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Louise Marie Roth: Selling Women Short

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INTRODUCTION

Not so long ago—as recently as the mid-1980s—Wall Street was one big men’s club of smoke-filled rooms and strippers on the trading floor. Women, to the degree that they were welcome at all, were relegated to roles as secretaries and sex objects. Firms blatantly discriminated against the few women who did fight to become traders, and court cases demonstrate a long history of groping, name calling, come-ons, blocked mobility, and sexual pranks. Since then, women have made great inroads into jobs on Wall Street, and Wall Street firms have largely cleaned up their act. You would be hard-pressed to find a “boom-boom room” associated with any of the major or minor firms today.

Despite the overall improvement in the climate in these firms, since the late 1990s, three major Wall Street firms—Citigroup’s Smith Barney, Merrill Lynch, and Morgan Stanley—have each paid out more than \$100 million to resolve sex discrimination suits, even while denying that any systematic discrimination against women occurs within their walls. On April 19, 2004, for instance, a panel of arbitrators awarded \$2.2 million to Hydie Sumner, a female stockbroker and one of 2,800 women who brought a class action suit against Merrill Lynch for sex discrimination.¹ Morgan Stanley also paid a settlement of \$54 million on the eve of court proceedings in an EEOC sex discrimination case.² The lead plaintiff, Allison Schieffelin, received \$12 million, and the settlement granted another

\$2 million to diversity programs to promote the advancement of women within the firm.

Allison Schieffelin's case claimed that she and other female workers had been denied equitable pay and promotions, and had been excluded from company functions because of their gender. The EEOC investigated her charges and found evidence that less-deserving men had been promoted while Schieffelin, a high producer in international equity sales, remained in a lower-level position, and that the firm had retaliated against her when she filed complaints. Morgan Stanley's spokesperson, Ray O'Rourke, said that the firm "emphatically disagrees with the findings" and "does not practice or condone discrimination of any kind."³

By resolving these cases out of court while denying the allegations, Wall Street firms have avoided public scrutiny of their corporate culture and how gender inequality persists within it. And although the firms denied any wrongdoing—standard in such agreements, and therefore somewhat meaningless—the settlements serve as an indication that discrimination on Wall Street has shifted from blatant, socially unacceptable behavior to an endemic firm- and industry-wide discrimination against women and minorities. The question is, why? These firms, more than others, supposedly pay for performance by tying bonus amounts to revenue production—if you make a Wall Street firm a lot of money, you get a large bonus—so how is it that they get away with paying women less than similarly qualified men? And what can we learn from women on Wall Street about gender inequality more generally?

At a broad level, these are questions about the processes that lead to a well-known and much discussed outcome: gender inequality in the workplace. They're also questions about how paying workers based on performance evaluations affects equality when workers do not start out as equals and how systems established to level the playing field and to make companies transparent can do more harm than good. Understanding how gender inequality persists among similar men and women illuminates how inequality can persist even if men and women perform similarly. The rest of *Selling Women Short* explains just how this happens—how the road to continued

gender discrimination is paved with good intentions—and offers some suggestions for breaking the mold.

This book compares men and women who worked on Wall Street during the long bull market of the 1990s, when opportunities in the securities industry were abundant. In Wall Street parlance, “securities” refers to shares, options, and derivatives that corporations issue on the public financial markets. This market environment should have provided a best-case scenario for the advancement of underrepresented groups like women. Yet men and women who obtained comparable training and entered the marketplace during the same period still found themselves separated by substantial gender inequality. Within the booming financial markets of the 1990s, they reveal how an institutionalized bonus pay system, which should have been the great equalizer, had negative effects on women. The case histories discussed in subsequent chapters can also reveal the strategies of some workers to reduce or eliminate their structural disadvantage.

Women on Wall Street

Women first entered Wall Street as professionals in the mid-1970s. At that time they faced blatant discrimination: they were excluded or ejected from meetings in all-male clubs and were often told outright that they would receive less money than men. The glass ceiling blocking their promotions was more obvious, as was their clear underpayment relative to their male peers—this despite sometimes superior performance.⁴ These women had only two options: to endure compensation discrimination or to leave the profession.

