The Good, the Bad, and the Ugly

The Peculiar Discrimination Case of Joe's Stone Crabs

by David Sherwyn, Melenie J. Lankau, and Zev Eigen

Joe's tried to be good, but the government said it was bad.

The result was ugly.

In 1997 a judge in a district court in South Florida found a nationally famous Miami Beach restaurant, Joe's Stone Crabs, guilty of unintentional discrimination. At first glance the term "unintentional discrimination" sounds like an oxymoron. A law-savvy restaurant owner might ask, "how can the law hold me accountable for discrimination that I did not intend or even know about?" Even more perplexing at first glance is the question, "how is it possible to take steps to avoid liability for doing something I did not intend

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to do or even know I was doing in the first place?" As we relate below, the Joe's Stone Crabs story has all the elements of a business owner's worst nightmare: a government agency's witch hunt, a judge grossly misapplying the law, and a company that could have taken relatively simple steps to avoid unintentional discrimination had it not been caught in a Catch-22 of not knowing that it was doing something wrong. This article explains the law, presents Joe's case, describes why we believe the judge erred in this case, and sets forth suggestions to ensure that your company is not the next Joe's.

An Unknowing Culprit

A family-owned and -operated restaurant, Joe's Stone Crabs Restaurant is one of the great SoBe (South Beach) success stories. Established 86 years ago, it has grown from a small seafood shack to one of the top-ten highest-grossing single-unit restaurants in the United States. This is impressive considering that the restaurant is open only from mid-October to mid-May (stone-crab season). Joe's seats 440 patrons, serves 1,800 dinners on a busy night, and employs 260 people. In spite of its size and success, employees regard working for the company as being part of a large and caring family. Unlike most of the industry, it does not suffer from high employee turnover. In fact, some of Joe's employees have been with the restaurant for more than 30 years. In addition to the family climate, the restaurant attracts tremendous employee loyalty because of its high wages (in the form of tips), generous benefits, and a profit-sharing plan.

The restaurant's employee-friendly atmosphere has been nurtured by four generations of family ownership. Joe's is owned by Jo Ann Bass, the granddaughter of founder Joe Weiss, and her stepmother, Grace Weiss. The chief operating officer is Jo Ann's son, Stephen Sawitz (a graduate of the Cornell University School of Hotel Administration). One of the family's top priorities has been to foster a supportive work environment for its employees. Joe's has also been well known over the years for its commitment to hiring and serving people of all races, creeds, and religions—an uncommon policy when it opened. Joe's was the first eating house on Miami Beach, for example, to serve and employ African Americans. In 1991 Jo Ann Bass received an award from the National Association of Businesswomen for mentoring women and minorities and for her service in the community.

Joe's Hiring Practices

The government's case against Joe's Stone Crabs is one of hiring discrimination. Therefore, let us review the restaurant's employment situation. Because it closes each summer, Joe's engages in a mass hiring session each fall with a process that is not complex. Servers who worked the previous season are rehired if they wish to return and if Joe's wishes to reemploy them. As we wrote above, Joe's prides itself on its low turnover, and thus the vast majority of its employees returns to the restaurant each year. Still, there are a few server spots to fill at the beginning of each season.

Joe's fills these rare openings by engaging in what it refers to as a roll call. On the second Tuesday in October all interested applicants report to Joe's for an interview. The hiring staff evaluates applicants in the individual interview on the following four criteria: "appearance, attitude, articulation, and experience." Since 1992 applicants must also demonstrate their ability to lift and carry a loaded tray. The roll call is widely known about in the restaurant community, but Joe's sometimes advertises in the *Miami Herald* and other newspapers. In a typical year 100 or so applicants attend the roll call. Significantly, from 1986 to 1990 only two or three women were among those would-be employees. As it happened, Joe's did not hire any of those women during that time.

The U.S. government sued Joe's Stone Crabs even though no employee or applicant had filed a discrimination complaint against Joe's.

The fact that no women were hired attracted the federal government's attention. In June 1991 the government sued Joe's Stone Crabs because, according to the Equal Employment Opportunity Commission (EEOC), the restaurant discriminated against women when hiring servers. It is worth noting that this lawsuit originated from a commissioner's charge, which means no employee or applicant had filed a complaint against Joe's. Not only did no individual complain against Joe's, but the court's own finding was that Joe's did not intend to discriminate. Nev-

ertheless, the court held Joe's guilty of unintentional discrimination. The court case cost Joe's over $1 million in attorney's fees, plus $200,000 in damages for five women. Four of those women never even applied for a job at Joe's. Not only that, now Joe's must deal with the EEOC and the court telling it how to run its business.

