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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 FIRST 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 in substance to my first report titled "Expert Report" (June 22, 2006), except that it has been placed in declaration form, with some necessary changes in formatting and pagination.

EXPERT REPORT

Shirley 'Rae' Ellis, et al.

v.

Costco Wholesale Corporation

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

June 22, 2006

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EXECUTIVE SUMMARY

I have been retained by counsel for Costco Wholesale Corporation to provide expert opinion and testimony in the case styled Shirley 'Rae' Ellis et al. vs. Costco Wholesale Corporation. In summary, my opinions are as follows:

1) Dr. Reskin's report is based on an inappropriate level of analysis – the group level rather than the individual level.

2) Dr. Reskin presents the foundation for her opinions in a manner that departs from a typical scholarly presentation.

3) Dr. Reskin inappropriately cites "social framework analysis" as a methodology.

4) Dr. Reskin's assertions of commonality of candidate experience at Costco for purposes of class certification deal with trivial and irrelevant rather than central issues of commonality.

5) Dr. Reskin proposes that certain human information processing mechanisms are universal, thus common across all locations and decision-makers. These proposed mechanisms are neither automatic nor universal, and cannot be used as a foundation for supporting a claim of commonality among plaintiffs in their experiences with the Costco promotional process.

6) Dr. Reskin's observations regarding the presence of a "culture" at Costco does not speak to issues of commonality in Human Resource decision-making.

7) Dr. Reskin's advocacy of "bureaucracy" as a defense against gender discrimination is inappropriate.

8) Dr. Reskin misrepresents the concept of walking the warehouse. The warehouse walk is a critical element of warehouse management and is conducted on a daily basis by Warehouse Managers and periodically by senior managers above the warehouse level.

9) Dr. Reskin is critical of the fact that Costco attempts to identify management talent "early on" and that some employees are unaware of their presence or absence on a promotability list. Once again, Dr. Reskin seems unaware of modern approaches to management and leadership development.

10) Dr. Reskin's criticisms of the Costco job descriptions are unfounded. The Costco job descriptions for the positions of Assistant Warehouse Manager and Warehouse Manager meet or exceed current professional and regulatory standards.

11) Dr. Reskin criticizes Costco for the absence of "measurable performance criteria" and "valid measures of stated criteria." In my professional opinion, the stated performance evaluation system in place at Costco meets or exceeds current professional standards.

12) The promotional process at Costco to staff manager, Assistant Warehouse Manager, and Warehouse Manager meet or exceed professional standards.

13) Dr. Reskin inappropriately invokes stereotyping as a mechanism of gender discrimination in promotional decisions to Assistant Warehouse Manager and Warehouse Manager at Costco.

14) Dr. Reskin misrepresents the current scientific view of automatic cognitive processing.

15) Dr. Reskin inappropriately invokes the concept of in-group status as an explanatory mechanism for alleged gender discrimination at Costco. There is no evidence of in-group favoritism in Costco promotional decisions or general management/leader behavior.

16) Dr. Reskin introduces the concepts of favoritism, paternalism, and tokenism as explanatory mechanisms in her assertions that Costco discriminates against women in promotions to Assistant Warehouse Manager and Warehouse Manager. She provides no scientific citations for these concepts and as such, they simply represent lay speculation rather than subjects for expert debate.

17) Dr. Reskin fails to address at least one plausible explanation for the alleged statistical disparity between the promotion rates of men and women for promotions to the Assistant Warehouse Manager and Warehouse Manager positions – the differential desirability of the threshold staff manager position, Merchandise Manager. When experience as a Merchandise Manager is held constant or controlled, there is no observed gender disparity in the promotional statistics for the Assistant Warehouse and Warehouse manager positions. Dr. Reskin pays scant attention to this observation, other than to suggest that Costco change its business model.

In the report and associated appendices that follow, I present the foundation for these opinions.

INTRODUCTION[1,2]

Scope of Work

I have been retained in the case of Shirley 'Rae' Ellis et al. vs. Costco Wholesale Corporation (hereafter referred to as 'Costco') by Seyfarth Shaw LLP, counsel for Costco, to provide expert understanding and expert testimony for purposes of addressing plaintiffs' motion for class certification. In particular, I have been asked to consider the report submitted by Dr. Barbara Reskin dated May 16, 2006. Although the current issue before the court is class certification, Dr. Reskin's report addresses broader issues related to Costco human resources (HR) or personnel practices. As a result, in my report, I will address issues related to the extent to which female applicants for the Costco positions of Assistant Warehouse Manager and Warehouse Manager share a common promotional experience, as well as the other HR or personnel issues addressed by Dr. Reskin in her report.

In my work on this case, I have been assisted by various members of my staff. They have conducted literature reviews as well as reviews of various depositions and exhibits relevant to this litigation. I have directed all of their efforts and this report represents my opinions and the foundations for those opinions.

I am an industrial and organizational (I-O) psychologist with particular training and experience in human resource and personnel areas related to those at issue in this case. My

[1] In preparing this report, I used the report submitted by Dr. Barbara Reskin dated May 16, 2006. She has since submitted a corrected report, which I received after I had written the bulk of the current report. In addition to her corrected report, Dr. Reskin submitted an errata sheet detailing the 160 corrections to her original 32-page report.

[2] I reserve the right to append this report or submit a supplemental report based on new discovery or new submissions from Dr. Barbara Reskin, Dr. Marc Bendick, or Dr. Richard Drogin.

curriculum vitae (CV), is presented in **Appendix A**. Before describing my background and experience, I will provide a description of the scientific domain of I-O psychology, to assist the court in distinguishing between my area of expertise and that of Dr. Reskin. This is an important distinction because Dr. Reskin's report suggests that she is personally unaware of many of the concepts she introduces, and simply presents the thinking of other non-testifying experts from other domains – particularly the domains of I-O psychology and human resource theory and practice.

The Fields of Industrial and Organizational Psychology and HR Management

Industrial and organizational psychology is a specialty field within the broader discipline of psychology (Landy & Conte, 2004). It is distinct from other subfields such as clinical and counseling psychology, educational psychology, or experimental psychology because it deals specifically with workplace management, organizational effectiveness, and worker performance. As a result, there are unique tools that are used for analysis, unique scientific literature, and unique theories of worker behavior that are not shared with other branches of psychology or with related disciplines such as sociology, anthropology, industrial engineering, or industrial management. I-O psychology deals with the application of findings from other areas of psychology (e.g., social psychology, personality, cognitive psychology, experimental psychology), and human resource management to the work environment.

The field of I-O psychology has been in existence for slightly more than 100 years. Courses in the discipline are offered at both the undergraduate and graduate level at the majority of colleges and universities. Advanced degrees (M.A., M.S., Ph.D., and Psy.D.), have been offered in the field for over 90 years. There have been hundreds of basic texts published in this

area, thousands of specialty texts dealing with individual topics, and hundreds of thousands of empirical research studies published in peer-reviewed journals both domestically and internationally that address topics within the domain of I-O psychology.

I-O psychology is divided into three main sections: HR (or personnel) psychology, organizational psychology, and human engineering. For purposes of this report, topics in HR psychology will be addressed. HR psychology considers issues related to the human abilities and attributes necessary to complete the essential tasks of a job. Common topics in HR psychology include job analysis, cutoff scores, selection, training, performance evaluation, discipline, and promotion.

I-O psychologists are often involved as expert witnesses in cases concerning allegations of employment discrimination. The methods of I-O psychology include analysis of survey data, interviews, content analysis of organizational documents, reviews of scientific literature, and statistical analysis of data. These methods are commonly used for scientific research in the field as illustrated in the major research journals in the field.

The field of HR management arose from changes in the world of work such as the increased specialization of labor during the industrial revolution, early I-O psychology, establishment of the federal Civil Service Commission, behavioral sciences, and social legislation beginning in the 1960's (Cascio, 1995). HR management can be viewed as the application of I-O psychology theories to the workplace.

In the present case, the areas of I-O psychology and HR management that hold the greatest relevance are the following: principles and research findings related to job analysis, performance evaluation, promotional procedures, fairness in personnel decisions, and the early identification of management talent. In my career, I have done graduate and undergraduate

instruction, research, consulting, professional workshops, scientific writing, and provided sworn testimony in all of these areas.

Experience

I have a Ph.D. in I-O psychology and have been conducting and publishing research and consulting in organizational settings for 40 years. I have been actively engaged in consulting with respect to the retail environment since 1970.

Publications and Research

I founded and edited the scientific journal entitled "Human Performance," published by Erlbaum. This journal is currently in its seventeenth year of publication and publishes articles related to HR psychology and HR management. I was the Associate Editor of the "Journal of Applied Psychology" (the leading scientific journal in I-O psychology, published by the American Psychological Association) for six years and currently serve on the editorial board. This journal also publishes research and practice articles in HR psychology and HR management. I am a peer reviewer for many journals related to industrial, organizational, and general psychology, including the "Journal of Applied Psychology", "Journal of Occupational Psychology," "The American Psychologist," "The Psychological Bulletin," "Human Performance" and others listed on my CV in **Appendix A**. Literature related to the issues under consideration in this litigation appears in all of these scientific journals.

I currently have, or in the past have had, appointments to several federal grant and contract review panels. At various points in my career, I have been asked by the National Academy of Sciences, the United States Department of Transportation, United States

Department of State, United States Equal Employment Opportunity Commission (EEOC), United States Department of Labor, United States Department of Justice, the Office of Federal Contract Compliance Programs (OFCCP), United States Customs Service, United States Secret Service, the Drug Enforcement Agency (DEA), and the Central Intelligence Agency (CIA), to provide reports on employment discrimination. I was commissioned by the United States Department of Labor to undertake a study of possible race bias in the performance evaluations of federal employees in 12,000 different job titles over a 20-year period.

I have written textbooks with chapters on performance measurement, training and development, selection and promotion systems, and social dynamics of organizations, as well as invited book chapters (e.g., Landy, 1987; Landy, 1989; Landy & Conte, 2004; Landy & Conte, 2007; Landy, Shankster, & Kohler, 1994; Landy, Shankster-Cawley, & Moran, 1995). I have published extensively in peer-reviewed scientific journals on topics related to promotion, work assignments, performance evaluation, training, and employment discrimination. I have recently completed a scholarly text entitled "Employment Discrimination Litigation" (Landy, 2005). The Society of Industrial and Organizational Psychology (SIOP), the major professional and scientific organization for I-O psychologists, commissioned this text to represent an authoritative survey of issues, representative case law, and professional and scientific practice related to employment discrimination.

In addition to my specialized background in I-O psychology and HR management, I have conducted funded research, written books, book chapters, and articles, taught undergraduate and graduate courses, and provided expert testimony related to topics dealing with the social psychology of work, human information processing, and cognitive psychology.

Delivered Papers and Awards

I have delivered over 600 scientific presentations in conference and non-conference settings. I was on the faculty of The Pennsylvania State University for over 25 years, retiring at the rank of Full Professor, and Director of the Center for Applied Behavioral Sciences. I remain on the faculty of the Colorado State University as well as Griffiths University in Brisbane, Australia. I have received two awards for research from SIOP. In 1980, I (and my colleagues) received the Cattell Award for Excellence in research design. In 1998, I (and my colleagues) received the M. Scott Myers Award for Applied Research in the Workplace, an award given in recognition of a project or product representing an outstanding example of the practice of I-O psychology in the workplace. In 2004, I was awarded the Professional Contributions Award by SIOP for developing, refining, and implementing practices, procedures, and methods that have had a major impact on both people in organizational settings and the profession of I-O psychology.

Professional Memberships

I am a Fellow of Divisions 5 (Measurement), 14 (Industrial and Organizational Psychology), 21 (Engineering), 26 (History), and 47 (Sports and Exercise Psychology), of the American Psychological Association (APA). I am also a member of the American College of Sports Medicine. Additionally, I am a past president of SIOP. In that capacity, I provided input to legislators and regulators on the Civil Rights Act of 1991, the Americans with Disabilities Act (ADA), and the Age Discrimination in Employment Act (ADEA). In 1993, research which I directed was used as a foundation for changing the exemptions clauses of the ADEA with respect

to public safety employees, including firefighters. As was the case in 2005, I am frequently invited by SIOP to conduct workshops on employment discrimination.

Organizational Consulting

I have worked as a consultant to private and public sector organizations since 1965. In collaboration with my colleague Rick Jacobs, I founded the consulting firm of Landy, Jacobs and Associates, Inc. (LJA), an organizational consulting firm and remained President of that firm until 1998, when LJA merged with SHL Group plc (Saville & Holdsworth, Ltd). Both LJA and SHL have been retained by the Commonwealth of Massachusetts at various times in the last two decades to design selection programs, as well as medical standards and fitness programs, for public safety officers, including firefighters.

I am currently the CEO of the Landy Litigation Support Group (LLSG) and, in that capacity, work with public and private sector employers domestically and internationally on issues related to HR practice.

In my various employment roles, I have testified in employment discrimination lawsuits in federal and state courts and have been admitted as an expert in federal court on issues related to age, race, sex, and disability discrimination, as well as on issues relating to statistics and general organizational and management practice. As an expert witness, I have worked with lawyers representing both plaintiffs and defendants.

MATERIAL REVIEWED

In preparing my report, I have reviewed the following case-related material.

Depositions

The following depositions were reviewed, including the exhibits that are attached to each.

- **Richard Webb**
- **Mario Omoss**
- **Dennis Hoover**
- **Dennis Zook**
- **Elaina Wales**
- **Elaine Sasaki**
- **Fidel Cardoso**
- **Jessica Barbarite Harrell**
- **Sandra Barnwell**
- **Jim Sinegal**
- **John Gaherty**
- **John Matthews**
- **Joseph Portera**
- **Judy Vadney**
- **Kathleen Olsen**
- **Leah Horstman**
- **Richard DiCerchio**
- **Ron Vachris**
- **Shirley 'Rae' Ellis**
- **Wendy Davis**

Other Materials

- Report of Dr. Marc Bendick Jr.
- Report of Dr. Richard Drogin dated May 15, 2006
- Report of Dr. Barbara Reskin dated May 16, 2006
- Corrected Report of Dr. Barbara Reskin dated May 16, 2006
- Second Amended Complaint
- PowerPoint Slides – "Diversity at Costco" dated April 25, 2006
- PowerPoint Slides – "The Rothman Work Plan: The Next Step" dated 2005
- Costco University Leadership Training Module
- Report of Dr. Casey Mulligan
- Report of Dr. Ali Saad
- Report of Dr. Peggy Stockdale

Finally, I reviewed professional and scientific literature that addresses issues raised by Dr. Reskin in her report of May 16, 2006 as well as the material that she cites in that report (with the exception of two unpublished documents which have not yet been forwarded to me by attorneys for the Plaintiffs). In addition to this case-specific literature, I reviewed material in my professional and scientific library which touched on issues raised in this case. Much of that literature appears in the reference section to this report.

Warehouse Visits

In addition to the material described above, I visited four Costco Warehouses during the period May 28-June 1, 2006. These warehouses included three in Colorado in the Denver/Boulder area (Superior, Westminster, and Arvada), as well as one in California (Hawthorne). In the California Warehouse, I was able to interview an Assistant Warehouse Manager (Mike Stranathan), and a Receiving Manager (Miguel Andrade), as well as observe a typical daily start-up (4:30 am – 7:30 am). Both Mr. Stranathan and Mr. Andrade have extensive experience with Costco and were able to provide me with information about practices within and between warehouses. These interviews confirmed information provided by Costco representatives through deposition and deposition exhibits.

OVERVIEW OF MY REPORT

In broad terms, my report will address several areas. First, I will deal with the domain of scientific knowledge relevant to issues associated with the determining when employees are commonly situated with respect to HR practices. Next, I will deal with the approach taken by Dr. Reskin to address these issues. Finally, I will present my specific opinions related to various assertions made by Dr. Reskin in her report of May 16, 2006. These opinions will address both Dr. Reskin's assertions regarding the extent to which female applicants for Assistant Warehouse Manager and Warehouse Manager positions at Costco share a common experience, as well as her broader opinions regarding Costco's HR practices.

OPINIONS

1) Dr. Reskin's report is based on an inappropriate level of analysis – the group level rather than the individual level.

Dr. Reskin is a sociologist. As such, she addresses human behavior at the group, community, or institutional level. Psychology addresses behavior at the individual level. Thus, HR practices involving *individual* decisions regarding *individual* candidates for promotional positions reside in the psychological, not sociological, domain. Because of this difference in perspective, Dr. Reskin ignores the individual differences in decision-makers and work environments which influence such phenomena as stereotyping, automatic cognitive processing, promotional decisions, and decentralization of HR practice. Further, although she purports to address workplace issues related to gender discrimination, working hours etc., her attention is focused on macro-level phenomena such as national or institutional policy. Her report shows little awareness of the day-to-day HR practices of a 21st Century employer. It does not appear that she has experience with retail environments, or has interviewed any big box retailers to understand this retail environment. Such grounding is critical for an understanding of the issues under consideration in this case.

Dr. Reskin's report represents a superficial presentation of the work and thinking of other scholars in fields other than sociology. One possible cause of this may be her unfamiliarity with the research, theories, principles and practices of social psychology, cognitive psychology, I-O psychology, and HR management. That is certainly the case with her treatment of the topics of stereotyping and automatic cognitive processing. I have no reservations about her credentials or experience in areas related to the sociology of work, gender segregation of jobs and workplaces in the broad social context, or the myriad of other issues that define work sociology.

Nevertheless, in her report, Dr. Reskin purports to support her opinions by invoking the research of scholars in areas very different from her own. As I will demonstrate in my later, more specific, opinions, Dr. Reskin is unfamiliar with the literature she cites, and as a result, misconstrues, misunderstands, and therefore misstates the implications of that research, as well as failing to cite other critical and rebutting research.

2) Dr. Reskin presents the foundation for her opinions in a manner that departs from a typical scholarly presentation.

