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# FROM LEGALLY BLONDE TO MISS CONGENIALITY: THE FEMININITY CONUNDRUM

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## I. INTRODUCTION

“To Thine Own Self Be True”<sup>1</sup>

Modern movies that present career women as heroines reflect the conundrum women face regarding the extent to which they should—or should not—display their femininity in the career world.<sup>2</sup> But these movies often inadequately identify the legal solutions available. Because movies indirectly impact society, moviemakers contribute to the perpetuation of gender inequality in the career world by sending mixed messages about femininity in the workplace and by insinuating that the heroine has no choice but to comply with her employer’s expectations regarding her femininity. While in the real world there are legal solutions for women who face such discrimination, moviemakers tend to ignore this possibility. Two popular movies, *Legally Blonde* and *Miss Congeniality*, illustrate how the influence of the gender stereotypes incorporated into such popular movies serves as a blockade along the route to gender equality.<sup>3</sup>

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<sup>1</sup> WILLIAM SHAKESPEARE, *HAMLET* 45 (Barbara A. Mowat & Paul Werstine, eds., Washington Square Press 1992).

<sup>2</sup> The definition of “femininity” is somewhat elusive. Each person has her own notion of what it means to be feminine. See *supra* Part II.B. Webster defines “feminine” as “characteristic of or appropriate or unique to women.” MERRIAM-WEBSTER ONLINE DICTIONARY (2005), <http://www.m-w.com/dictionary/feminine>. Some authors instead consider femininity to deal more with stereotypes than with “being a woman.” DAVID GAUNTLETT, *MEDIA, GENDER AND IDENTITY: AN INTRODUCTION* 9-10 (2002). Femininity, as it is used in this Article, means a woman who displays stereotypical feminine traits; femininity necessarily includes an element of sexuality.

<sup>3</sup> Cf. Miriam Cherry, *How to Succeed in Business Without Really Trying (Cases): Gender Stereotypes and Sexual Harassment Since the Passage of Title VII*, 22 *HOFSTRA LAB. & EMP. L.J.* 533 (2005) (noting how a revival of a pre-Civil Rights Act of 1964 musical “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”); Diane Klein, *Ally McBeal and Her Sisters: A Quantitative and Qualitative Analysis of Representations of Women Lawyers on Prime Time Television*, 18 *LOY. L.A. ENT. L.J.* 259 (1998) (stating that “television art imitates life” in her analysis of the “representational inaccuracies” of television’s female attorneys).

In *Legally Blonde*, the ultra-feminine heroine, Elle Woods, is a Harvard law student. Elle is sexually harassed at her job as a law clerk—presumably because she is too feminine.<sup>4</sup> Conversely, in *Miss Congeniality*, the heroine, Gracie Hart, is a not-so-feminine FBI agent. Gracie is considered not feminine enough for her job when the FBI determines it needs an agent to pose as a beauty-pageant contestant for an undercover operation.<sup>5</sup> Both movies present the same solution: the heroine changes to conform to her employer's expectations. The pink-wearing, lipstick-loving, perfectly fashionable law student in *Legally Blonde* becomes a dull, dreary graduate with minimal make-up, and a conventional, conservative style of dress,<sup>6</sup> and the rough, tough, almost-masculine FBI agent in *Miss Congeniality* is transformed into a pretty and sweet-natured poster-girl for the FBI.<sup>7</sup>

While being cast as heroines in blockbuster films in which women are successful in traditionally masculine occupations should be considered a significant advance in the status of women,<sup>8</sup> especially when compared to the roles women played in pre-Title VII cinematography,<sup>9</sup> the movie industry is sending the message that women have to change who they are in order to be successful in these careers. This is the wrong message.<sup>10</sup>

Title VII provides a remedy for women who face discrimination based on stereotypes at work, and it does not involve having to suppress—or concoct—femininity in order to conform to stereotypical ideas. Instead, the goal of Title VII is to nullify such reliance on stereotypes.<sup>11</sup> The heroines in *Legally Blonde* and

<sup>4</sup> LEGALLY BLONDE (MGM Studios 2001). For more on the plot of *Legally Blonde*, see *infra* Part IV.A.

<sup>5</sup> MISS CONGENIALITY (Warner Studios 2000). For more on the plot of *Miss Congeniality*, see *infra* Part IV.B.

<sup>6</sup> She does, however, still have on feminine shoes; they are not, however, quite as ostentatious or pink as the shoes she wore at the beginning of her law school experience. Of course, by the time Hollywood made *Legally Blonde 2*, Elle Woods was back once again to her fabulous feminine self. LEGALLY BLONDE 2: RED, WHITE & BLONDE (MGM Studios 2003). Unfortunately, she again encountered difficulty on the job due to her feminine style. *Id.*

<sup>7</sup> See MISS CONGENIALITY 2: ARMED AND FABULOUS (Warner Bros. Ent. Inc. 2005) (casting Gracie Hart as the new “face of the FBI”).

<sup>8</sup> While the focus of this article is women working in male-dominated professions, the Author acknowledges that women face similar obstacles in occupations that would traditionally be considered female-dominated. See Beverly McPhail, *Setting the Record Straight: Social Work is Not a Female-Dominated Profession*, 49 SOCIAL WORK 323 (2004) (noting that while “[s]ocial work is often described as a female-dominated” profession, “having a numerical majority does not automatically translate into having power or control”).

<sup>9</sup> See Jane Sherron De Hart, *The New Feminism and the Dynamics of Social Change*, in LINDA K. KERBER & JANE SHERRON DE HART, WOMEN'S AMERICA 539, 543 (4th ed. Oxford Univ. Press 1995) (“[T]he heroines hawked by Hollywood in the 1950s fell into two categories: sex objects and wives.”).

<sup>10</sup> See, e.g., Lisa Bradshaw, *Making Waves*, NERVY GIRL! (2000), <http://eminism.org/publication/nervy-waves.html> (“[L]egal changes are needed to allow . . . authenticity, because ‘when women are discriminated against they can’t be authentic at work or in their families.’” (quoting Emi Koyama, founder of the third-wave action group “Feminist Conspiracy”).

<sup>11</sup> Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17 (2000) (prohibiting making employment decisions on the basis of race, color, religion, sex, or national origin); see also *Griggs v.*

*Miss Congeniality* should not have had to change in order to fit into previously masculine work roles; instead, they should have been true to themselves and required their employers to conform to the requirements of Title VII.<sup>12</sup>

Part II of this Article addresses the history of the feminine ideal and examines how that ideal has shaped gender-role expectations in the modern workplace. Part III explains where movies fit into the Title VII picture and how something as seemingly innocuous as a movie can play a role in the continuing challenge that women face daily in scenes acted out with their employers in the employment epic. Part IV discusses the disconnect between modern movies and the law, first focusing on the sexual harassment problem encountered by the *Legally Blonde* heroine Elle Woods, then turning to the problem *Miss Congeniality*'s Gracie Hart faced—being discriminated against because one is not feminine enough. Part V concludes with a challenge to moviemakers to play their part in the eventual realization of gender equality in the workplace by including Title VII in future scripts in which a woman's employer takes her level of femininity into consideration.

## II. THE DOUBLE-BIND VERSUS TITLE VII

### A. *The History of the Feminine Ideal*

Throughout the history of Western society, men and women have played different roles,<sup>13</sup> and these roles are deeply embedded in society's perception of

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Duke Power Co., 401 U.S. 424, 429–30 (1971) (stating that the purpose of Title VII “was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group. . .”). Justice Brennan summed it up nicely in *Price Waterhouse*:

As for the legal relevance of sex stereotyping, we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group, for “[i]n forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.” An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible catch 22: out of a job if they behave aggressively and out of a job if they do not. Title VII lifts women out of this bind.

*Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989) (citations omitted) (quoting *Los Angeles Dept. of Water & Power v. Manhart*, 435 U.S. 702, 707 n.13 (1978) (quoting *Sprogis v. United Air Lines, Inc.*, 444 F.2d 1194, 1198 (7th Cir. 1971))).

<sup>12</sup> See Deborah L. Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163, 1163–64 (1988) (“The question is not simply how well women can accommodate the demands of male-dominated professions, but also how those professions must change to accommodate women.”); see also Christine A. Littleton, *Reconstructing Sexual Equality*, in JOHN J. DONOHUE III, FOUNDATIONS OF EMPLOYMENT DISCRIMINATION LAW 346, 348–49 (2d ed. 2003) [hereinafter DONOHUE] (“[W]omen and men tend to develop somewhat differently in terms of their values and inclinations. . . . In our desire for equality, we should not be forced to jettison either [mode of development]; rather, we should find some way to value both.”).

<sup>13</sup> See MARGARET MEAD, SEX AND TEMPERAMENT IN THREE PRIMITIVE SOCIETIES, at ix–xii (1939).

