EXPERT REBUTTAL REPORT RESPONSIVE TO REPORT OF WAL-MART EXPERT NANCY COMBS

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
LONDON DIVISION

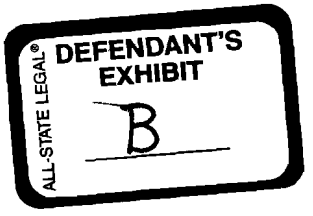
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

v.

WAL-MART STORES, Inc.

RICHARD F. MARTELL, Ph.D.

AUGUST 15 2008



I. MY ASSIGNMENT

I have been retained by the Equal Employment Opportunity Commission ("EEOC") in the matter of the EEOC v. Wal-Mart Stores, Inc ("Wal-Mart"). The EEOC alleges sex discrimination against women in hiring at Wal-Mart Distribution Center 6097 ("DC 6097"). My assignment is to respond to the opinions proffered by defendants' expert, Ms. Nancye Combs, who testified in her deposition of April 29, 2008 that her charge was to examine Wal-Mart's policies, procedures and practices as they relate to the selection process and management training at DC-6097 (Combs depo., p. 12-13) and to opine as to their "*adequacy and completeness*" for hiring purposes (Combs depo., p. 13, p. 70, 248).[1] My report contains my analysis and expert opinions regarding Ms. Combs' conclusions as they relate to the hiring policies and practices and the training provided to hiring managers at Wal-Mart Distribution Center 6097.

In addition, Ms. Combs offers conclusions that go beyond her stated assignment in this case including, for example, her opinion that the hiring policies and practices at DC 6097 prevent gender bias in hiring decisions.[2] Consequently, I shall address this matter in my report as well, with particular attention as to whether Ms. Combs' opinion that Wal-Mart's hiring processes prevent gender bias in hiring at DC 6097 (Combs depo., p. 117) is consistent with human resource management ("HRM") research and practice.

II. MY QUALIFICATIONS

I am a tenured Full Professor of Management in the School of Business and Economics at Wilfrid Laurier University in Ontario, Canada. I received my Ph.D. in industrial-organizational psychology from New York University in 1988, where my studies were concentrated in both industrial-organizational psychology and social psychology. As an I/O psychologist, I am trained as a "scientist-practitioner" specializing in both the study of behavior in work settings and the application of the methods, facts and principles of psychology to individuals and groups in work settings.

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[1] Also see Ms. Combs' stated assignment in her report in her January 7, 2008 report (Combs rpt., p. 1).

[2] Ms. Combs offers opinions, for example, regarding whether managers at DC 6097 in fact follow Wal-Mart's hiring policies and procedures (Combs depo., p. 51-53, 92-93), whether five of the class members whose depositions she reviewed are credible and whether she would have hired them (Combs depo., p. 51-58), whether these class members were treated fairly (Combs depo., p. 52-53) and whether females are interested in working in distribution centers such as Wal-Mart's DC 6097 (Combs depo., p. 74-77, 124-125).

My doctoral dissertation examined organizational factors that influence sex stereotyping and discrimination in the workplace and was awarded the NYU Douglas H. Fryer Award for Outstanding Scholarship on Behavior in Organizations. My first academic appointment, from 1988-1992, was in the department of psychology at Rice University. From 1992 to 1996, I was on the faculty of Columbia University, where I was promoted with tenure to Associate Professor of Psychology. Prior to my current position, I was a tenured Associate Professor of Psychology at Montana State University.

My expertise is in human resource management and organizational behavior, including the dynamics of stereotyping in organizational settings and how an organization's personnel policies and practices influence the perception and treatment of members of protected groups. I have conducted laboratory and field research on gender bias, with specific attention to the nature of gender stereotypes in the workplace, organizational factors that enhance or diminish gender stereotyping and bias in personnel decisions and the cumulative negative effects of even quite small amounts of gender bias on women in organizational settings. My investigation in this latter area was funded by the National Science Foundation. My research is published in top-tier, peer-reviewed scientific journals.

Since 1999, I have served as Consulting Editor of the *Journal of Applied Psychology*, a premier research journal published by the American Psychological Association. I regularly review manuscripts for leading scientific journals on topics related to human resource management, organizational behavior, and gender stereotyping and discrimination in employment contexts. In addition, I have covered the topics of human resource management, organizational behavior, stereotyping and discrimination in organizational settings at both the undergraduate and graduate levels over the past eighteen years of university teaching, including in my current position—professor of management.

I have consulted to organizations in the areas of organizational behavior and human resource management including personnel decision-making and issues of stereotyping and discrimination in recruitment, hiring, job assignments, performance appraisal and promotion, as well as issues related to managerial training. During my tenure at Columbia University, I was a core faculty member in a 3-week training

program, *Organizational Development and Human Resource Management*, offered to very senior-level human resource managers in companies around the world. This training involved hands-on consulting and interaction with members of client organizations regarding issues related to human resource management.

I have often been called upon to offer my expertise in human resource management and organizational behavior as an expert witness in sex and race discrimination class action suits. This typically involves assessing a company's HRM policies, procedures and practices, particularly with respect to the conduct of job interviews and hiring decisions, performance appraisals, promotion decisions and training programs.[3] My curriculum vitae, the cases in which I have offered testimony over the past four years, a list of my published research articles and my consulting rate are attached as Exhibits A, B, C, and D, respectively.

My understanding is that discovery is ongoing. To the extent additional discovery is provided to me, I reserve the right to amend or supplement in writing, at deposition, or trial, my opinions in this case.

III. REPORT METHODOLOGY

In preparing this report, I reviewed the following documents: The January 7, 2008 report of Nancye Combs ("Combs Report"), both her April 29, 2008 and August 6, 2008 deposition testimony and accompanying exhibits. All the materials that Ms. Combs cited in her report (Combs rpt., p. 4-5), with the exception of deposition videos, were provided to me.[4]

To assess Ms. Comb's opinions in this matter, I rely on a large body of HRM research. Much of this research is conducted by scholars in industrial-organizational psychology, management science, social psychology and sociology. This body of scientific research is directly relevant to the matter at hand, as it identifies specific HRM policies and practices that yield accurate and unbiased hiring decisions and those that do not.

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[3] My expertise in such matters was most recently affirmed in a March 2008 5th Circuit Court of Appeals ruling in a class action discrimination case, McClain et al vs. Lufkin Industries, 519 F.3b 264 (5th Circuit 2008).

[4] Exhibit E of my Report provides a list prepared by plaintiffs' counsel of all the materials provided to me.

IV. MS. COMBS' OPINIONS GO BEYOND HER EXPERTISE IN HUMAN RESOURCE MANAGEMENT RESEARCH AND PRACTICE

Before presenting my analysis of Ms. Combs' specific opinions in this case, I shall first assess Ms. Combs' level of expertise as it relates to her conclusions regarding Wal-Mart's hiring policies and practices and the training of managers for personnel decision-making at DC 6097. As I describe below, it is my opinion that Ms. Combs lacks the expertise required to offer valid conclusions to the Court regarding the allegations made in this case. Specifically, whether Wal-Mart's hiring policies and practices, and the training provided to hiring managers, are consistent with HRM research and practice is beyond the scope of Ms. Combs' expertise.

Ms. Combs Lacks Expertise In HRM Research And Practice. Ms. Combs testified that she relied heavily on her education and experience in formulating opinions regarding the hiring system and training procedures used at Wal-Mart DC 6097 (Combs depo., p. 70). Ms. Combs' education and experience, however, are seriously deficient in this regard.

Ms. Combs only has an undergraduate degree in psychology issued over 30 years ago. Ms. Combs has no advanced degree in any subject that addresses the issues at hand in this case including human resource management, organizational behavior, industrial-organizational psychology, social psychology, applied psychology, sociology, management science and so forth.

Ms. Combs has neither research training in HRM nor a sufficient understanding of contemporary HRM practice as it relates to hiring procedures, managerial training, personnel selection, job interviewing, gender bias in the workplace, organizational culture or other topics related to the topics upon which she opines in this case. This is a point that I shall continue to revisit throughout my report. Ms. Combs testified that only "from time to time" does she read research on hiring and selection processes as reported in psychology, sociology and management journals (Combs depo., p. 41-42). In fact, Ms. Combs does not cite a single research study to support any of her opinions contained in her report. Rather, Ms. Combs appears dismissive of HRM research, even of research that addresses the very issues upon which Ms. Combs opines. For example, Ms. Combs was asked:

> ***Q: Are you familiar with research that shows in a male-dominated environment the image that person might have would be that of a man?***
> ***A: I know that there is research on all of that kind of thing going on all the time but I don't have time to be bothered with it***" (Combs depo., p. 199).[5]

Ms. Combs' opinions regarding *the adequacy and completeness* of Wal-Mart's hiring policies and practices are also based on her years of "experience" with other distribution companies (Combs depo., p. 13, 15, 70, 112, 248). When asked: "What companies did you compare Wal-Mart to?" Ms. Combs responded:

> ***"All the others I've observed their materials and evaluated them and created them when they were absolutely none"*** (Combs depo., p. 88-89).