Science is, among other things, a public phenomenon. By this, I mean that good scientific writing permits one scholar to critically evaluate the theory, data, inferences, and conclusions of another scholar. In her report, Dr. Reskin simply drops in vague and non-specific references as footnotes at various points in her presentation without describing for the reader how and why that reference supports her opinion. Rather than citing specific pages, paragraphs or lines, or empirical data sets in the body of the work, she simply presents the citation and forces the reader to wander though the cited work and guess at the points that may be salient to her opinion. When a citation is offered, it is not clear if Dr. Reskin is implying that *everything* presented in that citation supports her point, or that the reader should pay attention to a *specific* section of the citation. This style of presentation evokes an aura of authority to the non-expert reader, but is particularly frustrating to a fellow scientist, (in this case an opposing expert), since it is impossible to trace the connection between those references and her inferences, conclusions, or opinions.

To cite a few examples, on p. 4 of her report, Dr. Reskin asserts that Costco maintains a "paternalistic" culture, and cites two references (as footnote #3) without further explanation.

One of these references addresses "*Paternalism in Agricultural Labor Contracts in the U.S. South*"; the second reference is a general theoretical discussion of paternalism as a metaphor for management models in the financial sector of the United Kingdom (UK). Although the second reference cites a page number (665), this simply represents the page on which a lengthy discussion of strategic management begins. It is clear from the four pages of this section that the authors are addressing the banking industry in the UK and not a general model of management or even the banking industry outside of the UK. What is the reader to infer from this footnote/reference other than the fact that others have mentioned paternalism and management in the same breath?

In this section of her report, Dr. Reskin writes, "I characterize Costco's personnel practices as paternalistic because superordinates have almost total control over subordinate's advancement." She supports this observation with a specific quote from one reference and an entire book (Edwards) in footnote #4. If Dr. Reskin is trying to persuade the non-expert reader that others have invoked the metaphor of paternalism to discuss organizations, then perhaps such a method of citation might be adequate. But the expert reader needs to know more than the fact that another essayist has defined management paternalism as positioning management to be the "…fount of all corporate wisdom and is believed to exercise its power within the constraint of protecting and improving the lives of its employees" (Reskin report, p. 5, footnote #4). Further, if Dr. Reskin is suggesting that superordinates should *not* control the promotional process, the reader deserves to know why Dr. Reskin is proposing such a radical departure from standard organizational practice. Similarly, what the reader is to infer from the fact that Richard Edwards authored a book in 1980 entitled *Contested Terrain* (Footnote #4 to the Reskin report) remains opaque. **Table 1** presents a listing of the references/citations that appear in Dr. Reskin's report

that provide no hint at how the citation supports her opinion. These references/citations represent simply a book title, an article or a chapter with simply the beginning and ending pages. A remarkable 92% (46 of 50) of her references/citations are of that form. As a result, it is difficult, if not impossible, for me to determine if the sources cited actually support Dr. Reskin's opinions.

Table 1: References from Dr. Reskin's Expert Report, Citing Whole Books, Chapters or Articles

Reference	Whole Book	Whole Chapter	Whole Article
Monahan & Walker (1998) *Social Science in Law* (citation is all of chapter 5 in Social Science Used to Provide Context)		x	
Deal & Kennedy (1992) *Corporate Culture*	x		
Schein (1992) *Organizational Culture and Leadership*	x		
Kerr & Slocum (1987) *Managing Corporate Culture through Reward Systems*			x
Alston & Ferrie (1993) *Paternalism in Agricultural Labor contracts in the US South: Implications for the Growth of the Welfare State*			x
Edwards (1980) *Contested Terrain*	x		
Boyce, (1996) *Organizational Story and Storytelling: A Critical Review*			x
Swap et al. (2001) *Using Mentoring and Storytelling to Transfer Knowledge in the Workplace*			x
Ouchi (1980) *Markets, Bureaucracies and Clans*			x
Martin, et al. (1983) *The Uniqueness Paradox of Organizational Stories*			x
Peters (1978) *Symbols, Patterns and Settings*			x
Pfeffer (1982) *Management as Symbolic Action: The Creation and Maintenance of Organizational Paradigms*			x
Hansen & Kahnweiler (1993) *Storytelling: An Instrument for Understanding the Dynamics of Corporate Relationships*			x
Brewer & Brown (1998) *Intergroup Relations* (citation is all of Chapter 29 in The Handbook of Social Psychology)		x	
Rothbart & Lewis (1994) *Cognitive Processes and Intergroup Relations: A Historical Perspective* (citation is all of Chap 11 in Social Cognition: Impact of Social Psychology)		x	
Fiske (1998) *Stereotyping, Prejudice and Discrimination* (citation is all of Chapter 25 in The Handbook of Social Psychology)		x	
Brewer (1997) *The Social Psychology of Intergroup Relations: Can Research inform Practice?*			x
Tajfel (1970) *Experiments in Intergroup Discrimination*			x
Brewer (1989) *The Primacy of Age and Sex in the Structure of Person Categories*			x
Baron and Pfeffer (1994)*The Social Psychology of Organizations and Inequality*			x
Perdue et al (1990) *Us and Them: Social Categorization and the Process of Intergroup Bias*			x
McGuire (1999) *Do Race and Sex Affect Employees' Access to and Help from Mentors* (citation is all of Chapter 6 in Mentoring Dilemmas: Developmental Relationships within Multicultural Organizations)		x	

Reference	Whole Book	Whole Chapter	Whole Article
Kanter (1979) *Men and Women of the Corporation*	x		
Reskin et al (1999) *The Determinants and Consequences of Workplace Sex and Race Composition*			x
Brewer et al (1981) *Perceptions of the Elderly: Stereotypes as Prototypes*			x
Schmidt & Boland (1986) *Structure and Perceptions of Older Adults: Evidence for Multiple Stereotypes*			x
Bargh, Chen & Burrows (1996) *Automaticity of Social Behavior: Direct Effects of Trait Construct and Stereotype Activation on Action*			x
Gilbert & Hixon (1991)*The Trouble of Thinking, Activation and Application of Stereotypic Beliefs*			x
Alison et al. (1992) *Diversity in Work Group Composition: Implications for Majority and Minority Members*			x
Sturm (2001) *Second Generation Employment Discrimination: A Structural Approach*			x
Cassirer and Reskin (2000) *High Hopes*			x
Ogasawara (2001) *Office Ladies and Salaried Men*	x		
Martell (1996) *What Mediates Gender Bias in Work Behavior Ratings?*			x
Presser (2005) *Working in a 24/7 Economy*	x		
Presser (2003) *Race-Ethnic and Gender Differences in Non-Standardized Shifts*			x
Phelps (1972) *The Statistical Theory of Racism and Sexism*			x
Padavic & Reskin (1990) *Men's Behavior and Women's Interest in Blue-Collar Jobs*			x
Reskin (2000) *The Proximate Causes of Employment Discrimination*			x
Reskin B. (1998) *The Realities of Affirmative Action*	x		
Bielby (2000) *Minimizing Workplace Gender and Racial Bias*			x
Reskin & Hartman (1986) *Men's Work, Women's Work: Sex Segregation on the Job*	x		
Kalleberg et al. (1996) *Organizations in America*	x		
March & Simon (1958) *Organizations*	x		
Nikinovich (2000) *Bureaucracy* in The Encyclopedia of Sociology	x		
Greenwald & Krieger (2006) *Implicit Bias: Scientific Foundations.* Forthcoming in California Law Review			x
Renfrow (2005) *Sexuality as Status.* Unpublished Doctoral Thesis, University of Washington			x

Note: 46 references are included in this table. Two references were not found and two cited specific page numbers and were not included

It is not my position that all such references are inappropriate. Certainly, in providing a general backdrop for a theoretical discussion, it is appropriate to show a general pathway or historical trail. Further, in dealing with very specific issues such as promotion, leadership, mentoring, performance evaluation, an author is permitted the latitude of citing scholarly reviews or chapters on that specific issue. But for a scholarly/scientific report that represents the scientific foundation for opinions regarding issues such as commonality among employee groups or subgroups, discrimination, or HR practices, greater specificity is required that has been provided by Dr. Reskin. Similarly, one might expect hard data to support opinions rather than concatenated speculation of like-minded social observers.

As will be shown in the next opinion, I have been able to find all but two of Dr. Reskin's references. Of those references I could not obtain, one was unpublished. I have asked counsel to request those two references from Dr. Reskin but have not received them at this point. Having obtained and reviewed all of the citations included in Dr. Reskin's report (with the exception of those two), I am still unable to determine with any specificity, how many, if not most, of these citations support Dr. Reskin's opinions.

Dr. Reskin is an acknowledged scholar in the sociology of work. I have read many of her publications and they are, for the most part, careful scholarly works. Her report in this case is decidedly different from her published work with respect to the specificity of her references and arguments. Having served as an editor of many scholarly journals, I am confident that her report in this case does not match the standards of her other published work or the standards of her peers for scholarly work. Were she to submit a document such as this for peer review and consideration for publication, it would most certainly be rejected.

3) Dr. Reskin inappropriately cites "social framework analysis" as a methodology.

In Footnote #1 of her report (p. 3), Dr. Reskin identifies "social framework analysis" as her methodology. In the text of her report (p. 3, ll. 4-6), Dr. Reskin states, "I assess the extent to which data in the depositions and exhibits show personnel practices that have been shown in scientific research to eliminate or circumvent barriers to women's advancement." Thus, Dr. Reskin implies that her "methodology" is to connect deposition statements to "scientific literature," thus represents a "social framework analysis." For her authority, Dr. Reskin cites a chapter by Monahan and Walker (Footnote #1). I have two concerns about Dr. Reskin's purported "methodology." The first is that Monahan and Walker do not identify social framework analysis as a "methodology." My second concern is Dr. Reskin's loose use of the term "scientific literature." I will deal with each of these concerns in turn.

Social Framework Analysis

Dr. Reskin purports to have used social framework analysis as her "method of analysis" in preparing her expert report (Reskin Report, p. 3, Footnote 1). Social framework analysis was originally proposed by Monahan and Walker (1988; 1991; Faigman & Monahan, 2005), as a legal foundation for expert testimony of social scientists. They proposed that social science research could be provided by an expert or obtained through court-approved archival research that would provide context for the fact-finder(s) in a case. Monahan and Walker (1988; 1991) proposed that social framework evidence was to come from research originally conducted to answer more basic social science questions. The role of the expert or court researcher is to review and summarize the existing literature in a brief to aid the judge or jury in understanding the facts of the case (Monahan & Walker, 1991). In particular, Monahan and Walker proposed

that the most appropriate use of this research was in cases where counter-intuitive or confusing facts might be made clear by the introduction of context from social science research. In essence, they suggest that when a research question has been settled in the social and behavioral sciences, this settled research should be presented to the finder(s) of fact. Thereby, the facts at issue could be viewed as more probable or less probable than they would otherwise appear at face value (Monahan & Walker, 1991; Faigman & Monahan, 2005). This process was never considered a "method of analysis" as proposed by Dr. Reskin in her expert report. The goal of social framework analysis was to provide a clear path to the finder-of-fact through the forest of dense social science research.

The type of brief proposed by Monahan and Walker (1988; 1991; Faigman & Monahan, 2005) for use in a social framework analysis should contain only a review and summary of the relevant research. In fact, Monahan and Walker (1998) specifically instructed that:

> "Frameworks run little risk of inflaming a juror's emotions or taking advantage of a juror's credulity. They can, with careful presentation, clarify rather than confuse the issue to be decided at trial. Frameworks often tell jurors something they do not already know, or disabuse them of common but erroneous perceptions." (p. 357).

Under the Monahan and Walker model, the expert would not offer opinions regarding the interpretation of the research as it related to the specific facts in the case. This was proposed to be the work of the finder(s) of fact. The expert, instead, was to serve a pedagogical role. Dr. Reskin's report goes far beyond this teaching or instructing role to include inference and opinion. In this case, Dr. Reskin suggests that she uses social framework analysis as her methodology for analyzing information against a body of research. It is my opinion that Dr. Reskin is not following a social framework analysis process, but is instead conflating a neutral statement of research findings (social framework analysis), with the more common approach taken by someone who argues for a position. As such, Dr. Reskin attempts to transform social framework

analysis into a "methodology," thus providing a mantle of credibility for largely speculative opinions. Dr. Reskin first takes a strong position regarding unfair gender bias at Costco; subsequently she cites theory, opinion, testimony, and an occasional research study which appears to support her position and looks for facts in evidence that confirm her position, mining depositions and deposition exhibits for those facts, while ignoring facts that do not support her position.

Dr. Reskin proposes that she used a social framework analysis to evaluate the potential for workplace bias in the policies and practices of Costco. Dr. Reskin did not follow the social framework analysis process that meets the defined criteria for such a brief. As support for her assertion that she followed a social framework analysis process, Dr. Reskin provided one reference (Monahan & Walker, 1998), in her report. This reference, together with earlier and later writings by the some of the same authors on this topic (e.g., Monahan & Walker, 1991; Faigman & Monahan, 2005), do not support her approach, and in fact, highlight several problems with her approach to assisting the fact-finder(s).

First, it should be noted that other than very briefly defining social framework analysis, Monahan and Walker (1998), present no information relevant to this case. This reference simply reviews court cases in which a social framework was used by experts when testifying. Not a single case dealt with employment discrimination or commonality determinations for purpose of class certification. The vast majority of the 40-plus cases cited concerned police profiling or criminal activity such as murder, rape, domestic abuse, assault, and theft/robbery. The experts in those cases presented testimony about the probability of recidivism, the prediction of harmful actions by patients, the psychology of rapists, battered wife syndrome, battered child syndrome, post-traumatic stress disorder, rape-trauma syndrome, cross-cultural stressors, involuntary

subliminal television intoxication, and the accuracy of eyewitness identification. These were all cases where the expert's role was to present social science research with respect to the actions of a single person (most commonly as a victim or a perpetrator of a crime or harassing activity), and where the expert offered no opinion about how the research should be interpreted with regard to the specific facts and outcomes of the case. In addition, it should be noted that Monahan and Walker (1998), cite no cases dealing with commonality issues related to class certification, disparate treatment or impact cases in the context of employment discrimination, or any form of alleged discrimination for that matter. In the latest discussion of social framework analysis, Feigman & Monahan (2005), once again present discussions of criminal law, copyright issues, and medical causation testimony but provide no guidance, or even discussion, of the application of social framework analysis to the issues facing the court in the current litigation.

Another article by Monahan and Walker (1991) provides a more comprehensive treatment of social framework analysis and how it might be applied in a legal context. They state that a social framework denotes "...the use of general conclusions from social science research to determine factual issues in a specific case" (p. 581). Monahan and Walker (1998) not only repeat this statement but place emphasis with italics, "*...social framework, to refer to the use of general conclusions from social science research in determining factual issues in a specific case*" (p. 356). Monahan and Walker (1991), also suggest that social science research should be specifically evaluated from the perspective of whether it "a) has survived the critical review of the scientific community, b) has used valid research methods, c) is generalizable to the legal question at issue, and d) is supported by a body of other research" (p. 576). Dr. Reskin's citations in this case do not meet these standards. It is especially problematic that the findings from her citations cannot be generalized to the fact questions at issue - did intentional, or

unintentional discrimination based on gender, impact HR decisions for promotion to Assistant Warehouse Manager and Warehouse Manager at Costco?

It is important to understand the central proposition of a social framework analysis – the existence of "social fact" – in order to appreciate my criticisms of Dr. Reskin's invocation of "social framework analysis." There are many areas of research in the behavioral sciences where the data and conclusions all point in a single direction; the scientific community has agreed and generally accepted the results of a body of research. As an example, the scientific community has generally agreed that victims of spousal abuse often remain in the home in spite of the spouse's abusive behavior (Barnett, 2001). It is important for a finder of fact to be presented with this evidence since it may run contrary to "common sense." Thus, when a body of empirical research evidence unequivocally supports a causal, or even a directional relationship between two variables (e.g., smoking and the probability of developing lung cancer), this research can be presented as "social fact" (Monahan & Walker, 1988, 1991). Nevertheless, it is important to keep in mind that the only evidence that might be accepted as social fact is empirical evidence (i.e., evidence resulting from the systematic collection of data using commonly accepted methodology), and that evidence must all point to the same conclusion. This concept of "social fact" is central to my disagreements with the opinions offered by Dr. Reskin in this case as well as the foundations that she depends on for rendering those opinions. What Dr. Reskin cites as "scholarship" within the areas in question is far removed from data collection using a commonly accepted methodology and pointing to the same conclusion. Most of what Dr. Reskin cites as scholarship is simply essay, theory, or speculation. The areas that have been the subject of empirical investigation (i.e., stereotyping, automatic cognitive processing), do not lead to a generally accepted conclusion. As I will demonstrate in later

sections of this report, there is substantial debate regarding the existence, import, and applicability of this research to questions surrounding employment discrimination.

Monahan and Walker (1998), state that the body of research included in a social framework analysis should "make the existence of a fact at issue in a legal proceeding more probable or less probable than it would otherwise appear" (p. 357). It is my opinion that Dr. Reskin does not provide any information (i.e., social fact derived from relevant social science research), beyond the facts (which do not qualify as social fact), of the case that a layperson could use in forming a correct judgment. She does not link a body of research (i.e., social fact), to explicit facts in this case in a way that makes discrimination against female applicants for Assistant Warehouse Manager and Warehouse Manager positions more probable. Rather, she strings together many citations from several bodies of literature connected only by large inferential leaps to arrive at her opinions.

I will use the concept of organizational culture as an example of Dr. Reskin's failure to assist the fact-finder(s) in this case. Dr. Reskin uses the notion of culture in her opinion regarding the uniformity in managers' orientation towards the company and the uniformity of policy and practices within Costco. Her use of culture in her report is an example of where she purports to use a social framework to aid the fact-finder(s). However, this framework provides no additional information to the fact-finder(s) that is not apparent in many of the depositions and exhibits already before the court. Dr. Reskin defines culture as "shared assumptions, beliefs, norms and values about how things are done and ought to be done in the organization that differentiates it from other organizations." Virtually the entire content of Plaintiff and Costco representative depositions was on how things are done at Costco with respect to facts of this case. Dr. Reskin puts a redundant "social framework" cloak around the testimony of these

deposed individuals to assert a "culture." In addition, Dr. Reskin contradicts the neutral intent of social framework analysis by selectively introducing deposition testimony that fits her framework while ignoring testimony that does not. For example, Dr. Reskin has overlooked the many references in depositions to decentralization and to the independence and varying styles and practices of HR management within the warehouses, regions, and districts of Costco that contradict a claim of commonality (I have presented examples of that testimony in **Table 4** that accompanies Opinion 4). Dr. Reskin's notion of culture reflects a tautology that signs of culture can be found in company documents, and therefore, company documents represent the culture. This is simply a repackaging of facts and calling them culture. Consequently, it is my opinion that Dr. Reskin does not assist the finder of fact in her presentation of the purported social framework analysis of culture.

