EXHIBIT 28

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

SUSAN DULING and MARGARET ANDERSON, on behalf of themselves and all others similarly situated, Plaintiffs, -against- GRISTEDE'S OPERATING CORP.; RED APPLE GROUP, INC., D/B/A/ GRISTEDE'S; GRISTEDE'S FOOD INC.; GRISTEDE'S DELIVERY SERVICE, INC.; GRISTEDE'S FOODS NY, INC.; GRISTEDE'S NY, LLC; and NAMDOR, INC.; Defendants.	06 CV 10197 (LTS)(HBP)

EXPERT REPORT OF WILLIAM T. BIELBY, PH.D.

I, WILLIAM BIELBY, Ph.D., do hereby affirm to the court in the above-captioned case that the following is true and correct to the best of my knowledge, information, and belief:

ASSIGNMENT, QUALIFICATIONS, AND MATERIALS REVIEWED

1. I have been retained by Piper Hoffman of Outten & Golden LLP, attorneys for the plaintiffs in a sex discrimination lawsuit against the company that operates Gristede's grocery stores ("Gristede's") to analyze the company's personnel policies and practices. In particular, I have been asked to ascertain whether findings from social science research in which I have expertise are useful for understanding disparities by sex in hiring, job

assignment, promotion, part-time versus full-time status, compensation, and related career outcomes at Gristede's.

2. 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 2003 is attached as Exhibit A. Over the past 18 years I have provided expert testimony in several cases involving allegations of sex discrimination in the grocery industry and in other areas of retailing.[1] My rate of pay for consultation as an expert in this matter is $450 per hour.

3. 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 Illinois at Chicago ("UIC"). I am also Professor Emeritus at the University of California, Santa Barbara ("UCSB"), where I served on the faculty of the Department of Sociology from 1977 to 2004. At UCSB I was affiliated with the Department of Statistics and Applied Probability, and I chaired my department from 1992 to 1998. Prior to coming to UIC this academic year I was Professor of Sociology at the University of Pennsylvania, where I was Undergraduate Chair of my department from 2005 to 2007.

4. 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, at Northwestern University, and at UIC. Among my former positions are Visiting Professor of Management at UCLA, Fellow at the Center for

[1]Cases in the grocery industry include (with docket numbers in parentheses) *Stender et al. v. Lucky Stores* (C-88-1467 MHP); *Melodee Shores, et al. v. Publix Super Markets, Inc.* (95-1162-CIV-T-25E); and *Judy A. Adams et al. v. Brookshire Grocery Co.* (3-98CV0210-R). Among cases involving retail chain stores are: *Joyce Newton, et al. v. Sherwin Williams Company* (C-83-0835-L (A)); *Vicki Butler, et al. v. Home Depot, Inc* (C94 4335 VRW); and *Betty Dukes, et al. v. Wal-Mart Stores, Inc.* (C-01-2252 MJJ).

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. At the University of Pennsylvania I taught graduate level courses on statistics and research methods in the social sciences, and I continue to teach those courses at UIC. 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.

5. My research specialties are in the areas of organizational behavior, gender and racial inequality, and social science research methods. Over the past twenty-five 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.

6. 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.

7. My analysis is based on deposition testimony by the company's managers who are responsible for the company's personnel policies and practices and by those who make personnel decisions affecting the careers of the men and women who work at the company. In particular, I have reviewed the testimony of: senior executive vice president Charles Criscuolo who oversees the stores operations; director of human resources Debbie Clusan, who oversees the company's human resources operations; human resources specialist Michael McCormick, who reports to Ms. Clusan; and the company's two district managers, Christopher Lang and James Monos. I have also relied on the deposition testimony of store managers Mitchell Moore, Angelo Mendoza, and Faustino Ferdinand. I was also given declarations filed in support of EEOC charges submitted by eleven former Gristede's employees. My analysis is also based on company documents that appear as exhibits to the deposition testimony and on statistical analyses and tabulations contained in the expert report of Dr. David Crawford.[2]

[2]In addition to the materials described in this paragraph, I was also provided the Amended Complaint dates June 21, 2007 and the transcript of the deposition of plaintiff Susan Duling.

8. 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. Social research conducted across many decades has generated considerable knowledge about what generates and sustains workplace inequalities. That same research, either directly or by implication, points to the kinds of workplace policies and practices that are likely to minimize bias. The relevant research has applied multiple methodologies in a variety of contexts, including experiments in controlled laboratory settings; ethnographies and case studies in "real world" organizations both large and small, public and private, and in a range of industries; surveys done with representative samples of workers and employers; and historical studies based on archival materials from the United States and abroad. Thus, the scientific evidence about bias, discrimination, and the structure and dynamics of gender in organizations that I rely upon has substantial external validity and provides a sound basis for analyzing Gristede's policies and practices. My method is to look at distinctive features of the organization's policies and practices and to evaluate them against what social science research shows to be factors that create and sustain bias and those that minimize bias. In litigation contexts, this method of analysis is known as "social framework analysis."[3]

9. Below, I first describe Gristede's policies and practices for making personnel decisions, and then I describe social science research that explains what kinds of policies and practices create and sustain barriers to equal employment opportunity and what kinds minimize those barriers. Then I return to more detailed examination of the Gristede's,

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[3]See E. Borgida, C. Hunt, and A. Kim, "Research in Sex Discrimination Litigation," *Journal of Law and Policy*, Vol. 13, 2005, p. 613-628; D. L. Faigman and J. Monahan, "Psychological Evidence at the Dawn of the Law's Scientific Age," *Annual Review of Psychology*, Vol. 56, 2005, p. 631-659; J. Monahan and L. Walker, *Social Science in Law: Cases and Materials*, Fifth Edition, Foundation Press, 2002, Chapter Five, "Social Science Used to Provide Context."

with an analysis of how the social science research I describe can help us understand the patterns of sex segregation at the company and the consequences of that segregation for men's and women's careers.

THE STRUCTURE OF THE GRISTEDE'S SYSTEM FOR MAKING PERSONNEL DECISIONS

10. Gristede's employees approximately 1800 employees in about 40 stores.[4] All but five of the stores are in Manhattan. Two others are in Westchester and there is one each in Brooklyn, Locust Valley, and Roosevelt Island.[5] The company's senior executive vice president, Charles Criscuolo, is responsible for the stores' operations. Mr. Criscuolo reports to the company's president, John Catsimatidis.[6] The highest-level human resources manager is human resources director Deborah Clusan, who reports to both Mr. Criscuolo and Mr. Catsimatidis.[7] Ms. Clusan has no role in decisions about hiring, promotions, and terminations.[8] Reporting to Ms. Clusan is human resources specialist, Michael McCormick, who was responsible for all entry-level store hiring decisions up to September 2007.[9] The primary entry-level positions that are filled by Mr. McCormick are cashiers (clerks who work in the front end) and clerks who work in grocery, deli, produce, dairy, frozen foods, meat, and seafood departments, as well as floor waxers, delivery persons, porters, and receptionists.[10]

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[4]Criscuolo depo., p. 53-54; http://www.Gristede's.com/storelocator.asp (retrieved November 11, 2007).
[5]Criscuolo depo., p. 37-38.
[6]Criscuolo depo., p. 23-26, 37-38.
[7]Clusan depo., p. 64-65.
[8]Clusan depo., p. 66-67; Criscuolo depo., p. 61-62.
[9]Criscuolo depo., p. 53-54, 84-85; McCormick depo., p. 25-27. On approximately September 1, 2007, some hiring decisions were delegated to four store managers (Moore depo., p. 24-25, 32, 58-59).
[10]McCormick depo., p. 47, 86-87; Criscuolo depo., p. 26-27.

11. Each of two district managers is responsible for approximately half of the stores, and every store manager reports to one of them.[11] The district managers report to both Mr. Criscuolo and to the company's vice president of operations, Carmen Napolitano.[12] Store managers oversee store operations and have responsibility for planning, budgets, and ordering.[13] An assistant store manager or co-manager runs the store when the manager is absent.[14]

12. Entry-level clerks report to either a full-time department manager (if there is one for the department to which they are assigned) or to the store manager or assistant manager (if there is no full-time department manager).[15] Whether or not there is a full-time department manager for any given department depends on the size of the store.[16] Cashiers report to a bookkeeper/head cashier, who in turn reports to the store manager or assistant manager.[17] Managers for each department in the stores report to a department supervisor who is responsible for the department on a company-wide or district-wide basis.[18] Department supervisors are also responsible for training in the stores. An exception is in training for the front end, where there is a separate trainer position, reporting to Mr. McCormick.[19]

13. Newly hired clerks are usually assigned to a specific department, although store managers can assign them to others as the need arises.[20] Clerks who are not

