UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Nilda GUTIERREZ, Linda MORGAN, Wayne BROWN, and Krista MARSHALL	**Civil Action No. 01-5302**
Individually and as Class Representatives,	**Filed Electronically**
Plaintiffs,	
v.	
JOHNSON & JOHNSON,	
Defendant.	

APPENDIX C: REBUTTAL REPORT OF DR. WILLIAM T. BIELBY

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Plaintiffs,	
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NICOLE M. AUSTIN-HILLERY CERTIFICATION OF EXPERT REPORT

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Nicole M. Austin-Hillery hereby certifies as follows:

1. I am over the age of eighteen and an attorney licensed to practice in the District of Columbia and I have been admitted Pro Hac Vice to the State of New Jersey for this matter. I am associated with the firm of Mehri & Skalet, PLLC, which represents the Plaintiffs in this matter. I make this certification in support of Plaintiffs' Reply Brief in Support of Class Certification.

2. Attached as Exhibit 1 is the original signed Expert Rebuttal Report of William T. Bielby and Exhibits A through C.

3. Dr. Bielby has been retained by Plaintiffs to testify as an expert in support of the Motion for Class Certification. Plaintiffs submit the attached written report in partial satisfaction of the expert disclosure requirements of Fed. R. Civ. P. 26(a)(2)(B). The supporting data will be produced directly to Defendant.

4. I certify under penalty of perjury that the foregoing is true and correct.

Dated: April 28, 2006

Nicole M. Austin-Hillery

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Expert Rebuttal Report of William T. Bielby

Gutierrez v. Johnson & Johnson: Civil Action No. 01-5302

April 26, 2006

EXECUTIVE SUMMARY

Even companies with the most decentralized management strategies require centralized mechanisms to direct and coordinate their operations. Johnson & Johnson is no exception, a fact recognized by management scholars and observers of the Company. In its human resources function, Johnson & Johnson corporate headquarters establishes the framework for policies regarding compensation, promotion, and performance assessment, and these policies are implemented by its business units. In a large, diversified company like Johnson & Johnson, the specifics of compensation, promotion, and performance assessment systems can vary across occupational categories and business units. However, at the same time, policies and practices such as inadequate monitoring and oversight, lack of posting of advancement opportunities, and discretionary criteria for making decisions about pay and promotion can create discriminatory barriers companywide.

Dr. James Outtz, the defendant's expert, is aware of the balance between centralized direction and decentralized implementation, but in his analysis he chose to focus exclusively on local implementation and variation across business units, ignoring centralized direction and control. Dr. Outtz is aware of the scope of plaintiffs' allegations regarding systematic, companywide barriers that African American and Hispanic salaried

employees face in pay and promotion, but he focused his analysis narrowly on issues related to performance assessment. He adopted a methodology that highlighted variation across business units and occupational categories but had no mechanism for measuring and documenting commonalities.

Dr. Outtz has a sophisticated understanding of the need for proactive efforts to monitor human resources policies, practices, and procedures for their impact on equal employment opportunity, and he recognizes that in their absence a company's equal employment opportunity (EEO) efforts can be an empty exercise in "going through the motions." However, he largely ignored the implications of scholarship on this topic for Johnson & Johnson. In previous litigation, Dr. Outtz has testified that inadequate monitoring and oversight, coupled with discretionary and subjective policies and practices, creates a systematic "headwind" that disadvantages minority employees. Yet in his current assignment, Dr. Outtz ignored the Company's deficiencies in these areas.

Mr. Daniel Lemaitre, the other expert for the defendant who testified on management and organizational issues, expressed no opinion about any human resources policy, practice, or procedure at Johnson & Johnson. He had no knowledge of the allegations made by plaintiffs regarding racial bias. He reviewed no materials pertaining to the Company's human resources policies, practices, and procedures. Nothing in his report informs the issues plaintiffs allege regarding the discriminatory impact of companywide policies, practices, and procedures.

ASSIGNMENT, QUALIFICATIONS, AND MATERIALS REVIEWED

I have retained by Mehri & Skalet, PLLC to respond to the defendants' expert reports submitted by Dr. James Outtz and Mr. Daniel T. Lemaitre. Specifically, I have been asked to review their reports, their deposition testimony, and the materials they relied upon and to assess the validity of their conclusions regarding Johnson & Johnson's human resources policies, practices and procedures.

I have testified as an expert witness in both California Superior Court and federal court on cases involving workplace discrimination. A list of cases in which I have been identified as an expert or have given expert testimony since 2001 is attached as Exhibit A.

I received a Ph.D. in Sociology from the University of Wisconsin--Madison in 1976. I also have a B.S. in Electrical Engineering and a M.A. in Social Sciences from the University of Illinois. I am Professor of Sociology at the University of Pennsylvania, where I am also affiliated with the Population Studies Center. Prior to that, I served for twenty-seven years as a faculty member in the Department of Sociology at the University of California, Santa Barbara (UCSB), where I chaired my department from 1992 to 1998. At UCSB I was also affiliated with UCSB's Department of Statistics and Applied Probability. I am a past President of the American Sociological Association.

I have taught courses on employment discrimination at both the undergraduate and graduate levels at UCSB, at the University of California Washington Center in the District of Columbia, and at Northwestern University. Among my former positions are Visiting Professor of Management at UCLA, Fellow at the Center for Advanced Study in the Behavioral Sciences at Stanford, Visiting Distinguished John D. Macarthur Professor

of Sociology at Northwestern University, and Visiting Scholar at the American Bar Foundation. Since joining the faculty of the University of Pennsylvania I have taught graduate level courses on statistics and research methods in the social sciences. In addition to courses on discrimination, research methods, and statistics, I have taught graduate and undergraduate courses on organizational behavior, labor markets, and social inequality. I also specialize in research in each of these areas. Over the past twenty years, much of my research has focused on issues of workplace discrimination and on organizational policies and practices more generally. My research on these topics has been supported by four grants from the National Science Foundation, and it has been published in leading peer-reviewed social science research journals. My Curriculum Vitae is attached as Exhibit B.

I have received national awards from three different professional associations for my research on gender, labor markets, social psychological aspects of work, and organizational personnel practices. I have served on numerous panels, advisory committees, and professional workshops on topics relating to workplace discrimination, organizational personnel policies and practices, and research methodology. I have served as an advisor, consultant, or reviewer for the following organizations and agencies: the U.S. Bureau of the Census, the U.S. Department of Justice, the U.S. Department of Labor, the Equal Employment Opportunity Commission, the National Science Foundation, the National Institute of Mental Health, the National Academy of Sciences, the University of Michigan's Institute for Social Research, Stanford University, the Writers' Guild of America, West and the Bar Association of San Francisco. I have also served on the editorial boards of leading social science journals, and I regularly review

manuscripts for scientific journals on topics relating to organizational behavior, employment discrimination, and research methodology. I have been elected to several offices in the American Sociological Association. I served for three years on the ASA Council, the organization's governing body in addition to serving as the Association's President in 2003.

Materials I reviewed include the expert reports of Dr. Outtz and Mr. Lemaitre, their deposition transcripts and exhibits to their depositions, and the materials they produced through expert discovery. I also reviewed the deposition transcripts and exhibits of Johnson & Johnson managers and executives who testified on behalf of the Company as 30(b)(6) witnesses and of those who testified and as fact witnesses. I reviewed the expert report of Dr. Janice Madden (plaintiffs' statistical expert) and the reports and deposition testimony of Dr. David Wise (defendant's statistical expert) and Dr. Eugene Ericksen (defendant's sampling expert) as well as the materials they produced through expert discovery. I also reviewed the First Amended Complaint and the briefs and supplementary materials submitted by plaintiffs and defendant supporting and opposing class certification. I have also relied upon academic articles, chapters, and books written by social scientists and management scholars, and they are cited in the footnotes to this report.

EVEN THE MOST DECENTRALIZED COMPANIES HAVE COMPANYWIDE POLICIES, PRACTICES, AND PROCEDURES TO ESTABLISH DIRECTION, COORDINATION, AND CONTROL

Johnson & Johnson describes itself as "the world's most comprehensive and broadly based manufacturer of health care products, as well as a provider of related

services, for the consumer, pharmaceutical, and medical devices and diagnostics markets."[1] According to the Company website, approximately 116,000 individuals are employed worldwide at its 230 operating companies.[2] In official Johnson & Johnson documents, and in documents submitted as part of this litigation, the Company emphasizes the decentralized nature of its business operations. This feature of the Company is highlighted by the Company's experts, Dr. Outtz and Mr. Lemaitre. This aspect of the Company is well known. Johnson & Johnson is a "textbook case" of a global corporation in which business units have been delegated considerable autonomy for managing operations and responding to product-specific markets.

However, decentralization is always a matter of degree, a fact acknowledged in the Company-sponsored book by John Kador, *Great Engagements: The Once and Future Johnson & Johnson,* published by the Company in 2004. In a chapter titled "Valuing Decentralization: Markers for Managing from the Bottom Up," Mr. Kador writes:

> Decentralization is the keystone for the Company's broad agenda for management. It is an agenda *that operationalizes the Company's fundamental management imperatives and values*. Those principles include being broadly based in the business of human health care, managed for the long term and sustained through a values-based culture that maintains performance at the highest ethical levels.
>
> These imperatives and values underscore an agenda *around which the Company strives to have all of its organizations and people harmonize as they align priorities to achieve strategic objectives*.[3] (empahsis added)

Later in the same chapter, Mr. Kador writes:

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[1]"Our Company" statement at the Johnson & Johnson website, http://www.jnj.com/our_company/index.htm (April 18, 2006). Also see J. Kador, *Great Engagements: The Once and Future Johnson & Johnson*, Johnson & Johnson, 2004, cover material (J&J EXP 0007587).
[2]Johnson & Johnson website, *op cit*.
[3]Kador, *op cit*., p. 79 (J&J EXP 0007666).

> Even with the most decentralized organizations, *the corporate center has a role.* An organization's intellectual integrity *must be guaranteed from the center outward*. Furthermore, *programs that impact a number of autonomous units or transcend geographic borders*, such as initiatives promoting ethics, quality, and the environment, also *must start at the center*.
>
> *Managing the centralization-decentralization balance* is the essence of the strategic ballet. The only possible route to sustained success is fiddling with the equilibrium. It demands that the Company's increasingly dispersed companies become, in the words of Charles Handy, author of *The Age of Unreason*, "both big in some things and small in others, *to be centralized in some respects and decentralized in others*. Yet the drift, over the long haul, continues in one direction: away from headquarters' control and toward increased levels of autonomy.[4] (empahsis added)

Johnson & Johnson receives so much attention in the management literature and business press in part because it is a large, financially successful company that faces formidable challenges in balancing between decentralized operations and the need for coordination and central direction. It makes for a compelling example of how issues of corporate oversight and control are an integral part of a decentralized management approach. This is the theme of several Harvard Business School case studies that are widely used in teaching on this topic. For example, the 1986 case study, "Johnson & Johnson (A): Philosophy & Culture," frames the issue as follows in a section titled "Putting the J&J Philosophy into Operation:"

> The key organizational units for J&J were the operating company at the business level and the executive committee at the corporate level. The relationship between these two units was carefully managed to produce the cohesive independence that had become a cultural hallmark of J&J's operating structure. Strategic planning, compensation systems, and human resource management were among the major support systems to this relationship.[5]

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[4]Kador, *op cit*., p. 101 (J&J EXP 0007688).

[5]F. J. Aguilar and A. Bhambri, *Johnson & Johnson (A): Philosophy & Culture*, Harvard Business School, 1983 (rev. 1986), p. 6. A section titled "Central Staff Support Functions" describes how human resources and other functions were designed with careful attention "to defining their roles so as not to undermine the philosophy of decentralized operations" (p. 15).

