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FACULTY WOMEN'S STRUGGLE FOR EQUALITY AT THE UNIVERSITY OF CALIFORNIA DAVIS

Martha S. West*

ABSTRACT

This Article traces the struggle over salary equity for faculty women at the University of California Davis ("UCD") as an illustration of the serious hostility encountered by efforts to achieve equality for women in the 1990s. In the spring of 1994, the UCD administration released results of a preliminary study indicating that faculty women earned less than men when controlling for discipline, length of time since degree, and length of time on the UCD faculty. The administration proposed that the faculty Committee on Academic Personnel undertake a review of individual women's files to determine if women were underpaid in comparison to men with similar credentials in the same departments. This proposed study set off a firestorm among the faculty and several attempts were made to stop the equity reviews. Those supporting equality for women eventually prevailed, but the costs were high and the negative impacts on gender equality continue. Five years later, women's percentage among new faculty hires at UCD had declined from 34% percent to 18% percent. The UCD struggle to implement salary equity reviews illustrates the deeply controversial nature of women's rights at the end of the century.

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I. INTRODUCTION

Research universities in the United States continue to be hostile places for faculty women. It has been over twenty-seven years since Congress extended Title VII of the 1964 Civil Rights Act in 1972 to prohibit employment discrimination by educational institutions.¹ Yet, discrimination on the basis of sex persists in research universities at every level. We see discrimination when qualified women do not get hired for faculty jobs.² We see

1. See Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, § 3, 86 Stat. 103 (amending the Civil Rights Act of 1964, Title VII) (codified as amended at 42 U.S.C. § 2000e-2000e-17). Title VII prohibits sex, race, national origin, and religious discrimination by both public and private employers who employ 15 or more employees. See 42 U.S.C. §§ 2000e, 2000e-2.

2. Currently, women obtain 48% of the Ph.D.s earned by American graduate students. See Denise K. Magner, *Universities See Slight Increase in Number of Doctorates Awarded*, CHRON. HIGHER EDUC., Nov. 26, 1999, at A18. In 1991, 44% of Americans earning Ph.D.s were women. See Martha S. West, *Gender Bias in Academic Robes: The Law's Failure to Protect Women Faculty*, 67 TEMP. L. REV. 67, 75

discrimination when qualified faculty women seek, but do not attain, tenure.³ We see discrimination whenever we compare the salaries of faculty women and men at any professorial level.⁴

Despite laws prohibiting discrimination on the basis of sex, salary differences between women and men on university faculties are growing, not shrinking. At full professor rank, men on average earned 10% more than women in 1975-76; by 1998-99,

(1994). The percentage of women among Ph.D. recipients increased every year between 1991 and 1998, and is expected to reach 50% within the next two or three years. See Magner, *supra*.

Despite a qualified labor pool of over 40% women, universities hire women into faculty positions at significantly lower rates. At University of California Davis ("UCD"), over a ten year period from 1987-96, women made up an average of 34% of the new faculty hires. See U.C. Davis Hiring Data, 1981-99, prepared by Martha S. West (June 1999) (on file with author). Beginning with the 1997-98 hiring year, women's percentage of new faculty hires dropped to approximately 15%. See *id.* During 1998-99, women were only 18% of new faculty hires at UCD. See *id.* When the qualified labor pool averages 47% women, but women are only 15-18% of new hires, gender bias appears on the increase.

A parallel and reinforcing explanation may be the fallout from Proposition 209, which passed in California in November, 1996. Proposition 209, an amendment to the California Constitution, was understood by the general public to abolish affirmative action. Even though the University is governed by federal law, Executive Order 11246, which requires affirmative action in employment, perhaps faculty members thought they could return to "normal" hiring — hiring white men without thinking about issues of gender or race. The faculty at UCD remains a primarily white male faculty: in 1999, among 1283 faculty members, 66% were white men, 19% were white women, 11.5% were men of color, and 3.5% were women of color.

3. In 1997, Karen Sawislak was denied tenure at Stanford University, despite a 26-0 vote in her favor by the history department. See Karen Sawislak, *Denying Tenure: Who Said Anything About Fairness?*, CHRON. HIGHER EDUC., Sept. 17, 1999, at B4. The dean of humanities and science recommended denial of tenure, and the Stanford president concurred, suggesting the department's tenure standards were too low. See *id.* Sawislak's credentials were excellent: she had a book published by University of Chicago Press and was nominated for the Bancroft Prize in history. See *id.* The humanities dean involved had approved six men during his deanship, but only two women, one of which involved a demotion in rank. Two women other than Sawislak had also been denied tenure. See *id.* Sawislak's historical data showed a negative impact on women seeking tenure in the humanities at Stanford. Over a five-year period, 1986-91, 18 men had sought tenure and 12 succeeded (67%). Over the same period of time, 14 women sought tenure, and six succeeded (43%). See *id.* at B5.

In January 1999, a jury in Connecticut awarded Professor Leslie Craine \$12.7 million in her sex discrimination lawsuit against Trinity College for failing to grant her tenure. See David W. Chen, *Jury Awards \$12.7 Million to a Woman Denied Tenure*, N. Y. TIMES, Jan. 19, 1999, at B2. Her complaint alleged that men had been granted tenure with academic records inferior to hers. See *id.*

4. For a discussion of discrimination in faculty salaries, see West, *supra* note 2, at 92-93.

men were earning 15% more than women.⁵ The salary differences are less at the lower ranks but equally persistent and growing. At the associate professor rank, men on average made 5% more in 1975-76, and today make 9% more than women. At the assistant professor rank, men earned 4.5% more than women in 1975-76 and today earn 7% more than women assistant professors.⁶ Furthermore, these salary differences have increased more sharply at research universities than at other higher education institutions, such as four-year colleges.⁷ Even when researchers are able to control for a variety of factors, such as field of study, faculty publications, or length of experience, these gender differences remain unexplained.⁸ In the absence of alternative explanations, it appears that prejudice against women remains a serious problem in higher education, and the lower salaries that universities pay faculty women reflect the persistence of gender bias.

Every so often, some event comes along at a research university that gives us hope that discrimination against faculty women may end or at least taper off. The most recent encouraging event was the March 1999 study released by the Massachusetts Institute for Technology ("MIT") *admitting* that its faculty women in the School of Science experienced discrimination.⁹ The study began in 1994 and when the 1999 report was issued, MIT was able to report the steps it had taken over the previous two or three years to end this discrimination.¹⁰ Professor Nancy Hopkins, one MIT faculty member involved in the study, was not sanguine about the level of awareness among the MIT faculty of

5. *See Ups & Downs: The Annual Report on the Economic Status of the Profession*, Academe, Mar./Apr. 1999, at 19 ("Academic Salaries Since the Early 1970s").

6. *See id.*

7. *See id.*

8. *See id.* at 20 n.10.

9. This study was released on the internet in March 1999, on MIT's faculty newsletter web site. *See A Study on the Status of Women Faculty in Science at MIT*, 11 MIT FAC. NEWSL. 3 (Mar. 1999), <<http://web.mit.edu/fnl/women>> [hereinafter MIT Report]. It was sufficiently newsworthy to make the front page of the *New York Times*. *See* Carey Goldberg, *M.I.T. Acknowledges Bias Against Female Professors*, N.Y. TIMES, Mar. 23, 1999, at A1. For a follow-up article by one of the faculty women responsible for the study, see Nancy Hopkins, *MIT and Gender Bias: Following Up on Victory*, CHRON. HIGHER EDUC., June 11, 1999, at B4.

10. By 1999, MIT had hired new faculty women, increasing the percentage in the School of Science from 8% in 1994 (22 of 274), to 11.7% in 1999 (31 of 266). MIT Report, *supra* note 9. In addition, salaries of faculty women were raised, their lab space was increased or remodeled, and senior women began to be included on important departmental committees. *See* Hopkins, *supra* note 9.

discrimination against women. She nevertheless commented that an institution of science and learning was certainly the ideal place for the birth of a new social revolution.¹¹

II. THE BATTLE OVER PAY EQUITY FOR FACULTY WOMEN AT UC DAVIS

The University of California at Davis ("UCD") experienced its own chapter of this continuing gender equity social revolution in 1994 and 1995, the same years MIT examined the position of its faculty women in science. The battle over a salary equity study at UCD was a study in contrasts. The story included several victories for faculty women seeking equal opportunity, but it also revealed the continued existence of assumptions that women simply deserve lower salaries, evidenced by the strong opposition voiced by many men, and a few women, to the salary study. When the struggle began, both faculty and administrators interested in this issue were surprised by, and unprepared for, the strong level of hostility generated by the suggestion that sex discrimination may be a problem on our campus.

A. *Origins*

The UCD battle over faculty women's salaries had its early origins in 1988 and 1989. In January 1988, UCD Chancellor Ted Hullar met with an ad hoc group of faculty women and listened to complaints about isolation, lack of support, and unfair treatment received under the extensive personnel process used for merit salary steps and promotions.¹² Furthermore, a number of faculty women had left campus in 1986-87, indicating in exit interviews that they found the UCD academic environment "un-

11. See Hopkins, *supra* note 9, at B5. Hopkins is amazed, however, that we still need a social revolution so many years after civil rights laws and affirmative action "got women in the door of the academy." *Id.* Unfortunately, in her experience, research universities did not grant women equality once they arrived. See *id.*

The MIT study provoked a strong and widespread response by faculty women in other research universities, complaining about the same types of discrimination faced by the MIT women. Perhaps we will see a resurgence of a women's movement in the academy? See Robin Wilson, *An MIT Professor's Suspicion of Bias Leads to a New Movement for Academic Women*, CHRON. HIGHER EDUC., Dec. 3, 1999, at A16.

12. For a general discussion of the problems faced by UCD's faculty women, see Kathryn K. Johnson et al., *Academic Women at the University of California, Davis: Institutional Barriers to Retention and Promotion and Recommendations for Action 10* (Dec. 1989) (on file with author).

comfortable and inhospitable."¹³ Accordingly, in 1988, the UCD Office of Academic Affairs asked the Women's Resources and Research Center ("WRRC") to study problems faculty women faced.¹⁴ The WRRC study team contacted all faculty women and eighty-one women (fifty-three percent of the 154 ladder-rank faculty women) agreed to participate in the study.¹⁵ The WRRC published its final report in December 1989.¹⁶ Among its recommendations was a request that the Office of Academic Affairs conduct a formal equity review of personnel files to determine whether, or to what extent, there were discrepancies between faculty men and women in regard to salary and rank.¹⁷

In February 1990, then-Vice Chancellor for Academic Affairs Carol Cartwright announced a plan to conduct an equity review in response to the WRRC study which would address issues of compensation, workload, and advancement.¹⁸ Unfortunately, a budget crisis hit the entire UC system in 1990-91 and all projects requiring money were put on hold. Soon thereafter, Vice Chancellor Cartwright left campus. The next Vice Chancellor of Academic Personnel, now titled Vice Provost of Faculty Relations, was Carol Tomlinson-Keasey, hired in July 1992.

In the spring of 1993 Vice Provost Tomlinson-Keasey convened a "Salary Equity Committee" of representative faculty women to examine issues of pay differentials between men and women faculty.¹⁹ After several months, the committee sorted the faculty into nine comparative groups, with roughly similar academic fields and responsibilities. In early 1994, Vice Provost Tomlinson-Keasey asked Professor Jessica Utts, a statistics professor and member of the Salary Equity Committee, to do a preliminary statistical analysis to determine whether salary discrepancies existed between faculty men and women within

13. *Id.* at 9.

14. *See id.* at 11.

15. *See id.* at 13, 15.

16. *See id.*

17. *See id.* at 71-72.

18. *See U.C. Davis Status of Women Administrative Advisory Committee, Minutes* (Mar. 1, 1990) (on file with author). Carol Cartwright was the first UCD woman administrator with campus-wide academic responsibilities.

19. Despite my expertise on sex discrimination in higher education, I was not asked to join this Committee. I heard through the grapevine that the administration did not want my participation to "taint" the Committee's work. By 1993, I had become quite outspoken on campus about the failure to hire women into faculty positions commensurate with their availability in the national Ph.D. pool.

each of the nine academic areas. Professor Utts completed this analysis in April 1994.

In the spring of 1994, interim Chancellor Larry Vanderhoef was named permanent chancellor at UCD. An ad hoc group of faculty women organized themselves and wrote a letter in April 1994 to Chancellor Vanderhoef, congratulating him on his appointment and requesting a meeting to discuss faculty women's concerns. By this time, the preliminary salary equity analysis had been completed but no results had yet been released. In the letter we requested a discussion of "the need for strong and vocal support from the Chancellor's office for the salary equity study. As the results of the study become known, appropriate discussion of it with all faculty [would] be essential for full understanding and acceptance."²⁰

B. *Publication of the Preliminary Gender Equity Salary Study*

The first official notice of the salary study and its preliminary statistical results were published in the April 22, 1994 edition of the campus administration's newspaper, *Dateline U.C. Davis*.²¹ The headline read, "Salary Study Shows Faculty Women Are Paid Less." The data in the accompanying chart showed that seventy-four percent of women were paid below the mean for faculty salaries, rather than the fifty percent one would expect.²² This preliminary analysis was based on length of time since obtaining a Ph.D. degree (or its equivalent) and length of time teaching at UCD.²³ An equation based on men's salaries using these two variables was created within each academic area, and the women's salaries were compared to the men's salaries in their fields controlling for academic careers of comparable length.²⁴ Among the nine academic groups, the percentage of women below the relevant mean ranged from fifty-four percent in math and physical science to eighty-two percent below the mean in humanities, and eighty-four percent below the mean in

20. Letter from 10 Women Faculty Members, U.C. Davis, to Chancellor Larry Vanderhoef, U.C. Davis (Apr. 21, 1994) (on file with author).

21. See Maril Stratton, *Salary Study Shows Faculty Women Are Paid Less*, *DATELINE U.C. DAVIS*, Apr. 22, 1994, at 1.

22. See *id.*

23. See Carol Tomlinson-Keasey et al., *Gender Equity Study*, U.C. Davis 3-4 (1994) (on file with author).

24. The study was based on the faculty on the payroll in July 1993: 1165 men (81.5%) and 265 women (18.5%). See *id.* at 2.

agricultural related fields.²⁵ The salary differentials ranged from a minor difference of \$565 in math and physical science to \$3,473 in humanities, \$3,522 in social science, \$3,524 in biological science, and \$4,613 in medicine.²⁶

The initial announcement of the study in *Dateline U.C. Davis* stated that the Academic Senate's Committee on Academic Personnel ("CAP") would review individual women's files "to determine if adjustments in rank and step are appropriate."²⁷ The article explained that Tomlinson-Keasey would contact department chairs, deans, and faculty women themselves to identify those women whose files should be reviewed for equity adjustments.²⁸

In an April 28 letter sent to all faculty women, Tomlinson-Keasey informed us of the "recently completed" salary equity study. She also stated that the campus had asked CAP to conduct an "Equity Merit Review" of ladder rank faculty women "for whom some adjustment in rank and step might be appropriate."²⁹ She asked interested faculty women to nominate themselves by June 1, 1994 by filling out a short form attached. She continued:

Equity Merit Reviews will be based on an individual's cumulative record of teaching, research and service [Y]ou need not prepare any additional information — all the needed information will be taken from your personnel records A nomination ensures that your file will be considered. It does not ensure a merit adjustment. That will be determined by CAP based on comparative analyses of files.³⁰

She ended the letter by telling faculty women that "[t]he current [review] is . . . designed to (a) correct any salary inequities that exist and (b) educate the faculty and the administration about gender equity in hiring and advancement."³¹ The letter was signed by both Carol Tomlinson-Keasey and Harvey Himelfarb, the soon-to-be interim Vice Provost of Faculty Relations.

25. See Stratton, *supra* note 21.

26. See *id.* The salary difference for the four women law faculty members paid below the mean was \$10,010, but was skewed by the relatively longer years of law practice many of the women had accumulated before going into teaching. In setting law faculty salaries, no credit has been given for prior years of law practice.