Perhaps the most important point that needs to be made is that when specific research or unequivocal research is not available or does not speak directly to the legal issues in the case, Monahan and Walker (1988; 1991), suggest that it is necessary to conduct additional empirical tests of the psychological principles that serve as the foundation for these issues. In other words, they suggest that one must uncover any relevant social fact through empirical research. As noted earlier, Dr. Reskin has relied on several bodies of literature pieced together through a series of inferential leaps, none of which purport to identify a cause for any disparities in employment outcomes for female applicants for positions as Assistant Warehouse Manager or Warehouse Manager at Costco. Given the inability of the available empirical research to directly address the legal issue in this case (discrimination against females at Costco), Dr. Reskin could not have relied on extant social fact, if indeed she was following social framework analysis as stated in her expert report. As a result, Dr. Reskin would have had to create social fact by conducting

independent empirical research. Yet, Dr. Reskin never conducted nor referred to specific research with Costco employees or with any archival employee records.

Even more important is the fact that the research that is presented by Dr. Reskin in her expert report is far from unequivocal, and therefore, does not establish a social fact. I will provide examples of this lack of agreement regarding "social fact" in subsequent opinions. I am not simply disagreeing with her conclusions because I can find rebutting evidence for her opinions. Instead, at this point, I am pointing out that the very foundation for her opinions – social framework analysis – is inappropriately invoked by Dr. Reskin because there is no social fact to present to the finder of fact. Dr. Reskin would have us accept as *settled* her unsupported conclusions and inferences drawn from her incomplete and selective citation of what is, in fact, mixed and often contradictory research and theory. Dr. Reskin presents equivocal, and often irrelevant, research. For social framework analysis to represent added value, social facts presented to the finder of fact must be unequivocal with respect to the findings so that they can be applied by the finder of fact without hesitation. There are many such areas such as victim behavior in sexual harassment, the fallibility of eyewitness testimony, and recidivism among pedophiles. The litigation with which we are concerned in this case does not reach any areas of *settled* research. It is my opinion that Dr. Reskin has not met this standard set for "social framework analysis", and cannot, given the status of theory and data in the research domains she cites. I will return to the research invoked by Dr. Reskin throughout this report.

The research studies cited by Dr. Reskin fall far short of the demanding threshold that expert testimony address the "more or less probable" criterion posed by Monahan and Walker (1988; 1991; 1998), in their description of social framework analysis. As a result, Dr. Reskin

cannot and does not answer the "more or less" probable questions posed by invoking social framework analysis.

Wiener (1995), writing on the topic of the application of social framework analysis, suggests that expert witnesses from the social sciences should play less a role of advocate and more a role of consultant. He proposes that "...a consultant approaches a problem from a disconfirming perspective, searching results for evidence that refutes plausible explanations (including one's own), while an advocate assumes a confirming point of view and searches for research results supportive of a favor position" (p. 171). Given Dr. Reskin's approach outlined above, it would appear that Dr. Reskin is more an advocate than a neutral scientist or consultant in this case. This seriously undermines the credibility of her purported social framework analysis.

Scientific Literature

Social framework analysis depends upon a broad, rich, and unequivocal body of underlying empirical research. Dr. Reskin has present citations that primarily represent theory, speculation, essay, review, and irrelevant empirical investigation. In **Table 2**, I have presented all of the citations that appear in Dr. Reskin's report (with the exception of two unpublished or generally unavailable citations). I have further separated those citations into a number of categories, including those that would qualify as "empirical" research. I have also noted in the "empirical" columns, those citations that may include data but those data are not referenced by Dr. Reskin. Note that 69% (33 of 48) of these citations represent theory, essays, reviews, or simple speculation. Only 31% (15 of 48) qualify as "empirical research." Of those 15 that might be considered empirical research studies, only 6, were conducted in the business sector or a field

setting. The remaining 9 were conducted with college students in a context far removed from the issues under consideration in this case. Thus, of the original 48 references, a total of 6 (12%) had any empirical foundation in a business or field setting. The 9 laboratory-based studies commonly ask students to role-play a manager making a personnel decision about a hypothetical employee or candidate for whom little other than demographic information is presented. **Table 2** clearly illustrates Dr. Reskin's dependence on theory and speculation as the foundation for her opinions. This speculation and theorizing – no matter how inspired - is not the foundation contemplated by the authors of "social framework analysis." It falls far short of an unequivocal empirical basis for Dr. Reskin's opinions. Even Dr. Reskin's citations to the few sources that actually report empirical data of any sort do not tell us how or why any data in the source may be illuminating since she makes no reference in her report to those data.

Table 2: Categorized Research Citations from Dr. Reskin's Expert Report*

FN	No.	Book (w/o Citation)	Essay or Theory	Review	Empirical	
					Lab/Survey (research employing students or census data)	Field (research conducted in a field or organizational setting)
1	1.1	Book – Monahan & Walker (1998) *Social Science in Law* (citation is all of chapter 5, Social Science Used to Provide Context)				
2	2.1		Book - Deal & Kennedy (1992) *Corporate Culture* (no specific citation)			
	2.2		Book – Schein (1992) *Organizational Culture and Leadership* (no specific citation)			
	2.3					Kerr & Slocum (1987) *Managing Corporate Culture through Reward Systems* (no reference to empirical data)
3	3.1			Alston & Ferrie (1993) *Paternalism in Agricultural Labor contracts in the US South: Implications for the*		

FN	No.	Book (w/o Citation)	Essay or Theory	Review	Empirical	
					Lab/Survey (research employing students or census data)	Field (research conducted in a field or organizational setting)
				Growth of the Welfare State (no specific citation)		
	3.2		Kerfoot & Knights (1993) *Management, Masculinity, and Manipulation ; From Paternalism to Corporate Strategy in Financial Services in Britain* (pg 665)			
4	4.1		Book – Edwards (1980) *Contested Terrain* (no specific citation)			
6	6.1			Boyce, (1996) *Organizational Story and Storytelling: A Critical Review* (no specific citation)		
	6.2			Swap et al. (2001) *Using Mentoring and Storytelling to Transfer Knowledge in*		

FN	No.	Book (w/o Citation)	Essay or Theory	Review	Empirical	
					Lab/Survey (research employing students or census data)	Field (research conducted in a field or organizational setting)
				the Workplace (no specific citation)		
	6.3		Ouchi (1980) *Markets, Bureaucracies and Clans* (no specific citation)			
	6.4		Martin, et al. (1983) *The Uniqueness Paradox of Organizational Stories* (no specific citation)			
	6.5		Peters (1978) *Symbols, Patterns and Settings* (no specific citation)			
	6.6		Pfeffer (1982) *Management as Symbolic Action: The Creation and Maintenance of Organizational Paradigms* (no specific citation)			
	6.7		Hansen & Kahnweiler (1993) *Storytelling: An Instrument*			

FN	No.	Book (w/o Citation)	Essay or Theory	Review	Empirical	
					Lab/Survey (research employing students or census data)	Field (research conducted in a field or organizational setting)
			for Understanding the Dynamics of Corporate Relationships (no specific citation)			
9	9.1		Book – Stinchcombe (1965) *Social Structure in Organizations* (Chapter 4 in Handbook of Organizations)			
19	19.1			Greenwald & Krieger. (2006) *Implicit Bias: Scientific Foundations*. Forthcoming in California Law Review (no specific citation)		
20	20.1		Book – Brewer & Brown (1998) *Intergroup Relations* (Chapter 29 in The Handbook of Social Psychology, no specific citation within the			

FN	No.	Book (w/o Citation)	Essay or Theory	Review	Empirical	
					Lab/Survey (research employing students or census data)	Field (research conducted in a field or organizational setting)
				Research inform Practice? (no specific citation)		
23	23.1				Tajfel (1970) *Experiments in Intergroup Discrimination* (no reference to empirical data)	
24	24.1				Brewer (1989) *The Primacy of Age and Sex in the Structure of Person Categories* (no reference to empirical data)	
26	26.1		Baron and Pfeffer (1994)*The Social Psychology of Organizations and Inequality* (no specific citation)			
	26.2				Perdue et al (1990) *Us and Them: Social Categorization and the Process of Intergroup Bias* (no reference to empirical data)	
31	31.1					McGuire (1999) *Do Race and Sex Affect*

FN	No.	Book (w/o Citation)	Essay or Theory	Review	Empirical	
					Lab/Survey (research employing students or census data)	Field (research conducted in a field or organizational setting)
						Employees' Access to and Help from Mentors (Chap 6 in Mentoring Dilemmas: Developmental Relationships within Multicultural Organizations) (no reference to empirical data)
32	32.1		Book – Kanter (1979) *Men and Women of the Corporation* (no specific citation)			
34	34.1			Reskin et al (1999) *The Determinants and Consequences of Workplace Sex and Race Composition* (no specific citation)		
42	42.1				Brewer et al (1981) *Perceptions of the Elderly: Stereotypes as Prototypes* (no ref. to empirical data)	
	42.2				Schmidt & Boland (1986)	

FN	No.	Book (w/o Citation)	Essay or Theory	Review	Empirical	
					Lab/Survey (research employing students or census data)	Field (research conducted in a field or organizational setting)
					Structure and Perceptions of Older Adults: Evidence for Multiple Stereotypes (no reference to empirical data)	
	42.3				Bargh, Chen & Burrows (1996) *Automaticity of Social Behavior: Direct Effects of Trait Construct and Stereotype Activation on Action* (no reference to empirical data)	
45	45.1				Gilbert & Hixon (1991)*The Trouble of Thinking, Activation and Application of Stereotypic Beliefs* (no reference to empirical data)	
46	46.1				Renfrow (2005) *Sexuality as Status*. Unpublished Doctoral Thesis, University of Washington (no specific citation)	

FN	No.	Book (w/o Citation)	Essay or Theory	Review	Empirical	
					Lab/Survey (research employing students or census data)	Field (research conducted in a field or organizational setting)
47	47.1					Alison et al. (1992) *Diversity in Work Group Composition: Implications for Majority and Minority Members* (no reference to empirical data)
50	50.1		Sturm (2001) *Second Generation Employment Discrimination: A Structural Approach* (no specific citation)			
	50.2					Cassirer and Reskin (2000) *High Hopes* (no reference to empirical data)
	50.3		Book – Ogasawara (2001) *Office Ladies and Salaried Men* (no specific citation)			
51	51.1				Martell (1996) *What Mediates Gender Bias in Work Behavior Ratings?* (no reference to empirical data)	
52	52.1	Book – Presser (2005) *Working in a 24/7 Economy*				

FN	No.	Book (w/o Citation)	Essay or Theory	Review	Empirical	
					Lab/Survey (research employing students or census data)	Field (research conducted in a field or organizational setting)
		(no specific citation)				
	52.2					Presser (2003) *Race-Ethnic and Gender Differences in Non-Standardized Shifts* (no reference to empirical data)
55	55.1		Phelps (1972) *The Statistical Theory of Racism and Sexism* (no specific citation)			
56	56.1					Padavic & Reskin (1990) *Men's Behavior and Women's Interest in Blue-Collar Jobs* (no reference to empirical data)
59	59.1		Reskin (2000) *The Proximate Causes of Employment Discriminatio n* (no specific citation)			
66	66.1		Book – Reskin B. (1998) *The Realities of Affirmative Action* (no			

FN	No.	Book (w/o Citation)	Essay or Theory	Review	Empirical	
					Lab/Survey (research employing students or census data)	Field (research conducted in a field or organizational setting)
			specific citation)			
68	69.1		Bielby (2000) *Minimizing Workplace Gender and Racial Bias* (no specific citation)			
70	70.1	Book – Reskin & Hartman (1986) Men's Work, Women's Work: Sex Segregation on the Job				
74	74.1	Book - Kalleberg et al. (1996) *Organizations in America* (no specific citation)				
75	75.1		Book – March & Simon (1958) *Organizations* (no specific citation)			
76	76.1		Book – Nikinovich (2000) *Bureaucracy* in The Encyclopedia of Sociology (no specific citation)			

*Two references were not found

Wang C. & Banaji M. (1999) Implicit Gender Stereotypes about Work and Family. Unpublished

Nosek B., Banaji M. & Greenwald A. (2002) *Harvesting Implicit Attitudes and Beliefs from a Demonstration Web Site*. Group Dynamics 6:101-115

4) Dr. Reskin's assertions of commonality at Costco for purposes of class certification deal with trivial rather than central issues of commonality of candidate experience.

Although Dr. Reskin's commonality arguments are not always clear, I have attempted to extract what she appears to see as commonality factors from her report. I have identified each of those in **Table 3**.

Table 3: Indicators of "Commonality" Identified by Dr. Reskin in her Report

Page	Element
4	Common culture
6	Executives interact regularly
6	Divisional and regional executives visit from Issaquah monthly
6	Electronically generated paychecks from Issaquah
6	HR provides job descriptions
6	HR sets company-wide salary guidelines
6	Salaried job responsibilities are standardized across regions
6	All senior VPs, VPs in operations, GMs and AGMs have a common set of duties
6	Managers and VPs are charged with implementing Costco policies
6	The four warehouse staff positions are common across Costco
6	Promotional decision makers are AGM and GM hold the same positions across regions
6	Record keeping for transfers is common across regions
6	Divisional and regional VPs visit warehouses annually
6	Employees are rotated across warehouses, regions and divisions

From an HR perspective, the commonality issue depends on a showing that all members of the proposed class were subjected to the same decision-making process and environment. Most of the commonality factors identified by Dr. Reskin have little or nothing to do with the way in which decisions were made regarding who would be promoted to Assistant Warehouse Manager or Warehouse Manager. The fact that there is a single headquarters office in Washington; that there is a standard pay scale; that the decision-makers held the same job title; that the managerial structure of warehouses was identical; or that managers met with each other

on occasion for workshops, focus groups, or strategic planning, has little or nothing to do with the actual process by which individuals were chosen for the positions in question.

In her report of May 16, 2006, Dr. Reskin actually acknowledges the fact that there were differences in decision-making procedures, information used, promotability criteria etc., across Costco warehouses, regions, and districts. **Table 4** presents quotes from Dr. Reskin's report acknowledging these differences. Yet she ignores these acknowledged differences as relevant for purposes of determining the commonality of applicant experience, preferring to focus on the less relevant factors that appear in Table 3.

Table 4: Acknowledged Differences in Practices from Expert Report of Dr. Barbara Reskin

Page	Quote from Dr. Reskin's Expert Report
5	"…Costco gives its decision-makers almost total discretion in their personnel decisions…"
	"…stance across its disparate regions in giving managers and executives discretion in choosing whom to promote…"
7	"…decisions involving individual employees are made at the warehouse, regional or divisional level…"
	"…executives to use discretion in personnel decisions…"
8	"…decision-makers operate with considerable discretion…"
	"… (Regional and divisional vice presidents) have almost complete discretion in deciding whom to promote."
11	"Managers and executives testify to relying on their own or their subordinates discretion in making promotion decisions." (Jelinek dep.; Vachris dep. Pp. 78, 133) "There is no guidance as to how many persons should be on a promotable list." (Hoover dep. Pp. 56-57 and pp. 32-33)
24	"Promotion decisions for Assistant General Manager's depend on the opinions of the regional VPs and the GM." (Webb dep. P. 133) "…we need regional plans and goals…"
	"…promote diversity within their region…" (Schutt dep. P. 174)

"…testified that [goals] are division specific…" (Matthews dep. P. 177)

"…outline goals that reflect the population of the market area…" (Matthews dep. P. 190)

"Executive and Senior VP's in operations testified to different procedures." (Portera dep. Pp. 14-17)

"Gaherty listed as a goal in early 2005 one female manager or senior manager in all the 39 locations of his region…" (Gaherty dep. Pp. 124-126)

25 "…regional VP Webb described their affirmative steps as setting personal goals of having a female manager or AGM in every warehouse in the Midwest." (Webb dep. P. 194)

"Executive VP Schutt set a goal that women would comprise 30% of new mangers in his region without consulting the previous years goals because he thought one-third would be a good goal." (Schutt dep. P. 51)

28 "…HR does not oversee the promotion system or promotion decisions."

"…discretion to the persons who distribute reward and punishment…"

"The independence of Costco's promotion system from HR or the personnel department means that there is no common source of information…"

It is also important to note that there is ample deposition testimony to show that HR practices, generally, and promotional practices, specifically, vary widely across warehouses, regions, and districts. I have presented a sample of that testimony in **Table 5**.

