Rebuttal Report of William T. Bielby Ph.D.

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

Assignment And Materials Reviewed

1. 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 the expert report of Dr. Kevin R. Murphy, dated March 31, 2003, to address the validity of the opinions expressed therein. In addition to Dr. Murphy's report and his deposition testimony given on April 18, 2003, I have relied upon all the materials I reviewed for my original report. I have also relied on documents produced by Wal-Mart pertaining to the posting of Management Trainee Program openings in January 2003. Since submitting my original report I have also reviewed the expert report and deposition testimony of Dr. Joan Haworth and the deposition testimony of Rhonda Harper, a former Vice President of Marketing for Sam's Club.

Summary of Findings

2. Dr. Murphy expresses four conclusions in his report: (1) that Wal-Mart's corporate culture reduces the impact of stereotypes on personnel decisions; (2) that I have not established how Wal-Mart's culture and stereotyping led to bias in personnel decisions; (3) that scientific research does not support my conclusions about gender stereotyping; (4) that I have ignored evidence about personnel decisions at Wal-Mart that contradict my opinions; and (5) that the policies I recommend have already been implemented by Wal-Mart. Dr. Murphy misconstrues both my analysis and my

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conclusions. His claims about the scientific literature are based on a skewed reading of the relevant research and are at odds with his own writing about workplace bias. His claims are also contradicted by a recent review article by Dr. Eugene Borgida, a prominent social psychologist and expert on stereotyping. Dr. Borgida was listed on Wal-Mart's expert disclosure, but he has not submitted a report. However, Dr. Borgida did attend my deposition on February 28, 2003 on behalf of Wal-Mart. Dr. Murphy's conclusions are based on a superficial analysis of materials pertaining to Wal-Mart's personnel system which ignores key testimony on how that system is implemented in practice. Nothing in Dr. Murphy's report leads me to alter any of the opinions expressed in my original report. The basis for my conclusions about Dr. Murphy's report is described in detail below.

My Report Applies Well-Established Findings from Social Research and is not Based on an "Untested Theory"

3. Dr. Murphy claimed that in this and other cases I have proposed my own "untested theory" about "how gender stereotypes affect decisions made about men and women." He is wrong. The relationship between stereotypes and gender bias in decision-making is well-established in the scientific literature. It is important to understand that my original report is not designed to be a scientific study that tests theories about stereotyping and discrimination, using Wal-Mart as a setting. Instead, as I explained in my original report, I conducted a social framework analysis, relying upon the findings of [redacted] and that [redacted] bias" (Bielby dec., para. 8). The

research on gender bias, stereotypes, and the structure and dynamics of gender inequality in organizations is widely accepted in the scientific community. I have been doing research and contributing to scholarship in these areas for nearly twenty-five years. I have relied on this same body of research in my testimony in State and Federal Courts, in consulting on workplace bias for both public and private organizations, and in professional presentations to both social scientists and legal scholars. And, as I show below, Dr. Murphy has relied on this body of scholarship in his own professional writings on gender and work.

4. The issue in the *Dukes et al.* litigation is whether and how scientific research scholarship on stereotyping and gender bias applies to decision-making at Wal-Mart. The scientific validity of the scholarship itself is well-established and not at issue. In my original declaration I assessed whether the organizational context in which decisions about job assignment, pay, and promotion are made at Wal-Mart has features known to allow stereotyping and other forms of gender bias to influence decision making. To make that determination I devoted approximately 120 hours to a detailed, systematic analysis of the company's human resources policies and their implementation. As described in my original declaration (para. 6 and 7) , that analysis relied on the company's written policies, reports, correspondence and other documents describing its personnel system, the testimony of company managers and executives who design, implement, and oversee Wal-Mart's human resource policies, and testimony of the managers who make personnel decisions that affect the pay and career trajectories of company employees.

