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## Intentional Job Discrimination-New Tools for Our Oldest Problem

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# INTENTIONAL JOB DISCRIMINATION—NEW TOOLS FOR OUR OLDEST PROBLEM†

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Alfred W. Blumrosen\*

Ruth G. Blumrosen\*\*

## I. A BRIEF HISTORY

The roots of employment discrimination lie deep in our history. By the 18th century, race slavery was the underpinning of wealth in the southern colonies. Black slaves were considered property—sub-humans who had no rights in themselves or their offspring. In 1765, the British imposed “stamp taxes” on the colonies; the colonies resisted. In 1766, Parliament claimed the power to govern the colonies in all matters, but by 1770 it had repealed almost all the taxes that offended the colonists. “Business as usual” returned to the relations between the colonies and Britain.

In 1772, a British court declared slavery “so odious” that it could not exist at common law and freed the 15,000 slaves in England. The news spread to America; some slaves ran away, seeking freedom there. Virginia responded to the threat to slavery in the court decision of 1772 by initiating inter-colonial actions leading to the first Continental Congress in 1774. At the Congress, John Adams promised southern leaders to support their right to maintain slavery, and drafted with them, a Declaration of Colonial Independence from Parliament. Congress adopted the Declaration and the British decided that military force against the colonies was necessary. In 1776, Virginia made clear that slaves had no “natural rights” under its new constitution. Weeks later, we declared that “all men are created equal.” In 1777, the principle of states rights was written into the Articles of Confederation, except that states could not prevent slave owners from taking their slaves into any state, and then taking them out, even if the state did not allow slavery.

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† © 2004 by Alfred W. and Ruth G. Blumrosen. All rights reserved. This paper was presented to the US Civil Rights Commission on December 12, 2003.

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Slave labor was both degrading and cheap. In the south, it devalued the worth of white labor. A white laborer—in an era where most work was labor—was worth half as much in the south as he was in the north. After the revolution, white veterans in the north sought to move into the Ohio valley on condition that slavery would be prohibited, in part so that they would not have to compete with plantation owners using slave labor. The south resisted all such efforts until 1787. By the time of the Constitutional Convention, northern attitudes had hardened against slavery and the relative power of north and south states had changed because of wartime damage to the south, including the “liberation” of a quarter of its slaves.

The Constitutional Convention almost collapsed when northerners threatened to walk out over the issue of slavery. Rather than risk splitting the union, the southern states agreed in Philadelphia to prohibit slavery north of the Ohio River. The agreement was adopted by the Continental Congress in New York: the Northwest Ordinance prohibited slavery in more than half of the territory of the United States. The “Connecticut Compromise” then followed in Philadelphia and the Constitution was adopted.<sup>1</sup>

The division of slave and free states created by the Ordinance was followed until the 1850’s. The Civil War brought an end to formal slavery. Informal subordination of people of color then reigned until our Civil Rights Era began in the 1950’s.

Slavery and the subordination that followed demeaned its subjects by treating them as less than human and exploiting their labor. It frightened whites because it threatened their lives and livelihoods. Since the Civil Rights Acts of the 1960’s, we have been struggling against the perceptions and attitudes about Blacks and others of color forged during our long history of slavery and subordination. Congress was clear that intentional job discrimination was the “most obvious evil” that was condemned in the Civil Rights Act of 1964. Penalties for intentional job discrimination have been reinforced by statutes and court decisions in the nearly 40 years since then.

We are still using legal and industrial relations tools shaped in the 1960’s to combat intentional job discrimination. We have not developed methods of measuring the success or failure of the effort. We know that the problems of people of color in the work

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1. A more extensive discussion of the role of slavery in the revolution entitled ‘THE LAST TABOO—SLAVERY AND THE AMERICAN REVOLUTION’ is available by request at THEBLUMROSEN@aol.com.

place continue, although we have not been able to measure the magnitude of the problem, or the extent to which we have addressed it.