Ms. Combs' methodology is fundamentally flawed insofar as her opinions are, of necessity, largely a function of whatever particular standard Ms. Combs' prior experience leads her to adopt. For example, Ms. Combs indicated that she compared Wal-Mart to Foremost International, a company described by Ms. Combs as *not having any policies related to hiring* (Combs depo., p. 91). This is consistent with Ms. Combs' testimony that many of the companies she experienced had little to no written personnel policies (Combs depo., p. 90). This basis of comparison, involving companies whose HR and personnel function are so primitive as to lack *any* written hiring policies, sets a standard of comparison so low as to render Ms. Combs' conclusions regarding the "adequacy and completeness" of Wal-Mart's hiring policies rather meaningless.[6]

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[5] The impact of a male-dominated work environment on the perception and treatment of female job applicants is an important issue that I return to later in my report (see Footnote 21 of this report) when discussing the likelihood that the "mental image" managers have of a successful job candidate at DC 6097 is that of a *male*. Ms. Combs simply ignores HRM research on this issue and, in particular, the likely negative effects on female job applicants at DC 6097.

[6] Ms. Combs also indicated that she compared Wal-Mart selection policies and procedures to the Society for Human Resource Management ("SHRM") recommendations and standards (Combs depo., p. 13-14, 95-96, 112-113). However, many of Ms. Combs' opinions are directly contradicted by HRM research and practice that is displayed prominently on the SHRM website (see Footnote 10 of this report). This is disconcerting, indicating that Ms. Combs has failed to stay current with contemporary HRM research and practice, despite her position as a "life-time" member of SHRM.

It is my opinion that Ms. Combs lacks sufficient knowledge in the field of HRM, especially with respect to contemporary hiring policies and practices, including job interviewing, and managerial training; and her views and opinions in this matter are inconsistent with contemporary HRM research and practice. Consequently, Ms. Combs is ill-equipped to assess Wal-Mart's hiring policies and practices with respect to whether they are "reasonable and standard" or "adequate and complete," nor is she adequately equipped to opine as to their vulnerability to gender bias.[7]

V. MS. COMBS' OPINIONS REGARDING THE *ADEQUACY AND COMPLETENESS* OF WAL-MART'S HIRING POLICIES AND PRACTICES AT DC 6097 ARE CONTRADICTED BY HRM RESEARCH AND PRACTICE

Ms. Combs is of the opinion that Wal-Mart's hiring policies and procedures are adequate and complete, at least as compared to other companies she has worked with in a consulting capacity. Ms. Combs bases her opinion on what she believes to be a hiring process that "relies on an expensive and time-consuming system that is not widely used in distribution or any other industry" (Combs rpt., p. 14) and that is "more detailed than most distributors I deal with, that I observe" (Combs depo., p. 112).

As I shall describe in this section of my report, HRM research demonstrates that the manner in which Wal-Mart implements its hiring system, especially with respect to the nature of the job interviews conducted at DC 6097, undermines what Ms. Combs refers to as the *adequacy and completeness* of Wal-Mart's hiring policies and practices. Ms. Combs' failure to recognize the importance of HRM research relevant to the allegations in this case contributes to her erroneous conclusions.

Wal-Mart's *Recruit The Best Interview* Process Is Highly Unstructured And Contrary To HRM Research And Practice. Ms. Combs is mistaken when she concludes that Wal-Mart relied on structured interviews for hiring decisions (Combs rpt., p. 11-13), especially when she is addressing the 1998 to 2001 time period when the *Recruit The Best Interview Method* (WMDP00358-00392) was in place at DC 6097, and the 6097 managers were using the interview forms.[8] Ms. Combs' mistake in this regard

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[7] Perhaps this is one reason why Ms. Combs testified that she does not evaluate clients hiring procedures much anymore (Combs depo., p. 25).

is not surprising, as she fails to understand the nature and proper construction of structured interviews and why they are recommended by HRM scholars and professionals. Before proceeding to my assessment of Ms. Combs opinions and, specifically, to how her opinions depart from HRM research and practice, I believe it is useful to provide a brief review of the structured interview.

A structured interview is a carefully developed assessment tool employed by organizations to bolster the reliability, validity and utility of hiring decisions (Motowidlo et al., 1992; Campion, Palmer, & Campion, 1997; Campion, Pursell, & Brown, 1988). When using a *structured* interview, the interviewer:

- Relies on interview questions that are known to be job-related based on the results of a formal job analysis.
- Relies on a standardized set of questions in which each applicant is presented with identical questions in a predetermined sequence.
- Asks the same questions of all applicants so everyone has the same opportunity to display their knowledge, skills and abilities.
- Relies on a pre-determined scoring system that has been established prior to conducting the interview to evaluate applicants' answers to interview questions. The goal of such a scoring system is to reduce personal discretion in how interviewee responses are scored, to assign specific weights to each question and to clearly specify how scores relate to actual evaluations and hiring decisions. This increases the accuracy of ratings.

The ability to conduct a structured interview requires the following: a formal job analysis to accurately identify job-related selection criteria, careful attention to the nature of the interview questions to ensure that the selection criteria are appropriately job-related, firm guidelines regarding the scoring of candidate responses and formal training (Campion et al., 1988; Campion et al., 1997; Motowidlo et al., 1992). The benefits of a structured interview for hiring include greater reliability, validity and utility which is why

[8] The application packet of Ms. Kassandra Hammonds dated 12/18/2000 includes the first, second and third interviews (WMAI0000416H-WMAI0000430H). Also see Defendants' Response To EEOC's Third Set Of Interrogatories which identified 2002 as the year Wal-Mart began using the behavioral interview process.

it is recommended over unstructured interviews (Campion et al., 1997; Campion et al., 1988; Motowidlo et al., 1992).

In contrast, in an *unstructured* interview, there is much subjectivity and personal discretion regarding what questions are asked, the criteria used for evaluating interviewee responses, the manner in which interviewee responses are evaluated and how final selection decisions are made among multiple job candidates (Campion et al., 1997; Campion et al., 1988). This reduces the psychometric qualities of unstructured interviews (Campion et al., 1997; Campion et al., 1988; Motowidlo et al., 1992).

Ms. Combs deposition testimony reveals a deep misunderstanding of many of the key features of a structured interview.[9]

- Ms. Combs claims that a structured interview is defined by only two elements, namely, whether the interview is "planned" and whether the questions are "created in advance and written down" (Combs depo., p, 177-180). This is an overly simplistic notion that ignores the essential elements of structured interviews identified by HRM scholars and practitioners (see Campion et al., 1997; Campion et al., 1988; Motowidlo et al., 1992).[10]
- Ms. Combs is mistaken when she asserts that structured interviews are designed to provide "general information" about job applicants (Combs depo., p. 19). They are not. The goal of a structured interview is to provide specific information about an applicant's job-related skills and abilities (Campion et al., 1997; Campion et al., 1988; Motowidlo et al., 1992).

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[9] One wonders if Ms. Combs has any firm idea as to what constitutes a structured interview and why it is used insofar as she goes so far as to claim that an "information-gathering" session for job applicants, which is how Ms. Combs characterized Wal-Mart's screening interview process, is a structured interview (Combs depo., p. 336-337).

[10] Ms. Combs testified that the Society of Human Resource Management (SHRM), of which she is a member, does not address how an interview should be conducted (Combs depo., p. 115). Perhaps this explains Ms. Combs lack of understanding. This seems not to be the case, however. A brief review of the SHRM website (http://www.shrm.org) revealed numerous articles and papers on the proper conduct of structured interviews and the sensitivity of unstructured interviews to bias. Apparently, Ms. Combs decided to ignore this HRM research. A sample of these articles include the following: Structured Interviews: Step-By-Step Guide To Getting A Return On Your Investment In The Selection Process; Non-Standardized Interview Prompts Can Lead To Bias; Structured Behavioral Interviewing: Oldie But Goodie; Using Behavioral Interview Techniques To Select The Right Employees; Behavioral Interviewing; Behavioral Interviewing Popular, But Training In Use Urged; Train For Smarter Hiring.

