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Gender Stereotypes and Sexual Harassment Since the Passage of
Title VII**

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How to Succeed in Business Without Really Trying (Cases): Gender Stereotypes and Sexual Harassment Since the Passage of Title VII

Miriam A. Cherry*

I. INTRODUCTION

Last year I was invited to an undergraduate revival of the musical “How to Succeed in Business Without Really Trying,”¹ a comedy about the workplace, which I thought, as a teacher of employment law, I would enjoy. Written in the early 1960s and made into a 1967 movie, “How to Succeed” follows the adventures of J. Pierrepont Finch, a window washer who, with the aid of a sarcastic self-help book,² schemes his way up the corporate ladder. Although ostensibly a humorous look at the corporate world of the late 1950s and early ‘60s, I found myself cringing throughout the musical as I viewed the sexual exploits of the exclusively male executive corps among the female secretarial pool. After the lights rose, I analyzed my negative reaction and realized that the musical, far from simply being an evening’s entertainment gone awry, offered vital insights into gender stereotyping at work and how both employment law and society have changed - and not changed - during the past forty years.

As “How to Succeed” was written and first performed contemporaneously with the passage of Title VII,³ the musical also offers an opportunity to examine, from both a

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¹ ABE BURROWS ET AL., HOW TO SUCCEED IN BUSINESS WITHOUT REALLY TRYING (1961).

² The self-help book that Finch uses in the musical is Shepard Mead’s eponymous book. See SHEPARD MEAD, HOW TO SUCCEED IN BUSINESS WITHOUT REALLY TRYING (1951). Contemporary books in the same vein are SPENCER JOHNSON, WHO MOVED MY CHEESE (1998), and DONALD TRUMP, TRUMP: HOW TO GET RICH (2004), which parlays his success with the reality-based television show, The Apprentice, into written format.

³ Civil Rights Act of 1964, Pub. L. No. 88-352, Title VII, 78 Stat. 253 (codified as amended at 42 U.S.C. §§ 2000e to 2000e-17 (2000)). Mead’s book was published in 1951, and it was made into the musical in 1961. The musical was made into a movie, starring Robert Morse, in 1967. “How to Succeed” enjoyed a Broadway revival in 1995, starring Matthew Broderick, and, from the descriptions offered in the popular press and by critics, the 1995 version was extremely similar to the original 1960s production. See Margo Jefferson, *Step Right Up to Broadway’s Revivals Museum*, N.Y. TIMES, Apr. 2,

law and literature and law and popular culture perspective,⁴ how the view of women⁵ in the workforce has either progressed or remained stagnant during the past forty years. Although progress has been made toward gender equality, many issues highlighted in the musical are still problems today: sexual harassment; sex segregation of the workforce and pink collar ghettos; and the glass ceiling. This Article discusses these issues seriatim.

Initially, however, I will briefly describe the musical. “How to Succeed” follows Finch, a likeable rogue, who receives numerous promotions at World Wide Wickets while managing to perform little in the way of actual work.⁶ Finch accomplishes this by using techniques that should be familiar to anyone who has spent time working in an office, and certainly to anyone who has been an associate at a large law firm⁷: shifting

1995, at Section 2, page 1 (listing lack of meaningful changes between original and new version); Donald Lyons, *Theater: One Way to Fail on Broadway*, WALL ST. J., Mar. 24, 1995, at A12 (stating that “at ‘How to Succeed in Business’ I was longing for an updating breath of fresh air. None came. Every lame joke – ‘What’s the opposite of a sex maniac?’ ‘A businessman!’ – was preserved in amber. Why?”).

⁴ For other studies relating law to popular culture, see Lawrence M. Friedman, *Law, Lawyers, and Popular Culture*, 98 YALE L.J. 1579 (1989); Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 WIS. L. REV. 527 (1986); Jessica M. Silbey, *What We Do When We Do Law and Popular Culture*, 27 LAW & SOC. INQUIRY 139 (2002) (describing relationship of law and popular culture studies); William H. Simon, *Moral Pluck: Legal Ethics in Popular Culture*, 101 COLUM. L. REV. 421 (2001) (analyzing lessons about ethics that can be learned from popular dramatizations of legal disputes).

⁵ This article focuses in particular on gender and social class, as those are the most salient categories that the musical deals with. This is not to say that the issues of race and sexual orientation are not important at work – but rather that they were “whitewashed” out of the original performance. An all-white cast performed in the movie, although in the 1995 revival and in the version I saw last year, one of the secretaries, Miss Jones, was played by a black woman who brought a gospel-inspired flair to the songs. More than anything, I believe that this conspicuous lack of minorities showcases an almost complete exclusion from professional employment opportunities during that period in history. The musical also contains other cultural assumptions. For example, the musical assumes that all the men and women employed at World Wide Wickets are heterosexual and act upon their sexual impulses at work.

