Gender Practices
And Employment:
The Sears Case and
The Issue of
"Choice"

by

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This paper is about a basic conceptual, legal and moral concept, "free choice," that was used successfully by Sears, Roebuck and Company to defend itself against discrimination charges brought by the EEOC. The purpose of this paper is to look more closely at an ideal that seems in this instance to be hostile to the improvement of women's economic status in the United States.

First, we describe some salient points of the Judge's reasoning in the Sears case, noting especially his emphasis on the legal protection of "free choice" and his implicit definition of non-discrimination in employment as equal respect for men's and women's job choices. Second, we reexamine the origins of the 1964 Civil Rights Act to see how the protection of "choice" came to seem an essential (though perhaps unspecified) element of non-discrimination policy, a value supported inferentially by much social science thinking. Third, we offer some different ways to rethink the meaning of "choice" and implications for public policies to end sex-discrimination. Fourth, we indicate implications for policymaking of a revised conception of "choice." And finally, we make some brief comments on the
importance of integrating statistical with more experiential methodologies in order to understand this revised conception of choice.

The Legal Case

In 1986 an Illinois federal District Court Judge, John Nordberg, ruled that the Equal Employment Opportunity Commission (EEOC) failed to prove its complaint that Sears, Roebuck and Company historically discriminated against female employees.¹ The facts of the case on which the EEOC based its challenge were that at Sears commission sales jobs were held primarily by men, and that these jobs paid higher wages than the non-commission sales jobs that were primarily staffed by women. In defense, Sears offered several explanations for how the company could end up with a gender-differentiated sales force without having engaged in intentional or unintentional discriminatory hiring.

In his decision, Judge Nordberg noted numerous erroneous assumptions made by the EEOC statistical expert in designing his proofs of disparate treatment of women and men. An underlying theme was criticism of the expert's assumption that women had the same aspirations as men; assuming such an essential fact, the Judge noted, was unwarranted in light of other testimony about how women's life and work goals diverged from men's. Moreover, historical and psychological evidence was borne out by Sears' own difficulties persuading women to apply for traditionally male-dominated jobs.

The Judge cited in a footnote the "reasonable, well-supported
opinions" of historian Dr. Rosalind Rosenberg, and an interview study conducted with women workers at Sears by employment consultant Juliet Brudney as demonstrating that "overall tendencies of many women" were toward jobs different from those preferred by many men.² The Judge relied on historical and interview evidence to dismiss the first assumption of the EEOC statistical data: that female and male applicants had similar job aspirations.

Rosenberg's testimony argued that "The assumption that women and men have identical interests and aspirations regarding work is incorrect." Throughout the history of the United States and in all documented societies, work has been divided by gender, presumably entailing different attitudes towards performance and rewards for work. Moreover, women's relatively greater responsibility for children and domestic space, a commitment reinforced by marriage laws requiring male financial support, meant that most women were loath to accept the same employment burdens as men -- who were expected to spend less time on household work. Even when women needed to enter the labor force for economic reasons, or were encouraged to do so by national defense needs (as in World War II), according to Rosenberg, they had aspirations and attitudes different from men's. Women's psychology, their socialization, and the experiences consequent on these (such as not playing competitive sports as often as men do), according to Rosenberg, lead women to make different choices about education, work and career demands.³
In contrast, Alice Kessler-Harris, Professor of History at Hofstra University, testified for the EEOC that "History does not sustain the notion that women have, in the past, chosen not to take non-traditional jobs." Women have always sought good jobs and fought for and eagerly entered any well-paying jobs that employers would give them. Moreover, Kessler-Harris pointed out whenever the society decided it needed women's labor, it was willing (and able) to convince women that taking on jobs previously held by men did not conflict with women's female identity. Kessler-Harris concluded that women, like men in this society, seek jobs that they think they have a good chance of getting: job aspiration resulting from opportunities perceived and not from internalized and unchanging goals.4

The Sears lawyers, (who were first into the fray with Rosenberg's expert opinion), adroitly emphasized the notion of "choice." The EEOC and its expert witness responded in kind, and Judge Nordberg, presented with a case in which the issue of culpability seemingly centered on the factual question of whether or not women employees at Sears had "chosen" jobs lower-paying than jobs "chosen" by men, ruled that the EEOC had not proved that women had not made such choices.5 The judge ruled that Sears had not discriminated and was not liable to pay damages to women employees, because the women had chosen the jobs they held at Sears.

Historical Origins of Non-Discrimination Law

What does a non-sex-discriminatory society look like, both
in terms of how employees are treated and in terms of the labor force composition? How did "choice" become a criterion to determine whether or not an employer discriminated against women? When race discrimination was taken as a model for sex discrimination, the answers seemed clear. Assuming all people have similar aspirations and abilities regardless of color, then a racially-integrated labor force would be the outcome of equitable treatment of individual workers; statistical measures of equal outcomes in placement could logically be taken to represent equal (non-discriminatory) treatment of workers.

