

EXPERT REPORT OF WILLIAM T. BIELBY, PH.D.

George McReynolds et al. v. Merrill Lynch, Pierce, Fenner & Smith, Incorporated

ASSIGNMENT, QUALIFICATIONS, AND MATERIALS REVIEWED

1. I have been retained by Stowell & Friedman, Ltd., attorneys for the plaintiffs in a race discrimination lawsuit against Merrill Lynch & Co., Inc. ("Merrill" or "Merrill Lynch"). Plaintiffs in this litigation allege that Merrill systematically discriminated against current and former African American employees, and that as a result of that discrimination, they have been paid less than employees who are not African Americans and have been denied other career opportunities because of their race. Plaintiffs' counsel have requested that I analyze the record in this case to determine whether social science scholarship that is in my area of expertise can be used to understand whether and how Merrill's policies and practices create barriers to the career advancement of African Americans who are or have been employed at the company.

2. I have testified as an expert witness in both state and federal cases involving workplace discrimination. A list of cases in which I have been identified as an expert or have given expert testimony since 2003 is attached as Exhibit A. Over the past 10 years I have provided expert testimony in several cases involving allegations of discrimination in the financial services industry.¹ My rate of pay for consultation as an expert in this

¹Among the cases in the financial services are (with docket numbers in parentheses) *Marybeth Cremin, et al. v. Merrill Lynch, Pierce, Fenner & Smith Inc.* (96 C 3773); *Pamela K. Martens, et al. v. Smith Barney, Inc., et al.* (96 Civ. 3779 (AGS)); *EEOC & Schieffelin v. Morgan Stanley* (01 CV 8421 (RMB)) and *Stella Mitchell, et al. v. Metropolitan Life Insurance Co.*(01-CIV-2112 (WHP)).

matter is \$450 per hour. My rate for time spent testifying in deposition or at trial is \$800 per hour.

3. I received a Ph.D. in Sociology from the University of Wisconsin--Madison in 1976. I also have a B.S. in Electrical Engineering and a M.A. in Social Sciences from the University of Illinois. I am a Professor of Sociology at the University of Illinois at Chicago ("UIC"). I am also a Professor Emeritus at the University of California, Santa Barbara ("UCSB"), where I served on the faculty of the Department of Sociology from 1977 to 2004. At UCSB I was affiliated with the Department of Statistics and Applied Probability, and I chaired my department from 1992 to 1998. Prior to coming to UIC this academic year I was a Professor of Sociology at the University of Pennsylvania, where I was Undergraduate Chair of my department from 2005 to 2007.

4. I have taught courses on employment discrimination at both the undergraduate and graduate levels at UCSB, at the University of California Washington Center in the District of Columbia, at Northwestern University, and at UIC. Among my former positions are Visiting Professor of Management at UCLA, Fellow at the Center for Advanced Study in the Behavioral Sciences at Stanford, Visiting Distinguished John D. MacArthur Professor of Sociology at Northwestern University, and Visiting Scholar at the American Bar Foundation. At the University of Pennsylvania I taught graduate level courses on statistics and research methods in the social sciences, and I continue to teach those courses at UIC. In addition to courses on discrimination, research methods, and statistics, I have taught graduate and undergraduate courses on organizational behavior, labor markets, and social inequality.

5. My research specialties are in the areas of organizational behavior, gender and racial inequality, and social science research methods. Over the past twenty-five years, much of my research has focused on issues of workplace discrimination and on organizational policies and practices more generally. My research on these topics has been supported by four grants from the National Science Foundation, and it has been published in leading peer-reviewed social science research journals. My Curriculum Vitae is attached as Exhibit B.

6. I have received national awards from three different professional associations for my research. I have served on numerous panels, advisory committees, and professional workshops on topics relating to workplace discrimination, organizational personnel policies and practices, and research methodology. I have served as an advisor, consultant, or reviewer for the following organizations and agencies: the U.S. Bureau of the Census, the U.S. Department of Justice, the U.S. Department of Labor, the Equal Employment Opportunity Commission, the National Science Foundation, the National Institute of Mental Health, the National Academy of Sciences, the University of Michigan's Institute for Social Research, Stanford University, the Writers' Guild of America, West and the Bar Association of San Francisco. I have also served on the editorial boards of leading social science journals, and I regularly review manuscripts for scientific journals on topics relating to organizational behavior, employment discrimination, and research methodology. I have been elected to several offices in the American Sociological Association. I served for three years on the ASA Council, the organization's governing body in addition to serving as the Association's President in 2003.

7. My analysis is based in part on deposition testimony by the company's managers and executives who are responsible for designing, implementing, and overseeing the company's personnel policies and practices and by those who make personnel decisions affecting the careers of the company's employees. Some deponents were designated under Rule 30(b)(6) as testifying on behalf of the company on topics such as compensation, training, promotions, and FA teams. Others are "fact" witnesses testifying about their personal knowledge of company policies and practices, among other things. I was also provided with transcripts of deposition testimony of plaintiffs. A list of the depositions and other materials provided to me appears in Exhibit C. I also reviewed documents pertaining to the company's policies and practices. These include documents marked as exhibits in depositions as well as other documents produced by Merrill and third parties in this litigation.² The documents Merrill Lynch produced in response to Plaintiffs' Requests for Production of Documents, with the exception of documents from branch offices, were made available to me in computer-searchable format. I have reviewed the expert report produced by Dr. Janice Fanning Madden and Dr. Alexander Vekker, statistical consultants retained by plaintiffs,³ and I anticipate reviewing reports submitted by defendant's experts. At my request, Dr. Vekker produced supplemental tabulations on African American representation in the FA workforce. In addition to the materials described above, I was also given the Second Amended Complaint, plaintiffs' responses to defendant's first, second, and third set of

²I was supplied with documents from the Securities Industry Association produced to Plaintiffs in response to their Document Request Rider Subpoena Duces Tecum to Securities Industry Association.

³J. F. Madden and A. Vekker, "Evaluating Whether Employment Outcomes for Brokers and Broker Trainees at Merrill Lynch are Racially Neutral" ("Madden & Vekker Report").

interrogatories, as well as defendant's response to plaintiffs' first and second set of interrogatories. I also reviewed documents produced by plaintiffs in this litigation.

8. I have also relied upon my own research and work as well as academic articles, chapters, and books written by social scientists and management scholars, some of which are cited in the footnotes to this report. Social research conducted across many decades has generated considerable knowledge about what generates and sustains workplace inequalities. That same research, either directly or by implication, points to the kinds of workplace policies and practices that are likely to minimize bias. The relevant research has applied multiple methodologies in a variety of contexts, including experiments in controlled laboratory settings; ethnographies and case studies in "real world" organizations both large and small, public and private, and in a range of industries; surveys done with representative samples of workers and employers; and historical studies based on archival materials from the United States and abroad. Thus, the scientific evidence about bias, discrimination, and the structure and dynamics of race in organizations that I rely upon has substantial external validity and provides a sound basis for analyzing the company's policies and practices. My method is to look at distinctive features of the organization's policies and practices and to evaluate them against what social science research shows to be factors that create and sustain bias and those that minimize bias. My method in this litigation is the same as the method I have applied in reports admitted into evidence in state and federal courts in other employment litigation. It is similar to the approach taken by other social scientists who have testified

in matters relating to employment discrimination, and it is sometimes called "social framework analysis."⁴

9. Below, I first describe the Merrill Lynch workforce and summarize racial disparities in the pay and representation for Financial Advisors ("FAs"). In subsequent sections, I go into detail about specific features of the company's personnel policies and practices, and I explain how social science research can assist the court in understanding the factors responsible for the disparities in workplace experiences and outcomes of African American and non-African American FAs at Merrill Lynch.

DISPARITIES BY RACE IN REPRESENTATION AND CAREER OUTCOMES AMONG FINANCIAL ADVISORS AT MERRILL LYNCH

Low Representation of African Americans at Merrill Lynch

10. As of 2007, Merrill Lynch employed nearly 49,000 full-time employees in the United States, including over 16,000 Financial Advisors. Employment trends since 2004, taken from the company's Investor Relations website, are reported in Table 1, below:

⁴See E. Borgida, C. Hunt, and A. Kim, "Research in Sex Discrimination Litigation," *Journal of Law and Policy*, Vol. 13, 2005, p. 613-628; D. L. Faigman and J. Monahan, "Psychological Evidence at the Dawn of the Law's Scientific Age," *Annual Review of Psychology*, Vol. 56, 2005, p. 631-659; and E. Borgida and S. T. Fiske (eds.), *Beyond Common Sense: Psychological Science in the Courtroom*, Blackwell, 2008.

Table 1. Employees

	2004	2005	2006	2007
Full-Time:				
U.S.	40,200	43,200	43,700	48,700
Non-U.S.	10,400	11,400	12,500	15,500
Total	50,600	54,600	56,200	64,200
Non-U.S. Employees	21%	21%	22%	24%
Private Client Financial Advisors	14,140	15,160	15,880	16,740

<http://www.ir.ml.com/quick.cfm?section=employees> (retrieved 11/30/07 and 5/07/08)

11. A large majority of the company's employees are white, and not many are African American. The company's 2006 EEO-1 Consolidated Report⁵ indicates total employment of 45,794 of which 35,524 are white (77.6%). The same report indicates that the company employed 3,089 African Americans in 2006, or 6.7% of its workforce. African Americans comprise 13.2% of the employees in service positions but just 3.3% of the company's "Officials & Managers," according to the 2006 EEO-1 report.

12. The sales workers group, the largest EEO-1 category with over 16,000 employees in 2006, is just 3.1% African American. Financial Advisors account for most of the employees in that category, and company statistics show consistently low representation of African Americans in that position. For example, Merrill Lynch documents show that African American representation among Financial Advisors (trainees, also referred to as "POAs" for "Paths of Achievement") was approximately 2% in each year from 1994 through 2006. And when trainees are excluded from the calculation, African American representation among FAs is just 1.2% to 1.3% (in years

⁵BATES MLE00694 000483.

2003 through 2006).⁶ A 2002 company report indicated that there were only 48 African American Financial Advisors in the entire Merrill workforce with a length of service ("LOS") designation of ten years or longer.⁷ As of December 2005, Merrill had no African American FAs in 28 states.⁸

13. Table 2 reports African American representation in the FA workforce from 2001 through 2006. These tabulations were done at my request by Dr. Vekker, based on the database provided to plaintiffs by Merrill Lynch. The statistics in Table 2 are consistent with what appears in company documents on representation of African Americans overall in the FA workforce, excluding trainees: African Americans comprise 1.3% to 1.4% of non-trainee FAs throughout the period covered by these data (row 3). In other words, there are over 70 non-African American FAs for every African American FA working at Merrill Lynch (at year end) in each year from 2001 through 2006. Table 2 also shows (row 9) that in each year, the vast majority of Merrill Lynch offices, over 85%, had no African Americans in the FA workforce (again, excluding including trainees). For example, in 2006, only 97 offices employed African American FAs; the other 578 offices employed none. And among those offices that do employ African Americans as FAs, most employ just one African American. For example, at year-end 2006, 69 offices employed one African American FA, another eighteen offices employed two, and just ten offices employed three or more African Americans.

⁶USPC Diversity Analysis Presentation Book, January 2002 (BATES MLE 00003 000149); GPC Diversity Update, Diversity ACTM/GPC Stakeholder Meeting, January 26, 2004 (BATES MLEE 018 059067); Memorandum from Daniel C. Cochran to Robert J. McCann, June 10, 2006, Subject: Americas Advisory Division Diversity Headlines (BATES MLE00357 000645 to 000646). Since the McReynolds lawsuit was filed, African American representation among FAs has increased from 2.1% in the third and fourth quarters of 2005 to 2.6% in the last two quarters of 2006 and first quarter of 2007 ("Confidential Materials Prepared for GPC Executive Committee Regarding: COO Monthly Review" at BATES MLMRE 004 002001).

⁷African American Strategy and Market Plan, Multicultural Diversified Business Development, Keith B. Henry (no date) (BATES MLE00261 000144).

⁸Barry depo., p. 224.

Table 2. African American Representation in the FA Workforce (excluding trainees)

	2001	2002	2003	2004	2005	2006
1. Total FAs	9516	9632	9665	9782	10020	10423
2. Afr Am FAs	132	133	138	132	132	148
3. % of Afr Am Among all FAs	1.4%	1.4%	1.4%	1.3%	1.3%	1.4%
4. Offices	719	661	645	632	631	675
5. Offices w No Afr Am	628	569	552	544	541	578
6. Offices w One Afr Am	69	69	70	66	69	69
7. Offices w Two Afr Am	12	13	10	11	11	18
8. Offices w 3+ Afr Am	10	10	13	11	10	10
9. % Offices w No Afr Am	87.3%	86.1%	85.6%	86.1%	85.7%	85.6%
10. % Offices w One Afr Am	9.6%	10.4%	10.9%	10.4%	10.9%	10.2%
11. % Offices w Two Afr Am	1.7%	2.0%	1.6%	1.7%	1.7%	2.7%
12. % Offices w 3+ Afr Am	1.4%	1.5%	2.0%	1.7%	1.6%	1.5%
	100%	100%	100%	100%	100%	100%

14. Table 3 reports African American representation among newly hired trainees from 2001 through 2006. It also is based on tabulations done at my request by Dr. Vekker, based on the database provided to plaintiffs by Merrill Lynch. As Table 3 shows, in the six-year period from 2001 through 2006, Merrill Lynch hired over 4,200 POA trainees, of whom 190 (4.5%) were African American (rows 1 and 2, "TOTAL" column). (These statistics pertain to individuals hired into the POA registered trainee title or those who became registered trainees within six months of hire.) African American representation among new hires was three to four percent during the first three years, increasing to about five percent in 2004 and 2005 and to about six percent in 2006, the year following the filing of the McReynolds race discrimination lawsuit (row 3). In each year, among those offices that hired new POA trainees, approximately 90% of the offices hired no African Americans (row 9). Just a few offices hired two African

Americans in a given year (only one did so in 2006, down from four offices in each of the two preceding years), and it was extremely rare for an office to hire more than two African American trainees in any given year; it happened just three times over the six-year period (rows 7 and 8).

Table 3. African American Representation Among POA New Hires; Offices Hiring At Least 1 FA

	2001	2002	2003	2004	2005	2006	TOTAL
1. POA hires	686	798	677	928	727	407	4223
2. AA	29	34	22	44	37	24	190
3. % Afr Am among hires	4.2%	4.3%	3.2%	4.7%	5.1%	5.9%	4.5%
4. Offices hiring that year	306	283	277	331	289	222	551
5. Offices hiring no Afr Am	279	257	259	293	256	199	428
6. Offices hiring one	25	19	15	33	29	22	82
7. Offices hiring 2	2	6	2	4	4	1	26
8. Offices hiring more than two	0	1	1	1	0	0	15
9. % offices hiring none	91.2%	90.8%	93.5%	88.5%	88.6%	89.6%	77.7%
10. % offices hiring one	8.2%	6.7%	5.4%	10.0%	10.0%	9.9%	14.9%
11. % offices hiring two	0.7%	2.1%	0.7%	1.2%	1.4%	0.5%	4.7%
12. % offices hiring 3+	0.0%	0.4%	0.4%	0.3%	0.0%	0.0%	2.7%
	100%	100%	100%	100%	100%	100%	100%

"POA Hires" include individuals hired into POA title (registered trainee) or those who became trainees within six months of hire.

15. Over the entire six-year period, over three fourths (78%) of the offices that hired trainees only hired individuals who are not African American (row 9, "TOTAL" column). Of those offices that did hire African Americans, the majority (82 of 123 offices) only hired one and only 15 of Merrill Lynch's offices hired more than two African American trainees over the six-year period from 2001 through 2006 (rows 6, 7, and 8, "TOTAL" column). Of course, offices that do very little hiring have fewer opportunities to hire African American trainees, and conversely, the offices that hire

many new trainees have more opportunities to diversify their FA workforce. Table 4 reports hiring patterns for 2001 through 2006 among offices that hired at least one, five, and ten new trainees, respectively. It shows that even among offices that hired at least five trainees over the six-year period, nearly three-fifths hired no African Americans (row 9). And among offices that hired at least ten trainees, over two-fifths hired no African Americans, and another 30% of the offices each added just one African American (rows 9 and 10).

Table 4. African American Representation Among POA New Hires, in Offices Hiring at Least 1, 5, or 10 New POAs from 2001 through 2006

	<i>Number of FAs Hired in Office from 2001 through 2006, at least:</i>		
	<i>1</i>	<i>5</i>	<i>10</i>
1. POA hires	4223	3637	2696
2. Afr Am hires	190	177	140
3. % Afr Am among hires	4.5%	4.9%	5.2%
4. Offices hiring	551	274	132
5. Offices hiring no Afr Am	428	164	55
6. Offices hiring one	82	69	40
7. Offices hiring 2	26	26	22
8. Offices hiring 3+	15	15	15
9. % offices hiring none	77.7%	59.9%	41.7%
10. % offices hiring one	14.9%	25.2%	30.3%
11. % offices hiring two	4.7%	9.5%	16.7%
12. % offices hiring 3+	2.7%	5.5%	11.4%
	100%	100%	100%

"POA Hires" include individuals hired into POA title (registered trainee) or those who became trainees within six months of hire.

16. In sum, African American FAs and FA trainees at Merrill Lynch are literally "few and far between." African Americans are outnumbered by more than 70 to 1 in the

FA workforce. As recently as 2006, the vast majority of Merrill Lynch offices had no African American FAs, and the majority of African American FAs who work at Merrill Lynch do so in offices in which there are no other FAs of the same race. Hiring of African American trainees over the six-year period from 2001 through 2006 was confined to 123 of the 551 offices that did any hiring. Over this period, a newly hired African American trainee was unlikely to have another African American trainee peer, and he or she was likely to be hired into an office that had no African American FAs or at most token African American representation. Below, I summarize a large body of social science research on the consequences of highly skewed representation of workplace minority and majority groups for the career experiences and outcomes of those who are in the minority.

Earnings Disparities by Race Among Merrill Lynch's Financial Advisors

17. The report of plaintiffs' experts shows that in each year from 2001 through 2006 African American FAs, on average, earned between 26% and 42% less than their similarly situated white peers.⁹ Numerous studies conducted by Merrill Lynch show large disparities by race in earnings and production credits.¹⁰ Below, I show how social science research can be useful for understanding the factors that can create and sustain such large earnings disparities by race in organizational contexts like Merrill Lynch's.

⁹Madden & Vekker Report, Tables 1 through 6.

¹⁰See for example, "Americas Advisory Measure: FAs by Production Quintile," BATES MLE 00799 000196-201 and Sontag depo., p. 95-105, 215-216. Also, "Diversity Analysis: Additional Findings, March 2005" (BATES MLE 00179 000521-532).

**MINORITY WORKPLACE REPRESENTATION, CUMULATIVE
ADVANTAGE, AND THE PERPETUATION OF WORKPLACE BARRIERS
THAT AFFECT FINANCIAL ADVISORS' SUCCESS**

Compensation and Career Trajectories in a Cumulative Advantage System

18. The system used by Merrill Lynch for compensating employees is one of "success breeds success." For example, for a given LOS, the payout rate on production increases with the FA's level of production.¹¹ Also, for a variety of training, resources, and opportunities, eligibility is based on an FA's production quintile ranking.¹² Through these and similar mechanisms, resources that help an FA be an effective producer are distributed disproportionately to those who have the highest level of production. As a result, those who become the highest producers and are paid on production at the highest rate also have the greatest capacity to improve their effectiveness as a result of the company's support. This has a cumulative impact on compensation, as "the rich get richer." Social scientists describe these kinds of reward systems as systems of *cumulative advantage*. In a cumulative advantage system, factors that result in even small disparities between individuals have a cumulative impact and generate growing disparities.¹³ A

¹¹O'Neal depo., p. 223-224; Hogarty depo., p. 64-70, 93-102, 111-115, 123-128, and Exhibits 1 through 6 (compensation plans for 2001 through 2006).

¹²Sieg 12/1/06 (PM) depo., p. 35, 37-38; McCann depo. p. 269-271. On quintile requirements for participating in the Management Assessment Center, see Sieg 11/29/06 depo., p. 116-117, 127-133; and Sontag depo., p. 47-49, 55-56.

¹³The first cumulative advantage models were developed to explain differences in the career trajectories of scientists, including gender disparities in scientists' careers. See, for example, P. D. Allison, J. S. Long, and T. K. Krauze, "Cumulative Advantage and Inequality in Science," *American Sociological Review*, Vol. 47, 1982, p. 596-606; S. M. Clark, and M. Corcoran, "Perspectives in the Professional Socialization of Women Faculty: A Case of Accumulative Disadvantage?" *Journal of Higher Education*, Vol. 57, 1986, p. 20-43; R. K. Merton, "The Matthew Effect in Science, II: Cumulative Advantage and the Symbolism of Intellectual Property," *Isis*, Vol. 79, 1988, p. 606-623; and W. T. Bielby, "Sex Differences in Careers: Is Science a Special Case?" p. 171-187 in *The Outer Circle: Women in the Scientific Community*, edited by H. Zuckerman, J. R. Cole, and J. T. Bruer, Norton, 1991. It has also been applied to the impact of college on earnings and on the wage gap between men and women (see H. Taniguchi, "The Influence of Age at Degree Completion on College Wage Premiums," *Research in Higher Education*, Vol. 46, 2005, p. 861-

cumulative advantage system is not inherently discriminatory, so long as disparities are attributable to individual differences in productivity that have not emerged as a result of differential, discriminatory treatment by the organization. On the other hand, when organizational policies and practices give one group an advantage over the other, even if it is just a mild benefit or "tailwind" favoring the advantaged group, small discriminatory disparities grow to large ones.

Racial Differences in Skills and Productivity, Unrelated to Discriminatory Barriers, Do Not Explain Disparities in Earnings Between African American and non-African American FAs

19. Merrill Lynch executives testified at length about the skills required to be a successful FA, about their knowledge regarding whether or not African Americans hired by the company had a deficiency in relevant skills, and about their understanding of the reasons for the disparities by race in production credits and earnings. It is clear from this testimony that technical and relationship-building skills are viewed as key to becoming a successful FA, with the latter becoming increasingly important as the industry has moved to an emphasis on financial planning and away from revenues generating from trading.¹⁴ In addition, there appears to be a consensus among those who testified on behalf of the

881. For its application more broadly, see A. M. O'Rand, "The Cumulative Stratification of the Life Course," p. 188-207 in *Handbook of Aging and the Social Sciences* (4th ed.), edited by R. H. Binstock, L. K. George, et al. Academic Press, 1996; and T. A. DiPrete and G. M. Eirich, "Cumulative Advantage as a Mechanism for Inequality: A Review of Theoretical and Empirical Developments," *Annual Review of Sociology*, Vol. 32, 2006, p. 271-297. In recent years, the cumulative advantage model has been applied to the production of knowledge by L. Zucker, M. R. Darby, J. Furner, R. C. Liu, and H. Ma, "Minerva Unbound: Knowledge Stocks, Knowledge Flows and New Knowledge Production," *Research Policy*, Vol. 36, 2007, p. 850-863, and it has been used in numerous studies of life-course trajectories in health (see, for example, J. Mirowsky and C. E. Ross, "Education and Self-Rated Health," *Research on Aging*, Vol. 30, 2008, p. 27-62).

