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

Betty Dukes, et al. v. Wal-Mart Stores, Inc.

February 3, 2003

QUALIFICATIONS, ASSIGNMENT, AND MATERIALS REVIEWED

I have been retained by Brad Seligman and Jocelyn Larkin of the Impact Fund and by the law firm of Cohen, Milstein, Hausfeld & Toll, counsel for plaintiffs in *Betty Dukes, et al. v. Wal-Mart Stores, Inc.* ("Wal-Mart"). I have been asked to review materials pertaining to personnel policies and practices of Wal-Mart and to address three issues. The first is whether key elements of the personnel system at Wal-Mart are uniform across the U.S. retail divisions. Second, I have been asked to determine whether uniform features of the Wal-Mart personnel system create barriers to women's career advancement in the company, especially with respect to promotion into management and compensation. The third issue I have been asked to address is the adequacy of Wal-Mart's policies and practices in the areas of affirmative action, equal employment opportunity, and diversity for identifying, monitoring, and eliminating potential discriminatory barriers faced by women employed by the company.

I have testified as an expert witness in both California Superior Court and Federal Court on cases involving workplace discrimination. I have served as an expert in several other cases involving issues of gender discrimination in large, multi-establishment national and regional retail firms, including class action cases involving Lucky Stores, Publix, Sherwin-Williams, and Home Depot. A list of cases in which I have been

identified as an expert or have given expert testimony since 1998 is attached as Exhibit A.

I received a Ph.D. in Sociology from the University of Wisconsin--Madison in 1976. I also have a B.S. in Electrical Engineering and a M.A. in Social Sciences from the University of Illinois. I am currently Professor of Sociology at the University of California, Santa Barbara, where I chaired my department from 1992 to 1998. I am also affiliated with UCSB's Department of Statistics and Applied Probability. Among my former positions are Visiting Professor of Management at UCLA and Fellow at the Center for Advanced Study in the Behavioral Sciences at Stanford. I teach graduate and undergraduate courses on organizational behavior, research methods for the social sciences, labor markets, quantitative methods, and social inequality. I also specialize in research in each of these areas. Over the past twenty years, much of my research has focused on issues of workplace discrimination, and on organizational policies and practices more generally. My research on these topics has been supported by four grants from the National Science Foundation, and it has been published in leading peer-reviewed social science research journals. My Curriculum Vitae is attached as Exhibit B.

I have received national awards from three different professional associations for my research on gender, labor markets, social psychological aspects of work, and organizational personnel practices. I have served on numerous panels, advisory committees, and professional workshops on topics relating to workplace discrimination, organizational personnel policies and practices, and research methodology. I have served as an advisor, consultant, or reviewer for the following organizations and agencies: the U.S. Bureau of the Census, the U.S. Department of Justice, the U.S. Department of

Labor, the National Science Foundation, the National Institute of Mental Health, the National Academy of Sciences, the University of Michigan's Institute for Social Research, Stanford University, and the Writers' Guild of America, West. I have also served on the editorial boards of leading social science journals, and I regularly review manuscripts for scientific journals on topics relating to organizational behavior, employment discrimination, gender and work, and research methodology. I have been elected to several offices in the American Sociological Association. I served for three years on the ASA Council, the organization's governing body, and I am currently President of the Association.

My consulting rate is $275 per hour, plus expenses. My rate for time spent in depositions $550 per hour, with a four-hour minimum per day.

I have reviewed the deposition testimony of Wal-Mart managers responsible for creating and implementing the company's personnel policies, as well as the testimony of managers who made decisions about compensation, hiring, promotion, job assignment, and related personnel matters. I have also reviewed the documents used as exhibits in the depositions of these individuals. Among others, in the human resources and diversity areas I have reviewed the testimony of Kevin Harper, Vice President of the People Division Wal-Mart Stores and Specialty Group; Coleman Peterson, Executive Vice President, People Division; Charlene Jarrells Porter, Senior Vice President, People Division; Jeffrey Reeves, former Sam's Club Vice President of People; and several People Directors and Regional Personnel Managers. At the senior executive and operations levels, I have reviewed the deposition testimony of Thomas Coughlin, President and Chief Executive Officer of Wal-Mart Stores Division; Don Harris,

Executive Vice President of Merchandising and former Executive Vice President of Operations of Wal-Mart Stores; Jim Haworth, Executive Vice President of Operations and Chief Operating Officer of Wal-Mart Stores; and I have also reviewed the testimony of current and former Divisional Vice Presidents, Regional Vice Presidents, District Managers, and Store Managers. A complete list of the depositions I reviewed appears in Exhibit C.

The documents I reviewed included: organizational charts; correspondence, memos, reports, and presentations relating to personnel policy and practice, diversity, and equal employment opportunity issues, and documents describing the culture and history of the company. In addition to documents that are deposition exhibits, I was also provided with the expert report of Dr. Marc Bendick and tables from the report of Dr. Richard Drogin.

In addition to the materials described above, I have also relied upon a large body of social research on organizational policy and practice and on workplace bias. Social research conducted across many decades has generated considerable knowledge about what generates and sustains workplace inequalities. That same research, either directly or by implication, points to the kinds of workplace policies and practices that are likely to minimize bias. The relevant research has applied multiple methodologies in a variety of contexts, including experiments in controlled laboratory settings; ethnographies and case studies in "real world" organizations both large and small, public and private, and in a range of industries; surveys done with representative samples of workers and employers; and historical studies based on archival materials from the United States and abroad. Thus, the scientific evidence about gender bias, stereotypes, and the structure and

dynamics of gender inequality in organizations that I rely upon has substantial external validity and provides a sound basis for analyzing the policies and practices of Wal-Mart. My method is to look at distinctive features of the firm's policies and practices and to evaluate them against what social science research shows to be factors that create and sustain bias and those that minimize bias. In litigation contexts, this method of analysis is known as "social framework analysis."[1]

Below, I first summarize my overall conclusions about gender bias and the effectiveness of anti-discrimination policies and practices at Wal-Mart. Next, I address the issue of uniformity in personnel policy and practice at Wal-Mart. After that, I describe the firm-wide policies and practices at Wal-Mart that create and sustain barriers to women's career success and the effectiveness of the firm's efforts to identify and eliminate those barriers and guarantee equal employment opportunity.

SUMMARY OF FINDINGS

Centralized coordination, reinforced by a strong organizational culture, creates and sustains uniformity in personnel policy and practice throughout the organizational units of Wal-Mart. Subjective and discretionary features of the company's personnel policy and practice make decisions about compensation and promotion vulnerable to gender bias. Finally, I have concluded that there are significant deficiencies in the company's policies and practices for identifying and eliminating barriers to equal employment opportunity at Wal-Mart. The basis for my conclusions is explained below.

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[1]See J. Monahan and L. Walker, *Social Science in Law: Cases and Materials*, Fourth Edition, Foundation Press, 1998, Chapter Five, "Social Science Used to Provide Context."

AT WAL-MART, CENTRALIZED COORDINATION AND CONTROL ESTABLISHES UNIFORMITY IN PERSONNEL POLICY AND PRACTICE

Wal-Mart's People Division is responsible for corporate-wide human resource policy. Policies emanating from the Home Office in Bentonville are overseen by the Executive Vice President ("EVP") of the People Division, who described his duties as "overall responsibility for getting, keeping, and developing Wal-Mart talent worldwide."[2] The EVP reports to the company's President and Chief Executive Officer and sits on the corporate Executive Committee.[3] The senior human resources executives in each of the company's divisions report to the divisional top executives, with a "dotted-line" reporting relationship to the EVP of the People Division. For example, in Wal-Mart Stores Division 1, the Senior Vice President of People reports directly to the division's President and CEO, and reports indirectly to the EVP of the People Division, and a similar reporting relationship exists in the Sam's Club division.[4] These senior human resources executives meet weekly with the EVP of the People Division, where people activities in the divisions would be discussed.[5]

A Primary Policy Committee with representatives from each of the company's operating divisions as well as the Home Office formulates and approves all new human

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[2]The Executive Vice President's responsibilities cover Wal-Mart Division 1, the Specialty Divisions, and Sam's Club and the rest of the company's human resources operations worldwide (Peterson depo., p.8).

[3]Peterson depo., p. 11-12.

[4]Harper 30(b)6 depo., p. 235-237; Jarrells Porter depo. 30-32; Peterson depo., p. 26-29.

[5]Peterson depo., p. 27-28.

resources policies. A Secondary Policy Committee that includes representatives from the People Divisions of each of the operating divisions and the home office also reviews the policies, and ultimately all policies are approved by Wal-Mart's Executive Committee and Executive Vice President of People before being disseminated throughout the company.[6]

The human resources function is organized hierarchically within divisions. For example, in Division 1, the company's approximately 2800 stores are organized by six divisional areas, with five or six regions within each area, and 80 to 85 stores within each region.[7] Each store has an hourly employee with the title of personnel manager who coordinates hourly recruiting and "CBL" and performs payroll functions.[8] Overseeing store-level human resources activities, including staffing and compliance with government regulations and company policies, are the Regional Personnel Managers ("RPM"), and most of them work out of the corporate Bentonville Home Office. RPMs are responsible for the management staffing of stores (e.g., participating in the recruitment and selection of Store Managers and Co-Managers), overseeing the Management Career Selection process, and evaluating store management teams. Each of the thirty-five Regional Personnel Managers in Div 1 reports to one of the three People Directors at the Home Office, who in turn report to the Vice President of the Wal-Mart

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[6]Hass depo., p. 24-30; Jarrells Porter depo., p. 28, 33-34; Reeves depo., p. 147-149.

[7]Harper 30(b)6 depo., p. 188-190.

[8]Harper 30(b)6 depo., p. 117-120.

Stores People Division.[9] People Directors meet weekly with RPMs, provide them with training, direction, and support, and oversee training and orientation.[10] Mr. Harper, Vice President of the Wal-Mart Stores People Division, testified that among the responsibilities of his office are reviewing salary levels for district and regional managers, setting start rates for Assistant Manager, Co-Manager, and Store Manager positions, and the rate of salary adjustments for hourly employees.[11]

Sam's Club has a similar hierarchical organization to its human resources function, with Regional Personnel Managers reporting to a Vice President of People.[12] Former Vice President of People at Sam's Club Jeffrey Reeves testified that 99% of the human resources policies of Wal-Mart Stores and Sam's Club were identical.[13] Wal-Mart Stores CEO Thomas Coughlin also testified that the policies of two operating divisions were generally the same.[14]

Wal-Mart's computerized information system is a key element of the company's uniform personnel policies. The uniform policies and guidelines are available throughout

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[9]Harper 30(b)6 depo., p. 188-192; Harper depo., p. 18-21; Ellison depo., p. 75-78, 81; Ruiz depo., p. 150-152; "RPM Responsibilities" (WMHO369676). The human resources function has a similar hierarchical organization in the Specialty Divisions. Each Specialty Division has Regional Personnel Managers for One-Hour Photo, Tire Lube Express, and Shoes and Jewelry report to the heads of their respective divisional operating units. People Directors that report to the Vice President of the Wal-Mart Stores People Division also have responsibilities for Specialty Divisions (Harper depo., p. 20-27).