Our own society makes great use of this plot. It assigns different roles to the two sexes, surrounds them from birth with an expectation of different behaviour, plays out the

what it means to be male or female.<sup>14</sup> Men traditionally have been the breadwinners, and women have occupied the domestic sphere.<sup>15</sup> During World War II, however, women were called to fulfill their patriotic duty by entering the labor force while the men were off fighting the war.<sup>16</sup> Posters of Rosie the Riveter, which depicted a strong woman and the caption “We Can Do It,” gave women the confidence they needed to enter the men’s world.<sup>17</sup> When the men returned home, many of the women continued to work.<sup>18</sup> However, traditional notions “that true feminine fulfillment lay in maternity [and] domesticity” continued to permeate society.<sup>19</sup>

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whole drama of courtship, marriage, and parenthood in terms of types of behaviour believed to be innate, and therefore appropriate for one sex or for the other.

*Id.* at ix; see also Betty Friedan, *The Problem That Has No Name*, in LINDA K. KERBER & JANE SHERRON DE HART, *WOMEN’S AMERICA* 512, 515 (4th ed. 1995) (discussing the role of women in the Post-World War II era and noting that “[n]obody argued whether women were inferior to men; they were simply different. Words like ‘emancipation’ and ‘career’ sounded strange and embarrassing; no one had used them for years.”); Rhode, *supra* note 12, at 1164 (“For most of this nation’s history, gender defined the geography of occupational life. Women’s primary place was in the ‘private’ domestic spheres, men’s in ‘public’ commercial settings.”).

<sup>14</sup> See Jane Sherron De Hart, *The New Feminism and the Dynamics of Social Change*, in KERBER & DE HART, *supra* note 13, at 539, 545 (“Sexism . . . is persistent, pervasive, and powerful. It is internalized by women as well as men.”); see also *EEOC v. Sears, Roebuck & Co.*, 628 F. Supp. 1264, 1308 (N.D. Ill. 1986), *aff’d*, 839 F.2d 302 (7th Cir. 1988) (summarizing the testimony of defense expert Rosalind Rosenberg, who testified that women were not as interested as men in commission sales because “women tend to be more interested . . . in the social and cooperative aspects of the workplace”); Vicki Schultz, *Telling Stories About Women and Work: Judicial Interpretations of Sex Segregation in the Workplace in Title VII Cases Raising the Lack of Interest Argument*, in DONOHUE, *supra* note 12, at 398 (complaining that employers argue that “‘women won’t apply for [men’s jobs]—they just aren’t interested. They grow up wanting to do women’s work, and we can’t force them to do work they don’t want to do.’” (quoting the hypothetical employers)).

<sup>15</sup> See CAROL HYMOWITZ & MICHAEL WEISSMAN, *A HISTORY OF WOMEN IN AMERICA* 64-68 (1978) (“Implicit in the sphere theory was a kind of bargain—so long as women acted the part of piety, purity, submission, and domesticity, she was guaranteed the respect of her society.”); Jeanne Boydston, *The Pastoralization of Housework*, in KERBER & DE HART, *supra* note 13, at 142, 144-45 (“As recent historians have recognized, this glorification of wife and motherhood at the heart of one of the most compelling and widely shared belief systems of the early nineteenth century: the ideology of gender spheres.”). This division of labor has been true for white, middle and upper class “ladies” since the nineteenth century. “Immigrant women, poor farm women, black women, and poor native-born women who worked in factories were never ‘ladies’ in the nineteenth century.” HYMOWITZ & WEISSMAN, *supra*, at 68. However, even though women of color and “poor native-born women” have worked alongside their husbands, they cannot escape the stereotypical roles with which our society burdens all women. See, e.g., JOHNETTA BETSCH COLE & BEVERLY GUY-SHEFTALL, *GENDER TALK: THE STRUGGLE FOR WOMEN’S EQUALITY IN AFRICAN AMERICAN COMMUNITIES* 33-49 (2003) (“Black folks learn sex roles, as do white folks, at an early age—earlier than our consciousness of ‘race’ differences and racial oppression.”).

<sup>16</sup> See Jane Sherron De Hart, *The New Feminism and the Dynamics of Social Change*, in KERBER & DE HART, *supra* note 13, at 539, 543 (discussing the response of women “to patriotic appeals to get a war job so as to bring their men home sooner”).

<sup>17</sup> See Rosie the Riveter, *The Rosie the Riveter Trust: “Honoring Those Who Toiled in the Arsenal of Democracy,”* <http://www.rosietheriveter.org> (last visited Oct. 14, 2006).

<sup>18</sup> See De Hart, *supra* note 16, at 543. Unfortunately, many of the women were forced into lower paying jobs or out of the workplace altogether. See *id.* (“Not surprisingly, many [women] were reluctant to return home when ‘Rosie the Riveter’ . . . was told to put down her riveting machine at the return of peace. Forced out of well-paying ‘male’ jobs, many women returned to low-paying ‘female’ jobs.”).

<sup>19</sup> *Id.* at 543-44; see Robert Brookins, *Mixed Motives, Title VII, and Removing Sexism from*

World War II was almost seventy years ago and one would hope that society has progressed since that time. Indeed, there have been tremendous cultural shifts, spurred significantly by the second women's movement that began in the 1960s,<sup>20</sup> during which Betty Friedan taught women that fulfillment does not always lie in being a wife and mother and that a woman must "listen to her own inner voice to find her identity in this changing world."<sup>21</sup> On the legal front, Congress passed the Equal Pay Act in 1963 and Title VII of the Civil Rights Act of in 1964, so women who choose to participate in the career world are at least theoretically protected from discriminating employers.<sup>22</sup> Today the majority of women with children are gainfully employed.<sup>23</sup> No longer is it assumed that "Mom" is going to be at home with milk and cookies when the kids get home from school while "Dad" 'brings home the bacon.' In fact, some even embrace the idea of Dad occupying the domestic sphere and Mom being the primary breadwinner.<sup>24</sup>

### B. The Modern Gender Schema

Even though it is no longer assumed that women are confined to the domestic sphere, society still has difficulty overcoming the traditional ideals of "feminine" and "masculine;" these notions continue to persist from generation to generation.<sup>25</sup> This persistence can be partially attributed to the fact that children

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*Employment: The Reality and the Rhetoric*, 59 ALB. L. REV. 1, 17-19 (1995) (describing how societal stereotypes "have probably funneled multiple generations of women into either 'feminine' careers or housewifery"); Alice Kessler-Harris, *Pink Collar Ghetto, Blue Collar Token*, in *SISTERHOOD IS FOREVER* 358, 361 (Robin Morgan, ed. 2003) (noting how "residues" of stereotypical attitudes about women's place in the career world "remain embedded in our conceptions of jobs and what they are worth" and "account for women's firmly fixed places in certain kinds of jobs").

<sup>20</sup> M. MARGARET CONWAY ET AL., *WOMEN AND PUBLIC POLICY: A REVOLUTION IN PROGRESS* 4-6 (1995) (discussing how the "twentieth century has witnessed unprecedented changes in women's lives").

<sup>21</sup> BETTY FRIEDAN, *THE FEMININE MYSTIQUE* 338 (1963).

<sup>22</sup> Equal Pay Act of 1963, 29 U.S.C. § 206(d) (2000); Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) (2000). Interestingly, Congress added women to Title VII as an afterthought. See Claudia Goldin, *Understanding the Gender Gap: An Economic History of American Women*, in DONOHUE, *supra* note 12, at 328, 334 ("But until the day before the law was passed, the word 'sex' did not appear anywhere in the document.").

<sup>23</sup> Press Release, Bureau of Labor Statistics, *Women and the Labor Force: A Databook*, May 13, 2005, available at <http://www.bls.gov/bls/databooknews2005.pdf> ("Between 1970 and 2004 . . . women increased their labor force participation rate from 43 to 59 percent.").

<sup>24</sup> Consider, for example, *Mr. Mom*, one of the first films in which a Dad took on the role of a homemaker. *MR. MOM* (MGM Studios 1983). For a view of how difficult society makes it for men desiring to occupy a domestic role, see generally Kathleen Gerson, *Dilemmas of Involved Fatherhood*, in *RECONSTRUCTING GENDER: A MULTICULTURAL ANTHOLOGY* 272 (Estelle Disch ed., 1997) [hereinafter *RECONSTRUCTING GENDER*], who notes that "[s]ocial disapproval and economic inequality put full-time domesticity out of reach for almost all men."

