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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

VICKI BUTLER, SUSAN ELLIS, FELICIA FUNDERBURK, JACQUELINE GENERO, SHERYLE JONES, KIMBERLY STODDARD, and CHERYL WILLIAMS, on behalf of themselves and all others similarly situated, and JAMIE WILSON, an individual, Plaintiffs, v. HOME DEPOT, INC., Defendant.	No. C 94 4335 ~~VRW~~ S| CLASS ACTION **SUPPLEMENTAL DECLARATION OF WILLIAM T. BIELBY PURSUANT TO 28 U.S.C. SECTION 1746**

I, William T. Bielby, declare as follows:

1. I make this Declaration to supplement my prior Declaration filed in this case on May 5, 1995. I have personal knowledge of the facts stated in this Declaration, and I could and would testify competently to those facts.

2. I have been asked by Saperstein, Goldstein, Demchak & Baller and Lieff, Cabraser & Heimann, counsel for the plaintiffs, to review the Declaration of defendant's expert, Dr. Barbara Gutek and to assess the validity of her conclusions. I have reviewed her Declaration as well as the Declarations of defendant's other expert, Dr. Judith Stoikov and of plaintiff's expert, Dr. Jonathan S. Leonard, Defendant's Memorandum of Points and Authorities in Opposition to Motion for Class Certification, and the Declarations of 31 Home Depot employees filed by the defendant with that memorandum.

Gutek's Opinions Are Not Based on an Analysis of Home Depot's Actual Personnel Policies and Practices

3. In her Declaration, Gutek makes no reference to Home Depot managers' deposition testimony and employee Declarations she claims to have reviewed. Instead, her opinions are based solely on the forms that emanate from corporate headquarters. While some of the forms themselves may be of "high quality," they have little connection to the actual criteria used by managers in making decisions about hiring, job assignment, transfers, training, and promotion -- as the Home Depot employees' testimony itself shows.

4. Gutek does *not* assert that Home Depot has objective procedures for making personnel decisions. Instead, she concludes that the forms are "*consistent with* an organization which attempts, as much as possible, to measure objective characteristics" (emphasis added)[1] Clearly, the hypothetical organization with objective procedures described by Gutek is not Home Depot. Home Depot managers have testified consistently that they make subjective judgments and that there are no specific criteria -- let alone objective ones -- for making decisions about hiring, job assignment, pay, training, and promotion.[2] Indeed, even Home Depot's brief to the Court admits that personnel decisions are based upon "intangible factors" and subjective standards.[3]

5. Based on her analysis of the forms alone, Gutek concludes that a transfer from an operations to a sales position is not a "logical progression." This statement is clearly and repeatedly contradicted in the deposition testimony and exhibits she claims to have reviewed. For example, Bud Vosler, a Human Resource Manager in Southern California, testified that not only is it possible to transfer from operations to sales positions, it is seen as desirable from management's perspective, because "we want our people to be well rounded."[4] District Manager Mike Zeiss also testified at length about the possibilities for moving from operations to sales.[5] Store manager Kip Armstrong testified that

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[1] Declaration of Barbara Gutek, p. 4, line 1-2.

[2] See deposition testimony of Home Depot mangers cited in paragraphs 9 through 12 of my Declaration filed in support of Plaintiff's Motion for Class Certification.

[3] Defendant's Memorandum of Points and Authorities in Opposition to Motions of Class Certification, p. 12-13.

[4] Vosler depo., p. 202.

[5] Zeiss depo., p. 114-121.

while he does not like to transfer too many employees from operations jobs such as cashier to sales, there are no minimum qualifications for making such a transfer.[6] In all the materials I reviewed about the actual personnel practices at Home Depot, I came across no deposition testimony or other documents suggesting that a transfer from operations to sales would be an "illogical" progression because of differences in job duties between the two areas.

6. While Gutek draws conclusions based on the Home Depot list of duties forms, she presents no evidence that information on those forms is based on professional job analyses or that they accurately portray the actual duties of positions at Home Depot. Nor does she cite any evidence that the performance evaluation forms and the Home Depot procedures for performance appraisal have been assessed with respect to their reliability and validity. Given the large body of research literature on the professional assessment of the quality of job descriptions and performance evaluation systems,[7] it is surprising that she would rely on the forms alone as the basis for her opinion.

[6] Armstrong depo., p. 157-161.

[7] S. E. Bemis, A. H. Belenky, and D. A. Soder, *Job Analysis: An Effective Management Tool*, Bureau of National Affairs, 1983; S. Gael, *Job Analysis: A Guide to Assessing Work Activities*, Jossey-Bass, 1983; H. J. Bernadin and R. Beaty, *Performance Appraisal: Assessing Human Behavior at Work*, Kent Publishing, 1984; N. Winstanley, "How Accurate Are Performance Appraisals?" *Personnel Administrator*, Vol. 25, 1980, pp. 41-44.