Table 5: Differences in HR Practices from Deposition Testimony

HR Process	Comment
Diversity Goals	"I'm aware of the senior operations people down through district VP have goals that they're trying to improve representation of women and minorities in their locations…[the goals] They vary by division." (John Matthews dep. P. 177)
	"I set [diversity] goals for myself as well as those individuals that report directly to me. These goals are measurable and part of the review process." (Joseph Portera dep. P. 14)
	"When I set diversity goals, it's the inclusion of women and minorities. I have set goals to increase diversity in respective regions, specifically one year to 30% in the Northeast from 22%, and to 40% in the Southeast from 34%." [Relating to the job of Warehouse Manager] (Joseph Portera dep. P. 17)
	"[goals] vary by division…I know Dennis has goals, I know that Joe has goals, but they may not be the same, they're relevant to their particular buildings." (John Matthews dep. P. 177)
	"I know that certain operators have established goals for themselves. I think Doug Schutt has set some specific goals for himself, I think Joe Portera has set some goals for himself relative to promoting, diversity, gender and ethnicity…I believe Doug Schutt hit his goals…you know, I'm not going to tell them they can't establish goals for themselves." (Jim Sinegal dep. P. 187)
	"…goals and benchmarks vary store to store…" (Dennis Zook dep. P. 136)
	"…Some of my VPs or Assistant – or the District Managers put some type of diversity on there that they're looking at to increase the diversity pool."
	"They do it when its necessary. There's no directive from me, they create their own forms." (Dennis Zook dep. P. 137)
	"It's Mario's own style; he's probably trying to show me that he is looking at diversity in the management group…" [in response to a question, Do you know why Mario indicates diversity but Ron Vachris doesn't] (Dennis Zook dep. P. 143)
	"We [Mr. Gaherty and himself] set a personal goal to have a female assistant in every building in the Midwest." (Richard Webb dep. P. 194)
Performance Evaluations	"[this scale] it derived from the evaluation process, but yes, I was the one that attached it to this form…I took it and it was a lot briefer on my explanations. Boom, boom, boom. This was used for me only really…I carried it over to district 2…To be honest with you I came up with it on my own." (Ron Vachris dep. P. 176 – 178)

HR Process	Comment
	"No" [none of my superiors have ever expressed concern that I wasn't regularly doing performance evaluations]. (Richard Webb dep. P. 90)
	"No" [it is not my practice to review evaluations]. (Richard Webb dep. P. 91)
General HR	"The Manager is charged with running that warehouse as his own business and is responsible for building his staff." (Richard Webb dep. P. 83)
	"Preferably the Warehouse Manager [makes the decision to have an Administrative Manager] but the district Manager is probably involved."
	"The Warehouse Manager has the autonomy to run that Warehouse and staff that Warehouse." (Dennis Zook dep. P. 55)
	"A distinction [about how many Assistant Managers to have] is made usually based on the volume of the store…difficulty of running that location…you will have some small volume locations that will have one Assistant Manager." (Dennis Zook dep. P. 54)
	"The Administrative Manager is a staff position, but we've been phasing that particular position out in my region." (Dennis Hoover dep. P. 153)
	"…I think people issues are the issues that have to be handled at the regional level. I think we are most successful at handling it at the regional level…" (Jim Sinegal dep. P. 119)
	"We – the entire structure of Costco is very decentralized, and so when it gets to an international entity, we typically allow that entity to develop and evolve with support from our department, but its asked for rather than our department pushing…" (John Matthews dep. P. 20)
	"We put a lot of emphasis on people, and we feel that its our responsibility, the operators and the merchants, to be responsible for their own people. That's why they do their own interviewing, their own screening, that's their total responsibility, and diversity is their total responsibility." (Richard DiCerchio dep. P.37)
	"Each area manager will have goals, they don't have quotas, or we don't have a set percentage, but, unless they establish those." (Richard DiCerchio dep. P. 53)
	"I have a – I have a role that I can approve or disapprove goals of any kind, but they [the regions] establish their goals." (Richard DiCerchio dep. P.54)
Training	"All our warehouses are independent of each other, so corporate does not come out and do that [training]." (Richard Webb dep. P. 28)

HR Process	Comment
Staff Schedules	"[Schedules] are left up to the Warehouse Manager." (Dennis Zook dep. P. 68)
Promotion Process	"No, that [approving selection of Assistant Warehouse Managers] is generally a decision that was made at a regional level." (Jim Sinegal dep. P. 41)
	"…I felt more comfortable working off the performance evaluations and my notes. I felt very – it was a lot more inclusive – it was a better tool for me." (Mario Omoss dep. P.229)
	"…I compile my talent pool list. It is all of the information, and it gives me this as a - it's just a tool to look at, and to keep challenging myself and my managers."
	"…I don't know what other regions do, this is the program I have, and I feel comfortable with it. I think I have a clear understanding of my people and where they should be at." (Mario Omoss dep. P. 231)
	"No, I would not have done that [accept someone in a senior staff position transferring into the region as Assistant Manager]. I took assistants to be assistants and staff level to be staff level. I know in the Midwest, when they opened…they started to offer promotions for transfer. I didn't. From the beginning I said, everybody comes out laterally; I see what they can do." (Mario Omoss dep. P. 247)
Promotion Criteria	"No, there is no preprinted [checklist]. There are a lot of things that are available. I mean, there are self audits, corporate audits. There are a lot of things that I could pull off the intranet, but that's not the way I work." (Mario Omoss dep. P. 91)
	"I can't speak for all the regions, but in my region I have never really had that type of 'Manager in Training' program." (Mario Omoss dep. P. 81)
	"In general it [merchandising skills being important] is true, but we have things that we focus on differently by region. I run my 14 warehouses. I am looking at what others do but I do my thing. I can't answer for them. But I think we have a great program in Texas." (Mario Omoss dep. P. 122)
	"For me it is [prerequisite to be an Assistant Manager is being a Merchandising Manager]. For me you need to, in my region – you have to be a – I like people to go through all four staff level areas…" (Mario Omoss dep. P. 220)
Mentoring	"Understanding [a formal mentoring program] in the broadest possible sense, is there some structure that exists there, yes. We have – and – but it varies by region…" (John Matthews dep. P. 81)

HR Process	Comment
	"It's [the mentoring program] done through a conversation with the corresponding Warehouse Managers in a region…" (J. Matthews dep. P. 84)

Dr. Reskin appears to dismiss or diminish the importance of this testimony. It also appears that Dr. Reskin may be arguing that the very decision to decentralize HR administration with respect to promotions is, in itself, an instance of centralization or commonality.

More Generally, Costco's paternalistic stance across its disparate regions in giving managers and executives' discretion in choosing whom to promote adversely affects the advancement opportunities of all of its female employees by inviting the use of in-group favoritism and sex stereotypes in promotion decisions (Reskin Report, p. 5, lines 25-28).

Costco's common culture - with its license for executives to use discretion in personnel decisions - leads to in-group favoritism and sex stereotyping, both of which create system-wide disadvantages for Costco's female employees (Reskin Report; p. 7, lines 5-6).

This turns the whole notion of decentralization on its head and is a simple and obvious tautology. By this standard, virtually any organizational structure that permitted, encouraged, or required decentralization would be seen as an instrument of centralization.

5) Dr. Reskin proposes that certain human information processing mechanisms are universal, thus common across all locations and decision-makers. These proposed mechanisms are neither automatic nor universal, and cannot be used as a foundation for supporting a claim of commonality among plaintiffs in their experiences with the Costco promotional process.

As I indicated earlier in this report, it is not completely clear which arguments Dr. Reskin presents for purposes of establishing commonality versus those intended to bolster arguments related to merits issues. In her report, Dr. Reskin appears to take the position that human information processing is universally flawed with respect to the influence of gender on personnel decisions. She cites a number of concepts, such as stereotyping, automatic cognitive processing,

in group favoritism, paternalism, and tokenism as examples of this flaw. Her argument seems to be as follows:

- Decision-makers at Costco are male,
- Males have stereotypes of females that make females less attractive candidates than male candidates for certain managerial positions
- These stereotypes and various "isms" are activated automatically in all male (and possibly female) decision-makers,
- Because of these universal and automatic information-processing mechanisms, female candidates for certain managerial positions are at a disadvantage compared to their male counterparts.

Thus, Dr. Reskin may be arguing that it is this alleged universal and automatic "flaw" in information processing that is the common element in decision-making at Costco. Alternatively, she may be proposing these information-processing mechanisms as support for the analytical scheme followed by Dr. Drogin in failing to control for variables at the individual decision-maker, store, and region or district level. By suggesting that the decision-making process is universally and automatically influenced by biased processing, Dr. Reskin may be arguing that there is no need to either disaggregate for purposes of calculating gender disparities, nor is there a need to enter any control variables into the analysis since all decision- makers are similarly flawed and all female managerial candidates similarly situated or subjected to these common "flaws." Finally, she may be proposing these cognitive "flaws" as a way of explaining the mechanism of discrimination for plaintiffs individually or as a group sharing a common experience.

If it is Dr. Reskin's position that these flaws actually represent "common policies, practices or procedures", then she is wrong on two counts. First, there is ample evidence that these "flaws" are hardly universal. To take stereotyping as an example, there is ample research to demonstrate that the likelihood of a demographic stereotype influencing a personnel decision is moderated by at least the following factors:

1) The amount of information a decision-maker has about a "target" individual (e.g., a candidate for a promotion). This is known as "individuating information. The more information available, the weaker the influence of any stereotype (e.g., Fiske & Neuberg, 1990; Kunda & Thagard, 1996).

2) The degree of prejudice of the decision-maker. The more strongly prejudiced the decision-maker, the great the influence of the stereotype (e.g., McConnell & Leibold, 2001).

3) The cognitive capabilities of the decision-maker. The more cognitively complex the decision-maker, the weaker the influence of any possible stereotype (e.g., McFarland & Crouch, 2002).

In later opinions, I will present the research evidence that supports my observations about the non-universality of stereotyping. The point I make here is that there is nothing common nor universal about these proposed "flawed" information-processing mechanisms. As described above, there are substantial individual differences in the strength of stereotypes and the likelihood that any stereotypes will influence promotional decisions such as those at issue in this litigation.

Similarly, Dr. Reskin's claim for universal automatic cognitive processing is rebutted by current research literature. In a later opinion, I will present this rebutting research evidence.

There is a great deal of debate and conflicting research conclusions surrounding the notion that one can demonstrate universal automatic (i.e., implicit), discriminatory attitudes related to demographic variables such as gender, race, age, or disability. As was the case with stereotypes, if Dr. Reskin is asserting that it is the *automatic* character of discriminatory attitudes and behavior that is the common thread that ties together the decision-makers across stores, regions, and districts, there is no credible research evidence to support that assertion. In fact, the research shows rather clearly that this "automaticity" is also influenced by individual difference variables such as salience of the concept, cognitive capabilities of the perceiver, and familiarity with the concept in question. Seen in the best light, the concept of automatic cognitive processing (or implicit prejudice) is an intriguing hypothesis but it is far from generally accepted by the scientific psychological community.

6) Dr. Reskin's observations regarding the presence of a "culture" at Costco do not speak to issues of commonality in human resource decision-making.

In her report, Dr. Reskin observes that Costco has a culture and that the culture is communicated in multiple ways. Just as all people have personalities, all organizations have cultures (Landy & Conte, 2004; 2007). It is neither remarkable, nor the subject of expert opinion that Costco has a culture. Fact witnesses for Costco have repeatedly acknowledged and described the Costco culture.

Table 6: Descriptions of Costco's Culture from Deposition Testimony

Deponent	Page	Comment
Wendy Davis	52	"We just know there are always staff rotations. It's part of our culture that we rotate -- we as warehouse managers and experience it as a staff level manager and assistant, we rotate to make sure that our skill set is well rounded."
	146	"[describing how Ms. Ellis didn't 'get' the Costco Culture] She was a little rough around the edges. There were some employee complaints from time to time. There were -- she, at times, had --

		I want to say an edge. Abrasive may be too strong of a word, but she had an edge about her sometimes when meeting with employees. It's a long time ago. I remember very clearly that I spoke with her on a couple of occasions about having a more approachable style and tweaking her management style to be more approachable and effective with employees and I believe I evaluated her on that as well".
Mario Omoss	27	"...It is almost like having a performance appraisal everyday because we are a very verbal company and we discuss shortfalls and successes..."
Richard Webb	213	Q. And when you said to me that people from Sam's Club can never fit into the Costco culture, what did you mean by the "Costco culture"? A. In Costco there's a lot of interaction between salary and managers and hourly, and it's -- we have managers. They're in the trenches with the people on the floor. The sense that I got from Sam's is that there is a big rift between management and employees, that they do not work together in cooperation, that there is a barrier there.
Jim Sinegal	30	"Well, do they understand what the culture of the company is, do they understand how we treat people, do they understand how -- what we have in an open door with our employees, do they recognize all of the and benefit programs that we have in our company, and then do they understand the merchandising concepts of our company".
	37	" [in response to when the mentoring program started at Costco] I don't recall the date, but I know that it's a conversation that we have had on an ongoing basis for 15 years, that we have talked about how we mentor at the warehouse and teach, and that's part of the culture of our company, that we stress teaching. I mean the attitude in our company and what we have informed our managers is that if they do not understand that teaching is 80% to 90% of what they do, they don't understand their job. That is the most important thing that they, and they have to spend the appropriate amount of time on it".
	124	"I felt that we had a system in our company, we had a culture built into our company that was recognizing on a regional basis who was qualified to become an assistant manager and a manager that that determination was made by reviewing people on an ongoing basis. I felt that we had to draw the line someplace on we were going to post and how far we were going to post, and I felt very comfortable with keeping it at the jobs that we have identified, the merchandise manager, end manager, receiving manager, those staff positions at the warehouse. I considered the jobs of manager and manager to be top management jobs should be given on the basis of merit. We consider ourselves a meritocracy, we have evaluated these people, and we have a good system in place for developing it, and we think the proof is in the pudding relative to the quality of

management that we have turned out".

131 "[in response to questions about the results of lack of job posting for AWM and WM positions] I attribute that to the fact that we run our company right, that we have a culture that promotes from within our company, that we are very inclusive in the company, that we keep happy employees in our company, they stay with us because they enjoy working for the company and have pride in the company, and there's, as you know, a very good reason why people have pride in a company, and that's because they see the results of what the company is doing".

The Costco Culture of Inclusion

Every successful organization has a culture and transmits that culture in as many ways as possible. If the simple presence of a culture were sufficient for the determination of a commonality, then it would be axiomatic that commonality would be present in any organization regardless of size. What is missing from Dr. Reskin's observations about the Costco culture is any evidence that the culture is somehow pathological and devoted to discriminating against women. On the contrary, various depositions of Costco representatives and the exhibits to those depositions confirm an organization determined to directly address any possible barriers to the advancement of women and minorities. I have presented a representative sample of these statements in **Table 7**.

Table 7: Quotes from Depositions Addressing Barriers to Women's Advancement in Costco

Deponent	Page	Comment
Jim Sinegal	103-104	Q. At the time you sent this letter out, had you been receiving any statistical reports about what the profile of the work force was at Costco? A. Yes. Q. And you were generally aware of the of the company in terms of women and minorities at different levels of hourly and management jobs? A. Generally, yes.

			Q. Did you have a concern at that point that were not -- there was not sufficient diversity in management ranks?
			A. Yes, I felt that we were not taking advantage our full pool of people and that we had -- if we were going to succeed as a company, we had to be prepared to utilize everyone in the system, and we had to provide opportunities, and this indicated that we weren't getting the movement.
			Q. And so the purpose of this process was to try to get that kind of movement?
			Q. To increase levels of diversity in the company?
			A. Purpose was to make us a better company, to make us more aware of succession planning, to make us more aware of the fact that we had this goal of promoting from within our company, are we taking advantage of every single person in the company, and are we providing opportunities for every single person, and do we have any inadvertent barriers that exist, how do we improve.
		105	Q. And part of this process was to identify inadvertent barriers to promotional opportunities?
			A. Certainly, but that's a part, you know, a portion of the process.
			Q. Right. And that would include barriers in the warehouses?
			A. It would include barriers throughout every aspect of our business.
		135	"I don't recall what happened five years ago when this was going on, what happened with the promotion pool at that point. I could only tell you that we had an ongoing program that was trying to correct any low numbers that we had with any group here, and most particularly the warehouse manager. We had employee programs to make sure that we had more women in the pool for warehouse managers."
	Richard DiCerchio (Chief Diversity Officer)	81-83	"Yes, in Bryan's research he found that some buildings were working staff all night, we had crews worked all night, we had crews came in at midnight, and his recommendation was to have standard hours to operate our business……Because it's difficult for men and women and all of our managers to work all night shifts or midnight shifts, put a burden on -- it put a burden on single, it was a burden…We have taken these recommendations, but we haven't approved them all yet…Unless otherwise proven, I agree with Bryan's assessment."
		190	"Relocation was perceived as a barrier for more than women. It was a

		barrier for -- it came up at the managers meeting, and specifically it came out of Los Angeles if my memory serves me correct, and it was directed at Hispanics. And if I remember the conversation, and which I had never thought about, that's why this kind of sticks in my brain, is that we're getting, our nation is getting more and more Hispanic influence and Asian influence in some cities, the major cities or a lot of major cities now, the majorities of the cities themselves are Hispanic, and Los Angeles is one of these areas, so. And yet we do fine in how can we -- the question that came up or the discussion that came up is, well, gee, with this concentration of heavy Hispanic in Los Angeles and Texas or San Diego, gee, we should be able to take this talent and easily promote it to -- and widen our diversity. And that's why this was presented in relocation as a barrier for besides all management really it was – it really affects all management because husbands and wives. But in the Hispanic market where this came up from is where they have extended family living in a household, and they have large families, and they have cost of property and housing. So it affects more than women I guess my answer is."
Judy[3] Vadney (HR Director)	166-167	"[in response to a question about the purpose of the focus groups] To help us refine our processes and to help us do a better job running our company. Q. And was part of that an effort to have the Warehouse Managers help you identify what barriers might exist to the advancement of women and minorities into management? A. Yes.

What is particularly impressive about Costco's commitment to reducing barriers to the advancement of women is *when* this effort began. The history of this effort is described by Jim Sinegal in his deposition and can be seen to have formally begun in 1999. Additionally, the Rothman Workplan is evidence of the early and aggressive posture of Costco with respect to barriers for the advancement of women into the management ranks.

"Our participation in BOLD started before I think it started in 1999 and grew from that point where we developed a Workplan and subsequently became known as the Rothman Workplan because Ron Rothman, one of the people in our HR department died, and he had worked so hard on the program we memorialized it with his name on it (Sinegal dep. p. 58)."

[3] In her report Dr. Reskin refers to Judy Vadney as the Costco 'Personnel Director' (e.g., p.5, 113) rather than by her correct title as 'HR Director.' Personnel director is an archaic term and when used, often refers to responsibilities considerably more narrow than those of Ms. Vadney.

Q. You referred to the BOLD process early on, I want to go back in perhaps ancient history and ask how you first got involved in that.