<sup>25</sup> See Lillian B. Rubin, *The Transformation of Family Life*, in *RECONSTRUCTING GENDER*, *supra* note 24, at 263, 263-72 (providing insight into the difficulties associated with the division of household labor in our changing society). For an interesting recount of an interview the author of *The Transformation of Family Life* had with a husband who insisted that, even though his wife had to work to supplement his income, it was his "'job'" to "'support his family,'" see *id.* at 263-64. The husband continued, "'I mean she helps me out financially, and I help her with the kids and stuff. . . . It seems pretty equal to me.'" *Id.* In 1988 Deborah Rhode noted that women continued to perform 70% of

construct schemas—”generalized kinds of knowledge about situations or events”—of “male” and “female” by observing environmental cues and categorizing them.<sup>26</sup> While these cues are certainly more likely to contain “goes to work” for Mom and Dad now than they did several decades ago, many of the gender cues children receive from their environments have not changed significantly. For instance, even though “Mom” goes to work, in many households she also still cooks dinner, does the dishes and the laundry, and serves as the primary caretaker of the children.<sup>27</sup>

### C. The Femininity Ideal Leads to a Modern Double-Bind

These feminized notions of women that are so prevalent in society cause three over-arching problems for women in the career world. First, self-fulfilling prophecies and learned helplessness may influence the participation of stereotypically feminine women in the career world. A self-fulfilling prophecy is “a tendency to behave in a way that conforms with other people’s expectations,”<sup>28</sup> and learned helplessness is “a psychological state that results when an individual expects that life’s outcomes are uncontrollable.”<sup>29</sup> Stereotypically feminine women may either believe, or end up believing, that women just are not good at “men’s work” and therefore should not even try. The second difficulty caused by “feminine” expectations occurs when feminine women involved in traditionally masculine occupations are not taken seriously because people continue to identify

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household tasks and that women in dual-earner households spent approximately twice as much time on household tasks as their husbands. Deborah Rhode, *Occupational Inequality*, 1988 DUKE L.J. 1207, 1215 (1988). Research in 1998 indicated that young women in dual-earner households spent over 120 minutes a day on household chores, and their husbands spent less than 100 minutes. Women in Science Statistics, <http://www.serve.com/awis/statistics/chores.jpg> (last visited Oct. 14, 2006) (providing a graph from the Cornell Couples and Careers Study (1998)).

<sup>26</sup> “A schema represents ‘generic’ information that includes not only events from one’s life but also general knowledge about procedures, sequences of events, and social situations.” MARGARET W. MATLIN, *COGNITION* 235 (3d ed. 1994) (citing P.W. Thorndyke, *Applications of Schema Theory in Cognitive Research*, in TUTORIALS IN LEARNING AND MEMORY 167 (J.R. Anderson & S.M. Kosslyn, eds. 1984)); see KATHLEEN STASSEN BERGER, *THE DEVELOPING PERSON THROUGH CHILDHOOD AND ADOLESCENCE* 321-25 (3d Ed. 1991) (explaining how children construct their gender identities).

<sup>27</sup> See Joan Williams, *Toward a Reconstructive Feminism: Reconstructing the Relationship of Market Work and Family Work*, 19 N. ILL. U. L. REV. 89, 92 (1998) (“Women still specialize in family work. Men still specialize in market work.”). See also RECONSTRUCTING GENDER, *supra* note 24, at 260 (explaining that career women “continue to do most of the housework, working what is frequently referred to as the ‘second shift’ or the ‘double day’”); VIRGINIA VALIAN, *WHY SO SLOW? THE ADVANCEMENT OF WOMEN* 13 (1999) (“In white, western middle-class society, the gender schema for men includes being capable of independent, autonomous action . . . . The gender schema for women is different; it includes being nurturant, expressive, communal, and concerned about others.”); Jane Sherron De Hart, *The New Feminism and the Dynamics of Social Change*, in KERBER & DE HART, *supra* note 13, at 557 (noting the “double burden borne by women working outside the home” and reporting that “[w]orking women continue to do 80 to 90 percent of the chores related to running a household”); Beth Anne Shelton & Daphne John, *The Division of Household Labor*, 22 ANN. REV. OF SOC. 299, 317 (1996) (“[G]ender remains a more important determinant of housework time than any other factor.”).

<sup>28</sup> MARGARET W. MATLIN, *THE PSYCHOLOGY OF WOMEN* 270 (1993).

<sup>29</sup> JOHN MARSHALL REEVE, *UNDERSTANDING MOTIVATION AND EMOTION* 194-96 (2d ed. 1997).

women with the home and not with worldly occupations.<sup>30</sup> The final over-arching problem encountered by career women due to stereotypical gender schemas affects non-feminine women, who are discriminated against by coworkers who do not know how to mentally categorize these nontraditional women. A woman who acts masculine does not fit neatly into most people's "female" schema, and people seem to intrinsically prefer a bright-line rule to categorize their worlds rather than a balancing approach. Thus, a non-feminine woman who does not fit precisely into the "gender boxes" in her coworkers' minds can face occupational challenges due to her lack of femininity.<sup>31</sup> These three problems will be addressed in turn:

### 1. Self-Fulfilling Prophecy and Learned Helplessness

Unfortunately, many women internalize society's ideas about appropriate feminine occupations<sup>32</sup> and will never even attempt a traditionally masculine occupation, thus conforming to society's expectations. A self-fulfilling prophecy is influencing their decisions.<sup>33</sup> The negative societal influences that contribute to this prophecy include not only the popular media, which is discussed in Part III below, but also parents, teachers, and guidance counselors.<sup>34</sup> Each of these groups helps shape a young girl's perception of her gender role. Parents tend to encourage gender-typed household chores and gender-appropriate play.<sup>35</sup> Teachers unintentionally tend to pay more attention to boys, calling on them more and asking them more difficult questions.<sup>36</sup> Moreover, guidance counselors "may try to discourage women from seeking nontraditional careers," or may believe that female students who have aspirations to engage in a masculine career have chosen the wrong path.<sup>37</sup> In the end, the combination of these influences detrimentally affects a young woman's career choices.

The low percentage of female math and science professors provides an example of the self-fulfilling prophecy phenomenon. Young boys and girls tend to perform equally well at math and science tasks, yet girls are likely to lose interest

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<sup>30</sup> See *supra* note 14 and accompanying text.

<sup>31</sup> See, e.g., Nicole B. Porter, Book Note, 6 U. PA. J. LAB. & EMP. L 467, 472 (2004) (reviewing HOLLY ENGLISH, *GENDER ON TRIAL: SEXUAL STEREOTYPES AND THE LIFE/WORK BALANCE IN THE LEGAL WORKPLACE* (2003)) (suggesting that "people get mad when women act like men").

<sup>32</sup> The term "feminine occupation" is somewhat of a misnomer because even occupations that are generally considered feminine tend to be top heavy will men. See McPhail, *supra* note 8.

<sup>33</sup> See MATLIN, *supra* note 28, at 270 (defining self-fulfilling prophecy).

<sup>34</sup> See *id.* at 62-78, 94-95.

<sup>35</sup> See *id.* at 63-67 (examining the role parents play in the gender-schema development of their children). This encouragement is not only evidenced by the obvious—like giving girls dolls and having them do the laundry while giving boys toy cars and requiring them to take out the trash; it is evidenced more covertly by, for example, the discouragement of aggressive play for daughters (after all, she might get hurt), while boys are either encouraged to play aggressively (think about football) or ignored when they do so (with the excuse: boys will be boys). See *id.* at 64-65.

<sup>36</sup> See *id.* at 70-72 (discussing classroom studies).

<sup>37</sup> *Id.* at 94-95.

in these fields by the time they graduate high school.<sup>38</sup> Interestingly, while it is true that males still outperform females on the mathematics section of the SAT, high school and college females tend to earn better grades in math than their male classmates.<sup>39</sup> Thus, innate differences do not account for the fact that only ten percent of chemistry professors and less than twenty percent of biology professors are women.<sup>40</sup> A more plausible explanation is that women who are gifted in math and science may have rarely, if ever, had the opportunity to learn from a female math or science professor. Therefore, they either do not think collegiate academia is an appropriate profession for women with their particular talents, or they feel they will not be successful.<sup>41</sup> This self-fulfilling prophecy negatively impacts their decisions, and will continue to negatively impact the decisions of future generations of young women who will not have the opportunity of learning from the brilliant women who currently decide not to become math or science professors.