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[11]Criscuolo depo., p. 37; McCormick depo., p. 79-80.
[12]Lang depo., p. 28-29.
[13]McCormick depo., p. 79-80.
[14]McCormick depo., p. 71-73, 140-142; Criscuolo depo., p. 90-92; Lang depo., p. 83-84.
[15]Criscuolo depo., p. 31-32.
[16]McCormick depo., p. 65-66.
[17]Criscuolo depo., p. 32-33.
[18]Criscuolo depo., p. 69-72; McCormick depo., p. 89-90.
[19]Criscuolo depo., p. 72-75.
[20]Criscuolo depo., p. 26-29; McCormick depo., p. 64-65. Store departments are perishable, meat, seafood, bakery, deli, produce, grocery, frozen foods, dairy, and health and beauty aids (McCormick depo., p. 61-

cashiers typically are trained for and engage in a variety of tasks, including unloading trucks, taking in deliveries, unpacking and stocking products, price changes, sweeping and cleaning floors.[21] Cashiers do not necessarily engage in all of these tasks. Instead, besides checking out customers, they typically engage in tasks such as straightening the front end, unpack and stock health and beauty aids and non-food items, and do price changes on groceries.[22] While cashiers receive training directed at front end duties relating to handling money, checking, and customer service, there is no policy prohibiting cashiers from doing the tasks that are typically done by non-cashier clerks.[23] Although it is not a written policy, it is company practice to cross-train employees so that individuals, including cashiers, are capable of working in different departments (when not prohibited by a collective bargaining agreement).[24] Almost all cashiers are hired for part-time positions, as are most of those hired to be clerks in other departments.[25] Mr. McCormick decides whether a newly hired clerk will be assigned to a part-time or full-time position based on the needs of the department to which the employee is to be assigned.[26]

14. It is company practice to promote from within for store-level positions. The company rarely hires full-time department managers and bookkeepers/head cashiers from the outside,[27] and the same is true for assistant store managers and store managers, unless

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62). Clerks have to be a member of a specific union to be assigned to meat and seafood, and separate union contracts cover the delivery and floor waxer positions as well (McCormick depo., p. 64-65).

[21]Criscuolo depo., p. 27-28 30.

[22]Criscuolo depo., p. 28-29.

[23]Criscuolo depo., p. 29-30.

[24]McCormick depo., p. 57-58; Lang depo., p. 49-53, 75-76, 81-82; Monos depo., p. 79-84; Criscuolo depo., p. 59-60.

[25]Monos depo., p. 87-89.

[26]Monos depo., p. 88-89.

[27]Criscuolo depo., p. 34-35, 41-42; McCormick depo., p. 32-33. Bookkeeper positions are usually filled from the ranks of cashiers (McCormick depo., p. 84-85).

it is believed there are no capable candidates for management from within the stores.[28] Employees in all job categories are eligible for promotion,[29] including those in part-time positions.[30] Consideration for promotion to full-time department manager typically originates with a communication from a department manager to his supervisor or to the store manager expressing the opinion that a specific employee in the store would do well in the job.[31] When there is no full-time manager in the department, that recommendation typically comes from the store manager.[32] District managers relay promotion recommendations to Mr. McCormick in Human Resources, and Mr. Criscuolo, the executive who oversees store operations, makes the final decision.[33] A similar process is followed for promotions to higher-level store management (assistant manager, co-manager, and store manager), and the typical career route is from department manager to assistant or co-manager to store manager.[34]

15. Either district managers or store managers can make recommendations for promotion to assistant manager, and the district manager makes the final decision.[35] District manager Lang testified that the process for filling co-manager positions is similar to that for the job of department manager,[36] adding that a viable candidate would need to have experience as a department manager (in any department).

Gender Differences in Career Paths at Gristede's

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[28]Criscuolo depo., p. 33-35; McCormick depo., p. 65-66; Lang depo., 86-89; Monos depo., p. 44-45.
[29]McCormick depo., p. 78-79.
[30]McCormick depo., p. 56; Criscuolo depo., p. 102, 117; Lang depo., p. 78-79, 90-91; Monos depo., p. 86-87.
[31]Criscuolo depo., p. 69-70; Lang depo., p. 40-41, 54-56.
[32]Criscuolo depo., p. 78-79.
[33]McCormick depo., p. 27-28, 42-43, 55-56.
[34]McCormick depo., p. 82-83, 126-127, 142; Criscuolo depo., p. 79, 84-86, 93-102, 116-117; Lang depo., p. 68-69, 84-87, 100; Monos depo., p. 44-46, 68-69.
[35]Criscuolo depo., p. 79-80.
[36]Lang depo., p. 84-85.

16. Dr. Crawford's tabulations show a high degree of sex segregation in entry-level jobs: the cashier position is overwhelmingly female dominated. Women comprise well over 90% of the cashiers (both full-time and part-time), whereas men account for over two-thirds of the full-time non-cashier clerks and about 80% of the part-time clerks (Crawford Report, Table 4). Of the 2348 men hired from 1999 to 2007, 79% were assigned to the non-cashier clerk positions, whereas just 15% of the 2156 women hired over the same period were assigned to those jobs (Crawford Report, Table 5). Among those newly hired into full-time cashier positions, women are less likely to be placed in full-time positions (Crawford Report, Table 6).

17. Within the clerk category, there is a very high degree of gender segregation by department. Supplementary statistics on personnel transactions for the years 1999-2007 (Exhibit C to this report) tabulated by Dr. Crawford at my request allow me to assess the approximate degree of gender segregation by job titles. (The counts in Exhibit C pertain to personnel transactions, not job incumbents, so, for example, one individual who received two pay increases and one promotion would be counted three times, not once.) The transaction data indicate, for example, that among part-time clerks, women are assigned disproportionately to the deli department, and few male clerks work in that department. In contrast, the transaction data indicate that the majority of male part-time clerks are assigned to the grocery department, while few female part-time clerks are assigned to that department. The transaction data indicate that almost all of the grocery clerks are male, and few, if any, clerks in the full-time wrapper category are men. These data also indicate that almost all of the clerks (both full-time and part-time) in the butcher department are men.

18. Women are largely absent in the management ranks of the company. Approximately 95% of the managers are men (Crawford Report, Table 4), and for the period studied by Dr. Crawford, ten times as many men were promoted as women (Crawford Report, Tables 1 and 2). Women are less likely to be promoted into management than are men. Dr. Crawford's analysis indicates that this is due in part to the fact that women tend to be segregated into the jobs from which few employees are promoted (Crawford Report, Tables 1 and 3) and in part due to the fact that when men and women are in the same job categories women are promoted out at a lower rate than men (Crawford Report, Table 2).

19. Management ranks are also highly segregated at Gristede's. For example, the supplementary transaction statistics provided to me (Exhibit C) show that most if not all of the café managers and front end managers are women, whereas hardly any women work as dairy managers, meat managers, produce managers, or deli managers.

20. Women also earn less than men at Gristede's, and Dr. Crawford's report shows that this is largely due to sex segregation across jobs. In each year from 2000 through 2006, women earned less than 80 cents for each dollar earned by men who had comparable length of service with the company; in 2007 the earnings gap declined to about 88 cents for each dollar earned by men, still a statistically significant disparity (Crawford Report, Table 8). Comparing men and women with the same length of service and in the same job categories, earnings disparities are small (never more than 3% after the year 2000) and not statistically significant (Crawford Report, Table 8). Again, this means that women earn less than men at the company mainly because they are segregated into lower paying jobs, are in jobs that are rewarded with less frequent pay increases

(Crawford Report, Tables 9 and 10), and are less likely than similarly situated men to be promoted into higher paying management jobs. A gender disparity in the rate at which newly hired cashiers are placed into full-time jobs also contributes to the gender disparity earnings.

Why Are Men's and Women's Career Paths at Gristede's So Different?

21. Sex segregation across jobs creates and sustains differences in men's and women's careers at Gristede's, but what accounts for the very high degree of sex segregation? One possibility is that the skills, experiences, and qualifications required of male-dominated jobs differ dramatically from those required of female-dominated jobs, and men and women differ just as dramatically in their own skills, experiences, and qualifications. In other words, the work done mostly by men at Gristede's requires skills, experiences, and qualifications that many men possess and few women possess, and vice versa for the jobs done mostly by women. This is extremely unlikely for the kinds of entry-level jobs that exist at Gristede's, which do not require highly specialized skills, education, training, or prior work experience. Indeed, the company's own managers have testified that men and women are equally suited to be cashiers and equally suited to be clerks and are equally suitable for management positions.[37]

22. Research studies have shown that in highly segregated organizations, the strongest predictor of whether an open position is filled by a man or a woman is the gender of the previous job holder.[38] In such organizations, patterns of segregation

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[37]Lang depo., p. 69-70, 89-90; McCormick depo., p. 78; Clusan depo., p. 80-81; Moore depo., p. 87; Ferdinand depo., p. 29, 73; Mendoza depo., p. 23.

[38]See, for example, L. E. Cohen, J. P. Broschak, and H. A. Haveman, "And Then There were More? The Effect of Organizational Sex Composition on the Hiring and Promotion of Managers," *American Sociological Review*, Vol. 63, 1998, p. 711-727; and A. M. Konrad and J. Pfeffer, "Understanding the Hiring of Women and Minorities in Educational Institutions," *Sociology of Education*, Vol. 64, 1991, p. 141-157. For a review of relevant research, see B. F. Reskin, D. B. McBrier, and J. A. Kmec, "The

become institutionalized and persist over time, even when there are high levels of turnover in the jobs. Male-dominated jobs come to be viewed and understood as "men's work" and those filled mostly by women as "women's work."[39] In such organizational contexts, sex segregation is often sustained by highly discretionary and subjective personnel practices, especially when there is little oversight and accountability regarding: (1) the process used to make decisions about hiring, job assignment, promotion, and other career outcomes; and (2) the impact of personnel policies and practices on equal employment opportunity.[40] Below, I summarize the social science research that explains how personnel systems with these features sustain sex segregation, and then I return to the evidence regarding the Gristede's system and assess whether it has features that have been identified in social science research as contributing to sex segregation in the workplace.