## II. NEW TOOLS FOR AN OLD PROBLEM

Today, we introduce to you a new approach to reducing intentional job discrimination—an approach that builds on our combined eighty years experience working with the Civil Rights laws. This approach clarifies the gains we have made against intentional job discrimination and makes the elimination of existing discrimination a task of manageable proportions. This approach has evolved with the aid of a grant from the Ford Foundation, and the support of Rutgers Law School, and the informal cooperation of both the Equal Employment Opportunity Commission (EEOC), and the Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor. None of these organizations is responsible for our approach, and neither federal agency has adopted our approach as yet.

For five years, we have been analyzing the annual reports that employers file with the federal government concerning the race, sex and ethnicity of their workers in nine occupational categories. We do not have the names or addresses of these establishments, but we do know the Metropolitan Area and the Industry in which they operate. We have examined each metropolitan area separately, and within each such area, we examined each industry separately. Within each industry, we examine each of nine occupational categories separately. We have applied conservative legal standards to identify these probable intentional discriminators as those whose utilization of minorities and women is so far below the average use in the same labor market, industry, and occupation, that it is not likely to be the result of chance.

The study is entitled *THE REALITIES OF INTENTIONAL JOB DISCRIMINATION IN METROPOLITAN AMERICA—1999*. It is available for downloading on the web at [EEO1.com](http://EEO1.com), and on the Rutgers Law School web site, under emeritus faculty members. The National Report encompasses more than two hundred metropolitan areas. Forty state jurisdictions are each separately examined. This process became possible only as the material accumulated over years, as the power of computers increased, and as the law of intentional

discrimination was clarified by the Congress in 1991, and upheld by the Supreme Court last summer.

This approach has at least two dimensions that are directly related to the mission of the Civil Rights Commission.

### III. MEASURING PROGRESS IN REDUCING INTENTIONAL DISCRIMINATION

The first is to measure the extent of improvement in job opportunities for minorities and women in the quarter century from 1975 to 1999. There is good news from that measurement.

The civil rights policies and programs have succeeded in benefiting eight million minority and female workers between 1975 and 1999, beyond those benefited by the expanding economy of that period. This included 3.8 million women workers and 4.6 million minority workers. The basic difference between these two groups was that most of the net increase in women workers was in higher level jobs, while minority gains were spread more evenly through all nine occupational categories.

In the following charts, the dashed line represents the proportion of minority and female workers who would have been employed in 1999 if they were still distributed through the labor force in the proportions of 1975. This methodology automatically adjusts for the enormous changes in the economy that took place during that period. The top dark curve represents the actual utilization of minorities and women in those same occupational categories in 1999. The difference between the solid and dashed lines in each occupational category is the net improvement over the pattern of utilization in 1975.