Dr. Murphy's Published Work on Scientific Research on Stereotyping and Gender Bias is Consistent with the Opinions I Expressed in My Declaration

5. In his own scholarly writing, Dr. Murphy relies upon established scientific research on how stereotyping and gender bias affect decisions about women in organizational settings. His book, co-authored with Jeanette N. Cleveland and Margaret Stockdale, *Women and Men In Organizations: Sex and Gender Issues at Work* (Lawrence Erlbaum Associates, 2000) includes several sections summarizing research on stereotyping and gender bias. At p. 43, it is noted that gender stereotypes "can have a powerful influence on both men's and women's workplace experiences."

6. In his report, Dr. Murphy argues that there is no basis for assuming that gender stereotypes will influence decision makers in a workplace settings. In his book at p. 47, Dr. Murphy and his coauthors summarized research on the pervasiveness of gender stereotypes as follow:

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

7. Dr. Murphy asserts that because I have not collected information about the beliefs of individual decision-makers, it is impossible to draw the inference that they will be influenced by stereotypes. Summarizing relevant scholarship in his book, Dr. Murphy

came to the opposite conclusion. In a section on "stereotyping of people and jobs" Dr. Murphy summarized the relevant scientific research as follows (p. 163):

> "Stereotyping of men, women and jobs is not inevitable; people are often able to look past stereotypes and evaluate individuals strictly on their individual merits. (For a review of factors that moderate stereotyping, see Fiske & Taylor, 1991; Martell, 1996). *However, there is compelling evidence that stereotypes do influence evaluations of men and women at work. The role of gender stereotypes in the evaluation of male and female managers has been studies extensively and offers a case in point* [emphasis added]."

I agree with Dr. Murphy that under some circumstances it is possible to control or moderate stereotyping, and I draw the same conclusion from the relevant scientific studies in paragraph 49 of my original declaration. I also agree with Dr. Murphy that there is compelling evidence that stereotypes influence evaluations of men and women at work, particularly evaluations of men and women in management. In the paragraph following the one cited above, Dr. Murphy provides an excellent summary of research demonstrating how gender stereotypes constrain women's entry into and success in managerial ranks (p.163):

> "Research suggests that women and men do not differ in management ability or motivation (Dipboye, 1987), but women are generally seen as less attractive candidates for management positions. Even when they have similar backgrounds and credentials, women are perceived to have fewer of the attributes associated with managerial effectiveness (Brenner, Tomkiewicz, & Schein, 1989; Heilman *et al.*, 1989). Our stereotype of managerial success includes traits like decisiveness, confidence, and ambition, and women are usually assumed to be less decisive, less confident, and less ambitious than men. It is not clear whether this is really true or whether these traits contribute much to success as a manager, *but the fact that the stereotype of a man fits the stereotype of a manager, whereas the stereotype of a woman does not, spells trouble for women attempting to enter and succeed in the managerial ranks* [emphasis added]."

8. In a section titled "stereotypes of working women" Dr. Murphy summarizes research on the kinds of stereotypes that affect decisions about women in the workforce (p. 55-56):

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> "Given women's extensive involvement in the workforce, it is surprising that stereotypes of working women are still relatively negative and are still based on the assumption that the workplace is not the normal environment for women. Common stereotypes of working women include a non-job-involved, uncommitted, young, single woman who is looking for a husband; a sad, unhealthy middle-aged or older woman who has given up on men and will be a spinster, and a stressed-out career women uninterested in male-female relationships or having children. Stereotypes of working mothers often stress the conflicts between work and family, focusing either on the ways family will detract from work (e.g. working mothers are often assumed to be less reliable, etc.) or on the ways that work will detract from family (e.g. working mothers are sometimes assumed to have less interest in or dedication to their children)."

I agree with Dr. Murphy and his coauthors that working women are subject to the stereotype that because of family responsibilities they are less committed to advancing in the workplace (see paragraph 29 of my original declaration). In paragraph 30 of my original declaration I explain why this stereotype is directly relevant to the issue of women's promotion opportunities at Wal-Mart.