⁶ BURROWS ET AL., *supra* note 1.

⁷ Susan Saab Fortney, *Soul for Sale: An Empirical Study of Associate Satisfaction, Law Firm Culture, and the Effects of Billable Hour Requirements*, 69 UMKC L. REV. 239 (2000); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871 (1999); James J. Alfini & Joseph W.N. Van Vooren, *Is There a Solution to the Problem of Lawyer Stress? The Law School Perspective*, 10 J.L. & HEALTH 61 (1995/1996) (noting increased billable hours’ contribution to attorney stress).

blame for mistakes; taking credit for the work of subordinates;⁸ flattering the boss;⁹ and crumpling up pieces of paper and strewing coffee cups all around the office to make it appear that he has worked all night.¹⁰ Finch, inspired by the self-help book, tries a series of schemes, which include: pretending that he attended “Old Ivy,” J.B. Biggley’s alma mater;¹¹ having his superior hit on Biggley’s girlfriend so that the superior is sent to Venezuela and the way is opened for Finch’s promotion;¹² and stealing Bud Frump’s idea for a promotional treasure hunt.¹³ In a side plot, Rosemary Pilkington, a secretary in another department, flirts with Finch and tries to help him with his career.¹⁴

Meanwhile, Finch faces a number of obstacles to his promotion: Biggley’s annoying nephew, Bud Frump, who is at the company due solely to the power of nepotism¹⁵ and Biggley’s adulterous affair with Hetty LaRue, Finch’s secretary.¹⁶ The central challenge of the play involves Finch’s promotion to head of advertising, and the requirement that he come up with a brilliant idea.¹⁷ When no idea materializes, Finch steals Frump’s idea for a televised treasure hunt – an idea that Biggely has rejected several times.¹⁸ Finch sells him on the idea notwithstanding the fact that Biggely hates treasure hunts by casting Hetty LaRue as the star.¹⁹ Even though the treasure hunt ends in disaster,²⁰ the quick-thinking Finch emerges triumphant and gives the entire musical a happy ending. Wally Whomper, Chairman of the Board, marries Hetty LaRue and names Finch as his successor.²¹ Finch and Rosemary’s romance blossoms.²² And even

⁸ BURROWS ET AL., *supra* note 1, at 90.

⁹ *Id.* at 51-55.

¹⁰ *Id.* at 50.

¹¹ *Id.* at 52.

¹² *Id.* at 59-61.

¹³ *Id.* at 90.

¹⁴ *Id.* at 10.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 48-49.

¹⁷ *Id.* at 83.

¹⁸ *Id.* at 90.

¹⁹ *Id.* at 111.

²⁰ *Id.* at 116.

²¹ *Id.* at 132.

Biggley, who Finch could easily have blamed for the treasure hunt debacle, keeps his job.²³ With that summary, I now turn to the issues that were raised and how the work environment has changed in the forty years since the musical was first performed.

II. “A SECRETARY IS NOT A TOY”: SEXUAL HARASSMENT

Although “How to Succeed” is a work of fiction, at the time it originally came out, audiences would likely have viewed the musical simply as a humorous portrayal of office culture during the 1950s. From the initial scene in “How to Succeed,” it is clear to the audience that women and men, in this time period, are certainly not treated equally in the workplace. Indeed, the powerful men at World Wide Wickets treat the secretaries who work for them as mere sex objects. For example, Mr. Gatch, a vice-President of the company, puts his arms around Rosemary Pilkington, and tells her, salaciously that “seeing you always brightens up my days.”²⁴ When Rosemary protests and shrugs off his advances, Mr. Gatch ruefully states, “I’ve got to stop reading Playboy.”²⁵

As another example, it is clear from the moment she walks onstage that Hedy LaRue was hired on the basis of her sex appeal, rather than her secretarial skills.²⁶ Finch discovers her lack of clerical ability when he has her take dictation and she admits that she can type, “like a jackrabbit,” but then is forced to admit that this supposed fast pace consists of “twelve words a minute.”²⁷ During the same conversation, Finch is able to discover that it is J.B. Biggley, the CEO himself, who is Hedy’s protector.²⁸ Of course, being clever, Finch is able to turn the situation to his advantage by having Hedy, the sexpot, personally deliver memos to Mr. Gatch, the lecher.²⁹ The result is that Gatch attacks Hedy, Hedy reports same to J.B. Biggely, and, suddenly, Gatch finds himself reassigned to Venezuela and Finch finds himself with Gatch’s job, which he’s been angling for all along.³⁰ In this “game” of sexual politics, no one’s feelings are hurt, and everything is just one big good-natured joke.

