

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS
EAST ST. LOUIS DIVISION**

<p>JOHN TUCKER, et al.</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>Walgreen Company,</p> <p style="text-align: center;">Defendant.</p>	<p>Case No.: 05-cv-440-GPM</p>
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DECLARATION OF MARC BENDICK, JR., Ph.D.

I. Introduction

1. I know the following facts of my own personal knowledge and based on my experience as described herein. If called as a witness, I could and would testify thereto under oath.

2. I am a principal of Bendick and Egan Economic Consultants, Inc., 4411 Westover Place, N.W., Washington, D.C. 20016. I earned a Ph.D. in economics from the University of Wisconsin in 1975 and have engaged in the full-time practice of economics, specializing in employment and related issues, for more than 30 years. Over that period, I have been a researcher, policy analyst, university lecturer, and consultant to employers in the public, corporate, and non-profit sectors. I am the author, co-author, or editor of more than 100 pieces of scholarly research, including books, monographs, articles in refereed journals, and Congressional testimony. My resume is provided as Attachment A.

3. My professional activities have included involvement in litigation on employment discrimination, including analysis of:

- the availability of job-seekers in different demographic groups;

- processes for recruiting, hiring, training, assigning, evaluating, compensating, promoting, and discharging employees;
- policies and practices for managing a demographically-diverse workforce; and
- economic damages associated with denial or diminution of employment opportunities.

Attachment B lists the more than 130 cases in which I have participated, on behalf of both employers and employees. I have been qualified and testified as an expert in fourteen federal courts and seven state courts or administrative tribunals.

4. In *Tucker et al v. Walgreen*, plaintiffs' counsel retained me to analyze selected aspects of employment practices and employment outcomes in the Walgreen Company with respect to African American employees and prospective employees.

5. Throughout my work in this case, I utilize modes of analysis, computational procedures, information sources, and standards of care identical to or comparable to those I use in my scholarly research, and I apply theories, models, concepts, reasoning, and assumptions that command general acceptance among my professional peers. I hold the opinions I present in this declaration to a reasonable degree of scientific certainty.

6. In my work on this case to date, I have consulted or had access to the document and other information sources listed in Attachment C.

7. For my work on this case, I am being compensated at the rate of \$295 per hour plus out-of-pocket expenses.

II. The Empirical Issues in This Case

8. As a labor economist, I treat allegations put forth by either plaintiffs or defendants in litigation as *hypotheses* to be supported or refuted by statistical analysis of empirical data.

9. Reading the Complaint in this case¹ as a labor economist, I find three principal hypotheses with respect to Walgreens' employment practices:

- a. Walgreens has engaged in a continuing, company-wide pattern and practice of race discrimination² in *promoting* African Americans within the managerial and pharmacist career paths.
- b. Walgreens has engaged in a continuing, company-wide pattern and practice of race discrimination in *store assignments* of African Americans in managerial and pharmacist positions.
- c. Walgreens has engaged in a continuing, company-wide pattern and practice of race discrimination in *selecting* African Americans for entry-level management trainee positions.

10. The next sections of this declaration discuss the data which I -- or any other labor economist, statistician, or quantitative social scientist -- would need to test these hypotheses.

III. Data Required to Analyze the Promotions Hypothesis

11. One principal hypothesis set forth in plaintiffs' complaint is that African Americans are discriminated against in promotions within the management and pharmacist career paths -- for example, in the management career path from Assistant Store Manager/Manager Trainee to Executive Assistant, Store Manager, and District

¹ *First Amended Class Action Complaint*, filed 8/01/05, especially paragraphs 1 and 24.

² Here and throughout my work on this case, I use the term "discrimination" not in any legal sense but as it is defined in labor economics -- as differences in employment treatment or employment outcomes based on personal characteristics (such as race), rather than on job-related differences in qualifications, abilities, or interests.

Manager and above, and in the pharmacy career path from Staff Pharmacist to Pharmacy Manager to Pharmacy Supervisor and above. I would restate this hypothesis more precisely as follows: For the management and pharmacist positions at issue in the case, in decisions about who is selected from among applicants³ who were Walgreens managerial and pharmacy employees, non-African Americans⁴ have a higher probability of being selected than African Americans with equal qualifications.

12. To test this hypothesis, I would need data on the race and qualifications of all applicants for these positions⁵ who were Walgreens lower-level managerial and pharmacy employees at the time they applied for or were considered for promotion -- both African Americans and non-African Americans -- and designation of which individuals within these pools of applicants were promoted.

13. These data should be *nation-wide*, for at least three reasons:

³ Throughout this declaration, "applicants" should be understood to include *potential* applicants, who may not have filed formal applications, if certain circumstances apply. One circumstance is if incomplete records were kept on actual applicants. A second is if individuals are considered for hiring or promotion without formal applications. A third is if individuals are selectively approached and encouraged to apply for positions not publicly advertised ("tap on the shoulder" selections). A fourth is if potential applications were deterred ("chilled"), for example, by a belief that application would be futile. I have not yet seen information concerning whether these or similar considerations are applicable in the present case. However, a hypothesis of application "chilling" is often logically implied in a hypothesis of discrimination in hiring or promotions.

