

**Report on the Impact of Personnel Policies, Procedures
and Practice on Racial Disparities at LUFKIN INDUSTRIES, INC.**

McClain, et al. vs. LUFKIN INDUSTRIES, INC.
Case No. 9:97CVO63

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I. QUALIFICATIONS, ASSIGNMENT, AND MATERIALS REVIEWED

1. I am Associate Professor of Psychology at Montana State University. I received a Ph.D. in psychology from New York University in 1988, where my studies were concentrated in industrial-organizational psychology. My doctoral dissertation examined organizational factors that influence stereotyping and discrimination in the workplace and was awarded the NYU Douglas H. Fryer Award for Outstanding Scholarship on Behavior in Organizations. My first academic appointment, from 1988-1992, was in the department of psychology at Rice University, Houston, Texas. From 1992 to 1996, I was on the faculty of Columbia University, Teachers College, where I was promoted with tenure, to Associate Professor. My research program is in human resource management, and one of my specific interests is in the dynamics of stereotyping and discrimination in organizational settings. Much of my research in this area is concerned with identifying the conditions under which individuals stereotype and discriminate when making personnel evaluations and decisions, pinpointing the psychological mechanisms responsible for biased assessments, and examining the impact of discrimination against protected class members on their ensuing organizational mobility. My investigation in this latter area is funded by the National Science Foundation. My research is published in top-tier, peer-reviewed scientific journals, and I currently serve on the editorial board of the Journal of Applied Psychology. In addition, over the past fifteen years of university teaching, I have covered the topics of stereotyping and discrimination in organizational settings at both the undergraduate and graduate levels. My *curriculum vitae*, a statement of previous expert witness experience, and my rate sheet are attached to this Report.

2. I have been retained by Goldstein, Demchak, Baller, Borgen & Dardarian, LLP, counsel for the plaintiffs, to review Lufkin Industries, Inc. ("Lufkin") personnel policies, procedures, and practices and assess their impact on initial job assignments, selection and promotion decisions, compensation, and access to training and career opportunities of African-Americans employed at Lufkin.

3. In preparing this Report on the impact of personnel policies, procedures and practices on racial disparities at Lufkin, I have reviewed the deposition testimony of managers and supervisors who have responsibility for human resource management policies, procedures and practices at Lufkin, and that pertain to personnel decision-making at Lufkin. These include Mr. Viron Barbay, Human Resources Representative; Mr. Richard Gilley, Manager, Trailer Division; Mr. John Glick, Vice-President and General Manager, Power Transmission Division; Mr. John Havard, Manager, Human Resources; Mr. Larry Long, Manager, Oilfield Manufacturing; Mr. Paul Perez, Vice-President, Human Resources; Mr. Steve Reynolds, General Manager, Foundry Division. I have also read the deposition testimony of Ms. Susan Felts, Secretary to the General Manager, Trailer Division. I have also reviewed the Statistical Analysis of Racial Patterns in Lufkin Workforce prepared by Richard Drogin, Ph.D. Appendix 1 contains a complete list of the specific documents I have reviewed.

4. The conclusions expressed in this Report are based on the deposition testimony of numerous Lufkin managers and supervisors as well as my review of Lufkin documents that pertain to personnel decision-making. My analysis of racial disparities at Lufkin draws upon my expertise in theory and research dealing with stereotyping and discrimination in the workplace.

The conclusions expressed in this Report are based on my professional background and experience as an industrial-organizational psychologist trained in the scientific study and application of human resource management practices. In this Report, I will apply established social science theory and research on stereotyping and discrimination to the facts of the case.

II. SUMMARY OF FINDINGS

5. This Report is provisional. As stated in their deposition testimony, Mr. John Glick, Vice-president and General Manager of Power Transmission, and Mr. Richard Gilley, Manager of the Trailer Division, indicated that there were other individuals who had more knowledge of Lufkin personnel practices in their respective departments. Moreover, I understand that the deposition of Mr. John Havard, who was designated by Lufkin to provide testimony regarding Lufkin personnel practices in several areas, has not been completed. Further, I was informed by plaintiffs' counsel that the court on July 11, 2003 ordered that the parties could take additional depositions. Given that additional discovery is forthcoming, I reserve the right to amend, either in writing, deposition or at trial any aspect of the Report that may have to be modified or augmented because of information received since the production of this Report.

6. I have concluded that distinctive features of Lufkin's Human Resource Management System ("HRMS") are responsible for racial disparities that currently exist and have existed at Lufkin during the time period covered by this lawsuit. Having analyzed the personnel procedures, policies and practices embodied in the HRMS, I have identified three company-wide personnel practices that systematically disadvantage African-Americans at Lufkin.

7. Personnel evaluations and decisions are based on criteria and measurement procedures and practices that are very subjective, ambiguous, and discretionary in nature. Lufkin does not have in place measures to prevent racial stereotypes from systematically impacting initial job assignments, and selection and promotion decisions.

8. Training and career development opportunities are assigned to Lufkin employees in a manner that is very subjective and at the personal discretion of Lufkin management, thus, permitting racial stereotypes to influence opportunities for training and career development.

9. The Lufkin corporate culture lacks commitment to monitoring the treatment and status of African-American employees and does little to implement personnel policies, procedures and practices that discourage the use of racial stereotypes in personnel-decision making.

10. In the remainder of this Report, I will provide an overview of scientific theory and research on stereotyping and discrimination. The aim is to document the effects of racial stereotypes on personnel decision-making, and to pinpoint personnel practices and organizational factors that foster the use of racial stereotypes in the workplace. I will then outline the basis of my Opinion.

III. OVERVIEW OF THEORY AND RESEARCH ON STEREOTYPING AND DISCRIMINATION.

11. Stereotyping and discrimination have been the topic of scientific research for over 80 years, resulting in the publication of thousands of journal articles and books. These research investigations have used a variety of research methods including controlled laboratory and field experiments, archival studies and survey research, which, together, produce a well-established body of scientific theory and research. Three key questions have been the subject of much of this research, namely, what is a stereotype, what are the effects of stereotypes on personnel evaluations and decisions, and when do stereotypes lead to workplace discrimination? The answers to these three questions are germane to my analysis and opinion in this case.

A. What is a stereotype?

12. A stereotype is an organized set of conscious and unconscious beliefs regarding the traits, attributes, and behaviors thought to characterize individual members of identifiable groups (Hamilton & Sherman, 1994; Hilton & von Hippel, 1996; Martell, Parker, Emrich, & Swerdlin, 1998; Martell & DeSmet, 2001). African Americans constitute one such group. In the case of African-Americans, stereotypic depictions are mostly unfavorable. African-Americans are seen as less intelligent, hard-working, ambitious, responsible, organized, and successful than Whites; and they are more often depicted as ignorant, dishonest, lazy, and complaining (Davis & Smith, 1991; Dovidio & Gaertner, 1986; Gaertner & McLaughlin, 1983; Judd, Park, Ryan, Bauer, & Kraus, 1995; Wittenbrink, Judd, & Park, 1997). Racial stereotypes also have a strong affective component, causing Whites to have ambivalent (and sometimes hostile) feelings toward African-Americans. Racial stereotypes are widely shared and resistant to change (Devine, 1989; Devine & Baker, 1991; Dovidio, Brigham, Johnson, & Gaertner, 1996; Dovidio, Evans, & Tyler, 1986; Dovidio & Gaertner, 1986; Feagin & Sikes, 1994; Judd et al., 1995; Katz, Hass, & Wackenhut, 1986; Stangor, Sullivan, & Ford, 1991; Zarate & Smith, 1990).

13. Grouping people into different ethnic and racial categories is a fundamental feature of human perception. Research demonstrates the ease with which people are categorized along ethnic and racial lines (Fiske & Neuberg, 1990; Fiske & Pavelchak, 1986). For example, an African-American male is more likely (and more quickly) to be categorized, and subsequently treated, as African-American than as male (Zarate, Bonilla, & Luevano, 1995; Zarate & Smith, 1990). Once categorized as a member of a particular group, and in the absence of any systematic efforts to do otherwise, the stereotypic traits, behaviors, and expectations that comprise the category are attributed to individual group members. Stereotyping occurs quickly and with ease, as it is an efficient way to form judgments and reach conclusions regarding the likely attributes of members of a stereotyped group. Given the mostly negative content of racial stereotypes, African-Americans are disadvantaged with respect to how they are subsequently perceived and treated. In all, stereotypes often serve as an easy default option for individuals in the course of decision-making (Pendry & Macrae, 1994).

14. A good deal of stereotyping occurs automatically, that is, outside of conscious awareness (Bargh, 1999; Bodenhausen & MacCrae, 1996; Wilson & Brekke, 1994; Wittenbrink et al., 1997). Stereotypic beliefs appear to be so "overlearned" that they stand at the ready,

waiting to be applied in ways that escape conscious awareness. Much like the proprioceptive system manages sensory information to keep one's body properly oriented in space, with no conscious awareness, unconscious stereotypes keep the belief system balanced and free of the dissonance that would accompany conscious awareness of our stereotypic beliefs. This helps to explain how even well-meaning people can unwittingly invoke stereotypes and proceed to discriminate in a manner that escapes conscious awareness. An example is a classic study which found that in the course of conducting an interview, White interviewers unknowingly sat significantly farther away from African-American applicants than from White applicants and concluded the interview approximately 25% sooner (Word, Zanna, & Cooper, 1974; for similar examples, see Fazio, Jackson, Dunton, & Williams, 1995; Dovidio, Kawakami, Johnson, Johnson, & Howard, 1997; and von Hippel, Sekaquaptewa, & Vargas, 1997).

15. Stereotypes are pervasive and enduring. As children and continuing into adulthood, people develop attachments to their own racial group ("the in-group"), to which mostly positive attributes and behaviors are assigned, whereas, members of other racial groups are seen more negatively ("the outgroup"), to which mostly negative attributes and behaviors are assigned. The formation of racial "in-groups" and "out-groups" proceeds rather automatically, and these distinctions are maintained by strong cultural values, ongoing socialization processes and signs and symbols perpetuated by the media (Aronson, Wilson, & Akert, 2000). Once firmly in place, stereotypes remain largely resistant to change, even in the face of disconfirming evidence. There is one exception, however. Research indicates that African-Americans do not demonstrate a strong in-group favorability bias (Fiske, 1997). This is testimony to the power of racial stereotypes, where once stigmatized by the dominant White culture, and treated in a way that reinforces the stigma, it is not easy for African-Americans to escape the influence of unfavorable racial beliefs. Thus, even the victims of stereotypes can succumb to cultural forces embedded in schools, the media, and elsewhere throughout society, so as to come to agree, at least unconsciously, with society's generally negative depiction of African-Americans.

B. What are the effects of racial stereotypes on personnel evaluations and decisions?

16. Social science research (see paragraphs 17-24 below) has documented that stereotypic beliefs, if allowed to proceed unchecked, lead to discrimination against African-Americans on a wide range of personnel assessments. This occurs because decision-makers begin to think in racial terms when race is irrelevant to actual job qualifications. Once categorized along racial lines, African-Americans are assumed to possess the characteristics attributed to the racial group, even in the absence of concrete evidence. Because racial stereotypes cause African-Americans to be seen as lacking the requisite skills, abilities, or behaviors associated with, among other things, competent work performance, managerial potential, and organizational commitment, they will be unfavorably judged. Racial stereotypes hurt—they cause African Americans to be judged more harshly and accorded less favorable treatment than their White counterparts.

