BIELBY — HOME DEPOT #370

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IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

VICKI BUTLER, SUSAN ELLIS, FELICIA FUNDERBURK, JACQUELINE GENERO, SHERYLE JONES, KIMBERLY STODDARD, CHERYL WILLIAMS, and JAMIE WILSON, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

HOME DEPOT, INC.,

Defendant.

TERESA FRANK, KATHERINE TOMA, and KATHLEEN YORK, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

HOME DEPOT, INC.,

Defendant.

Case No. C 94-4335 SI
Case No. C 95-2182 SI
(Consolidated)

CLASS ACTION

REBUTTAL REPORT OF WILLIAM T. BIELBY, Ph.D. ON BEHALF OF PLAINTIFFS

Expert Rebuttal Report of William T. Bielby

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I. Assignment and Materials Reviewed.

1. I have been asked by Saperstein, Goldstein, Demchak & Baller and Lieff, Cabraser, Heimann & Bernstein, counsel for the plaintiffs, to review the two reports of defendant's expert, Dr. Barbara Gutek, and to assess the validity of her conclusions. Her first report is dated April 19, 1997 and is referred to below as "Report." The second is a supplemental report dated May 19 and is referred to below as "Supplement." In addition, I have reviewed the other expert reports filed by Defendant on April 21, 1997 as well as the supplemental report by Dr. Culbert dated May 18, 1997. In addition to evaluating the conclusions of Dr. Gutek, I evaluated the conclusions of other experts where they overlap with issues raised by Dr. Gutek.

II. Dr. Gutek's Characterization of the Criteria Used to Make Personnel Decisions at Home Depot is Inaccurate and Incomplete.

2. Dr. Gutek provides hardly any information about the data and materials about Home Depot that she relied upon and the method she used to come to her conclusions about Home Depot's personnel policies and practices. In Her Report, her citations to specific data and materials are limited to a reference to a statement by a corporate executive (p.4, footnote 2) and statistics compiled by other experts. Her Supplement includes two footnotes referencing a meeting held with five Home Depot managers at a Tucson Home Depot Store and a statement (p. 14) that she has had "an opportunity to meet many women who are Home Depot managers," but it includes no information on how those managers were selected or the circumstances under which the meetings took place. There is no evidence in Dr. Gutek's Report that she has analyzed the testimony of Home Depot's executives and managers who formulate and oversee personnel policy, those who train others in how to make personnel decisions, or those who make personnel decisions themselves. References to specific documents are limited to comments in her Report regarding the Home Depot application form and her citation to a specific performance review form in her Supplement (p. 3). Overall, it is impossible to tell whether or the extent to which Dr. Gutek systematically analyzed documents and testimony describing Home Depot's personnel policies and practices.

3. In her Report, Dr. Gutek opines that job segregation at Home Depot can be explained "in large part by the experiences and preferences of job applicants and of Home Depot's employees" (p. 3). However, Dr. Gutek does not analyze and makes no mention of the factors that are taken into consideration in making decisions about hiring and initial job assignment apart from the information that is included on the application form. Nor does she analyze how the information included on the form is weighted and used in making personnel decisions. The reasoning that led Dr. Gutek to conclude that the gender composition of jobs at Home Depot appear to be primarily a function of "reasonable, established, and widely used procedures" is flawed, because, from what I can ascertain from her Report and Supplement, she conducted no systematic and detailed analysis of the procedures used to make personnel decisions at the company.

4. Dr. Gutek has done no analysis of what constitutes "relevant" experience at Home Depot, of whether it is used consistently in making hiring and initial job assignment decisions, or of its importance relative to other criteria. As I explain in paragraphs 58 through 73 of my report, there is no consistent policy or practice at Home Depot on how prior experience is to be considered in these decisions. According to Home Depot's training materials and the deposition testimony of Home Depot managers and executives, prior experience in retail sales can be as relevant to hiring and job assignment decisions as experience in the home improvement industry or building trades. As I explain in paragraphs 63 through 72 of my report, Home Depot managers rely heavily on arbitrary and subjective assessment of personality traits in making decisions about hiring. In her Report, Dr. Gutek is silent about how reliance on arbitrary and subjective criteria affect women's career opportunities. In her supplement, Dr. Gutek defends Home Depot's subjective personnel practices is limited to the company's system for conducting performance appraisals. As I explain below, Dr. Gutek does not fully understand that system and how it is (and is not) used to make personnel decisions. In addition, as I report below, Dr. Gutek has written extensively on the topic of subjectivity in personnel systems in her own scholarly work, and her published work supports the conclusions I have drawn about the barriers to women's career advancement at Home Depot.

5. In her Report, Dr. Gutek expresses no opinion on Home Depot's policies and practices for making decisions about transferring or promoting employees from one job to another. She has not analyzed the procedures or criteria used by Home Depot to decide which employees are qualified for and interested in transfers or promotions. As I explain in paragraphs 74 through 82 of my report, Home Depot relies an arbitrary and subjective criteria to make such decisions. As I explain below, Home Depot's system for making hiring, job assignment, transfer, and promotion decisions is neither a "best practice" nor is it consistent with systems recommended in the human resource reference books cited by Dr. Gutek.

III. Dr. Gutek's Claim that Home Depot's Personnel Practices are "consistent with current best practices and recommendations in Human Resources and Personnel books" is Inaccurate.

6. Dr. Gutek (Report, p. 8) concludes that Home Depot's policies and practices for hiring and initial job assignment are "consistent with current best practices and recommendations contained in Human Resources and Personnel books." To the contrary, Home Depot's personnel policies and practices bear little resemblance to those recommended in Human Resource and Personnel books. The recommendations in the books cited by Dr. Gutek are indeed representative of what one finds in reference books and textbooks on modern Human Resource management. In addition, they are quite explicit about both the need for specific, validated, job-relevant criteria for making personnel decisions and the shortcomings and biases inherent in arbitrary and subjective personnel systems.

7. The three books cited and relied upon by Dr. Gutek in her Report are: (1) *Staffing Organizations*, Second Edition, by Herbert G. Heneman, III, Robert L. Heneman,

and Timothy A. Judge, published in 1997 by Mendota House and Richard D. Irwin (hereafter **HH&J**); (2) *Human Resource Selection*, Third Edition, by Robert D. Gatewood and Hubert S. Field, published in 1994 by Dryden Press (hereafter **G&F**); and (3) *Staffing Organizations*, Second Edition, by Benjamin Schneider and Neal Schmitt, published in 1986 by Scott, Foresman, & Co. and reissued in 1992 by Waveland Press (hereafter **S&S**). In the paragraphs that follow, I describe the methods, policies, and practices for hiring and internal selection recommended in these books as well as their assessments of personnel policies and practices similar to those found at Home Depot.

8. Each of these books is premised on a widely-recognized methodology for designing an effective and fair personnel system. The first step in the design is a systematic job analysis to identify the knowledge, skills, and abilities (KSAs) required for successful performance in the job to be staffed. In the second step, this information is used to design assessment procedures for accurately measuring the degree to which applicants possess job-related KSAs. In the third step, the degree to which the assessment procedures accurately measure the KSAs and predict successful performance is evaluated through a validation study. If the assessment procedures have an acceptable level of validity, they can then be used to make decisions about staffing jobs. In Exhibit A to this report, I have reproduced a schematic diagram of the design process from G&F. An overview of the process is described in Chapter 1 and p. 366-368 of HH&J, p. 14-21 and 138-139 of G&F, and p. 239-246 of S&S.

9. A systematic job analysis is essential for setting experience requirements for a job, since it is specific KSAs that are relevant to the staffing decision, and experience in a seemingly dissimilar job might provide an individual with the appropriate knowledge, skills, and abilities. HH&J (p. 363-364) give the example of a job analysis that demonstrated that successful performance as a homemaker provides individuals with KSAs important to staffing the position of police officer (both rely on troubleshooting and emergency handling skills). HH&J explain (p. 364):

> "Hence, in the absence of sound job analysis, many qualified applicants may inadvertently be overlooked even though they have some of the characteristics needed to do the job. Nonjob experience in the home, in the community, and in other institutions may be as valuable or more valuable than previous employment experiences."

They conclude (HH&J, p. 364):

> "In short, the logic of prediction indicates that a point-to-point comparison needs to be made between the requirements of the job to be filled and the qualifications that applicants have acquired from a variety of situations."