The historical development of non-discrimination thinking in the context of racial exclusion helps explain why the issue could be construed this way in the Sears case. Affirmative action programs were designed in the context of laws prohibiting discrimination against racial and ethnic minorities. Drawn up in the crisis atmosphere of World War II and the subsequent euphoria of the Black Civil Rights movement (with substantial support from Hispanic and Native American movements), presidentially-issued regulations and federal laws prohibited employers from automatically excluding potential employees solely on the basis of race or ethnicity (or religion, often a category equivalent to racial or ethnic difference).

The problem of discrimination was seen as the exclusion of workers from consideration for jobs. Racial minorities who had trained for particular jobs and then applied, only to be turned away because the employer didn't think a Black person should earn
such high wages, or thought his white employees would refuse to work with "coloreds," asked initially only for government protection of their freedom to choose. The government did not protect free choices of those who did not want to work with people of color, since these were considered antithetical to the interests of a nation mobilizing its entire population for a war effort and holding up a model of human freedom to challenge the Soviet Union. Demonstrating that the U.S. cared for justice for all, including the ability to compete fairly for a job, was deemed a more significant national interest than protecting white workers' racial comfort. Such justice arguably increased the national ability to fight wars and to produce goods, and offered a working model of the liberal principle that freedom and power are synonymous.

With employment discrimination outlawed, however, it became rapidly apparent that the historical legacy of racial-ethnic exclusions could be corrected only by affirmative actions: in education and training programs, in job testing, and in promotions. Modes of recruitment and channels of family and community knowledge about job availability, had to be opened up. Job tests and promotion criteria designed according to the experiences of white workers had to be re-thought to include the experiences of black workers. All these criteria were reviewed to protect job aspirants from unreasonable, and now illegal, exclusion.

It is not surprising that, in a context of formal
exclusionary policies, feminist theorists and political advocates initially analyzed sex discrimination like race discrimination. Such advocates assumed that women, given the chance, would have work aspirations and abilities similar to men's, would get jobs for which they had not previously been considered, and that the labor force would be integrated by gender. Since major feminist statements began to be made in the 1960s, in the Kennedy Presidential Commission report (1963) -- the Feminist Mystique (1963), and the charter of NOW (1966), for example -- such writings have presumed that women's employment is beneficial and that women should and would, if given the chance, participate in the labor market on the same footing as men. In the wake of the Kennedy Commission report, Congressional passage of the Equal Pay Act (1963) and inclusion of "sex" as a prohibited category for discrimination in the 1964 Civil Rights Act, the governmental machinery for enforcement was presumed to work the same way to alleviate both sex and race discrimination.

As long as actions were clearly needed to break down overt channelling of men and women into different training and jobs and to open up paths for women to choose professional training, jobs and career paths that had previously been limited to men, few questions were raised. Obviously discriminatory past practices -- employment advertisements specifying "male wanted" and "female wanted," corporate job categories absolutely excluding either women or men from consideration, pay scales in which women were systematically paid less -- were not easy targets, but they were
relatively noncontroversial ones. The government was simply dismantling barriers to women's free choices.  

The Supreme Court's decision in *Johnson v. Transportation Agency, Santa Clara County* (1987) underscores the law's tendency to protect a worker's right to be considered fairly for a job for which she has prepared herself and which she has chosen.  Diane Joyce trained for the job of road dispatcher, applied for the position, and scored well on the relevant tests. As the first woman to apply for a traditionally male job, Joyce was given some special consideration by a county government voluntarily working to integrate previously sex-segregated jobs, and was hired for the job. Paul Johnson, a competing applicant who received a slightly higher score than Joyce on the interview segment of the hiring process, sued the county on the basis that he had been the victim of "reverse" sex discrimination. The Supreme Court upheld the basic Civil Rights Act notion that non-discrimination consists of giving those previously excluded from particular jobs an opportunity to demonstrate their competence and to get a slight edge in being evaluated for jobs they "choose" to pursue.  