[10]Ruiz depo., p. 141-142; 151-152; "People Director Responsibilities" (WMHO369677).

[11]Harper depo., p. 41-47.

[12]Reeves 30(b)6 depo., p. 14-15.

[13]Reeves depo., p. 148. The only difference that Mr. Reeves could think of was in the attendance policy; also see Hottinger depo., p. 32-35.

[14]Coughlin depo., p. 42-43.

the company via the Pipeline intranet on-line database, and information relied upon by managers is distributed centrally via the Manager's Workbench.[15]

Wal-Mart is well known for its innovations in using sophisticated information systems to maintain centralized decision-making and control in its business operations. Writing in the *Sloan Management Review*, Thomas W. Malone, one of the leading experts on this topic, described Wal-Mart's centralized system as follows:

> By centralizing pricing, buying, and promotional decisions on a national level, Wal-Mart was able to deliver better-quality products for lower prices than most of its competitors - with the result that small towns across the United States are now filled with the empty hulls of local retail stores, driven out of business by a Wal-Mart down the street. Other factors played a role, too, but a key factor that enabled Wal-Mart to centralize its decision making was IT. With its famous state-of-the-art electronic ordering and inventory control systems, for instance, *Wal-Mart introduced a new level of connected, centralized decision making* into small-town retailing (emphasis added).[16]

Deposition testimony is consistent with this account of centralized control in operations, and it demonstrates that the same system of control extends to the human resources area. For example, each store manager receives a computerized daily recap for the store that includes detailed information on both operational and merchandising factors such as sales by department, price changes, inventories, and invoices, and personnel factors like

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[15]Hass depo., p. 23-34, 43-44, 52, 65-67, 95; Teng depo., p. 86-87; Harper 30(b)6 depo., p, 44-45, 58-59, 69-72, 126, 131-132, 149-150; Harper depo., p. 102, 113-114, 191-192; Mireles depo., p. 108-109, 183-184

computer-based learning ("CBL") completions, payroll, attendance, full-time and part-time hours, and evaluations. District managers get a similar recap for each store in their district, and Regional Vice Presidents get a recap twice weekly aggregated to the regional level.[17] District managers rely on these reports to intervene with store managers to address any exceptions that are not in compliance with company policy and guidelines.[18] Each month, a "People P & L" report is generated by the Home Office for each store, reporting information on separations, turnover, and workforce demographics. Aggregated reports are produced at the level of district, region, and division.[19]

In addition to acting upon information generated by reports rolled up from the store, district, regional, and divisional level, uniformity in human resources policy and practice is monitored via frequent store visits by District Managers and Regional Personnel Managers. District Managers are expected to visit each store in their District once every two weeks and submit reports about those visits to the Regional Vice President.[20] Each Regional Personnel Manager also travels weekly to visit stores in

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[16]T. W. Malone, "Is Empowerment Just Fad? Control, Decision Making, and IT," *Sloan Management Review*, Vol. 38 (Winter), 1997, p. 23-35.

[17]D. Carter depo., p. 138-139; Ellison depo., p. 225-228; Raps depo., p. 183-186; Butler depo., p. 112-113.

[18]See, for example, Raps depo., p. 186-187; D. Carter depo., p. 139-147; Ellison depo., p. 228; Butler depo., p. 111-112. District Manager Vincent Martinez testified that his primary job duties were to ensure "that all the company policies and culture and beliefs are communicated, taught, and enforced" (Martinez depo., p. 224-5.

[19]Harper 30(b)6 depo., p. 179-180, 242-246; R. Carter depo., p. 31; Harper depo., p. 274-275; Butler depo., p. 192

[20]Harper 30(b)6 depo., p. 166; D. Carter depo., p. 134-5; Ellison depo., p. 219-221.

their region, and reports from those visits are submitted to the People Director responsible for the Region.[21]

WAL-MART'S` STRONG ORGANIZATIONAL CULTURE REINFORCES UNIFORMITY IN PERSONNEL POLICY AND PRACTICE

An organizational culture is a shared set of values and beliefs about how things are done in the organization.[22] A strong and widely-shared organizational culture promotes uniformity of practices throughout an organization. Wal-Mart is widely recognized by social scientists and management scholars as an organization with a strong culture, with practices and policies typical of such firms. These include the emphasis on the company's founder and its history, a mission statement defined by core values, frequent communication about the culture to employees, orientation and training about the culture for employees at all levels of the organization, promoting managers from the ranks of hourly employees, and rotating managers among locations.[23]

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[21]Ludwig depo., p. 128-137; Martinez depo., p. 170, 174.

[22]See T. E. Deal and A. A. Kennedy, *Corporate Cultures*. Addison-Wesley, 1982; E. H. Schein, *Organizational Culture and Leadership*, Second Edition, Jossey-Bass, 1992; and J. Kerr and J. W. Slocum, "Managing Corporate Culture Through Reward Systems," *Academy of Management Executive*, Vol. 1, 1987, p. 99-108.

[23]Deal and Kennedy, *op cit.*; Schein, *op cit.*, W. Ouchi, "Markets, Bureaucracies, and Clans," *Administrative Science Quarterly*, Vol. 25, 1980, p. 129-141; C. D. Hansen and W. M. Kahnweiler, "Storytelling: An Instrument for Understanding the Dynamics of Corporate Relationships," *Human Relations*, Vol. 46, 1993, pp. 1391-1409; J. Martin, M. S. Feldman, M. J. Hatch, and S. B. Sitkin, "The Uniqueness Paradox in Organizational Stories," *Administrative Science Quarterly*, Vol. 28, 1983, pp. 438-453; T. Peters, "Symbols, Patterns, and Settings," *Organizational Dynamics*, Vol. 7, 1978, pp. 3-23; J. Pfeffer, "Management as Symbolic Action: The Creation and Maintenance of Organizational Paradigms," pp. 1-52 in *Research in Organizational Behavior*, Vol. 3, edited by L. L. Cummings and B. M. Staw, Jai Press, 1982; M .E. Boyce, "Organizational Story and Storytelling: A Critical Review," *Journal of Organizational Change Management*, Vol. 9 (No. 5), p. 5-26; W. Swap, D. Leonard, M. Shields, and L. Abrams, "Using Mentoring and Storytelling to Transfer Knowledge in the Workplace", *Journal of Management Information Systems*, Vol. 18 (Summer), 2001, p. 95-114.

Wal-Mart materials make frequent mention of Sam Walton's personal biography, the history of his founding of the company, and how his personal values (and those of others in his family) became core beliefs and values for the company.[24] Personal encounters with Sam are recounted as significant events in employees' lives, and stories about them are an important part of company lore.[25] The company's "Three Basic Beliefs" and other core elements of its mission and culture appear consistently in written, on-line, and video training and orientation materials.[26] Corporate culture is also a topic covered frequently in Wal-Mart World, the company newsletter distributed to all employees of Wal-Mart Stores and Sam's Club.[27] Corporate culture is an important element of company-wide meetings, including the annual shareholders meeting and events for managers and associates held at the beginning and end of the year.[28]

New employees learn the Wal-Mart culture by viewing videos about the company's history, completing CBL modules about elements of the culture, and reading the Associate Handbook.[29] Employees in Wal-Mart stores attend a daily meeting held at shift changes, where managers discuss the company culture and employees do the Wal-

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[24]Muzingo depo., p. 97-106.

[25]Muzingo depo., p. 107-108; Scantlin depo., p. 55-57; Seaman depo., p. 71-72; D. Carter depo., p. 35-40; Sherman depo., p. 98-101; Oshier depo., p. 106-108; Wesbecher depo., p. 19-23.

[26]Muzingo depo., p. 114, 117-122, 125-128, 130-135.

[27]Muzingo depo., p. 133-134.

[28]Muzingo depo., p. 86-87; 147-148. Also see M. J. Schneider, "The Wall-Mart Annual Meeting: From Small-Town America to a Global Corporate Culture," *Human Organization*, Vol. 57, 1998, p. 292-299.

[29]Muzingo depo., p. 114-115; Seaman depo., p. 70-71.

Mart cheer.[30] Additional instruction and orientation on the Wal-Mart culture is included as part of the training given to new managers and ongoing training given to managers at all levels of the company.[31] Wal-Mart and Sam's Club managers at the Home Office attend weekly Saturday morning meetings, and the first meeting of the month is devoted to a culture topic.[32] According to Ms. Muzingo, the company's 30(b)6 deponent on corporate culture, the meetings are a deliberate effort to sustain the culture as the company grows:

> I think as a company we recognize as we get larger that we are going to have to work hard to make sure that the culture stays intact. And so we look for lots of ways to do that. And one of them is that you have this large group of people that comes together on a weekly basis and so it's a good opportunity
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> And certainly that audience of people are largely comprised of individuals that travel out to the stores on a weekly basis, and so that's a good way to make sure that they're being trained and exposed to the culture in the hopes that when they go to the stores they also will be training and developing people on the culture.[33]

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[30]Muzingo depo., p. 86-87, 125; Hottinger depo. p. 83-84 and Oshier depo., p. 106-107 (on Sam's Club meetings and the Sam's Club cheer). The "Culture Topic Index" provided to store management states: "It is important for our Associates to understand how important culture is to their company. We have provided you with a culture topic for mandatory weekly discussions with all store Associates on each shift during store meetings." (BATES WMHO598668)

[31]Muzingo depo., p. 142-147.

[32]Muzingo depo., p. 135-142; Butler depo., p. 77-78; Ludwig depo., p. 112-113; Martinez depo., p. 166-168. Also see "Saturday Morning Fever: Wal-Mart's Weekly Meeting," *The Economist*, December 8, 2001.

[33]Muzingo depo., p. 141. Ms. Muzingo went on to explain that one reason experienced managers are included in the meeting is to teach the culture to those who are new to management (Muzingo depo., p. 142).

