

Book Review

***THE BELLWOMEN: THE STORY OF THE LANDMARK AT&T SEX DISCRIMINATION CASE* BY MARJORIE A. STOCKFORD**

Reviewed by Victoria E. Anderson†

*The Bellwomen: The Story of the Landmark AT&T Sex Discrimination Case*¹ by Marjorie A. Stockford is an engaging account of the 1970 employment discrimination case the EEOC instituted against AT&T and its resulting historic settlement benefiting some 15,000 women and minority Bell Operating System employees. The author herself, a former Bell employee, was a beneficiary of the settlement² and supplements her unique insight into the Bell Operating System with media accounts, information from the AT&T and the National Archives, and eighty-four interviews with those involved in the case and negotiating the final consent decree. Told in a novelistic style, *The Bellwomen* examines this ground-breaking case from both the government lawyers' and AT&T executives' perspectives while interspersing vignettes depicting the stories of actual AT&T female employees affected by the settlement. However, Stockford often leaves the reader wanting more historical context and analysis of the issues presented.

Stockford's account begins in November 1970 and introduces the book's centerpiece personality, EEOC attorney, David Copus. Like other liberal-minded, idealistic, privileged white men that came of age in the 1960s, Copus was focused on Civil Rights but enrolled in Harvard Law School more to avoid a tour of duty in Vietnam than to obtain the skills necessary to help a cause he strongly supported. After traveling in Asia and Africa and taking a stint in the Peace Corps, Copus' parents curtailed the finances available to him. As a result, Copus, like many of his colleagues from Harvard, took a government job. At age twenty-nine, he began his tenure at the fledgling EEOC, owing his position to the

† J.D. candidate, 2005, University of Pennsylvania Law School; B.A. in Philosophy 1998, Tufts University. I would like to acknowledge my mother, a Bell System employee that began her career as a telephone operator in 1956 and retired as a second level manager in 1985, who made me take the telephone operator test upon my graduation from college.

1. MARJORIE A. STOCKFORD, *THE BELLWOMEN: THE STORY OF THE LANDMARK AT&T SEX DISCRIMINATION CASE* (2004) [hereinafter STOCKFORD, *THE BELLWOMEN*].

2. RUTGERS UNIV. PRESS, *Bookjacket* to STOCKFORD, *THE BELLWOMEN*.

Commission's general counsel who actively hired anyone from his alma mater. Ironically, this hiring practice was analogous to the one used by AT&T that Copus soon came to criticize because it impeded the access of women and minorities to higher paying positions.

AT&T was the umbrella organization for twenty-three local Bell Operating Companies responsible for providing phone service in their respective geographic areas, including New England Telephone and Southern Bell, Bell Labs, AT&T Long Lines, and Western Electric.³ In the early 1970s, before AT&T's antitrust dissolution and advent of the "Baby Bells,"⁴ AT&T was the largest employer in America with its 750,000 employees⁵ and, as such, it generated six to seven percent⁶ of the EEOC's total employment discrimination complaints. Both minority and white women complained of sexually biased hiring and promotion schemes and pay discrepancies. Copus became frustrated by how little he could do to help those that filed complaints against their employers in general, and AT&T in particular. At the time, the EEOC was nicknamed the "toothless tiger."⁷ Stockford characterizes the EEOC as an entity hated by NOW and other activist organizations because of its ineffectiveness. The EEOC was developed to enforce the Civil Rights Act of 1964⁸ but "had no legal authority to take an employer to court, leaving its lawyers the limited tools of negotiation, pressure, and, finally referral [of cases to outside counsel to begin litigation]."⁹

On November 18, 1970 Copus learned that AT&T planned to raise its telephone rates to produce an additional \$400 million in revenue, and the only governmental regulator that AT&T faced in this endeavor was the FCC.¹⁰ In the wake of the Civil Rights Movement, FCC regulators established that they could take action against industries under their control with discriminatory employment practices.¹¹ Copus saw these regulations as his opportunity to meaningfully attack the discriminatory hiring and promotion structure at AT&T, which he discovered through the complaints he received over the past year. However, these new regulations had only been in place for three months and had yet to be utilized.¹²

3. *Id.* at 16.

4. For a description of post-divestiture AT&T see *A Brief History: Post-Divestiture AT&T*, AT&T, at <http://www.att.com/history/history4.html> (last visited Nov. 21, 2004).

5. STOCKFORD, *THE BELLWOMEN* at 14.

6. *Id.* at 18.

7. *Id.* at 14.

8. Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) (2000). The EEOC's statutory development stems from 42 U.S.C. § 705(a).