27. Stratton, *supra* note 21.

28. See *id.*

29. Letter from Carol Tomlinson-Keasey, Vice Provost, U.C. Davis, and Harvey Himelfarb, Acting Vice Provost, U.C. Davis, to the Faculty, U.C. Davis (Apr. 28, 1994) (on file with author).

30. *Id.*

31. *Id.*

The local media soon picked up news of the gender equity salary study. When the *Sacramento Bee* printed a story about the study, its May 5 headline read: "Salary Equality Eludes UCD's Female Faculty, 74% Earn Less than Men, Study Shows."³² The accompanying graphic labeled the percentages of women in each field earning below the mean as "percentages of women earning less than men."³³ Unfortunately, the newspaper headline, graphic, and story were wrong. The reporter did not understand the concept of a mean and did not understand that women's salaries were being measured against a mean, not against all men's salaries. She did not understand that one would expect fifty percent of both men and women to be below the mean. The headline should have read "24% of Women Are Paid Less than Expected" or "Paid Less than Comparable Men."

A second unfortunate mistake in media reporting occurred in the May 6 campus student newspaper report on the equity study. After explaining the study, the student newspaper reported that CAP "began the equity surveys in March, and has already reviewed twenty-five cases of faculty inequities."³⁴ In fact, no such review by CAP had yet begun. This erroneous report, however, added to the rapidly developing misunderstandings of the preliminary equity study and the follow-up steps being contemplated by the administration.

On May 16, nine members of our ad hoc faculty women's group met with Chancellor Vanderhoef for our requested appointment. We were granted thirty minutes of the Chancellor's time. We discussed the concerns expressed in our letter about faculty hiring, women's involvement in search committees, and the need for more appointments of women as high level administrators. A significant portion of our time, however, was spent discussing the salary equity study; we asked for the administration's strong support for the study. Professor Utts explained to the Chancellor that she was beginning to receive irate phone calls from male colleagues about the study, accusing her of improper statistical analysis. The Chancellor listened carefully.

Meanwhile, those faculty members angry over the newspapers' charges of discrimination, and suspicious of the claims of

32. Lisa Lapin, *Salary Equality Eludes UCD's Female Faculty*, SACRAMENTO BEE, May 5, 1994, at A1.

33. *Id.*

34. Jill Nielsen, *UCD Wages Favor Males, Study Says*, CAL. AGGIE, May 6, 1994, at 1.

gender inequities, had begun demanding copies of the study as soon as the newspaper articles appeared. The administration, however, had not yet issued a written report setting forth the study's preliminary findings and explaining the statistical analysis used. On May 23, Tomlinson-Keasey finally distributed a written report, hurriedly drafted by her office with the assistance of Professor Utts and Joyce Strand.³⁵ It explained the basis of the study, the use of time from attainment of degree and teaching time at UCD, and the grouping of faculty into nine subject areas. It showed the statistical analysis of salary differentials in four different ways, using base salary, with and without off-scale salary, with and without starting salary step.³⁶ By the time the actual written study was distributed, however, serious credibility damage had already occurred.

C. *Review of Faculty Files by CAP*

Discussion of the proposed second phase of the salary equity study, CAP's review of individual faculty women's files, was placed on the agenda of the UCD Academic Senate's Representative Assembly for discussion at its June 7 meeting. Prior to the meeting, Professor Quirino Paris from the Agricultural Economics Department issued a paper criticizing the preliminary study.³⁷ He took issue with the reported accusations of discrimination against women, contending that no study was meaningful without including quantitative measures of scholarly productivity.³⁸ In his view, women received lower salaries than men because they published less scholarship. He proceeded to analyze the differences between the salaries of the men and women faculty members in two departments, Agricultural Economics ("Ag Econ") in the College of Agriculture and Environmental Science and the Economics department in the College of Letters and Science.³⁹ His pool included fifty-two faculty members: forty-six men (88.5%) and six women (11.5%).⁴⁰ Using two measures of productivity — number of published articles and number of cita-

35. See Tomlinson-Keasey, *supra* note 23; Letter from Carol Tomlinson-Keasey, Vice Provost, U.C. Davis, to the Faculty, U.C. Davis (May 23, 1994) (accompanying Tomlinson-Keasey, *supra* note 23) (on file with author).

36. See Tomlinson-Keasey, *supra* note 23, at 4, 7, 8.

37. See Quirino Paris & Oscar Burt, *An Evaluation of the Gender Equity Study* — U.C. Davis 1994 (on file with author).

38. See *id.* at 2, 3, 5.

39. See *id.* at 5-6.

40. See *id.* at Tables 10B, 10C.

tions — he maintained there was no discrimination against faculty women at Davis: “The alarm sounded by the UCD administrators of a widespread pattern of gender-salary discrimination is false. . . . [R]eview of women’s files should be delayed until a meaningful statistical study is completed.”⁴¹

A lively debate occurred at the June 7 Academic Senate Representative Assembly. The focus was on the administration’s request that CAP review women’s files and determine whether any women should receive salary adjustments. Through Executive Vice Chancellor Robert Grey, the administration acknowledged the time lag between the release of the statistical results and the written report of the study, but urged the faculty to separate “unfortunate errors in the process from the reason why the report was prepared.”⁴² He pointed out that gender equity was a national issue: “The question did not arise out of the morning dew.”⁴³ Professor Utts defended the statistical analysis, explaining that performance measures could not be quantified across academic disciplines and that the preliminary study based on time measures was sufficient to warrant the necessary next step, CAP’s review of individual files.⁴⁴ The outgoing CAP Chair stressed the need for the faculty committee to stay in charge of the review process, rather than ceding the power to make salary adjustments to the administration: “We decided to preserve as much [faculty senate] oversight as possible.”⁴⁵

Other faculty members, however, joined Paris in objecting to going forward with any equity reviews. Pointing out that the equity analysis “calls the integrity of the academic personnel process into question,” Economics Professor Kevin Hoover advocated that a second study be done to “discover the nature of the problem, if one exists” before CAP undertook any equity re-

41. *Id.* at 8.

42. Susanne Rockwell, *Gender Salary Study Provokes Faculty Concern*, DATELINE U.C. DAVIS, June 17, 1994, at 1.

43. *Id.* The salary differences between faculty men and women at UC Davis were similar to gender salary differences found at all eight general campuses within the UC system, and at research universities in general. See *UC Davis Women Faculty In Line for “Gender Equity” Raises*, NOTICE (Academic Senate, University of California), Oct. 1994, at 1, 4. In 1993-94, at UC Davis the average male full professor earned \$69,400, compared to \$61,700 for women; at the associate professor level, men earned on average \$48,700 and women \$45,800; among assistant professors, men earned \$41,000 and women \$39,200. See *id.*

44. See Rockwell, *supra* note 42.

45. *Id.*

views for women.⁴⁶ Paris and Hoover suggested the Representative Assembly take action to stop the equity reviews. However, by the time this suggestion was made, the assembly lacked a quorum so no vote was taken.⁴⁷

The debate over equity reviews for faculty women continued into the summer months. Professor Utts and Vice Provost Tomlinson-Keasey issued a response to Paris's attack, explaining that quantifying "merit" by counting numbers of publications was impossible.⁴⁸ In many departments books, not articles, are written. They also emphasized that evaluation during the personnel process focused on the quality of a professor's research and writing, not just on quantity.⁴⁹ They explained that significant portions of the salary differences were related to the salary step given to faculty at the time of hire, suggesting that salary at hire should be the initial focus of individual reviews.⁵⁰ In her response to Paris, however, Tomlinson-Keasey backed away from any suggestion that discrimination against women was shown. She stated, "I would note, however, that the [April 22] *Dateline* article [which announced the study] was quite clear in indicating that the results showed differences, not inequities. To identify inequities, one has to include a merit assessment . . . the necessary second step."⁵¹

In July 1994, Hoover published a lengthy editorial in *Dateline* that objected to the suggestion that the personnel process at UCD might discriminate against women.⁵² He rejected the statistical analysis of salary differences:

46. *Id.*

47. *See id.*

48. Carol Tomlinson-Keasey & Jessica Utts, Response to Paris and Burt Evaluation 2 (1994) (on file with author).

49. *See id.* In an article on gender differences among men and women scientists, one study found that although men published more articles than women, women's articles tended to be more comprehensive, were cited more often, and thus, have had a larger impact on their field of research. *See* Robert Finn, *Study Finds Gender Disparity Even Among High Achievers in Science*, SCIENTIST, Nov. 13, 1995, at 3, 9 ("[M]ale scientists produced an average of 2.8 publications per year, while women produced an average of only 2.3. . . . [Women's] articles are much more cited . . . [A]rticles by women averaged 22.4 citations, while articles by men were cited an average of 14.4 times.").

50. Tomlinson-Keasey & Utts, *supra* note 48, at 2.

51. *Id.* at 3. For discussion of the April 22 *Dateline U.C. Davis* article, see *supra*, text accompanying notes 21-28.

52. *See* Kevin Hoover, *Don't Make Gender Equity Product of Prejudgment*, DATELINE U.C. DAVIS, July 1, 1994, at 2.

The study does not sustain that *prima facie* case [of unfairness to women], presenting only partial documentation of its central results and subject to numerous, obvious objections to its methodology Much of the passion about the study stems from the fact that women and men of good will, who have played a faithful part in the personnel system over the years, do not wish it to be impugned — and indeed to feel themselves impugned — as part of a system engaged in systematic discrimination against women. The presumption of a need for remediation [the CAP file reviews] discredits the personnel process.⁵³

He said he was not arguing “that there is no discrimination,” just that the campus needed a better study to discover any. He explained that “[a] useful study must be one that has been subjected to peer review, comment and careful evaluation.”⁵⁴

Professor Hoover touched on a very sensitive point. The University of California (“UC”) faculty are proud of their role in the “shared governance” of the UC faculty personnel system. Because of very extensive peer review processes, the administration’s study was, in effect, accusing senior male faculty members of discriminating against women.⁵⁵ The responsibility for academic personnel decisions lay primarily with the faculty, under CAP oversight.⁵⁶ Peer review at UCD occurred both before and after tenure and required faculty colleagues to vote on each other’s merit salary steps every two or three years.⁵⁷ With such

53. *Id.*

54. *Id.*

55. The bulk of the senior faculty, as well as the personnel committees, chairs, and deans were men. During the 1993-94 academic year, among 730 full professors at UCD, 633 (87%) were men. See U.C. Davis Ladder Rank Faculty Data, 1992-97 (June 1998) (on file with author). Among department chairs and deans, the percentages were higher. In 1992-93, 92% of department chairs were men (83 of 90). See Status of Women Administrative Advisory Committee, U.C. Davis, 1992-1993 Report of the Academic Affairs Subcommittee Table 1 (July 1993) (on file with author).

In 1994, six of eight academic deans were men (75%). Six years later, in 2000, the situation is worse, not better: nine of 10 academic deans are men (90%).

56. CAP has nine faculty members who are appointed by a faculty Senate Committee. Salary steps at hire are usually determined by faculty members who are department chairs and deans, subject to central campus administrative review. If a faculty member is hired with tenure, however, that appointment goes to CAP, which recommends the salary step for hire.

57. Merit salary increases for faculty are voted on by those departmental colleagues who share the same or higher rank. Thus, all departmental faculty vote on assistant professors’ merit raises, associate and full professors vote on associate professors’ merits, and all full professors vote on full professors’ merit steps. Merit increases for assistant professors, associate professors, and full professors below Step VI are then reviewed by college-level faculty personnel committees, subject to

massive amounts of peer review, all tenured faculty were heavily involved in the movement, or lack of movement, of their colleagues up the salary ladders. This extensive peer review system, mandating review from hire until retirement, made it impossible to blame salary and promotion decisions on isolated administrators. Furthermore, although senior administrators reviewed personnel committee recommendations, the administration approved eighty to ninety percent of them.

Professor Hoover's guest editorial was one of several public statements made by faculty men over the next few months objecting to accusations of discrimination resulting from past faculty decisions. Several senior male faculty expressed defensiveness and hurt feelings throughout the struggle over gender equity during the 1994-95 academic year.⁵⁸ They felt falsely accused. Rather than viewing gender bias as a systemic problem within society, they interpreted the preliminary statistical study's results and the proposed CAP review as personal attacks on their own past decisions.

In contrast to the outrage and anger expressed by senior men in the summer and fall of 1994, faculty women became increasingly concerned about the possibility of unfair treatment during CAP's proposed individual equity reviews. Because of the extensive peer review system, faculty women were concerned that CAP would send their files back to their home departments for evaluation of any proposed equity adjustments. Professor Merna Villarejo had raised this concern in June at the Representative Assembly meeting. She questioned the wisdom of any process that sent files "back to a unit that may have been 'ac-

final review by deans. The salary increases for full professors at Step VI and above go to CAP.

58. For example, in January 1995, I received the following letter from a senior male faculty member, a former member of CAP: "I believe that I heard you state at the Representative Assembly meeting [on January 19] that CAPs (other than the current membership) had practiced discrimination against women faculty members. Would you have specific charges for the period of September 1, 1981 through August 31, 1984 when I was a member?" Letter from Senior Faculty Member, U.C. Davis, to Martha S. West, U.C. Davis (Jan. 20, 1995) (on file with author). I talked to the faculty member later and explained that I would have no idea which women had their files reviewed by CAP during the years he was a member. I also tried to convey to him the often subtle, but systematic nature of prejudice against women, of assumptions we all hold that women must prove their academic qualifications, in contrast to the assumed competence of men. He had interpreted the discussion of gender bias at the meeting as a personal accusation against him and the other men who had served on CAP in the past.

tively discriminating” against faculty women.⁵⁹ Consequently, in the fall, our ad hoc faculty women’s group set up an October meeting with the new Vice Provost for Faculty Relations, Harvey Himelfarb.

On October 27, 1994, Vice Provost Himelfarb reported that CAP was finalizing its procedures for conducting the equity reviews. Any woman would be able to nominate herself for a review, even if she had not responded to the initial call last spring. CAP envisioned doing a preliminary review of each file and then sending the file back to the department to comment on CAP’s preliminary finding. Himelfarb indicated that departments would probably vote on proposed adjustments, but he promised that departments would not have veto power over any equity increase. CAP would make the final decisions, subject to administrative concurrence. Some of the thirty-seven women at the meeting expressed their fear of being negatively evaluated again by a department they felt discriminated against them all along. They wanted to know if they could withdraw their request for an equity evaluation. They were assured they could.⁶⁰

I questioned the propriety of CAP doing the reviews at all. I suggested that perhaps the administration itself should simply make any equity adjustments in women’s salaries where warranted. From an employment law perspective, the administration represented the employer, the University of California. If an employer was on notice of possible discrimination on the basis of sex, then the employer was obligated to redress illegal discrimination. Since the preliminary salary study put the employer on notice, the administration was obligated to do something, regardless of what CAP decided to do. Vice Provost Himelfarb assured us of his confidence in CAP’s ability to do fair reviews and to take the necessary steps to eliminate any discrimination it found.

D. *The Opponents’ First Attempt to Stop the Salary Equity Reviews*

While the faculty women were concerned about protecting themselves from further distress through the lengthy process proposed by CAP, the opponents of equity reviews gained momentum. Professors Paris and Hoover were learning how to use the

59. Rockwell, *supra* note 42.

60. Notes from Meeting with Harvey Himelfarb, Interim Vice Provost, U.C. Davis, prepared by Martha S. West (Oct. 27, 1994) (on file with author).

Academic Senate process itself to stop the reviews. On October 28, the day after our meeting with Himelfarb, we heard that Paris and Hoover were circulating a petition for a mail ballot that asked faculty to vote on a resolution directing CAP to stop proceeding with any salary equity evaluations. Under Senate rules, fifty signatures were necessary to mandate such a mail ballot.