SEX SEGREGATION OF JOBS AND DISCRETIONARY PERSONNEL SYSTEMS: FINDINGS FROM SOCIAL SCIENCE RESEARCH

Segregation and Stereotypes

23. The gender composition of a job is an important part of the *organizational context*, which in turn shapes how the company's hiring policies and practices impact women. Social science research shows that occupations and jobs with highly skewed ratios of men to women become *sex labeled* -- widely viewed as "men's work" (if males predominate) or "women's work" (if women predominate). This is especially true when

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Determinants and Consequences of Workplace Sex and Race Composition," *Annual Review of Sociology*, Vol. 25, 1999, p. 335-361 (esp. p. 343-344).

[39]See, for example, V. K. Oppenheimer, "The Sex-Labeling of Jobs," *Industrial Relations*, Vol. 7, 1968, p. 219-234.

[40]See, for example, W. T. Bielby, "Minimizing Workplace Gender and Racial Bias," *Contemporary Sociology*, Vol. 29, 2000, p. 120-129

jobs are viewed as having *sex-linked characteristics* -- that is, when the preferred employees for the line of work have traits that are considered prevalent among the members of one sex.[41] Physically demanding work, such as working as a stock person in a store, is one example of the kind of trait that contributes to the sex labeling of a job.[42] Sex-labeled jobs within organizations also sustain and reinforce *gender-based schema* -- cognitive representations (stereotypes) that shape how decision-makers understand the traits of job incumbents.[43] Management scholar Elissa Perry and colleagues summarize this line of social science research as follows:

> The reinforcing effects of context on decision makers' jobholder schemas are one important reason for the persistence of gender segregation. A second reason why gender segregation persists is that gender-associated jobholder schemas may reinforce contextual factors that generate segregation. For example, if a job's current gender composition is skewed, then gender becomes part of decision makers' schema (through the process of repeated observation). Consequently, when decision makers use these gender-associated schemas in hiring and promotion decisions, the current gender composition of the job is recreated.... Thus, context and cognition may operate in a mutually reinforcing fashion to sustain gender segregation.[44]

Most studies consider a job or occupation in which men (or women) comprise a majority of 85% or more to be a line of work that is likely to be male-dominated (or female-

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[41] Oppenheimer, *op cit.*, esp. p. 226-228; also see S. Kiesler, "Actuarial Prejudice Towards Women and Its Implications," *Journal of Applied Social Psychology*, Vol. 5, 1975, p. 201-216.

[42] Oppenheimer, *op cit.*, p. 226; K. Deaux and L. L. Lewis, "Structure of Gender Stereotypes: Interrelationships Among Components and Gender Label," *Journal of Personality and Social Psychology*, Vol. 46, 1984, p. 991-1004; W. T. Bielby and J. N. Baron, "Men and Women at Work: Sex Segregation and Statistical Discrimination," *American Journal of Sociology*, Vol. 91, 1986, p. 759-99, esp. 782-785.

[43] E. H. Gorman, "Gender Stereotypes, Same-Gender Preferences, and Organizational Variation in the Hiring of Women: Evidence from Law Firms," *American Sociological Review*, Vol. 70, 2005, p. 702-728, esp. p. 704-705; P. DiMaggio, "Culture and Cognition," *Annual Review of Sociology*, Vol. 23, 1997, p. 263-287; M. E. Heilman, "Sex Bias in Work Settings: The Lack of Fit Model," *Research in Organizational Behavior*, Vol. 5, 1983, p. 269-298, esp. p. 263-271, 273-274.

[44] E. L. Perry, A. Davis-Blake, and C. T. Kulik, "Explaining Gender-Based Selection Decisions: A Synthesis of Contextual and Cognitive Approaches," *Academy of Management Review*, Vol. 19, 1994, p. 786-820 (quoted at p. 820). Also see M. E. Heilman, "The Impact of Situational Factors on Personnel Decisions Concerning Women: Varying the Sex Composition of the Applicant Pool," *Organizational Behavior and Human Decision Processes*, Vol. 26, 1980, p. 386-395; and M. E. Heilman, R. F. Martell, and M. C. Simon, "The Vagaries of Sex Bias: Conditions Regulating the Undervaluation, Equivaluation, and Overvaluation of Female Job Applicants, *Organizational Behavior and Human Decision Processes*, Vol. 41, 1988, p. 98-110.

dominated) and gender labeled and one in which the gender composition of the job is reinforced by and reinforces gender schemas.[45]

24. Social science research shows that organizational policies and practices, once in place, become institutionalized, establishing what organizational scholars refer to as "organizational inertia." As a result, institutionalized policies and practices rarely change in the absence of any substantial change in a firm's business, technical, or legal environment.[46] When a company's policies create and sustain sex segregation, especially in industries that have been historically sex-segregated, the sex-labeling of jobs becomes a taken-for-granted frame of reference for subsequent decisions about hiring, job assignment, and promotion.

How Discretionary Decision-Making Contributes to Gender Bias

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[45]Oppenheimer's criteria was 70%. Most organizational sociologist follow Kanter's definition of 85% as the threshold for a skewed distribution (R. M. Kanter, *Men and Women of the Corporation*, Basic Books, 1977). See, for example, D. F. Izraeli, "Sex Effects or Structural Effects" An Empirical Test of Kanter's Theory of Proportions," *Social Forces*, Vol. 62, 1983, p. 153-165; and J. Pfeffer and A. Davis-Blake, "The Effect of Proportion Women on Salaries: The Case of College Administrators," *Administrative Science Quarterly*, Vol. 32, 1987, p. 1-24. Also see Perry *et al.*, *op cit.*, esp. p. 798-799.

[46]L. Stinchcombe, "Social Structure and Organizations," p. 142-93 in *Handbook of Organizations*, edited by J. G. March, Rand McNally, 1965; M. T. Hannan and J. H. Freeman, "Structural Inertia and Organizational Change," *American Sociological Review*, Vol. 43, 1984, p. 143-164; J. N. Baron, "Organizational Evidence of Ascription in Labor Markets," in *New Approaches to Economic and Social Analyses of Discrimination*, edited by R. Cornwall and P. Wunnava, Praeger, 1991. The concept of organizational inertia has been applied in scientific studies conducted in a wide range of industrial settings. For reviews, see S. Kaplan and R. Henderson, "Inertia and Incentives: Bridging Organizational Economics and Organizational Theory," *Organization Science: A Journal of the Institute of Management Sciences*, Vol. 16, 2005, p. 509-521; and C. Gresov, H. A. Haveman, and T. A. Oliva, "Organizational Design, Inertia, and the Dynamics of Competitive Response," *Organization Science: A Journal of the Institute of Management Sciences*, Vol. 4, 1993, p. 181-208. Also see, for example, J. Roggema and M. H. Smith, "Organizational Change in the Shipping Industry: Issues in the Transformation of Basic Assumptions," *Human Relations*, Vol. 36, 1983, p. 765-790; E. Abrahamson and C. J. Fombrun, "Macrocultures: Determinants and Consequences," *Academy of Management Review*, Vol. 19, 1994, p. 728-755; L. Gardenswartz and A. Rowe, "Diversity Management: Practical Application in a Health Care Organization," *Frontiers of Health Services Management*, Vol. 11, 1994, p. 36-40; G. T. Fairhurst, S. Green, and J. Courtright, "Inertial Forces and the Implementation of a Socio-technical Systems Approach: A Communication Study," *Organization Science*, Vol. 6, 1995, p. 168-185; C. Doucouliagos, "Conformity, Replication of Design and Business Niches," *Journal of Economic Behavior & Organization*, Vol. 30, 1996, p. 45-62; and M.. Ruef, "Assessing Organizational Fitness on a Dynamic Landscape: An Empirical Test of the Relative Inertia Thesis," *Strategic Management Journal*, Vol. 18, 1997, p. 837-853.

25. Social science research demonstrates that substantial discretion in assessing and weighing evaluative criteria invites bias. 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 those in the minority. 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.[47] In other words, they exercised their 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.[48]

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

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[47]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.

[48]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.

qualifications, evaluators redefined criteria of success so that men were assigned to stereotypically male jobs and females were assigned to stereotypically female jobs.[49] 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.[50]

Uhlmann and Cohen conclude their study by linking it to the research of Gaertner and Dovidio described above, noting (p. 479) that it "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.