¹⁴O'Neal depo., p. 130, 163-164; Pillar depo., p. 289-292; Sontag depo., p. 62-64. Also see P. McGeehan, "Goodbye Cold Calling; Hello Cross-Selling," *New York Times*, December 20, 1999; and B. McCann, "How Will Advisors Handle Change?" *Researchmag.com*, June 1, 2008 (http://www.researchmag.com/cms/research/monthly%20issues/Issues/2008/06/Index/Research%20at%2030/06_30th_mccann).

company that these skills do not vary by race in any significant way in the company's FA workforce.¹⁵ Company executives have also testified that there is no difference by race in the skills necessary to be promoted into management and to become a successful manager at Merrill Lynch.¹⁶

20. Several individuals, while *not* testifying that there are race differences with respect to technical and relationship-building skills, did testify that there was a cost to African American FAs in "crossing cultural boundaries" and that African American FAs might also be disadvantaged in terms of access to social networks of wealthy individuals.¹⁷ Former Chief Executive Officer Stan O'Neal gave the most blunt testimony, stating that he believed that because of the challenge of crossing cultural boundaries, it was more difficult for an African American FA to generate production than for an FA who is not African American.¹⁸ Assuming that African American FAs face unique obstacles in "boundary crossing" as they engage non-African American customers, Merrill Lynch's cumulative advantage system knowingly disadvantages African American FAs for the barriers that they face because of their race. Indeed, reliance on a cumulative advantage system to distribute resources which Merrill Lynch controls in this circumstance is acting deliberately and intentionally in a way that sustains and perpetuates discriminatory barriers.

¹⁵See, for example, Sontag depo., p. 72-73; Pillar depo., p. 296-297; Sieg 6/1/07 depo., p. 28-29, 116-117. Ms. Barry gave contrary testimony, stating that in her opinion African Americans with the skills to succeed had many opportunities elsewhere, and as a result the pool from which Merrill Lynch recruits is not large (Barry depo., p. 278-280).

¹⁶Sieg 11/29/06 depo., p. 101, 104, 115; Sontag depo., p. 56-57.

¹⁷O'Neal depo., p. 129-132, 138-139, 142-145, 147-148, 150, 245-246, 269-270; Sontag depo., p. 120-121, 127-130; McCann depo., p. 265-270. On the other hand, Mr. Sontag testified (Sontag depo., p. 70) that access to social networks might be important for the effectiveness of some FAs but not others.

¹⁸O'Neal depo., p. 220, 268-269.

21. Regarding access to social networks of wealthy individuals, it is indeed the case that in the United States, personal wealth is greater among white households than among African American households. As a result, among adults in the United States, a smaller fraction of African Americans were raised in a milieu in which family, friends, and acquaintances came from households of significant wealth than is the case for non-African Americans.¹⁹ However, educational gains and occupational mobility have contributed to the emergence of a growing African American affluence.²⁰ Although I have not done a systematic analysis, anecdotal materials I have reviewed indicate that many of Merrill Lynch's African American FAs attended prestigious colleges and universities, had prior experience in professional careers before joining the firm, and come from relatively advantaged family backgrounds, and conversely, there are many white and non-African American FAs who did not attend elite institutions and who come from modest, working class and lower middle class backgrounds.²¹ In short, there is scant, if any, evidence that, *among those in the Merrill Lynch FA workforce*, African Americans have less access to social networks of wealth than do non-African Americans, yet Merrill Lynch readily adopts this assumption. If this assumption is true that African American FAs are disadvantaged in terms of access to social networks of wealthy individuals, either due to a difficulty crossing racial barriers or the racial demographics of

¹⁹See, for example, M. L. Oliver and T. M. Shapiro, *Black Wealth/White Wealth: A New Perspective on Racial Inequality*; Routledge; and D. Conley, "Decomposing the Black-White Wealth Gap: The Role of Parental Resources, Inheritance, and Investment Dynamics," *Sociological Inquiry*, Vol. 71, 2001, p. 39-66, *Sociological Perspectives*, Vol. 47, 2004, p. 161-187.

²⁰L. A. Keister, "Race and Wealth Inequality: The Impact of Racial Differences in Asset Ownership on the Distribution of Household Wealth," *Social Science Research*, Vol. 29, 2000, p. 477-502; K. R. Lacy, *Blue-Chip Black: Race, Class, and Status in the Black Middle Class*, University of California Press, 2007.

²¹For example, the 2002 African American Yearbook (BATES P 04424-4521), prepared for the June 2002 African American Training Symposium, includes short biographies of 97 of Merrill Lynch's African American FAs, approximately half of those invited to contribute biographies to the yearbook (see e-mail from Kelly Foster, Subject: African American Symposium Yearbook, dated July 10, 2002 (BATES MLEE 026 107278-80). Most of the biographies include information on college degrees and prior professional experience.

wealth, reliance on a cumulative advantage system to allocate resources which Merrill Lynch controls is, again, acting deliberately and intentionally in a way that creates and sustains discriminatory barriers.

How Social Interaction in Predominantly White Work Settings Disadvantages African Americans: Isolation and Exclusion

22. The racial composition of Merrill Lynch offices and its professional and managerial workforce, described above, has consequences for the career experiences of minority employees, and a large body of social science research explains why that is the case. Of course, the "snapshot" statistics reported above in paragraphs 10 through 16, showing low African American representation in specific positions at specific points in time, reflect a combination of decisions regarding hiring, promotions, job changes, and turnover. The policies and practices that shape these decisions are addressed at various places in this report. But regardless of the mechanisms generating these statistical patterns, low African American representation, especially among FAs and the managers who supervise them, is a key aspect of the *organizational context* for Merrill's African American employees. For a position like Financial Advisor, the low representation of African Americans implies first, as noted above, that many office locations employ no African Americans. Second, it implies that almost all African American FAs will work out of offices in which they have few if any peers who are of the same race. Third, it implies that decisions about the allocation of resources that influence an FA's productivity and career trajectory will almost always be made by managers who are not African American.

23. Social science research shows that African Americans and other persons of color in predominately white work settings receive less support in the form of mentorship and professional development, and are more likely to be socially isolated, and are more likely to be excluded from informal workplace social networks than their white peers.²² Stereotypes and outgroup bias are especially likely to affect decisions about minority employees when the criteria used to make decisions are vague and ambiguous and when decision-makers have substantial discretion about which criteria to use and how to weigh them.²³ Below, I describe some of the policies and practices at Merrill Lynch that allow

²²See, for example, D. A. Thomas, "The Impact of Race on Managers' Experiences of Developmental Relationships (Mentoring and Sponsorship): An Intra-Organizational Study," *Journal of Organizational Behavior*, Vol. 11, 1990, p. 479-492; T. H. Cox and S. M. Nkomo, "A Race and Gender-Group Analysis of the Early Career Experience of MBAs," *Work and Occupations*, Vol. 18, 1991, p.436; G. F. Dreher and T. H. Cox, "Race, Gender, and Opportunity: A Study of Compensation Attainment and the Establishment of Mentoring Relationships," *Journal of Applied Psychology*, Vol. 81, 1996, p. 297-308; A. Mehra, M. Kildruff, and D. J. Brass, "At the Margins: A Distinctiveness Approach to the Social Identity and Social Networks of Underrepresented Groups," *Academy of Management Journal*, Vol. 41, 1998, p. 441-452; E. H. James, "Race-Related Differences in Promotions and Support: Underlying Effects of Human and Social Capital," *Organization Science*, Vol. 11, 2000, p. 493-208; K. A. Mollica, B. Gray, and L. K. Treviño, "Racial Homophily and Its Persistence in Newcomers' Social Networks," *Organizational Science*, Vol. 14, 2003, p. 123-136; and S. B. Bacharach, P. A. Bamberger, and D. Vashdi, "Diversity and Homophily at Work: Supportive Relations Among White and African-American Peers," *Academy of Management Journal*, Vol. 48, p. 619-644. Also see J. P. Fernandez, *Racism and Sexism in Corporate Life: Changing Values in American Business*, Lexington Books, 1981, p. 9-10, 43; R. Nixon, *Black Managers in Corporate America: Alienation or Integration?* National Urban League, 1985, p. 18-19, 24-26; R. Nixon, *Climbing the Corporate Ladder: Some Perceptions Among Black Managers*, National Urban League, 1985, p. 33-35; H. Ibarra, "Race, Opportunity, and Diversity of Social Circles in Managerial Networks," *Academy of Management Journal*, Vol. 38, 1995, p. 673-703; D. A. Thomas, "The Truth About Mentoring Minorities: Race Matters," *Harvard Business Review*, Vol. 79, 2001, No. 4, p. 98-112; G. M. McGuire, "Gender, Race, and the Shadow Structure: A Study of Informal Networks and Inequality in a Work Organization," *Gender & Society*, Vol. 16, 2002, p. 303-322; and G. M. McGuire, "Gender, Race, Ethnicity, and Networks: The Factors Affecting the Status of Employees' Network Members," *Work and Occupations*, Vol. 27, 2004, p. 501-523. For reviews of relevant research, see B. F. Reskin, D. B. McBrier, and J. A. Kmec, "The Determinants and Consequences of Workplace Sex and Race Composition," *Annual Review of Sociology*, Vol. 25, 1999, p. 335-361 (esp. p. 343-344). Also see Joshi, Aparna, Hui Lao, and Susan E. Jackson, "Cross-Level Effects of Workplace Diversity on Sales Performance and Pay," *Academy of Management Journal*, Vol. 49, 2006, p. 459-481.

²³On stereotypes, see N. E. Evans, and R. B. Tyler, "Racial Stereotypes: The Contents of Their Cognitive Representations," *Journal of Experimental Social Psychology*, Vol. 22, 1986, p. 22-37; P. G. Devine and A. J. Elliot, "Are Racial Stereotypes Really Fading? The Princeton Trilogy Revisited," *Personality and Social Psychology Bulletin*, " Vol. 21, 1995, p. 1139-1150; J. F. Dovidio, J. C. Bringham, B. T. Johnson, and S. L. Gaertner, "Stereotyping, Prejudice, and Discrimination: Another Look," p. 276-319 in *Stereotypes and Stereotyping*, edited by C. N. MacRae, C. Stangor, and M. Hewstone, Guilford Press, 1996; S. B. Blinder, "Dissonance Persists: Reproduction of Racial Attitudes Among Post-Civil Rights Cohorts of White

the kinds of biases detected in social science research to affect the careers of African American employees at the company.

HOW SPECIFIC FEATURES OF MERRILL LYNCH'S POLICIES AND PRACTICES CREATE CAREER BARRIERS FOR AFRICAN AMERICAN FINANCIAL ADVISORS

Participation on Teams Contributes to the Success of FAs

24. It is Merrill Lynch policy to promote and support teams in its FA workforce. A team is a kind of partnership among FAs. Under a team arrangement, multiple FAs pool at least a third of their production under a single pool number, with a prearranged percentage split of the production being allocated to the individual team FAs.²⁴ Teams can range from simple 50/50 partnerships between a pair of FAs to larger and more structured arrangement in which a team head oversees multiple FAs who cover particular

Americans," *American Politics Research*, Vol. 35, 2007, p. 299-335. For articles and chapters providing reviews of relevant research, see D. M. Messick and D. Mackie, "Intergroup Relations," *Annual Review of Psychology*, Vol. 40, 1989, p. 49-50; L. H. Krieger, "The Contents of our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity," *Stanford Law Review*, Vol. 47, 1995, p. 1161-248; B. F. Reskin, *The Realities of Affirmative Action in Employment*, American Sociological Association, 1998; W. T. Bielby, "Minimizing Workplace Gender and Racial Bias," *Contemporary Sociology*, Vol. 29, 2000, p. 120-129; W. T. Bielby, "Promoting Racial Diversity at Work: Challenges and Solutions," p. 53-88 in *Diversity at Work*, edited by Arthur P. Brief, Cambridge, 2008. For reviews of research on ingroup favoritism and outgroup bias, see M. B. Brewer and R. J. Brown, "Intergroup Relations," p. 554-594 in *Handbook of Social Psychology*, Vol. 2 (4th ed.), edited by D. T. Gilbert, S. T. Fiske, and G. Lindzey, Oxford, 1998; M. B. Brewer, "The Psychology of Prejudice: Ingroup Love or Outgroup Hate?" *Journal of Social Issues*, Vol. 55, 1999, p. 429-444; and M. Hewstone, M. Rubin, and H. Willis, "Intergroup Bias," *Annual Review of Psychology*, Vol. 53, 2002, p. 575-604. On bias and the exercise of discretion, see G. Hodson, G., J. F. Dovidio and S. L. Gaertner, "Processes in Racial Discrimination: Differential Weighting of Conflicting Information," *Personality and Social Psychology Bulletin*, Vol. 28, 2002, p. 460-471; M. I. Norton, J. A. Vandello, and J. M. Darley, "Casuistry and Social Category Bias," *Journal of Personality and Social Psychology*, Vol. 87, 2004, p. 817-831; S. L. Gaertner, J. F. Dovidio, J. Nier, G. Hodson, and M. A. Houlette, "Aversive Racism: Bias Without Intention," p. 377-393 in *Handbook on Employment Discrimination Research: Rights and Realities*, edited by R. L. Nelson and L. B. Neilson, Kluwar Academic Press, 2005; and E. L. Uhlmann and G. L. Cohen, "Constructed Criteria: Redefining Merit to Justify Discrimination," *Psychological Science*, Vol. 16, 2005, p. 474-480.

²⁴Sieg 6/1/07 depo., p. 8-9.

clients and specialties.²⁵ (The firm also has single-FA "vertical teams" composed of one FA along with at least one Investment Associate and one Client Associate.²⁶)

25. Merrill Lynch strongly encourages the formation of teams²⁷ and devotes considerable resources to supporting them.²⁸ Merrill Lynch has developed extensive teaming policies as well as a central corporate department for teams. It is a company "best practice" for the local branch manager to assist in coordinating the formation of a team, the partnership arrangement, and the team's business plan, and the local manager has to approve the team pooling arrangement.²⁹ Through approximately 2002, the company's Team Consulting Group supported the operations of FA teams, analyzed the impact of teams on FA productivity and retention, and recommended policy to improve the rate of team formation and the effectiveness of teams. More recently, the Team Consulting Group's responsibilities have been assumed by the firm's Practice Management Consulting Group (PMCG).³⁰ Regarding the formation and dissolution of teams, the PMCG has advised managers to have a formal team formation process and to "facilitate matchmaking" in order to minimize conflict and enhance effectiveness. The

²⁵Sieg 6/1/07 depo., p. 13-16.

²⁶Documents I reviewed indicate that in early 2001 the company considered revising the definition of vertical and horizontal teams. See, for example, e-mail from Denise Fehrenbach to James Hays and Robert Mullholland, dated February 14, 2001, with the subject "Team Definitions" (BATES MLE 00087 000442).

²⁷Gardner depo., p. 142; Sieg 6/1/07 depo., p. 26-27.

²⁸Sieg 6/1/07 depo., p. 55-56.

²⁹ Sieg 6/1/07 depo., p. 56-59, 119-122; Gardner depo., p. 152.

³⁰Sieg 6/1/07 depo., p. 18-19, 59-60, 62, 72, 108; Sieg 11/29/06 depo., p. 23-24. A document from approximately August of 2002, titled "Focus on Formation: Director Resource for Building High Performance Teams" includes a timeline indicating that the Team Consulting Group was formed in 1995, replacing the "Team Performances Strategy Group" (BATES MLE 00146 000239). The document includes a detailed analysis of performance and retention data for FAs who are and are not on teams, describes the Team Homepage on the Learning Network, provides guidelines for FAs on the process for team formation, a workbook to use in making decisions about team formation, and a guide for formulating a team business plan. It also includes a Manager's Guide to the workbook and a Manager's Facilitation Guide to a FA Networking Workshop which appears to be designed to provide support to FAs who have an interest in joining teams (BATES MLE 00146 000239 through 000291). Mr. Sieg testified that this document, posted at the Practice Management Consulting Group's website, was "a resource and a tool for directors, in helping them work with individual FAs or teams that are interested in forming" (Sieg 6/1/07 depo., quote from p. 71, also see p. 72, 77).

PMCG "Team Dissolution Guide to Managers" provides the following guideline to managers as a best practice:

Take responsibility for matchmaking & team formation in your office. Teams are small business mergers and require in-depth discussion & analysis.³¹

26. Merrill Lynch determined from its own studies that FAs on teams are, on average, more successful than those who work independently. For example, a document from December 2004, titled "Effectiveness of FA Teams" summarized the results of a study by Global Private Client's Six Sigma group showing that "Team FAs generally outperformed non-team FAs, particularly in PC growth, asset & liability growth, and FA retention" and that these benefits were greatest for FAs with lower LOS.³² In deposition testimony, William Sieg, the executive responsible for managing the FA workforce, testified that among the benefits experienced by an FA from being on a team could be improvements in client service, client acquisition, production, assets, and "life style advantage" (coverage by another team member when the FA is away from the office).³³

27. The percentage of FAs on teams increased annually from 2000 to 2002, from about one in five to two in five, and participation has remained at roughly that level since then. A document from an audit of team participation in 2006 allows for the computation

³¹Sieg 6/1/07 depo., p. 61-62 and Exhibit 2 to that deposition, "Team Dissolution Guide to Managers" at MLE 00149 000345.

³²"Effectiveness of FA Teams," Analytics and Management Science, Bonnie Liao, December 22, 2004 (BATES MLE 00145 000694-698). A related document from February 2005 titled "Effectiveness of Teams: Management Summary," includes a table showing substantial benefits for FAs with fewer than ten years of LOS, with the greatest benefits going to those with zero to two years of LOS (BATES MLEE 066 000866). An overview of the findings of six different studies conducted between 2001 and 2004 on the impact of teams on FA effectiveness and retention appears on p. 13 of a Practice Management Consulting Group document titled "Overview - 2005, Richard Orlando, Ph.D. Director" (BATES MLE 00137 001265). Another overview of findings regarding teams, also associated with Dr. Orlando, and with similar conclusions to those described above, appears in a document dated July, 31, 2006, with the title "Overview of Team Effectiveness" (BATES MLE 00135 000585-597).

³³Sieg 6/1/07 depo., p. 35-38, 45-53.

of the percentage of FAs on multi-FA teams annually from year-end 2000 through year-end 2005 and on 3/31/2006.³⁴

Year	% of FAs on multiple-FA teams
2000	20.0%
2001	30.0%
2002	35.4%
2003	40.9%
2004	41.4%
2005	41.1%
2006	40.9%

The trend over this period coincides with initiatives by the company to increase FA participation on teams. According to an article in *On Wall Street Magazine* published in January 2003, "more than any firm of its size, Merrill actively promotes broker teams, particularly to serve high net worth clients." The article goes on to note that the company had set a goal of 50% of its FAs on teams by year-end 2002.³⁵ And speaking at company Management Update event in 2003, CEO Stan O'Neal articulated a goal of having every Merrill Lynch FA working in teams.³⁶

³⁴"AMERICAS Advisory Measure: FA's on TEAMS" (BATES MLE00134 000513-515). According to other company documents, in 1998 less than a fourth (23%) of FAs were on teams, increasing to 35% by 2001. and by year-end 2003, nearly half (47%) of FAs were on teams. These statistics appear in several documents. See, for example, "FA Teams at Merrill Lynch, May 2004 Update" (BATES MLEE 014 028463). Also see Sieg 6/1/07 depo., p. 23-24.

³⁵"Team Building by Brokerages," by T. Chapelle, *On Wall Street Magazine*, January 2003. A document dated May, 2004, "FA Teams at Merrill Lynch, May 2004 Update, Robert McCann, EVP, Vice-Chairman," states that as of that time it was still a goal of the company to "continue to increase the number of Financial Advisors in teams" (BATES MLEE 014 028469).

³⁶"We, in my view, cannot build a successful business model predicated on 13,000 people who are picking stocks consistently beating the Dow Jones or the S&P. I don't think that will happen. What I do think is possible and what I do think we can do better than anyone else is have 13,000 successful relationship

African American FAs Have Limited Access to the Advantages of Belonging to a Team

28. Mr. Sieg testified that race is not a factor in FAs' decisions about joining teams and that the personal traits that make for a good team -- mutual respect, shared values, and shared work ethic -- do not vary by race.³⁷ Yet, African Americans at Merrill Lynch participate on teams at a much lower rate than do non-African American FAs. Merrill Lynch documents indicate the firm was well aware of this phenomenon. In 2006, across the entire company, just 37 African American FAs were on teams, so the overwhelming majority of teams include no African Americans, and it would be extremely rare for a team to include more than one African American.³⁸ When the participation rates reported above are disaggregated by race, we find a large disparity, consistently from year-end 2000 through 3/31/2006:

	% of FAs on multiple- FA teams	
Year	Non-African American FAs	African American FAs
2000	20.4%	4.8%
2001	30.5%	6.7%
2002	35.8%	14.1%
2003	41.2%	20.3%
2004	41.9%	16.8%
2005	41.7%	12.6%
2006	41.6%	11.6%

managers working in teams." From MLE DVD 003 - 000003; also see " ESO Talking Points, DBS Town Hall, August 12, 2003, Final Draft" at BATES MLE 00116 001406-1415 at 1412-13.

³⁷Sieg 6/1/07 depo., p. 28-29, 116-117, 130.

³⁸"AMERICAS Advisory Measure: FA's on TEAMS" (BATES MLE00134 000513-515).

The expert report of plaintiffs' statistical experts also show large and statistically significant disparities by race over the period for which they have data (2002 through 2006; see Madden and Vekker Report, Table 9).

29. Despite the fact that the Merrill Lynch devotes considerable resources to supporting the formation and operation of FA teams, in deposition the company's managers indicate that they assume little or no responsibility for addressing the very low rate of African American participation on teams. Mr. Sieg testified that choices about team membership are made by individual FA, and any involvement by management to "force" teams would lead to undesirable attrition of FAs.³⁹ Company Vice Chair and head of Global Private Client Robert McCann and head of Americas Wealth Management Daniel Sontag gave similar testimony.⁴⁰ Mr. Sieg, along with former head of Private Client H. McIntyre "Mac" Gardner each testified that teams at Merrill Lynch are formed in a manner similar to marriages among consenting adults and that it is not company policy to force "arranged marriages."⁴¹ Mr. Sontag had no explanation for African American's lower team participation rate other than "it's a self choice that takes place inside the organization,"⁴² and Mr. Gardner gave similar testimony.⁴³

30. The social science research summarized above at paragraph 23 is useful for understanding factors contributing to African Americans' consistently low participation on teams. If African Americans tend to be isolated and excluded from informal social networks, and if through the operation of cumulative advantage mechanisms African

³⁹Sieg 6/1/07 depo., p. 62-67. Mr. Sieg gave a similar rationale for the company practice of allowing multiple members of the same family to work as a team (Sieg 6/1/07 depo., p. 130-131).

