

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

Labor Disputes and Complex Discrimination



Technology and data are changing the way firms conduct business and interact with customers and employees. These changes have important implications for legal issues related to employment and discrimination. Regulatory authorities and policy makers have also increased their scrutiny of labor market antitrust issues. High-stakes discrimination, employment, and labor antitrust cases require rigorous economic analysis to address complex economic issues. Cornerstone Research works with clients at all stages of the litigation process, combining cutting-edge statistical techniques with decades of experience.

CONTENTS

HIGH-STAKES DISCRIMINATION AND LABOR MATTERS.....	1
SELECTED RETENTIONS	2
SELECTED EXPERTS.....	5

HIGH-STAKES DISCRIMINATION AND LABOR MATTERS

COMPLEX DISCRIMINATION

Discrimination cases—whether in hiring, compensation, promotion, or other selective processes like college admissions—typically hinge on empirical analyses designed to measure the impact, if any, of the alleged conduct on the relevant protected group. Our staff and experts are well-versed in the statistical and econometric techniques used to evaluate alleged discrimination in a variety of contexts, including promotion and pay, pre-litigation consulting on pay equity issues, and the use of race in college admissions and employment decisions.

ALGORITHMIC DISCRIMINATION AND BIG DATA

The widespread use of big data and algorithms raises new concerns about bias and discrimination in many business contexts, including advertising, consumer finance, employment, and healthcare. Cornerstone Research's understanding of the economics of discrimination and the science of algorithms and big data provides insightful analyses of algorithmic discrimination claims.

LABOR MARKET ANTITRUST

Regulatory bodies and policy makers are increasingly focused on antitrust concerns in labor markets. We have worked on a variety of high-profile labor antitrust matters in both litigation and regulatory contexts, including no-poach (both vertical and horizontal) and monopsony cartel matters. Through our expert network, we work with leading academics to capture the unique economics of labor markets when assessing allegations of anticompetitive conduct.

WORKER CLASSIFICATION AND THE GIG ECONOMY

Tech platforms and the rise of the gig economy are disrupting traditional labor markets. A rapidly growing body of litigation focuses on fundamental questions about the nature of employment, including whether workers are independent contractors or employees. Cornerstone Research staff and experts have worked on multiple, complex worker classification matters involving the gig economy and leading tech platforms.

CLASS CERTIFICATION

Our expertise in class certification is a common thread across high-profile employment matters. Together with academic experts, Cornerstone Research applies rigorous statistical methods to assess whether common impact can be established using common class-wide evidence and methodologies. Our experience spans a variety of labor market contexts, including high-skill professions (such as finance or healthcare), retail and manufacturing, and tech platforms.

SELECTED RETENTIONS

NO-POACH CLAUSES IN QSR LITIGATION (DESLANDES ET AL. V. MCDONALD'S USA LLC ET AL. AND CONRAD ET AL. V. JIMMY JOHN'S FRANCHISE LLC ET AL.)

Defense counsel retained Cornerstone Research to support Justin McCrary of Columbia University on two seminal quick-serve restaurant (QSR) franchise no-poach cases involving the McDonald's and Jimmy John's franchises.

The no-poach clauses at issue place limits on the ability of franchisees to solicit, recruit, or hire employees from other franchisees within the same branded franchise. Plaintiffs allege that such clauses suppress both their wages and employment opportunities within the franchise system.

In both matters, Professor McCrary analyzed the potential procompetitive benefits of the challenged clauses and opined on issues of class certification. Class certification was denied in both cases, with both U.S. district court judges relying on Professor McCrary's analysis in their opinions.

SFFA V. HARVARD UNIVERSITY

Defense counsel retained Cornerstone Research in a high-profile trial addressing Harvard College's use of race in its undergraduate admissions process. Cornerstone Research supported David Card of the University of California, Berkeley, as Harvard's testifying economic expert.

Professor Card filed two rounds of reports and testified at a bench trial, presenting the federal district court with extensive statistical analyses of Harvard's admissions process.

After a three-week trial, the U.S. district court judge ruled in favor of Harvard on all counts. She cited Professor Card's testimony and analyses extensively in her opinion, aligning with Professor Card on nearly all points of methodological disagreement between the economic experts.

In November 2020, the U.S. Court of Appeals for the First Circuit affirmed the district court's ruling that Harvard's admissions program did not violate Title VI. In the district court trial, Harvard relied on the testimony of Professor Card, and his testimony was cited in the appellate court's ruling.

SELECTED RETENTIONS

CLASS CERTIFICATION ANALYSIS IN EMPLOYMENT DISCRIMINATION LITIGATION

Defense counsel retained Justin McCrary of Columbia Law School and Cornerstone Research in a class action labor discrimination case brought against a large retailer.