FIGURE 1  
NATIONALLY: MINORITIES 1975-1999

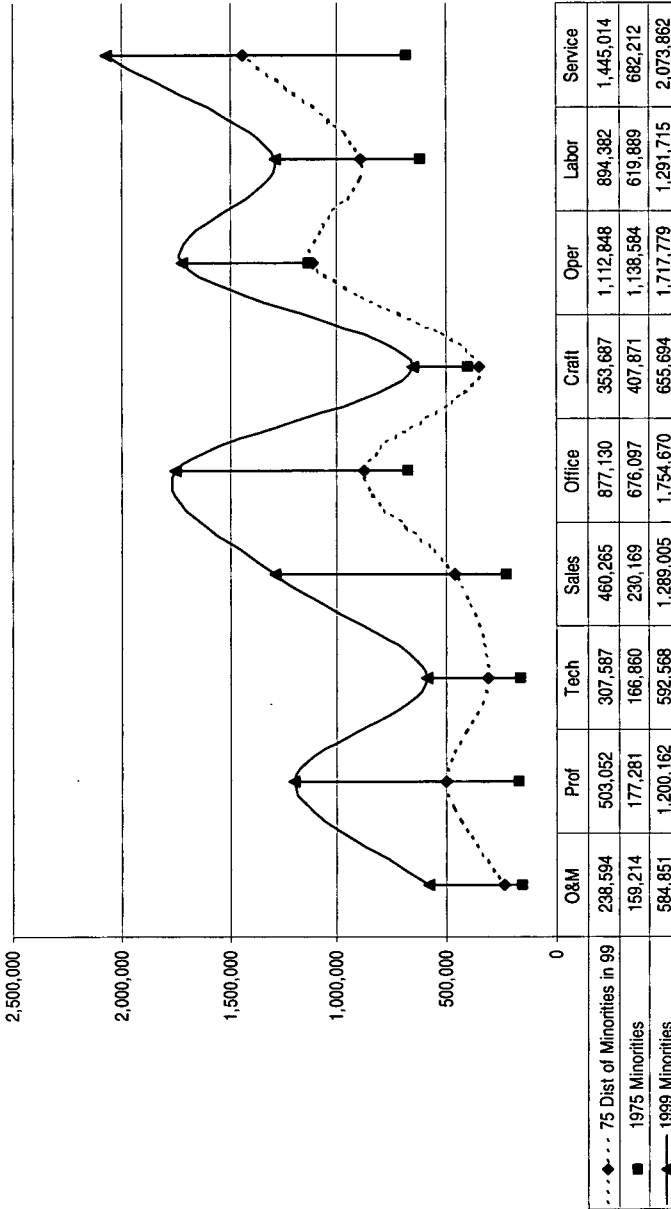
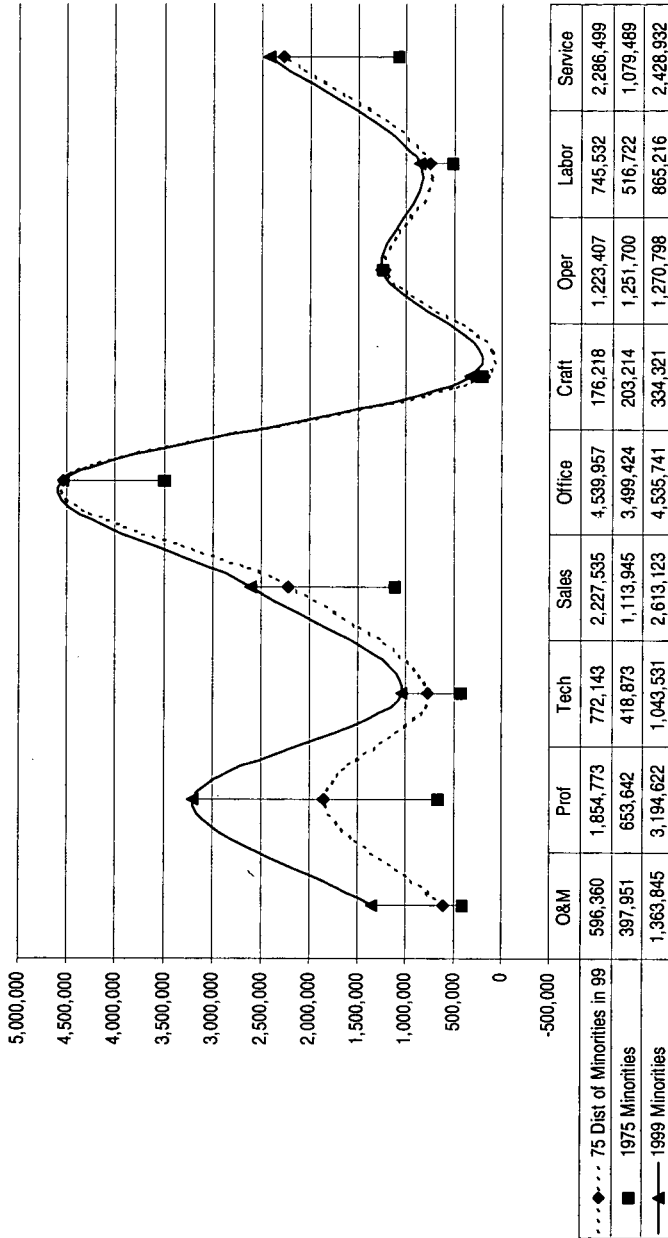


FIGURE 2  
NATIONALLY: WOMEN 1975-1999



All who have participated in the equal opportunity field in the past quarter century should take satisfaction that their work—while perhaps not as successful as they would like—was clearly not in vain.