Even if some “feminine” women are willing to disregard society’s expectations and try nontraditional occupational roles, if teachers, co-employees, or employers trample their hopes, they may develop learned helplessness. Again, learned helplessness occurs when one thinks one cannot control life’s outcomes.<sup>42</sup> For instance, in *Legally Blonde*, the heroine, Elle Woods, almost gives up after she is sexually harassed by her professor. She determines that going to law school was a “big mistake” and packs up her belongings, intending to leave Harvard Law School and give up her Harvard education. Fortunately, an encouraging female professor hears Elle complaining about the incident to a friend and persuades Elle not to quit.<sup>43</sup>

In real life, though, a self-esteem savior is not always available when women encounter similar situations. While Title VII provides a legal remedy for women who are harassed,<sup>44</sup> if the woman believes that *she* failed because she is a woman, which in her mind could equate to an intrinsic flaw, then she is not likely to pursue legal recourse. Instead, she may reevaluate her occupational goals. But, the failure is not hers. It is not even entirely her employer’s. Instead, society’s lethargic journey to gender equality in employment is to blame. Rather than taking the fast track to gender equality in employment that Congress seemed to instigate with the

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<sup>38</sup> Caryl Rivers & Rosalind C. Barnett, *Flawed Science on Gender, Math Does Not Compute*, CHI. TRIB., Feb. 9, 2005, at C6 (“Given these facts, you don’t have to talk about genes to explain why there aren’t more women who seek math careers. But stereotypes remain immortal when they are endlessly repeated by the media. They are not supported by science and can do great harm.”).

<sup>39</sup> See MATLIN, *supra*, note 28, at 127-30 (reporting various studies regarding grades in mathematics courses).

<sup>40</sup> Matthew Tresaugue, *Academia Has Difficult Time Hiring Women with Ph.D.s*, HOUS. CHRON., June 12, 2005, at B1.

<sup>41</sup> Cf. Sam Dillon, *Harvard Chief Defends His Talk on Women*, N.Y. TIMES, Jan. 18, 2005, at A16 (discussing how the President of Harvard University partially attributed the low percentage of female professors to innate differences).

<sup>42</sup> See *supra* note 29, and accompanying text (discussing learned helplessness).

<sup>43</sup> LEGALLY BLONDE, *supra* note 4.

<sup>44</sup> See *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 64 (1986).

addition of “sex” to Title VII,<sup>45</sup> society appears to be on a leisurely walk, taking pit stops along the way. Unfortunately, it is going to take time to overcome the masculine and feminine ideals that continue to prevail.<sup>46</sup>

## 2. Feminine Women Are Not Respected When They Attempt Masculine Jobs

One of the factors that may contribute to learned helplessness is the lack of respect women who enter male-dominated professions receive. Often, a woman entering such a profession is considered to be a “token” who may have only been hired because her employer was trying to have a more balanced workforce, as opposed to getting the job because she was qualified. Research has found that token women are generally viewed as (1) a “mother to men in the group”; (2) a “seductress or sex object”; (3) a “pet or mascot of the organization”; or (4) an “iron maiden who expects full rights of group membership.”<sup>47</sup> This subsection will discuss the first three viewpoints, and the iron maiden category will be discussed in the next subsection because it involves viewpoints about non-feminine women.

A few well-known cases easily demonstrate that these categorizations are not just theoretical. In *Burns v. McGregor Electronic Industries*, the employees of a speaker-manufacturing plant seemed to cognitively place the plaintiff, Ms. Burns, in the “woman as seductress” category. Ms. Burns’s co-workers and the plant owner were aware that nude photographs of Ms. Burns had appeared in two motorcycle magazines, and they crassly took her off-the-job activities as license to treat her extremely unprofessionally on-the-job. For example, the owner of the plant “showed her advertisements for pornographic films in Penthouse magazine, talked about sex, asked her to watch pornographic movies with him, and made lewd gestures, such as ones imitating masturbation.”<sup>48</sup> What is even more shocking is that the district court ruled that Ms. Burns surely could not have been offended by this behavior because she had posed nude for a national magazine.<sup>49</sup> The Eighth Circuit reversed the district court because it determined “a reasonable person would

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<sup>45</sup> The courts partially determine what kind of “vehicle” is taken on this journey through their interpretation of Title VII. Congress slightly modernized this vehicle when it increased employer liability through the 1991 amendments. Pub. L. No. 102-166, 105 Stat. 1071 (1991) (Expanding the remedies available to plaintiffs under Title VII). It is possible that Congressional action could speed up the journey more, but that issue must be reserved for future commentaries.

<sup>46</sup> Cf. Deborah Brake, *The Struggle for Sex Equality in Sport and the Theory Behind Title IX*, 37 U. MICH. J.L. REFORM 13, 18-19 (2001) (noting that even though “opportunities for female athletes are at an all-time high,” “Title IX has not succeeded in ending the long history of discrimination against girls and women in sport”).

<sup>47</sup> Hilary Lips & Nina Colwill, *Issues in the Workplace*, in HILARY M. LIPS, SEX & GENDER: AN INTRODUCTION 374, 387 (5th ed., McGraw-Hill 1997) (citing a study reported in R.M. KANTER, MEN AND WOMEN OF THE CORPORATION (1977)). Lips and Colwill note that “[t]hese four roles share two commonalities: They are blatant caricatures of the female gender role and they rob the role players of the chance to be seen in their worker role.” *Id.*

<sup>48</sup> *Burns v. McGregor Elec. Indus.*, 955 F.2d 559, 560 (8th Cir. 1992).

<sup>49</sup> *Id.* at 566 (discussing the district court’s Opinion).

consider the [harassing] conduct...to be sufficiently severe or pervasive...to create an abusive work environment,"<sup>50</sup> which is the standard for sexual harassment.

*International Union v. Johnson Controls* provides an example of the "women as a pet or mascot" category.<sup>51</sup> The employer, Johnson Controls, paternalistically excluded women who were capable of bearing children from jobs in which they would be exposed to lead.<sup>52</sup> Fertile men, on the other hand, were given a choice as to whether they wanted to risk exposure.<sup>53</sup> Rather than considering women as capable as men at making these choices, the employer treated the women as if they needed protection.

The plaintiff in *Galdieri-Ambrosini v. National Realty & Development Corp.* fits into the "woman as mother" category. She alleged that she was a victim of gender discrimination because her employer required her, as part of her secretarial duties, to get him coffee and clear his desk of used coffee cups.<sup>54</sup> Even though the Second Circuit determined that such a requirement, in this instance, did not constitute discrimination based on gender,<sup>55</sup> it provides an apt example of the "woman as mother" category. Many men grew up having their mothers wait on them hand and foot and developed similar expectations for all women. However, their female coworkers or employees are not their mothers, and Title VII prohibits this type of behavior in the work place.<sup>56</sup>

In each of these examples, the employers and co-workers focus not on how well the female employees are doing their jobs, but rather on how well they fit into the feminine mold. The double-bind is that even when a woman fits her employer's notion of "feminine," she is not respected because she is merely seen as a seductress, pet, or mother. While this subsection has discussed how difficult it is for feminine women to earn the respect of their employers and coworkers due to gender schemas that are entrenched with stereotypes, the next section elucidates the negative impact stereotypical gender schemas have on non-feminine women.

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<sup>50</sup> *Id.* The Eighth Circuit remanded the case for reconsideration, *id.*, and in a later appeal, the Eighth Circuit noted that it believed the appropriate standard should be "that of a reasonable woman under the circumstances." *Burns v. McGregor Elect. Indus.*, 989 F.2d 959, 962 n.3 (8th Cir. 1993) (emphasis added). The Eighth Circuit eventually held that "[t]he plaintiff's choice to pose for a nude magazine outside work hours is not material to the issue of whether plaintiff found her employer's work-related conduct offensive," and admitted that "[t]o hold otherwise would be contrary to Title VII's goal of ridding the work place of any kind of unwelcome sexual harassment." *Id.* at 963.

<sup>51</sup> *Int'l Union v. Johnson Controls*, 499 U.S. 187 (1991).

<sup>52</sup> *Id.* at 191-92.

<sup>53</sup> *Id.* at 192.

<sup>54</sup> *Galdieri-Ambrosini v. Nat'l Realty & Dev. Corp.*, 136 F.3d 276, 280 (2d Cir. 1998). *Legally Blonde* provides a fictitious example of "woman as mother." The heroine, Elle, and another female who was also hired as an intern with Elle at their professor's law firm have a discussion about work during which Elle's co-worker complains, "Did you ever notice how [Professor] Callahan never asks Warner[, a male employee,] to get him his coffee? He's asked me about ten times." LEGALLY BLONDE, *supra* note 4.

<sup>55</sup> *Galdieri-Ambrosini*, 136 F.3d at 291.

<sup>56</sup> See generally notes 86-91 and accompanying text.

