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COSTCO WHOLESALE CORPORATION

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

(SAN FRANCISCO DIVISION)

SHIRLEY "RAE" ELLIS, on behalf of herself and all others similarly situated, Plaintiffs, v. COSTCO WHOLESALE CORPORATION Defendant.	Case No. C04 3341 MHP **DECLARATION OF FRANK J. LANDY, Ph.D., ENCLOSING SECOND REPORT SUBMITTED IN OPPOSITION TO CLASS CERTIFICATION** Date: November 6, 2006 Time: 2:00 p.m. Courtroom: 15 Judge: Marilyn Hall Patel

I, FRANK J. LANDY, declare:

This Declaration is identical to my second report titled "Second Expert Report—Response to Dr. Barbara Reskin's Report of July 31, 2006" (August 21, 2006), except that it has been placed in declaration form.

SECOND EXPERT REPORT

Shirley 'Rae' Ellis, et al.

v.

Costco Wholesale Corporation

Frank J. Landy Ph.D.
Landy Litigation Support Group

August 21, 2006

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RESPONSE TO DR. BARBARA RESKIN'S REPORT OF JULY 31, 2006

In an earlier report dated June 22, 2006, I responded to a report filed by Dr. Barbara Reskin dated May 16, 2006 in the case styled Shirley 'Rae' Ellis et al. v. Costco Wholesale Corporation (Costco). Since that time, Dr. Reskin has submitted a second report addressing issues raised in my report. With this supplemental report, I respond to the issues raised by Dr. Reskin in her second report that are related to my previously offered opinions.

I. INTRODUCTION

My opinions in this report will address six general themes:

A) The new material introduced by Dr. Reskin to support her opinions related to stereotyping and automatic cognitive processing suffer from the same weaknesses as the research she originally cited – the research results, essays, and theoretical discussions do not provide a link between the artificial world of laboratory research and the real world of personnel decision making. Further, her deposition testimony of August 15, 2006, largely supports my opinions related to individuating information.

B) Social Framework Analysis is not a methodology and does not provide support for Dr. Reskin's opinions. In her deposition, Dr. Reskin concedes that Social

C) Framework Analysis has never been used as a methodology for addressing the issues relevant to this case.

D) Dr. Reskin fails to identify any relevant common HR practices that support the plaintiffs' assertion that they share a common HR experience with respect to promotions to AGM and GM positions at Costco.

E) Individuating information regarding Costco employees is substantial and sufficient to mitigate and possible stereotypic tendencies among decision makers for AGM and GM promotions.

F) In her deposition of August 15, 2006, Dr. Reskin reveals misunderstandings and ignorance of many of the HR practices of Costco.

G) There are numerous opinions that I offered in my initial report dated June 22, 2006 which Dr. Reskin does not rebut. I will assume that absent such rebuttal opinion, that Dr. Reskin accepts my position on these issues.

In presenting my opinions related to Dr. Reskin's second report, I will follow the sequence of her report. I will not comment on certain sections of her report that are directed primarily to the opinions of other Defendant experts. My numbered paragraphs below correspond to Dr. Reskin's 33 numbered opinions in her second report

II. RESPONSES TO DR. RESKIN'S OPINIONS IN HER REBUTTAL REPORT

1. Dr. Reskin asserts that I ignore "well-established scholarship about sex stereotyping and the impact of stereotyping on women's under representation in high level jobs." The only citation made by Dr. Reskin in this opinion is the Cleveland, Stockdale, & Murphy book published in 2000. I am very familiar with the Cleveland et al. book and with the research cited in that book. Much of that research was the same research which I critiqued in Dr. Reskin's original report. My concern is not that the research on stereotyping cited by Cleveland et al. in that book is "unscholarly." My concern is that the scholarship represented by that research is simply not relevant to the real world challenges of personnel decision making. I do not believe that research using students to make decisions about general characteristics of men and women, or asked to make personnel "decisions" about hypothetical candidates in the context of little or no individuating information tell us anything about influences on real decisions made by real managers about real candidates with public accountability for those decisions. In her deposition (pp. 103-104; 109; 112), Dr. Reskin agrees with me that there is no research available that directly applies her notions of stereotyping to real world personnel decisions such as those at issue in the promotion to the position of Assistant General Manager (AGM) and General Manager (GM) at Costco.