Statistical evidence was used in this case to counter Paul Johnson's claim that Santa Clara County had no reason to prefer Diane Joyce. *Santa Clara County* demonstrated the severity of past gender segregation through quantitative methods. The data was not taken as evidence to prove that employers had "intentionally" and unlawfully discriminated, but simply as facts to demonstrate that the County acted reasonably to rectify gender segregation.
The *Santa Clara County* decision bolsters the implicit notion prevalent since 1964 that a non-discriminatory employment situation is achieved when women have a pattern of hires, promotions, training chances, income, and benefits similar to men's (within limitations of the legally allowed variables of education, seniority, and merit).\(^{10}\)

Defining equality as non-exclusion leads logically to evaluating effectiveness of measures against discrimination by the standard of how similar women's position in the labor force is to men's: the goal becomes a world in which women and men are indistinguishable in the labor market, either in jobs held or wages earned.\(^{11}\) Among large labor forces, where treatment of hundreds of thousands of individuals is difficult to monitor (as is true in the practices reviewed in the *Sears* case), statistical measures to show unwarranted differences between women and men has become the primary way to prove employer discrimination. *Sears* battled the statistical evidence with its own statisticians, but it also backed up one step to raise the fundamental question: Did women want the same jobs as men? Had *Sears* excluded women from jobs they were qualified for and wanted? If women did not "choose" the same jobs as men, then *Sears* could not be held culpable for unfair exclusion.

Numerous cases during the 1970s and 1980s have clarified the issue that discrimination against women has been substantially different from racial discrimination; that women have not been so often excluded by individual employer or
government action as they have been by society-wide beliefs and behavior. Society, and not just particular employers, discriminated against women. Women also accepted society-wide norms about appropriate female and male roles and behavior, and in this sense they "chose" the jobs and career paths deemed appropriate for women. Using "choice" in this way -- to stand for acquiescence or effective socialization -- is not the way "choice" is typically used in social science or legal theory, where it is taken to mean the freedom to act on one's rational calculation of personal benefit.

Since "choice" is a central issue in the Sears case, the decision provides an opportunity to rethink the appropriateness of "choice" as a concept in doing research on and making policy about sex discrimination. If race and sex discrimination are so different in form, what did the 1964 Civil Rights Act expect to change? What acts were being made illegal, and what arrangements would, in future, constitute non-discrimination? The Sears decision provides a good place to stop and ask the questions: what is the social good we seek to advance with a policy on women's employment? and, how shall we think about the balance between individual "choice" and socialization?

The "Choice" Problem

What does the word "choice" mean anyway? It is used in various ways within different intellectual systems: as a description of a particular political system; a logic premise; an ethical goal; an experiential state; and a descriptive
psychology, to mention the most obvious. Let us look at how the term "choice" is used in public policy and related social science writings in order to disentangle some of the moral values and social realities being asserted and described.

The Political Theory Use: Some public policy theorists represent "choice" as one half of a dichotomy: freedom from governmental regulation or constraint by the government. In these terms, one has "choice" or one doesn't; there are no in-between states. For example, David Kirp and his co-authors in Gender Justice juxtapose the liberal goal of enhancing individual freedom to the radical goal of equalizing women's and men's employment status and incomes. The liberal goal requires the protection of women's "right to choose" whatever jobs they want, even if these are less well-paying and secure than the jobs men "choose." To use government authority to push for a society in which women and men do the same sorts of jobs, with similar career patterns, incomes and family responsibilities is depicted by Kirp and his colleagues as radical action that sacrifices individual liberty to authoritarian zeal.

The Gender Justice argument is in accord with the notion of affirmative action as a protection from exclusion. The authors assert that if women want the same jobs in the labor market as men, then their ability to choose such jobs should be protected. But they assume that women are unlikely to choose the same jobs as men and that job integration is the goal of authoritarian ideologues (an impression conveyed by labelling such advocates
"Levellers").

The Kirp use of "choice" implies that women's socialization to aspire to jobs that pay less than men's and to organize their adult lives around marriage and child care is not a result of government actions and, therefore, does not diminish women's liberty; women's "choice" to take jobs that leave them less economically and socially powerful than men is an exercise of "freedom" because not enforced by government. If women "choose" to behave in traditionally female ways and not to be marked as social deviants, then it is not the responsibility of government (and of public policy) to interfere.

The message that women make economically-diminishing, albeit socially correct, decisions and that their "freedom" to do so must be protected by the government is one that may be taken from Kirp's work and from the Sears decision. The argument conveniently ignores the government's support for female (and male) socialization: publicly-funded school courses and publicly-licensed media, for instance, that purvey traditional notions of appropriate female and male behavior and social roles.

The argument that conforming to social norms is the same as "choosing" certain behavior makes some sense in the context of the Sears case. The only alternatives, given the dichotomy of freedom or coercion, were deciding women had "chosen" the jobs they were in or that Sears, Roebuck and Company had acted to exclude women from other jobs that they wanted. Since Sears had acted no differently from other social institutions and with
values no different from dominant sex-role norms, the Company felt it should not be financially liable because it had not anticipated changing gender norms. The only option to finding Sears at fault was to decide that women employees had wanted typically female jobs, even though they were lower-paying than typically male jobs. The adversarial system allowed only a "yes, they discriminated," or "no, they didn't." Saying that women "choose" economic dependence and possible impoverishment over economic independence, however, sounds suspiciously like adding the insult of stupidity to the injury of low wages.