A. I was invited to join a group of CEO's in by Phil Condit, who was at that time the CEO of Boeing. The invitation letter was to assemble a group of CEO's in the Puget Sound area that would convene on a quarterly basis for the purpose of discussing diversity and diversity opportunities as it pertained to our companies and to our region. And we had our first meeting I think in I think it was in 1999. It was part -- BOLD is an acronym for Business Opportunities for Leadership Diversity. It's headquartered in -- the organization is headed up by a woman by the name of Bea Fitzpatrick who offices in New York. There are similar groups available in other cities. I know specifically in Fort Worth, in the Fort Worth-Dallas area there's a group of CEO's, and I attended one of their meetings down in Fort Worth. We had the first meeting, and then Phil moved the home office for Boeing to -- I think we may have had two meetings, and then he moved the home office, home office of Boeing to Chicago, so he was only part of the group for a brief period of time. Alan Malotley, who is the CEO of the commercial airline division, has participated for Boeing since that time. (Sinegal Dep. Pp. 85-86)

The Costco approach to diversity – an approach well documented in deposition testimony and exhibits - meets or exceeds the standards one might expect for diversity sensitivity for a successful 21st Century organization even today and was well ahead of professional standards in 1999. The BOLD initiative was a unique strategic plan by the major Seattle area employers to take positive steps toward diversity (Sinegal Dep. Pp. 85-89) very early in the effort to help women to advance to senior leadership positions. It is clear that Costco was an active member in that consortium and was in the vanguard of organizations committed to providing a fair playing field for women.

Consider the elements of the Costco culture as enumerated by Dr. Reskin in her report. I have presented these elements in **Table 8**.

Table 8: Elements of the Costco Culture Identified by Dr. Reskin

Page	Element
5	Contract in which employees exchange obedience and loyalty for a well paying job, benefits and promotion opportunities

5	An open company in which communication flows freely
5	Relationships based on trust and respect
5	Relationships oriented toward teaching and developing people
5	Expectations of initiative by employees
5	Reward employees by promoting from within

There is nothing pathological about these elements. Many organizations would embrace a culture defined as Dr. Reskin has defined the Costco culture. Similarly, there is nothing remarkable about the methods by which Costco introduces and maintains their culture. In **Table 9** I have listed the methods enumerated by Dr. Reskin for culture maintenance.

Table 9: Methods by which Costco Creates and Maintains its Culture from Dr. Reskin's Report

Page	Method
4	Employee Agreement
4	Employees involved in revising Employee Agreement
4	The 'Costco Today' newsletter
4	Internet and intranet sites
4	Courses at 'Costco University'
4	'Costco Perspective' employee meetings
5	Initial orientation for new employees
5	Employee workshops

One aspect of culture maintenance elements described above is particularly interesting – the employee involvement in revision the "Employee Agreement." Every three years, Costco invites all employees to help in redrafting the Costco Employee Agreement. The employees enthusiastically respond to that invitation and it is not uncommon to receive 3000+ suggestions for revisions in the agreement from Costco employees (Matthews dep. P. 165). Thus, unlike many other employers, Costco actually *invites* its employees to take an active role in the reformulation of their culture every three years. This is perhaps one of the most forward looking cultural initiatives I have encountered in more than 30 years of organizational consulting. With

such a procedure in place, it is hard to understand Dr. Reskin's view that the Costco culture is a top down creation of a small group of senior executives imposed on those below them.

Dr. Reskin points to no evidence suggesting anything pathological about the Costco culture, other than the fact that there are fewer female Assistant Warehouse Managers and Warehouse Managers than the plaintiffs believe there should be. As a result, her observations about the existence of a culture and the methods by which that culture is transmitted are irrelevant to the issue of commonality of applicant experience. If anything is to be deduced from the facts in evidence, it is that Costco has pursued a culture of openness and inclusiveness.

7) Dr. Reskin's advocacy of "bureaucracy" as a defense against gender discrimination is inappropriate.

In her report, Dr. Reskin suggests that bureaucratization and related standardization are the cures for the ills created through a paternalistic form of management. Bureaucracy was a very early form of management theory that emphasized concepts such as:

- Division of Labor – the development of jobs, functions and departments
- Delegation of Authority – the hierarchy of reporting relationships
- Span of Control – the number of people reporting to a single individual

In the 1930's and 1940's, advocates of bureaucratic organizational models suggested that there was an ideal "form" for an organization regardless of circumstances (Landy & Conte, 2004, pp. 512-520). Most would agree that these three elements of the bureaucratic model are effective and necessary characteristics of the modern organization. They promote fairness and efficiency – an employee should know what their job is, who they report to, and who reports to them. The

ubiquitous organizational chart is the representation of these elements of the bureaucratic model. Costco, like all other modern organizations, has adopted these three principles of the bureaucratic model as can be seen in their job descriptions (See **Appendix B**), and organizational charts at the corporate, district, regional, and warehouse levels.

Dr. Reskin, however, adds the concept of centralization and standardization of HR practices to the bureaucratic model. In this extension, she is wrong. In fact, the modern use of the term "bureaucracy" evokes images of inefficiency, ineffectiveness and impersonality (Landy & Conte, 2004, p. 512), precisely because of the glorification of standardization of the HR function. It suggests a hidebound and rule bound organization that is cumbersome in its response to environmental events created through competition. Further, it is at odds with modern motivation theory that stresses local strategic decision-making as a way of encouraging commitment among employees (Landy & Conte, 2004; 2007). Strategic management theory emphasizes the interaction between an organization and its environment and stresses decentralization in decision-making (Miner, 2002). Modern organization theory (e.g., the contingency theories of Lawrence and Lorsch, 1967; the "Resource" theory of Salancik and Pfeffer, 1977; Landy & Conte, 2004; 2007), rejects the static and centralized concepts of the outdated bureaucratic model in favor of an open-systems view of the organization (Katz & Kahn, 1966; 1978) which emphasizes the necessity of recognizing and adapting to local environments. Were Costco to follow Dr. Reskin's suggestion to adopt the bureaucratic model of organization, it would be stepping back 50 years into an HR environment strangled by standardization and centralization, an environment incapable of responding to competitive challenges peculiar to a region, district, or warehouse.

Modern organization theory stresses the concept of strategic HR management. Strategic HR management has been defined as the linking of human resources with strategic goals and objectives in order to improve business performance and develop organizational systems that foster innovation and flexibility. The HR strategy of an organization must reflect the business strategy of that organization in order to achieve the stated goals and objectives (Ulrich, 1997). Dr. Reskin seems unaware of modern organization theory in her recommendation that the bureaucratic model of organization (and associated emphasis on standardization), be adopted by Costco as an HR "strategy." Dr. Reskin's observations that certain Costco functions are centralized (e.g., payroll, sales), while other functions (e.g., promotions, mentoring), are decentralized simply confirms the fact that Costco has adopted the strategic HR model. Dr. Reskin would prefer that Costco adopt a different model. There is little support for her suggestions in modern organizational literature (Miner, 2002).

As has been the case in other observations offered by Dr. Reskin, it appears that she is not expert or reasonably informed on the topic of organizational structure and design. She appears to advocate the concept of a Bureaucracy because another scholar suggests that Bureaucracy is a check and balance against paternalism. Few modern organizational scholars would suggest that bureaucracy and the standardization of HR practices is a solution to anything – it would be seen as a problem not a solution. In fact, most local, state and federal agencies have been struggling for decades to be freed of the inefficiencies imposed by the bureaucratic advocates of the early 20th century.

8) Dr. Reskin misrepresents the concept of walking the warehouse. The warehouse walk is a critical element of warehouse management and is conducted on a daily

basis by Warehouse Managers and periodically by senior managers above the warehouse level.

In her report, Dr. Reskin trivializes the concept of the warehouse walk. She portrays the walk as an event conducted by senior managers on an infrequent basis. She uses this representation of the walk as a way of suggesting that there is inadequate opportunity for senior managers to gather any information about candidates for promotion. In fact, the walk occurs on a daily basis and is conducted by Warehouse Managers, Assistant Warehouse Managers, and staff managers. There are several purposes for the walk. One is to review the condition of the warehouse and the daily merchandising strategy and operation. Another purpose is to see and been seen by warehouse employees. This permits two-way communication between management and staff on a daily basis. Employees interact with management on any issues of interest to the employee and management directly observes the work behavior of the employees and assesses their skills and abilities. The daily walk is the foundation for developing individuating information regarding each employee.

Wendy Davis has clearly described the warehouse walk as it is used in the Costco environment. It is far from the trivialized version presented by Dr. Reskin in her report.

> Q. As the warehouse manager, do you walk the store every day?
>
> A. Yes.
>
> Q. Once a day?
>
> A. No.
>
> Q. How many times a day?
>
> A. Well, there are a couple of different definitions. By walk, do you mean a thorough detailed merchandise focused walk or do you mean everything I do?
>
> Q. Well, you have been talking about they are performing because -- you know, because we walk the store.

A. Uh-huh.

Q. So, what was the definition that you meant with that?

A. Multiple things. I walk the floor with my 'merch' team every day to evaluate how we handle the freight, how we set the freight. Did we -- did we put the product in the best position to maximize sales. Are we neat, clean, straight? I walk the fresh department. I go to the bakery and I look at the product and is it dated properly and are we in stock and are we low on anything and are we clean and I go through the bakery and I look at what production has been in place and I talk with the employees and I see if we have cakes ready. And, then, I go to the meat department and I walk the case and make sure that we are full and we are ready for opening throughout the day, that any of our policies are followed. If they rewrap an item because the package breaks, they have to put an R on it. So, I look at that. I go to the deli and I make sure that the chickens are made and if the chickens are getting low, when do the next chickens come out and I talk with the deli manager and the employees. And I go to receiving and I check -- I walk their department in terms of is it secure -- or is the product stacked, is any product I anticipate needing later in the day going to be ready on the dock and staged. I go through the RT department, I make sure that we are following our standards in terms of shipping out product and sometimes I need to scan product out for UPS or sign a document for something being shipped out. Then I walk the front end and I walk for line control and I have standards -- and we have standards to make sure that our member service is being handled and for me it's one on the best, two in line. You know, it shouldn't be -- I shouldn't have 20 registers open with one person every line. That's not cost effective. But I shouldn't have six registers open with twenty people in line. I walk with my front-end supervisors and my front-end managers to make sure we are following the procedures. Are we transferring product. Are we looking safely. I walk with the employees and make sure their register area is safe and clean. I talk to the membership manager and walk the membership department and talk about how we are doing with American Express benchmarks. Are we talking to members about the value -- are you an American Express holder? Okay. Okay. Because you get great rebates. So, I make sure we are doing that. And I try to find out, you know, how our sign-ups are going. And I go to the tire center and I make sure that we are functioning in a safe way, are they wearing their safety goggles and is it clean and neat and what's the wait. There is a benchmark for everywhere. For instance, we should be able to get somebody in and out within an hour and I have systems I can have them sign on the computer and show me -- show me your wait time, how are you doing, and do you need any help, how are your breaks and lunches, and I do that everywhere in every department all day.

Q. So, this is every day you go through each of those departments with those things at least once.

A. Yes. (Davis Dep. P.61)

In **Table 10,** I have presented additional descriptions of the warehouse walk provided by various Costco deponents. From these descriptions, one can see a very dynamic and powerful

method for the collection of information about people and operations – in fact, one sees a model of management.

Table 10: Descriptions of Costco's "Warehouse Walks" from Deposition Testimony

Name of Deponent	Page	Comment
Jim Sinegal	16	"Typically I would have -- we would drive around the building to see the exterior of the building and the landscaping and that, receiving area, et cetera. I would get out of the car. I would most typically go into the tire shop first, simply because if I don't do it then, I usually have a tendency to forget it, and it's an outpost in the business, and I want to make sure that I get in and see that part of the business. If there was a gas station, we would have driven past the gas station also just to visually inspect it. And then I go into the warehouse just as a customer does. The manager at that point probably already knows I'm there and has come out to the tire shop to see me. And then the manager and I would tour the building starting at the entry and walking through the electronics department and down through the hard lines and apparel departments, back to the fresh foods department, into the receiving area, back up to the -- through the food department into the pharmacy and up to the front of the building and goodbye."
		"...[Manager] accompanies me on the walks."
	17	"[on who else accompanies him on a walk]...Depending on who's on the trip when we're visiting, it could be some of our merchants, meaning our Buyers and Senior Buyers. It could be the operator who's in charge of the region, so it might be a Dennis Hoover who is with me walking. And most generally whatever Assistant Managers are working that day with the manager...:
	18	"Yes [there are typically notes or reports prepared of these walks] I prepare them. I send them to the Buyers, because most of the comments are relative to the buying situations, and they may not be with me on the walk, so I want to give them some points about various items that I see in the warehouse. And it would -- it then would go to, if it was in Dennis Hoover's region, it would go to him and probably to his Food and Sundries Buyer down there and to the chief merchants. A typical walk lasts 45 minutes to an hour."
Richard Webb	61-62	"I try to make two warehouses a day and then competition. I spend over an hour on the floor itself, and then I spend also an hour or more going over their figures and any other personnel issues they have or, you know, documents they need signed, like wage increases or, you know, transfer requests or, you know, employees wanting to speak with me."
	65-66	"But it's usually an entourage, where, you know, it's always the manager, the Warehouse Manager, unless he's off, and the assistants are always there unless they're off. And then it's the merchants. And if the Front End Manager wants to go, I've had Front End Managers on the walks a great number of times. The Receiving Manager comes out and walks."

Name of Deponent	Page	Comment
	67	"[when I say 'big entourage']...Well, you've got at least three floor managers: center, hard lines, and food. You've got a Merchant Manager. You've got two or three assistants, depending on the volume. And you may have a lead, you know, a lead back in your fresh foods -- that handles, you know, you know, your produce and your cooler, your freezer and your deli items."
	114	"Well, at every walk we're constantly evaluating people, and, you know, looking for who really knows what's going on in their section -- whether it's, you know, a merchant or if it's a bakery manager, or if it's a center manager -- that they -- that they understand what they're doing, they're not just going through the motions, and that they're able to instruct, you know, their work force to get done what needs to be done. And we're -- We can tell, you know, through their interaction. We can also tell when someone don't know anything that's going on, that you have -- There have been times that I've said, "I've talked to you about this last year; don't you recall? Every year we kind of do the same things. You need to remember that we're going to put furniture on two boards every time it comes in to keep it from getting damaged." You know, so you do see those people that, you know, need constant instruction."
Judy Vadney	264	"These VP's are in the buildings every -- they're in each building every four to six weeks, and they have a very good working knowledge of the abilities of the Assistant Managers in those buildings and whether or not they are performing at a level that would enable them to run a $150 Million business."
	265	"There is an interactive conversation that goes on throughout all of these walks. Those conversations are broad. They talk about merchandising, they talk about sales, about merchandise issues, about competition, they talk about people, they talk about our membership efforts, our -- they're a very wide range of questions and answers and dialogue that may occur on any warehouse walk, and often the Assistant Managers are actively participating in those conversations. I have been on a ton of walks personally as I came up through the company."
Dennis Zook	88	"If you move to the merchandising part in the back, they're measured to the standards of the warehouse as far as how the warehouse looks through walks at different levels, Jim, myself, the district managers, the senior people, and you get a feeling for that Assistant Manager in an objective way how that warehouse is merchandised."
	90	"[You do that in all of the warehouses in your division?] Walk the floor? Yes."

Name of Deponent	Page	Comment
Wendy Davis	55	"...more importantly, I got interviewed just about every day. When you're a merch manage or an Assistant Manager over 'merch' or an area manager, you get a walk every day from your Warehouse Managers and you're judged and evaluated on how you did the job and it's pretty objective, because the freight comes in and there is maybe 40 boards -- 48 boards on a semi truck and depending how busy you are, what location you're at and how many sales - for instance..."
	58	"I knew how I was doing prior to that, because I had so many walks. He -- I think I mentioned during those years there was just a few buildings in the Midwest and so a senior VP is used to having many locations and he had five or seven the first couple of years and so I got a lot of attention and it was verbal, it was on the phone, it was in person..."
	80	"That's the great thing about being a merchant, you have the opportunity to spend time with all the leaders of our company as they are walking your building and you're talking about merchandising and sales and product, but you also have an opportunity to talk about yourself and to demonstrate your skill set and knowledge and be proud of what you have accomplished on that walk."
Fidel Cardoso	60	"Every opportunity I had, I would work in different areas. While I was front-end manager, I would schedule myself to be participating in the floor walks that the merchandise manager did with the warehouse manager. So I've always extended myself to the next area whenever my schedule permitted, and I would recommend that to my staff."
	193	Q. Do you ever go on a store walk through with a candidate? A. I've done that before, yes. Q. With what level of candidate have you done that? A. I've done that for merchandising position. I've also done a walk of the front end with a front-end manager candidate, and I've walked receiving with a receiving manager candidate. So I've done a lot of different things, like I said, that I may not be thinking about right now. Q. What was the purpose of doing the walks with these different candidates?

Name of Deponent	Page	Comment
		A. To hear their comments and feedback and hear some of their knowledge that they may have, to draw the knowledge.

In my visit to the Hawthorne, California warehouse, I accompanied the Assistant Warehouse Manager and Receiving Manager on a walk. This is a walk they conduct on a daily basis. During the course of this two-hour walk, I questioned the Warehouse Manager about numerous warehouse staff members who were engaged in the tasks of preparing the store for the daily opening. In every instance, he was able to tell me the positions they had held in the warehouse, their current job title and area, their strengths and weaknesses, and their aspirations for advancement. He developed this knowledge base through his daily walks. In addition, a bulletin board in the management offices was used to display the names and pictures of every warehouse employee, arranged in rows of tenure with the more senior employees at the top and the least senior members on the bottom row. .

On the same walk, I questioned a Receiving Manager about his staff and he was able to provide similar deep and broad information about his direct reports. When senior managers above the warehouse level do a walk, the Warehouse Managers are a source of expert information about their staff. They provide this information to senior managers during the walk and document this performance information in annual performance reviews, promotability ratings, and promotability lists.