A subsection titled "Central Staff Support Functions" has a separate heading for "Human resources and personnel" which explains that traditional personnel functions were the responsibility of the operating companies, but "corporate staff served to ensure uniformity in such areas as compensation and personnel policies."[6]

A more recent Harvard case study, "Johnson & Johnson in the 1990s," discusses Ralph Larsen's challenge upon assuming the role of Chief Executive Officer and concluding that "we were overdoing decentralization."[7] The case study ends with a section titled "Adjusting the Balance," describing how Larsen realized that he needed to "inject centralized elements" into the Company's decentralized structure, preserving the principle of decentralization while working "extra hard to keep everyone playing the same tune."[8] Reflecting that strategy, in the 1994 Annual Report, Mr. Larsen wrote: "We have encouraged our companies to share services, such as finance, purchasing, and human resources administration, while strengthening the vital strategic capabilities...."[9]

The point of these case studies is not that there is a single, unchanging, or optimal balance between decentralized management and centralized coordination and control, or that a decentralized approach to management is inherently superior to or inferior to a more centralized system, or that responsibility for human resources policy and practice rests solely at the corporate center or within decentralized business units. The key point is that no matter how great a value a company places on decentralized management, some amount of direction and coordination from the top cannot be avoided, and this is as true in the area of human resources as it is in other functional areas.

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[6]F. J. Aguilar and A. Bhambri, *op cit*., p. 15.
[7]J. Hurstak, under the supervision of Professor A. E. Pearson, *Johnson & Johnson in the 1990s*, Harvard Business School, 1992, p. 2.
[8]Hurstak, *op cit*., p. 4.
[9]1994 Annual Report, p. 3 (J&J EXP 0039675).

The balance between decentralization and centralization, between autonomy and centralized coordination, is a key theme in scholarship on management and organizational behavior, and it has long been understood by those working in the field of human resources. For example, in a chapter published two decades ago in the *Handbook of Human Resources Administration,* based on a report from the Conference Board, Harold Stieglitz wrote:

> To a large extent, this point concerning scope of decisions also answers the second perplexing question: "What limitations, if any, on decentralization?" For in a real sense, the decisions made at the top of the organization that take the form of objectives and policies are the limits of decentralized authority. And as previously stated by way of definition, authority means freedom to act or make decisions within, or in conformity with, overall corporate objectives and policies....
>
> Still another way to view the limits on decentralization is to examine the term itself: de-centralization. *Viewed in this way, there is something (an organization) that must be centralized before it can be decentralized. And to keep decentralization from resulting in complete fragmentation, some part of the central core must remain as the unifying element.*
>
> Thus, *decentralization in practice becomes a matter of degree* -- with the degree being determined by how far down authority has been delegated and how stringent the limitations are that have been placed on authority. *It is this fact that leads organizational analysts to declare that no company is completely decentralized. Companies are only more or less decentralized*.[10] (empahsis added)

In his expert report for the defendant, Dr. Outtz asserts that Johnson & Johnson's U.S. subsidiaries "operated as autonomous companies, each responsible for its human resources policies, practices, and procedures,"[11] implying that there is no corporate oversight, guidance, coordination, and control. However, a closer look at his report, his draft report, and his expert testimony indicates that he is in fact aware of the interplay

[10]H. Stieglitz, "Organizational Planning," p. (2)-1-(2)-17 in *Handbook of Human Resources Administration*, Second Edition, edited by J. J. Famularo, McGraw-Hill 1986.
[11]Outtz Expert Report, Vol. I, p. 66.

between decentralized operations and corporate-level coordination and oversight in the human resources function, as described in the paragraphs above. For example, in a passage that appeared in his draft report dated April 4, 2005, but omitted from his final expert report, he wrote:

> Johnson & Johnson must maintain a delicate balance between monitoring and evaluating the implementation of human resource policies at each operating company and providing autonomy that each company needs to meet its organizational objectives. This balance has to be maintained despite frequent acquisitions, mergers, reorganizations, and divestitures.[12]

In deposition, when asked whether the operating companies were completely autonomous, Dr. Outtz responded as follows (depo., p. 228):

> ***Q. Let me just ask you this question, is it your opinion that the Johnson & Johnson operating companies are completely autonomous?***
> A. I believe that the Johnson & Johnson operating companies have autonomy with regard to certain HR practices and procedures and that there may be complete autonomy with regard to certain HR, well, certain practices and procedures, they may not be HR practices and procedures.

The response is somewhat ambiguous but it appears that he believes there is not complete autonomy at least with respect to some human resources policies, procedures, and practices. His views are clearer in the context of his response to a question about whether the operating companies were completely autonomous in the area of compensation. He responded (depo., p. 210):

> A. The operating companies have autonomy in terms of operationalizing guidelines, I testified to this before, in terms of operationalizing guide posts with regard to compensation emanating from Johnson & Johnson Corporate Headquarters.

Asked to define autonomous, Dr. Outtz responded (depo., p. 105):

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[12]Outtz Draft Expert Report, April 4, 2005, p. 24 (J&J EXP 0038482).

A. I would define that as operating these companies, having the authority and responsibility to carry out certain things, certain policies and practices, that is, to implement them, to operate them, to operationalize them independent of Corporate Headquarters.

The dictionary definition of "operationalize" is "to put into operation, start working."[13]

Thus, it appears that Dr. Outtz recognizes that there are some policies, frameworks, and guidelines that emanate from corporate headquarters and are implemented in the business units. He says so explicitly in his testimony regarding compensation policies (depo., p. 41-42):

Q. When you looked at the compensation systems, did you see any policies or practices adopted by the Executive Committee at Johnson & Johnson and applicable to all employees, at least in the domestic United States?

MR. JOHNSON: Objection to form.

A. I saw policies adopted by Corporate Headquarters, I believe you said Corporate Headquarters.

Q. I said adopted by the Executive Committee.

A. That is what I thought. In any areas? I mean any policies? In any practices?

Q. I'm talking about in terms of compensation.

A. Oh, okay. What I saw was that the Executive Committee, on an annual basis, issues certain policies that serve as a framework for what the operating companies can choose to do with regard to compensation.

And the framework is issued annually and the operating companies have the autonomy to decide how they are going to put that into operation, how they are going to make that work.

As I've said, my understanding is that this compensation, these compensation policies

[13]Webster's New Millennium Dictionary of English, Preview Edition (v 0.9.6), Lexico Publishing Group, LLC, 2003-2005, http://dictionary.reference.com/search?q=operationalize.

that I'm thinking of, this is communicated annually.

Here, Dr. Outtz's testimony is consistent with that of former CEO Ralph Larsen concerning the role of the Executive Committee in formulating, coordinating, and disseminating human resources policies. For example, regarding compensation, in deposition Mr. Larsen gave the following testimony regarding the annual letter providing policy guidelines (p. 135-136):

Q. And what was the purpose of letters like this?

A. The purpose of the letters, a letter like this that went out each year, *was to provide a framework for the administration of compensation* for the end of the year covering, in this case the 1998 year-end compensation.

So it was *designed to get everybody on the same wavelength in terms of how we were going to be administering compensation, what the merit increase guidelines were going to be, if we were going to be making any changes to our bonus program or to our compensation program.*

And it was also intended to continued (*sic*) to encourage the differentiation between low performers and high performers, as opposed to a clustering around the middle. So this -- we continually preached and encouraged that our people differentiate between performers who were mediocre or average or below average and

performers who were outstanding. And as I had mentioned earlier in my deposition, that is a constant struggle.

Q. And when the changes to the compensation program, would they generally be approved by the management compensation committee, the Executive Committee or the Board of Directors?

A. It would be approved by the management compensation committee first, it would then be approved by the full board, by the full Executive Committee, *so that everyone was in the loop and knew what changes we were going to make and, then*

finally, if the changes were of significance,
where we were changing a major concept, we would take that to the management committee of the board.

Thus, while Dr. Outtz chose to focus on implementation issues regarding human resources at the business unit level, it is clear that implementation or "operationalization" takes place within a framework devised, disseminated, and coordinated centrally.

In addition, in his report, draft report, and deposition testimony, Dr. Outtz demonstrated awareness of the fact that after being acquired by Johnson & Johnson, an integration process would be implemented to bring the acquired firm's human resources policies and practices into alignment with those of Johnson & Johnson. In discussing performance appraisal systems in his expert report, he notes the "difficulties faced by Johnson & Johnson each time it experiences a merger or acquisition" because the human resources practices of the acquired firm "will at some point have to reflect Johnson & Johnson's business philosophy as exemplified for example in the Johnson & Johnson Credo."[14] In deposition testimony, he elaborated on the example from his report regarding the changes in the performance assessment system at Centocor following its acquisition. He explains that the individual he quotes in his report "is saying, we have got to bring these practices of Centocor in, you know, make them similar to what the other -- what is supposed to be happening in terms of guidelines from Corporate Headquarters."[15] Dr. Outtz went on to testify that he agreed with the characterization that

[14]Outtz Expert Report, Vol. I, p. 33.
[15]Outtz depo., p. 312.

the individual at Centocor was "endeavoring to make the policies fall into the fold of the Johnson & Johnson guidelines."[16]

In a paragraph of his draft report that was omitted from his final report, Dr. Outtz relied upon and cited scientific literature on mergers and acquisitions and the challenges of effectively integrating the acquired firm into the culture, policy, and practices of the acquiring firm.[17]

In sum, while his expert report expresses the conclusion that the Company's business units operate as autonomous companies with respect to human resources, in many ways Dr. Outtz's opinions about autonomy and decentralization are consistent with the views of management scholars about the balance between decentralization and centralized coordination and control in decentralized companies generally and at Johnson & Johnson specifically. However, as I explain below, his analysis of the Company's human resources policies, practices, and procedures largely ignores the allegations by plaintiffs regarding companywide barriers to equal employment opportunity for African American and Hispanic employees.

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[16]Outtz depo., p. 312. The quotation is counsel's question, to which Dr. Outtz responded, "that is my interpretation of it." Dr. Outtz also testified (p. 315) that acquired companies are not following corporate directives but instead "Corporate Headquarters distributes, disseminates guidelines, and an acquired company, just as a legacy company, has the autonomy to operationalize those guidelines."

[17]Outtz Draft Expert Report, April 4, 2005, p. 25 (J&J EXP 0038483). Additional scientific studies on this topic were produced as part of expert discovery but were not cited by Dr. Outtz. These include, for example, P. Shrivastava, "Postmerger Integration," *Journal of Business Strategy*, Vol. 7 (1986), p. 65-76 (J&J EXP 0005445-0005455). For testimony on post-acquisition integration of human resources policies and practices at Johnson & Johnson, see, for example, the deposition testimony of Joseph Michalcewicz at pages 72-75, 79-82, 87-91, 97-98 regarding the changes at ALZA after it was acquired.

DR. OUTTZ DID LITTLE OR NO ANALYSIS OF MANY OF THE PLAINTIFFS' ALLEGATIONS REGARDING DISCRIMINATORY BARRIERS CREATED BY COMPANYWIDE POLICIES AND PRACTICES, AND MUCH OF HIS ANALYSIS HAS LITTLE OR NO RELATIONSHIP TO THOSE ALLEGATIONS

In his expert report, Dr. Outtz wrote that he was retained to "evaluate the human resources policies, practices and procedures" of the Company and its subsidiaries "as they relate to class certification" with the goal of "determining whether the named plaintiffs and employees they wish to represent were similarly affected by the human resource policies, practices and procedures of Corporate Headquarters and the Subsidiaries."[18] Dr. Outtz began his assignment in this litigation by reading the First Amended Complaint and identifying the plaintiffs' specific allegations. Dr. Outtz testified as follows about his purpose in constructing the list of allegations (p. 178):

> ***Q. What did you do, what was the purpose of you doing this list?***
> A. To focus my attention on what areas I needed to look at, at Johnson & Johnson Corporate and the operating companies. I wanted to get an understanding of what Plaintiff's, what their Complaints were, in order to try to offer some assistance as my retainer called for me to do.

His list of twelve specific allegations, which I have included as Exhibit C to this report, is a relatively complete and accurate summary of the class (as opposed to individual) claims regarding racial discrimination.[19] Briefly, the twelve allegations are: (1) failure to post promotion vacancies; (2) a flawed process for career development and succession planning; (3) a secretive and excessively subjective system for identifying "high potential" employees; (4) low rate of advancement for African American and Hispanic

[18]Outtz Expert Report, Vol. 1, p. 1.
[19]The list is at p. 4 of Exh. 6 to the Outtz deposition, J&J EXP 0008111. Dr. Outtz's testimony about the process used to compile the list is at Outtz depo., p. 35-39, 170-178.

employees; (5) a "glass wall" limiting opportunities for African American and Hispanic employees in more powerful areas of the Company; (6) inadequate efforts by the Board of Directors in linking senior management compensation to performance related to equal employment opportunity; (7) racial bias in setting entry level salaries due to inadequate guidelines and oversight; (8) racial bias in compensation, linked to a flawed and unduly subjective performance assessment system; (9) failure to monitor promotion and compensation practices for racial bias; (10) failure to act on internal data showing racial bias; (11) endorsement of discriminatory behavior because of a failure to monitor and curb it; and (12) inadequate handling of EEO complaints.