Underlying the ideal that government should not intervene in people's choices about where and what to work at is the feeling that "private" decisions should not be liable to "public" interference. Feminist analysts have pointed out that "public" and "private" are not bounded spaces, but social concepts, as are "choice" and government intervention. The "private" family as a scene of child abuse and wife-beating is open to regulation in its "public" capacity as child-rearing agency and marital institution. Husbands cannot choose to beat their wives, and wives cannot "choose" to be beaten. "Choice" of a powerful husband to beat his wife is a different mental process made in a different context than the "choice" of a powerless wife to be beaten without protest.

The Economics Use. Another version of the "free choice" versus "state planning" dichotomy is offered by economists. Much economic theory works on a carefully-defined, often mathematical
notion of decision-making -- rational individuals with maximum information making uncoerced decisions. The model is a logical one and not necessarily descriptive of reality; that is, it provides a quantitative formula for determining how to get the most things a group wants for the least expense, but does not describe how people behave.

The logical model fits well, of course, with the dominant political values of the U.S.: "choice" is equated with "freedom" from governmental regulation and coercion. In brief, some economists have argued that a person chooses a job (whether paid employment, housework, or a combination) freely and with greatest well-being for herself and the economy at large when state authorities do not intervene. The implicit assertion is that women making rational decisions in their everyday existences are making logical calculations of benefits.

Other forms of familial compulsion and coercion, such as a husband's saying he doesn't want his wife working at a full-time job or young children's afternoon care requiring the mother to work part-time hours, are assumed to be factors that the wife evaluates according to her personal desires and goals: the individual woman assesses the costs of preparing for higher-paying jobs and balances this against the costs of damage to her marriage partnership and the health of her children, and then acts on her preference among these alternatives. She may decide, by rational calculation, to work at a less high-paying and time-demanding job in order to maximize her overall family well-
being. When women make decisions to take jobs that require less personal investment so that they can expend attention and energy on other tasks such as child care and housework, then government is unwise to interfere in these decisions, even though the woman may find herself impoverished at some point as a result of the decision.

The logic of "free choice," useful in modelling alternatives for decision-making, does not adequately account for the decision of such a wife, who is sensible, but not rational in the sense of economic calculation. This may be because the wife has a different objective from her husband or her employer. As one economic theorist, Thomas C. Schelling, has pointed out, the economic method was not intended to make judgments among objectives, but among alternative methods of reaching objectives. The economist's use of "choice" to indicate that it is logically useful to assume free and rational decisions in making policy decisions can easily be misunderstood to mean that this social science defends the ethical superiority of traditional divisions of labor by sex.

The Sociological Use of "Choice"

Mainstream sociologists have assumed that people make "choices" about the organization of their lives using the values and behaviors internalized through the socialization process and responding to social sanctions of approval and disapproval. Throughout their lives, in different social settings, individuals learn norms, possibilities, appropriate and behaviors. Within
society-wide and contradictory rules, they find a tolerable path for their individual needs. As norms as rules change, individuals adapt and change, indeed the may try and change the rules.

Individual occupational aspirations are usually sex typed, and sex stereotypes are learned at the earlier grade levels in school. Young women are more likely to aspire to female occupations and young men are more likely to aspire to typically male occupations. While women do aspire to or "choose" occupations on the basis of their socialized sex-identification, a variety of studies have shown a less than .50 correlation between young women's occupational aspirations and subsequent occupational attainments. Any particular individual changes her mind about the relative attractiveness of jobs, presumably as she learns more about herself, about occupations available and as social norms change.

Sociologists have described the intense pressures in U.S. and other societies for women and men to take sex-stereotyped jobs and work roles. Indeed, some mainstream sociologists have assumed that these pressures are so great that women come to think about and to assess jobs differently from the ways men do: women weighing family service higher than income, which men presumably give more weight to. Roslyn Feldberg and Evelyn Nakano Glenn, in pointing out this untested assumption within sociological writings, challenge the notion that women separate income-earning from their overall calculations of family well-
being.\textsuperscript{23}

Likewise, what individuals "choose" has changed historically as opportunities have changed: for example, women's taking heavy industrial jobs during the male labor shortage of World War II. For sociologists, sex-segregation, the sex-typing of particular occupations and changes over time, is the consequence of individual preferences exercised within particular labor markets and job possibilities.

