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Stony Brook Women vs. State University of New York: 15 Years to Justice

The State University of New York opened its new University Center at Stony Brook in 1962. Perhaps the powers that be in Albany didn't take into account that this sleepy village, surrounded far and wide by farms and other little villages, had a limited labor supply. Fortunately, in addition to the gift of 1,000 acres donated by the philanthropist Ward Melville, one of the resources available to the new campus was the large number of highly educated wives of the professors hired to make Stony Brook a great university

The university did hire a small number of women as regular faculty members—though very few ranked higher than assistant professor. Most of the positions open to the faculty wives and other educated women, even those with Ph.D.s were as "non-teaching professionals," such as assistants to department chairs, a few academic advisors like me, program coordinators in the residence halls, or clerks and assistants in non-academic areas of the administration. Some women with Ph.D.s were hired semester by semester to teach a course or two. The going rate for such adjunct instructors at that time was \$1,500 per course. Even for those who managed to get two courses in each of the two semesters, \$6,000 was hardly a living wage, but the women were glad for the opportunity to put their education to use.

As the national women's movement gained steam, in 1970 a few women on campus started a chapter of the growing National Organization for Women. In this forum we could compare notes and, as more women joined the group, alert the administration to the discrimination we lived with. Several years later Congress at last responded to the employment inequities American women faced by expanding to women the rights given to racial minorities in the Civil Rights Act of 1964. The addition of Title VII to this law in December 1972 gave us the vehicle for replacing wistful moaning among ourselves with action.

Thus, in the Fall 1973 semester the Campus Committee of N.O.W. wrote to the Executive Committee of the University Senate urging that a careful statistical study be undertaken to determine the facts about sex and racial discrimination on campus. Bringing equity would be in the University's best interest, N.O.W. pointed out, for universities by their very nature should be leaders in applying the law. Agreeing with N.O.W., the Executive Committee wrote to University President John S. Toll, asking him to establish a task force that would conduct a study of salary inequities, to be completed by the end of the following January. President Toll acted on the Executive Committee's recommendation by appointing the Salary Equity Task Force; however, he assigned no staff or other resources necessary for the work.

When it became clear by the end of February that nothing had been done, Campus N.O.W. wrote to President Toll directly, advising him that we would file a complaint with the Equal Employment Opportunity Commission (E.E.O.C.) unless he complied with the Executive Committee's recommendation by March 31. That got his attention! Within a week he assigned ten people to work with the Task Force.

The first report of the Task Force, dated April 1, 1974, covered non-teaching professionals; it showed extraordinary disparities. Toll, after resorting to delaying tactics until the end of the academic year, used obscure criteria developed by his inner circle to

whittle down the list of dozens of women to eight and reduce by far the amount of the discrepancies. As one of those eight, I received a raise of \$300 a year, although the Task Force's formula—and a federal judge's decision fifteen years later—showed a discrepancy of several thousand dollars.

My case is an example. In 1970, the Arts and Sciences dean's office decided to add two positions to the undergraduate advising staff. Both people hired would do academic advising, with each of them having some additional but equal responsibilities. Given the choice of the two positions, I chose the one that sounded more interesting to me. Only with the Task Force Report did I learn that the man who took the other position was paid \$14,500, while my salary was \$11,500. And, of course, the gap widened with each across-the-board, cost-of-living increase.

The Task Force at last submitted reports on West Campus faculty and Health Sciences Center faculty the following fall. Although both showed evidence of significant wage disparities between men and women, especially at the senior ranks in departments with a high concentration of women, no action was taken. The task force never completed a report on classified personnel—the secretaries, maintenance workers, and so forth. I should mention here that the campus had so few faculty and professional African-Americans that it was impossible to make a statistical case about them in any of the completed reports.

Seeing that the Administration had stymied our attempt to work cooperatively with it, Campus N.O.W. retained Judith Vladeck, a New York City attorney who had won several sex discrimination cases of national significance, including a celebrated case for the women of A.T.&T. We sent a letter to faculty and non-teaching professional women reporting on our actions thus far, inviting them to participate, and asking for donations toward the \$2-to-3,000 we expected in initial costs. Ms. Vladeck filed a complaint with the E.E.O.C. in December 1974 with twenty-five faculty and three non-teaching professional women anonymously representing their colleagues. The complainants included the entire faculty of the School of Nursing—women educators, after all, for a women's profession. They had learned from the Health Sciences Center report that the pay scale was much higher than theirs in the School of Allied Health Professions, where mostly men prepared medical technologists, physical therapists, and physician's assistants.

