

Reflections on Being an Expert Witness in Class Action Sex Discrimination Litigation

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Our story begins with the fourteenth annual convention of the National Employment Lawyers Association (NELA) held in June 2003. NELA's annual meeting took place in Vail, Colorado, and its geographically apt theme was "Conquering Mountains for Workers' Rights." This chapter's first author had been invited to participate in a panel session on "Stereotyping evidence: The forgotten method of proof" along with Seattle-based attorney, Michael C. Subit, who had prior litigation experience with expert testimony on gender stereotyping. The session was quite well attended, though attendance may have been inflated by NELA members exiting the exhilarating keynote address ("Fighting for Justice") of nationally renowned plaintiffs' attorney, Gerry Spence, from an adjacent ballroom.

During the panel session, which was deemed a great success by NELA, a then anonymous attorney from the audience operated the overhead projector during both presentations on the use of stereotyping evidence in employment discrimination cases. It turns out, however, that this attorney was paying very close attention to the content of the overhead slides that she was so graciously flipping. Later that summer the attorney, from the Seattle law firm representing female plaintiffs in a class action case against The Boeing Company, stepped out of the shadow of anonymity, contacted the chapter's first author, and retained him as the plaintiffs' expert witness on gender stereotyping and prejudice. On February 25, 2000, a group of non-management female plaintiffs had filed a class action suit against The Boeing Company.¹ Many of the plaintiffs claimed they were paid less than similarly situated males for doing the same job, or were not granted opportunities for training, overtime, or promotion

which advantaged their male counterparts. Some plaintiffs also complained they were subjected to unwelcome sexual overtures or comments about their bodies. When these women complained about the harassment or unequal treatment to Boeing officials, some were relocated to less desirable job sites or to work less desirable shifts, some were ostracized by their co-workers, and some were denied even more gainful job opportunities; in short, they alleged they suffered retaliation by their employers for complaining. In its defense, Boeing denied all allegations of misconduct, including the plaintiffs' claims they were treated differently than their male counterparts based on their sex. After a four-year legal battle, the litigation was settled in May 2004, though the terms of the settlement were not disclosed.

The purpose of this chapter is to review the challenges to the first author's expert testimony in this case, and to highlight some important lessons learned. We first generally review the expert's psychological testimony on gender stereotyping and prejudice as it was presented in the first step of his testimony, the expert report. Next, we review and discuss his deposition and, in particular, the specific defense challenges to the expert's report and opinions. We describe the exchange in greater detail because it is diagnostic of the set of key challenges to expert psychological testimony that are common in class action sex discrimination cases. We argue that there are important lessons to be learned from these challenges and (perhaps more importantly) from the defense motions to exclude the expert's testimony. Although the federal judge in the case ultimately denied the defense motion to exclude the testimony, there is every reason to believe that these issues will resurface in future class action and single plaintiff litigation in this legal arena.

Borgida's Experiences in the Case

The plaintiffs in *Beck et al. v. The Boeing Company* claimed to have been denied, based on their gender, competitive promotions (for non-management female employees), annual compensation adjustments for salaried women, and overtime opportunities at Boeing's Puget Sound facilities between late February 1997 and November 2003. Plaintiffs' counsel asked Borgida to review all available case materials and address the extent to which gender stereotyping may (or may not) have played a role in understanding these claims. Plaintiffs' counsel also asked if the report would address whether women would likely be disadvantaged by various Boeing employment practices.

A general opinion was proffered in the report: that the social scientific research literature on gender stereotyping and prejudice played an important explanatory role in understanding how gender stereotypes affected pay and promotion and overtime practices at Boeing. Several related and more specific opinions were also offered (e.g., that under various conditions, people make decisions based on gender stereotypes, whether or not they are aware that such generalizations about women can result in faulty judgments about specific

individuals; in the absence of specific, accurate evidence of competent performance, there is an increased likelihood that gender stereotypes will bias managers' compensation decisions and managers will be more inclined to rely on the opinions of fellow managers who are usually male).