During one point, the secretaries themselves rebuke the executives by parading through the office and singing “A Secretary is Not a Toy,” which includes the lines:

²² *Id.*

²³ *Id.*

²⁴ *Id.* at 33.

²⁵ *Id.*

²⁶ *Id.* at 58.

²⁷ *Id.*

²⁸ *Id.* at 59.

²⁹ *Id.* at 60.

³⁰ *Id.* at 61.

A secretary is not a toy,
No, my boy; not a toy
To fondle and dandle
And playfully handle
In search of some puerile joy...

Used for play therapy
Be good to the girl you employ
Boy; ...

A secretary is not a thing
Wound by key, pulled by string.
Her pad is to write in
And not spend the night in ...
If that's what you plan to enjoy.³¹

In the movie, the song is accentuated by men slapping the secretaries dismissively on their rear ends, embracing them, and engaging in other sexual “horseplay” and innuendo.³² At another point, Hedy LaRue complains about her job to Biggely, and expresses her desire to go back to being “[h]ead cigarette girl at the Copa.”³³ Biggely, unbelieving, questions why she would want to work at the Copa (a nightclub) where strange men were making advances, and Hedy LaRue replies, “It’s no different around here in big business. At least at the Copa, when I got pinched, I got tipped. Around here a girl can’t even bend down to pick up a pencil with confidence.”³⁴

At the time that the musical was first written and performed, sexual harassment at work was not actionable. The lack of any applicable law meant that victims of

³¹ *Id.* at 37-39.

³² The point could be made that despite the horseplay, the song is, in general, rebuking men who harass secretaries at work, and Gatch is sent away to Venezuela as punishment for his inappropriate behavior. However, the only reason that Gatch is punished and demoted to Venezuela is that the last secretary he hits on is Hedy LaRue, who is under the protection of Biggely, Gatch’s boss. The message is that a male executive should not avoid sexual harassment because it is inherently wrong or damaging to a female subordinate. Rather, the musical implies, a man should avoid harassment because it is bad for his career -- it constitutes a distraction from advancement, and because the woman he is hitting on could have a lover / protector in another part of the company who could become an enemy.

³³ BURROWS ET AL., *supra* note 1, at 47.

³⁴ *Id.*

harassment had no redress, and either had to put up with the harassment, or be fired. The first court to recognize it as an action did not do so until 1976³⁵ and it was not until 1986 that the Supreme Court's decision in *Meritor Savings Bank v. Vinson*³⁶ categorically established such a cause of action under the statute.

Today, World Wide Wickets would be a hotbed of sexual harassment litigation, and the EEOC would likely be called to investigate.³⁷ Secretaries who refused men's advances for sexual favors could bring a quid pro quo action for sexual harassment, and all of the sexual comments and innuendo would bring charges of a hostile working environment.³⁸ With forty years of distance, it is widely acknowledged that sexual harassment constitutes an abuse of power and that it causes serious emotional and psychological damage.³⁹ If for no other reason than avoiding liability, companies have begun training and education measures, and have begun to take the investigation of complaints – and the need for action on the complaints – much more seriously.⁴⁰ Such measures are a far cry from the joking innuendo and horseplay that was widely tolerated, even encouraged, by the executives at World Wide Wickets.

Although there most certainly has been progress, most notably the recognition that harassment is devastating to the victim, and that it is illegal, that is not to say that the problem has been solved. Unfortunately, harassment still occurs, and the statistics show that it disproportionately affects women. In 1992, women filed over 90% of sexual harassment complaints with the EEOC.⁴¹ In 2003, the numbers were similar, with

³⁵ *Williams v. Saxbe*, 413 F. Supp. 654 (D.D.C. 1976), *rev'd on other grounds, sub nom. Williams v. Bell*, 587 F.2d 1240 (D.C. Cir. 1978).

³⁶ *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).

³⁷ 42 U.S.C. § 2000e-4 (2000).

³⁸ *See Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986) (establishing quid pro quo and hostile environment causes of action).

³⁹ CATHERINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN* (1979).

⁴⁰ *See Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998) (both holding that companies may insulate themselves from liability for sexual harassment by having policies and procedures in place to prevent incidents of harassment, investigating charges, and taking prompt corrective action).