In sum, consistent with the organizational research on this topic, Wal-Mart's distinctive corporate culture is sustained by focused efforts of the firm through on-going training and socialization, communication specifically designed to reinforce its distinctive elements, promotion from within and relocating managers from store to store, and shared experiences among employees that build commitment to shared beliefs and values. As a result of these efforts, employees achieve a common understanding of the company's ways of conducting business.[34] This can be seen in the way various operational and personnel practices that might otherwise be coordinated solely by written rules enforced from above become part of the company's culture. Examples of these, which are fully understood by nearly all employees, are concepts such as SWAS ("store within a store"), CBWA ("coaching by walking around"), "Grass Roots," "Open Door," "Store of the Community," "Every Day Low Prices," "Ten Foot Rule," "Sun-Down Rule," and "Servant/Leadership."[35]

PATTERNS OF GENDER SEGREGATION AT WAL-MART

At Wal-Mart in 2001, women outnumbered men by nearly two to one in the hourly ranks (65.2% female for Wal-Mart and Sam's combined, Drogin Appendix Table 5a) and men outnumbered women by almost two to one in salaried management positions (33.2% female). At Wal-Mart Stores (Wal-Mart/Supercenter/Neighborhood Markets) in 2001, women's representation among hourly supervisors (78.5% of Team Leaders, job

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[34]Deal and Kennedy, *op cit.*; Ouchi, *op cit.*

code 101) exceeded their representation among hourly salespersons (64.4% of Sales Associates, job code 501; see Exhibit D). Sales Associate is the largest job classification in the company, employing over 200,000 individuals, and there is substantial segregation within that job category. For example, in 2001 women comprised over 90% of those employed as Sales Associates in men's wear, infant/toddlers, health and beauty aids, domestic goods, and ladies sportswear, and less than 25% of those employed as Sales Associates in hardware and in Supercenter food departments such as dairy products, meat, frozen food, and produce (Exhibit D). Few men work in the front-end position of Cashier (job code 501, the second largest job category, with over 150,000 employees), which was 89.5% female in 2001. Not every department is sex segregated; for example, the gender mix is relatively balanced among Sales Associates in automotive (43.6% female), electronics (47.2% female), and candy, tobacco, and cookies (55.4% female).

In store-level supervisory and salaried management positions, women's representation drops with each step up the job hierarchy. Although women outnumber men by nearly four to one among hourly supervisors, in 2001 they comprised only 45.1% of the Support Managers (job code 1050, "team lead"), the highest-level hourly supervisory position (Exhibit D). Moving into salaried management, in 2001 they comprised only 37.6% of Assistant Managers (job code 43000), 21.9% of Co-Managers (job code 41000), and 15.5% of Store Managers (job code 40000).

A similar pattern holds at Sam's Club, but at a somewhat lower level of segregation. In 2001, women comprised 54.1% of hourly employees but only 31.2% of

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[35]Muzingo depo., p. 84-92, 115, 131; Harper depo., p. 291-292; Jarrells-Porter depo., p. 115-116; Kintzele depo., p. 192-193; Dolan depo., p. 132-133; Goodwin depo., p. 48, 214; Wigger depo., p. 129-130, 138; D. Carter depo., p. 222; R. Carter, p. 155-156.

salaried managers (Drogin Appendix Table 5b). Among the hourly ranks, in 2001 women were 71.8% of Cashiers (job code 501, the largest job category, employing over 16,000 individuals). Four of the six largest job categories are highly segregated, either done mostly by women (job code 320, "demo ptnr," 92.7% female in 2001) or mostly by men (job code 300, "shoe mngt," 19.1% female; job code 816, "tire tech," 1.1% female; and job code 530, "cart ptnr," 2.3% female).

The hourly supervisory position at Sam's Club is team lead (job code 910, 39.4% female in 2001). At Sam's Club, an Area Manager is a salaried position below the level of Assistant Manager.[36] The largest Area Manager positions are Front End (job code 43350, 64.8% female in 2001), Bakery (job code 49900, 58.2% female in 2001), Receiving (job code 43360, 34.0% female), and Meat (job code 49950, 8.5% female). Assistant Manager-level positions are Merchandising Manager 1 (job code 43370, 17.3% female in 2001), Merchandising Manager 2 (job code 43380, 16.0% female), and Business Manager (job code 43390, 36.6% female). Men outnumber women by almost four to one among Sam's Club Co-Managers (job code 41200, 22.0% female) and by about 10 to 1 among General Managers (job code 40000, 9.2% female).

Dr. Bendick's benchmarking analysis shows that there is a significant shortfall in women's representation in management at Wal-Mart relative to other companies in the large-chain retail industry. He also shows that the shortfall is consistent over time and across regions of the United States (Bendick Report, p. 16-30). Dr. Drogin's analysis demonstrates that contributing to the shortfall is a consistent gender disparity in rates of promotion into the Support Manager and Area Manager positions, into salaried

management from the hourly ranks, and into the Co-Manager and Store Manager positions (Drogin Appendix Tables 14a to 14h). Dr. Drogin also shows significant compensation disparities by gender among similarly situated men and women (Drogin Appendix Tables 16). Below, I identify some of the personnel policies and practices that contribute to those disparities.

SUBJECTIVE AND DISCRETIONARY FEATURES OF THE WAL-MART PERSONNEL SYSTEM CONTRIBUTE TO GENDER BARRIERS IN PROMOTION AND COMPENSATION

Factors That Create and Minimize Workplace Gender Bias: Findings from Social Science Research

In this section of my report I summarize the scientific literature upon which my opinions are based. In footnotes, I provide citations to sources in peer refereed journals, in important books and edited volumes in relevant fields of social science research, and, whenever possible, to review articles by leading experts who summarize the findings of social science research on gender bias in organizations, stereotypes, and related topics.

Sources of Workplace Gender Bias

Depending on the job, organizational setting, and work environment, there are many reasons why men and women can have different career trajectories. For example, jobs may have job-related skill and experience requirements that differ, on average, between men and women. Gender disparities arising from such factors would not be considered discriminatory, so long as the employer is not responsible for differences in

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[36]Reeves 30(b)6 depo., p. 73-80, 83.

men's and women's qualifications (e.g., by not providing equal access to training). Conversely, employers create gender barriers when they make decisions about individuals' suitability for jobs, training, and support or their compensation based on beliefs about a person's gender rather than on his or her actual qualifications. Employers also create gender barriers when they ignore (or encourage) an organizational climate that is hostile towards women and inhibits them from performing to their full potential. Sometimes, practices that appear to be gender-neutral have the effect of denying to women the same opportunities that are available to men. For example, using employee referrals as a recruitment mechanism is likely to reinforce a workforce's existing gender composition.[37]

One way gender bias affects career outcomes is when stereotypes are allowed to affect personnel decisions. *Gender stereotypes* are beliefs about traits and behaviors that differ between men and women.[38] For example, men are believed to be competitive, aggressive, assertive, strong, and independent, while women are thought to be nurturing, cooperative, supportive, and understanding. Men are assumed to place a high priority on their careers, while women are assumed to be more strongly oriented towards family,

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[37]For a review of relevant research, see P. V. Marsden and E. Gorman, "Social Networks, Job Changes, and Recruitment," p. 467-502 in *Sourcebook on Labor Markets: Evolving Structures and Processes*, edited by I. Berg and A. L. Kalleberg, Plenum Publishing, 2001.

[38]K. Deaux and L. Lewis, "Components of Gender Stereotypes," *Psychological Documents*, Vol. 13, 1983, p. 25-34; K. Deaux and L. Lewis, "The Structure of Gender Stereotypes: Interrelationships Among Components and Gender Label," *Journal of Personality and Social Psychology*, Vol. 46, 1984, p. 991-1004; J. E. Williams and D. L. Best, "Sex Stereotypes and Intergroup Relations," p. 244-259 in *Psychology of Intergroup Relations*, edited by S. Worchel and W. G. Austin, Nelson-Hall, 1986; S. T. Fiske, "Stereotyping, Prejudice, and Discrimination," p. 357-411 in *The Handbook of Social Psychology, Vol. 2 (Fourth Edition)*, edited by D. T. Gilbert, S. T. Fiske, and G. Lindzey, McGraw-Hill, 1998.

even though research demonstrates that the commitments of men and women with similar job opportunities and family situations are virtually identical.[39]

These kinds of stereotypes are relevant to how men and women advance in careers with Wal-Mart. For example, if women are believed to be committed to and constrained by family circumstances, and men are not, women will not be given the same consideration as men for management positions that are believed to interfere with family obligations, especially if there is no reliable and systematic way to assess employees' interests in management positions.

When women perform successfully in male-dominated contexts, their accomplishments are more likely to be attributed to luck, help from others, or special circumstances rather than to their ability, whereas comparable performance by men is more likely to be attributed to their superior skills.[40] Moreover, stereotypical behaviors that are believed to be typical of men are often viewed as *inappropriate* for women. For example, it is less acceptable for a married woman with young children to place a high

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[39]For a review see D. D. Bielby, "Commitment to Work and Family," *Annual Review of Sociology*, Vol. 18, 1992, p. 281-302. Also see 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. 367-390.

[40]For a review of relevant research, see J. K. Swim and L. J. Sanna, "He's Skilled, She's Lucky: A Meta-Analysis of Observers' Attributes for Women's and Men's Successes and Failures," *Personality and Social Psychology Bulletin*, Vol. 22, 1996, p. 507-519. For studies of attribution bias in employment contexts, see J. H. Greenhaus and S. Parasuraman, "Job Performance Attributions and Career Advancement Prospects: An Examination of Gender and Race Effects," *Organizational Behavior and Human Decision Processes*, Vol. 55, 1991, p. 273-297; M. Igbaria and J. Baroudi, "The Impact of Job Performance Evaluations on Career Advancement Prospects: An Examination of Gender Differences in the IS Workplace, *Management Information Systems Quarterly*, Vol. 19, 1995, p. 107-123. Greenhaus and Parasuraman studied managers in three companies in the communications, banking and electronics industries, while Igbaria and Baroudi studied professionals in the field of information systems and data processing. For reviews of social psychological research on attribution biases, see Fiske and S. E. Taylor, *Social Cognition*, Second Edition, McGraw-Hill, 1991, Chapter 3; M. Hewstone, "The 'Ultimate Attribution Error'? A Review of the Literature on Intergroup Causal Attribution," *European Journal of Social Psychology*, Vol. 20, 1990, p. 311-335.

priority on her career than it is for a married man. Similarly, a woman who behaves in an competitive, assertive, and independent manner often elicits disapproval from those around her.[41]

Because of gender stereotypes, individuals tend to ascribe "masculine" traits to men and "feminine" traits to women, and individuals tend to assume that the prevalence of "masculine" traits among women and "feminine" traits among men is rare. A large body of research demonstrates that the tendency to invoke gender stereotypes in making judgments about people is spontaneous and automatic.[42] As a result, people are often unaware of how stereotypes affect their perceptions and behavior, and individuals whose personal beliefs are relatively free of prejudice or bias are susceptible to stereotypes in the same ways as people who hold a personal animosity towards a social group.[43]

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[41]T. W. Smith, "Working Wives and Women's Rights: The Connection Between the Employment Status of Wives and the Feminist Attitudes of Husbands," *Sex Roles*, Vol. 12, 1985, p. 501-508; J. S. Bridges and A. M. Orza, "The Effects of Employment Role and Motive for Employment on the Perceptions of Mothers," *Sex Roles*, Vol. 27, 1992, p. 331-343; A. H. Eagly, M. G. Makhijani, and B. G. Klonsky, "Gender and the Evaluation of Leaders: A Meta-Analysis," *Psychological Bulletin*, Vol. 111, 1992, p. 3-22; M. J. Martinkio and W. L. Gardner, "A Methodological Review of Sex-Related Access Discrimination Problems," *Sex Roles*, Vol. 9, 1983, p. 825-839; C. L. Copeland, J. E. Driskell, and E. Salas, "Gender and Reactions to Dominance," *Journal of Social Behavior and Personality*, Vol. 10, No. 6, 1995, p. 53-68; A. M. Konrad and K. Cannings, "The Effects of Gender Role Congruence and Statistical Discrimination on Managerial Advancement," *Human Relations*, Vol. 50, 1997, p. 1305-1328; A. H. Eagly, and S. J. Karau, "Role Congruity Theory of Prejudice Toward Female Leaders," *Psychological Review*, Vol. 109, 2002, p. 573-598.