10. Each of the three books emphasizes the importance of a weighted scoring of information that appears on application forms and the shortcomings of relying on either unweighted or subjective assessments of applications. HH&J (p. 376) explain that evaluations based on unweighted information from applications "are not particularly valid predictors of job performance." According to HH&J, such assessments are appropriate only for initial screening to rule out those obviously unqualified. They conclude (p. 393):

"Thus, it is not necessarily appropriate to condemn unweighted application blanks based on a criterion for which they are rarely used (i.e. used by themselves to make substantive selection decisions about applicants). As long as application blanks are used in this context (***and not relied on to a significant degree to make substantive hiring decisions***), they can be a useful method of making initial decisions about applicants." [Emphasis added.]

A similar point is made by S&S (p. 377-378):

"On the surface, it is sensible to have an application blank because the information collected should be useful in screening candidates. However, we've found that application blanks are used quite subjectively and haphazardly by many organizations. By this we mean that people who review application blanks as a way of screening for candidates are rarely provided with specific guidelines about what they should be looking for. Is length of time on previous job important? Is why they left jobs important? Are the job duties previously performed critical to the new job? Or, how about majors or school programs?"

"Research shows, in fact, that people who screen applications *think* they know what they are looking for because they *think* they know what is important. What a reviewer thinks is important will be the issue he or she assigns the most weight to. The weight given to the various pieces of information are *implicit* weights if no guidelines are provided. Explicit weights are contained in a set of guidelines or rules for evaluating information blanks." [Emphasis in original.]

11. Similar to both HH&J and S&S, G&F point to the shortcomings of relying upon subjective "holistic judgment" in evaluating information on an application form (442-443):

"This particular method is not really a T&E [training and experience] evaluation as we have defined the term. Rather, it is an informal, unstructured approach that an individual takes when reviewing an application or T&E form. It merits a brief description because of the high frequency with which it is used. Essentially, an individual receives an application, resume, or some other form on which training, experience, and education information are reported. The individual reviews the information and makes a broad, general judgment of the applicant's suitability. These judgments might be nothing more than 'qualified' or 'not qualified for this position.' Judgments made are individualistic; that is, the standards used for evaluating T&E information exist in the mind of the individual evaluator. Thus they will very from one evaluator to the next."

"As you can probably tell, an evaluator's judgments in the holistic approach are not formally recorded on a standardized from and scored; they are

simply made by an individual after a cursory review of training and experience information. Because of its unstandardized nature and unknown reliability and validity, it should be avoided as an approach to T&E evaluations."

12. In explaining the need for systematic scoring of application forms, G&F note (p.475):

"Where clear guides are not provided, selection decisions focusing on application information may be based on the personal biases, prejudices, and whims of each application reviewer....Unless relationships between application data and job success are known, application information may be of limited help to managers involved in selection decisions. However, empirical scoring and statistical analyses performed on application data can be very helpful in isolating those specific factors predictive of job success. These analyses, in turn, can lead to a better understanding of application information and standardization of its use." (p. 475)

13. G&F (p. 436-451, 475-488) describe in detail specific methods for scoring applications, deriving weights to be applied to those scores, and validating application data to ensure that that what is elicited is job-relevant information predictive of job performance. All three books describe how these methods can be applied to biographical information or "biodata" which is an extensive inventory of an applicant's personal background and life experiences (G&F, p. 488-510; HH&J, p. 377-386; S&S, p. 378-382). They also explain the negative consequences of not carefully designing and validating methods use to assess biographical data. S&S conclude (p. 381):

"Dreher and Sackett (1983) concluded that the use of biodata is "relatively likely" to produce adverse impact. It seems clear that we should choose and use biodata items carefully. We agree with Pace and Schoenfeldt (1977), who recommend that the most reasonable and justifiable approach is to base the choice of biodata items on a well done job analysis, matching items to the knowledge, skill, and ability requirements of the job description. In other words, a move away from a strictly empirical approach to a more rational approach may be necessary for a legal defense of the use of biodata information in personnel selection. We also contend that rational selection of biodata items provides dividends in terms of greater understanding of the predictor and criterion measures used."

G&F (p. 506) make a similar point:

"Perhaps the best advice that can be offered is that a user of a BIB [biographical information blank] should always check for validity and fairness. Some BIB items involving topics such as education and socioeconomic background may very well be associated with applicant gender or ethnicity. So appropriate care should be taken. *Validity and fairness should not be taken for granted. Job analysis as well as other*

steps might be used to produce content-valid biodata measures that may have less adverse impact against protected groups." [Emphasis added.]

Dr. Gutek has not heeded the advice of the reference sources she has relied upon to draw inferences about the way Home Depot uses information on applicants' background and experiences. She has not examined how the experience requirements used by Home Depot were derived, how they are applied, whether they are reliable indicators of relevant skills, knowledge, and aptitudes, or whether they are valid and unbiased predictors of job performance.

14. Dr. Gutek expresses no opinion about Home Depot's reliance on largely unstructured interviews to make subjective assessments of the psychological traits that are important factors in hiring decisions. However, the references she relies upon are explicit about the shortcomings of unstructured, subjective interviews that attempt to assess KSAs in the absence of specific guidelines, validated job-relevant criteria, and objective scoring procedures. For example, HH&J (p. 448) explain that unstructured interviews are commonly used but have the following limitations:

> "Research shows that organizations clearly pay a price for the use of the unstructured interview, namely lower reliability and validity. Interviewers using the unstructured interview (a) are unable to agree among themselves in their evaluation of job candidates, and (b) cannot predict the job success of candidates with any degree of consistent accuracy."

G&F (p. 532) explain that an unstructured interview is likely to be neither valid nor unbiased:

> "We know the interview must be carefully constructed and carried out in order to maximize its usefulness. An unplanned interview seemingly forces an interviewer to rely on the stereotypes, impressions, and implicit theories of his or her knowledge structures and reduces the importance of the information that can be gained from the interview process, thus decreasing the validity of the interview."

G&F note that while unscored and unstructured interviews are widely used, they are inferior to scored, structured interviews in virtually every respect:

> "It is almost universally recognized that the intuitive evaluation of an applicant by an interviewer, still very common in interviewing, is to be avoided if carefully determined evaluations are desirable. Formal evaluation forms usually contain a number of defined applicant characteristics, all preferably related to job performance, a separate rating scale for each characteristic, and a rating of the overall acceptability of the applicant" (G&F p. 535)

> "The study of the interview has consistently concluded that an interview format which provides a formal scoring system is superior in many ways to a format that does not. This in terms of legal defensibility, reliability, and

> validity of judgment by the interviewer, and acceptance by the interviewee....It is simply not possible for a selection specialist to retain all relevant information, weigh it appropriately, and use it to compare a number of individuals--at least in a consistent and effective manner. The issue, therefore, becomes not whether to score the interview but rather how best to score it." (G&F p. 551)

Moreover, according to G&F (p. 262), a system that allows decision-makers to combine objective and subjective assessments are vulnerable to bias and inconsistency:

> "Fourth, decision makers are more likely to add considerable error if they are allowed to combine judgmentally both subjective data (e.g., interview assessments) along with objective data (e.g. test scores). Their implicit theories (derived from past experience as well as other sources) of good applicants may bias their evaluations and ultimately decisions to select or reject an applicant. Furthermore, their inconsistency across decisions can have numerous causes: time pressures to make a decision, a bad day at the office, or even comparisons to the most recently selected. Statistical models will make an allowance for such error and reduce the impact of individual biases on decision outcomes."

> "It is clear from our discussion that a statistical combination of various information sources is better than a judgmental combination for making selection decisions. While gut feel, or intuitive decisions, probably give the decision maker a feeling of control over the process and confidence in his or her judgment, it is usually not warranted by the quality of the decision outcomes."

HH&J (p. 474) come to a similar conclusion about the superiority of objective, standardized assessment over judgmental, intuitive approaches:

> "Standardization is important when collecting information about applicant reactions to the assessment process. Many selection decision makers might feel they have a good sense of how applicants react to the selection process, but in order to move beyond subjective "hunches" to objective data, it is important that standardized procedures are followed when collecting information on applicant reactions."[1]

15. Human Resources professionals have a well developed methodology for constructing structured interviews with acceptable levels of reliability and validity and

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[1]HH&J (p. 393) specifically criticize efforts to make assessments of whether an applicant's personality provides a good fit in an initial job interview: "Evaluations of personal characteristics of the applicant (e.g. race, sex), *as well as judgments about an applicant's personality (e.g. she seems so outgoing and just 'right' for this job), are to be avoided*" (emphasis added). They also state (p. 422): "the reliability and validity of projective tests and interviews as methods of personality assessment are questionable at best." Also see G&F, p. 610-616.

minimum potential for bias (see, for example, HH&J, p. 454-458), but Home Depot has chosen not to apply methods described in the reference books relied upon by Dr. Gutek to their system for making decisions about hiring and initial job assignment. Home Depot has not developed questions that are matched to KSAs derived from systematic job analysis. They have not developed benchmark responses and rating scales for scoring applicants' performance in job interviews or weights for combining responses to different questions. And they have made no effort to assess the reliability of interview assessments or their validity for predicting actual job performance. Instead, Home Depot continues to rely on a largely unstructured, arbitrary, and subjective interview assessment of the type criticized by the Human Resources professionals Dr. Gutek has relied upon.