Unintentional Discrimination?

Let us review how Joe's ended up in such a situation. The law recognizes two kinds of employment discrimination, one is called "disparate treatment" and the other, "adverse impact" (also sometimes referred to as "disparate impact"). Disparate *treatment* occurs when an employer intentionally bases an employment decision on one of the seven protected classifications: **(1)** race, **(2)** sex, **(3)** religion, **(4)** national origin, **(5)** color, **(6)** age, or **(7)** disability.[1] By contrast, adverse or disparate *impact* refers to "unintentional discrimination," which occurs when a company's policy or practice that is neutral on its face has a disproportionate effect on one or more protected classes.

Adverse impact is best explained in the context of *Griggs v. Duke Power Co.*, the progenitor case that established adverse impact as a cause of action.[2] In 1970 the Duke Power Company in North Carolina required employees to have a high-school diploma to be eligible for a promotion. This policy, while neutral on its face (i.e., it did not single out a protected class), was found to have had an adverse impact on African-American employees. The reason was that 36 percent of the white population in North Carolina had high-school diplomas, while only 12 percent of the state's African Americans had graduated from high school.

In deciding this case the U.S. Supreme Court first examined Duke Power's motives and held that the company did not intend to discriminate. Nevertheless, the court held that despite the fact that Congress never addressed unintentional discrimination in the statute or in the legislative history, the law does, in fact, prohibit such conduct. Thus, the court held that the employer has the responsibility of ensuring that any specific criterion for employment or promotion does not have the effect of excluding all or substantially all employees or applicants in any protected class. The exception to this principle may occur if the employer can prove that the policy or practice is a "business necessity."[3] Note that the Civil Rights Act of 1991 codified the *Griggs* holding and made adverse impact part of federal statute.

Since the *Griggs* case, few adverse-impact cases have gone to trial relative to the much larger volume of disparate-treatment claims that have made it to the courtroom. This makes sense since the initial burden on plaintiffs alleging intentional discrimination is fairly easy to satisfy, whereas the burden on adverse-impact plaintiffs is much more cumbersome.[4] Specifically, to establish a *prima facie* case of adverse impact plaintiffs must: **(1)** demonstrate a statistical disparity between the proportion of the protected class in the available labor pool and the proportion of that protected class the employer hired; **(2)** identify the specific employment practice alleged to be the cause of the statistical disparity;[5] and **(3)** show the causal nexus between that employment practice and the disparity.[6]

Applying Law to Joe's Facts

The EEOC alleged that Joe's intentionally and unintentionally discriminated against women. After examining the evidence, the court concluded that Joe's did not intentionally discriminate. This finding is significant. It means that the court examined all evidence of potential bias against women presented by the plaintiffs (the EEOC) and concluded that the plaintiff could not sustain its burden of proving that Joe's intentionally took any actions singling out women. The court did find, however, that Joe's was guilty of unintentional, adverse-impact discrimination.

To prove adverse impact the EEOC had to satisfy the three-step

[1] These are the classifications protected by Title VII of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 253 (codified as amended at 42 U.S.C. §2000e-§2000e17); the Age Discrimination in Employment Act, Pub. L. No. 90-202 at 15, 18 Stat. 602 (1967) (codified as amended 29 U.S.C. §621-634 (1994 & Supp. I 1995)) (ADEA); and the Americans with Disabilities Act, Pub. L. No. 101-336, 104 Stat. 327 (1990) (codified as amended at 42 U.S.C. §§12101-12213) (ADA)—all federal statutes. Certain states, counties, cities, and other municipalities have passed laws protecting classifications such as sexual orientation and family status.

[2] *Griggs v. Duke Power Co.*, 401 U.S. 424 (1970). The case is explained at greater length in: John P. Kohl, "Personnel Decisions: How to Avoid Discrimination Charges," *Cornell Hotel and Restaurant Administration Quarterly*, Vol. 24, No. 3 (November 1983), pp. 86–92.

