L.T.V. and WABCO have approached the Tri-State Conference in hope of being included under the Steel Valley Authority umbrella.

Even the application of the concept to steel alone is viewed by some as "creeping socialism." The Allegheny County commissioners, while applauding the appropriateness of carrying out feasibility studies, have stopped short of endorsing either a worker takeover of Dorothy Six or the use of eminent domain. In all likelihood, efforts will be made in several quarters to co-opt the plan. U.S. Steel may come to its senses and decide to sell to a third party of its own choosing; a watered-down ESOP may be approved which offers workers only the illusion of ownership; or a splashy new regional plan may be announced that keeps power centralized in an effort to pre-empt a genuine grassroots approach.

Mike Stout is adamant about U.S. Steel's duty to preserve Dorothy Six. The company has no more right to tear down the plant, he says, "than a man who's divorcing a woman has a right to just unilaterally tear the house down when he walks out of it."

"It's just as much our steelworks . . . as it is theirs," he adds. "The U.S. government built those mills in Duquesne and Homestead during World War II, with taxpayers' money, and sold them to U.S. Steel for ten cents on the dollar. The American government put 46 million tax dollars into building the Homestead mill in 1941, and in 1946 sold it to U.S.

Steel for \$4 million. As far as we're concerned, U.S. Steel is merely the groundskeeper."

As for the plan to save Dorothy, create a Steel Valley Authority and stimulate the demand for steel with a program for rebuilding the nation's roads, bridges and cities, that originated with steelworkers and people who live in the community, he points out. "We like to refer to this as re-industrialization from below. We don't just see it as saving jobs; we see it as our patriotic duty. We see the backbone of this country being crushed, and we're saying we're out to save it."

Tri-State Conference director Jim Benn says he muses about the larger implications of what the steelworkers and the people in the region are doing for the rest of the country. "But," he says, "wouldn't it be something, you know, just to save one mill." □

## Women's History

*(Continued From Front Cover)*

the commission charged, lay in the company's subjective hiring practices. Sears had no written guidelines, and its training of interviewers was minimal. Thus there were no checks on interviewer bias, conscious or unconscious, which courts in other discrimination cases have taken into account. Tests were administered to applicants, and Yes answers to a few key questions were used to identify promising commission salespeople: Did the applicants like boxing, swear often, enjoy an event more when they bet on it, and speak with a low voice? The E.E.O.C. argued that not only were the questions biased against women but Sears had offered no evidence that they predicted sales ability.

Sears attorneys, led by Charles Morgan Jr., former civil rights activist and former head of the Washington office of the American Civil Liberties Union, responded that the company had done its best to hire women for the better-paying jobs. An affirmative action program established with great fanfare in 1973 required that half of all new employees be women or minority men. The E.E.O.C. said it is satisfied that the program reached its goals for minority groups but contended that it has failed for women. Between 1973 and 1980, the proportion of female commission salespeople rose from 20 percent to 29 percent; Sears's goal had been 38 percent.

Sears argued that it had been unable to hire more women for commission sales because so many of them didn't want those jobs. Women are afraid of competition with other salespeople and rejection by customers, Sears attorneys told the court; they are unfamiliar with most product lines sold on commission (which include fencing and auto parts, but also washing machines and draperies), and they didn't want additional responsibilities.

The evidence for this argument consisted mainly of Sears

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managers' anecdotes and opinions. The corporate director of equal opportunity testified that women were unwilling to take jobs selling tires because they didn't like going outside when "it's snowing or raining or whatever." Managers testified that they "continually tried to persuade reluctant women—even those only marginally qualified—to consider commission selling," that in many places they had "interviewed every woman in the store and found not one who was willing to sell big-ticket merchandise." In these efforts managers "purposely deviated from sound personnel practices," company attorneys told the judge, and "Sears stores lost sales because they retained poorly performing commission saleswomen in order to meet affirmative action requirements." Sears also presented evidence from surveys of its employees, which the E.E.O.C. claimed were biased and unreliable.

Sears attorneys counted on Rosenberg, an associate professor at Barnard College and the author of *Beyond Separate Spheres: Intellectual Roots of Modern Feminism*, to provide historical evidence for their argument that women don't want commission sales jobs. "Women have goals and values other than realizing maximum economic gain," she told the court, values centering on their roles as wives and mothers. Citing more than fifty works in women's history and women's studies, she described the development of a women's culture that emphasized nurturance and selflessness and that disavowed competition. These "traditional values . . . continue to be the ideal," Rosenberg reported; as a result, women's relative absence from high-paying jobs is the consequence not of employer discrimination but of the choices women make.