In fact, however, Dr. Outtz's analysis focuses primarily on an examination of the performance appraisal processes used throughout the Company and its subsidiaries and largely ignores allegations about other aspects of Johnson & Johnson's human resources policies, practices, and procedures. His analysis of compensation in Chapter 4 of Volume 1 of his report is limited to a taxonomy of factors that are considered by Corporate Headquarters and Subsidiaries in setting initial salaries, merit increases, and compensation for field sales employees.[20] He devotes just one paragraph on policies and practices related to promotion at Corporate Headquarters and Johnson & Johnson Subsidiaries, concluding that the promotion process includes consideration of job performance as determined by the performance appraisal process.[21] The one paragraph devoted to monitoring of employment practices is little more than a statement of the

[20]Outtz Expert Report, Vol. 1, p. 42-54.
[21]Outtz Expert Report, Vol. 1, p. 56-57.

minimal reporting and recordkeeping obligations Johnson & Johnson and its subsidiaries face as a government contractor.[22]

In his deposition, Dr. Outtz testified that the limited focus of his analysis was intentional. Asked about his understanding of what he agreed to do on behalf of the defendant, he testified as follows (p. 75-76):

> ***Q. And what did you understand your charge to be in terms of that report?***
> A. To express my opinions with regard to issues that I had reached a conclusion about, basically, there were two issues. Whether there was *excessive subjectivity in the performance appraisal process* at the different operating companies of Johnson & Johnson and Corporate Headquarters, and whether *the performance appraisals, performance management and policies and procedures at Johnson & Johnson, based on those performance appraisals*, were different at different operating companies and Corporate Headquarters. (empahsis added)

Asked why he did not do a more complete analysis of compensation policies, practices, and procedures, Dr. Outtz testified as follows (p. 78):

> My own examination of documents and review of deposition transcripts indicated that for each operating company, performance was tied to compensation, and to other practices, but to compensation. So, *I did not elect to look at compensation independent of performance appraisal or performance management* because the two are tied together at each operating company, in different ways, but at each operating company. (empahsis added)[23]

Dr. Outtz provided the same rationale for imposing the same limitation on his analysis of promotion.[24] As a result of Dr. Outtz's decision to limit his analysis in this way, his

[22]Outtz Expert Report, Vol. 1, p. 57-59.
[23]Also see Dr. Outtz's deposition testimony at p. 75-77.

report includes no significant analysis of plaintiffs' discrimination claims relating to posting, succession planning, designation of "high potential" employees, "glass wall" barriers, monitoring of promotion and compensation processes, failure to act on internal evidence of discrimination, and EEO complaint procedures.

Dr. Outtz's limited analysis of compensation and promotion fails to assess how performance assessments are used in combination with other factors to make decisions about initial pay, merit increases, compensation, and promotions. This is a serious shortcoming, because in a highly discretionary system with limited monitoring, even objective factors can be evaluated in a way that leads towards favoritism to the majority group and discrimination against minorities. Social science research demonstrates that substantial discretion in assessing and weighing evaluative criteria invites bias. For example, social psychologists Samuel Gaertner and John Dovidio have conducted research showing that when white evaluators have discretion in how to weigh evaluative criteria, they tend to do so selectively, in a way that biases outcomes in favor of white ratees. In one part of their study, participants were told they were assisting a university in making admission decisions, and they were given information on factors such as test scores and high school grades for (hypothetical) African American and white applicants. When applicants were strong on one dimension and weak on the other, raters tended to give the stronger dimension a greater weight for white applicants and the weaker one a greater weight for African American applicants.[25] In other words, they exercised their

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[24]Outtz depo., p. 81-85.

[25]G. Hodson, G., J. F. Dovidio and S. L. Gaertner, "Processes in Racial Discrimination: Differential Weighting of Conflicting Information," *Personality and Social Psychology Bulletin*, Vol. 28, 2002, p. 460-471.

discretion in a way that ensured that whites would rank on top. The authors summarize their findings as follows:

> White college participants (whom, relative to the general population may be regarded as generally moderate to low prejudiced...), give White candidates the "benefit of the doubt," a benefit they do not extend to Blacks.[26]

In a study of gender bias with a similar experimental design, Eric Uhlmann and Geoffrey Cohen found that when given discretion on defining and weighing qualifications, evaluators redefined criteria of success so that men were assigned to stereotypically male jobs and females were assigned to stereotypically female jobs.[27] They concluded (p. 474) that "even without ambiguity in applicants' credentials, the criteria used to assess merit can be defined flexibly in a manner congenial to the idiosyncratic strengths of applicants who belong to desired groups." By acting in this way, decision-makers can justify biased decisions by appealing to seemingly "objective" criteria. In their words (p. 479):

> Bias in the construction of job criteria allows evaluators both to discriminate and to maintain a personal illusion of objectivity. Although gender stereotypes encourage discrimination, egalitarian norms compel making hiring decisions on the basis of applicants' merit rather than their group membership. These conflicting pressures can be reconciled by defining and redefining merit in a manner that justifies discrimination.[28]

Although theirs is a study of gender bias, Uhlmann and Cohen conclude their study by linking it to the research of Gaertner and Dovidio described above, noting (p. 479) that it

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[26]S. L. Gaertner, J. F. Dovidio, J. Nier, G. Hodson, and M. A. Houlette, "Aversive Racism: Bias Without Intention," p. 377-393 in *Handbook on Employment Discrimination Research: Rights and Realities*, edited by R. L. Nelson and L. B. Neilson, Kluwar Academic Press, 2005 (internal citation omitted, quotation on p. 384); G. Hodson, J. F. Dovidio, and S. L. Gaertner, "Processes in Racial Discrimination: Differential Weighting of Conflicting Information," *Personality and Social Psychology Bulletin*, Vol. 28, 2002, p. 460–471.

[27]E. L. Uhlmann and G. L. Cohen, "Constructed Criteria: Redefining Merit to Justify Discrimination," *Psychological Science*, Vol. 16, 2005, p. 474-480.

[28]Also see M. I. Norton, J. A. Vandello, and J. M. Darley, "Casuistry and Social Category Bias," *Journal of Personality and Social Psychology*, Vol. 87, 2004, p. 817-831.

"dovetails with work on aversive racism in suggesting that prejudice often expresses itself in rationalizable ways..." In sum, this body of research demonstrates that discretion in the definition and weighing of evaluative criteria, even with regard to ostensibly objective criteria, contributes to bias, and it often does so in a way that allows decision-makers to justify to themselves and to others that their actions are fair and nondiscriminatory.

Dr. Outtz's failure to analyze Johnson & Johnson's monitoring practices regarding equal employment opportunity is surprising, given his awareness of the importance of effective monitoring for minimizing bias. In his report, he states:

> An important element in the development and implementation of human resource policies and practices particularly with regard to equal employment opportunity is proper monitoring. It is not good enough to simply formulate policies that meet accepted professional standards, the employer must take affirmative steps to monitor the implementation of those policies to ensure that they produce the intended results.[29]

Dr. Outtz recognizes that formal written policies alone are not sufficient to minimize bias in personnel decisions. Dr. Outtz has testified on this topic in prior litigation as well. For example, n his report submitted in Roberts et al. v. Texaco, Inc., Dr. Outtz wrote:

> Texaco designed systematic guidelines for the companywide implementation of certain employment policies and practices discussed below, but it has not taken appropriate steps to ensure their effective and consistent implementation companywide.... Without control over the implementation of its employment policies and practices, Texaco does not maintain the essential evidence needed to ascertain whether its employment policies and practices are having an adverse impact on African-Americans or even whether they are being effectively implemented.[30]

Regarding the impact of ineffective monitoring, Dr. Outtz wrote:

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[29]Outtz Expert Report, Vol. 1, p. 57.

[30]Preliminary Report of Dr. James L. Outtz Pursuant to Federal Rule of Civil Procedure 26 (a)(3), *Roberts et al. v. Texaco*, para. 9 (Outtz Depo., Exh. 7a, "Outtz Preliminary Report"); also see Outtz depo., p. 236-242.

> Texaco appears to have failed to make an attempt to assess and if possible reduce the adverse impact of its basic company wide employment programs such as the PMP, the Potential Forecast, the High Potential and Bench lists, the Ladder and other succession plans, and the job posting system. This is illustrated by its failure to either monitor or audit the implementation of the above policies. Without adequate controls such as monitoring and auditing, these policies constitute a systematic "built in" headwind against African-Americans throughout the company.[31]

Dr. Outtz's opinion is consistent with a substantial body of social science research. It indicates that passive organizational approaches to the prevention of harassment and discrimination that rely primarily on posters and policy statements and that take action only after an incident is brought to the attention of management are largely ineffective. Written anti-discrimination policies that are simply reactive and lack effective accountability are vulnerable to bias against women and minorities. Often, such a system is simply a symbolic exercise in "going through the motions," with little substantive impact on creating organizational policy and practice that is free of bias.[32] Sociologist and legal scholar Lauren Edelman, the leading expert on this topic, summarizes the findings of fifteen years of research on organizational responses to EEO as follows:

> Because it is generally the form rather than the substance of compliance that attains an institutionalized status, there is variation in how enthusiastically management, as well as the personnel who staff compliance structures, embraces legal ideals. In some cases, structures have both symbolic and substantive

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[31]Outtz Preliminary Report, para. 16.

[32]L. B. Edelman, "Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law," *American Journal of Sociology*, Vol. 97, 1992, p. 1531-1576; L. B. Edelman, S. Patterson, E. Chambliss, and H. S. Erlanger, "Legal Ambiguity and the Politics of Compliance: Affirmative Action Officers' Dilemma," *Law and Policy*, Vol. 13, 1991, p. 73-97; L. B. Edelman, H. S. Erlanger, and J. Lande, "Employers' Handling of Discrimination Complaints: The Transformation of Rights in the Workplace," *Law & Society Review*, Vol. 27, 1993, p. 497-534; L. B. Edelman, Lauren B. and S. Petterson, "Symbols and Substance in Organizational Response to Civil Rights Law," in *Research in Social Stratification and Mobility*, 1999; J. S. Leonard, "Women and Affirmative Action," *Journal of Economic Perspectives*, Vol. 3, 1989, p. 61-75. Also see J. S. Leonard, *Use of Enforcement Techniques in Eliminating Glass Ceiling Barriers*, Report prepared for the U. S. Department of Labor, Glass Ceiling Commission, April 1994.