16. Although Dr. Gutek expresses no opinion about Home Depot's policies and practices for making decisions about transfers and promotions, the Human Resources principles and methods articulated in the reference books she has relied upon are as applicable to internal movement among jobs ("internal selection") as they are to hiring and initial job assignment ("external selection").[2] As HH&J explain (p. 498-503), an effective, valid, and fair system for internal selection must be based on KSAs derived from systematic job analysis, selection criteria matched to those criteria, and objective mechanisms for evaluating internal candidates on the selection criteria.[3] Subjective systems for internal selection have the same vulnerabilities as subjective systems for hiring. HH&J conclude (p. 501):

> "Decision errors often occur when relying upon subjective feelings for internal selection decisions.... A sound job analysis will show that both technical and managerial skills need to be assessed with well-crafted predictors."
>
> "Feel, hunch, gut instinct, intuition, and the like do not substitute for well-developed predictors. Relying solely on others "feelings" about the job may result in the lowering of hiring standards for some employees, discrimination against protected class employees, and decisions with low validity. As a result, it is imperative that a selection plan be used for internal as well as external selection. As described in Chapter 9, a selection plan lists the predictors to be used for assessment of each KSAO."

17. HH&J also provide recommendations for policies that specify the rules and procedures that determine how employees move among jobs in a company (p. 320-327). Among their recommendations for a well-defined "mobility path policy" is the following (p. 325):

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[2]See HH&J, p. 14, 498-499, 529-530.

[3]Also see F. J. Landy and J. L. Farr, *The Measurement of Work Performance: Methods, Theory, and Applications*, Academic Press, 1983, p. 192-195, and F. J. Landy, *Psychology of Work Behavior*, Third Edition, Dorsey Press, 1985, p. 115-116. Dr. Gutek relies on both of these volumes for opinions she expresses in her Supplement.

> "Procedures are clearly described, such as how employees will be notified of openings, time deadlines and data to be supplied by the employee, how requirements and qualifications will be communicated, how the selection process will work, and how job offers will be made."

They note that a poorly-developed or nonexistent policy "is likely to lead to employee claims of favoritism and discrimination" (p. 326). With the exception of the recently developed "development game plans" which have yet to become company policy, Home Depot has nothing resembling the kind of mobility path policy advocated by the reference book relied upon by Dr. Gutek. As I explain in paragraphs 74 through 82, Home Depot has very little in the way of specific criteria and written guidelines for making decisions about movements among jobs, and it has no mechanism for systematically informing employees of job openings, communicating requirements and qualifications, or specifying how selections are to be made.

IV. Dr. Gutek's Analysis of Work Preferences Fails to Consider the Impact of Opportunities on Employees' Interests, and it is Inconsistent with Her Own Writing on the Subject.

18. In her Report, Dr. Gutek expresses the opinion that an applicant's interests or preferences are important considerations in hiring and initial job assignment (Report, p. 10-12). However, Dr. Gutek fails to take into consideration how expressed interest on a job application form is influenced by perceptions of which jobs are and are not realistically available to an applicant. A large body of research conducted by social scientists over the past fifty years consistently shows that individuals' job aspirations, interests, and commitments are shaped by the opportunities available to them. Barriers to career advancement reduce individuals' career aspirations, commitment to work, and interest in promotion, and when new opportunities open up, individuals tend to adjust their aspirations accordingly. Studies that control for differences in advancement opportunities show that gender differences in attitudes towards promotions and commitment to work disappear when women are compared to men with similar promotion opportunities and job responsibilities. Research shows that women readily move into male-dominated occupations as opportunities expand and barriers are removed, and conversely that they disengage from occupations where they face substantial barriers and discrimination. That interest in and attitudes towards jobs and career opportunities are influenced by perceptions of both opportunities and barriers faced by individuals has been demonstrated in a variety of organizational and industrial contexts, with research methodologies ranging from ethnographic studies to laboratory experiments to representative national surveys of working adults.[4] This relationship between individuals' orientations towards careers on

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[4]Among the most significant studies are: R. Guest, "Work Careers and Aspiration of Automobile Workers," *American Sociological Review*, Vol. 19, 1954, pp. 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; O. Grusky, "Career Mobility and Organizational Commitment," *Administrative Science Quarterly*, Vol. 10, 1966, pp. 489-502;.R. M. Kanter, *Men and Women of the Corporation*, Basic Books,

the one hand and their perceptions of opportunities and barriers on the other is a well-established scientific research finding.

19. Indeed, in her published work, Dr. Gutek herself has come to the same conclusion I have regarding the scientific literature on the relationship between individuals' orientations towards work and careers and the opportunities available to them. For example, in her review articled, "Women's Work: What Women Want, Expect, and Get," published in 1979 in the annual volume *New Directions for Education, Work, and Careers*, Dr. Gutek and her co-author reached the following conclusion:

> "A message emerging from this review is that, in many instances, one's realistic expectations shape one's desires and aspirations. What women want from a job tends to be shaped by what they expect to receive, and what they expect tends to be shaped by what they or others like them are receiving or have received in the past. The realities of the present affect aspirations for the future."[5]

1977; P. M. Baker, W. T. Markham, C. M. Bonjean, and J. Corder, "Promotion Interest and Willingness to Sacrifice for Promotion in a Government Agency," *Journal of Applied Behavioral Science*, Vol. 24, 1988, p. 61-80; S. L. Harlan, "Opportunity and Attitudes Toward Job Advancement in a Manufacturing Firm," *Social Forces*, Vol. 67, 1989, J. A. Jacobs, *Revolving Doors: Sex Segregation and Women's Careers*, Stanford University Press, 1989; 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; P. V. Marsden, A. L. Kalleberg, and C. R. Cook, "Gender Differences in Organizational Commitment: Influences of Work Positions and Family Roles," *Work and Occupations*, Vol. 20, 1993, p. 368-390; 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; B. A. Gutek, A. G. Cohen, and A. Tsui, "Reactions to Perceived Discrimination," *Human Relations*, Vol. 49, 1996, p. 791-813. For review articles summarizing research on job commitment, aspirations, and interests, 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, pp. 223-87 and D. D. Bielby, "Commitment to Work and Family," *Annual Review of Sociology*, Vol. 18, 1992, p. 281-302.For a review of research on attitudes toward promotion, 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. For a review of research on commitment to work, see D. D. Bielby, "Commitment to Work and Family," *Annual Review of Sociology*, Vol. 18, 1992, p. 281-302. Also see p. 766-788; 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.

[5]V. F. Nieva and B. A. Gutek, "Women's Work: What Women Want, Expect, and Get," *New Directions for Education, Work, and Careers*, Vol. 8, 1979. The cited passage is from the Conclusions section, p. 92, and it also appears in Chapter 9 of Nieva and Gutek's 1982 book, *Women and Work: A Psychological Perspective*, published by Praeger. Also see p. 87, 91 of the 1979 article, p. 12-13 and 109-110 of the 1982 book, and p. 3-4 of Dr. Gutek's introduction to her edited volume, *Sex Role Stereotyping and Affirmative Action Policy, Institute of Industrial Relations*, UCLA, 1982.

20. According to both company documents and statements of company executives and managers, it is Home Depot's practice to hire from its customer base. The concentration of women in cashier and other operations positions, documented in the statistics on gender segregation in my Report, would be readily apparent to anyone who shops regularly at Home Depot and applies for a position with the company. Consequently, there is no reason to believe that Home Depot's applicants are immune from the processes documented in the substantial body of scientific research described above. Thus, what a person writes as "position applied for" on a Home Depot application is likely to be influenced by that individual's perceptions of what positions are realistically available to her or him. A female applicant who knows that Home Depot hires only a small percentage of those who apply and who observes that the vast majority of women are in operations positions would reasonably conclude that her chances for employment can be maximized by applying for an entry level jobs in operations, even if she has the skills and traits one needs to perform successfully in an entry level sales position. In addition, as Dr. Carl Hoffman has stated in his submissions to the court in this case, applicants may be subject to "steering" whereby males and females are made aware of and encouraged to apply for different kinds of jobs.