⁴¹ *Sexual Harassment Charges, EEOC & FEPAs Combined: FY 1992-FY3003*, *available at* <http://www.eeoc.gov/stats/harass.html>.

women filing 85% of the EEOC complaints.⁴² Furthermore, statistics show that half of working women will be sexually harassed at some point during their lifetime.⁴³

In sexual harassment jurisprudence, there are two areas currently that are of major concern. First, the courts seem to be hostile toward allowing sexual harassment cases to go forward, with many cases being disposed of in the motion to dismiss or summary judgment stages.⁴⁴ As aptly described by Theresa Beiner, some of these dismissals are disturbing because, accepting the facts in the pleadings as true, they present dysfunctional workplaces that are oppressive to women.⁴⁵ Despite the courts' oft-repeated statements that the harassment is not "severe and pervasive enough" to constitute an actionable complaint, Beiner argues persuasively that many of the workplaces described in the judicial opinions would be objectively harassing to a reasonable person.⁴⁶ The federal courts, she argues, are disposing of many cases, substituting the judge's notion of a winning case in place of the jury's decision.⁴⁷

Another disturbing trend is the classification of certain allegations within a complaint as a "stay remark."⁴⁸ Even though a complaint may include a statement clearly indicative of gender bias, the court, by labeling the statement as a "stray remark," categorically

⁴² *Id.*

⁴³ Jennifer Coburn, *Sexual Harassment: Why is Society Shocked?*, available at <http://www.now.org/nnt/01-97/shocked.html> ("More than one-half of all women who work outside the home report they have been sexually harassed).

⁴⁴ See Theresa M. Beiner, *The Misuse of Summary Judgment in Hostile Environment Cases*, 34 WAKE FOREST L. REV. 71 (1999); M. Isabel Medina, *A Matter of Fact: Hostile Environments and Summary Judgments*, 8 S. CAL. REV. L. & WOMEN'S STUD. 311 (1999); Richard D. Sutton, *Comment: Suits About Nothing: Does the Seinfeld Case Indicate that Businesses Need to Reconsider the Rights of Employees Accused of Sexual Harassment*, 2 U. PA. LAB. & EMP. L. 345, 345 (1999).

⁴⁵ Theresa M. Beiner, *Let the Jury Decide: The Gap Between What Judges and Reasonable People Believe is Sexually Harassing*, 75 S. CAL. L. REV. 791 (2002).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ See Laina Rose Reinsmith, *Proving an Employer's Intent: Disparate Treatment Discrimination and the Stray Remarks Doctrine after Reeves v. Sanderson Plumbing Products*, 55 VAND. L. REV. 219, 242 (2002); Linda Hamilton Krieger, *The Content of our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161, 1183 (1995).

excludes it from evidence.⁴⁹ For example, in *Heim v. Utah*,⁵⁰ the Tenth Circuit held that a supervisor's comment "'F---ing women, I hate having f---ing women in the office,'" constituted only "circumstantial or indirect evidence," leaving the plaintiff to fail the pretext portion of the *McDonnell Douglas* test.⁵¹ A result-oriented court can decide to classify a statement as a "stray remark" because a non-decisionmaker made the statement;⁵² because the remark was made after the negative employment decision was already made; because the remark was unrelated to the employment decision;⁵³ or because the court decides that the remark is essentially "de minimus" and therefore would have played no role in the negative employment decision.⁵⁴ Doing so completely excludes the statement and may result in a grant of summary judgment. Remarks that are so revealing of gender animus should not be excluded in a case that is, ultimately about gender animus. It should be the purview of the jury to determine the weight to give the evidence.⁵⁵

Disposing of complaints either because they fail to meet an extraordinarily high standard of what constitutes "severe and pervasive" or classifying some of the statements and allegations in the complaint as "stray remarks" so as to dismiss the complaint on the papers is both disingenuous and manipulative. Whether the judge thinks that the lawsuit

⁴⁹ See *Montgomery v. J.R. Simplot Co.*, 916 F. Supp. 1033, 1039-40 (D. Or. 1994) (holding that supervisor's comments that plaintiff was a "bitch" and was "taking a job away from a man that could do the job and that she belonged in the kitchen or the bedroom" were stray remarks made by nonmanagement personnel). "At best, Plaintiff has established that [her supervisor] disliked Plaintiff, at least in part because she was a woman working as a truck driver, and that he expressed such dislike in an offensive manner on two occasions in 1991." *Id.* at 1040.

⁵⁰ 8 F.3d 1541, 1546 (10th Cir. 1993).

⁵¹ *Id.* at 1546-47. The Court went on to state that "[a]lthough the remark . . . was certainly inappropriate and boorish, it was on its face a statement of . . . personal opinion. The evidence does not show [the supervisor] acted with discriminatory intent, only that he unprofessionally offered his private negative view of women during a display of bad temper at work." *Id.* at 1547.

⁵² *Delaski v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 65 Fed. Appx. 368, 372-73 (3d Cir. 2002).