Along with sex-stereotypic socialization, sociologists also investigate the institutional processes by which individuals are recruited, hired, allocated to jobs, trained and promoted are both formal and informal. In a review of the literature, Patricia Roos and Barbara Reskin describe how formal procedures or rules of firms such as veterans' preferences, seniority systems, nepotism, and recommendation requirements have negative effects on women's occupational participation.\textsuperscript{24} Much has also been written on the effects of informal procedures such as sexual harassment at construction sites, in firehouses and in squad cars in constraining women's occupational choice.\textsuperscript{25}

One insight from sociological and historical work is that government itself has been one agent of socialization. In the United States, the government has supported education and training programs that track students by gender and race to meet changing political, social and economic needs. Individuals have made decisions about jobs appropriate for them under governmental influence since at least the beginning of the twentieth
In short, the term "choice" is used to indicate: "freedom from government regulation" (political theory); uncoerced rational calculation (economic theory); acting in conformity to or deviance from social norms (sociology); selecting from many alternatives available for one's life (history); and, preferring one thing to another (popular discourse). These meanings overlap in particular debates and in individual minds. They change in nature depending on context.

In the Sears case the company used the term to mean that Sears, Roebuck and Company had conformed to socialized expectations about women's work and was not liable for unfairly denying women's preferences. The EEOC countered with the argument that women had chosen among alternatives they perceived to be available, and that Sears' setting job criteria in conformity with gender norms discouraged women from aspiring to jobs previously held by men.

Let us consider briefly two new ways of thinking about "choice" that are more operational and less theoretical than those discussed above. First, "choice" may be understood as a subjective state, i.e. individuals feel desire for something or to do something, we can begin to consider "choice" as a contingent mental state open to influence, rather than an unyielding moral stance or a psychological essence. Second, "choice" is what people do as they select among alternatives for action. Neither idea of "choice" interferes with an ethical
defense of individual liberty. Each, conceived in this more contingent fashion -- providing people with information to change their feelings and re-organizing institutions to increase alternatives -- opens up terrain for policymakers to re-think the issue of non-sex-discrimination.

Public's Interest in Influencing Women's Choices

Why does the public have an interest in pursuing non-sex-discrimination, at least in employment? Women's economic well-being has become a significantly more urgent social concern during the past twenty years. Rising rates of divorce mean that more women will be self-supporting than in earlier decades. And many of these divorced women have children. That means that the financial care of future citizens and workers will increasingly devolve on women. These facts intensify in significance with the rising numbers of never-married women with and without children. Instead of images of an army of Amazons taking on the world, as the "new woman" was often pictured in the 1910s and 1920s, contemporary images are of poor women, poor households, and poor children who also are women of color, as the proportions of African-American, Puerto Rican, American Indian, and Mexican-American women facing self-reliance grow faster than the proportions among white women.28

Influencing Aspirations. In the light of this growing social problem, social commentators have begun to rethink the goals intended in anti-discrimination efforts. In brief, goals are for women, as much as for men, to hold jobs that pay them living
wages. While some believe such equalization of income requires gender integration of jobs, others view such integration as a secondary goal to improving women's income position. Many of these non-integrationist support policies of "pay equity" or "comparable worth" as a means of raising women's pay in "traditional" women's jobs, without achieving gender integration of the labor force.

Education and occupational socialization are areas in which the society has accepted government intervention as legitimate on some grounds. We are deciding as a society that we are unwilling to let adolescents ridicule "brainiacs" and pressure peers not to study. Local governments are willing to pay for educational programs -- and to suffer political hardships -- in order to "coerce" students to tackle their books if they want to play football or be leaders in student government.29 (This example is especially poignant to one of the authors who was a young girl in Texas. Little energy was felt to be needed to keep young girls from not learning and from succumbing to the pressures to believe that marching in the Kilgore Rangerettes or the Apache Belles was a much more worthy goal than being a "brain" at Rice University.) But, faced with intense competition to bring in industries to replace lost oil business, Texas politicians will nowadays take flak to keep students in math classes.

Moreover, experiments in changing girls' job aspirations and women's job selections that have been undertaken since the early 1970s indicate that such change is welcomed, even in a
society that retains strong sex-role training. Many companies have been successful in recruiting and placing women in jobs previously considered inappropriate for women through the following innovative techniques:

* Going beyond high school shop classes, trade schools and military services to CETA referrals, women's physical education classes and women in blue collar community organizations as recruits for non-traditional jobs;

* Preparing for women workers by sending supervisors to sexual harassment workshops;

* Sending women to pre-training programs to familiarize them with tools and terms that men get in shop courses, the military, or "just tinkering around with their fathers";

* Recruiting women for developmental activities from which they were traditionally excluded on the grounds that it did not pay to train women since they would leave the job to bear and to care for children.30

Changing Institutional Alternatives. Assisting parents in the care of children in some fashion (facilities, tax breaks, regulation of work leave, referrals) is the most obvious way public policy can change the alternatives women see as available when they seek employment. The lack of adequate, affordable child care is a constraint that has affected women's access to and retention of jobs more than men's.