9. STOCKFORD, *THE BELLWOMEN* at 10.

10. *Id.* at 7-20.

11. *Id.* at 16.

12. *Id.*

At this point in the book, Stockford glosses over one of the most important legal precedents leading up to the EEOC's case. Activist groups trying to attack Potomac Electric Power Company's discriminatory employment practices relied on Washington D.C.'s Public Service Commission to deny a rate increase unless the Company eliminated these practices. In *Potomac Electric Power Co. v. Public Service Commission of District of Columbia*,¹³ the court concluded that the Commission's regulatory authority extended to questionable employment practices and that the Commission "had authority and power to examine Pepco's employment practices, either as part of a rate proceeding or as an independent matter."¹⁴ This case legitimized regulators' review of employment practices. However, the distinguishing characteristic in Copus's plan was that he needed the FCC's regulatory authority to extend to the EEOC even though the only connection between these two commissions is that they are both government agencies. Copus clung to this idea because the FCC regulations gave him the jurisdictional reach needed to actually have an impact on a previously untouchable company.

Corpus found precedent neither allowing nor restricting such a relationship between agencies. EEOC Chairperson, Bill Brown accepted that as enough proof that the EEOC had the right to petition the FCC to only grant AT&T's requested rate increase contingent upon a hearing examining AT&T's employment practices. Brown then had to decide whether to actually risk the credibility of the EEOC, an agency in its infantile stages with only a \$20 million annual operating budget,¹⁵ by waging a war against a company with an annual income in excess of \$2.3 billion.¹⁶ Stockford nominally describes the political considerations inherent in such a matter. Perhaps a larger examination of the political pressures and struggles involved in making such allegations against AT&T in this fashion and Brown's apolitical nature are not appropriate in this book, but Stockford makes the whole process seem too easy. She should have placed this action in the context of a government where political affiliations are paramount and matters cannot readily be taken without political reprisal. However, the fact that Brown was not reappointed to his EEOC post after the case settled¹⁷ provides some evidence that the political ramifications of Brown's decision to attack institutional discrimination at its highest level, and continuing to do so for the remainder of his tenure at

13. Nos. 2382-70 & 2384-70, 1971 U.S. Dist. LEXIS 14478 (D.D.C. Feb. 23, 1971). This citation is for the appeal of the original case decided April 15, 1970. Because PEPCO did not receive adequate notice that its employment practices were subject to separate regulation, the case was thrown out on procedural grounds.

14. *Id.* at *1.

15. STOCKFORD, THE BELLWOMEN at 26.

16. *Id.* at 18.

17. *Id.* at 211.

the EEOC, actually had a broader and more complex effect than Stockford reports.

After ensuring the FCC would partner with the EEOC, Copus and two other attorneys-produced a sixty page document accusing AT&T of violating every law that could possibly be interpreted to provide protection from discrimination. The complaint referenced the Civil Rights Act of 1964,¹⁸ Equal Pay Act of 1963,¹⁹ and went so far as to argue that the Fifth Amendment provided for a right to fair employment. Don Liebers, with only ten days of experience as AT&T's Director of Employment, hoped AT&T could use the media to gain support, and thus responded to the allegations through a series of press conferences. He issued a five page response to the EEOC's charges outlining AT&T's statistical record of hiring women and minorities.

Copus, "[f]rustrated by the impotence of the agency he worked for,"²⁰ relied heavily on the EEOC's own demographic records and surveys of employers eliciting information about women and minorities in certain job classifications. These records, in conjunction with the hundreds of claims against AT&T filed in EEOC offices across the country, proved invaluable. Also, during discovery, various AT&T corporate offices sent the EEOC an estimated 100,000 pages of information. This information culminated in *A Unique Competence*, a document of over 20,000 pages. The EEOC titled this report after an AT&T executive's statement that, as one of the largest companies in the United States, AT&T was especially qualified to improve equal opportunity in employment.²¹

As the case unfolds, Stockford introduces other members of the EEOC, AT&T, and activist groups interested in the proceedings. When describing a female character, Stockford finds it necessary to decide if the term "feminist" applies to the woman in question and mentions whether the woman burned her bra in her determination.²² Stockford disserves both the reader and the women she describes by not explaining exactly what she means by this term. "Feminist" has always been a politically charged word that invokes images of Marxist separatists, militancy, aggression, or simply women that believe there are discrepancies in society that favor men. Stockford describes Susan Ross, an attorney that assisted in the beginning stages of the case and helped Copus understand his best arguments would be based on sex and not racial discrimination grounds, as an "actual living and breathing feminist,"²³ as though she were an exotic animal rather than a

18. 42 U.S.C. § 2000e-2(a)(1) (2000).