The opinion offered in this case reflected the application of a social framework analysis. This approach to expert scientific testimony represents a scientifically known and established approach to using social science evidence in litigation.² It is an approach that has increasingly been accepted in the courts over the past decade or more in cases involving, for example, employment discrimination, eyewitness identification, and sexual victimization. This approach has been written about most extensively by Monahan and Walker who have discussed the social framework approach in their law review writings,³ but others also have written about the approach.⁴

A social framework analysis uses general conclusions from tested, reliable, and peer-reviewed social science research and applies them to the case at hand. It provides an assessment of general causation in a research area in order to inform fact finders about more specific causation issues associated with a particular case.⁵ General causation refers to whether causality between two factors exists at all. For example, an expert who testifies that smoking can cause lung cancer is addressing general causation because the testimony is designed to establish that the phenomenon occurs. Specific causation, in contrast, refers to whether the phenomenon of interest occurred in a particular context. It refers to whether causality between two factors actually did exist in the case at hand. In our smoking and lung cancer example, an expert who testifies that smoking a particular brand of cigarettes caused a specific patient's lung cancer is addressing specific causation.⁶

How exactly does the expert present a social framework analysis? In this instance, Borgida drew on his knowledge of social psychology and the established, peer-reviewed scientific research literature on gender stereotyping and gender prejudice, including his own contributions to this body of social scientific knowledge, to review the set of case documents provided by plaintiffs' or defense counsel. Specific examples were then drawn from the case materials to illustrate and highlight the pertinent scientific conclusions drawn from the social scientific research literature. De facto, this was the approach taken in the American Psychological Association's (APA's) amicus curiae brief submitted to the U.S. Supreme Court in *Price Waterhouse v. Hopkins*.⁷

This use of a social framework to present social science evidence has generally served to educate fact finders about the conditions under which gender stereotypes and gender prejudice are likely to influence impressions, evaluations, and behavior in social and organizational settings.

In fact, a considerable body of theory and research in psychology and other social sciences on the nature and consequences of gender stereotyping has accumulated over the past several decades, and was recently reviewed by Hunt, Borgida, Kelly, and Burgess.⁸ Several areas of general scientific consensus emerged from this analysis.

First, there seems to be general agreement about the content of gender stereotypes (e.g., communal attributes, agentic attributes) as well as the existence of various subcategories of women (e.g., “career women,” “feminists,” or “housewives”). Second, gender stereotypes have small to modest but consistent effects on judgments of women and men (including in the context of employment decisions), particularly when men and women behave in stereotype-inconsistent ways. For example, when women are confrontational and assertive, and not passive, submissive, and relational, stereotypes are activated and the women are more likely to be seen as “gender nonconformists” by men and even by other women.⁹ Third, gender stereotypes are more likely to be used in certain circumstances, such as when gender is salient (e.g., few women in a particular workforce or organization) and when decision makers are not motivated to make accurate judgments. Finally, Hunt et al. concluded that there also was general agreement about certain psychological processes associated with gender stereotyping: that people automatically categorize others according to their memberships in social groups; that gender is a fundamental dimension of categorization; that categorization can lead to stereotype activation, of which individuals may be unaware; and that certain individual differences can influence the use of gender stereotypes. It is also the case that the strength of learned associations and different goals (e.g., knowledge or self-enhancement goals) can influence the activation and application of stereotypes when judging individuals.

Expert report

In Borgida’s expert report submitted in *Beck*, several areas of the research literature on gender stereotypes,¹⁰ in conjunction with the various conditions previously reviewed in Fiske et al.¹¹ and others, provided the basis for examining the plaintiffs’ claims about adverse employment decisions at Boeing’s Puget Sound facilities. In particular, the content of gender stereotypes, the consequences of not meeting prescriptive expectations, and the problematic role of unchecked subjectivity in making pay and promotion decisions were chosen as themes that could be illustrated with selected case material from *Beck*. However, as discussed in the next section, Borgida’s approach and the conclusions that he drew from the research literature were challenged by defense counsel in the deposition.

The deposition

During a deposition, a witness gives testimony that is written down and/or videotaped by a duly qualified officer of the court and sworn to by the deposition. In this case, the defense counsel used the deposition context to challenge the scientific status of Borgida’s report in two ways. First, counsel attacked the validity of Borgida’s claims, questioning the methodology used to reach his findings and the failure to apply those findings to specific Boeing business practices. Second, counsel also questioned the utility of the general body of gender stereotyping research, arguing that the primarily experimental

findings are not generalizable to the “real world” and therefore had no place in this litigation.

At the crux of Boeing’s challenges to Borgida’s expert report, both about the validity of his claims and the utility of the body of gender stereotyping research, was the belief that Borgida should have addressed specific causation. In other words, defense counsel suggested that unless the science was applied specifically to The Boeing Company, it wasn’t science at all. Although the social framework analysis that Borgida provided in his report was geared to general causation, Boeing charged that general causation was not sufficient, and that Borgida’s report should have addressed specific employment practices at Boeing.