Professor McCrary provided expert analysis on the question of whether the class should be certified. He analyzed the retailer's internal wage and promotion data in order to assess the differences in wages, job titles, and career progression across individual employees and across stores. Professor McCrary's statistical analysis established that there were large and significant differences in wages and promotion outcomes across individual employees and, on average, across stores.

The judge denied certification of the plaintiffs' proposed class.

ALLEGATIONS OF NO-POACH HIRING AGREEMENT BETWEEN TECH FIRMS

The Department of Justice investigated allegations that two technology companies caused anticompetitive harm by bilaterally agreeing not to hire or recruit one another's employees. Counsel for one of the parties retained Cornerstone Research to analyze this alleged conspiracy between the two companies.

We conducted statistical analyses to assess whether there was evidence of coordinated behavior not to hire or recruit. In addition, we analyzed whether such an alleged conspiracy would be likely to have a negative impact on employees of the two firms.

BROWN ET AL. V. MADISON COUNTY, MISSISSIPPI

Cornerstone Research worked with Simpson Thacher and the ACLU of Mississippi in this pro bono case that resulted in a landmark consent decree. The citizens of Madison County, Mississippi, brought a class action lawsuit against the county's Sheriff's Department. The plaintiffs alleged the Sheriff's Department used unconstitutional tactics and racial profiling in traffic and pedestrian stops.

Rahul Guha and Bryan Ricchetti of Cornerstone Research, Justin McCrary of Columbia Law School, and Patricia Frontiera of the University of California, Berkeley, served as expert witnesses for the plaintiffs. The experts analyzed the frequency of traffic stops across different racial groups, and assessed whether roadblocks in Madison County were implemented more frequently in predominantly African American neighborhoods.

In October 2019, a U.S. district judge for the Southern District of Mississippi approved a groundbreaking consent decree, one of the first in the state of Mississippi to address these kinds of policing practices. The settlement implements new policies for non-biased policing, roadblocks, and pedestrian stops. It also establishes new data collection, record-keeping, and disclosure requirements as well as a community advisory board to monitor compliance and to provide a forum for community complaints and comments.

SELECTED RETENTIONS

HELDT ET AL. V. TATA CONSULTANCY SERVICES LTD.

The jury rendered a unanimous verdict in favor of our client in this alleged discrimination class action. The plaintiffs alleged that Tata Consultancy Services Ltd. (TCS) engaged in a pattern of discrimination on the basis of race and national origin in favor of workers of South Asian origin.

Defense counsel retained Cornerstone Research to support TCS's testifying economic expert. Our expert analyzed TCS's rate of involuntary termination for non-South Asian locally hired employees and compared that rate with the national average for a corresponding group. At trial he testified that the data were inconsistent with a pattern of discrimination because the termination rate was only one-third of the national average.

After a twelve-day trial in the U.S. District Court for the Northern District of California, a jury rendered a unanimous verdict in favor of TCS. In addition, the judge cited our expert's trial testimony in her ruling denying the plaintiffs' motion for a new trial.

MORGAN ET AL. V. U.S. SOCCER FEDERATION INC.

The judge ruled in favor of the defendant's motion for summary judgment on all equal pay claims in this Title VII case. The plaintiffs, a class representing the U.S. Women's National Soccer Team (USWNT), brought a gender pay discrimination suit against the U.S. Soccer Federation (USSF) alleging unequal pay.

Defense counsel retained Cornerstone Research to support Carlyn Irwin of Cornerstone Research and Justin McCrary of Columbia Law School as expert witnesses. In her analysis, Ms. Irwin found that the USWNT earned more than the U.S. Men's National Soccer Team (USMNT) during the class period, both overall and on a per-game basis. In addition, she showed that the highest paid USWNT players earned more than the highest paid USMNT players both overall and on a per-game basis.

Professor McCrary's analysis showed that the women's collective bargaining agreement is more favorable than the men's on several important dimensions. He also showed that differences in bonuses paid to USWNT and USMNT for winning the World Cup were driven by differences in prize money set by Fédération Internationale de Football Association (FIFA), rather than the defendant. The judge ruled in favor of the defendant's motion for summary judgment on all equal pay claims, citing both Ms. Irwin and Professor McCrary in his order.

SELECTED EXPERTS



DAVID CARD

Class of 1950 Professor of Economics,
Director, Center for Labor Economics,
University of California, Berkeley

David Card is a renowned expert in labor economics, including the economics of discrimination. His research focuses on statistical analyses of the labor market and related issues such as wages, hours of work, employment, education, immigration, discrimination, and race-conscious admissions. Professor Card has served as an expert witness in multiple matters, including *SFFA v. Harvard University*, addressing Harvard College's use of race in its undergraduate admissions process. He has edited multiple books on labor economics, including the *Handbook of Labor Economics*. In 1995 he received the John Bates Clark Medal, widely regarded as one of the highest honors in the field of economics. In 2021 Professor Card was awarded the Nobel Memorial Prize in Economic Sciences for his empirical contributions to labor economics.