We can all agree that designing research with sufficient fidelity to answer real world problems is difficult. Nevertheless, that should be the justification for developing more realistic research designs that close the gap between results and application. The difficulty of

doing good or relevant research cannot be used as a justification for making inferential leaps from an inadequate research base. Clever speculation cannot replace a solid and relevant research base.

2. The Cleveland et al. book, like the work of most scholars in this area, acknowledges the important mitigating effect of individuating information (p. 59). The implicit mechanisms invoked by Dr. Reskin as the explanation for gender stereotyping have been to shown to operate in information-deprived (i.e., stranger-to-stranger) environments. When salient and job-related information is available about individuals in the workplace, the effect of stereotypes is eliminated. The sections quoted by Dr. Reskin from the Cleveland et al. book are not conclusions – they are simply hypotheses.

Similarly, the Hunt et al. citation presented by Dr. Reskin is replete with acknowledgements about the effect of individuating information on the mitigation of stereotypes. If anything, that reference contradicts Dr. Reskin rather than supporting her. The "small but consistent effects" referred to by Dr. Reskin are found in meta-analyses of laboratory/student research, not field research. The Hunt et al. reference simply collects the findings of researchers who study stereotypes in artificial environments.

In her deposition, Dr. Reskin agrees that individuating information strongly influences the potential biasing effects of stereotypes (p. 115).

3. Dr. Reskin adopts the notion that the number of men and women in a job determines whether or not the job is gender-typed. I disagree. The critical variable in gender-typing is the

extent to which the perceiver *believes* that the job is either a "man's" job or a "woman's" job. In the absence of any information about how the job of AGM or GM is perceived by decision makers at Costco, it is not possible to conclude that the simple number of men and women in a job determines a job's "type." In fact, it is clear that there is no gender typing of staff managers' jobs. The representation of women in front-end, administration and receiving manager positions rebuts such a conclusion. Similarly, even the representation of women in the merchandise manager position in certain geographic regions (e.g., Bay Area) defies any classification as gender-typed. Further, it is not clear what standard Dr. Reskin uses for her implication that there is gender-typing of managerial jobs at Costco.

Dr. Reskin's citation of the Kilbourne et al. article is inappropriate for several reasons. First, it uncritically accepts the definition of gender typing as the percentage of males or females in a job. In addition, the data set it is based on represents data from 1966-1981, and concentrates on issues related to the interaction of gender and race. As part of the research design, the authors of the study coded some jobs as "nurturant" (as defined by face-to-face interactions with a customer). The Nelson and Bridges reference similarly uses the "percentage in occupation" as an indicator of gender typing.

In contrast to her report, in her deposition, Dr. Reskin agrees with me that one cannot look at percentage of males or females in a position as an indicator of a "gender-typed" position (p. 206) thus rendering her rebuttal opinion #3 moot.

4. Dr. Reskin once again refers to the book by Rosabeth Kanter as an authority for her opinions. This is inappropriate for several reasons. First, Dr. Kanter makes it very clear in