⁵³ *Matthews v. Perry*, 996 F. Supp. 503, 515-16 (E.D. Va. 1997).

⁵⁴ See *Shockley v. Wicomico County*, 2004 U.S. Dist. LEXIS 10833 * 14-15, 21-22 (Jun. 10, 2004).

⁵⁵ See *Beiner*, *supra* note 44 at 74-75; *Beiner*, *supra* note 45 at 820-21, 844; *Medina*, *supra* note 44 at 317, 358-62.

will ultimately succeed on the merits at trial, that decision should be left until trial, to be decided by a jury. The judge's role is to screen out cases that, assuming all the facts to be true, fail to state a claim. The hostility to sexual harassment lawsuits may be the product of courts that are overburdened and need to dismiss cases, or perhaps may be the product of courts that ideologically opposed to such lawsuits. But whatever the cause, the ultimate result is the same – many who are sexually harassed are not able to have their cases heard.

III. “THIS NOBLE BROTHERHOOD OF MAN”: SEX SEGREGATION IN THE WORK FORCE

In the musical, all of the executives at World Wide Wickets are men, and all the women who work there are secretaries. There is no discussion of a female executive: she simply does not exist. Even the highest-ranking of the secretaries, Miss Jones, who achieved her position through competence and merit, stands no chance of achieving the title of executive, because she is female. As for a male secretary, at World Wide Wickets, the thought is unimaginable. During the finale, the executives (joined by only one woman, Miss Jones) sing a song that bridges all of the differences and tensions between Finch, Frump, Bigeley, and Whomper. The song is entitled, “This Noble Brotherhood of Man,” and the sheer masculinity of this title underscores the absolute sex segregation that is present. In the World Wide Wickets worldview, biology truly is destiny.

Although such an extreme, rigid, and explicit system of prescribed gender roles would be illegal today under Title VII, an overwhelming system of sex segregation in the workforce continues.⁵⁶ An EEOC study reported that while women represented 51.7 percent of professional workers and 45.9 percent of technical workers, the three categories with the highest concentration of women were clerical, service, and sales workers, where women comprised 80.3, 57.7 and 56.4 percent of the workforce, respectively.⁵⁷ This tendency toward occupational segregation is typically referred to as the “pink collar ghetto,” that is, the concentration of women in certain lower-paid, lower-status workplace positions.⁵⁸ If women tend to move into a position, they are paid less and the entire status of the position starts to decline.⁵⁹

⁵⁶ See U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N, GLASS CEILINGS: THE STATUS OF WOMEN AS OFFICIALS AND MANAGERS IN THE PRIVATE SECTOR *available at* <http://www.eeoc.gov/stats/reports/glassceiling/index.html> (last viewed Aug. 23, 2004).

⁵⁷ *Id.*

⁵⁸ See, e.g. Christine Jolls, *Accommodation Mandates*, 53 STAN. L. REV. 223, 292 tbl.3 (2000) (listing many occupational fields that were over 95% male, including many mechanical and blue collar jobs, and seven occupational fields, including receptionists, secretaries, and childcare workers that were over 95% female).

⁵⁹ [Insert sources here]

At other times, women performing the same or similar work as men are paid significantly less. A study by the United States General Accounting Office found that “[w]hen [the GAO] account[s] for difference between male and female work patterns as well as other key factors, women earned, on average, 80 percent of what men earned in 2000 Even after accounting for key factors that affect earnings, our model could not explain all of the difference in earnings between men and women.”⁶⁰ Although Title VII and the Equal Pay Act were supposed to equalize the terms and conditions of employment, they have left the sex-segregated nature of work mostly intact.⁶¹

Looking at it from a purely law and economics perspective, this continued gender segregation is odd. If a position is higher paid, and higher status, one would expect women, as rational economic actors, to choose the highest paying positions. The problem with the standard law and economics analysis is that gender stereotyping and discrimination trumps the market. Not only are there barriers to entry, but stereotypes result in a system that continually pushes women toward certain types of (lower paying) jobs, and men toward certain types of (higher paying) jobs. One commentator has suggested that women may be choosing female-dominated, or at the very least, gender integrated workplaces because women assume that these types of workplaces will engender the least harassment and discrimination.⁶²

The musical illustrates class differences as well: the secretaries apparently scrape by, living on their own in the city on their meager pay, while the powerful men in the company are making much higher salaries. For the women, “success,” economic or otherwise, has nothing to do with being promoted within the company. Instead, their entire aim is to find a man who can be a good provider, and quit working.⁶³ The goal is not to rise in the company – and who can really blame them? There is no position at World Wide Wickets suitable for an ambitious woman who wants a fulfilling career. All of the “girls”⁶⁴ in the secretarial pool are apparently single and seeking husbands, except for the spinsterish Miss Jones.⁶⁵

⁶⁰ GEN. ACCOUNTING OFFICE, WOMEN’S EARNINGS: WORK PATTERNS PARTIALLY EXPLAIN DIFFERENCE BETWEEN MEN’S AND WOMEN’S EARNINGS 2 (2003), *available at* <http://www.gao.gov/new.items/d0435.pdf> (last viewed Aug. 23, 2004).