## 3. The Unpopular Non-Feminine Co-worker

Non-feminine women often are faced with employment difficulties because they do not conform to their employers' or coworkers' gender expectations. Instead, they are seen as "iron maidens." The classic case representing this categorization is *Price Waterhouse v. Hopkins*, in which the plaintiff, Ann Hopkins, was told she needed to "walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry" in order to receive a promotion to partner at a large accounting firm.<sup>57</sup> Unlike the feminine women discussed above, nobody seemed to want to take Ann Hopkins under his wing like a pet or mascot, and she was not seen as motherly or seductive at work. Instead, she was tough and aggressive, conforming to stereotypical notions of successful *male* executives.<sup>58</sup> But, she was not respected for this; instead, she was denied a duly earned promotion.<sup>59</sup> Ann Hopkins sued her employer under Title VII, and the case reached the Supreme Court. The Court reiterated that Title VII does not tolerate even subtle discrimination and explained that Congress had hoped that employers would focus on the *qualifications* of their employees if they were legally unable to consider discriminatory factors.<sup>60</sup>

Notwithstanding this admonition and the subsequent amendments to Title VII allowing employers to be held liable for mixed motive discrimination, women who do not fit the mold still often face discrimination. For instance, in *Yanowitz v. L'Oreal USA, Inc.*, Yanowitz was terminated because she refused to fire a female sales associate that a vice president of the company determined was not "sufficiently physically attractive."<sup>61</sup> The vice president instead wanted Yanowitz to hire someone "'hot.'" At one point after he and Yanowitz had passed a sexy, "'young [,] attractive blonde girl,'" he instructed Yanowitz: "'God damn it. Get me one that looks like that.'"<sup>62</sup>

Even if employers are savvy enough not to make overt employment decisions based on such factors, there are many cases in which co-workers take gender into account in their interactions, and their employers fail to control this behavior.

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<sup>57</sup> *Price Waterhouse v. Hopkins*, 490 U.S. 228, 235 (1989).

<sup>58</sup> See *id.* (noting how one partner described Hopkins as "'macho'" and another thought she "'overcompensated for being a woman'"). See Anna M. Archer, *Shopping for a Collective Voice When Unionization Is Unattainable: 1.6 Million Women Speak Up in Dukes v. Wal-Mart*, 43 HOUS. L. REV. 837, 854 (2005), for a more recent example of an employer discriminating against a non-feminine woman: "[Plaintiff] was told to 'blow the cobwebs off her make-up' and 'doll up' when she [asked for a promotion]."

<sup>59</sup> See *Price Waterhouse*, 490 U.S. at 233 & n.1 (discussing how *Price Waterhouse* "held" consideration of Hopkins's partnership candidacy for a year at first and then withdrew it altogether); *id.* at 234 (describing how well clients perceived Hopkins's work).

<sup>60</sup> *Id.* at 243.

<sup>61</sup> *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal. 4th 1028, 1038 (Cal. 2005). See generally Stacey S. Baron, Note, *(Un)Lawfully Beautiful: The Legal (De)Construction of Female Beauty*, 46 B.C. L. REV. 359 (2005) (analyzing the case and emphasizing the "positive results for women flowing from appearance-based litigation").

<sup>62</sup> *Yanowitz*, 36 Cal. 4th at 1038.

Examples include *Flackowicz v. Raffi Custom Photo Lab, Inc.*,<sup>63</sup> and *Atkins v. Memphis Light, Gas & Water Division*.<sup>64</sup> In *Flackowicz*, a co-worker told a woman she was “‘old’ and ‘ugly,’”<sup>65</sup> and in *Atkins*, coworkers called a female employee “‘ugly,’ ‘spanky,’ ‘fat,’ and ‘cowtitty.’”<sup>66</sup> Title VII prohibits such behavior if it is “severe or pervasive” enough “to alter the conditions of...employment,” creates “an abusive working environment,” and if a reasonable person would consider the environment hostile.<sup>67</sup>

#### 4. The Double-Bind.

If a female is too feminine, she faces the threat of not being taken seriously; yet if she is not feminine enough, people do not like her—the classic double-bind.<sup>68</sup> The Supreme Court recognized this bind in *Price Waterhouse* when it determined that Title VII mandates that “gender must be irrelevant to employment decisions.”<sup>69</sup> This mandate came in 1989, yet there are still over 10,000 charges of sexual harassment filed with the EEOC every year,<sup>70</sup> and if movies can be

<sup>63</sup> *Flackowicz*, No. 02 Civ. 9558 (DC), 2004 U.S. Dist. LEXIS 18367 (S.D.N.Y. Sept. 13, 2004).

<sup>64</sup> *Atkins*, No. 98-5116, 1999 U.S. App. LEXIS 24824, (6th Cir. 1999).

<sup>65</sup> *Flackowicz*, No. 02 Civ. 9558, 2004 U.S. Dist. LEXIS 18367 at \*4.

<sup>66</sup> *Atkins*, No. 98-5116, 1999 U.S. App. LEXIS 24824 at \*3.

<sup>67</sup> *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 67 (1986).

<sup>68</sup> Rhode, *supra* note 12, at 1183. Rhode asserts:

Females aspiring to nontraditional or high-status positions remain subject to a familiar double bind. Those conforming to traditional characteristics of femininity are often thought lacking in the requisite assertiveness and initiative, yet those conforming to a masculine model of success may be ostracized in work settings as bitchy, aggressive, and uncooperative.

*Id.* See also Susan P. Sturm, *From Gladiators to Problem-Solvers: Connecting Conversations About Women, the Academy, and the Legal Profession*, 4 DUKE J. GENDER L. & POL’Y 119, 131 (1997) (“[W]omen face criticism for either conforming to the gladiator model and failing to be adequately feminine, or failing to be aggressive enough and thus not performing well.”). See Devon W. Carbado, Mitu G. Gulati, & Gowri Ramachandran, *Make-Up and Women at Work*, HARV. C.R.-C.L. L. REV. (forthcoming 2006), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=873881](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=873881) (last visited Oct. 14, 2006) for an interesting discussion of *Jespersion v. Harrah’s, Inc.*, 392 F.3d 1076 (9th Cir. 2004), which involves a woman who was not as feminine as her employer desired. Ms. Jespersen, who was a bartender at Harrah’s Casino, was fired when she refused to wear make-up. *Jespersion*, 392 F.3d at 1078. The Ninth Circuit held that Harrah’s Casino did not violate Title VII when it required Ms. Jespersen and her co-workers to wear make-up. *Id.* At 1083. Carbado, Gulati, and Ramachandran conclude that “[o]n the one hand, forcing women to wear makeup can create double binds in some industries . . . . On the other hand, forbidding women (and men) from wearing makeup may have a disparate impact on women . . . . In the end, what may be best for women, and men, is freedom to make up their identities unencumbered by gender normativity.” Carbado, Gulati & Ramachandran, *supra*.

<sup>69</sup> *Hopkins v. Price Waterhouse*, 490 U.S. 228, 240 (1989); see *supra* note 10 (quoting Justice Brennan’s acknowledgment of the double bind); see also Tristin K. Green, *Work Culture and Discrimination*, 93 CAL. L. REV. 623, 661-64 (2005) (expanding on the *Price Waterhouse* problem and explaining that the problem went beyond the double-bind to the very work culture, which “favored assertive and aggressive behavior defined along a male norm”).

<sup>70</sup> See U.S. Equal Employment Opportunity Commission, *Sexual Harassment*, [http://www.eeoc.gov/types/sexual\\_harassment.html](http://www.eeoc.gov/types/sexual_harassment.html) (last visited Oct. 7, 2006) (“In Fiscal Year 2005, EEOC received 12,679 charges of sexual harassment.”). Interestingly, 14.3% of these charges were filed by males, *id.*; however, this does not discount the huge number and disproportion of women who

indicative of society's progress, *Legally Blonde* and *Miss Congeniality* reveal that employers have not come very far in the past decade and a half in complying with the Supreme Court's edict.

### III. WHY MOVIES MATTER

Moviemakers produce movies to entertain. When people go to the movies on Saturday night, it is not to learn new truths about human nature; the point is simply to have a good time. However, the stories played out on the big screen provide more than entertainment. Movies influence viewers' cognition of the world in which they live, and that influence sometimes disparately impacts career women. This disparate impact can be analogized to disparate impact in employment, which involves a seemingly neutral action by an employer that affects members of a certain class disparately.<sup>71</sup> The seemingly neutral activity of going to the movies affects women more negatively than men because the movies people watch contribute to their gender schemas. This influence ultimately leads to society mirroring movies.

A vicious cycle emerges when one analyzes the impact of this influence. Members of society who possess these stereotypical gender schemas—in part due to the influence of movies these individuals have seen—write and direct the very types of movies that negatively influenced their viewpoints in the first place. Furthermore, these movies are exactly what this gender-schema-laden society demands. So, movies mirror society.<sup>72</sup>

#### A. *Life Mirrors Movies*

Cognitive psychological theory teaches that people develop their viewpoints of the world by categorizing. They develop these categories by observing the world around them.<sup>73</sup> Studies show that on average people in the United States watch over four hours of television a day.<sup>74</sup> The sheer number of hours people are

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are being harassed.

<sup>71</sup> See 42 U.S.C. § 2000e-2(k) (2000) (delineating the burdens of proof in a disparate impact case).