Kessler-Harris, a professor at Hofstra University, the author of *Out to Work: A History of Wage-Earning Women in the U.S.* and *Women Have Always Worked: A Historical Overview* and chair of the American Historical Association's committee on women historians, responded in her brief that "choice can be understood only within the framework of available opportunity." Where opportunities have been denied women, they have rationalized their situation in terms of domesticity. But when opportunities for better-paying jobs have been present, women have taken them. In the past 200 years, American women have worked at a variety of jobs, many of them "nontraditional." Kessler-Harris provided dozens of examples, from the 175 industries in which women were employed in 1850 to the experiences of "Rosie the Riveter" during World War II.

The main reason women work outside the home, she argued, and the main reason they want better-paying jobs, is that their families need the money. (A Sears witness, appropriately named Rex Rambo, had testified that women work "to get away from children.") Sears's own data showed that 28 percent of the full-time noncommission saleswomen had husbands who were unemployed; 27 percent had husbands earning less than \$15,000 a year; and 75 percent had husbands with incomes below \$25,000. The notion that work and family obligations are in conflict is less applicable to these women than it might be to women seeking self-fulfillment in demanding careers.

In an interview, Rosenberg said she agrees with Kessler-Harris's argument that working women want to make more money. "But Sears found that men were much more likely to want commission sales jobs," she maintained, the reason being that those jobs "involve risk of reduced income as well as an opportunity for greater income." Kessler-Harris replied: "There is no such risk at Sears. Sears guaranteed a salary against commissions. The guaranteed salary for commission salespeople was considerably higher than for non-commission salespeople."

Rosenberg offered other reasons why women turn down commission sales positions. "Working women who are married are likely to put family and children first," she said, "and therefore, as the survey evidence of the Sears work force shows, are less willing to work evenings and weekends than men—evenings and weekends which are required of commission salespeople." Kessler-Harris replied: "The argument that women are not willing to work evenings and weekends doesn't hold up. Evenings and weekends are required of all salespeople, whether or not they work on commission. They all rotate their schedules. Moreover, many women choose jobs with evening and weekend hours because those are the hours husbands can babysit." Husbands and relatives provide most child care for working women, according to surveys. "And there are predominantly female occupations that require extensive evening and weekend work, especially nursing and health care."

Rosenberg cited still other evidence against Kessler-Harris's argument that when good jobs are available, women take them. "Kessler-Harris may have been unaware that Sears presented Exhibit 25, identifying 680 women in only one district who had been offered promotions to commission sales jobs as part of Sears's affirmative action program and who had refused those offers."

Rosenberg's characterization of Exhibit 25 is incorrect, however. According to company attorneys, only some of the 680 were offered promotions; the rest did not receive offers but rather "indicated a lack of interest." Sears did not say how many women received genuine offers of promotion; the E.E.O.C. estimates that at most there were one hundred. "The E.E.O.C. tried to find out more about these offers," Kessler-Harris said. "What conditions were attached? Were the women required to move to distant locations? Were part-time workers required to take full-time jobs? How many men turn down the same kind of offers? Sears refused to identify any of the women who supposedly had turned down offers of better jobs."

In our interview, Rosenberg justified her testimony in defense of Sears as part of the "fight against the oppression of women," saying she told the truth about "the sources of women's oppression." Ellen DuBois, a historian at the State University of New York at Buffalo and author of *Feminism and Suffrage*, comments:

The E.E.O.C. lawsuit is part of a political battle that has been altering the cultural configuration Rosenberg says she laments. She argues that history shows the situation is "too complicated" for an affirmative action program to remedy. This argument is the essence of conservatism and must be

read as an attack on working women and sexual equality, an attack on the whole concept of affirmative action.

Rosenberg asserted that "Sears was not discriminating against women" in the period covered by the suit. Why didn't the Reagan Administration drop the case? She said:

They've let this case go on, for their own cynical reasons. Because it's such a weak one, it actually damages the cause of affirmative action.

Sears was the first major retailer to establish an affirmative action program. It spent millions on this program. . . . [Other retailers] will say Sears spent all this money, and look where it got them; we might as well save the money. Sears's winning would show that their commitment to affirmative action was worth it—that if you've made a good faith effort you can survive this kind of legal attack.

To that, Kessler-Harris says: "There's no evidence that Sears had a good affirmative action program for women. To say the Reagan Administration is supporting this suit as a way of attacking a good affirmative action program makes little sense." Indeed, Administration officials have made it clear they'd like to lose the case to discourage E.E.O.C. officials from bringing similar suits. E.E.O.C. chair Clarence Thomas has repeatedly criticized the suit because of its reliance on statistical evidence. When his opposition to it made page one of *The New York Times* in December, Sears attorneys sought a deposition from him; the judge ruled that his testimony would be irrelevant. Democratic Representative Augustus F. Hawkins summoned Thomas before the House Subcommittee on Employment Opportunities to complain that it was not "appropriate for you, as chairman of the commission . . . to criticize the commission's own case while the case [was] still before the court."