⁶¹ Lisa Catanzarite, Wage Penalties in Brown-Collar Occupations, LATINO POLICY & ISSUES BRIEF, No. 8, September 2003, *available at* http://www.chicano.ucla.edu/press/siteart/LPIB_08Sept2003.pdf

⁶² Scott A. Moss, *Women Choosing Diverse Workplaces: A Rationale Preference with Disturbing Implications for Occupational Segregation and Economic Analysis of Law*, 27 HARV. WOMEN’S L.J. 1 (2004).

⁶³ BURROWS ET AL., *supra* note 1 at 88.

⁶⁴ “Girls” is still consistently used to describe women workers in a dismissive fashion. The term should only be used to refer to females under the age of eighteen.

⁶⁵ BURROWS ET AL., *supra* note 1 at 88.

This view of women as only working temporarily is still an active stereotype. Single women were seen as temporarily single – going from a father’s protection to that of a husband’s – and working in the paid labor force was mostly seen as transient status until a husband’s financial support could be found. Women’s work has historically been lower-paid, in part based upon the idea that a single woman’s wages would only be squandered on extravagances. On the other hand, men’s much higher wages were justified and reinforced by the idea of the “family wage,” that is, the need for a man to make more money so that he could support his wife and children. Of course, this was a gross misstatement of reality for many working women, who often times did have a family to support. Worse yet, it was almost always a misstatement for women of color, who had to help work to support their families since minority men were so often excluded from well-paying employment, and who, statistics have shown, earn less on average than other groups.⁶⁶

IV. KEY TO THE EXECUTIVE WASHROOM: THE GLASS CEILING

In “How to Succeed,” the existing power structure will not allow women to advance into the executive ranks. Although today there are many women executives, there still is the problem of the glass ceiling, an invisible barrier that blocks women from rising to the highest levels within their companies.

Indeed, the statistics available reveal a grim truth about the lack of women’s progress in top business positions. In 2004, only eight of the CEOs of Fortune 500 companies are women, up from 1 in 1995.⁶⁷ In 2002, women held 15.7% of the corporate officer positions in Fortune 500 companies and 9.9% of the line-corporate officer jobs.⁶⁸ According to the 1995 fact finding report of the Federal Glass Ceiling Commission, “over the last decade, 95 to 97 percent of senior managers – vice presidents and above – [of Fortune 1500 companies] were men.”⁶⁹ A 1993 study found that 16 percent of the men but only 2 percent of the women from the Stanford University Business School class of 1982 were CEOs, chairmen, or presidents of companies, 23 percent of men and 10 percent of women were vice presidents, and 15 percent of men and 8 percent of women were directors.⁷⁰ More recently, an EEOC analysis concluded that although women

⁶⁶ Deborah King, *Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology*, 14 SIGNS 42 (1988); Kimberle Crenshaw 1989 U. CHI. LEGAL F. 139.

⁶⁷ Joann S. Lublin, *Women Aspire to be Chief as Much as Men Do*, WALL ST. J., Jun. 23, 2004, at D2, available at 2004 WL-WSJ 56932719.

⁶⁸ *Id.*

⁶⁹ FED. GLASS CEILING COMM’N, GOOD FOR BUSINESS: MAKING FULL USE OF THE NATION’S HUMAN CAPITAL 12 (1995) available at <http://www.ilr.cornell.edu/library/keyWorkplaceDocuments/government/federal/Glassceilingreport.html> (last viewed Aug. 23, 2004)

⁷⁰ *Id.* at 13-14.

comprised 48 percent of the surveyed workforce, only 36.4 percent of officials and managers were women.⁷¹

In “How to Succeed,” the glass ceiling is most evident in a somewhat strange place – the men’s restroom, also known as the “executive washroom.” In this inner sanctum of male privilege, the executives gather to use the water closet, brush their hair, straighten their ties, sing about competition in the workforce, and plot their advancement up the corporate ladder. While some of the executives, including Frump, sing “Gotta stop that man / or he’ll stop me,”⁷² Finch, to boost his confidence, sings to his reflection in the washroom mirror “I believe in you.”⁷³ In “How to Succeed,” the executive washroom symbolizes a place where women simply cannot enter.⁷⁴