Contrary to Gutek's Claims, the Level of Segregation in Home Depot Stores is Extremely High for an Organization that Promotes from Within, Provides its Employees with On-the-Job Training, and Has No Minimum Qualifications for Entry Level Jobs

7. Gutek offers a series of inappropriate comparisons in an attempt to show that the level of segregation in Home Depot stores is not particularly high.

a) First, she compares the segregation indices for Home Depot stores to those in a study by James N. Baron and me on California firms. In our study, most of the data were from the 1960s and early 1970s, manufacturing firm were disproportionately over-represented in the sample, and firms in retail sales were under-represented.[8] The personnel practices in the highly segregated firms in our sample would be blatantly illegal in today's context.[9]

b) Second, Gutek compares the level of gender segregation in management positions at Home Depot to that in top management and in boards of directors in the "Fortune 1000" corporations, in executive management positions in the U.S. government, and in school administration. None of these is an appropriate comparison. Because Home Depot promotes from within and requires

[8] W. T. Bielby and J. N. Baron, "A Woman's Place is with Other Women: Sex Segregation within Organizations," pp. 27-55 in *Sex Segregation in the Workplace: Trends, Explanations, Remedies,* edited by B. F. Reskin, National Academy Press, 1984; see pp. 30-31.

[9] For example, many of the firms in our sample had explicit policies banning women from specific jobs (Bielby and Baron, *op cit.*, p. 51).

no previous management experience, the relevant labor pool for supervisory and management positions at Home Depot is the Home Depot work force (approximately 35% female), not the top executive ranks of large corporations and government. I am aware of no studies that show that most large corporations, government agencies, and school systems recruit managers from among the ranks of employees who started in entry level jobs that have no minimum qualifications.

c) Third, Gutek also suggests that the high level of sex segregation in the building and construction trades and related industries justifies the under-representation of women in merchandising positions at Home Depot. Gutek asserts somewhat tentatively that industry experience would "appear to be a job related factor to be considered in the hiring and promotion of employees." However, the deposition testimony of Home Depot managers indicates that such experience is neither a prerequisite for employment in a merchandising position nor a factor considered in subsequent promotions.[10] Moreover, the Census statistics compiled by Home Depot's other expert, Dr. Stoikov, show that Home Depot's employment of women in merchandising positions is substantially below the industry average. According to her statistics, nationally in 1993, women were 26.47% of sales workers

[10] See deposition testimony of Home Depot mangers cited in paragraphs 9 through 12 of my Declaration filed in support of Plaintiff's Motion for Class Certification.

in hardware and building supplies, but they were just 17.5% of the employees in merchandising departments at Home Depot in 1994.[11]

The Segregation Indices Reported in My Original Declaration Understate the Level of Segregation that Would be Computed from Complete Data from Home Depot Stores

8. Unfortunately, unlike Dr. Stoikov, I did not have access to Home Depot's computerized personnel data for current and former employees in all stores in the Western Division, and I would welcome the opportunity to analyze those data. Instead, to compute segregation indices, I could only rely on data from managers' depositions and class members' Declarations for selected stores, and these data did not include all departments. For two stores, the data did not allow me to distinguish between the predominately female Design Center jobs and other positions in the Paint Department. Similarly, for six stores, the data did not allow me to distinguish between jobs in the heavily female Kitchen Cabinet area and jobs in the predominately male Plumbing Department. Data for night crew were available for just one store, and the EEO-1 forms I have reviewed indicate that women are rarely employed on the night crew. Complete data on the gender composition of jobs in each department in every store would almost certainly result in significantly higher segregation indices than those reported in my prior

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[11] Declaration of Judith Stoikov, Tables 2 and 3. I performed a binomial statistical test of the discrepancy between the 17.5% female composition of the merchandising workforce at Home Depot and the 26.47% female composition nationally among salespersons in hardware and building supplies. The Z statistic for the test if 20.616 with a p-value of less than 10^{-94}. Conventionally, Z statistics greater than 2.0 and p levels of .05 or less are indicative of a statistically significant relationship. Clearly, according to the figures in Stoikov's Declaration, Home Depot's record in employing women in merchandising jobs is substantially and significantly worse than the record of the industry as a whole.

Declaration. For example, in the one store where information on the night crew was available, the segregation index was 79.5, close to the average for the firms with discriminatory employment practices studied by Bielby and Baron, using data from the 1960s and 1970s.