Consistent with this critique, Boeing’s attorney first questioned the overall opinion proffered, indicating his belief that Borgida should have supported his opinion by analyzing actual employment decisions at Boeing. Then he was critical of the non-random process used to select documents that constituted the basis for Borgida’s opinions in the case, “If you were attempting to obtain data for . . . peer-reviewed scientific inquiry, would accepting the evidence . . . of the declarants . . . at face value and using that . . . to base scientific conclusions have been consistent with the scientific method?”¹² As he continued, defense counsel implied that Borgida’s review of the documents was not comprehensive and that he should have asked for additional (though unspecified) defense documents that would have provided a more balanced view of the case.

Boeing also questioned the scientific standing of Borgida’s findings, pointing out that the expert report did not assert a specific and quantifiable confidence level for the claims made in the report. Because Borgida did not conduct any statistical analyses of original data collected at Boeing, the defense questioned how it was even possible to test the falsifiability of Borgida’s conclusions.¹³ This exchange culminated in the defense attorney commenting, “. . . but there is no attempt, no visible attempt, to me, to test those hypotheses in any sort of scientifically valid, methodologically rigorous way.”¹⁴

During the deposition, the Boeing attorney repeatedly asked whether Borgida had specifically applied his findings to Boeing. For example, when discussing organizational remedies for monitoring and reducing the effects of stereotypes that were described in Borgida’s expert report, Boeing asked whether Borgida was aware if these remedies already existed at Boeing. When considering the role of adequate information in employment decisions, for example, defense counsel asked, “Have you done any systematic examination of the record to determine whether, in fact, Boeing managers do not have access to adequate information when they make employment decisions?”¹⁵

This line of questioning demonstrates and underscores Boeing’s view that Borgida should have been able to testify about the specific conditions at Boeing. Whether through collecting original, primary data from Boeing employees or by reviewing Boeing’s specific employment practices, Boeing argued that Borgida should have addressed specific causation issues. And as we will see later, this critique was central to the defense motion to exclude Borgida’s testimony.

The defense not only attacked the scientific status and foundation for Borgida's claims, but also attacked the utility of the body of gender stereotyping research described in the expert report, basing much of the challenge on the kinds of arguments developed by Copus,¹⁶ who believes that plaintiffs' expert opinions on the role of gender stereotypes "have no reliable scientific basis" and "constitute junk science." For example, defense counsel questioned Borgida about the effect sizes reported in a meta-analysis described in the expert report, pushing Borgida to characterize the effect size as very small, and implying that the effect sizes would be even smaller in real-world business settings.¹⁷

Boeing also questioned Borgida about the generalizability of research on gender stereotyping. Defense counsel argued that because experimental studies typically employ college students as participants, the findings cannot be generalized to actual conditions at Boeing, especially with respect to those factors that might reduce the prejudicial effects of stereotypical thinking. "Would it be fair to say . . . the subjects of the experiment have less incentive for being correct, less time, and less diagnostic individuating information than would a manager in a typical employment environment?"¹⁸ In other words, according to Boeing, college students are not motivated to be accurate the way Boeing managers are motivated because Boeing managers know that their judgments have real consequences. In addition, college students do not have adequate, individuating information about the female employee about whom they are making a fictitious decision. As noted before, the issues described here also highlight defense counsel's belief that Borgida's research should have been directly applicable to the employment practices at Boeing.

In summary, the Boeing attorneys challenged the scientific status of the proffered testimony, arguing that the scientific method, which is at the heart of peer-reviewed research, did not characterize Borgida's expert report. They argued that the sampling of documents was not comprehensive and was biased against the defendants; the studies in the research literature were limited in terms of effect size and how generalizable the studies were to "real-world" work settings; and that hypotheses were not tested using original data collected at Boeing facilities. The latter claim was made several times during the deposition.