> significance -- their form signals attention to legal ideals and they operate to enhance the workplace status and conditions of legally protected employees. In other cases, however, the structures fit the law in form but lack substantive effect. Organizations may strategically seek to create compliance structures merely as symbolic gestures by "decoupling" those structures from core organizational activities. Organizations may, for example, create affirmative action officer positions but give the officer little or no autonomy or authority or create grievance procedures that are hard to access and known to provide little relief.[33]

The most effective approaches to minimizing bias rely on proactive policies and practices, including recurring and mandatory training of managers and supervisors and ongoing, systematic statistical monitoring of disparities by race in perceptions of workplace climate and of disparities by race in outcomes of personnel decisions regarding hiring, job assignment, promotion, performance ratings, and compensation.[34] Effective EEO policy also requires explicit evaluation of managers and supervisors on their contributions to an organization's equal opportunity goals. Nearly all medium- to large-scale organizations have a written antidiscrimination policy, and many have a written policy stating that implementing the objectives of the Affirmative Action Plan is the responsibility of every employee. However, such policies are merely symbolic unless they also delineate explicit duties and responsibilities relating to equal opportunity in

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[33]L. B. Edelman, "Law at Work: The Endogenous Construction of Civil Rights," p. 337-352 in *Handbook on Employment Discrimination Research: Rights and Realities*, edited by R. L. Nelson and L. B. Neilson, Kluwar Academic Press, 2005 (internal citation omitted, quotation on p. 345-346). Also see K. D. Krawiec, "Cosmetic Compliance and the Failure of Negotiated Governance," *Washington University Law Quarterly*, Vol. 81, p. 487-544. On the general issue of decoupling of organizational functions, see D. J. Orton and K. E. Weick, "Loosely Coupled Systems: A Reconceptualization," *Academy of Management Review*, Vol. 15, p. 203-223

[34]For a review of monitoring and accountability as strategies for ensuring equal employment opportunity, see W. T. Bielby, "Minimizing Workplace Gender and Racial Bias," *Contemporary Sociology*, Vol. 29 (No. 1), 2000, p. 120-129; also see S. Sturm, "Second Generation Employment Discrimination: A Structural Approach," *Columbia Law Review*, Vol. 101, 2001, p. 458-568; B. F. Reskin, "Including Mechanisms in Our Models of Ascriptive Inequality," *American Sociological Review*, Vol. 68, 2003, p. 1-21 (see, especially, p. 12-14); and A. Kalev, F. Dobbin, and E. Kelly, "Best Practices or Best Guesses? Diversity Management and the Reduction of Inequality," Paper Presented at the Meeting on Social Scientific Perspectives on Employment Discrimination in Organizations," Center for Advanced Study in the Behavioral Sciences, Stanford, CA, November 2005. For an example of policies and practices used by human resources professionals for establishing effective monitoring and accountability, see D. Kennedy, *Accountability: Establishing Shared Ownership*, Berrett-Koehler Communications, 2000.

each manager's or supervisor's job description, which can then be related to specific evaluative dimensions in the performance reviews of those employees. In short, in the area of EEO as well as other aspects of human resources, "what gets measured gets done."[35]

Despite the fact that plaintiffs made a specific claim regarding failure to link senior management compensation to equal opportunity performance, and despite the emphasis on evaluation of managers on EEO contributions in the research and management literature, Dr. Outtz ignored this topic in his report. The extent of his analysis was to testify in deposition that he was aware that development, which he understood to include EEO, was a dimension of performance evaluation.[36]

Dr. Outtz was aware that prior to this litigation, Johnson & Johnson did no annual monitoring of racial disparities in compensation, and he understood that no such monitoring was conducted by the Company's business units.[37] Dr. Outtz testified that instead, the practice in the business units was strictly reactive, conducting an adverse impact analysis of compensation only when required to do so by an outside government agency.[38] Similarly, the Company does no monitoring of racial disparity in performance ratings, and there is no evidence that the Company's subsidiaries regularly monitor them either.[39] Dr. Outtz gave no consideration to the absence of regular monitoring of racial disparities in performance ratings, despite the fact that his own statistical analysis showed

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[35]S. Black, "What Gets Measured Gets Done: Using Metrics to Support Diversity," *Canadian HR Reporter*, Vol. 15, 2002, p. 13-14; M. Giovannini, "What Gets Measured Gets Done: Achieving Results Through Diversity and Inclusion," *Journal for Quality and Participation*, Vol. 27, 2004, p. 21-27; S. Kerr, "On the Folly of Rewarding A, While Hoping for B." *Academy of Management Journal*, Vol. 18, 1975, p. 769-783; Bielby, 2000, *op cit*.
[36]Outtz depo., p. 179.
[37]Outtz depo., p. 187-198
[38]Outtz depo., p. 185-208, 276-277.
[39]See Obler depo., p. 190.

consistent disparities across operating companies, favoring whites over African Americans.[40] In short, Dr. Outtz ignored or discounted a substantial evidence in the record that Johnson & Johnson failed to establish effective monitoring and oversight at the corporate level, delegated responsibility for EEO monitoring to subsidiaries but did not hold those units accountable for doing so effectively, and relied on a system that was largely reactive and lacked the element he emphasized in his report, "affirmative steps to monitor the implementation of those policies to ensure that they produce the intended results." This is precisely the kind of system that allows discretionary and subjective decision-making to create "a systematic 'built in' headwind" against minorities, as Dr. Outtz has testified in prior litigation.

PLAINTIFFS ARE MAKING NO CLAIM THAT THEY HAVE BEEN "SIMILARLY AFFECTED" BY EVERY ASPECT OF JOHNSON & JOHNSON'S HUMAN RESOURCES POLICIES, PRACTICES, AND PROCEDURES

An examination of Dr. Outtz's testimony about the method he used in doing his analysis suggests that he believes either: (1) that plaintiffs are claiming that all aspects of the Company's human resources policies, practices, and procedures affect each of them and those they seek to represent in the same way; or (2) that plaintiffs are required to prove that this is the case in order to achieve class certification. The latter is a legal issue that neither Dr. Outtz nor I is qualified to make, and the former is simply wrong. No one disputes that Johnson & Johnson's salaried workforce includes individuals employed in a variety of occupational roles, including, among others, secretaries, office managers,

[40]Outtz depo., p. 243, 258-271, 404-408, 568-569. In deposition testimony, Dr. Outtz repeatedly emphasized that that magnitude of racial disparities differed across business units, but there is no evidence that he made any effort to assess whether that variation was due to chance; Outtz depo., p. 270-271, 406-408, 508-511.

laboratory technicians, accountants, scientists, and salespersons. No one claims, for example, that the educational credentials are considered in the same way for secretaries and scientists when decisions are made about job assignment, compensation, and promotion. Similarly, no one claims, for example, that the criteria for assessing performance and the system for incentive-based compensation are or should be the same for computer programmers and salespersons. These kinds of features of human resources policies, practices, and procedures can vary across occupational categories and business units, while at the same time, policies and practices such as inadequate monitoring and oversight, lack of posting of advancement opportunities, and discretionary criteria for making decisions about pay and promotion can create discriminatory barriers throughout the Company.

Thus, the results that appear in Chapter 4 of Dr. Outtz's report regarding differences in factors considered in compensation decisions and incorporated into performance appraisals are not surprising. Nor is it surprising that he finds some factors that are commonly used across business units in making decisions about compensation and about performance assessment. It is clear from his deposition testimony that Dr. Outtz defined as his task as one of identifying differences and that he chose to ignore commonalities across the Company in policies, practices, and procedures. For example, he testified that he did not examine and document the validity of plaintiffs' claim about systematic failure to post promotional opportunities because it was "readily apparent" that operating companies and Corporate Headquarters did not require job postings and "that would be a constant."[41] He provided the same rationale for his failure to examine

[41]Outtz depo., p. 182.

whether there was uniformity in the absence of monitoring promotion and compensation practices for discriminatory effect because "that is another constant."[42]

The same is true for Dr. Outtz's analysis of performance appraisal policies, practices, and procedures. His testimony is as follows (p. 360-362):

Q. Sir, let's take a look at Page 31 to 33, where it says differences in appraisal systems.
A. Yes.
Q. Okay. Do you have any, what were you trying to do here with this section?
A. It says in this section that the first

objective of examining actual performance appraisals was to assess the similarity or dissimilarity of the performance appraisal processes at the subsidiaries.
Q. Okay. And this, do you have a section here where you discuss the similarities in appraisal systems, do you have a heading for that in your report?
A. No.
Q. Is that because you found no similarities?
A. Not necessarily, no.
Q. Do you think to be scientific or more objective that one should have a section about similarities as much as differences?
A. I don't believe that was necessary for the point I was making in this report. As line two says, assess a similarity or dissimilarity.
Q. Okay.
A. It doesn't say address the similarity and the dissimilarity.
Q. Okay. So you only looked at the dissimilarity in terms of what you reported in this report?
A. I was assessing the performance

appraisals to determine the extent to which they were similar or dissimilar, and if I established that they were dissimilar, that speaks to whether they are similar. In other words, if I looked at

[42]Outtz depo., p. 184.

all of them for similarity and found that they weren't similar, then they are dissimilar. If I look at them for dissimilarity and find that they are dissimilar, then in my opinion they are not similar.

Q. Where do you report any findings of similarity?

A. I do not. I report the findings of dissimilarity.

In short, Dr. Outtz defined the scope of his analysis so narrowly that he all but ignored many of the plaintiffs' claims about systematic discriminatory barriers. Then he applied a methodology that was designed to highlight variation in human resources policies, practices, and procedures and ignore features that were common companywide.

VOLUME 2 OF DR. OUTTZ'S REPORT IS LARGELY DEVOID OF ANALYSIS

In his expert report, Dr. Outtz wrote that Volume 2 is a description of the policies, procedures, and practices for filling job vacancies, compensation, and performance management at Johnson & Johnson Corporate Headquarters and its subsidiaries.[43] In the Introduction to Volume 2, Dr. Outtz states that it is based on declarations from managers and executives from Headquarters and the subsidiaries as well as documents produced by Johnson & Johnson.[44] At his deposition, Dr. Outtz testified that it was in fact based on a more expansive body of evidence, including everything he relied upon for Volume 1, although the declarations were the "focal point" of his analysis.[45]

In fact, with a few exceptions, Volume 2 consists of nothing more than a series of quotations from the Company's declarations and nearly verbatim paraphrases of language that appears in those declarations. In the descriptions for 26 companies and Corporate

[43]Outtz Expert Report, Vol. 2, p. 1.
[44]Outtz Expert Report, Vol. 2, p. 1.
[45]Outtz depo., p. 95-103.

Headquarters that appear in Volume 2, Dr. Outtz provided few cites to declaration exhibits or other documents, apart from the declarations. The only "analysis" in the descriptions for each of the companies is a concluding "boilerplate" paragraph characterizing the performance appraisals examined by Dr. Outtz. For example, the concluding paragraph in the description for Advanced Sterilization Products (ASP) reads:

> Examination of completed performance appraisals from ASP that were part of the random sample described in Chapter 3 of Volume 1 of this report indicated that the appraisals were objective and based on work behaviors. The appraisals exceed accepted professional standards for objectivity.[46]

The exact same language (with only the name of the company changed) appears as the last paragraph in 18 other descriptions. Another four descriptions end with the language below (again, with the name of the company changed).

> Examination of completed performance appraisals from Worldwide Headquarters that were part of the random sample described in Chapter 3 of Volume 1 of this report indicated that 94% were objective and based on work behaviors. The appraisals exceed accepted professional standards for objectivity.[47]

Even the figure of 94% appears in all four of the paragraphs, even though it would be impossible to get that percentage in three out of the four instances.[48]

In none of the descriptions does Dr. Outtz offer any analysis or conclusions regarding policies, procedures, and practices for filling job vacancies or for compensation. Furthermore, while some of the declarations describe a subsidiary's efforts in the areas of diversity and/or equal employment opportunity, Dr. Outtz makes reference to this information in just one instance (the first description, for ASP), and

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[46]Outtz Expert Report, Vol. 2, p. 5.

[47]Outtz Expert Report, Vol. 2, p. 81.

[48]The first time the paragraph appears is for Worldwide Headquarters, for which Dr. Outtz reviewed 18 appraisals. If he counted all but one as meeting his criteria for being "objective and based on work behaviors" the percentage, corresponding to 17 of 18, would be 94%, as reported. In the other three instances there were 14, 30, and 12 appraisals examined, respectively. It is impossible to get a figure of 94% in those instances.

ignores it in every other instance.[49] In short, there is scant evidence of any substantive analysis relevant to the litigation in the second volume of Dr. Outtz's expert report.

THE OPINIONS EXPRESSED BY MR. LEMAITRE HAVING NOTHING TO DO WITH JOHNSON & JOHNSON'S HUMAN RESOURCES POLICIES, PRACTICES, AND PROCEDURES OR WITH PLAINTIFFS' CLAIMS OF DISCRIMINATION

Mr. Lemaitre offers the rather unremarkable conclusion that the Company has a decentralized management approach which has contributed greatly to the Company's success.[50] In his report, he does not mention a single human resource policy, practice, or procedure; he simply asserts that the human resources function is decentralized.[51] At his deposition, when asked whether he examined the organization of the human resources function, Mr. Lemaitre testified as follows (p. 61):

Q. Sir, before issuing your report, did you make any inquiries to see if whether the human resource function as opposed to operations was handled in a way that had some centralized components to it? Did you consider that in preparing your report?

A. I did not. I did not think it was necessary for me to delve into the functions within Johnson & Johnson to be able to articulate how Wall Street perceived J&J's operating structure.

