

# “A Pervasive Pattern of Delinquency:”

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Rutgers University and the Struggle for Equal  
Pay, 1970-1976

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On 31 January 1970, Bernice Sandler and the Women's Equity Action League (WEAL) – an offshoot of the National Organization of Women – filed a class action complaint with the Department of Labor against the University of Maryland and every other public or private college or university in America. The complaint alleged sex discrimination in institutions of higher learning, and there was a series of Congressional Hearings about the matter; hearings which ultimately resulted in new legislation to prevent the sex discrimination that Sandler and WEAL had uncovered. Today, 40 years later, Sandler is most often remembered as the Grandmother of Title IX, that famous piece of legislation that most of us know allows women equal access to playing college sports. But there is more to Sandler – and to her class-action complaint – than soccer cleats or track shoes.<sup>1</sup>

What has been forgotten by more recent generations of women is that, as envisioned by Sandler and her colleagues back in 1970, Title IX also protects the rights of women employed by – or wishing to be employed by – colleges and universities across the country. The legislation was groundbreaking in terms of women's rights because, until Title IX was signed into law by President Richard Nixon on 23 January 1972, there had been no piece of legislation enforcing nondiscriminatory employment practices for women in academia. The Civil Rights Act of 1965 specifically excluded “educational institutions in their educational activities.” Similarly, though the Equal Pay Act ostensibly mandated equal pay for each sex, it did not extend to professionals and thus faculty were not covered. And the 14<sup>th</sup> Amendment provided no protection because, as Sandler pointed out years after the fact, “no case concerning discrimination against women in education had ever been decided in favor of women by the Supreme Court.”<sup>2</sup> It was only through the then little-known Executive Order 11246, which Lyndon B Johnson signed into law on 13

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<sup>1</sup> Sandler, Bernice. “‘Too Strong For a Woman’ – The Five Words That Created Title IX.”  
<<http://www.bernicesandler.com/id44.htm>> Accessed 15 October 2009.

<sup>2</sup> *Ibid.*

October 1968 to prohibit Federal contractors from discrimination in employment on the basis of sex, that Sandler, with the backing of WEAL, was able to stake her claim to equality.

Though Sandler herself had no affiliation with them, New Jersey universities were among those specifically named by her class-action complaint. As a result, on 10 December 1970, the Department of Health, Education, and Welfare (HEW) informed Rutgers University President Mason Welch Gross that the Office of Civil Rights (OCR) would be coming to campus in January 1971 to complete an Affirmative Action Compliance Review. Since Sandler's complaint was so far-reaching, alleging sex discrimination in every American university that had accepted federal funds, this was not an indication of wrong-doing on Rutgers' part. Indeed, Jim Leahy, Chief of the OCR's Contract Compliance Branch, assured Gross that his visit was part of a normal review, and he made no allegations of improper conduct.<sup>3</sup> Rutgers prepared for the visit simply by hiring an administrator for its newly created Rutgers University Affirmative Action program,<sup>4</sup> and by sending all "Deans, Directors, and Department Heads" a special notice to "clarify and reaffirm the University's policy on equal employment opportunity:" namely that the university had one, and that it specifically stated the university's intention to comply with Executive Order 11246.<sup>5</sup>

The only indication that something might actually have been amiss in Rutgers' hiring practices is hidden in the minutes of a Provost's Cabinet meeting held the day before the OCR review: in this meeting, the Provost "expressed concern for the apparent under-representation of

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<sup>3</sup> 10 December 1970, Letter, From Joseph F. Leahy to Mason W. Gross. Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 46, Folder 2. Special Collections and University Archives, Rutgers University.

<sup>4</sup> 8 January 1971, Memorandum, From Provost Richard Schlatter to all Deans, Directors, and Department Heads. Inventory to the Records of the Rutgers University Provost's Cabinet, 1953-1972, Box 2, Folder 11. Special Collections and University Archives, Rutgers University.

<sup>5</sup> 6 January 1971, Memorandum, From Provost Richard Schlatter and Vice-President/Treasurer John L. Swink to all Deans, Directors, and Department Heads, Inventory to the Records of the Rutgers University Provost's Cabinet, 1953-1972, Box 2, Folder 11. Special Collections and University Archives, Rutgers University.

women on the academic staff of the University” and urged department chairmen to start hiring more women and “to bring to redress male/female employment imbalances where they [were] found to exist.”<sup>6</sup> But other than this brief mention, there was no acknowledgement on the part of the university that it might not be in compliance with Executive Order 11246. It appears the OCR review went well – there were no further mentions of it in university documents – and the university’s administration turned its attention to other matters, such as how to deal with an oncoming budget crisis and what to do about its flagging minority enrollment and minority recruitment programs (for which it was already under investigation by the OCR).<sup>7</sup>