However, Borgida was not asked to conduct contract research on behalf of the plaintiffs. As he repeated throughout the deposition, he was not asked to do contract research evaluating Boeing's hiring, promotion, and pay decisions. Rather, he was asked to provide a social framework analysis wherein he established the conditions under which gender stereotyping was more likely than not to occur in a workplace setting. Conclusions based on the research literature, in this approach, can be illustrated by drawing on documents and specific case facts. These conclusions also can be construed as hypotheses that can be evaluated by available archival data. For example, Borgida did review an internal study conducted by human resources staff at Boeing. This study showed that when decisions by Boeing managers were monitored, overtime assignments to men and women in fact were fairly distributed and not subject to gender bias compared

to those who were not monitored. The hypothesis, based on the research literature, suggested that managerial monitoring should attenuate, if not eliminate, gender bias in overtime assignments, and this is precisely what the Boeing study demonstrated, much to the chagrin of the Boeing defense lawyers.

The defense motion to exclude the expert report and testimony

Given Boeing's challenges to the credibility of the psychological science during the deposition, it came as no surprise when in April 2004 Boeing filed for the exclusion of Borgida's expert report on the grounds that it did not satisfy the requirements outlined in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*¹⁹ Boeing argued that Borgida's theory could not be, and had not been, tested; that it was not subject to the peer review process and publication; that there was no known or potential rate of error; and finally, that his theory had not gained widespread acceptance within the scientific community. Boeing also charged that the methodology employed by Borgida did not reflect the scientific rigor characteristic of peer-reviewed research in the field.²⁰

In its motion, Boeing also argued that Borgida's report should not be admissible because it was not relevant to the case at hand. Boeing argued that there was no empirical link between the research on gender stereotypes and Borgida's opinion that stereotypes specifically, and in a quantifiable way, influenced decision makers at Boeing. Again, Boeing's belief that Borgida should have conducted contract research at Boeing was reiterated. In the motion, Boeing charged that Borgida had not analyzed the extent to which the situation at Boeing precisely resembled the conditions described in the literature on gender stereotyping and prejudice: Borgida admitted that, although "it is possible to generate hypotheses based on the [social science] literature and then examine the extent to which those hypotheses are supported by the archival [i.e., case related] data . . . I didn't do a quantitative study of that."²¹

Furthermore, Boeing charged that the research outlined in Borgida's report illustrates that stereotypes likely have a small impact at Boeing.²² In this regard, Boeing raised the argument that the effect sizes typically reported in gender stereotyping research are small, and that they are smaller still (as opposed to potentially larger) when one accounts for all of the moderators associated with the influence of stereotypes; moderators that the defense claimed are present in "real-world" employment practices at Boeing.

Lastly, in its motion to exclude Borgida's report and testimony from trial, Boeing argued that establishing general causation would not assist the fact finder.²³ Because the content of Borgida's report and testimony did not address specific causation, the report had little added value for fact finders.

In their reply to the defense motion,²⁴ plaintiffs rebutted the notion that Borgida needed to address specific causation. In pattern and practice discrimination cases, they argued, evidence of an employer's general discriminatory attitude is relevant and admissible to prove discrimination; in other words, the

test is general, not specific, causation.²⁵ In a pattern and practice case, as defined by the context of Title VII of the 1964 Civil Rights Act, plaintiffs have the burden of showing that unlawful employment practices were the defendant's regular policy or procedure, rather than an unusual practice.

Also, the plaintiffs argued that Borgida's testimony would be helpful in aiding the fact finder in several ways. For example, Borgida's testimony would establish that most people harbor gender stereotypes, whether they are consciously held or not, and that the research literature establishes that these stereotypes often influence the decisions people make even if they are unaware of it. Furthermore, Borgida's testimony would aid the jurors in understanding the actual practices at Boeing because Borgida would describe the effect of working in a male-dominated industry (as was the case with Boeing), and the effect of not having specific, accurate information about female employees, as was often the case at Boeing.²⁶

With respect to rebutting Boeing's attack on the scientific validity of Borgida's findings, the plaintiffs clarified the "relevance" standards set by the Federal Rules of Evidence. According to the Federal Rules of Evidence, plaintiffs argued, evidence is relevant if it makes "the determination of the action more probable or less probable than it would be without the evidence." Thus, Borgida did not have to testify about the specific conditions at Boeing in order to qualify under the Federal Rules of Evidence.²⁷

Plaintiffs also outlined other cases in which a social framework analysis, the type of analysis that Borgida offered, had been used (explicitly or implicitly) by the courts.²⁸ As examples, they cited *Robinson v. Jacksonville Shipyards, Inc.*²⁹ and *Butler v. Home Depot* (1997)³⁰, both of which were sex discrimination cases that relied upon social framework analyses. With respect to Boeing's claim that Borgida should have conducted an empirical study about the conditions at Boeing, plaintiffs reiterated the argument that such evidence is not necessary in a pattern and practice case, and highlighted the finding in *Butler* that declared this an issue of weight, rather than admissibility.