both the preface to that book as well as in an Appendix to that book that she does not consider her samples as either scientific, or even representative. She reports the results of two surveys. One included only male sales representatives and sales managers. The second was a voluntary survey of non-exempt personnel related to the issue of loyalty and commitment. Dr. Kanter neither designed nor administered the survey. Finally, Dr. Kanter's conclusions are based on one division of one company observed during the years 1970-1976. As Dr. Reskin herself notes in the context of criticizing the cited research of Drs. Stockdale and Mulligan in #22 of her second report, "…sexes' relative positions in the labor force in 1977 - … differed so dramatically from their relative positions today that we cannot extrapolate from 1977 work-related preferences" (Reskin report, p. 8, #22, ll. 5-8). In addition, "as noted, pervasive changes since the late 1970s in the sexes' positions in the labor force means that research from the 1970s is not likely to apply to contemporary womens' preferences" (Reskin report, p. 8, #22, ll. 14-16). Thus, it is at least inconsistent that Dr. Reskin uncritically accepts the observations of Dr. Kanter from a similar period. She cannot have it both ways. Either 1977 (Stockdale citation) and 1978 (Mulligan citation) data are suitable or 1970-1976 data (Dr. Kanter) are not. The observations of Dr. Kanter, no matter how stimulating, are nothing more than the observations of a limited segment of one organization during a much earlier and arguably irrelevant period for present purposes.

5. In this point, Dr. Reskin simply reports the concerns or speculations of others. As I indicated above, Dr. Kanter's book is hardly the authority for such strong propositions. The work of Hunt et al. is simply a review of earlier research based largely on laboratory

experiments with students. Cleveland et al. simply cautions that if stereotypes are operating, they might be operating to the disadvantage of women. Interestingly, Cleveland et al. speculate that women may be evaluated less favorably on the attributes associated with leadership such as decisiveness, confidence and ambition. Yet in the current case, we are confronted with contrary data – not only are women promoted to positions of management in proportion to their interest (e.g., application for staff manager positions), but the analyses of Dr. Saad demonstrate that women are not evaluated less favorably on dimensions related to leadership, they are actually rated *significantly higher* on those dimensions. Dr. Reskin's speculation that these higher ratings should predict higher promotion rates ignores the fact that one must control for gender-differentiated interest in these higher-level positions.

6. Dr. Reskin misunderstands my criticism of the research she cites. It is not my opinion that research on cognitive mechanisms and automatic processing does not go on or is not published in scholarly journals. My criticism is that what Dr. Reskin presents as "social fact," i.e., the unanimous opinion of behavioral researchers in a particular area, is far from unanimous. In my earlier report, I presented ample evidence of the controversial nature of propositions regarding automatic processing as well as the role of research designs based on stranger-to-stranger paradigms. I agree with Dr. Reskin that the research she cites is published in reputable journals – but she fails to acknowledge the deep skepticism and criticism of that research. Acceptance of a research line or topic is not the same as uncritical acceptance of conclusions *about* that research. In her deposition (103-104; 108-109; 112) Dr. Reskin concedes that most of this research has not been tested in real world environments.

7. Dr. Reskin once again sidesteps the issue of individuating information. The cognitive tendency to simplify has been proposed as an information processing "shortcut only when the amount of information is overwhelming or the stimuli are unfamiliar." There is no evidence that Costco managers were overwhelmed with information, and there is ample evidence that the "stimuli" (i.e., the male and female managers in the pool for AGM or GM promotions), were not "novel" – they were familiar "stimuli" who were accompanied by substantial individuating information. Dr. Reskin's proposed mechanisms of categorization, in-group favoritism and stereotyping do not come into play when job-relevant individuating information about employees is present.

8. As I stated in my earlier report, misgivings about the basic paradigm that characterizes the IAT are widely shared and are not simply my misgivings. The work of Dr. Greenwald has been focused on the narrow associations made between concepts – black and white; good and bad; insects and flowers. In his recent article in the California Law Review, Dr. Greenwald lists the categories that have been the targets of his research. None of these listed categories include gender. Further, as I indicated in my earlier report, contrary to Dr. Reskin's belief, there is abundant "...question in the psychological community about whether response latency methodologies are a useful means of studying stereotyping." Finally, even if there were not "questions in the psychological community" about the *method* for studying a phenomenon such as stereotyping, that is a far cry from the uncritical leap of faith from simplistic laboratory experiments to real world personnel decisions.