Mr. Lemaitre's report cites no scientific or professional literature. In deposition, Mr. Lemaitre testified that he reviewed no documents to prepare his report, that he had no knowledge of the nature of the complaint or other issues in the litigation, that he asked

[49]Outtz Expert Report, Vol. 2, p. 4.
[50]Lemaitre Expert Report, p. 5-8.
[51]Lemaitre Expert Report, p. 6.

for no information about the human resources function at the Company, and that he did not write his report.[52] Instead it was written by an attorney for the defendant, based on comments he made over the phone.[53]

CONCLUSION

Even companies with the most decentralized management strategies require centralized mechanisms to direct and coordinate their operations. Johnson & Johnson is no exception, a fact recognized by management scholars and observers of the Company. In its human resources function, Johnson & Johnson corporate headquarters establishes the framework for policies regarding compensation, promotion, and performance assessment, and these policies are implemented ("operationalized") by its business units. In a large, diversified company like Johnson & Johnson, the specifics of compensation, promotion, and performance assessment systems can vary across occupational categories and business units. However, at the same time, policies and practices such as inadequate monitoring and oversight, lack of posting of advancement opportunities, and discretionary criteria for making decisions about pay and promotion can create discriminatory barriers companywide.

Dr. Outtz is aware of the balance between centralized direction and decentralized implementation, but in his analysis he chose to focus exclusively on local implementation and variation across business units, ignoring centralized direction and control. Dr. Outtz is aware of the scope of plaintiffs' allegations regarding systematic, companywide barriers that African American and Hispanic salaried employees face in pay and

[52]Lemaitre depo., p. 13-17, 61-69.
[53]Lemaitre depo., p. 17-23.

promotion, but he focused his analysis narrowly on issues related to performance assessment. He adopted a methodology that highlighted variation across business units and occupational categories but had no mechanism for measuring and documenting commonalities.

Dr. Outtz has a sophisticated understanding of the need for proactive efforts to monitor human resources policies, practices, and procedures for their impact on equal employment opportunity, and he recognizes that in their absence a company's equal employment opportunity (EEO) efforts can be an empty exercise in "going through the motions." However, he largely ignored the implications of scholarship on this topic for Johnson & Johnson. In previous litigation, Dr. Outtz has testified that inadequate monitoring and oversight, coupled with discretionary and subjective policies and practices, creates a systematic "headwind" that disadvantages minority employees. Yet in his current assignment, Dr. Outtz ignored the Company's deficiencies in these areas.

Mr. Lemaitre expressed no opinion about any human resources policy, practice, or procedure at Johnson & Johnson. He had no knowledge of the allegations made by plaintiffs regarding racial bias. He reviewed no materials pertaining to the Company's human resources policies, practices, and procedures. Nothing in his report informs the issues plaintiffs allege regarding the discriminatory impact of companywide policies, practices, and procedures.

I declare under penalty of perjury that the forgoing is a true and correct report of my analysis and opinion.

Executed this 26th day of April, 2006.

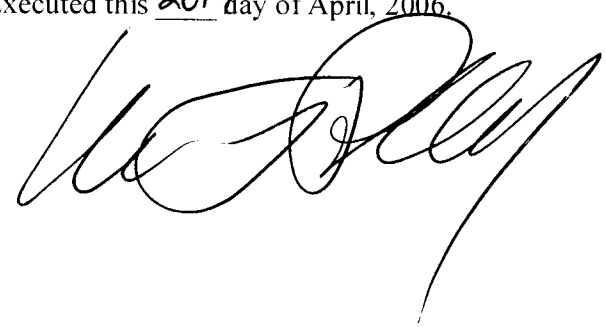

EXHIBIT A

WILLIAM T. BIELBY
TESTIMONY AS AN EXPERT WITNESS SINCE 2000

EEOC v. Ian Schrager, Hotels, Inc. d/b/a Mondrian Hotel
Docket No. CV 99-00987 R (RCx)
Court: United States District Court, Central District of California
Counsel: Anat Ehrlich, Kathleen Mulligan, EEOC
Report: Expert Report
Expert Report, Deposition Testimony

Rebecca Beckmann, et al. v. CBS, Inc., et al.
Docket No: 3-96-1172
Court: United States District Court, District of Minnesota
Counsel: Sprenger & Lang, Minneapolis, MN
Expert Report, Deposition Testimony

Marybeth Cremin, et al. v. Merrill Lynch, Pierce, Fenner & Smith Inc.
Docket No: 96 C 3773
Court: United States District Court, Northern District of Illinois, Eastern Division
Counsel: Stowell & Friedman, Chicago, IL
Expert Report, Arbitration Testimony

Pamela K. Martens, et al. v. Smith Barney, Inc., et al.
Docket No. 96 Civ. 3779 (AGS)
Court: United States District Court, Southern District of New York
Counsel: Stowell & Friedman, Chicago, IL
Expert Reports, Arbitration Testimony

Lucy's Sales, et al. v. County of Contra Costa, et al.
Docket No. C98-02955 PJH (JL)
Court: United States District Court, Northern District of California
Counsel: Lawyers' Committee for Civil Rights of the San Francisco Bay Area (Oren Sellstrom)
Wilson Sonsini Goodrich & Rosati (Lisa Davis, David Berger), Palo Alto
Expert Report, Deposition Testimony, Trial Testimony

Curtis V. Rodriguez, et al. v. California Highway Patrol, et al.
Docket No. C-99-20895-JF/EAI
Court: United States District Court, Northern District of California
Counsel: Keker & Van Nest (Roy Austin), San Francisco
American Civil Liberties Union Foundation of Southern California
Expert Report

Ella Bramwell and Marilyn Hill v. BMG Entertainment, Inc.
Docket No. 00C 7751
Court: United States District Court, Eastern District of Illinois
Counsel: Stowell & Friedman (Linda Friedman), Chicago
Expert Report, Deposition Testimony

Eric Bates, et al. v. United Parcel Service
Docket No. C-99 2216 (TEH)
Court: United States District Court, Northern District of California
Counsel: Schneider & McCormac (Todd Schneider), San Francisco

Declaration, Expert Report, Deposition Testimony

Prabhavati Rao v. County of Ventura
Docket No. CV 01-00982 GAF (MCx)
Court: United States District Court, Central District of California
Counsel: Janet M. Koehn, Ventura, CA
Expert Report

Frank Armenta, et al. v. Osmose Wood Preserving, Inc.
Case No. CV000999
Court: Superior Court of the State of California, County of San Luis Obispo
Counsel: James H. Cordes, Santa Barbara, CA
Declaration

Francisco Rodriguez, et al. v. Merrill Lynch & Co.
Docket No. L-5908-98
Court: Superior Court of New Jersey, Law Division: Hudson County
Counsel: Steven Arenson, Arenson, Dittmar & Karbani, New York
Declaration, Expert Report, Deposition Testimony

Carol Gosho, et al. v. U.S. Bancorp Piper Jaffray, Inc.
Docket C 00-01611 PJH
Court: United States District Court, Northern District of California
Counsel: Meites, Mulder, Burger & Mollica, Chicago
Declaration, Expert Report, Deposition Testimony

Betty Dukes, et al. v. Wal-Mart Stores, Inc.
Docket C-01-2252 MJJ
Court: United States District Court, Northern District of California
Counsel: The Impact Fund (Jocelyn Larkin, Brad Seligman)
Expert Report, Deposition Testimony

Mary Singleton, et al. v. Regents of the University of California, et al.
Docket 807233-1
Court: Superior Court of the State of California, County of Alameda
Counsel: The Sturdavent Law Firm (Mark Johnson), San Francisco
Declarations

Equal Employment Opportunity Commission v. The Herrick Corporation d/b/a/ Stockton Steel
Docket CIV. S-00-0102 FCD DAD
Court: United States District Court, Eastern District of California
Counsel: EEOC (Lynn Palma), San Francisco
Expert Report

EEOC & Schieffelin v. Morgan Stanley
Docket 01 CV 8421 (RMB)
Court: United States District Court, Southern District of New York
Counsel: Outten & Golden (Adam Klein), New York, EEOC (Michael Ranis)
Expert Report, Deposition Testimony

Stella Mitchell, et al. v. Metropolitan Life Insurance Co.
Docket 01-CIV-2112 (WHP)
Court: United States District Court, Southern District of New York

Counsel: Saperstein, Goldstein, Demchak & Ballar (Teresa Demchak), Outten & Golden (Adam Klein)
Expert Report, Deposition Testimony

Roderick Arnold, et al. v. Cargill, Inc.
Docket 01-CV-2086 (DWF/AJB)
Court: United States District Court, District of Minnesota, Fourth Division
Counsel: Sprenger & Lang; Cohen, Milstein, Hausfeld & Toll
Expert Report, Deposition Testimony, Declaration

Derrick Satchell, et al. v. FedEx Express.
Docket C 03-2659 SI, C 03-2878 SI
Court: United States District Court, Northern District of California
Counsel: Lieff, Cabraser, Heimann & Bernstein (James Finberg)
Expert Report, Deposition Testimony

Daryal Nelson, et al. v. Wal-Mart Stores, Inc. and Wal-Mart Transportation LLC
Docket 2:05 CV-00134-WRW
Court: United States District Court, Eastern District of Arkansas
Counsel: of Cauley Bowman Carney & Williams (Hank Bates) and Welch and Kitchens (Morgan Welch)
Expert Report

EXHIBIT B

April 2006

CURRICULUM VITAE

William T. Bielby

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EDUCATION:

B.S. Electrical Engineering (High Honors), University of Illinois--Urbana, 1970.
M.A. Social Sciences (Economics), University of Illinois--Urbana, 1972.
Ph.D. Sociology, University of Wisconsin, 1976.

PREVIOUS POSITIONS:

Professor, Department of Sociology, University of California, Santa Barbara, 1983-2005
Professor (Affiliated), Department of Statistics and Applied Probability, UCSB, 1993-2005
Affiliated Faculty, Center for Film, Television, and New Media, UCSB, 2002-2005
Fellow, University of California Washington Center, Washington, DC, Fall 2004
Visiting Distinguished John D. MacArthur Professor of Sociology, Northwestern University Spring 2004
American Bar Foundation, Chicago, IL, Visiting Scholar, 2003-2004
Visiting Professor, Graduate School of Management, UCLA, 1985
Chair, Department of Sociology, University of California, Santa Barbara, 1992-1998
Associate Professor, Department of Sociology, University of California, Santa Barbara, 1981-83
Assistant Professor, Department of Sociology, University of California, Santa Barbara, 1977-81
Research Associate, Institute for Research on Poverty, University of Wisconsin, 1975-77
Rhythm guitar, bass guitar, The Newports, Harvey, Illinois, 1960-1965

HONORS AND AWARDS:

Reuben Hill Research and Theory Award from the National Council on Family Relations, 1992
Sociological Research Association (by election, 1989)
Kathleen Gregory Klein Award for Excellence in Feminist Studies from the Popular and American Culture Associations, 1986
Fellow, Center for Advanced Study in the Behavioral Sciences, Stanford, California, 1983-84.
European Group on Organizational Sociology Award, Organizations & Occupations Section, American Sociological Association, 1981 (with J. N. Baron)
Eta Kappa Nu, Electrical Engineering Honorary Society
Tau Beta Pi, Engineering Honorary Society
Phi Kappa Phi, Scholastic Honorary Society
Riverdale Historical Society (Riverdale, IL), Honorary Member (2002-present)

PROFESSIONAL ACTIVITIES:

Professional Associations:

American Sociological Association
American Economic Association
American Statistical Association
Society of Labor Economists
Society for Human Resource Management

Officer:

President, American Sociological Association, 2002-2003
Council, American Sociological Association, 1998-2001
Committee on Sections, American Sociological Association, 1998-2001 (Vice-Chair, 2000-2001)
Committee on Nominations, American Sociological Association, 1995-97
Council, (1982-84) and Secretary/Treasurer (1984-88), Methods Section of the American Sociological Association.
Council (1986-88), Organizations and Occupations Section of the American Sociological Association.