17. African-Americans are discriminated against in hiring and initial job assignments. As compared to their White counterparts, African-Americans are likely to be tracked into low-skill, low pay, low prestige jobs and task assignments that are less likely to lead to more senior,

higher paying positions (Bendrick, Jackson, & Reinoso, 1994; Bills, 1988; Braddock & McPartland, 1987; Feagin & Sikes, 1994; Ilgen & Yountz, 1986; Kaufman, 1986; Lefkowitz, 1994; McConohay, 1983; Mueller, Parcel, & Tanaka, 1989; Neckerman & Kirschenman, 1991; Pettigrew & Martin, 1987; Sigelman & Welch, 1991).

18. African-Americans are discriminated against in work performance assessments and promotion decisions. As compared to their White counterparts, the work performance of African-Americans is often judged less favorably and their rates of promotion are lower (Baldi & McBrier, 1997; DeJung & Kaplan, 1962; Greenhaus, Parasuraman & Wormley, 1990; Hamner, Kim, Baird & Bigoness, 1974; Kraiger & Ford, 1985; Landau, 1995; Pulakos, White, Oppler, & Borman, 1989; Sackett & DuBois, 1991; Sackett, DuBois, & Noe, 1991; Weil & Wesley, 1993).

19. Explanations for the success of African-Americans reveal racial bias. As compared to their White counterparts, the work performance of African-Americans is more likely to be attributed to external and/or unstable causes and not to their inherent ability (Greenhaus & Parasuraman, 1993; Heneman, Greenberger, & Anonyuo, 1989; Ilgen & Yountz, 1986; Yarkin, Town, & Wallston, 1982). This form of racial bias serves to diminish the accomplishments of African-Americans in work settings.

20. African-Americans are discriminated against with respect to job training and developmental opportunities. This is especially likely when such efforts, if successful, will increase the representation of African-Americans in higher status positions occupied primarily by Whites. This occurs due to a perceived threat among Whites, as when a mostly White group is threatened with the prospect of racial integration (Fiske & Ruscher, 1993; Pettigrew & Meertens, 1995; Smith, 1993). Moreover, there is much research showing that African-Americans, as out-group members, are far less likely to receive help and assistance, formal or informal, than their White counterparts (Brewer & Brown, 1998; Dovidio, 1984). The basic principle is that people exhibit less help to someone they perceive to be a member of an out-group. In all, as compared to their White counterparts, African-Americans are more frequently denied key, job-related experiences needed for advancement (Ilgen & Yountz, 1986; Powell & Butterfield, 1997; Thomas & Alderfer, 1989), are assigned jobs of less complexity and challenge (Braddock & McPartland, 1987; Kaufman, 1986; Lefkowitz, 1994; Mueller et al., 1989), and are accorded less help, direction, information and guidance (Dovidio, 1984).

21. African-Americans often find themselves isolated from the informal social networks that are critical to success in organizations. This stems from a feeling of personal discomfort among Whites, who are the in-group, with people perceived as dissimilar to themselves, and speaks to the negative affective component of stereotypes (Stangor, Sullivan, & Ford, 1991). As a result, African-Americans find that they have less access to important sources of job-related information as well as less support from White supervisors and co-workers. Differential access to job-related information has negative consequences for African-Americans, resulting in less awareness of opportunities for training and career advancement than their White counterparts (Feagin & Sikes, 1994; Greenhaus et al., 1990; Ilgen & Yountz, 1986; Landau, 1995; Thomas & Alderfer, 1989).

22. The workplace discrimination faced by African-Americans produces negative, long-term consequences for organizational mobility, resulting in the overrepresentation of African-Americans in low-paying, lower status jobs that offer limited opportunity for future promotion. Organizational scholars recognize the lasting impact of early job experiences, opportunities and performance evaluations on individuals' organizational mobility (Berlew & Hall, 1966; Forbes & Piercy, 1991; Martell et al., 1996; Rosenbaum, 1979, 1984, 1989; Sheridan, Slocum, Buda, & Thompson, 1990). Individuals who are initially selected into skilled jobs, and who are perceived and treated more favorably early on in their career, are significantly more likely to advance within the organization. This is because most organizations rely on "career ladders" in which certain jobs or positions provide the pool of candidates from which to promote individuals (Baron, Davis-Blake, & Bielby, 1986; Stewman, 1986). Individuals assigned to jobs that are more favorable accrue a promotion advantage over their counterparts who have not been. If allowed to stand, racial discrimination in personnel evaluations and decisions produces segregation in organizations, whereby African-Americans are over-represented in low skilled, lower paying jobs and positions, with little opportunity to move into positions of higher status in the organization.

23. Racial segregation in organizations is the result of many very "small" decisions that disadvantage African-Americans. Although counterintuitive, the proposition that small differences can yield rather large and pervasive results is a key element of complexity theory (Casti, 1994; Eidelson, 1997). Social science research demonstrates how a very small degree of bias, favoring one group over another, is sufficient to yield widespread and enduring racial segregation. Schelling (1971), for example, examined the impact of racial preferences on patterns of segregation that evolve over time. To do this, he constructed a hypothetical checkerboard "neighborhood" so that every individual (Black or White) occupied a particular square. Each individual's degree of dissatisfaction and thus propensity to move to another square was determined by the racial composition of the immediately adjacent squares. Results of the simulation yielded a remarkable phenomenon: Even an extremely modest preference for one's own racial group produced, over time, highly racially-segregated neighborhoods. This finding illustrates the sizeable impact of small and subtle preferences on racial segregation. Similar findings were observed in a computer simulation designed to model the organizational processes that guide initial hiring and subsequent mobility up the organizational hierarchy. In this study, an extremely small amount of bias against out-group members was sufficient to diminish their organizational mobility and result in widespread segregation throughout the company (Martell et al., 1996).

24. Racial segregation has the unfortunate consequence of reinforcing racial stereotypes insofar as the underrepresentation of African-Americans in particular jobs and occupations unwittingly supports the implicit belief that African-Americans are not qualified for these jobs and occupations. As such, certain jobs and careers become racially-stereotyped as more (or less) suited for African-Americans. Thus, by dint of their underrepresentation (or complete absence) in more skill-based, higher paying jobs and careers, African-Americans are disadvantaged (Morrison & von Glinow, 1990; Kraiger & Ford, 1985).

C. When do stereotypes lead to discrimination?

25. Discrimination against African-Americans in work settings is not inevitable. This underscores a fundamental assumption that psychologists have recognized for decades – attitudes do not always lead to their corresponding behavior. Similarly, stereotypes do not lead inevitably to discrimination (American Psychological Association, 1991; Blanchard, Lilly, & Vaughn, 1991; Blanchard, Crandall, Brigham, & Vaughn, 1994; Brewer, 1996; Eberhardt & Fiske, 1996). An abundance of social science theory and research demonstrates that whether stereotypes are used is “context-dependent.” As noted by Nobel Laureate, Gary Becker, in his 1992 Nobel Lecture, “... sometimes the environment greatly softens, while at other times it magnifies, the impact of a given amount of prejudice” (p. 387). The point here is that the nature of an organization’s personnel policies, procedures and practices plays a key role in regulating the impact of stereotypes in the workplace. Careful attention to these factors in the design and implementation of an organization’s personnel decision-making processes discourages racial stereotyping and thus enhances the treatment and status of African-Americans in work settings.

26. Because people tend to hold racial stereotypes, if left to collect and interpret information in the absence of explicit criteria and objective measurement procedures and instruments, it is likely that much “stereotype-confirming information” will emerge and disadvantage African-American job candidates. In contrast, if decision-makers are guided by criteria and measurement practices that are more objective and unambiguous in nature, then personal discretion (which fosters stereotypic thinking) will assume a far less significant role. For, as more accurate and unbiased information is encountered, decision-makers are faced with stereotype-inconsistent information, that is, work-related information depicting African-Americans in a more positive and less stereotypically negative manner. As a result of encountering stereotype-inconsistent information, African-Americans are increasingly likely to be categorized not in terms of their race (which disadvantages African-Americans) but in other more positive ways such as a “good worker” (Brewer, 1996; Fiske & Neuberg, 1990; Rothbart & John, 1985). The point here is that any individual may be categorized in numerous ways (e.g., age, race, sex, “good-worker”), depending on the nature of the information used by decision-makers. Information gathering strategies that are more structured in nature, insofar as explicit, unambiguous criteria and measurement procedures are in place, will cause information regarding the actual skills, abilities and work performance of African-Americans to be more accessible; this, in turn, reduces the negative impact of racial stereotypes on the perception, judgment and treatment of African-Americans.

27. Furthermore, assessments based on information that is very subjective and discretionary in nature may cause decision-makers to be overly confident in the accuracy and “unbiased nature” of their evaluations and decisions. This occurs because decision-makers mistakenly perceive that they have adequate (and unbiased) information with which to render what they believe to be accurate, non-discriminatory personnel evaluations and decisions (Brewer, 1996; Darley & Gross, 1983; Denhaerinck, Leyens, & Yzerbyt, 1989; Hilton & Fein, 1989; Yzerbyt, Schadron, Leyens, & Rocher, 1994). Research reveals that decision-makers are often not unaware that their assessments of African-Americans reflect stereotypic thinking. A long line of research suggests that decision-makers are not in a position to assert what they did not consider in their decisions (Bargh, 1999; Wilson & Brekke, 1994; Wittenbrink et al., 1997).

It is important, therefore, to examine what decision-makers do, and not what they say or believe, to determine whether biased evaluations and decisions are being made.

28. Organizations can control stereotyping in personnel decision-making. Many organizations understand that to discourage discrimination in evaluations and decisions it is important to: (a) employ evaluative criteria that are objective, unambiguous and well-defined; (b) evaluate job candidates using measurement practices and procedures that produce reliable and valid assessments; (c) ensure that all relevant prescribed human resource management (HRM) policies, procedures and practices are in written form, so that personal discretion in decision-making is minimized; and, (d) provide adequate training and oversight in the implementation of HRM policies, procedures and practices that discourage discrimination in personnel evaluations and decisions (Brief, Buttram, Reizenstein, Pugh, & Douglas, 1997; Konrad & Linnehan, 1995). As organizations institute more formal HRM procedures to help guide decision-makers, a practice that serves to limit the personal discretion of individual decision-makers, the treatment and status of members of "protected classes" improves significantly (Konrad & Linnehan, 1995).

29. The use of "Structured Behavior Interviews" and "Assessment Centers" for personnel decision-making evaluating are two excellent examples of well-developed HRM procedures and practices. Each is built on: (a) the results of a formal job analysis that accurately identifies critical criteria for job performance; (b) measurement instruments and procedures designed to accurately rate observed work performance; and, (c) rater training that is systematic and on-going.