27. Bias due to discretionary decision-making of the type described above comes about largely because of the influence of gender stereotypes. Gender stereotypes are "socially shared beliefs about the characteristics or attributes of men and women in

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[49]E. L. Uhlmann and G. L. Cohen, "Constructed Criteria: Redefining Merit to Justify Discrimination," *Psychological Science*, Vol. 16, 2005, p. 474-480.
[50]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.

general that influence our perceptions of individual men and women."[51] Industrial psychologist Jeanette Cleveland and coauthors summarize research on the pervasiveness of gender stereotypes as follows:

> *Pervasiveness of Gender Stereotypes*. Assessments of gender stereotypes in the United States have shown remarkably consistent results. Again, women are often described as affectionate, attractive, charming, dreamy, emotional, flirtatious, and sentimental. Men are often described as aggressive, assertive, dominant, handsome, masculine, strong, tough, rational, and realistic. This research has been extended to 25 countries to assess sex-trait stereotypes cross-culturally (Best & Williams, 1990). In all 25 countries surveyed, women were described as sentimental, submissive, and superstitious, and in 22 countries they were described as sexy. For men in all 25 countries, masculine stereotypes included adventurous, independent, masculine, and strong. *This consistent pattern of findings across studies and across countries suggests that gender stereotypes are quite pervasive* [emphasis added].[52]

28. It is sometimes claimed that gender stereotypes do not influence personnel decisions when the company's culture encourages managers to pay attention to information about individual employees.[53] Such claims usually cites research studies on the role that "individuating information" plays in reducing stereotyping. In fact, the relevant social science research demonstrates conclusively that it is only under very specific circumstances that individuating information reduces the impact of stereotyping. Dr. Eugene Borgida, a leading social psychologist who specializes in research on stereotyping, summarizes this research in an article, "Gender Stereotyping: Scientific Status," which appeared in the book *Modern Scientific Evidence: The Law and Science*

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[51] J. N. Cleveland, M. Stockdale, and K. R. Murphy, *Women and Men In Organizations: Sex and Gender Issues at Work*, Lawrence Erlbaum Associates, 2000, p. 42-43.
[52] J. N. Cleveland, *et al., op cit.*, p. 47.
[53] For example, see D. Copus, "A Lawyer's View: Avoiding Junk Science," p. 450-462 in *Employment Discrimination Litigation: Behavioral, Quantitative, and Legal Perspectives*, edited by F. J. Landy, Jossey Bass, 2005.

of Expert Testimony."[54] Regarding the current status of research on the topic, Dr. Borgida and his coauthors (Jennifer Hunt, Kristina Kelley, and Diana Burgess) wrote (p. 408):

> "Early studies suggested that knowledge of individuating information could reduce or even eliminate the influence of gender stereotypes on judgments about the individual. These studies have been misinterpreted as evidence that perceivers will not use stereotypes as long as they have any form of individuating information about a person. *However, additional research and theory indicate that the effects of individuating information are considerably more complex* [emphasis added]."[55]

The article goes on to explain that individuating information on an individual's characteristics is considered only if it is inconsistent with the stereotype, and even then, the information about the individual is sometimes processed in a biased manner. Elaborating on this, Dr. Borgida and coauthors wrote (p. 409):

> "Without necessarily realizing it, perceivers tend to selectively process information about individuals that is consistent with group stereotypes, while inhibiting information that is inconsistent with stereotypes. Perceivers also use stereotypes when they interpret individuating information.... Thus, people tend to interpret ambiguous or internally contradictory (i.e. mixed) individuating information in stereotype-consistent ways. Only individuating information that is truly unambiguous is seen as stereotype-disconfirming. This process of biased information-processing is particularly insidious because people believe they are judging others on the basis of personal characteristics, often unaware of the influence that stereotypes have on the interpretation of those characteristics."

Dr. Borgida and his coauthors go on to summarize research that "non-diagnostic" or irrelevant information about an individual (e.g. information about personal qualities not

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[54] J. S. Hunt, E. Borgida, K. M. Kelley, and D. Burgess, "Gender Stereotyping: Scientific Status," p. 384-426 in *Modern Scientific Evidence: The Law and Science of Expert Testimony*, edited by D. Faigman, D. H. Kaye, M. J. Sacks, and J. Sanders, West Publishing Co., 2002.

[55] Not included in the quotes extracted here are the extensive footnotes to the relevant scientific literature.

related to job-related qualifications for a promotion), can, under some circumstances, actually increase the impact of stereotyping.[56]

29. Dr. Borgida and his coauthors conclude their discussion of individuating information by noting that "the relationship between knowledge of individuating information and stereotype use is complex, depending on elements of the target, the perceiver, the individuating information, the relationship between the information and the group stereotype, and the particular decision being made" (p. 410).

30. Later in the chapter, Dr. Borgida and his coauthors summarize research on "intentional stereotype suppression," that is, "the ability of individuals to control their own use of gender (and other) stereotypes." This research demonstrates that it is incorrect to assume that simply enunciating a principle like "respect for the individual" and reinforcing it in the company culture is sufficient to motivate individuals not to be influenced by stereotypes.. The relevant scientific research summarized by Dr. Borgida and coauthors demonstrates that this assumption is incorrect (p. 418):

> "Research suggests that the intentional stereotype suppression is a difficult process that can occur only under certain circumstances. Further, recent research has documented a rebound effect, in which stereotype use actually increases when a person ceases active efforts to inhibit stereotypes."

The article notes that effective stereotype suppression requires "careful, deliberative thought" which in turn requires sufficient motivation to be free of bias (p. 418-419). As with the use of irrelevant individuating information, attempts to suppress stereotyping can lead to subsequent "rebound effects" which increase rather than decrease the use of stereotyping. Dr. Borgida and his colleagues draw the following conclusion from their review of the relevant research (p. 419):

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[56]Hunt *et al.*, p. 410. They use the example of a decision-maker learning that a woman was on a pep squad, when making a decision for which that particular piece of individuating information is not directly relevant.

> "Moreover, even when stereotype suppression initially is successful, a backlash can occur, actually increasing the use of stereotypes after active inhibition efforts end. *This research therefore suggests that controlling the use of gender stereotypes in busy workplace environments may be very difficult, indeed* [emphasis added]."

It is for precisely this reason that having a perfunctory equal employment policy that is little more than a written statement of nondiscrimination is not sufficient to reduce the impact of stereotyping on personnel decisions. It is also for this reason that clearly specified and relevant criteria, along with effective monitoring and accountability are necessary to minimize the impact of stereotypes and gender bias on personnel decisions.[57]

How Organizational Policies and Practices Can Minimize Bias

31. Gender bias in personnel decisions is not inevitable, and the social science research summarized above and related scholarship demonstrates that the effects of gender stereotypes and the sex-labeling of jobs on evaluative judgments such as those involved in hiring and assessments of skills and qualifications can be minimized when human resources practices are formalized so that decision-makers know that they will be held accountable for the criteria used to make decisions, for the accuracy of the information upon which the decisions are based, and for the consequences their actions have for equal employment opportunity.[58]

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[57] Bielby, 2000, *op cit.*

[58] B. F. Reskin and D. B. McBrier, "Why Not Ascription? Organizations' Employment of Male and Female Managers," *American Sociological Review*, Vol. 65, 2000, p. 210-233; M. Elvira and M. E. Graham, "Not Just a Formality: Pay System Formalization and Sex-Related Earnings Effects," *Organization Science*, Vol. 13, 2002, p. 601-617; J. N. Baron, M. T. Hannan, G. Hsu, and O. Kocak, "In the Company of Women: Gender Inequality and the Logic of Bureaucracy in Start-Up Firms," *Work and Occupations*, Vol. 34, 2007, p. 35-66; S. T. Fiske, M. Lin, and S. L. Neuberg, "The Continuum Model: Ten Years Later," p. 231-54 in *Dual Process Theories in Social Psychology*, edited by S. Chaiken and Y. Trope, Guilford Press, 1999; T. E. Nelson, M. Acker and M. Manis, "Irrepressible Stereotypes," *Journal of Experimental Social Psychology*, Vol. 32, 1996, p. 13-38; J. L. Eberhardt and S. T. Fiske, "Motivating Individuals to Change: What Is a Target to Do?" p. 369-415 in *Stereotypes and Stereotyping*, edited by C. N. MacRae, C. Stangor,

32. However, formal written policies alone, such as specific guidance on assessing and weighing evaluative criteria, are not sufficient to minimize bias. Passive organizational approaches to the prevention of discrimination that take action only after an incident is brought to the attention of management are often ineffective. A written antidiscrimination policy that is simply reactive, responding to complaints, and lacking effective accountability, is often a symbolic exercise in "going through the motions," with little substantive impact on creating organizational policy and practice that is free of bias.[59] 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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and M. Hewstone, Guilford Press, 1996; A. M. Konrad and F. Linnehan, "Formalized HRM Structures: Coordinating Equal Employment Opportunity or Concealing Organizational Practices?" *Academy of Management Journal*, Vol. 38, 1995, p. 787-829; T. F. Pettigrew and J. Martin, "Shaping the Organizational Context for Black American Inclusion," *Journal of Social Issues*, Vol. 43, 1987, p. 41-78; G. R. Salancik and J. Pfeffer, "Uncertainty, Secrecy, and the Choice of Similar Others," *Social Psychology*, Vol. 41, 1978, p. 246-55; C. T. Schreiber, K. F. Price, and A. Morrison, "Workforce Diversity and the Glass Ceiling: Practices, Barriers, Possibilities," *Human Resource Planning*, Vol. 16, 1993, p. 51-69; P. E. Tetlock, "Accountability: The Neglected Social Context of Judgment and Choice," p. 297-332 in *Research in Organizational Behavior*, Vol. 7, edited by L. L. Cummings and B. M. Staw, Jai Press, 1985; P. E. Tetlock and J. I. Kim, "Accountability and Judgment Processes in a Personality Prediction Task," *Journal of Personality and Social Psychology*, Vol. 52, 1987, p. 700-709. To see how human resource professionals apply these principles in the design of personnel systems, see R. D. Gatewood and H. S. Field, *Human Resource Selection*, Fifth Edition, Dryden Press, 2001; and H. G. Heneman, III, R. L. Heneman, and T. A. Judge *Staffing Organizations*, Third Edition, Mendota House and Richard D. Irwin, 1999.