- Ms. Combs contradicts HRM research and practice when she claims that *subjective* ratings of interviewees are acceptable elements of a structured interview (Combs depo., p. 20-22, 135). They are not. If properly designed and executed, structured interviews *reduce* subjectivity and personal discretion in interviewer assessments which lead to enhanced reliability, validity and utility (Motowidlo et al., 1992; Campion et al., 1997; Campion et al., 1988).
- Ms. Combs testified that "Many employers use structured interviews "... *to identify incongruence between what the applicant relates verbally and how the applicant re-actin (sic) the work environment. It is a recommended selection practice*" (Combs rpt., p. 12-13). Ms. Combs is mistaken. Structured interviews are not used as a form of "lie-detector." Indeed, Ms. Combs provides no empirical evidence nor theoretical explanation to support the use of structured interviews in this manner.
- Ms. Combs testified that she does not recommend a pre-set scoring system for rating interviewee responses to each question posed in the interview (Combs depo., p. 140, 178). This is contrary to HRM research and practice. Ms. Combs fails to understand that in a structured interview a formal, pre-determined scoring system is constructed to ensure that the responses of each applicant are rated accurately and in a fair manner. The goal is to reduce the extent to which managers rely on their own personal discretion when rating interviewee responses by having a standardized scoring system in place.
- Ms. Combs claims: *"If your interviewers are trained, you can use any system you want to, including extemporaneous, no questions written down at all, as long as you have well-trained interviewers"* (Combs depo., p. 193). Remarkably, Ms. Combs recommends that organizations use any type of interview process, whether structured or not, whether valid or not, whether job-related or not, provided there is training. I know of no HRM research that supports such an extreme statement. Ms. Combs provides no research evidence to support such idiosyncratic claims.

- Ms. Combs conceded that a job analysis *is* the proper method for constructing job-related interview questions (Combs depo., p. 178),[11] yet she also claimed that not all questions contained in structured interviews need to be derived from a job analysis (Combs depo., p. 178). This is contrary to HRM research and practice. One of the defining features of a structured interview is the use of a formal job analysis to ensure that all rating criteria are job-related.[12]

As an industrial-organizational psychologist, I am confident in my opinion that the interview process depicted in Wal-Mart's *Recruit The Best* program is a far cry from a structured interview. It lacks the key elements of a structured interview and, as a result, accords managers enormous personal discretion in the interview and hiring process. My opinions in this matter are based on the following:

- In none of the materials that I have reviewed have I seen evidence that a job analysis had been conducted to ensure that selection criteria were job-related.
- *Recruit The Best* was comprised of a mix of open-ended questions and situational questions (WMDP00365-WMDP00368). There was little to no emphasis on more objective behavioral ratings of job applicants.
- Although Wal-Mart guidelines provided suggested questions, interviewers were permitted to "probe" job applicants in areas outside the scope of these questions. In fact, interviewers could generate their own questions (WMDP 00373).
- There was no pre-established standardized scoring system in place for evaluating applicant responses. What constituted a satisfactory answer, how responses were scored and the relationship between interview ratings and hiring decisions were left to the personal discretion of each Wal-Mart manager.

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[11] With the exception of the report of George Barrett dated January 7, 2008, a formal job analysis of the warehouse order-filler position in DC 6097 has not been conducted (see Defendants' Response To EEOC Seventh Request For Production).

[12] It is impossible to overstate the importance of conducting a formal job analysis, as it provides the foundation upon which valid and unbiased personnel practices are built. Job analysis constitutes an empirical approach to identifying the knowledge, skills, and abilities required to perform a job. It entails a structured study of the elements of a job and a statistical analysis to establish the job-relatedness of various selection criteria. A properly conducted job analysis identifies evaluative criteria that are job-relevant, helps to ensure that measurement tools are objective and measure only job-related criteria, assigns weights to the criteria and fosters uniformity in the criteria used in personnel decisions (see Brannick & Levine, 2002; Fine & Cronshaw, 1999; Gatewood & Field, 1998; Guion, 1998)).

- Ms. Combs testified that Wal-Mart managers embraced a "holistic" approach to hiring (Combs rpt., p. 14-16), an approach that Ms. Combs deems "reasonable and desirable" (Combs rpt., p. 16).

Ms. Combs' opinions are ill-founded: That managers can somehow integrate disparate pieces of applicant information *holistically* in the absence of specific guidelines or written policies in a manner that is accurate and unbiased is unsupported by social science research (Meehl, 1954; Grove & Meehl, 1996; Grove, Zald, Lebow, Snitz, & Nelson, 2000). Rather, even experienced decision-makers require firm written guidelines that provide direction as to how information should be combined if they are to produce accurate and unbiased judgments and decisions (Meehl, 1954; Grove & Meehl, 1996; Grove et al., 2000). Such direction was not provided to hiring managers at Wal-Mart, a serious deficiency that contributed further to the lack of structure in job interviews and hiring decisions.[13]

Ms. Combs testified that she is unsure of what, if anything, Wal-Mart did to ensure uniformity in hiring interviews (Combs depo., p. 280). This is a startling admission. Ms. Combs simply cannot have it both ways: She cannot confidently opine that Wal-Mart has always relied on structured interviews and, at the same time, testify that she is unaware of what was done to ensure that uniformity, a defining element of structured interviews, was present throughout the *Recruit The Best* interview process.

Wal-Mart's *TalentSelection* program introduced greater structure into the interview process at DC 6097. More recently in 2002, Wal-Mart abandoned *Recruit The Best* and introduced the *TalentSelection program*,[14] a new and, in my opinion, improved *behavioral* approach to the interview process for hiring into DC 6097.[15] To my

[13] The information that Ms. Combs believes managers can integrate "holistically" include the following: A job candidate's prior related work experience, lifting ability, flexibility of work hours, attitude, enthusiasm, mood state, team player (Combs depo., p. 214). Also included in this "holistic assessment" is the substance and form of the interview, what the applicant said during interview, evaluation of all communication provided by the applicant, how the applicant behaved throughout the hiring process, the applicant's body language, interest in the job, enthusiasm for the job and willingness to do the work (e.g., Combs rpt p. 14-16)

[14] *TalentSelection Method* (WMDP00511-WMDP00702, WMDP00741-WMDP00888, WMDP00896-WMDP00992, WMDP01031-WMDP01039).

[15] See undated interview forms containing screening, first and second interviews (WMDP00511-WMDP00533).

surprise, Ms. Combs testified that she failed to see a difference in either interview process, claiming that they are just packaged differently (Combs depo., p. 167-169; Combs rpt., p. 10) and that both are structured (Combs depo., p. 155): "It's the same lengthy process of multi-step interview" (Combs depo., p. 169). However, Ms. Combs also testified that Wal-Mart moved to a more behavioral interview that attempted to assess applicants' prior behavior so as to better predict their future behavior in the distribution center (Combs depo., p. 132-133, 144).

Ms. Combs' inconsistency aside, it is my opinion that Wal-Mart's *TalentSelection* program injects more structure into the interview process in a manner that helps to reduce subjectivity and personal discretion in hiring decisions. The improvement over *Recruit The Best* is as follows: First, the interview process has been reoriented to concentrate on a more behavioral approach to assessing interviewees, an opinion that Ms. Combs appears to share (Combs depo., p. 132-133). Second, the questions are now pre-determined in a manner that helps to standardized the interview process. Indeed, interviewers may no longer manufacture their own questions. Third, there now exist written guidelines regarding the relationship between an interview rating and actual hiring decisions.

However, although progress was made in mitigating some of the deficiencies of the *Recruit The Best* program, the *TalentSelection* program suffers from a number of limitations that still remain. First, a formal job analysis has not been conducted of positions throughout DC 6097. Second, an objective, validated measure of job applicant strength and lifting ability has yet to be incorporated in the hiring process at DC 60-97. Third, the measurement scale used to evaluate job candidate responses during the interview is lacking, as managers are provided little to no guidelines in the scoring of interviewee responses. Finally, managers are provided insufficient direction regarding how candidates' interview ratings should be linked to actual hiring decisions. These shortcomings afford managers undue personal discretion in the hiring process and are contrary to HRM research and practice.

After the initial introduction of the *TalentSelection* program, Wal-Mart amended the process to include panel interviews sometime in 2004 to enhance the quality of the interview process and outcomes[16] in addition to making other changes.[17]

In all, it is Ms. Combs' peculiar and unsupported opinions regarding proper interviewing processes, especially with respect to structured interviews, that lead her to conclude Wal-Mart has always relied on structured interviews for hiring into DC 6097. This conclusion can be reached only by a rather complete and mistaken revision of what constitutes a structured interview. Ms. Combs has done just that, offering opinions that are contradicted by HRM research and practice.