30. For example, the structured interview is often used by organizations as an assessment tool to measure individuals' knowledge, skills, and abilities (KSA's). A structured interview is of great practical value as it can be used in large, Fortune 500 companies, as well as smaller companies, such as Lufkin. It is designed specifically to obtain a sample of behaviors that are important to effective work performance, as determined by the previous conduct of a formal job analysis. Subject matter experts are used to customize the content of the questions and create a rating system for evaluating candidate responses. In a structured interview, interviewers follow a predetermined sequence of questions that are behavioral in nature. Included among the objectives of the structured interview are: (a) interview validity, with respect to whether the interview measures what it claims to measure; (b) interview reliability, with respect to whether the interview yields consistent measurement; (c) interview practicality, with respect to keeping the interview focused and at a consistent length; and (d) interview fairness, with respect to using a standardized measure of competencies. Research indicates that these two formal personnel practices can be effective in discouraging the use of stereotypes in personnel decision-making (Campion, Pursell, & Brown, 1988; Huck & Bray, 1976; Kacmar & Hochwarter, 1995; Lin, Dobbins, & Farh, 1992; Moses & Boehn, 1975; Ritchie & Moses, 1983).

31. In all, theory, research and practice in management science, social psychology and industrial-organizational psychology demonstrate that whether stereotypic beliefs are invoked in the decision-making process is dependent on the nature of the evaluative criteria and the quality of the performance measurement tools. (For a comprehensive review of the role of subjectivity, personal discretion, and the nature of evaluative criteria, standards, and measurement procedures, see American Psychological Association, 1991; Biernat & Manis, 1994; Biernat, Manis, &

Nelson, 1991; Brewer, 1996; Darley & Gross, 1983; Denhaerincx et al., 1989; Fiske & Taylor, 1991; Fiske & Neuberg, 1990; Fiske, Neuberg, Beattie, & Milberg (1987). Hilton & Fein, 1989; Hilton & von Hippel, 1990; Leyens, Yzerbyt, & Schadron, 1992; Messick & Mackie, 1989; Pratto & Bargh, 1991; Rothbart & John, 1985; Seta & Seta, 1993).

IV. LUFKIN'S PERSONNEL PROCEDURES, POLICIES, AND PRACTICES ARE SUBJECTIVE, AMBIGUOUS, AND HIGHLY DISCRETIONARY

32. In the sections to follow, my analysis will rely on the deposition testimony of Lufkin managers and supervisors, Lufkin documents provided to me, and additional documents that relate to Lufkin personnel decision-making (see Appendix A) to support my conclusion that Lufkin personnel policies, procedures and practices, as they relate to the personnel evaluations and decisions accorded to African-American employees, contribute to racial disparities in the Lufkin workforce.

A. Initial Job Assignments Are Based On Criteria And Measurement Practices That Are Subjective, Ambiguous, And Highly Discretionary

33. Lufkin's placement practices were subject to an audit in 1994/1995 by the OFCCP, which found that minorities were relegated to jobs with less desirable work conditions than non-minorities with similar experience and qualifications (L-161021-161024). The report also concluded that initial job assignments of minorities were concentrated in the Foundry department and to less desirable jobs in other departments.

34. The specific steps and procedures involved in the hiring of hourly, bargaining unit employees into entry-level positions are prescribed in Lufkin documents (Human Resource Quality Procedure /Local Hiring Procedures for Bargaining Unit Employees: L-11374) and outlined in deposition testimony of Lufkin Managers (Perez depo, p. 87-115; Barbay depo, p. 46-104; Havard depo, p. 91-145; Glick depo, p. 66-78; Long depo, p. 53-60; Reynolds, 77-80). Lufkin represents its hiring procedure as follows: To begin, all hourly applicants are initially processed through the Texas Workforce Commission (TWC). When a job opening becomes available, Lufkin telephones (or in the last 6 months, forwards an email to) the TWC, and communicates, among other things, the position title and minimum job requirements. The stated minimum requirements for entry-level positions differ somewhat by Division. The Power Transmission department, for example, requires a high school diploma or GED for entry-level positions. TWC conducts a search for job applicants that meet the minimum requirements of the position and proceeds to identify a pool of qualified applicants. These job applicants will then meet with a Lufkin representative from Human Resources for a preliminary employment interview, at which time they also complete a Lufkin job application form. (Currently, Mr. Barbay, the Lufkin Human Resources Representative is responsible for entry-level hourly hires, whereas in the past, other individuals, including Mr. Havard, the Manager of Human Resources since 1994, have been involved). The interview is designed to determine whether and to what extent each applicant meets the minimum job requirements of the position for which he or she is applying. A number of qualifying applicants are then selected for a second, onsite job interview at Lufkin with the manager or supervisor of the hiring unit. (This second interview was eliminated in 2002.) The hiring decision is made by the area manager or supervisor. An

element of the hiring process, clearly stated in Lufkin documents and restated in deposition testimony, is that the job request made to the TWC contains the Position Title. It is for this specific position that applicants are applying. As noted by Mr. Barbay, Human Resources Representative, individuals are assigned to the position they apply for (Barbay depo, p. 90).

35. However, Lufkin and TWC documents provided to me, the deposition testimony of at least one Lufkin manager, the results of the Drogin Statistical Analysis of Racial Patterns in Lufkin Workforce, and the findings of two audits conducted by the Office of Federal Contract Compliance Programs (OFCCP) indicate a significant departure from Lufkin's stated policy with respect to entry-level job assignments. Specifically, in contrast to Lufkin written policy, personal discretion is exercised by managers in deciding which specific jobs are assigned to particular applicants, to the extent that applicants may apply initially for one specific position or department and, yet, be assigned for hiring consideration for a different position and department.

36. Lufkin's placement practices were subject to an audit in 1994/1995 by the OFCCP. A letter dated January 31, 1995 from Ms. Lois Jimmerson, Houston District Director of the U.S. Department of Labor, to Mr. Douglas Smith, CEO of Lufkin (L-161021-161024), stated the findings of the audit, as follows: "Lufkin's placement practices resulted in minorities being relegated to jobs with less desirable work conditions than non-minorities with similar experience and qualifications." Further, analysis of initial job assignments revealed that minorities are concentrated in the Foundry department. As described in the OFCCP report, "Evidence obtained on-site and during a visit to T.E.C. revealed that both minorities and non-minorities are referred for jobs in the Foundry, but minorities are consistently assigned to the Foundry and less desirable jobs in other departments."

37. A subsequent audit of Lufkin was conducted by the OFCCP. As indicated in a letter dated September 6, 1996 from Ms. Lois Jimmerson, Houston District Director of the U.S. Department of Labor, to Mr. Douglas Smith, CEO of Lufkin (L-161033-161036), the audit found a disproportionate hiring pattern for the Machinist Helper position such that minorities were significantly underrepresented in the position.

38. The Drogin Report found that newly hired, entry-level African-American employees at Lufkin are disproportionately placed into the Foundry department. Additional statistical analysis compared entry-level candidates with the same start date. Similar findings were found. This later analysis controls for the possibility, however unlikely, that African-Americans as a group apply for entry-level positions only on days when jobs in the Foundry are available.

39. In a November 12, 1996 letter from defendants attorney, John H. Smither to Ms. Lois Jimmerson, Office of Federal Contract Compliance Program, Mr. Smither challenged the conclusions of a statistical analysis of entry-level hiring patterns at Lufkin (L-22680-22683). On page two of his letter, Mr. Smither stated: "Moreover, in connection with the alleged discrimination against minority applicants for the machinist helper position *we found that hires for specific entry-level jobs were often made from requisitions for some other entry-level job. Thus, hires cannot be related directly to the applicant flow with respect to any specific entry-level job simply because the number of applicants truly considered is not entirely known*"

(italics inserted). This suggests that, contrary to Lufkin policy, and Mr. Barbay's deposition testimony in which he stated that applicants were assigned only to the position for which they had initially applied, individuals may be assigned into positions that differ from the job contained in the initial job request made to the TWC.

40. According to the testimony of Mr. Long, Manager of the Oilfield Manufacturing, when conducting onsite job interviews of an applicant for a specific entry-level, bargaining unit position, area managers have referred applicants judged as especially talented and with high-potential for positions to other divisions for further consideration. (Long depo, p. 55-56).

41. A review of computer printouts of two job orders generated by the TWC indicated that a specific position was not included in either job description (TWC00298-TWC00020).

42. Other data received from the TWC by plaintiffs' counsel revealed that no hiring department was explicitly identified for the majority of job requisitions received from Lufkin, further suggesting departures from Lufkin's written policies regarding initial hiring and job assignments.

43. Making initial job assignments to positions that are not contained in the original Lufkin requisition is contrary to Lufkin policy. Thus, as with hiring decisions, there exist no formal guidelines, written procedures, objective criteria or sound measurement instruments or procedures with which to make initial job assignments. Consequently, over the span of the liability period covered in this lawsuit, initial job assignments for entry-level bargaining unit positions have been based on criteria and measurement practices that are subjective and ambiguous (see below).

44. Deposition testimony revealed ambiguity in the nature of the minimum job requirements used to screen job applicants. For example, one of the qualifications is previous work experience in an "Industrial Environment." There are no written guidelines on how to accurately measure this "criterion." It is treated as a discretionary judgment (Perez depo, p. 87-89; 105; Barbay depo, p. 84-85).

45. There are no written guidelines, standards or criteria for selecting among the best applicants and eliminating less qualified applicants (Perez depo, p. 110-111; Barbay depo, p. 235-240). It is up to interviewer discretion to select the person who most strongly matches the minimum job requirements. This requires a subjective judgment.

46. Deposition testimony indicates that most if not all entry-level bargaining unit jobs have not been subject to a formal job analysis (Barbay depo, p. 83; 144). As noted earlier, the formal conduct of a job analysis is the foundation upon which personnel practices and procedures rest. Job analyses provide an objective basis for numerous personnel decisions and procedures. First, a formal job analysis is used to accurately determine the knowledge, skills, and abilities required to perform a job, as well as the relative importance of each criterion. Second, a formal job analysis serves as the basis for constructing a fair and accurate performance appraisal instrument. Third, a formal job analysis is a required step in constructing job descriptions that accurately convey the requirements of the position. Another benefits of a formal job analysis is

that it reduces individuals' personal discretion in deciding which criteria are job-related, how they should be weighed, and measured. For example, absent a formal job analysis, the basis for requiring a high school diploma or GED for entry-level positions in some Divisions but not in others lacks justification.

47. The personnel interview conducted by business unit managers and supervisors, which is used to evaluate job applicants for hiring and job assignments, is very subjective (Perez depo, p. 112-114; 189; Barbay depo, p. 80-83; Glick depo, p. 66-78). There are no written guidelines for the conduct of the interview. No written guidelines are provided to managers to assist in identifying and assigning weights to each applicant's strengths and weaknesses. A formal, structured interview is not used, nor is formal training in the conduct of an employment interview provided. There are no written guidelines or formal training to determine what questions are job-related, that is, directly related to performance on the job. Thus, other than being instructed to select the best person for the job, managers are left to their own discretion in making hiring and job assignments. Further, all the Human Resource department employees and managers involved in hiring and job assignments are White.

B. Promotion for Non-Entry Level Bargaining Unit Positions Are Based On Criteria And Measurement Practices That Are Subjective, Ambiguous, And Highly Discretionary

48. At Lufkin, movement of hourly employees into non-entry level positions is governed by the Collective Bargaining Agreement ("CBA") (1996-1999 CBA: L-11124-11174; 1999-2002; CBA: L-10824-10874). As it relates to promotions of hourly employees, the CBA contains specific, company-wide personnel procedures and practices that are very subjective, ambiguous, and highly discretionary in nature.