On October 31, a petition signed by sixty-two faculty members was submitted to the Academic Senate, mandating a faculty vote on the following resolution:

The Academic Senate MANDATES CAP to suspend any activity associated with the Equity Merit Review . . . until a new statistical study of the salary status of men and women faculty, which MUST INCLUDE INDEXES OF PERFORMANCE, is undertaken and completed.

Furthermore, the Academic Senate MANDATES the Committee on Faculty Welfare to appoint a research group of faculty to conduct such a statistical study.⁶¹

It just so happened that Paris was a member of the Faculty Welfare Committee for the 1994-95 academic year, a committee that normally dealt with health insurance, pension benefits, parking fees, and other fringe benefit issues. After receiving the petition, the Academic Senate notified all faculty of the pending ballot and informed interested faculty of their right to submit pro and con ballot arguments in November.

The Academic Senate initially refused to publish the names of the faculty who signed Paris's petition. In mid-November, however, the Senate's Committee on Elections, Rules and Jurisdiction ruled that the petition, with its signatories, was a public document and open for inspection.⁶² Accordingly, I visited the Senate office and recorded the names. Among the sixty-two signatories, fifty-nine were men and three were women.⁶³ Paris and Hoover had obtained nine signatures from their Ag Econ and Economics departments. In addition, twelve of the signatories came from Engineering, six from the Division of Biological Sciences, and twelve from departments other than Ag Econ within the College of Agriculture and Environmental Science. Among

61. Letter from Evelyn Silvia, Secretary, Davis Division of the Academic Senate, to Members, Davis Division of the Academic Senate (Nov. 4, 1994) (on file with author).

62. See Letter from David Glenn Smith, Chair of the Committee on Elections, Rules and Jurisdiction, Davis Division of the Academic Senate, to Karl Romstad, Chair, Davis Division of the Academic Senate (Nov. 15, 1994) (on file with author).

63. See List of U.C. Davis Faculty Signatories to Quirino Paris's Petition, prepared by Martha S. West (on file with author).

the departments within the College of Letters and Science, five Political Science faculty signed, four Physics faculty, and three Math faculty members. Three members of the Graduate School of Management faculty also signed.⁶⁴ I was struck by the fact that a large percentage of the names were from departments with relatively few faculty women.⁶⁵ From my viewpoint, the battle over pay equity had been joined along conspicuous gender lines.

I was even more distressed when I found out that the voting pool on the mail ballot would contain a higher proportion of men than I anticipated. Ballots would be mailed to all members of the Academic Senate, which not only included current faculty, but also emeriti faculty, of whom over ninety percent were men.⁶⁶ Thus, the voting pool for the mail ballot would be 1,975 senate members, of whom only 1,151 were current ladder-rank faculty members.⁶⁷

In the midst of the turmoil over holding this election, CAP finally issued its document outlining the process it would use to conduct its "gender equity" salary study.⁶⁸ CAP stated that it would conduct salary equity reviews on a case-by-case basis for

64. Among the remaining signatories, one was from Rhetoric, one from Linguistics, one from Philosophy, one from History, one from Music, and two from English. One is no longer listed on campus and his department is unknown. *See id.*

65. By October 1994, the Economics and Ag Econ departments together had 12% women faculty (5 of 41). Engineering had 7.6% faculty women (10 of 132); in Biological Science, 19% of the faculty were women (16 of 84). The Graduate School of Management had 10.5% women (2 of 19). Outside of Ag Econ, the College of Agriculture and Environmental Science had 22% faculty women (56 of 250). The highest percentage of faculty women were in the College of Letters and Science. Outside of Economics, 31% of Letters and Science faculty were women (108 of 344). The Letters and Science departments from which several of the petition's signatories came, however, had very low numbers of women: Philosophy had zero faculty women out of 7; Music had one woman out of 10 faculty; Physics had 8% women faculty (2 of 25); Political Science had 17% women faculty (3 of 18); and Math had 15% women faculty (4 of 26). Among the remaining departments in Letters and Science, women made up 38% of the faculty (98 of 258). *See U.C. Davis Women Faculty Data* (Oct. 1994) (on file with author).

66. Early retirement options were offered to UC faculty between 1990 and 1993. Approximately 25% of all UC faculty retired during those three years. Among those retiring, 93% were men and 7% were women. *See West, supra* note 2, at 172.

67. Ladder-rank faculty include nontenured assistant professors and tenured associate and full professors. Approximately 440 of the Academic Senate members were other teaching faculty not tenured or on a tenure track, such as clinical Medical School faculty, senior lecturers, and a variety of other titles. Approximately 380 were retired faculty.

68. *See U.C. Davis Committee on Academic Personnel, The Gender Equity Study and the Merit System's Role* (Nov. 9, 1994) (on file with author).

those faculty women who wished to have such a review as the *first phase* of a "merit-equity" review. After they finished evaluating the files of faculty women, they proposed a *second phase*, extending the equity review process "to all Senate academic personnel who were not reviewed in the first phase."⁶⁹ CAP, on its own initiative, had decided to extend these "equity" reviews to men, making men eligible for the same reviews as women!

I found this astonishing. What had happened to the notion that women's salaries were generally lower because they were women? What kind of "equity" did CAP have in mind? Was CAP suggesting that the entire faculty personnel process was arbitrary? Was it not a "merit" review system after all? It appeared that by November 1994, neither the campus administration nor the faculty personnel committee wanted to be on record acknowledging that gender bias might be a problem at UCD.

CAP tailored its new "merit equity" review process to follow as closely as possible the normal merit salary review process. If the woman was going forward for a normal merit salary step, the equity review process would be combined with the normal merit process. The equity review, however, would include a broader examination of the faculty member's academic record, an "expanded dossier" review, considering rank and step at hire, as well as the person's cumulative performance during her career at UCD. From a gender bias perspective, the most important provision in CAP's procedures was its statement that the review would include a "comparison . . . with the performance of male faculty over the same period."⁷⁰

The faculty women were dismayed that CAP's proposed procedures also called for their respective departments to review and vote on any equity adjustment proposed by CAP after a preliminary file review.⁷¹ Although a departmental vote would not be binding on CAP, many women expected negative departmental votes, based on their past experiences. This was a substantial chilling factor, eventually leading some women to forego any equity review. The administration also made clear that CAP equity reviews would not involve any retroactive adjustments; any eq-

69. *Id.* at 6.

70. *Id.* at 3.

71. *See id.* at 5.

uity adjustments would take effect the following academic year beginning July 1, 1995.⁷²

All faculty women received a December 1 letter from the administration containing a copy of CAP's new procedures. The letter asked them to renominate themselves (if they had already done so in the spring) or to nominate themselves for the first time, now that detailed CAP procedures were available.⁷³ The new deadline for nominations was January 6, 1995. This time, the campus asked interested women to write a "brief letter in which you indicate any areas in your record of particular concern, or that helps direct CAP's attention to those places in the record where you believe aspects of your research, teaching, or service were not appropriately weighted in past merit judgements."⁷⁴ It seemed ironic that the campus asked women to put themselves forward for "merit equity" reviews at the same time that the Academic Senate was asking faculty to vote on whether or not to stop CAP from conducting any equity reviews at all.

On December 2, news of our impending vote at UCD hit the regional media market by way of an opinion "hit" piece in the *San Francisco Chronicle*. Professor Paris's media relations campaign had gone into overdrive. Debra Saunders, a conservative columnist, attacked UCD's salary equity review as "A Study Without Merit."⁷⁵ Repeating Paris and Hoover, she criticized the salary study because it contained "no merit or productivity factors The above omissions offended some professors simply on the question of scholarship. 'You would flunk a student for that (lack of) statistical acumen,' one prof complained."⁷⁶ Her tone became increasingly sarcastic as she repeated Paris' conclusions from his own statistical study of two departments: "Lo and behold, when productivity was a factor, women profs in the two fields were paid more than their male colleagues."⁷⁷ She also implied that perhaps women were not as good as men in

72. See Susanne Rockwell, *Here's a Synopsis of How the Merit-Equity Review Process Will Work*, DATELINE U.C. DAVIS, Nov. 18, 1994, at 9; see also Letter from Harvey Himelfarb, Acting Vice Provost — Faculty Relations, U.C. Davis, to Dean and Department Chairs, U.C. Davis (Dec. 9, 1994) (on file with author).

73. See Letter from Harvey Himelfarb, Acting Vice Provost, U.C. Davis, and Carol Tomlinson-Keasey, Dean of College of Letters & Sciences, U.C. Davis, to Women Faculty, U.C. Davis (Dec. 1, 1994) (on file with author).

74. *Id.*

75. Debra J. Saunders, Open Forum, *A Study Without Merit*, S.F. CHRON., Dec. 2, 1994, at A25.

76. *Id.*

77. *Id.*

teaching: "When the ladies looked at the time since they were hired, they didn't consider the quality of teaching."⁷⁸ She then continued:

Some study. Women stand to get raises. For the time being, however, men, who like women might be paid a certain salary for reasons that have nothing to do with gender, don't. This so-called study then may end up unfairly discriminating against men. But that's different, right?⁷⁹

She aimed her most bitter remarks, however, at comments Jessica Utts and I had made to reporters in April 1994, speculating on why women were hired at lower salary ranks than men:

Perhaps the most offensive component . . . is the use of stereotype . . . to explain why women earn less. Women "are just not as good at negotiating a higher salary for themselves," Professor of Statistics Jessica Utts told Dateline. "We're socialized to be more cooperative than competitive." Law professor Martha West said, "Women don't even know they could or should ask for more." What West is saying is that women professors are dumb.

If an employer implied that his women workers weren't as tough or savvy as men — as Utts, West, and Tomlinson-Keasey said outright — he could be sued. Yet here these so-called feminists are describing women as less capable than men.

Would you want a professor who couldn't negotiate a raise — or as West said, didn't know enough to negotiate a good raise — teaching you to be a lawyer?

How ironic that the very sisters who are out fighting for equity tend to put women professionals in a dim light. Their study isn't a study. And their excuses are patronizing.⁸⁰

Debra Saunders' column seemed to be particularly well-timed, appearing three days before the ballots were mailed out.

Jessica Utts and I worked late into the night on December 2, composing our reply and faxing it to the editor of the San Francisco paper. Although we wrote what we thought was a brilliant response,⁸¹ it was never printed. Carol Tomlinson-Keasey also

78. *Id.*

79. *Id.*

80. *Id.*

81. We included a discussion of the impossibility of evaluating quality by simply measuring quantity:

Those responsible for the study reached the obvious conclusion that "merit" cannot be determined by any quantitative method. It is not the *number* of publications or creative works that determine salary, but also the type or length, and most important, the quality of scholarship. A ten-page article is not valued the same as a 100-page article. An article published in an obscure journal is not valued the same as one published in a reputable journal. In addition, the university de-

sent an official response on behalf of the campus, but it was not printed either. We were impressed by the power of the pen in a syndicated reporter/opponent's hand and by our total inability to respond effectively to this mean-spirited diatribe against us.⁸²

The ballots on Paris's petition to stop the equity reviews were mailed out on Monday, December 5. Because the Senate By-laws required a certain number of classroom teaching days for a faculty vote, and because it was very close to the end of the teaching quarter, the votes were not due back until January 11, 1995, after winter classes resumed. It was going to be a long wait over the holidays.

Arguments Pro and Con were mailed out with the ballots. A Pro vote for the resolution would "mandate" CAP to suspend the merit equity reviews "until a new statistical study," which would "include indexes [sic] of performance . . . is undertaken

pend on written evaluations of the quality of scholarship by both on-campus faculty and outside reviewers.

My favorite part of our response, however, was the section refuting Saunders' claims of stereotyping:

Finally, we object to Debra Saunders' all-too-familiar journalistic technique of taking quotes out of context to portray us as "patronizing" In commenting on the fact that women tend to be hired at lower salaries, we have mentioned obstacles women face. Some lack information about what "extras" a faculty candidate could or should bargain for. Men receive informal mentoring in the hiring process that women do not always receive. Issues such as summer salary, additional lab equipment, or a "plus" on the salary scale are not standardized within or between departments. Women's isolation in male-dominated fields contributes to their lack of equal treatment in the initial salary setting process. It is also a sad fact that some women continue to be hesitant to make the demands they should precisely because they are afraid of exclusion and possible retaliation from those who will control future academic careers.

We find it sobering and discouraging that Debra Saunders seems to have so little understanding of the problems women continue to face in the academy.

Letter from Jessica Utts, Professor of Statistics, U.C. Davis, and Martha West, Professor of Law, U.C. Davis, to Editor of the "Open Forum," *San Francisco Chronicle* (Dec. 3, 1994) (on file with author).

82. The Debra Saunders column continued to haunt me for months. In late December, I received an anonymous letter containing a copy of the column reprinted in another newspaper I could not identify. This time the heading over Debra Saunders' name read: "Would you want a law professor who couldn't negotiate a good raise?" The byline read: "Study implies that women professors are dumb." About a year later, one of my law students received a copy of the same column from her grandmother in Massachusetts, reprinted in a local paper, asking if she knew this UCD law professor. It had evidently been reprinted again several months later.

and completed.”⁸³ Thus, the Pro side were the opponents of gender equity reviews, with Economics Professor Hoover and Ag Econ Professor Caputo presenting the Pro argument. They took issue with the allegedly inaccurate press reports of salary discrimination against faculty women and criticized the administration for asking CAP to examine files in order to remedy inequities before an “adequate” study was done: “There is therefore substantial doubt as to whether a problem even exists, and, if it does, what its causes and scope may be.”⁸⁴ The Pro argument asked voters to “preserve the integrity of the Senate and the personnel process,” criticizing CAP for agreeing to cooperate with the administration in altering the personnel process without the consent of the Senate.⁸⁵ Specifically, the Pro argument states:

Remediation actions would necessarily overturn considered judgments of the personnel process . . . impugn[ing] the integrity of the women and men who have played a faithful part in the personnel system over the years If the personnel process in fact discriminates, CAP, as an integral part of that process, should not be asked to investigate itself Take charges of gender inequity seriously. The essential question is, Does the personnel system systematically discriminate? Individual cases can always be brought up under the existing procedures. Only a careful study can show that the problem is systematic. Diagnosis must precede cure. If there is systematic discrimination it is essential to locate its sources and mechanisms accurately. Otherwise proposed cures will fail.⁸⁶

The authors concluded that a vote for the resolution was not a vote against women. Instead, a “yes” vote was a vote “for truth and open governance in the University.”⁸⁷ Before any remediation should be undertaken, “important methodological issues [must] be thoroughly discussed and debated by those with expertise in such investigations.”⁸⁸ They were no doubt referring to themselves or their colleagues in Economics and Agricultural Economics. By implication they were dismissing Statistics Professor Utts’s expertise.

83. U.C. Davis Division of the Academic Senate, Resolution and Ballot (Dec. 5, 1994) (on file with author) [hereinafter Dec. 5 Resolution and Ballot].

84. Pro Statement: Vote *Yes* on the Resolution (Dec. 5, 1994) (accompanying Dec. 5 Resolution and Ballot, *supra* note 83) (on file with author) [hereinafter Dec. 5 Pro Statement].

