Sexual Discrimination in the Workplace:
Allison Schieffelin and Morgan Stanley

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Executive Summary

No one likes to feel discriminated against but, unfortunately, most people can point to at least one instance in their life when they have felt that someone unrightfully kept them from something simply because of who they are or where they are from. Business organizations must be especially mindful to ensure that they do not discriminate against people for non-job-related reasons. It is true, however, that every business must discriminate in one form or fashion. If you have a single job opening and ten qualified applicants, nine of those applicants *will* be discriminated against. The duty for businesses is to ensure that those nine individuals are not discriminated against for reasons unrelated to the job.

The case of Allison Schieffelin and Morgan Stanley—the stalwart investment bank—is one that involves discrimination against an upper-level female employee regarding a potential promotion to the position of Managing Director. A basic timeline of the case is as follows:

- November 1998: Allison Schieffelin files a complaint with the Equal Employment Opportunity Commission (EEOC) stating that Morgan Stanley, as a company, paid women less than men and limited their professional opportunities and promotions.
- June 2000: the EEOC finds that there is significant evidence that Morgan Stanley engaged in a "pattern and practice" of discrimination against women.
- October 2000: Morgan Stanley fires Schieffelin, citing insubordination and inappropriate conduct at the workplace.
- September 10, 2001: the EEOC files a sex discrimination lawsuit against Morgan Stanley.
- July 7, 2004: Trial is slated to start after several attempts to negotiate a settlement fail. It would be the first gender-bias case against a Wall Street firm to make it to trial.
- July 9, 2004: After a slight delay, a mostly female jury is selected.
- July 12, 2004: $54 million settlement between the EEOC and Morgan Stanley is announced (Mason-Draffen 2004).

The out-of-court settlement of the case requires that Morgan Stanley set up a special fund to pay for ongoing management training for gender-sensitivity issues that will be overseen by an outside monitor. The monitor will be Paul Shechtman, a partner with the law firm of Stillman & Friedman in New York and former chief of the criminal division of the U.S. Attorney's Office for the Southern District of New York. Mr. Shechtman will issue a report on the progress of the firm and their compliance with the consent decree at least once a year and copies will be distributed to both Morgan Stanley and the EEOC (Kelly, et. al. 2004). As part of the deal, Morgan Stanley denied any wrongdoing and said it has always treated women fairly and equitably (Appleson 2004).

The Crisis

After Ms. Schieffelin filed her claim with the EEOC, the federal agency began investigating Morgan Stanley for discrimination in regards to how the company compensates their female employees as compared to their male counterparts. Ms. Schieffelin claims that Morgan Stanley's decision not to promote her to the position of Managing Director was the direct result of the firm's systematic sex discrimination practices. She also claims that the firm told her directly that she would "never" be promoted to the position she coveted (Gasparino 1999). In fact, very few employees ever are (Ackman 2004). The charges have led to increased scrutiny of hiring and promotion practices at the firm according to court documents available to the public. At the time of Ms. Schieffelin's complaint, she reportedly was being paid in excess of $1.3 million per year as a salesperson in the firm's institutional-equities group. If she were appointed to the position of Managing Director, however, she could make anywhere from $2 million to $5 million annually (Gasparino 1999). In fact, some people view the fact that some Wall Street women are so handsomely compensated that the money acts as a "golden muzzle," effectively keeping them from pushing too hard for what they see as desirable career goals (McGoldrick, et. al. 1985).

In October of 2000, Morgan Stanley fired Ms. Schieffelin. Evidently, the situation reached a crucial stress point in late September when settlement talks between Morgan Stanley and the EEOC broke down. According to Ms. Schieffelin, that is when her immediate supervisor—Gay Ebers-Franckowiack—increased her level of harassment. According to the firm, the decision to sever their working relationship with Ms. Schieffelin was finalized when the two women had a verbal altercation on the trading desk (Gasparino 2000). Ms. Schieffelin said she was "shocked" by the reason given her regarding her termination, citing the fact that such outbursts are common on the "rough-and-tumble" trading floor (Gasparino 2001).