49. In the case of internal promotion, an open position is posted for bid over a 3-day period. The posting contains the job title, shift and area information. It does not include the job requirements. According to the CBA (Division 3: Terms of Employment. Article 22, Seniority, L-11145-11146), the most senior, qualified individual is awarded the position. The CBA, however, includes an "Ability Clause," which accords Lufkin management the right to promote an internal candidate of lesser seniority. The exact wording of the ability clause is as follows: "... departmental seniority shall govern if their ability to perform the work is approximately equal. " 'Ability' as the term is used in the phrase 'ability to perform,' shall be understood to include the employee's capacity to perform the work, to which they are assigned, with efficiency equal to that of other employees under consideration ..." ... "The determination of an employee's ability to perform the work is a function of management." In my judgment, the ability clause is ambiguous and subjective in nature. Specifically, there is no fixed, universal standard or measure of performance against which to assess the most senior employee's ability. How much "ability" the most senior employee must have to warrant promotion is not established. Instead, judgments are comparative in nature insofar as an employee's perceived ability is compared to other, less senior employees under consideration. Overall, decisions made by Lufkin management to not promote the most senior job candidate, based on the judgments of "ability," are subjective, ambiguous and highly discretionary in nature.

50. Deposition testimony of Lufkin managers indicate that the definition and measurement of "ability" is very subjective and arbitrary (Perez depo, p. 143-149; Reynolds depo, p. 136-140; Glick depo, p. 92-97). Vice-President of Human Resources, Mr. Perez, could not point to any written documentation or objective criteria for defining or measuring "ability" as used in Article 22 of the CBA. He characterized judgments of ability as subjective in nature (Perez depo, p. 143-149). Mr. Reynolds, General Manager of the Foundry, is unaware of actual guidelines, criteria or documentation regarding how to judge and compare the ability of one employee against another (Reynolds depo, p. 136-140). Vice-President and General Manager of Power Transmission, Mr. Glick, reported being unaware of specific criteria for specific job positions (Glick depo, p. 92-97). Finally, Manager of the Trailer Division, Mr. Gilley, reported knowing of no written guidelines regarding how to decide an employee had demonstrated successful performance in a particular job (Gilley depo, p. 202-204). In none of the documents presented to me was there evidence of: (a) the conduct of formal job analysis to establish a comprehensive list of objective criteria for jobs; (b) formal, objective rating instruments and methods used to assess job candidates; or, (c) adequate rater training in employee assessment and feedback. It is these three factors that, together, help to ensure that judgments of ability are unaffected by racial stereotypes. In their absence, racial stereotypes can influence judgments regarding the abilities of African-Americans in work settings.

51. As part of the promotion process, job candidates are interviewed by the immediate supervisor to assess their qualifications for the job. The interview, however, is extremely unstructured – there is not a standardized list of questions to ensure that all candidates are asked the same questions. Mr. Reynolds, for example, testified that he is unaware of the use of any instruments, strategies or criteria designed for use by supervisors to: (a) measure applicants' skills or fit for the job; or, (b) ensure that all job applicants are interviewed in a consistent manner (Reynolds depo, p. 94-108). The only guidance are admonitions against asking questions that are related to a job candidate's group membership, such as questions that are of a racial nature, and a general statement that questions should be "job-related." Interviewers at Lufkin are left mostly to their own discretion in the design and conduct of job interviews.

52. Deposition testimony suggested two additional criteria that must be met if a potential job candidate is to be judged qualified (Perez depo, p. 139-142; Gilley depo, p. 182; Reynolds depo, p. 153-156; 161-187). These criteria are unacceptable attendance and a serious plant rule violation. However, my review of the CBA failed to find any statements to the effect that unacceptable attendance or plant rule violations rendered an employee ineligible for promotion consideration.

53. Nonetheless, deposition testimony of Lufkin managers indicate much discretion in the application of the attendance criteria. Mr. Perez stated that attendance problems can be overlooked, and that the rule is applied at the personal discretion of the Superintendent (Perez depo, p. 139-142). In contrast, Mr. Reynolds stated that a candidate with unacceptable attendance under the Lufkin attendance program is not eligible for promotion (Reynolds depo, p. 153-156; 161-187), whereas Mr. Gilley stated that he was unaware of attendance as a criterion for promotion (Gilley depo, p. 182).

54. As for the role of a serious plant rule violation in determining eligibility for promotion, there is no clear and objective definition of what constitutes a serious plant rule violation. As discussed by Mr. Perez, this rule is not written in any Lufkin documents. Moreover, whether the rule is used in promotion decisions is at the discretion of the Superintendent (Perez depo, p. 139-142). In his testimony regarding the plant violation rule, Mr. Reynolds indicated that there are no written criteria contained within the Lufkin Employee Handbook as to when a formal warning or letter will be written in response to a plant rule violation. The decision to issue a formal written letter is at the discretion of the Manager or General Manager of the Division. Further, Mr. Reynolds indicated that he uses his own personal, unwritten guidelines, as do other managers in the Foundry, to determine whether a rule violation results in a formal warning (Reynolds depo, p. 153-156; 161-187).

55. For some jobs, Lufkin uses tests to aid in promotion decisions. In the Foundry, for example, Mr. Reynolds testified that approximately 25% of positions have a test designed specifically for use in selecting Lufkin hourly employees into non-entry level hourly positions. Generally, a score of 70% constitutes a passing grade. However, Mr. Reynolds noted that there can be departures from this rule. Specifically, in the event two individuals each have a passing score, it is possible to select the employee with less seniority. He also noted that the minimum passing score of 70% is not always followed, as he can decide to lower the score if he chooses (Reynolds depo, p. 192-194).

56. There are two additional elements of the CBA that are subjective in nature and accord Lufkin management much discretion in promotion decisions. First, not all hourly jobs are posted. Because these jobs are not posted, decisions as to which employees are best qualified for such positions are at the discretion of management. Second, Lufkin reserves the right to promote from outside the job bid list in the event a qualified internal candidate cannot be identified. There are no written criteria for judging qualifications and the decision to promote from outside the job bid list is at the discretion of Lufkin management.

57. The deposition testimony of Lufkin managers and a review of Lufkin documents reveal the following. For many positions, a comprehensive formal job analysis has not been conducted to identify the skills, attributes and behaviors required for the position. There are no written Lufkin guidelines for establishing what constitutes a "more qualified" job candidate, which allows Lufkin management a great deal of discretion in the decision-making process. There are no written Lufkin guidelines for rating candidates on the various criteria used by managers in making final promotion decisions among candidates. Deposition testimony indicates that managers can exercise enormous personal discretion, both in the criteria used to evaluate candidates and the standards applied to make such assessments. These are the conditions which previously reviewed theory and research indicate lead to less favorable treatment of African-Americans in work settings.

C. Selection Decisions For Salaried Employees Are Based On Criteria And Measurement Practices That Are Subjective, Ambiguous, And Highly Discretionary

58. Deposition testimony reveals that movements into salaried positions at Lufkin are governed by a personnel decision-making process that is very subjective, lacks written objective criteria, and relies on the discretionary judgments of managers rather than on well-developed assessment instruments and procedures to evaluate the fit of applicants' qualifications with the requirements of the job. These are the conditions which previously reviewed theory and research indicate lead to less favorable treatment of African-Americans in work settings.

59. Selection into salaried positions can involve external hiring or internal promotion from within Lufkin. There is no formal procedure that governs whether Lufkin fills a salaried position from inside or outside the company. Vice-President and General Manager of Power Transmission, Mr. Glick, characterized the decision as a subjective process, with no written criteria (Glick depo., p. 125).

60. At Lufkin, promotion into salaried positions begins with a discussion between the hiring Department Head and Human Resources, who, together, determine whether or not to post an available position (Lufkin Human Resources Quality Procedure: Salaried Job Posting Policy: 1-31-95, L-11380; Gilley depo., 191-193). If posted, interested employees can sign their name to the job posting. Next, Mr. Barbay, Lufkin Human Resources Representative, conducts a preliminary screen of employees' personnel files to determine which applicants meet the minimum job requirements for the opening and, in his words, "potentially had, ..., the skills to do the position..." (Barbay depo., p. 125). Although Mr. Barbay meets with the hiring Supervisor and consults the Position Description, much personal discretion is exercised in judging whether and to what extent applicants meet the minimum qualifications for the job. According to his deposition testimony, there are no written guidelines with regard to: (a) measuring the job requirements contained in the Position description; (b) weighing the relative importance of various job requirements contained in the Position Description; (c) assessing whether an applicant's qualifications meet the minimum job requirements; (d) measuring and weighing the relative importance of applicant qualifications; or, (e) assessing the degree of fit between job requirements and an applicant's qualifications.

61. The next step in the selection for salaried employees is a second interview with the manager in the business unit, which may also involve the participation of other employees. Deposition testimony and my own reading of Lufkin documents indicate that three specific features of the decision-making process yield final selection decisions into salaried positions that are very subjective, ambiguous and discretionary in nature.

62. **First**, managers noted their heavy reliance on Lufkin Position Descriptions as the basis for determining relevant job criteria (Perez depo, 122; Barby depo, 140-142; Glick depo, 107-118). As is generally true of most Position Descriptions that are designed to advertise and solicit job applications, the accompanying list of required skills and abilities is not complete. And, seldom are the specific weights assigned to the importance of various skills and abilities contained in the description. Position Descriptions cannot take the place of a complete and

comprehensive list of objective criteria to be used for assessing an applicant's qualifications. The Lufkin Position Descriptions that accompany job postings for salaried positions do not provide a complete list of relevant criteria nor are the criteria always stated objectively. Nonetheless, Position Descriptions at Lufkin play a major role in identifying relevant job criteria and assessing the degree of applicant – job fit. Without rating guidelines and a comprehensive list of objectively defined criteria, Lufkin managers are forced to rely on their own subjective judgment regarding whether and to what extent applicants meet the requirements of the job.

63. Proper identification and subsequent weighing of relevant job criteria requires a formal job analysis. To properly conduct a job analysis to develop a Position Description for use in hiring requires extensive training, feedback and independent evaluation of the job analysts' competence. According to Mr. Barbay, who is largely responsible for constructing Position Descriptions, he has no formal training in the design and conduct of a job analysis for the drafting of Position Descriptions (Barbay depo, p. 139). Similarly, Mr. Havard, Manager of Human Resources, testified that he is unaware of any efforts on the part of Lufkin to formally validate the criteria contained in Position Descriptions (Havard depo, p. 165-166).

64. In a discussion of one particular requirement contained in a Position Description, "Technical background, as well as adequate years of related experience....," Mr. Barbay noted that there was no written criterion that clearly defined "adequate" or "related" experience. Nor did the Position Description indicate the relative importance of these criteria. According to Mr. Barbay, no written guidelines are provided to help managers match qualifications listed in the Position Descriptions with job candidate qualifications (Barbay depo, p. 141-143).

65. Furthermore, additional deposition testimony (Reynolds depo, p. 226-228) and my review of job postings and subsequent hiring decisions (L-13612-13701) revealed the use of criteria that are not included in the Position Description. These additional criteria were often in the form of subjective traits such as "people skills," "leadership ability," "self-confidence," and "ability to cooperate with others." These traits are impossible to measure without the use of formal rating instruments designed specifically to provide an accurate assessment. Mr. Reynolds testified to the absence of guidelines or measurement instruments for judging candidates on these very subjective traits.