[3] With regard to hiring, the employer must show that its hiring criteria are "*bona fide* occupational qualifications" (BFOQs). Courts have defined such criteria narrowly. See: Kohl, pp. 91–92.

[4] To establish a *prima facie* case of disparate treatment, employees need only show that: **(1)** they are members of a protected class; **(2)** they were qualified for the position; **(3)** they were "mistreated" by their employer or potential employer; and **(4)** employees who do not belong to that protected class were not mistreated. Employees establishing a *prima facie* case do not have to provide any evidence of discrimination. See: *McDonnell Douglas v. Green*, 411 U.S. 792 (1973).

[5] Courts have recognized that this element encompasses both "neutral" hiring criteria, like the requirement of a high-school diploma in *Griggs*, as well as "subjective practices of discretionary nature." See: *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977 at 990–91 (1988).

[6] *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 656–58 (1989). For a discussion of the *Ward's Cove* decision, see: Arthur J. Hamilton, "The New EEO Environment," *Cornell Hotel and Restaurant Administration Quarterly*, Vol. 31, No. 1 (May 1990), pp. 124–129.

test outlined above. First, it had to show that there was a statistical disparity between the number of male and female servers at Joe's. Second, the EEOC had to identify "the employment practice alleged to be the cause of the disparity." Finally, the government had to prove that the policy in question "caused the exclusion of applicants for jobs and promotions because of their membership in a protected group."[7]

In proving statistical disparity, courts typically compare the gender ratio of those hired against that of those who applied. If the hiring rate for women is less than 80 percent of the hiring rate for men, the plaintiff can proceed. If not, the defendant prevails. In that critical period of 1986 to 1990 Joe's hired 108 servers, none of whom were women. Applicant-flow data available for that period indicated that perhaps 3 percent of the applicants were female. In the five-year period after the EEOC charge was filed (1991–1995), by contrast, Joe's hired 88 servers, 19 of whom were female (21.6 percent). Applicant-flow data for that period indicated that approximately 22 percent of the applicant pool was women. If the court used the applicant pool as the appropriate proxy the EEOC would have failed to establish a *prima facie* case and Joe's would have prevailed. That is not what occurred, however.

The court instead rejected the applicant-pool data as the point of comparison for those hired against those who applied. The court decided instead that the number of female applicants for server positions at Joe's was skewed and that alternate data should be used. Employing 1990 census data the court arrived at a figure of 31.9 percent to represent the percentage of available and qualified female table servers in Miami Beach. Statistical analyses comparing the number of women hired as servers to this standard of 31.9 percent revealed statistical disparities in Joe's hiring for the two periods of 1986 through 1990 and 1991 through 1995, as well as for the two periods combined. Because the court held that the difference in the hiring rate was statistically significant, the EEOC had satisfied the first step of the *prima facie* case.

The next step, according to the court, was to identify the policy or practice that caused the disparity.[8] Here the court singled out what it referred to as Joe's "undirected and undisciplined delegation of hiring authority" to subordinate staff. The court found that the restaurant's management failed to develop uniform, gender-neutral guidelines for interviewers. The four criteria (appearance, attitude, articulation, and experience) were not defined or standardized, according to the court, and interviewers failed to interpret and apply them consistently.

The final step in proving a case of disparate impact is to establish a causal connection between the employment practice and the statistical disparity. The EEOC created a causative link by using various witnesses' testimony about Joe's reputation as a "male-server type" establishment. This reputation was viewed by the court as causing qualified women to

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[7] *EEOC v. Joe's Stone Crabs, Inc.*, 969 F.Supp. 727 at 736, 738 (S.D.Fl.L. 1997).

[8] The court stated: "Having shown a disparity in the hiring of women and an employment practice which could account for the disparity, the remainder of the EEOC's case becomes one of causation. That is, does Joe's undirected and undisciplined delegation of hiring authority cause the disparity between the number of women hired as servers and the number of women available, or are forces outside the hiring process—such as a deteriorating neighborhood, low turnover, or the heavy lifting required of servers—to blame? To prevail on this question, the EEOC must provide statistical evidence 'of a kind and degree sufficient to show that the practice in question has caused the exclusion of applicants for jobs and promotions because of their membership in a protected group.'" *Id.* at 739 (citing *Watson*, 487 U.S. at 994).

remove themselves from the true applicant pool at the annual roll calls. The court also accepted the EEOC's claim that the restaurant's reputation explained how the undirected and undisciplined delegation of hiring authority produced the disparate impact in the hiring of female servers.