On September 10, 2001 the EEOC filed charges in federal court in New York City on behalf of women employees at Morgan Stanley alleging sexual discrimination. The case was delayed for a significant amount of time following the terrorist attacks on the World Trade Center on September 11, 2001; many documents relating to the case were destroyed when the two buildings collapsed. The case was unusual in that it contrasted with similar cases alleging unequal pay and promotional opportunities bought against Merrill Lynch and CitiGroup's Smith Barney unit in recent years (Ackman 2004).

Past cases brought against brokerage firms have been filed by female support staff or stockbrokers. The Morgan Stanley case, however, is on behalf of top employees, some (including Ms. Schieffelin) with million-dollar-plus annual salaries. In her original complaint, Ms. Schieffelin said that she "hit the glass ceiling" in 1996, ten years after starting at Morgan Stanley. According to her, she was told that she was "snippy" in the way she conducted herself, while men were routinely praised for being "aggressive". Ms. Schieffelin also claims she was never offered the opportunity to attend training designed to improve her interpersonal skills. The EEOC went on to say that "Morgan Stanley made a bad situation worse by punishing her by exercising her federally protected rights" (Ackman 2004).

On July 12, 2004, Morgan Stanley and the EEOC reached a settlement agreement on the sex discrimination case involving Ms. Schieffelin and 340 other women who worked in the firm's institutional-equities division (IED) since 1995 (Appleson 2004). The deal was struck after weekend negotiations that involved the CEO of Morgan Stanley and the chairwoman of the EEOC. Under the settlement, Morgan Stanley agreed that few women were promoted to the highest levels of the firm, but denied discrimination (McClam 2004).

The settlement, which came in the form of a Consent Decree, allows for present and former female employees of the IED, who believe they were the subject of discrimination, to have the opportunity to make claims on a specially established fund of $40 million. Morgan Stanley, among other things, will appoint an internal ombudperson and an outside monitor, implement management training on the federal anti-discrimination laws, perform promotion and compensation analyses, maintain a complaint database, and implement programs to address the promotion and retention of women (U.S. Equal Employment Opportunity Commission 2004). Separately, Ms. Schieffelin (the lead plaintiff) will be paid

$12 million by the firm (McClam 2004). The settlement amount represents about two percent of the $2.45 billion in profits Morgan Stanley made in the first half of 2004 (Appleson 2004).

Context: Environment, Culture & Systems

General Summary

Morgan Stanley operates in an industry that is—unfortunately—known for its glacial movements towards sexual (and racial) equality. This historical lack of equality in the workplace has been commented upon by individuals from both within and outside the industry. In February 1985, an extraordinary document arrived on the desks of the deans of several of the nation's leading business schools with the intention of being posted upon the school's bulletin boards. The subject of this memo was a warning from women within the financial services industry to young women in college to seriously consider if they want to go to work for firms that will not reward them as well as their male counterparts (McGoldrick, et. al. 1985).

The authors of the diatribe typed the letter on company-logo-carrying letterhead but characterized it not as a communication from Goldman, Sachs & Company, but as a 'private communication' from affected women employees. The main focus of the authors was to point out that, with few exceptions, women had so far failed to achieve a sacred Wall Street goal: to be named partner or, in public firms, managing director, a promotion that usually occurred at about the ten-year mark of a career. This type of outcry, however, has been fairly rare. Some women industry veterans admit that it's awfully hard for the general public to feel sorry for people that routinely make more money than most women (or men for that matter) in other industries; even if they make less than their male counterparts. (McGoldrick, et. al. 1985).