9. Neither Dr. Greenwald nor any other researchers have systematically studied stereotypes suggesting that "women are more oriented toward their families than to their jobs" or stereotypes that "women's orientation to their children and families leads them to avoid certain jobs because of irregular or long hours" (Reskin report, p. 3, #9, ll. 4-6). These are stereotypes proposed by Dr. Reskin not by the researchers she cites.

More importantly, in a recent paper in the California Law Review (cited by Dr. Reskin in her first report), Greenwald and Krieger acknowledge that even the tenuous IAT race effect disappears when known faces of admired African-Americans (scientists, artists, political leaders), are used as stimuli rather than abstract concepts such as African American or European American. In other words, as researchers have found consistently in the study of stereotypes, even Greenwald finds the mitigating effect of individuating information in his IAT studies.

In that same article, Greenwald presents a table (Table 1) describing his research on the IAT. It is important to note that not a single entry in that table references male/female investigations. There are studies of race, of age, of places (foreign and American), sexual orientation, body size, and wealth. But there is not a single study that includes the concept of gender. This is an important exclusion since Dr. Reskin would like to generalize from Greenwald's research on the IAT to gender stereotypes. There is no empirical foundation for such a generalization. Greenwald and Krieger also note that "research has shown that when a person forms a new personal connection with a member of a previously devalued out-group, implicit attitudes toward that group may change dramatically and rapidly" (Greenwald &

Krieger, p. 29, last line, p. 30, first line). It would appear that Dr. Reskin feels less constrained to generalize than the researchers on whom she depends.

10. As I noted earlier in this report, my criticisms of Dr. Reskin's dependence on mechanisms such as categorization and in-group favoritism concern the relevance of such mechanisms to situations where there is substantial salient and individuating information about the target individual. Dr. Reskin invokes a "half century of research" (Reskin report, p. 3, #10, l. 3) that employs the stranger-to-stranger research laboratory paradigm using student participants. It would not matter if the research paradigm had been used for 10 years, 50 years, or 200 years. It is simply not relevant to the circumstances of day-to-day personnel decisions involving individuals for whom there exists substantial individuating information, as is the case with candidates for the positions of AGM and GM at Costco.

11. Dr. Reskin concedes that laboratory experiments of stereotyping are of little value if "…subjects behave differently from the general population or if the experimental manipulation does not correspond to real world situation" (Reskin report, p. 4. #11, ll. 2-3). Those are exactly my points. Dr. Reskin and researchers in stereotyping simply do not know how the "general population" of personnel decision makers behaves because they do not study personnel decision makers making real decisions. Further, there is little disagreement that the "experimental manipulation does not correspond to the real world situation." The Costco personnel decisions associated promotions to AGM and GM are made by experienced, accountable managers with substantial individuating information about the candidates using

structured, relevant, and behavioral information. Laboratory subjects are inexperienced, unaccountable "decision makers" using crude instruments to make their decisions with no historical foundation for those decisions. In her deposition (p. 103-104; 109; 111), Dr. Reskin concedes that she depends on laboratory research with college students as the foundation for her opinions regarding the dynamics of stereotyping and that real world tests of these dynamics would provide the foundation for generalization to the Costco promotional scenario, a foundation that she concedes is not yet available.

12. Dr. Reskin concedes that individuating information mitigates stereotyping but she places constraints on the value of that individuating information. She asserts that individuating information will have no effect in the following circumstances:

1) the individuating information is not relevant
2) the individuating information is ambiguous
3) the perceiver (decision maker) has limited cognitive resources
4) the perceiver is not motivated to suppress the stereotype

In applying these principles to the Costco promotional decision making process, Dr. Reskin simply assumes, without any cited evidence, that each of these conditions holds. Dr. Reskin cites no evidence to suggest that any of these assumptions hold in the present instance. In fact, in my earlier report, I presented ample evidence that information about candidates was both relevant and unambiguous.