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

Seven prominent faculty men signed the Con argument, including the Economics Chair, the Medical School's Internal Medicine Chair, two other department chairs, plus an engineering professor, a law professor who was then chair of the system-wide Academic Senate, and a political science professor.⁸⁹ The Con argument pointed out that the sixty-two signers of the Paris petition requested anonymity which suggested a desire on their part to escape responsibility for opposing the gender equity reviews.⁹⁰ The Con argument continued, "The petition, if passed, would establish dangerous precedents, breach confidentiality, introduce arbitrariness into our review process, and undermine the desired goal of equity for all." The Con argument acknowledged that any equity study must take merit into account as the next step: "The question is WHO is best qualified and legally mandated to assess merit?"⁹¹ The choice was between CAP, "[c]onforming as closely as possible to the regular merit review process," and considering "QUALITY as well as the QUANTITY of the academic record," or the Committee on Faculty Welfare carrying out some "computer study that 'counts' the number of publications and other (unspecified) quantitative 'indexes [sic] of performance.'" ⁹² The Con argument was also careful to point out that CAP now proposed to allow "ALL Senate members, men and women alike, an opportunity to undergo an equity review."⁹³ The Con argument refuted the claim that the salary equity study was done by the administration without faculty participation: "In fact, the Administration established a Salary Equity Committee, consisting of twelve members of the Academic Senate representing every school and college of the

89. Con Statement (Dec. 5, 1994) (accompanying Dec. 5 Resolution and Ballot, *supra* note 83) (on file with author) [hereinafter Dec. 5 Con Statement]. Members of the ad hoc women's faculty group had worked throughout November to craft the Con argument and obtain the signatures. One of the signers, when asked for comment by a local newspaper reporter, said he was happy to sign the statement against Paris's resolution, but he certainly didn't want to be associated in any press coverage with people "like Martha West and her ilk." At that point, those of us organizing the opposition to Paris's resolution were not probing too deeply into people's reasons for being willing to sign on to our arguments against the mail ballot.

90. *See id.* As indicated above, the petition's signatories had lost their attempt to remain anonymous. *See supra* text accompanying note 62. The mail ballot itself explained that the petition requesting the mail ballot was a public document, and that the names of the signers were on file in the Academic Senate for faculty members to review. *See* Dec. 5 Resolution and Ballot, *supra* note 83.

91. Dec. 5 Con Statement, *supra* note 89.

92. *Id.*

93. *Id.*

University.”⁹⁴ The Con argument concluded, “CAP is the only duly constituted Academic Senate body with the authority and experience to undertake [a qualitative] evaluation of academic files.”⁹⁵

A second “Con Statement” was attached to the ballot, signed by the Chair of the Academic Senate.⁹⁶ He explained to the faculty voters that he had consulted the Senate Committee on Elections, Rules, and Jurisdiction to determine whether the ballot measure could be implemented if it were passed. The answer was “no,” for two reasons. First, by-laws of the Academic Senate would have to be amended to allow the Faculty Welfare Committee to examine questions of rank and merit step advancement, matters now assigned to CAP. Likewise, the faculty vote could not prevent CAP from proceeding, without a similar change in by-laws, because its current duties included evaluating rank and step. Second, giving the Faculty Welfare Committee’s assigned research group access to confidential personnel information would violate the *UC Academic Personnel Manual*, which strictly limits access to confidential information.⁹⁷ The Chair of the Senate concluded by saying that although the Committee on Elections, Rules and Jurisdiction believes the ballot measure cannot be implemented, the by-laws also “require that the petition be circulated and voted upon.”⁹⁸ Thus, in his view, the resolution would be unenforceable even if passed.

When the ballots were mailed out in early December, we were hopeful, but not at all certain, that Paris’s resolution would lose. Meanwhile, we were meeting with the Senate Chair and the CAP Chair about what should happen next, particularly if the resolution passed. They were fairly confident that CAP could and would proceed with the “merit equity” reviews regardless of the ballot outcome. I kept reminding them that under federal and state laws prohibiting employment discrimination, the campus was obligated to investigate any salary inequities that the administration was aware of and redress any gender bias found. If

94. *Id.* (footnote omitted). In a footnote, the statement listed the name, rank, and department of the Salary Equity Committee members, who had met for over a year and helped design the basis for Professor Utts’ statistical analysis. The members included 10 women and two men.

95. *Id.*

96. Con Statement signed by Karl M. Romstad (Dec. 5, 1994) (accompanying Dec. 5 Resolution and Ballot, *supra* note 83) (on file with author).

97. *See id.*

98. *Id.*

the Academic Senate's personnel committee did not undertake such reviews, then the administration would be obligated to do it themselves.

Press coverage of the gender equity issue continued in December 1994 while the vote was pending. Tension was building between those of us who viewed this as a battle over equal rights for women and those who wanted to downplay the gender discrimination aspect of the issue.⁹⁹ The CAP Chair and other persons interviewed by the press continued to discount the gender issue. A system-wide UC Academic Senate newsletter article summarized remarks by the UCD CAP Chair:

[T]he idea of extending the consideration to men came out of the committee's deliberations this fall as to how to go about assessing the women's files The committee, in reflecting on the various ways in which women might come to be paid less than their performance calls for, realized that some of the same inequities might affect men Gender discrimination is not among them — for men or women — by [my] lights. "We don't put much stock in the idea that there has been intentional discrimination against women," he said. "In any case, we're not a court, and we don't care how inequities may have happened."¹⁰⁰

The same article quoted Jessica Utts, stating that the plan to include men was "an important step to ensuring fairness," and that the faculty women were pleased with the idea. She stated, "[f]airness was all that we wanted to achieve with the study."¹⁰¹ In an earlier report, the UCD Academic Senate Secretary, Professor Evelyn Silvia, observed that the ballot resolution had created "an unnecessary division in the faculty As long as CAP does a fair, equitable review for everybody, let's just do it and get

99. Although I viewed the consistent pattern of salary differentials as fairly solid evidence of sex discrimination, even Jessica Utts and I had pointed out in our unpublished letter to the San Francisco Chronicle that gender discrimination had not been proven, only that the possibility had been suggested. "At this point there has been no determination that women faculty suffer from gender bias. All that the preliminary analysis indicated is that some may." Letter from Jessica Utts and Martha West to Editor of the "Open Forum," *supra* note 81.

100. *Petition Filed to Stop Pay-Equity Reviews at UCD Pending More Study*, NOTICE (Academic Senate, University of California), Dec. 1994, at 1. As an example, Professor Poulos, the chair of CAP, explained that for some faculty, superior performance over time may have justified an "acceleration," jumping ahead two salary steps, instead of just one. "Less insistent negotiating, which had been speculatively blamed for some of the gap between men's and women's salaries, might also cause some men to be underpaid, Poulos said." *Id.*

101. *Id.*

on with the process."¹⁰² The reality was that most of the women wanted CAP to proceed with the equity reviews, regardless of the public rationales given. We had great confidence in CAP's willingness to give deserving faculty women some increase in salary. We hoped the gender neutral rhetoric would encourage our male colleagues to support us.

As more time went by, however, and as a long-time observer of the body of case law on sex discrimination against faculty women, I found myself increasingly at odds with the neutral rhetoric. How could we even discuss salary inequities when we were unwilling to recognize that women received inferior treatment? In addition, I detected a larger political objective among the opponents of the salary reviews.

During the 1994 fall quarter, as the salary equity struggle developed, the UCD Representative Assembly was in the midst of a vigorous debate over an undergraduate "general education" program requirement for UCD. The campus had been trying to pass "general education" requirements for several years. A revised program offered for final approval in October 1994 contained three elements: a "writing experience" requirement, a "topical breadth" requirement, and a requirement to take one course in "social-cultural diversity."¹⁰³ The debate over the diversity course requirement had become heated at Representative Assembly meetings held in October and November in 1994 and at a subsequent meeting on January 9, 1995. In the course of debate, the definition of a diversity course had been amended to be defined as broadly as possible: "any course that deals with issues such as race, ethnicity, social class, gender, sexuality, or religion."¹⁰⁴ Interestingly, the faculty who spoke against the diversity course were the same faculty members who were becoming the major spokespersons against the gender equity salary reviews. The watered-down diversity course requirement finally passed the Representative Assembly on January 9, 1995, but by a

102. Susanne Rockwell, *Faculty Asked to Suspend Reviews of Salary Equity*, DATELINE U.C. DAVIS, Nov. 18, 1994, at 1. Silvia pointed out the same problem referred to by Poulos: over time faculty members may have accumulated extra work not recognized by the merit step system, when one goes "back to zero" at the beginning of each two- or three-year merit cycle. *Id.*

103. Report of the Executive Council (1995) (on file with author). The original general education proposal had required two courses in "social-cultural diversity," but because of the limited number of such courses available, the requirement had been revised to include only one course. *Id.*

104. *Id.*

very narrow margin of thirty-one to twenty-six. The level of hostility toward the diversity requirement and the narrowness of the vote did not bode well for any future debate over gender equity. On the other hand, strong proponents in the Representative Assembly of both racial/ethnic diversity and gender equity had an opportunity to work together in the fall of 1994. We had an opportunity to observe the parliamentary tactics and styles of our faculty opponents as they sought to block passage of the diversity requirement.

In mid-December, a local reporter interviewed me and I suggested a connection between the diversity debate and the gender equity issue. It appeared to me that we were "caught in a broad political movement against women, liberal education and people of color at UCD."¹⁰⁵ I observed that there had been no determination yet that faculty women suffered from gender bias but the preliminary statistical analysis indicates that some may. I then commented, "It appears some of our male colleagues are afraid of actually investigating the matter further. If there has been no gender discrimination at UCD, why are they worried?"¹⁰⁶ The report continued with my plea to friendly male colleagues to join us in allowing CAP to conduct the salary reviews: "[T]he mail ballot represents the opportunity for men on the faculty to show solidarity with the women and vote down this politically motivated resolution . . . supported by the same group that opposes . . . the introduction of a diversity requirement" in the general education program.¹⁰⁷ Trying to sound positive, I stated, "I'm hoping my male colleagues will support us."¹⁰⁸ Unfortunately, although many men did support us, more did not.

The vote on the resolution mandating CAP to suspend salary reviews was announced on January 12, 1995. The resolution passed by a narrow margin: 527 "yes" and 503 "no."¹⁰⁹ UCD's faculty women, the campus administration, CAP, and the leadership of the Academic Senate had lost the first skirmish in the larger war over salary equity for faculty women.

105. Elisabeth Sherwin, *Rift Over Gender Study Grows*, DAVIS ENTERPRISE, Dec. 12, 1994, at A1.

106. *Id.*

107. *Id.*

108. *Id.*

109. See U.C. Davis Division of the Academic Senate, Report of the Committee on Elections, Rules and Jurisdiction (Jan. 12, 1995) (on file with author). Out of 1975 eligible voters, 1052 cast ballots, 18 were invalid, and four abstained. See *id.*

When the local newspaper interviewed me, I tried to state the issues as clearly and strongly as possible. According to the article:

Martha West, professor at King Hall School of Law, was not surprised at the vote, since 85 percent of those eligible to vote are men. Nonetheless, West said she was disappointed. "I'm very disappointed in our male colleagues because it means they don't understand the problems women faculty face. They think there is no discrepancy in salaries and I believe that there is. I've been following these cases nationally . . . and every university that does a salary equity study finds a similar differential."¹¹⁰

The newspaper emphasized my point by noting that out of 1,151 ladder rank faculty, only 235 (20.4%) were women; based on UCD's 1994 data, women full professors made \$7,800 less than comparable men, women associate professors made \$3,100 less, and at the assistant professor rank, women made \$1,800 less, on average, than men.¹¹¹ The news article then made public my claim that if CAP did not do the equity reviews, the administration itself would have to act:

"It is my position that the administration now has to do a comparative review without faculty participation," West said shortly after the ballots were counted "The administration is on notice that there may be violations of the law. [Sex] discrimination is illegal. If [CAP] can't do its personnel review, then the faculty has taken itself out of the shared governance loop."¹¹²

In retrospect, life would have been much less stressful for many faculty women on campus if the administration had gone ahead and done the equity reviews itself. But that was not to be, as political events unfolded at UCD in 1995.

E. *Organizing the Academic Senate's Representative Assembly*

In early January 1995, even before the mail ballots were counted, Professor Paris made his next move. The opponents of the equity reviews realized in December that even if they won the mail ballot vote, CAP would probably proceed with the reviews. The Senate Chair's Con statement mailed with the ballot had made it clear that he would not implement the resolution, even if it passed. Consequently, Paris and four colleagues sub-

110. Elisabeth Sherwin, *Faculty Salary Review Halted*, DAVIS ENTERPRISE, Jan. 13, 1995, at A1.

111. *See id.*

112. *Id.*

mitted a request to the Academic Senate in early January that a special meeting of the Representative Assembly be called in order "to discuss, approve, or disapprove the draft document prepared by CAP entitled *The Gender Equity Study and the Merit System's Role*."¹¹³ Under the Senate rules, a special meeting of the Representative Assembly must be called within two weeks upon the written request of five members of the Senate.¹¹⁴

The Representative Assembly had 110 members: sixty-eight departmental representatives, twenty-five at-large members, and seventeen ex officio members.¹¹⁵ Paris's purpose was clearly to try and convince the Representative Assembly to modify or reject CAP's proposed procedures for conducting the "merit equity" reviews. After receiving the request, the Senate Chair set the special meeting for January 19. Notice of the request and the special meeting of the Representative Assembly was mailed to all faculty members on January 5, 1995, just as classes resumed for the winter quarter.

The day before the January 19 meeting, a four-column "letter to the editor" authored by Paris was published in the local paper. It consisted of a diatribe against me personally and an attack on my 1994 law review article about discrimination against faculty women.¹¹⁶ He claimed that my article advocated "discrimination against white males" and "has revealed an agenda for deconstructing research universities," supposedly demonstrating my extremist views. He then strung together a series of quotes from my article to illustrate his points. On the one hand,

113. Notification from Evelyn M. Silvia, Secretary, Davis Division of the Academic Senate, to Members, Davis Division of the Academic Senate (Jan. 5, 1995) (on file with author). In their request they cited the Senate by-law that gave the Representative Assembly "the authority, by a majority vote, of reviewing any policy statement of a Divisional committee and of calling up for discussion and determination of any policy question pending before a Divisional committee." *Id.*

114. In addition to Paris, three of the other men who signed the request had also signed his earlier petition for the mail ballot resolution. The fifth man who signed played a prominent role in the debates that followed.

115. The ex officio members included Jack Peltason, President of the entire UC system, and UCD Chancellor Larry Vanderhoef. In addition, 90 alternates were listed, entitled to attend and vote if their regular departmental representative was unable to attend a meeting. Most departments listed two alternates. Twelve of the members and seven of the alternates on the Representative Assembly list had signed either Paris's petition for the mail ballot or the argument in support of the ballot. Paris himself was an at-large member of the Assembly. See List of 1994-95 Members of the Representative Assembly of the Davis Division of the Academic Senate (on file with author).

116. See Quirino Paris, Letters, *Lower Standards?*, DAVIS ENTERPRISE, Jan. 18, 1995, at A6; see also West, *supra* note 2.

I should have been flattered. He claimed he was very worried about my views because I had "emerged as a very influential member of the university community," making it worthwhile "to pay close attention to what activist Martha West wrote."¹¹⁷ He ended his attack by concluding:

Professor West's message is clear: Academic merit is a myth supported by white males to keep women out of universities; a goal of women faculty is that of changing academic standards The debate over the Equity Merit Review . . . is part of the vigilance that must be exercised to avoid the possibility that Martha West's vision on academic standards becomes a reality at UC Davis.¹¹⁸

After both Paris's and Debra Saunder's scathing comments, I was beginning to realize that the role of spokeswoman for faculty women carried with it certain risks.¹¹⁹

When the Representative Assembly convened at 4:10 p.m. on January 19, 1995, our ad hoc women's group was well prepared for the debate over "merit equity" salary reviews. By early January, we had over fifty faculty women on our e-mail list and we had urged women throughout the campus to locate their department representatives, speak to them on the issue, and urge them to attend.¹²⁰ Three days before the meeting, we had circulated a letter to all faculty women to encourage them to attend the Representative Assembly and speak about the reality of sex discrimination. We emphasized that any faculty member could speak at the assembly, even if they had no official vote. We were strongly supported in our organizing efforts by the chair and leadership of the Senate, as well as by the chair and members of CAP.

117. Paris, *supra* note 116.

118. *Id.*

119. I responded to Paris' attack by publishing my own letter to the editor a few days later:

I appreciate the publicity Professor Quirino Paris has given my article. . . . If anyone would like to read the full text of the article, placing his quotes of my work in their correct context, please visit the UC Davis law school library, where several copies are now on reserve.