Finally, the defense argued that Borgida's testimony did not exceed common knowledge and experience in educating the fact finders in the case. Plaintiffs argued that Borgida's testimony would be particularly useful to the fact finders in a pattern and practice case, where the nature of the discrimination is so "pervasive and culturally ingrained that their [i.e., gender stereotypes'] role in perpetuating discrimination is not readily recognizable to the jury or judge."³¹ In other words, sex discrimination is often so subtle and pervasive that it often goes unnoticed in our society. Both judges and juries could benefit from the kind of expert testimony offered.

Boeing's reply to the plaintiffs' rebuttal was to reiterate its claim that Borgida's testimony did not address specific conditions at Boeing, and to argue that a social framework analysis has never been used in court. To this end, Boeing argued that the term "social framework analysis" had been mentioned once in a court decision, and that was in *Ray v. Miller Meester Advertising, Inc.*,³² where the admission of such testimony was overturned on appeal.³³

On May 14, 2004, just before the case settled out of court, Judge Marsha Pechman denied the defense motion to exclude Borgida's report and testimony. In her order, Judge Pechman denied the defendant's motions on all counts, including the attacks on the scientific validity of the expert report. She outlined the ways in which Borgida qualified to testify as an expert according to the Federal Rules of Evidence and *Daubert*, and ruled that the method by which Borgida reached his conclusions was valid, accepted by the field, and accepted by previous courts in similar cases. Furthermore, she ruled that Boeing's contention that Borgida did not relate enough of the evidence back to the practices at Boeing was indeed a matter of weight, and therefore could be subject to cross-examination.³⁴

Lessons

In this chapter, we discussed the expert report and deposition in *Beck* as a case study of the key challenges that confront expert psychological testimony in class action sex discrimination cases. Typically in such cases, there are statistical disparities of at least two standard deviations (often more) across several job-related dimensions (e.g., pay and promotion gaps between men and women). The question in the face of such disparities is: What accounts for these discrepancies between men and women in a given organization? As was the case in *Beck*, different experts were retained to offer different "accounts" for these disparities. Expert psychological testimony in the form of a social framework analysis of gender stereotyping and prejudice research constitutes one such account. The extant research literature provides the foundation on which areas of scientific consensus can be identified, and these conclusions in turn provide the basis for generating hypotheses about the nature of the disparities at issue that the expert can address in the expert report, and then defend in deposition and at trial.

But what is quite clear from the case study offered in this chapter is that this approach is embedded within an adversarial context which virtually ensures that the proffered expertise will be rigorously challenged. The kinds of challenges that are common to litigation in this arena are important to reflect upon. Is the scientific database involved, for example, sufficiently coherent that one can generate testable hypotheses? If so, then how do the findings from the aggregate-level, scientific database apply to the specifics of the case? If they do not, then should new, on-site data be collected to test hypotheses about the gender disparities at the heart of the litigation? On the other hand, do findings from the scientific database provide an account for these disparities that has the potential to educate fact finders in the case?

In *Beck* as well as in some other class action sex discrimination cases, it was determined that there is a body of social scientific knowledge that can be used to generate a scientifically-grounded account of the demonstrable statistical disparities between men and women. In addition, it is important to underscore

the extent to which the scientific challenges to the expert testimony in *Beck* are common in the employment discrimination arena, and by no means idiosyncratic to this particular case.³⁵ Bielby, for example, discusses several of these very same challenges to expert testimony in class action sex discrimination cases.³⁶ Specifically, the external validity of experimental investigations to “real-world” organizational dynamics can be challenged as an “untested theory” about workplace disparities between men and women. Similarly, an “account” and expert opinions that rest on the pertinent research literature (even with illustrative examples from deposition material and case exhibits) is not considered as scientifically valid an account as an account that is based on contract research conducted to test hypotheses in the specific organizational context. Finally, it is typical to challenge expert testimony on the grounds that the plaintiffs’ expert is basing his or her account on a selective and biased interpretation of the database, an interpretation that, for example, overstates the significance of the effect sizes found in the research literature.