#### IV. WHO ARE THE DISCRIMINATORS?

The second dimension of our study seeks to pinpoint employers and industries engaged in intentional job discrimination with greater accuracy, and efficiency than techniques now in use.

We have analyzed the EEO-1 statistics for the 1975–1999 period in several different ways.

##### *A. The Severity of the Discrimination.*

In 1999, there were at least two million minority and female workers affected by intentional job discrimination. They were affected by discrimination in about one third of all establishments examined. However, the statistics disclosed multiple levels of intentional job discrimination, depending on the extent to which establishments deviated from the average utilization of minorities/women and the duration of that observable deviation: At Risk, Presumed, Clearly Visible, and Hard Core.



TABLE I  
LEGAL EFFECT OF VARIATIONS IN STATISTICAL ANALYSIS

STANDARD DEVIATIONS	PROBABILITY		LEGAL EFFECT
	Chance	Not chance <i>Described in this study as:</i>	
1.65	1 in 10	90% At Risk	Admissible if relevant; weighed with all other evidence; worker must prove that he/she was discriminated against.
2.0	1 in 20	95% Presumed	Admissible; creates presumption of discrimination; employer must prove it had only legitimate non-discriminatory reasons. As the probability of result occurring by chance declines, the presumption of discrimination strengthens and raises the risk that employer will lose litigation; most such cases settle.
2.5	1 in 100	99% Clearly Visible	
2.5 over 9 yrs		Hard Core	

TABLE II  
HARD CORE DISCRIMINATION AGAINST MINORITIES AND WOMEN—1999

	AGAINST MINORITIES				AGAINST WOMEN			
	ESTABLISHMENTS		AVERAGE AFFECTED WORKERS		ESTABLISHMENTS		AFFECTED WORKERS	
	Percent	Number	Number	Number	Percent	Number	Number	Number
Officials & Managers	3.1%	567	10,928	19	3%	791	16,081	20
Professionals	5.2%	1,252	50,599	40	5%	1,322	48,587	37
Technicians	6.9%	810	22,414	28	5%	581	13,817	24
Sales Workers	12.1%	3,938	95,587	24	4%	1,508	33,506	22
Office & Clerical	8.0%	2,302	63,702	28	4%	1,112	28,757	26
Craft Workers	6.9%	776	16,991	22	8%	555	10,027	18
Operatives	9.7%	1,899	54,975	29	13%	2,019	48,705	24
Laborers	8.0%	920	21,935	24	8%	857	18,207	21
Service Workers	13.0%	3,475	95,827	28	3%	876	23,221	27
Total Affected Workers			432,958				240,908	
Extrapolated Total Affected Workers			649,267				343,398	

TABLE III  
CLEARLY VISIBLE DISCRIMINATION AGAINST MINORITIES AND WOMEN—1999

	AGAINST MINORITIES				AGAINST WOMEN			
	ESTABLISHMENTS		AFFECTED WORKERS	AVERAGE AFFECTED WORKERS	ESTABLISHMENTS		AFFECTED WORKERS	AVERAGE AFFECTED WORKERS
	Percent	Number	Number	Number	Percent	Number	Number	Number
Officials & Managers	6.4%	1,146	14,432	13	6%	1,557	22,671	15
Professionals	9.0%	2,187	42,066	19	10%	2,926	63,529	22
Technicians	9.5%	1,120	18,370	16	10%	1,192	21,469	18
Sales Workers	11.4%	3,699	59,817	16	8%	2,753	44,704	16
Office & Clerical	11.4%	3,268	56,896	17	10%	3,059	55,119	18
Craft Workers	10.1%	1,137	15,639	14	14%	928	11,107	12
Operatives	13.0%	2,550	45,876	18	15%	2,429	39,633	16
Laborers	15.0%	1,722	29,399	17	14%	1,475	22,807	15
Service Workers	14.3%	3,821	76,785	20	8%	2,206	43,884	20
Total Affected Workers			359,219				324,924	
Extrapolated Total Affected Workers			584,467				504,513	