<sup>72</sup> See generally NEAL GABLER, *LIFE THE MOVIE* (1998) (examining the implications movies have on culture and analyzing "how [movies] have changed and continue to change our lives").

To compare life to a movie is not to say, as the cliché has it, that life imitates art, though surely there is truth to that. Nor is it to say that life has devised its own artistic methods and thus reversed the process—art imitates life—though that also is true, as one can see from the number of novels, movies, and television programs that have been inspired by real-life events. Rather it is to say that after decades of public-relations contrivances and media hype . . . life has *become* art, so that the two are now indistinguishable from each other.

*Id.* at 4.

<sup>73</sup> See generally, *supra* Part II.B.

<sup>74</sup> See Norman Herr, *Television and Health*, The Sourcebook for Teaching Science, available at <http://www.csun.edu/science/health/docs/tv&health.html> (last visited Oct. 7, 2006); Media Use Statistics, available at <http://frankwbaker.com/mediausage.htm> (last visited Oct. 7, 2006); see also DAVID GAUNTLETT, *MEDIA, GENDER AND IDENTITY: AN INTRODUCTION 2* (2002) (recognizing that people spend a great deal of time watching television and determining that "[i]t seems obvious and

exposed to television or movies is almost enough to persuade that they *must* have an influence on gender schemas.

One could argue that viewers are aware that what they are watching is not real, and therefore the amount of influence is minimized. Even if one concedes this point, however, movies and television have an influence on the development of gender schemas due not only to mass inundation of the messages they send, but because of the type of messages they send. Movies and television dramas inarguably tell stories,<sup>75</sup> and such stories have a significant impact on human cognition. Parents educate their children through stories;<sup>76</sup> humans transmit their culture from generation to generation through stories.<sup>77</sup> The stories an individual hears as she attempts to cognitively organize her world impact that organization, and movies inevitably compose a portion of the stories to which she is exposed.

It is not just the stories that influence the torpid speed with which society is proceeding toward gender equality in employment. It is also the implicit messages received. For instance, there simply are not as many women on television and in the movies as men.<sup>78</sup> Additionally, women are not the lead characters in the biggest blockbusters.<sup>79</sup> Even the salaries of top actresses, while being more than most of us could ever imagine earning, are not as high as the salaries of top male actors.<sup>80</sup> Furthermore, women are still often portrayed in television and movies as adornments.<sup>81</sup>

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inevitable, then, that we will be affected by these experiences somehow”).

<sup>75</sup> GRAEME TURNER, *FILM AS SOCIAL PRACTICE* 78 (3d ed. 1999).

<sup>76</sup> Consider all the information parents pass on to their children just by relaying stories. For example, telling our children the story of the five monkeys who jumped on the bed, then fell off and bumped their little heads, warns children not to jump on the bed. See EILEEN CRISTELOW, *FIVE LITTLE MONKEYS JUMPING ON THE BED* (1989).

<sup>77</sup> See TURNER, *supra* note 72, at 78-84 (discussing, for example, how anthropologist Claude Lévi-Strauss's studies led Lévi-Strauss to theorize that “[m]yths negotiated a peace between men and women and their environment so that they could live in it without agonizing over its frustrations and cruelties.”); see also MARY CATHERINE BATESON, *PERIPHERAL VISIONS* 109-26 (1994) (“Stories of unique and startling events—visions and miracles—are common in mythology, but to recount them is to claim a share in continuing truths.”).

<sup>78</sup> See MATLIN, *supra* note 26, at 245-48 (explaining that women are relatively invisible and inaudible in the media and often portrayed in stereotypical roles).

<sup>79</sup> See generally Dean Keith Simonton, *The “Best Actress” Paradox: Outstanding Feature Films Versus Exceptional Women’s Performances*, 50 *SEX ROLES* 781 (2004) (conducting a study to explore the “‘Best Actress’ Paradox”—for example, “[a] very large number of women have won best acting Oscars in films that were not even nominated for best picture Oscars”).

<sup>80</sup> See *id.* at 791 (noting the fact that female actors are generally paid less than male actors); see also Diaz, *Sandler Rake in the Biggest Bucks*, Sun-Sentinel (Ft. Lauderdale, FL), Aug. 31, 2003, at 4A (reporting that Cameron Diaz, who earned \$42.2 million in 2001, was “approaching the pay given to male actors in Hollywood” and that Adam Sandler, who made \$49.5 million in 2001, was the “world’s highest-paid actor”).

<sup>81</sup> See generally RHODA UNGER & MARY CRAWFORD, *WOMEN AND GENDER: A FEMINIST PSYCHOLOGY* (1992). While this problem has become less prominent in the modern media where examples of career women abound, there are still examples of its frequent occurrence. For instance, rarely is a woman the lead news anchor. See, e.g., Maureen Dowd, *Can Mommy Know Best?*, N.Y. TIMES, Dec. 10, 2005, at A15 (“The network news anchor career path is laden with the same sort of gender tripwires as the one for the presidency.”); Jim Rutenberg, *New Anchors and the Chathode-Ray Ceiling*, N.Y. TIMES, June 3, 2002, at C1 (“[W]omen have made huge gains in television news, but the

While these facts demonstrate that the media often does not take women seriously, this reality is further evidenced by the fact that the media seems more concerned with what a woman in a position of power wears than what she says.<sup>82</sup> Consider, for instance, the media craze over O.J. Simpson prosecutor Marcia Clark's makeover.<sup>83</sup> And, more recently, the news media was anxious to discuss former White House Counsel Harriet Miers's wardrobe and make-up.<sup>84</sup> Yet, one rarely hears reports about the way *male* public figures dress or look. The news media will more than likely respond that it chooses its stories based on public demand, and unfortunately, the public is more interested in bashing women in powerful positions if they have a bad hairstyle or wear too much eyeliner than really listening to what these women have to say. The news media is responding to a gender bias exhibited by society, while at the same time perpetuating that bias.

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evening news anchor remains a male bastion.”); *see also* Gloria Steinem, *The Media and the Movement: A User's Guide*, in *SISTERHOOD IS FOREVER*, *supra* note 18, at 103, 104 (noting how, in the 1960s, “Barbara Walters was still off-camera writing a script for men to speak . . . and the only female host was a trained chimp”); *id.* at 107 & n.6 (noting how, in the 1980s and 1990s, while “newswomen were visible on local and national television,” they were “still required to be better-looking and younger . . . than their male counterparts”). However, on September 5 of this year, Katie Couric officially became the “first woman to serve as the official solo anchor of a major network evening news broadcast.” Alessandra Stanley, *For the New Face of CBS News: A Subdued Beginning*, N.Y. TIMES, Sept. 6, 2006, at A15. Interestingly, the media began keeping track of ratings from the first day Ms. Couric appeared, and the nation watched in anticipation to see if Americans would welcome a woman into their homes to inform them about important world events. *See, e.g.*, Jacques Steinert, *On Day 3, Couric Has a Lead*, N.Y. TIMES, Sept. 9, 2006, at B8 (reporting that the CBS Evening News “drew an estimated 9.5 million viewers, a loss of about 600,000 from the night before”); Jacques Steinberg, *After Katie Couric Drops Anchor, Some Viewers Drop Out*, N.Y. TIMES, Sept. 8, 2006, at E5 (reporting that the 10.1 million people who watched Katie Couric anchor the news was well above CBS's recent ratings); Jacques Steinberg, *Couric's Opening Night Lifts Ratings for CBS*, N.Y. TIMES, Sept. 7, 2006, at E3 (reporting that “the broadcast drew 13.6 million viewers on Tuesday”).

<sup>82</sup> *See id.* at 113 (discussing how the news media reported about Justice O'Connor's robes, Justice Ginsburg's diminutive stature, and Geraldine Ferraro's haircut, yet it rarely mentions what men look like or wear).

<sup>83</sup> *See, e.g.*, Peter Hartlaub, *The Best Defense Money Can Buy Is Awesome to Behold, and Tough to Overcome*, SAN. FRAN. CHRON., June 4, 2004, at E1 (“The camera-loving prosecutors in the O.J. Simpson trial spawned the current television makeover craze. Marcia Clark was the first Swan.”); Janet Weeks, *“Fashion Emergency” Comes to the Real-Life Rescue*, USA TODAY, Dec. 29, 1997, at 3D (discussing stylist Allen Edwards, who “who made headlines with O.J. Simpson prosecutor Marcia Clark's makeover”).