This lack-of-action has been the subject of investigations led by several different levels of government: one such inquiry began in September of 1994. At that time the U.S. Civil Rights Commission began holding hearings to examine the record of the financial services industry. At that time the Commission found that, of the 546 managing directors employed by Merrill Lynch, just 57 were women and only 38 were black, Asian, or Hispanic. At Goldman, Sachs & Company there were just seven women and one black out of 150 partners. Around that same time period, Morgan Stanley hired a full-time consultant to work exclusively on diversity issues within the company (Spiro 1994).

At the state level, public hearings were called in late 1997 and early 1998 by New York State Attorney General Dennis Vacco. The purpose of the hearings was to investigate sex discrimination in the securities industry after several women told graphic tales of being harassed and discriminated against by Wall Street firms. The women, who sat undisguised but unidentified, testified that they had been intimidated, groped, and subjected to a variety of vulgar behavior and lewd language while on the job. One woman went on to tell of working in the municipal bond department of the now-defunct Shearson brokerage firm for 10 years without a promotion while one of her bosses pressed her to have sex with him. Judith Vladeck, an attorney who represents women in discrimination cases, said that the securities industry was the worst she had encountered in its treatment of women—less accepting than even construction companies and construction unions (Boyce, et. al. 1998).

Critics of the industry point to figures such as those reported in 2003 by the Securities Industry Association, Wall Street's main trade group, which found that the number of women working in securities firms declined over the past four years, to 37 percent in 2003 from 43 percent in 1999. During that period, however, the percentage of females working as Managing Directors rose to 19 percent from 14 percent, but this is not the entire story. The percentage of women working in all executive-management posts dropped to 17 percent from 21 percent (Kelly, et. al. 2004).

Legal Issues

The legal ramifications for industries and firms engaging in these kinds of discrimination are fairly straight-forward. The Equal Pay Act of 1963 requires that men and women be given equal pay for equal work within the same establishment. The jobs need not be identical, but they must be substantially equal. Furthermore, Title VII of the Civil Rights Act of 1964 protects individuals against employment discrimination on the bases of sex as well as race, color, national origin, and religion (U.S. Equal Employment Opportunity Commission n.d.).

Title VII specifically makes it illegal to discriminate against an employee (or an applicant for employment) in regards to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII also makes it illegal to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation (U.S. Equal Employment Opportunity Commission n.d.).

Unfortunately, the fact that the practice of discriminating against individuals on the basis of being a part of a protected class in regards to employment is illegal has not stopped these practices from being applied. As recently as 2002, one in five civil lawsuits filed in America's Federal courts centered upon harassment or discrimination. This figure may not sway many individuals in regards to their thinking on the severity of the problem but when compared to the fact that only one in 20 civil lawsuits in 1992 alleged harassment or discrimination, most people with sit-up and take notice. To combat the ever-rising tide of civil damages being paid out to individuals or parties to a class action lawsuit, more than 100 domestic insurance firms now offer Employment Practice Liability Insurance. The purpose of this product: to cover employers' legal costs, damages, and settlements resulting from lawsuits for discrimination and harassment (The Economist 2002).

Theoretical Application

Ms. Schieffelin's charge of discrimination against Morgan Stanley is representative of how determining what are fair (or unfair) practices within an organization is a very personal experience. Some would point to Ms. Schieffelin's million-dollar-plus annual salary in 1998 and ask how she could possible feel unfairly treated. Most reasonable people would readily recognize that she was probably in the top percentages of employees in the United States (or the world for that matter) in terms of her compensation package. Ms. Schieffelin, however, felt discriminated against when she was not promoted to the position of Managing Director.

Violation of Distributive Justice

Given the fact that Wall Street has been described as a "citadel of pure economics" (Ackman 2004), Deutsch's (1975) theory of equity being the dominant principle of distributive justice applies to Ms. Schieffelin situation. Accordingly, Ms. Schieffelin found herself evaluating her ratio of inputs to outcomes in relation to the ratios of those around her. Due to historical trends in the financial services industry, her social referents were probably other white male employees in the firm. These same white male employees were the traders being promoted to the position she coveted at approximately the same point in their career where she now found herself.