V. Dr. Gutek's Analysis of Subjectivity in Home Depot's Performance Appraisal Policy and Procedures is Inaccurate and Incomplete, and It Is Inconsistent with Her Own Publications on This Topic.

21. In her Supplement, Dr. Gutek expresses the opinion that the subjective component of Home Depot's staffing procedures is "both common and not bad" (p. 7). However, she limits her analysis to Home Depot's procedures for conducting performance appraisals and ignores Home Depot's arbitrary and subjective procedures for making decisions about job assignment, promotion, and compensation. She does not address how performance ratings are (and are not) used in making personnel decisions at Home Depot, and she ignores the arbitrary and subjective standard against which employees are rated in their performance reviews.

22. As I explain in paragraphs 89 through 91 of my original Report, it is both the written policy of Home Depot and the company's practice to assign performance ratings in a way that precludes using them to draw meaningful comparisons among employees. As a result, performance ratings cannot be relied upon to systematically relate pay to performance or to reliably assess which employees are most qualified for advancement.

23. In her Supplement, Dr. Gutek cites textbooks and articles from the field of industrial psychology to support her conclusion that subjective performance ratings can be acceptable tools for measuring employee performance. One consistent theme emphasized in these reference sources, not mentioned in Dr. Gutek's Supplement, is the importance of using rigorous methods to develop rating scales. These methods include job analysis for establishing content validity, quantitative item analysis for assessing the reliability of scale components, and empirical validation of the ratings against appropriate criteria.[6] Dr.

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[6]See, for example, Landy and Farr, *op cit.*, p. 17, 57-90.

Gutek has not conducted an analysis of the methods used by Home Depot for developing its performance rating scales, and she has no basis for drawing a scientific conclusion about the reliability, validity, or unbiasedness of Home Depot's performance ratings.

24. It is of course true that in many work settings, the evaluation of performance requires the exercise of judgment on the part of the rater. If this is what one means by subjective, then it is true that subjective evaluation is "common," as stated by Dr. Gutek. But whether it is also "not bad" is an empirical question in any given work setting, and it depends on both the rigor with which rating procedures are developed and the way performance ratings are actually conducted and utilized. This point is emphasized by Robert M. Guion in a reference article cited by Dr. Gutek:

> "Emphasizing the role of judgment, particularly in the evaluation of validity and job relatedness, can be dangerous. It opens the door to shoddy practices, trivialities, snap judgments, and a willingness to defend what is easy--all on the grounds of professional judgment; it will permit or even encourage people who are neither well informed nor have much depth of understanding to say, 'My judgment is just as good as anyone's.' It is therefore vitally important to recognize another recurring theme: *Professional* judgment, unlike hunch or 'play it by ear' decision making, is systematic, informed, and based on understanding and research. The call for professional judgment is neither as difficult as some people may fear nor as easy as others may like. One needs to understand the jobs for which people are selected, not merely how to do an impressive job analysis. One needs to understand the literature on individual differences in abilities, personality, and background, among other considerations, to make judgments wisely about appropriate predictor constructs, not merely how to buy and administer a test. One needs to conduct research or master the relevant research literature to evaluate the psychometric validity of a proposed predictor, not merely use those that happen to be available. One certainly needs to know the research literature to evaluate probable job relatedness for different categories of predictor-criterion linkages or do a logically disciplined study of pooled judgments if the literature does not provide the needed information."[7]

25. Frank J. Landy and James L. Farr, in *The Measurement of Work Performance*, a reference book cited by Dr. Gutek in her Supplement, stress the necessity of empirically validating performance measures if they are to be used to make personnel decisions:

> "Predictive validity is most important for work performance measures when they are used as predictors of future performance or as part of any personnel decision procedure. Unless it can be demonstrated empirically that the scores on the prior performance measure are significantly related to

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[7]R. M. Guion, "Personnel Assessment, Selection, and Placement," p. 327-397 in *The Handbook of Industrial and Organizational Psychology*, Second Edition, Volume 2, edited by M. D. Dunnette and L. M. Hough, Consulting Psychologists Press, Inc., 1991. This passage is from page 388.

> scores on the subsequent measure, then the prior performance measure should not be a part of the input to the personnel decision." (p. 17-18)
>
> "Keep in mind that a valid performance measurement system does not necessarily yield fair and equitable individual decisions -- it simply permits them. Conversely, a performance evaluation system that is invalid (i.e., is incapable of producing numbers that are accurate representations of actual performance) is unlikely to provide a firm foundation for fair and equitable individual decisions." (p. 189-190)[8]

26. That judgments of performance are vulnerable to gender stereotyping is well known in the field of industrial psychology. Frank R. Landy, in *The Psychology of Work Behavior*, a reference book cited by Dr. Gutek, summarizes the substantial research on this topic as follows:

> "The sex stereotype of an occupation (i.e., whether a particular job is typically perceived as masculine or feminine) interacts with the sex of the ratee to distort ratings. Thus, males are evaluated more favorably than females in perceived masculine tasks, but females are evaluated more favorably than males in tasks typically characterized as feminine."[9]

27. In her own published books, articles, and contributions to edited volumes, Dr. Gutek has repeatedly expressed conclusions similar to the one quoted above. She has also published conclusions consistent with those Dr. Fiske and I have drawn on how ambiguity and subjectivity allows stereotypes to influence personnel decisions. In her widely cited review article published in 1980 in the *Academy of Management Review* under the title "Sex Effects on Evaluation,"[10] Dr. Gutek and her co-author wrote:

> "When ambiguity regarding performance criteria or the person's actual performance level are high, inference and stereotypic reactions are also high. Increasing the clarity in the evaluation situation reduced the possibility for biased inferences." (p. 270)
>
> "Without specific and concrete information about the merits of an individual relevant to the demands of particular situations, judges [i.e. evaluators] tend to resort to inferences based on what is generally known about the group to which a person belongs." (p. 271)
>
> "Bias tends to be found in situations where inferences about the causality of performance are called for, where expectations from available information

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[8]Landy and Farr, *op cit.*

[9]F. R. Landy, *op cit.*, p. 196. Also see Landy and Farr, *op cit.*, p. 141-143. Landy and Farr (p. 143) also make the important point that female raters are as vulnerable to the effects of stereotyping as male raters.

[10]V. F. Nieva and B. A. Gutek, "Sex Effects on Evaluation," *Academy of Management Review*, Vol. 5, 1980, p. 267-275. Much of the same materials appears as Chapter 6 in Nieva and Gutek's book, *Women and Work: A Psychological Perspective*, Praeger, 1981.

> to future contexts is required (i.e., in selection and promotion), and where this ambiguity concerning the focal female or the evaluation criteria. The more task-related information provided about the 'evaluatee' and the greater the clarity about the criteria to be used in the evaluation situation, therefore, the less likely it is that 'actuarial prejudice' will operate." (p. 273)
>
> "In sum, sex-related evaluation bias presents the greatest problems for successful or competent women, in situation where there is considerable ambiguity, and that involve sex-inappropriate situation or require sex-role-incongruent behaviors." (p. 274)

The article by Nieva and Gutek that contains these passages and their book chapter reporting similar conclusions have become standard references in the field of gender and work. Indeed, as recently as 1995 Dr. Gutek cited this work as a reference on gender bias in performance appraisal in her contribution to the *Blackwell Encyclopedic Dictionary of Organizational Behavior*.[11]

28. While Dr. Gutek's own published research documents how and why arbitrary and subjective evaluation procedures are vulnerable to bias, in her Supplement she cites a1986 meta-analysis by Ford *et al.* on race (not gender) effects in performance evaluation to support the claim that subjective performance ratings are no more prone to bias than objective ratings. In fact, Dr. Gutek incorrectly characterizes their findings. Ford *et al.* compared subjective and objective ratings on *three different categories of evaluations*: (1) evaluations of performance; (2) evaluations of absenteeism; and (3) cognitive tests.[12] Clearly, it is their analysis of performance evaluations that is most relevant to Dr. Gutek's opinions about Home Depot. For the category of performance evaluations, Ford *et al.* found greater bias (i.e. larger effects of ratee's race) for subjective measures of performance than for objective measures. They summarize their result as follows:

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[11]B. Gutek, "Women at Work," p. 604-607 in the *Blackwell Encyclopedic Dictionary of Organizational Behavior*, edited by N. Nicholson, Blackwell, 1995. This work is also cited in her 1996 article, "Reactions to Perceived Sex Discrimination." For a recent review, see M. E. Heilman, "Sex Stereotypes and Their Effects in the Workplace: What We Know and What We Don't Know," *Journal of Social Behavior and Personality*, Vol. 10, No. 6, 1995, p. 3-26. In her 1995 review article, Professor Heilman summarized research on gender bias in evaluation as follows:

> "The underrating of women relative to men has been found regardless of whether research participants were rating resumes, doing in-basket exercises, or observing videotapes. And the participants were equally apt to engage in such behaviors whether they were male or female or whether they were college students, professional interviewers, or professional interviewers, or personnel directors." (p. 8).