Editorial Board:

American Sociological Review (1994-1996)
Westview Series on Social Inequality (1991-1996)
Sociological Methods and Research (1978-1989, 1994-1998)
American Journal of Sociology (1982-84)
Sociology of Education (1981-85)
Gender & Society (1997-2000)

PROFESSIONAL ACTIVITIES (continued):

Member:

Social Science Research Council Site Selection Committee, First Year Fellowships in the Study of the Former Soviet Union (1989-1995)
National Institute of Mental Health, Social Science and Population Study Section Review Panel, (Special Reviewer, 1994)
National Institute of Health, Center for Scientific Review (Special Emphasis Panel Chairperson, August 1999)
National Institutes of Health, International Studies on Health and Economic Development Review Committee (November 2000)
Social Science Research Council Committee on the Sociological Study of the USSR (1988-92)
Jessie Bernard Award Selection Committee, American Sociological Association (1990-92)
Social Science Research Council Committee on Occupational Measurement (1980-88)
National Science Foundation, Sociology Review Panel (1985-87)
National Science Foundation, ADVANCE Institutional Transformation Awards Review Panel (2001)
University of Illinois Foundation (1999-2005)
Program Committee, American Sociological Association Annual Meeting, 2001
Board of Directors, Consortium of Social Science Associations (2002-2004)
Amicus Brief Task Force, American Sociological Association (2002-2003)
Sociology Ph.D. Program Assessment Committee, University of California, Irvine, April, 2003
Oversight Committee, Workshop on the Utilization of Women-Owned Small Businesses in Federal Contracting, National Research Council, National Academy of Sciences, 2004
Sociology Ph.D. Program Assessment Committee (Chair), Texas A & M University, April, 2005

PUBLICATIONS:

2006 William T. Bielby
"Promoting Racial Diversity at Work: Challenges and Solutions." Forthcoming in Arthur P. Brief and Jill Bradley (eds.), *Diversity at Work*. New York: Cambridge University Press.

2005 William T. Bielby
"Applying Social Research on Stereotyping and Cognitive Bias to Employment Discrimination Litigation: The Case of Allegations of Systematic Gender Bias at Wal-Mart Stores." In Robert L. Nelson and Laura Beth Neilsen (eds.), *Handbook on Employment Discrimination Research: Rights and Realities*. Norwell, MA: Kluwer Academic Press 2005.

2005 Arleen Leibowitz, William T. Bielby, Jonathan S. Leonard, Patricia A. Roos, J.H. (Rip) Verkerke, and John E. Rolph
Analyzing Information on Women-Owned Small Business in Federal Contracting. (Report of Steering Committee for the Workshop on Women-Owned Small Business in Federal Contracting.) Washington, D.C.: National Academy Press.

2004 William T. Bielby
"Rock in a Hard Place: Grass-Roots Cultural Production in the Post-Elvis Era." *American Sociological Review*, Vol. 69, No. 1: 1-13.

2004 William T. Bielby
"Social Science Accounts of the Maternal Wall: Applications in Litigation Contexts." *Thomas Jefferson Law Review*, Vol. 26: 15-26, Fall 2003.

2004 Denise D. Bielby and William T. Bielby
"Audience Aesthetics and Popular Culture." Pp. 295-317 in Roger Friedland and John Mohr (eds.), *Matters of Culture: Cultural Sociology in Practice.* Cambridge, England: Cambridge University Press.

2003 William T. Bielby
"Can I Get A Witness? Challenges of Using Expert Testimony on Cognitive Bias in Employment Discrimination Litigation." *Employee Rights and Employment Policy Journal*, Vol. 7, No. 2: 377-400, Symposium Issue on "Litigating the Glass Ceiling and the Maternal Wall: Using Stereotyping and Cognitive Bias Evidence to Prove Gender Discrimination."

2003 Denise D. Bielby and William T. Bielby.
"Beyond Contexts: Taking Cultural Objects Seriously in Media, Popular Culture, and the Arts." *Sociological Perspectives*, Vol. 46, No. 4: 429-433.

2003 Denise D. Bielby and William T. Bielby
Co-editors of Special Issue on Media, Popular Culture, and the Arts, *Sociological Perspectives*, Vol. 46, No. 4.

2003 William T. Bielby and Denise D. Bielby
"Controlling Primetime: Organizational Concentration and Network Television Primtime Programming Strategies." *Journal of Broadcasting and Electronic Media*, forthcoming, Vol. 47, No. 4: 573-596.

2003 William T. Bielby
"ASA Submits Amicus Brief in U.S. Affirmative Action Supreme Court Case." *Footnotes: Newsletter of the American Sociological Association*, Vol. 31, No. 3, March, 2003.

2002 Denise D. Bielby and William T. Bielby
"Hollywood Dreams, Hard Realities: Writing for Film and Television." *Contexts*, Vol. 1: 21-27, Fall/Winter 2002.

2002 William T. Bielby and Denise D. Bielby
"Telling Stories about Gender and Effort: Social Science Narratives About Who Works Hard for the Money." Pp. 193-217 in Mauro F. Guillen, Randal Collins, Paula England, and Marshall Meyer (eds.), *The New Economic Sociology: Developments in an Emerging Field.* New York: Russell Sage Foundation.

2002 William T. Bielby
"The SoCal Professor Was an Early '60s Rocker" (interview by Mike Dugo). *Lance Monthly*, Vol. 4, No. 2, July, 2002, http://musicdish.com/mag/index.php3?id=6362.

2001 Denise D. Bielby and William T. Bielby
"Audience Segmentation and Age Stratification Among Television Writers." *Journal of Broadcasting and Electronic Media*, Vol. 45, No. 3: 391-412, Summer, 2001.

2000 William T. Bielby
"Minimizing Workplace Gender and Racial Bias." *Contemporary Sociology*, Vol 29, No. 1: 120-129, January, 2000.

1999 William T. Bielby
"Framing Sociology in Court: Affirmative Action Discourse and Expert Testimony on Employment Discrimination." *Research on Social Stratification and Mobility*, Vol. 17: 265-283, 1999.

1999 Denise D. Bielby, C. Lee Harrington, and William T. Bielby
"Whose Stories Are They? Fans' Engagement with Soap Opera Narratives in Three Sites of Fan Activity." *Journal of Broadcasting and Electronic Media*, Vol. 42, No. 2: 35-51, Spring, 1999. Reprinted in Toby Miller (ed.), *Television: Critical Concepts in Media and Cultural Studies*, New York: Routledge, 2002

1999 William T. Bielby and Denise D. Bielby
"Organizational Mediation of Project-Based Careers: Talent Agencies and the Careers of Screenwriters." *American Sociological Review*, Vol. 64, No. 1: 64-85, February, 1999.

1998 Bielby, William T. and Denise D. Bielby.
The 1998 Hollywood Writers' Report: Telling ALL Our Stories. Los Angeles, CA: Writers Guild of America, West, 53 p. (http://www.wga.org/manuals/Report/index2.html)

1997 Matt L. Huffman, Steven C. Velasco, and William T. Bielby
"Where Sex Composition Matters Most: Comparing the Effect of Job Versus Occupational Sex Composition on Earnings." *Sociological Focus*, Vol. 29, No. 3: 189-207, August, 1997.

1996 Bielby, Denise D. and William T. Bielby
"Women and Men in Film: Gender Inequality among Writers in Culture Industries." *Gender & Society*, Vol. 10, No. 3: 248-270, June, 1996. Reprinted in Paula Dubeck and Dana Dunn (eds.), *Workplace/Women's Place*, Belmont, CA. Roxbury, 2002.

1994 Bielby, William T. and Denise D. Bielby
"'All Hits are Flukes:' Institutionalized Decision-Making and the Rhetoric of Network Prime-Time Program Development." *American Journal of Sociology*, Vol. 99, No. 5: 1287-1313, March, 1994. Reprinted in Toby Miller (ed.), *Television: Critical Concepts*, New York and London, Routledge, 2002.

1994 Bielby, William T. and Denise D. Bielby
"The Production of Mass Culture." *Footnotes*, Vol. 22, No. 4, April, 1994. Washington, DC: American Sociological Association.

1993 Bielby, Denise D. and William T. Bielby
"The Hollywood 'Graylist'? Audience Demographics and Age Stratification Among Television Writers." *Current Research on Occupations and Professions*, Vol. 8: 11-172.

1993 Bielby, William T.
"Aging in the Television Industry." Pp. 34-37, 74-76 in *Age Has A Future: Maturity and the Media*. Conference Proceedings published by the American Association of Retired Persons, Washington, DC.

1993 Bielby, William T. and Denise D. Bielby.
The 1993 Hollywood Writers' Report: A Survey of the Employment of Writers in the

Film, Broadcast, and Cable Industries for the Period 1987-1991. West Hollywood, CA: Writers Guild of America, West, 52 p.

1992 Bielby, William T. and Denise D. Bielby
"Cumulative Disadvantage in an Unstructured Labor Market: Gender Differences in the Careers of Television Writers" *Work and Occupations*, Vol. 19, No. 4: 366-386, November, 1992. Reprinted in Jerry A. Jacobs (ed.), *Sex Segregation at Work*, Newbury Park, CA, Sage, 1994.

1992 Bielby, William T. and Denise D. Bielby
"I Will Follow Him: Family Ties, Gender-Role Beliefs, and Reluctance to Relocate for a Better Job," *American Journal of Sociology*, Vol. 97, No. 5: 1241-1267, March, 1992 (Winner of the 1992 Reuben Hill Research and Theory Award from the National Council on Family Relations).

1992 Bielby, William T. "The Structure and Process of Sex Segregation." Pp. 97-112 in Richard Cornwall and Phanindra Wunnava (eds.), *New Approaches to Economic and Social Analyses of Discrimination*. New York: Praeger. Reprinted in David B. Grusky (ed.), *Social Stratification: Class, Race, and Gender in Sociological Perspective*, Second Edition, Boulder, CO: Westview Press, 2001.

1991 Bielby, William T. and Ross N. Matsueda
"Statistical Power in Nonrecursive Linear Models," in Peter V. Marsden (ed.), *Sociological Methodology*, Vol. 21: 167-197.

1991 Bielby, William T.
"Sex Differences in Careers: Is Science a Special Case?" Pp. 171-187 in H. Zuckerman, J. R. Cole, and J.T. Bruer (eds.), *The Outer Circle: Women in the Scientific Community*. New York: Norton. Reprinted (German translation) in Beate Krais (ed.), *Wissenschaftskultur und Geschlechterordnung*, Frankfort: Campus Verlag.

1989 Bielby, William T. and Denise D. Bielby
"Family Ties: Balancing Commitments to Work and Family in Dual Earner Households," *American Sociological Review*, Vol. 54, No. 5: 776-789, October, 1989.

1989 Bielby, W.T. and Bielby, D.D.
The 1989 Hollywood Writers' Report: Unequal Access, Unequal Pay. West Hollywood, CA: Writers Guild of America, West, 112 p.

1988 Bielby, Denise D. and William T. Bielby
"She Works Hard for the Money: Household Responsibilities and the Allocation of Work Effort," *American Journal of Sociology*, Vol. 93, No. 5: 1031-1059, March, 1988 (Winner of the 1986 Kathleen Gregory Klein Award for Excellence in Feminist Studies from the Popular and American Culture Associations).

1988 Bielby, Denise D. and William T. Bielby
"Women's and Men's Commitment to Paid Work and Family: Theories, Models, and Hypotheses." Pp. 249-253 in B. Gutek, L. Larwood, and A. Stromberg (eds.), *Women and Work, Volume III*. Newbury Park, CA: Sage.

1988 Bielby, Denise D. and William T. Bielby
"Sex Differences in the Allocation of Work Effort Among Professionals and Managers." Pp. 45-67 in R. Schwartz, (ed.), *Women at Work*. Los Angeles: UCLA Institute for Social Science Research.

1988 Treiman, Donald J., William T. Bielby, and Man-tsun Cheng
"Evaluating a Multiple-Imputation Method for Recalibrating 1970 U.S. Detailed Industry Codes to the 1980 Standard." *Sociological Methodology*. Vol. 18: 309-345.

1988 Bielby, Denise D., William C. Brastow, and William T. Bielby
"Goal Incongruence, Interdependence, and Decision-Making in a 'High-Tech' Firm," *Research in the Sociology of Work*, Vol. 4: 153-178. Revised version published in Russian in V. Yadov (ed.), *Social Organization of Labor: Aspects of the Problem.* Moscow: Soviet Sociological Association, 1989.