[42]See, for example, M. A. Zarate and Eliot R. Smith, "Person Categorization and Stereotyping," *Social Cognition*, Vol. 8, 1990, p. 161-185; M. R. Banaji, C. D. Hardin, and A. J. Rothman, "Implicit Stereotyping in Person Judgment," *Journal of Personality and Social Psychology*, Vol. 65, 1993, p. 272-281; M. A. Zarate and P. Sandoval, "The Effects of Contextual Cues on Making Occupational and Gender Categorizations," *British Journal of Social Psychology*, Vol. 34, 1995, p. 353-362; M. R. Banaji and C. D. Hardin, "Automatic Stereotyping," *Psychological Science*, Vol. 7, 1996, p. 136-141. For a review, see J. A. Bargh and T. L. Chartrand, "The Unbearable Automaticity of Being," *American Psychologist*, Vol. 54, 1999, p. 462-479.

[43]S. T. Fiske and S. E. Taylor, *op cit.*, p. 271-294; R. Brown, *Prejudice*, Blackwell, 1995; G. V. Bodenhausen and C. N. Macrae, "The Self Regulation of Intergroup Perception: Mechanisms and Consequences of Stereotype Suppression," p. 227-253 in *Stereotypes and Stereotyping*, edited by C. N. Macrae, C. Stangor, and M. Hewstone, Guilford Press, 1996; S. T. Fiske, "Stereotyping, Prejudice and Discrimination," p. 357-411 in *Handbook of Social Psychology*, edited by D. T. Gilbert, S.T. Fiske, and G.

In the employment context, career barriers resulting from gender stereotypes and gender bias are likely to be consequential for women working in a traditionally male domains, such as the middle to upper managerial and professional ranks of large corporations, engineering divisions of firms, in the military, and in historically male-dominated industries such as skilled crafts and construction trades.[44] At Wal-Mart,

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Lindzey, McGraw-Hill, 1998; G. V. Bodenhausen, , C. N. Macrae, and J. Garst, "Stereotypes in Thought and Deed: Social Cognitive Origins of Intergroup Discrimination," p. 311-335 in *Intergroup Cognition and Intergroup Behaviors*, edited by C. Sedikides, J. Schopler, and C. A. Insko, Erlbaum, 1998. Both men and women are influenced by gender stereotypes, as can be seen in the findings of focus group and interview study conducted in early 2002 and in many of the company documents regarding diversity. For example, in the focus group and interview study, some respondents mentioned that women had an advantage selling in the long-term care area, in part because of the "nurturing characteristics of the product" (FSCW Report, p. 35). One respondent reported (p.37) that the advantage to a male/female partnership was that "the men are good at numbers; the women provide the caring." It is often assumed that women do differ from men in both how they sell insurance and financial products and how they manage, in the absence of any systematic data that this is indeed the case. All of the relevant social science research cited here shows that when there are differences between men and women on traits relevant to selling and managing, they tend to be small on average, with substantial similarity in how each of these traits is distributed among women and among men.

[44]W. T. Bielby and J. N. Baron, "Men and Women at Work: Sex Segregation and Statistical Discrimination," *American Journal of Sociology* Vol. 91, 1986, p. 759-99; K. Deaux and J. C. Ullman, *Women of Steel: Female Blue-Collar Workers in the Basic Steel Industry*, Praeger, 1983; R. M. Kanter, *Men and Women of the Corporation*, Basic Books, 1977; Eagly *et al.*, *op cit.*; M. J. Martinkio and W. L. Gardner, "A Methodological Review of Sex-Related Access Discrimination Problems," *Sex Roles*, Vol. 9, 1983, p. 825-839; C. M. Jagacinski, "Engineering Careers: Women in a Male-Dominated Field," *Psychology of Women Quarterly*, Vol. 11, 1987, p. 97-110; P. Glick, C. Zion, and C. Nelson, "What Mediates Sex Discrimination in Hiring Decisions?" *Journal of Personality and Social Psychology*, Vol. 55, 1988, p. 178-186; I. Padavic, "The Re-Creation of Gender in a Male Workplace," *Symbolic Interaction*, Vol. 14, 1991, p. 279-294; J. S. McIlwee and J. Gregg Robinson, *Women in Engineering. Gender, Power, and Workplace Culture*, State University of New York Press, 1992; J. Mettrick and G. Cowan, "Gender Stereotypes and Predictions of Performance: Women in Air Combat," *Journal of Social Behavior and Personality*, Vol. 11, 1996, p. 105-120; J. H. Stiehm, *Arms and the Enlisted Woman*, Temple University Press, 1989; R. Hertz, "Guarding Against Women?: Responses of Military Men and Their Wives to Gender Integration," *Journal of Contemporary Ethnography*, Vol. 25, 1996, p. 251-284. A job category is considered male-dominated when men comprise at least eighty to eighty-five percent of the incumbents. For additional research on the bias women face in such settings, conducted in a variety of contexts, see: E. Spangler, M. A. Gordon, and R. Pipkin, "Token Women: An Empirical Test of the Kanter Hypothesis," *American Journal of Sociology*, Vol. 84, 1978, p. 160-170; M. E. Heilman, "The Impact of Situational Factors on Personnel Decisions Concerning Women: Varying the Sex Composition of the Applicant Pool," *Organizational Behavior and Human Performance*, Vol. 26, 1980, p. 386-395; J. Crocker and K. M. McGraw, "What's Good for the Goose is not Good for the Gander: Solo Status as an Obstacle to Occupational Achievement for Males and Females," *American Behavioral Scientist*, Vol. 27, 1982, p. 357-369; P. R. Sackett, C. L. DuBois, and A. W. Noe, "Tokenism in Performance Evaluations: The Effects of Work Group Representation on Male-Female and Black-White Differences in Performance Evaluations," *Journal of Applied Psychology*, Vol. 76, 1991, p. 263-267; J. Rosenberg, H. Perlstadt, and W. R. Phillips, "Now That We Are Here: Discrimination, Disparagement, and Harassment at Work and the Experiences

women comprise a majority of employees overall and about two-thirds of those in hourly positions, but they comprise only about a third of those in salaried management positions, and most higher level management positions have a low representation of women.

A large body of social science research demonstrates that stereotypes are especially likely to influence personnel decisions when they are based on informal, arbitrary, and subjective factors.[45] In such settings, stereotypes can bias assessments of a woman's qualifications, contributions, and advancement potential, because perceptions are shaped by stereotypical beliefs about women generally, not by the actual skills and accomplishments of the person as an individual.[46] In decision-making contexts characterized by arbitrary and subjective criteria and substantial decision-maker

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of Women Lawyers," *Gender & Society*, Vol. 7, 1993, p. 415-433; and J. D. Yoder, "Looking Beyond Numbers: The Effects of Gender Status, Job Prestige, and Occupational Gender-Typing on Tokenism Processes," *Social Psychology Quarterly*, Vol. 57, 1994, p. 150-159.

[45]For a review, see American Psychological Association, "In the Supreme Court of the United States: Price Waterhouse v. Ann B. Hopkins: Amicus Curiae Brief for The American Psychological Association," *American Psychologist*, Vol. 46, 1991, p. 1061-1070. Also see V. F. Nieva and B. A. Gutek, "Sex Effects on Evaluation," *Academy of Management Review*, Vol. 5, 1980, p. 267-275 (especially pages 270-274); D. N. Bersoff, "In the Supreme Court of the United States: Clara Watson v. Fort Worth Bank & Trust, Amicus Curiae Brief for the American Psychological Association" (reprinted in *American Psychologist*, Vol. 43, 1988, p. 1019-1028); Messick and Mackie, "Intergroup Relations," *Annual Review of Psychology*, Vol. 40, 1989, p. 49-50; Fiske and Taylor, *op cit.* (especially Chapter 9, "Social Inference"); L. H. Krieger, "The Contents of our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity," *Stanford Law Review*, Vol. 47, 1995, p. 1161-248; B. F. Reskin, *The Realities of Affirmative Action in Employment*, American Sociological Association, 1998; W. T. Bielby, "Minimizing Workplace Gender and Racial Bias," *Contemporary Sociology*, Vol. 29, 2000, p. 120-129.

[46]For review articles on gender bias in evaluation, see Nieva and Gutek, *op cit.* and R. Kalin and D. C. Hodgins, "Sex Bias and Occupational Suitability," *Canadian Journal of Behavioral Science*, Vol. 16, 1984, p. 311-325. Examples of studies of gender bias in assessments of qualifications, performance and promotion potential include: G. L. Gerber, "The More Positive Evaluation of Men Than Women on the Gender-Stereotyped Traits," *Psychological Reports*, Vol. 65, 1989, p. 275-286; G. H. Dobbins, R. L. Cardy, and D. M. Truxillo, "The Effects of Purpose of Appraisal and Individual Differences in Stereotypes of Women on Sex Differences in Performance Ratings: A Laboratory and Field Study," *Journal of Applied Psychology*, Vol. 71, 1988, p. 551-558; T. H. Shore, "Subtle Gender Bias in the Assessment of Managerial Potential," *Sex Roles*, Vol. 27, 1992, p. 499-515; M. Foschi, L. Lai, and K. Sigerson, "Gender and Double Standards in the Assessment of Job Applicants," *Social Psychology Quarterly*, Vol. 57, 1994, 326-339; J. Landau, "The Relationship of Race and Gender to Managers' Ratings of Promotion Potential," *Journal of Organizational Behavior*, Vol. 16, 1995, p. 391-400.

discretion, individuals tend to seek out and retain stereotyping-confirming information and ignore or minimize information that defies stereotypes.[47]

Social research establishes clearly that the historical representation of women in a job has a substantial impact on compensation and other job rewards, mobility prospects, and workplace culture.[48] In retailing, management has historically been viewed as "men's work" while women were viewed as appropriate for cashier and clerk positions. Wal-Mart's founder, Sam Walton, described the traditional view of men's and women's roles in the industry as follows:

> In the old days, retailers felt the same way about women that they did about college boys, only more so. In addition to thinking women weren't free to move, they didn't think women could handle anything but the clerk jobs because the managers usually did so much of the physical labor -- unloading trucks and