Gutek's Assertions about Women's Lack of Interest in Sales and Management Jobs at Home Depot are Unsupported by Any Empirical Evidence and Reflect Stereotypical Assumptions about Gender Differences in Work Orientations

9. Gutek suggests that women avoid merchandising and management jobs at Home Depot because the shifts and hours conflict with their family responsibilities. In fact, research shows that many women actually seek out nonstandard shifts. Research by Professor Harriet Presser shows relatively small differences between men and women in the propensity to work nonstandard shifts and hours. For example, her data from the May 1985 Current Population Survey show that 13.0% of employed women work a nonday shift compared to 15.5% of employed men, that 4.2% of employed women work rotating shifts compared to 4.8% of employed men, and that 24.1% of employed women usually work Saturdays and Sundays compared to 29.7% of employed men.[12] Gutek suggests that the increase in female-headed households reduces the availability of women for jobs requiring long hours or non-standard shifts. In fact, Presser's research shows that employed women who are single parents are ***more likely*** to work nonstandard shifts and hours than are employed men.[13]

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[12] H. B. Presser, "Can We Make Time for Children? The Economy, Work Schedules, and Child Care," Demography, Vol. 26, p. 526.

[13] *Ibid.*, p. 528.

Moreover, women are increasingly becoming the primary providers for their families. A recent study by the Families and Work Institute shows that 55% of employed women bring in half or more of their household income and that nearly as many men as women would prefer to work part-time.[14] In short, the assumption that men want jobs with good career prospects because they are the providers and women avoid such jobs because they are homemakers is a gender stereotype. So is the unsupported assumption made by both Gutek and Stoikov that women prefer the hours and shifts available in operations jobs over the longer hours and more irregular shifts in merchandising and management jobs. In the absence of any evidence of the actual preferences of individual male and female employees at Home Depot, Gutek and Stoikov simply assume that work schedule preferences differ by gender. It is this kind of stereotypical judgment that sustains the kind of gender segregation found at Home Depot. In the absence of an objective system for accurately ascertaining the actual interests and qualifications of individual employees and job applicants, stereotypical beliefs about differences between men and women influence personnel decisions.

10. Moreover, the "societal factors" such as family responsibilities emphasized by Gutek cannot explain the pattern of gender segregation across departments within merchandising, where women are concentrated in departments such as Design Center, Garden, and Light Cloud and rarely assigned to departments such as Lumber, Building Materials, and Electrical. Nor can a gender difference in willingness to relocate explain the extremely high level of gender segregation in

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[14] E. Galinsky, et al., *The New Providers*, Families and Work Institute, 1995; also see S. Shellenbarger, "Women Indicate Satisfaction with Role of Big Breadwinner," *Wall Street Journal*, May 11, 1995, p. B1, B2.

initial job assignment and in positions below the level of assistant manager, where relocation is not an issue.

11. In her own scholarly writing, Gutek notes that presumed gender differences in aptitudes and interests 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,*[15] 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,*[16] Gutek asserts:

> "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.'

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

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

Stereotypes result from these tendencies to exaggerate within-group similarities and between-group differences" (p. 118).

These general observations in Gutek's published work apply to the Home Depot personnel system as reflected in the factual materials I have reviewed.

Contrary to the Assertion by Gutek, Team-based Decision Making by Managers is Likely to Increase Rather than Reduce the Influence of Stereotypes on Personnel Decisions

12. Gutek asserts that Home Depot's use of "teams of cross-level employees for evaluation prevents any one person from having undue say in evaluating another and tends to diminish the impact of idiosyncratic opinions" (p. 11). I agree with this statement but disagree with the conclusion she draws from it. Social psychological research conducted over six decades shows that when a decision-making group is faced with ambiguous and subjective information, individuals will be strongly influenced by group norms, a phenomenon social psychologists call "groupthink."[17] Summarizing decades of research, the phenomenon is described as follows in a new text by two of the leading psychologists in the field:

"Groups whose members share similar backgrounds and similar points of view are most likely to fall prey to groupthink. Despite this

[17] M. Sherif, *The Social Psychology of Social Norms*, Harper, 1936; S. E. Asch, "Opinions and Social Pressure," *Scientific American*, Vol. 193, No. 5, 1956, pp. 31-35; L. G. Zucker, "The Role of Institutionalization in Cultural Persistence," *American Sociological Review* Vol. 42, 1977, pp. 726-743; I. Janis, *Groupthink*, Second Edition, Houghton Mifflin, 1982;

danger, such groups often isolate themselves from outside influences and different perspectives, thereby making it more likely that shared biases will corrupt their decision making."[18]

Home Depot's overwhelmingly male management teams make their personnel decisions in an environment with a strong corporate culture that places a high value on conformity to organizational norms. This is precisely the kind of context where gender stereotypes are likely to have a very strong impact on their decisions.