66. Deposition testimony offered by Mr. Gilley, Manager of the Trailer Division, revealed an absence of written guidelines for assessing whether and to what extent candidates satisfy the qualifications contained in Position Descriptions (Gilley depo, p. 199-204). Specifically, Mr. Gilley could not identify any written guidelines for how to assess job candidates on many of the criteria contained in the Position Description of Maintenance Supervisor (L-13694) that was used in an actual hiring situation. A number of the criteria used in the hiring decision are extremely subjective in nature (e.g., supervisory skills; organizational skills; ability to prioritize a heavy workload) and thus require training to assess fairly and accurately. Mr. Gilley has been provided no formal training on how to evaluate candidates on many of the criteria contained in Position Descriptions.

67. **Second**, a selection interview technique used for personnel decision-making is no different than any other measurement instrument. It requires skill in design and execution. The

“interviews” conducted at Lufkin to evaluate candidates for salaried positions are of a very unstructured nature. As distinguished from an informal discussion, in which individuals’ stereotypic beliefs and expectations can more easily influence decision-making, a structured interview requires: (a) the unambiguous specification of objective criteria to be used in the interview; (b) identification of clear and concrete questions designed specifically to accurately assess interviewees on each criterion; (c) emphasis on measuring interviewees’ behavioral responses, preferably using relevant, job-related hypothetical scenarios, for which positive responses are identified a priori for purposes of scoring and objective evaluation; and, (d) that all interviewees are asked the same questions in identical order. The ability to conduct a structured interview does not come easily. It requires formal training, subsequent practice, and independent evaluation of one’s interviewing skills.

68. At Lufkin, managers receive little formal training in the proper design and conduct of a personnel selection interview (Barbay depo, 170-172; Glick depo, p. 196-197). Lufkin documents regarding human resource management provide no evidence that managers are properly trained and thus qualified to design and conduct a formal job interview in a manner that is fair and accurate. Managers are not required to demonstrate proper interview techniques nor are they evaluated or given feedback regarding the quality and appropriateness of their interviewing style and skills (Barbay depo, p. 170-172).

69. Mr. Glick, for example, described the conduct of interviews of job candidates as a discussion of the candidates strengths and weaknesses, the likely long-term future of the candidate, and whether the group thought the candidate would be successful. Based on this unstructured interview, in which none of the features of a carefully devised structured interview were apparent, a final hiring decision was made (Glick depo, p. 97-125).

70. Mr. Gilley testified that when he conducted interviews for the position of Maintenance Supervisor there was nothing in writing regarding how to evaluate the job candidates on many of the criteria used in making the hiring decision (Gilley depo, p. 199).

71. The sample of job postings and subsequent hiring decisions (L-13612-13701) provided to me by plaintiffs’ counsel contained evidence of specific interview questions that were used in three different promotion decisions. The questions were open-ended, some were vague, and no scoring system, to rank-order the applicants, was evident.

72. **Third**, to be fair and unbiased, employees’ abilities and work performance must be accurately assessed. This requires the careful design of a work performance appraisal system, with particular attention to ensuring the criteria are objective and job-relevant, the instrument is reliable and valid, and raters are trained in its proper use.

73. At Lufkin, the performance of employees in exempt salaried positions is evaluated using the “Lufkin Industries, Inc. Exempt Performance Appraisal and Review” (L-000959), whereas the “Personnel Performance Rating” (L-000957) is used to evaluate nonexempt salaried employees (Havard depo, p. 186-189). Performance evaluations of salaried employees are used for a variety of purposes including performance review, promotions, developmental feedback,

compensation, layoffs and demotions (Havard depo, p. 194-195). Deposition testimony and my own review of these two rating instruments reveal a number of deficiencies.

74. To begin with, there has been no specific, formal training offered in the use of the measurement instruments. Nor are explicit guidelines provided to managers to use in evaluating employees (Havard depo, 189-195; Gilley depo, 230-232). This is a serious omission, as raters are not trained to ensure that they are evaluating employees against a common set of standards when making what are often very subjective judgments.

75. Furthermore, no evidence was provided to indicate that the rating instruments are based on the conduct of a formal job analysis, to help ensure that all the criteria are job-related. Nor is there any evidence of the reliability or validity of the rating instruments. That is, to what extent are raters consistent in their assessments (is the tool reliable?), and are performance evaluations related to actual job performance (is the tool valid)?

76. These deficiencies are of particular concern insofar as many of the items on the rating instruments are subjective in nature. The rating instrument for nonexempt salaried employees, for example, requires subjective judgments of an individual's leadership, creativity, and aptitude. Moreover, there are no guidelines on the rating instrument with respect to calculating an overall rating.

77. The rating instrument for exempt salaried employees also requires subjective judgments. It clearly states at the top of the form that the overall performance rating assigned to an employee is **not** the numerical average of each performance factor rating contained in the instrument. Rather, the overall performance rating "represents a composite of your thoughts and impressions of this person's activity in the job." The form also states that managers are to assign their own degree of importance to each of the performance factors when calculating an overall performance score.

78. In all, each of these performance appraisal instruments contain deficiencies that invite the intrusion of excessive subjectivity and subsequent reliance on racial stereotypes.

D. Allocation of Opportunities For Training And Career Development Are Subjective, Ambiguous, And Highly Discretionary

79. At Lufkin, on-the-job training is key to developing many of the skills required to move into more advanced and higher paying jobs. This is especially true for entry-level, bargaining unit employees, who must bid on higher-level positions. For example, training in how to operate different types of machinery, as well as opportunities to develop skills in leadership and supervision, are important ways of preparing employees to qualify for more advanced positions. Most training at Lufkin is of an informal, on-the-job nature. Individuals may solicit the help of fellow employees, often outside of normal working hours, or ask for the assistance of their supervisor (Gilley depo, p. 92; p. 105). In addition, managers may select particular employees for additional training and work experience (Barbay depo, p. 44; 147-150; Glick depo, p. 77-80; Gilley depo, p. 90-122). Deposition testimony reveals that Lufkin managers may exercise enormous discretion in choosing which employees will receive job

assignments and training opportunities to prepare them for promotion to higher skill-level jobs. Lufkin has no policy to guide managers in identifying which employees will be selected for additional on-the-job training and work experience. There are no formal, written criteria or valid measurement instruments or procedures for selection decisions. Rather, training opportunities are assigned based on each manager's subjective judgment of a particular employee's "potential" or "ability" (Perez depo, p. 151; Glick depo, p. 77-87; 197-198; Gilley depo, p. 90-122).

80. Mr. Glick, Vice President and General Manager of the Power Transmission Division, testified that he is unaware of any guidelines, policies, or criteria used to select employees for additional job training and work experience, other than "business need" and the judgment of an individual's "aptitude." Mr. Glick stated that he is unaware of any criteria for rating an employee's aptitude (Glick depo, p. 78-87) or of formal reporting mechanisms to monitor Lufkin managers' training assignments (Glick depo, p. 198).

81. Mr. Gilley, Manager of the Trailer Division, testified that he is unaware of any objective criteria used in selecting employees for additional job training and work experience and that certain training opportunities are assigned at the sole discretion of the supervisor (Gilley depo, p. 90-122; 106-113).

82. Deposition testimony indicated that there is no central database, in which records of employees who have received training are maintained (Barbay depo, p. 186; Havard depo, p. 182; 184-185). Nor are training opportunities always posted at Lufkin (Gilley depo, p. 110). Consequently, it is not possible to effectively monitor the manner in which training opportunities are accorded to Lufkin employees.

83. Finally, the informal nature of training at Lufkin, in which the onus is placed on African-Americans to solicit help from fellow employees and managers, most of whom are likely to be White, places African-Americans at a distinct disadvantage. As noted earlier, African-Americans are often isolated from informal social networks in organizations, especially when they are in the minority, and enjoy less support from White supervisors and co-workers. Accordingly, as compared to their White counterparts, African-Americans are more frequently denied key, job-related experiences needed for advancement (Ilgen & Yountz, 1986; Powell & Butterfield, 1997; Thomas & Alderfer, 1989), are assigned jobs of less complexity and challenge (Braddock & McPartland, 1987; Kaufman, 1986; Lefkowitz, 1994; Mueller et al., 1989), and are likely to be accorded less help and guidance (Brewer & Brown, 1998; Dovidio, 1984).

84. In all, the decisions regarding which Lufkin employees receive training opportunities are such that supervisors: (a) are free to rely on their own discretion; (b) have no written criteria or guidelines; and (c) receive no training or oversight in their decisions. These are the conditions that promote reliance on racial stereotypes, which serves to disadvantage African-Americans.

V. LUFKIN'S ORGANIZATIONAL CULTURE CONTRIBUTES TO AND SUSTAINS RACIAL DISPARITIES WITHIN THEIR WORKFORCE

85. Whether an organization's culture is perceived to be actively committed to the prevention of stereotyping and discrimination in the workplace influences the treatment accorded African-Americans in the workplace. An organization's culture, that is, the set of shared values and practices embodied by a group, has long been recognized by scholars as a powerful source of influence on the behavior of employees (Schein, 1992; Smircich & Morgan, 1982; Tichy & Ulrich, 1984). If senior level managers assume a laissez-faire approach to ensuring equal employment opportunities, employees will fall back on their conscious (and unconscious) stereotypic beliefs when issuing personnel evaluations and decisions, causing African-Americans be treated less favorably than their White counterparts. The point here is that relying on stereotypic beliefs is appealing – it enables decision-makers to conserve their mental resources (Macrae, Milne, & Bodenhausen, 1994) and engage only in the amount of thought required to produce an apparently adequate assessment. Relying on stereotypes in the decision-making process reflects the very human tendency to “satisfice” rather than optimize the quality of one's evaluations and decisions (Simon, 1957). Thus, to prevent discrimination against protected class members, organizations understand that they must induce in their members a sufficient degree of motivation to avoid relying on stereotypes, and this motivation must remain in force. Should the motivation to avoid stereotyping be relaxed, discrimination will return in full-force (Bodenhausen & Macrae, 1996; Macrae, Bodenhausen, Milne, & Jetten, 1994). As discussed next, there are key elements of corporate culture that can serve to either foster versus discourage racial stereotyping.

86. Corporate leaders are the keepers of the culture; that is, they are pivotal in developing and maintaining the values and norms of the organization (Schein, 1992; Smircich & Morgan, 1982; Tichy & Ulrich, 1984). This is precisely why the visible support and continued oversight of senior management, beginning with the CEO and his/her senior executives, is associated with the success of programs, policies, and practices aimed at improving the treatment and status of African-Americans, and other historically underrepresented groups, in organizational settings (Bielby, 1987; Dovidio 1993; Hitt & Keats, 1984; Konrad & Linnehan, 1995). The reasoning here is straight-forward—when senior management is perceived to actively support and carefully monitor the treatment and status of African-Americans, organizational members will feel a greater pressure to behave in ways that do not violate the mandate that employees be treated in a non-discriminatory manner (Blanchard et al., 1991; Blanchard et al., 1994; DiMaggio & Powell, 1983; Edelman, 1992).