From our perspective, it is incumbent on attorneys and the experts they retain in class action sex discrimination cases to be aware of these common challenges to expert psychological testimony. As (if not more) important, it is crucial for social scientists retained in such cases to anticipate these challenges and issues at the outset of their involvement in litigation. The contours of an expert report, the dynamics of a deposition, and ultimately trial testimony will be influenced by the ways in which the expert decides to address these scientific challenges. Moreover, the obvious also needs to be kept in mind. However the expert psychologist decides to take on these challenges, the approach must be consistent with APA’s Ethical Principles of Psychologists and Code of Conduct.³⁷ Psychologists serving as experts should always “seek to promote accuracy, honesty, and truthfulness in science, teaching, and the practice of psychology” and they should base their analyses “upon established scientific and professional knowledge of the discipline.”³⁸ As Brodsky³⁹ suggests, an expert is obligated to the ethical standards of the field when it comes to representing science in legal (and non-legal) contexts. To do otherwise would unacceptably compromise the integrity and applicability of the scientific knowledge and findings that are intended to educate fact finders and contribute to the overall quality of justice that is dispensed.

Notes

- 1 Beck v. Boeing Co., 203 F.R.D. 459 (W.D. Wash. 2001).
- 2 See: Fiske, S., & Borgida, E. (1999). Social framework analysis as expert testimony in sexual harassment suits. In S. Estreicher (Ed.), *Sexual harassment in the workplace* (pp. 575–583). Boston: Kluwer Law International. See also: Hunt, J. S., Borgida, E., Kelly, K. M., & Burgess, D. (2002). Gender stereotyping: Scientific status. In D. L. Faigman, D. J. Kaye, M. J.

- Saks, & J. Sanders (Eds.), *Modern scientific evidence: The law and science of expert testimony* (pp. 374–426). St. Paul, MN: West Publishing Co.
- 3 Faigman, D. L., & Monahan, J. (2005). Psychological evidence at the dawn of the law's scientific age. *Annual Review of Psychology*, *56*, 631–660.
 - 4 Bielby, W. T. (2003). Can I get a witness? Challenges of using expert testimony on cognitive bias in employment discrimination. *Employee Rights and Employment Policy Journal*, *7*, 377–397. Fiske & Borgida (1999). Gitek, B. A., & Stockdale, M. S. (2005). Sex discrimination in employment. In F. J. Landy (Ed.), *Employment discrimination litigation: Behavioral, quantitative, and legal perspectives* (pp. 229–255). San Francisco: Jossey-Bass. Krieger, L. H. (2004). The intuitive psychologist behind the bench: Models of gender bias in social psychology and employment discrimination law. *Journal of Social Issues*, *60*, 835–848. Outtz, J. L., & Landy, F. J. (2005). Concluding thoughts. In F. J. Landy (Ed.), *Employment discrimination litigation: Behavioral, quantitative, and legal perspectives* (pp. 575–590). San Francisco: Jossey-Bass.
 - 5 Faigman, D. L., Kaye, D. H., Saks, M. J., & Sanders, J. (2002). *Modern scientific evidence: The law and science of expert testimony*. St. Paul, MN: West Publishing Co.
 - 6 Faigman & Monahan (2005). Faigman et al. (2002).
 - 7 *Price Waterhouse v. Hopkins*, 109 S.Ct. 1775 (1989). Fiske, S. T., Bersoff, D. N., Borgida, E., Deaux, K., & Heilman, M. E. (1991). Social science research on trial: Use of sex stereotyping research in *Price Waterhouse v. Hopkins*. *American Psychologist*, *46*, 1049–1060.
 - 8 Hunt et al. (2002). See also: Borgida, E., Hunt, C., & Kim, A. (2005). On the use of gender stereotyping research in sex discrimination litigation. *Journal of Law and Policy*, *13*(2), 613–628.
 - 9 Hyde, J. S. (2005). The gender similarities hypothesis. *American Psychologist*, *60*(6), 581–592. Heilman, M. E. (2001). Description and prescription: How gender stereotypes prevent women's ascent up the organizational ladder. *Journal of Social Issues*, *57*(4), 657–674. Rudman, L. A. (2005). Rejection of women? Beyond prejudice as antipathy. In J. F. Dovidio, P. Glick, & L. A. Rudman (Eds.), *On the nature of prejudice: Fifty years after Allport* (pp. 107–120). Malden, MA: Blackwell.
 - 10 Hunt et al. (2002).
 - 11 Fiske et al. (1991).
 - 12 Videotaped deposition of Eugene Borgida, PhD, at 23, *Beck v. Boeing Co.*, No. C00-301P (W.D. Wash. Dec. 11, 2003).
 - 13 Borgida deposition, p. 57.
 - 14 Borgida deposition, p. 59.
 - 15 Borgida deposition, p. 176.
 - 16 Copus, D. (2005). A lawyer's view: Avoiding junk science. In F. J. Landy (Ed.), *Employment discrimination litigation: Behavioral, quantitative, and legal perspectives* (pp. 450–462). San Francisco: Jossey-Bass.