The Warehouse Walk and Leadership

The most compelling theories of leadership and management incorporate the concept of transformational leadership behavior (Yukl, 2006; Landy & Conte, 2004; 2007). The transformational leader is one who inspires followers to go beyond simple self-interest and to adopt broader unit and organizational goals. The transformation leader motivates and inspires through direct contact with followers. In fact, transformational leadership is virtually impossible

unless there is substantial personal contact between the leader and the followers (Bass, 1997; Bass & Avolio, 1997; Landy & Conte, 2004; 2007). Costco has identified the warehouse as the central organizational unit. As a result, the warehouse walk that occurs on a daily basis is the foundation for the development of this direct and personal contact between the leader (Warehouse Managers) and the followers (employees below the level of Assistant Warehouse Manager or Warehouse Manager). It is not apparent from her report that Dr. Reskin is aware of the central role of the warehouse walk in the warehouse environment. She portrays the warehouse walk as an infrequent and stylized "show and tell" in which senior regional, district, and divisional leaders sweep through a warehouse in a rush. This description does not capture either the essence or the process of the "warehouse walk" but only describes the tip of an iceberg. Once again, hands-on operational and strategic HR do not seem to be areas in which Dr. Reskin is expert. Her dependence on selected excerpts from Costco depositions and exhibits for her knowledge of big box retail HR operations, without a personal background in organizational and HR consulting, is inadequate for forming opinions regarding Costco practices.

9) Dr. Reskin is critical of the fact that Costco attempts to identify management talent "early on" and that employees are unaware of their presence or absence on a promotability list. Once again, Dr. Reskin seems out of her scholarly area when she discusses talent identification and development.

A standard concept in most successful modern organizations is something known as the "talent pipeline" (Byham, Smith, & Paese, 2002). In fact, it is not uncommon to have an entire department devoted to talent management. Talent management implies the identification, training, development, motivation, and advancement of the top employees in an organization.

Simply put, the concept addresses the need to have a continual source of talent available for filling the upper ranks of the organization. The talent pipeline philosophy encourages senior level managers to identify potential management talent as early as possible in order that these promising individuals will be given critical developmental opportunities as well as feedback that will enable the development of the skills and experience necessary for successful performance at the next level (Byham, Smith & Paese, 2002). Without such an early talent identification and development process, the organization would be in a continual crisis mode as it attempted to fill vacancies at its upper ranks.

Costco has adopted a "promote from within" process where 80% of all positions above entry level are to be filled with current Costco employees. For levels of management at staff manager and above, this percentage is closer to 100%. For this reason, the early talent identification and development of Costco employees is central to the future success of the organization. In the Costco environment, this concept is known as the talent pool. The mechanisms chosen by Costco for the development of individuals in the talent pool is through structured performance evaluation and work –related goal setting, identification of strengths and weaknesses of each member of the talent pool through promotability ratings, and the concept of job rotation through which promising candidates are provided with diverse work challenges in various specialty and management areas. This type of job rotation has long been seen as a best practice for strategic HR organizations (McCall, 1980). This is particularly true in staff management positions, the feeder positions for Assistant Warehouse and Warehouse Manager.

> "We just know there are always staff rotations. It's part of our culture that we rotate -- we as warehouse managers and experience it as a staff level manager and assistant, we rotate to make sure that our skill set is well rounded. So, the skill set -- the leadership skills are transferable, but the technical needs of being a front-end manager are different than the technical needs of being a merchandise

> manager. On the front end I'm looking for as a warehouse manager and I was demonstrating as a front-end manager that I could be effective with people, that I can manage a large group of employees, that I could manage multi-tasking, a lot of balls in the air with members coming in and line set I'm running back and forth to. When I was in merchandise I needed to demonstrate that I could drive sales, that I understand the business, that I could create that treasure hunt that were things for Costco". (Wendy Davis dep. P. 52)

One challenge in maintaining this talent pool is the possible negative effect that early talent identification might have on individual employees. If this pool were to become public, those identified as potential management talent might very well stop developing in the belief that they have a secure future at their current level of performance. Similarly, those not identified as having management potential might also stop developing or possibly leave the organization believing that they will have little opportunity to advance. When an organization adopts a talent pipeline model for the early identification and development of managerial talent, best practice (Walker, 1992), suggests that individuals in the pipeline not be identified widely to prevent the possibility that selection for the pipeline might become a self-fulfilling prophecy and lead to lower levels of performance and development both for those identified as in the pipeline as well as those not in the pipeline. In addition to the fact that it is considered industry "best practice" to maintain the confidentiality of talent pool or pipeline membership, Costco senior managers have recognized the importance of confidentiality independently.

Maintaining the confidentiality of the talent pool recognizes that those not identified "early on" may simply develop at a slower level or after a critical rotational experience (McCall, 1980). It also recognizes the possibility that the early promise evident in some employees fails to blossom. Finally, it allows those identified as potential future managers to opt off the managerial ladder without any loss of face or esteem. Even though many people have the talent

to become middle and senior level managers, it is equally true that some subset of those talented individuals prefer to avoid the responsibilities that come with management – if only for specific periods of their career.

Costco uses promotability lists as a way of populating their talent pool. They identify strengths and weaknesses in possible managerial candidates and estimate the amount of time and the critical experiences necessary before the individual is ready to assume greater managerial responsibility. **Appendix C** presents an example of the promotability lists and the associated estimates of time to promotion. I have also included some examples of the promotability rating forms that are used to create the promotability lists. The Costco talent pool is sophisticated and based on a careful evaluation of the work related behaviors of employees.

Contrary to the views expressed by Dr. Reskin in her report, both the use of promotability lists and the decision to restrict knowledge of membership on these lists to senior managers are considered best practices in modern organizations. Dr. Reskin seems unaware of the concept of a talent pipeline. Were Costco to abandon either of these procedures, it would represent a step back in organizational development rather than a step forward. Once again, with respect to issues related to the early identification of talent and the need to keep this information confidential, Dr. Reskin presents an unenlightened and inexperienced view of how an organization should operate. She shows no awareness of the substantial scientific and HR management literature in these topical areas.

With respect to the role of the promotability lists in promotions to Assistant Warehouse Manager and Warehouse Manager, it is important to note that the length of these lists is determined at the district and regional level and that there is no standard number of individuals on a list. Examples of these variations can be seen in the exhibits to Costco representative

depositions. This is another example of the decentralization and lack of commonality of process in the Costco HR environment.

10) Dr. Reskin's criticisms of the Costco job descriptions are unfounded. The Costco job descriptions for the positions of Assistant Warehouse Manager and Warehouse Manager meet or exceed current professional and regulatory standards.

Dr. Reskin asserts that the job descriptions associated with the positions of Assistant Warehouse Manager and Warehouse Manager are inadequate because they lack "detail" (p. 9, lines 19-20). She cites no authority for this criticism nor does she identify the problem with or effect of job descriptions that do not have sufficient "detail." Her criticism seems to be related to how Costco promotes individuals to Assistant Warehouse Manager and Warehouse Manager but it is not clear why the job descriptions in their current form represent a problem. She asserts that the Costco job descriptions fall short of some unspecified ideal "standard" but does not describe this "standard." She presents no data or testimony to suggest that Costco employees are unfamiliar with the essential functions of the Assistant Warehouse Manager and Warehouse Manager. Her one example (footnote #11 in Dr. Reskin's Report) speaks less to the issue of essential functions than it does to day-to-day managerial decisions.

I have been examining, analyzing, and creating job descriptions for more than 30 years and have broad experience in the evaluation of existing job descriptions. The two job descriptions in question appear as Exhibits 8 and 9 to the Zook deposition. I have included them as **Appendix B** to the current report. These job descriptions adequately describe the essential functions of the jobs in question as well as the knowledge, skills, and experience necessary for successful performance of these jobs. In conducting job analyses and writing job descriptions, it

is widely recognized that as one moves up the organizational ladder, responsibilities become broader (Gatewood & Feild, 2001; Lievens, Sanchez & DeCort, 2004; 1988; Schippman, 1999). As a result, the tasks that define the job become broader. A job description for an entry-level position often includes considerably more detail than the job description for the senior executives of the same organization. As can be seen from the job description of the Warehouse Manager, six essential functions include in excess of 20 specific work-related tasks. Similarly, for the position of Assistant Warehouse Manager, nine essential functions include in excess of 25 specific tasks.

Both professional standards (SIOP, 2003), and federal regulatory guidelines (Uniform Guidelines on Employee Selection Procedures, 1978), recognize that there is no one best way to conduct a job analysis or to write a job description. Nevertheless, job descriptions in the modern organization are becoming less task-specific, and more strategic. By that, I mean that instead of elaborate lists of observable tasks, job descriptions identify essential strategic functions – i.e., functions that define the major responsibilities of the incumbent and functions most closely associated with the success or failure of the organization. The U. S. Department of Labor has been conducting job analyses and publishing job descriptions for employers for over 60 years. In the last decade, the Department of Labor has replaced the venerable Dictionary of Occupational Titles (D.O.T.), which was the repository for these job descriptions from 1945 until 1998 with a new system known as O*NET. As part of the overhaul of their system for developing job descriptions, the Department of Labor has moved away from a concentration on particularized tasks and toward a focus on what are called "generalized work behaviors" and broad essential functions (which they call "tasks"), (Landy & Conte, 2004, pp. 198-199). **Appendix D** presents the O*NET job descriptions for positions most similar to the Assistant Warehouse Manager and

Warehouse Manager – General and Operations Manager, Storage and Distribution Manager, and Administrative Services Manager (*http://online.onetcenter.org/find/family/title?s=11&g=Go*; *http://online.onetcenter.org/find/quick?s=store+manager&g=Go*).

As can be seen in these descriptions, the essential functions are identified at a broad and strategic level, virtually identical to those developed by Costco for the positions of Warehouse Manager and Assistant Warehouse Manager. It is my professional opinion that the job descriptions for the positions of Assistant Warehouse Manager and Warehouse Manager meet or exceed current professional standards with respect to how job descriptions should be written.

11) Dr. Reskin criticizes Costco for the absence of "measurable performance criteria" and "valid measures of stated criteria" (p. 9, l. 20). In my professional opinion, the performance evaluation system in place at Costco meets or exceeds current professional standards.

As was the case above with her criticism of the Costco job descriptions, Dr. Reskin criticizes the Costco performance evaluation system without identifying what flaws she sees in that system and without the citation of any authority for her opinion.

As was the case with job analysis and job description, I have been conducting research, writing textbooks, testifying, and consulting in areas related to performance evaluation for well over 30 years (Landy & Farr, 1980; Landy & Farr, 1983). There are generally accepted standards for a performance evaluation system that are well documented (e.g., Landy & Conte, 2004, pp. 222-228). These standards include the following:

- The performance area to be evaluated should be well defined
- The evaluative anchors should be specific and comprehensible

- The rating scale should be specific and well described

Consider the completed Costco performance evaluation scales that appear in **Appendix E**. Each performance area is specific. Each performance area is well defined by the behavioral statements associated with the area. The rating scale is clear and unequivocal and the rater knows the definition of each number on the scale. The rater records behavioral details for ratings. Additionally, the performance evaluation scale includes the opportunity for the employee and the employee's manager to set and monitor progress toward employee-specific goals. The Costco performance evaluation system permits the employee to provide self-evaluations in each performance area and review the performance evaluations provided by the immediate supervisor. The employee then acknowledges having seen the ratings of the supervisor and signs off on the form. In addition, the form permits the employee to identify career development goals as well as future performance goals. I have presented samples of these goals in **Appendix G.** Finally, the completed form is reviewed by the Warehouse Managers, providing both a check and balance for the employee and additional information to the Warehouse Manager about the performance, skills and abilities of warehouse personnel.

Contrary to the opinion of Dr. Reskin, the performance evaluation system in place at Costco is defined by measurable criteria and valid ways to measure those criteria. There is no basis for Dr. Reskin's criticism of the Costco performance evaluation system. It clearly meets, and in many instances exceeds, all professional standards for personnel practice. I would not expect Dr. Reskin to know this without some effort on her part since performance evaluation is clearly in the domain of I-O psychology and HR management and not in sociology.

Thus, it is my professional opinion that the Costco procedures for evaluating the performance of employees meet or exceed any current professional standards. Further, it is my

opinion that the performance evaluation procedures used by Costco are fair in content and process to female employees.

12) The promotional process at Costco to staff manager, Assistant Warehouse Manager, and Warehouse Manager meet or exceed professional standards.

Dr. Reskin is particularly critical of the method by which incumbents are chosen for management positions at the level of staff manager and above. She is critical of the concept of the warehouse walk, promotability lists, and the role of performance evaluations in promotional decisions.

One of the most important concepts in understanding the foundation for the Costco promotional process is the strategy of filling management positions from within. Costco has a goal of filling 80% of the open positions above entry level through promotional mechanisms. The percentage of internal promotions to fill staff manager, Assistant Warehouse Manager and Warehouse Manager positions is closer to 100%. Using a strategy such as this, Costco is able to leverage valuable and powerful performance information available for current employees that would not be available for outside candidates. It is axiomatic in I-O psychology that one of the best predictors of future performance is past performance (Landy & Conte, 2004; 2007). Thus, when the time comes to fill vacancies, it is performance information that is critical and considerably more useful than something such as the score on a written standardized test. Typically, there is a strong and positive statistical association between performance ratings from one year to the next. This can be seen as evidence for the proposition that past behavior predicts future behavior. In contrast, the statistical association between test scores and future performance is considerably lower. The fact that Costco has made the strategic decision to

promote current employees to fill vacancies rather than to hire from the outside provides a strong behavioral and job related rationale for the use of performance information in making promotional decisions.

Costco uses three mechanisms for collecting and using performance information for promotional purposes. The first of these is the formal method of performance evaluation described above. It is consistent, sophisticated, job related, and fair. The second method is through the construction of promotability lists. Dr. Reskin would have us believe that these represent simply the listing of names without any behavioral foundation. This is not the case. Promotability lists are based on not only the performance evaluations done annually, but also on specific rating devices dedicated to the issue of promotability. Dr. Reskin makes no mention of these promotability ratings. I have presented an example of this rating procedure in **Appendix F**. These promotability ratings clearly demonstrate the job relatedness of the resulting promotability lists.

In her example of one promotability list of Vachris (footnote #18 to Dr. Reskin's report), (one of dozens of lists available to her), Dr. Reskin implies that the promotability lists, and the promotability ratings that underlie those lists, are unfair to female employees. In order to help me to test this hypothesis, I asked Dr. Ali Saad to conduct an analysis of the performance ratings of a random sample of 150 male and 150 female Costco employees who had held a staff manager position (job codes 2002, 2003, 2004, and 2005), at any time during the period 2001 to 2004. This sample was drawn from a population of 555 females and 1383 males who had held staff positions during the period 2001 to 2004.

The results of Dr. Saad's analysis are informative and I reproduce his Exhibits 38 and Exhibit 39 as **Tables 11 and 12** to my report[4].

Table 11: Average Performance Appraisal: All Observations – by Gender*

Performance Category	Female Average Rating	Male Average Rating	Difference (Female–Male)	P-value
Integrity	3.4104	3.3349	0.0745	0.0230
Member Service	3.2969	3.2514	0.0456	0.1042
Personal Leadership	3.2333	3.0931	0.1401	<.0001
Interpersonal Skills & Communications	3.1915	3.1366	0.0548	0.0190
Initiative/Work Ethic	3.2914	3.1909	0.1005	<.0001
Decision-Making	3.2244	3.1900	0.0344	0.1400
Functional Skills or Focus Areas	2.7500	2.6389	0.1111	0.5070
Leading Others	3.0738	2.9607	0.1131	<.0001
Overall	3.2245	3.1388	0.0858	<.0001

*This table is a reproduction of Exhibit 38 in Dr. Ali Saad's Report.
Note: P-value of 0.05 or less is statistically significant at the 0.05 level.

As can be seen from **Table 11,** (Dr. Saad's Exhibit 38), not only do three rating dimensions show no differences between the ratings of male and female staff managers (member service, decision-making, and functional skills), but in six dimensions (integrity, interpersonal skills and communications, personal leadership, initiative/work ethic, leading others, and overall), the ratings show the female sample are statistically significantly *higher* than those of their male counterparts. Most notably, the female sample receives statistically significantly higher ratings on the both *leadership* dimensions ("Personal Leadership", "Leading Others"). It is exactly these dimensions on which you would expect women to receive significantly *lower* ratings if the performance evaluation system were used as an instrument of discrimination against female applicants for senior managerial positions (Eagly & Karau, 2002). In fact, the

[4] Exhibit 38 of Dr. Saad's analysis examines all performance ratings available for the 300 individuals. Exhibit 39 of Dr. Saad's analysis analyzes the average performance ratings for each of the 300 individuals.

differences favoring females to males on these leadership dimensions are some of the most dramatic of the comparisons ($p<.0001$; $p<.0001$).

It is also worth noting that the numerical average ratings are higher than the numerical average ratings for males *on every single dimension.* Results as seen in **Table 12** (Dr. Saad's Exhibit 39) are similar.

Table 12: Average Performance Appraisal – by Gender*

Performance Category	Female Average Rating	Male Average Rating	Difference (Female–Male)	P-value
Integrity	3.4316	3.3056	0.1260	0.0054
Member Service	3.2988	3.2727	0.0262	0.5212
Personal Leadership	3.2393	3.0760	0.1633	<.0001
Interpersonal Skills & Communications	3.1971	3.1325	0.0646	0.0420
Initiative/Work Ethic	3.2944	3.1894	0.1050	0.0045
Decision-Making	3.2312	3.1896	0.0415	0.2255
Functional Skills or Focus Areas	2.7731	2.6685	0.1047	0.6385
Leading Others	3.0747	2.9564	0.1183	0.0002
Overall	**3.2270**	**3.1362**	**0.0908**	**0.0022**

*This table is a reproduction of Exhibit 39 in Dr. Ali Saad's Report.
Note: 1) P-value of 0.05 or less is statistically significant at the 0.05 level. 2) The average rating is used for individuals with more than performance appraisal.