87. A company concerned with fostering an organizational culture that discourages the use of racial stereotypes in personnel decision-making must, at minimum, do the following. First, there must be recognition that racial stereotypes exist and can influence perception and judgment in the workplace. This is a critical first step, especially when the majority of key decision-makers in a company are White males who, as a group, have not been the target of wide-spread and pervasive stereotyping. Second, there must be a formal monitoring procedure in place to assess the treatment and status of African-Americans throughout the company. Third, there must be formal policies, procedures and practices in place to discourage employees from relying on racial stereotypes in their evaluations and treatment of African-Americans in the

organization. In all, what these three features share is a commitment to ensuring equal employment opportunity that is comprised of more than words. Rather, the emphasis is on action. My assessment leads me to conclude that Lufkin's corporate culture is deficient in this regard. Throughout the company there is evidence of a lack of commitment to monitoring the treatment and status of African-American employees, and that little is done to implement personnel policies, procedures and practices designed specifically to discourage the use of racial stereotypes in personnel decision-making.

A. Lufkin Lacks Commitment To Systematically Measuring Whether Employment Opportunities Are Equally Available To All Employees Regardless Of Race And To Monitoring The Treatment And Status Of African-American Employees

88. Lufkin documents contain numerous references to the company's commitment to equal employment opportunity (EEO) (see the most recent Lufkin Equal Opportunity Policy and Affirmative Action Plan, L-14568; the Lufkin Orientation Checklist, L-211636; the Human Resources Procedures and Orientation Policy and Outline, L-11378; and memos from Mr. Doug Smith, Lufkin's CEO, to Lufkin employees, L-211651; L-11089). In these memos, for example, Mr. Smith states Lufkin's commitment to ensuring that all employment decisions conform with the principles of EEO. This is a commitment that, according to the deposition testimony of Mr. Glick, a Vice-President at Lufkin, extends to all employees (Glick depo, p. 57). Nonetheless, based on the deposition testimony of numerous Lufkin managers, including the Department of Human Resources personnel, these laudatory words are not translated into concrete personnel policies, procedures or practices.

89. The deposition testimony of Lufkin managers reveals insufficient attention to monitoring the treatment and status of African-Americans in its workforce, even among senior-level managers and Human Resource personnel. For example, according to Mr. Glick, Vice-President and General Manager of Power Transmission, although he reports directly to Lufkin CEO, Mr. Smith, he has never spoken with him regarding EEO opportunities for his staff. Nor, has Mr. Smith ever raised the subject. In fact, Mr. Glick reported that he has never spoken with anyone at Lufkin regarding equal employment opportunities for African-Americans (Glick depo, p. 48-49). Similarly, Mr. Reynolds, General Manager of the Foundry, testified that he too, despite meeting with Lufkin CEO, Mr. Smith, on a monthly basis, has never spoken with him regarding EEO at Lufkin. Nor, has Mr. Reynolds spoken to his superior, Mr. Larry Hoes, Vice-President of the Oil Field Division, about EEO at Lufkin (Reynolds depo, p. 34). Moreover, according to Human Resources Representative, Mr. Barbay, there are regularly scheduled weekly Human Resource department meetings at Lufkin, which are attended by the five employees in Human Resources, all of whom are White. The retention, recruitment, and training of Lufkin African-American employees has never been discussed at these meetings; although, Mr. Barbay did testify that he would talk one on one with his boss, Mr. John Havard, Manager of Human Resources, about these issues. However, I have seen no evidence that Mr. Barbay took any concrete action to address these concerns (Barbay depo, p. 38-44).

90. Lufkin managers are provided with very little information regarding the treatment and status of African-Americans within their own departments and throughout the company.

Mr. Havard testified that Lufkin does not provide information to its managers regarding the racial composition of their respective departments. In fact, information regarding the representation of African-American employees in positions throughout the company is communicated to only three Lufkin employees, all of whom are employed in Human Resources (Havard depo, p. 90-91).

91. For example, Mr. Long, Manager of Oilfield Manufacturing, testified that he: (a) does not generally receive copies of Lufkin's Affirmative Action Plan; he had seen the current Plan for January 1, 2003-December 31, 2003, only the day before his deposition, (b) receives no statistics on the workforce in the Oilfield division as it relates to percentages of African-American and White employees, and their corresponding pay; and, (c) does not convey to his managers the racial composition and pay rate of employees that they supervise.

92. Similarly, Mr. Reynolds testified to being unaware of whether Lufkin has ever performed a review of its personnel practices, policies, or procedures to ensure adherence to a policy of equal employment opportunity (Reynolds depo, p. 205). This observation, as it pertains to African-American employees, is consistent with the testimony of other managers at Lufkin.

93. Mr. Perez, for example, reported that he does not conduct a formal analysis of promotion decisions to assess the treatment of African-Americans (Perez depo, p. 150). And, despite serving as the Vice-President for Human Resources, he is unaware of the percentage of salaried positions held by African-Americans at Lufkin (Perez depo, p. 136).

94. In addition, Mr. Havard testified that he does examine the performance ratings accorded Lufkin employees. Specifically, he examines the overall distribution of performance scores across the workforce. Companies often use this type of analysis to detect psychometric shortcomings in performance appraisal instruments. However, potential differences in the performance evaluations accorded African-Americans versus Whites are not examined (Havard depo, p. 203-204).

95. Another way to assess the status and treatment of African-Americans and other protected class members is to ask. To do this, companies often rely on formal attitude surveys of their workforce, in an effort to assess employees' perceptions, beliefs, and experiences. This is not done at Lufkin (Reynolds depo, p. 214; Glick depo, p. 127; Long depo, 92-93). Mr. Reynolds, for example, testified to being unaware of Lufkin ever conducting a survey to measure whether employees perceive there to be equal employment opportunities in the company (Reynolds depo, p. 214).

96. Similarly, Mr. Long indicated in his deposition testimony that the only time he could recall surveying African-American employees at Lufkin was in early 1997. However, neither before nor after 1997 has Mr. Long undertaken or directed anyone else to conduct a survey of African-Americans in the Oilfield Division regarding their interest in training. More generally, Mr. Long testified that he is unaware of any surveys conducted either in the Oilfield Division or at Lufkin to gather feedback regarding perceptions of equal employment opportunity at Lufkin (Long depo, p. 70-76).

97. Lufkin does little to alert employees to the nature of discrimination in organizational settings, and provides inadequate training to its managers on how to avoid the influence of racial stereotypes on personnel decision-making (Barbay depo, p. 172; Havard depo, p. 113-123; Glick depo, p. 55-58; 86-87). For example, Mr. Havard has as his responsibility educating managers on EEO-related matters and ensuring that personnel decisions are consistent with EEO policy. However, Mr. Havard testified that he has not received any training on the nature of racial stereotyping or on how to avoid discrimination in personnel practices. Further testimony by Mr. Havard revealed the following: (a) Lufkin managers are not required to receive training in EEO, as it relates to work settings; (b) there is no written documentation to certify which managers have (and have not) received EEO training; (c) Lufkin does not have a budget for EEO training; and, (d) Lufkin does not require all managers to receive EEO training, either before or after they assume a supervisory role in the company.

98. Mr. Glick testified that he is unaware of any specific programs to promote equal opportunity for minority employees. Nor is he aware of any efforts to increase equal opportunity with regard to promotions or hiring. Mr. Glick could point to no specific steps, policies or procedures that have been implemented or altered in Power Transmission to insure equal employment opportunities for all employees (Glick depo, p. 55-58). Finally, he noted that Human Resources at Lufkin offers no guidelines to Power Transmission in how to increase or maintain EEO in the workplace.

99. In all, insufficient attention to racial diversity and the nature and effects of racial stereotypes in the workplace creates an environment of denial, whereby the unquestioned assumption guiding Lufkin personnel decision-making is that "we hire the most qualified person for the job." Yet, as noted earlier (Bargh, 1999; Bodenhausen & MacCrae, 1996; Wilson & Brekke, 1994; Wittenbrink, Judd, & Park, 1997), people can be unaware of the nature of their evaluations and decisions, and the role played by racial stereotypes. This is especially likely in environments where there is a history of racial segregation, and as a result, insufficient awareness of the extent to which what appear to be normal, everyday practices are systematically disadvantaging African-Americans. It is also more likely in organizational cultures where there is little commitment to monitoring the status and treatment of African-American employees.

B. Lufkin Does Little To Implement Personnel Policies, Procedures, And Practices Designed To Discourage The Use Of Racial Stereotypes In Personnel Decision-Making

100. Organizations can foster an environment in which decision-makers feel motivated to think in less stereotypic and more complex ways (Acker & Manis, 1996; Eberhardt & Fiske, 1996; Konrad & Linnehan, 1995; Langer, 1989; Langer, Bashner, & Chanowitz, 1985; Pettigrew & Martin, 1987). This can be done by ensuring that decision-makers are held accountable for their decisions to an external agent known to have non-biased, egalitarian values (Pendry & Macrae, 1996; Tetlock, 1995, 1992). One approach used by organizations is to require decision-makers to offer a written detailed explanation and justification regarding their evaluations and selection decisions, which is accompanied by an expectation of feedback as to the quality of the decision-making process – two factors known to reduce discrimination (Crosby, Bromley, & Saxe, 1980 Powell & Butterfield, 1997). Yet another strategy is to ensure that African-

Americans as a group play a critical role in personnel decision-making. The occasional token African-American decision-maker is not enough, however.

101. Another approach employed by organizations is to deliberately include a manager's effectiveness in creating equal opportunity for African-Americans in their annual performance appraisal. The success of this approach turns on the well-supported notion derived from almost a century of research on learning theory, which demonstrates that behavior rewarded is behavior observed. The fundamental principle at work here is that desired organizational behavior must be rewarded and undesired behavior sanctioned (Kerr, 1975).

102. In his deposition testimony Mr. Barbay testified that for selection of bargaining unit entry-level hires, no one reviews his decisions (Barbay depo, p. 85-86). In addition, he noted that there is little documentation required for justifying and explaining the basis of hiring decisions for salaried positions (Barbay depo, p. 129-135).

103. Mr. Havard testified that since 1996 he has examined hourly to salaried, and salary to salary, promotions (Havard depo, p. 166). There are, however, no written requirements or formal guidelines in place to require decision-makers to explain and justify their decisions.

104. My review of Lufkin documents (L-13612-13699) revealed that sometimes there was a reason offered for the selection decision, whereas sometimes there was not. Few of the explanations, however, were detailed; most were rather cursory.

105. In all, to the extent that personnel actions are subject to formal overview and justification at all, Lufkin, managers' explanations are informal, cursory and not subject to written guidelines (Barby depo, p. 85-86; 129-135; Perez depo, exhibit 3). As such, there is little reason to believe that Lufkin managers experience a sufficient degree of motivation and pressure to explain and justify their decision so as to override the use of racial stereotypes.

106. Lufkin managers are generally not evaluated with respect to their effectiveness in fostering equal employment opportunity (Reynolds depo, p. 125; Glick depo, p. 217-218; Havard, 196-199; Gilley depo, p. 232-233). As such, managers are not rewarded for fostering the broadly stated goals of Lufkin to ensure equal employment opportunity. Nor, are they sanctioned for failing to meet such goals.

107. In 1994-1995, the Office of Federal Contract Compliance Program (OFCCP) conducted an audit of Lufkin Industries, in which it was found that minorities were concentrated in the Foundry department and placed in jobs with less desirable working conditions than non-minorities with similar experiences and qualifications. Subsequent to the finding, Lufkin entered into a conciliation agreement which outlined specific corrective actions that Lufkin would take to mitigate the less favorable treatment accorded African-Americans. Among these actions were to improve the recruitment of minorities and develop an action plan designed to eliminate the causes of disparate treatment, and the resulting impact on minorities. The nature of Lufkin's response suggests a culture that is not committed to improving the treatment of African-American employees.