The concept of cognitive resources can be interpreted in two ways. First, it has been articulated in a way that suggests that the perceiver simply does not have sufficient mental ability to think in ways other than simple "categories" or stereotypes. Dr. Reskin cites no evidence to suggest that the Costco decision makers have insufficient mental ability to make promotional decisions. Cognitive resource availability has also been construed to mean that even though the decisions makers may have sufficient mental ability to make decisions, they do not have the time to make them – they are simply too busy to take the time to avoid simple categorization or stereotypes. Again, Dr. Reskin cites no evidence to support the assertion that Costco decision makers are somehow too busy to avoid simplifying categories or stereotypes. In her deposition, Dr. Reskin appears unaware of the fact that decisions regarding staff manager and AGM positions are made largely at the Warehouse level (p. 118), and concedes that her concern about "cognitive resources" of decision makers was based on the assumption that the decision maker was the regional manager instead of the warehouse GMs and AGMs (p. 89). Finally, in her deposition, Dr. Reskin further obscures what she means by "cognitive resources" when she opines that stereotypes decisions occur even when people have adequate time (e.g., 3 months), to make a decision (p. 87).

Dr. Reskin implies that the decision makers at Costco are simply not motivated to avoid stereotypes. The record amply demonstrates that issues related to diversity, fairness, inclusion, and expanded opportunities for specific demographic groups – including women – were in the forefront of discussions and communications at every level of the organization. This was particularly noticeable after Costco joined the BOLD consortium in 1999 and developed the Rothman Workplan in 2001. In contrast, Dr. Reskin cites no evidence

suggesting that managers at Costco responsible for promotional decisions "...lacked incentive to form an individualized impression of the person" (Reskin report, p. 4, #12, ll. 9-10). In her deposition, Dr. Reskin retreats from this opinion in her rebuttal report, stating that she now is "agnostic" on the issue of the effect of personal motivation to avoid stereotypes (p. 75).

Thus, none of the conditions which Dr. Reskin proposes in her second report are present in the Costco decision making process. And with respect to the "conditions" of motivation and cognitive resources, she appears to have changed her position on their effects. It would then follow that individuating information would have its normal and universally recognized mitigating effect at Costco.

13. As I indicated in the opinion above, Dr. Reskin's application of laboratory research related to cognitive resources is largely irrelevant for several reasons. She has presented no evidence to suggest that the Costco decision makers do not have sufficient cognitive resources. The Bodenhausen et al. article cited by Dr. Reskin is a review and theoretical article with no original data. Interestingly, however, Bodenhausen et al. theorize that through the process of attempting to suppress a stereotype, the stereotype is activated thus increasing the possibility of bias. They explain "One of the ironic things about mental control that is apparent from this theoretical perspective is that trying to avoid a particular thought may actually result in its hyper-accessibility" (Wegner & Erber, 1993). That is, the very act of trying not to think in stereotypic terms may actually increase the extent of stereotypic activation (p. 325, ll. 32-36). Similarly, another of Dr. Reskin's authorities – Hunt et al. - suggest that "...cognitively busy individuals may not be able to activate a stereotype in response to a relevant cue" (p. 418, ll.

20-21) simply because they do not have the cognitive resources. Speculations such as this illustrate the non-scientific nature of the stereotyping argument: if you do not try to suppress stereotypes, they will result in bias; if you do try to suppress stereotypes, they will result in bias. If you have insufficient cognitive resources (i.e. you are "busy"), you will *use* stereotypes; if you have insufficient cognitive resources (i.e. you are "busy") you will *not use* stereotypes. The hallmark of science is the possibility of disconfirming a hypothesis. In the case of the both the "cognitive resource" hypothesis and the "intention to suppress" hypothesis, there can be no scientific test of the hypothesis since no matter what the data show, the researcher will claim that stereotypes are resulting in bias.