For every dimension, the ratings of female staff managers numerically exceed the ratings of their male counterparts. The differences are statistically significant in six dimensions (integrity, personal leadership, interpersonal skills and communications, initiative/work ethic, leading others, and overall) and once again, on the two leadership rating dimensions where one might most expect to see the effects of negative stereotypes for women ("Personal Leadership"; Leading Others"), female staff managers are rated *statistically significantly higher than their male counterparts.* Once again, the differences favoring females to males on these leadership dimensions are the most dramatic of any of the comparisons ($p<.0001$; $p<.002$).

I find the results of Dr. Saad's analysis compelling. From these analyses, it appears that female staff managers are evaluated more positively than their male counterparts. Thus, there is no evidence that performance ratings are used in any discriminatory manner with respect to female Costco staff managers.

The final method by which Costco collects information for promotional purposes is through the warehouse walk. As I described in an earlier section of this report, the warehouse walk at Costco is a defining element of the management system. Senior warehouse and staff managers do it daily. Through these walks, senior managers are able to flesh out the individualized information provided by promotability ratings and performance evaluations.

Thus, the Costco promotional procedure can be seen as behaviorally based with various types and levels of converging information about individual employee performance. There are several concepts in HR practice that map to the Costco procedures. The first of these is known as 360-degree feedback. It is well established in HR management and I-O psychology that multiple sources of information improve both reliability and validity of measurement (Dalessio, 1998; Harris, 2000; Kenny & DePaulo, 1993). Because of the identification of the warehouse as the critical organizational unit in the Costco system, each warehouse employee is subject to observation and evaluation from many sources including not only their immediate supervisor but also levels above that supervisor such as staff manager, Assistant Warehouse Manager and Warehouse Manager. As a result, when the time comes to choose an employee to fill a vacancy, information is available from many different sources for making the choice. Dr. Saad has documented the highly stable nature of the Costco senior management workforce in his report in Exhibit 40 for both males and females in these senior positions, the termination rates are lower than 2%. Percentages this low signal an extraordinarily stable and satisfied workforce. This

stability permits the continual collection of work related information about employees as they move through their careers at Costco.

The warehouse walk is a concept that has roots in standard assessment procedures. It is variously known as walk-through testing (Hedge & Teachout, 1992) or behavioral interviewing (Landy & Conte, 2007; Taylor & Small, 2002). Using this technique, a decision-maker or information gatherer engages job incumbents in work-related discussions about past, present and future performance and operational issues. This is the essence of the warehouse walk. This procedure permits the individualized and nuanced promotional decision-making so critical at the warehouse level

Dr. Reskin argues for bureaucratic standardized methods for filling staff and senior management positions in the warehouse and suggests that most large organizations follow such standardized procedures. She is not correct in this assertion. In fact, as one progresses up the management ladder, assessment procedures become considerably less standardized (Silzer & Jeanneret, 1998). The emphasis shifts from an assessment of basic abilities to an assessment of experience and past performance. Research (Day & Carroll, 2003) shows very clearly the increasing importance of experience in selecting candidates for upper level management positions such as staff managers, Assistant Warehouse Managers, and Warehouse Managers.

Barbara Underwood, writing in the Yale Law Journal, did an excellent job of presenting the differences between the use of "standardized" decision-making (such as advocated by Dr. Reskin), versus the use of individualized judgment (such as the method used currently by Costco), (Underwood, 1979). Underwood argues that standardized procedures ignore individuality in a misplaced desire to be "fair" and, as a result, turn out to be less fair and effective than judgmental or clinical decision-making procedures such as those used by Costco.

Consider an analogy. The Scholastic Aptitude Test is a standardized assessment of general mental ability. As such, it can be argued that it is "fair" to all applicants for college because of its standardization – every applicant is judged on a common metric. Nevertheless, there is a groundswell of resistance to the use of the SAT for making decisions about college admissions precisely because it ignores the individuality of each applicant. As a result, many college admissions procedures are moving away from these "standardized" assessments as a result of concerns that they are not "fair" to applicants because they ignore individualized information.

The Costco promotion model is a one based on the exercise of expert management judgment. It depends on the analysis of substantial individualized information about each candidate. This information comes from past performance evaluation, promotability evaluations, warehouse walks, and other information shared among Costco managers The method is strategically aligned with both the definition of the individual warehouse as the critical organizational unit and with the intentional policy of filling vacant positions with current incumbents. As such, it meets or exceeds professional standards for assessment of candidates for management positions.

13) Dr. Reskin inappropriately invokes stereotyping as a mechanism of gender discrimination in promotional decisions to Assistant Warehouse Manager and Warehouse Manager at Costco.

Dr. Reskin's theory of discrimination in the case of Costco promotions to Assistant Warehouse Manager and Warehouse Manager is a simple one. She asserts that male decision-makers are influenced by stereotypes that they have of women as ineffective managers. In Dr. Reskin's theory, these stereotypes result in the formation of in-groups (men), and out-groups

(women), and that out-group members are discriminated against in promotional decisions. Further, she asserts that these stereotypes are automatically activated (and thus, in and out groups automatically formed), and that the male managers are not even aware that they are influenced by these stereotypes or that they are forming in or out groups. I will deal with the assertion of automatic cognitive processing and in/out group formation in subsequent opinions. Here, I will address Dr. Reskin's assertions regarding stereotypes.

There is general agreement in the social and cognitive psychological literature that stereotypes can play a role in information processing in humans in specific situations. Initial impressions of people with whom we come in contact can be influenced by what we believe about demographic groups to which these people belong. Thus, our initial views can be influenced by such characteristics as age, gender, race, disability, attractiveness, accents, etc. After a relatively short period (depending on the intensity of contact, this may be no more than a matter of days), these stereotypes are abandoned as we gather behavioral information about the individuals in question. This new information is called "individuating information."

Dr. Reskin fails to mention the body of research that shows that the effects of stereotypes on judgments are muted or even canceled by such individuating information (i.e., specific information about an individual, such as specific job performance or skill information that goes beyond appearance and superficial information). Under the stereotype models reported in the literature (e.g., Fiske & Neuberg, 1990), when an individual is confronted with a member of a particular group (or other information that activates the cognitive structures associated with a particular group), stereotype information is the first type of information that is activated. Then if other types of more specific information (i.e., individuating information), about the individual group member becomes apparent to the person, that information is processed in such a way that

it overrides the stereotypic information as the information is processed in order to make a judgment. Research has found that individuation information does eliminate most stereotype bias (see Kunda & Thagard, 1996, for a review of these studies).

Because employment decision-making was delegated within Costco to local warehouse, region and district management, actual decision-makers have very specific information about the performance of employees in their decision-making processes related to promotions. Given the wealth of information available to managers regarding the performance and capabilities of the candidates for advancement, there is no reason to expect that stereotypes would play any role in the decision-making process. Thereby, it would be expected that stereotypes would play no role in these processes. Dr. Reskin fails to acknowledge the high likelihood of the effect of individuating information in the promotional decision-making process used by Costco that would serve to eliminate gender bias. The analysis of the performance ratings referred to earlier in Opinion #12 provide vivid evidence of the *absence* of any negative stereotypes with respect to female candidates for management positions. If anything, these ratings suggest a more positive view of female candidates than of their male counterparts, and this is particularly true for the two leadership ratings. If Dr. Reskin's opinions regarding negative female stereotypes at Costco were true, we would hardly expect that female ratings would be equal to or higher than the ratings of their male counterparts.

Dr. Reskin would have us believe that the only information collected and used in making promotional decisions is gender-based. The Costco managers deposed by plaintiffs clearly dispel that simple-minded view of information processing by Costco managers. **Table 13** presents a representative sample of the information provided by Costco managers regarding both male and female candidates for promotional consideration.

Table 13: Individuating Information on Men and Women Eligible for Promotion at Costco

Deposition	Page	Comment
Judy Vadney	230	"[About Elaine Sasaki] I asked Denny about her job performance and how he had rated her readiness to be a warehouse manager, and he told me that he had concerns about her ability to take charge and step up…That means to take the initiative, to identify problems and resolve them."
	236	"[About Elaine Sasaki] John told me that he was disappointed in Elaine's ability to take charge…Denny had gone through some pretty rough times, his wife was very ill, and he was spending a lot of time away from work, and that because he knew that Elaine wanted to be promoted, he expected that if the Warehouse Manager wasn't there that she would take a leadership role and run that building and he didn't feel that she had done that."
	248-249	"[Mario Omoss] told me that he wasn't overly impressed [with Elaine], that she was a very nice woman, that he had concerns about her ability to get things done…the example he gave me was that when they did the new member signups at the warehouse that she was helping to open, she was in charge of finding a spot for the members to come in and sign up for membership prior to the warehouse being open and tht she had found a spot, and she had set it up, and he went to check and see how everything was looking. And the had the Costco banners hung up and what have you, behind this counter, but that when you walked in the door, the tile and the flooring was in very bad shape and the countertop was okay but the front of the counter was all dirty…the point was he should not have had to point it out to her."
Richard Webb	224	"In 2000 Craig was very green, just promoted Assistant Manager, and we probably told him that he's a great merchant. He is a little stiff with his personality, but not to the point of offending anyone but me and John. We told him its going to take him two years."
	226	"We thought Shirley [Ellis], based on her background and experience, we knew that she had some people skills that she needed to work on, that maybe the culture from, you know, Sam's Club and management and employees being a little bit – a wider spread and coming to work for us and, you know 'take care of your employees', might be an issue. And we told her, 'I think you need to polish up on your people skills'. But we thought she was going to run a building and that she would be ready in about a year."
	222	"David [Pearce] is always right here in my mind, because he has been on list, off list in the entire…There's so many times that we thought he was ready, and then he ends up doing something or being a part of something that makes us question his judgment."

Mario Omoss	187	"I think she [Nak'he Evans] needed a little bit more merchandising as well as numbers, like budgeting numbers for the fiscal budget."
	189 - 192	"Greg Silverstri is still in the same building, he might have gone from one to two years because he kind of had a people issue – it was more of a good decision/bad decision issue. He made not the proper decision…he decided to use the company e-mail system for inappropriate activity…I pretty much read him the riot act."
	192	"Jason Meudt is in Arlington…at one point he was in the one to two years…He is a very good assistant, but he has his issues. People issues mainly – explosive personality…he managed through intimidation, I had a long talk with him…told him that if he continues this pattern, being tough on employees he wouldn't be working for Costco."
	196	"Mike Darrow is in Austin….he might have gone in the one to two years point…he made an error in judgment."
	200	"I had a couple of issues lately with Matt [Herre], in the last year that have shown that he sees everything as black and white and with people, with members and I need people who can find a way to say yes to our employees and our members and find a solution and Matt sometimes has difficulty, he can do it, but he chooses not to sometime."
	201	"Richard Mendez…he just doesn't command respect, he doesn't – he's not a good leader. He is an okay merchant, but the people don't rally behind him – he is not dynamic, and the competition is fierce now."
	202	"Greg Banner has been demoted since this list…he had an affair with his payroll clerk but he completely lied after three sessions of questioning by his Warehouse Manager…"
	212	'Mike Morris has a bad attitude. He has a chip on his shoulder, but he's capable, he just has to get his brain on right."
	215	'Brenda Bond has some people issues, she used to work as a warden in a prison so I had to…I mean, she's tough and she gets the job done…but you know, the Costco way is not the prison way."
	217	Jami Galloway is right there but has not gotten promoted yet. She does a great job, excellent merchant. She had a couple of hiccups lately on merchandising but the last visit I was with her, she did a great job…"
	219	"Brad Beck is very introverted. He has trouble coming out of his shell, and, obviously – he's much more comfortable as a merchant on the floor than anything people related. So he'll be good with time…but…"
Wendy Davis	122	"…I think there is a tendency, sometimes in the heat of the moment, for her to speak in a way that doesn't engender the best

> result and so I went to Dave Harruff and to the HR department to research what was available. Got approval to actually enroll her and pay for her Dale Carnegie course…"

As can be seen from **Table 13**, these examples illustrate a complex and nuanced behavioral view of individuals, not the primitive gender-based categorization implied by Dr. Reskin. This level of individuating information about Costco employees – both male and female – can be seen in the depositions of most, if not all, of the Costco representatives. And it is important to note that with the exception of Wendy Davis and Fidel Cardozo, the Costco managers deposed by plaintiffs are all at levels well *above the Warehouse environment*. Yet each can present individuating information about Costco employees. This level of detail is impressive and supports the belief that any possible stereotypes are overwhelmed by individuating information.

Additional evidence of individuating information appears in the annual performance evaluations for Costco staff managers. A content analysis of the 300-staff managers that comprised Dr. Saad's sample for purposes of examining rating differences between male and female staff managers produced over 800 performance goal descriptions for the 300 staff managers. I have reproduced these statements in **Appendix G.** The evidence of individuating information in the record is overwhelming and is more than adequate to rebut the simplistic mechanism of stereotyping as portrayed in Dr. Reskin's report.

The presence of individuating information at the Warehouse level was confirmed in my discussions with the Assistant Warehouse Manager and Receiving Manager at the Hawthorne, California Warehouse. They provided rich and detailed work-related information about any employee I identified, regardless of the gender, race, age, or appearance of that employee. They

told me that they would have a very good behavioral picture of a new hire within 30 days, and that this picture would become more elaborated as the tenure of the new employee grew.

It is important to understand the role of the Employee Agreement in the collection of individualized information about employees. Unlike most other employment situations, the Costco Employee Agreement guarantees the employee that after a 90-day probationary period, Costco will not terminate the individual employee except for good cause i.e., Costco will not exercise any rights to terminate an employee "at will." This means that the 90-day probationary period is critical to Costco. Costco must collect information about the performance and reliability of the individual before allowing the new employee to move from probationary status to non-probationary status. Costco receives no benefit from guaranteeing employment to a poorly performing probationary employee. It is in Costco's self-interest to gather as much relevant information as possible before making the decision to convert a probationary employee to non-probationary status. Thus, the Employee Agreement can be seen as an engine driving the collection of comprehensive individuating information from the first day of employment. Because of this need to gather comprehensive employee performance information early in the Costco employment cycle, it is my professional opinion that I would obtain similar evidence of the presence of individuating information from the senior managers at any Costco warehouse since every warehouse is bound by the same Employee Agreement. In addition to the collection of work related information about individuals during their probationary period, this individualized information continues to accumulate from the daily warehouse walk, the annual performance evaluations, the individualized performance goals submitted by employees, and the promotability ratings.

The stereotyping research to which Dr. Reskin refers has been conducted almost exclusively with undergraduate college students being asked to evaluate hypothetical candidates for hire, promotion, salary increases etc. These student subjects have little or no experience in the task they are asked to perform – i.e., making personnel decisions. Further, the information they are provided about these hypothetical "candidates" is very primitive – usually a basic resume or a brief narrative description of the "candidate" or "employee." And, of course, they are provided with critical demographic information (e.g., age, race, gender, or whatever happens to be the focus of the research). It is not at all surprising that in an environment so information-deprived, that stereotypes might play a role in the hypothetical decisions about hypothetical candidates made by inexperienced and unaccountable decision-makers. However, these experiments are very different from the decisions being made by experienced managers regarding people with whom they have worked for a decade or more and on whom they will depend for success of their enterprise.

Furthermore, these student subjects have absolutely no accountability for the hypothetical decisions they make. They are asked to play a role for course credit and there are no consequences for poor decisions. How could there be since the candidates are not real and will not be asked to "perform" in any actual organization. Contrast this with the decision being made by Costco management about who will assume substantial managerial responsibilities in warehouse. Bad choices have real and immediate consequences. Research indicates (e.g., Fiske, 2000) that when the decision-maker must depend on the individual about whom they are making a decision for the completion of work-related tasks, stereotypes play little or no role in the decisions made.

Dr. Reskin's dependence on the concept of stereotyping to support her assertions of gender discrimination at Costco is without foundation. The research foundation on which she depends is a body of research on college undergraduates being asked to consider people who do not exist and make decisions for which they are unprepared and unaccountable. Dr. Reskin's position on stereotyping is rebutted by common experience, research data on stereotyping, and the deposition testimony of Costco representatives. Given what is known about individuating information and the effect of that information on the influence of stereotypes, Dr. Reskin's dependence of stereotyping as the mechanism for discrimination at Costco would never pass the critical review of any serious social science scholar. Once again, this may simply be the result of Dr. Reskin's unfamiliarity with the salient and critical scientific literature – a literature that exists in psychological, not sociological journals.

Dr. Reskin also fails to note that a woman's accumulation of Merchandise Manager experience positions her for a promotion to Assistant Warehouse Manager in a manner equal to (and sometimes with less experience as was the case in 2003 and 2004) the experience accumulated by her male counterpart. As can be seen in Exhibit 18b in Dr. Saad's report, women are treated the same as men with respect to the value of experience as a Merchandise Manager. Following Dr. Reskin's theory of gender discrimination, one would expect women to meet a higher "experience standard" than their male counterparts. The data once again fail to support Dr. Reskin's theory.

As an aside, Dr. Reskin's observation that Mr. Sinegal is simply demonstrating the presence of a stereotype when he observes that women have a greater likelihood of occupying caregiver roles and thus may be less attracted to jobs with schedules such as those of

Merchandise Manager[5] and Receiving Manager at Costco is strange. It appears that she is suggesting that Mr. Sinegal has simply adopted a stereotype. Her suggestion lacks any foundation. First, Mr. Sinegal has been intimately involved in the operations of Costco since 1983 and during that period, has had many opportunities to observe the choices made by male and female employees with respect to career advancement. More striking, however, is the fact that this observation – i.e., that women with caregiver responsibilities prefer jobs that allow them to balance work with non-work – is hardly unnoticed in the social and behavioral sciences. Not only have leading scholars noted this phenomenon (e.g., Presser, 2005), but this has been noted by Dr. Reskin in her own writings (Padavic & Reskin, 2002). Similarly, the reports by Drs. Mulligan and Stockdale confirm that the tendency for women to choose work hours that permit a balance of work and care-giver responsibilities is well recognized in the social and behavioral sciences. Mr. Sinegal's experience-based observation is compatible with what is known by behavioral scientists and hardly a confirmation that Mr. Sinegal illustrates the use of a stereotype to explain the behavior of Costco employees.