Of course, something *was* amiss in Rutgers’ hiring practices – as it was on many campuses throughout the country. Even before Sandler’s national complaint and the resulting OCR reviews stemming from it, women at Rutgers had been protesting unequal treatment, though not in any unified or public fashion.<sup>8</sup> On 3 May 1971, these protests became both unified and public: the entirety of the tenured female faculty of the Newark College of Arts and Sciences (NCAS) made clear their displeasure with Rutgers University’s policies - both unspoken and not - via an organized, official complaint against the College.<sup>9</sup> Ten days later, one of the women who spearheaded the NCAS complaint, Dorothy Dinnerstein, filed a second complaint on behalf

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<sup>6</sup> 11 January 1971, Provost’s Cabinet Meeting Minutes. Inventory to the Records of the Rutgers University Provost’s Cabinet, 1953-1972, Box 2, Folder 11. Special Collections and University Archives, Rutgers University.

<sup>7</sup> 12 March 1971, Press Release from the Rutgers News Service. Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 8, Folder 1. Special Collections and University Archives, Rutgers University.

<sup>8</sup> In one instance, in March 1970, Dr. Mary Alessio in the Botany Department was denied tenure because the department chairman had not, according to her, given her an enough credit for her research, teaching ability, or service to the university. She took her complaint to Dean Henry Blumenthal, who agreed that her qualifications for tenure were greater than the Botany Chair had represented them to be, but still ultimately denied her tenure. In his opinion, since the Botany Department obviously did not like her, she was not likely to ever get tenure there and so should not be allowed to stay on. (25 March 1970, Letter, Dean Henry Blumenthal to Dr. Mary Alessio, Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 3, Folder 2.) In another, Helen Strausser, who was tenured, and who signed the HEW complaint filed in May 1971, complained of having been passed over for a merit increment she believed she deserved. (September 1970, Letter, Helen Strausser to Dean Henry Blumenthal, Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 3, Folder 2.)

<sup>9</sup> 3 May 1971, Letter, From Tenured NCAS faculty to Elliot Richardson. Lillian Robbins’ Personal Papers.

of female faculty in the Newark Psychology Department.<sup>10</sup> Both of these complaints, like Sandler's, alleged various forms of sex discrimination; both requested redress from the Department of Health, Education, and Welfare (HEW) on the basis of Executive Orders 11246, 11357, and the Office of Federal Contract Compliance Guidelines (Title 41, Code of Federal Regulations, 69-20.5).

The NCAS complaint drew on employment data, valid up to July 1970 and supplied by Rutgers Newark's Dean Henry Blumenthal, that were analyzed statistically to show that female faculty were disadvantaged in terms of hiring, promotions, and payment. The data showed that there were "grave discrepancies between the situations of the sexes," wrote Dinnerstein. There were "four times as many men as women" in the college, and "at every rank there [were] more men than women." In addition, as the ranks increased, so too did the ratio of men to women. Dinnerstein acknowledged that the proliferation of women in lower-ranked positions could demonstrate attempts by the university to rectify past discriminatory hiring practices by hiring women who would, theoretically, be promoted to more senior positions in several years. She disregarded this interpretation, however, and offered an alternative view: that similar imbalances in the lower ranks had always existed, and that junior faculty women were, and had always been, "systematically less often reappointed, so that those now in the junior ranks are less likely than their male colleagues to ever reach the senior ranks." Lastly, Dinnerstein argued, not only were there far fewer tenured women than men on the NCAS campus, but those tenured women were also paid at significantly lower rates than were their tenured peers.<sup>11</sup>

The number of women who signed the complaint is also indicative of the gap between the number of tenured male and female professors. As noted in the body of the complaint, the 8

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<sup>10</sup> 13 May 1971, Letter, From Dorothy Dinnerstein to Elliott Richardson. Lillian Robbins' Personal Papers.

<sup>11</sup> 3 May 1971, Letter, From Tenured NCAS faculty to Elliot Richardson. Lillian Robbins' Personal Papers.

signers comprised 100% of the tenured female faculty at NCAS, yet there were a total of 54 tenured professors on campus. In other words, tenured women made up 14.8% of all tenured faculty. Helen Cooke of Economics, Dorothy Dinnerstein of Psychology, Eva Hirsch of Economics, Mary Plevich of Romance Languages, Ethel Somberg of Zoology and Physiology, Grace Spruch of Physics, Helen Strausser of Zoology and Physiology, and Margaret Wheeler of Zoology and Physiology: these are those 14.8%. Though other women were involved in the complaint – such as Lillian Robbins – only tenured women signed it, in order to protect those untenured women who could potentially lose their jobs for speaking out against the university.