Dr. Reskin includes a reference to Martell (1991) in her second report but provides no citation in her report for why that reference has been included. I can only assume she had intended to reference Martell's work in this section of her report because it purports to deal with attentional demands and performance appraisal. The research design included 202 college students evaluating the performance of hypothetical police offers. The "performance" was presented as a written vignette. While making ratings, some students were distracted by a tape recorded message (either words or numbers) and other students were not. Some students were urged to hurry and finish and others were not. Martell justified the experimental task by saying "knowledge of responsibilities of a police officer's job is generally well known; and this work assessment (by student subjects) would seem to require no special expertise" (p. 1954, ll. 19-21). This conclusion would come as a great surprise to both police officers and police supervisors. This badly-flawed Martell design is representative of the simulated "real world" research on which Dr. Reskin depends for her conclusions.

14. Dr. Reskin repeats her speculation that Costco decision makers do not have sufficient time to deal with the information available to them. Thus, she opines, the cognitive overload will lead to stereotyping. Among other sources for this conjecture, she cites Hunt et al. but as I have indicated above, Hunt et al. also suggest that when cognitive resources are strained, decision makers may not have enough time to activate stereotypes. So what are we to believe? Are strained cognitive resources a good or bad situation for stereotyping? In her deposition, Dr. Reskin conceded that she was not familiar with the actual decision makers in the promotions to AGM and GM, nor of the information used to make those decisions. Thus, her speculations about "cognitive resources" and Costco promotional decisions sit on a rather precarious base. Her speculations about the "busy workplace" invoked by Hunt et al. are nothing more than that – speculations. Further, her deposition testimony (p. 87) only serves to confuse the issue of "cognitive resources" since in that testimony, she uncouples that concept from any temporal meaning by saying that even when people have plenty of time (e.g., 3 months), they may still activate stereotypes.

15. Dr. Reskin repeats her opinion that formal personnel procedures will reduce gender discrimination and uses the procedures to audition for symphony orchestras as her empirical foundation. This study was a retrospective analysis of decisions made between 1950 and 1995. Of the 11 orchestras represented in the data set, 8 had used blind audition procedures since at least 1979. Thus, the analysis was largely of decisions made well before 1980 (some as early as 1952). Dr. Reskin concedes both in her report and in her deposition that there is a dramatic difference between the status of women in the 1960's and 1970's and women in the 21st

century, making the value of retrospective analyses such as those of Goldin & Rouse questionable. Further, the "personnel procedure" tested in this retrospective analysis was the use of an actual screen placed in front of a candidate to preclude awareness of the gender of the candidate. It is not clear from her report if Dr. Reskin is suggesting that somehow the Costco decision makers should be unaware of the gender of a candidate. While this may be possible when considering an outside hire, it is virtually impossible with the system of internal promotions used at Costco. Even if the data analyzed by Goldin & Rouse were more current, the gap between the "personnel procedure" examined by Goldin & Rouse and the procedures used to promote candidates to the positions of AGM and GM at Costco is much too large to permit any generalizations from the cited study.

Once again, Dr. Reskin extrapolates from theory and laboratory research with students (Tetlock) and speculation (Hunt et al.) to suggest that accountability structures will eliminate stereotypes and in-group favoritism. Importantly, Dr. Reskin begs the question of accountability, implying that Costco managers have none. In fact, the standard Costco managerial performance evaluation includes a specific item in the "Leading Others" subsection that specifically addresses the responsibility of the manager to create opportunities for diversity with the wording "progress toward creating a more diverse organization." There is ample evidence to suggest that diversity was a critical issue in Costco managerial discussions.

16. Dr. Reskin simply displays her unfamiliarity with the performance appraisal process in this point. She assumes that performance judgments come from filling out performance evaluations. She has the process backwards. The forms are memorializations of information gathered over time. There is no need for the decision maker to "consult" those forms. The forms are for developmental use in discussing present and future performance with employees. The individuating knowledge about candidates has been gathered and stored for months, and most often years, by the decision makers and various levels of warehouse managers (e.g., staff, department, AGMs and GMs), on whom the decision makers rely for information.