⁴⁰McCann depo., p. 318-321; Sontag depo., p. 295-296.

⁴¹Sieg 6/1/07 depo., p. 62-63, 68-69; Gardner depo., p. 139-140, 144-147.

⁴²Sontag depo., p. 294; also see p. 292-293..

⁴³Gardner depo., p. 139-141.

American FAs are generating fewer production credits than non-African Americans and are perceived to be less productive, then they are less likely to be invited to join established teams. This is especially likely to be true for an African American FA if the existing and newly forming teams in his or her office are comprised exclusively of FAs who are not African Americans. And, of course, this is true by definition for any African American who is in an office with no other African American FAs.

31. As early as 2002, an internal Merrill Lynch survey of its sales force identified the problem of limited access to teams for African American FAs and other minorities. Included in the "Survey Findings and Conclusions are the following points:

7. The current low rates of Black, Asian, Hispanic and Women acceptance of the team approach and their low rate of invitations to join teams will pose future problems for these groups.
8. The voluntary model for forming teams appears to disadvantage women and minority FA's unless managers who believe in diversity are actively involved in the process. Many managers recognize the value of the team as a training tool but few new women or minority FA's get early team assignments.⁴⁴

32. Racial isolation in an organizational context in which the dominant group forms tight social networks that have control over resources creates a phenomenon social scientists refer to as "opportunity hoarding." Sociologist Charles Tilly describes it as follows:

If members of a network acquire access to a resource that is valuable, renewable, subject to monopoly, supportive of network activities, and enhanced by the

⁴⁴"USPS Diversity Analysis Presentation Book, January 2002" (BATES MLE 00003 00145-176 at 175).

network's modus operandi, network members regularly hoard access to the resource, creating beliefs and practices that sustain their control. If that network is categorically bounded, opportunity hoarding thereby contributes to the maintenance of categorical inequality.⁴⁵

Applied to Merrill Lynch, teams comprise the network, inherited accounts (accounts of departing FAs that are distributed to team members who stay with the firm) comprise the renewable resource that is supportive of the network, and race is the categorical boundary. The impact of teams on the distribution of accounts and its potential for creating racial bias is described in the following section.

How Merrill Lynch's Account Distribution Practices Disadvantage African American FAs

33. Receiving or "inheriting" accounts from a departing FA contributes to an FA's ability to generate new business. CEO Stan O'Neal acknowledged: (1) that inherited accounts can generate referrals to new accounts; and (2) that they count as part of the production that is used as a criterion for allocating other resources, including titles and office space.⁴⁶

34. In 2000, as part of the settlement of the *Cremin et al v. Merrill Lynch* litigation alleging gender discrimination, the company established a National Account Distribution Policy, providing written criteria for a ranking system governing the distribution of accounts of brokers who leave the firm and of team partnerships that

⁴⁵C. Tilly, *Durable Inequality*, University of California Press, 1998, p. 154. Also see p. 10, 68, 155, 168-169. Also see C. Tilly, "Changing Forms of Inequality," *Sociological Theory*, Vol. 21, 2003, p. 31-36.

⁴⁶O'Neal depo., p. 224-225, 227-228.

dissolve.⁴⁷ The policy also applies to the distribution of "client relationships" more generally, including walk-ins, call-ins, leads, and branch manager referrals.⁴⁸ New policies were adopted annually, with the exception of 2005.⁴⁹ The following table from a January 2005 document shows the ranking criteria used in each year from 2001 through 2004.⁵⁰

Year	Eligibility Ranking Criteria
2001	(1) Planning Points, (2) Recognition Club, (3) Annuitized Assets, (4) Revenue, (5) Priority Households
2002	(1) Annualized Revenue, (2) Net New Money, (3) Enrollment in Designation program or designations, (4) Annuitized Assets, (5) Recognition Club
2003	(1) Annualized Revenue, (2) Client Loss Rate, (3) Asset Retention Index, (4) Annuitized Assets, (5) New Assets in New Relationships, (6) New Assets in Existing Relationships, (7) Continuing Education
2004	(1) Annualized Revenue, (2) Acquisition/Retention, (3) Certifications, (4) Retention Bonus

Additional changes were made in the eligibility criteria and the measures used for ranking that went into effect in July 2006, although the criteria were classified into the same four categories listed above for 2004.⁵¹ In addition to specifying the criteria for eligibility to receive account distributions and for ranking eligible FAs within an office,

⁴⁷Sieg 1/16/07 depo., p. 21-26, and see, for example, correspondence of Nicholas J. Pappas, on behalf of Merrill Lynch, to Cynthia Hotman, EEOC, dated June 16, 2006, p. 16 (BATES MLE 000913 000027-28). Also see, for example, the following from the 2003 Account Distribution Policy, p. 1 (BATES MLE 00922 003558):

Purpose:

The Account Distribution Policy is designed to keep the client's best interests in mind, and provide the fair and equitable distribution of client relationships that were handled by Financial Advisors (FAs) who are leaving production for any reason. The goal is a system that is client-focused and simple, while providing complete redistribution and transfer activity transparency. No account distributions will discriminate against any person on the basis of race, national origin, gender, religion, age, sexual orientation, disability or any other prohibited basis, and the client's interests shall always come first. FAs will receive accounts if they have demonstrated an ability to grow their business and a commitment to the firm's strategy.

⁴⁸Sieg 1/16/07 depo., p.35-36, 72-74.

⁴⁹Sieg 1/16/07 depo., p. 62-64.

⁵⁰"Advisory Division Account Redistribution: Review & Update On 2004 Performance," January 24, 2005, p. 4 (BATES MLEE 016 009510).

⁵¹"Responses to FA Departures: Redistribution Policy and Process" including a section titled "Summary of Changes for 2006," BATES MLE 00100 000255-269.

the policies in place for each year specify circumstances in which managers have discretion to depart from the ranking system.⁵²

35. The policies in place from 2001 through 2006 put African American FAs at a significant disadvantage in a number of ways. For example, the policies made it possible for remaining members of a team to inherit the accounts of a departing member, regardless of their rankings on the criteria established by the policy.⁵³ Indeed, the policy implemented in 2000 states that management has discretion to give preference to team members, based on the premise that they are more familiar with a client than are other FAs. Because African American FAs are substantially less likely than other FAs to be on teams, Merrill's policy and practice regarding account distribution places African Americans at a disadvantage. And because inherited accounts allow FAs to qualify for other resources -- including additional inherited accounts -- this disadvantage becomes cumulative.⁵⁴

36. Prior to 2003, company policy did not prohibit FAs from forming a team with a colleague anticipating retirement as a means to circumvent the ranking system.⁵⁵ The company's 2003 National Account Distribution Policy specifies that for teams in existence three years or longer, remaining team members retain all of the assets of the departing FA, and for those in existence less than three years, a portion of the assets remain with the team as a "team incentive" and the rest are distributed to other FAs in the office according to the ranking system.⁵⁶ Thus, FAs not on teams, who are

⁵²Sieg 1/16/07 depo., p. 64-65.

⁵³Sieg 1/16/07 depo., p. 49, 55-61, 137-139.

⁵⁴Sieg 1/16/07 depo., p. 101.

⁵⁵Sieg 1/16/07 depo., p. 54-57, 225-226.

⁵⁶See, for example, the 2006 policy, "Responses to FA Departures: Redistribution Policy and Processes" (MLE 00100 - 000261-263). The policy gives an example of a team with a 50-30-20 split losing the member with the largest (50%) share. If the team is in existence for less than three years, the 30% and 20%

disproportionately African American, remain disadvantaged by the post-2003 policy, relative to those who are on a team that loses a member.⁵⁷

37. Although the account distribution policy provided for a ranking system, it did not specify a specific procedure for distributing accounts among ranked FAs. Instead, until the 2006 policy was adopted in July of that year, local managers had discretion on the distribution procedure. The 2006 policy notes:

First, for the first time in 2005, OGC Risk evaluated the account redistribution policy and found in particular that a "process for distribution" was lacking from the current policy. The 2006 changes address this issue by putting a detailed distribution process in place.⁵⁸

The 2006 policy implemented a "draft" process, whereby each successively ranked FA is allowed to choose the account he or she is to receive. Prior to that, the majority of managers assigned accounts to ranked FAs and used their own discretion regarding when to return to the top of the ranking list versus continue with lower ranked candidates.⁵⁹

38. African American FAs face disadvantages in the redistribution of accounts regardless of whether or not the departing FA is on a team. Even when the FA leaving the firm is not on a team, company policy allows managers considerable discretion to depart from the ranking system in distributing accounts. For example, a client can

team members each retains his or her "share" of the team plus another share equal to his share as a "team incentive." For example even if the team existed for as short as six months, the 30% team member retains his 30% share of the team and the 20% team member retains his 20% share of the team. In addition, the 30% team member retains 30% of the departing FAs 50% share of the team and the 20% team member retains another 20% of the 50% retiring FAs share of the team. Thus, only 25% of the team assets would distribute through the National Account Distribution Policy. Also see Gardner depo., p. 152-158; Sontag depo., p. 296-299; Sieg 1/16/07 depo., p. 49-52, 137-143.

⁵⁷In 2006, the company modified the account distribution policy to add a prohibition on any retiring FA from becoming an Investment Associate for his or successor as a way of "preselling" their book of accounts. Prior to 2006, there was no policy specifically prohibiting this practice (Sieg 1/16/07 depo., p. 226-228).

⁵⁸"Account Redistribution Policy -- 2006 Changes" (MLE 00100 000268).

⁵⁹ See Sieg 1/16/07 depo., p. 110-118, 181-183, 188-189, 208-211.

5 another FA, a mentee or another person they
6 have a relationship with, that no longer
7 exists.

8 Likewise, there's a term which is
9 commonly used, "FA culling a book," and that
10 means shedding certain client relationships,
11 and the practice prior to this 2006 policy
12 was that the financial advisors could
13 determine who they wanted to direct those
14 relationships to, and a decision was made to
15 not allow that to happen, and to have any
16 about account transfers from one FA to
17 another FA go through the distribution
18 policy, as opposed to the FA who is giving
19 the account just simply making a decision who
20 to give a relationship to.

21 Now, that does not include FAs
22 deciding to form an ongoing partnership.
23 This is actually moving accounts from one FA
24 to another.⁶⁴

The first example given by Mr. Sieg, sometimes called "re-directing" or "re-gifting" in company documents, is a concern identified in the company's first effort at auditing of the account review process in 2005. Audit results appear in three documents titled "GPC FA

⁶⁴Sieg 1/16/07 depo., p. 213.

Account Distribution Policy Review," dated September 7, 2005 (with audit results for accounts distributed at a sample of offices during the fourth quarter of 2004 through the second quarter of 2005), March 2006 (results extended through the second quarter of 2005), and April 2006 (updating and supplementing the March 2006 results). The concluding section of each of these documents, "Distribution Review Summary," includes the following bullet point: "Senior FAs often redirect accounts received through an account distribution to junior FAs or mentees."⁶⁵

41. A related type of FA-to-FA transfer identified around the same time is a pre-distribution transfer, in which an FA who anticipates leaving the firm transfers accounts to an FA of his or her choice in advance of separating, thereby avoiding the company's ranking system. Maura Gallagher, Director of Global Private Client Diversity, conducted an analysis of accounts transferred from one FA to another within two week's of the separation of the FA initiating the transfer. Ms. Gallagher found that the magnitude of assets involved in such transfers was very large (over one billion dollars for the first nine months of 2005), and she speculated that "a scenario might be: You know you're leaving, so you transfer your accounts to the FA of your choice, prior to leaving."⁶⁶

⁶⁵BATES MLE 00034 000015-24 (September 7, 2005); BATES MLE 051 000637-647 (March 2006); and BATES (MLE 00100 000042-53) (April 2006). A related concern identified in the same documents is "account splits without formal team agreements" which is described as follows in a separate bullet point: "Accounts are often distributed to an FA with a split relationship to an account even if the account itself should have been distributed to the office under the Account Distribution Policy." A draft summary of the audit results through the first quarter of 2005 identifies "the ability of FAs to 're-gift' the accounts" as one reason for departures from the ranking system and includes the following bullet points under the category "audit observations:" "Pre-distribution transfers and post-distribution 're-gifting' create potential for abuse within the policy" (MLE 00179 01506-1512, quoted passage at 1508).

⁶⁶E-mail from Maura Gallagher to Kim Pillar, dated October 26, 2005 (no subject heading), BATES MLE 00182 000003. Also see "Account Transfer Analysis: Confidential-FOR INTERNAL USE ONLY," dated October 14, 2006, which includes analyses for the first part of 2005 showing that over 25% of FA-to-FA account transfers happened within the two weeks prior to the sending FA's separation from the firm (at BATES MLE 0018 000212-214).

41. Another related practice used by retiring FAs to bypass the ranking system was to "pre-sell" their book of client accounts to a successor of their choosing and then become an Investment Associate (IA) for the successor. Documents I have reviewed suggest that this practice was identified as a concern by the Office of General Council in 2006.⁶⁷ Mr. Sieg testified that this was an example of the kind of FA-to-FA transfer he described in the testimony quoted above at paragraph 39.⁶⁸ Apparently in response to concerns about this practice, it was explicitly prohibited in the 2006 Account Distribution Policy.⁶⁹

42. In sum, the National Account Distribution Policy, which was mandated in 2000 as part of the settlement agreement in *Cremin et al v. Merrill Lynch* class action gender litigation and subsequent policies included a ranking system to address bias in the distribution of accounts of FAs who leave the firm. However, the policies have allowed for departures from the ranking system under a range of circumstances, often at the discretion of local managers, and the policy gives an advantage to FAs who are members of teams. In addition, FAs have found a variety of ways to "game the system" and transfer their accounts to favored colleagues outside of the ranking system, a type of "opportunity hoarding" as described in paragraph 32. As noted above, African American FAs are substantially less likely than other FAs to be on teams, and they almost always

⁶⁷"Account Redistribution Policy Update: Confidential--FOR INTERNAL USE ONLY," dated October 2006, BATES MLE 00190 000209-213 at pages 000212-213).

⁶⁸Sieg 1/16/07 depo., p. 226-228. Also see Sieg 6/1/07 depo., p. 92-95, 102-103.

⁶⁹The 2006 policy states:

Note, the practice of an FA choosing their successor, transferring their book to the successor, and then becoming an IA for their successor, is not in keeping with the Account Distribution Policy and is prohibited. Further, if done for the purpose of "pre-selling and retiring" will render the FA ineligible for the Client Transition Program (CTP). (BATES MLE 00100 000261).

The "Client Transition Program" is part of the 2006 Account Distribution Policy that specifies the details of the process for transferring accounts from retiring FAs. Sieg 1/16/07 depo., p. 222 and see, for example, "Managers' Guide to MLCTP and Termination Process" (MLE 00036 000541-561) and "Merrill Lynch Client Transition Program" Updated 12/05 (MLE 00042 000760-775).

comprise a small minority in local offices. And as social science research shows, in employment settings, minorities often find themselves excluded from informal networks, isolated, and disadvantaged in terms of support from both peers and management. Because distributed accounts are a resource that increase an FA's book and production, the company's policy and practices regarding account distribution contribute to the cumulative disadvantage of African American FAs. And at the same time, they support and sustain a "rich get richer" white-dominated culture in which valuable and scarce resources are controlled by the ingroup and channeled away from the African American outgroup.

43. The National Account Distribution Policies have always given substantial weight to various measures that disadvantage African American FAs in both the ranking system and the eligibility criteria for receiving distributions. For example, the ranking system in the original policy included quintile rankings (by LOS) for both revenue, annuitized assets/liabilities, and revenue, and that in place in 2006 included (again by LOS) quintile rankings in annualized revenue and acquisition of net new households or money. To the extent that African American FAs face barriers on account of their race that limit their ability to excel on these criteria, the ranking system itself perpetuates cumulative disadvantage, over and above any bias due to departures from the ranking system of the type described above.⁷⁰

⁷⁰Analyses by plaintiffs' statistical experts show that African American FAs are less likely than white FAs to receive accounts from individuals in households with assets valued above \$250,000 and more likely to receive accounts from individuals in households with assets valued below that amount. Their analyses also show that among FAs who receive accounts, the average asset value of accounts distributed to African Americans is lower than that of accounts distributed to whites. See Madden & Vekker Report, p. 34-37.

Merrill Lynch's Racialized Jobs and Racialized Marketing Place African Americans at A Disadvantage

44. African American managers and professionals in large organizations are often assigned to "racialized jobs" or "racial submarkets" -- "niche" jobs that are oriented towards minority markets or constituencies.⁷¹ This practice, often adopted in response to external pressure to diversify as a result of EEO litigation or regulation, can create barriers for career advancement for African American employees, because they limit opportunities outside the racialized niche.⁷² Sometimes the assignment of minority professionals to racialized jobs is part of an explicit diversity strategy, what management scholars have called the "access-and-legitimacy" paradigm in which "organizations have pushed for access to -- and legitimacy with -- a more diverse clientele by matching the demographics of the organization to those of critical consumer or constituent groups."⁷³ In other words, the minority employee provides the organization with both access to and legitimacy with a minority constituency. However, strategies like this can create barriers

⁷¹M. Durr and J. R. Logan, "Racial Submarkets in Government Employment: African American Managers in New York State," *Sociological Forum*, Vol. 12, 1997, p. 353-370; S. M. Collins, "The Marginalization of Black Executives," *Social Problems*, Vol. 36, 1987, p. 317-331; S. M. Collins, *Black Corporate Executives: The Making and Breaking of A Black Middle Class*, Temple University Press, 1997. For a review of relevant research, see G. Wilson, "Racialized Life-Chance Opportunities across the Class Structure: The Case of African Americans," *ANNALS of the American Academy of Political and Social Science*, Vol. 609, 2007, p. 215-232. The racial segregation of professionalized jobs has been studied in the legal profession by D. Wilkins, "From 'Separate Is Inherently Unequal' to 'Diversity Is Good for Business': The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar," *Harvard Law Review*, Vol. 117, 2004, p. 1548-1615; on boards of directors by C. A. Peterson, J. Philpot, and K. C. O'Shaughnessy, "African-American Diversity in the Boardrooms of the US Fortune 500: Director Presence, Expertise and Committee Membership," *Corporate Governance*, Vol. 15, 2007, p. 558-575; and in media industries by D. D. Bielby and W. T. Bielby, "Hollywood Dreams, Hard Realities: Writing for Film and Television," *Contexts*, Vol. 1, 2002 (Fall/Winter), p. 21-27. For an historical overview of workplace racial segregation, see M. B. Katz, M. J. Stern, and J. J. Fader, "The New African American Inequality," *Journal of American History*, Vol. 92, 2005, p. 75-108.

⁷²S. M. Collins, "Black Mobility in White Corporations: Up the Corporate Ladder but out on a Limb," *Social Problems*, Vol. 44, 1997, p. 55-67; S. M. Collins, "Occupational Mobility Among African Americans: Assimilation or Resegregation," p. 189-202 in *Handbook of Employment Discrimination Research: Rights and Realities*, edited by L. B. Nelson and R. L. Nelson, Springer, 2005; Wilkins *op cit*.

⁷³D. A. Thomas and R. J. Ely, "Making Differences Matter: A New Paradigm for Managing Diversity," *Harvard Business Review*, Vol. 74, 1996 (September-October), p. 79-90 (quoted at p. 83).

to career advancement for minority employees. Management scholars David Thomas and Robin Ely note that while the strategy can lead to increases in diversity in some instances, it is "perhaps more notable for its limitations" which they describe as follows:

In their pursuit of niche markets, access-and-legitimacy organizations tend to emphasize the role of cultural differences in a company without really analyzing those differences to see how they actually affect the work that is done. Whereas discrimination-and-fairness leaders are too quick to subvert differences in the interest of preserving harmony, access-and-legitimacy leaders are too quick to push staff with niche capabilities into differentiated pigeonholes without trying to understand what those capabilities really are and how they could be integrated into the company's mainstream work.⁷⁴

Thomas and Ely add that the access-and-legitimacy approach can lead to disaffection among minority employees who feel exploited when they see their opportunities limited to niche markets, especially if the company later redirects its focus away from the niche area, thereby undermining opportunities for minorities to be successful outside their niche.⁷⁵

45. The kind of "access-and-legitimacy" approach to diversity described above was adopted within Merrill Lynch, which tied its FA diversity efforts to programs designed to expand market share among diverse client groups. In the Fall of 2001, in consultation with the firm's head of Human Resources, Merrill Lynch Global Private Client launched its multicultural marketing function, known at that time as Multicultural Diversified and Business Development Group (MDBD). In 2005 it was renamed the

⁷⁴Thomas and Ely, *op cit.*, p. 83.

⁷⁵Thomas and Ely, *op cit.*, p. 84-85. Also see Collins, 1997 *op cit.* and Collins 2005, *op cit.*

Multicultural Marketing Group (MMG).⁷⁶ From its inception, MDBD was expected to "partner" with diversity initiatives throughout the firm.⁷⁷ Subha Barry, the initial head of MDBD, testified about the link between multicultural marketing and diversity as follows:

22 And out of that, I thought it was a
23 terrific opportunity for Merrill Lynch to do
24 business with these communities, because there
25 was a lot of wealth there, and -- um, also, I
0057

1
2 realized that when people from the community
3 walked into a branch office that they would
4 really not see a reflection of themselves in
5 the branch offices, and that level of affinity
6 I believed to be important in helping make the
7 customer feel comfortable with the company
8 they were doing business with,

9 So, I took the business idea which
10 actually um, I believed to be a bridge between
11 business development and human development, to
12 Terry Kassel and to Stan O'Neal, and with
13 their encouragement and support, was
14 ultimately persuaded to give up my book of

⁷⁶Chopra depo., p. 21-32, 35-36.

⁷⁷Chopra depo., p. 32-33. Also see Pillar depo., p. 224.

15 business to come in to start this new unit in
16 private client.⁷⁸

In March of 2003, in a communication to the entire company on workforce diversity issues, CEO Stan O'Neal announced that MDBD's efforts in the area of diversity recruitment, retention, and development would continue, and that Subha Barry, its head, would "assume responsibility for coordinating diversity activities across the firm."⁷⁹

46. Although the extent of the multicultural marketing function's responsibility for driving FA diversity efforts remained vague at least into 2005 (a topic addressed in more detail below), the approach described above was not significantly modified during the period Ms. Barry headed multicultural marketing.⁸⁰ And as recently as February 2006, the "access and legitimacy" approach was identified as one of three paradigms guiding the mission of the GPC Diversity Group.⁸¹

47. The kind of "pigeonholing" that can occur when racialized marketing strategies are associated with race-based work assignments is a concern that has been raised by African American FAs at Merrill Lynch. In fall 2005 the company conducted a research study of Merrill Lynch FAs and managers who participated actively in servicing the African American market. Among the findings reported in "A Qualitative Research Study of the African American Market Among ML FAs and ML Managers," dated November 2005, is the following:

⁷⁸Barry depo., p. 57-58. Also see McCann depo., p. 206-207, 210.