The complaint against the Psychology Department took a similar form, but more thoroughly explored the reasons why women might have suffered discrimination. It also more clearly articulated the philosophy behind their push for equal pay. According to Dinnerstein, who orchestrated this complaint, women hired to the university from outside positions with higher pay were offered pay cuts, whereas men were offered pay raises. She believed these women to be “for practical and/or emotional reasons in a weaker bargaining position [than men],” and the lower pay showed that the university believed it also and took advantage of it. Women had, in her opinion, also long been passed over for merit-based bonuses (called merit increments in university parlance) in favor of their male colleagues, often, Dinnerstein asserted, “because of ‘need’ [on the part of men] or because these men [had] been offered positions elsewhere which, unlike women, they [were] free to move to.”<sup>12</sup>

These and other instances of pay discrimination in the Psychology Department led Dinnerstein to discuss the morality of equal pay for women even on the lowest rungs of the academic ladder. In particular, she harshly condemned the fact that female graduate students within the department were, as a group, less likely to receive funding: “There are, of course,

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<sup>12</sup> 13 May 1971, Letter, From Dorothy Dinnerstein to Elliott Richardson. Lillian Robbins’ Personal Papers.

relatively more women than men who would agree – willingly or unwillingly – to accept economic disadvantage and fringe status in order to get into graduate school. This does not make it moral – or, I assume, legal – to take advantage of this.”<sup>13</sup>

These complaints formed the foundation for a unified pay equality movement on the Rutgers-Newark University campus. That Dorothy Dinnerstein, with the backing of her female colleagues, wrote both documents shows us that despite the differences between the documents, differences which manifested in both tone and focus, they did have a similarity of purpose. Each provided a different argument for ending pay discrimination, and each encompassed different strategies for having that discrimination recognized and examined. The statistics-heavy NCAS complaint appears to have been intended to offer definitive proof that that discrimination existed, whereas the complaint against the Psychology Department, with its more thoughtful examination of sex discrimination, its manifestations, and its consequences for women in the academic community, offered a justification for NCAS women to advocate change in Rutgers’ salaries and promotions policies.

In addition, the complaints highlighted ideas that would become key points of the ensuing university-wide debate over how to identify and correct the discrepancies in pay and promotions for NCAS female faculty – namely that the problems with hiring and promotions were systemic and were structural in nature, and that treating women as equals was a moral imperative – and foreshadowed the trouble that NCAS women would have in allowing men to work with them in ending discrimination. Ultimately, the strategies implicit in these complaints, and the ways in which those strategies were interpreted and combated by Rutgers University administration, help illuminate some of the pitfalls and internal contradictions of which the drive for pay equality in the American academy could, and did, run afoul.

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<sup>13</sup> *Ibid.*

There is no indication of when exactly the university became aware of the women's specific complaints, though on 4 May 1971, Dean Henry Blumenthal, in a Provost's Cabinet Meeting, warned his colleagues "that a women's liberation movement has started among the NCAS women faculty members" which "may become a major college issue."<sup>14</sup> During the summer months, the Psychology Department began, with Blumenthal's support and encouragement, searching for resolution to some of the problems Dinnerstein had raised in her complaint. In June, the department proposed several ways of immediately equalizing women's salaries. The Provost, however, was less enthusiastic about tackling the problem than Blumenthal and, citing budget constraints, chose to delay making a decision about the proposal.

Though he agreed that the university might have to "do something about women's salaries," the Provost rejected the idea that each department's inequalities should be dealt with individually. "[T]his must be solved as part of a general program and a general policy, not piecemeal," he concluded. Even if the university was not yet willing to concede that there was pay discrimination, or, in fact, discrimination of any kind, it nevertheless appeared that the university and its female faculty agreed on at least one thing: any existing discrimination within NCAS was systemic, not confined to a single department or a particular group of women on campus, and all women were harmed by such discrimination.<sup>15</sup>

Once the OCR completed a follow-up investigation of NCAS in August 1971, at the behest of Dinnerstein and the tenured female faculty, more serious divisions between the women and the university emerged. First, the university's 19 August 1971 hiring of new Affirmative

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<sup>14</sup> 4 May 1971, Provost's Cabinet Meeting Minutes. Inventory to the Records of the Rutgers University Provost's Cabinet, 1953-1972, Box 2, Folder 11. Special Collections and University Archives, Rutgers University.

<sup>15</sup> All documents covering this exchange can be found stapled together in the same location. They cover a time period from 29 June to 1971, when three male senior faculty members in the Psychology Department sent their initial proposal to the Dean, to 13 July 1971 when the Provost rejected their proposal. Citation given is for the document on the top of the stapled pile. 13 July 1971, Memorandum to Dean Henry Blumenthal from Provost Richard Schlatter. Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 29, Folder 3. Special Collections and University Archives, Rutgers University.