19. 29 U.S.C. § 206 (2000).

20. STOCKFORD, *THE BELLWOMEN* at 17.

21. *Id.* at 80.

22. *Id.* at 67.

23. *Id.* at 21.

pivotal contributor to the case. Stockford reduces the importance and force of the Women's Movement by buying into the stereotypical and negative connotations associated with the term "feminist."

Furthermore, by only briefly mentioning Second Wave Feminists, their seminal texts, and the founding of NOW, Stockford does not adequately put the EEOC's case in a historical context that fully explains the influence of the Women's Movement on the EEOC's ability to bring its case to fruition. The Women's Movement, as it developed on the tail of the Civil Rights Movement, raised the public's consciousness of social injustice. Thus, high powered women, like those at the EEOC, could identify instances of discrimination and use their influence to elicit change. But, more importantly, this Movement raised awareness among women who were actually suffering discrimination at the Bell System, prompting them to file the complaints that ultimately became the crux of the EEOC's case.

Spurred by mounting racial tensions throughout the country's cities where AT&T drew a substantial amount of its employees, the company approached the EEOC in hopes of reaching a settlement. Copus naturally wanted guarantees that women would have access to jobs typically reserved for men. In addition, the settlement would force AT&T to cease its use of gender biased recruiting materials and its practice of subjecting female applicants to a "home visit," whereby a recruiter could examine a woman's home to discern whether she was suitable for a position with the telephone company.²⁴ Also, the settlement agreement would prevent AT&T from fostering the flawed recruiting practice that encouraged male craft workers to recruit only their male buddies when positions became available. Moreover, Copus wanted the maximum backpay he could elicit to both punish AT&T and benefit those that had been discriminated against. But, he also requested assurances that AT&T would place men in jobs that were previously reserved for women. For example, of the 100,000 Bell System operators, just over a dozen were male.²⁵

Stockford fails to adequately discuss this portion of the proposed settlement, arguably the most vital in combating AT&T's institutional discrimination. By ensuring that males occupy "women's" jobs, AT&T could better assure that there will be less pay disparity between the "women's" job and other comparable work that men might gravitate to. In order to attract male candidates to these positions, AT&T would be forced to improve the quality of work. Stockford does not discuss the more philosophical implications of this request either. In addition to pervading AT&T's hiring policies, discrimination also presented itself in co-workers'

24. *Id.* at 83.

25. *Id.* at 65.

relationships. Stockford writes of a woman that was promoted, and upon complaints by co-workers, a more senior woman was promoted shortly thereafter.²⁶ Women supervisors did not think to suggest certain jobs to other women, because they considered these positions to be “men’s jobs.”²⁷ Also, those employed in typically male jobs harassed their female co-workers.²⁸ To effectively eliminate gendered work, an organization or department must welcome women where they once were not and must encourage men to work in areas where women once dominated. By virtue of both sexes occupying new positions, organizations and individuals ought to grow more accustomed to the idea the work is not gendered or menial, thus elevating women’s status in the workplace.

The negotiations between the EEOC and AT&T broke down. The hearing began in January 1972 and was presided over by Fred Denniston, an FCC hearing examiner who acted as both judge and jury. Copus alleged disparate impact discrimination and institutional discrimination because AT&T’s hiring and promotion practices created an ingrained culture of discrimination throughout the Bell System.²⁹ “The company had operated like this for so long, with separate men’s and women’s jobs, that the policies sustaining them seemed reasonable, or at least inappropriate to question.”³⁰ Stockford slightly misstates the Supreme Court holding in *Griggs v. Duke Power Co.*³¹ that enabled Copus to allege disparate impact discrimination. Stockford writes that *Griggs* absolutely prohibits companies from using policies that affected groups unequally, regardless of whether the company had intended such an outcome.³² Upon first glance Stockford would have the reader believe that a company cannot, under any circumstances, use an employment screening test that tends to favor men. However, *Griggs* allows for such tests when they are directly related to measuring a quality necessary to perform a job, even if that test ultimately favors one group over another.³³

Although Copus had never tried a case before, he made a strong presentation consisting of statistical evidence, expert witness testimony about discrimination generally and within the specific context of the Bell System, and employees that had won previous discrimination suits against the Bell System.³⁴ In response, AT&T presented experts and happy employees, and relied heavily on its own statistical evidence showing an

26. *Id.* at 60.

27. *Id.* at 111.

28. *Id.* at 112.

29. *Id.* at 54.

30. *Id.* at 66.

31. 401 U.S. 424 (1971).