This type of barefaced discrimination became less prevalent in the 1980s, largely because it clearly violated Title VII, the federal law that prohibits sex discrimination in hiring and promotion, and because the most flagrant incidences of discrimination had been attacked in court. In the early 1980s, recruiters for Goldman Sachs, for instance, asked female MBAs if they were willing to have abortions to

stay on the fast track, which violated the Pregnancy Discrimination Act (PDA) of 1978 (discrimination on the basis of pregnancy is illegal sex discrimination).⁵ A group of Stanford MBAs complained in 1984, producing a public outcry and leading to changes in the firm's interview questions. Views of women as reproductive time bombs did not completely disappear, but the most obvious discrimination on that basis has.

Legal challenges motivated Wall Street firms to develop internal policies and procedures to comply with equal employment opportunity guidelines and to address discrimination in hiring and promotion, sexual harassment, and maternity leave. At least on the surface, these firms made efforts to hire and retain qualified women.⁶ The most obvious barriers to women's success eroded in the late 1980s, when most investment banks promoted their first female managing directors and partners. But at the same time, the sex discrimination cases of the last decade imply that discrimination and a culture of sexual harassment remained defining features of the industry.

Having won court cases to institute formal policies against discrimination, by the 1990s women on Wall Street started to fight back against the male-dominated culture of the industry, filing class action suits against major securities firms. In some cases, like the infamous "boom-boom room" case against Smith Barney, these suits focused partly on verbal and physical sexual harassment.⁷ In 1995, after enduring years of put-downs, lewd remarks, sexual gestures, and practical jokes, as well as being denied promotions and access to the best accounts, three women at Smith Barney's Garden City brokerage office filed a class action suit charging the firm with sex discrimination and sexual harassment. They alleged that "the office maintained a fraternity-house culture" that was hostile and degrading to women.⁸ (The "boom-boom room" was a party room in the basement of the Garden City office where male brokers held parties that excluded women or subjected women to sexual innuendo and pranks.) The suit claimed that the firm had tolerated a hostile and discriminatory work environment, and Smith Barney settled before it went to court. While the firm accepted no culpability,

the settlement led to an overhaul of its sexual harassment and diversity policies.

A similar class action suit against Merrill Lynch focused primarily on patterns of economic disparity, although sexual harassment was also an issue.⁹ Female brokers at Merrill entered the class action suit en masse because of discrimination in wages, promotions, account distributions, and maternity leaves. They were especially concerned about the allocation of accounts from departing brokers, walk-ins, leads, and referrals, which they claimed went disproportionately to male brokers. When a panel of arbitrators awarded Hydie Sumner \$2.2 million on April 19, 2004, it was the first legal ruling to find that a Wall Street firm engaged in systematic discrimination.

In addition to these class actions, individual women also filed suits. In 1999, a former employee of J. P. Morgan sued the firm for barring her from working as a trader because of her gender.¹⁰ Around the same time, Allison Schieffelin filed her highly publicized gender discrimination lawsuit with the EEOC after she was passed over for promotion to managing director in Morgan Stanley's international equity sales division.¹¹ Morgan Stanley only reluctantly, and under duress, cooperated with the investigation. The EEOC decided to pursue the case, in their first ruling against Wall Street in over a decade. The day before the case was scheduled to go to court, on July 13, 2004, Morgan Stanley settled for a total of \$54 million.¹² The fact that these lawsuits have found some Wall Street firms liable for gender discrimination reveals that obstacles for women remain entrenched, even after past legislative actions have removed the most blatant displays of gender bias. The question remains, however, why such barriers exist and how they persist.