⁴ From the information available to me to date, it is not yet clear to me whether the plaintiffs' hypotheses concern the experiences of African Americans compared to those of persons of all races and ethnicities other than African American, or whether the hypotheses more specifically concern the experiences of African Americans compared to those of whites.

⁵ According to the careers section of the Walgreens website, www.walgreens.com, the company follows a policy of "promote from within" with respect to managerial and pharmacist positions above the entry level. If this policy is followed, it would imply that all or nearly all applicants and selectees for the positions being analyzed here would be current Walgreen lower-level managerial and pharmacist employees. Nevertheless, it is important that data be provided on any applicants considered and selections made through external hiring. These data are necessary to take account of the race effects of these hires within a promotions analysis, as well as to verify the extent to which the "promote from within" policy is actually followed.

- a. I assume that at least some Walgreens managerial and pharmacy employees who apply for or are considered for promotions wish to be considered for positions outside the district in which they are currently employed.
- b. I assume that at least some Walgreens managerial employees receive promotions to managerial or pharmacist track positions in districts other than the one in which they were then employed. And
- c. Plaintiffs allege that the pattern and practice of discrimination in promotions occurs nation-wide.

14. Only with *nation-wide* data can these assumptions and allegations be accurately verified or rejected empirically. I understand that Walgreens has proposed to provide data only for approximately 1,500 stores -- about one-third of its stores nationwide⁶ -- and these stores would be only from the 80-100 districts with at least one "African American/low income" store.⁷ If the data on applicants for promotion were limited in this way, it would be difficult to draw sound, empirically-based conclusions on the company's promotional practices nation-wide for at least three reasons:

- The data would not provide direct evidence on promotional practices in all districts.
- It would be risky to make inferences from those 80-100 districts to the remaining districts because the remaining districts are

⁶ According to the Walgreen Company's "10-k" annual report to the Securities and Exchange Commission in 2004, p. 7, the firm at that time operated 4,582 drugstores in 44 states and Puerto Rico.

⁷ Letter from Ybarra to Klosener, October 18, 2005, p. 3-4; letter from Demchak and Klosener to Ybarra, October 17, 2005, p. 4.

known to be different from the districts about which I would have data in at least one important way (the presence or absence of “African American/low income” stores). And

- Because of inter-district promotions, applicant and selection information would be incomplete even for the districts for which data were provided.

**IV. Data Required to Analyze
the Assignments Hypothesis**

15. A second primary hypotheses set forth in plaintiffs’ Amended Complaint is that African Americans are discriminated against in store assignments. I would restate this hypothesis in a more precise form as follows: For the management and pharmacist positions at issue in the case, in decisions about the assignment of employees to stores, non-African Americans and African Americans with equal qualifications have different probabilities of being assigned to stores with:

- a. different customer demographic characteristics (especially race and income);
- b. different operating conditions (e.g., level of inventory shrinkage, frequency of security incidents, presence of security guards, adequacy of store staffing, store total sales volume, average size of sales transaction); and/or,
- c. different profitability.

16. To test this hypothesis, I would need data on the race and qualifications of all employees who were available for, were considered for, or had applied for various

store assignments, as well as the characteristics of the stores where vacancies were available and the stores to which they were subsequently assigned.

17. These data on employees and stores should be *nation-wide*, for at least three reasons:

- a. I assume that at least some Walgreens employees wish to be considered for positions outside the region in which they are employed.
- b. I assume that at least some Walgreens employees are actually assigned, temporarily or long-term, outside the districts in which they were previously employed. And
- c. The plaintiffs allege that the pattern and practice of discrimination in assignments occurs nation-wide.

18. Only with nation-wide data can these assumptions and allegations concerning assignments be accurately verified or rejected empirically, for reasons parallel to those listed in paragraph 14. That is, if I had store assignments data only for 1,500 stores drawn from 80-100 districts:

- These data would not provide direct evidence on assignment practices in all districts.
- It would be risky to make inferences from these 80-100 districts to the remaining districts because the remaining districts are known to be different from the districts about which I would have data in at least one important way.

- Because of inter-district assignments, information about persons available for assignment would be incomplete even in the districts about which I had data. And
- Categorizing stores as “African American/low income” versus “all others” may not reflect the actual distinction between stores to which African Americans may be discriminatorily assigned. To examine other possibilities empirically -- for example, that African Americans are discriminatorily assigned to “high shrink” stores or low profit stores -- requires data on stores with a wide variety of characteristics. Districts selected simply because they contain at least one “African American/low income” store may not include stores with the variation in these other characteristics necessary to determine empirically which store characteristics actually affect store assignments.