⁷⁹"A message from Stan O'Neal, Chief Executive Officer: Building a Performance-Based Culture: Next Steps for Workforce Diversity," March 5, 2003 (BATES MLE 00117 000077-78 at 77).

⁸⁰Gardner depo., p. 208-209, 213-217, 221-227; Barry depo., p. 73-74, 102-103, 163-164; McCann depo., p. 204-207, 213.

⁸¹"FA Diversity ACTM Minutes, February 1-3, 2006," (BATES MLE 000206 000215-227 at 223). The minutes note the problems associates with this approach: "We must seek to avoid however the tendency to push staff into narrow niches and markets."

Advisors and managers criticized always trying to fit an African American client with an African American advisor, especially when an advisor leaves the business. Because of the high turnover of African American advisors, this often results in a client being paired with 2 or 3 advisors just because they are African Americans. Ultimately, this "shuffling" results in the client becoming frustrated and requesting a white advisor, because they feel they will provide a more stable relationship.⁸²

Indeed, African American FAs receive mixed messages from the company, with resources devoted to racialized approaches to multicultural marketing on the one hand and occasional emphasis on the importance of having a (racially) "diversified book" on the other.⁸³

48. Initially, MDBD focused on the South Asian market, with the Hispanic market added in mid-2002 and the African American and women's markets added in early 2003.⁸⁴ By the time the 2006 multicultural marketing plan was developed, the operation was organized around seven diversity segments: African American, Hispanic, "LGBT" (lesbian, gay, bisexual, transgendered), Native American, South Asian, Special Needs, and Women.⁸⁵ Race-matching was an explicit criteria for selecting the heads of each of marketing group: an African American was selected to head the African

⁸²BATES MLE 00951 000889.

⁸³O'Neal depo., p. 133, 138-139; Pillar depo., p. 298-299; "USPS Diversity Analysis Presentation Book, January 2002" (BATES MLE 00003 00145-176 at 160); and "African American FA Task Force, Focus Group Conclusions, December 2003" (BATES MLE 00356 000160-166 at 162), in a section titled "Summary" is the following bullet point: "Black FAs lack a natural market such as Asian and Hispanic FAs have. African American FAs need a more diverse book than any other ethnic group. Among the successful African American FAs, between 1% and 50% of their book is African American clients."

⁸⁴Chopra depo., p. 25-26; Barry depo., p. 63-65. Between 2003 and 2005 the multicultural marketing function added groups focusing on the LGBT community, Native Americans, and the disabled (Barry depo., p. 64).

⁸⁵Chopra depo. p. 81, 83-84; Barry depo., p. 63-65; and "Multicultural Marketing 2006 Objectives," BATES MLE 00202 000029.

American group, a South Asian to head the South Asian group, and so on.⁸⁶ Ms. Barry testified that race-matching was used in part because "communities are usually more likely to embrace one of their own."⁸⁷

49. Racialized " pigeonholing" of African American FAs was also institutionalized at Merrill Lynch through the "virtual teams" initiative, developed in 2002 and introduced in 2003.⁸⁸ In a virtual team, FAs in different offices work together on a specific client relationship, and the arrangement exists throughout the FA workforce as a way of building upon complementary skills that exist among FAs in different offices in the same region.⁸⁹ However, when applied to the company's African American multicultural marketing efforts, the virtual team concept was used in a way that invoked stereotypes and is likely to have reinforced the "typecasting" of African American FAs. In particular, to increase participation in the African American market given that there are no African American FAs in many offices and few FAs on teams, the virtual team initiative is an arrangement formalizing the "access-and-legitimacy" approach described above. This rationale is stated explicitly in company documents, as in this example, from a document prepared for the July 2005 African American Financial Advisor Symposium:

We believe it is paramount that diverse FA teams are able to access key and influential local organizations that are tied in with the key business and business owners. By positioning the firm as corporate members of these "key" organizations and associations, diverse FA teams gain access to these groups that

⁸⁶Barry depo., p. 64-68.

⁸⁷Barry depo., p. 111.

⁸⁸See, for example, "Merrill Lynch USPC Marketing, HNW African Americans Business Development Strategy and Marketing Position, Discussion Document, 7/31/02" (BATES MLEE 016 0039001-037); and the press release announcing Keith Henry's appointment as Director of the African American Market, dated January 30, 2003 (BATES MLEE 038 037205-207).

⁸⁹Sieg 6/1/07 depo., p. 110-111, McCann depo., p. 286-289; O'Neal depo., p. 303.

might otherwise be difficult to penetrate. By "branding" Merrill Lynch at annual recognition dinners, symposiums and events AAFA teams become recognized as leaders in their communities.

and, from the same document:

Diverse FA teams ... raise the profile of Merrill Lynch in diverse communities that previously have been under penetrated but represent significant business opportunities.⁹⁰

One of the "benefits," according to this document, is that diverse virtual teams can bring business from "non traditional markets (e.g. athletes, entertainers, casino operators, et al)."⁹¹ And included in a list of presumed "needs" of African American FAs with regard to teaming is the statement "AAFAs might be encouraged to learn to play golf or other activities designed to learn how 'business gets done' in manners that the AAFA might not be familiar with."⁹²

50. Testimony and materials I reviewed indicate that assumptions about and approaches to the African American market often embraced sweeping generalizations and racial stereotypes about actual and potential African American clients. And at the same time, successful African American FAs were typecast as having distinctive skills that differed from their successful non-African American peers. In short, the multicultural marketing effort was built on stereotyped assumptions about both clients and customers.

⁹⁰"Merrill Lynch African-American Financial Advisor Symposium, Tuesday, July 26, 2005, Virtual and Non-virtual Teams, A discussion with Directors" (BATES MLE 00206 000631-648, quoted at 639, and 642); McCann depo., p. 288-289; O'Neal depo., p. 302-309. Also see, for example, "Multicultural & Diversified Business Development, African American Strategy and Market Plan at BATES MLE 00973 001002: "Implement the African American Virtual FA Network in order to: A. Train and develop African American FAs; B. Provide business opportunities for African American FAs; C. Penetrate High Net Worth African American Market; C. Motivate and Recognize African American FAs; D. Attract new African American recruits from the competition."

⁹¹BATES MLE 00206 00642.

⁹²BATES MLE 00206 00645.

For example, in approximately March 2006, Jyoti Chopra, head of the Multicultural Marketing Group prepared two sets of documents for Vice Chair of Global Private Client, Bob McCann: an overview of MMG's marketing model, strategy, and plans, and a 2006 marketing plan for each of the diverse segments.⁹³ The overview document includes an "investment profile" characterizing traits of the African American, Hispanic, South Asian, and women segments that includes generalizations such as South Asians being "technical," "self-directed," "fee sensitive," and "savvy investors," while typical households in the other three segments possess none of those traits. Similarly, the document characterizes Hispanic, African American, and female households as "conservative," "need education," and "prefer cash and real estate" while South Asian households possess none of those traits.⁹⁴

51. The MMG materials for marketing to affluent African Americans categorizes that group further into six segments, including "entertainer/athlete" with a mindset that includes "money to burn/big spender," "community leader/activist & small business owner" with a mindset that includes "don't trust the system" and "cash is king" and "emerging" with a mindset that includes "it's my time."⁹⁵

52. In 2006 the Multicultural Marketing Group developed an "FA Tool Kit" that was distributed to FAs and field managers to be used as a resource for attracting clients

⁹³Chopra depo., p. 107-108. The former document is "Multicultural Marketing Group" Bob McCann, March 2006, BATES MLE 00357 000788-873; the latter document for the African American segment is "Multicultural Marketing: 2006 Affluent African-American Marketing Plan" (BATES MLE 00666 000283-402).

⁹⁴See the overview document at BATES MLE 00357 000798. Also see BATES MLE 00357 000830, 838, 846, 856, and 870.

⁹⁵Chopra depo., p. 104-105. See the overview document at BATES MLE 00357 000832 and the African-American Marketing Plan at BATES MLE 00666 000326. Also see BATES MLE 000666 - 000356: "Segment markets based on core beliefs, lifestyle, buying behavior, age (e.g. Trendsetters, Assimilators, Business Owners, Technicians, Entertainers, Hip Hop, etc.)"

from diverse market segments.⁹⁶ The Multicultural Marketing Quarterly Newsletter for the first quarter of 2006 included a message from Ms. Chopra explaining that the toolkit "contains information on all seven markets and reviews market opportunities and provides tactical suggestions to help you successfully build your business in these segments."⁹⁷ Included in the toolkit was a "cultural sensitivities fact sheet" for each of the seven diverse market segments which included guidance for FAs on "etiquette," "values," "family relationship structures," and "business protocols & practices" distinctive to each segment.⁹⁸ For the African American segment, the document titled "African American Market Cultural Sensitivities" includes under the Etiquette category, "as a general rule, business etiquette is identical to American customs." Under the Family and Relationship Structures category it states: "almost half of all households are single-parent homes."⁹⁹ While it is unclear how either of these pieces of guidance could have any utility for marketing Merrill Lynch products to affluent African American households, they are examples of the kind of broad generalizations found in the company's multicultural marketing materials.

⁹⁶Chopra depo., p. 37-40, 61, 65-69, 76-77, 80; Barry depo., p. 167

⁹⁷BATES MLE 00121 000786.

⁹⁸Chopra depo., p. 76-77. Also see, for example, "Multicultural & Diversified Business Development: MDBD Growth Plans, Global Private Client Marketing" at BATES 00261 000252. Under the heading of 2005: Mobilizing the Field is the goal, "Engage FAs & Managers in MDBD efforts & programs to enable FA & office success in Women's & diverse market segments." "Cultural sensitivities" is listed under the heading of "Provide Education" (along with "Market intelligence" and "social prospecting & networking"). An overview of the FA Toolkit in general and the "Cultural Sensitivities" document in particular appears in many documents designed to be marketing resources for FAs. See, for example, "Total Merrill: Using Multicultural Marketing to Build Your Business and Your Brand, Greater Los Angeles" BATES MLE 00977 000164-289. Also see e-mail memo from Amy O'Hara of GPC Marketing to the diverse segment market managers regarding "FA Tool Kit: Cultural Sensitivities," dated March 7, 2006 (BATES MLMRE 001 012666). It states: "For the ethnic markets, we have one-page documents on the cultural sensitivities which we would like to include in the FA tool kit. The content for these pieces was developed last summer with input from each of the market managers."

⁹⁹See, for example, BATES MLE 00226 000004 and BATES MLE 00666 0000068.

53. The racialized approach to marketing created a climate that led to the profiling by race, ethnicity, and religion of the clients of Global Private Client. For example, a presentation by the Multicultural Marketing Group to the head of Global Private Client, Robert McCann, identified "investor profiling, segmentation, and targeted marketing" as a focus of Merrill Lynch's approach to marketing.¹⁰⁰ In 2005, the company contracted with the Donnelly Marketing Division of infoUSA to undertake an analysis that categorized Merrill Lynch clients by race, national origin, and religious categories based on surnames.¹⁰¹ The company viewed itself as an industry leader in this regard, highlighting its "identification/profiling of diverse constituencies" as well as its "cultural sensitivities" training in a self-nomination to the Securities Industries Association (SIA) for a diversity and leadership award.¹⁰² The nomination also asserted that the programs and strategies emanating from the MDBD group had the active participation and support of Merrill Lynch's top management.¹⁰³

¹⁰⁰"Multicultural Marketing Group, Bob McCann, March 2006" (BATES MLE 00357 000788-873 at 790).

¹⁰¹Chopra depo., p. 85-90, 93; Barry depo., p. 192-194, 205; "Multicultural Marketing Group Summary, African American, Hispanic, Native American, South Asian, Based on Donnelly Ethnic Append Analysis, Multicultural Marketing Group, December 2005," (BATES MLE 00202 000001-12); E-mail from Subha Barry to Robert McCann, Subject: MDBD Business Update follow up items, dated February 10, 2004 (BATES MLEE 038 010468-69); "Multicultural Marketing, 2006 African-American Marketing Plan" (BATES MLE 00666 000283-402 at 290-291); E-mail from Dwayne Redmond to Bruce Sparber, Subject: Preliminary Ethnicity Client Numbers, dated October 25, 2005 and accompanying attachment (BATES MLMRE 001 024383-391). The contract between Merrill Lynch and infoUSA gave the firm "use of "Licensed Data or information derived either in whole or in part from the Licensed Data for its own direct marketing activities, database marketing, marketing analysis and decision support." Included in the consumer data licensed under the contract is the data element "Ethnic Code" (BATES INFO 00244-00252 at 244 and 249).

¹⁰²"SIA Member Firm Diversity Leadership Award Nomination and Submission Form" (BATES MLEE 018 034299-304 at 300-301).

¹⁰³The nomination states: "The majority of Merrill Lynch's Executive Committee and leadership team...and the corporate group actively participate in programs pertaining to the Multicultural & Diversified Business Development Group." It also states: "The Chairman & CEO of Merrill Lynch receives regular reports on the group's activities and actively participates in several programs per year." "SIA Member Firm Diversity Leadership Award Nomination and Submission Form" (BATES MLEE 018 034299-304 at 302-303). On management knowledge and approval of the ethnic coding project, see Chopra depo., p. 87-88, 98, 106.

54. It is perhaps not surprising that the racialized approach to multicultural marketing lead to the development of assumptions that to be successful, African American FAs needed to possess unique talents not identified as success factors for non-African American FAs. For example, the 2001 Multicultural Business Plan included guidance for training those who hire into the FA training program "to be adept in identifying these skills/characteristics found in successful diverse FAs" which included "ability to build relationships with individuals they are not comfortable with," "thick skin, fearless," "ability to thrive in an environment where they are the minority," and "associated with circles of wealth via prior education and employment."¹⁰⁴ When asked how the list of skills was developed, Ms. Barry, who headed the multicultural marketing unit at the time, testified that "it could have been [her own] personal insights."¹⁰⁵

55. No systematic job analysis went into developing this profile of skills presumed to be needed to be a "successful diverse FA."¹⁰⁶ Yet some of them found their way into recommendations for recruiting African American FAs, including one to hire from the military in part because of "tough skin" and another to develop personality assessments to assess aptitudes such as "ability to inspire confidence and trust and resiliency."¹⁰⁷ Simply assuming that African American FAs will face rejection from whites, have difficulty crossing cultural boundaries, and lack access to networks of wealthy individuals can activate and reinforce stereotypes, in the same way as does assuming that many of the African American clients that they are encouraged to do

¹⁰⁴"2001 Multicultural Business Plan, August 22, 2001" (BATES MLE 00196 00060-200 at 095). A document from 2001 titled U.S. Private Client Diversity & Recruitment Toolkit repeated this list (BATES MLE 00991 000541-558 at 543).

¹⁰⁵Barry depo., p. 293.

¹⁰⁶Barry depo., p. 294-296.

¹⁰⁷"African American FA Task Force, Focus Group Conclusions, December 2003" (BATES MLE 00179 000514-520 at 517).

business with are in single-parent family households or that potential clients who are African American community leaders have a "cash is king" mindset. And assuming that African American clients are not financially "savvy" reinforces the stereotype that African American FAs are unsophisticated in such matters as well.

How Merrill Lynch's System for Making Promotions into Management Creates Barriers to Career Advancement for African Americans

56. FAs who wish to move into positions as complex or office managers or into regional management at Merrill Lynch must be accepted for evaluation at the company's Management Assessment Center ("MAC"), and to become a manager they must receive a "pass" rating after participating in a variety of assessment exercises over a three to four day period.¹⁰⁸ Ratings are done by a team of approximately 18 to 20 assessors drawn from the ranks of field management, and those who "role play" in an assessment exercises are individuals from local-level management as well.¹⁰⁹ From 2003 through 2006 the MAC has been done once per year, and more often than that in some prior years.¹¹⁰ In recent years there have been approximately 20 people evaluated each year.¹¹¹

57. To be accepted for evaluation at the MAC, an FA must have a length of service of at least four years and be nominated by his or her manager.¹¹² The FA must also be in the first or second production quintile. Exceptions are allowed for third quintile FAs, although there are no written criteria of allowable reasons for granting an

¹⁰⁸Sieg 11/29/06 depo., p. 31-32, 145-146.

¹⁰⁹Sieg 11/29/06 depo., p. 151-153; Sieg 12/1/06 (AM) depo., p. 211-212; Sieg 12/1/06 (AM) depo., p. 296.

¹¹⁰Sieg 11/29/06 depo., p. 36-37.

¹¹¹ Sieg 11/29/06 depo., p. 84-85.

¹¹²Sieg 11/29/06 depo., p. 46-48, 81-82.

exception.¹¹³ Nor have there been validation studies demonstrating that production quintile ranking reliably predicts effectiveness as a manager.¹¹⁴

58. The criteria for qualifying for the MAC is one that by design screens out African Americans. In a context where African Americans are disadvantaged within a "success-breeds-success" cumulative advantage system, African American FAs will not have the same chances as other FAs of the same LOS and comparable management potential to rank in the top two or three quintiles of production. In addition, the isolation and exclusion from social networks that tends to occur in work contexts where African Americans have only token presence can make it more difficult to get the management sponsorship required to qualify for the MAC, especially for third quintile FAs for whom a rationale for exception must be made.

59. In a company that embraces racialized approaches to jobs and marketing, it is not surprising that elements of its assessment procedures also reinforce stereotypical generalizations about African Americans. First, given the very low representation of African Americans in both the FA workforce and management ranks, those making the assessments and playing the roles in the exercises will almost always be non-African Americans. Similarly, any African American FA who is an assessee is likely to be the only African American among the cohort of candidates being assessed. In short, the dynamics of token representation of African Americans that exists in the company's workforce is reproduced in assessment setting.

60. Second, Mr. Sieg testified that "inclusiveness is threaded throughout the Assessment Center,"¹¹⁵ but in the case of representing African Americans, it is done in a

¹¹³Sieg 11/29/06 depo., p. 81-82

¹¹⁴Sieg 11/29/06 depo., p. 116-117.

way that resonates with stereotypical generalizations. For example, Mr. Sieg testified that the specific roles constructed for the assessment exercise were composites of "real life situations that someone might face as a complex manager." In one exercise for a fictional office, twenty-six roles are included, and just one is written to represent an African American. She is a "frustrated" African American female FA with a "short temper" who is "struggling in the fifth quintile."¹¹⁶ It is well established in the social science literature summarized above that stereotypical associations are undermined by specific information that runs counter to a stereotype (e.g., in this case, if the African American woman had been a top producer or experienced and highly regarded high-level manager) and are reinforced by information consistent with stereotypical expectations (in this case, associating the traits of low producer and short temper with African American). Another example comes from a "business issues" exercise that has been used to train assessors. In it, the person being evaluated is to demonstrate "situational judgment" in responding to a problem described in an e-mail or memo. Of ten vignettes in the exercise, one titled "coaching a difficult minority FA" describes a "bright and articulate" African American female FA who is "failing in the business," has a "tough and abrasive" personality, "is not well liked," and as a result "nobody in the office wants to team with her." Of the set of ten exercises, this is the only one that identifies an individual specifically as African American, and again, rather than presenting counter-stereotypical traits, it includes ones that can reinforce stereotypes.¹¹⁷ Mr. Sieg testified that the

¹¹⁵Sieg 11/29/06 depo., p. 161-162; also see Sieg 11/29/06 depo., p. 177-181; Sieg 12/1/06 (AM) depo., p. 230-234.

¹¹⁶"Profiles" (BATES 00080 000193-198 at 193); Sieg 12/1/06 (AM) depo., p. 259-261, 263-264.

¹¹⁷"Business Issues: Situational Judgment Activity" (BATES MLEE 013 000404-409 at 405); Sieg 12/1/06 (AM) depo., p. 347, 349.

objective of the exercise would have been equally effective if the person had not been identified as African American.¹¹⁸

61. In selecting assessors and role players for the MAC, Merrill Lynch has the capacity to consider field managers' performance on diversity measures such as the diversity "Critical Few Objectives" (CFO), their record in hiring and developing diverse FAs, but that kind of information is not used for that purpose.¹¹⁹ Mr. Sieg testified that "having an inclusive environment and dealing in an atmosphere that promotes meritocracy, those are the types of people who should be assessors,"¹²⁰ but I saw no evidence that individuals invited to be assessors are systematically evaluated on the presence of those traits. Instead, the extent of evaluation of potential assessors with respect to diversity and inclusiveness appears to be "vetting" them with the Office of General Counsel and Human Resources, which could possibly disqualify them if there are complaints on record.¹²¹ Yet even with this limited screening, when the Office of General Counsel identified a field manager who had been the subject of prior complaints as someone who should not be an assessor, that individual was allowed to proceed in the role anyway, because as Mr. Sieg testified, "I certainly feel as if I gave him the impression that he might be invited."¹²²

62. The Management Assessment Center has been designed to evaluate candidates on a variety of behavioral dimensions related to management tasks.¹²³ Each MAC exercise is designed to allow for an assessment on some, but generally not all, of

¹¹⁸Sieg 12/1/06 (AM) depo., p. 347-348.

¹¹⁹Sieg 11/29/06 depo., p. 169-173; 175-176; Sieg 12/1/06 (AM) depo., p. 192-195, 213-214.

¹²⁰Sieg 11/29/06 depo., p. 171.

¹²¹Sieg 11/29/06 depo., p. 91, 152-160; Sieg 12/1/06 (AM) depo., p. 216-219.

¹²²Sieg 11/29/06 depo., p. 157, 165-166, quoted at 165.

¹²³Sieg 11/29/06 depo., p. 120-123, 147-148, 150-151.

the dimensions. The assessors do independent ratings for the exercises they have observed,¹²⁴ but the process for aggregating those individual ratings into a final decision relies on the generation of a subjective consensus among raters in a way that is vulnerable to stereotypes. Rather than relying on an objective system for weighing the independent ratings of assessors, a single consensus rating emerges from a group "integration meeting." In that meeting, individual assessors present their ratings of each trait they observed, but then there is a group discussion (including all assessors, not just those who observed the trait) followed by a vote to arrive at a final score on each trait. And in second round,¹²⁵ the group takes another vote that determines whether the candidate receives the 70% or higher support required for a passing grade.¹²⁵ In other words, in the final analysis, all of the specific information based on observations of individual rates is set aside, and the subjective judgment of the group prevails. Moreover, individual rating sheets are not retained, so there is no possibility of auditing or monitoring the evaluation process for reliability and bias.¹²⁶ This kind of subjective and highly discretionary decision-making process is highly vulnerable to racial bias. Social science research demonstrates that in a highly discretionary system with limited monitoring, even objective factors, can be evaluated in a way that leads towards favoritism to the majority group and discrimination against those in the minority.¹²⁷ And given the demographic

¹²⁴Sieg 12/1/06 (AM) depo., p. 288-302.