In 2004, Wal-Mart Introduced The *Panel Interview Process* For Use At DC 6097, A Superior Interviewing Method According To HRM Research And Practice. Ms. Combs has proposed that Wal-Mart's use of multiple interviewers throughout the hiring process is a recommended organizational process (Combs depo., p. 39-40), that the more interviewers used the better (Combs depo., p. 115-116) and that the effects of interviewer biases in job interviews is necessarily reduced by using more interviewers (Combs depo., p. 44). Ms. Combs' opinions are incorrect, as she fails to recognize key differences between the *sequential interview process* used by Wal-Mart and the *panel interview process* introduced in 2004 for hiring into DC 6097. Although the two interview methods rely on multiple interviewers, their similarities go no further.

A *sequential interview process* involves a series of one-on-one interviews that are conducted by different interviewers. This method relies on a process of elimination insofar as a job applicant must receive a sufficiently favorable rating on one interview in order to move onto the next interview. At any point, an interviewer can decide to eliminate an applicant (Combs depo., p. 39-40).[18] This interview process is akin to what

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[16] See interview forms dated April 2004 containing prescreening, panel and final interview materials (WMDP000534-WMDP000553).

[17] Such changes made after 2002 included the start of panel interviews in 2004, the use of a panel interview and a final one-on-one interview conducted by a manager independent of the panel in December 2004, and a telephone prescreening process that was conducted by an hourly employee (See Defendants' Response To EEOC's Third Set Of Interrogatories).

[18] Wal-Mart has until recently relied on a three-step *sequential interview process*. If evaluated favorably, the applicant subsequently moves forward for an interview by the warehouse manager, who is charged with

HRM professionals refer to as a *multiple hurdle approach* to selection (Holley & Jennings, 1983; Schmitt, 1997), the implications of which Ms. Combs seems neither to recognize nor understand. Each one-on-one interview presents an opportunity for applicants to either move forward or be eliminated; and, thus, to the extent any interviewer biases are held among managers, even if not by all, the impact of such biases will be exacerbated.

In 2004, Wal-Mart moved to the use of panel interviews after an initial screening interview. These panel interviews involve a small number of interviewers meeting as a group to evaluate a job applicant but still relied on a final one-on-one interview. Using interview panels of this type can help reduce various types of interviewer biases (e.g., Prewett-Livingston, Field, Veres, & Lewis, 1996) because ratings are based on more observations and the effects of idiosyncratic opinions can be canceled out. Using a panel interview is also beneficial because it allows interviewer ratings to be reviewed by others before hiring decisions are implemented. In my opinion the introduction of panel interviews at DC 6097 can afford greater protection against interviewer biases by providing a more objective measurement of each job candidate's ability to do the job.

Ms. Combs' Opinions Regarding Wal-Mart's Use Of *Realistic Job Previews* To Evaluate Job Applicants Is Contrary To HRM Research and Practice. The purpose of a *realistic job preview* is to give job candidates as much information about the job as possible so that they can make an informed decision about their suitability for the job (Wanous, 1992; Premack & Wanous, 1985). In order for the realistic job preview to be successful, it must objectively outline positive and negative aspects of the job. A realistic job preview reduces unnecessary turnover caused by the disappointment of initial job expectations that have been inflated by traditional "sell the job" recruiting methods. Realistic job previews can be found in a variety of formats including, for example, videos, verbal presentations and job tours.

According to Ms. Combs, job candidates at DC 6097 may be given a tour of the distribution center after their initial interview (Combs depo., p. 205), as a type of realistic job preview (Combs depo., p. 206). However, the actual frequency of such distribution

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making final hiring decisions (Combs rpt., p. 13). A job applicant can be eliminated at any point in the process.

center tours is unclear. I did not see any formal, written requirements in the materials that I reviewed, and Ms. Combs testified that she did not know if every applicant who made it to the second interview was given a tour of the distribution center (Combs depo., p. 205). Nonetheless, the fact remains that realistic job previews are done to afford job candidates an opportunity to view work and experience the working conditions so that a more informed decision can be made by job candidates.

Ms. Combs' opinions in this matter depart from HRM research and practice when she supports the use of realistic job previews by Wal-Mart managers as a method for evaluating job candidates based on managers' perceptions of a job candidate's reaction to the work and the work environment (Combs rpt., p. 12). Specifically, Ms. Combs testified that "Many employers use … realistic job-previewing....to identify incongruence between what the applicant relates verbally and how the applicant re-actin (sic) the work environment. It is a recommended selection practice" (Combs rpt., p. 12-13). This is not an opinion shared by HRM researchers or practitioners. Ms. Combs provides no research evidence to support using realistic job previous as a selection tool, nor does Ms. Combs provide evidence to support her belief that managers are able to accurately discern dissociations between applicant attitudes and likely work behavior by relying on a work site tour. Indeed, Ms. Combs' notions that managers can accurately assess a job candidate's true interest in the job by evaluating their "body-language" and "interpreting non-verbal cues" (Combs depo., p. 206-209) is without research support. Consistent with my strong critique of her opinions in this matter, Ms. Combs readily acknowledged that HRM textbooks indicate that relying on body language can be a source of error in personnel decision-making (Combs depo., p. 209) and that she has not reviewed any HRM textbooks that recommend relying on body language as a best practice (Combs depo., p. 208).

In all, Ms. Combs fails to recognize that realistic job previews are used only to inform job candidates of the positive and negative aspects of a job. Ms. Combs' belief that a realistic job preview can and should be used by an employer as a measurement tool for hiring decisions, and not just as a method for conveying both positive and negative aspects of a job, puts Ms. Combs far outside contemporary HRM research and practice.

VI. MS. COMBS' OPINIONS REGARDING MANAGERIAL TRAINING IN JOB INTERVIEWING CONDUCTED AT DC 6097 ARE CONTRADICTED BY HRM RESEARCH AND PRACTICE

Ms. Combs takes a decidedly informal, non-standardized approach to training, a position supported by her belief that the uninitiated can learn what they need to know about interviewing by "shadowing" more experienced managers (Combs depo., p. 65, 118; Combs rpt., p. 17) and that formal assessments of training effectiveness to ensure that managers have the requisite skills to properly conduct job interviews are not required (Combs depo., p. 281). Moreover, Ms. Combs' positive opinions regarding the training of managers at DC 6097 remain unaffected by the fact that she is not aware of whether Wal-Mart assesses whether new managers are picking up the correct interviewing techniques (Combs depo., p. 282, 291) or whether Wal-Mart measures the interviewing skills of its hiring managers before training other managers (Combs depo., p. 276).[19] Perhaps this is because Ms. Combs does not recommend assessing the effectiveness of training programs, a point she testified to in her deposition (Combs depo., p. 281). Rather, Ms. Combs' opinion is that Wal-Mart managers have a "mental image" of the ideal job incumbent based on their experience in the distribution center against which they can accurately assess job applicants (Combs depo., p. 210-213; 244; Combs rpt., p. 16). According to Ms. Combs, Wal-Mart managers in the distribution center "inherently understood the kind of employee needed to be successful in their environment" (Combs rpt., p. 12, 16) and should simply rely on their own experience when hiring.

Ms. Combs' positive opinions of Wal-Mart's managerial training are also unaffected by the fact that she does not know if all managers between 1998 and 2004 received training using *Recruit The Best* and/or *TalentSelection* (Combs depo., p. 270), that she is unaware of any training required of all managers at 6097 (Combs depo., 270-271), that "There appear to be no standardized formal training curriculum required for all managers during a specified time period" (Combs rpt., p. 17) and that she did not review any records to ascertain what training each manager had received (Combs depo., p. 273).

In my opinion, Wal-Mart's training methods suffer from three specific deficiencies that are ignored by Ms. Combs. First, relying on shadowing as a training

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[19] Ms, Combs testified that she did not ask to see any such documentation (Combs depo., p. 276).

method is problematic, as it requires assurance that the manager who is modeling for the trainee conducts interviews properly and without bias. Relying on an experienced manager who is not skilled in conducting interviews or who harbors biases will likely perpetuate ineffective and biased interviewing techniques.[20] Ms. Combs recognized this shortcoming (Combs depo., p. 227-234) and, in fact, described shadowing as an "unsophisticated method of training" and "flawed by learning an inappropriate technique" in an earlier draft of her report (Combs depo., p. 341). I agree with Ms. Combs' assessment of the deficiencies of shadowing as a training method, even if she chose to expunge such concerns from her final report.

Second, Ms. Combs makes much of her belief that Wal-Mart managers have a clear mental image of the "ideal employee" based on their years of experience on the job and that managers rely heavily on that image for hiring purposes (Combs depo., p. 210-213, 244; Combs rpt., p. 12, 16). What Ms. Combs fails to understand, however, is that a large body of HRM research demonstrates that the "mental image" of which she speaks is, in the absence of training programs designed to suggest otherwise, likely to be that of a *male*.[21] Ms. Combs' apparent lack of concern that inadequate interviewer training is provided to ensure that the image of the ideal applicant at DC 6097 is not a male (Combs depo., p. 212-213) is at odds with HRM research and practice.