While the E.E.O.C. investigated our case, we formed a steering committee, rented a post office box, and opened a bank account in the name of Stony Brook Women's Legal Defense Fund. After eighteen months of investigation, in 1976 the overworked E. E.O.C., unable to file suit itself, gave us permission to sue.

Campus N.O.W. set up a meeting of the named plaintiffs with Ms. Vladeck so that she could explain just what this lawsuit would entail. She told the group that she had taken the case on a contingency basis. Lawyer's fees would be paid by the defense, if we won. She would get nothing if we lost; but she believed so strongly in women's rights and the strength of our case that she was willing to take the risk. She trusted us, though, to raise as much money as possible in that case to pay her firm at least a minimal amount. Win or lose, we would have to pay all other costs—filing fees, court and deposition transcripts, telephone calls, expert witnesses, etc. She could not say exactly how much that would cost, because at this point there were so many unknowns; but she estimated that it would probably be around \$5,000 more than the \$2-3000 she had mentioned for preparing to go to the E.E.O.C. All agreed to donate an amount equivalent to one percent of her salary each year for as long as the case took.

In May 1976 we initiated the class action in Federal District Court -- much to the Administration's surprise. Those powerful men never thought we would go that far, if only

because of the cost. They weren't worried about the cost of their defense, because it wouldn't come out of the University's budget. The State of New York, not the University would pay, and was willing to spend whatever was necessary, because of the ramifications if we won. Women in all 64 units of the State University—and possibly all female State professional employees—could then insist on parity. Ironically, our tax dollars contributed to the fight against our cause.

That year, I was a member of the President's Affirmative Action Committee. The committee had decided months before our suit was filed to hold a dinner meeting with President Toll in May at the home of the Human Resources Director. As it turned out, the papers in our suit were served on the University two days before that dinner meeting took place. I spent a very nervous two days. There would be no lawyers between me and the president at that dinner. But President Toll was no dummy, and I'm sure he was warned by the University's lawyers against anything that could be interpreted as retaliation. Although my position in the Administration was several rungs below the president -- and I'm sure he wouldn't normally have paid much attention to me---he was exceedingly courtly to me throughout dinner, helping me at the buffet table, later pouring more wine for me; I actually had a good time.

The first phase of a lawsuit like this is called "Discovery." During this period, each party is supposed to share with the other side all the information gathered through depositions and answers to interrogatories on which it was building its case. Because the important thing for plaintiffs in a class action is to present a strong statistical case, Ms. Vladeck asked for employment records for each of the named plaintiffs and the men in equivalent positions. Six more women had joined the action after we filed with the E.E.O.C., so there were now 34 named plaintiffs . I can't tell you how many equivalently placed men there were, but you may be sure there were many more of them than of us. Since our complaint covered discrimination in recruitment, hiring, tenure, and promotion, as well as in salary, Ms.Vladeck sought information about the search for each position and the further records for each employee. The University had a big job ahead of it, and so did we.

The University's poor records played havoc with our expenses during Discovery, which stretched over six years before the trial. Because the Human Resources Department had not kept records for much that was basic in recruiting, hiring, tenure, and promotion, it turned for help to the individual academic departments, which were at least as sloppy. After a long time Human Resources and the departments managed to produce much, but far from all, that we needed, making our side's work more difficult. Realizing that none of the plaintiffs were well enough trained in statistics, we had hired a statistical expert more than a year after Discovery started. Acting as if our funds were as limitless as the State's—and without checking with us—he had consulted with high-powered statisticians from Princeton and the University of Chicago and used computer centers on both campuses as well.

Although the long delay to start the trial was primarily due to the University's difficulty in providing the necessary information—which their lawyers as well as ours needed—other factors contributed. Judge George C. Pratt, the first judge we worked with, was assigned to the Abscam trial in 1980, so our trial was postponed. A new judge took over; but, alas, he soon dropped dead on the street. Although the suit was reassigned to Judge Pratt in February 1981, still another judge replaced him that fall and scheduled the trial for early March 1982. However, Judge Pratt, who evidently was interested in our case, found an opening in his schedule and took it back. Eight years after the complaint to the E.E.O.C. our trial—Coser v. Moore-- began at last on February 15, 1982, and continued well into March. Judge Pratt split the case in half. The first trial would determine whether or

not the University was guilty of a pattern of discrimination against women. After the verdict on this matter, the Court would consider the situation of each plaintiff in a new trial. If the University was found guilty of having a pattern of discrimination, their task in the individual cases would be to prove that, in spite of the pattern, in the case of this particular woman there was no discrimination. If we lost the class action, the burden of proof would fall to each plaintiff.