The Pattern of Gender Disparities in Performance Appraisals is Consistent with Social Science Research and with Opinions Expressed in My Prior Expert Reports

9. Dr. Murphy misrepresents my prior writing on subjectivity and performance assessment. Once again, he attributes a "theory" to me, when in fact I am applying well-accepted results of social science research, results that Dr. Murphy himself has endorsed in his own writing. Dr. Murphy claims that in prior reports I have theorized that subjective criteria lead to biased performance appraisals of women, regardless of the work context (paragraphs 18 through 24). In fact, what I have written in prior reports, consistent with the scientific literature, is that subjective evaluations are vulnerable to gender bi[redacted]*s*. For example, in the report I submitted in *Stender et al. v. Lucky Stores*, cited by Dr. Murphy, I wrote:

> "Gender stereotypes contribute to biases in performance evaluations. For example, in experimental studies in which subjects are required to review the resumes of

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> (hypothetical) job applicants, male applicants are rated higher *for predominantly male jobs* and female applicants are rated higher *for predominantly female jobs*, even when information in the resumes indicates that candidates are equally qualified for sex-atypical jobs (see Ruble and Ruble 1982 for a review) [emphasis added]."

In *Passantino v. Johnson & Johnson*, also cited by Dr. Murphy, I wrote:

> "In the employment context, gender stereotypes are likely to be consequential *for women working in traditionally male domains*, such as the middle to upper management ranks of large corporations, and in historically male-dominated industries. *In such settings*, assessments of a woman's qualifications, performance, and ability for higher level work are biased when they are influenced by stereotypical beliefs about women generally, instead of the individual's actual skills and accomplishments [emphasis added]."

A similar statement also appears in my report in the *Butler et al. v. Home Depot* litigation, also cited (but incorrectly characterized) by Dr. Murphy. In his book, Dr. Murphy summarizes scientific research fully consistent with the statements from my prior reports quoted above. For example, Dr. Murphy summarizes scholarship on this topic by Madeline Heilman, a leading social psychologist, as follows (p. 164):

> "Heilman suggested that gender discrimination is most likely to occur when characteristics of the person do not fit with the stereotype of the job. That is, women are most likely to encounter gender discrimination when the job is seen as masculine. Conversely, men are most likely to encounter gender discrimination when entering jobs or occupations that are stereotypically feminine. Sackett, Dubois, and Noe (1991) provided striking confirmation for some of the predictions of the lack of fit model. They found *that when women made up less than 20% of a work group, their performance evaluations were substantially lower than those received by men. In groups that were 50% or more female, women received slightly higher performance ratings* [emphasis added]."

Consistent with the scientific literature, with my prior reports, and with Dr. Murphy's own writing on the topic, I did not expect the performance assessments of female hourly employees to be lower on average than those of men. Since the hourly workforce at Wal-Mart is disproportionately female, the pattern should be in the opposite direction. In fact,

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the pattern detected by Dr. Drogin is fully consistent with the scientific literature on this topic.

10. Finally, directly relevant to the *Dukes et al. v. Wal-Mart* litigation, research studies show that even when women get higher evaluations than men, they still lag behind in promotions. Dr. Murphy summarized this research in a section of his book titled "Influence of Stereotypes on Evaluations of and Decisions About Men and Women," under the heading "Hiring and Promotion Decisions" (p. 57):

> "In general, women are perceived as less competent and subsequently are less likely to be promoted or are promoted at a slower rate than men with similar qualifications (Nieva & Gutek, 1981b). *In fact, even when women receive higher performance ratings than men, men receive more promotions* (Gupta, Jenkins & Beehr, 1983) [emphasis added; also see Murphy depo., p. 100-101]."

The patterns of gender disparity in performance appraisals and promotions, documented by Dr. Drogin, fit this pattern precisely.