17. Dr. Reskin does not appear to understand the roles of various managers in the decision to promote to AGM and GM. This is made clear by her deposition testimony in which she appears unaware of the fact that GMs play a primary role in the promotion to AGM and both GMs and AGMs play a primary role in promotion to staff manager. This misunderstanding is critical to Dr. Reskin's opinion since she seems to assume that Costco relies solely on the regional managers and the regional warehouse walks to collect individuating information. In her deposition, it was also apparent that Dr. Reskin was not aware of the extent to which AGMs and GMs interacted with staff managers on a daily basis. Dr. Reskin did not appear to know that the AGM and GM offices were even located on the warehouse floor (p. 93).

She repeats her opinion that the early identification of managerial talent is biased and exclusionary. In holding that opinion, she ignores a clear best practice among high performing organizations. I have presented my opinion on this issue in my earlier report. Dr. Reskin cites no authority for this repeated opinion.

18. In this opinion, Dr. Reskin re-asserts her earlier position that "bureaucracies" prevent stereotypes from influencing personnel decisions and that Costco is not a bureaucracy. In support of her opinion, she cites the work of Kalleberg et al. It is clear from a reading of the Kalleberg reference that Costco is indeed a bureaucracy. Dr. Reskin conceded in her deposition (p. 204) that Costco did conform to Kalleberg's definition of a branch bureaucracy. Further, she conceded in her deposition (p. 205) that Costco conformed to what Kalleberg described as a high performing organization, largely because Costco has a "firm internal labor market" (i.e., they promote from within). Kalleberg further defined high performing organizations as decentralized with low formalization. Kalleberg makes no assertion that the formalization or standardization of personnel practices such as those advocated by Dr. Reskin are at all related to high performing organizations. The Kalleberg reference actually rebuts Dr. Reskin's assertions regarding standardization rather than supporting them.

19. Once again, Dr. Reskin introduces the notion of the gender composition of jobs as a foundation for her opinions. Her rebuttal report notwithstanding, in her deposition, Dr. Reskin concedes that she does not think the gender composition of a job is of any value in defining "men's" and "women's" work (p. 206).

32. In her deposition, Dr. Reskin concedes (p. 259) that she has never seen Social Framework Analysis described as a methodology or used to support assertions of gender discrimination. Further, she cites the Kanter (1977) reference again as an empirical foundation for her opinions. As I have shown earlier, Kanter made her observations during a period

stretching from 1970 to 1976, her "empirical " data consisted of a two data sets: a survey voluntarily completed by non-exempt employees which Dr. Kanter neither designed nor administered, and a survey of an all-male sample of a sales representatives. It is my opinion that no matter how inspired the observations of Dr. Kanter may have been about the sales division of a single organization in 1976 (when Costco did not even exist), they do not rise to the level of an empirical foundation for the opinions of Dr. Reskin regarding Costco's promotional procedures 25 to 30 years later.

III. DR. RESKIN'S MISUNDERSTANDING OR IGNORANCE OF COSTCO ENVIRONMENT AND PROCEDURES

In her initial and supplemental reports, it is not always clear if Dr. Reskin is sufficiently knowledgeable regarding the Costco environment and HR procedures. Her deposition testimony makes it clear that in some cases she is unfamiliar with important aspects of the Costco HR environment and in other cases, she is incorrect in her assumptions. Below, I list examples of unfamiliarity and misunderstandings on the part of Dr. Reskin.

p. 88/89; 118; 200 – Dr. Reskin continues to believe that the decisions regarding promotion to staff manager and AGM positions are made by regional managers rather than GMs and AGMs within a given warehouse. She is wrong. As can be seen from my earlier report and in the examples appearing in Exhibit A of Dr. Stockdale's rebuttal report, GMs and AGMs often play a primary role in promotions to staff manager and AGM positions.

p. 91-93 – Dr. Reskin is unsure of the extent of contact between AGMs and staff during a particular week, the location of the GM's office, or the extent to which an AGM or GM are on the floor of the warehouse interacting with staff managers. Both the AGM and GM have offices on the floor level of the warehouse and interact continually with staff managers.