TABLE IV  
 SUMMARY OF EFFECT OF DIFFERENT TYPES OF DISCRIMINATION ON MINORITY AND FEMALE WORKERS IN ESTABLISHMENTS OF 50 OR MORE EMPLOYEES IN MSA'S

	ACTUAL				EXTRAPOLATED			
	MINORITIES		FEMALE		MINORITIES		FEMALE	
	# Estab.	# Affected Workers	# Estab.	# Affected Workers	# Estab.	# Affected Workers	# Estab.	# Affected Workers
Hard Core	12,739	432,958	8,222	240,908	22,269	649,267	13,173	343,398
Clearly Visible	15,906	359,219	14,801	324,924	29,656	584,467	26,177	504,513
Presumed	6,782	74,087	5,696	62,563	13,099	127,349	10,534	104,221
At Risk	5,593	NA	5,590	NA	10,768	NA	10,541	NA
All		866,264		628,395		1,361,083		952,132

The total numbers of establishments may be less than the sum of the number of establishments in each degree because one establishment may discriminate against workers in more than one degree and would be counted twice. Each worker is counted once, so there is no double-counting in the totals of affected workers.

Together, Hard Core and Clearly Visible discriminators—both defined as at least 2.5 Standard Deviations below the average utilization of minorities or women (a 1 in 100 chance that it happened by accident)—account for ninety percent of affected Women and 91.5% of affected minorities. Only ten percent of the employer establishments were responsible for 90% of discrimination visible through the EEO-1 statistics.

### *B. Discrimination by Industry Group*

More than seventy five percent of the two million affected minority and female workers were employed by forty “equal opportunity” discriminating industries, who affected everyone: White Women, Blacks, Hispanics and Asian Pacific Americans. There is a thread of discrimination that runs through these industries that simultaneously discriminate against all minority groups and women, and most likely, reflects unsound policies that affect white workers as well. On the next page is the list of the forty industries, with the number of workers of different groups affected by each industry. The bottom line is that these forty industries, of the 200 examined, account for 75% of affected workers who are women, 79% of Black affected workers, 73 % of Hispanic affected workers and 84% of Asian Pacific affected workers.<sup>2</sup>

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2. Data on Native American workers was not sufficient for detailed analysis.

TABLE V  
 FORTY INDUSTRIES' INTENTIONAL DISCRIMINATION AGAINST WOMEN, BLACKS, HISPANICS, AND ASIANS, SHOWING  
 AFFECTED WORKERS AND DISCRIMINATION RISK BY INDUSTRY

SIC	INDUSTRY	WOMEN		BLACKS		HISPANICS		ASIANS		AFFECTED WORKERS
		Number	% Rsk	Number	% Rsk	Number	% Rsk	Number	% Rsk	
806	Hospitals	63,908	21%	89,314	41%	19,562	22%	23,719	36%	196,503
581	Eating and Drinking Places	35,370	19%	55,591	43%	43,702	40%	3,530	40%	138,193
531	Department Stores	42,271	22%	50,959	37%	20,615	29%	5,414	31%	119,259
541	Grocery Stores	28,253	14%	53,333	41%	20,681	33%	1,559	24%	103,827
805	Nursing and Personal Care Facilities	13,865	14%	39,429	35%	7,247	34%	5,508	34%	66,049
737	Computer and Data Processing Services	31,114	26%	8,206	28%	1,988	27%	16,637	36%	57,943
701	Hotels and Motels	13,127	17%	17,960	29%	18,651	25%	6,471	32%	56,208
481	Telephone Communication	29,394	30%	19,857	32%	3,654	25%	2,886	33%	55,791
602	Commercial Banks	18,673	18%	20,131	37%	4,006	23%	4,821	30%	47,632
371	Motor Vehicles and Equipment	18,084	32%	14,470	36%	3,206	32%	1,732	37%	37,492
367	Electronic Components and Accessories	11,965	26%	3,001	33%	5,808	23%	11,749	35%	32,522
421	Trucking & Courier Services, Ex. Air	10,119	42%	15,842	35%	5,304	26%	501	32%	31,766
451	Air Transportation, Scheduled	15,651	32%	8,597	30%	4,057	22%	2,768	33%	31,073
308	Miscellaneous Plastics Products	11,109	33%	4,662	33%	7,216	35%	2,559	49%	25,547
514	Groceries and Related Products	11,184	32%	4,783	34%	6,077	32%	534	36%	22,577