Dr. Heilman's article updates Nieva and Gutek's review by summarizing more recent research which confirms the conclusion that arbitrary, subjective, and ambiguous decision-making criteria allow stereotypes to affect personnel decisions. See Heilman, *op cit.*, p. 10-15.

[12]J. K. Ford, K. Kraiger, and S. L. Schectman, "Study of Race Effects in Objective Indices and Subjective Evaluations of Performance: A Meta-Analysis of Performance Criteria," *Psychological Bulletin*, Vol. 99, 1986, p. 330-337.

> "In the performance criterion category, the effect size for the objective performance indicators was significantly smaller than the comparable subjective rating effect size ($Z = 3.51$; $p<.01$)."[13]

In short, while Ford et al., studies racial bias and not gender bias, their findings regarding bias in subjective versus objective evaluations of performance are consistent with the opinions I expressed in my report and with Dr. Gutek's own published work, but they are not consistent with the opinions Dr. Gutek expressed in her Supplement.

VI. Dr. Gutek's Own Publications are Consistent with the Analysis in My Report and with Dr. Fiske's Conclusions about Stereotyping. Dr. Gutek Does Not Question the Scientific Research I Have Relied Upon to Analyze Impact of Arbitrary and Subjective Personnel Systems on Women's Career Opportunities, Nor Does She Question Dr. Fiske's Analysis of the Impact of Gender Stereotypes.

29. In paragraph 55 of my original Report, I summarized research showing that women managers are subject to gender stereotypes about women as leaders. In her own writings, Dr. Gutek has come to a similar conclusion about this area of research. The following is from her chapter "Point-"Point-Counterpoint -- Discrimination Against Women in Management: Going, Going, Gone, or Going But Never Gone?"[14] which appeared in the book, *Women in Management: Trends, Issues, and Challenges in Managerial Diversity*:

> "The stereotype that men and women have different managerial styles, and that the managerial style of males is better suited to the pursuit of corporate excellence, has been a troubling barrier to the advancement of women in management. Naturally, this stereotype need not be based in truth for it to be a barrier for women. If the people who do the hiring (whether men ***or women***) have this view in their minds, it will (perhaps subconsciously) influence their evaluations of applicants' potential." (p. 220, emphasis in original)

30. The above passage makes the important point that women as well as men are influenced by gender stereotypes. Regarding the barriers faced by women attempting to move into management in male dominated work settings, Dr. Gutek elaborates as follows in her book, *Women and Work: A Psychological Perspective*:[15]

> "These pressures towards homogeneity tend to make the acceptance of female newcomers problematic. Women are seen as possessing different values, orientations, and experiences from the dominant male group. Thus,

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[13]Ford *et al.*, *op cit.*, p. 333.

[14]"Point-Counterpoint -- Discrimination Against Women in Management: Going, Going, Gone, or Going But Never Gone?" pp. 219-245 in *Women in Management: Trends, Issues, and Challenges in Managerial Diversity*, edited by Ellen A. Fagenson, Sage Publications, 1993

[15]Nieva and Gutek, 1981, *op cit.*

> they are regarded as unreliable, worthy of trust only in thoroughly subordinate positions (Lorber, 1985), and unacceptable as regular members of the group. Kanter (1977a) suggests that the pressure for similarity rises with increasing situational uncertainty. The problem of integration thus becomes more difficult as one progresses up the organizational hierarchy, where procedures are less specified, the need to communicate accurately and rapidly is magnified, and there is increasing dependence on human trust and discretion. Under such circumstances, the importance of similarities is heightened, as people require assurance that others on whom they have to depend share their values and perspectives." (p. 67)

> "In the face of a new type of member, pressures toward certainty and homogeneity cause distress both to the newcomer and to the in-group, creating a context in which the solution to discomfort is likely to be the continued or increased exclusion of the category perceived as the cause of distress. Thus without external intervention, imbalance is a self-perpetuating system." (p. 68)

31. In my original Report at paragraph 43, I describe and rely upon research on the gender labeling of jobs. Dr. Gutek and I agree that social science research shows that this kind of gender labeling encourages stereotyping. The first quotation below is from her article, "Diversity in Work Group Sex Composition: Implications for Majority and Minority Members,"[16] which appeared in *Research in the Sociology of Organizations* in 1992, and the second is from her chapter, "Theory and Research on Group Composition: Applications to the Status of Women and Ethnic Minorities,"[17] which appeared in the book, *Interpersonal Processes: The Claremont Symposium on Applied Social Psychology*:

> "Our findings are consistent with Gutek's logic that women in the minority are more likely than men in the minority to experience negative outcomes in the workplace because of traditional gender roles which label the workplace a masculine domain." (p. 135)

> "As one empirical example, sex stereotyping of occupations has been found to be strongly linearly related to the percentage of women in the occupation (Krefting et al., 1978). Often, people within the group stereotype the group just as people outside it do. Those in the numerical majority of an unbalanced group may come to think of it as 'their' group, or

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[16] A. M. Konrad, S. Winter, and B. A. Gutek, "Diversity in Work Group Sex Composition: Implications for Majority and Minority Members," *Research in the Sociology of Organizations*, Vol. 10, 1992, pp. 115-140.

[17] A. M. Konrad, and B. A. Gutek, "Theory and Research on Group Composition: Applications to the Status of Women and Ethnic Minorities," pp. 85-121 in *Interpersonal Processes: The Claremont Symposium on Applied Social Psychology*, edited by S. Oskamp and S. Spacapan, 1987, Sage Publications.

> a group for persons of their social type. For example, whites may speak of blacks as 'invading' their neighborhoods, or men may refer to women as 'taking' their jobs. Homogenous or unbalanced groups that have existed for long periods of time, such as years or decades, are quite likely to be stereotyped." (p. 101-102)

32. In a review article on gender segregation, published in 1988 in *Applied Psychology: An International Review*,[18] Dr. Gutek wrote about the consequences of job segregation by sex for women's career advancement:

> "Sex Segregation of work is important because it creates women's jobs and men's jobs which differ on many characteristics. For example, irrespective of nation, women's jobs are lower-paid than men's jobs, even when they require comparable effort and training. ... An extensive analysis of pay differentials in the U.S. concluded that discrimination is a definite contributor to women's lower earnings in the U.S. (Treiman & Hartmann, 1981)."
>
> "Pay is not the only differential. *Potential advancement ladders are shorter and less frequently allow promotion to executive or administrative levels* (Baron et al., 1986; Moussourou & Spiliotopoulos, 1984; Scriven, 1984). The social status accorded positions primarily held by women is lower than that given to predominately male positions (Strober, 1984). The positions are also frequently designed for transitory workers, requiring less training or commitment and being easy to enter on a part- or full-time basis (Atwood & McAndrew, 1984; O'Neill, 1985; Scriven 1984). All of these characteristics are consistent with the concept of women in women's jobs as casual workers intent primarily on earning additional money in a job that would not conflict with family responsibilities. *Thus, sex segregation creates a class of jobs called women's work which is subject to societal stereotypes of women.*" (p. 107-108, emphasis added)

Elsewhere in the same article, Dr. Gutek describes the concept of sex segregation as "one of the most theoretically fruitful concepts in the study of women and work today" (p. 113) and as "a theoretically powerful concept" with "implications for all areas on women and work" (p. 103). Dr. Gutek cites my work with James Baron in the passage quoted above, and she cites other work of ours in a passage summarizing the implications of her research on "sex-role spillover:"

> "Sex-role spillover suggests that people endow a job with the sex-role expectations of the numerically dominant sex (cf. Gutek, 1985). For example, managers, because most are men, are supposed to 'act like men.' Thus, sex segregation of jobs triggers a number of cognitive processes in

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[18]B. A. Gutek, "Sex Segregation and Women at Work: A Selective Review," *Applied Psychology: An International Review*, Vol. 37, 1988, p. 103-120.

people that, in turn, affect the behaviour of people in those settings (cf. Bielby & Baron, 1984; Brewer & Kramer, 1985; Deaux, 1985)." (p. 113-114)

33. In her academic work, one of Dr. Gutek's specialties is research on stereotyping and gender bias in the workplace. I have relied upon her research and review articles in my published work, and she has relied on my research in her work. In her published work, Dr. Gutek cites and relies upon many of the same sources that Dr. Fiske and I relied upon in drawing conclusions about arbitrary and subjective personnel practices, stereotypes, and gender bias. In her Report and Supplement, Dr. Gutek offers no critique of the scientific research I have relied upon and does not contest the scientific basis for the conclusions I have drawn about subjectivity, stereotyping, and bias. Dr. Gutek ignores Dr. Fiske's report altogether. In short, in her published work outside the context of the *Butler et al. v. Home Depot* litigation, Dr. Gutek has expressed opinions on subjectivity, stereotyping, and gender bias fully consistent with those expressed on these topics by plaintiffs' experts.