¹²⁵Sieg 12/1/06 (AM) depo., p. 302-313, 327-330.

¹²⁶Sieg 12/1/06 (AM) depo., p. 313-327; 340-343.

¹²⁷For example, social psychologists Samuel Gaertner and John Dovidio have conducted research showing that when white evaluators have discretion in how to weigh evaluative criteria, they tend to do so selectively, in a way that biases outcomes in favor of white ratees. In one part of their study, participants were told they were assisting a university in making admission decisions, and they were given information on factors such as test scores and high school grades for (hypothetical) African American and white applicants. When applicants were strong on one dimension and weak on the other, raters tended to give the stronger dimension a greater weight for white applicants and the weaker one a greater weight for African American applicants. In other words, they exercised their discretion in a way that ensured that whites

makeup of Merrill's field managers, the most salient dimensions of homogeneity are likely to be race and gender, placing African American (and female) candidates at a distinct disadvantage.

Decoupled and Diffuse Lines of Authority and Accountability for EEO and Diversity Allow Discriminatory Barriers to Persist

63. Social science research shows that an organization's policies, practices, and culture, once in place, become institutionalized, establishing what organizational scholars refer to as "organizational inertia." As a result, these central features of the organization rarely change in the absence of any substantial change in the firm's business, technical, or legal environment.¹²⁸ A large and visible discrimination lawsuit is the kind of change to a company's legal environment that can lead to significant changes in "standard operating procedures" on matters relating to equal employment opportunity, leading to, for

would rank on top. The authors summarize their findings as follows: "White college participants (whom, relative to the general population may be regarded as generally moderate to low prejudiced...), give White candidates the 'benefit of the doubt,' a benefit they do not extend to Blacks." Gaertner et al., *op cit.*, quoted at p. 384. Also see Hodson et al., *op cit.* and Norton et al., *op cit.*

¹²⁸A. L. Stinchcombe, "Social Structure and Organizations," p. 142-93 in *Handbook of Organizations*, edited by J. G. March, Rand McNally, 1965; M. T. Hannan and J. H. Freeman, "Structural Inertia and Organizational Change," *American Sociological Review*, Vol. 43, 1984, p. 143-164; J. N. Baron, "Organizational Evidence of Ascription in Labor Markets," in *New Approaches to Economic and Social Analyses of Discrimination*, edited by R. Cornwall and P. Wunnava, Praeger, 1991. The concept of organizational inertia has been applied in scientific studies conducted in a wide range of industrial settings. For reviews, see S. Kaplan and R. Henderson, "Inertia and Incentives: Bridging Organizational Economics and Organizational Theory," *Organization Science: A Journal of the Institute of Management Sciences*, Vol. 16, 2005, p. 509-521; and C. Gresov, H. A. Haveman, and T. A. Oliva, "Organizational Design, Inertia, and the Dynamics of Competitive Response," *Organization Science: A Journal of the Institute of Management Sciences*, Vol. 4, 1993, p. 181-208. Also see, for example, J. Roggema and M. H. Smith, "Organizational Change in the Shipping Industry: Issues in the Transformation of Basic Assumptions," *Human Relations*, Vol. 36, 1983, p. 765-790; E. Abrahamson and C. J. Fombrun, "Macrocultures: Determinants and Consequences," *Academy of Management Review*, Vol. 19, 1994, p. 728-755; L. Gardenswartz and A. Rowe, "Diversity Management: Practical Application in a Health Care Organization," *Frontiers of Health Services Management*, Vol. 11, 1994, p. 36-40; G. T. Fairhurst, S. Green, and J. Courtright, "Inertial Forces and the Implementation of a Socio-technical Systems Approach: A Communication Study," *Organization Science*, Vol. 6, 1995, p. 168-185; C. Doucouliagos, "Conformity, Replication of Design and Business Niches," *Journal of Economic Behavior & Organization*, Vol. 30, 1996, p. 45-62; and M. Ruef, "Assessing Organizational Fitness on a Dynamic Landscape: An Empirical Test of the Relative Inertia Thesis," *Strategic Management Journal*, Vol. 18, 1997, p. 837-853.

example, the establishment of affirmative action or diversity offices, training programs, complaint procedures, new written policies, and the like.¹²⁹ Sometimes changes made in response to litigation or EEO regulatory enforcement have measurable impacts on reducing discriminatory barriers, but often they are just "window dressing," adopted mainly because they create the appearance of compliance with the law.¹³⁰ Sociologist and legal scholar Lauren Edelman, the leading expert on this topic, summarizes the findings of fifteen years of research on organizational responses to EEO as follows:

Because it is generally the form rather than the substance of compliance that attains an institutionalized status, there is variation in how enthusiastically management, as well as the personnel who staff compliance structures, embraces legal ideals. In some cases, structures have both symbolic and substantive significance -- their form signals attention to legal ideals and they operate to enhance the workplace status and conditions of legally protected employees. In other cases, however, the structures fit the law in form but lack substantive effect.

¹²⁹E. H. James and L. P. Wooten, "Diversity Crises: How Firms Manage Discrimination Lawsuits," *Academy of Management Journal*, Vol. 49, 2006, p. 1103-1118; K. Stainback, C. L. Robinson, and D. Tomaskovic-Devey, "Race and Workplace Integration," *American Behavioral Scientist*, Vol. 48, 2005, p. 1200-1228; S. Skaggs, "Producing Change or Bagging Opportunity? The Effects of Discrimination Litigation on Women in Supermarket Management," *American Journal of Sociology*, Vol. 113, 2008, p. 1148-1182; A. Kalev, F. Dobbin, and E. Kelly, "Best Practices or Best Guesses? Assessing the Efficacy of Corporate Affirmative Action and Diversity Policies," *American Sociological Review*, Vol. 71, 2006, p. 589-617; A. Kalev and F. Dobbin, "Enforcement of Civil Rights Law in Private Workplaces: The Effects of Compliance Reviews and Lawsuits Over Time," *Law & Social Inquiry*, Vol. 31, 2006, p. 855-903.

¹³⁰L. B. Edelman, "Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law," *American Journal of Sociology*, Vol. 97, 1992, p. 1531-1576; L. B. Edelman, S. Patterson, E. Chambliss, and H. S. Erlanger, "Legal Ambiguity and the Politics of Compliance: Affirmative Action Officers' Dilemma," *Law and Policy*, Vol. 13, 1991, p. 73-97; L. B. Edelman, H. S. Erlanger, and J. Lande, "Employers' Handling of Discrimination Complaints: The Transformation of Rights in the Workplace," *Law & Society Review*, Vol. 27, 1993, p. 497-534; L. B. Edelman, Lauren B. and S. Petterson, "Symbols and Substance in Organizational Response to Civil Rights Law," in *Research in Social Stratification and Mobility*, 1999; J. S. Leonard, "Women and Affirmative Action," *Journal of Economic Perspectives*, Vol. 3, 1989, p. 61-75. Also see J. S. Leonard, *Use of Enforcement Techniques in Eliminating Glass Ceiling Barriers*, Report prepared for the U. S. Department of Labor, Glass Ceiling Commission, April 1994; and M. L. Selmi, "The Price of Discrimination: The Nature of Class Action Employment Litigation and Its Effects," *Texas Law Review*, Vol. 81, 2003, p. 1249-1336.

Organizations may strategically seek to create compliance structures merely as symbolic gestures by "decoupling" those structures from core organizational activities. Organizations may, for example, create affirmative action officer positions but give the officer little or no autonomy or authority or create grievance procedures that are hard to access and known to provide little relief.¹³¹

64. Research by social scientists and management scholars shows that interventions aimed at increasing workforce diversity and minimizing barriers are most successful when they avoid "decoupling" by establishing "responsibility structures," i.e. specific organizational units that provide clear lines of responsibility and accountability for achieving EEO and diversity goals.¹³² But absent effective responsibility structures, genuine accountability, and meaningful commitment from top management, interventions such as diversity training, diversity evaluations for managers, and mentorship programs are often ineffective, and some may even create barriers to advancement for minority employees.¹³³

¹³¹L. B. Edelman, "Law at Work: The Endogenous Construction of Civil Rights," p. 337-352 in *Handbook on Employment Discrimination Research: Rights and Realities*, edited by R. L. Nelson and L. B. Neilson, Kluwer Academic Press, 2005 (internal citation omitted, quotation on p. 345-346). Also see K. D. Krawiec, "Cosmetic Compliance and the Failure of Negotiated Governance," *Washington University Law Quarterly*, Vol. 81, p. 487-544. On the general issue of decoupling of organizational functions, see D. J. Orton and K. E. Weick, "Loosely Coupled Systems: A Reconceptualization," *Academy of Management Review*, Vol. 15, p. 203-223

¹³²Kalev *et al.*, *op cit.* For an example of policies and practices used by human resources professionals for establishing effective monitoring and accountability, see D. Kennedy, *Accountability: Establishing Shared Ownership*, Berrett-Koehler Communications, 2000. For reviews of monitoring and accountability as strategies for ensuring equal employment opportunity, also see Bielby, 2000, *op cit.*; also see S. Sturm, "Second Generation Employment Discrimination: A Structural Approach," *Columbia Law Review*, Vol. 101, 2001, p. 458-568; B. F. Reskin, "Including Mechanisms in Our Models of Ascriptive Inequality," *American Sociological Review*, Vol. 68, 2003, p. 1-21 (see, especially, p. 12-14).

¹³³Kalev, *et al.*, *op cit.* Also see F. Dobbin, A. Kalev, and E. Kelly, "Diversity Management in Corporate America," *Contexts*, Vol. 6, No. 4, 2007, p. 21-27; J. Denis, "More than 'Window Dressing'? The Conditional Effects of Diversity Training on Managerial Diversity: The Importance of Commitment," paper presented at the annual meeting of the American Sociological Association, New York, New York City, Aug 11, 2007; A. M. Konrad and F. Linnehan, "Formalized HRM Structures: Coordinating Equal Employment Opportunity or Concealing Organizational Practices?" *Academy of Management Journal*, Vol. 38, 1995, p. 787-829..

65. Merrill Lynch experienced a significant disruption to the *status quo* regarding EEO matters when it entered into a settlement of the *Cremin et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.* class action gender discrimination litigation. As I described in my report submitted by the *Cremin* plaintiffs, the company did little in the way of monitoring disparities by gender and race in the career outcomes among its brokers and managers, and accountability for equal employment opportunity was minimal. As part of the settlement, the company agreed to abandon mandatory arbitration in bias cases, enhance and extend its diversity programs, and establish firm-wide guidelines for distribution of accounts of departing FAs.¹³⁴

66. In the years following the *Cremin* settlement, Merrill Lynch adopted a range of diversity-related programs and initiatives on both a company-wide basis and within Global Private Client, including diversity advisory boards and offices, FA training and mentorship programs, diversity training for managers, minority symposia, focus groups, surveys, exit interviews, and diversity "dashboards" and similar tools and reports for tracking disparities by gender and minority status.¹³⁵

67. Yet despite these programs, there has been little improvement in employment outcomes for African American FAs at Merrill Lynch, as measured either by the statistics summarized above or the company's internally developed metrics. The meager results of the company's programs and unfavorable employment outcomes of African Americans as compared to white FAs were regularly reported to and known by management, executives and the Board of Directors of Merrill Lynch. While the programs and

¹³⁴Stipulation of Settlement, *Marybeth Cremin, et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., et al.*, Northern District of Illinois, Eastern Division, No. 96 C 3773, June 17, 1998, and First Amendment to Stipulation of Settlement, August 27, 1998.

¹³⁵Pillar depo., p. 308-317, 325-335, 345-352, 361-362; O'Neal depo., p. 171-175; Gardner depo., p. 248-252; Barry depo., p. 208, 212-215; Sontag depo., p. 205-206, 238-241; Sieg 12/1/06 (PM) depo., p. 49-50.

initiatives differ in their sponsorship, resources, focus, continuity, and duration, what is common to all is that they were implemented in a context of ambiguous, unstable, and diffuse structures of responsibility and authority. This is the kind of organizational context that social science and management research shows can make them ineffective or even counterproductive.

68. For example, at both the corporate level and within GPC, lines of authority, responsibility, and accountability for diversity and EEO have been shifting, ambiguous, and diffuse from 2001 through the establishment of the Office of Diversity in June 2006, and beyond. According to the company's 2003 Affirmative Action Plan, the Chairman and Chief Executive Officer have overall responsibility for affirmative action results, with responsibility and accountability at the corporate level delegated to the Senior Vice President of Human Resources. All managers and supervisors and company locations and business units are expected "to understand their roles and responsibilities for affirmative action."¹³⁶ Similar language exists in other years.¹³⁷ CEO Stan O'Neal articulated a similar message in March 2003, in a company-wide communication on workforce diversity. In it, Mr. O'Neal stated: "Accountability for diversity will be shared by me, SVP Terry Kassel, head of Human Resources, and the members of executive management. He also stated: "Ultimately, we know that lasting progress depends on

¹³⁶"Executive Order 11246 2003 Affirmative Action Program for Minorities and Women, 4 World Financial Center," (BATES MLE 00694 000274-297 at 285).

¹³⁷See, for example, ¹³⁷"Executive Order 11246 2004 Affirmative Action Program for Minorities and Women, 4 World Financial Center," (BATES MLE 00694 002129-2155 at 2140), and ¹³⁷"Executive Order 11246 2005 Affirmative Action Program for Minorities and Women, 4 World Financial Center," (BATES MLMRE 019 059062-88 at 73).

decisions about hiring, training, development and promotion that are made every day by managers throughout the company."¹³⁸

69. Despite these corporate-level policy pronouncements, Robert McCann, Executive Vice Chair of Merrill Lynch and Vice Chair of Global Private Client at the time of his deposition, testified that he did not know if the company had an Affirmative Action Plan.¹³⁹ Daniel Sontag, Senior Vice President and head of the Americas Client Relationship Group at the time of his deposition, gave similar testimony.¹⁴⁰ Kim Pillar, who was head of Human Resources for Global Private Client from approximately February 2003 through March 2005, testified that she had never seen an Affirmative Action Plan and had no responsibility for doing so:

21 Q. Do you know whether Merrill Lynch
22 had an affirmative action plan at any time
23 from 2003 to 2005 when you were the head of
24 human resources?

25 MR. PAPPAS: Objection. Form.

0210

1

2 Lacks foundation.

3 A. During my tenure in HR, I did not

4 get involved with affirmative action plans.

¹³⁸"A message from Stan O'Neal, Chief Executive Officer: Building a Performance-Based Culture: Next Steps for Workforce Diversity," March 5, 2003 (BATES MLE 00117 000077-78).

¹³⁹McCann depo., p. 61.

¹⁴⁰Sontag depo., p. 233. Neither Mr. McCann nor Mr. Sontag were aware that in 1995 the company represented to the EEOC, in correspondence about the terms of a consent decree, that it was developing an Affirmative Action Plan (letter from Thomas W. Smith, Assistant General Counsel to Robert D. Unitas, dates November 30, 1994, BATES MLE 00227 000462; McCann depo., p. 61, 64; Sontag depo., p. 232-233).

5 I am assuming that they did have
6 one, but I did not get involved in affirmative
7 action.

8 Q. Did you ever see any of the reports,
9 under utilization?

10 MR. PAPPAS: Objection to form.

11 A. I don't recall ever seeing anything
12 like that.

13 Q. Did you ever see any documents that
14 comprised the affirmative action plan?

15 MR. PAPPAS: Objection. Form.

16 Asked and answered.

17 A. I don't recall ever seeing that. I
18 am not saying that I --

19 I don't recall ever seeing that.¹⁴¹

According to Ms. Pillar, the *only* policies she was responsible for regarding disparities by protected category were those relating to account distribution, and she testified that the only other policy her organization was responsible for developing was for leave of absences.¹⁴²

¹⁴¹Pillar depo., p. 209-210. Also see Pillar depo., p. 269-270.

¹⁴²Pillar depo., p. 53, 277. In addition, Ms. Pillar was unaware that while she was head of Human Resources for GPC, one of the company's local offices had been audited by and entered into a conciliation agreement with the Office of Federal Contract Compliance Programs (OFCCP). Nor did Ms. Pillar know what OFCCP is (Pillar depo., p. 210-212). According to Mr. McCann, at the time Ms. Pillar was head of Human Resources for GPC, she "had an accountability into the business, and then an accountability into the core global function" (McCann depo., p. 84).

70. Ms. Pillar testified that it was her understanding that during the time she was head of Human Resources for GPC, the multicultural marketing (MDBD) group was responsible for supporting FAs in doing business in diverse markets, and that the group did *not* have any responsibility for matters relating to FA workforce diversity.¹⁴³ This perception is understandable given the ambiguous lines of responsibility emanating from the corporate level. For example, Ms. Barry testified that she too was in disagreement with top management about her role and its relationship to diversity efforts in GPC and at the corporate level. She testified that in March of 2003, the company's head of Human Resources expected her to "help to define and shape how our diversity activities were evolved in the private client business" and also "to find the business links across the organization globally."¹⁴⁴ And indeed, in March of 2003 the company sent an announcement to all employees that MDBD would "continue to identify recruitment, retention and development programs for diverse professionals" and that Ms. Barry, head of MDBD, would "assume responsibility for coordinating diversity activities across the firm."¹⁴⁵ Ms. Barry testified that at the time she felt she had neither the mandate, support, or structure to take on that responsibility.¹⁴⁶ According to Ms. Barry, "in spite of repeated efforts to get clarity" about the role that had been assigned to her, she "was not able to find it."¹⁴⁷ Asked if she got any further clarity after the communication about her role, Ms. Barry testified:

6 Q. Did you get any more clarity after
7 the memo issued?

¹⁴³Pillar depo., p. 36-39.

¹⁴⁴Barry depo., p. 151-152.

¹⁴⁵"A message from Stan O'Neal, Chief Executive Officer: Building a Performance-Based Culture: Next Steps for Workforce Diversity," March 5, 2003 (BATES MLE 00117 000077-78).

¹⁴⁶Barry depo., p. 150-152.

¹⁴⁷Barry depo., p. 152.

8 A. Um, my understanding of it was that
9 the coordination of the diversity activity
10 still needed to rest very firmly in the HR
11 organization, and my small team just did not
12 have the bandwidth and infrastructure to be
13 able to absorb that work load, and we actually
14 turned that down.

15 Q. Do you know if there was ever any
16 memo that was issued to all of the employees
17 at Merrill Lynch telling them that the prior
18 e-mail was wrong and that, in fact, you would
19 not be responsible for coordinating the
20 diversity efforts across the firm?

21 A. No.

22 Q. No such memo was issued?

23 A. Not to my knowledge.¹⁴⁸

Ms. Barry testified it was her belief that as a result of these developments some people in GPC may have assumed that she had responsibility for coordinating diversity across the firm.¹⁴⁹

71. The research on responsibility structures summarized above indicates that a major flaw of a management philosophy defining diversity as "everyone's" responsibility is that absent clearly defined lines of responsibility and accountability, it becomes either

¹⁴⁸Barry depo., p. 154.

¹⁴⁹ Barry depo., p. 160-161.

nobody's responsibility or "someone else's" responsibility. Hartwell McIntyre ("Mac") Gardner, at the time of his deposition head of the company's brokerage business for the Americas, made the point succinctly, in testimony about meetings regarding the relationship between the multicultural marketing function and diversity:

19 Any time in an organization, you don't have
 20 clear lines of responsibility for everyone
 21 involved, you have chaos. You have everyone
 22 thinking that someone else -- everyone taking
 23 credit for everything good that gets done when
 24 something good happens, and you have no owners
 25 when something bad happens. Miraculously, in
 0226
 1 shared ownership, there's nobody to talk to
 2 when something doesn't happen.¹⁵⁰

72. Former CEO O'Neal embraced this kind of approach to diversity. According to Ms. Barry, shortly after becoming CEO he issued a directive that diversity "would be pushed down into the business and that ownership for diversity would be driven not from corporate; but that diversity meant different things to each of our different business groups."¹⁵¹ Ms. Pillar's testimony indicates that at GPC, this approach led to diffuse and ambiguous lines of responsibility and accountability for diversity. She testified that in Human Resources, "we weren't specifically responsible for diversity, because the business was responsible for diversity, but we were responsible for helping the business

¹⁵⁰Gardner depo., p. 225-226.

¹⁵¹Barry depo., p. 248.

role [sic] out a lot of initiatives."¹⁵² And asked which of the individuals in GPC Human Resources were responsible for assisting in drafting policies on diversity, she testified: "I wouldn't say that we had, um, a policy specific to diversity. We had policies and procedures for the firm."¹⁵³ Similarly, in responding to questions about company-wide processes for selecting new FA trainees when she was head of GPC Human Resources in 2004, Ms. Pillar testified: "I was not responsible in 2004 for FA recruiting. So, human resources was not responsible for FA recruiting, the business was responsible for FA recruiting." She added: "And HR was not responsible for FA recruiting, that did not fall under HR responsible [sic], and that did not fall under my responsibility."¹⁵⁴

73. In short, it is difficult to determine which units or individuals were responsible for diversity and equal employment opportunity in Global Private Client, especially for the years 2003 through 2005. Ms. Barry testified that after Keith Henry left the position of Director, Human Resources Diversity in GPC, Ms. Pillar and "the HR team" took responsibility for diversity, "in partnership" with her group.¹⁵⁵ But Ms. Pillar's testimony, cited above, indicates that her organization did not have any specific diversity responsibility for GPC, and to her understanding, neither did Ms. Barry's.¹⁵⁶ It also appears that there was discontinuity in responsibility for diversity at the corporate level over the same period. The retirement of the head of Global Diversity, Jeff Humber,

¹⁵²Pillar depo., p. 52. Ms. Pillar added that while her organization was not "specifically responsible" for diversity, "I would say that all of the human resources individuals were responsible for helping to drive diversity through the organization with the business partners" (Pillar depo., p. 52.)

¹⁵³Pillar depo., p. 53

¹⁵⁴Pillar depo., p. 214, 217.

¹⁵⁵Barry depo., p. 248-251. According to a company press release, Keith Henry was appointed to the position of Director of Diversity for the U.S. Private Client Group in April, 2001, and in January, 2003 he became head of the firm's African American market efforts, also taking responsibility for running the African American Virtual Team (BATES MLEE 038 037205-206).