SIC	INDUSTRY	WOMEN		BLACKS		HISPANICS		ASIANS		AFFECTED WORKERS
		Number	% Rsk	Number	% Rsk	Number	% Rsk	Number	% Rsk	
809	Health and Allied Services	10,329	21%	6,767	35%	2,063	29%	1,478	32%	20,638
633	Fire, Marine, and Casualty Insurance	7,858	18%	4,012	22%	772	20%	754	32%	13,395
632	Medical Service and Health Insurance	5,733	19%	5,751	28%	914	21%	944	26%	13,341
372	Aircraft and Parts	5,901	29%	1,443	34%	2,611	17%	2,497	35%	12,453
357	Computer and Office Equipment	5,814	27%	1,310	28%	1,066	21%	4,170	32%	12,360
594	Miscellaneous Shopping Goods Stores	6,186	30%	3,216	36%	1,888	33%	619	28%	11,909
621	Security Brokers and Dealers	7,506	21%	2,277	29%	817	23%	1,122	21%	11,723
384	Medical Instruments and Supplies	5,474	25%	1,012	27%	1,821	27%	2,995	31%	11,301
871	Engineering & Architectural Services	6,487	23%	1,792	25%	715	18%	2,235	25%	11,229
504	Professional & Commercial Equipment	6,440	26%	1,984	26%	977	25%	1,632	29%	11,033
366	Communications Equipment	4,500	25%	1,269	20%	978	20%	3,839	36%	10,585
283	Drugs	5,301	23%	1,718	25%	1,185	24%	2,301	31%	10,504
801	Offices & Clinics of Medical Doctors	4,936	1%	2,987	33%	1,028	22%	1,419	27%	10,370
275	Commercial Printing	4,869	29%	1,984	31%	1,486	31%	878	43%	9,216
201	Meat Products	2,286	32%	1,720	33%	3,517	28%	916	58%	8,439
641	Insurance Agents, Brokers, & Service	3,943	19%	2,768	30%	756	25%	756	25%	8,222
349	Misc. Fabricated Metal Products	3,440	35%	1,511	30%	1,683	29%	835	39%	7,469
836	Residential Care	2,481	21%	3,449	33%	854	28%	378	35%	7,163
267	Misc. Converted Paper Products	3,505	33%	1,511	30%	1,516	33%	456	44%	6,988
344	Fabricated Structural Metal Products	2,242	37%	1,660	33%	2,476	32%	511	48%	6,888

SIC	INDUSTRY	WOMEN		BLACKS		HISPANICS		ASIANS		AFFECTED WORKERS	
		Number	% Rsk	Number	% Rsk	Number	% Rsk	Number	% Rsk	Number	% Rsk
489	Communication Services	2,530	30%	1,322	27%	1,474	29%	1,474	29%	6,800	
271	Newspapers	2,924	19%	2,094	37%	1,016	26%	337	31%	6,372	
501	Motor Vehicles, Parts, and Supplies	2,579	29%	1,354	30%	1,010	31%	1,010	31%	5,953	
209	Misc. Food and Kindred Products	2,024	32%	1,119	35%	2,091	25%	695	43%	5,930	
225	Knitting Mills	1,396	34%	1,043	34%	700	46%	414	59%	3,553	
Total Affected Workers		470,773		463,206		207,186		125,052		1,266,217	
31% reduction for minority women included in Women		(145,940)								1,120,277	
Percent of All Affected Workers		75%		79%		73%		84%		77%	

\* Discrimination 1.65 or more standard deviations  
 \*\* Affected Workers are the difference between employment in same labor market and occupation at 2 or more standard deviations below average, and number who would have been employed if establishment had employed at the average  
 \*\*\* Risk based on proportion of comparisons of establishments in same labor market and occupation



## V. THE ECHO OF SLAVERY

The short recital of the history of slavery and the US revolution at the beginning of this paper helps to explain the persistence of intentional job discrimination, and validates our efforts to eliminate it. Here is a final chart that shows how our history is reflected in current patterns of discrimination. We identified the proportion of Black, Hispanic and Asian-Pacific employees who were affected by intentional discrimination in 1999.