1987 Bielby, William T.
"Modern Prejudice and Institutional Barriers to Equal Employment Opportunities for Minorities," *Journal of Social Issues*, Vol. 43, No. 1: 79-84, Spring, 1987.

1987 Bielby, William T. and Denise D. Bielby
The 1987 Hollywood Writers' Report: A Survey of Ethnic, Gender and Age Employment Factors. West Hollywood, CA: Writers Guild of America, West.

1987 Bielby, William T. and James N. Baron
"Undoing Discrimination: Comparable Worth and Job Integration." Pp. 211-229 in Christine Bose and Glenna Spitze (eds.), *Ingredients for Women's Employment Policy.* Albany: State University of New York Press.

1986 Baron, James N. and William T. Bielby
"The Proliferation of Job Titles in Organizations," *Administrative Science Quarterly*, Vol. 31, No. 4: 561-586, December, 1986.

1986 Baron, James N., Alison Davis-Blake, and William T. Bielby
"The Structure of Opportunity: How Promotion Ladders Vary Within and Among Organizations," *Administrative Science Quarterly*, Vol. 31, No. 2: 248-273, June 1986. Reprinted in Peter Capelli (ed.), *Training and Development, a volume in The International Library of Management*, Aldershot, Hampshire, England, Dartmouth Publishing, 1994.

1986 Bielby, William T.
"Arbitrary Metrics in Multiple Indicator Models of Latent Variables," *Sociological Methods and Research*, Vol. 15, No. 1: 3-23, November, 1986.

1986 Bielby, William T.
"Arbitrary Normalizations (comments on Sobel, Arminger and Henry), *Sociological Methods and Research*, Vol. 15, No. 1: 62-63, November, 1986.

1986 Bielby, William T. and James N. Baron
"Sex Segregation Within Occupations," *American Economic Review*, Vol. 76, No. 2: 43-47, May, 1986.

1986 Matsueda, Ross N. and William T. Bielby
"Statistical Power in Covariance Structure Models," *Sociological Methodology* Vol. 16: 120-158.

1986 Bielby, William T. and James N. Baron
"Men and Women at Work: Sex Segregation and Statistical Discrimination," *American Journal of Sociology*, Vol. 91, No. 4: 759-799, January, 1986. Reprinted in David B.

Grusky (ed.), *Social Stratification: Class, Race, and Gender in Sociological Perspective*, Boulder, CO: Westview Press, 1994. Reprinted in Marianne A. Ferber (ed.), *Women in the Labor Market* (in the series *International Library of Critical Writings in Economics*, Mark Blaug, series editor), Cheltenham, UK: Edward Elgar Publishing, 1998.

1985 Baron, James N. and William T. Bielby
"Organizational Barriers to Gender Equality: Sex Segregation of Jobs and Opportunities." Pp. 233-251 in A.S. Rossi (ed.), *Gender and the Life Course*. New York: Aldine, 1985.

1984 Bielby, William T. and James N. Baron
"A Woman's Place is With Other Women: Sex Segregation Within Organizations." Pp. 27-55 in B. Reskin (ed.), *Sex Segregation in the Workplace: Trends, Explanations, Remedies*. Washington, D.C.: National Academy Press, 1984.

1984 Baron, James N. and William T. Bielby
"The Organization of Work in a Segmented Economy," *American Sociological Review*, Vol. 49, No. 4: 454-473, August, 1984.

1984 Bielby, Denise D. and William T. Bielby
"Work Commitment, Sex Role Attitudes, and Women's Employment," *American Sociological Review*, Vol. 49, No. 2: 234-247, April, 1984.

1983 Bielby, William T. and James N. Baron
"Organizations, Technology, and Worker Attachment to the Firm." *Research in Social Stratification and Mobility*, Vol. 2: 77-113.

1983 Wilson, Thomas P. and William T. Bielby
"Recursive Models for Categorical Data," *Social Science Research*, Vol. 12, No. 2: 109-130, June, 1983.

1982 Baron, James N. and William T. Bielby
"Workers and Machines: Dimensions and Determinants of Technical Relations in the Workplace," *American Sociological Review*, Vol. 47, No. 2: 175-188, April, 1982.

1981 Bielby, William T.
"Neighborhood Effects: A LISREL Model for Clustered Samples," *Sociological Methods and Research*, Vol. 10, No. 1: 82-111, August, 1981.

1981 Bielby, William T.
"Models of Status Attainment." *Research in Social Stratification and Mobility*, Vol. 1: 3-26.

1981 Bielby, William T. and Arne L. Kalleberg
"The Structure of Occupational Inequality," *Quality and Quantity*, Vol. 15, No. 2: 125-150, April, 1981.

1981 Friedland, Roger O. and William T. Bielby
"The Power of Business in the City." Pp. 131-151 in T. N. Clark and L. C. Ferguson (eds.), *Urban Policy Analysis*. Beverly Hills: Sage Publications, 1981.

1981 Hawley, Clifford B. and William T. Bielby
"Research Uses of Longitudinal Survey Data on Women," Pp. 364-386 in R. F. Boruch, P. M. Wortman, and D. S. Cordray (eds.), *Reanalyzing Program Evaluations Policies and*

Practices for Secondary Analysis of Social and Educational Programs. San Francisco: Jossey-Bass, 1981.

1980 Baron, James N. and William T. Bielby
"Bringing the Firms Back In: Stratification, Segmentation, and the Organization of Work," *American Sociological Review*, Vol. 45, No. 5: 737-765, October, 1980 (Winner of the European Group on Organizational Sociology Award, American Sociological Association, 1981). Reprinted in David B. Grusky (ed.), *Social Stratification: Class, Race, and Gender in Sociological Perspective*. Boulder, CO, Westview Press, 1992.

1980 Sanders, Jimy M. and William T. Bielby
"Revising 'The American Soldier Revisited:' Comment on Butler and Wilson," *Social Science Quarterly*, Vol. 60, No. 2: 333-336, September, 1980.

1979 Allen, Richard C. and William T. Bielby
"Blacks' Attitudes and Behaviors Toward Television," *Communications Research*, Vol. 6, No. 4: 437-462, October, 1979.

1979 Allen, Richard C. and William T. Bielby
"Blacks' Relationship with the Print Media," *Journalism Quarterly*, Vol. 56, No. 3: 488-496, Autumn, 1979.

1977 Bielby, William T. and Robert M. Hauser
"Response Errors in Earnings Functions for Non-black Males," *Sociological Methods and Research*, Vol. 6, No. 2: 241-280, November, 1977. The issue has been reprinted as *Survey Design and Analysis: Current Issues*, D.F. Alwin (ed.), Beverly Hills, CA: Sage Publications, 1978. Article reprinted in *Linear Models in Social Research*, P. V. Marsden (ed.), Beverly Hills, CA: Sage Publications, 1981.

1977 Bielby, William T. and Robert M. Hauser
"Structural Equations Models," *Annual Review of Sociology*, Vol. 3: 137-161, 1977.

1977 Bielby, William T., Robert M. Hauser, and David L. Featherman
"Response Errors of Black and Non-black Males in Models of the Intergenerational Transmission of Socioeconomic Status," *American Journal of Sociology*, Vol. 82, No. 6: 1242-1288, May, 1977.

1977 Bielby, William T., Robert M. Hauser, and David L. Featherman
"Response Errors of Non-black Males in Models of the Stratification Process," in D. J. Aigner and A. S. Goldberger (eds.), *Latent Variables in Socioeconomic Models*. Amsterdam: North-Holland, 1977, revised and expanded *in Journal of the American Statistical Association*, Vol. 72, No. 360: 723-735, December, 1977.

1977 Bielby, William T. and James R. Kluegel
"Simultaneous Statistical Inference and Statistical Power in Survey Research Applications of the General Linear Model," *Sociological Methodology:* Vol. 8: 283-312.

1974 Bielby, William T. and James R. Kluegel
"Non-random Exogenous Variables in Path Analysis: A Comment," *American Sociological Review*, Vol. 39, No. 6: 888-891, December, 1974.

BOOK REVIEWS AND REVIEW ESSAYS:

2001 *Creative Industries: Contracts Between Art and Commerce* by Richard E. Caves. Reviewed in *American Journal of Sociology*, Vol 16, No. 6: 1830-1832.

1999 *Organizations in America: Analyzing Their Structures and Human Resource Practices* by Arne L. Kalleberg, David Knoke, Peter V. Marsden, and Joe L. Spaeth. Reviewed in *Administrative Science Quarterly*, Vol. 44, No. 4: 842-846, December 1999.

1999 *The Use of Social Science Data in Supreme Court Decisions* by Rosemary J. Erickson and Rita J. Simon. Reviewed in *Contemporary Sociology*, Vol. 28, No. 2: 222-223, March, 1999.

1998 "Firm Commitments." Review Essay on *The Time Bind: When Work Becomes Home and Home Becomes Work* by Arlie Russell Hochschild. Contribution to Review Symposium in *Contemporary Sociology* Vol. 27, No. 1: 32-34, January, 1998.

1998 *Social Differentiation and Social Inequality: Essays in Honor of John Pock*, edited by James N. Baron, David B. Grusky, and Donald J. Treiman. Reviewed in *Contemporary Sociology*, Vol. 27, No. 2: 152-153, March, 1998.

1992 "Organizations, Stratification, and *The American Occupational Structure*." Review essay in *Contemporary Sociology* as part of a 25 year retrospective on Blau and Duncan's *The American Occupational Structure*, Vol. 21, No. 5: 647-650, September, 1992.

1992 *Revolving Doors: Sex Segregation and Women's Careers* by Jerry A. Jacobs, *and Doing Comparable Worth: Gender, Class, and Pay Equity* by Joan Acker. Reviewed *in Social Forces*, Vol. 70, No. 4: 1165-1168, June, 1992.

1988 *The Process of Occupational Sex-Typing: The Feminization of Clerical Labor in Great Britain* by Samuel Cohen, and *Gender at Work: The Dynamics of Job Segregation* by Sex during World War II by Ruth Milkman. Reviewed in *Social Forces*, Vol. 67, No. 2: 551-553, December, 1988.

1986 "Contractual Arrangements." Review of *Households, Employment, and Gender: A Social, Economic, and Demographic View* by Paula England and George Farkas. Reviewed in *Science*, Vol. 232, No. 4753: 1021-1022, May, 1986.

1984 "Imperatives of the Organization: Stinchcombe's Techno-Marxism." Review essay on *Economic Sociology* by A. S. Stinchcombe. *American Journal of Sociology*, Vol. 90, No. 1: 192-196, July, 1984.

1980 "More Inequality: Christopher Jencks on the Paths to Success." Review essay *on Who Gets Ahead?* by Christopher Jencks, et al. in *Contemporary Sociology*, Vol. 9, No. 1: 754-758, November 1980.

1980 *Mathematical Tools for Applied Multivariate Analysis* by P. E. Green. Reviewed in *Contemporary Sociology*, Vol. 9, No. 1: 105-106, January 1980.

1979 *Inequality in American Communities* by R. F. Curtis and E. F. Jackson; and *Classes in the United States: Workers Against Capitalists* by C. Loren. Reviewed in *Social Forces*, Vol. 57, No. 3: 982-985, March, 1979.

1977 *Women and the Workplace: The Implications of Occupational Segregation*. Edited by Martha Blaxall and Barbara Reagan. Reviewed in *Social Forces*, Vol. 56, No. 1: 287-289, September, 1977.

TECHNICAL REPORTS:

1995 Bielby, William T. and Denise D. Bielby
"Agency Representation and Writers' Employment in Television and Film." Report prepared for the Writers Guild of America, West, West Hollywood, CA, February 1995.

1987 Bielby, William T. and Denise D. Bielby
"Employment Opportunities for Television Writers: Continuity and Change from 1960 to the Present." Report prepared for the Writers Guild of America, West Hollywood, CA, October 1987.

1983 Bielby, William T.
"Measuring Attributes of Jobs in the Panel Study of Income Dynamics." Report prepared for the National Advisory Board on the Panel Study of Income Dynamics, January, 1983.