¹⁵⁶In response to a press release about the FAST program in December 2002 that identified Mr. Henry as Head of Diversity for GPC, Mary Allyn, then head of Human Resources for U.S. Private Client, sent an e-mail stating: "Please handle!!! Since when is Keith Henry Head of Diversity for Global Private Client???" (BATES MLMRE 015 001433, press release at MLMRE 013 000449)

was announced in March 2003, and materials I have reviewed indicate that no one assumed a comparable role at the corporate level until Subha Barry was appointed head of the Multicultural Careers Inclusion Group in August 2005.¹⁵⁷ There was also a lack of stability in leadership of GPC Human Resources, which was headed by four different individuals over the period from 2000 through 2006.¹⁵⁸

74. Ambiguity over the allocation of responsibility and accountability regarding diversity in GPC continued up through the announcement of the Office of Diversity in June of 2006, and beyond. As early as April 2005, Ms. Barry began efforts to seek additional resources for the multicultural group, in order to assert greater control over diversity efforts throughout GPC around issues of hiring, training, and retention. Ms. Barry did not believe that Merrill Lynch branch managers were interested or capable of successfully managing minority employees and that they lacked "affinity" with diverse markets.¹⁵⁹

75. But Mr. Gardner, to whom Ms. Barry reported, had come to the conclusion that such a centralized approach to diversity would be ineffective.¹⁶⁰ In Mr. Gardner's view, "ownership of the diversity efforts around hiring, training, retention of diverse candidates has to be nested down in the business."¹⁶¹ The decision was made by Mr. Gardner, Mr. McCann, and Mr. Sontag to reject the proposal to enhance the multicultural

¹⁵⁷Barry depo., p. 247-248; also see "Subha Barry Appointed MD and Head of Multicultural Careers, August 19, 2005," (BATES MLE 00308 00090-91); "A message from Stan O'Neal, Chief Executive Officer: Building a Performance-Based Culture: Next Steps for Workforce Diversity," March 5, 2003 (BATES MLE 00117 000077-78); "Merrill Employment Practices Liability Insurance Renewal, June 5-6, 2006" (BATES MLEE 038 059356-59428 at 59371, "Recent Internal Developments").

¹⁵⁸Pillar depo., p. 13, 17-18, 22, 29, 40-41.

¹⁵⁹Barry depo., p. 73-74, 120-121.

¹⁶⁰Gardner depo., p. 208-210, 214-217, 224-227, 229-230; Barry depo., p. 73-74, 102-103, 120-121, 164-165; McCann depo., p. 206-212.

¹⁶¹Gardner depo., p. 208-209. Also see "Multicultural & Diversified Business Development Group, Discussion with Mac Gardner, Prepared April 2005" (BATES MLE 0202 000542-573).

marketing group's responsibility for FA diversity, to remove Barry as head, to remove its responsibility for diversity issues, and instead to limit the group's mission to marketing to diverse segments and to support efforts directly tied to that mission.¹⁶² The details of the redefined mission of the group (renamed the Multicultural Marketing Group) were still being worked out nearly a year later, in March 2006.¹⁶³

76. Going into 2006, responsibility and accountability for diversity within GPC remained in a state of flux, and, as was the case in the late 1990s, efforts at restructuring coincided with developments in litigation. Individual and class claims in the McReynolds litigation were communicated to the company in May of 2005, and the lawsuit was filed with the court on November 18, 2005.¹⁶⁴ Coverage in the business press appeared soon thereafter.¹⁶⁵ In late December, the *Wall Street Journal* reported a story that the company had entered into discussions with African American FAs to discuss plaintiffs' allegations and potential ways to address them, and on June 5, 2006 the Dow Jones News Service carried a story about a breakdown in settlement discussions.¹⁶⁶ And on July 14, 2006, the *New York Times* published a lengthy story on the litigation.¹⁶⁷

77. In a memo dated June 4, 2006 from GPC Chief Administrative Officer Daniel Cochran, communicating on behalf of Mr. Sontag, advisors on the company's Diversity &

¹⁶²McCann depo., p. 204-206, 211-213; Sontag depo., p. 252.

¹⁶³Sontag depo., p. 252-253, 272; Also see, for example, "Multicultural Marketing, Bob McCann Update, March 2006" (BATES MLE 00985 000099-158) and "Multicultural Marketing Group, Bob McCann, March 2006" (BATES MLE 00357 000788-873).

¹⁶⁴Correspondence from Mary Stowell to Allan Dinkoff, May 18, 2005 (BATES MLMRE 014 101171); Complaint, filed November 18, 2005 (BATES MLE 00966 000196-209).

¹⁶⁵See, for example, "African-American Broker Sues Alleging Bias at Merrill Lynch," *Wall Street Journal*, December 1, 2005 (BATES MLE 016 017204-205); "Merrill, in shift, says slow in improving diversity," Reuters News, January 6, 2006 (BATES MLE 00367 000041-42); "Cover Story: Our Diversity Problem," *Registered Rep*, March 1, 2008 (BATES MLE 00367 000048-51).

¹⁶⁶"Merrill Managers, Black Brokers Discuss Claims of Racial Bias," *Wall Street Journal*, December 30, 2005 (BATES MLE 00179 001071-1072); "Update: Merrill Talks to End Lawsuit Fail," Dow Jones News Service, June 5, 2006 (BATES MLMRE 009 000094-95).

¹⁶⁷"On Wall Street, a Question of Bias," *New York Times*, July 14, 2006 (BATES MLE 01803 000918-920).

Inclusion Council were informed that talks between the company and the McReynolds plaintiffs had broken down a few days earlier. The memo also informed them that the GPC Office of Diversity, which had been proposed by the plaintiffs, would be announced in the coming week.¹⁶⁸ Mr. McCann's announcement of the creation of the Office of Diversity was distributed the next day.¹⁶⁹

78. At the time the announcement was made about the Office of Diversity in June 2006, none of the top-level management positions had been filled, other than the person designated to head the office, Colbert Narcisse, GPC's Chief Operating Officer.¹⁷⁰ Mr. Narcisse, a former investment banker, had no prior experience managing any organizational unit relating to diversity or human resources, and he did not relinquish any of his full-time duties as COO upon taking on his new responsibility.¹⁷¹

79. The senior management positions within the office were not staffed until September of 2006.¹⁷² In that month Mr. Gardner made an inquiry to Mr. Narcisse regarding how the Office would interface with other initiatives, and in October of 2006 the Office sponsored a two-day "strategic retreat" to discuss strategy and coordination among diversity efforts.¹⁷³ In October 2006, the Office of Diversity was still assessing

¹⁶⁸Interoffice Memorandum, to Advisors to the Diversity & Inclusion Council from Daniel C. Cochran, Subject: African American Financial Advisors' Class Action Lawsuit, dated June 6, 1006 (BATES MLMRE 008 000281-282).

¹⁶⁹"GPC Creates New Office of Diversity" (BATES MLE 00116 000352).

¹⁷⁰McCann depo., p. 101-102; Pillar depo., p. 252.

¹⁷¹McCann depo., p. 94-95. Mr. Narcisse was replaced as COO of GPC in approximately May of 2007, and his successor as COO, Navtej Nandra, also succeeded him as head of the Office of Diversity (Chopra depo., p. 127-128.)

¹⁷²The announcement of the members of the senior management team for the Office of Diversity was made via e-mail on September 21, 2006 (MLE 00829 00071). Also see e-mail message from Jyoti Chopra to Michele Holton, dated August 21, 2006, Re: Key Responsibilities of Chief Diversity Officer/Role (BATES MLMRE 001 024889); and "GPC Office of Diversity, Timetable" (BATES MLMRE 004 000842).

¹⁷³E-mail exchange between Mac Gardner and Colbert Narcisse, September 22, 2006, no subject (BATES MLEE 016 009189-90); "Confidential Materials Regarding: Global Private Client: Office of Diversity Strategic Retreat" with documents dated October 26 and 27, 2006 (BATES MLE 01370 001336-81). Also

GPC's existing diversity programs and strategies, and it appeared to be in early stages of formulating plans to develop audit and assessment systems relating to workforce diversity.¹⁷⁴ Regional Division Managers in the Office of Diversity were not appointed until February, 2007.¹⁷⁵ As recently as that month there was no physical location housing the Office of Diversity, and at that time the office's website was still being created.¹⁷⁶

80. Materials I have reviewed indicate that by the latter half of 2006, as GPC attempted to develop a strategy for building an Office of Diversity, senior managers were acknowledging that to make meaningful progress, the Office would need to have the features of effective "responsibility structures" described in social science and management scholarship summarized above. For example, a document dated October 22, 2006 that included a "Diversity Strategy Update" included the following statement in the a section on the Office of Diversity:

Due to the large decentralized nature of GPC, senior management determined that in order to increase our effectiveness, we needed to create a centralized function with the appropriate infrastructure to drive our diversity strategy and address the unique challenges the exist in our business.¹⁷⁷

see "Confidential Materials Regarding: GPC Office of Diversity, October 2006" (BATES MLE 01370 001265-1287).

¹⁷⁴McCann depo., p. 158-159; "Merrill Lynch Board of Directors Public Policy and Responsibility Committee, Bob McCann, Global Private Client, Diversity Strategy Update, October 22, 2006" (BATES MLE 00800 000207-210).

¹⁷⁵E-mail announcement, "A message from Colbert Narcisse, GPC chief operating officer, Division Diversity Managers Appointed," dated 2/21/2007 (BATES MLEE 023 047953-54).

¹⁷⁶McCann depo., p. 92-93; Pillar depo., p. 252-253, 258. Also see "Directors' ACTM Minutes, September 20-22, 2006" (BATES MLEE 021 032210-17 at 032214, "...a GPC website will be developed to serve as the primary repository for issues related to diversity..."). According to a document titled "Confidential Materials Prepared for: GPC Executive Committee Regarding: COO Monthly Review, March 2007," the Office of Diversity website was launched on March 5, nine months after the announcement of the creation of the Office (BATES MLMRE 004 001959-1991 at 1966).

¹⁷⁷"Merrill Lynch Board of Directors Public Policy and Responsibility Committee, Bob McCann, Global Private Client, Diversity Strategy Update, October 22, 2006," (BATES MLE 038 014867-70 at 68).

The most recent documents I have reviewed, from late 2006 and the first three months of 2007, indicate that the template being developed for the Office of Diversity envisions meaningful and effective structures of responsibility and accountability. But they also clearly indicate that by March 2007 the Office was still very much in its formative stages, and in its brief existence had experienced three different heads.¹⁷⁸ Based on the materials I have reviewed, there is reason to be concerned regarding whether it will be implemented in a way that overcomes the ambiguous, diffuse, and decoupled lines of responsibility and authority for diversity and equal employment opportunity that have characterized Global Private Client for over a decade. If it does not, then future efforts at addressing barriers faced by African American employees at GPC are likely to remain limited in their effectiveness.

81. It is tempting to view the absence of effective responsibility structures as no more than a result of lack of focus, knowledge, and competence regarding issues relating to diversity. But organizations make decisions about whether to implement, staff, and commit to meaningful structures of responsibility and accountability. Organizations make deliberate decisions about whether or not to decouple their diversity efforts from their core operations and from their legal obligations not to discriminate. And they make deliberate decisions about whether or not to emphasize symbolism over substance by, for

Similar language appears in a memo prepared for distribution to Americas Advisory in November 2006 titled "Update on Advisory Division Diversity Effort" (BATES MLE 00949 000164-175 at 165).

¹⁷⁸See, for example, "Confidential Materials Regarding: Global Private Client Office of Diversity, Presentation to: GPC Operating Committee," dated March 7, 2007 (BATES MLMRE 004 002184-88); "Confidential Materials Regarding: Global Private Client Office of Diversity, Presentation to: Mac Gardner, Dan Sontag," dated February 7, 2007 (BATES MLMRE 004 000751-774); "Confidential Materials Regarding: Global Private Client Office of Diversity, Presentation to: Mac Gardner, Dan Sontag," dated January 30, 2007 (BATES MLMRE 017 000209-233); "Confidential Materials Regarding: Global Private Client Office of Diversity, Presentation to Diversity ACTM Chairperson" dated January 3, 2007 (BATES MLE 01367 000521-531); "Merrill Names New Head for Global Wealth Management Diversity," [wealthbriefing.com](http://archive.wealthbriefing.com), September 17, 2007, http://archive.wealthbriefing.com/merrill_names_new_head_for_global_wealth_9045.html.

example, announcing new organizational units dealing with diversity long before there are meaningful structures of responsibility and accountability in place that can minimize bias.

How Racial Bias Is Embedded in Merrill Lynch's Everyday Business Practices

82. Merrill Lynch's top executives frequently describe their system for rewarding and advancing employees as a "meritocracy" in which hard work is rewarded without regard to race.¹⁷⁹ Yet the company has long been aware that its African American employees are disadvantaged with respect to access to teams, which are central to the company's business and to an FA's success. The company has also been aware that productivity-enhancing resources such as accounts of departing brokers are distributed in a way that is vulnerable to favoritism, self-dealing, and bias. Similarly, many of the company's executives also attribute the racial earnings gap to the barriers African American FAs face in crossing "cultural boundaries," yet the company has not taken effective action to eliminate the reliance on racialized assumptions that reflect and reinforce cultural stereotypes about African Americans in its own business development strategies and human resources practices. Nor has Merrill Lynch changed its cumulative advantage system that exacerbates the impact of any such barriers.

83. In a success-breeds-success system such as Merrill Lynch's, in which African Americans are barely visible in its workforce and have very low representation among its managers and senior executives, it is inevitable that the most successful and influential people in the organization will come from the dominant, mostly white male, majority. By promoting the idea that the system is based on meritocratic principles, the company

¹⁷⁹See, for example, Gardner depo., p. 239-240; McCann depo., p. 305-306; O'Neal depo., p. 176, 220-221, 322-324; Sieg 11/29/06 depo., p. 171; Sieg 6/1/07 depo., p. 68.

encourages a sense of entitlement among the dominant (overwhelmingly white male) group and a belief that African Americans are less successful because they lack the skills and talent necessary to excel. This, of course, creates further incentive for non-African American FAs to resist entering into team and pooling arrangements with African Americans, which further exacerbates racial disparities in production. Moreover, the common practice in GPC of widely circulating information showing the concentration of African Americans in the lowest quintiles¹⁸⁰ only reinforces such beliefs. This can create resentment and resistance to evaluating managers on diversity contributions, since non-African American managers are likely to view racial disparities as a result of performance deficiencies, not organizational barriers.¹⁸¹ Indeed, resistance to diversity efforts along these lines has been noted in company internal reports. The September 2003 "FA Diversity Comparison" includes the following summary:

The strategy to hire diverse FAs may be in conflict with the managing directors' goal to maximize current revenue. The higher loss rate the first five years for minority FAs coupled with lower asset revenue and production levels presents managing directors with a difficult challenge: How can present goals be met, while still positioning Merrill Lynch for the future?¹⁸²

¹⁸⁰See, for example, McCann depo., p. 169-171; Pillar depo., p. 156-160; O'Neal depo., p. 178-179; "USPC Diversity Analysis Presentation Book, January 2002 (BATES MLE 00003 00145-176 at 146, 158); "Diversity Analysis: Additional Findings, March 2005" (BATES MLE 00966 000274-318); "Advisory Diversity Dashboard, Complex Level Snapshot, as of: Month-End: Aug 2005" (BATES MLE 000190 000519).

¹⁸¹For a review of relevant research, see D. A. Harrison, D. A. Kravitz, D. M. Mayer, L. M. Leslie, and D. Lev-Arey, Understanding Attitudes Toward Affirmative Action Programs in Employment: Summary and Meta-Analysis of 35 Years of Research," *Journal of Applied Psychology*, Vol. 91, 2006, p. 1013-1036

¹⁸²"FA Diversity Comparison, Data as of September 2003, Human Resources Management Support & Analysis (John Zazzu 609-282-1250)" (BATES MLE 00373 000261-292 at 265). Also see McCann depo., p. 134.

Similarly, in August 2006, Ms. Pillar, at the time Chief Administrative Officer for GPC wrote a memo to Mr. Sontag, at the time head of Americas Advisory, explaining that in one of the complexes "more senior FAs were complaining" because of changes to the account distribution policy that removed eligibility criteria disproportionately disqualified women and minorities.¹⁸³ Along the same lines, both former CEO Stan O'Neal and head of GPC Robert McCann testified that they were aware of field managers' resistance to the modified diversity CFOs introduced in 2006.¹⁸⁴

84. That a white male culture, exclusionary towards African Americans and other persons of color, dominates Merrill Lynch has been recognized by Merrill Lynch executives. For example, Robert McCann, head of GPC, has referred to "a culture dominated by white men" as a "heritage of Merrill Lynch," "that's just a fact of history."¹⁸⁵ Former CEO San O'Neal has expressed similar sentiments, referring to the company's culture historically as "very US centric -- predominately white male

¹⁸³E-mail message from Kim Pillar to Dan Sontag, Subject: Account Distribution info, dated August 8, 2006 (BATES MLEE 016 011571).

¹⁸⁴O'Neal depo., p. 198-200; McCann depo., p. 134. In fact, because the diversity CFOs and prior diversity assessment measures have always been based on metrics that aggregate across categories of diversity -- female, LGBT, Hispanic, African American, etc. -- their impact on changing behavior towards African Americans is diluted. Managers have discretion to focus on whichever diverse group provides the greatest opportunity to meet the performance criteria, and if African American FAs are believed to be less productive than members of other diverse groups, managers have a little incentive to concentrate efforts on improving their standing. In addition, in a February 2006 e-mail from Ms. Pillar to Maura Gallagher and David Sontag, re: Diversity CFO, she notes that managers complained the CFO was a "difficult task to accomplish" and that they might focus on others "and not try so hard with this one" (BATES MLEE 018 075292-93 at 93). Also see e-mail from K. Pillar to M. Gardner, dated May 22, 2006, re: RD ACTM, (BATES MLEE 021 006021) in which, in response to a call with Directors, Pillar reported to Gardner low morale among Directors due to Diversity CFO. Finally, Merrill Lynch reports show weak performance by management in achieving the Diversity CFO. See, for example, Final Diversity CFO Adjustments, dated 2006, (BATES MLE 009922 000001-6) which show around half of managers achieved only five or fewer points out of the twenty points possible for the Diversity CFO. Also see Final Diversity Adjustments, dated 2005 (BATES MLEE 018 076593-96).

¹⁸⁵"Robert J. McCann Talking Points for BPN Conference Call" dated April 7, 2006, (BATES MLE 00116 000662-72 at 62).

oriented."¹⁸⁶ Similar views have been expressed by a former head of Merrill Lynch Human Resources, by a member of its Diversity Advisory Board, and by the company's head of Multicultural Careers and Inclusion.¹⁸⁷

85. In sum, Merrill Lynch has put in place a cumulative advantage system that has identifiable features that place African American FAs at a disadvantage, and it also creates and sustains a culture of shared beliefs rationalizing the subordinate status of its African American workforce. It has done so in a way that makes the structure of the system and the culture mutually reinforcing, and therefore resistant to change.

CONCLUSION

86. The materials I have reviewed show that African Americans do not differ from non-African Americans in the skills, abilities, and experiences required to be a successful FA and to be a successful manager. Yet, at Merrill Lynch, African American FAs earn substantially less than do similarly situated non-African Americans, and very few have advanced into the management ranks. In this report, I have relied on a large body of research by social scientists and management scholars that helps us understand how this situation came about and persists year after year. In particular, it provides a means for identifying specific features of Merrill Lynch's personnel policies and practices that create a "success-breeds-success" system within which African American FAs face growing obstacles to equal employment opportunity. The extremely low representation

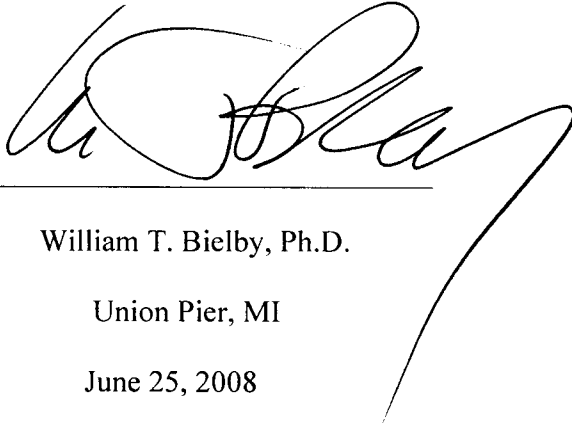
¹⁸⁶Stan O'Neal Speech at Leadership 2005 GPC Manager's Meeting," dated January 12, 2005 (BATES MLEE 003 003304 to 003337 at 3317). Also see Handwritten Notes from meeting with Bob McCann, dated April 7, 2006, (BATES MLE 00174 000022-25 at 22-23).

¹⁸⁷Dame Judith Mayhew Jonas Remarks at Merrill Lynch Global Private Client Managers Meeting, dated January 25, 2006 (BATES MLE 00256 000042-55 at 43); Terry Kassel's remarks in "Leading Your Market in 2001" (BATES MLE DVD 000017); Subha Barry Speech at the Diversity and Women Leadership Summit and Gala Emerging Trends Conversation, dated October 2004, (BATES MLEE 038 010675-78 at 10676).

of African Americans in the workforce overall and at individual complexes contributes to isolation and exclusion from social networks, and is likely to result in them receiving less support and productivity-enhancing resources than their counterparts who are not African American. One very significant manifestation of this disadvantage is African Americans' limited opportunities to participate on FA teams. Another is an account distribution system that is easily "gamed" by the non-African American FAs who benefit most from it.

87. Merrill Lynch's racialized approach to business development is built upon cultural stereotypes, typecasts its African American FAs in a way that limits their opportunities to excel, and engages in racial profiling of its customers in a way that reinforces stereotypes. The system the company uses to promote FAs into its field management ranks uses materials based on racial stereotypes and includes discretionary and subjective features that are structured in a way that reinforces and reproduces the racial composition and culture of the company's management ranks. The company's diversity programs, offices and initiatives have inadequate accountability and responsibility structures, and the company has chosen to decouple its diversity efforts from both its core operations and its legal obligations not to discriminate, in effect, choosing "symbol over substance." The company's policies and practices reinforce beliefs that its African American FAs fall behind because of their own personal failings and perceived client bias, which creates resistance to diversity interventions and reinforces the biases built into the company's cumulative advantage system. Far from being a colorblind meritocracy, race permeates policy and practice in a way that creates

substantial obstacles to equal employment opportunity for Merrill Lynch's African American employees.



William T. Bielby, Ph.D.
Union Pier, MI
June 25, 2008

EXHIBIT A

WILLIAM T. BIELBY
TESTIMONY AS AN EXPERT WITNESS SINCE 2001

Marybeth Cremin, et al. v. Merrill Lynch, Pierce, Fenner & Smith Inc.

Docket No: 96 C 3773

Court: United States District Court, Northern District of Illinois, Eastern Division

Counsel: Stowell & Friedman, Chicago, IL

Expert Report, Arbitration Testimony

Pamela K. Martens, et al. v. Smith Barney, Inc., et al.

Docket No. 96 Civ. 3779 (AGS)

Court: United States District Court, Southern District of New York

Counsel: Stowell & Friedman, Chicago, IL

Expert Reports, Arbitration Testimony

Lucy's Sales, et al. v. County of Contra Costa, et al.