108. According to the testimony of Mr. John Havard, Manager of Human Resources, he could not recall the findings of the OFCCP audit or the specific actions to be taken by Lufkin as stated in the conciliation agreement. Moreover, he testified that he did not recall: (a) seeing a written plan of action; (b) discussing the plan with any Lufkin employees; (c) making any changes in Lufkin hiring or job assignment practices for entry level employees; (d) who was responsible for developing the corrective plan of action; or, (e) discussing the OFCCP audit results with the Texas Workforce Commission (Havard depo, p. 93-131).

109. Mr Reynolds, who was the General Manager of the Foundry Division at the time of the 1994-1995 OFCCP audit and resulting conciliation agreement, testified that he was unaware of: (a) the audit; (b) its finding that minorities were placed in jobs with less desirable working conditions than non-minorities with similar experiences and qualifications; (c) the conciliation agreements entered into by Lufkin (Reynolds depo, p. 204-204); or, (d) any changes in the processes, criteria, or procedures for making promotion decisions, either for salary or hourly employees (Reynolds depo, p. 204-204; 151-152).

110. A follow-up audit of Lufkin Industries conducted by the OFCCP in 1995-1996 found that Lufkin discriminated against minority applicants for the Machinist Helper position due to their race (L-161033 - 052; L-161021-032). Mr. Havard testified that he could not recall having any discussions of the OFCCP audit and findings with the TWC, or with Mr. Barbay, the Lufkin Human Resources Representative, who had responsibility for hiring and assignments of entry-level, hourly employees at the time. Moreover, Mr. Havard could not recall any follow-up assessment of Lufkin hiring practices for Machinist Helper or any changes made by Lufkin in their Machinist Helper hiring procedures (Havard depo, p. 147-149)

111. Mr. Glick has been the Lufkin Vice-President and General Manager of Power Transmission Division since September, 1994. Nonetheless, he testified to being unaware of the OFCCP audit and its finding of racial disparity in hiring of the Machinist Helper position. Moreover, according to Mr. Glick, he was unaware of: (a) the conciliation agreement entered into by Lufkin; (b) any changes to the hiring practices for Machinist Helper in Power Transmission; (c) any steps or practices developed to increase the number of minorities in Machinist Helper position; (d) any changes in the manner in which employees in Power Transmission are either hired from outside or promoted from within to fill vacant or available positions; or, (e) any corrective actions taken by Lufkin or anybody at Power Transmission to correct any problem areas with regard to equal employment opportunities (Glick depo, p. 177-191).

112. Similarly, Mr. Long testified that only recently had he become aware of the 1995 OFCCP audit, its finding that Lufkin had discriminated against minorities in hiring of Machinist Helpers, and that Lufkin had signed a conciliatory agreement (Long depo, 86-88).

113. In all, deposition testimony depicts an organizational culture that is not committed to monitoring the treatment and status of African Americans in the company. Nor is it a culture that seems concerned with the potential impact of stereotypes on personnel decisions and implementing changes to its personnel policies, procedures, and practices so as to discourage the use of racial stereotypes in personnel decision-making.

114. Given the nature of the culture, it is not surprising to find few formal grievances filed by Lufkin African-American employees. Indeed, one need only to be reminded of Lufkin's lack of response to the two OFCCP audits and formal charges of race discrimination that ensued. No concrete changes in Lufkin personnel practices were made, even though the conciliation agreement entered into by Lufkin required that it do so. In fact, numerous managers were unaware of the audit results and the action plan that resulted. An organization which does not exhibit a commitment to addressing racial disparities through concrete, visible steps – even in the face of OFCCP findings of discrimination against minorities and subsequent conciliatory agreements, is not an organization in which individual African-Americans are likely to feel able to successfully challenge personnel decisions on the grounds of unfair treatment. One need only to consult a basic principle of psychology that enjoys widespread scientific support: To act, we must see a clear relationship between our behavior and the desired goal (Bandura, 1986; 1997). In the absence of a relationship, few among us would strive for what, in the end, seems futile. This is the situation faced by African-American employees at Lufkin. It is an example of what is referred to in the scientific literature as “learned helplessness” (Seligman, 1975).

115. I have carefully read Lufkin's most recent Equal Employment Policy and Affirmative Action Program document, dated January 1, 2003 to December 31, 2003 (L-14563-14587). The Plan refers to various responsibilities, the dissemination of the Plan to Lufkin employees, and initiating statistical analyses to identify problem areas. However, the Plan itself is not adequate to ensure equal employment opportunities for African-American employees at Lufkin. Among other things, the Plan devotes little attention to identification of the Lufkin personnel procedures, policies and practices that encourage the use of racial stereotypes in personnel decision-making and what concrete organization-wide changes will be required. Moreover, the Plan is not disseminated to the managers who are responsible for its implementation.

116. To be clear, culture change is never an easy task; it requires a deep institutional transformation that seldom can be accomplished without the intervention of outside experts. Given the nature of Lufkin's culture as described in this report, and the absence of formal education and training in human resource management among Lufkin human resource personnel, I am not confident that Lufkin alone can engineer systematic change in their personnel practices so as to begin to eliminate the racial disparities that have existed in Lufkin for quite some time.

VI. CONCLUSION

117. It is my conclusion that the personnel procedures, policies and practices of Lufkin are responsible for the existing racial disparities that currently exist and have existed at Lufkin during the time period covered by this lawsuit. Initial job assignments for bargaining unit employees, the selection for non-entry level bargaining unit positions and for salaried positions are based on criteria and measurement practices that are subjective, ambiguous and highly discretionary. As such, Lufkin does little to prevent racial stereotypes from negatively influencing and impacting the personnel decisions accorded African-Americans. African-American employees at Lufkin are further disadvantaged by the subjective and discretionary nature in which opportunities for training and career development are allocated. Given the emphasis on training at Lufkin for job advancement, much of which is in the form of informal,

on-the-job training and career development opportunities, African-Americans have limited opportunity for job advancement. Moreover, Lufkin lacks commitment to systematically measuring or monitoring the treatment and status of African-American employees, and little is done to implement personnel policies, procedures or practices to actively discourage the use of racial stereotypes in personnel decision-making.

Executed on July 16, 2003 in Bozeman, Montana


Richard F. Martell

7-16-03
Date

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- Rosenbaum, J. E. (1989). Organization career systems and employee misperceptions. In M. Arthur, D. Hall and B. Lawrence (Eds.), Handbook of Career Theory. Cambridge: Cambridge University Press.
- Rothbart, M., & John, O.P. (1985). Social categorization and behavioral episodes: A cognitive analysis of the effects of intergroup contact. Journal of Social Issues, 41, 81-104.
- Sacket, P.R., DuBois, C.L.Z., & Noe, A.W. (1991). Tokenism in performance evaluations: The effects of work group representation on male-female and Black-White differences in performance evaluations. Journal of Applied Psychology, 76, 263-267.
- Sackett, P. R., & DuBois, C.L.Z. (1991). Rater-ratee race effects on performance evaluation: Challenging meta-analytic conclusions. Journal of Applied psychology, 76, 873-877.
- Schelling, T.C. (1971). Dynamics models of segregation. Journal of Mathematical Sociology, 1, 143-186.
- Schein, E.H. (1992). Organizational culture and leadership, Second Edition. Jossey-Bass.
- Seligman, M.E.P. (1975). Helplessness: On depression, development, and death. San Francisco: Freeman.
- Seta, J., & Seta, C.E. (1993). Stereotypes and the generation of compensatory and noncompensatory expectancies of group members. Personality and Social Psychology Bulletin, 19, 722-731.
- Sheridan, J. E., Slocum, J. W., Buda, R., & Thompson, R. C. (1990). Effects of corporate sponsorship and departmental power on career tournaments. Academy of Management Journal, 33, 578-602.
- Sigelman, L. & Welch, S. (1991). Black American's views of racial inequality: The dream deferred. Cambridge, UK: Cambridge University Press.
- Simon, H. (1957). Models of man. New York: Wiley.
- Smircich, L., & Morgan, G. (1982). Leadership: The management of meaning. Journal of Applied Behavioral Science, 18, 257-273.

Yzerbyt, V.Y., Schadron, G., Leyens, J., & Rocher, S. (1994). Social judeability: The impact of meta-informational cues on the use of stereotypes. Journal of Personality & Social Psychology, 66, 48-55.

Zarate, M.A., & Smith, E.R. (1990). Person categorization and stereotyping. Social Cognition, 8, 161-185.

Zarate, M.A., Bonilla, S., & Luevano, M. (1995). Ethic influences on exemplar retrieval and stereotyping. Social Cognition, 13, 145-162.

Curriculum Vitae

RICHARD F. MARTELL

July 2003

PERSONAL

Work Address

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8002 Balsam Drive
Bozeman, MT 59718

EDUCATION

PhD 1988 Industrial-Organizational Psychology; New York University

MA 1986 General Psychology; New York University

BA 1978 Psychology; Sonoma State University

ACADEMIC EMPLOYMENT

1997 — present Associate Professor of Psychology, Montana State University

1996 — 1997 Associate Professor of Psychology (tenured), Columbia University,
Teachers College

1992 — 1996 Assistant Professor of Psychology, Columbia University, Teachers College
Held Seat in the Faculty of the Graduate School of Arts and Sciences,
Columbia College

Approved Ph.D sponsor in the Graduate School of Arts and Sciences,
Columbia College

1988 — 1992 Assistant Professor of Psychology, Rice University

PROFESSIONAL ACTIVITIES

Consulting Editor: Journal of Applied Psychology (1999-current).

Editorial Board: Perspectives: Introduction to management (1999-2000)

Ad-Hoc Reviewer: Academy of Management Review, Group and Organizational Management,
Academy of Management Journal, Journal of Organizational Behavior, Sex Roles, Journal of
Applied Social Psychology, Organizational Behavior and Human Decision Making

Program Committee Membership: Society of Industrial-Organizational Psychology Convention (1993; 1995-1996; 1998-2001). Program Committee, American Psychological Association Convention, Division 14, (1992).

Professional Memberships: Academy of Management, American Psychological Society, Society for Industrial and Organizational Psychology.

CONSULTING

- 2001 Consulting Expert: Employed by Wm. Hanson law firm and Garrity, Avignone, Banick & Whetstone (Plaintiff's Law Firm: Lead Attorney—Bill Hanson) in a gender discrimination case filed against the US Department of the Interior.
- 1998 Consulting Expert: Employed by Lief, Cabraser, Heimann, & Bernstein, San Francisco (Plaintiff's Law Firm: Lead Attorney—James Finberg) in a class action racial discrimination case against United Parcel Service of America, Inc.
- 1993-1995 Faculty Participant: Advanced Program in Organizational Development and Human Resource Management (ODHRM). Co-sponsored with University of Michigan School of Business.
- 1987-1988 Consultant: Employed by Citicorp, N.A. to assess and train high potential managers.

RESEARCH INTERESTS

Workplace Stereotyping and Discrimination: Identifying organizational factors that contribute to biased personnel assessments of members of stigmatized groups (e.g., women, African-Americans); understanding how gender bias leads to the exclusion of women at senior levels of management; introducing methodological improvements in the measurement of stereotypes and detection of bias in work performance evaluations.