Third, Ms. Combs noted the extent to which Wal-Mart managers rely on a job candidate's "body language" in the course of making hiring decisions (Combs depo., p. 206-209) and that Wal-Mart managers are not trained to accurately assess body language, including with respect to avoiding biased assessments of job candidates (Combs depo., p. 210). Ms. Combs seems untroubled by this significant training deficiency, as she is of the belief that managers can accurately interpret a job candidate's body-language and

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[20] For supporting research evidence see HRM articles identified in Footnote 10 of this report.

[21] In fact, a large and well-developed body of scientific research shows that women in male-dominated occupations experience greater sex stereotyping; this is due largely to the belief that the prototypic successful employee is seen as a male and not a female (Kanter, 1977a, 1977b; Konrad, Winter & Gutek, 1992; Reskin, McBrier, & Kmec, 1999; Yoder, 1994). Research has shown, for example, that female job applicants in a male-dominated applicant pool experience more gender stereotyping and are less likely to be hired (Heilman, 1980) and that the work performance of females is judged less favorably than that of men as their proportion in a work group decreases—even after controlling for human capital differences (Sackett, Dubois, & Noe, 1991).

other non-verbal cues (Combs depo., p. 206-209). As with many of her other beliefs, Ms. Combs' opinions stand far removed from HRM research and practice.

Finally, many of Ms. Combs' opinions in this matter reflect a deep lack of knowledge of HRM research and practice as it relates to the importance of having formal, standardized training programs for managers engaged in interviewing and making hiring decisions. Indeed, Ms. Combs testified as follows (Combs depo., p. 274):

> ***Q: Ms. Combs, we're talking about Wal-Mart's training of managers for hiring. What does SHRM say concerning whether having a standardized system for manager training is the best practice?***
>
> ***A. I don't know that there is any literature on that subject.***

Given her membership in *The Society of Human Resource Management* ("SHRM"), Ms. Combs' response is surprising. There is a rather large body of knowledge regarding managerial training, including as it relates to interviewing and hiring on the SHRM website.[22] What this research shows is that, at minimum, training must be of a reasonable length and intensity to ensure proper interview techniques are in place.

VII. MS. COMBS OFFERS OPINIONS THAT GO BEYOND HER ASSIGNMENT IN THIS CASE

Ms. Combs offers opinions and factual determinations that stray from her stated assignment[23] and that appear to invade the purview of the fact-finder (viz., judge or jury). Moreover, Ms. Combs' departures from her assignment in this case are not random but reveal a particular pattern, with each opinion and factual determination depicting Wal-Mart in a favorable light. Ms. Combs, for example, states to a certainty that managers at

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[22] See Footnote 10 of this Report.

[23] In her report of January 7 2008, Ms. Combs identified her assignment as follows: "I have been requested to provide an opinion regarding the human resource practices of Wal-Mart at its Distribution Center #6097, including the hiring policies and procedures, as well as the selection and training of employees assigned to participate in the selection system ..." (Combs rpt, p. 1). Ms. Combs was more specific in her deposition testimony of April 29, 2008 wherein she testified that her charge was to, first, examine Wal-Mart's policies, procedures and practices as they relate to the selection process and management training at DC-6097 (Combs depo., p. 12-13) and, second, to opine as to their "adequacy and completeness" for hiring (Combs depo., p. 13, p. 70, 248).

DC-6097 have in fact followed Wal-Mart's policies and procedures (Combs depo., p. 92-93). How can she know this? Ms. Combs opines as to the credibility of five class members chosen by Wal-Mart and whose testimony she reviewed in this case (Combs depo., p. 51-58). Through what means or method can Ms. Combs make such determinations? Ms. Combs opines that Wal-Mart managers at DC-6097 have, in fact, treated these five class members fairly (Combs depo., p. 52-53). Again, one wonders what means or method Ms. Combs has at her disposal to reach such conclusions. Of course, Ms. Combs is simply stipulating in the absence of any reliable methodology that I can discern and in the absence of any request to proffer opinions on these matters. Ms. Combs appears to have strayed from the neutral role that should be occupied when serving as an expert to an advocate for Wal-Mart. In fact, Ms. Combs' testimony indicated that she agreed to *defend* Wal-Mart, after reviewing the materials in this case (Combs depo., p. 352-353).

Ms. Combs Opines That Managers AT DC 6097 Have In Fact Followed Wal-Mart's Hiring Policies And Procedures. Ms. Combs ventures beyond her assignment when she stipulates that managers throughout DC 6097 have in fact followed Wal-Mart's hiring policies and procedures (Combs depo., p. 92-93). In none of the materials that I have reviewed to date have I read that Ms. Combs was asked to make any such determinations.[24] And for good reason: On what basis can Ms. Combs know to a certainty that managers throughout DC-6097 have adhered to Wal-Mart's hiring policies and procedures throughout the time period covered in this suit? Ms. Combs claims to have "watched the process in action for the adequacy and the completeness and if that system is a workable system" (Combs depo., p. 332). Ms. Combs' description is a fiction, misrepresenting, as it does, the actual methodology she relied upon in assessing Wal-Mart's hiring processes. Ms. Combs has not observed hiring processes as they are implemented by managers throughout DC 6097, nor has she observed a single applicant interview. Rather, Ms. Combs has reached her conclusions by relying on the written and videotaped deposition testimony of only five of the class members—all of whom were

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[24] During her deposition Ms. Combs expanded upon her assignment, testifying that she was to evaluate Wal-Mart's hiring process **and** determine whether managers throughout Distribution Center 6097 followed Wal-Mart's selection processes (Combs depo., p. 51-53).

pre-selected by defense counsel for Ms. Combs' review without any explanation as to the selection criteria (Combs depo., p. 59) and the depositions of nine managers testifying on behalf of Wal-Mart.

On this basis, Ms. Combs concluded that managers throughout Wal-Mart Distribution Center 6097 follow the prescribed hiring process and that job applicants throughout the distribution center are treated fairly (Combs depo., p. 52-53). In so doing, Ms. Combs has moved beyond evaluating Wal-Mart's stated hiring policies and procedures and inserted herself into the role of fact-finder, a position that renders suspect Ms. Combs' neutrality in this matter.

Ms. Combs Opines As To The Credibility Of Five of The Class Members In This Case And Whether They Were Treated Fairly Throughout The Selection Process At DC 6097. Ms. Combs exhibits a dramatic (and disconcerting) departure from her assignment when she judges the credibility of five of the female class members who were deposed in this case and whether these particular class members were treated fairly throughout the selection process. Defendants' law firm selected the class members from a larger pool of class member depositions for Ms. Combs' review (Combs depo., p. 48-49). To be clear, Ms. Combs testified that she was not asked to form any such opinions, nor was she asked to opine as to whether these five class members should have been hired at DC 6097 (Combs depo., p. 51, 56). Moreover, I did not see in any of the materials provided to me that Ms. Combs was asked to opine as to whether she believed their testimony. And yet, incredibly, Ms. Combs offered factual determinations regarding the "credibility" of these five class members based on her observation of their body language during their deposition testimony[25] as well as judgments of whether these class members had been "treated fairly" throughout the selection process and even her own assessment of whether she would have hired these class members for the Wal-Mart position (Combs depo., p. 51-58).

According to Ms. Combs' deposition testimony, she relied on the videotaped depositions of these five class members "To observe the selection process .... and to

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[25] Not only are Ms. Combs' determinations far removed from her charge in this matter but a large body of social science research demonstrates that the likelihood of Ms. Combs reaching accurate conclusions regarding plaintiffs' credibility based on her observation of their body language is close to nil (Ekman, O'Sullivan, & Frank, 1999; Ekman, 1996).

watch the response of the *job applicant* (italics added) (as) if I would have been interviewing them ... the responses, the nonverbal cues, nonverbal behaviors" (Combs depo., p. 55-56). Ms. Combs claims are incredulous. The DVD's reviewed by Ms. Combs contained videos only of the class member's deposition testimony and not their actual hiring and interview process at Wal-Mart Distribution Center 6097. Ms. Combs did not observe the job interviews of any job applicants, only the deposition testimony of five of the class members. Nonetheless, Ms. Combs offers opinions regarding Wal-Mart's hiring policies and procedures that are based on her evaluations of the five class members' nonverbal behavior and nonverbal cues reportedly observed by Ms. Combs during their deposition testimony. Ms. Combs fails to even attempt to provide a rationale for how or why nonverbal behavior and nonverbal cues reportedly observed in deposition testimony can provide any foundation for opining as to the fairness of Wal-Mart's selection processes or the credibility of class members allegations in this case. Ms. Combs presents no evidence that she, or anyone, is capable of accurately decoding and evaluating nonverbal behavior and nonverbal cues in the manner Ms. Combs claims to have done. There is no such evidence. Moreover, in making her determinations Ms. Combs did not observe deposition testimony of male job applicants who were hired (Combs depo., p. 56), review the qualifications of male applicants whom were hired (Combs depo., p. 56) or review the applications of all individuals who were and who were not hired at DC 6097 (Combs depo., p. 16).