<sup>84</sup> *See, e.g.*, *About Face!* DAILY NEWS (NEW YORK), Oct. 11, 2005, at 2 (discussing Harriet Miers's eyeliner); Amy Diluna, *Mrs. Smith Goes to Washington, Oh! What to Wear*, DAILY NEWS (NEW YORK), Oct. 5, 2005, at 43 (suggesting that perhaps Anna Nicole Smith, whose case was soon to be heard by the Supreme Court, should “take some [wardrobe] pointers from . . . Harriet Miers, who showed up for her big day at the Oval Office in a conservative indigo suit and comfort pumps”). *See generally*, Ann Coulter, *Who Was the Second Choice*, Oct. 19, 2005, <http://www.anncoulter.com/cgi-local/welcome.cgi> (criticizing the White House for emphasizing Harriet Miers's hobbies, such as making her own clothes, rather than delving into substantive issues like how she will vote on certain issues).

*B. Movies Mirror Life*

It does not take a huge inferential leap to realize that movies, to some extent, mirror life.<sup>85</sup> Moviemakers are members of society, and when determining the theme of a movie, they necessarily draw on their gender schemas. As previously discussed, these schemas have been developed in part through the moviemakers' own exposure to the media. The effect of this cycle has limited the extent to which the media and society have embraced the equality in employment that Title VII was meant to secure, and overcoming this effect will take time.

Even if moviemakers were able to disregard their own gender schemas and make films that did not contain these gender stereotypes, they probably would not do so. There has to be a demand for such movies before the movie industry will be willing to supply them.<sup>86</sup> Of course, there are ways to make the types of movies the public wants to see and still minimize the gender stereotypes they are perpetuating. One suggestion is to make the same types of movies but to emphasize the legal remedies available to the female characters when their employers violate Title VII, rather than just ignoring the problem.

## IV. THE DISCONNECT BETWEEN HOLLYWOOD AND MODERN LAW

In *Legally Blonde*, Elle Woods has difficulty fitting in with other Harvard law students because she so openly displays her femininity. In *Miss Congeniality*, Gracie Hart is uncomfortable participating in the feminine rituals that her employer has asked her to engage in during an undercover stint as a beauty queen. Both of these very different examples are similar because they teach young female viewers that their employers or potential employers have unspoken job requirements regarding the extent of femininity female employees should display.<sup>87</sup> This lesson is detrimental because it robs employers of a diverse workforce and it robs women of fully developing their natural personalities and styles. The legal fact is that women do not have to change their personalities in order to be as employable as men.<sup>88</sup> The movie-making industry could easily ameliorate this negative influence by reconciling its presentation of these real-world problems with the legal remedies that the real world provides.

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<sup>85</sup> For example, New York Times columnist Maureen Dowd, in an article highlighting how modern women have moved beyond 1960s feminism but are getting mixed signals as to how a woman should behave, discusses several movies in which well-off men have fallen for women in subservient positions, such as *Spanglish*, *Maid in Manhattan*, and *Girl with a Pearl Earring*. Ms. Dowd complains, "Art is imitating life, turning women who seek equality into selfish narcissists and objects of rejection rather than affection." Maureen Dowd, *What's a Modern Girl to Do?*, N.Y. TIMES MAGAZINE, Oct. 30, 2005, at 50.

<sup>86</sup> See GAUNTLETT, *supra* note 71, at 23 (analyzing John Fiske's work as suggesting that "the power of the audience to interpret media texts, and determine their popularity, far outweighs the ability of media institutions to send a particular message or ideology to audiences within their texts").

<sup>87</sup> See *supra* Part III.A (describing how movies can impact gender schemas).

<sup>88</sup> See *supra* note 11 and accompanying text.

*A. Why Elle Woods Should Be as 'Blonde' as She Wants to Be*

In the movie *Legally Blonde*, Elle Woods is the prototypical feminine woman at the beginning of the movie—a life-size Barbie doll. She is not, however, the type of woman one envisions when one thinks about a female attorney. In other words, she does not fit into most people's "female attorney" schema. She does, however, have the intellect required for the profession—she scored well enough on the LSAT to get into Harvard Law School. She also has the initiative needed—when she decided to go to Harvard Law School, she was able to prepare for and do well on the LSAT even though her undergraduate degree was in fashion merchandising.

When she arrives at Harvard, her fellow students quickly let her know that she does not fit in. She is laughed at when she uses a pink pen and frilly notepad to take notes, and the other students will not let her in their study groups. She perseveres despite this implied criticism and ends up being selected for an important internship at her criminal law professor's law firm. Unfortunately, her feeling of success in this accomplishment does not last long because the professor, alone with her in his office, puts his hand on her leg and begins to move it up her thigh.

Elle:(Moving his hand off her knee) "You're hitting on me!"

Professor: "I'm a man who knows what he wants."

...

Professor: "I thought you were a law student who wanted to be a lawyer."

Elle runs from the office and quits the internship. She is convinced the only reason she was ever hired was because her professor "liked the way [she] looked": "Callahan never saw me as a lawyer, he saw me as a piece of ass, just like everyone else."<sup>89</sup>

Elle is arguably a victim of sexual harassment. Title VII prohibits employers from making employment decisions "because of sex,"<sup>90</sup> and the Supreme Court has interpreted this to include a prohibition of sexual harassment.<sup>91</sup> In order to have a cause of action under Title VII, Elle would have to prove that the harassment was "sufficiently severe or pervasive 'to alter the conditions of [the victim's] employment and create an abusive working environment.'"<sup>92</sup>

The professor would likely have several defenses to the claim, the first being that this one instance of touching Elle's knee was not "severe and pervasive" and

<sup>89</sup> *LEGALLY BLONDE*, *supra* note 4.

<sup>90</sup> Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) (2000).

<sup>91</sup> *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 64 (1986) ("Without question, when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex.").

<sup>92</sup> *Id.* at 67 (quoting *Henson v. Dundee*, 682 F.2d 897, 904 (11th Cir. 1982)) (alteration in original).

that it did not alter the conditions of her employment. The Supreme Court has warned that Title VII is not a “general civility code,”<sup>93</sup> and that it will not uphold claims based on “the sporadic use of abusive language, gender-related jokes, and occasional teasing.”<sup>94</sup> However, Elle could rebut that argument with case law allowing sexual harassment claims to stand despite only one instance of physical contact and no adverse employment action. In *Fall v. Indiana University Board of Trustees*, the defendant, a university chancellor, called the plaintiff into his office, closed the door, and after a brief meeting proceeded to “grab[] her like a gorilla,” forcefully kiss her, and put his hands down her blouse.<sup>95</sup> Granted, the conduct of the professor in *Legally Blonde* did not rise to this extreme, but it may be enough to constitute a question of fact, which a jury must decide.<sup>96</sup>

The professor in *Legally Blonde* may present an affirmative defense if the law firm had a valid sexual harassment policy and Elle did not follow its guidelines. Because the employer is a law firm, it likely has such a policy. Elle would have to either take advantage of the policy or prove that the policy was ineffective for some reason (for instance, if the professor was the only person to whom she could report) before she would have a valid claim.<sup>97</sup>

Even an effective policy, however, is rendered ineffective against an employer if a tangible employment action is involved.<sup>98</sup> In the movie, the professor was discussing a potential summer clerkship with Elle when the incident occurred, and it is certainly reasonable to conclude that getting the summer job, which is so important to a law student’s future success, depended on her succumbing to his advances. The professor confirmed such a conclusion when, as soon as Elle rejected him, he said that he thought she wanted to be a *lawyer*. Therefore, Elle may have been able to convince a jury that a tangible employment action occurred, in which case the existence of a policy would not matter.

The problem with this fictitious example, however, is that in the movie *Legally Blonde*, there was no mention of a sexual harassment claim or policy. It would have been simple to add a short dialogue in which the attorney that Elle

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<sup>93</sup> *Oncale v. Sundowner Offshore Servs.*, 523 U.S. 75, 81 (1998).

<sup>94</sup> *Faragher v. Boca Raton*, 524 U.S. 775, 788 (1998) (quoting B. LINDEMANN & D. KADUE, *SEXUAL HARASSMENT IN EMPLOYMENT LAW* 175 (1992)).

<sup>95</sup> *Fall v. Indiana University Bd. of Trustees*, 12 F. Supp. 2d 870, 872-73 (N.D. Ind. 1998).

<sup>96</sup> See also *supra* note 54 and *infra* note 103 (discussing how the professor required women to get coffee for him, but not men, which may also serve as evidence of the professor treating women and men differently).

<sup>97</sup> See *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 765 (1998) (approving the affirmative defense); EEOC, *Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors* (1999), available at <http://www.eeoc.gov/policy/docs/harassment.html> (outlining the requirements for the affirmative defense); see also Allan G. King, *Resist and Report: A Policy to Deter Quid Pro Quo Sexual Harassment*, 50 BAYLOR L. REV. 333, 343-46 (1998) (discussing the elements of an effective policy and the reasoning behind those elements). *Ellerth*’s rule involves vicarious liability, and it is unclear if the affirmative defense is valid if the offender is a partner rather than a supervisor.