[59]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.[60]

33. The most effective approaches rely on proactive policies and practices, including recurring and mandatory training of managers and supervisors, and systematic and consistent monitoring of outcomes of personnel decisions.[61] Effective accountability 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 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 equal

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[60]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

[61]For a review of monitoring and accountability as strategies for ensuring equal employment opportunity, see Bielby, 2000, *op cit.*; 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? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies," *American Sociological Review*, Vol. 71, 2006, p. 589-617. 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.

employment opportunity ("EEO") as well as other aspects of human resources, "what gets measured gets done."[62]

GRISTEDE'S HAS MANY OF THE POLICIES AND PRACTICES THAT CREATE GENDER BIAS AND VIRTUALLY NONE OF THOSE THAT MINIMIZE BIAS

Criteria for Making Personnel Decisions Are Unwritten, Ambiguous, and Highly Subjective, and Gristede's Does Not Monitor How They Are Applied

34. Gristede's provides very little guidance to its managers about the criteria to be used in making decisions about hiring, job assignment, and promotion. The company does not maintain written job descriptions for any of its positions,[63] and there are no formal performance evaluations of employees for managers and supervisors to review when deciding which employees should be recommended for open positions.[64] Many of the qualifications and criteria emphasized by Gristede's managers are highly subjective. For example, Mr. McCormick testified that the qualifications needed to be a stock person were to be "friendly, honest."[65] Those were also qualities he used to describe cashiers (along with being able to make change).[66] Mr. McCormick testified that he determines whether an applicant is honest through "eye contact" and by asking questions. Eye contact and a person's smile are also used to determine whether an applicant is qualified

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[62]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.*
[63]Lang depo., p. 58; Monos depo., p. 111; Clusan depo., p. 85; McCormick depo., p. 48, 67-68, 71, 79-80; Mendoza depo., p. 81. Mr. Criscuolo believed that job descriptions existed for the positions of store manager and assistant manager, but he was not aware of the content (C depo., p. 79-80). Mr. McCormick's testimony suggests that Mr. Criscuolo was incorrect in assuming those descriptions exist at the company.
[64]Criscuolo depo., p. 82-84; Lang depo., p. 58; Mendoza depo., p. 28-29.
[65]McCormick depo., p. 54-55, 46-47.
[66]McCormick depo., p. 57.

for employment.[67] Customer service skills are assessed by Mr. McCormick by an applicant's politeness and "the way they act" with him.[68] Subjective judgments of nonverbal behavior can be particularly vulnerable to bias, since an applicant's behavior in the interview can be influenced by the way she or he is treated by the person conducting the interview.[69]

35. Mr. Criscuolo testified that the job requirements were "basically friendly outgoing people, available to work the schedule that is needed for the stores, the flexibility to work within the schedules."[70] The qualifications to become a department manager, according to Mr. McCormick, are "know how," "experience," and "being able to motivate people."[71] Although an applicant is required to answer some written questions during an interview, Mr. McCormick relies much less on their answers than on the impression he forms of the applicant during the interview.[72]

36. District manager Monos testified that a good candidate for management must have a positive attitude about their job, customers, and the company. He relied on his own subjective judgment for assessing whether employees have this quality, testifying as follows:

Q. There was some other factors that you mentioned in how you determine whether an employee is a good candidate for management.

[67]McCormick depo., p. 36-37.
[68]McCormick depo., p. 37.
[69]See, for example, C. O. Word, M. P. Zanna, and J. Cooper, "The Nonverbal Mediation of Self-Fulfilling Prophecies in Interracial Interaction," *Journal of Experimental Social Psychology*, Vol. 10, 1974, p. 109-120, and the review of this line of research in T. F. Pettigrew and J. Martin, "Shaping the Organizational Context for Black American Inclusion," *Journal of Social Issues*, Vol. 43, 1987, p. 41-78. Also see C. L. Ridgeway and L. Smith-Lovin, "The Gender System and Interaction," *Annual Review of Sociology*, Vol. 25, 1999, p. 191-216.
[70]Criscuolo depo., p. 56.
[71]McCormick depo., p. 69-70.
[72]McCormick depo., p. 113-115, 117-118.

I believe one of them was attitude?
A. Yes.
Q. What did you mean by attitude?
A. They have to have a good positive

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Monos

attitude about their job, the customer, and the company. Because they're representing the company.
Q. How do you know whether an employee has a positive attitude?
A. I've been in this business for 38 years. You could read people pretty well. You could tell how they work, how they perform their functions. They come to work every day, they call out sick. You could just tell how the people are.
Q. So you can determine whether an employee has a positive attitude based on your personal observation of the employee?
A. It's not 100 percent, but for the most part, yes.[73]

37. Store manager Moore testified that he has not received any training from Gristede's regarding what to look for in interviewing applicants.[74] District manager Lang

[73]Monos depo., p. 55. Mr. Monos testified (p. 58) that he would also rely on feedback from a store manager such as "this guy's got good attitude, the person has good attitude, bad attitude, or doesn't care." Mr. Monos would also rely on store managers' feedback about an employee's knowledge of operations and other traits. However, according to Mr. Monos, he did not receive regular feedback about all employees; sometimes such information would be volunteered by store managers, and other times he might ask for feedback about an employee (Monos depo., p. 58-62).

testified that he was never told by anyone in the company what criteria to use making promotion recommendations.[75] Mr. Lang testified that in seeking to fill department manager positions in stores, he looks for candidates who have relevant knowledge, want to "grow within the organization," and are willing to be trained and developed.[76] However, he does not review the candidate's personnel file and he does not rely on any other documents in assessing those qualities.[77] District manager Monos gave similar testimony.[78] Mr. Criscuolo testified that an employee recommended for a promotion would have an "interview" that was more like a conversation between the employee and his or her supervisor. Only the person being recommended is "interviewed," and there are no company guidelines about what questions to ask during the conversations.[79]

38. Store manager Angelo Mendoza testified that he was never told what to look for in an employee when making promotion recommendations, that he never saw any documents on the topic, and that he relied upon his personal assessment of the worker's character, ability, and "a gut feeling" of whether the person could do the job.[80] Mr. Mendoza's highly discretionary and subjective approach to making promotion recommendations is consistent with Gristede's practice as described by Michael

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[74]Moore depo., p. 55-58.
[75]Lang depo., p. 71-72. Similarly, store manager Faustino Ferdinand testified that he had never been told by anyone the requirements for becoming a store manager, that there is no rule for what to look for in making promotion recommendations (Ferdinand depo., p. 26, 56-57).
[76]Lang depo., p. 54-57.
[77]Lang depo., p. 58. Similarly, store manager Mendoza testified that he looks at no documents pertaining to an employee's qualifications when making promotion recommendations (Mendoza depo., p. 68-69).
[78]Monos depo., p. 84-86, 100, 111-121. Also see Moore depo., p. 81, 84-85 (regarding no documents to rely upon in making recommendations for promotion).
[79]Criscuolo depo., p. 105-106. Store manager Moore testified that in making recommendations for promotion, he sought individuals who were "more like myself" along with work performance, "good attitude," and "follows company policies" (Moore depo., p. 75). Mr. Moore testified that he was specifically told by past supervisors to look for "*more individuals like yourself* or individual that you would want as your assistant, *somebody like yourself*" (Moore depo., p. 78-79). Such direction is likely to increase the impact of stereotyping, in the absence of clearly specified criteria, a systematic process for assessing promotion candidates on those criteria, and effective monitoring and oversight.
[80]Mendoza depo., p. 61-62.

McCormick, the company's human resources specialist. Asked about the criteria used for making promotions at the company, Mr. McCormick testified as follows:

Q. Do you know, are there any criteria for promotion -- for promoting a individual?
A. I don't know the criteria.
Q. Do you know if there's any written criteria anywhere?
MR. NASH: Objection.
A. Not to my knowledge.
MR. NASH: He just said he didn't know the criteria.
MS. GREENE: I asked him another question, Mr. Nash.
MR. NASH: Well, whether it's

written or oral, it's still a criteria. So if he doesn't know, he doesn't know.
BY MS. GREENE:
Q. You don't know if there are any written --
A. Not my knowledge.
Q. Where would you look if you were going to find out if there was written criteria?
MR. NASH: Objection.
A. I wouldn't even know.