- 17 Borgida deposition, pp. 150 and 200.
- 18 Borgida deposition, p. 201.
- 19 *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 S. Ct. 2786 (1993).
- 20 Defendant's motion *in limine* to exclude expert report, opinions, and testimony of plaintiffs' expert Eugene Borgida, Ph.D., *Beck v. Boeing Co.*, No. C00-301P (W.D. Wash. Apr. 12, 2004).
- 21 Defendant's motion *in limine*, part IIB2a, p. 7 (emphasis added by defense).
- 22 Defendant's motion *in limine*, part IIB2b, p. 8.
- 23 Defendant's motion *in limine* part IIC, p. 11.
- 24 Plaintiffs' opposition to Boeing's motion *in limine* to exclude expert report, opinions, and testimony of plaintiffs' expert Eugene Borgida, Ph.D., *Beck v. Boeing Co.*, No. C00-301P (W.D. Wash. Apr. 26, 2004).
- 25 See Faigman & Monahan (2005).
- 26 Plaintiff's opposition to Boeing's motion *in limine*, Part II, pp. 2–3.
- 27 Plaintiff's opposition to Boeing's motion *in limine*, Part IIIA, p. 5.
- 28 Plaintiff's opposition to Boeing's motion *in limine*, Part IIIB, p. 6.
- 29 *Robinson v. Jacksonville Shipyards, Inc.*, 760 F. Supp. 148 (1991).
- 30 *Butler v. Home Depot*, 984 F. Supp. 1257 (N.D. Cal. 1997).
- 31 Plaintiff's opposition to Boeing's motion *in limine*, Part IIIC, p. 9.
- 32 *Ray v. Miller Meester Advertising, Inc.* 664 N.W.2d 355 (Minn. 2003). In the *Ray v. Miller Meester* decision, which Borgida was handed just moments before he gave his 2003 NELA presentation, social framework analysis was rejected because the Minnesota appellate court ruled it did not exceed common knowledge for fact-finders who, according to this opinion, are adequately informed about gender relations and gender stereotyping via television sitcoms and other media coverage. While the Minnesota appellate court was not persuaded by the "added value" of social science, Judge Pechman's opinion in *Beck v. Boeing Co.* found that the social framework analysis provided by Borgida provided added value in *Beck v. Boeing Co.* because the jury would have to decide if the *class* of plaintiffs suffered from a pattern of discrimination at Boeing. Thus, an expert who could explain what stereotyping is and the conditions under which it is more likely than not to occur would assist the jury in this task.
- 33 Boeing's reply on motion to strike expert report, opinion, and testimony of plaintiffs' expert Eugene Borgida, Ph.D., part IIB, p. 3., *Beck v. Boeing Co.*, No. C00-301P (W.D. Wash. Apr. 29, 2004).
- 34 Order denying defendant's motion to exclude expert report, opinions, and testimony of plaintiffs' expert Eugene Borgida, Ph.D., *Beck v. Boeing Co.*, No. C00-301P (W.D. Wash. May 14, 2004).
- 35 Gutek, B. A., & Stockdale, M. S. (2005). Sex discrimination in employment. In F. J. Landy (Ed.), *Employment discrimination litigation: Behavioral, quantitative, and legal perspectives* (pp. 229–255). San Francisco: Jossey-Bass.
- 36 Bielby (2003).

- 37 American Psychological Association (2002). Ethical principles of psychologists and code of conduct. In D. N. Bersoff (Ed.), *Ethical conflicts in psychology* (pp 28–45). Washington, DC: American Psychological Association.
- 38 Bersoff, D. N. (Ed.). (2003). *Ethical conflicts in psychology* (3rd ed). Washington, DC: American Psychological Association.
- 39 Brodsky, S. L. (1999). *The expert witness: More maxims and guidelines for testifying in court*. Washington, DC: American Psychological Association.