A similar example of Dr. Reskin's inappropriate labeling of behavior as "stereotypic" appears on p. 19 (lines 3-13) of her report. She implies that "profanity" at the workplace results is more "noticeable" for women than for men, as a result of why Dr. Reskin labels "proscriptive sex stereotypes" (i.e., women are not expected to use profane language). Ms. Ellis was asked to take a sensitivity class dealing with management style and anger management as a result of her use of profanity at the workplace. The implication of Dr. Reskin's observations that "proscriptive stereotypes" influenced the decision regarding Ms. Ellis is that one might expect to

[5] In her report, Dr. Reskin incorrectly refers to "Merchandising Managers" at Costco (e.g., p. 22, l. 17). The Costco staff manager position to which she refers is "Merchandise Manager."

see disproportionate instances of female assignments to sensitivity training for management style or anger management issues than males. Dr. Reskin had no foundation for that speculation. I asked counsel for Costco to obtain statistics on instances of assignment to sensitivity training for managers because of management style and/or anger management issues. From 1999 to present, there have been 38 referrals to sensitivity training for managers with management style or anger management problems. Of these 38 referrals, 32 (84%) have been male managers, and 6 (16%) female managers. Once again, it appears that Dr. Reskin is wrong in her speculation.

If there is any stereotype operating here, it would seem to be Dr. Reskin's superficial categorization of Mr. Sinegal's experience-based observations and her speculations about management style and/or anger management referrals for female managers.

14) Dr. Reskin misrepresents the current scientific view of automatic cognitive processing.

An integral part of Dr. Reskin's "model" of gender discrimination at Costco is the notion of the automatic activation of negative gender stereotypes. In other words, the perpetrators of this alleged institutional discrimination – male senior managers at Costco – don't even know they are influenced by these stereotypes. This is an appealing proposition for plaintiffs since they are freed from the need to identify intention on the part of the defendants; further, it permits the plaintiffs to discount any contrary statements or behaviors of the defendants since the theory says the defendants are unaware of their prejudices and function as discriminatory automatons.

Greenwald and his colleagues (e.g., Greenwald, Banaji, Rudman, Farnham, Nosek, & Mellot, 2002), have championed the hypothesis that automatic cognitive mechanisms are responsible for discriminatory behavior. Greenwald proposes that individuals form implicit

(unconscious), associations between categories and concepts; for example, people form negative associations with insects and positive associations with flowers. Greenwald further proposes that a simple test can be used to determine whether a category has a "bad" or "good" implicit meaning. If you pair a category with an incongruent concept, it should take longer to make that association. Thus, for example, it should take less time to make an association between the words "insect" and "bad" or "flower" and "good" than between "insect" and "good" or "flower" and "bad." Greenwald claims that the speed with which associations can be made is an indication of the positive or negative implicit meaning of a category such as insect or flower. He has developed a test called the Implicit Association Test (IAT), (Greenwald, McGehee, & Schwartz, 1998), that purports to measure the tendency for individuals to hold such "automatic" or implicit beliefs about various broad categories. This basic paradigm has been extended to demographic categories such as gender, race, and age. It has been hypothesized that men carry implicit negative associations about women and that whites carry implicit negative associations about minorities.

The concept of implicit or automatic associations is relatively new in the social and behavioral sciences – barely more than 10 years old. It has been received by the scientific community with considerable skepticism (e.g., Blanton & Jaccard, 2006; Brendl, Markman, & Messner, 2001; Fazio & Olson, 2003; McFarland & Crouch, 2002; Rothermund & Ventura, 2004) for a number of reasons, including the following:

1) Like the concept of stereotypes described above, most of the research has been conducted with college undergraduates.

2) There is no very good theory behind the hypothesis, i.e. there is little plausible theory to describe *why* such associations may be formed (Fazio & Olson, 2003)

3) The experimental design measures this "hidden prejudice" by comparing associations that occur in thousandths of a second. According to the IAT, favored associations (e.g., flower and good), are formed in approximately 7/10ths of a second, while disfavored associations (e.g., insect and good), are formed in one second. Thus, the fact that the insect – good association is formed in 3/10ths of a second less than the flower – good association is thought to confirm that there is a bias against insects.

4) There is little evidence to show any connection between this proposed tendency and actual behavior (McConnell & Leibold, 2001).

5) There are differences between individuals in the tendency to form these implicit associations; thus, it cannot be considered universal or present in all individuals. In other words, some people are more likely to hold biased implicit associations than others (Fazio & Olson, 2003).

6) The test that has been used to illuminate this proposed phenomenon is, itself, the subject of serious debate regarding its reliability and validity (Blanton & Jaccard, 2006). The test-retest reliability of .60 is well below what might be considered acceptable (Murphy & Davidshofer, 2005). This means that whatever human attribute is measured by the IAT is not consistent from one occasion to another. Similarly, the fact that the IAT is only modestly correlated with behavior, and with other measures of "implicit associations", makes the question of what the IAT actually measures.

7) The phenomenon is limited to concepts and categories and seems unrelated to known or familiar individuals (e.g., DeHouwer, 2001). Thus, when associations are formed between the category "females" or "women" and concepts such as "effective" or "decisive" or "aggressive", the results are very different than when associations are formed between *particular*

women who are known to the subject and the same concepts. This was much the same case with stereotypes. Individuating information alters the phenomenon.

8) The phenomenon is likely limited to concepts and categories that are not salient to the individual in question – some research has shown that the "implicit negative associations" can be shown most clearly in associations between categories or concepts and nonsense words (Brendl, Markman, & Messner, 2001). Thus, it is possible to conclude that any "bias" may stem more from lack of salience or from unfamiliarity with the object in question rather than any implicit prejudice against the properties of the object. Following this logic, familiarity with or salience of females in the Costco environment would be more than sufficient to offset any "unfamiliarity" effects.

Dr. Reskin makes no mention of the controversy surrounding the concept of automatic cognitive processing as it may relate to gender discrimination. Since this research falls in a domain with which she is unfamiliar – psychology rather than sociology – perhaps she is simply unaware of the debate. Nevertheless, the scientific status of this controversial phenomenon is far from settled and is nothing more than inspired speculation as a foundation for "explaining" allegations of discrimination. At this stage of investigation, the notion of automatic cognitive processing as an explanation for gender discrimination is little more than "pop" psychology. It plays no serious role in discussions of gender discrimination in the workplace.

To return to the data presented in **Tables 11 and 12,** if it were true that females evoke automatic negative associations, how can Dr. Reskin explain the rather dramatic results in comparing performance evaluations? Why, if these associations are so universal and automatic, would women receive *higher* performance evaluations than men on *every* performance dimension, (and statistically significantly higher ratings on several dimensions)? Most startling

is the fact that women are rated as more decisive and statistically significantly more competent to *lead others* than their male counterparts. Results such as these are simply incompatible with the notion of automatic or unconscious negative views of female employees at Costco.

Of course, Dr. Reskin might respond that these implicit biases are present at levels lower than those examined, but that would still leave open the question of why would these implicit negative associations be present at lower levels of the organization but not at higher levels of the organization. Equally damaging to Dr. Reskin's theory is the fact that when Merchandise Manager experience is held constant, women and men are promoted at the same rate to Assistant Warehouse Manager positions. A similarly damaging fact to Dr. Reskin's theory is the observation that men and women are promoted at equal rates to Warehouse Manager positions.

Similarly, how can Dr. Reskin's theory account for the large number of current staff managers (and in particular admin and Front End Managers), Assistant Warehouse Managers, and Warehouse Managers? How did they manage to escape this withering automatic bias? And given the indisputable evidence on the record that senior male managers record and recall individuating information about female Costco employees, the question arises, "why would they bother" if their decision-making will be automatic? The skeptic might argue that they carry the information around just in case someone challenges their decision-making, but this would mean that they are *aware* of their bias, or why would they bother to collect that individuating information?

It appears that the *facts* of the current case are sufficient to rebut Dr. Reskin's heory of automatic (unconscious), negative views of female candidates for Assistant Warehouse Manager and Warehouse Manager. The theoretical and research arguments against her theory simply add

substance to the facts. Automatic or implicit bias provides little explanatory value in the light of the facts of the case.

From either a scientific or a common sense point of view, the suggestion that some automatic, unconscious mechanism is responsible for alleged gender discrimination in promotions at Costco is tortured.

15) Dr. Reskin inappropriately invokes the concept of in-group status as an explanatory mechanism for alleged gender discrimination at Costco. There is no evidence of in-group favoritism in Costco promotional decisions or general management/leader behavior.

In any organization, as one moves up the organizational ladder, there are fewer opportunities available for promotion. This is axiomatic. There are fewer staff managers than department managers, fewer Assistant Warehouse Managers than Staff Managers, fewer Warehouse Managers than Assistant Warehouse Managers, etc. Thus, to simply categorize those who receive promotions as members of an "in" group and those who do not as members of an "out" group is an example of circular reasoning; it is tautological and hardly noteworthy. Further, when you control for experience as a Merchandise Manager, there is no longer any "in" or "out" group since the rates of promotion of men and women to Assistant Warehouse Manager and Warehouse Manager are no different. Putting aside for the moment the categorical variable of gender, one could readily identify many other categorical variables which might distinguish between these arbitrarily identified "in" and "out" group members. Some obvious examples include tenure with the company, previous job titles held, or performance evaluations.

The concept of in and out-group status in I-O psychology has been an integral part of leadership theory (specifically the theory known as Leader-Member Exchange), and is supported by substantial amounts of field research over a more than 30 year period (Landy; 1986; Landy & Conte, 2004; 2007). Dr. Reskin seems to be unfamiliar with this research. This is understandable since it falls in the research domain of I-O psychology, not sociology. The research base demonstrates that in and out-group status are defined by individualized interactions between leaders/managers and individual workers. The quality of these interactions is determined by the willingness of leaders to engage followers in respectful and individualized work related exchanges. There is a tendency for out-group members to experience less personal interaction with leaders, to express more serious dissatisfaction, to receive less relevant performance related feedback, and to voluntarily leave the organization at a high rate for reasons related to dissatisfaction with their immediate manager. None of these conditions can be seen at Costco for the positions in question. The process of the warehouse walk guarantees continual job-related interaction between managers and subordinates on a daily basis.

I have seen no evidence of widespread dissatisfaction among female Costco employees. The performance evaluations for female employees at Costco are as individualized and work-related as those for their male counterparts. Tenure for both male and female Costco employees is extraordinarily high. Turnover runs at an average of less than 2% per year, on the average. (See the report of Dr. Ali Saad, Exhibit 40). In short, there is little evidence to suggest that women (or *any* demographically defined group), occupy "out-group" status at Costco. On the contrary, the management and leadership model adopted by Costco is one of inclusion and all evidence suggests a strong sense of inclusion and "in-group" emphasis at Costco.

16) Dr. Reskin introduces the concepts of favoritism, paternalism, and tokenism as explanatory mechanisms in her assertions that Costco discriminates against women in promotions to Assistant Warehouse Manager and Warehouse Manager. She provides no scientific citations for these concepts and as such, they simply represent common sense descriptions rather than subjects for expert debate.

It is not clear from Dr. Reskin's report whether the concepts of favoritism, tokenism, and paternalism represent any causal or explanatory role in her theory of gender discrimination at Costco. Her citations for these "-isms" are very board and provide no hint of the role of these variable sin the current discussion. For example, one citation for paternalism (Lee & Ferrie, 1993), refers to agricultural labor in the rural south. Her references to tokenism and favoritism are similarly obscure. It appears that she is simply using these "-isms" to reinforce her proposition that women are less likely to become Assistant Warehouse Managers and Warehouse Managers because of their gender. The concepts of tokenism and favoritism may be seen as simply recognizing that there are fewer female Assistant Warehouse Managers and Warehouse Managers than the plaintiffs might prefer. This ignores the threshold status of experience as a Merchandise Manager. Without further elaboration by Dr. Reskin on the role of favoritism and/or tokenism in her theory of gender discrimination at Costco, these simply seem to be synonyms for sexism or gender discrimination and do not warrant extensive response from me.

With respect to paternalism, a search of the psychological literature turns up very little with the exception of the proposition by some researchers (e.g., Glick & Fiske, 1998), that when men say nice things about women, they are acting in a patronizing way. This has been labeled "benevolent sexism". To be sure, common sense tells us that this could conceivably be true in some instances, but there is no evidence that this is the case at Costco. The performance-related

feedback that women at Costco receive as seen in performance evaluation forms seems is clearly tied to documented work related behavior. It is not clear if Dr. Reskin is suggesting that the feedback is insincere or patronizing, but in the absence of any elaboration from Dr. Reskin, there is not much to say about her assertions related to this and the other "-isms." She does observe at one point that "paternalism" is evidenced by the fact that Costco management retains control over career advancement. This puts Costco into a very large pool. Few modern organizations would give up this control.

While Dr. Reskin may finally be on some familiar sociological turf when discussing the various "-isms", she fails to show how they have any relevance in the individuated environment of Costco. Nor can these "-isms" account for:

1) The promotion rates at Costco of females to Assistant Warehouse and Warehouse Manager when controlling for Merchandise Manager experience.
2) The startling low voluntary termination rate of women at Costco, a rate no different from that of men.
3) The substantial and obvious amount of individuating information collected and recorded regarding female Costco employees.
4) The illuminating performance evaluation information showing clear advantages for female Costco managers.

17) Dr. Reskin fails to address at least one plausible explanation for the alleged statistical disparity between the promotion rates of men and women for promotions to the Assistant Warehouse Manager and Warehouse Manager positions – the differential desirability of the threshold staff manager position, Merchandise Manager. When

experience as a Merchandise Manager is held constant or controlled, there is no observed gender disparity in the promotional statistics for the Assistant Warehouse and Warehouse manager positions. Dr. Reskin pays scant attention to this observation, other than to suggest that Costco change its business model.

Costco representatives have made it very clear in their depositions that merchandising experience is essential for the position of Assistant Warehouse and Warehouse Manager positions.

"..Merchandising is definitely a science...it's the cornerstone if not the foundation of our business..." (Mario Omoss dep. P. 122).

"...she's getting close to being an Assistant Manager...She's gone through some areas, she's been through Front-End. She needs to do Merchandising and then she'll be ready.
Q. Is it a pre-requisite to be an Assistant Manager that you have to be a merchant Manager?
A. For me it is..." (Mario Omoss dep. P. 122).

"As I mentioned before, merchandising is an important part of what we do, so we weight merchandising higher than any other category -- the merchandising skills". (Dennis Hoover dep. P. 113).

A. Couldn't be a warehouse manager without a strong merchandising background (Richard DiCerchio dep. P. 68).

Further, this requirement is well known among Costco employees with aspirations for senior Warehouse Manager positions, including named plaintiffs. Consider the following question and answer from the deposition of Leah Horstman.

"What they told us is that you had to have done the Merchandising Manager position before being promotable to Assistant Warehouse Manager. That was a known fact.
Q. That was the most important one?
A. That was the most important one." (Leah Hostman depo. p. 72)

It is also well known among Costco employees that, historically, the position of Merchandise Manager has brought with it non-standard work hours and unpredictable work schedules. In fact, this has been the topic of recent focus group discussions among Costco staff

managers. The notes of these discussions clearly document the recognition among staff managers themselves that the issues of shift hours and unpredictability are important issues for work/life balance. These are not the stereotyped perceptions of senior level managers but instead represent the hard reality of balancing work and non-work responsibilities. I have reproduced minutes from these discussions as **Appendix H.**

As both Drs. Stockdale and Mulligan have shown in their reports in this case, the fact that unpredictable and non-standard hours are less attractive to women with caregiver responsibilities is well known in the social and behavioral sciences. In fact, even Dr. Reskin has acknowledged this in her earlier writings (Padavic & Reskin, 2002). The fact that this association between gender and preferred hours/predictable schedules is so well documented, even in Dr. Reskin's scientific domain, makes her failure to acknowledge this plausible explanation for alleged gender disparities all the more remarkable.

Dr. Reskin's position on the issue of work hours and willingness to relocate is two fold. On the one hand, if a Costco representative observes that many women with caregiver responsibilities prefer predictable and standard hours, Dr. Reskin cites this as evidence of "stereotypical thinking." **Appendix H** provides clear evidence that these caregiver concerns are not the product of "stereotypical thinking." On the other hand, she suggests that if these conditions are onerous to female employees with aspirations to senior warehouse management positions, then Costco should simply change their model of operation and eliminate these onerous conditions for women. In other words, Costco should abandon an evolved and successful business model in which merchandising experience involves critical scheduling variables (such as seasonal and regional market differences and the early morning preparation of

a warehouse), in favor of a method of operation that is more friendly to those with care giver responsibility of either gender.

Organizations have responsibilities to customers, shareholders, and employees to remain competitive and viable. The Costco strategic leaders clearly believe in the importance of merchandising experience for warehouse management. This has been a core element of their strategic model for decades. A decision to change successful business and operational models is not to be taken lightly. Dr. Reskin makes no comment about the importance of merchandising experience for warehouse management, nor does she comment on the importance of preparing a warehouse for daily operations during the early hours of the day. She presents no coherent argument for why her model of operations should replace the Costco model.

CONCLUSION

In my professional opinion, Dr. Reskin's observations and opinions are both superficial and ill informed. She ignores or misconstrues critical scientific and professional literature, selectively excerpts deposition testimony that fits her predetermined theory, and either ignores, or is unaware of best practices followed by Costco in implementing their strategic HR model. In my professional opinion, this is because she has little appreciation for or training in the scientific domains of I-O psychology, social psychology, cognitive psychology, and HR theory and practice.

Dr. Reskin's foundation for her opinions regarding commonality invokes the concept of "culture" without showing how or why the Costco culture is causal in alleged statistical disparities between male and female senior management promotional rates. Further, additional "commonality" elements invoked by Dr. Reskin have little to do with the key issue before the court in class certification – the promotional decision-making process. Finally, Dr. Reskin's suggested HR and operational remedies as presented in her report are without rational or scientific support. She simply instructs Costco to change their business and operational model. Her training and experience provide little reason for Costco to follow her suggestions in light of a rational model that has evolved at Costco for Warehouse operation.

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

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