We were optimistic. At the same time that Ms. Vladeck was representing us, she was also representing the City University women. She once said that, while they had a good case, our case was stronger. So we were not prepared for the State's bombshell, dropped early in the trial. The defendants' expert statistician had discovered an error in our statistician's work – something they had neglected to let our side know during Discovery. Although the re-running of the tables still supported our claim, it was on a somewhat reduced level. But the damage had been done. Our star witness was discredited. Ms. Vladeck was furious. Still, she had plenty of supporting evidence that she produced through the rest of the trial.

Judge Pratt did not give his verdict from the bench. Rather, he produced a written decision in August 1983. More than a year later! Imagine what that waiting period was like, especially that we lost. Although he wrote that, at Stony Brook, women had not been treated equally with men, *this was due to historic social and economic forces, so the University was not guilty*. He declared that we, the plaintiffs, had not proven our case. We appealed the decision, but in 1984 the Court of Appeals upheld Judge Pratt's verdict. That was the end, for we couldn't afford to appeal to the United States Supreme Court.

By the way, while we waited for Judge Pratt, the CUNY women won their case—before a different judge and with a different statistician.

Two years later, too late to be a precedent in our case, Bazemore vs. Friday, did make it to the Supreme Court. This was a similar case under the Civil Rights Act, although with African-American plaintiffs, but with similar reasoning given in the lower courts for finding the employers not guilty. In this case the Court--the Burger Court!--found unanimously for the plaintiffs. In particular, the decision declared: "the error in the lower courts with respect to salary disparities created before the Civil Rights Law went into effect and perpetuated thereafter . . . was too obvious to warrant discussion. . . . To hold otherwise would have the effect of exempting from liability those employers who were historically the greatest offenders of the rights of blacks." Under the Civil Rights Act, what holds for blacks, holds for women. Had this precedent been set several years earlier, the outcome of our case might well have been reversed.

Too late for the class action, the decision in Bazemore v. Friday helped some of us who pursued our individual cases. Although most of the named plaintiffs had put our case behind them when we lost the class action, six of us proceeded.

Before discussing our individual cases, which Judge Pratt considered in a single trial held in 1988, I want to tell you how it felt to continue to be productive for, and loyal to, the institution that was our adversary through all those years. Charles Dickens wrote a wonderful novel, called "Bleak House," about a decades-long court case and its psychological effect on the lives of the plaintiffs and those close to them. Perhaps some of you have read the book or you may have seen the dramatized version on Masterpiece Theatre a few years ago. Although the lawsuit in Dickens had nothing to do with sex discrimination, I think of these fifteen years of my life as "Living in Bleak House."

A lawsuit doesn't transform you. A person inclined to serious self doubt –and so many women are--easily falls back into it, no matter how the figures prove the great discrepancy between her own salary and that of men at the same rank. Even if you had

already, as an old friend, Arlene Kaplan Daniels, a sociologist who was for years chair of Women's Studies at Northwestern, once eloquently expressed her own experience: "I had already begun to recognize a larger pattern in all the slights, snubs, omissions, and patronizing acts that I had shrugged off as my paranoia or my just desserts." Even if, in the case of faculty members, the woman has been honored in her field more than the men in her department with whom she is compared. Even if she had been awarded a Guggenheim fellowship, among the most prestigious honors in academic life, as had two of our ultimate winners, but none of the so-called comparable men.

Although many people told us individually how much they valued our work and supported our cause, there were enough people in the university who called us trouble makers, especially present and former department chairs. Never mind that it wasn't our fault that they had to retroactively construct department records, because their department hadn't bothered much with record-keeping in the past. It certainly wasn't women department chairs responsible for that; in the 1970s there were hardly any women department chairs!