Illogical and Incorrect

We can only conclude that management and legal counsel for Joe's were stunned by this outcome because we find this holding to be both illogical and incorrect. Relying on questionable evidence, tortured logic, and a misunderstanding of the law, the court held that the EEOC met the three-step test to prove adverse impact. Below, we examine the first and third elements of the *prima facie* case and explain why this judge erred.

Skewed statistical analysis. Throughout the trial the EEOC and the judge placed critical emphasis on specific witnesses' testimony as descriptive of a reputation that Joe's did not hire female servers. Indeed, the judge used Grace Weiss's own testimony as evidence that male servers were preferred over females. When asked if she had an explanation for the lack of female servers, Weiss stated:

> In spite of the fact that the restaurant has been run predominately by females (myself and my daughter) for the past 45 years, we have always had mostly male servers. We have a mixture of young and old; black, white, and Oriental waiters; and occasionally female servers. I cannot explain the predominance of male servers, but perhaps it has to do with the very heavy trays to be carried, the ambience of the restaurant, and the extremely low turnover in servers.[9]

The judge pounced on the fact that Weiss mentioned the restaurant's ambience as a possible explanation for the lack of female servers. To make matters worse, Joe's inexplicably presented a restaurant expert who testified that the European model of restaurants featured all male servers. The judge then cited a *New York Times* article which stated the same thing. In addition, the restaurant's *maitre d'* testified that males traditionally filled the roles of servers and host. Finally, a manager stated that having a predominantly male wait staff did not strike him as being strange. Based on this slender thread, the judge concluded: "Joe's sought to emulate Old World traditions by creating an ambience in tuxedo-clad men serv[ing] its distinctive menu."[10] This conclusion, however, is irrelevant because it contradicted the judge's own earlier holding that Joe's did not intentionally seek to discriminate. A business that seeks to create a tradition by using all male servers would be guilty of disparate treatment. Because the judge held that Joe's did not intentionally discriminate, the judge's conclusion regarding the tradition is misplaced. To Joe's disadvantage, however, the judge relied heavily on this conclusion to develop the bizarre statistical-disparity test in step one.

Determining the pool. Next, the judge ruled that Joe's reputation "caused many eligible female food servers not to attend the annual roll call, considering it a waste of time." Based on that conclusion the court found the applicant pool to be an invalid indicator of potential discriminatory effects on women.[11] For this reason, the court turned to the available labor force as the appropriate pool against which to judge.

This divergence from typical adverse-impact procedures raised the question of how to determine what constitutes the available labor pool. The EEOC argued that 41 percent of the servers working or living in Miami Beach constituted the available work force. The expert witness for Joe's on this matter, Dr. McClave, argued that this figure was inaccurate because it would be unrealistic to equate servers working in diners with those employed in high-end restaurants. McClave then explained that the court should, for example, focus only on servers who earned between $25,000 and $49,000 per year as a more accurate representation of the servers looking for work at Joe's.[12] McClave testified that while such a proxy would reduce the percentage of women in the labor pool to 31.9 percent, it still did not reflect the restaurant's distinctive operation. Joe's is a high-end restaurant whose servers are, indeed, well compensated. They must do difficult work for that money—carrying heavy trays and turning tables several times each night. In most other high-end restaurants the servers neither carry trays nor strive for rapid table turns.

The court dismissed those arguments and adopted instead the income data set forth by the EEOC as an appropriate proxy for "available labor pool" to measure Joe's hiring. The decision to use this proxy in lieu of the actual applicant-flow data was solely attributed to the court's declaration that Joe's had a negative reputation (for women servers). Had the court used the typical comparison of those hired against those who applied, the EEOC's claims would have been dismissed. This is because **(1)** between 1986 and 1990 there were not enough women applicants

[9] *Id.* at 731-32.

[10] *Id.* at 732.

[11] *Id.* at 733.

[12] This figure reflected the income range for Joe's servers with at least one year of experience.

to permit a statistically valid finding; and **(2)** between 1991 and 1995 the percentage of women hired was almost exactly equal to the percentage of women who applied.

Which Hiring Policy?