Unfortunately, the glass ceiling issue is still a serious problem, and that is certainly true within the legal profession. Despite an increasing number of women law students, large law firms are still overwhelmingly male-dominated and hierarchical places in which to work.⁷⁵ The fact that women lawyers constitute such small percentages of large law firm partners continues to be a source of question and concern.⁷⁶

What accounts for the continuing small numbers of women in high level executive positions? Unfortunately, it is only possible to answer this question with more questions. Is it sex stereotyping, of the type that Ann Hopkins faced, where she was criticized for

⁷¹ E.E.O.C., GLASS CEILINGS: THE STATUS OF WOMEN AS OFFICIALS AND MANAGERS IN THE PRIVATE SECTOR, available at <http://www.eeoc.gov/stats/reports/glassceiling/index.html> (last viewed Sept. 20, 2004).

⁷² BURROWS ET AL., *supra* note 1 at 101.

⁷³ *Id.* at 102.

⁷⁴ I have written before about the pervasiveness of gender difference arguments in part based on the absence, or presence of bathrooms. See Miriam A. Cherry, *Exercising the Right to Public Accommodations: The Debate Over Single Sex Health Clubs*, 52 ME. L. REV. 97, 142 (2000).

⁷⁵ Deborah L. Rhode, *Myths of Meritocracy*, 65 FORDHAM L. REV. 585, 592-93 (1996) (documenting sweatshop hours and continuing stereotypes about women that contribute to exclusion of women in partnership positions in large law firms).

⁷⁶ See, e.g. Cynthia Fuchs Epstein, *Women in the Legal Profession at the Turn of the Twenty-First Century: Assessing Glass Ceilings and Open Doors*, 49 KAN. L. REV. 733 (2001); Mark S. Kende, *Shattering the Glass Ceiling: A Legal Theory for Attacking Discrimination Against Women Partners*, 46 HASTINGS L.J. 17 (1994); S. Elizabeth Foster, *Comment: The Glass Ceiling in the Legal Profession: Why Do Law Firms Still Have So Few Female Partners?*, 42 UCLA L. REV. 1631 (1995) (analyzing singular career path as factor preventing women from attaining partnership status, and also analyzing prominent cases); MONA HARRINGTON, *WOMEN LAWYERS* (1995) (discussing career paths of women lawyers as told in first-person accounts, as well as barriers left to overcome).

not being “feminine” enough?⁷⁷ Is it a question of “choice,” leading many women to sacrifice career progress for more time with their families? Alternately, is it “lookism,” which results in differential hiring and promotion?⁷⁸ Is it that certain workplaces are devoid of the “ethic of care” described in Carol Gilligan’s work?⁷⁹ Is it the fact that many large corporations are generally dysfunctional workplaces, but that the dysfunction has a disparate impact on women? Are men usually promoted because of the “good old boy network” or their focus on making contacts and business connections? Or are there still other factors that also play into the answer to the question?⁸⁰

Some commentators have suggested that the only way to shatter glass ceilings is to have an absolute commitment to diversity in the workforce, to eliminate sexual harassment categorically,⁸¹ to eliminate the use of sex stereotypes,⁸² and to modify the Family and Medical Leave Act⁸³ so that it includes paid leave for both women and men who take time off to care for new children.⁸⁴

⁷⁷ Price Waterhouse v. Hopkins, 490 U.S. 228 (1989).

⁷⁸ M. Neil Browne & Andrea Giampetro-Meyer, *Many Paths to Justice: The Glass Ceiling, The Looking Glass, and Strategies for Getting to the Other Side*, 21 HOFSTRA LAB. & EMP. L.J. 61, 65 (2003).

⁷⁹ CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT* (1983).

⁸⁰ For one alternative view, see Kingsley R. Browne, *Sex and Temperament in Modern Society: A Darwinian View of the Glass Ceiling and the Gender Gap*, 37 ARIZ. L. REV. 971 (1995). Browne apparently attributes differences in work performance to men’s “innate” or “evolutionary” ability to take risks and be more ambitious than women. Even though Browne admits “this sounds terribly sexist to some,” *id.* at 981, the article does nothing to avoid being sexist. Rather, it revels in the stereotypes, generalizations, and “ancient canards” that have traditionally been used to subordinate women and deny women rights. Furthermore, Darwinian justifications for human social disparities are rife with scientific difficulty and historically have justified a number of repulsive practices.

⁸¹ Larry Lovoy, *A Historical Survey of the Glass Ceiling and the Double Bind Faced by Women in the Workplace: Options for Avoidance*, 25 LAW & PSYCHOL. REV. 179, 199 (2001) (suggesting elimination of harassment, as well as an ombuds office to ameliorate gender discrimination in the workforce).