Important in itself, child care is a good example of how women's and men's perceptions (subjective desires) and rational
calculation of alternatives (institutional options) have been shaped by a society promoting sex differentiation. When women are said to make a "choice" about going to work, seeking particular kinds of jobs, and managing their child-bearing or child care accordingly, the implicit assumption is that they make these decisions with the same feelings and perceptions as men do.\textsuperscript{31} This proposition has not been tested, however, by probing people's perceptions. We do recognize that when men, in the past, made the decision to concentrate on work, they did so with a perception that their children were well-cared for and their domestic labor tended to by a wife working in the home full-time or part-time. When women make the decision to concentrate on paid employment, they make the "choice" without such a vision of life. What men experience as free choice, in other words, women may experience as a forced choice.

Mothers, no more than fathers, do not want to see their children badly treated and badly raised. But mothers make employment decisions within assumptions that the quality of their child's early years depends on the mother's being the child's caretaker, and not on her earning a lot of money. Fathers make employment decisions with a socially-enforced belief that the child's well-being depends on the father's earning as much money as he can, and not on how much time he spends with his children.\textsuperscript{32} One might argue that institutionally and emotionally such beliefs limit human fulfillment and narrow the options for good child care. They certainly raise the question that the
society cannot construct a non-sex-discriminatory work policy without considering non-sex-discriminatory means to raise children.

A Brief Note on Research Methods. During the last decade or so, feminist methodologists have begun to develop methods to understand subjective feelings and experiences as an alternative to (though not necessarily in place of) relying on objective questionnaires reporting pre-defined attitudes and behaviors. In emphasizing the subjective side of what philosopher Sandra Harding has identified as the ideological dualisms of objectivity and subjectivity underlying contemporary science and social science. Feminist analysts have often disagreed with mainstream social scientists, who, in turn, have characterized women's voices telling their own stories as being too "soft" and too subjective. Feminist methodologists have generally preferred these more qualitative methodologies that try to learn how particular women construct, under conditions that they do not necessarily choose, their emotions, definitions, behaviors, life histories and worlds. The purpose of this kind of feminist research and methodology is not necessarily to create replicable generalizations or to test unvarying laws. Rather, the purposes are to raise women's consciousness and to increase their power to transform sexist society.

The Sears case provides, once again, a good place to think about integrating methodologies that have been perceived as hostile. Though the EEOC and the Sears' attorneys used
mainstream social scientific statistical evidence and techniques to prove different truths -- either that Sears had not hired women in the percentages in which they applied or that Sears had hired them appropriately -- the statistics still tell a story of women's ending up in different places in the Sears' job inventory than men did. Such data, as with the data on occupational segregation, paint a picture of an employment landscape in which men and women inhabit different spaces. By including more qualitative, subjective experiential methodologies along with quantitative and statistical information, we can then seek to understand what brought women and men to their respective spaces and what processes could change the picture.

This paper is intended to loosen up our intellectual muscles and to push for integration of a variety of disciplinary perspectives and methodologies on issues of major importance to women and men in our society. Our hope is to encourage more work across disciplinary differences and to remember that our goal is the search for dialogue and for policies that advance this country's historical commitment to non-discrimination.
1. EEOC v. SEARS, ROEBUCK & CO., 39 FEP Cases, 1703. U.S. District Court for the Northern District of Illinois, Eastern Division, Civil Action #79-C-11373; appeal filed April 1, 1986.

2. Id, n 43.

3. Id. "Offer of Proof Concerning the Testimony of Dr. Rosalind Rosenberg," reprinted in SIGNS, 11 (Summer 1986), 757-766. Rosenberg cites much feminist psychological and sociological scholarship to bolster these points, such as articles written to support passage of Title IX of the Education Amendments of 1972 to guarantee girls a fair share of school athletic funds. In these, scholars argued that athletic programs were important because they developed "active, assertive, and self-assured social behavior."


5. Id, n 43., Judge Nordberg states that the Kessler-Harris testimony lost impact because of its implication that "sweeping generalities can be accurately made about women ... in the workplace" and her "unwillingness to qualify ... generalizations by estimating some percentage of women with the interests or views being discussed."