IV. Data Required to Analyze the Entry-Level Selection Hypothesis

19. The final primary hypothesis set forth in the Amended Complaint is that African Americans are discriminated against in selection for entry level management trainee positions, typically Assistant Manager/Management Trainee. I would restate this hypothesis in a more precise form as follows: For the entry-level management positions at issue here, in decisions about who is selected the pool of applicants, non-African Americans have a higher probability of being selected than African Americans with equal qualifications.

20. To test this hypothesis, I would need data on the race and qualifications of all applicants for these positions -- both African Americans and non-African Americans -- and designation of those individuals within these pools of applicants who were selected.

21. These data on should be *nation-wide*, for at least three reasons:

- a. At least some recruiting by Walgreen for management and pharmacist positions is conducted nation-wide. In particular, applicants from anywhere in the nation are invited to submit resumes electronically at the careers section of the company's website, www.walgreens.com. In addition, this website describes nation-wide intern programs for college students interested in either retail management or pharmacist careers.
- b. I assume that at least some applicants who file applications within one Walgreens district wish to be considered for positions outside that district; this interest may be particularly strong among impending or recent college graduates, for example, who appear to be major targets of the company's internship and management training programs. And
- c. Plaintiffs allege that the pattern and practice of discrimination in hiring occurs nation-wide.

22. Only with *nation-wide* data can these assumptions and allegations be empirically verified or rejected for the firm nation-wide. If the data were limited to 1,500 stores in 80-100 districts, it would be difficult to draw sound, empirically-based conclusions on the company's selection practices nation-wide for reasons parallel to those listed in paragraphs 14 and 18:

- the data would not provide direct evidence on selection practices in all districts.
- It would be risky to make inferences from the 80-100 districts examined to the remaining districts because the remaining districts are known to be different from the districts about which I would have data in at least one important way.
- Inter-district applications and selections would mean that information would be incomplete even for the 80-100 districts for which data were supplied.
- It would be unclear how to combine district-specific applicant data in those 80-100 districts and applicant data from nationwide recruiting such as college intern programs and from applications filed through the careers section of the company's website.

23. The data required to test this hypothesis empirically must encompass both *internal applicants* -- non-managerial Walgreen employees seeking to be *promoted* to the entry-level management positions and *external applicants* -- persons not currently employed by Walgreens seeking to be *hired* into an entry-level management position. This breadth of data is required because Walgreens apparently considers applicants from both sources in making these selections. For example, the careers section of the company's website, www.walgreens.com, describes the store management career path and encourages interested external candidates to apply either through the website or directly at its stores. At the same

time, the experience of plaintiffs in this case establishes that additional candidates have been selected from current Walgreens non-managerial employees. Among the named plaintiffs, John Tucker was employed as a Clerk before becoming a Store Manager, and William Strickland was employed as a Service Clerk before becoming an Executive Assistant.⁸

**V. Interactions among
the Three Hypotheses**

24. As a labor economist, I believe that the plaintiffs' allegations of discrimination in hiring, promotions, and assignments each can potentially stand independently. That is, empirical evidence could support or refute any of the three hypotheses without automatically supporting or refuting the others.

25. However, the three hypothesized types of discriminatory behavior may also interact with each other in a variety of ways. For example:

- a. Suppose that, in selecting an individual to fill a specific store's management or pharmacist vacancy, Walgreens simultaneously consider both internal candidates who might be promoted and external candidates who might be hired, and the pools of internal and external candidates have different racial compositions. In this circumstance, decisions to fill vacancies by hiring rather than promotion, or *vice versa*, might be discriminatory in ways not captured by analyses of either hiring or promotions alone.
- b. Suppose that, in making hiring or promotional decisions, Walgreens consider the racial match between job candidates and the customers

⁸ *First Amended Class Action Complaint*, filed 8/01/05, paragraphs 9 and 14.


at stores where management or pharmacist positions are to be filled. In that circumstance, analyses of differences in the rates at which African American and non-African Americans are hired or promoted should incorporate information about the store assignments available when those hiring or promotion decisions are being made.

- c. Suppose that that the race match between employees and customers is considered in making store assignments, that customer race is correlated with store profitability, and that the profitability of the store where a manager or pharmacist works is considered in promotion decisions. In that circumstance, analyses of differences in promotions between African Americans and non-African Americans should incorporate information about employees' store assignments preceding the promotion decision.

26. Because of such possible interactions among hiring, promotions and assignments, to accurately test *any* of the three principal hypotheses of discrimination nation-wide requires nation-wide data on *all* three processes. Geographically-limited data on* *any* of the three subjects -- such as from 1,500 stores in 80-100 districts -- would adversely affect the accuracy of the analysis on *all three* hypotheses.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 20th day of October 2005 at Washington, D.C.


Marc Bendick, Jr., Ph. D.