32. STOCKFORD, *THE BELLWOMEN* at 54.

33. *Griggs*, 401 U.S. at 424.

34. STOCKFORD, *THE BELLWOMEN* at 95-113.

adequate number of minorities and women were hired and promoted appropriately. Because the case was ultimately settled, one could only guess how the FCC hearings examiner would have ruled. Stockford that AT&T probably would not have prevailed because the statistical evidence it heavily relied on was severely flawed. Statistics played a large role in this case; in Stockford's narrative, it is almost as though statistics themselves should have been included among the seventy-nine people listed in the *The Bellwomen's Cast of Key Characters*.³⁵ Nevertheless, Stockford does not acknowledge the magnitude of Copus's decision to attack AT&T's statistical analysis. Lawyers and the court confirm the validity of evidence and its connection to an issue but often blindly rely on the accuracy of statistical models.³⁶ The EEOC's filing of institutional discrimination charges was a historic legal maneuver, but Copus's questioning of the statistical models' assumptions in his cross-examination (hence discrediting much of the evidence AT&T presented) was also a legal milestone. It is disappointing that Stockford does not explore the use of statistical evidence in the context of employment discrimination further. For example, soon after the AT&T case was resolved, the Supreme Court explicitly outlined what a plaintiff must show to prove systemic disparate treatment.³⁷ In short, a plaintiff can present a statistical comparison between an employer's workforce and the relevant hireable population to prove discriminatory hiring practices when the workforce is not representative of this population.³⁸

As mentioned above, the case eventually settled. AT&T agreed to hire more women and minorities into supervisory positions, hire more men into positions typically reserved for women, and ensure equal pay. It was required to release annual reports over the next six years outlining the progress made toward its hiring goals. Also, AT&T was required to ensure that each employee understood his or her new rights in light of already existing union contracts. This settlement was representative of the common ground the government and corporate America agreed upon in the name of fair employment practices and was used as a template for other major consent decrees. However, despite its importance, Stockford neglects to analyze the settlement in more detail, namely the inadequacies resulting from the back pay award and the impact it would have on Bell

35. *Id.* at xi-xiv.

36. See e.g., Michael O. Finkelstein & Bruce Levin, *Bush v. Gore: Two Neglected Lessons From a Statistical Perspective*, 44 *JURIMETRICS J.* 181 (2004) (arguing the Supreme Court relied on untenable statistical assumptions in its decision), Ronald Meester & Marjan Sjerps, *Why the Effect of Prior Odds Should Accompany the Likelihood Ratio When Reporting DNA Evidence*, 3 *L. PROBABILITY & RISK* 51 (2004) (questioning the statistical methods used to analyze DNA evidence in criminal cases).

37. *Int'l Bhd. of Teamsters v. U.S.*, 431 U.S. 324 (1977).

38. *Id.*

System union members.

By accepting the offer outlined in the settlement, which granted equal salary and a one-time \$300 payment, an employee relinquished the right to bring further past or present discrimination allegations against the Bell System.³⁹ While prudent for AT&T to insulate itself against future claims, many of the women affected by years of discrimination did not receive a just settlement. Regardless of whether an employee had two or twenty years of service, the maximum back-payment award was \$300. Not only was this inadequate in most cases, but compensation for missing years of compounding interest and adequate retirement benefits was nonexistent. Although the settlement awarded women some compensation for past discriminatory practices, it further discriminated against older women and those with more Bell System service.

Stockford does not discuss whether AT&T should have been required to pay restitution in addition to back pay. "Restitution is a return or restoration of what the defendant has gained in a transaction"⁴⁰ while damages is a measure of what the plaintiff has lost.⁴¹

In such cases [where the defendant has gained more than the plaintiff has lost] the measure of restitution is determined with reference to the tortiousness of the defendant's conduct or the negligence or other fault of one or both of the parties in creating the situation giving rise to the right to restitution. If the defendant was tortious in his acquisition of the benefit he is required to pay for what the other has lost although that is more than the recipient benefited. If he was consciously tortious in acquiring the benefit, he is also deprived of any profit derived from his subsequent dealing with it.⁴²

The disproportionately low wages AT&T paid to female workers because of tortious discriminatory conduct ultimately contributed to the company's substantial bottom line. Stockford does not explore the possibility that AT&T might have been subject to restitution to address this unjust enrichment.

Communication Workers of America (CWA), representing 500,000 workers, was the largest Bell System union and the International Brotherhood of Electrical Workers (IBEW) also represented a substantial

39. STOCKFORD, *THE BELLWOMEN* at 197-201.

40. DAN B. DOBBS, *LAW OF REMEDIES: DAMAGES-EQUITY-RESTITUTION* 365 (2d ed. 1993).

41. *Id.* at 369.