For 1999, the discrimination against Blacks was most severe in terms of numbers of establishments discriminating, numbers of affected workers and proportion of affected workers compared to total Black Employment.

TABLE VI  
 DISTRIBUTION OF EMPLOYEES IN EACH MINORITY GROUP,  
 NUMBER AND PERCENTAGE OF AFFECTED EMPLOYEES,  
 AND PERCENT AFFECTED WORKER  
 IN EACH MINORITY GROUP—1999

RACE/ETHNIC GROUP	DISTRIBUTION OF MINORITY EMPLOYEES BY GROUP	DISTRIBUTION OF AFFECTED WORKERS BY MINORITY GROUP		AFFECTED WORKERS AS PERCENT OF EACH MINORITY GROUP	NUMBER OF ESTABLISHMENTS THAT DISCRIMINATED
		Number	Percentage		
Black	49%	586,771	57%	15%	34,107
Hispanic	33%	283,150	28%	11%	19,174
Asian-Pacific	17%	149,214	15%	11%	10,888
Native American	2%	1,983	0%	1%	207
All	100%	1,021,118	100%	12%	

## VI. OPERATIONAL USES OF THE EEO1 DATA

The Federal Government knows the identities of the establishments discussed here. Both OFCCP and EEOC should use the method of analysis described here to select subjects for investigation and processing under Federal Laws. OFCCP has a program that does not include non-contractors in its labor market analysis.

The first step in such a program should be to inform the establishment that it stands far below the industry average utilization in particular occupations with respect to specific minority/female groups. This notice will give employers the opportunity to decide how to respond, by taking affirmative action, by supporting its position on non-discriminatory grounds, or by doing nothing. The number of establishments to be informed is so large that it makes sense to give notice before deciding who to pursue with investigations or compliance reviews.

In such investigations or reviews, the establishment will have an opportunity to rebut the accuracy of the statistics or to justify them. Any statistical errors can be identified and the investigation/review closed.

To the extent that the investigation/review concludes with a finding of discrimination, the remedy should include affirmative action programs to bring the establishment up to the industry average.

The information about the establishment's standing among its peers should also be used by investigators of individual discrimination claims, to confirm or rebut claims of discrimination. If the claim is made against an establishment that is at or above the average utilization, with respect to the occupation involved in the claim, the statistical evidence tends to support the employers claim of legitimate non-discriminatory reason; to the extent that the establishment is far below that average, the statistical evidence tends to confirm the claim. Since half of all discrimination claims involve discharge, this function of statistics is very important.

## VII. RESEARCH USES FOR THE EEO1 DATA.

The EEOC has refused to allow us to obtain EEO1 data with which to continue our research. This data is critical to understand how the recession has affected minority and female participation

in the workforce. A copy of our response to the EEOC letter of explanation is attached.

The existing data base, from 1975 to 2000, will permit us to do further research including examination of multi-establishment employers, the relation of discrimination among senior management to discrimination in lower level jobs, and to compare government contractors and non-contractors.