Action program Administrator Cecelia Rock, who had been the Contract Compliance Specialist with HEW investigating Rutgers, enraged NCAS women. Wrote the Committee on the Status of Women:

*We have no reason to doubt the personal intentions of Miss Cecelia Rock, but we do doubt the University's good intentions in recruiting her. Her resignation from the HEW team assigned to investigate women's complaints against Rutgers deprived that team of its senior member. At the same time, her move to Rutgers armed the university with an employee knowledgeable about the ways in which HEW investigations of this kind can be undermined, delayed, and side-stepped.*<sup>16</sup>

NCAS women worried that Rock's hiring represented an attempt by Rutgers to subvert, rather than support, the OCR and HEW's work towards equality.

The women's ire was soon vindicated, when it became clear that the groups did not agree on how to fix the parameters of the problem: why were women discriminated against, when did it start, and in what ways did the discrimination manifest? One of the largest stumbling blocks in negotiations, at least for the university, lay in the question of how to address the problem of salary inequities. Rutgers administration resented the idea that they might have to give female faculty members back pay to make up for historical discrimination. Such payments, according to newly-hired Cecelia Rock, would constitute paying more than once, and Rock believed that simply promoting the women and putting them on a more appropriate pay scale would be sufficient to fix the problem.<sup>17</sup>

Yet, though the concerns of both the NCAS female faculty and the university were multiple and varied, one issue in particular stands out as connecting all facets of the debate. Looking at the debate around how the university ought to judge the professional experience of

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<sup>16</sup> Flyer, circa October or early November 1971, distributed by the Committee on the Status of Women at Rutgers-NCAS. . Lillian Robbins' Personal Papers.

<sup>17</sup> 15 November 1971, Letter, Dorothy Dinnerstein, on behalf of the Executive Council of the Committee on the Status of Faculty Women at NCAS to Cecelia Rock and Edward Bloustein. Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 2, Folder 3. Special Collections and University Archives, Rutgers University.

female faculty members in order to raise salaries and give promotions allows us to see the ways in which different groups differently understood the discrimination these women suffered.

The NCAS view of the situation was nuanced and complex: women wanted to be considered on par with men, which can be seen in their repeated suggestions that their salaries be compared to those of male colleagues with similar levels experience. Yet these women also wanted to be set apart from men. They found it “grossly offensive” that university President Edward Bloustein wanted to keep formal discussions of the complaints among male administrators, arguing that the men could not understand “the atmosphere of humiliation and exploitation in which [the women had lived their] professional lives.”<sup>18</sup> Instead they felt that men should have a peripheral role, as Dinnerstein had informed university administrators at the commencement of negotiations in October of 1971:

*Decisions about what constitutes professional experience should be made by a committee consisting of: three N.C.A.S. faculty women chosen by the Committee on the Status of Faculty Women at N.C.A.S.; Cecelia Rock, if she has the time, and – if the University feels that this is necessary to ensure impartiality – an N.C.A.S. man acceptable to the Administration and to the women on the committee.*<sup>19</sup>

Though NCAS women might have considered men’s salaries relative to their levels of experience to be useful in judging the extent of the discrimination women had suffered, female faculty did not find men themselves to be necessary to the judging process. And though the NCAS women wanted to be judged like men, they also wanted the judging process to reflect that they were different from men, with different experiences, different struggles, and different needs.

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<sup>18</sup> 7 February 1972, Rutgers-Newark Women’s Caucus’ Response to President Edward Bloustein’s Proposed Affirmative Action Plan. Lillian Robbins’ Personal Papers. Edward Bloustein replaced Mason Gross as Rutgers University President beginning in the 1971-1972 academic year, and for reasons having nothing to do with the NCAS women’s claims of sex discrimination: Gross simply retired.

<sup>19</sup> 11 October 1971, Letter, Dorothy Dinnerstein to Cecelia Rock. Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 3, Folder 14. Special Collections and University Archives, Rutgers University.

This seemingly contradictory desire can be explained by turning to the question of experience. As the original complaints discussed, the NCAS women considered the discrimination against them to be part of a larger structural concern. Women were hired less frequently than men, were promoted less frequently, and were paid less money as well. The reason these things happened, according to Dinnerstein's reports, was because the level of experience attributed to each woman by the university – the yardstick on which her progress as an academic professional and her deservedness of raises and promotions was measured – was inaccurate. The vitas of women did indeed, as Dinnerstein acknowledged, reflect fewer academic qualifications: women often had fewer publications than men, fewer years working in their chosen field, less experience serving on departmental and interdepartmental committees, and longer time lags between earning their highest degree and their first professional appointment.