p. 97 – Dr. Reskin is not aware of how AGMs are evaluated and can only infer the process from my earlier report and the report of Dr. Saad. They are, in fact, evaluated (by GMs and Regional Managers) using the same form as all other warehouse staff.

p. 172 – Dr. Reskin does not know how job descriptions were used as Costco. The evidence demonstrates that the job descriptions were used for multiple purposes including job postings, the preparation of performance evaluations, and for developmental discussions and goal setting with associates.

p. 179 – Dr. Reskin believes that the job descriptions were used to make compensation decisions at Costco. There is no evidence that the job descriptions were used for that purpose as Costco.

p. 186 – Dr. Reskin does not know if there are any written or verbal instructions that accompany the performance evaluations. Managers are given written instructions as well as

training in various supervisory/managerial training programs such as those offered through Costco University.

p. 187 – Dr. Reskin does not know that performance evaluations are completed by the immediate supervisor/manager with oversight from the next level of management.

p. 189 – Dr. Reskin is unfamiliar with the difference between promotability lists and the ratings that support those lists.

p. 197 – Dr. Reskin is not sure if AGMs have contact with staff managers. The AGMs, in fact, directly supervise the staff managers. Contact could not be more frequent or direct.

Dr. Reskin's unfamiliarity and mistaken understanding of the Costco environment undermines her opinions regarding issues such as individuating information and personnel procedures. Without a good understanding of these issues, Dr. Reskin's opinions regarding the potential influence of individuating information or the value of various personnel procedures lack validity.

IV. AREAS OF MY INITIAL REPORT ON WHICH DR. RESKIN IS SILENT

1. In my earlier report, in Opinion #4, I opine that Dr. Reskin fails to identify any relevant common HR experiences that cut across warehouse, districts, or regions. In her rebuttal report, Dr. Reskin provides no further foundation for her initial opinions regarding commonality nor does she further explain the foundation any opinions she might have regarding commonality.

2. In my earlier report, in Opinion #5, I assert that there is nothing universal about the cognitive mechanisms (e.g., in group favoritism, stereotyping, automatic cognitive bias), identified by Dr. Reskin in her initial report. Although she does not comment on my opinion directly in her rebuttal, she does concede that there are many individual differences (e.g., motivation, cognitive resources) that make the claim for the "universality" of these mechanisms unlikely.

3. In my earlier report, in Opinion # 10, I opine that Costco's job descriptions meet or exceed best practice standards. Dr. Reskin provides no rebuttal to that opinion in her most recent report.

4. In my earlier report, in Opinion #11, I opine that Costco's performance evaluation process meets or exceeds best practice standards. Dr. Reskin provides no rebuttal to that opinion in her most recent report.

5. In my earlier report, in Opinion # 16, I opine that favoritism, paternalism, and tokenism are not scientific concepts. Dr. Reskin provides no rebuttal to that opinion in her most recent report.

V. CONCLUSIONS

When Dr. Reskin's most recent report and her deposition are combined, they lead to the following conclusions:

1. Dr. Reskin is either mistaken or uninformed about critical characteristics of various Costco decision makers and the process that support promotional decisions.

2. Dr. Reskin agrees that individuating information is an important safeguard against stereotypes decisions making.

3. Dr. Reskin agrees that there is little or no research connecting the laboratory studies of cognitive processing to the real world in general, and Costco in particular.

4. Dr. Reskin agrees that social framework analysis has never been used to support opinions such as those she offers in this case.

5. Dr. Reskin provides no foundation for the argument that candidates for staff manager, AGM, or GM positions at Costco share a common HR experience.

NEW REFERENCES

Wegner, D. M. & Erber, R. (1993) Social Foundations of Mental Control. In D. M. Wegner and J. W. Pennebaker (Eds.), Handbook of Mental Control (pp. 36-56). Englewood Cliffs NJ: Prentice-Hall.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 12th day of September at Breckenridge, Colorado

FRANK J. LANDY