My own private Bleak House had some different components, because for all but two years I was the bookkeeper. Money, it turns out, gives you a whole new perspective. The records I kept for most of those years showed who responded to our fundraising efforts and how much each person gave. I have to admit that these facts, always in the back of my mind, sneaked to the forefront when I was in a room with certain people. I'm sorry to say, they became rather an obsession with me. I lost respect for the associate director of the University Library, among the highest ranking women on campus, who once and only once sent us a check for \$20. Another woman, a plaintiff, responded to my first request to the plaintiffs to start paying off their pledges of 1 percent of their salary, by writing me a scathing letter. How dared I ask her for money. She had only joined the suit, she wrote, because she was so highly esteemed that it would add prestige to the case --she was not one of the two Guggenheim fellows! She sent a small check then--and never again. Some plaintiffs sent \$10 or \$25 once or twice. One woman, whom I heard brag at a party about what she would do with all the money coming to her, never contributed anything. On the other hand, tears came to my eyes when I saw a check for \$3 sent by a graduate student whom I knew could barely afford to go back each weekend to Nassau County, where her ex-husband and four children lived, to shop and cook the next week's meals for them. But I had to keep all this bottled up.

Our steering committee had early on set up an account with an organization called WEAL, the Women's Equity Action League, so that contributions could be tax deductible. At first we raised enough money to keep up with the expenses. That was largely because in 1979 we benefitted from the battle between two unions that wanted to represent the State University faculty and other professionals. We asked both parties for a contribution. UUP, the union that had been representing us for years, sent us \$6,000 and NEA sent us \$1,800. In 1980, when I was no longer the bookkeeper, my replacement wrote to UUP, which had won the representation battle, asking for another contribution. This time the union sent us \$20,000.

But in many ways, how naïve we were! Perhaps at that meeting in 1976 we should have gotten signed pledges for 1 percent of their salary from the plaintiffs. Surely the members of the steering committee who had hired the statistician and with his help estimated that his services would cost about \$3,000, should have made a written agreement with him -- about compensation, about the relationship between him and the steering committee. Trusting him, they left him to his own devices. No one authorized him to include two consultants or to far exceed his original cost estimate. The lack of a written

agreement was discovered in 1981 by another plaintiff who took over the finances that year.

In 1984, at the time we lost our appeal of Judge Pratt's decision, we owed about \$100,000 to Ms. Vladeck's firm, our statistician, and the computing centers he used. That doesn't even include any money we might hope to raise to pay Ms. Vladeck at least part of the legal fees she would not now collect from the other side.

By August 1982, I once again became the bookkeeper; but now the woman who had written to the statistician stayed on as a co-chair, attending to other financial duties, mainly continuing to deal with the statistician and pursuing organizational leads for donations. It was a relief to have a comrade! I immediately wrote letters to all the plaintiffs urging them to send larger payments and to give us lists of people we might solicit. Only five people provided lists, (and three only because I twisted their arms). In October I mailed 300 letters to previous donors and other individuals who might possibly contribute. Between August and Christmas I received 69 checks, totaling \$8,340, including \$2,900 from three especially conscientious plaintiffs. WEAL's cut was ten percent of that.

When Ms. Vladeck wrote on the December bill, "Rhoda--please!" that got to me. I wrote her a long letter reporting all these activities and more, assuring her that I didn't blame her, the statistician, the computing centers, or anyone else with a legitimate claim for wanting to be paid; but I was quite disgusted with my thankless job. Many of the plaintiffs --and I'm quoting from my letter here--"treat me like a pariah because I goad them. Even those who have given generously and been helpful are inclined to treat me like their clerk."

Then, in the spring of 1984 it looked like rescue was at hand. A new Stony Brook representative to UUP's Affirmative Action Committee called me after a meeting to say that the chair of the union's Legal Defense Fund had sought suggestions about how to use the large amount of money sitting in the fund. After someone mentioned our suit as a possible recipient, our representative was asked to find out if more was needed.

You may be sure that I immediately wrote for an Application for Legal Defense Assistance and began to collect the necessary materials. On August 6, 1984, I filed a request for \$68,000 on behalf of all the named plaintiffs and sent it with a detailed letter to the union president. She wrote back that she had forwarded the material to the Legal Defense Fund Committee, suggesting that they meet to come to a decision before the next Delegate Assembly, in October.

In 1985, as the union committee stalled, the statistician sued us for \$60,000. My co-chair and I were frightened that we would be held personally liable. Ms. Vladeck--wonderful lawyer!--took care of the threat. She told his lawyer that if he did not withdraw his suit, she would countersue for malpractice. The settlement soon followed: He accepted as full payment all the money he had already received from us; we promised never to start a malpractice suit.

So, the statistician's large part of our debt was erased and the results of a last-ditch fundraising letter had lowered our request to UUP to just under \$36,000. But monthly bills from Ms. Vladeck's firm and occasional dunning letters from the two computing centers still arrived at my house month after month. Eventually the latter stopped.