The following testimony should remove any doubt as to where Ms. Combs stands with respect to her judgment regarding the credibility of these class members' testimony in this case:

> ***Q: So what you did is you used your own opinion on who you think should have been hired?***
> ***A: I used my opinion on the quality of their responses of whether or not I believed what they had to say in their deposition*** (underline inserted)... " (Combs depo., p. 56).

Ms. Combs continues down this same path when she asserts that her opinions regarding the five female class members will generalize to all job applicants at DC 6097 from 1998 to 2004. In Ms. Combs' words:

> ***"I viewed these five as candidates for employment in that distribution center that would be representative of candidates for employment that I might see if I were doing the interviewing"*** (Combs depo., p. 49-50).

Ms. Combs goes on to stipulate in the absence of any credible support that these five class members, who were not hired, are representative of the approximately 25,000 individuals who had applied at the distribution center between 1998 and 2004 and that she would expect to see if she were doing the interviewing (Combs depo., p. 47-51). Notably, Ms. Combs is unaware of how many class member depositions there are and how many of these depositions she may not have seen (Combs depo., p. 49).[26]

When pressed to explain how she could know to a certainty that these five class members are representative of all job applicants, Ms. Combs chose to invoke her family background (Combs depo., p. 49-51).

> ***"I know the area intimately. I am a Combs. I believe there are 50,000 Combs in that area of Kentucky. I married into a family from that area"*** (Combs depo., p. 50).

While I am at a loss to understand how Ms. Combs' family background figures into her reasoning, it is clear that Ms. Combs has fallen victim to a serious error in judgment known among social scientists as the "law of small numbers" (Tversky & Kahneman, 1971) in which she exaggerates beyond recognition the degree to which an exceedingly small, non-random sample (viz., five class members who were selected by Wal-Mart) resembles the far larger population from which it is drawn.

Ms. Combs Opines That Females Are Less Interested Than Males In Working In Distribution Centers Such As Wal-Mart's DC 6097. I have seen no evidence in the materials presented to me that Ms. Combs was asked to make any determinations regarding gender differences in work-related attitudes and interests nor, specifically, whether females are less interested than males in working at Wal-Mart DC

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[26] Because the actual number of class member depositions was unknown to Ms. Combs at the time she reviewed the deposition testimony of these five class members (Combs depo., p. 49), she had no way of knowing the extent to which her conclusion are necessarily generalizable to other class members, a shortcoming that Ms. Combs seems to simply discount (Combs depo., p. 49).

6097. Ms. Combs' opinions are mere stipulation based on an unreliable mix of anecdote and casual observations. There is not even the appearance of any formal analysis or research upon which she formed her opinions. Ms. Combs' opinions are based simply on her observation that she "can't find any women" when she walks through distribution centers (Combs depo., p. 74-75), that warehouse jobs in distribution centers "are just not jobs that females seek" (Combs depo, p. 74-77) and on anecdotes offered up by distribution managers (Combs depo., p. 74, 124-125). She has neither been presented with nor asked to see applicant flow data to confirm whether her beliefs hold true for positions at DC 6097 (Combs depo., p. 74-75, 80-81). But Ms. Combs did see Dr. Barnow's expert report showing females do apply to Wal-Mart Distribution Center 6097 (Combs depo., p. 81). Once again, I think it accurate to conclude that Ms. Combs has moved well beyond her charge when proffering her opinions on this particular matter.

Ms. Combs Opines That There Is No Gender Bias In Hiring Decisions At Wal-Mart DC 6097. Ms. Combs moves well beyond her charge and into the domain reserved for fact-finders when she proffers opinions regarding whether there is gender bias in hiring at Wal-Mart DC 6097. Specifically, Ms. Combs concluded that DC 6097 *prevents gender bias in hiring decisions* by spending a lot of money in selecting employees in a lengthy process (Combs depo., p. 117) and by hiring the best people (Combs depo., p. 126).

I have seen no evidence in the materials presented to me that Ms. Combs was asked to make any factual determinations regarding the existence of gender bias in hiring at DC 6097. Indeed, attempting to decide, one way or the other, whether females are discriminated against at DC 6097 is well beyond the purview of any social science expert, including Ms. Combs. Nonetheless, Ms. Combs' conclusions fall on the side of Wal-Mart, finding that hiring at DC 6079 is free of gender bias. And yet, Ms. Combs has not taken steps to compare the qualifications of hired males to the qualifications of non-hired females (Combs depo., p 126). Nor has Ms. Combs compared the qualifications of the five class members she reviewed to any other individuals who applied at Wal-Mart and were hired (Combs depo., p. 306). Rather, Ms. Combs simply stipulates that there is an absence of bias in hiring. Given the deficiencies of Ms. Combs' methodology, her limited educational training and her lack of command of contemporary HRM research

and practice, each of which I have discussed at length, it is my opinion that Ms. Combs is ill-equipped to offer factual determinations regarding the allegations of sex discrimination made in this case. Nor is an attempt to do so within the purview of experts involved in litigation.

It is not my role to render a determination of whether gender stereotyping caused women to be discriminated against in hiring at DC 6097. I will, however, respond to Ms. Combs' opinions by assessing the vulnerability of Wal-Mart's hiring processes to gender stereotyping, based on the large body of social science research that exists on gender bias in the workplace.[27] I will, first, provide a brief review of relevant research on gender bias in the workplace and, then, identify specific elements of Wal-Mart's personnel system that are vulnerable to sex stereotyping in hiring at DC 6097. Because Wal-Mart has relied on two different procedures, *Recruit The Best* and *TalentSelection* (which in 2004 was altered to include a panel interview), I will distinguish between the two in assessing their vulnerability to gender bias, based on HRM research.

Gender Bias At Work. An extensive body of social science research demonstrates that women are often perceived as lacking many of the attributes, skills and abilities deemed necessary to succeed in male sex-typed occupations (see Brenner, Tomkiewicz, & Schein, 1989; Dodge, Gilroy, & Fenzel, 1995; Eagly & Karau, 2002; Heilman, 1995; Heilman, Block, & Martell, 1995; Heilman, Block, Martell, & Simon, 1989; Martell & DeSmet, 2001; Martell, Parker, Emrich, & Swerdlin, 1998). This causes women to be disadvantaged,[28] especially in occupations dominated by men.[29] These

[27] An amicus curiae brief proffered by the American Psychological Association ("APA") in the sex discrimination case of *Price Waterhouse v. Hopkins (1989)* provides a useful starting point for summarizing what is known of gender stereotyping in the workplace. The goal of the brief was to educate the Court on the nature and validity of gender stereotyping research as it relates to personnel decision-making in a male-dominated employment context (APA Amicus Brief, 1988; APA, 1991; Fiske et al., 1991). The APA brief offered a number of conclusions that are relevant to the allegations made in this case: (1) The validity of a large body of empirical research on gender stereotyping that has amassed over seven decades is widely accepted throughout the scientific community; (2) Gender stereotypes depict women as less well suited than men for traditionally male-dominated occupations; (3) Gender stereotypes disadvantage women on a wide range of employment decisions including hiring and job assignment. Empirical research conducted since the 1988 APA brief continues to demonstrate that women are often perceived as lacking many of the attributes deemed necessary to succeed in traditionally male-dominated occupations (see Brenner, Tomkiewicz, & Schein, 1989; Dodge, Gilroy, & Fenzel, 1995; Eagly & Karau, 2002; Heilman, 1995; Heilman, Block, & Martell, 1995; Heilman, Block, Martell, & Simon, 1989; Martell & DeSmet, 2001; Martell, Parker, Emrich, & Swerdlin, 1998). Burgess and Borgida (1999), (Heilman, 2001), and Eagly & Karau (2002) provide extensive reviews of this research.

findings have proven to be robust based on narrative and meta-analytic reviews of a very large scientific literature (e.g., Bowen et al., 2000; Davison & Burke, 2000; Eagly & Karau, 2002; Olian et al., 1988; Perry, Davis-Blake, & Kulik, 1994; Swim et al., 1989; Swim & Sanna, 1996; Tosi & Einbender, 1985).[30]