Docket No. C98-02955 PJH (JL)

Court: United States District Court, Northern District of California

Counsel: Lawyers' Committee for Civil Rights of the San Francisco Bay Area (Oren Sellstrom)

Wilson Sonsini Goodrich & Rosati (Lisa Davis, David Berger), Palo Alto

Expert Report, Deposition Testimony, Trial Testimony

Eduardo Amezcua, et al. v. State of California, Department of Transportation, et al.

Docket No: 814381

Court: Superior Court of the State of California, County of Orange

Counsel: Allred, Maroko & Goldberg (Dolores Y. Leal), Los Angeles

Missey Jefferson, et al. v. Ingersoll International, Inc., et al.

Docket No. 98 C 50042

Court: United States District Court, Northern District of Illinois, Western Division

Counsel: Jeanne Szromba, EEOC

Curtis V. Rodriguez, et al. v. California Highway Patrol, et al.

Docket No. C-99-20895-JF/EAI

Court: United States District Court, Northern District of California

Counsel: Keker & Van Nest (Roy Austin), San Francisco

American Civil Liberties Union Foundation of Southern California

Expert Report

Ella Bramwell and Marilyn Hill v. BMG Entertainment, Inc.

Docket No. 00C 7751

Court: United States District Court, Eastern District of Illinois

Counsel: Stowell & Friedman (Linda Friedman), Chicago

Expert Report, Deposition Testimony

Eric Bates, et al. v. United Parcel Service

Docket No. C-99 2216 (TEH)

Court: United States District Court, Northern District of California

Counsel: Schneider & McCormac (Todd Schneider), San Francisco

Declaration, Expert Report, Deposition Testimony

Prabhavati Rao v. County of Ventura

Docket No. CV 01-00982 GAF (MCx)

Court: United States District Court, Central District of California

Counsel: Janet M. Koehn, Ventura, CA

Expert Report

Frank Armenta, et al. v. Osmose Wood Preserving, Inc.

Case No. CV000999

Court: Superior Court of the State of California, County of San Luis Obispo

Counsel: James H. Cordes, Santa Barbara, CA

Declaration

Francisco Rodriguez, et al. v. Merrill Lynch & Co.

Docket No. L-5908-98

Court: Superior Court of New Jersey, Law Division: Hudson County

Counsel: Steven Arenson, Arenson, Dittmar & Karbani, New York

Declaration, Expert Report, Deposition Testimony

Carol Goshu, et al. v. U.S. Bancorp Piper Jaffray, Inc.

Docket C 00-01611 PJH

Court: United States District Court, Northern District of California

Counsel: Meites, Mulder, Burger & Mollica, Chicago

Declaration, Expert Report, Deposition Testimony

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

Docket C-01-2252 MJJ

Court: United States District Court, Northern District of California

Counsel: The Impact Fund (Jocelyn Larkin, Brad Seligman)

Expert Report, Deposition Testimony

Mary Singleton, et al. v. Regents of the University of California, et al.

Docket 807233-1

Court: Superior Court of the State of California, County of Alameda

Counsel: The Sturdavent Law Firm (Mark Johnson), San Francisco

Declarations

Equal Employment Opportunity Commission v. The Herrick Corporation d/b/a/ Stockton Steel

Docket CIV. S-00-0102 FCD DAD

Court: United States District Court, Eastern District of California

Counsel: EEOC (Lynn Palma), San Francisco

Expert Report

EEOC & Schieffelin v. Morgan Stanley

Docket 01 CV 8421 (RMB)

Court: United States District Court, Southern District of New York

Counsel: Outten & Golden (Adam Klein), New York, EEOC (Michael Ranis)

Expert Report, Deposition Testimony

Stella Mitchell, et al. v. Metropolitan Life Insurance Co.

Docket 01-CIV-2112 (WHP)

Court: United States District Court, Southern District of New York

Counsel: Saperstein, Goldstein, Demchak & Ballar (Teresa Demchak), Outten & Golden (Adam Klein)

Expert Report, Deposition Testimony

Roderick Arnold, et al. v. Cargill, Inc.

Docket 01-CV-2086 (DWF/AJB)

Court: United States District Court, District of Minnesota, Fourth Division

Counsel: Sprenger & Lang; Cohen, Milstein, Hausfeld & Toll

Expert Report, Deposition Testimony, Declaration

Derrick Satchell, et al. v. FedEx Express.

Docket C 03-2659 SI, C 03-2878 SI

Court: United States District Court, Northern District of California

Counsel: Lieff, Cabraser, Heimann & Bernstein (James Finberg)

Expert Report, Deposition Testimony

Eduardo Gonzalez, et al. v. Abercrombie & Fitch Stores, Inc.

Docket 03-2871-SI

Court: United States District Court, Northern District of California

Counsel: Lieff, Cabraser, Heimann & Bernstein (Bill Lann Lee)

Daryal Nelson, et al. v. Wal-Mart Stores, Inc. and Wal-Mart Transportation LLC

Docket 2:05 CV-00134-WRW

Court: United States District Court, Eastern District of Arkansas

Counsel: of Cauley Bowman Carney & Williams (Hank Bates) and Welch and Kitchens (Morgan Welch)

Expert Report, Deposition Testimony

Nilda Gutierrez, et al. v. Johnson & Johnson

Docket 01-5302 (WHW)

Court: United States District Court, District of New Jersey

Counsel: Mehri & Skalet (Cyrus Mehri)

Expert Rebuttal Report, Deposition Testimony

Derrick Satchell, et al. v. FedEx Express

Docket C 03-2659 SI, C 03-2878 SI

Court: United States District Court, Northern District of California

Counsel: Lieff, Cabraser, Heimann & Bernstein (James Finberg)

Expert Report, Rebuttal Report, Deposition Testimony

Equal Employment Opportunity Commission v. Wal-Mart Stores, Inc.

Docket 6:01-CV-339-KKC

Court: United States District Court, Eastern District of Kentucky

Counsel: EEOC (Nancy Edmonds), Indianapolis

Expert Report, Deposition Testimony

Susan Duling et al. v. Gristede's Operating Corp. et al.

Docket 06 Civ. 10197(LTS(HBP)

Court: United States District Court, Southern District of New York

Counsel: Outten & Golden (Piper Hoffman), New York

Expert Report

EXHIBIT B

January 2008

CURRICULUM VITAE

William T. Bielby

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CURRENT POSITION:

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Professor, Department of Sociology, 2007-present
University of California, Santa Barbara
Professor Emeritus, Department of Sociology, 2005-present

EDUCATION:

B.S. Electrical Engineering (High Honors), University of Illinois--Urbana, 1970.
M.A. Social Sciences (Economics), University of Illinois--Urbana, 1972.
Ph.D. Sociology, University of Wisconsin, 1976.

PREVIOUS POSITIONS:

University of Pennsylvania
Professor, Department of Sociology, 2005-2007
Research Associate, Population Studies Center, 2004-2007
Sociology Department Undergraduate Chair, 2005-2005
Professor, Department of Sociology, University of California, Santa Barbara, 1983-2005
Professor (Affiliated), Department of Statistics and Applied Probability, UCSB, 1993-2005
Affiliated Faculty, Center for Film, Television, and New Media, UCSB, 2002-2005
Fellow, University of California Washington Center, Washington, DC, Fall 2004
Visiting Distinguished John D. MacArthur Professor of Sociology, Northwestern University
Spring 2004
American Bar Foundation, Chicago, IL, Visiting Scholar, 2003-2004
Visiting Professor, Graduate School of Management, UCLA, 1985
Chair, Department of Sociology, University of California, Santa Barbara, 1992-1998
Associate Professor, Department of Sociology, University of California, Santa Barbara, 1981-83
Assistant Professor, Department of Sociology, University of California, Santa Barbara, 1977-81
Research Associate, Institute for Research on Poverty, University of Wisconsin, 1975-77
Rhythm guitar, bass guitar, The Newports, Harvey, Illinois, 1960-1965, 2006-present

HONORS AND AWARDS:

Reuben Hill Research and Theory Award from the National Council on Family Relations, 1992
 Sociological Research Association (by election, 1989)
 Kathleen Gregory Klein Award for Excellence in Feminist Studies from the Popular and
 American Culture Associations, 1986
 Fellow, Center for Advanced Study in the Behavioral Sciences, Stanford, California, 1983-84.
 European Group on Organizational Sociology Award, Organizations & Occupations Section,
 American Sociological Association, 1981 (with J. N. Baron)
 Eta Kappa Nu, Electrical Engineering Honorary Society
 Tau Beta Pi, Engineering Honorary Society
 Phi Kappa Phi, Scholastic Honorary Society
 Riverdale Historical Society (Riverdale, IL), Honorary Member (2002-present)

PROFESSIONAL ACTIVITIES:

Professional Associations:

American Sociological Association
 American Economic Association
 American Statistical Association
 Society of Labor Economists
 Society for Human Resource Management

Officer:

Fellow, Center for the Study of Poverty and Inequality, Stanford University, 2006-
 President, American Sociological Association, 2002-2003
 Council, American Sociological Association, 1998-2001
 Committee on Sections, American Sociological Association, 1998-2001 (Vice-Chair, 2000-2001)
 Committee on Nominations, American Sociological Association, 1995-97
 Council, (1982-84) and Secretary/Treasurer (1984-88), Methods Section of the American
 Sociological Association.
 Council (1986-88), Organizations and Occupations Section of the American Sociological
 Association.

Editorial Board:

American Sociological Review (1994-1996)
 Westview Series on Social Inequality (1991-1996)
 Sociological Methods and Research (1978-1989, 1994-1998)
 American Journal of Sociology (1982-84)
 Sociology of Education (1981-85)
 Gender & Society (1997-2000)

PROFESSIONAL ACTIVITIES (continued):

Member:

- Social Science Research Council Site Selection Committee, First Year Fellowships in the Study of the Former Soviet Union (1989-1995)
- National Institute of Mental Health, Social Science and Population Study Section Review Panel, (Special Reviewer, 1994)
- National Institute of Health, Center for Scientific Review (Special Emphasis Panel Chairperson, August 1999)
- National Institutes of Health, International Studies on Health and Economic Development Review Committee (November 2000)
- Social Science Research Council Committee on the Sociological Study of the USSR (1988-92)
- Jessie Bernard Award Selection Committee, American Sociological Association (1990-92)
- Social Science Research Council Committee on Occupational Measurement (1980-88)
- National Science Foundation, Sociology Review Panel (1985-87)
- National Science Foundation, ADVANCE Institutional Transformation Awards Review Panel (2001)
- University of Illinois Foundation (1999-2005)
- Program Committee, American Sociological Association Annual Meeting, 2001
- Board of Directors, Consortium of Social Science Associations (2002-2004)
- Amicus Brief Task Force, American Sociological Association (2002-2003)
- Sociology Ph.D. Program Assessment Committee, University of California, Irvine, April, 2003
- Oversight Committee, Workshop on the Utilization of Women-Owned Small Businesses in Federal Contracting, National Research Council, National Academy of Sciences, 2004
- Sociology Ph.D. Program Assessment Committee (Chair), Texas A & M University, April, 2005

PUBLICATIONS:

- 2007 William T. Bielby and Pamela Coukos
 "Statistical Dueling' with Unconventional Weapons: What Courts Should Know about Experts in Employment Discrimination Class Actions." *Emory Law Journal*, Vol. 56.
- 2007 William T. Bielby
 "Promoting Racial Diversity at Work: Challenges and Solutions." Forthcoming in Arthur P. Brief and Jill Bradley (eds.), *Diversity at Work*. New York: Cambridge University Press.
- 2005 William T. Bielby
 "Applying Social Research on Stereotyping and Cognitive Bias to Employment Discrimination Litigation: The Case of Allegations of Systematic Gender Bias at Wal-Mart Stores." In Robert L. Nelson and Laura Beth Nielsen (eds.), *Handbook on Employment Discrimination Research: Rights and Realities*. Norwell, MA: Kluwer Academic Press 2005.
- 2005 Arleen Leibowitz, William T. Bielby, Jonathan S. Leonard, Patricia A. Roos, J. H. (Rip) Verkerke, and John E. Rolph
Analyzing Information on Women-Owned Small Business in Federal Contracting. (Report of Steering Committee for the Workshop on Women-Owned Small Business in Federal Contracting.) Washington, D.C.: National Academy Press.
- 2004 William T. Bielby
 "Rock in a Hard Place: Grass-Roots Cultural Production in the Post-Elvis Era."

American Sociological Review, Vol. 69, No. 1: 1-13. Reprinted in *The Practical Skeptic: Readings in Sociology*, edited by Lisa J. McIntyre; McGraw-Hill, forthcoming, 2007.

- 2004 William T. Bielby
 "Social Science Accounts of the Maternal Wall: Applications in Litigation Contexts."
Thomas Jefferson Law Review, Vol. 26: 15-26, Fall 2003.
- 2004 Denise D. Bielby and William T. Bielby
 "Audience Aesthetics and Popular Culture." Pp. 295-317 in Roger Friedland and John Mohr (eds.), *Matters of Culture: Cultural Sociology in Practice*. Cambridge, England: Cambridge University Press.
- 2003 William T. Bielby
 "Can I Get A Witness? Challenges of Using Expert Testimony on Cognitive Bias in Employment Discrimination Litigation." *Employee Rights and Employment Policy Journal*, Vol. 7, No. 2: 377-400, Symposium Issue on "Litigating the Glass Ceiling and the Maternal Wall: Using Stereotyping and Cognitive Bias Evidence to Prove Gender Discrimination."
- 2003 Denise D. Bielby and William T. Bielby.
 "Beyond Contexts: Taking Cultural Objects Seriously in Media, Popular Culture, and the Arts." *Sociological Perspectives*, Vol. 46, No. 4: 429-433.
- 2003 Denise D. Bielby and William T. Bielby
 Co-editors of Special Issue on Media, Popular Culture, and the Arts, *Sociological Perspectives*, Vol. 46, No. 4.
- 2003 William T. Bielby and Denise D. Bielby
 "Controlling Primetime: Organizational Concentration and Network Television Primetime Programming Strategies." *Journal of Broadcasting and Electronic Media*, forthcoming, Vol. 47, No. 4: 573-596.
- 2003 William T. Bielby
 "ASA Submits Amicus Brief in U.S. Affirmative Action Supreme Court Case."
Footnotes: Newsletter of the American Sociological Association, Vol. 31, No. 3, March, 2003.
- 2002 Denise D. Bielby and William T. Bielby
 "Hollywood Dreams, Hard Realities: Writing for Film and Television." *Contexts*, Vol. 1: 21-27, Fall/Winter 2002.
- 2002 William T. Bielby and Denise D. Bielby
 "Telling Stories about Gender and Effort: Social Science Narratives About Who Works Hard for the Money." Pp. 193-217 in Mauro F. Guillen, Randal Collins, Paula England, and Marshall Meyer (eds.), *The New Economic Sociology: Developments in an Emerging Field*. New York: Russell Sage Foundation.
- 2001 Denise D. Bielby and William T. Bielby
 "Audience Segmentation and Age Stratification Among Television Writers." *Journal of Broadcasting and Electronic Media*, Vol. 45, No. 3: 391-412, Summer, 2001.

- 2000 William T. Bielby
 "Minimizing Workplace Gender and Racial Bias." *Contemporary Sociology*, Vol. 29, No. 1: 120-129, January, 2000.
- 1999 William T. Bielby
 "Framing Sociology in Court: Affirmative Action Discourse and Expert Testimony on Employment Discrimination." *Research on Social Stratification and Mobility*, Vol. 17: 265-283, 1999.
- 1999 Denise D. Bielby, C. Lee Harrington, and William T. Bielby
 "Whose Stories Are They? Fans' Engagement with Soap Opera Narratives in Three Sites of Fan Activity." *Journal of Broadcasting and Electronic Media*, Vol. 42, No. 2: 35-51, Spring, 1999. Reprinted in Toby Miller (ed.), *Television: Critical Concepts in Media and Cultural Studies*, New York: Routledge, 2002
- 1999 William T. Bielby and Denise D. Bielby
 "Organizational Mediation of Project-Based Careers: Talent Agencies and the Careers of Screenwriters." *American Sociological Review*, Vol. 64, No. 1: 64-85, February, 1999.
- 1998 Bielby, William T. and Denise D. Bielby.
The 1998 Hollywood Writers' Report: Telling ALL Our Stories. Los Angeles, CA: Writers Guild of America, West, 53 p.
 (<http://www.wga.org/manuals/Report/index2.html>)
- 1997 Matt L. Huffman, Steven C. Velasco, and William T. Bielby
 "Where Sex Composition Matters Most: Comparing the Effect of Job Versus Occupational Sex Composition on Earnings." *Sociological Focus*, Vol. 29, No. 3: 189-207, August, 1997.
- 1996 Bielby, Denise D. and William T. Bielby
 "Women and Men in Film: Gender Inequality among Writers in Culture Industries." *Gender & Society*, Vol. 10, No. 3: 248-270, June, 1996. Reprinted in Paula Dubeck and Dana Dunn (eds.), *Workplace/Women's Place*, Belmont, CA. Roxbury, 2002.
- 1994 Bielby, William T. and Denise D. Bielby
 "'All Hits are Flukes:' Institutionalized Decision-Making and the Rhetoric of Network Prime-Time Program Development." *American Journal of Sociology*, Vol. 99, No. 5: 1287-1313, March, 1994. Reprinted in Toby Miller (ed.), *Television: Critical Concepts*, New York and London, Routledge, 2002.
- 1994 Bielby, William T. and Denise D. Bielby
 "The Production of Mass Culture." *Footnotes*, Vol. 22, No. 4, April, 1994. Washington, DC: American Sociological Association.
- 1993 Bielby, Denise D. and William T. Bielby
 "The Hollywood 'Graylist'? Audience Demographics and Age Stratification Among Television Writers." *Current Research on Occupations and Professions*, Vol. 8: 11-172.
- 1993 Bielby, William T.
 "Aging in the Television Industry." Pp. 34-37, 74-76 in *Age Has A Future: Maturity and the Media*. Conference Proceedings published by the American Association of Retired Persons, Washington, DC.

- 1993 Bielby, William T. and Denise D. Bielby.
The 1993 Hollywood Writers' Report: A Survey of the Employment of Writers in the Film, Broadcast, and Cable Industries for the Period 1987-1991. West Hollywood, CA: Writers Guild of America, West, 52 p.
- 1992 Bielby, William T. and Denise D. Bielby
 "Cumulative Disadvantage in an Unstructured Labor Market: Gender Differences in the Careers of Television Writers" *Work and Occupations*, Vol. 19, No. 4: 366-386, November, 1992. Reprinted in Jerry A. Jacobs (ed.), *Sex Segregation at Work*, Newbury Park, CA, Sage, 1994.
- 1992 Bielby, William T. and Denise D. Bielby
 "I Will Follow Him: Family Ties, Gender-Role Beliefs, and Reluctance to Relocate for a Better Job," *American Journal of Sociology*, Vol. 97, No. 5: 1241-1267, March, 1992 (Winner of the 1992 Reuben Hill Research and Theory Award from the National Council on Family Relations).
- 1992 Bielby, William T. "The Structure and Process of Sex Segregation." Pp. 97-112 in Richard Cornwall and Phanindra Wunnava (eds.), *New Approaches to Economic and Social Analyses of Discrimination.* New York: Praeger. Reprinted in David B. Grusky (ed.), *Social Stratification: Class, Race, and Gender in Sociological Perspective*, Second Edition, Boulder, CO: Westview Press, 2001.
- 1991 Bielby, William T. and Ross N. Matsueda
 "Statistical Power in Nonrecursive Linear Models," in Peter V. Marsden (ed.), *Sociological Methodology*, Vol. 21: 167-197.
- 1991 Bielby, William T.
 "Sex Differences in Careers: Is Science a Special Case?" Pp. 171-187 in H. Zuckerman, J. R. Cole, and J. T. Bruer (eds.), *The Outer Circle: Women in the Scientific Community.* New York: Norton. Reprinted (German translation) in Beate Kraus (ed.), *Wissenschaftskultur und Geschlechterordnung*, Frankfurt: Campus Verlag.
- 1989 Bielby, William T. and Denise D. Bielby
 "Family Ties: Balancing Commitments to Work and Family in Dual Earner Households," *American Sociological Review*, Vol. 54, No. 5: 776-789, October, 1989.
- 1989 Bielby, W .T. and Bielby, D .D.
The 1989 Hollywood Writers' Report: Unequal Access, Unequal Pay. West Hollywood, CA: Writers Guild of America, West, 112 p.
- 1988 Bielby, Denise D. and William T. Bielby
 "She Works Hard for the Money: Household Responsibilities and the Allocation of Work Effort," *American Journal of Sociology*, Vol. 93, No. 5: 1031-1059, March, 1988 (Winner of the 1986 Kathleen Gregory Klein Award for Excellence in Feminist Studies from the Popular and American Culture Associations).
- 1988 Bielby, Denise D. and William T. Bielby
 "Women's and Men's Commitment to Paid Work and Family: Theories, Models, and Hypotheses." Pp. 249-253 in B. Gutek, L. Larwood, and A. Stromberg (eds.), *Women and Work, Volume III.* Newbury Park, CA: Sage.
- 1988 Bielby, Denise D. and William T. Bielby
 "Sex Differences in the Allocation of Work Effort Among Professionals and Managers."

Pp. 45-67 in R. Schwartz, (ed.), *Women at Work*. Los Angeles: UCLA Institute for Social Science Research.

- 1988 Treiman, Donald J., William T. Bielby, and Man-tsun Cheng
 "Evaluating a Multiple-Imputation Method for Recalibrating 1970 U.S. Detailed Industry Codes to the 1980 Standard." *Sociological Methodology*. Vol. 18: 309-345.
- 1988 Bielby, Denise D., William C. Brastow, and William T. Bielby
 "Goal Incongruence, Interdependence, and Decision-Making in a 'High-Tech' Firm," *Research in the Sociology of Work*, Vol. 4: 153-178. Revised version published in Russian in V. Yadov (ed.), *Social Organization of Labor: Aspects of the Problem*. Moscow: Soviet Sociological Association, 1989.
- 1987 Bielby, William T.
 "Modern Prejudice and Institutional Barriers to Equal Employment Opportunities for Minorities," *Journal of Social Issues*, Vol. 43, No. 1: 79-84, Spring, 1987.
- 1987 Bielby, William T. and Denise D. Bielby
The 1987 Hollywood Writers' Report: A Survey of Ethnic, Gender and Age Employment Factors. West Hollywood, CA: Writers Guild of America, West.
- 1987 Bielby, William T. and James N. Baron
 "Undoing Discrimination: Comparable Worth and Job Integration." Pp. 211-229 in Christine Bose and Glenna Spitze (eds.), *Ingredients for Women's Employment Policy*. Albany: State University of New York Press.
- 1986 Baron, James N. and William T. Bielby
 "The Proliferation of Job Titles in Organizations," *Administrative Science Quarterly*, Vol. 31, No. 4: 561-586, December, 1986.
- 1986 Baron, James N., Alison Davis-Blake, and William T. Bielby
 "The Structure of Opportunity: How Promotion Ladders Vary Within and Among Organizations," *Administrative Science Quarterly*, Vol. 31, No. 2: 248-273, June 1986. Reprinted in Peter Capelli (ed.), *Training and Development, a volume in The International Library of Management*, Aldershot, Hampshire, England, Dartmouth Publishing, 1994.
- 1986 Bielby, William T.
 "Arbitrary Metrics in Multiple Indicator Models of Latent Variables," *Sociological Methods and Research*, Vol. 15, No. 1: 3-23, November, 1986.
- 1986 Bielby, William T.
 "Arbitrary Normalizations (comments on Sobel, Arminger and Henry), *Sociological Methods and Research*, Vol. 15, No. 1: 62-63, November, 1986.
- 1986 Bielby, William T. and James N. Baron
 "Sex Segregation Within Occupations," *American Economic Review*, Vol. 76, No. 2: 43-47, May, 1986.
- 1986 Matsueda, Ross N. and William T. Bielby
 "Statistical Power in Covariance Structure Models," *Sociological Methodology* Vol. 16: 120-158.