## APPENDIX

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THE STATE UNIVERSITY OF NEW JERSEY  
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Thursday, November 27, 2003

Anthony J. Kaminski,  
Chief of Staff,  
EEOC Vice Chair Naomi C. Earp

Dear Mr Kaminski:

I have received your letter of November 4, 2003, explaining that the Commission has refused my request for edited EEO-1 data on the same terms as it has provided me with such data from 1966 to 1999. Based on this data, my wife and I published at EEO1.Com in August, 2002 a 1,400 page study entitled *THE REALITIES OF INTENTIONAL JOB DISCRIMINATION IN METROPOLITAN AMERICA—1999*. There has not been a single complaint from an employer that there has been any disclosure of its identity in that study. The Commission, itself, has recognized the importance of the study and its methodology. In 2000, it contracted with me to use the methodology to assist the commission in identifying potential subjects of investigation. As you know, the edited version of the EEO-1 data

supplied to us did not contain the names or addresses of any establishment.

The reason given in your letter of Nov. 4, 2003 is "Due to a concern that a user might be able to combine EEO-1 dataset information with information available from other sources to identify individual employers, the Commission's Office of Research, Information and Planning (ORIP) has decided that it will no longer release edited EEO-1 datasets, regardless of intended use." In light of the importance of the research that can be performed with the data, it is important to consider procedures to both protect the confidentiality of the data and permit research which can illuminate the progress of the past and the problems for the future. Please consider this letter an appeal to the Commission to overrule the decision in your letter of Nov. 4, 2003.

The Commission has the power to "cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals," and is authorized to "make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public."<sup>3</sup> The position taken in your letter of Nov. 4, will make it impossible for this research to continue. There is another way to protect the confidentiality of the data aside from refusing to provide it to any outside researchers that will protect the confidentiality of the data. That is, to limit such research to persons that meet the following requirements: (1) that they have well established academic affiliation with a recognized university; (2) that they assure the commission that the data will be used only by persons who also have regular professional relations with an established research organization (3) that they, and all persons having access to the data, assure the commission that the data will be used only for research purposes and will not make the names or addresses available to the general public.

This interpretation is consistent with the Commission's existing regulations.

### § 1601.22 Confidentiality.

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3. § 705(g) (1),(5). § 709 (e) makes it "unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information." § 705 (g) (5) and § 709(e) must be read together in interpreting the law.

**Neither a charge, nor information obtained during the investigation of a charge of employment discrimination under the ADA or title VII, nor information obtained from records required to be kept or reports required to be filed pursuant to the ADA or title VII, shall be made matters of public information by the Commission prior to the institution of any proceeding under the ADA or title VII involving such charge or information.** This provision does not apply to such earlier disclosures to charging parties, or their attorneys, respondents or their attorneys, or witnesses where disclosure is deemed necessary for securing appropriate relief. **This provision also does not apply to such earlier disclosures to representatives of interested Federal, State, and local authorities as may be appropriate or necessary to the carrying out of the Commission's function under title VII or the ADA, nor to the publication of data derived from such information in a form which does not reveal the identity of charging parties, respondents, or persons supplying the information.**<sup>4</sup>

The Commission's regulation properly focuses on the "form which does not reveal the identity of charging parties, respondents or persons supplying the information." The EEO-1 dataset that you have supplied me and that I requested for 2001, and will request for succeeding years, does not reveal the identity of any employer. The employer's name and identifying address is deleted. Your letter recognizes this, and expresses a concern that "a user might be able to combine EEO1 dataset information "with information from other sources" to identify individual employers. But the criminal provision of the statute, and your own regulations, focus on the actions of the EEOC itself, not on any actions that might be taken by members of the public who happen to have other sources of information.

You further state that EEOC does not have the staff to monitor data provided to individuals external to EEOC. Such monitoring is unnecessary where EEOC has fully performed its duty not to disclose the names and identifying addresses of employers who report and has restricted access to the data to those who themselves are institutionally and contractually committed to honor the confidentiality provision of the statute. Requiring the researcher and all persons with access to the data to honor the confidentiality provi-

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4. Emphasis added.

sion of the statute would satisfy the law and preserve the research value of the data.

I will be pleased to discuss this proposal further with the Commission.

Sincerely,

Alfred W. Blumrosen  
Thomas A. Cowan Professor Emeritus  
Director, Intentional Job Discrimination Study  
Rutgers Law School  
Newark, NJ

cc: EEOC Chair Cari Dominguez  
EEOC General Counsel Eric Dreibard