Rosenberg said the biggest factor influencing her to testify for Sears was the E.E.O.C.'s failure to produce women who had been denied good jobs by Sears: "I do not believe statistical disparities alone constitute proof of employer discrimination." But given the immense size of the Sears work force, statistical evidence is the only good indication of a pattern of discrimination. Such evidence was accepted by the courts as the basis for the A.T.&T. settlement, the biggest in the history of sex discrimination litigation. It is difficult to find complainants in sex discrimination suits. Women looking for jobs at Sears between 1973 and 1980 filled out applications, had five-minute interviews and later were notified that they did or didn't get the job. Those who weren't hired had no way of knowing if they had been the victims of sex discrimination. Even if they had known, most lacked the resources to pursue a complaint and needed a job right away. Rather than file charges, they would have kept looking.

Two women who had been turned down did appear at the end of the trial. Sears picked three applications out of a pool of one hundred as examples of women who were not interested in selling on commission, and the E.E.O.C. managed to locate two of them. Each said she was indeed interested and showed she was qualified; one had considerable experience in commission sales.

Sears asked a number of experts in women's history to testify in its behalf, but Rosenberg was the only one who accepted the invitation. Kathryn Kish Sklar, a professor at the University of California, Los Angeles, and the author of *Catharine Beecher: A Study in American Domesticity*, said: "Sears asked me. I said they were wasting their time. There was no way I was going to be a witness against the E.E.O.C."

Although Rosenberg cited Sklar's book in her brief, Sklar told me: "I'm profoundly troubled by the use of scholarship about women in the past as a justification for discrimination against women in the present. It ignores the basic tenet of historical study: change over time. Evidence about the nineteenth century simply doesn't explain women's labor force participation today."

Carl Degler of Stanford University, the author of *At Odds: Women and the Family in America* (which Rosenberg also quoted) and president-elect of the American Historical Association, also declined Sears's invitation to testify. "I don't like the idea of using historical evidence as a justification for limiting opportunities," he commented. "Of course it's true that few women in the past have taken these jobs; nevertheless, it's likely that more will in the future, with changed opportunities and more willingness on the part of employers to consider women for nontraditional jobs."

Other historians cited by Rosenberg objected to her use of their scholarship. William Chafe, a professor at Duke University and the author of *The American Woman: Her Changing Social, Economic, and Political Roles, 1920-1970*, said: "All of the examples Rosenberg cited from my work emphasize the institutional, cultural and political obstacles to the achievement of sex equality in the United States. None of them suggest women wanted



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to be unequal or chose to have inferior jobs."

Asked to identify historians who would approve of her use of their scholarship in this case, Rosenberg cited only one, Regina Morantz-Sanchez of the University of Kansas, the author of *Sympathy and Science: Women Physicians in American Medicine*. When she was asked to comment, Morantz-Sanchez's endorsement was qualified: "Is it possible for women to have chosen not to take those jobs at Sears? My work on women physicians suggests that theoretically it is. That does not mean institutions don't discriminate against women. Sears may be discriminating in this case."

On June 28, when closing statements were presented, Morgan, once a hero of the civil rights movement, summed up for the company in demagogic style. He called on the judge to reject the E.E.O.C.'s statistics and the testimony of "these Ph.D.s" called by the government, and instead use "common sense . . . walking-around sense." Common sense suggested sex discrimination didn't exist at all: "Strange, isn't it, that we live in a world where there is supposed to be a monopsony 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."

He linked the E.E.O.C. case against Sears to the antiwar protests at the 1968 Democratic National Convention in Chicago:

What was Sears in 1968? Sears was God, motherhood and country. . . . In those years God, motherhood and country became controversial, [opposed by] that new generation coming alive in the streets of Chicago with values quite different from mine and from some others'. . . . My heavens, what did the pill do? Said to women, . . . You don't have to have children at all. You can devote and dedicate yourself to a career.

In her summation, E.E.O.C. attorney Karen Baker told the court that the company's witnesses had "said women aren't interested in these jobs; they are afraid of the products; they are afraid of going to people's homes; they are afraid of competition; they are afraid of risk in income; they are afraid of going out in the rain. When you listen to [the] Sears store witnesses, you get the idea that women are really a very weak lot." Those opinions, the basis of Sears managers' decisions about hiring and promotion, constitute "the essence of discrimination."

There is little reason to fear that the Sears case represents the beginnings of a trend among historians of women: Sears's expert witness has virtually no support in the field. Nevertheless, the historical testimony in the case reflected in an exaggerated way the divisions in the feminist movement. Betty Friedan, in her book *The Second Stage*, and others have called for a return to the family in the name of preserving female values. Feminists on the left reply that all arguments about distinctive female values play into the hands of conservatives. The Sears case exposes the political implications of the "female values" position. If something in women leads them to reject higher-paying jobs, why should the government press any employer to establish an affirmative action program? □

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