Q. Who would you ask?
A. I wouldn't even know, because everybody's gone from years back. So I don't even know who to ask.
Q. Okay.
Do you know if potential -- if employees who are being considered for promotion are interviewed?
A. That, I don't know.[81]

Moreover, while Mr. McCormick in human resources sees all promotion recommendations that come from district managers and submits them to Mr. Criscuolo for final approval, he testified that he has no knowledge of the process used by either the district managers or Mr. Criscuolo in reaching their decisions; his role in the process is simply to be a "messenger."[82] In short, human resources at Gristede's provides no guidance on the criteria to be used and does no oversight of the process for making promotion decisions at the company.

There are No Systematic Mechanisms for Determining the Interests, Availability, and Qualifications of Individuals for Promotion Opportunities

39. Promotion opportunities are not posted, there is no written or formal application process for being considered for a promotion, the company makes no systematic efforts to learn which employees are interested and qualified for promotions, and employees are given no documents about the requirements for promotion.[83] As a

[81]McCormick depo., p. 144-145.
[82]McCormick depo., p. 43-44, 126, 147. Mr. McCormick's testimony seems to contradict the testimony of District manager Monos, who believed that Mr. McCormick reviewed his promotion recommendations (Monos depo., p. 100-101).
[83]McCormick depo., p. 125-126, 135-136; Lang depo., p. 57-58, 79-80, 84-85, 91-92; Criscuolo depo., p. 86-90, 102-105, 107-108; Clusan depo., p. 88-89; Moore depo., p. 71-72; Ferdinand depo., p. 73-74;

result, employees have no systematic way for making their interest in, qualifications for, and availability for an open position known to those who make the initial recommendation for a promotion and to the other managers who participate in making the decision about whom to promote. District manager Monos testified that employees must take the initiative to express their interest in promotion to him, and someone who does not do so will not be considered for promotion. Employees are not informed that this is a requirement for being considered for advancement in the company.[84] Mr. Monos considers his "bullpen" of internal candidates for promotion into management is comprised of anyone a store manager has told him would like to be given the opportunity, but no list of such individuals is maintained.[85]

40. Failure to systematically assess employees' interests in and availability for promotions and relying on employee initiative to seek advancement is especially problematic in a highly sex-segregated workplace in which women may face barriers to advancement and to assignment to male-dominated jobs. A large body of research in sociology and organizational studies, dating back to the 1950s, shows that individuals who find their opportunities for advancement blocked respond by lowering their goals

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Mendoza depo., p. 67-69. In addition, the company does not post opportunities to move from part-time to full-time positions (Lang depo., p. 79-80). Store manager Ferdinand testified that in recent months some job openings have been posted (Ferdinand depo., p. 68-70), although store manager Mendoza, testifying on the same day, said he had never seen a posting for an open management position (Mendoza depo., p. 67).

[84]Monos depo., p. 49-50.

[85]Monos depo., p. 51-52. If there is a management opening, and no store manager has told him of a potential candidate, and he has no one in mind, Mr. Monos would ask Mr. McCormick to place a newspaper advertisement in order to recruit from outside. But there would be no internal posting or other systematic effort to identify internal candidates (Monos depo., p. 52-54). Asked what an employee should do if he or she wanted to be promoted, store manager Ferdinand testified "I have no idea" and that he assumed the employee would tell him (Ferdinand depo., p. 70-71). Store manager Mendoza gave similar testimony (Mendoza depo., p. 67-69).

and aspirations, and by lowering their commitment to their work compared to others with more promising career prospects.[86]

41. District manager Lang testified that an employee seeking an opportunity to move out of a part-time position would learn about a full-time opening by word-of-mouth, through the "close-knit community" of fellow workers, and he knew of no other way that a person could gain such information. He testified as follows:

Q. Would part-time clerks know when there was a need for a full-time clerk?

A. Most of time within that particular store they would, and sometimes it seems to be a close-knit community so that if they hear somebody might be leaving and stuff like that, they express interest.

Q. So part-time employees may hear that a full-time person is leaving. Is there another way they would know there's a

[86]For a relatively recent study of this phenomenon in the context of gender barriers and a review of the relevant research, see N. Cassirer and B. Reskin, "High Hopes: Organizational Position, Employment Experiences, and Women's and Men's Promotion Aspirations," *Work And Occupations*, Vol. 27, 2000, p. 438-463. Early studies of opportunity and aspiration (not in the context of gender discrimination) include R. Guest, "Work Careers and Aspiration of Automobile Workers," *American Sociological Review*, Vol. 19, 1954, p. 155-63; E. Chinoy, *Automobile Workers and The American Dream*, Doubleday 1955; T. V. Purcell, *Blue Collar Man: Patterns of Dual Allegiance in Industry*, Harvard University Press, 1960; R. Blauner, *Alienation and Freedom*, University of Chicago Press, 1964; and O. Grusky, "Career Mobility and Organizational Commitment," *Administrative Science Quarterly*, Vol. 10, 1966, p. 489-502. On gender, career aspirations, and perceptions of opportunities, see Kanter, *op cit.*; J. A. Jacobs, *Revolving Doors: Sex Segregation and Women's Careers*, Stanford University Press, 1989; and K. Loscocco, "Reactions to Blue-Collar Work: A Comparison of Men and Women," *Work and Occupations*, Vol. 17, 1990, p. 152-177; L. M. Shore and S. J. Wayne, "Commitment and Employee Behavior: Comparison of Affective Commitment and Continuance Commitment with Perceived Organizational Support," *Journal of Applied Psychology*, Vol. 78, 1993, p. 774-780; J. E. Wallace, "Organizational and Professional Commitment in Professional and Nonprofessional Organizations," *Administrative Science Quarterly*, Vol. 40, 1995, p. 228-255; R. P. Settoon, N. Bennett, and R. C. Liden, "Social Exchange in Organizations: Perceived Organizational Support, Leader-Member Exchange, and Employee Reciprocity," *Journal of Applied Psychology*, Vol. 81, 1996, p. 219-227. For reviews, see W. T. Markham, S. L. Harlan, and E. J. Hackett, "Promotion Opportunity in Organizations: Causes and Consequences," *Research in Personnel and Human Resource Management*, Vol. 5, 1987, p. 223-287 and D. D. Bielby, "Commitment to Work and Family," *Annual Review of Sociology*, Vol. 18, 1992, p. 281-302.

21 *full-time opening in their store?*

22 A. Not that I know of.[87]

Similarly, store manager Moore testified that open positions are not posted, and that employees learned of opportunities by "word of mouth" and rumors "flying around the company." According to Mr. Moore, store management usually already has a person in mind when filling an open position, so no effort is made to systematically assess who among existing employees would be interested and qualified.[88]

42. Unfortunately, when information about job opportunities and other workplace resources is spread primarily by word-of-mouth, and when candidates for promotion are pre-selected by store management, opportunities for advancement tend to be more accessible to advantaged groups in the workplace -- "insiders" -- than to disadvantaged groups. Thus a woman working in a female-dominated job or department is more likely to learn about and be selected for openings in the area in which she works than she is for openings in male-dominated areas that are likely to have better prospects for further career advancement.[89]

Limited Monitoring and Oversight

43. Ms. Clusan testified that to her knowledge, no one in the company reviews her work or evaluates her performance.[90] She also testified that she did not review the

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[87]Lang depo., p. 78-79.
[88]Moore depo., p. 80-81, 84.
[89]For a review of the relevant research and a study of gender and workplace networks, see G. M. McGuire, "Gender, Race, and the Shadow Structure: A Study of Informal Networks and Inequality in a Work Organization," *Gender & Society*, Vol. 16, 2002, p. 303-322. For a review of relevant research on how networks are shaped by gender as well as other social traits, see M. McPherson, L. Smith-Lovin, and J. M. Cook, "Birds of a Feather: Homophily in Social Networks," *Annual Review of Sociology*, Vol. 27, 2001, p. 415-444.
[90]Clusan depo., p. 65, 67-68.

performance of Ms. McCormick, nor does she review his decisions or actions.[91] Mr. McCormick testified that no one reviews the decisions he makes about hiring for entry level jobs.[92]

44. There is no oversight of the criteria and process used by District managers in making promotions to department manager positions;[93] in effect District managers have complete discretion, since there is no systematic assessment of their job performance.[94] District managers do not review the file of employees proposed for promotion and see no information on others who may have been interested and qualified for the open position.[95]. In addition, no written documents are maintained that record who was interested in, considered for, or received promotions.[96] As a result, it is impossible to conduct any meaningful oversight on the process and criteria used to select individuals who are recommended for and approved for promotions, nor is it possible to compare the qualifications of those recommended and selected for a position with the qualifications of other employees who might have been interested in and available for it.