Martha West, Letters, *Text Available*, DAVIS ENTERPRISE, Jan. 22, 1995, at A6.

120. During the fall quarter, we had learned that one of the major tactics of the faculty opponents of diversity was to call for a "quorum" just as the assembly was about to vote. Often by 5:00 p.m. or 5:30 p.m. the assembly had lost its quorum because too many of the regular members had left, and the courtesy members of the assembly, such as President Atkinson and Chancellor Vanderhoef, were never there at all.

At the Representative Assembly meeting on January 19, the room was packed. Normally only the voting members, sixty to seventy faculty, attend but approximately 150 faculty, about half women, were there that afternoon. The chair of the Senate explained that the resolution passed by the mail ballot could not be implemented without amending Senate By-laws. He then turned to the current and past chairs of CAP to discuss their proposed procedures for conducting the salary equity reviews. The current chair explained the two-step review process the Committee had approved in November: faculty women's files would be evaluated first, and then men could request that their files be reviewed during a second phase, if they felt their salaries did not accurately reflect their accomplishments. In response to the opponents of salary equity reviews, Professor Dean Simonton, the prior CAP chair from Psychology, explained why no statistical study could ever accurately reflect productivity or scholarly merit. He stated, "[T]he ways merit is assessed are infinite in variety. There is no reliable way to get useful measures of merit I've spent 20 years of my life measuring productivity and I'd bet my career on that."¹²¹ He thought it was very important for CAP to proceed because only in this way could faculty "maximize the amount of senate oversight."¹²² At some point during the debate, interim Vice Provost Himelfarb told the group that if the Senate chose not to participate in the equity study, UC's General Counsel had advised the administration to proceed with a study of salary inequities or "be vulnerable to a class action law suit" by the faculty women.¹²³

After considerable discussion, Professor Arnold Sillman spoke for the Pro side of the mail ballot. He made a motion that the Representative Assembly instruct CAP to rewrite its November merit equity procedures to be gender neutral — with the understanding that women not be given priority for reviews — and then submit it to the Representative Assembly for approval.¹²⁴ In Sillman's view, "[a]s long as you have a difference based on

121. Maril Revette Stratton, *Faculty to Discuss How to Extend Salary-Equity Study to Both Sexes*, DATELINE U.C. DAVIS, Jan. 17, 1995, at 1.

122. *Id.*

123. *Id.*

124. *See id.*; *see also* Memorandum from Evelyn M. Silvia, Secretary, Representative Assembly Davis Division of the Academic Senate, to Members, Representative Assembly Davis Division of the Academic Senate (Jan. 27, 1995) (setting forth the motion pending from Jan. 19, 1995 Representative Assembly Meeting) (on file with author).

gender, this flies in the face of the Senate ballot."¹²⁵ Economics Professor Greg Clark, one of the most vigorous opponents of both gender equity and the diversity general education requirement, suggested that CAP do its equity reviews by alphabetical order.¹²⁶

Somewhere around this point in the debate the faculty women began to speak. Professor Maureen Stanton responded to the motion by suggesting that doing random reviews is "akin to hearing a rumbling in your car and taking it to two mechanics — one who says 'sounds like the front end' and one who says 'well, we're gonna work alphabetically.'"¹²⁷ Professor Marilyn Etzler testified to the "rumbling" she heard in her department when she was hired. Reading from departmental minutes, she quoted faculty concerns about hiring women: "she could get married, have a child, follow her husband." She continued, "these happen to be the minutes from when I was brought out to be hired by our department."¹²⁸ When she sat down, a brief but loud silence followed.

Only a few men were willing to express publicly their belief that discrimination against women was not a problem at the university. Professor Hoover, lead spokesman for the Pro ballot group, stated, "In my 10 years here, I have never taken an action or seen an action that constitutes discrimination on the basis of sex."¹²⁹ He pleaded one more time for CAP not to go forward with its reviews "against the expressed will of the senate." He declared that the campus should not be engaged in "remediation for a problem not shown to exist."¹³⁰

As the debate over a gender-neutral study continued, I spoke in favor of CAP's November procedures. I argued, "CAP's document already reflected compromise."¹³¹ Many women were opposed to CAP's proposed procedures because they believed CAP itself, in the past, had contributed to the inequities in women's ranks and salaries, and because they opposed CAP sending their files back to their own departments "to be trashed one more time."¹³² I ended on my most militant note: "If you

125. Stratton, *supra* note 121.

126. *See id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

vote to make [this study] gender-neutral, just forget it. We're not interested."¹³³

Other faculty women were more accommodating. Professor Merna Villarejo said she was worried about the future of shared governance and "the ability of the Academic Senate to be taken seriously We've been in a state of complete gridlock If we are totally paralyzed, someone else will have to step in."¹³⁴ My law school colleague, Professor Leslie Kurtz, urged the Assembly to take action: "Equity will be delayed for everyone — females and males — the longer we put this off."¹³⁵ By this time, it was after 6:00 p.m. The meeting had lasted over two hours. Someone called "the question" on the pending motion and then someone else called for a quorum. When the chair of the Senate counted the raised hands of voting members, it was clear a quorum no longer existed. The chair said he would call another special meeting to continue the discussion, then the meeting adjourned.

The faculty women had a chance to regroup before the next meeting set for February 14, Valentines Day, an appropriate day to focus on gender issues. Early in January, before the Representative Assembly debate, our ad hoc women's group had asked Chancellor Vanderhoef and Executive Vice Chancellor Robert Grey to meet with interested faculty women sometime during the winter quarter. Our meeting with the Chancellor was scheduled for February 9, excellent timing in light of the issue pending before the Assembly. In the flurry of e-mails exchanged among the faculty women in late January, several suggestions were made about following up on Vice Provost Himelfarb's reference to a possible class action lawsuit. Others urged patience, suggesting we wait and see if the Chancellor was willing to make a commitment to take action in the event the Representative Assembly voted to end CAP's proposed reviews. The distrust of CAP, and its suggested process for obtaining departmental input on equity adjustments, was running high among faculty women. In preparation for the February 9 meeting, we sent a letter to the Chancellor asking him to address three questions at the meeting:

1. Have you considered addressing the Representative Assembly on this issue? We feel leadership is crucial at this time.

133. *Id.*

134. *Id.*

135. *Id.*

2. In the event that the Academic Senate cannot or will not proceed, is the campus administration committed to proceeding with a review of faculty women members' salaries?
3. Assuming the answer to Question Two is yes, how long will you allow the Senate to debate the issue before you proceed?¹³⁶

We were anxious to hear what the Chancellor would say in response to our questions.

In the meantime, our opponents had gained the ear of editors at the *Wall Street Journal*. On January 30, the following short comment appeared on the editorial page:

Asides

Pay Masters

Professors at [UC Davis] might wonder what happened to the sanctity of faculty governance. When a vice provost determined that women professors there were underpaid (in a study that didn't consider output, just time in the job), the ruling clique of the faculty senate opted to review the files of any petitioners, with an eye to overruling salary decisions of the departments. Some economists challenged this and won a vote of the full faculty, 527 to 503, to halt the process until another bias study including performance measures could be completed. But the tally has been disregarded and the remediation is to begin. Some profs are more equal than others, all right, but it's as much a matter of power as pay.¹³⁷

This gambit of Paris and Hoover immediately got the attention of Chancellor Vanderhoef; he and Senate Chair Romstad mailed a letter to the *Wall Street Journal* the next day. They informed the editors of the *Journal* that the *Journal* had been ill-advised, that the study had always included two parts, and that a faculty committee was preparing "to examine the quality of individual faculty members' research, teaching and service."¹³⁸ They added that, "At no point were salary remedies suggested to be given without a careful review of performance."¹³⁹ The letter explained that the faculty personnel committee "has committed to a 'gender neutral' equity review, examining men's as well as women's files," and that the administration has further pledged to

136. Letter from Martha West, Professor of Law, U.C. Davis, and Jessica Utts, Professor of Statistics, U.C. Davis, to Larry Vanderhoef, Chancellor, U.C. Davis, and Robert Grey, Executive Vice Chancellor, U.C. Davis (Jan. 27, 1995) (on file with author).

137. Asides, *Pay Masters*, *Wall St. J.*, Jan. 30, 1995, at A20.

138. Letter from Larry N. Vanderhoef, Chancellor, U.C. Davis, and Karl M. Romstad, Chair, Academic Senate, to Daniel Henninger, Deputy Editor of the Editorial Page, *Wall Street Journal* (Feb. 1, 1995) (on file with author).

139. *Id.*

make the effective date of any salary remedies be the same for both men and women. They reassured the *Wall Street Journal* that “joint governance is indeed alive and well on the UC Davis campus.” They may have reassured the newspaper, but the faculty women were disappointed by the apparent commitment to a “gender neutral” review. Had we already lost the battle in the Representative Assembly without a vote? Were men’s files going to be reviewed along with women’s files? Or were women still going to get priority?

At 4:30 p.m on February 9, between forty-five to fifty faculty women met with Chancellor Vanderhoef and Executive Vice Chancellor Grey for an hour. Those who have organized faculty members will understand how pleased we were at the participation of so many women on a Thursday afternoon. The Chancellor sought to reassure the women that the administration was committed to a salary equity review for women and that the matter had been properly delegated by the Chancellor, through the Vice Provost of Faculty Relations, to the Senate’s Committee on Academic Personnel. In the Chancellor’s view, there was a difference between inequalities in pay and inequities in pay. CAP’s role was to determine, on an individual basis, whether or not inequalities in pay were due to inequities. He did not think it appropriate for him to address the Representative Assembly: “now is not the time.” In his view, participation by the Chancellor would reduce the chances of the CAP plan passing. The matter was in the hands of the Senate and, despite a certain amount of unpredictability, he was in favor of staying with the proposed plan. In response to our questions about what would happen if the CAP process collapsed, Executive Vice Chancellor Robert Grey stated that the University’s General Counsel had said the campus was obligated to proceed with equity reviews. An alternative process would be put in place if CAP did not do the reviews. He assured us, “[w]e are obligated to pursue the issue of inequities.”¹⁴⁰

On the other hand, the Chancellor believed that some men may have been treated inequitably as well, stating, “we need to scrutinize the whole process.” However, the Chancellor ultimately indicated that he did not support the “gender neutral” motion currently pending before the Representative Assembly. He preferred the process proposed by CAP in November, re-

140. Notes from Meeting with Larry Vanderhoef, Chancellor, U.C. Davis, and Robert Grey, Vice-Chancellor, U.C. Davis, prepared by Martha S. West (Feb. 9, 1995) (on file with author).

viewing the women's files first and then looking at the files of any men who wanted such a review.

Several women raised concerns about the potential for further harassment from their departments as a result of the proposed process to send files back to departments for input. The Chancellor acknowledged that this possibility existed, but hoped we were in the process of changing the culture on campus. He and the prior administration had worked hard on the campus's Principles of Community, trying to set a tone of greater respect for differences among us. He noted, however, that we were in difficult times and that the "winds were blowing" against affirmative action, creating a "bandwagon" effect and reflecting a general level of anger in society. The Chancellor also emphasized the central role that "peer review" plays in the UC faculty personnel process. In his opinion, keeping the "merit equity" review process as close as possible to the regular review process was the best strategy, even though this necessitated giving some opportunity to a faculty member's departmental colleagues to comment on any proposed adjustment.

For the most part, the faculty women were pleased with the Chancellor's comments. Many felt he understood the issues and they appreciated his direct and straightforward responses. We reported on the meeting to our e-mail list of faculty women, now containing over seventy names. We urged all faculty women to attend the reconvened Representative Assembly meeting on February 14, ready to speak in support of CAP's November proposal to review files in two stages, women first, men second. We also organized faculty women in each school or college to contact both the departmental and at-large representatives from their school and speak personally to them about the issues pending before the February 14 meeting. We also wanted to make sure friendly members of the Assembly attended on February 14; we knew the opponents of equity reviews and their supporters would definitely be there.

A smaller group of us worked on issues of parliamentary procedure in order to figure out a way to get a vote first on CAP's November procedures, rather than on the "gender neutral" motion pending at the time the Representative Assembly had adjourned.¹⁴¹ Under *Robert's Rules of Order*, we deter-

141. Immediately after the January 19 meeting, CAP had, in fact, prepared a "gender neutral" version of its "Merit Equity Review" procedures first proposed in November 1994. See U.C. Davis Committee on Academic Personnel, *The Merit*

mined that we could make a substitute motion, which would take precedence over the pending motion. Our substitute motion would be to “direct CAP to proceed under its original document” issued in November 1994. We were also determined to “call the question” as soon as it seemed appropriate, so that a quorum would still exist, allowing a final vote to be taken.

On February 14 the faculty women packed the meeting. It was exciting to walk into a large meeting room at UC Davis and, for the first (and perhaps only) time, see a majority of women among the faculty in attendance. We were not all voting members of the Assembly but we were able to control the meeting by our very presence and our willingness to speak. Our strategy worked. Professor Carole Joffe made the substitute motion, there was debate, the “question” was called, and the motion to close debate passed by the necessary two-thirds vote. The final vote passed by a wide margin: thirty-one “yes” votes to eighteen “no” votes. Finally, CAP could proceed under its November 1994 proposal, first with equity reviews for women and second, with any requested reviews for men. The large photograph on the front of the local paper the next day was of a sea of faculty women’s faces, many of them with their hands raised as the vote was taken.¹⁴²

The debate itself was a repeat version of the January meeting, with Hoover claiming that CAP’s November proposal was exactly the proposal defeated by the mail ballot. He argued, “[T]he Representative Assembly shouldn’t put itself in opposition to the wishes of the whole senate.”¹⁴³ By this time, however, everyone was aware that those voting on the mail ballot included

Equity Review (Jan. 27, 1995) (accompanying Memorandum from Evelyn M. Silvia to Members, *supra* note 124). The major difference was that it omitted any reference to “gender equity” or women faculty.

In contrast, the November document spoke only in terms of women faculty filing requests for “merit equity” reviews, describing the ways to request reviews and the process to be used, using female pronouns for the faculty member under review. At the very end of the six-page document, it added a final paragraph:

VI. The Second Phase

CAP recommends that, upon completion of the first phase of the merit-equity review, a second phase be undertaken in which substantially the same process would be extended to all Senate academic personnel who were not reviewed in the first phase.

U.C. Davis Committee on Academic Personnel, *supra* note 68, at 6.

142. Elisabeth Sherwin, *Gender Equity Reviews Will Go On*, DAVIS ENTERPRISE, Feb. 15, 1995, at A1.

143. Kimberly A. Got, *Senate Votes to Continue Faculty Gender Equity and Merit Review*, CAL. AGGIE, Feb. 16, 1995, at 1.

not only current faculty members, but also the large group of recently retired faculty. Because retired faculty were not members of the Representative Assembly, we argued that the Representative Assembly more accurately reflected current faculty wishes. Professor Leslie Kurtz responded to Hoover, declaring, "I don't see what harm is done in following the original proposal, since men will be included and all salaries will be adjusted at the same time."¹⁴⁴ Professor Susan Mann, a member of CAP, called on the Representative Assembly to remember the importance of including everyone in self governance. She stated, "I'm dismayed at the bitter tone of this debate. A gender issue is a faculty issue and we shouldn't be distracted from that."¹⁴⁵ The debate and subsequent vote ended the discussion only for that evening. It continued on campus,¹⁴⁶ in the letters to the editor of the local paper,¹⁴⁷ and in further efforts of Paris and his allies to reverse the Representative Assembly outcome.

F. *The Opponents' Second Attempt to Stop the Salary Equity Reviews*

As soon as the Representative Assembly adjourned on February 14, Professors Paris and Hoover announced that they would continue to seek ways to stop CAP from proceeding and

144. *Id.* The administration had published a notice in *Dateline U.C. Davis* the week before the meeting, informing the faculty that the effective date of any approved adjustment would be the same for all faculty members, whether their files were reviewed earlier or later in the process. See *Salary Equity Issue Gets a New Read*, DATELINE U.C. DAVIS, Feb. 10, 1995, at 1.