VANDY M. HOWELL

Senior Vice President
San Francisco
415.229.8156
vhowell@cornerstone.com

Vandy Howell is an economist with expertise in industrial organization and labor economics. Dr. Howell focuses on antitrust, intellectual property, marketing, and class certification matters. She has experience across many industries, including cases involving labor markets, technology and innovation, and agriculture. Dr. Howell has applied economic theory to complicated market settings and developed complex models using econometric techniques. She has consulted on antitrust and competition issues in many high-profile cases.

SELECTED EXPERTS



FRANCINE LAFONTAINE

William Davidson Professor of Business Economics and Public Policy,
Ross School of Business;
Professor of Economics (by courtesy),
University of Michigan

Francine Lafontaine is an expert in industrial organization, antitrust, and contracting and franchising. Professor Lafontaine has served as an economic consultant and advisor to private firms and federal enforcement agencies, including as a director in the Bureau of Economics at the Federal Trade Commission. She conducts research related to vertical relationships, franchising, contract theory, and entrepreneurship, with a particular interest in the retail and service sectors. She is the author of multiple books on the economics of franchising.



JUSTIN MCCRARY

Paul J. Evanson Professor of Law,
Columbia Law School;
Senior Advisor, Cornerstone Research

Justin McCrary is an expert on statistical methods and economic modeling at the intersection of law and economics. Professor McCrary has conducted academic research and testified on a wide range of issues related to labor markets and discrimination. For example, he testified in multiple high-profile class action lawsuits involving claims of gender discrimination in compensation and promotion outcomes. He has also been retained on several antitrust matters involving allegations of no-poach clauses and coordination to suppress wages. Further, Professor McCrary has worked on cases related to gig economy platforms, addressing the question of whether workers on such platforms are employees or independent contractors.

SELECTED EXPERTS



PAUL OYER

The Mary and Rankine Van Anda Entrepreneurial Professor and Professor of Economics, Graduate School of Business, Senior Fellow, Stanford Institute for Economic Policy Research

Paul Oyer is an authority on empirical labor economics. He focuses on labor and human resources issues, the economics of organizations, incentives, and matching (or two-sided) markets. Professor Oyer has been retained as an expert witness in a variety of matters related to labor economics and compensation, such as performance-based pay systems, overtime pay, alleged discrimination, the effects of “non-compete” agreements, class actions, and lost wages. He analyzes career dynamics of highly skilled workers in competitive labor markets. Focusing particularly on legal and software engineering professionals, Professor Oyer assesses recruitment and employee incentive systems, including stock option programs. He recently wrote a report about the impact of the gig economy on flexible work arrangements and on improved “matching” between firms and workers.



BRYAN M. RICCHETTI

Vice President and Cohead, Antitrust and Competition Practice
Chicago
312.345.7320
bricchetti@cornerstone.com

Bryan Ricchetti has particular expertise in economic and statistical issues that arise when assessing antitrust impact, market power, class certification, hiring and compensation decisions, and discrimination. Dr. Ricchetti has consulted on multiple high-profile labor matters involving issues of monopsony power, discrimination, employee/independent contractor status, compensation, and promotion. His recent case experiences include assessing claims of discrimination and the use of affirmative action in *SFFA v. Harvard University*, assessing antitrust impact and liability in ongoing no-poach matters, and analyzing class certification and damages issues in multiple large gender discrimination matters. Dr. Ricchetti has also served as an expert witness in labor matters involving questions of lost wages, promotion and hiring, and discrimination.

SELECTED EXPERTS



CELESTE C. SARA VIA

Vice President
San Francisco
415.229.8116
csaravia@cornerstone.com

Celeste Saravia provides economic and statistical consulting, analysis, and expert testimony in complex business litigation. Dr. Saravia specializes in class certification, liability, and damages issues arising in antitrust and regulatory matters. She has analyzed issues of monopsony power and anticompetitive conduct by employers in alleged no-poach cases. She has particular expertise in the economics of distribution and franchising, vertical restraints, and other exclusionary conduct. She has worked on matters across a range of industries, including information technology, medical devices, aviation, energy, telecommunications, and media. *Who's Who Legal* has recognized her as a leading competition economist.

CORNERSTONE RESEARCH

Cornerstone Research provides economic and financial consulting and expert testimony in all phases of complex litigation and regulatory proceedings. The firm works with an extensive network of prominent faculty and industry practitioners to identify the best-qualified expert for each assignment. Cornerstone Research has earned a reputation for consistent high quality and effectiveness by delivering rigorous, state-of-the-art analysis for over thirty years. The firm has more than 700 staff and offices in Boston, Chicago, London, Los Angeles, New York, San Francisco, Silicon Valley, and Washington.

www.cornerstone.com