VII. Field Studies Fail to Support the Conclusion that Affirmative Action Negatively Affects Intended Beneficiaries and Others

34. In her Supplement (p. 14-15), Dr. Gutek relies on laboratory studies by Professor Madeline Heilman to argue that programs designed to hire and advance women and minorities would have a negative effect on the self-perceptions of female employees and encourage resentment among male employees. However, Dr. Gutek fails to point out what Dr. Heilman makes quite explicit in her studies: they simulated a quota system whereby females were selected over males (or vice versa) *regardless of the actual competence of an individual for successful performance in a position.* These simulations have little resemblance to most programs designed to enhance opportunities for women and minorities in real organizations.[19] Moreover, Dr. Heilman herself warns against drawing the conclusion that negative consequences are inevitable implication of her findings:

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[19]H. Holzer and D. Neumark, "Are Affirmative Action Hires Less Qualified? Evidence from Employer-Employee Data on New Hires," Working Paper No. 5603, National Bureau of Economic Research, 1996; M. V. L. Badgett and H. Hartmann, "The Effectiveness of Affirmative Action," p. 55-97 in Economic Perspectives on Affirmative Action, edited by M. C. Simms, Joint Center for Political and Economic Studies, 1995; L. B. Edelman, "Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law," *American Journal of Sociology*, Vol. 97, 1992, p. 1531-1576; N. A. Paul, "The Civil Rights Act of 1991: What Does it Really Accomplish?" Employee Relations Law Journal, Vol. 17, 1992, p. 567-592; S. D. Clayton and F. J. Crosby, *Justice, Gender, and Affirmative Action*, University of Michigan Press, 1992; P. Burstein, "'Reverse Discrimination' Cases in the Federal Courts: Legal Mobilization by A Countermovement," *Sociological Quarterly*, Vol. 32, 1991, p. 257-267; J. S. Leonard, "Women and Affirmative Action," *Journal of Economic Perspectives*, Vol. 3 (No. 1), 1989, p. 61-75; J. S. Leonard "Antidiscrimination or Reverse Discrimination: The Impact of Changing Demographics, Title VII, and Affirmative Action on Productivity," *Journal of Human Resources*, Vol. 19, 1984, p. 145-174.

"Rather, they underscore the necessity of paying heed to the way in which such programs are implemented, and, in particular, of making sure that selection without regard to competence is not believed to characterize affirmative action efforts." (p. 68)[20]

35. Recent field studies of the impact of actual programs to enhance opportunities for women and minorities do not replicate Heilman's findings. Professor Marylee Taylor's study of the beneficiaries of affirmative action based on a representative national sample of employed adults show that the social psychological effects of such programs on women and African Americans are predominately positive.[21] In another study using representative national data, Taylor found no evidence of "backlash" among whites with first-hand exposure to affirmative action programs. Instead, among whites, those in firms with such programs were more supportive of interventions to create opportunities for African Americans than whites in firms without affirmative action programs.[22] In a study of 188 managers and professionals, Laura Graves and Gary Powell found no support at all for the hypothesis that preferential treatment has a negative effect on the job attitudes of its intended beneficiaries; *indeed, they found just the opposite*.[23] In the "acknowledgments" section of their article Professors Graves and Powell thank Dr. Gutek for her helpful comments on an earlier version, so she was certainly aware of this research, and she apparently chose not to cite it.[24]

36. In short, there is no reason to believe that a well-designed program to identify and remove barriers faced by female employees at Home Depot and to create equal opportunity for advancement would have a detrimental effect on employee morale or effectiveness.

VIII. In A Segregated Work Setting with Subjective Personnel Practices, Gender Disparities in Pay are Difficult for Employees to Detect

37. Both experimental and field studies show that individuals tend to compare their pay and work situations to individuals of the same sex who share the same job classification. This tendency is reinforced in gender segregated workplaces, where women have little information about the pay of men in male-dominated jobs. In such contexts, a

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[20]M. E. Heilman, M. C. Simon, and D. P. Repper, "Intentionally Favored, Unintentionally Harmed? Impact of Sex-Based Preferential Selection on Self-Perceptions and Self-Evaluations," *Journal of Applied Psychology*, Vol. 72, 1987, p. 62-68. Also see M. E. Heilman, J. C. Rivero, and J. F. Brett, "Skirting the Competence Issue: Effects of Sex-Based Preferential Selection on Task Choices of Women and Men," *Journal of Applied Psychology*, Vol. 76, 1994, p. 105.

[21]M. C. Taylor, "Impact of Affirmative Action on Beneficiary Groups: Evidence from the 1990 General Social Survey," *Basic and Applied Social Psychology*, Vol. 15, 1994, p. 143-178.

[22]M. C. Taylor, "White Backlash to Workplace Affirmative Action: Peril or Myth?" *Social Forces*, Vol. 73, 1995, p. 1385-1414.

[23]L. M. Graves and G. N. Powell, "Effects of Sex-Based Preferential Selection and Discrimination on Job Attitudes," *Human Relations*, Vol. 47, 1994, p. 133-157.

[24]Graves and Powell, *op cit.*, p. 155.

woman's satisfaction with her pay is usually based on a comparison with what other women are earning in her female-dominated job category, not what men are earning in jobs that include few women.[25] This is especially likely in work settings where information on the pay of others is difficult to obtain and pay comparisons are discouraged.[26]

38. The findings of these studies are directly applicable to Home Depot. The workforce is highly segregated, employees do not have access to information on average pay rates or pay ranges for any job categories, and there are no specific company guidelines on what employees in different job classifications should be paid. The research cited above indicates that the degree to which women in female-dominated operations jobs are satisfied with their pay will be based on comparisons with the pay of other women in those jobs. It will not be based on comparisons with the pay of employees in the higher-paying male-dominated jobs in merchandising, even for women who are as qualified or more qualified than the men in those positions to perform in the higher paying jobs. In short, a large body of social research identifies the circumstances under which it is highly unlikely that women will become aware of and dissatisfied with gender disparities in pay, and all these circumstances are present in the Home Depot personnel system.

IX. The Relative Turnover Rates of Men and Women are Not Relevant to an Analysis of Barriers to Women's Career Advancement at Home Depot

39. Dr. Judith Stoikov, in her initial Report filed on behalf of Home Depot, expresses the opinion that if women employees are experiencing discrimination, their turnover rate should be higher than the turnover rate of male employees (p. 3, 17-18). This theoretical inference is inconsistent with social science research on the topic. Research shows that there is no simple relationship between turnover and perceptions of discrimination. Dr. Gutek, in her 1996 article, "Reactions to Perceived Discrimination," studied reactions to perceived discrimination in a sample of 457 psychologists and a sample of 209 senior managers.[27] In her study, she found that "perceptions of discrimination against women were associated with lower feelings of power and prestige on the job, more work conflict, more hours spent on paid work activities, and a lessened willingness to make the same career choice" (p. 791). However, according to Dr. Gutek's

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[25]G. C. Rutte, K. A. Diekmann, J. T. Polzer, F. J. Crosby, and D. M. Messick, "Organization of Information and the Detection of Gender Discrimination," *Psychological Science*, Vol. 5, 1994, 226-231; B. Major and M. Testa, "Social Comparison Processes and Judgments of Entitlement and Satisfaction," *Journal of Experimental Social Psychology*, Vol. 25, 1989, p. 101-120; B. Major, "Gender Differences in Comparisons and Entitlement: Implications for Comparable Worth," Journal of Social Issues, Vol. 45, 1989, p. 99-115; B. Major and B. Forcey, "Social Comparisons and Pay Evaluations: Preferences for Same-Sex and Same-Job Wage Comparisons.," *Journal of Experimental Social Psychology*, Vol. 21, 1985, p. 393-405; F . Crosby, *Relative Disadvantage and Working Women*, Oxford, 1982; G. R. Oldham, G. Nottenburg, M. W.. Kassner, G. Ferris, D. Fedor, and M. Masters, "The Selection and Consequences of Job Comparisons," *Organizational Behavior and Human Performance*, Vol. 29, 1982, p. 84-111.