Equal employment legislation may have paved the way for women's entrance into the securities industry, but more than half of all employees in the industry are still white men (even when female-dominated positions like administrative assistants and sales assistants are included). The figure rises to over 70 percent among investment bankers, traders, and brokers, and to over 80 percent

among executive managers.¹³ While the number of women in professional positions has risen, and securities firms have a heightened awareness of equal employment opportunity laws, Wall Street remains a male-dominated environment. And while the most obvious forms of differential treatment have been squelched, more subtle forms of discrimination still flourish on Wall Street.

Gender Discrimination and Employment Law

Gender discrimination can take multiple forms, and employment law contains provisions for blatant and subtle forms of discrimination, sexual harassment, and pregnancy discrimination. The 1963 Equal Pay Act and Title VII of the 1964 Civil Rights Act legally protect workers from discrimination on the basis of sex in hiring, promotion, and pay.¹⁴ Title VII prohibits *disparate treatment* of applicants or employees, defined as treating workers differently based on their membership in a protected class. For example, policies that specify that only men be hired for a job in which gender is irrelevant to performance are facially discriminatory.¹⁵ Early female entrants to Wall Street faced differential treatment that clearly meets this definition of illegal sex discrimination. Clearly, there is no gender-specific requirement for jobs on Wall Street, and securities firms have eliminated facially discriminatory policies and managerial behavior to protect themselves from disparate treatment claims.

In most cases, though, direct evidence of discrimination is rare, and discrimination may take more subtle and insidious forms. Some subtle forms of discrimination are also recognized under Title VII. Since 1971, employment law has recognized discrimination when an employer may not be motivated by discriminatory intent, but uses a facially neutral employment practice that has an unjustified adverse impact on members of a protected class.¹⁶ These are cases where facially neutral practices have a *disparate impact*. Examples of practices that may be subject to a disparate impact challenge include written tests, height and weight requirements, and subjective procedures like interviews. For example, entrance exams and hiring

criteria on Wall Street were heavily biased in favor of white, heterosexual men until the late 1970s. A landmark decision against Merrill Lynch in 1976 eliminated entrance exams with questions such as, “When you fight with your wife, which of you usually wins?” and “When you meet a woman, what interests you the most about her?” (The correct answer was “her beauty,” while the fewest points were scored for “her intelligence.”) When Helen O’Bannon failed the entrance exam for its broker-trainee program in 1972, she sued for sex discrimination and won, costing the firm over \$4 million.¹⁷ Of course, disparate impact is not always as clear as in the O’Bannon case and subtle discrimination is always harder to prove than its more blatant counterpart—and therefore more common. Employers can also legally justify practices with a disparate impact on members of a protected class if the practices fulfill some “essential” or “indispensable” business necessity.

Title VII also recognizes sexual harassment as a form of illegal sex discrimination. Many of the lawsuits against Wall Street firms, most notably the boom-boom room case, involved sexual harassment claims.¹⁸ Sexual harassment may take the form of a *quid pro quo*, in which submission to unwelcome sexual advances or requests for sexual favors is made a condition of an individual’s employment or is used as a basis for employment decisions. It may also take the form of a hostile work environment, in which repeated put-downs and come-ons have the purpose or effect of unreasonably interfering with an individual’s work performance or create an intimidating, hostile, or offensive work environment.¹⁹ This type of hostile work environment was at the heart of the boom-boom room case against Smith Barney. But while courts have decided some high-profile sexual harassment cases in favor of plaintiffs, they decide the majority of cases in favor of employers. Sexual harassment is notoriously difficult to prove, and most workers who suffer from it never bring attention to their experiences.²⁰

But here’s the catch to all of these protections, the catch that rests at the heart of this book: Existing employment laws are based on principles of equal treatment and are written to be gender neutral, and these laws assume that the sexes are “similarly situated”

and, therefore, that men and women should be treated the same.²¹ This belies the fact that there are situations in which men and women are differently situated, pregnancy being the most obvious example.²² When men and women are differently situated, treating them the same may have an adverse impact on women. At the same time, differential treatment in cases where men and women are differently situated is often not viewed as discrimination and not actionable. As a result, gender-neutral laws guaranteeing equal protection have failed to produce gender-equal outcomes in most employment settings. This may also be a consequence of the fact that subtle forms of discrimination are difficult to demonstrate and address through the legal system, and definitions of some types of discrimination like sexual harassment are widely variable.²³ Subtle discrimination typically occurs through unconscious preferences and prejudices that most people have, but of which they are unaware.²⁴ These preferences and prejudices influence how they perceive other people, their competencies, and their performance at various tasks. On Wall Street, these unconscious considerations are particularly important because pay is awarded on the basis of performance evaluations.