Returning to our attempt to get UUP's help. . . the chair of the Legal Defense Fund for a reason I never learned did not want us to get that money. It took two years, three applications, and many phone calls to her, which she never returned, for UUP to come through. Sometimes my phone call caught the chair, but she gave vague answers to my questions about committee meetings called and cancelled for lack of a quorum --which I subsequently learned from a member of her committee were lies. Finally she told me that we would have to begin all over again, because the terms of the committee members had

ended, the new committee had not yet been appointed, and the union's president and lawyers were "reviewing everything."

Now a UUP Delegate myself, I prepared for the October 1986 Assembly by writing a three-page history of our attempts to get the union's help after a union committee had suggested we do so two years before. I reminded the Delegate Assembly that they had given us their moral support, when eighteen months earlier they overruled the Legal Defense Fund Committee's denial of our application on a technicality and urged us to apply again. We had learned, I wrote, that the Legal Defense Fund had sufficient money and that the committee seemed to have a majority in favor and could have acted on time. With the support of the Affirmative Action Committee, we distributed copies of my report to all the Delegates before the plenary session. At my request another Delegate (and former plaintiff) presented the report orally to the Assembly, because she was a better speaker than I. The Delegate Assembly approved our application by a voice vote that seemed to be unanimous. By the end of 1986 we were debt free. No more bills for the Stony Brook Women's Legal Defense Fund came to my house, and I could turn my attention to my individual suit, as I'll now turn yours to that phase of our sex discrimination matter.

Shortly after our first trial, Judge Pratt had been elevated to the Federal Court of Appeals. He didn't have to handle the second half of our case, but he chose to come back to the District Court to hear the six individual suits in a single trial. My private opinion, for which I have no proof whatsoever, that he wanted to make up for declaring the University not guilty in the class action by giving us a second chance. Indeed, when the University's attorney in her opening statement referred to his finding that the university did not discriminate according to sex, Judge Pratt interrupted her. He pointed out that he had not said the defendants didn't discriminate according to sex, but rather that the plaintiffs had not proven that they did.

As the defense presented its witnesses, trying to prove that none of us were worthy of any higher salary than we got, we were often disheartened. They were willing to take all sorts of cheap shots, such as trying to infuse a rivalry between women and blacks, which shocked and angered us. One of the witnesses they called against me was a former Dean for Undergraduate Studies, my boss for several years, and now the Provost at a SUNY four-year college. The evening before he came, when Ms. Vladeck was preparing me for the next day in court, I told her he was no problem. He had often told me how valuable I was to him and the University, and many times he put that in writing, including letters he wrote requesting merit increases for me. In one letter he sent to me alone, which we were submitting as evidence, he wrote "After Joan [also a plaintiff in the class action], you are the person in this office I have relied on the most to the many puzzles we have encountered over the years."

"They may as well have called my mother," I said.

Before the next day's session started, when my former boss arrived in the courtroom, we welcomed each other with a big hug. Then he began to testify. He explained those letters by telling the court that a boss always exaggerates when supporting a staff member's request for a raise; and in other ways he denigrated my work. Ms. Vladeck's cross examination was short. With her last question she delivered the coup de grace, asking him if he was a candidate for the open position of Provost at Stony Brook; he had to answer yes. Thus, he was totally discredited as a witness. But I was in shock.

The testimony of other defense witnesses taught us some important things about the University and some of its personnel. We noted the hypocrisy of the university, seen as a liberal institution full of liberal individuals but quite willing to forget principles when faced with inconvenient reality. Often favoritism and cronyism we had long suspected was

described by defense witnesses with pride. They explained how an academic department would decide to whom they wanted to give a big raise and how much, then find arguments to justify it up the line. A common practice was to raise salaries of scholars receiving outside offers—which women rarely received in those days. Often this caused the inequity against women to be perpetuated and increased; but the University never saw that as a reason to correct it.

In the end Judge Pratt decided in favor of four of the six plaintiffs. He awarded us winners the difference between what we had been paid and what we should have been paid, with compounded interest, from the time Title VII became law in December 1972 to the present. In addition the University was obliged to deposit in our pension accounts the amounts that should have been deposited in the past and what they would have earned over the years. And, very important to us, the defendants had to pay Judith Vladeck her well-deserved legal fees. Of course, the University appealed the verdict, but in 1989 the Court of Appeals upheld Judge Pratt's decision.

Under the law we didn't receive punitive damages, but we didn't care. We were glad to get whatever we received. The important thing was obliging the university to rectify early discrimination and, we hoped, improve the treatment of women in the future.