[26]Major and Testa, *op cit.*, Major, *op cit.*

[27]Gutek, Cohen, and Tsui, *op cit.*

study, "*intent to turnover was not associated with perceived discrimination*" (p. 809). In neither sample was there any significant relationship between perceptions of gender discrimination and reports of turnover intentions (p. 805-806).

40. I obtained the same result in an analysis of a representative national sample of approximately 300 women employed full-time. These women were respondents to the 1991 General Social Survey (GSS) administered by the University of Chicago's National Opinion Research Center. The GSS asked these women whether they thought their gender made their promotion opportunities better, worse, or made no difference. The women were also asked how likely it was that they would try very hard to find a job in another organization within the next twelve months. The possible responses were "not at all likely," "somewhat likely," and "very likely." A cross-tabulation of the two responses appears in Exhibit B to this report, and there is no simple association between the perceptions of discrimination and intentions to look for work in another organization. Women who thought their gender made no difference were least inclined to report intentions to look for another job, and women who thought there gender was a disadvantage were slightly *less* likely to report strong intentions to seek work elsewhere than were women who thought their gender improved their promotion prospects.

41. I also examined the same data with a linear regression model, in order to test whether a perception of gender discrimination in promotion was significantly related to intentions to look for a job in another organization, controlling for education, age, and number of years the respondent had been with her current employer. I measured perceptions of discrimination two different ways. In one model, I contrasted women who responded that their gender was a disadvantage with all other women, and in the other I used a 3-point scale, with 1 = being female perceived as an advantage, 2 = being female perceived as having no effect, and 3 = being female perceived as a disadvantage. In each model, there was no statistically significant relationship between perceptions of gender discrimination and intentions to seek employment at another organization. The results of this regression analysis are reported in Exhibit B to this report.

42. As Dr. Gutek notes in her 1996 study, a women's response to perceived discrimination will be shaped by her perceptions of the available alternatives, and if she is committed to her job and her career, she may decide that changing jobs would be futile (p. 809). In addition, as I describe above at paragraphs 37 and 38, in a highly segregated work setting with a subjective personnel system, women may not be aware of gender disparities in career prospects in the first place. Thus, it is not reasonable to conclude that similarity between men and women in turnover rates is a sign that personnel practices are free of gender bias.

IX. Most Empirical Studies Fail to Support the Economic Theory of "Equalizing Differences" as An Explanation for Gender Differences in Career Outcomes

43. Like Dr. Gutek, Dr. Sherwin Rosen and Dr. Edward Lazear, labor economists who have submitted reports on behalf of Home Depot, suggest that the difference between men and women in their interests and preferences is likely to be an important factor explaining why men and women are found in different kinds of jobs at the company.

The labor economists rely on the economic theory of "equalizing differences" as a possible explanation of differences in pay and career prospects for men and women at Home Depot. Their theory is that women value pay and career advancement less highly than do men, and therefore women willingly sacrifice access to higher paying jobs that lead to management in exchange for jobs that provide other amenities such as clean working conditions and compatibility with family responsibilities.[28] As Dr. Rosen explains in a review article, the theory of equalizing differences (also known as the theory of "compensating differentials") "refers to observed wage differentials required to equalize the total monetary and nonmonetary advantages or disadvantages among work activities and among workers themselves."[29] So, for example, the theory can be used to explain why a wage premium is associated with jobs that involve hazardous or other onerous working conditions compared to otherwise comparable jobs that are performed in more pleasant contexts. Relating this theory to Home Depot, Dr. Rosen asserts (p. 9) that the hardware business in general "has been traditionally more attractive to men for its rough and ready character." Similarly, Dr. Lazear (p.5) suggests that women employees may choose operations jobs over higher paying merchandising positions because they provide "working conditions that are compatible with their lifestyles."

44. However, Home Depot's experts fail to point out that a large body of research has tested whether the theory of equalizing differences substantially explains gender differences in pay, and most of these studies fail to support the theory. In a comprehensive test of the theory, Dr. Paula England concluded:

> "Amenities, disamenities, and effort, taken together, contribute nothing to the sex gap in pay. ... Moreover, these results do not support the notion that compensating differentials explain the pay differences between men's and women's jobs."[30]

Dr. Jerry Jacobs and Dr. Ronnie Steinberg come to a similar conclusion in their research studies published in 1990 and 1995.[31] In another direct test of the theory as an explanation for gender segregation, Jennifer Glass and Valerie Camarigg concluded:

> "The analyses performed here lend little support to the assertion that female-dominated jobs are chosen by women because of their greater compatibility with current or anticipated family demands. In fact, exactly

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[28]Lazear Report, p. 5; Rosen Report, p. 5, 9.

[29]S. Rosen, "The Theory of Equalizing Differences," p. 641-692 *in Handbook of Labor Economics*, Volume I, edited by O. Ashenfelter and R. Layard, Elsevier, 1986.

[30]P. England, *Comparable Worth: Theories and Evidence*, Aldine de Gruyter, 1992, p. 183. Dr. England reviews other studies on the topic at p. 69-73.

[31]J. A. Jacobs and R. J. Steinberg, "Compensating Differentials and the Male-Female Wage Gap: Evidence from the New York State Comparable Worth Study," *Social Forces*, Vol. 69, 1990, p. 439-468; J. A. Jacobs and R. J. Steinberg, "Further Evidence on Compensating Differentials and the Gender Gap in Wages." Their studies were designed explicitly to evaluate one of the most widely-cited studies purporting to support the theory, R. Filer, "Male-Female Wage Differences: The Importance of Compensating Differentials," *Industrial and Labor Relations Review*, Vol. 38, 1985, p. 426-437.

> the opposite was found in professional and blue collar jobs where female concentration was negatively related to compatibility." (p. 148)[32]

45. One reason the economic theory of equalizing differences fails to explain gender differences in career outcomes is that it is based on faulty assumptions about the stability of job preferences and interests. As I explain above at paragraphs 18 and 19 above, it is inappropriate to assume that interests and preferences are formed in isolation from perceptions of available opportunities. Dr. Jacobs, in his important book, *Revolving Doors* (cited by Dr. Gutek at page 13 of her report) draws the following conclusions about the economic theory relied upon by defendant's experts:

> "The patterns of mobility documented here raise serious questions for the economic model of occupational sex segregation. Economists assume stable preferences; these data, however, clearly indicate that preferences are not stable. Economists assume that stable differences in values lead men into male-dominated occupations and women into female-dominated occupations. But the data suggest otherwise. Individuals report frequent changes in intentions, and thus a central premise of the economic perspective is undermined." (p. 106)

> "The evidence suggests that women are highly responsive to opportunities provided by the weakening of discriminatory barriers. Since women move into male-dominated occupations as opportunities expand, it is hard to argue that women's pursuit of female-dominated occupations represents the rational pursuit of individual self-interest over their lifetimes." (p. 187)[33]

46. Another reason the economic theory fails to explain gender differences in career outcomes is that it is based on a faulty assumption about the magnitude of gender differences in what men and women seek from a job or a career. Research studies consistently show that men and women are very similar in the degree to which they value good pay, opportunity to advance, meaningful work, and other job values. In a recent study of work values based on representative national samples of employed adults from 1973 to 1990, Dr. Reba Rowe and Dr. William Snizek concluded (p. 215) that "alleged gender differences are minimal, at best, and continued emphasis on differences merely serves to reinforce traditional gender-role stereotypes and to perpetuate gender inequality in the workplace."[34]

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[32]J. Glass and V. Camarigg, "Gender, Parenthood, and Job-Family Compatibility," *American Journal of Sociology*, Vol. 98, 1992, p. 131-151.