Importantly, gender bias in personnel decision-making is not inevitable. The nature of a company's personnel policies and practices can either promote or inhibit the expression of gender bias in hiring decisions. Specifically, subjective selection criteria and measurement policies and practices that accord hiring managers undue personal discretion serve to promote gender bias in traditionally male-dominated occupations

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[28] Compared with their male counterparts, females in traditionally male-dominated occupations are more likely to be recruited and hired at substantially lower rates; tracked into lower paying and lower prestige jobs and task assignments; accorded less favorable performance evaluations by their supervisors and judged as less effective by their male peers; promoted less frequently, especially to higher status positions; given inadequate credit for their accomplishments, frequently finding that their successes are (mis)attributed to external factors, including luck and the "help" of their male colleagues, rather than to their efforts and abilities; criticized for promoting their successes; provided fewer training and career developmental opportunities; assigned less challenging jobs; receive substantially less support from their superiors; and greater exclusion from informal networks (Bartol, 1999; Biernat, Crandall, Young, Kobrynowicz, & Halpin, 1998; Blum, Fields, & Goodman, 1994; Bowen, Swim, & Jacobs, 2000; Cohen, Broschak, & Haveman, 1998; Cole, Feild, & Giles, 2004; Davison & Burke, 2000; Eagly, Makhijani, & Klonsky, 1992; Eagly & Karau, 2002; Fiske, 1993; Foschi, Lai, & Sigerson, 1994; Foschi, 1996; Goldin & Rouse, 2000; Greenhaus & Parasuraman, 1993; Haberfeld, 1992; Heilman, 1995; Heilman et al., 2004; Heilman & Haynes, 2005; Landau, 1995; Martell, 1996a, 1996b; Mehra, Kilduff, & Brass, 1998; Morrison & Von Glinow, 1990; Ohlott, Ruderman, & McCauley, 1994; Olian, Schwab, & Haberfeld, 1988; Perry, Davis-Blake, & Kulik, 1994; Reskin, 1993; Reskin & Ross, 1995; Sackett, DuBois, & Noe, 1991; Stroh, Brett, & Reilly, 1992; Swim, Borgida, Maruyama, & Meyers, 1989; Swim & Sanna, 1996; Tosi & Einbender, 1985).

[29] Women in occupations that are male-dominated experience greater sex stereotyping (Kanter, 1977a, 1977b; Konrad, Winter & Gutek, 1992; Reskin, McBrier, & Kmec, 1999; Yoder, 1994). Research has shown, for example, that female job applicants in a male-dominated applicant pool experience more gender stereotyping and are less likely to be hired (Heilman, 1980), and that female's work performance is judged less favorably as their proportion in the work group decreases—even after controlling for human capital differences (Sackett et al., 1991).

[30] Studies of gender bias in the workplace use an array of methods including controlled laboratory and field experiments, field studies, and archival organizational data. There is presently a large body of research on the nature of gender stereotypes in the workplace, the effects of gender stereotyping on decision-making, and the types of factors that either promote gender bias and thus disadvantage women in the workplace or that effectively diminish the likelihood that gender bias will infect personnel decision-making (e.g., APA, 1991; APA Amicus Brief, 1988; Eagly, & Karau, 2002; Fiske et al., 1991; Heilman, 2001; Martell, 1996). The research findings have proven to be *reliable* (i.e., the basic findings can be replicated), *internally valid* (i.e., causal assertions regarding the effects of gender can be made), and *externally valid* (i.e., study results are sufficiently generalizable). Taken together, these studies represent an established body of scientific research that is well-accepted within the scientific community and that has often been cited in employment litigation contexts (e.g., APA, 1991; APA Amicus Brief, 1988; Eagly & Karau, 2002; Fiske et al., 1991).

(APA, 1988). More recent studies provide additional support for this finding.[31] In fact, large scale, quantitative reviews of numerous studies published over a 25-year period have found that gender bias effects can be lessened when objective, job-relevant information that is diagnostic of likely job success is provided (Davison & Burke, 2000; Swim et al., 1989; Tosi & Einbender, 1985). Much of this research is reviewed in a recent article entitled: "*Subjectivity In The Appraisal Process: A Facilitator Of Gender Bias In Work Settings*, authored by organizational scholar Madeline Heilman.

Consistent with this research, as organizations formalize the human resource management procedures that guide personnel decision-making, a practice that decreases subjectivity by more clearly defining evaluative criteria and limiting the personal discretion of individual decision-makers, the treatment and status of protected group members in the workplace improves (see Brief, Butz, & Deitch, 2005; Huffcutt & Roth, 1998; Konrad & Linnehan, 1995; Kalev, Dobbin, & Kelly, 2006; Reskin & McBrier, 2000; Tomaskovic-Devey & Skaggs, 1999). Indeed, as noted by one prominent researcher in the field of bias in the workplace:

> "***Stereotypes are more troublesome in those organizations whose HRM policies and practices allow individual managers a great deal of discretion, providing little in the way of written guidelines or effective oversight***"
> (Brief et al., 2005, p. 134).

To be clear, Wal-Mart's *Recruit The Best* and its *TalentSelection* procedure are *both* vulnerable to gender stereotyping. Each contained specific elements that increase subjectivity and personal discretion and thus pose obstacles to the hiring of female job candidates at DC 6097 in a manner that Ms. Combs has failed to recognize in her report and deposition testimony. Specifically, with respect to Wal-Mart's *Recruit The Best* and its *TalentSelection* process:

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[31] See, for, example, Borgida et al., 1995; Brewer, 1996; Hamilton & Sherman, 1994; Heilman & Haynes, 2005; Reskin et al., 1999; APA, 1991; Heilman, 1995; Heilman et al., 2004; Heilman & Hayes, 2005; Heilman, 2001; Fiske et al., 1991; Fiske & Neuberg, 1990; Reskin & McBrier, 2000;Welle & Heilman, 2005; Uhlmann & Cohen, 2005. Studies of other protected groups (e.g., African-American employees) yield similar findings, demonstrating that excessive subjectivity create conditions ripe for stereotyping effects (e.g., Chung-Yan & Cronshaw, 2002; Huffcutt & Roth, 1998; Martocchio & Whitener, 1992).

- A job analysis has not been conducted to ensure the use of selection criteria that are job-related.[32] The absence of a formal job analysis injects excessive subjectivity into personnel decision-making which, in turn, promotes the use of stereotypes. This is true whether traits or behaviors serve as the criteria for hiring decisions.
- DC 6097 continues to lack a formal, pre-determined interview scoring system to ensure that the responses of each applicant during interviews are rated accurately and in a fair manner. Rather, managers are left to their own personal discretion when evaluating interviewee responses and deciding the proper score to assign to applicants' responses (Combs depo., p. 202).
- The assessment of whether job candidates meet any minimal physical requirements, including lifting ability, continues to rely on an extremely subjective approach. Rather than use validated tests that are readily available, managers at DC 6097 engage in something akin to a guessing game, whereby an applicant's physical abilities are inferred by asking about their prior work history (Combs depo., p. 188-189). This extremely subjective and round-about way of judging an applicant's abilities is ripe for stereotyping women as necessarily failing to meet minimum physical requirements for jobs at DC 6097. The absence of an objective measure of physical strength poses a significant obstacle to female job candidates at DC 6097.
- Neither hiring process has been subjected to tests of validation to assess the validity of the interview and hiring decisions at DC 6097

Wal-Mart's *Recruit The Best* Hiring Process Is Extremely Vulnerable To Gender Stereotyping. As I have described previously[33] Wal-Mart's *Recruit The Best* hiring process relied on an extremely unstructured process for evaluating job candidates and making hiring decisions.

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[32] Wal-Mart had not conducted a formal job analysis of warehouse positions to identify job-related criteria for use in hiring decisions until the 2008 report provided by George Barrett. Wal-Mart document, "Essential Functions Job Specific Matrix" (WMDP00062), describes some job requirements in terms of very basic competencies and physical requirements (Combs rpt. P. 14-15) that are identified for compliance with the American Disabilities Act ("ADA") (Combs depo., p. 199, 201, 203). It is not a job analysis.

[33] See pages 7-12 of this Report.

For example, there were no standardized written hiring criteria in place (Combs depo., p. 335-336). Rather, managers were free to rely on a wide range of extremely subjective criteria (Combs depo., p. 214, 335-335; Combs rpt., p. 15-16) such as: positive attitude, enthusiastic, happy, team player, flexibility, career-oriented, good work attitude, stable work history, pleasant, willingness to do the job. These criteria were not mandatory, rather managers were accorded much discretion in deciding the relative importance of various criteria (Combs depo., p. 217). Consistent with the undue personal discretion accorded to managers at DC 6097, the criteria used for evaluations varied from manager to manager (Combs depo., p. 197, 200) and managers could generate there own questions.