Dr. Murphy's Selective Summary of Promotion Disparities is Not Relevant to the Opinions Expressed in My Report

11. Dr. Murphy reviewed the statistical analysis of Dr. Drogin in its entirety (depo., p. 48-49, 181-182). As noted above, Dr. Murphy chose to rely on Dr. Drogin's analysis of gender disparities in performance evaluations, mistakenly concluding that Dr. Drogin's findings contradicted my opinions. Dr. Murphy chose to ignore Dr. Drogin's analysis of promotion disparities (depo., p. 189-193). Instead, Dr. Murphy relied on nine pages of preliminary charts created by Dr. Haworth (apparently with no accompanying text), which he interpreted as demonstrating that women advance through the ranks at Wal-Mart at a greater rate than do men (para. 28, depo., p. 190-193). Dr. Murphy understood that Dr. Haworth's analysis examined promotion rates *among the people who had interviewed for a job* and conceded that there was no way of determining from her

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analysis whether it reflected the pool of people who were interested in and available for promotion (depo., p. 191-192). In my original declaration, I emphasized that a significant vulnerability of the company's policy for making promotions into salaried management was the absence of a uniform job posting system or similar mechanism for systematically and reliably assessing hourly associates' interest, qualifications, and availability for the Management Trainee Program and for openings in Assistant Store Manager and Co-Manager positions (Bielby dec., para. 44 through 46). Dr. Haworth's analysis of promotions into management among those who applied through the MCS system does not and cannot assess the extent to which women are disadvantaged relative to gender bias in how qualifications, interest and availability are considered.[1] Dr. Drogin's analysis, ignored by Dr. Murphy, computes disparities relative to availability pools from historical feeder jobs and avoids the limitation of Dr. Haworth's analysis.

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[1] In her report (p. 28), Dr. Haworth cites statistics on the gender composition of those who applied through the temporary posting system for the Management Trainee Program implemented for two weeks in January 2003. She interprets this statistic as a measure of women's interest in promotion to salaried management at Wal-Mart. As I testified in my deposition (Bielby depo., p. 169-173), this is inappropriate for two reasons. First, the posting process was not linked to systematic information on career paths through the company that are available by participating in the Management Trainee Program, including information on compensation and other career advancement opportunities in the traditionally male-dominated salaried management positions. Instead, the posting process was "front-loaded" with information about relocation, travel, and scheduling requirements and other job demands. Second, the posting program was opened for only a seven-day application period, to be used to fill Management Trainee Program openings occurring during the first quarter of 2003. There was no indication at the time that the posting program was to be permanent. Research shows that people adjust their aspirations and interests to what they believe is realistically available to them, and those adjustments are not made instantaneously. It is reasonable to assume that many women who had previously been discouraged from seeking management jobs would not adjust their interests and aspirations immediately, especially for a program that might be perceived as temporary. A permanent posting program, linked to clearly articulated career opportunities, would be more likely to motivate women who might otherwise face personal constraints to rearrange their circumstances in order to take advantage of the new opportunities.

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Dr. Murphy Made No Attempt to Analyze Testimony and Documents Describing the Wal-Mart Personnel System, and He is Uninformed About the Basic Features of That System

12. At deposition, Dr. Murphy testified that his task was to "examine what Dr. Bielby's claims were, and to determine whether they were supported by scientific methods, by relevant data" (p. 66-67).[2] According to Dr. Murphy, his task included assessing how accurately and completely I considered all of the evidence in the record (depo., p. 97). Remarkably, in making his assessment of whether my opinions are supported by appropriate analysis of the data, Dr. Murphy ignored most of the data on Wal-Mart policy and practice that I rely upon.[3] It appears he reviewed none of the deposition exhibits, nor did he review any other Wal-Mart documents, other than a single interrogatory response. Except for paragraph 7 on Corporate culture, which cites one deposition without designating page numbers and cites one page each from three others, Dr. Murphy fails to support any of his claims with citations to deposition testimony.

13. Dr. Murphy made no effort to determine which deposition transcripts were most relevant to the issues addressed and the opinions expressed in my report. Instead he relied on Wal-Mart's counsel to make that determination.[4] He did not review (and was

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[2]Similarly, at p. 161, Dr. Murphy testified that his task was "to look at what Dr. Bielby's claims were and see whether those are supported by the scientific method, by scientific method, by the data available from Dr. Bielby." Also see Murphy testimony at p. 10-13, 71, 96.