What Dinnerstein, and the NCAS women, wanted the university to recognize was that women had no control over these statistics on their vita. Women were negatively judged for having a weak publication record, but were less likely to be published in the first place. Women lucky enough to get published were less often quoted in bibliographies than their male peers, in part because people assumed that the work was trivial or, if the woman was a coauthor, that she had contributed little to the work. Women were less likely to get asked to serve on faculty committees, and less likely to be awarded grant money. According to Dinnerstein, then, the reason that women got less pay and fewer promotions than men wasn't because they were less qualified. It was because the compounded effects of the discrimination they experienced in

literally every aspect of their academic lives made them *appear* less qualified than their male colleagues.<sup>20</sup>

The university only exacerbated this problem, and continued the discrimination, by relying on a pay and promotions rubric that did not fit the reality of women's lives. What Dinnerstein and the other NCAS women proposed as a solution was that the university calculate women's professional experience with the structural discrimination in mind and, once this had been done, to then compare women's experience to that of men and determine appropriate salaries and promotions. As a (presumably female-led) NCAS committee investigating salary equalization explained:

*It must be realized that the discrimination of women often occurs through the application of the principle of equal treatment for both sexes. This practice ignores the fact that treatment is often accorded to the criteria that apply to the way men are able to pursue their academic and research careers; it ignores the special circumstances faced by women in academic life. As a consequence women are often doubly mistreated: on the one hand, they are penalized for being denied opportunities to enter and advancement in academic careers on an equal basis with men because their career patterns do not conform to those of men at comparable times in their lives. On the other hand, the ways in which their life own life experiences as women and often as mothers, as experience gained in non-academic positions (e.g., clinical psychologist in private practice) contribute substantially to their ability as mature psychologists and teachers often seem not to be considered as an important factor in determining their academic position.<sup>21</sup>*

Only by recognizing all of the ways in which women were disadvantaged and correcting for it could the university end the discrimination that prompted the HEW complaints. Significantly, this recognition had to include the counting of women *as women*. The NCAS female faculty wanted equality, but did not want to be treated as if men and women were the same. They felt that there were key differences between the sexes – motherhood among them, but, more

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<sup>20</sup> November 1971, Memorandum on the Status of Faculty Women at Rutgers in Newark, distributed by Dorothy Dinnerstein and Helen Strausser. Lillian Robbins' Personal Papers.

<sup>21</sup> 29 June 1971, Letter, From the Committee on the Equalization of Salaries, Psychology Department, to Dean Henry Blumenthal. Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 29, Folder 3. Special Collections and University Archives, Rutgers University.

importantly, sex discrimination that affected women and not men – which resulted in key differences between the experiences each sex had. Thus the NCAS women’s emphasis on how to appropriately determine a woman’s level of professional experience relied on a strategy of creating equality through a recognition of difference. This emphasis meant that, for female faculty involved in the complaints process, simply raising salaries and doling out promotions under the current experience algorithm was not sufficient to correct the damage done. The Rutgers system – and, for that matter, the entire academic community – required deep structural changes in order to permanently end the discriminatory practices which continued to marginalize female faculty.

Rutgers University administration strongly resisted undertaking the kind of structural analysis – and correction – the women desired. Not only were they unconvinced that discrimination existed (administrators at all levels continued to speak vaguely and in conditionals: ‘if,’ ‘might,’ ‘maybe’), they were equally unconvinced of the fairness of the approach NCAS women suggested. When asked to furnish information to help with the university’s OCR-instigated investigation of the complaint, the chair of the Sociology Department, Bernard Goldstein, refused to cooperate, stating refusal to “waste [his] time complying with it.” He did not support the investigation, he wrote, but he did “endorse the University’s efforts to encourage the practice of hiring people and promoting them on the basis of their ability.”<sup>22</sup> Implicit in this comment was the belief that qualitative analysis of women’s work, as opposed to quantitative analysis, meant promoting undeserving individuals.

Though the Provost continued with the affirmative action process by looking to Goldstein’s Dean for the required information, he was not as enthusiastic as the NCAS women

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<sup>22</sup> 12 November 1971, Letter, From Bernard Goldstein to Provost Richard Schlatter. Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 3, Folder 4. Special Collections and University Archives, Rutgers University.

and was not willing to make the sweeping changes they desired. His concession to the women was to inform lower level administrators that “in some cases women and minority group staff may have been promoted less rapidly than deserved” and that such individuals “should...be compared not only to ‘those who have served in the same rank for an equal length of time’ but to those with whom they would have served an equal length of time had they been promoted when they deserved.”<sup>23</sup> Again, the Provost was unwilling to commit to the idea of discrimination’s existence, and only wanted to address the plight of women once they had crossed the threshold of university employment. Affirmative Action Coordinator, Rock, was equally unconvinced, expressing concern that the NCAS women’s desired way of judging experience would not provide an “adequate measure of an individual’s immersion in the discipline.”<sup>24</sup>

Part of the university’s reluctance to fully address the structural concerns of women’s educational paths and employment trajectories had to do with the amount of money it had available to correct any inequities that administrators – with the help of the HEW and OCR – decided actually existed. Especially given that there was no consensus about whether discrimination existed, asking the university to financially compensate women for structural problems outside the confines of the university itself – even if the problem permeated the academic community as a whole – was probably unrealistic, in part due to the expense and in part due to the scale of the problem.