145. Got, *supra* note 143.

146. Professor Hoover and I debated the issue of gender equity reviews for women faculty on the campus radio station, KDVS, for an hour on February 21, 1995, on a show entitled *Let's Argue*.

147. Professor Ann Noble, another member of CAP, published a letter to the editor in the local paper on February 16, bemoaning the amount of time and energy expended by those few, notably Paris and Hoover, who maintain "that women have not been disadvantaged:"

I write today because of frustration induced by the buzzing of these angry mosquitoes and to note the sad, sad irony. The passion and energy that these few exert to *prevent* a review to guarantee that no injustices exist, could so much more productively been spent by helping raise funds for people whose homes were lost in floods in California, for aid to the homeless, money or clothes for displaced citizens of Rwanda . . . , funds for research for diseases such as AIDS, heart disease, cancer or Alzheimer's, or even to prevent abuse of children and, in general, women. (Or, of course, they could invest this energy in their teaching or research . . .).

A.C. Noble, Letters, *Misguided Effort*, DAVIS ENTERPRISE, Feb. 16, 1995, A6.

to force the Senate to implement the resolution approved by the mail ballot in January.¹⁴⁸ In January, they had already appealed the Senate Chair's refusal to implement the ballot resolution to the Executive Council of the Davis Academic Senate. They amended their appeal in February to include the results of the February 14 meeting. On February 23, the Executive Council denied their appeal, ruling that the Merit Equity Review fell within the jurisdiction of CAP and that a standing committee of the Senate, such as CAP, cannot be mandated by a faculty vote "to refrain from undertaking, or to undertake, any action falling within [its] charge." Such action would require a change in the Committee's By-laws, which could only be made with a two-thirds vote of the Representative Assembly.¹⁴⁹

Because Paris and Hoover were making no progress with the Senate's Executive Council, they returned in early March to their previously successful mode of operation. On March 9, 1995, all faculty members were mailed a new notice that informed them that another request for a mail ballot had been received by the Academic Senate office.¹⁵⁰ The resolution we would be asked to vote on this time read:

[T]he Academic Senate refutes the action of the Representative Assembly taken on February 14, 1995 which endorsed a procedure for a gender Equity Merit Review [T]he Academic Senate instructs [CAP] that any Equity Merit Review must be gender neutral. Nothing in this proposition may be

148. See Sherwin, *supra* note 142 (quoting Professor Kevin Hoover) ("'This matter has not ended,' . . . he was determined to keep fighting because he says the personnel system at UCD has been impugned '[T]his is a political charge steam-rolled through on bad evidence.'").

149. See Letter from Karl Romstad, Chair, Executive Council, to Michael Caputo, Professor of Agricultural Economics, U.C. Davis, et al. (Feb. 27, 1995) (on file with author).

A subsequent appeal by Paris, Hoover, and friends to the system-wide Senate Committee on Rules and Jurisdiction was unsuccessful as well. The system-wide Committee eventually found that the fall 1994 mail ballot resolution was unenforceable, and suggested, in hindsight, that the authors of the ballot resolution should have withdrawn it when the local Rules and Jurisdiction Committee ruled that it was unenforceable. In passing, the University Committee commented, "[T]here seems to have been a failure of goodwill, mutual trust, and collegiality that prevented all concerned from working together towards a mutually acceptable resolution to the impasse." Memorandum from University Committee on Rules and Jurisdiction to Michael Caputo, Professor of Agricultural Economics, U.C. Davis, et al. 8 (Aug. 7, 1995) (on file with author).

150. See Notification from Evelyn M. Silvia, Secretary, Davis Division of the Academic Senate, to Members, Davis Division of the Academic Senate (Mar. 9, 1995) (on file with author).

construed as being in conflict with [the] previously approved mail ballot . . . held during December 1994–January 1995.¹⁵¹

This request for a mail ballot was signed by fifty-five faculty members and this time their names were listed on the notification itself.

The fifty-five faculty petitioning to set aside the Representative Assembly vote were an even more isolated group of faculty than the sixty-two who had signed Paris's fall petition.¹⁵² A significant number were from Paris' Ag Econ department: fifteen of his colleagues signed, two of whom were retired.¹⁵³ Among Hoover's colleagues in Economics, seven signed the petition, two of whom were retired.¹⁵⁴ The other large group of faculty signatories were from the College of Engineering: ten members of the Mechanical Engineering department and seven faculty from other engineering departments. Together, faculty from engineering and the two economics departments accounted for thirty-nine signatures, with only fifteen male and one female faculty members joining Paris and Hoover from the rest of the campus.

Despite the relatively narrow composition of the petitioners, we were now forced to respond to this new attempt to reverse the progress we had made in February. The Pro and Con ballot arguments were due on April 11. This time, instead of finding prominent men to sign the Con argument, we solicited signatures from as many men and women faculty as possible in support of a simple statement:

Regardless of procedural or statistical arguments, the basic issue facing the faculty is whether it is willing to support [CAP] as it examines the question of gender inequities in faculty salaries.

151. *Id.*

152. Thirteen faculty, including one woman, signed both petitions: Bittlingmayer (Graduate School of Management), Carmon (Agricultural Economics), Dwyer (Mechanical Engineering), Groth (Emeritus Political Science), Hass (Math), Hazlett (Agricultural Economics), Karnopp (Mechanical Engineering), Peterman (Political Science), Plant (Agronomy & Range Science), Singh (Physics), Thompson (Math), Wade (Political Science), and Whitaker (Chemical Engineering). *See id.*; *see also* List of U.C. Davis Faculty Signatories to Quirino Paris's Petition, *supra* note 63.

153. Paris obtained signatures from 60% of his then current colleagues: 13 of 22 Agricultural Economics faculty signed his petition. Neither of the two women in the department had signed. In 1994, only three of his colleagues had signed his petition. *See* List of U.C. Davis Faculty Signatories to Quirino Paris's Petition, *supra* note 63.

154. Hoover obtained signatures from only 26% of his colleagues: five of 19 current faculty signed, including one of the three women in the department. In 1994, six members of the Economics department had signed the first petition, including Steve Sheffrin, now the Dean of Social Science.

CAP is the most appropriate body of the Academic Senate to make any determination. We ask for your support on this issue of importance to all faculty on this campus. Please vote *NO* on the current ballot resolution.¹⁵⁵

We obtained signatures from 108 faculty members across campus — sixty-four women and forty-four men. The names were listed on the Con Statement.

The Pro argument was similar to the “color blind” argument being used against affirmative action. According to the Pro statement, if one supported the “gender neutral” review process, that would help make our campus a more egalitarian environment:

Across the campus, there are many who are working to make our offices, classrooms, laboratories, and workplaces gender-neutral. We believe that we should accept gender neutrality as one of the fundamental premises upon which we base the policies and procedures of the Academic Senate.¹⁵⁶

This argument was signed by three men and one woman, the one woman who had signed both resolutions seeking to prevent CAP from moving forward. None of the economics faculty leading the charge signed the Con argument.

The ballots and accompanying arguments were mailed out on April 21 and were due back on May 2. In the middle of our frenetic activity collecting signatures on the Con statement, I gave an informal talk on March 29 to the local National Organization for Women (“NOW”). Usually, the local newspaper paid no attention to such events but that evening, a reporter was present. Although I knew the reporter was present, I did not hesitate to express my view that I thought the opponents of gender equity on campus were part of a much larger national backlash against women.¹⁵⁷ I pointed out that the petition to reverse the February vote in favor of gender equity reviews had been signed primarily by men from departments where there were very few women: among the two economics departments, plus mechanical engineering, there were only seven faculty women among seventy-two men. I suggested that, whether conscious or not, per-

155. Con Statement (Apr. 21, 1995) (accompanying U.C. Davis Division of the Academic Senate, Resolution and Ballot (Apr. 21, 1995)) (on file with author) [hereinafter Apr. 21 Con Statement].

156. Pro Statement (Apr. 21, 1995) (accompanying U.C. Davis Division of the Academic Senate, Resolution and Ballot (Apr. 21, 1995)) (on file with author) [hereinafter Apr. 21 Pro Statement].

157. This was not a new idea. See SUSAN FALUDI, *BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN* (1991).

haps these men did not feel comfortable working with women. I also suggested that perhaps this campus battle was one sign of a largely male power structure digging in its heels to keep the status quo in place.

The following week I was surprised to find that this frank discussion of male power among a small group of feminists at the Davis Public Library had become the topic of a front page story in the local newspaper. The headline blared:

GENDER CONFLICT PART OF NATIONAL MALE BACKLASH?

UCD law prof says male-dominated departments are digging in their heels to defend against charges of gender discrimination in salaries.¹⁵⁸

The article proceeded to quote me as saying, no doubt accurately, that the conflict on campus "is our own local example of what's happening throughout the entire country The white male backlash is vociferous Research universities are the last bastions of almost totally male-dominated power structures — and they want to keep it that way."¹⁵⁹ I am sure these are accurate quotes; I just was not pleased to see them printed on the front page of the paper. Had I been giving quotes to a reporter, I would have toned down my remarks, qualified them somewhat, and sounded more polite, with perhaps a bit more polish. The newspaper article did state my view that discrimination is not a function of "evil people doing evil things." Instead, "real discrimination is more subtle, more benign. We live in a world where race and gender are taken into account every day We all prefer people most like ourselves So integrate the decision makers and we can all keep our biases in check."¹⁶⁰ But I was worried no one would read past the first few lines which made me sound like a shrill "militant feminist." I knew this article would not be helpful in convincing our more moderate colleagues on campus to vote with us against the second ballot resolution.

On April 21, the same day the ballots were mailed to faculty members, a lengthy guest editorial appeared in the campus administration's weekly newspaper, signed by the current chair of the Ag Econ department and three of its former chairs. It stated, "Accusations against economists called prejudice by Ag Econ

158. Elisabeth Sherwin, *Gender Conflict Part of National Backlash?*, DAVIS ENTERPRISE, Apr. 3, 1995, at A1.

159. *Id.*

160. *Id.*

leaders.”¹⁶¹ According to them, prejudice had arisen in an “unexpected context,” citing recent attempts “to characterize entire departments or the entire cohort of economists at Davis as ‘anti-equity.’”¹⁶² They referred not only to my remarks at the NOW meeting, as quoted in the newspaper, but also to a letter from three women faculty members, dated March 6, 1995. That letter urged faculty friends to vote against Hoover, Paris, Caputo, and two other members of the Ag Econ department, who were five of seven candidates then running for campus-wide election to the University-wide Representative Assembly.¹⁶³ Portraying themselves as simply professional economists, the editorial continued:

[I]t is not surprising that the [gender equity] study would receive careful scrutiny, especially among economists They . . . have opposed the proposed salary remediation pending the completion of a better economic study of salary determination at Davis [P]rejudicial people want to brand these economists as anti-equity and along with them apparently all those who share the same disciplinary affinity.¹⁶⁴

They then challenged their detractors to find “one phrase or sentence that indicates a gender bias, [but] you won’t, [so] stop the name calling and the labelling [sic].”¹⁶⁵ According to the Ag Econ Chair and former chairs, Paris, Hoover, and colleagues were acting “solely on professional opinion that no credible evidence of salary bias” had been produced, and we were instructed to stop questioning their “motives and integrity.”¹⁶⁶ According to the authors, we women were the prejudiced ones, not the economics faculty.

What impact, if any, would this editorial have on the pending faculty vote? When the ballots had been mailed out, we had sent an e-mail to all the women on our list that asked them to send a short note to their departmental colleagues and the retired faculty from their departments, urging them to vote “no” on the resolution opposing the Representative Assembly outcome.

161. Hoy F. Carman et al., Forum, *Accusations Against Economists Called Prejudice by Ag Econ Leaders*, DATELINE U.C. DAVIS, Apr. 21, 1995, at 2.

162. *Id.*

163. See Letter from “Members of the Faculty Concerned About Gender/Merit Equity” to Faculty, U.C. Davis (Mar. 6, 1995) (containing signatures from Merna Villarego, Professor of Biological Sciences, Connie Bowe, Professor of Med-Neuro, and Gyongy Laky, Professor of Environmental Design) (on file with author).

164. See Carman et al., *supra* note 161.

165. *Id.*

166. *Id.*

We nervously awaited the vote. The ballots were to be counted on May 2.

We won, but by a narrow margin: 336 "yes" votes to 385 "no" votes.¹⁶⁷ Finally, CAP could now proceed to conduct the "gender equity" merit reviews! To celebrate the successful end to our year of struggle, the ad hoc faculty women's group invited the 114 faculty women now on our network list to a reception/discussion at the end of May. Among the thirty-five women who attended, we discussed possible strategies to pursue during the next academic year to increase the hiring of faculty women on campus. We also discussed the need for faculty women to organize on a school or college basis in order to keep in touch with each other and keep apprised of what was going on among the faculty in their area. We stressed the need to monitor which faculty "volunteered" or were chosen as departmental representatives to the Representative Assembly. It was crucial that we maintain a balance in the Assembly or the opponents of gender equity would once again attempt to use the Academic Senate procedures against us.

The 1994-95 academic year ended with a final blast delivered personally against me at a meeting of the Representative Assembly on June 5. I had become chair of the UCD Academic Senate's "Committee on Committees" in January 1995. This committee is the only body of the Academic Senate actually elected by the members of the Senate. There are six members, serving two-year terms, and the Committee appoints the members of all the other faculty committees and the Senate officers.¹⁶⁸ At the June 1995 meeting, I presented the report of the Committee, announced the new officers of the Senate, and, fol-

167. Out of 1,975 ballots sent out, 769 were returned (39%). Evidently, many faculty were not even interested in the issue, or were retired and not picking up their mail! Of those who voted, forty-six of the ballots were "invalid." Perhaps the voter did not sign the outside of the second envelope so the Senate could keep track of who had voted and who had not. Among the 723 valid ballots, two people abstained. Among those who cast valid votes, we obtained a 53% "no" vote, and our opponents received a 47% "yes" vote. See U.C. Davis Division of the Academic Senate, Report of the Committee on Elections, Rules and Jurisdiction (May 3, 1995) (on file with author).

168. I had been elected to the Committee in December 1993, receiving the highest number of votes. In the December 1993 Committee on Committees election, 777 ballots were received. I received 467 votes (a 60% mandate!); the other two elected members received 277 and 276 votes each. See U.C. Davis Division of the Academic Senate, Report of the Committee on Elections, Rules and Jurisdiction (Dec. 14, 1993) (on file with author). My term ran during the 1994 and 1995 calendar years.

lowing normal procedure, moved the confirmation of the membership of the faculty committees for the 1995-96 academic year listed in our printed report. Immediately, Professors Paris, Hoover, and Clark began asking questions about the recommended membership for the Faculty Welfare Committee. They wondered why there were all new members of the Committee for the following year. Although referring to other members, they were really asking why Paris had not been reappointed to the Committee. Clark then distributed a one-page sheet that documented the decline in male membership on all the committees from 1994 to 1995 and specifically noted the decline in committee memberships among the two economics departments' faculty.¹⁶⁹ He continued to speak for a long time. At first, I was worried that he was attacking the entire Committee on Committees. Then I realized he was only attacking me, implying that it was my bias against the "white male establishment" that had produced these results. He accused "Martha West [of] enforcing conformity" among the members of the Committee and imposing her will on the group. He stated that the appointments for 1995-96 illustrated her continuing attacks on economics faculty members. It was an amazing experience for me to sit there and hear my name repeated over and over, and wonder "who is this powerful person they were talking about?" I had to laugh inside because those of us on the Committee knew how much vigorous debate occurred during our weekly meetings as we put the slates of committees together.