[3]Dr. Murphy claims to have at least "skimmed" the deposition transcripts of 30 deponents, a total of over 6,000 pages (depo., p. 44) and to have reviewed eight binders of Wal-Mart policies, four in their entirety. He accomplished this Herculean task in just 15 hours (depo., p. 196).

[4]At p. 67-68, Dr. Murphy testified:

Q. How--was it--how was it determined which depositions you should receive?

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not aware of) the deposition testimony of Coleman Peterson, Wal-Mart's top human resources executive, nor that of Charlene Jarrells Porter, Senior Vice President, People Division who also had key responsibilities in the human resources area. The testimony of Thomas Coughlin, the company's CEO was also ignored by Dr. Murphy, as was that of senior operations executives, including Thomas Grimm, former President and CEO of Sam's Club, and Don Harris and Jim Haworth, former Executive Vice Presidents of Operations Wal-Mart Stores (depo., p. 66-69). Each of these individuals provided key testimony that I relied upon, regarding how Wal-Mart's personnel policies are implemented.

14. In fact, it is apparent that Dr. Murphy learned very little about Wal-Mart's policies and their implementation from his review of testimony by Wal-Mart executives and managers and the eight binders of company policies. At deposition, Dr. Murphy could not identify the store-level management positions, the store-level organizational structure, the number of employees employed at a Wal-Mart Store or Supercenter, the

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A. I don't know.

Q. You accepted the--the depositions were provided to you by counsel, is that right?

A. Yes, they were.

Q. *And you did not advise counsel of which depositions you wanted to receive. You just took the deposition they sent you and reviewed them?*

A. That's correct.

Q. And you did not inquire of counsel whether there were other depositions which they could have sent you, but did not?

A. Not to my recollection.

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number of stores in a district, or the frequency of District Manager Store tours (depo., p. 73-75, 107).

15. Dr. Murphy was unable to say who determines pay adjustments for hourly employees or compensation for Assistant Store Managers and Store Managers (depo., p. 76-77, 80-81) or the factors to be relied upon in deciding on pay raises (depo., p. 81). He did not know who conducts the performance appraisals for hourly employees or for Store Managers, nor could he recall anything about the criteria used for assessing performance (depo., p. 78-79, 82-83). Also, Dr. Murphy did not know whether the same individuals are involved in making decisions about compensation, promotion, and performance assessment (depo., p. 80-81).

16. Dr. Murphy had hardly any knowledge of the process for promoting hourly employees into management. He did not know the positions of the individuals who participated in and had final authority on promotion decisions (depo., p. 80), and he knew nothing about the process by which hourly employees enter into the Management Trainee Program (depo., p. 89-91). He was unaware of whether vacancies in the program have ever been posted, a key issue in the *Dukes et al.* litigation (depo., p. 80), and he did not know the company's criteria for making promotions (depo., p. 93-94).

17. Dr. Murphy testified that he had no basis for taking issue with my descriptions of the promotion and compensation systems at Wal-Mart, appearing in paragraphs 37 through 41 of my original declaration. Indeed, in the end, he had no basis for doing so, because he did no independent analysis of the testimony and documents that describe those systems (depo., p. 156-157).

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Dr. Murphy Agrees with My Conclusion That Wal-Mart's Strong Organizational Culture Promotes Uniformity in Personnel Practice Throughout the Company, and He Has Conducted No Independent Analysis of Centralization and Uniformity in Wal-Mart's Personnel System

18. Dr. Murphy agrees with my conclusion that the company's [redacted] organizational [redacted] contributes to uniformity in personnel policy and practice at Wal-Mart (Bielby dec., para. 10, 18-21; compare Murphy report, para. 6). Dr. Murphy made no effort to evaluate the basis for my conclusion that Wal-Mart's hierarchical and centralized human resources structure is another major factor contributing to uniformity. For example, when asked whether the written policies governing pay increases applied in a uniform way throughout the company, Dr. Murphy responded that "my purpose was not to describe what happens at Wal-Mart" and as a result "I did not obtain, nor did I seek the data to find out whether those are uniformly applied from store to store." Again, Dr. Murphy's refusal to evaluate the testimony and documents on company personnel policy and practice is at odds with his claim to be assessing whether my opinions were supported by relevant data.