But even asking the university to provide back pay intended to correct structural problems within its own departments was an expensive undertaking: the women of the AAUP’s

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<sup>23</sup> 8 November 1971, Memorandum, Provost Richard Schlatter to all Deans, Directors, and Department Chairs. Inventory to the Records of the Rutgers University Provost’s Cabinet, 1953-1972, Box 2, Folder 14. Special Collections and University Archives, Rutgers University.

<sup>24</sup> 26 October 1971, Memorandum, Cecelia Rock to Dorothy Dinnerstein. Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 2, Folder 3. Special Collections and University Archives, Rutgers University.

Committee W provided an initial estimate of \$250,000, just for initial salary equalization, with estimated reparations costing another \$1 million.<sup>25</sup> And with the budget crises of the early 1970s already affecting university operations and budgets, administrators were very concerned about preserving jobs, departments, and services they feared might get cut as the crisis worsened.<sup>26</sup> Having to pay a quarter of a million dollars in reparations – or more – in addition to raising salaries and creating new positions by boosting minority recruitment was not an enlightening prospect for such a troubled economic climate. Thus, the university’s refusal to engage in discussion about substantive structural change can also be interpreted as the university’s concern for its bottom line and its attempts at frugality.

This concern took several forms, including attempts by the university to pay both women and African-Americans out of the same funds and in the same way. On several different occasions NCAS women’s groups condemned this plan as a “divisive...unethical tactic”<sup>27</sup> and refused to be complicit in what they considered the university’s attempts to have the groups illegally “compete for the same resources.”<sup>28</sup> The women agreed wholeheartedly with Civil Rights for all minorities, but they saw the university’s plan to lump their concerns with those of

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<sup>25</sup> Smith, Georgina M. “Faculty Women at the Bargaining Table,” in the *AAUP Bulletin*, Winter 1973, 402-406. In Lillian Robbins’ Personal Papers.

<sup>26</sup> One document, from October 1971, directly cited the “severe budget constraints” the university was under, and its impact on Affirmative Action decisions – in this case, that only departments that could show a hire was “necessary to clear inequities in the representation of minority persons and women” would be allowed to make said hire. (26 October 1971, Memorandum, Provost Richard Schlatter to Deans, Directors, and Department Heads, Inventory to the Records of the Rutgers University Provost’s Cabinet, 1953-1972, Box 2, Folder 14. Special Collections and University Archives, Rutgers University.) Multiple records of Provost’s Cabinet meetings show concerns over the university budget, ranging from concerns that as of January 1971 the budget for 1972-1973 was unclear to discussing many ways in which the university might need to cut back its services – one of these was a hiring freeze. (Inventory to the Records of the Rutgers University Provost’s Cabinet, 1953-1972, Box 2, Folder 11. Special Collections and University Archives, Rutgers University.)

<sup>27</sup> 7 February 1972, Rutgers-Newark Women’s Caucus’ Response to President Edward Bloustein’s Proposed Affirmative Action Plan. Lillian Robbins’ Personal Papers.

<sup>28</sup> 22 November 1971, Letter, From The Executive Council of the Committee on the Status of Faculty Women at the Newark College of Arts and Sciences to Provost Richard Schlatter and the Deans, Directors, and Department Chairmen. Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 2, Folder 3. Special Collections and University Archives, Rutgers University.

African-Americans as a way for Rutgers to avoid paying both groups the full amount each were owed and to avoid making real changes.

Second, and most significant, was the university's refusal to even consider back pay as an option for the women. Cecelia Rock, both in her negotiations with NCAS women and in her private consultations with other university administrators, made it clear that she thought back pay constituted an unreasonable expense given the nature of the university's alleged offenses. Publicly, Rock told Dinnerstein that she

*...[agreed] that [Rutgers] must continue salary studies and monitoring systems for a number of years (especially following a promotions program) to insure salary parity. However, [she believed] that the University should only be asked to pay once for any one of its historical mistakes.*<sup>29</sup>

Rock implicitly stated agreement with plans to combat sex discrimination, if not agreement with how the university should be asked to combat it. Yet, in her private notes, written in the margins of a letter Dinnerstein sent requesting back pay for NCAS women, Rock wrote: “[I]f promotion is essential to an equitable adjustment, the promotion plus salary adjustment should be the remedy. Only once.”<sup>30</sup> Here, Rock showed a continued reluctance on the part of administrators to admit wrongdoing, or to find mutually agreeable ways to correct it. In both notes Rock rejected the specific indemnities that NCAS women had requested, believing them to be unreasonable, unnecessary, and even unmerited: in her opinion the requested money did not rightfully belong to the women, as the university would already be giving them their due with promotions and salary increases.