Ms. Scieffelin experienced a distributive injustice at the interpersonal level when she considered the outcomes of others, which were mostly men that had been promoted to the position of Managing Director. In her mind she had not gotten what she deserved because she had been a top salesperson within the firm that had but one documented case of poor workplace behavior. Ms. Schieffelin believed that, given her level of inputs, she deserved the same outcomes of her social referents that had previously been promoted.

Violation of Procedural Justice

Ms. Schieffelin's dissatisfaction with her situation was also a result of her feeling subjected to a promotion process that was unfair at the structural level. According to Leventhal (1980), Ms. Schieffelin held a cognitive map describing what she felt would be a fair process regarding her employment with Morgan Stanley. Her cognitive map probably read something like this: (1) become employed with investment bank, (2) rise to position of trader within institutional-equities department, (3) work with firm for approximately ten years, and (4) be promoted to position of Managing Director. At some point on her journey along this path, her path veered off of this map due to Morgan Stanley's actions (or lack thereof, depending on how you analyze the situation). I believe that Ms. Schieffelin felt that the process she was being subjugated to was unfair for several reasons.

First, I believe that Ms. Schieffelin felt that those tasked with making decisions about her future were not suppressing their personal biases. Historically, very few employees ever reach the upper echelons of management at financial services firms. Even fewer women, however, are ever offered the opportunity. Critics of the industry—and I believe Ms. Schieffelin herself—believe the reason fewer women than men are promoted to the post of Managing Director is due to deep-seated discriminatory feelings. Perhaps it is that women are viewed as being the "weaker" sex, or perhaps it is simply the "good ol' boys network" at work, but whatever the reason, personal biases are in place that has nothing to do with the job needing to be done.

Ms. Schieffelin began complaining about the discrimination she was facing as early as 1996 when she met with Vikram Pandit, the head of the institutional-stock division at that time. This complaint prompted Mr. Pandit to hold several dinner meetings with other women at the firm to hear their views (Gasparino, et. al. 2001). These efforts demonstrated that the firm at least wanted to listen to people voice their concerns on a superficial level. However, their inaction to correct the process is in violation of another of Leventhal's (1980) characteristics of fair procedures. Some may argue that Mr. Pandit's decision to hear complaints at all serves as an appeals process, but the fact that he did not attempt to change a process that was discriminatory violates an additional characteristic.

In general, most people would agree that it is unethical (let alone illegal) to discriminate against someone because they are a woman and Leventhal (1980) would argue that these actions do not make for fair procedures. Deciding what is ethical or unethical, much like what is fair or unfair, is a very personal experience. However, there are certain social norms that the majority of adults would agree are acceptable practices in the business world, and typically discrimination is not accepted. Ms. Schieffelin, just like the other women that joined her lawsuit, saw something wrong in how the firm treated women and viewed these actions as inherently unfair.

Tyler and Bies (1990) would argue that the actions of Morgan Stanley—when they fired Ms. Schieffelin—violated yet one more characteristic of proper decision-making processes. They argue that providing an account for a decision is important for individuals evaluating the fairness of a process. According to the firm, Ms. Schieffelin was fired after a verbal altercation with another woman who was her boss. She argues, however, that these kinds of outbursts were common on the trading floor and that she alone was punished for it. In other words, the account that the firm gave her was not valid and was not the real reason for her firing, which was because she had filed a complaint with the EEOC.

Alternatives & Intervention

Fixing the Problem

Unfortunately, any alternative to Ms. Schieffelin's situation will probably fall short of her desire: to be promoted to the position of Managing Director at Morgan Stanley. The reason for this is that the fact of the matter is very few people were promoted to this position, regardless of their sex. This shows that, at the very least, most employees are consistently denied this very lucrative position. However, I do believe that the firm could have handled her situation in a much more positive manner that would have allowed her to view the decision-making process as more fair. I believe that three of Tyler and Bies' (1990) five norms could have been more adequately enacted to improve Morgan Stanley's decision processes.