Work Performance Assessment: pinpointing the impact of cognitive biases in performance appraisal judgments; exploring the costs and benefits of using groups (versus individuals) to assess performance; developing rater training programs.

Alternative Research Methods: The study of human resource management using computational modeling, signal detection analyses and experimental methods derived from cognitive psychology

TEACHING

Psychology of Prejudice/Diversity at Work (UG; GRAD)

Industrial-Organizational Psychology (UG; GRAD)
Organizational Behavior (GRAD)
Psychological Aspects of Organizations (GRAD)
Social Cognition in Organizations (GRAD)
Proseminar in Social Psychology (GRAD)
Practicum in Conflict Resolution (GRAD)
Research Methods (UG)
Social Psychology (UG)

REFEREED PUBLICATIONS

- Martell, R.F., & Leavitt, K (2002). Reducing the performance-cue bias in work behavior ratings: Can groups help? Journal of Applied Psychology, 87, 1032-1041.
- Martell, R.F., & DeSmet, A. (2001). A diagnostic-ratio approach to measuring beliefs about the leadership abilities of male and female managers. Journal of Applied Psychology, 86, 1223-1231
- Martell, R.F., Parker, C., Emrich, C.E., & Swerdlin, M (1998). Sex stereotyping and the executive suite: Much ado about something. Journal of Social Behavior and Personality, 13, 127-138.
- Martell, R.F. (1996). What mediates gender bias in work behavior ratings? Sex Roles, 35, 153-169.
- Martell, R.F., Lane, D.M., & Emrich, C.E. (1996). Male-Female differences: A computer simulation. American Psychologist, 51, 157-158.
- Martell, R.F. (1996). Sex discrimination at work. In K.M. Borman and P. Dubeck (Eds.), Handbook of women and work. New York: Garland Publishing.
- Martell, R.F., Guzzo, R.A., & Willis, C.E. (1995). A methodological and substantive note on the performance-cue effect in ratings of work-group behavior. Journal of Applied Psychology, 80, 191-195.
- Heilman, M.E., Block, C.J., & Martell, R.F. (1995). Sex stereotypes: Do they influence perceptions of managers? Journal of Social Behavior and Personality, 10, 237-252.
- Martell, R.F. & Borg, M. (1993). A comparison of the behavioral rating accuracy of groups and individuals. Journal of Applied Psychology, 78, 43-50.
- Martell, R.F., & Willis, C.E. (1993). Effects of observers' performance expectations on behavior ratings of work groups: Memory or response bias? Organizational Behavior and Human Decision Processes, 56, 91-109.

Martell, R.F. (1991). Sex bias at work: The effects of attentional and memory demands on performance ratings of men and women. Journal of Applied Social Psychology, 21, 1939-1960.

Martell, R.F., & Guzzo, R.A. (1991). The dynamics of implicit theories of group performance: When and how do they operate? Organizational Behavior and Human Decision Processes, 50, 51-74.

Heilman, M.E., Block, C.J., Martell, R.F., & Simon, M.C. (1989). Has anything changed? Current characterizations of men, women, and managers. Journal of Applied Psychology, 74, 935-942.

Heilman, M.E., Martell, R.F., & Simon, M.S. (1988). The vagaries of sex bias: Conditions regulating the undervaluation, equivaluation, and overvaluation of female job applicants. Organizational Behavior and Human Decisions Processes, 41, 98-110.

Heilman, M.E., & Martell, R.F. (1986). Exposure to successful women: Antidote to sex discrimination in applicant screening decisions? Organizational Behavior and Human Decision Processes, 37, 376-390.

MANUSCRIPTS UNDER REVIEW

Martell, R. F., & Evans, D. Reducing the effects of rater expectations on work behavior ratings: A "source-monitoring" approach. Manuscript revised for publication in the Journal of Applied Psychology.

MANUSCRIPTS IN PREPARATION

Martell, R.F., Emrich, C., & Robison-Cox, J. From bias to exclusion: Linking gender discrimination and organizational mobility to explain the glass ceiling.

Martell, R.F. What moderates gender bias in personnel assessments? A model and research agenda.

RESEARCH IN PROGRESS

Martell, R. F. Assessing the validity of field correlation research.

Martell, R.F., & Robison-Cox, J., & Emrich, C. Gender bias and organizational mobility: A computer simulation.

Robison-Cox, J., Martell, R.F., & Emrich, C. Estimating the "cost" of gender bias: A utility Analysis.

Martell, R.F., & Bobocel, R. (2000). Leader of a roundtable discussion on: Ways of conducting research on employment discrimination. Psychological and Organizational Perspectives on Discrimination in the Workplace: Research, Theory, and Practice. A Scholarly Conference (by invitation only) sponsored by Rice University. Houston, TX.

Heilman, M.E., Eagly, A., & Martell, R.F. (2000). Co-leader of a roundtable discussion on: Gender discrimination in the workplace. Psychological and Organizational Perspectives on Discrimination in the Workplace: Research, Theory, and Practice. A Scholarly Conference (by invitation only) sponsored by Rice University. Houston, TX.

Martell, R.F. (1999). Sensitive dependence in organizations: Invited Paper: Midwestern Psychological Association Annual Meeting, Chicago, IL.

Martell, R.F. (1997). Social cognition: Basic processes and applications. A series of lectures presented at Tbilisi State University, Department of Psychology, Tbilisi, Republic of Georgia.

Martell, R.F. (1997, November). Importance of early stimulation for infant psycho-social development. Tbilisi Children's Home, Tbilisi, Republic of Georgia.

Martell, R.F. (1995). Sex bias in work assessments and organizational mobility. Division II: Dean's Breakfast Talk. Columbia University.

Martell, R.F. (1993). Stereotyping and discrimination at work. The Council on Scholarship on Women and Gender. Columbia University.

Martell, R.F. (1991). An industrial-organizational psychologist's approach to investigating gender bias at work. Department of Psychology, Texas A & M University.

Martell, R.F. (1988). Gender bias at work. Department of Psychology, Rice University.

Martell, R.F. (1988). A cognitive approach to understanding gender discrimination in personnel assessments. Department of Psychology, Baruch College, City University of New York.

GRANT ACTIVITY

National Science Foundation, Principal Investigator. Gender Bias and Organizational Mobility. 2003. Funded: \$86,819

National Science Foundation, Co-Principal Investigator. ADVANCE: Increasing the Participation and Advancement of Women in Academic Science and Engineering Careers. 2002. Not funded.

National Science Foundation, EPSCoR (MONTS) program, Principal Investigator: Effects of gender bias on organizational mobility: A computer simulation. 2000. Funded: \$22,588

Scholarship and Creativity Grant, MSU, Office for Research and Creative Activities. Principal Investigator: Sensitive dependence in the workplace: Can a little gender bias cause the "glass ceiling" in organizations? 2000. Funded: \$5000

EPSCoR funds to attend a National Science Foundation Social, Behavioral and Economic Sciences Conference on Funding Opportunities. 2000. Funded: \$850.

National Science Foundation, EPSCoR program. Principal Investigator: Exploring the effects of human resource management (HRM) practices on small firm financial performance – A university-business collaboration. Selected as 1 of 3 pre-proposals from Montana for final submission. 1999. Not funded.

Office for Research and Creative Activities, MSU. Principal Investigator: Effects of human resource management (HRM) practices on small firm financial performance. 1998. Funded: \$11,000

Office of International Education, MSU. Principal Investigator: Work attitudes, values and motivation of Georgian students and managers – Implications for a newly developing market economy. 1997. Funded: \$3000

National Science Foundation, EPSCoR program. Co-principal Investigator: Center for applied behavioral and social sciences: Developing university-industry partnerships to enhance human resource practices in the Northwest EPSCoR region. Selected as 1 of 4 pre-proposals from Montana for final submission. 1997. Not funded.

HONORS AND AWARDS

Teaching

Montana State University	2002 President's Excellence in Teaching Nomination
Columbia University	Teaching Commendation, 1994

Research

Montana State University	2002 Award to sponsor a Native American "Leadership Alliance" student from Stanford University to work in my research lab
New York University	Douglas H. Fryer Award for Outstanding Scholarship on Behavior in Organizations, 1989
New York University	Dean's Dissertation Fellowship, 1986-87.

APPENDIX 1

Documents Reviewed

**DOCUMENTS REVIEWED BY RICHARD MARTELL RE PREPARATION OF
EXPERT REPORT FOR McCLAIN v. LUFKIN**

MISC. DOCUMENTS

- 3/13/99 Memorandum Opinion re Class Certification
- 3/8/00 Protective Order
- Original Complaint
- Amended Complaint
- 6/16/03 Drogin Report
- Statistical database re Lufkin workforce – sent by R. Kakigi 6/03
- Exhibit 8 to deposition of J. Havard – 2/24/95 letter from OFCCP to Douglas Smith
- McCune Report
- EEOC charges and declarations of S. McClain and B. Thomas
- 9/4/01 TWC Statistical Analysis Memo from S. Grimes

DEPOSITION TRANSCRIPTS

- Barbay, Viron
- Felts, Susan
- Gilley, Rickey
- Glick, John
- Havard, John
- Long, Larry
- Perez, Paul
- Reynolds, Steve
-

LUFKIN PRODUCED DOCUMENTS

- 161021-161025
- 211622-211652
- 500002-500006,
- 500008
- 900004-900041
- L000954-L001046
- L001090-L001196
- L001310-L001992
- L008764-L008784
- L012169-L010173
- L11067-L11422
- L11605-L11852

- L13612-L13701
- L13963-L14509
- L15284-L15287
- L20811-L20821,
- L20824-L20985
- L21125-L21165
- L21818-L21825
- L22043-L22072
- L22077-L22101
- L22110-L22264
- L22495-L22503
- L22505-L22560
- L22579-L22598
- L22600-L22604
- L22612-L22615
- L22620
- L22623-L22625
- L22629-L22630
- L22634-L22650
- L22663-L22671
- L22679-L22703
- L22733-L22744

TEXAS WORKFORCE COMMISSION (TWC) DOCUMENTS

- TWC00013
- TWC00020-TWC00021
- TWC00178-TWC00180
- TWC00184
- TWC00298

APPENDIX 2

Prior Expert Testimony. I have not testified as an expert at trial or deposition within the previous four years.

APPENDIX 3

Publications Authored Within The Preceding Ten Years.

- Martell, R.F., & Leavitt, K (2002). Reducing the performance-cue bias in work behavior ratings: Can groups help? Journal of Applied Psychology, 87, 1032-1041.
- Martell, R.F., & DeSmet, A. (2001). A diagnostic-ratio approach to measuring beliefs about the leadership abilities of male and female managers. Journal of Applied Psychology, 86, 1223-1231
- Martell, R.F., Parker, C., Emrich, C.E., & Swerdlin, M (1998). Sex stereotyping and the executive suite: Much ado about something. Journal of Social Behavior and Personality, 13, 127-138.
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- Martell, R.F., Lane, D.M., & Emrich, C.E. (1996). Male-Female differences: A computer simulation. American Psychologist, 51, 157-158.
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- Martell, R.F., & Willis, C.E. (1993). Effects of observers' performance expectations on behavior ratings of work groups: Memory or response bias? Organizational Behavior and Human Decision Processes, 56, 91-109.

APPENDIX 4

Compensation. Class counsel have agreed to pay me \$200.00 per hour for research, consultation and report production. My hourly rate for deposition or trial testimony is \$300 per hour