Gutek's Own Scholarly Writings Do Not Support Opinions Expressed in Her Declaration

13. In my original Declaration (paragraph 26), I summarized social research indicating that "gender stereotypes are especially likely to influence personnel decisions when criteria for evaluation are vague or ambiguous, and when accurate, objective, and timely information on individuals' qualifications is limited." Gutek agrees with this assessment. The following passages are from her article, "Sex Effects on Evaluation"[19] which appeared in the *Academy of Management Review*:

"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).

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[18] E. R. Smith and D. M. Mackie, *Social Psychology*, Worth Publishers, 1995, p. 382.

[19] V. F. Nieva and B. A. Gutek, "Sex Effects on Evaluation," *Academy of Management Review*, Vol. 5, 1980, pp. 267-275.

"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 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).

14. In my original Declaration (paragraph 23), I summarized research showing that women managers are subject to gender stereotypes about women as leaders. Gutek agrees. The following is from her chapter "Point-"Point-Counterpoint -- Discrimination Against Women in

"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, 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).

15. In my original Declaration (paragraphs 21-22), I describe how gender segregation at Home Depot is supported by beliefs that merchandising positions are "men's work" and cashier jobs are "women's work." Gutek agrees that this kind of gender labeling of jobs

encourages stereotyping and sustains gender segregation. The first quotation below is from her article, "Diversity in Work Group Sex Composition: Implications for Majority and Minority Members,"[23] which appeared in *Research in the Sociology of Organizations*, and the second is from her chapter, "Theory and Research on Group Composition: Applications to the Status of Women and Ethnic Minorities,"[24] 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 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

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[23] 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.

[24] 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.

Management: Going, Going, Gone, or Going But Never Gone?"[20] 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).

The above passage makes the important point that women as well as men are influenced by gender stereotypes. Defense counsel has the mistaken impression that it is impossible for a female manager or supervisor to discriminate against another woman.[21] Regarding the barriers faced by women attempting to move into management in male dominated work settings, Gutek elaborates as follows in her book, *Women and Work: A Psychological Perspective*:[22]

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[20] "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

[21] Defendant's Memorandum of Points and Authorities in Opposition to Motions of Class Certification, p. 10, lines 16-19.

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

existed for long periods of time, such as years or decades, are quite likely to be stereotyped" (p. 101-102).

16. Finally, Gutek has written extensively on sexual harassment and the relationship between harassment and discrimination. I cite her work in my original Declaration (paragraph 26), a fact that she notes in her Declaration.[25] In her Declaration, Professor Gutek does not question my application of her research on sexual harassment to the case of Home Depot.

Conclusions

17. Dr. Gutek reviewed some of the official forms used by Home Depot, but she has not analyzed Home Depot's personnel policies and practices, and she incorrectly characterizes those practices. The inferences she draws from the forms are contradicted by the deposition testimony of Home Depot managers. Gutek attempts to justify segregation at Home Depot through inappropriate comparisons to firms known to have highly discriminatory practices or to corporations and government agencies with very different personnel systems. Both Dr. Gutek and Dr. Stoikov make unsupported assumptions about gender differences in Home Depot employees' preferences for hours and shifts.

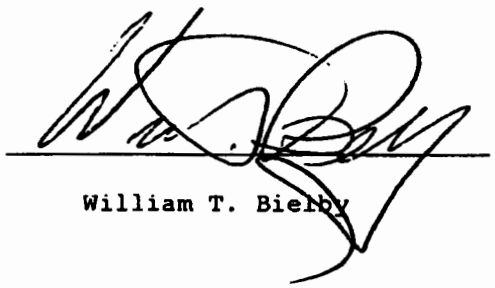
18. Nothing in the Declarations of Dr. Gutek and Dr. Stoikov or in the other materials I have reviewed for this Declaration leads me to revise my original conclusion. Based on all of the materials I have reviewed for this Declaration and my previous Declaration, I have

[25] Gutek Declaration, p. 2, lines 21-22.

concluded that the subjective nature of decision-making throughout the Home Depot personnel system, applied in the context of a male-dominated corporate culture which encourages managers to ignore the objective qualifications and interests of women employees, leads to a pattern which is largely uniform throughout Home Depot's Western Division of segregated jobs and departments whereby women have few opportunities outside of cashier and other dead-end jobs in operations. Indeed, I find strong support for this conclusion in the scholarly work of Dr. Gutek.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed this 7th day of June, 1995 at Santa Barbara, California.



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