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<sup>29</sup> 26 October 1971, Memorandum, Cecelia Rock to Dorothy Dinnerstein. Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 2, Folder 3. Special Collections and University Archives, Rutgers University.

<sup>30</sup> 15 November 1971, Letter, Dorothy Dinnerstein, on behalf of the Executive Council of the Committee on the Status of Faculty Women at NCAS to Cecelia Rock and Edward Bloustein. Inventory to the Records of the Rutgers University Provost and Vice-President (Richard Schlatter), 1945-1972, Box 2, Folder 3. Special Collections and University Archives, Rutgers University.

These exchanges alone are not enough to suggest that the university's resistance to back pay was a budget issue, but events unfolding later in the negotiations process are. As of 1972, Rutgers had still not concluded its investigation or made much progress towards resolving the complaints. By this time the American Association of University Professors (AAUP) had gotten involved in the negotiations, under the aegis of bargaining for fair employment contracts, and other third parties such as the Women's Equity Action League (WEAL) and AAUP's Committee W began negotiating on the women's behalves as well.

Despite months of stalling, the university was finally beginning to show a willingness to address the kinds of structural concerns that had originally bothered the NCAS women. WEAL's work in New Jersey was through Project Monitor, an organization focused on "help[ing professional academic] women candidates have their resumes read [by universities], not ignored-as is sometimes the case in departments where affirmative action is not yet an accepted concept." As part of this work Project Monitor required a great deal of professional advice and monetary support; Rutgers President Edward Bloustein sat on the board, along with administrator Blenda J. Wilson, and ensured that Rutgers departments volunteered time and at-cost Xerox copies. Since Project Monitor's mission was a direct assault on structural disadvantages women had faced, Bloustein's involvement with the group demonstrates that Rutgers wanted to give, at the very least, the appearance of caring about such concerns.<sup>31</sup>

In addition, the AAUP and OCR had finally been able to make headway in an area where NCAS women had failed: the university assumed responsibility for sex discrimination on the Newark campus, and, on 10 November 1972, had released an affirmative action statement

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<sup>31</sup> New Jersey Women's Equity Action League Records, 1970-1974, Box 4, Folder 1. There is no one letter that directly states his involvement, but Bloustein was on the WEAL letterhead, and there are multiple instances of communication between WEAL and Rutgers wherein Rutgers staff and administrators agreed to make copies and review resumes.

detailing a salary equalization plan which accounted for both quantitative and qualitative factors affecting each individual's career path.<sup>32</sup>

Yet despite these seeming concessions, Rutgers was still resistant to the idea of back pay and to the nuances of determining the quality of each woman's resume. Though they had been presented with the OCR's findings of sex discrimination in July 1973, and "agreed to look into the funding of retroactive pay" in September of the same year, the university was simultaneously questioning whether the OCR had legal authority to demand back pay.<sup>33</sup> New Jersey Senator Clifford Case soon stepped in, corresponding with President Bloustein and pressing Rutgers administrators to settle the complaint; as a result, the women involved "all felt [he] was instrumental in getting the university to settle."<sup>34</sup> Indeed, Case's office conducted extensive research into the origins and development of the complaint. A chronology of events compiled as part of this research shows Rutgers' consistent preoccupation with finding funds for back pay, and a clear correlation between Rutgers' receiving word that the State Budget and Fiscal Planning Office expected them to "assume responsibility from its own monetary resources and not to [let the payments] be reflected in the University's state budget," and Rutgers' waning cooperation with OCR efforts to capture back pay for NCAS female faculty.<sup>35</sup>

Though Rutgers had consistently questioned the legality of the OCR's findings, and had been stalling investigators for years, the university's discovery of its expected financial role hugely impacted its proceedings in the rest of the investigation. Instead of paying the agreed-

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<sup>32</sup> According to the plan, quantitative factors were defined as "rank, appointment basis, college, department, degree, date of degree, date of hire at Rutgers, and number and type of publications." Qualitative factors were "quality of teaching, research, other scholarly activities, and service to the University and the community." The Deans and Department Chairs were allowed to recommend that a particular individual was more qualified than she appeared, and thus enforce redress on that basis as well. (10 November 1972, Affirmative Action Information Sheet #1. Box 44, Folder 20. Special Collections and University Archives, Rutgers University.)

<sup>33</sup> Undated. New Jersey Senator Clifford Case investigation of sex discrimination case. Clifford Case Papers, Box 69, Sex Discrimination Folder. Special Collections and University Archives, Rutgers University.