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[47]This kind of biased information-processing has been examined and replicated in numerous experimental studies. See, for example, Banaji, Hardin, and Rothman, *op cit.*; Banaji and Hardin, *op cit.*; J. Crocker, D. B. Hannah, and R. Weber, "Person Memory and Causal Attributions," *Journal of Personality and Social Psychology*, Vol. 44, 1983, p. 55-66; S. M. Belmore, "Determinants of Attention During Impression Formation," *Journal of Experimental Psychology: Learning, Memory, and Cognition*, Vol. 13, 1987, p. 480-489; M. Schaller, "Social Categorization and the Formation of Group Stereotypes: Further Evidence for Biased Information Processing in the Perception of Group-Behavior Correlations," *European Journal of Social Psychology*, Vol. 21, 1991, p. 25-35; T. E. Ford and C. Stangor, "The Role of Diagnosticity in Stereotype Formation: Perceiving Group means and Variances," *Journal of Personality and Social Psychology*, Vol. 63, 1992, p. 356-367; C. N. Macrae, A. B. Milne, and G. V. Bodenhausen, "Stereotypes as Energy-Saving Devices: A Peek Inside the Cognitive Toolbox," *Journal of Personality and Social Psychology*, Vol. 66, 1994, p. 921-935; C. N. Macrae, C. Stangor, and A. B. Milne, "Activating Social Stereotypes: A Functional Analysis," *Journal of Experimental Social Psychology*, Vol. 23, 1994, p. 370-389; L. C. Johnston and C. N. Macrae, "Changing Social Stereotypes: The Case of the Information Seeker," *European Journal of Social Psychology*, Vol. 24, 1994, p. 356-367; M. Zuckerman, C. R. Knee, K. Miyake, and H. S. Hodgins, "Hypothesis Confirmation: The Joint Effect of Positive Test Strategy and Acquiescence Response Set," *Journal of Personality and Social Psychology*, Vol. 68, 1995, p. 52-60. For reviews, see Brown, *op cit.* and *Fiske, op cit.*

[48]P. England, *Comparable Worth: Theories and Evidence,* Aldine de Gruyter, 1992; B. F. Reskin, D. B. McBrier, and J. A. Kmec, "The Determinants and Consequences of Workplace Race and Sex Composition," *Annual Review of Sociology*, Vol. 25, 1999, p. 335-361.

hauling merchandise out of the stockroom on a two-wheeler, mopping the floors and cleaning the windows if necessary.[49]

Experimental studies on stereotyping show that male and female job applicants with identical personal traits are matched according to their gender to jobs that are considered predominantly-male and predominantly-female.[50] And studies done in both experimental and natural settings demonstrate the impact of "sex role spillover," whereby gender-linked traits associated with male-dominated occupations can profoundly affect the working climate for women.[51]

A large body of research in industrial sociology, dating back to the 1950s, shows that individuals who find their opportunities for advancement blocked respond by lowering their goals and aspirations, and by lowering their commitment to their work compared to others with more promising career prospects.[52]

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[49] S. Walton with J. Huey, *Sam Walton: Made in America*, My Story, Bantam Books, 1992, p. 218. Mr. Walton continued: "Nowadays, the industry has waked up to the fact that women make great retailers. So we at Wal-Mart, along with everybody else, have to do everything we possibly can to recruit and attract women." As I show below, one of the innovations supported by Mr. Walton to recruit women into management, the Resident Assistant Manager program, has been largely ignored in the years since his death.

[50] Glick et al., *op cit.*

[51] Gutek and B. Morasch, "Sex Ratios, Sex-Role Spillover, and Sexual Harassment of Women at Work," *Journal of Social Issues*, Vol. 38, 1982, p. 55-74; B. Gutek, *Sex and the Workplace*, Jossey-Bass, 1985; D. Burgess and E. Borgida, "Sexual Harassment: An Experimental Test of Sex-Role Spillover Theory," *Personality and Social Psychology Bulletin*, Vol. 23, 1997, p. 63-75.

[52] R. Guest, "Work Careers and Aspiration of Automobile Workers," *American Sociological Review*, Vol. 19, 1954, p. 155-63; E. Chinoy, *Automobile Workers and The American Dream*, Doubleday 1955; T. V. Purcell, *Blue Collar Man: Patterns of Dual Allegiance in Industry*, Harvard University Press, 1960; R. Blauner, *Alienation and Freedom*, University of Chicago Press, 1964; O. Grusky, "Career Mobility and Organizational Commitment," *Administrative Science Quarterly*, Vol. 10, 1966, p. 489-502; Kanter, *op cit.*; J. A. Jacobs, *Revolving Doors: Sex Segregation and Women's Careers*, Stanford University Press, 1989; and K. Loscocco, "Reactions to Blue-Collar Work: A Comparison of Men and Women," *Work and Occupations*, Vol. 17, 1990, p. 152-177; L. M. Shore and S. J. Wayne, "Commitment and Employee Behavior: Comparison of Affective Commitment and Continuance Commitment with Perceived Organizational Support," *Journal of Applied Psychology*, Vol. 78, 1993, p. 774-780; J. E.

Discretionary and Subjective Procedures for Making Decisions that Affect Promotion and Compensation

Managers Have Substantial Discretion on Criteria Used to Make Promotion and Compensation Decisions

Written guidelines for promotion are not absent in the Wal-Mart Personnel System. However, the materials I have reviewed indicate that: (1) written guidelines provide only minimum criteria for advancement, and managers can and do add additional criteria at their own discretion; (2) managers are able to modify or disregard written guidelines at their own discretion; and (3) there is little monitoring or oversight regarding how managers exercise their discretion in making promotion decisions.

Deponents ranging from store managers to top operations executives testified that there are no written criteria for selecting hourly associates for promotion into management or for promotions into Co-Manager or Store Manager positions, beyond the minimum requirements. They also testified that managers who make those selections have discretion to devise their own criteria, with no monitoring or oversight over how those criteria are devised or applied.[53]

Wallace, "Organizational and Professional Commitment in Professional and Nonprofessional Organizations," *Administrative Science Quarterly*, Vol. 40, 1995, p. 228-255; R. P. Settoon, N. Bennett, and R. C. Liden, "Social Exchange in Organizations: Perceived Organizational Support, Leader-Member Exchange, and Employee Reciprocity," *Journal of Applied Psychology*, Vol. 81, 1996, p. 219-227. For reviews, see W. T. Markham, S. L. Harlan, and E. J. Hackett, "Promotion Opportunity in Organizations: Causes and Consequences," *Research in Personnel and Human Resource Management*, Vol. 5, 1987, p. 223-87 and D. D. Bielby, "Commitment to Work and Family," *Annual Review of Sociology*, Vol. 18, 1992, p. 281-302.

[53]See, for example the testimony of the following Division 1 managers: Harris (former Executive Vice President, Operations) depo., p. 82-84, 213, 223-233; Haworth (Executive Vice President, Operations), p. 90-92; Pharr (Divisional Sr. Vice President) depo., p. 174-175; Schwindt (Divisional Sr. Vice President) depo., p. 132-139, 195-196; Maines (Regional Vice President) depo., p. 206-208; Williams (Regional Vice President) depo., p. 168-172; Ludwig (District Manager) depo., p. 149-151; Kintzele (District Manager) depo., p. 46-47; Raps (Store Manager) depo., p. 125-128; Harper depo., p. 212-214. Store Manager Jesse James Brown testified that during his years in management at Wal-Mart, he has never

Wal-Mart managers gave similar testimony about promotion to hourly supervisory positions such as Support Manager. Company guidelines specify minimum criteria based on discipline, tenure, and performance evaluations, however there is no other written policy or guideline specifying the criteria to be used to select among candidates who meet the minimum criteria. Store managers are allowed to consider other factors and apply other criteria, and it is left to their discretion to devise and apply them.[54] For example, Store Manager Arturo Mireles testified that he was aware of no written criteria to be used in making decisions about promotion to Department Manager or Support Manager. His practice was to rely on a range of unwritten criteria, including subjective factors such as teamwork, ethics, integrity, ability to get along with others, and willingness to volunteer to come in to assist in the store or at another store outside of regular work hours.[55] While factors like these might have common sense appeal and some might in fact be appropriate to consider in making promotion decisions, assessments will be biased unless they are assessed in a systematic and valid manner, with clear criteria and careful attention to the integrity of the decision-making process.[56]

The same kind of discretion is allowed in decisions about compensation for hourly employees. For example, in Division 1, each job is categorized into one of five

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been overruled by anyone in higher-level management for any personnel decision (Brown depo., p. 299). Mr. Harper testified that there is no written policy governing exceptions to the guidelines, that there is no system in place or analysis conducted to assess whether the guidelines are followed, and that no exception report is generated for promotion decisions regarding selection into management trainee and high level management positions (Harper depo., p. 212-215, 224-225).

[54]Harper depo., p. 142-145; Harris depo., p. 210-213.

[55]Mireles depo., p. 155-159, 180-182.

[56]R. D. Gatewood and H. S. Field, *Human Resource Selection*, Third Edition, Dryden Press, 1994; and H. G. Heneman, III, R. L. Heneman, and T. A. Judge *Staffing Organizations*, Second Edition, Mendota House and Richard D. Irwin, 1997.

job classifications, each with its own hourly starting rate. However, according to company policy the Store Manager can pay up to two dollars an hour above the stated rate, based on his or her assessment of factors such as previous pay and experience. There is no company guideline and no training on when and how to adjust pay upwards, and while overall payroll is monitored, there is no monitoring of these individual adjustments.[57] In fact, at the Store Manager's discretion, a new employee can be paid more than two dollars above the specified start rate, and in such instances no exception report is generated.[58]

Annual pay increases in Division One are tied to performance evaluation ratings, with a percentage increase guideline specified by the Home Office. A Store Manager can give a raise larger than the specified amount at his or her own discretion. In addition, employees can be given merit increases for "exceptional performance." The company guideline is that a merit increase of four or five percent can be given no more than once per year, and it cannot be granted within 90 days of an annual performance increase or raise due to a promotion.[59] However, there is no guideline for assessing "exceptional performance" and no monitoring of the number of people who receive increases and how frequently they are given to any specific employee.[60] Managers can and do give merit raises more than once per year.[61]

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[57]Shatz depo., p. 66-72; Harper depo., p. 15-19; FYE 2003 Field Non-Exempt Associate Pay Guidelines, p. 5 (BATES WMHO366905).

[58]Shatz depo., p. 66-67.

[59]Harper depo., p. 51; FYE 2003 Field Non-Exempt Associate Pay Guidelines, p. 10 (BATES WMHO366910); Scantlin depo., p. 91.