42. RESTATEMENT (FIRST) OF RESTITUTION[®] Introductory Note 595 (1936).

amount of the Bell System's lower-level workers.⁴³ Both of these unions declined to participate in FCC hearings and entered into settlement negotiations too late for the parties to consider their input. Stockford nominally explains her theory why the unions ignored the FCC hearings. She attributes their behavior to the fact they held their own seniority rules paramount to all else, and if they supported women and minorities, they would degrade their seniority provisions.⁴⁴ Stockford does not adequately explain that unions owe all its members the duty of good-faith representation. By not being part of the FCC hearings, unions were harming their female members and aiding in the discrimination that the unions themselves were supposed to stop. By not contributing to the consent decree development, unions were sacrificing the importance of seniority and hurting their white male members. While it is unlikely that the consent decree would have been substantially different if the unions had participated, the women and minorities were probably better served through their unions' inaction.

The condition of the settlement agreement shielding AT&T from further employment discrimination litigation for six years placed unions in a potentially precarious position. The Landrum-Griffin Act⁴⁵ outlines rights of union members in relation to their union and requires a union member to exhaust internal procedures before bringing a case against the union in federal court.⁴⁶ Thus, if a male employee had a problem related to his seniority and lack of promotion, his union should file a grievance with AT&T on his behalf. In turn, if AT&T refused to arbitrate the grievance, the union would invoke the Federal Arbitration Act,⁴⁷ which made arbitration agreements in contracts affecting interstate commerce enforceable in federal court. However, the consent decree in the settlement agreement shields AT&T from the government bringing further charges of discrimination. Therefore, it seems as though AT&T could choose not to arbitrate the complaint. The male employee is left no other choice than to sue his union for violating its duty of fair representation when the settlement was negotiated.

Stockford should have made more relevant comparisons between the employment climate in the 1970s and the environment today. She acknowledges that AT&T's top-level executives were all white men unfamiliar with the sting of discrimination; that a management structure without women or minorities did not have as much of an incentive to ensure that AT&T acted as a good corporate citizen. Stockford seems to be

43. STOCKFORD, *THE BELLWOMEN* at 74.

44. *Id.* at 74-75.

45. 29 U.S.C. § 401 (2000).

46. *Id.* at § 101(a)(4).

47. 9 U.S.C. § 4 (2000).

making the implicit argument that every corporation should have such a person at their highest management levels to guard against discriminatory policies, but she neither expands on this idea nor suggests solutions to amend current corporate structures. Also, many people, especially those in AT&T's more unskilled positions not requiring an education beyond on-the-job training, did not necessarily think they were being treated unfairly. They were "grateful for regular and known work."⁴⁸ Stockford does not take the opportunity to draw an analogy between these employees and today's transient workforce. Freelance and temporary employees typically do not receive benefits and have restrictions on collecting unemployment insurance. This puts them, along with the poor and immigrants, unaware of their rights, and in the precarious position of being grateful for regular work such that they may tolerate employment discrimination out of necessity.

Stockford does a laudable job of presenting an even-handed description of AT&T throughout the book. Despite the fact that mere accusations of discrimination can often make a company a villain, Stockford does show that AT&T was not entirely evil. In many respects AT&T was actively seeking women and minorities through hiring programs and, in general, seemed to have the best of intentions. In this respect the EEOC settlement served not only as a punishment, but also as a signal that results, not intentions, are the government's measurements of whether a corporation is adhering to non-discriminatory hiring practices.

One cannot graduate law school without learning how *Marbury v. Madison*⁴⁹ solidified the Supreme Court's power to ensure that congressionally made law adheres to the Constitution. However, law students never learn whether William Marbury ever attained the Justice of the Peace commission he so dearly wanted. *Palsgraf v. Long Island Railroad*⁵⁰ introduces every torts student to causation and duty, but what became of Palsgraf after she was crushed by the scales that fell upon the fireworks explosion? Likewise, after being told that Tompkins must seek damages via state rather than federal law, law students never learn if he actually recovered any money from the accident caused by Erie Railroad.⁵¹ Practicing attorneys read cases for their procedural aspects or in search of parallel fact patterns and largely continue to ignore the human element behind the litigation. The true value in Stockford's narrative account of the people involved on all sides of this landmark case is that it directs the reader to remember that even the most complicated cases can always be reduced to individual people in need of justice.

48. STOCKFORD, *THE BELLWOMEN* at 34.

49. 5 U.S. 137 (1803).

50. 248 N.Y. 339 (N.Y. 1928).

51. *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938).