45. The company does no monitoring of gender disparities in hiring, promotion, and compensation. Ms. Clusan, the top human resources official of the company, testified that she had no responsibility regarding nondiscrimination in the hiring and promoting of women, and she was unaware of whether anyone else in the company had

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[91]Clusan depo., p. 57-58, 84-85. While not reviewing his decisions, Ms. Clusan testified that he "runs his decisions by me" (p. 85).
[92]McCormick depo., p. 117-118. Also see Lang depo., p. 55 (he does no review of hiring decisions by Mr. McCormick done at his request).
[93]Asked how department managers make those decisions, Mr. McCormick, the company's Human Resources Specialist, testified "I don't know how they decide" (McCormick depo., p. 70).
[94]Lang depo., p. 29.
[95]Lang depo., p. 40-41, 54-55.
[96]Lang depo., p. 92-93, Moore depo., p. 85, Ferdinand depo., p. 73-74; Mendoza depo., p. 69-70.

such responsibility.[97] Ms. Clusan testified that she was unaware of any affirmative action policy, and did not know of any company efforts to study whether it was hiring in a nondiscriminatory manner.[98] She also testified that she did not "100 percent" know what affirmative action is, and she did not know what the term "underutilization" meant in the context of employment.[99] Mr. McCormick, the second-highest human resources manager in the company, confirmed that the company has no affirmative action plan and that there are no policies or plan in place regarding the employment and promotion of women and minorities.[100] Both district managers testified that they were unaware of any efforts by the company to assess gender disparities in employment and promotions.[101]

Gristede's Has No Equal Employment Policy Apart from Its Written Statement Regarding Sexual Harassment, and Managers Receive No Training on Equal Employment Opportunity

46. Like most companies, Gristede's provides new employees with a handbook containing the companies policies, rules, regulations, and benefits.[102] Topics included in Gristede's handbook include the Family Medical Leave Act, training, cash control/register procedures, loss prevention, policies about absenteeism, lateness, safety, time clocks, proper behavior, dress code, and e-mail/internet usage, among others. However, there is no statement of equal employment opportunity and non-discrimination outside the context of the company's sexual harassment policy.[103] Apart from this, the only written policy regarding equal employment opportunity I was able to find in the

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[97]Clusan depo., p. 72-73.
[98]Clusan depo., p. 72.
[99]Clusan depo., p. 72, 74.
[100]McCormick depo., p. 41-42
[101]Lang depo., p. 42-43; Monos depo., p. 41-43.
[102]McCormick depo., p. 111-112.
[103]McCormick depo., Exhibit 2.

materials I reviewed was the statement "we are an equal opportunity employer" on the company application.[104] My review is consistent with the testimony of Ms. Clusan, who oversees human resources at Gristede's. She did not think there was a written policy and had never seen one, apart from the statement on the application form.[105] Mr. McCormick confirmed that the company had no written statement regarding its equal employment opportunity practices. Asked whether he told job applicants whether the company was an equal employment opportunity employer, he replied: "I don't tell them anything about that. But we are."[106] Both district managers testified that they had not seen a written equal employment opportunity policy.[107]

47. Mr. McCormick, the human resources official who, until recently, did all of the company's hiring for entry level jobs, has received no formal training from the company on matters relating to nondiscrimination and equal employment opportunity.[108] When he was first trained at the company, the only guidance he received on criteria to use in hiring was to look for individuals who were honest, friendly, and who would be able to interact well with customers.[109] Likewise, Ms. Clusan, the top human resources official at the company, has received no training on equal employment opportunity, and she was not aware of any of the company's managers receiving such training. She testified as follows:

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[104]McCormick depo., Exhibit 1 and online at http://www.Gristede's.com/ourcompany_careers.asp (retrieved November 16, 2007). Apart from the statement on the application form, which can be downloaded from the companies website, there is no statement of nondiscrimination or equal employment opportunity anywhere on the company's website, including the page with information about careers at the company.
[105]Clusan depo., p. 71-72.
[106]McCormick depo., p. 34-35.
[107]Lang depo., p. 101-102; Monos depo., p. 130-131.
[108]Ms. Clusan testified that she gave Mr. McCormick no formal training, but she was confident that she had "coached him on certain aspects of the supermarket business" but not on anything having to do with hiring or equal employment opportunity. Although she was sure she had coached him on some human resources over the years, she could not recall any specific topics (Clusan depo., p. 92-93).
[109]McCormick depo., p. 46.

Q. Have you had any training in Title 7?
A. No.
Q. Do you know what Title 7 is?
A. No.
Q. Have you had any training in the Civil Rights Act?
A. No.
Q. Do you know what the Civil Rights Act is?
A. Not specifically, no.
Q. Do you know generally what it is?
A. I know what civil rights are, so . . .
Q. Have you had any training in the New York City Human Rights Law?
A. No.
Q. Have you had any training in the New York State Human Rights Law?

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A. No.
Q. Do you know what Equal Employment Opportunity means?
A. It means hiring anybody regardless of race, creed, color, religion, which is what we practice.
Q. Have you had any training in EEO?
A. No.

Q. Do you know if store managers get any training in EEO?
A. Not that I'm aware of.
Q. Do you know if store managers get any training in HR?
A. I don't know.
Q. Do you know if department managers get any training in EEO?
A. I don't.
Q. Do you know if department managers get any training in HR?
A. I don't know.
Q. Who would know?
A. I don't know.[110]

Mr. Moore, one of the four store manager who recently took on responsibility for hiring, gave similar testimony, as did other store managers.[111]

48. In sum, Gristede's nondiscrimination and equal employment opportunity policies are virtually nonexistent. The company's human resources managers are not trained on matters relating to equal employment opportunity and nondiscrimination. They are largely uninformed about their obligations under the law, and none of the managers who have testified by deposition seem to have any awareness of the kinds of policies and practices that are vulnerable to bias and the steps that can be taken to minimize the potential for bias in the company's personnel decisions. Usually, when

[110]Clusan depo., p. 69-70. Also see Lang depo., p. 42, 102; Monos depo., p. 38-41, 62-64.
[111]Moore depo., p. 87. Store manager Ferdinand also testified that he received no training on issues related to discrimination and equal employment opportunity (Ferdinand depo., p. 80-81), and Mr. Mendoza testified he received no such training apart from a one-time viewing of a video relating to sexual harassment and discrimination (Mendoza depo., p. 73-76).

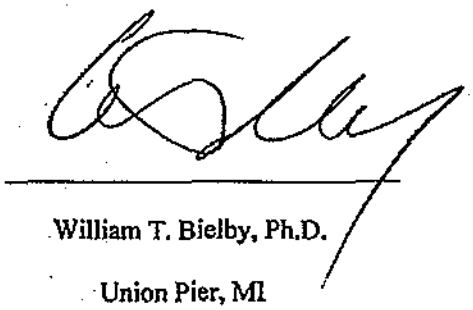
social scientists study a company's policies and practices regarding nondiscrimination and equal employment opportunity, they try to determine whether they are primarily symbolic, "going through the motions," or whether they have a real substantive impact on decision-making about hiring, job assignment, promotion, compensation, and other career outcomes. Gristede's does not even bother to "go through the motions."

CONCLUSIONS

49. Gristede's has a workplace characterized by a high degree of job segregation by sex. Women are concentrated in jobs that have limited advancement opportunities, and even when they are in the same jobs as men, they are promoted at a lower rate. As a result of the high level of segregation and promotion disparities, very few women make it into the management ranks of the company, and women, on average, earn significantly less than men who have been at the company for the same length of time.

50. I have summarized social science research that explains how gender stereotypes, along with discretion and subjectivity in decision-making processes and criteria, create barriers to equal employment opportunity for women. I have also summarized social science research on the features of personnel systems in organizations that minimize bias. This large body of social science research allows us to understand how the absence of monitoring and oversight, inadequate equal employment opportunity policies and practices, and vague and highly discretionary criteria and processes for making decisions about hiring, job assignment, and promotion creates and sustains a highly segregated workforce and gender disparities in promotion rates at Gristede's.

Segregation and barriers to advancement in turn explain the pay gap between men and women at the company.[112]



William T. Bielby, Ph.D.

Union Pier, MI

April 8, 2008

[112]Formal collective bargaining agreements limit discretion in setting pay within job categories (see Criscuolo depo., p. 63-69; Clusan depo., p. 79), so it is not surprising that within job categories gender disparities in pay are small and not statistically significant.