[60]Arnold depo., p. 149-150; Harper depo., p. 51-55; Seaman depo., p. 253; Shatz depo., p. 82, 86-89. Company guidelines also specify a shift differential of fifty cents, with District Manager approval

Availability and Interest in Advancement is Not Assessed Systematically for Promotion into Management

Consistent and systematic job posting is an effective way to determine who is interested in and available for promotion to higher-level positions. An effective system also communicates clear and accurate information to employees about the training and experience required to become eligible for a job, about job conditions, and about how the job fits into a career path in the organization.[62] Wal-Mart People Division Vice President Harper agreed that the company benefits from posting, by allowing people to show interest in a position. He added: "I think anytime you get the right candidate into the right job, the success of that person would certainly reflect in the performance of their area of responsibility." He agreed that posting benefits employees by giving them "an opportunity for promotion or an opportunity for diversifying their career by being able to work in different parts of the store."[63] Coleman Peterson, the Executive Vice President

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required for any differential over that amount (Pay Guidelines, p. 9). However, Mr. Shatz, who pays a one dollar differential in his store, testified that he did so without District Manager Approval and that he has never sought approval from a District Manager for any pay adjustment he has given (Shatz depo., p. 84-85).

[61] Shatz depo., p. 105-106; Ellison depo., p. 266-267; Raps depo., p. 256-250. District Manager Bernard Seaman was not aware of any guidelines about how to make decisions about merit raises or when merit raises should be given (Seaman depo., p. 253, 258-259).

[62] Heneman, Heneman, and Judge *op cit.*; L. S. Kleiman and K. J. Clark, "An Effective Job Posting System," *Personnel Journal*, Vol. 63 (February), 1984, p. 20-25; J. Z. Levine, "Job Posting Practices," *Personnel*, Vol. 61 (November/December), 1994, p. 48-52; W. Markham, S. Harlan, and E. Hackett, "Promotional Opportunity in Organizations: Causes and Consequences," p. 223-287 in *Research in Personnel and Human Resources Management*, edited by K. Rowland and G. Ferris, Jai Press, 1987; J.P. Rudin and J. W. Boudreau, "Information Acquisition in Promotion Decisions," *Human Relations*, Vol. 49, 1996, p. 313-325.

[63] Harper depo., p. 116-117. Also see Harper depo., p. 153-154. Similarly, former People Division Vice President Andrew Wilson testified that posting of hourly positions was done so that employees in stores that might have as many as six hundred employees could become aware of which positions were available. He testified that it was the company's view that "it would encourage our associates to be able to know the jobs that were open and be able to apply for those jobs" (Wilson depo., p. 133-134).

of the company's People Division, gave similar testimony: "Job posting ensures the company that it is able to attract and identify as many talented people as possible for jobs that are needed and for the individuals it provides an opportunity to apply for positions in the company that can allow them to move forward in their careers."[64] Mr. Peterson, who has been an advocate for the adoption of posting policies at the company, has also testified about their impact on workplace fairness. He testified that posting reduces litigation expenses because it affects "the fairness of how people get picked for jobs." According to Mr. Coleman: "People understand where the jobs are and they understand what it is you need to do to qualify for the jobs."[65] The testimony of these two executives from the company's People Division is consistent with the professional literature on human resources policy. Unfortunately, Wal-Mart's posting systems do not meet the criteria of effective and fair policy and practice. Wal-Mart has separate posting systems for hourly and management positions, and each has identifiable deficiencies that make them vulnerable to bias.

Current company policy specifies that openings for hourly supervisory positions are to be posted within the store where the opening occurs. Online, computerized posting began in the late1990s; prior to that there was paper posting of some positions.[66]

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[64]Peterson depo., p. 162.

[65]Peterson depo., p. 166-167. Similarly, People Director Bob Monfils testified that posting of open District Manager and Store Manager positions helps ensure that the most qualified individuals apply for and are selected for these positions and allows all employees to feel they have a fair chance to apply (Monfils depo., p. 141-142).

[66]Wilson depo., p. 133-134; Peterson depo., p. 157-158; Weaver depo., p. 52-55 (paper posting of department manager lead and office supervisor positions in stores where she worked). Posting of hourly positions at Sam's Club began in approximately 1999 (Haworth depo., p. 50-51). Prior to the posting policy, one way openings were filled was for a manager to approach an employee considered to be a good performer and ask that person if he or she wanted the position (Weaver depo., p. 56-57).

However, under current policy, Store Managers have the authority to choose not to post a position. There are no written guidelines regarding when to depart from the posting policy, and there is no monitoring or review of exceptions to posting of hourly positions.[67] Store managers also have authority to waive minimum requirements regarding time in current position and coachings, and there are no guidelines specifying when this is appropriate.[68] In addition, there is no requirement to post openings that are filled by lateral moves, so, for example, a manager can choose not to post an open supervisory position and instead informally approach an existing supervisor and ask that person if he or she would like the position.[69]

Prior to 1998, management positions in Division 1 were not posted. Since then, posting of Store Manager, District Manager, and some other positions has been done via the computerized Management Career Selection ("MCS") system, although an employee needs the approval of his or her District Manager before applying via the MCS system.[70] Co-Manager, Assistant Store Manager, and Management Trainee positions are generally not posted.[71] As with hourly promotions, the Regional Personnel Managers have

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[67]Harper depo., p. 118-119; Haworth depo., p. 88; Harris depo., p. 174-175. Mr. Harper was not aware of any analysis by the company on the frequency with which Store Managers depart form the posting policy. He testified that he was aware that complaints about lack of posting is one of the allegations in this litigation, and to his knowledge no effort has been made to find out if it is true (Harper depo., p. 119-120).

[68]Harper depo., p. 122-124.

[69]Weaver depo, p. 91-92. Under the policy, the position vacated by that supervisor would be posted (Weaver depo., p. 112).

[70]Kintzele depo., p. 40; Peterson depo., p. 157-158; Management Career Selection Guide (BATES WMHO217238-217240). A limited test posting program for management trainees was tried for one week in January 2003 (Haworth depo., p. 49-50).

[71]Harper depo., p. 160-163; Kintzele depo., p. 41-42; Peterson depo., p. 160-161; Monfils depo., p. 145-146; Mitchell depo., p. 161-163, 169-170; Butler depo., p. 171; Martinez depo., p. 157-158;

discretion to depart from the policy on posting management positions, although there is no written policy on when that is appropriate.[72] An exception report shows whether or not a position was posted and how long it took to fill a position, but no record is made of reasons for exceptions to the posting policy, and no statistical summary is complied regarding exceptions to the posting policy.[73] At Sam's Club, management positions are not posted, and on-line posting of management trainee positions began just recently, in early January of 2003.[74]

The company's practice of requiring relocation across stores in order to move into salaried management positions makes the promotion process especially vulnerable to gender stereotyping. While it may indeed be the case that, on average, more women than men face family constraints that limit their ability to relocate for a management position, stereotypes lead people to act on an assumptions that overstate the extent to which that is true.. The absence of a systematic mechanism for determining which employees are available for and interested in promotion from the hourly ranks into management is especially problematic in this context. In the absence of systematic, reliable, and timely information on the interests and availability of individual men and women, stereotypes about women's and men's family commitments and constraints will lead decision-makers

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Scantlin depo., p. 141, 145; Seaman depo., p. 148. According to the July 2000 version of the MCS Training Manual, Co-Manager and Assistant Manager positions in Division 1 "may be posted on an exception only basis" with prior approval from the RPM's People Director (BATES WMHO349584; Monfils depo., p. 150-152). Mr. Harper testified that he did not know why Store Manager and hourly promotions were posted, but management trainee positions were not. He was not aware of any discussions in the company about why this is the case, outside of discussions with attorneys (Harper depo., p. 180-181).

[72]Harper depo., p. 151-153, 155-157.

[73]Harper depo, p. 157-160; Mitchell depo., p. 153-159.

to overlook or discount the availability of qualified women who want to advance into the salaried ranks. Similarly, District Managers who must give there approval before a salaried employee responds to a posting under the MCS system are likely to be influenced by stereotypes in the same way.

Lack of clarity in the relocation requirements associated with promotion to salaried management positions is likely to discourage some women from seeking promotions. Managers consistently testify that hourly employees usually move to a different store when they become management trainees and are promoted to Assistant Store Manager positions, and promotion to Co-Manager and Store Manager almost always involves relocation as well.[75] Less consistent is testimony about whether an employee must be able and willing to relocate their place of residence in order to be considered for a management position. For example, in District Manager Daniel Carter's district in Northern California, employees applying for the Management Training program have been asked to certify in writing that they are willing to transfer "to any location within the Wal-Mart trading area" to receive training and again at the completion of training.[76] Former Regional Vice President John Butler required Co-Managers to be willing to relocate "whenever and wherever we need them."[77] Similarly, Store Manager Bernard Seaman emphasizes the relocation requirements of the Management Training program when speaking to hourly employees who express interest:

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[74]Grimm depo., p. 232-233; Haworth depo., p. 56-57; Reeves depo., p. 159-160; Spragg depo., p. 182-183.

[75]Mains depo., p. 196-197; Reeves depo., p. 156-157; Drogin Report, Table 16.

[76]D. Carter depo., p. 260-264.

[77]Butler depo., p. 155-156.

Q. What do you tell that employee about the scope of that relocation requirement?

A. I say, you realize you could be relocated, and it could mean from -- in my case now, Seattle, I always use the example you could be in Texas, you could go to Maine, or, in my case, you get a call one day from Los Angeles and three weeks later you're in Seattle. So I kind of use my own experience. I throw that at them (Seaman depo., p. 349-350)

In contrast, other managers testify that ability and willingness to relocate one's place of residence is not an absolute requirement for promotion, although moving from one store to another usually is required.[78] As recently as June, 2002, People Division Vice President Harper determined that it was important to remind Regional Personnel Managers that ability to relocate was not a mandatory requirement for promotion.[79] It is likely that hourly department heads considering a career in salaried management or Assistant Managers considering higher-level salaried positions may well be receiving mixed messages about whether they are required to indicate a willingness to relocate to any area of Wal-Mart's operations in order to be given serious consideration for a promotion. An individual who is not able to make that commitment is likely to be discouraged by the apparent emphasis on relocation, even when a move to a new store within a district or region would be possible.

Wal-Mart's founder, Sam Walton, recognized that the emphasis on relocation could work to the disadvantage of talented women who are qualified for management

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[78]Harris depo., p. 233-236; Harper depo., p. 233-234, 238-242.

[79]Harper depo., p. 247-249.

positions and that the business case for the emphasis on relocation might be overstated. In his autobiography, he discussed the original management philosophy, that one had to be ready to relocate on a moment's notice to move into management, and his views of the shortcomings of that approach:

> Maybe that was necessary back in the old days, and maybe it was more rigid than it needed to be. Now, though, it's not really appropriate anymore for several reasons. First, as the company grows bigger, we need to find more ways to stay in touch with the communities where we operate, and one of the best ways to do that is by hiring locally, developing managers locally, and letting them have a career in their home community--if they perform. Second, the old way really put good, smart women at a disadvantage in our company because at the time they weren't as free to pick up and move as many men were. Now I've seen the light on the opportunities we missed out on with women.[80]

To open more opportunities for women in management, Mr. Walton was a strong supporter of the Resident Assistant Manager program. In the late 1980s, Wal-Mart implemented and later formalized a policy creating the position of Resident Assistant Manager for individuals who were eligible to be Assistant Managers but not able to relocate.[81] Resident Assistant Managers were eligible to move into a Co-Manager position without relocating.[82] According to Executive Vice President of Operations Jim Haworth, the program was phased out, although some Assistant Managers have been

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[80]Walton op cit., p. 217-218.