We believe the decision is also defective because the court was unable to pinpoint a hiring policy that caused an adverse impact on women. The court accepted the EEOC's identification of a policy that did not and could not have caused the disparity. The court's opinion, in fact, contains nothing showing that the roll-call hiring policy caused the disparity between male and female servers. Instead, the percentage of women who were hired is almost identical to the percentage of those who applied (an outcome that usually is within the bounds of law). Despite this fact, the court found that the open roll-call policy was at the root of the problem.

We contend that the court again misapplied the law and made unsubstantiated leaps of logic, in the following ways. First, as occurred with its decision not to use the applicant pool as the appropriate hiring proxy, the court invoked the concept of intent (that is, that Joe's intended to discriminate). The court did this by citing Grace Weiss's statement that the restaurant was of the "male-server type" and noting that the general manager "candidly admitted that it never occurred to him that something might be wrong when 108 positions were filled sequentially with male applicants between 1986 and 1990." Such statements have no probative value because they do not answer the question of whether the hiring policy *caused* the disparity between the number of employees who applied and the number that were hired. Moreover, the statements once again confuse the issue because the court had already concluded that there was no intent to discriminate. Thus, the general manager's state of mind is irrelevant.

The court concluded that Joe's hiring policy caused the disparity between male and female applicants by constructing an argument that we find absurd. The court stated that the EEOC could not prove its case based on numbers alone: *"Even substantial statistics, however, do not suffice when standing alone"* [emphasis added]. The Supreme Court has cautioned that "their usefulness depends on all of the surrounding facts and circumstances."[13] The EEOC's only evidence, however, was the numbers it presented. Without any evidence of causation, the court simply assumed this vital element without any basis, writing:

> Certainly the statistics presented in this case, most notably the statistics for the five-year pre-charge period during which not one female food server was hired, are substantial and persuasive. They support the inference that the restaurant's uncircumscribed delegation of hiring caused the disproportionate exclusion of women from server positions.[14]

If statistics alone do not suffice, then stating without support that such statistics create an inference of causation is not a sound basis for a finding against the defendant. Again, the only additional "support" for the causal link between the delegation of hiring authority and the adverse effect on women servers is the statement made by Weiss. Her statement, therefore, was the only available leg on which the court could build its precariously balanced opinion.

In addition, the inference that the delegation of hiring caused the "disproportionate exclusion of women

We consider the finding of adverse impact to be both illogical and incorrect—in part because the court was unable to pinpoint a hiring policy that caused an adverse impact on women.

[13] *Id* at 739 (citing *International Brotherhood of Teamsters v. U.S.*, 431 U.S. 324 at 339-40 (1977)).
[14] *Id.*

from server positions" is easily contested. In the time period that the court identifies, only two or three women applied for positions each year. Since few women applied, the fact that Joe's did not hire them does not provide an inference regarding the hiring policy. Instead, it simply shows that women did not happen to apply during the years in question. The question that the statistical evidence does not answer is why women did not apply in the first place. The answer could have been the weight of the trays or the fact that South Beach was considered to be an unsafe neighborhood in the late 1980s. But it also could have been that Joe's had a reputation for hiring only men.

Taking into account the first two possible answers above should absolve Joe's of liability. Joe's is not guilty of discrimination if women chose not to apply for jobs because of the type of work or the neighborhood. The matter of reputation is more intricate. The interesting questions are whether Joe's is responsible for its reputation and, if so, whether a reputation qualifies as the policy or practice that causes an adverse impact.

The court sidestepped those matters by using the restaurant's unsophisticated hiring policy as guise for assessing liability based on reputation. The fact that this was a guise is evidenced by the method used to assess damages. If the policy caused a hiring disparity, then the injured parties would have been those who applied for jobs but were turned down. This group included exactly one person (who did not make a complaint). Instead, the court assessed damages to those theoretical individuals who would have applied for work but were scared off by Joe's reputation. Obviously, the court believed that Joe's should be held liable for its reputation, although it did not affirmatively state such a holding.

The case is under appeal as we write. If the court's ruling holds, we see several issues that must be resolved for owners and managers. For example, is it possible for an employer to gain a reputation for discrimination without that being the fault of the employer? If so, is it possible for such a reputation to exist without the employer's knowledge? On the one hand, could an employer be held liable for a reputation that it did not actively create but knew about? On the other, could an employer be held liable if it did not even know of the reputation's existence? Finally, what steps, if any, could an employer take if it had an unwanted reputation for discrimination? All of these questions are interesting and terrifying for employers.