EXHIBIT A

WILLIAM T. BIELBY
TESTIMONY AS AN EXPERT WITNESS SINCE 2001

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

Eduardo Amezcua, et al. v. State of California, Department of Transportation, et al.
Docket No: 814381
Court: Superior Court of the State of California, County of Orange
Counsel: Allred, Maroko & Goldberg (Dolores Y. Leal), Los Angeles

Missey Jefferson, et al. v. Ingersoll International, Inc., et al.
Docket No. 98 C 50042
Court: United States District Court, Northern District of Illinois, Western Division
Counsel: Jeanne Szromba, EEOC

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. Kochn, 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

Eduardo Gonzalez, et al. v. Abercrombie & Fitch Stores, Inc.
Docket 03-2871-SI
Court: United States District Court, Northern District of California
Counsel: Lieff, Cabraser, Heimann & Bernstein (Bill Lann Lee)

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, Deposition Testimony

Nilda Gutierrez, et al. v. Johnson & Johnson
Docket 01-5302 (WHW)
Court: United States District Court, District of New Jersey
Counsel: Mehri & Skalet (Cyrus Mehri)
Expert Rebuttal Report, Deposition Testimony

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, Rebuttal Report, Deposition Testimony

Equal Employment Opportunity Commission v. Wal-Mart Stores, Inc.
Docket 6:01-CV-339-KKC
Court: United States District Court, Eastern District of Kentucky
Counsel: EEOC (Nancy Edmonds), Indianapolis
Expert Report, Deposition Testimony

EXHIBIT B

January 2008

CURRICULUM VITAE

William T. Bielby

ADDRESS:

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College of Liberal Arts and Sciences
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Chicago, IL 60607

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CURRENT POSITION:

University of Illinois--Chicago
Professor, Department of Sociology, 2007-present
University of California, Santa Barbara
Professor Emeritus, Department of Sociology, 2005-present

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:

University of Pennsylvania
Professor, Department of Sociology, 2005-2007
Research Associate, Population Studies Center, 2004-2007
Sociology Department Undergraduate Chair, 2005-2005
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, 2006-present

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:

Fellow, Center for the Study of Poverty and Inequality, Stanford University, 2006-
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:

2007 William T. Bielby and Pamela Coukos
"'Statistical Dueling' with Unconventional Weapons: What Courts Should Know about Experts in Employment Discrimination Class Actions." *Emory Law Journal*, Vol. 56.

2007 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 Nielsen (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. Reprinted in *The Practical Skeptic: Readings in Sociology*, edited by Lisa J. McIntyre; McGraw-Hill, forthcoming, 2007.

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
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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.

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

2006 "Title VII Class Actions and the Disaggregation Defense: Bad Law and Bad Statistics." First Annual Conference on Empirical Legal Studies (CELS), University of Texas School of Law, October, 2006 (with Pamela Coukos)

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 Dumavich 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 (2005-present)

2007 "'Statistical Dueling' with Unconventional Weapons: Anticipating the Disaggregation Defense in Discrimination Class Actions." The Impact Fund, Oakland, CA, February 16, 2007 (with Pamela Coukos).

2007 "Perspectives from the Trenches: Employers, Employees, and Expert Witnesses." Panelist, Institute for Law and the Workplace Member Conference on New Frontiers in Employment Litigation, Chicago-Kent College of Law, November 9, 2007.

2006 "The Lasting Effectiveness of Consent Decrees on Employers' Policies and Practices," Participant and advisor for meeting organized by the Institute for Women's Policy Research and the WAGE Project, Boston, MA, November 29, 2006.

2006 "'Statistical Dueling' with Unconventional Weapons: What Courts Should Know About Experts in Employment Discrimination Class Actions." Center for the Study of Law & Society, School of Law, Boalt Hall, University of California, Berkeley (co-sponsored by the Haas School of Business and the Department of Sociology), November 14, 2006 (with Pamela Coukos)

2006 "Managerial Discretion, Cognitive Stereotypes, and Workplace Discrimination: Should Organizations be Legally Liable for 'Unconscious' Bias?" Department of Sociology, University of Illinois--Chicago, October 26, 2006.

2006 Interview, "From the Plaintiffs' Expert." Annual Conference of the American Employment Law Council, Naples, FL, October, 20, 2006 (interviewed by Neal Mullen of Paul, Hastings, Janofsky & Walker, LLP).

2006 Panelist, "When Do You Need and Expert." National Employment Lawyers Association Workshop, Beyond Stereotypes: Discovering & Proving Hidden Bias in Employment Cases. Washington, DC, October 14, 2006.

2006 "The Law, Equal Opportunity, and Organizational Sociology: Understanding and Addressing Workplace Discrimination in an Era of "Subtle" Bias -- or -- 'Bringing the Firms Back In.'" Harvard Inequality & Social Policy Seminar, Kennedy School of Government, Harvard University, October 2, 2006.

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.

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.

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

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|                   |
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| column percentage |
+-------------------+
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position	gender F	gender M	Total
PT MEAT	0	3	3
	0.00	100.00	100.00
	0.00	0.02	0.02
PTBAKE	25	42	67
	37.31	62.69	100.00
	0.74	0.30	0.39
PTBUTCH	0	4	4
	0.00	100.00	100.00
	0.00	0.03	0.02
PTDAIRY	13	556	569
	2.28	97.72	100.00
	0.38	4.03	3.31
PTDELI	2,069	2,171	4,240
	48.80	51.20	100.00
	60.85	15.75	24.68
PTFROZ	9	364	373
	2.41	97.59	100.00
	0.26	2.64	2.17
PTGRO	205	8,561	8,766
	2.34	97.66	100.00
	6.03	62.12	51.02
PTPROD	917	1,735	2,652
	34.58	65.42	100.00
	26.97	12.59	15.43
PTSEA	117	342	459
	25.49	74.51	100.00
	3.44	2.48	2.67
TWRAP	45	4	49
	91.84	8.16	100.00
	1.32	0.03	0.29
Total	3,400	13,782	17,182

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           |     19.79      80.21 |    100.00
           |    100.00     100.00 |    100.00


. ' h position gender if job=="CLERKFT", row col

+-------------------+
| Key               |
|-------------------|
|     frequency     |
|  row percentage   |
| column percentage |
+-------------------+

           |        gender
  position |         F          M |     Total
-----------+----------------------+----------
    FTBAKE |        25         17 |        42
           |     59.52      40.48 |    100.00
           |      2.47       0.62 |      1.12
-----------+----------------------+----------
   FTBUTCH |        13        388 |       401
           |      3.24      96.76 |    100.00
           |      1.28      14.21 |     10.71
-----------+----------------------+----------
  FTBUTCHB |         0          4 |         4
           |      0.00     100.00 |    100.00
           |      0.00       0.15 |      0.11
-----------+----------------------+----------
   FTDAIRY |         0        295 |       295
           |      0.00     100.00 |    100.00
           |      0.00      10.80 |      7.88
-----------+----------------------+----------
    FTDELI |       365        491 |       856
           |     42.64      57.36 |    100.00
           |     36.03      17.98 |     22.86
-----------+----------------------+----------
    FTFROZ |         0         64 |        64
           |      0.00     100.00 |    100.00
           |      0.00       2.34 |      1.71
-----------+----------------------+----------
     FTGRO |        28        898 |       926
           |      3.02      96.98 |    100.00
           |      2.76      32.88 |     24.73
-----------+----------------------+----------
    FTPROD |        49        553 |       602
           |      8.14      91.86 |    100.00
           |      4.84      20.25 |     16.08
-----------+----------------------+----------
     FTSEA |         6         21 |        27
           |     22.22      77.78 |    100.00
           |      0.59       0.77 |      0.72
-----------+----------------------+----------
    FTWRAP |       527          0 |       527
           |    100.00       0.00 |    100.00
           |     52.02       0.00 |     14.08
```

```
----------+----------------------+----------
    Total |      1,013       2,731 |     3,744
          |      27.06       72.94 |    100.00
          |     100.00      100.00 |    100.00


. tab position gender if job=="MANAGER", row col

+-------------------+
| Key               |
|-------------------|
|     frequency     |
|  row percentage   |
| column percentage |
+-------------------+

          |        gender
 position |         F          M |     Total
----------+----------------------+----------
  ASSTMGR |        25        809 |       834
          |      3.00      97.00 |    100.00
          |     12.32      21.22 |     20.77
----------+----------------------+----------
   CAFMGR |        15          0 |        15
          |    100.00       0.00 |    100.00
          |      7.39       0.00 |      0.37
----------+----------------------+----------
   COMGR  |        19        554 |       573
          |      3.32      96.68 |    100.00
          |      9.36      14.53 |     14.27
----------+----------------------+----------
 DAIRYMGR |         0        158 |       158
          |      0.00     100.00 |    100.00
          |      0.00       4.14 |      3.93
----------+----------------------+----------
  DELIMGR |        28        402 |       430
          |      6.51      93.49 |    100.00
          |     13.79      10.54 |     10.71
----------+----------------------+----------
    FEMGR |        11          0 |        11
          |    100.00       0.00 |    100.00
          |      5.42       0.00 |      0.27
----------+----------------------+----------
  FROZMGR |         0          2 |         2
          |      0.00     100.00 |    100.00
          |      0.00       0.05 |      0.05
----------+----------------------+----------
   GENMGR |         0         23 |        23
          |      0.00     100.00 |    100.00
          |      0.00       0.60 |      0.57
----------+----------------------+----------
      MGR |        28        346 |       374
          |      7.49      92.51 |    100.00
          |     13.79       9.07 |      9.31
----------+----------------------+----------
   MTMGR  |        18        658 |       676
```

	2.66	97.34	100.00
	8.87	17.26	16.83
PRODMGR	30	732	762
	3.94	96.06	100.00
	14.78	19.20	18.97
SEA MGR	29	125	154
	18.83	81.17	100.00
	14.29	3.28	3.83
SEAMGR	0	4	4
	0.00	100.00	100.00
	0.00	0.10	0.10
Total	203	3,813	4,016
	5.05	94.95	100.00
	100.00	100.00	100.00