At some point Paris stood up and said that because Martha West herself proposed him for the Committee the previous year, and another member of this year's "Committee on Committees" had asked him earlier in the spring if he was willing to serve as chair, he could not understand why he was not reappointed to the Faculty Welfare Committee. Finally, someone asked me directly why everyone on the Faculty Welfare Committee had been replaced. As the newspaper reported the next day: "West refused to be baited into debate. 'Our work is confidential,' she said to charges of committee-packing. 'But we consult widely

169. Greg Clark's data showed that for 1994-95, 115 men had been appointed to committees and for 1995-96, only 97 had been appointed. In contrast, 48 women had been appointed for 1994-95, and 65 women had been appointed for 1995-96. Among the economics faculty across both departments, seven had served in 1994-95, but only one had been appointed for 1995-96. See Gregory Clark, *Some Committee on Committees Statistics, 1994-95* (on file with author).

and solicit (committee) members,' she added."¹⁷⁰ In addition, she said "that decisions made are based on a wide variety of input and factors."¹⁷¹ Mathematics Professor Joel Hass, one of the most outspoken opponents of the gender equity study, formally objected to the proposed list of Faculty Welfare Committee members. Under the rules of the Senate, this objection required a vote on whether to call for an election to select new members of the Faculty Welfare Committee. Before taking the vote, the Senate Chair explained that a "yes" vote indicated support of the objections to the Committee's appointments, and a "no" vote indicated endorsement of the Committee on Committee's appointments for 1995-96. The vote was taken: eighteen members voted "yes," and thirty-three voted "no."¹⁷² At that point, Paris questioned the existence of a quorum, but it was too late, the vote had already been taken. A quorum count was taken; fifty-two Assembly members were still present, but a quorum required fifty-six. The chair immediately adjourned the meeting and our Committee report had been confirmed.

At the time, I thought I had weathered this Representative Assembly attack and all the other storms of the 1994-95 academic year fairly well. In retrospect, however, the year left some scars. As time passed, I found myself becoming increasingly resentful toward the administration. They had created confusion over the equity study when the preliminary analysis was released, without a proper written report, had not wanted my expertise in helping to design the study, and did almost nothing to assist us as we fought our bitter political battles in the Academic Senate. I felt I ended up spending enormous amounts of time to bail out an administration that did not value either my professional scholarly work or my political work on campus in attempting to make UCD a more hospitable place for faculty women.

During the subsequent 1995-96 and 1996-97 academic years, I spoke widely, both on campus and state-wide, about affirmative action issues. I was responding to the UC Regents' resolution in July 1995 abolishing affirmative action as a matter of University

170. Elisabeth Sherwin, *Coleman Appointed Chairman of UCD's Academic Senate*, DAVIS ENTERPRISE, June 6, 1995, at A7.

171. U.C. Davis Division of the Academic Senate, Minutes from the Regular Meeting of the Representative Assembly 4 (June 5, 1995) (on file with author).

172. This vote was almost identical to the vote on the gender equity resolution itself on February 14, with the "yes" and "no" positions reversed: 31 "yes" and 18 "no." See *supra* text accompanying note 142. Apparently, Professors Paris, Hoover, and Clark could not come up with more than 18 votes in the Assembly.

policy and was also working to defeat Proposition 209, subsequently passed by California voters in November 1996. Because it appeared to me that equality issues had become unimportant to the UC administration, I decided to curtail my political work on campus. During the 1996-97 year, I ended my service on campus committees. I then ran for election as a member of the local public school board in November 1997. I have been enjoying service as a member of the Davis Joint Unified School Board ever since.

III. RESULTS OF THE SALARY STUDY AND LESSONS WE HAVE LEARNED

A. *Results of CAP's "Merit Equity" Reviews*

CAP proceeded to conduct equity reviews of faculty files from the spring of 1995 through the 1995-96 academic year. The 1995-96 chair of CAP, Professor Harry Mathews, presented CAP's report on the salary reviews to the UCD Academic Senate in the fall of 1996. By that time, seventy-two out of 334 eligible faculty women (twenty-two percent) had nominated themselves or were nominated by department chairs or deans to have their personnel files reviewed.¹⁷³ When a nomination was made, either the faculty candidate or the administrative nominator had to state a basis for a claim of salary inequity. Nominations were then screened by CAP to determine whether there was a reasonable probability that an inequity had occurred.¹⁷⁴ If CAP found evidence of a probable inequity, it then sent the file to the faculty member's department and asked the woman's colleagues to carry out their own equity review and send a recommendation back to CAP. The departmental review included comparisons with the personnel records of comparable male faculty within the department.¹⁷⁵ Based on its screening review, CAP was able to alert the department to examine either inequity in rank/salary at initial hire or inequities resulting from merit promotions while teaching at UCD, or both.

Out of the seventy-two women nominated, CAP determined that twenty-six did not call for further review.¹⁷⁶ Among the

173. See Harry R. Mathews, *The U.C. Davis Merit Equity Review, 1994/96 2* (Aug. 29, 1996) (on file with author).

174. See *id.*

175. See *id.* at 3.

176. *Id.* at 2.

forty-six women's files surviving CAP's initial screening, CAP asked departments to examine rank/salary at initial hire in eighteen cases, salary history at UCD in twenty-one cases, and both types of inequities in six cases.¹⁷⁷ Among the forty-six files sent back to departments, thirty-two (seventy percent) were recommended for a salary increase by the department itself. The CAP Chair was pleased with this result:

[This result] strongly suggests both recognition of past errors in judgment and desire to remedy them, at the department level. This indicates that, in spite of the contentious start to the process, the results have been widely accepted and recognized as necessary by the Academic Senate. CAP hopes that the conscientious and sensitive reviews received from many departments reflect changes in the historical attitudes which may have led to some of the cases being reviewed. Nevertheless, some continuing education in this area is probably necessary.¹⁷⁸

Departments recommended no adjustment in nine women's files, were split on two files, and one remained pending.¹⁷⁹

After receiving departments' recommendations, CAP made its recommendations to the Vice Provost of Faculty Relations, who concurred in all of the decisions. CAP approved salary raises for a total of thirty-eight faculty women, recommended no action for four women, and two files were still pending at the end of the 1995-96 academic year.¹⁸⁰ The final results reported in 1996 showed that thirty-eight (fifty-four percent) of the seventy women whose reviews had been completed received one merit step increase on the UC Davis faculty salary scale.¹⁸¹ Using an average increase of \$3,500, each woman would be entitled to receive additional salary totaling more than \$35,000 over the next ten years. Even more importantly, women's resulting pension payments upon retirement would be higher for the rest of their lives because of these salary increases.

After CAP initially screened the women's files, it then turned its attention to the few men who had nominated themselves or been nominated for "equity" reviews. Out of 1,158

177. *Id.* One file was classified as "other." *Id.*

178. *Id.* at 3.

179. *Id.* at 2.

180. *Id.* Thus, CAP overruled department recommendations in six cases.

181. All merit increases resulting from the gender equity review were retroactive to July 1, 1995. At this time, one merit step increase ranged from \$3,000 to \$4,000 per year. See Crystal Ross, *Women at UCD: The Struggle for Equality Continues*, DAVIS ENTERPRISE, May 25, 1997, at C1.

male faculty eligible, sixty-one men (five percent) were nominated for review.¹⁸² After its screening, CAP declined to proceed with forty-three of the men's files which represented over seventy percent of those nominated.¹⁸³ CAP did send eighteen men's files back to their departments for an equity review, nine for a review of the initial rank/step at hire, five for a UCD salary history review, and four for both types of review. The men's departments recommended a salary increase for twelve men, recommended no action for four, were split on one, and one file was still pending.¹⁸⁴ By August 1996, CAP approved a salary increase for thirteen men and had recommended no action on two men's files; the files of three men were still pending before CAP.¹⁸⁵ Thus, of the fifty-eight men's files completed, twenty-two percent (thirteen) received a salary adjustment. The men's twenty-two percent adjustment rate fell significantly below the women's fifty-four percent adjustment rate. When comparison is made to the total faculty eligible, one percent of men (thirteen of 1,158) and eleven percent of women (thirty-eight of 334) received a salary increase.

CAP found that the disparity between the proportion of women who received adjustments and the proportion of men who did was "striking" and "statistically significant."¹⁸⁶ This, in essence, vindicated the perception of many that faculty women are often treated less favorably than comparable men. CAP was careful to say, however, that the purpose of its study was not to identify "potential discrimination." Yet, it concluded that the "data provide evidence for inappropriate personnel decisions, especially those affecting women."¹⁸⁷ In making its recommendations, CAP acknowledged that it was "not directly address[ing] the issue of inequities based on gender." Instead, it asked the "Academic Senate to consider what further action may be needed to create a gender-neutral environment on Campus."¹⁸⁸

Among its recommendations, CAP suggested the following: first, in setting initial salaries, department chairs and deans should guard against exploiting new faculty appointees who may be naive, or lack room for negotiation, because of commitment

182. Matthews, *supra* note 173, at 2.

183. *See id.*

184. *See id.*

185. *See id.*

186. *Id.* at 3.

187. *Id.*

188. *Id.* at 4.

to a spouse.¹⁸⁹ Second, CAP and the school or college personnel committees should carefully examine salary at hire when new faculty appointments are made. Third, faculty should be better informed about the priority ranking their files receive when going through the merit process, so that high performing faculty are alerted to the possibility of asking for an accelerated salary raise from time to time. Fourth, all faculty should receive extended reviews at several key promotions during their careers, with departments and personnel committees examining retroactively salary at hire and the need for possible upward adjustments in light of subsequent achievements.¹⁹⁰ CAP concluded its report by urging all those involved in the personnel process to be more aware of situations where inequities may occur. Examples included uncertainty in how to evaluate faculty at hire because of unusual circumstances, such as recruitment from a nonacademic job, undervaluation of candidates already on campus in nonladder rank faculty positions, or incorrect assessment of the value of "forward-looking work whose importance is not realized at the time."¹⁹¹

The real question now is whether the merit equity study will make a difference over the long run? If we do a similar salary study in another ten years, will we find the same gender differences? Will seventy-four percent of faculty women again be below salary means, instead of the fifty percent one would expect? Will over half of the women whose files are individually reviewed again be eligible for a raise, based on comparisons with the men in their departments? Apparently, the current CAP does play a larger role in examining salaries at hire to make sure comparable faculty appointments receive comparable salaries. This is important because Professor Utts found that approximately one-third of the salary differentials between men and women were reflected in lower salaries for women at the time they were hired. Again, without further study on campus, it is impossible to say if

189. *See id.* When CAP presented its report to the Representative Assembly on Oct. 7, 1996, Paris objected to one of CAP's recommendations that departments "stop negotiating the lowest acceptable offer" when hiring a new faculty member. Chair Matthews agreed to delete this clause from the report. *See* Maril Revette Stratton, *Salary-Equity Study Looks at Reasons and Solutions*, DATELINE U.C. DAVIS, Oct. 18, 1996, at 5. Paris then objected to other aspects of the report and moved to suspend the report until further clarification was received. His motion failed on a 28 to 41 vote. *See id.*

190. *See* Matthews, *supra* note 173, at 5.

191. *Id.* at 4.

salary inequities between women and men on the faculty continue to be perpetuated at UCD.

B. *What lessons can be learned from our struggle over gender equity at UC Davis?*

In reflecting on the events at UCD in 1994 and 1995, I have reached several conclusions:

- Equal treatment of women is still a controversial issue.
- The prevailing legal theory of discrimination — that discrimination results from intentional decisions made by a few prejudiced individuals — makes it difficult to see or remedy unequal treatment of women.
- Be well prepared when taking action to create social change.
- Expect a backlash; unless change is made permanent, gains will not last.

1. Equal Treatment of Women Is Still a Controversial Issue.

When Vice Provost Tomlinson-Keasey convened the Salary Equity Committee to design a pay equity process, I do not think any of us requesting such a study over the years thought it would become controversial on campus. We assumed everyone knew women were generally paid less than men, even when they held comparable positions. Pay equity and/or comparable worth ideas had been in the news for years. Many academic institutions had conducted such studies in the past and women had received upward salary adjustments without much notice, or so it seemed. Evidently, however, the times had changed and the need for improvement in women's economic and professional status was no longer a given. As a subsequent article in the *Chronicle for Higher Education* pointed out:

[The controversies at UC Davis and other universities] are part of a growing resistance nationally to salary-equity studies. Universities have used such studies for years, usually to test whether women are paid fairly compared to men. The studies — and resulting pay raises — were less controversial a decade ago, when institutions employed fewer female academics, and sex discrimination was seen as overt. But as colleges have actively recruited women, the studies have become more contentious.¹⁹²

192. Robin Wilson, *Equal Pay, Equal Work?*, CHRON. HIGHER EDUC., Nov. 24, 1995, at A15.

Apparently, when we were less than fifteen percent of the faculty, a few salary raises for a few women did not matter much. Now that we constituted slightly more than twenty percent of the faculty, more of our male colleagues were beginning to notice us!

What seems so obvious to many women is not obvious to many men. We were surprised to find out that many men on campus do not think that discrimination against women exists. We were unprepared for the need to actually prove the inferior treatment that many women have received at UCD. I was surprised that some of my own law school colleagues did not see the gender discrimination that occurred within our department when a woman on our faculty was passed over for a promotion, for which she was superbly qualified, while a man with arguably less qualifications received the promotion. Most women on campus have similar vivid and clear stories of differential treatment to report, but few men are aware of the discriminatory nature of these events. It became apparent to me that faculty women live in a different world than the men we interact with in our departments, and an even more different world than men who come from departments with few women.

2. The Prevailing Legal Theory of Discrimination Makes It Difficult to See or Remedy Unequal Treatment of Women.

The United States Supreme Court views discrimination as the result of intentional behavior by a few prejudiced individuals as an isolated event, not an every day occurrence.¹⁹³ It has been difficult, if not impossible, to convince the Court that discrimination is a systemic problem, rooted in pervasive racial and/or gender bias in a society that values white people over people of color and men over women. The Court's focus has been on specific individual decision-makers, and plaintiffs are required to prove

193. See *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 515-16 (1993) (explaining that an African American plaintiff's proof that employer's reasons for termination were false may not be sufficient to prove that the decision-maker was actually motivated by racial prejudice against African Americans); *Price Waterhouse v. Hopkins*, 490 U.S. 228, 241 (1989) ("The critical inquiry . . . is whether gender was a factor in the employment decision *at the moment it was made.*") (emphasis added); *United States Postal Serv. Bd. v. Aikens*, 460 U.S. 711, 715-16 (1983) ("The 'factual inquiry' in a Title VII case is 'whether the defendant intentionally discriminated against the plaintiff.' . . . There will seldom be 'eye witness' testimony as to the employer's mental processes. But none of this means . . . courts should treat discrimination differently from other ultimate questions of fact. . . . The law often obliges finders of fact to inquire into a person's state of mind.").

that the adverse action against them was motivated by the decision-maker's own gender or racial bias.¹⁹⁴

The failure of the Supreme Court to recognize the pervasiveness of prejudice in society is reflected in the views of some of our white male colleagues. They were personally offended by the notion that, over time, CAP or their own departments may have discriminated against women. They did not think they were prejudiced against women, so how could discrimination have happened if they had not seen it? One of the exchanges that best illustrates this point was Professor Carl Jorgenson's response to Hoover's statement in the Representative Assembly that he, Hoover, had never seen any instance of discrimination against a woman since he had been at UC Davis. Jorgenson, an African American professor of sociology, responded in a subsequent letter to the editor:

Professor Hoover . . . claims . . . that any accusation that discrimination has occurred is a slander against honorable women and men. Anyone who is certain that they have never been a party to discrimination cannot be trusted Very few black people I know will ever believe someone who tells them "I never discriminate." They operate on the theory that becoming nonracist and nonsexist is a goal that should be strived for but can never be reached. Progress is marked by continuing evolution, not completion This has nothing to do with honorableness. There has been systematic discrimination in the UCD personnel process by honorable people. When I joined the departments of psychology and sociology in 1971, . . . [h]onorable men truly believed that women would not make the same commitment to professional life that men did and that the subjects the women wanted to study and teach were not central to the disciplines. Aspects of comparison of male and female faculty remain problematic.¹⁹⁵

When I debated Hoover on the campus radio station in late February 1995, I illustrated the nature of prejudice by describing the situation faced by a new faculty member as she or he walks into class for the first time. When a white man walks into the classroom, the students assume he is competent. In my experience, when a white woman walks into that classroom, she must prove her competence. She is not given the benefit of the doubt. When a person of color walks into that classroom, whether a woman or a man, she or he must also prove her or his competence.