1983 Nam, Charles B. (Subcommittee Chair), William T. Bielby, Clifford Clogg, Stephen Fienberg, William H. Form, Robert M. Hauser, David L. Kaplan, Ann R. Miller, Mary G. Powers, Donald Rubin, and Donald J. Treiman.
"Alternative Methods For Effecting the Comparability of Occupational Measurement Over Time." Report to the SSRC Advisory and Planning Committee on Social Indicators and the U.S. Bureau of the Census. Subcommittee on Comparability of Occupational Measurement, Social Science Research Council.

1980 Bielby, William T. and Richard A. Berk
"Sources of Error in Survey Data Used in Criminal Justice Evaluation." Final Report submitted to National Institute of Law Enforcement and Criminal Justice.

1979 Bielby, William T.
"Evaluating Measures of Neighborhood Quality in the Annual Housing Survey." *Annual Housing Survey Studies No. 2*. U.S. Department of Housing and Urban Development. Washington, D.C.: U.S. Government Printing Office, 1979, 33 p.

1979 Bielby, William T., Clifford B. Hawley and David Bills
Research Uses of the National Longitudinal Surveys. Research and Development Monograph No. 62, U.S. Department of Labor. Washington, D.C.: U.S. Government Printing Office, 1979, 143p.

RECENT PAPERS PRESENTED AT PROFESSIONAL MEETINGS (2001 - present):

2005 "Managerial Discretion, 'Subtle' Bias, and the Politics of Expertise: Litigating Statistical Proof of Employment Discrimination." American Sociological Association, Philadelphia, PA, August, 2005

2002 "'I Remember Great Times:' Recreating Community in a Suburban Diaspora." American Sociological Association, Chicago, IL, August, 2002 (with Carl Durnavich and Craig Rawlings).

2002 "Insuring Discrimination: Making a Market for Employment Practice Liability Insurance." American Sociological Association, Chicago, IL, August, 2002 (with Michael Bourgeois).

RECENT INVITED LECTURES AND ACTIVITIES (2001-present)

2005 Panelist, "Best Practices: Strategies for Retention and Promotion." Promoting Diversity: Tough Questions and Proposed Solutions Conference, Sponsored by the Bar Association of San Francisco, California Minority Counsel Program, and Minority Corporate Counsel Association, San Francisco, October 28, 2005.

2005 "Cognitive Bias, Organizational Context, and Intent: Lessons from Applying Social Science Expertise in Dukes et al. v. Wal-Mart." Equal Justice Society Conference on Rethinking the Intent Doctrine, Chicago, IL, September 9, 2005.

2005 "Managerial Discretion, 'Subtle' Workplace Bias and the Courts." The Ruth and John Useem Plenary Address, 2005 Annual Meeting of the North Central Sociological Association, Pittsburgh, PA, April 9, 2005.

2004-06 "Managerial Discretion, 'Subtle' Bias, and the Politics of Expertise: Litigating Statistical Proof of Employment Discrimination." Columbia University Sociology Colloquium, March 22, 2006; Harvard-MIT Economic Sociology Seminar, MIT Sloan School of Management, October 27, 2005; Colloquium Series, Department of Sociology, University of Illinois, January 30, 2004; Economic Sociology Workshop, Graduate School of Business, University of Chicago, February 3, 2004; Department of Sociology, Northwestern University, February 5, 2004, Department of Sociology, University of Wisconsin--Madison, March 2, 2004, Public Policy Seminar, George Washington University, October 20, 2004. Population Studies Center, University of Pennsylvania, February 14, 2005.

2004 "I Remember Great Times: Recreating Community in an On-Line Suburban Diaspora." Plenary Speaker, Sociology Day Program, University of Illinois at Chicago, March 27, 2004.

2003 "Controlling Primetime: Organizational Concentration and Network Television Primtime Programming Strategies." Colloquium Series, Department of Sociology, University of Minnesota, September 23, 2002; Brown Bag Series, Department of Sociology, University of Arizona, October 3, 2003.

2003 "Insuring Discrimination: Making a Market for Employment Practice Liability Insurance." Colloquium Series, Department of Sociology, University of Minnesota, November 2003; Colloquium Series, Department of Sociology, University of Pennsylvania, December 2003.

2003 "Rock in a Hard Place: Grass-Roots Cultural Production in the Post-Elvis Era." Presidential Address, American Sociological Association, Atlanta, GA, August 17, 2003.

2003 Panelist, Open Forum on Electronic Publication. American Sociological Association, Atlanta, GA, August, 2003.

2003 "Thin Vitae: Bigger and Better." Performance, Grand Ballroom, Atlanta Hilton, American Sociological Association, Atlanta, GA, August 16, 2003 (with Steve

Gortmaker, Doreen Lebeau, Craig Rawlings, Paul Cleary, Mickey Silvers, Britta Wheeler, Andrew Merritt, and John Sutton; video documentary by Carl Durnavich, CD by Steve Gortmaker).

2003 Presentation, "Controlling Primetime: Organizational Concentration and Network Television Programming Strategies," UCSB Foundation, May 16, 2003.

2003 Panelist/Commentator, "Beyond the Glass Ceiling: The Maternal Wall as a Barrier to Gender Equality," Thomas Jefferson School of Law Ruth Bader Ginsburg Lecture Series, San Diego, CA, April 25, 2003 (commenting on lecture by Joan Williams).

2003 "Rock in a Hard Place: Home Grown Cultural Production in the Post-Elvis Era." Irene Flecknoe Ross Lecture Series, Department of Sociology, UCLA, April 11, 2003; Colloquium Series, Department of Sociology, University of Chicago, May 6, 2003; Colloquium Series, Department of Sociology, Northwestern University, May 24, 2003.

2003 "Can I Get a Witness? Presenting and Challenging Expert Testimony on Gender Bias in Employment Discrimination Litigation," Social Psychology of Bias Panelist, American Bar Foundation and Stanford Law School Conference, Rights and Realities: Legal and Scientific Approaches to Employment Discrimination. Stanford Law School, March 24-25, 2003.

2002 "Thin Vitae: Blues & 3-Chord Rock 'n Roll." Performance, Grand Ballroom, Chicago Hilton, American Sociological Association, Chicago, IL, August 16, 2002 (with Steve Gortmaker, Doreen Lebeau, Craig Rawlings, Bryan Salvage, Mickey Silvers, and John Sutton; video documentary by Carl Durnavich).

2002 Discussant, "Profiling and Ascription in Employment." Thematic Session, American Sociological Association, Chicago, IL, August, 2002.

2002 "The Social Psychology of Racial Profiling in Drug Interdiction Stops." Association of Black Sociologists, Chicago, IL, August, 2002.

2002 "Organizational Perspectives on Minimizing Workplace Bias," Cognitive Bias Working Group, Program on Gender, Work & Family, College of Law, American University, May 11, 2002.

2002 "Expert Testimony on Stereotyping and Cognitive Bias in Employment Litigation," Cognitive Bias Working Group, Program on Gender, Work & Family, College of Law, American University, May 10, 2002.

2002 "Social Statistics in Litigation Contexts." Quantitative Methods in the Social Sciences Colloquium, University of California, Santa Barbara, April 18, 2002.

2002 "Controlling Prime-Time: Organizational Concentration and Network Television Programming Strategies," Colloquium, Department of Communication, University of California, Santa Barbara, March, 2002.

2001 "Disney's America and the World." Organizer and Presider, Thematic Session, American Sociological Association, Anaheim, CA, August, 2001.

2001 Professional Workshop: Serving as an Expert Witness. American Sociological Association, Anaheim, CA, August, 2001.

2001 Author Meets Critic, Barry *Glassner's The Culture of Fear: Why Americans Are Afraid of the Wrong Things.* Panelist, Pacific Sociological Association, March 2001.

2001 "Hollywood Graylist? Access to Employment for Writers." Sociology Day - Perspectives on Aging in the 21st Century, California State University, Fullerton, March 20, 2001.

2001 State of California Senate Committee on Government Oversight Hearing, testimony on gender equity in University of California practices for faculty hiring, January 31, 2001.

RESEARCH GRANTS:

2004-05 "Doctoral Dissertation Research: Dividing the Field: Credentials, Organizational Dynamics and Sex Segregation in U.S. Higher Education, 1970-2000." National Science Foundation Dissertation Improvement Grant (Craig Rawlings, Ph.D. Candidate, UC Santa Barbara).

2002-03 "'Serial Employment': Professional, Managerial, and Technical Workers in the New Economy." University of California Institute for Labor and Employment (with Lisa Torres).

1995-98 "Environments, Organizations, and Jobs: The Causes and Consequences of Workplace Gender Segregation." National Science Foundation, Sociology Division and Human Capital Initiative.

1995-96 "MOST Program: Minority Opportunity Through School Transformation." American Sociological Association, Ford Foundation, and the Borchard Foundation (Co-Investigator, with Kum-Kum Bhavnani).

1989-93 "From Market to Hierarchy: Industrial Change and the Employment Relation in Television Production." National Science Foundation, Sociology Division. (Principal Investigator. Denise D. Bielby, Co-Investigator.)

1985-87 "Men's and Women's Commitment to Work and Family." National Science Foundation, Sociology Division. (Principal Investigator. Denise D. Bielby, Co-Investigator.)

1987 "Research Conference on Occupational Sex Segregation and Comparable Worth." American Sociological Association, Problems of the Discipline Program (with Toby Parcel, James Baron, Paula England, Jerry Jacobs, Barbara Reskin, and Patricia Roos).

1980-83 "Jobs, Firms, and Industries: Economic `Dualism' and the Organization of Work." National Science Foundation, Divisions of Sociology and Applied Research. (Principal Investigator. James N. Baron, Co-Investigator.)

1978-80 "Sources of Error in Survey Data Used in Criminal Justice Evaluation." National Institute of Law Enforcement and Criminal Justice. (Principal Investigator. Richard A. Berk, Co-Investigator.)

1978 "Neighborhood and Household Components of Variation in Respondents' Reports of Neighborhood Quality." U. S. Department of Housing and Urban Development. (Principal Investigator.)

1977 "Research Uses of the National Longitudinal Survey." U. S. Department of Labor. (Principal Investigator.)

RESEARCH AND TEACHING INTERESTS:

Quantitative Methods	Organizations
Media & Popular Culture	Labor Markets & Discrimination
Social Stratification	Gender & Race

REFERENCES: available upon request

EXHIBIT C

Gutierrez et al., v. Johnson & Johnson

1. Failure to Post Promotion Vacancies - Posting of promotion vacancies is not required resulting in vacancies being filled "behind the scenes by predominantly white managers who hand pick favored whit candidates
2. Inconsistent and inadequate Career Development Program - The Company's inconsistent and excessively subjective career development program and in particular that component called the "Succession Planning Process.
3. The part of the Company's Succession Planning Process called the High Potential System which is secretive and excessively subjective and for which the Company fails to conduct proper monitoring and fails to properly disclose the list of high potential candidates and the criteria for the list.
4. Lack of African American and Hispanic American Advancement - Few African Americans or Hispanic Americans advance to senior levels within the Company, especially when compared to the significant representation of African Americans and Hispanic Americans among salaried employees.
5. Glass Wall - African Americans and Hispanic Americans in Senior positions are concentrated in less powerful and non-revenue generating areas such a s Human Resources while they have been effectively excluded from high-level positions of significant influence in the more powerful revenue-generating areas of the Company.
6. Ineffective Board - The Board of Directors has failed to firmly link senior management compensation with equal opportunity performance.
7. Entry Level Salary Bias – Managers are free to establish starting salaries without adequate written guidelines and with very little oversight.
8. Discrimination in Compensation - Each component of the compensation system (merit increases, cash bonuses, stock awards and stock options) is centered around the Company's flawed and unduly subjective performance rating system. (In many instances, performance ratings are not even completed.
9. Failure to Monitor or Remedy Discrimination – Senior management and Human Resources have repeatedly failed to sufficiently monitor J&J's promotion and compensation practices for discriminatory effect.
10. Lack of Attention to Internal Information - Company Surveys show inadequate effort to retain African American Employees. The Company has failed to take action based on internal data showing an undercurrent of intolerance and misunderstanding with pockets of the organization.
11. Endorsement of Discriminatory Behavior - J&J endorses the discriminatory behavior of its Caucasian managers by failing to effectively monitor or curb it. The Company allows subjectivity to permeate many aspects of the promotion process.
12. Inadequate Handling of EEO Complaints – The Company's procedures for handling EEO complaints are inadequate.

Confidential Information