On Wall Street, most widespread, blatant discrimination has largely disappeared, and certainly firms have removed any official (or unofficial) sanction from such behavior. Instead, in the face of numerous lawsuits, they have instituted programs that seek to treat men and women the same—gender-neutral practices that reward employees based on performance and apparently objective measures. Given that men and women started in different positions relative to one another, these practices only contribute to the gap. And the objective measures, which often turn out to be subjective perceptions, only contribute to the ongoing problem.

The problem is surprisingly large. Few will be surprised that there was still gender inequality in pay on Wall Street in the late 1990s; that women are generally underpaid for similar work now seems a truism of employment in the United States. What is astonishing is the degree of inequality between men and women who were similar in their background and work-related characteristics,

who worked in similar positions in similar organizations, and who experienced the same market conditions in the formative years of their careers. While explanations for gender differences in pay often highlight differences in education, work experience, and other productivity-related characteristics, I found that pay inequality on Wall Street was dramatic even for men and women with identical qualifications who had been in the pipeline for the same amount of time.²⁵ My findings reveal the mechanics of subtle forms of discrimination and how they operate through interpersonal and organizational dynamics in Wall Street firms.

The Study

To understand the dynamics of gender inequality on Wall Street, I examined the career histories of a three-year cohort of elite MBA graduates who started in top Wall Street firms in the early 1990s. Surely, if any women were going to excel and keep up with their male counterparts, they were going to be from this group. Experiences of inequality occur in particular historical, legal, organizational, and market contexts such that every cohort encounters a unique configuration of forces.²⁶ Men and women from the same cohort, therefore, would be subject to the same market cycles, changes in employment law, and organizational policy initiatives. Every new group in the securities industry shares certain opportunities and constraints and is influenced by the changing legal and market environment that it encounters at the dawn of its career.

The men and women I interviewed, who graduated in 1991, 1992, and 1993, were similar in their background and work-related characteristics, worked in similar positions in similar organizations, and experienced the same market conditions in the formative years of their careers. They began their careers a few years before Wall Street's longest bull market in history—the period when traders were making bucketfuls of money. I interviewed them in 1998 and early 1999, just before the market peaked in the spring of 2000, and captured their entire career histories from before the time they

completed their MBAs in the early 1990s. I was able to analyze compensation outcomes and the processes leading to those outcomes.²⁷ I also included those who had left finance so that I could analyze their reasons for leaving Wall Street. These experiences yielded important information about the processes of gender inequality in securities firms. The career histories of this strategically placed group shed light on general processes that produce gender inequality within jobs, especially in settings where pay is based on performance evaluations. Because they faced widening opportunities in the 1990s, their experiences revealed how gender inequality within jobs can persist despite market pressures *against* discrimination.

Selling Women Short focuses on the subtle, structural discrimination that occurs through performance evaluations. It illustrates the operations of structural discrimination, which does not rest on individual acts of meanness, in which some people consciously limit the opportunities of women, but on the interpersonal and organizational dynamics that subtly and often unintentionally re-create inequality. This discrimination is embedded in the unconscious and the subjective masquerading as an objective measure of performance.

On Wall Street, these interpersonal and organizational dynamics occur through a bonus system where pay supposedly reflects performance. Despite a supposed basis in individual merit, this variable pay system not only coexists with gender inequality between workers in the same jobs, it can even help reproduce this inequality. I use my findings to delve beneath the surface of Wall Street's meritocracy to reveal how opportunity is institutionally structured, and to show the gendered and gender-neutral forces that structure—and obscure—the career paths of modern workplaces.