[81]Haworth depo., p. 97-98; Curran depo., p. 24-25, 27.

[82]Curran depo., p. 25-26.

"grandfathered" into the program, and it is being "tested" in some areas currently. Mr. Harper testified that the program still exists, but with little participation and only on an "as requested" basis.[83] Former Regional Vice President John Butler said that he was "vaguely" aware of the program, Store Manager Bernard Seaman testified that he just recently learned of the program, and Store Manager Jesse James Brown had heard of the program but did not know if it applied to his store.[84] Don Harris and Jim Haworth, the former and current Executive Vice Presidents of Operations, each testified that they were unaware of any plans to expand the program.[85] And while Resident Assistant Managers are eligible for promotion, Wal-Mart Stores Chief Executive Officer Thomas Coughlin testified that he was not aware of anyone being promoted from that position.[86] In sum, this program, originally implemented in part to create more management opportunities for women, appears to have little effect anymore as a route to management for employees who have personal or family commitments that tie them to a specific community geographic region.

WAL-MART'S DIVERSITY EFFORTS ARE INADEQUATE FOR ELIMINATING BARRIERS TO WOMEN'S CAREER ADVANCEMENT

Organizational policies and practices that create barriers to career advancement for women and minorities, once in place, become institutionalized and rarely change in

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[83]Harper depo., p. 242-243.

[84]Butler depo., p. ; Seaman depo., p. 354-355; Brown depo., p. 226-228.

[85]Harris depo., p. 238-239; Haworth depo., p. 100; also see Jarrells Porter depo., p. 246.

the absence of any substantial change in a firm's business, technical, or legal environment.[87] This is especially true of personnel practices and policies that are reinforced by the firm's culture.[88] However, gender bias in the workplace is by no means inevitable, and social science research shows what kinds of policies and practices effectively minimize bias.

Through deliberate efforts, the effects of stereotypes can be controlled.[89] Research studies show that the effects of stereotypes and outgroup bias on evaluative judgments such as those involved in recruitment, hiring, job assignment, promotion, and assessments of skills and qualifications can be minimized when decision-makers know that they will be held accountable for the criteria used to make decisions, for the accuracy of the information upon which the decisions are based, and for the consequences their

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[86]Coughlin depo., p. 157-158.

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

[88]P. Doeringer and M. Piore, *Internal Labor Markets and Manpower Analysis*, D. C. Heath, 1971

[89]P. G. Devine, "Stereotypes and Prejudice: Their Automatic and Controlled Components," *Journal of Personality and Social Psychology*, Vol. 56, 1989; S. T. Fiske, M. Lin, and S. L. Neuberg, "The Continuum Model: Ten Years Later," p. 231-54 in *Dual Process Theories in Social Psychology*, edited by S. Chaiken and Y. Trope, Guilford Press, 1999.

actions have for equal employment opportunity.[90] However, as I described above, at Wal-Mart, personnel decisions regarding promotion and hourly compensation rely significantly on discretionary and subjective criteria, with little monitoring and oversight.

Formal written policies alone are not sufficient to minimize bias in personnel decisions. A written equal employment opportunity ("EEO") policy that is simply reactive and lacks effective accountability is vulnerable to bias against women and minorities. Often, such a system constitutes what social scientists call symbolic compliance: an exercise in "going through the motions," with little substantive impact on creating a work environment that is free of bias.[91] True "EEO accountability" has three

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[90]T. E. Nelson, M. Acker and M. Manis, "Irrepressible Stereotypes," *Journal of Experimental Social Psychology*, Vol. 32, 1996, p. 13-38; J. L. Eberhardt and S. T. Fiske, "Motivating Individuals to Change: What Is a Target to Do?" p. 369-415 in *Stereotypes and Stereotyping*, edited by C. N. Macrae, C. Stangor, and M. Hewstone, Guilford Press, 1996; A. M. Konrad and F. Linnehan, "Formalized HRM Structures: Coordinating Equal Employment Opportunity or Concealing Organizational Practices?" *Academy of Management Journal*, Vol. 38, 1995, p. 787-829; T. F. Pettigrew and J. Martin, "Shaping the Organizational Context for Black American Inclusion," *Journal of Social Issues*, Vol. 43, 1987, p. 41-78; G. R. Salancik and J. Pfeffer, "Uncertainty, Secrecy, and the Choice of Similar Others," *Social Psychology*, Vol. 41, 1978, p. 246-55; C. T. Schreiber, K. F. Price, and A. Morrison, "Workforce Diversity and the Glass Ceiling: Practices, Barriers, Possibilities," *Human Resource Planning*, Vol. 16, 1993, p. 51-69; P. E. Tetlock, "Accountability: The Neglected Social Context of Judgment and Choice," p. 297-332 in *Research in Organizational Behavior*, Vol. 7, edited by L. L. Cummings and B. M. Staw, Jai Press, 1985; P. E. Tetlock and J. I. Kim, "Accountability and Judgment Processes in a Personality Prediction Task," *Journal of Personality and Social Psychology*, Vol. 52, 1987, p. 700-709; P. E. Tetlock, "The Impact of Accountability on Judgment and Choice: Toward a Social Contingency Model," *Advances in Experimental Social Psychology*, Vol. 25, 1992, p. 331-376; Reskin, *op cit.*; P. M. Tetlock and M. Lerner, "The Social Contingency Model: Identifying Empirical and Normative Boundary Conditions on the Error-and-Bias Portrait of Human Nature," p. 571-585 in *Dual Process Theories in Social Psychology*, edited by S. Chaiken and Y. Trope, Guilford Press, 1999; W. Bielby, 2000, *op cit.* To see how human resource professionals apply these principles in the design of personnel systems, Gatewood and Field, *op cit.*; and Heneman, Heneman, and Judge *op cit.*

[91]L. B. Edelman, "Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law," *American Journal of Sociology*, Vol. 97, 1992, p. 1531-1576; L. B. Edelman, S. Patterson, E. Chambliss, and H. S. Erlanger, "Legal Ambiguity and the Politics of Compliance: Affirmative Action Officers' Dilemma," *Law and Policy*, Vol. 13, 1991, p. 73-97; L. B. Edelman, H. S. Erlanger, and J. Lande, "Employers' Handling of Discrimination Complaints: The Transformation of Rights in the Workplace," *Law & Society Review*, Vol. 27, 1993, p. 497-534; L. B. Edelman, Lauren B. and S. Petterson, "Symbols and Substance in Organizational Response to Civil Rights Law," in *Research in Social Stratification and Mobility*, 1999; 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, 1995, p. 3-26; J. S. Leonard,

key elements: (1) monitoring and analysis of disparities in career trajectories; (2) systematic evaluation of managers on their contributions to the firms' goals regarding diversity and equal employment opportunity; and (3) monitoring and analysis of employees' perceptions of discriminatory barriers and career opportunities.[92] Below, I assess the effectiveness of Wal-Mart's policies and practices on each of these dimensions.

Monitoring of Gender Disparities

Effective EEO policy includes the regular monitoring and analysis of patterns of segregation and differences by gender and race in pay and career advancement as a routine part of an organization's personnel system. Such monitoring is used to assess whether disparities are greater than what plausibly might be expected based on differences in job-related knowledge, skills, abilities, interests, availability and other job-related factors that influence an employee's contributions to the organization.

Gender composition in Wal-Mart jobs is tracked in several reports. Kevin Harper, Vice President of the People Division reviews the monthly People P & L report and a quarterly People Update reporting the gender composition of Wal-Mart's hourly workforce and salaried management. A quarterly Diversity Report Card compiles regional People P & L statistics in a single report.[93] However, statistics on gender composition are not analyzed to assess factors that could account for the disparity in women's representation among salaried management positions compared to the representation in the hourly workforce and in hourly department head positions.

"Women and Affirmative Action," *Journal of Economic Perspectives*, Vol. 3 (No. 1), 1989, p. 61-75. Also see J. S. Leonard, *Use of Enforcement Techniques in Eliminating Glass Ceiling Barriers*, Report prepared for the U. S. Department of Labor, Glass Ceiling Commission, April 1994.

[92]W. Bielby, 2000, *op cit.*

Managers testified consistently that they did not believe that women were less qualified than men for management positions in the company, and Wal-Mart has taken a similar position in its responses to plaintiffs' interrogatories.[94] Yet there have been no attempts to explain, for example, why it is that women in Division 1 represent more than three quarters of all hourly department heads but only 38% of Assistant Managers.[95] Nor is there any regular monitoring of gender disparities in compensation among hourly or managerial employees.[96] In addition, there have been no studies of whether women are less interested than men in management positions.[97] In sum, Wal-Mart's policies and practices regarding equal employment opportunity include no systematic assessment of disparities by gender in pay, promotion, and other career outcomes designed to identify possible discriminatory barriers and remedy them.

Evaluation of Managers on Contributions to Company EEO and Diversity Objectives

The second component of EEO accountability is explicit evaluation of managers and supervisors on their contributions to an organization's EEO objectives. Nearly all medium- to large-scale organizations have a written antidiscrimination policy. Many

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[93]Harper depo., p. 273-280; Ruiz depo., p. 170.

[94]For example, see Haworth depo., p. 109-110; Bosler depo., p. 120; Butler depo., p. 200-201; Curan depo., p. 100; Harris depo., p. 85; Kintzele depo., p. 188; Ludwig depo., p. 237-237; Martinez depo., p. 265-266; Perkins depo., p. 84; Schaffner depo., p. 157; Defendant's Supplemental Objections and Answers to Plaintiffs' First and Second Sets of Interrogatories, p. 7.

[95]Harper depo., p. 304-305; Jarrells Porter depo., p. 242-249; Haworth depo., p. 113; Harris depo., p. 95.

[96]Coughlin depo., p. 121-123; Harris depo., p. 175-178; Harper depo., p. 37, 88-93 (on one study of gender differences in base pay among managers), 100; Haworth depo., p. 177-178; Schwindt depo., p. 265; Shatz depo., p. 115.

have a written policy stating that implementing the objectives of the Affirmative Action Plan is the responsibility of every employee, a statement often repeated by top executives. However, such policies are merely symbolic unless they also delineate explicit duties and responsibilities relating to equal employment opportunity in each manager's or supervisor's job description, which can then be related to specific evaluative dimensions in the performance reviews of those employees.