- 1986 Bielby, William T. and James N. Baron
 "Men and Women at Work: Sex Segregation and Statistical Discrimination," *American Journal of Sociology*, Vol. 91, No. 4: 759-799, January, 1986. Reprinted in David B. Grusky (ed.), *Social Stratification: Class, Race, and Gender in Sociological Perspective*, Boulder, CO: Westview Press, 1994. Reprinted in Marianne A. Ferber (ed.), *Women in the Labor Market* (in the series *International Library of Critical Writings in Economics*, Mark Blaug, series editor), Cheltenham, UK: Edward Elgar Publishing, 1998.
- 1985 Baron, James N. and William T. Bielby
 "Organizational Barriers to Gender Equality: Sex Segregation of Jobs and Opportunities." Pp. 233-251 in A. S. Rossi (ed.), *Gender and the Life Course*. New York: Aldine, 1985.
- 1984 Bielby, William T. and James N. Baron
 "A Woman's Place is With Other Women: Sex Segregation Within Organizations." Pp. 27-55 in B. Reskin (ed.), *Sex Segregation in the Workplace: Trends, Explanations, Remedies*. Washington, D.C.: National Academy Press, 1984.
- 1984 Baron, James N. and William T. Bielby
 "The Organization of Work in a Segmented Economy," *American Sociological Review*, Vol. 49, No. 4: 454-473, August, 1984.
- 1984 Bielby, Denise D. and William T. Bielby
 "Work Commitment, Sex Role Attitudes, and Women's Employment," *American Sociological Review*, Vol. 49, No. 2: 234-247, April, 1984.
- 1983 Bielby, William T. and James N. Baron
 "Organizations, Technology, and Worker Attachment to the Firm." *Research in Social Stratification and Mobility*, Vol. 2: 77-113.
- 1983 Wilson, Thomas P. and William T. Bielby
 "Recursive Models for Categorical Data," *Social Science Research*, Vol. 12, No. 2: 109-130, June, 1983.
- 1982 Baron, James N. and William T. Bielby
 "Workers and Machines: Dimensions and Determinants of Technical Relations in the Workplace," *American Sociological Review*, Vol. 47, No. 2: 175-188, April, 1982.
- 1981 Bielby, William T.
 "Neighborhood Effects: A LISREL Model for Clustered Samples," *Sociological Methods and Research*, Vol. 10, No. 1: 82-111, August, 1981.
- 1981 Bielby, William T.
 "Models of Status Attainment." *Research in Social Stratification and Mobility*, Vol. 1: 3-26.
- 1981 Bielby, William T. and Arne L. Kalleberg
 "The Structure of Occupational Inequality," *Quality and Quantity*, Vol. 15, No. 2: 125-150, April, 1981.
- 1981 Friedland, Roger O. and William T. Bielby
 "The Power of Business in the City." Pp. 131-151 in T. N. Clark and L. C. Ferguson (eds.), *Urban Policy Analysis*. Beverly Hills: Sage Publications, 1981.

- 1981 Hawley, Clifford B. and William T. Bielby
 "Research Uses of Longitudinal Survey Data on Women," Pp. 364-386 in R. F. Boruch, P. M. Wortman, and D. S. Cordray (eds.), *Reanalyzing Program Evaluations Policies and Practices for Secondary Analysis of Social and Educational Programs*. San Francisco: Jossey-Bass, 1981.
- 1980 Baron, James N. and William T. Bielby
 "Bringing the Firms Back In: Stratification, Segmentation, and the Organization of Work," *American Sociological Review*, Vol. 45, No. 5: 737-765, October, 1980 (Winner of the European Group on Organizational Sociology Award, American Sociological Association, 1981). Reprinted in David B. Grusky (ed.), *Social Stratification: Class, Race, and Gender in Sociological Perspective*. Boulder, CO, Westview Press, 1992.
- 1980 Sanders, Jimmy M. and William T. Bielby
 "Revising 'The American Soldier Revisited:' Comment on Butler and Wilson," *Social Science Quarterly*, Vol. 60, No. 2: 333-336, September, 1980.
- 1979 Allen, Richard C. and William T. Bielby
 "Blacks' Attitudes and Behaviors Toward Television," *Communications Research*, Vol. 6, No. 4: 437-462, October, 1979.
- 1979 Allen, Richard C. and William T. Bielby
 "Blacks' Relationship with the Print Media," *Journalism Quarterly*, Vol. 56, No. 3: 488-496, Autumn, 1979.
- 1977 Bielby, William T. and Robert M. Hauser
 "Response Errors in Earnings Functions for Non-black Males," *Sociological Methods and Research*, Vol. 6, No. 2: 241-280, November, 1977. The issue has been reprinted as *Survey Design and Analysis: Current Issues*, D. F. Alwin (ed.), Beverly Hills, CA: Sage Publications, 1978. Article reprinted in *Linear Models in Social Research*, P. V. Marsden (ed.), Beverly Hills, CA: Sage Publications, 1981.
- 1977 Bielby, William T. and Robert M. Hauser
 "Structural Equations Models," *Annual Review of Sociology*, Vol. 3: 137-161, 1977.
- 1977 Bielby, William T., Robert M. Hauser, and David L. Featherman
 "Response Errors of Black and Non-black Males in Models of the Intergenerational Transmission of Socioeconomic Status," *American Journal of Sociology*, Vol. 82, No. 6: 1242-1288, May, 1977.
- 1977 Bielby, William T., Robert M. Hauser, and David L. Featherman
 "Response Errors of Non-black Males in Models of the Stratification Process," in D. J. Aigner and A. S. Goldberger (eds.), *Latent Variables in Socioeconomic Models*. Amsterdam: North-Holland, 1977, revised and expanded in *Journal of the American Statistical Association*, Vol. 72, No. 360: 723-735, December, 1977.
- 1977 Bielby, William T. and James R. Kluegel
 "Simultaneous Statistical Inference and Statistical Power in Survey Research Applications of the General Linear Model," *Sociological Methodology*: Vol. 8: 283-312.
- 1974 Bielby, William T. and James R. Kluegel
 "Non-random Exogenous Variables in Path Analysis: A Comment," *American Sociological Review*, Vol. 39, No. 6: 888-891, December, 1974.

BOOK REVIEWS AND REVIEW ESSAYS:

- 2001 *Creative Industries: Contracts Between Art and Commerce* by Richard E. Caves. Reviewed in *American Journal of Sociology*, Vol. 16, No. 6: 1830-1832.
- 1999 *Organizations in America: Analyzing Their Structures and Human Resource Practices* by Arne L. Kalleberg, David Knoke, Peter V. Marsden, and Joe L. Spaeth. Reviewed in *Administrative Science Quarterly*, Vol. 44, No. 4: 842-846, December 1999.
- 1999 *The Use of Social Science Data in Supreme Court Decisions* by Rosemary J. Erickson and Rita J. Simon. Reviewed in *Contemporary Sociology*, Vol. 28, No. 2: 222-223, March, 1999.
- 1998 "Firm Commitments." Review Essay on *The Time Bind: When Work Becomes Home and Home Becomes Work* by Arlie Russell Hochschild. Contribution to Review Symposium in *Contemporary Sociology* Vol. 27, No. 1: 32-34, January, 1998.
- 1998 *Social Differentiation and Social Inequality: Essays in Honor of John Pock*, edited by James N. Baron, David B. Grusky, and Donald J. Treiman. Reviewed in *Contemporary Sociology*, Vol. 27, No. 2: 152-153, March, 1998.
- 1992 "Organizations, Stratification, and *The American Occupational Structure*." Review essay in *Contemporary Sociology* as part of a 25 year retrospective on Blau and Duncan's *The American Occupational Structure*, Vol. 21, No. 5: 647-650, September, 1992.
- 1992 *Revolving Doors: Sex Segregation and Women's Careers* by Jerry A. Jacobs, and *Doing Comparable Worth: Gender, Class, and Pay Equity* by Joan Acker. Reviewed in *Social Forces*, Vol. 70, No. 4: 1165-1168, June, 1992.
- 1988 *The Process of Occupational Sex-Typing: The Feminization of Clerical Labor in Great Britain* by Samuel Cohen, and *Gender at Work: The Dynamics of Job Segregation by Sex during World War II* by Ruth Milkman. Reviewed in *Social Forces*, Vol. 67, No. 2: 551-553, December, 1988.
- 1986 "Contractual Arrangements." Review of *Households, Employment, and Gender: A Social, Economic, and Demographic View* by Paula England and George Farkas. Reviewed in *Science*, Vol. 232, No. 4753: 1021-1022, May, 1986.
- 1984 "Imperatives of the Organization: Stinchcombe's Techno-Marxism." Review essay on *Economic Sociology* by A. S. Stinchcombe. *American Journal of Sociology*, Vol. 90, No. 1: 192-196, July, 1984.
- 1980 "More Inequality: Christopher Jencks on the Paths to Success." Review essay on *Who Gets Ahead?* by Christopher Jencks, et al. in *Contemporary Sociology*, Vol. 9, No. 1: 754-758, November 1980.
- 1980 *Mathematical Tools for Applied Multivariate Analysis* by P. E. Green. Reviewed in *Contemporary Sociology*, Vol. 9, No. 1: 105-106, January 1980.
- 1979 *Inequality in American Communities* by R. F. Curtis and E. F. Jackson; and *Classes in the United States: Workers Against Capitalists* by C. Loren. Reviewed in *Social Forces*, Vol. 57, No. 3: 982-985, March, 1979.

- 1977 *Women and the Workplace: The Implications of Occupational Segregation*. Edited by Martha Blaxall and Barbara Reagan. Reviewed in *Social Forces*, Vol. 56, No. 1: 287-289, September, 1977.

TECHNICAL REPORTS:

- 1995 Bielby, William T. and Denise D. Bielby
"Agency Representation and Writers' Employment in Television and Film." Report prepared for the Writers Guild of America, West, West Hollywood, CA, February 1995.
- 1987 Bielby, William T. and Denise D. Bielby
"Employment Opportunities for Television Writers: Continuity and Change from 1960 to the Present." Report prepared for the Writers Guild of America, West Hollywood, CA, October 1987.
- 1983 Bielby, William T.
"Measuring Attributes of Jobs in the Panel Study of Income Dynamics." Report prepared for the National Advisory Board on the Panel Study of Income Dynamics, January, 1983.
- 1983 Nam, Charles B. (Subcommittee Chair), William T. Bielby, Clifford Clogg, Stephen Fienberg, William H. Form, Robert M. Hauser, David L. Kaplan, Ann R. Miller, Mary G. Powers, Donald Rubin, and Donald J. Treiman.
"Alternative Methods For Effecting the Comparability of Occupational Measurement Over Time." Report to the SSRC Advisory and Planning Committee on Social Indicators and the U.S. Bureau of the Census. Subcommittee on Comparability of Occupational Measurement, Social Science Research Council.
- 1980 Bielby, William T. and Richard A. Berk
"Sources of Error in Survey Data Used in Criminal Justice Evaluation." Final Report submitted to National Institute of Law Enforcement and Criminal Justice.
- 1979 Bielby, William T.
"Evaluating Measures of Neighborhood Quality in the Annual Housing Survey." *Annual Housing Survey Studies No. 2*. U.S. Department of Housing and Urban Development. Washington, D.C.: U.S. Government Printing Office, 1979, 33 p.
- 1979 Bielby, William T., Clifford B. Hawley and David Bills
Research Uses of the National Longitudinal Surveys. Research and Development Monograph No. 62, U.S. Department of Labor. Washington, D.C.: U.S. Government Printing Office, 1979, 143p.

RECENT PAPERS PRESENTED AT PROFESSIONAL MEETINGS (2001 - present):

- 2006 "Title VII Class Actions and the Disaggregation Defense: Bad Law and Bad Statistics." First Annual Conference on Empirical Legal Studies (CELS), University of Texas School of Law, October, 2006 (with Pamela Coukos)
- 2005 "Managerial Discretion, 'Subtle' Bias, and the Politics of Expertise: Litigating Statistical Proof of Employment Discrimination." American Sociological Association, Philadelphia, PA, August, 2005

- 2002 "I Remember Great Times: Recreating Community in a Suburban Diaspora." American Sociological Association, Chicago, IL, August, 2002 (with Carl Durnavich and Craig Rawlings).
- 2002 "Insuring Discrimination: Making a Market for Employment Practice Liability Insurance." American Sociological Association, Chicago, IL, August, 2002 (with Michael Bourgeois).

RECENT INVITED LECTURES AND ACTIVITIES (2005-present)

- 2007 "Statistical Dueling' with Unconventional Weapons: Anticipating the Disaggregation Defense in Discrimination Class Actions." The Impact Fund, Oakland, CA, February 16, 2007 (with Pamela Coukos).
- 2007 "Perspectives from the Trenches: Employers, Employees, and Expert Witnesses." Panelist, Institute for Law and the Workplace Member Conference on New Frontiers in Employment Litigation, Chicago-Kent College of Law, November 9, 2007.
- 2006 "The Lasting Effectiveness of Consent Decrees on Employers' Policies and Practices," Participant and advisor for meeting organized by the Institute for Women's Policy Research and the WAGE Project, Boston, MA, November 29, 2006.
- 2006 "Statistical Dueling' with Unconventional Weapons: What Courts Should Know About Experts in Employment Discrimination Class Actions." Center for the Study of Law & Society, School of Law, Boalt Hall, University of California, Berkeley (co-sponsored by the Haas School of Business and the Department of Sociology), November 14, 2006 (with Pamela Coukos)
- 2006 "Managerial Discretion, Cognitive Stereotypes, and Workplace Discrimination: Should Organizations be Legally Liable for 'Unconscious' Bias?" Department of Sociology, University of Illinois--Chicago, October 26, 2006.
- 2006 Interview, "From the Plaintiffs' Expert." Annual Conference of the American Employment Law Council, Naples, FL, October, 20, 2006 (interviewed by Neal Mullen of Paul, Hastings, Janofsky & Walker, LLP).
- 2006 Panelist, "When Do You Need and Expert." National Employment Lawyers Association Workshop, Beyond Stereotypes: Discovering & Proving Hidden Bias in Employment Cases. Washington, DC, October 14, 2006.
- 2006 "The Law, Equal Opportunity, and Organizational Sociology: Understanding and Addressing Workplace Discrimination in an Era of "Subtle" Bias -- or -- 'Bringing the Firms Back In.'" Harvard Inequality & Social Policy Seminar, Kennedy School of Government, Harvard University, October 2, 2006.
- 2004-06 "Managerial Discretion, 'Subtle' Bias, and the Politics of Expertise: Litigating Statistical Proof of Employment Discrimination." Columbia University Sociology Colloquium, March 22, 2006; Harvard-MIT Economic Sociology Seminar, MIT Sloan School of Management, October 27, 2005; Colloquium Series, Department of Sociology, University of Illinois, January 30, 2004; Economic Sociology Workshop, Graduate School of Business, University of Chicago, February 3,

2004; Department of Sociology, Northwestern University, February 5, 2004,
 Department of Sociology, University of Wisconsin--Madison, March 2, 2004,
 Public Policy Seminar, George Washington University, October 20, 2004.
 Population Studies Center, University of Pennsylvania, February 14, 2005.

- 2005 Panelist, "Best Practices: Strategies for Retention and Promotion." Promoting Diversity: Tough Questions and Proposed Solutions Conference, Sponsored by the Bar Association of San Francisco, California Minority Counsel Program, and Minority Corporate Counsel Association, San Francisco, October 28, 2005.
- 2005 "Cognitive Bias, Organizational Context, and Intent: Lessons from Applying Social Science Expertise in *Dukes et al. v. Wal-Mart*." Equal Justice Society Conference on Rethinking the Intent Doctrine, Chicago, IL, September 9, 2005.
- 2005 "Managerial Discretion, 'Subtle' Workplace Bias and the Courts." The Ruth and John Useem Plenary Address, 2005 Annual Meeting of the North Central Sociological Association, Pittsburgh, PA, April 9, 2005.

RESEARCH GRANTS:

- 2004-05 "Doctoral Dissertation Research: Dividing the Field: Credentials, Organizational Dynamics and Sex Segregation in U.S. Higher Education, 1970-2000." National Science Foundation Dissertation Improvement Grant (Craig Rawlings, Ph.D. Candidate, UC Santa Barbara).
- 2002-03 "'Serial Employment': Professional, Managerial, and Technical Workers in the New Economy." University of California Institute for Labor and Employment (with Lisa Torres).
- 1995-98 "Environments, Organizations, and Jobs: The Causes and Consequences of Workplace Gender Segregation." National Science Foundation, Sociology Division and Human Capital Initiative.
- 1995-96 "MOST Program: Minority Opportunity Through School Transformation." American Sociological Association, Ford Foundation, and the Borchard Foundation (Co-Investigator, with Kum-Kum Bhavnani).
- 1989-93 "From Market to Hierarchy: Industrial Change and the Employment Relation in Television Production." National Science Foundation, Sociology Division. (Principal Investigator. Denise D. Bielby, Co-Investigator.)
- 1985-87 "Men's and Women's Commitment to Work and Family." National Science Foundation, Sociology Division. (Principal Investigator. Denise D. Bielby, Co-Investigator.)
- 1987 "Research Conference on Occupational Sex Segregation and Comparable Worth." American Sociological Association, Problems of the Discipline Program (with Toby Parcel, James Baron, Paula England, Jerry Jacobs, Barbara Reskin, and Patricia Roos).
- 1980-83 "Jobs, Firms, and Industries: Economic 'Dualism' and the Organization of Work." National Science Foundation, Divisions of Sociology and Applied Research. (Principal Investigator. James N. Baron, Co-Investigator.)

- 1978-80 "Sources of Error in Survey Data Used in Criminal Justice Evaluation." National Institute of Law Enforcement and Criminal Justice. (Principal Investigator. Richard A. Berk, Co-Investigator.)
- 1978 "Neighborhood and Household Components of Variation in Respondents' Reports of Neighborhood Quality." U. S. Department of Housing and Urban Development. (Principal Investigator.)
- 1977 "Research Uses of the National Longitudinal Survey." U. S. Department of Labor. (Principal Investigator.)

RESEARCH AND TEACHING INTERESTS:

Quantitative Methods	Organizations
Media & Popular Culture	Labor Markets & Discrimination
Social Stratification	Gender & Race

REFERENCES: available upon request

EXHIBIT C

Materials Reviewed

Deposition Transcripts and Exhibits for the Following Deponents:

- Subha Barry, 4/12/07
- Tamara Cassidy, 12/20/06
- Jyoti Chopra, 6/8/07
- Michael G. Dauber, 6/21/07
- Hartwell McIntyre Gardner, 3/8/07
- John Hogarty, 10/5/06
- Leopoldo F. Marichal, 6/21/07
- Robert J. McCann, 2/22/07
- E. Stan O'Neal, 11/1/06
- Kim Pillar, 2/23/07
- William Schetler, 12/20/06
- Phillip W. Sieg, 11/29/06, 12/1/06, 1/16/07, 6/1/07
- Daniel Sontag, 1/17/07
- Pao Ling Yu, 6/21/07
- Cathy Bender-Jackson, 3/27/07
- Leroy Brown, 5/30/07, 5/31/07, 7/9/07
- Leslie Brown, 4/5/07
- Christina Coleman, 3/26/07
- Glenn Capel, 5/24/07
- LaRue Gibson, 6/13/07
- Maroc Howard, 3/22/07, 3/23/07
- Mark Johnson 3/21/07
- Yves LaBorde, 8/8/07
- Jennifer Madrid, 6/12/07
- George McReynolds, 8/14/07, 8/15/07
- Carnell Moore, 6/5/07
- Frankie Ross, 5/17/07
- Stephen Smartt, 5/31/07
- Henry Wilson, 4/4/07
- Marva York, 6/6/07

Court Papers:

- Plaintiffs' Second Amended Complaint
- Merrill Lynch's Answer to Plaintiffs' Second Amended Complaint
- Plaintiffs' Responses and Objections to Defendant's First Set of Interrogatories
- Plaintiffs' Position on Defendant's Second Set of Interrogatories
- Plaintiffs' Responses and Objections to Defendant's Second Set of Interrogatories
- Plaintiffs' Responses and Objections to Defendant's Third Set of Interrogatories
- Plaintiffs' Responses and Objections to Defendant's Fourth Set of Interrogatories
- Defendant's Objections and Responses to Plaintiffs' First Set of Interrogatories

- Defendant's Supplemental Objections and Responses to Plaintiffs' First Set of Interrogatories
- Defendant's Amended Supplemental Objections and Responses to Plaintiffs' First Set of Interrogatories
- Defendant's Second Amended Supplemental Objections and Responses to Plaintiffs' First Set of Interrogatories

Documents/Materials Reviewed:

- All documents produced by Merrill Lynch in response to Plaintiffs' document requests to Merrill Lynch, which were sent to me by Plaintiffs in a text-searchable database. This database included all documents Merrill Lynch produced, with the exception of the documents from branch offices.
- Documents produced by Plaintiffs in response to Merrill Lynch's document requests, including [P 00001 – 01612, P 04312 – 04317, P 04424 – 04521, P 04712 – 05472, P 05559 – 06124, P 06148 - 06159]
- All DVDs produced by Merrill Lynch in response to Plaintiffs' document requests to Merrill Lynch, and transcriptions of four of these DVDs.
- All documents produced by third-party Securities Industry Association in response to Document Request Rider to Subpoena Duces Tecum to Securities Industry Association, SIA 00001 to 00509.
- All documents produced by third-party InfoUSA in response to Document Request Rider to Plaintiffs' Subpoena Duces Tecum to InfoUSA, Inc., d/b/a/ Donnelley marketing, INFO 00001 to 00947.
- Correspondence setting forth the scope of the Rule 30(b)(6) depositions and re: discovery
- MLE CD 00042 (data produced by Merrill Lynch)
- Data summaries of representation of African-Americans as FAs and Managers, including data summaries prepared by Dr. Alex Vekker of E-Consult
- Certain press reports and publicly available information, as cited in the report