<sup>34</sup> 10 September 2010, Personal Correspondence with Dr. Judith Weis

<sup>35</sup> *Ibid.* this happened on 5 August 1974

upon monies, Rutgers demanded that the OCR reopen the investigation and give definitive proof of its legal authority for demanding such payments. The university also questioned the amounts it was obligated to give each disadvantaged faculty member. The reason given was “legality,” but it appears that the motives were financial. The university was able to continue stalling reparations payments until February 1976: it appears that, at that time, the HEW was forced to settle with the university and Rutgers was ultimately able to pay less money in reparations than was originally mandated. In addition, Rutgers only had to pay reparations for discrimination dating back to 1972, instead of the pre-1970 settlement the women had been hoping for.<sup>36</sup>

Though the university made its monetary concerns – both in terms of how much money the women were owed for their suffering and in terms of how much the university was willing to pull out of its bank vaults – central to the argument over pay discrimination, in reality it was the debate over how to determine women’s “experience” that became the linchpin of the whole affair. The Rutgers women’s equality through difference strategy was met with firm resistance from university administration, including the tactic of hiring of unsympathetic affirmative action liason Cecelia Rock, in part because the moral terms in which Dinnerstein and her colleagues framed the debate translated very differently to officials concerned with an already cash-strapped university’s bottom line. In this instance, the “experience” question was really a question about how much discrimination the university could be held responsible for – and the way in which the

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<sup>36</sup> Upon her death, Lillian Robbins, a woman involved in the complaint, left her papers to her friends and colleagues who had been involved in the complaint with her. Some of these documents are personal notes of faculty meetings and strategy sessions of women’s groups on campus. Several such documents, from early 1976, discuss the HEW’s settlement with the university, and how it was better for the women to accept the settlement instead of protesting further. Also mentioned in the document was the story of Helen Strausser, who was originally promised \$21,504 from HEW and yet ultimately only received \$9,695. The other women named in the complaint were so upset by the discrepancy that they each donated 10% of the settlements they had received to Strausser to make up the difference.

women wanted the university held responsible was primarily financial.<sup>37</sup> They coupled their exploration of what it meant for Rutgers to deny them the salary and job security commensurate their level of experiences with an exploration of the financial losses they had incurred as a result. Since the women framed their debate in these financial terms, the university's moral and ethical failings bore a high cash cost. These failings represented financial losses that the university did not believe it could afford, and it is this that drove the confusion and the debate forward until the complaints' resolutions in 1976.

But this debate has larger implications. In context of the Sandler case, the complaints demonstrate the universality of the dissatisfaction that academic women felt with their working environments, and of the growing awareness these women had of the scope of the problem: sex discrimination did exist, and they were not alone. Sandler, when reminiscing about the early 1970s, recalled that it took three humiliating experiences in quick succession for her to realize that she had been the victim of sex discrimination; it is reasonable to assume, especially in light of the multitude of anecdotal evidence provided by NCAS female faculty, that other women had similar moments of awareness that may have helped propel them to action.<sup>38</sup> In any case, the Rutgers complaints are indicative of the fact that, whether inspired by Sandler or not, and whether other women experienced similar realizations in similar ways or not, there was a growing realization among American women that sex discrimination was a problem, and there was a growing movement within the female academic community to demand equality. The Rutgers case was one among many, but it was also one of the first successful complaints to the HEW, in which the HEW acknowledged and corrected for the sex discrimination female faculty

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<sup>37</sup> It is worth noting that Rutgers very quickly warmed to the notion of promotions and salary increases – it is only once women started talking about back pay and about long-term academic-community wide inequities that the university balked.

<sup>38</sup> Sandler, Bernice. “‘Too Strong For a Woman’ – The Five Words That Created Title IX.” <<http://www.bernicessandler.com/id44.htm>> Accessed 15 October 2009.

had suffered. The case was also noteworthy because only the tenured women (all of them) signed the complaint, thus protecting the untenured faculty from reprisals.

In addition, looking in such close focus at the rhetoric employed in the Rutgers complaints – and the ensuing debates – opens new questions. Though outside the scope of this paper, the NCAS women avidly supported – and were influenced by – the African-American civil rights movement. In addition, as I briefly mentioned in the preceding pages, part of the women’s argument with the university over reparations was about the ways in which Rutgers attempted to treat all minorities alike, as if their experiences of discrimination had, historically, been the same. This also can be viewed in context of the Bernice Sandler case: she attributed her discovery of Executive Order 11246 to her research on African-American civil rights movements, and admitted that she drew strategy advice from African-American activism.<sup>39</sup> Given that women such as these saw parallels between their own experiences of discrimination and those of African-Americans, and yet wanted the differences to be acknowledged and respected, it seems that women’s exploration of these issues may have broader implications for how we think about the intersection of questions of institutionalized racial discrimination and sex discrimination.

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<sup>39</sup> *Ibid.*