6. "Negroes" files, RG 69, National Recovery Administration, contains many letters to this effect from Negroes describing the language of employers used to justify "laying off" previously employed black workers, and from white employers advocating a racial or regional (proxy for race) differential in the minimum wages required under NRA industrial codes. Similar statements are recounted by federal agents in the National Youth Administration, the FERA, and the WPA women's projects, RG 69, National Archives, as they seek to design and to fund projects from which women, white and Negro, and Negro youths, male and female, would be able to find non-relief jobs.

graduation rates. Duke Power was forbidden from using a requirement of "a high school education" for moving employees to any department other than the previously "black" one. Duke Power was allowed to draw up tests related to job performance in order to maintain production standards, but it could not use as a proxy the high school diploma that many black workers would have been discouraged from getting in the previously segregated school system of North Carolina. The Court specifically precluded "using diplomas or degrees as fixed measures of capability," since these often measured access more than "effective performance." (quoted by Freeman, 1096)

8. As we move to more complicated questions about women's economic independence relative to men's, we should not underestimate the scope of simple discrimination (excluding women from men's places) that existed before passage of the 1960s legislation. As numerous histories of professional women document, women were systematically excluded from formal education programs and from various jobs and career ladders once they had struggled to achieve the necessary credentials. See, for example, Margaret W. Rossiter, Women Scientists in America. Struggles and Strategies to 1940 (Baltimore and London: The Johns Hopkins University Press, 1982); Mary Roth Walsh, Doctors Wanted: No Women Need Apply. Sexual Barriers in the Medical Profession, 1835-1975 (New Haven: Yale University Press, 1977); Paula Giddings, When and Where I Enter. The Impact of Black Women on Race and Sex in America (New York: William Morrow and Company, Inc., 1984).


10. British courts responding to suits from the Employment Opportunities Commission in Great Britain, have been less amenable to partial exclusion than have U.S. courts. For cases in the area of comparable worth, a notion more clearly supported in EEC law than in U.S. employment law, the British courts have ruled that if one man is employed in a predominantly-female occupation, then the occupation is not liable to be compared to predominantly-male occupations to determine if it is being undervalued relative to the skills and responsibility required by the two occupations. To be liable to charges of discrimination, employers must have placed only men in certain jobs and only women in others.

11. David L. Kirp, Mark G. Yudof, and Marlene Strong Franks, parody this position in the first chapter of Gender Justice (Chicago and London: The University of Chicago Press, 1986) calling those who want to remake the imaginary state of Civitas so that butchering and candlemaking cease to be respectively "male" and "female" occupations the Levellers. (pp.9-10)
12. Id, Kirp is Professor in the Graduate School of Public Policy, University of California, Berkeley; Yudof is the dean of the University of Texas Law School; Franks is completing her Ph.D. at the Berkeley school of public policy. Margaret Mead made a similar suggestion to reconcile post-World War II American women to the loss of war-time advantages; in a December 1946 Fortune article, she argued that if women were given the opportunity to choose between career and family, they would choose family much more happily than if they were denied the right to make the choice.


14. See Frances Olsen, above, fn 4. Michelle Rosaldo and Louise Lamphere, Woman, Culture and Society (Palo Alto: Stanford University Press, 1974), now a classic in anthropology and feminist theory, in their introductory essay established the "public-private" distinction as a useful framework for analysis. They argued, and most of the essays in the book demonstrated, that all societies divided human activities into public (economic, political, formal institutional) life and private (familial, intimate, informal institutional) life. In all societies, those activities defined as public had more prestige and power than those activities labelled private. Men led and were identified with public life, while women inhabited and were identified with private life. Theorists and practitioners in various disciplines adopted this analytic framework, notably Eli Zaretsky, Capitalism, The Family, and Personal Life (New York: Harper & Row, Publishers, 1976) in history; Nancy Chodorow in sociology; numerous feminist literary critics such as Patricia Spacks, Elaine Showalter, Susan Gubar and Susan Gilbert. After using this analysis for a few years, theorists began to recognize its artificiality. Theorists writing now have not given up the dichotomous language, but they are describing how, for instance, state decisions affect family life, and sexuality affects the public arena of the workplace, and how the shifting boundaries of public and private are a topic for historical research. (See Jane Flax, "Feminist Theory, Post-Modernism, and Gender Relations in Contemporary American Culture, Signs, 12 (summer 1987). Some feminist thought has never accepted the analytic usefulness of this distinction; they have, instead, pointed out that the experience of Afro-American women going out of their own homes to do housework in the homes of others is a good example of how arbitrary the categories are. (See, for instance, Angela Y. Davis, Women, Race & Class (New York: Vintage Books, 1983);

15. "Privacy" became important to women as a positive defense after the Supreme Court abortion decision Roe v. Wade, which protected women's right to abortion on the grounds of non-interference with women's privacy. A distinction made by feminist theorists is between "privacy" for the individual and "privacy" for the family, which may simply protect male authority over women and children. For a lucid explication of the difference in usage, see Rosalyn Petchesky, "Antiabortion, Antifeminism, and the Rise of the New Right," *Feminist Studies*, 7 (Summer 1981): 206-246.

16. An inspiration to examine the "choice" issue in economics is the mind-opening work of Thomas C. Schelling, especially his *Choice and Consequence. Perspectives of an errant economist* (Cambridge, MA and London: Harvard University Press, 1984). Schelling points out that there may be many ways to protect free choices and that programs can be re-thought as we juggle the alternatives being compared. Schelling's modesty in proposing economic reasoning as a means to assess goals and not a preeminent good in itself also helped me, as a non-economist, to feel more friendly to this tool. ("Economic Reasoning and the Ethics of Policy," esp. pp. 24ff).