⁸² Diane L. Bridge, *The Glass Ceiling and Sexual Stereotyping: Historical and Legal Perspectives of Women in the Workplace*, 4 VA. J. SOC. POL’Y & L. 581 (1997).

⁸³ 29 U.S.C. §§ 2601-54 (2000).

⁸⁴ Jeremy I. Bohrer, *You, Me, and the Consequences of Family: How Federal Employment Law Prevents the Shattering of the ‘Glass Ceiling,’* 50 WASH. U. J. URB. & CONTEMP. L. 401, 421 (1996).

V. KEEPING HIS DINNER WARM: STEREOTYPES ABOUT WOMEN WORKERS

Finch's love interest, Rosemary, reinforces the dominant gender stereotype that women are in the workforce only because they are not yet married. In "Helping to Keep his Dinner Warm," Rosemary sings about her hopes for the future, which include a house in an expensive suburb of New York City, and "keeping the dinner warm" for Finch, her imagined husband, her "darling tycoon."⁸⁵ With some measure of irony, Rosemary sings about the long nights at home alone that she is sure to face as the wife of a successful businessman.⁸⁶ Although throughout the musical, and the movie, Rosemary seems to want Finch's attention, to have her ideas taken seriously, and to have a relationship that is also a friendship with Finch, the life she is singing about is one based on his status and perceived financial position.⁸⁷ Rosemary senses that Finch is someone who is going places⁸⁸ – had he stayed in his position as a window washer at Wickets, it is doubtful whether she would give him a chance romantically.

At another point in the musical, Smitty, another secretary, gives Rosemary advice about Finch. Rosemary, upset that Finch is ignoring her, is almost ready to quit World Wide Wickets – and almost ready to stop dating Finch.⁸⁹ Smitty tells Rosemary that she cannot drop Finch, as she is the pride of the entire secretarial staff.⁹⁰ Like Cinderella, her prince (Finch) is going to take care of her and enable her to stop working.⁹¹ As the "girls" in the secretarial pool sing: "Why spoil our enjoyment / You're the fable / The symbol / of glorified unemployment."⁹² She cannot abandon Finch simply because he is ignoring her.⁹³ After Smitty's plea on behalf of Finch, Rosemary decides that she will stick with Finch after all. He does not even notice that she had been angry with him at any point, as he is too busy plotting his career ambitions.

⁸⁵ BURROWS ET AL., *supra* note 1 at 11.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.* at 88.

⁹³ *Id.*

The “Cinderella myth” that Smitty sings about is accepted unquestioningly in the musical. However, it is a problem that has seriously troubled feminists.⁹⁴ Dominant culture tells women that they are helpless and needy, and should be in search of a “prince” who will solve their problems. Women who believe this myth may fixate on trying to live up to unrealistic beauty standards⁹⁵ instead of concentrating on careers or contributing to society. Even more damaging is that the myth makes it seem that for all women, work is just “temporary,” when for many women, their careers are extremely important.

VI. CONCLUSION

After analyzing my reaction to “How to Succeed” I have realized that the discomfort I felt while viewing the movie was really a testament to the societal and legal changes that women have made toward equality during the past forty years. The modern day staging of the musical, which left everything from the time before Title VII untouched, was horribly dated. In the forty years that have elapsed, larger societal and workplace behaviors have changed. Although some group of people probably always believed it was wrong to exploit subordinates sexually, that norm has now officially been enshrined in the law. Women no longer have to accept the “boys will be boys” attitude at evidence in the musical. Further, women have made tremendous advances in terms of entering male-dominated professions. The progress that has been made has surely been in large part due to the enforcement of Title VII and the protections granted thereunder.

At the same time, Title VII has not been the panacea for women in the labor force that many hoped it would be. Today, women are still far disproportionately susceptible to being sexually exploited and harassed in the workplace. Disturbing numbers of women are still segregated or tracked into traditional “pink collar” ghettos, and many of the women who do break into male-dominated professions are denied advancement when they find themselves up against glass ceilings. All of these problems are real, and unfortunately still exist. As Title VII has proven itself to be a malleable and extremely useful piece of legislation in the last forty years, here is to hoping for its continued success in business during the next forty.

⁹⁴ COLETTE DOWLING, *THE CINDERELLA COMPLEX: WOMEN’S HIDDEN FEAR OF INDEPENDENCE* (1990).

⁹⁵ NAOMI WOLF, *THE BEAUTY MYTH: HOW IMAGES OF BEAUTY ARE USED AGAINST WOMEN* (2002).