Dr. Murphy's Opinions About How "Individuating Information" Eliminates the Effects of Stereotyping at Wal-Mart Are Not Supported by Scientific Research

19. Dr. Murphy believes that gender stereotypes do not influence personnel decisions at Wal-Mart because the company's culture encourages managers to pay attention to information about individual employees (para 15 through 16). Dr. Murphy bases this belief on his interpretation of research studies on the role of "individuating information" in reducing stereotyping. Dr. Murphy believes that a little bit of information goes a long way towards eliminating the effects of stereotyping. In deposition (p. 109-110), he testified as follows:

> And based on my review of that relevant literature, the bar is set quite low. That is, if you look through studies that examine whether individuating information is sufficient to reduce or eliminate the effects of stereotypes, the general method is to provide no more than a few phrases or sentences describing a person at a level that's something other than simply their group membership.

In fact, the relevant social science research demonstrates conclusively th[redacted]

[redacted] Wal-Mart's expert Dr. Eugene Borgida, a leading social psychologist who specializes in research on stereotyping, summarizes this research in an article, "Gender Stereotyping: Scientific Status," which appeared in the volume *Modern Scientific Evidence: The Law and Science of Expert Testimony*."[5] Regarding the current status of research on the topic, Dr. Borgida and his coauthors wrote (p. 408):

> "[redacted] [emphasis added]."[6]

The article goes on to explain that individuating information on an individual's characteristics is considered [redacted], and even then, the information about [redacted]

Elaborating on this, Dr. Borgida and coauthors wrote (p. 409):

> "Without necessarily realizing it, perceivers tend to selectively process information about individuals that is consistent with group stereotypes, while inhibiting information that is inconsistent with stereotypes. Perceivers also use

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

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

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stereotypes when they interpret individuating information.... [redacted] Only [redacted] that is [redacted] This process of biased information-processing is [redacted] judging [redacted] influence [redacted] characteristics."

Dr. Borgida and his coauthors go on to summarize research that "non-diagnostic" or irrelevant information about an individual (e.g. information about personal qualities not related to job-related qualifications for a promotion), can, under some circumstances, *increase* the impact of stereotyping.[7]

20. Dr. Borgida and his coauthors conclude their discussion of individuating information by noting that "the relationship between knowledge of individuating information and stereotype use is complex, depending on elements of the target, the perceiver, the individuating information, the relationship between the information and the group stereotype, and the particular decision being made" (p. 410).[8]

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

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[7]Hunt *et al.*, p. 410.

[8]At deposition, Dr. Murphy agreed with much of what Dr. Borgida and his colleagues wrote summarizing scientific research on individuating information and stereotyping (depo., p. 213-218).

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

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

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

It is for precisely this reason that having a stated value of "respect for the individual" or a management philosophy of "coaching by walking around" is not sufficient to reduce the impact of stereotyping on personnel decisions and why clearly specified and relevant criteria, along with effective monitoring and accountability (as described in paragraphs 49 and 50 of my original declaration) are necessary to minimize the impact of stereotypes and gender bias on personnel decisions .

Dr. Murphy's Opinions About Wal-Mart's Anti-Discrimination Efforts Are Not Based on An Analysis of How They Are Designed and Implemented

22. In paragraphs 31 through 34 of his report, Dr. Murphy argues that Wal-Mart has already implemented many of the measures that I recommend for minimizing bias and that they have done so "as part of a strong system of policies to encourage diversity" (para. 31, p. 17). The basis for his opinion is the company's response to Plaintiffs'

Interrogatory No. 39 which describes various diversity reports, goals, and related programs (depo., p. 168-170).