<sup>98</sup> *Ellerth*, 524 U.S. at 765.

spoke with immediately following the incident encouraged her to take advantage of the policy rather than quitting. Further, such an addition would have informed other women who suffer similar fates to explore this possibility. Additionally, Elle could have filed a complaint against the professor with the EEOC. Neither option was included in the script. Instead, Elle behaved as if the fact that she has blonde hair and large breasts was to blame for the professor's behavior. This is not very encouraging to blonde, voluptuous women who watch the movie—or any women for that matter. Unfortunately, by the end of the movie Elle no longer looks like the woman she was when the professor harassed her; instead, she more accurately fits the “law school student” schema. Her hair is plain and her make-up is minimal.<sup>99</sup>

The moviemakers should have made some minor changes in an effort to stop the cycle of discrimination partially perpetuated by their craft. First, Elle should have asked about the firm's sexual harassment policy, and she should have investigated other remedies regarding a claim against the professor rather than quitting the firm. Furthermore, she should have maintained her feminine qualities throughout her law school experience instead of changing into the prototypical law student. If the moviemakers would have taken these simple steps, which would not have negated the entertainment value of the movie, then rather than reinforcing people's stereotypical attitudes regarding how female attorneys should be, *Legally Blonde* could have served as a message to employers to take Title VII seriously. Additionally, the movie could have sent the message to smart, feminine women that they do not have to change to be successful.

#### *B. The Consequences of Not Being Congenial to Miss Congeniality*

*Miss Congeniality*, like *Legally Blonde*, helps perpetuate the idea that women must change in order to be successful in their careers. However, the moviemakers in *Miss Congeniality* add to the confusion by sending the opposite message. Instead of warning against being too feminine, à la Elle Woods, the moviemakers in *Miss Congeniality* caution against being too masculine.

The impact of gender schemas is demonstrated in the first scene of *Miss Congeniality* when Gracie Hart, as a child, punches a boy on the playground who is bullying another boy. Gracie behaves in a way that society deems is inappropriate for girls,<sup>100</sup> and the audience is immediately reminded of this fact when the boy she saved from the bully tells her that he did not need a *girl* to save him. One gets the impression Gracie did not conform with gender stereotypes from

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<sup>99</sup> The unspoken (and sometimes spoken by law school career development offices) rules about how female law students should dress for job interviews, including how much jewelry and make-up to wear, provides an interesting supplement to this argument. However, it is beyond the scope of this Article.

<sup>100</sup> See JOSH R. GEROW, *PSYCHOLOGY: AN INTRODUCTION* 491 (3d ed. 1992) (reporting studies that indicate males are more aggressive than females).

a young age; rather than playing with dolls and Easy-Bake ovens, she probably liked to play with BB guns and toy soldiers.<sup>101</sup> However, the scene with the boy on the playground indicates that not fitting into the typical feminine categories most of her playmates had developed caused her some challenges as she matured. However, she met these challenges head-on; for example, she let the boy she “saved” from the bully know exactly how she felt about his “girl” comment by punching him out too.

When Gracie, as an adult, is faced with the same problem regarding her lack of femininity, her resistance to being placed in the traditional feminine category collapses when she is required to enter a beauty pageant as part of her job. Certainly, the decision to place Gracie in the pageant despite her vocalized opposition to the decision was made on the basis of her sex.<sup>102</sup> It was not, however, based on her femininity, because Gracie had not become any more feminine as an adult than she was as a little girl on the playground. The FBI had to hire a troupe of beauty-creating professionals to make her over into a beauty-pageant contestant.

Gracie did not have an easy time becoming feminine enough for a beauty pageant. In fact, at one point she considered throwing in the towel because she just did not think she could do it. She almost gave up her job because it required her to be more feminine than she was.

While the moviemakers in *Miss Congeniality* did not portray Gracie’s co-workers as directly discriminating against her, they did include evidence of a hostile work environment when (1) Gracie was exposed to the men in the office looking at all the women in the office on a computer program that placed them in bikinis to see if they had good enough bodies to be in the beauty contest, and (2) Gracie was required to be the “coffee girl” for the office.<sup>103</sup> A claim for hostile work environment, which requires severe and pervasive conduct,<sup>104</sup> would likely call for additional evidence to which the audience of the movie is not privy.

Regardless of whether Gracie had any legally cognizable claims, the movie

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<sup>101</sup> See, e.g., LIPS, *supra* note 47, at 293 (citing studies that suggest that boys are more likely to have access to “sports equipment, toy vehicles, [and] military toys” and girls were more likely to have “dolls and children’s furniture”); MATLIN, *supra* note 28, at 42-44 (reporting the results of a study that found that if subjects had a choice between a football, teething ring, or doll, they were much more likely to give the baby the football if they believed the baby was a boy and much more likely to give the baby a doll if they believed the baby was a girl); UNGER & CRAWFORD, *supra* note 81, at 83-84 (describing how “[c]hildren are encouraged to play with different toys and engage in different activities from a very early age”).

<sup>102</sup> See Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) (2000). As previously discussed, Title VII prohibits employers making decisions because of sex. *Id.* However, in this case Gracie’s employer would probably be able to successfully claim that Gracie’s acceptance of undercover operations that are necessarily assigned on the basis of sex was a bona fide occupational qualification, which is a statutory affirmative defense under Title VII. *Id.* § 2000e-2(e).

<sup>103</sup> In *Miss Congeniality*, there is only one instance in the film of Gracie being asked to get coffee for the men in the office; in *Legally Blonde*, Callahan singled female interns out for the task several times.

<sup>104</sup> See *Burns v. McGregor Elec. Indus.*, 955 F.2d 559, 560 (8th Cir. 1992).

leaves the audience with the impression that women who are not feminine are going to have much better working lives if they have a fashion, beauty, and attitude makeover.<sup>105</sup> At the beginning of the movie, Gracie's career was going down the tubes. She had refused to follow orders during a mission and consequently was told that she would be buried in paperwork for the next two weeks until a discipline committee could be convened to determine her fate. The FBI quickly changed its tune when it needed a female agent to be a beauty contestant. After her complete make-over, Gracie successfully completes her mission, is first runner-up in the beauty contest, and wins the affection of the leading male character. At the end of the movie she returns to her regular FBI garb, but her hair and makeup are now perfect, and she acts like a typical beauty-pageant contestant when her fellow contestants deem her "Miss Congeniality." She had shed her plain, aggressive, non-conforming old persona and blossomed into a beautiful woman who is professionally and romantically successful. The message is not subtle—being pretty and conforming to common gender schemas will get you a lot further in the male-dominated workplace than being competent.<sup>106</sup>

The moviemakers could have dampened the impact of this message by including a short scene in which the male lead character tells the pre-make-over Gracie that he is attracted to her and by having Gracie return more fully to her former self after the assignment. While these changes would not have literally harmonized the events in the film with modern employment law, they would have brought the message the film is sending more in line with the spirit of the law: equality. It is imperative that moviemakers realize the detrimental message Cinderella stories such as *Miss Congeniality* send to young career women and attempt to connect the stories they tell with the spirit of Title VII; otherwise, the disconnect will continue to impede the realization of true equality in the career world.

## V. CONCLUSION

Gender schema research reveals that humans categorize the world in their minds and that input from the environment can affect expectations of the roles males and females should play. The popular media plays a role in the development of these schemas. Currently the role it plays is to reinforce the stereotypical viewpoints already intact in society through its portrayal of women in the career world in movies like *Legally Blonde* and *Miss Congeniality*. *Miss Congeniality* reinforces the idea that not fitting into the right box makes co-workers uncomfortable and that the best way to deal with this is to try to fit in the box.

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<sup>105</sup> The movie also warns against being too feminine—one of the contestants told Gracie about being harassed by a professor while in college. The moviemakers in this case got it right when Gracie informed her that she should have filed a claim against him.

<sup>106</sup> Just not too pretty—because then you might face the sexual harassment problem presented in *Legally Blonde*. See *supra* Part II.C.2.

*Legally Blonde* cautions, however, that going overboard on the characteristics you find in the feminine gender schema can also cause problems at work. This is a femininity conundrum—should a woman try to fit the feminine gender schema or not? The answer should be no. A woman should instead try to be good at her job. If a woman is qualified, her degree of femininity should not matter—a viewpoint with which the law in this country agrees. However, neither the moviemakers nor their viewers have received that message; they are still making and demanding movies that are not connected with this legal reality: women, men, blacks, whites, people young and old—all must be judged for their *qualification* for the position—not for how well they fit into the boxes in their employers' minds. Popular culture needs to catch up with the reality of the law so that society can move more quickly toward the reality that women are just as capable as men at being successful in their chosen careers—even if they like to wear pink.