194. See West, *supra* note 2, at 97-98, 102-03, 143-47.

195. Carl Jorgensen, Letters, *Honest About Bias*, DAVIS ENTERPRISE, Feb. 13, 1995, at A6.

This "white male privilege" is a privilege neither white women nor men and women of color enjoy.¹⁹⁶ In my view, all of us carry these types of assumptions around in our heads, whether we are aware of them or not. It is the kind of devaluing that women face when they are hired in at lower ranks or salary steps than comparable men, and when requested salary accelerations are requested and granted to men, but not to women. The women at MIT also came to recognize the difficulty of recognizing discrimination in the 1990s:

[Discrimination at MIT] *did not look like what we thought discrimination looked like . . .* [G]ender discrimination turns out to take many forms and many of these are not simple to recognize. Faculty women who lived the experience came to see the pattern of difference in how their male and female colleagues were treated and gradually they realized that this was discrimination. But when they spoke up, no one heard them, believing that each problem could be explained alternatively by its "special circumstances." Only when the women came together and shared their knowledge, only when the data were looked at through this knowledge and across departments, were the patterns irrefutable.¹⁹⁷

Similarly, not until CAP reviewed thirty-eight individual women's files and compared them to similarly situated men in the same departments, was CAP willing to acknowledge that women, in fact, appeared to suffer from inequitable treatment by the personnel process at UCD.

The problem created by narrow and limiting definitions of discrimination was exacerbated by the nature of the personnel decision-making process within the UC system. At other universities or colleges, without our extensive "peer review" process both before and after tenure, faculty could blame discriminatory salary structures on the administration. Not so at UC Davis. Salary merit raises were voted on by faculty colleagues and then approved or disapproved by faculty senate committees. There was really no one to "blame" for systemic discrimination against women but our own male and female colleagues, all of whom suffer from the unconscious nature of prejudice in our society.

196. See STEPHANIE M. WILDMAN, *PRIVILEGE REVEALED: HOW INVISIBLE PREFERENCE UNDERMINES AMERICA* 17 (1996).

197. MIT Report, *supra* note 9.

3. Be Well Prepared When Taking Action to Create Social Change.

Because the administration did not realize how controversial a gender equity salary study was going to be in 1994, they were not well prepared for the controversy. Although it may not have mattered in the end, the administration created a serious credibility problem for itself at the beginning of the struggle by not writing up the preliminary statistical analysis before releasing the results to the press. The delay between the initial press reports and the availability of the written report allowed Paris to take advantage of this procedural lapse in his initial attack on the study.

By May 16, 1994, when the nine faculty women met with Chancellor Vanderhoef, we had learned of Paris's initial attack and urged the Chancellor to give strong and vocal support to the implementation of the salary equity reviews. I left that meeting with the impression that he did not take our concerns seriously enough. To my knowledge, the Chancellor did not make any public statement in support of the study during the following months. We raised the issue of public support again with him in our meeting on February 9, 1995, but he did not feel action from him was advisable at that time. As matters turned out, perhaps his judgment was correct. I cannot help but wonder, though, if a clear statement from him in the fall of 1994 might have convinced Paris not to file his first mail ballot request. Or, it might have convinced enough faculty to vote against Paris's first mail ballot, saving us from the turmoil of January through June 1995.

Paris and his allies learned the Academic Senate's rules of procedure much earlier than either the faculty women's ad hoc group or the leadership of the Academic Senate. When the first request for a mail ballot was filed, none of us had a clue that retired faculty would be allowed to vote on our fate. We knew virtually nothing about the procedures of the Academic Senate and learned only as we were forced to respond to Paris' various efforts to stop the study and shut the Representative Assembly down. It took the faculty women's group from October 1994 until February 1995 to become sufficiently well-organized to mount a vigorous defense. We also learned *Roberts' Rules of Order* under fire and the important significance of having a quorum at Representative Assembly meetings. Paris and his colleagues, on the other hand, continued to use their expertise in disrupting Ac-

ademic Senate meetings long after the salary study was put to rest.¹⁹⁸

4. Expect a Backlash; Unless Change Is Made Permanent, Gains Will Not Last.

Although the faculty women at UCD won the battle over a campus salary equity study, it appears we are now losing the much larger war over equal treatment of faculty women on a long term basis. Beginning with the 1997-98 academic year, the hiring of new faculty women has plummeted at UC Davis. There is no definitive way to connect the drastic decline in the hiring of women to the campus struggle over salary equity, but it may not be just a coincidence that the decline in women hired is much more pronounced at UCD than at the other UC campuses.

Over a ten-year period, from 1987 to 1997, among new faculty hires at UCD, women accounted for an average of 34.5% of the new appointments.¹⁹⁹ During the 1997-98 academic year, the percentage of women among new faculty hires fell to 15.5%, less than half the level of the previous ten years.²⁰⁰ During the 1998-99 academic year, based on preliminary data, women accounted for 18% of the new faculty hires. This gender profile of our recent hiring efforts are even more inexplicable when compared to the national Ph.D. pool from which we hire. In 1998,

198. In May 1996, Professor John Vohs wrote a guest editorial decrying the inability of the Representative Assembly to do business because of lack of a quorum. See John Vohs, Forum, *Senate Delivers Fumbled Governance*, DATELINE U.C. DAVIS, May 17, 1996, at 2. According to Vohs, the Representative Assembly met four times in 1993-94, seven times in 1994-95, and four times by May of 1995-96. At six of those meetings (40%), the Assembly was forced to adjourn before completing its business because of the lack of a quorum. See *id.* Although Vohs was critical of those faculty members who did not attend the meetings, the real change in the way the Senate did business was not in lower attendance, but in the constant calls for a quorum by those in opposition to the Senate leadership. See *id.* Calls for a quorum became a regular event with Paris, Hoover, Hass, and Clark, first in response to the proposal for a diversity course in the general education program, and then at the meetings on the salary equity study. They continued this pattern throughout the 1996-97 academic year as well, making it very difficult for "shared governance" to work at UCD.

199. See note 2, *supra*.

200. See note 2, *supra*. These hiring decisions were actually made during the 1996-97 academic year, but the results did not appear until the new faculty came to campus at the beginning of the 1997-98 year.

I began keeping track of hiring data at UCD in 1982, and there were only three years in the 1980s when women's percentage of new hires fell below 18%.

the percentage of women among Americans obtaining Ph.D.s rose to 48%.²⁰¹

No doubt, the passage of Proposition 209 in 1996 has had a depressing effect on decisions whether to hire white women and men and women of color.²⁰² We can see some fallout from California's decision to abolish "preference" when we examine the hiring data for the UC system as a whole. During the 1997-98 academic year, women constituted 31.8% of all new faculty who arrived to teach on one of nine UC campuses.²⁰³ The following year, women's percentage of new hires had fallen by four points to 27.7%.²⁰⁴ One can speculate that the UC Regents' and California's attempt to abolish affirmative action has had some effect on faculty hiring, but it cannot account for the difference between the hiring rates of women at most of the UC campuses and those at UCD.

UCD experienced the most dramatic decline of any campus. The data from the UC Office of the President shows Davis dropping from 34.9% women hires in 1997-98 to 15.9% in 1998-99. Berkeley, UCLA, and UC Irvine had small declines of two or three percentage points in the percentage of women hired but nothing comparable to UCD's nineteen point drop.²⁰⁵ We now have a new campus taskforce at UCD, with the charge to advise

201. See note 2, *supra*.

202. See note 2, *supra*.

203. For UC data on the World Wide Web, see University of California, Reports on Faculty: New Appointments of 1984-84 through July 1999 University wide by Campus by Sex (visited Nov. 1999) <<http://www.ucop.edu/acadadv/datamgmt>>. The UC system database uses a different cut-off date than the UC Davis data. Consequently, what appears as 1998-99 data on the UC system data base appears as 1997-98 data in the UC Davis reports.

Proposition 209 passed in November 1996, but was enjoined by a federal district court and did not take effect until the Ninth Circuit Court of Appeals upheld its constitutionality on April 8, 1997, in *Coalition for Economic Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997).

204. See University of California, *supra* note 203. Again, the UC data lists this as new appointments in 1998-99, but with a July 1, 1998 cut-off date, this reflects new faculty who arrived on campus during the 1997-98 academic year.

205. At Berkeley, the percentage of women hired fell from 26.3% to 23.5% over the same time period. At UCLA, women's percentage of new hires fell from 27.6% to 25.4%. UC Irvine also showed a decline, from 31.7% down to 29.3%. At several of the other campuses, the percentage of women hired actually increased: UC Riverside, 25% up to 29% women; UC Santa Barbara, 38.2% up to 44.1%; UC San Diego, 29.3% up to 31%. UC Santa Cruz saw a decrease, but hiring of women was already at a very high level for a UC school: 45.5% down to 41.2%. The number of new faculty hired in any given year at the UC San Francisco Medical School is so small that the data fluctuates widely from year to year. See *id*.

the campus on what to do about faculty recruiting. At our taskforce meetings, however, there has been no discussion about what may have happened on campus during the past five years to produce this type of drastic change in hiring faculty women. No one has seriously questioned why UCD has shown such a greater decline in hiring women than the other campuses. Perhaps the other campuses did not have a year-long political battle over gender equity, generating what may be an unspoken but fairly evident backlash against adding more women to the faculty ranks.

The faculty women's ad hoc group has not met for the past three years. Because I decided to run for the local school board, I did not convene any more meetings. Among the women leaders on campus, some have retired, gone on sabbatical, or taken campus administrative jobs. It is very difficult to keep an informal coalition in place, organized solely on a volunteer basis, with no staff or permanent campus base. Perhaps a stronger faculty women's group, institutionalized in some way to become a permanent campus presence, may have provided a stronger reminder to departments that they must continue to make special efforts to include women in their ranks.

The most important element missing since 1997, however, is leadership by the campus administration and by the UC Office of the President regarding the need and the legal obligation to hire more women. Both the UC Regents' resolution against affirmative action and Proposition 209 contained clauses specifying that nothing in these measures should be construed to require the University and/or other elements of state government to do anything that would jeopardize federal funds.²⁰⁶ Under federal law, any entity that has over fifty employees and receives \$50,000 or more in federal funds is required to pursue an affirmative action policy in employment, or risk the loss of federal funds.²⁰⁷ Because women are underrepresented on the faculty, UCD's af-

206. See UC Regents Resolution SP-2, Policy Ensuring Equal Treatment — Employment and Contracting, July 20, 1995. Proposition 209 was an amendment to the California Constitution. See CAL. CONST. art. I, § 31(e).

207. See Exec. Order No. 11,246, 30 Fed.Reg. 12,319 (1965), revised in Order No. 4, 41 C.F.R. 60-2.10 (1978). These federal requirements require employers to develop and maintain affirmative action plans. Under such a plan, the employer must measure the composition of its workforce by race and gender against the composition of the available qualified labor pool for each job category. If there is underrepresentation of any gender or racial/ethnic group, the employer must set goals to govern future hires, and must make every "good faith effort" meet those goals. 41 C.F.R. 60-2.10.

firmative action plan sets numerical goals by department for hiring women.²⁰⁸ Consequently, neither the Regents' resolution nor Prop. 209 should have had any impact on faculty hiring, but no one told the faculty about the supremacy of federal law. Most faculty on campus assumed "affirmative" efforts to hire women were no longer necessary, and no UC leaders told them otherwise. Because the campus climate at Davis had become poisoned by the animosity over salary gender equity, the lack of leadership and failure to remind faculty to make "good faith efforts" to hire women was sorely evident in our recent hiring results. In addition, today there are fewer women in administrative leadership positions on the faculty side of campus governance, fewer women deans and vice chancellors, than there were in 1994. This dearth of women in leadership may be another factor in the failure to make gender equity a more lasting concern on campus.

IV. CONCLUSION

One of the most positive aspects of the 1994-95 struggle at UCD over salary equity for women was the strong sense of community we forged among ourselves during the political battles. Faculty women made new connections with each other, but we also worked closely with many men in Senate leadership positions who fought alongside of us. Without their support, we would never have succeeded in overcoming the efforts to derail CAP's study. I was personally rewarded with a wonderful gift on my 50th birthday, an epic poem to memorialize the events of 1994 and 1995.²⁰⁹

208. At UC Davis, we currently have 161 goals to hire more women faculty, and 93 goals to hire more faculty of color. See U.C. Davis Office of the Provost, Academic Utilization Analysis (Oct. 31, 1999) (on file with author).

209. The poem was written by Professor Connie Bowe, Professor of Medicine, responsible for organizing sympathetic faculty in the Medical School to attend the Representative Assembly meetings:

ODE TO MARTY WEST

Faculty come and faculty go and few make little waves,
 But then there was the troublemaker who simply couldn't behave.
 Davis was an ole boys club when first you settled in,
 But you saw fit to question that, and then began the DIN. . . .
 Women asking why and how, why not and is it not wrong?
 You've led the movement to success and now they're feeling strong.
 You're tenacious and steadfast in your fight for the "Davis gals"
 But to us you're immobile and unfeeling, "What's to become of *our*
 PALS?"

UC Davis was a pleasant place, before you began spinning your

Hopefully, the situation for faculty women at UCD will again improve. In another five years, perhaps the hiring of faculty women will have reached new heights, perhaps women will be receiving salaries comparable to similarly qualified men at the time of hire, and perhaps someone on campus will review women's salaries from time to time to make sure they stay comparable. Even the current backlash against women faculty may have been a positive sign. As Naomi Wolf suggested, the depth of the male backlash against women's progress is an indirect measure of our success, of women's growing power and authority. Drawing lessons from the "genderquake" caused by Anita Hill's testimony against Clarence Thomas, Naomi Wolf commented:

[W]omen underestimate their own power while men do not underestimate women's power The backlash is an eminently reasonable, if intolerable, reaction to a massive and real threat. We are not simply experiencing a 'war against women' in which women are unthreatening victims. Rather, we are in the midst of a civil war over gender Evidence exists that female power has turned a corner, and that "the opposition"

spell,

But now we only meet in fisticuffs, when our egos begin to swell.
You've infiltrated our base of support, found access to our power,
You can even mobilize the *medical staff* to defeat us in an hour!

Is there no length to which you will not go to promote the cause of right?

Are you so naive to believe that justice is really might?

You're clearly here to stay, your influence is not soon to melt,
And we will have to coexist though civilities are not heartfelt.

You're an ominous opponent, no doubt that can be claimed,
You have even amassed followers who could be considered *sane*,
You're a mover and shaker, the chairs now give pause,
Can their discriminatory acts really be against the laws?

We "boys" have talked and liked it better when men were men and strong,

Your influence is not appreciated, we'd like to say "so long."

You've thwarted all our strategies, out foxed us with Robert's Rules,
And more discouraging, even vile, is that you make us look like fools.

But it is your birthday, so let's celebrate and call a truce,
Tonight. No politics, intrigue or petty ego boosts,
Congratulations on your 50th, *may retirement approach soon*,
And then Aggie Econ can prevail! And bring the place to ruin.

Love, Quirino, Kevin and the "boys"

Connie Bowe, Ode to Marty West (Feb. 1996) (on file with author).

sees the situation far more clearly than do women themselves.²¹⁰

I agree with Naomi Wolf that women must make every effort to take advantage of this “open moment” at the turn of the century to maximize egalitarian gains, but sometimes it is difficult to recognize our power in the midst of the struggle.

210. See NAOMI WOLF, *FIRE WITH FIRE: THE NEW FEMALE POWER AND HOW IT WILL CHANGE THE 21ST CENTURY* 11-12 (1993).