23. In my original declaration (paragraphs 49 through 62), I provided a detailed analysis of Wal-Mart's diversity and anti-discrimination efforts. In that part of my report, I relied on a large body of social science and human resources research on the topic to explain why these efforts were insufficient for significantly reducing or eliminating gender bias. In his deposition testimony, Dr. Murphy agreed with my characterization of the relevant research literature on this topic. He agreed with my characterization of literature showing that organizational policies and practices become institutionalized and are resistant to change, that specific policies and practices can contribute to minimizing gender bias, and that sometimes anti-discrimination efforts are merely symbolic, an exercise in "going through the motions," with little real impact on workplace barriers (depo., p. 207-210).

24. Dr. Murphy made no effort of his own to assess the effectiveness of the policies and programs described in Wal-Mart's response to Interrogatory 39, and he presents no specific criticisms of my analysis of those policies and programs. He reviewed no testimony or documents to assess how those programs and policies were implemented, and he had virtually no knowledge of those policies and practices apart from what was stated in the interrogatory response (depo., p. 168-171). For example, at deposition, Dr. Murphy testified that he would expect a company intending to reduce bias in compensation decisions to monitor gender disparities in compensation (depo., p. 172). However, at deposition he could not recall if Wal-Mart did so. My declaration (para. 52, footnote 96) cited deposition testimony of six different Wal-Mart executives, including

30(b)6 deponents, to show that no such monitoring was done by company. Dr. Murphy ignored this evidence. In short, Dr. Murphy has no scientific basis for his assertion that the company's efforts are "part of a strong system of policies to encourage diversity" or for his statement (para. 34, p. 18) that the company "has made impressive efforts to remove barriers and encourage diversity." Instead, he simply accepts the company's representation that this is the case.

25. Dr. Murphy has written on the topic of diversity goals and the circumstances under which they are effective for minimizing bias. His published work on this topic, in the book *Women and Men In Organizations: Sex and Gender Issues at Work*, cited above, is consistent with the opinions I expressed in my original declaration (in paragraphs 54 through 58) and with the relevant scientific and human resources literature. In a chapter titled "Managing Diversity," Dr. Murphy and his colleagues wrote the following about the circumstances under which goals are effective and ineffective for reducing bias (p. 370):

> "***Incentives for Managers.*** Most of the time, if a goal is truly important to an organization, the organization will monitor progress toward achieving that goal and provide incentives and rewards for accomplishing it. Thus, one way to determine whether an organization is truly interested in the structural integration of women into the workforce is to examine the incentives available to managers and executives to move this process along. As K. Murphy and Cleveland (1995) noted, *organizations often give lip service to human resource activities (e.g. performance appraisals) but provide no meaningful rewards for doing them well and no meaningful sanctions for doing them poorly* [emphasis added]."

Dr. Murphy and his coauthors describe how to evaluate the effectiveness of an incentive program as follows (p. 370-371):

> "In evaluating an incentive program, it is useful to ask both what behaviors are rewarded and how substantial the rewards really are. Diversity programs are most likely to succeed if the rewards and incentives are large enough to be meaningful

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(and if the sanctions for failing to take steps to increase diversity are also meaningful) and the emphasis is on developing long-term success stories rather than providing positive numbers."

This is precisely the standard I applied in my original declaration (paragraphs 54 through 58), and Dr. Murphy presents no evidence that contradicts or is inconsistent with my analysis and conclusions. He simply assumed that goals would be effective, whereas an analysis of how they are designed and implemented shows that they fail to meet his own criteria for effectiveness.

Conclusions

26. Dr. Murphy's critique of my expert report is based on a flawed interpretation of the relevant social science literature and is even inconsistent with his own earlier writing on the topic of stereotyping and gender bias in organizations. Dr. Murphy criticizes my use of the available data on Wal-Mart's personnel practices, yet he performed virtually no independent analysis of those data himself. His conclusions are based on a superficial analysis of materials pertaining to Wal-Mart's personnel system which ignores key testimony and documents describing on how that system is implemented in practice. Nothing in Dr. Murphy's report leads me to alter any of the opinions expressed in my original report.

Signed this 3rd day of May, 2003 at Santa Barbara, California.

William T. Bielby