18. Lenore J. Weitzman, *The Divorce Revolution. The Unexpected Social and Economic Consequences for Women and Children in America* (New York: The Free Press, 1985) cites data to the effect that "divorced women and the minor children in their households experience a 73 percent decline in their standard of living in the first year after divorce [while] former husbands, in contrast, experience a 42 percent rise in their standard of living." (xii)


20. This brief explication of socialization theory is clearly an oversimplified one as has been referred to by sociologists Dennis Wrong as the "oversocialized conception of man (sic)." See Dennis M. Wrong, "The Oversocialized Conception of Man." *American Sociological Review* (Vol. 26), 183-193.


23. Roslyn L. Feldberg and Evelyn Nakano Glenn, "Male and Female: Job Versus Gender Models in the Sociology of Work," in Rachel Kahn-Hut, Arlene Kaplan Daniels, and Richard Colvard, Women and Work (New York: Oxford University Press, 1982), describes how sociologists have made the a priori decision to use a job model in analyzing male workers and a gender model to analyze female workers. A subset of assumptions are that: men's basic social relationships are determined by work, and women's by family; the man's connection to the family is as economic provider and the woman's is as wife/mother; men's sociopolitical attitudes are derived from occupational status and women's from family roles.


26. Phyllis Palmer, Dirty Work, Housework and Domestic Labor in the U.S., 1920-1945 (manuscript in progress) describes vocational education programs in home economics partially funded by the Office of Education after passage of the Smith-Hughes Act in 1917, and work relief and training programs for unemployed women funded under various New Deal legislation, beginning with the Federal Emergency Relief Act of 1933. In these programs women were trained to be domestic workers, housewives, home economics teachers, sewers, and clerical workers. Only by accepting traditional concepts of what women could work at were relief authorities able to get Congress to authorize any money to assist

27. Chapter 3 of Thomas Schelling's Choice and Consequence, "The Intimate Contest for Self-Command," supra fn 17, gives a superbly humorous description of the variability of the human mind as it makes decisions for its person about whether or not to smoke a cigarette, eat a piece of chocolate cake, or skip the day's jogging.


29. The Texas debates about requiring a C average in order to participate in extra-curricular activities, including the sacrosanct sport of football, have presented a particularly lively version of this social debate. Critics will argue that this is not an interference with free choice, because we don't typically allow that to people under the age of 18 anyway. Cases like the Texas one, and the recent UDC study raising an alarm about pressures exerted on adolescents in the District of Columbia not to be "brainiacs," indicate, however, that some social goods outweigh free choice. It is not usually argued that Texas or District of Columbia youths don't understand their interests and have the ability to make decisions; it is that the society is not willing to tolerate the results of their making the wrong decision. Texas as a competitive economy needs educated citizens to work in high tech industries. The District, as a center of U.S. government and a showcase for the nation, cannot allow Black youngsters to decide to fail academically, endangering not only the D.C. economy and their own future income-earning, but also the reputation of the U.S. as a racially just society.


31. That fathers face the same dilemma as mothers has become the staple of popular journalism. Was this story not "sexy" until it had a male protagonist? A Fortune cover story, "Executive Guilt: Who's Taking Care of the Children?" (February 16, 1987) begins
its account with a 37-year-old vice-president of a sportswear company, a man, who couldn't concentrate on his work for worrying about his one-year-old -- until his parents moved next door and became full-time babysitters.

32. Francesca M. Cancian, "The Feminization of Love," Signs, 11 (Summer 1986) describes as a difference in female-male perceptions of love that women interpret talking and "sharing feelings" as signs of love, while men see "instrumental help" as a love message.

33. The others include culture vs. nature, rational mind vs. prerational body and irrational emotions and values, public and private. Masculinity is linked to one side of this set of dualisms and feminity to the other. See Sandra Harding, The Science Question in Feminism. Ithaca, New York: Cornell University Press, 1986, esp. p. 136.

34. In her recent paper, "Feminist Methodology, Quantitative Data and the Decline of Family-Wage Patriarchy," Spalter-Roth identifies three feminist methodological positions: (1) those who argue that there are feminist research questions but no distinct feminist methods (defined as tools, techniques and protocols); (2) those who argue that there is a distinct feminist methodology and it is the polar opposite of conventional quantitative methodology and (3) those who argue that if critically used and driven by feminist questions and purposes, then a range of tools, techniques and portocols are part of what can be called "feminist methodology" and that an important purpose of this methodology is to seek alternatives to existing sexist tools, techniques and measures.