[33]Jacobs, *op cit.* Dr. Gutek's report cites the title of his book incorrectly as *The Revolving Door.*

[34]R. Rowe and W. Snizek, "Gender Differences in Work Values: Perpetuating the Myth," *Work and Occupations*, Vol. 22, 1995, p. 215-229. Also see M. M. Marini, P. Fan, E. Finley, and Ann M. Beutal, "Gender and Job Values," *Sociology of Education*, Vol. 69, p. 49-65. Analyzing the work values of high school seniors with national data from 1976 to 1991, the authors conclude: "Our findings clearly indicate that young women are not less willing than young men to invest time and effort on the job and that such a

47. In her published work, Dr. Gutek has been critical of assumptions that differences in values and interests account for gender differences in career outcomes, noting that they are often used as *post hoc* rationalizations for gender segregation. In her book, *Sex and the Workplace: The Impact of Sexual Behavior and Harassment on Women, Men, and Organizations*,[35] Dr. Gutek writes:

> "Thus, if one asks why a particular electronics assembly is done by men, the answer may be that the job requires mechanical aptitude and good spatial relations. The same assembly task done by women in another plant is explained on the basis of women's patience and ability to handle detail work. I contend that, to some extent, the choice of male or female workers comes first, and the explanation or justification afterwards." (p. 40)

And in her book, *Women and Work: A Psychological Perspective*,[36] Gutek concludes:

> "Across many areas of reward, the rationalizations of women's preferences has tended to be used to justify the low reward levels they attain." (p. 113)

> "When groups are formed on the basis of a dominant characteristic, differences between them are emphasized, while in-group similarities are underlined. Thus, 'all men are highly motivated and career committed' while 'all women are not interested in achievement and only want undemanding, intermittent work.' Stereotypes result from these tendencies to exaggerate within-group similarities and between-group differences." (p. 118)

In sum, a large body of social science research indicates that it is implausible to attribute the high level of sex segregation and resulting disparities in pay and career advancement at Home Depot to differences between men and women in their interests in the "rough and ready" nature of the work, to differences in the "lifestyle compatibility" of the work, or to gender differences in interests and preferences more generally.

X. The Gender Composition of Occupations in Sweden is Irrelevant to an Analysis of Home Depot's Personnel Policies and Practices

48. In her Report, Dr. Gutek notes that there is a high level of gender segregation in the labor market in Sweden, a country with progressive policies regarding child care and employment (p. 14-15). This is irrelevant to an analysis of Home Depot's personnel practices. Sweden has an explicit and successful policy to narrow the wage gap between predominately male and predominately female jobs, so gender segregation is much less

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difference in orientation cannot account for the large gender difference observed in occupational attainment and earnings in the United States" (p. 58).

[35]B. A. Gutek, *Sex and the Workplace: The Impact of Sexual Behavior and Harassment on Women, Men, and Organizations*, 1985, Jossey-Bass.

[36]V. F. Nieva and B. A. Gutek, *Women and Work: A Psychological Perspective*. 1981, Praeger.

consequential for women's careers in the Sweden compared to the United States.[37] In addition, until the Act of Equality between Man and Women at Work went into effect in 1980, Sweden had no agency monitoring compliance with nondiscrimination standards.[38] Social policy in Sweden has been successful in accommodating work and family demands and narrowing the wage gap between men's work and women's work, but until recently there has been no concerted and effective effort to reduce the degree of sex segregation in the workforce.[39] The factual context of gender segregation in Sweden is substantially different from the context in the United States and in Home Depot Stores. Therefore, it would be inappropriate for a social scientist to draw conclusions about Home Depot from labor force patterns and trends in Sweden.

XI. Conclusions

49. Dr. Gutek's characterization of the Home Depot personnel system is inaccurate and incomplete, and it appears to be based on an unsystematic and limited review of materials about the company's personnel policies and practices. The Human Resources reference books cited by Dr. Gutek are very clear about the policies and practices that result in fair and equitable personnel decisions, and contrary to Dr. Gutek's claims, the Home Depot personnel system departs substantially from their recommendations.

50. In their reports, Dr.Gutek and Home Depot's other experts fail to consider the impact of opportunities and barriers on employees' preferences and interests. Social research consistently demonstrates that employees' interests and preferences are influenced by their perceptions of what jobs and opportunities are realistically available to them. Dr. Gutek has repeatedly drawn this same conclusion in her own published work, but she has ignored its implications for her analysis of the Home Depot personnel system. Dr. Gutek has published research and review articles that are consistent with other research that shows how an arbitrary and subjective personnel system allows stereotypes to influence personnel decisions. While Dr. Gutek does not question the scientific research Dr. Fiske and I rely upon to analyze the impact of stereotypes, she ignores the implication of that research (including her own research) in her analysis of Home Depot.

51. In my original report, I concluded that Home Depot relies on arbitrary and subjective criteria for making personnel decisions, which, in the context of a male-

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[37]A. Rivlin, "Overview," p. 1-21 in *The Swedish Economy*, edited by B. P. Bosworth, G. Burtless, R. J. Flanagan, E. M. Gramlich, R. Z. Lawrence, A. M. Rivlin, and R. K. Weaver, The Brookings Institution, 1987. See p. 5-6. This book is one of the two sources Dr. Gutek relied upon for her opinions about sex segregation in Sweden. Also see M. Ruggie, The State And Working Women: A Comparative Study of Britain and Sweden, Princeton, 1984. See p. 156-181.

[38]R. J. Flanagan, "Efficiency and Equality in Swedish Labor Markets," pp. 125-284 in the Bosworth *et al.* volume relied upon by Dr. Gutek. See p. 145-147.

[39]Incidentally, a study of the labor market in Sweden found that the theory of compensating wage differentials did not provide a satisfactory explanation for gender differences in wages. See M. O. Palme and R. E. Wright, "Gender Discrimination and Compensating Differentials in Sweden," *Applied Economics*, Vol. 24, 1992, p. 751-759.

dominated culture, allow gender stereotypes to affect decisions about hiring, job assignment, promotion, performance evaluation, and pay. Nothing in Dr. Gutek's report leads me to change that conclusion. Indeed, the references from the scientific and Human Resources literature Dr. Gutek relies upon -- and Dr. Gutek's own published work -- strongly support the conclusions of my original Report.

Executed this 24th day of June, 1997 at Santa Barbara, California.

William T. Bielby, Ph.D.

EXHIBIT A
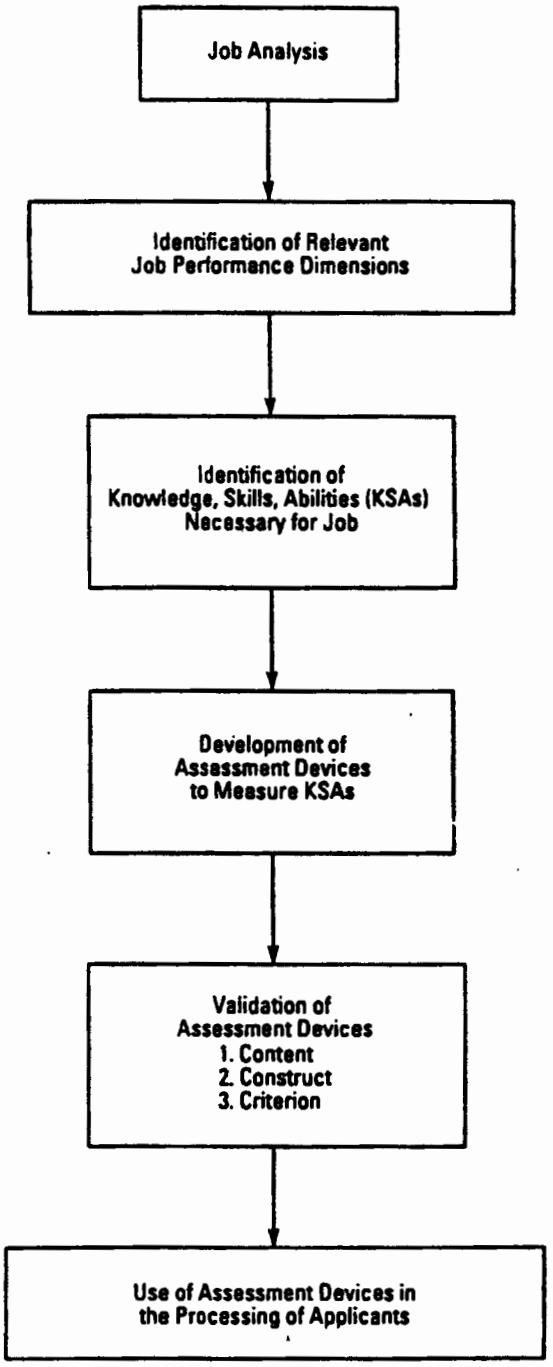
EXHIBIT 1.2 **STEPS IN THE DEVELOPMENT OF A SELECTION PROGRAM**