One way of evaluating managers' contributions is to establish numerical goals and assess managers on progress towards achieving those goals. At Wal-Mart, goals have been established for women's representation in management, and diversity has been added to the "people" dimension of managers' performance evaluation. However, the numerical goals themselves are not based on any assessment of women's representation among those qualified and available for salaried management positions and the rate at which women would be expected to move into those positions absent any barriers to equal employment opportunity. Instead, Wal-Mart's goals for women's representation are based on the principle that they should reflect the "community" (i.e. roughly 50%), without any regard to gender composition of the relevant applicant pools.[98] In fact, the goals themselves are established in an ad hoc manner, without any guidelines. For example, in Division 1 since 2000, District Managers have devised their own goals, which are compiled and aggregated by Regional Personnel Managers into goals for each region, which are in turn compiled and aggregated by People Directors and forwarded to

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[97]Curran depo., p. 89; Harper depo., p. 128, 185; Haworth depo., p. 54-55, 108-109; Monfils depo., p. 94-95.

[98]Harper depo., p. 291-293, 302-303.

the People Division Vice President.[99] District Managers, RPMs, and Regional Vice Presidents are not given any instruction on how to determine their goals other than to increase representation, and there is no written document describing the goal-setting process.[100] Managers at the level of District Manager and higher are evaluated on progress towards those goals.[101] A similar process has been used for setting goals at Sam's Club.[102] Not surprisingly, Wal-Mart managers set modest goals that are slightly higher the current representation. For example, RVP Butler testified, "we look at where we are, and we select what we think -- what we consider is a reasonable improvement from one year to the next."[103] Sandy Ellison testified that when she was a RPM, she would compile District Manager goals into a spreadsheet and examine whether they "made sense" and "weren't worse than the year before or something like that." District Manager Daniel Carter testified that Ms. Ellison, when she was his RPM, would review with him associate demographics reported on the People P &L, but he was never given any goals regarding women's representation in management.[104] Mr. Carter testified that the one time he was asked to develop a goal for his district, he did not want to write anything down that was "unrealistic or I knew wouldn't happen immediately."[105]

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[99]Harper depo., p. 293-294, 296-297, 299-300; Jarrells Porter depo., p. 118-120; Ellison depo., p. 179-184.

[100]Harper depo., p. 297-299; Butler depo., p. 203; Ellison depo., p. 184-186.

[101]Harper depo., p. 310-311.

[102]Dolan depo., p. 71-73, 240-243.

[103]Butler depo., p. 203.

[104]D. Carter depo., p. 215-219

[105]D. Carter depo., p. 219-220.

Similarly, District Manager Ludwig Marcus testified that he was not aware of any company goals about promoting women into management, and that when he was a RPM the goals he set with District Managers were not any sort of target, other than an indication of a need to improve.[106] Sam's RPM Ben Dolan testified that he was looking for goals that were "realistic or achievable" from his Directors of Operations ("DO"), and that he did not know how they set their goals. He chose purposely not to give DOs guidance because he "wanted to see what they submitted back."[107] Wal-Mart Store Manager Jesse James Brown testified that he has not had any discussions with his District Manager or other Wal-Mart officials about goals and objectives for his store regarding female managers.[108] Similarly, Store Manager Arturo Mireles testified that he was not aware of any goals for promotion of women into management, and Store Manager Marvin Raps gave similar testimony.[109] At Sam's Club, Director of Operations Mark Bosler and General Manager Alan Oshier each testified that they were not aware of any goals for increasing women's representation in management.[110]

In the absence of guidelines, managers who are aware that they are evaluated relative to diversity goals have an incentive to establish modest goals, and there is little incentive to work aggressively to meet them, since evidence of improvement, rather than

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[106]Ludwig depo., p. 234-235.

[107]Dolan depo., p. 243-244. Mr. Dolan testified that after assuming his position as RPM in 2001 it took him about six months to get a feel for what kinds of goals were "reasonable numbers."

[108]Brown depo., p. 207-208; also see p. 159, 161.

[109]Mireles depo., p. 219; Raps depo., p. 222-225.

[110]Bosler depo., p. 85; Oshier depo., p. 69-70.

meeting the goal, is viewed as satisfactory performance.[111] Overall, contribution towards diversity goals is at best only weakly tied to the compensation of managers. For Store Managers and Co-Managers, performance evaluation is not a factor for either base salary or incentive pay, so evaluation on contributions to diversity goals has no impact on their compensation.[112] For others, diversity is one component of one dimension of the performance evaluation, and it is the overall aggregate score that is tied to managers' percentage raises.[113] For example, Jeff Reeves, former Vice President of People at Sam's Club, testified that managers received a "very subjective" rating of diversity contributions on a 1 to 5 scale. That rating was one component of four which together had a weight of just 5% in the overall evaluation score for General Managers and Co-Managers. Of course, evaluation of diversity contributions has no effect at all on motivating managers' behavior if they are not aware that they are being evaluated, and there is deposition testimony suggesting that is the case for some managers. For example, District Manager John Scantlin could not recall whether meeting demographic goals had ever been discussed with him as part of his evaluations, and John Butler, formerly a Regional Vice President at Wal-Mart, did not know whether any portion of the performance evaluation score was tied to diversity.[114]

The absence of a significant relationship between diversity contributions and compensation was viewed as a major weakness of the company's diversity efforts by

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[111] Harper depo., p. 311-312.

[112] Arnold depo., p. 178-192.

[113] Jarrells Porter, p. 149-150. For Division 1, see Ellison depo., p. 192-194. For Sam's Club, see Grimm depo., p. 117-118.

former Sam's Club People Vice President Jeff Reeves. In his view, diversity efforts will remain "lip service" unless diversity contributions are tied in a significant way to incentive pay.[115] In the assessment of Mr. Reeves, efforts to increase the diversity of the company's management ranks will remain limited until executives and managers fully embrace diversity efforts as an integral part of the operations side of the business.[116]

The materials I have reviewed are consistent with Mr. Reeves' assessment. It is clear that there has been an increased emphasis on diversity issues by high level human resources executives at Wal-Mart since the late 1990s, but that commitment has had little impact on actual personnel policy and practice as it relates to compensation among hourly employees and promotion into field management. The company's diversity efforts have been weak in assessing and addressing vulnerabilities to bias created by discretionary and subjective aspects of the personnel system. The process for setting diversity goals and evaluating contributions to diversity objectives is not linked in any meaningful way to identifying and eliminating barriers to equal employment opportunity.

Although Wal-Mart Stores Chief Executive Officer Thomas Coughlin has testified that responsibility for diversity is shared equally by all management employees,[117] awareness of diversity goals is limited both among top operations executives and store-level managers. While operational aspects of Wal-Mart's business are run with centralized coordination and oversight, Mr. Coughlin rejects having the

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[114]Scantlin depo., p. 72;

[115]Reeves depo., p. 21-24, 26, 34-35, 38-40, 282.

[116]Reeves depo., p. 15-16, 34-35, 263-264.

[117]Coughlin depo., p. 199-204.

same kind of oversight and accountability in the area of diversity.[118] Absent this kind of accountability, true integration of diversity policy into the personnel practices in the operating divisions and genuine commitment to diversity efforts by managers and executives who oversee and make decisions about pay and career advancement is unlikely to take place. In addition, other proactive efforts that have the potential to contribute to enhanced diversity in the management ranks, such as recent efforts to identify and develop highly qualified women and minority employees,[119] are likely to have limited success.

Monitoring Employees' Perceptions of Discriminatory Barriers

The third component of EEO accountability is systematic analysis of feedback from employees about perceptions of barriers to and opportunities for career advancement. Systematic monitoring of trends in employees' perceptions of barriers to career advancement and of top management's commitment to EEO can be used to identify subtle forms of bias and related problems not immediately apparent from analyses of more objective workforce data.

Wal-Mart surveys its employees annually as part of its Grass Roots survey program. The survey is designed to assess employees' perceptions on work-related issues. Results are tabulated by store, and the top three concerns are posted at each store. Store Managers are expected to meet with their employees to discuss those concerns and to develop specific action plans for addressing them.[120] Responses to the survey are

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[118] Coughlin depo., p. 200-201.

[119] See, for example, Ellison depo., p. 207; Jarrells Porter depo., p. 281-282.

[120] Albrecht depo., p. 56-57, 140; Coughlin depo., p. 187-188; Peterson depo., p. 68, 189-190.

also used to compute a Unresolved People Index ("UPI," formerly called Union Potential Index) which is used to identify stores at risk of union organizing activity. Stores scoring high on the index are targeted for intervention by company management and are subsequently re-surveyed to assess whether there is any improvement in employee morale following intervention.[121]

The Grass Roots Survey, which has been conducted annually since 1994, would seem to be an efficient mechanism for assessing employees' perceptions about barriers to equal opportunity associated with gender. However, the survey has never been used to assess employees' perceptions on issues such as whether they have been treated unfairly due to gender (or race) or the firm's commitment to diversity. Nor have the results of Grass Roots Surveys ever been analyzed by gender or race in order to assess perceived discriminatory barriers.[122] Indeed, according to Kristi Lem Albrecht, the company's 30(b)6 deponent on surveys, there have been no employee surveys of any kind addressing diversity issues or the treatment of women employees.[123]

In sum, Wal-Mart has a range of diversity and equal opportunity policies and initiatives, many of them implemented in the past few years. Unfortunately, they have identifiable weaknesses that limit their effectiveness for identifying and eliminating discriminatory barriers. The process for setting goals is not linked to a systematic assessment of the policies and practices that influence the rate at which men and women

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[121]Albrecht depo, p. 107-109, 142-143; Hobbs depo., p. 185; Sims depo., p. 177-178.

[122]Albrecht depo., p. 70-72; Jarrells Porter depo., p. 147; Peterson depo., p. 189-193. Although the surveys had been conducted annually since 1994, Ms. Albrecht testified that the first and only time she was asked to do a tabulation by gender was in 2001, and at that time she discovered that the system being used for the survey at that time was not capable of producing results separately by gender (Albrecht depo., p. 70-71).

advance through their careers at Wal-Mart. Evaluation of managers on contributions to the company's diversity and equal employment opportunity objectives is too weak to have any significant effect, and the company fails to use the tools available to it to systematically assess employees' perceptions of discriminatory barriers related to gender. In contrast to the centralized coordination and control that characterizes the operations side of Wal-Mart's operations, its human resources practices regarding equal employment opportunities are too diffuse to establish meaningful oversight and accountability.

CONCLUSION

I have concluded that an elaborate and sophisticated system of centralized coordination, reinforced by a strong organizational culture, creates and sustains uniformity in personnel policy and practice throughout Wal-Mart's organizational units. I have also concluded that subjective and discretionary features of the company's personnel policy and practice make decisions about compensation and promotion vulnerable to gender bias. In addition, I have concluded that there are significant deficiencies in the way the company monitors its personnel policies and practices, establishes diversity goals, and evaluates managers' contributions to equal opportunity objectives. Personnel policy and practice at Wal-Mart as implemented in the field has features known to be vulnerable to gender bias. Discretionary and subjective elements of Wal-Mart's personnel system and inadequate oversight and ineffective anti-

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[123]Albrecht depo., p. 55-56.

discrimination efforts contribute to disparities between men and women in their compensation and career trajectories at the company.

William T. Bielby, Ph.D.
February 3, 2002