Caution in Hiring

The *Joe's* case would have been helpful if it had answered or at least addressed the questions regarding the effect of reputation. Although that did not occur, the case does provide guidance for employers. The most important advice is to err on the side of caution in hiring policies and procedures. Courts and the EEOC seem to do what they can to adapt the law to the circumstances surrounding different employer situations. As occurred in *Joe's*, courts may employ statistics to prove discrimination if they can identify any policy that is not defensible, even if that policy does not directly cause the negative impact on the protected class of people. Essentially, what this means is that an employer might best think of adverse impact as imposing a strict liability standard. If there is a statistical disparity within a company's work force, the employer should find some way to correct it. This poses potential difficulties for industries and professions with traditionally low numbers of one or more protected classes. Employers should, therefore, at least take these four steps to prevent adverse impact problems:

(1) *Conduct periodic audits of your human resources.* An HR audit is an examination of the effectiveness of your company's use of human resources. While an audit is typically designed to assess many different aspects of the human-resources-management system, it can also focus on the company's ability to include and manage diversity. The following pieces of information are important for this purpose:

- an analysis of turnover rates for the organization, per job class, or per type of employee (i.e., women, people of color);
- the total number of women, minorities, disabled individuals, and people over 40 employed by the organization and also separately for each job class. (Note: Do *not* ask this information of job candidates but only of employees. Denying someone a job based on their being a part of a protected class is intentional discrimination or "disparate treatment"; the employer's knowledge of the applicant's protected-class status may provide sufficient basis for a court to infer discriminatory intent.);
- An examination of whether job classifications break along protected-class lines (e.g., all the servers are women, but the managers are men); and

- Feedback from protected-class employees regarding any perceived barriers to moving into different positions in the organization.

(2) *Consider conducting a utilization analysis.* A utilization analysis is required by businesses that have affirmative-action (AA) plans. Organizations must submit their reports to the Department of Labor's Office for Contract Compliance Programs (OFCCP). This practice may also be useful for companies that do not have an AA program, because it may help highlight potential areas where protected-class members are underrepresented. The analysis involves a comparison of the percentage of persons from protected classes working in an organization to the percentage of those same protected classes in the available labor market. The OFCCP offers guidelines regarding how to determine the figures for the available labor market such as using "qualified workers in the labor market from which you recruit" as your standard.

(3) *Examine the company's selection tools and hiring criteria.* Ensure that selection tools are fairly and consistently implemented across all applicants. Avoid subjective hiring criteria—especially when delegating hiring authority to subordinates. Use structured interviewing techniques to reduce interviewer bias.[15] Be sure to provide interviewers with *specific, objective* hiring criteria on which to evaluate candidates. Provide definitions of the criteria and the rating scales. Ensure consistency of understanding of the definitions and the method to quantify the interview across raters. If appearance is germane to the position (e.g., sales, servers), make sure that the appearance criteria are described in gender-neutral terms and span across any and all protected classes. (For example, do not describe potentially worthy candidates as macho or masculine.)

(4) *Take steps to promote a positive reputation.* This appears to be a key lesson from *Joe's.* Be proactive and conduct inquiries with customers, employees, and potential applicants about your organization's reputation in the community. Be sure to promote your organization as an "equal opportunity employer" whenever possible (e.g., in recruitment advertisements and printed information about the company). The *Joe's* court repeated in its opinion the importance of grabbing any available opportunity to clarify for the public that "[the employer] is an equal opportunity employer." Joe's was held liable partially for missing public opportunities to repudiate its reputation for hiring only men.[16]

With these steps as a starting point, and a wariness of potential liability ranging from thousands of dollars to the millions as an additional incentive, employers will be more prepared to avoid the seemingly unavoidable—liability for unintentional discrimination. **CQ**

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[15] For example, see: Tony Simons, "Interviewing Job Applicants—How to Get Beyond First Impressions," *Cornell Hotel and Restaurant Administration Quarterly*, Vol. 36, No. 6 (December 1995), pp. 21–27.

[16] The court specifically pointed to the frequent media attention Joe's received, and the roll call itself as opportunities in which Joe's management should have stated that Joe's is an "equal opportunity employer." *Id.* at 741.