Moreover, managers relied on their own subjective judgments with respect to what the applicant had said during the interview and how the applicant behaved, including evaluations of the applicant's "body language" and "silent communication." Little to no guidance was provided regarding the specific manner in which job candidate responses and behavior were to be scored. This is a significant shortcoming, as many of the hiring criteria were "traits" which, even under the best of circumstances, require careful measurement.

Wal-Mart's training methods used in the *Recruit The Best* hiring process were also deficient in a manner that posed obstacles for female job applicants at DC 6097. As I have discussed,[34] DC 6097 relied heavily on "shadowing" as a method for training managers in the proper conduct of job interviews. This approach is problematic insofar as it assumes that the manager who is modeling for the trainee conducts interviews properly and without bias. Relying on an experienced manager who is not skilled in conducting interviews or who may harbor a gender-based preference for males will simply perpetuate ineffective and biased interviewing techniques. Ms. Combs recognized this shortcoming (Combs depo., p. 227-234) and, in fact, described shadowing as an "unsophisticated method of training" and "flawed by learning an inappropriate technique" in an *earlier draft* of her report (Combs depo., p. 341).

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[34] See pages 17-18 of this Report.

Overall, Wal-Mart's *Recruit The Best* hiring process injected enormous subjectivity and personal discretion into the decision-making process, factors that enhance the likelihood of gender stereotyping. In contrast, HRM research demonstrates that structured interviews are effective in curbing stereotyping during the interview process, due largely to the fact that subjectivity and personal discretion in decision-making is reduced which, in turn, enhances interviewer objectivity (Huffcutt & Roth, 1998; Kacmar & Hochwarter, 1995; Lin, Dobbins, & Farh, 1992; Prewett-Livingston, & Field, Veres, & Lewis, 1996).[35]

Wal-Mart's *TalentSelection* Program Is Less Vulnerable To Gender Stereotyping. As I have stated, although Wal-Mart's *TalentSelection* hiring process is in no way immune to gender stereotyping, it is, nonetheless, not as vulnerable as the *Recruit The Best* program. This is because the interview procedure introduced by Wal-Mart as part of the Talent Selection program incorporated more structure and, in so doing, reduced subjectivity and personal discretion in hiring decisions.

Specifically, *TalentSelection* relies on criteria that are more behavioral in nature and oriented less around traits as predictors of future work behavior. The questions are predetermined and thus interviewers are accorded less personal discretion in deciding what questions to use in the interview. There is also some, though not completely adequate, guidance provided regarding the relationship between interview scores and actual hiring decisions.

In addition, the *Panel Interview Process* at DC 6097 introduced in 2004 as part of the *TalentSelection* program is a marked improvement over the sole reliance on one-on-one *sequential interviews*. *Panel interviews* can afford greater protection against the negative effects of gender-based stereotypes by providing a more objective measurement of each job candidate's ability to do the job (Prewett-Livingston et al., 1996). Relying on sequential interviews alone is problematic because each one-on-one interview represents yet another opportunity for female applicants to be unfairly disqualified. Thus, to the extent traditional sex-role stereotypes are harbored by managers, even if not by all managers, female job applicants will be disadvantaged. This is an example of the effects

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[35] Ms. Combs correctly recognized that structured interviews are less sensitive to claims of employment discrimination (Combs depo., p. 19).

of cumulative disadvantage, a topic on which I have published peer-reviewed studies (Robison-Cox, Martell, & Emrich, 2007; also see, Martell, Lane, & Emrich, 1996) to help explain gender segregation in organizations.[36]

Wal-Mart's Use Of *Realistic Job Previews* To Evaluate Job Applicants Is Vulnerable To Gender Stereotyping. Realistic job previews have been (mis)used at DC 6097 to judge the suitability of job candidates, largely by relying on managers' subjective interpretation of job candidates' body language and non-verbal cues (Combs depo., p. 206-209). There is simply no scientific basis for assuming that managers can, in fact, make such determinations in an accurate and unbiased manner (Ekman, O'Sullivan, & Frank, 1999; Ekman, 1996). Nor is Ms. Combs aware of whether Wal-Mart even attempts to train managers on how to assess body language in a manner that avoids the biasing effects of job candidate gender (Combs depo., p. 210).

Remarkably, Ms. Combs appears rather disinterested in knowing whether there is any empirical support for her opinions regarding whether perceptions of a job candidate's behavior during a realistic job preview (such as occurs when candidates tour the distribution center 6097) is an accurate predictor of job success and whether the behavior of female job candidates might be misinterpreted (Combs depo., p. 207-208). Ms. Combs testified as follows:

> ***Q: Do industrial psychologists think that a person's behavior during a realistic job preview is an accurate predictor of their success on the job?***
> ***A: I don't have a clue"***
> ***Q: "Are you aware of any research that talks about whether or not body language can be reliable measured?***
> ***A: Not off the top of my head, but I am sure, like every other topic, it has been researched to death.***
> ***Q; Are you familiar with research that behavior will be labeled differently by an interview depending upon whether it's observed in men or women?***

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[36] A discussion of my research on cumulating gender bias effects in traditionally male-dominated occupations is presented in Lippa (2002), Agars (2004), and Valian (1999).

A: I haven't studied gender differences in behavior cues as it relates to interviews in men or women. I have not seen research on that subject specifically." [37]

Yet, there is one very important point made by Ms. Combs that I strongly agree with. I think Ms. Combs had it right when she wrote in a *draft* of her expert report that the realistic job preview could be used by hiring managers to coach applicants into accepting jobs (Comb depo., p. 329).[38] Just the same, it could be used to discourage female applicants from accepting jobs. Nonetheless, Ms. Combs apparently had a change of heart and failed to consider this possibility in her *revised* final report. Ms. Combs' opinions regarding the potential use of realistic job previews to inappropriately coach applicants is now nowhere to be found in her *final* expert report. In all, it is my opinion that using a realistic job preview as a measurement and selection tool, one that as far I can discern has not been validated, is at odds with HRM research and practice, and risks disadvantaging female applicants who may be steered away from pursuing warehouse positions in DC 6097.

VIII. CONCLUSIONS

My expert opinions regarding Ms. Combs' conclusions as they relate to the hiring policies and practices and the training provided to hiring managers at Wal-Mart Distribution Center 6097 are as follows:

First, Ms. Combs' opinions in this case go beyond her expertise in HRM research and practice.

Second, Ms. Combs' opinions regarding the adequacy and completeness of Wal-Mart's hiring policies and practices at DC 6097 are contradicted by HRM research and practice.

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[37] In fact, social science research demonstrates the ease with which identical behavior can be misconstrued in gender-consistent ways (Bodenhausen, Macrae, & Sherman, 1999; Borgida et al., 1995; Hilton & von Hippel, 1996; Kunda & Thagard, 1996; von Hippel, Sekaquaptewa, & Vargas, 1995). For example, what may be labeled as persistence on the part of a male employee may be seen as foolhardy for a woman, and the assertive and confident behavior of males may be seen as aggressive and arrogant in females. Thus, the observation of work behavior alone is not necessarily an effective antidote to gender bias in work settings, rather identical behavior can be misinterpreted in ways that sustain sex-role stereotypes.

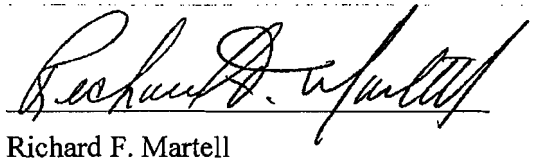
[38] Ms. Combs stated: "It is a well-known interviewer bias" (Combs depo., p. 329).

Third, Ms. Combs' opinions regarding managerial training in job interviewing conducted at DC 6097 are contradicted by HRM research and practice.

Fourth, Ms. Combs offers opinions that go beyond her assignment and that invade the purview of the factfinder in this case. To begin, Ms. Combs opines that there is no gender bias in hiring decisions at Wal-Mart DC 6097 and that managers at DC 6097 have in fact followed Wal-Mart's hiring policies and procedures. Moreover, Ms. Combs opines as to the credibility of five of the class members in this case and judges that they were treated fairly throughout the selection process at DC 6097. Ms. Combs also opines that females are less interested than males in working in distribution centers such as Wal-Mart's DC 6097.

Fifth, Wal-Mart's *Recruit The Best* hiring process is extremely vulnerable to gender stereotyping in hiring at DC 6097, whereas Wal-Mart's *TalentSelection* program, though by no means immune, is less vulnerable to gender stereotyping.

Finally, Wal-Mart's use of *Realistic Job Previews* in the manner described by Ms. Combs to evaluate job applicants is vulnerable to gender stereotyping in hiring at DC 6097.



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