First and foremost would be the suppression of personal biases. For years Morgan Stanley specifically has systematically discriminated against women and minorities. Women who aspire to the proverbial corner office are often described as "snippy" while their male counterparts are deemed "aggressive". Managers should be encouraged, and rewarded, for implementing these policies and creating a gender-blind workplace. This could be accomplished by creating a blind selection process for promotions that would be administered by a committee made up of individuals from multiple departments and several different management levels.

Second, Morgan Stanley should improve their processes for providing timely feedback after making a decision. If, in fact, Ms. Schieffelin was appropriately termed "snippy" rather than simply aggressive, the firm should have processes in place to provide constructive feedback and help her improve her attitude. In fact, she claims that she was never offered the opportunity to attend any training designed to help her better interact with clients and co-workers. I believe that it would be reasonable for a company to wish to maximize their investment in an employee, especially when they are already paying that employee more than $1 million per year, by helping them to do their jobs better. In order to provide for this, I believe that Morgan Stanley should implement a detailed response plan for employees in crisis that includes opportunities for additional training and the possibility to be reconsidered for promotion after completing this training.

Finally, Morgan Stanley should train their executives and managers to provide better accounts and explanations for the decisions that are made. In no report issued prior to the settlement did Morgan Stanley ever provide a reasonable reason as to why Ms. Schieffelin had not been promoted to the position of Managing Director. It could be argued that the firm wanted to reserve these reasons for inclusion at trial but in a world driven by PR and the desire to spin a story it seems logical that Morgan

Stanley would want to explain their reasoning and attempt to win the case in the court of public opinion. Instead, no justification was given to either Ms. Schieffelin or the EEOC and the only incident cited when explaining her termination was a single incident on the trading floor. In order to ensure that a break-down in communication does not occur in the future, Morgan Stanley should create and implement detailed documentation procedures for the entire organization to provide accurate reasons and accounts for any actions that may be taken.

<u>Psychological Contract</u>

I believe that Ms. Schieffelin's case is a good example of the difference between a psychological contract (Robinson, et. al. 1994) between an employee and their employer and an employee's expectations. The psychological contract that existed between Morgan Stanley and Ms. Schieffelin was truly a pay-for-performance contract in that she was a commissioned salesperson that was only compensated when she entered a trade on behalf of institutional clients. Ms. Schieffelin believed that if she worked hard for the firm she would be very well rewarded. The reciprocal contract was that Morgan Stanley would continue to reward her highly if she worked hard and produced. Where the psychological contract was violated was that the two parties *understood* the potential rewards to be different things.

I believe that it is at this point where Ms. Schieffelin crosses the line from a recognized psychological contract to the realm of an *expectation* of what she deserved (Robinson, et. al 1994). An employee's expectations are grounded in what they believe should be the result of their behavior on the job. Ms. Schieffelin believed that if she were a good employee that made the firm money, she would be rewarded with the position of Managing Director somewhere around the ten-year mark of her career with the firm. She failed to consider the fact that very few employees are ever promoted to this position and refused to accept the fact that she may not be tapped as an appropriate candidate by the firm because of the arbitrarily high value she placed upon her own contributions to the firm.

Once Ms. Schieffelin's psychological contract, as well as her cognitive map, was violated by Morgan Stanley, she began to look for the reasons behind these failures. Upon further investigation she reasoned that the entire process was inherently unfair because the firm was engaging in discriminatory practices towards women. This led to her filing of a complaint with the EEOC, which in turn investigated

Morgan Stanley on a more intense level. After the investigation the EEOC found that there was "reasonable cause" to believe that Morgan Stanley had violated Ms. Schieffelin's civil rights in deciding not to promote her and that the firm had engaged in a "pattern and practice of discrimination based on gender" (Smith 2001). Morgan Stanley should have actively engaged Ms. Schieffelin and reinforced the accepted norms within the firm (and the industry) that very few employees are every promoted to a Managing Director position.

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