

Abolish the *Uniform Guidelines*

SIOP 2011 Panel Discussion,

VCU

Final Four NCAA

Go Rams!

- Michael McDaniel, Virginia Commonwealth University
- Structure of the panel discussion
 - Introduce panelists
 - 10 minutes or less for each panelist to express sentiments concerning the abolishment of the *Uniform Guidelines on Employee Selection Procedures*
 - Note cards are being distributed to the audience by some colleagues in case you would like to submit a question to the panel
 - 30 minutes are allotted to address questions

Additional Panelists



- Art Gutman, Professor of Psychology, I-O graduate program at Florida Institute of Technology.
- David Copus, distinguished employment attorney with Morristown, New Jersey office of Ogletree Deakins.
- James Outtz, consulting expert or testifying expert for plaintiffs and defendants in litigation.
- James C. Sharf, Sharf & Associates, Employment Risk Advisors, Inc.

McDaniel's 10 Minutes





- The SIOP journal accepted a proposal for a focal article on the *Uniform Guidelines (UG)*:
 - McDaniel, M.A., Kepes, S., Banks, G. C. (in press). The *Uniform Guidelines* are a detriment to the field of personnel selection. *Industrial and Organizational Psychology: Perspectives on Science and Practice*.
- Paper available on the SIOP web site.
- Encourage commentaries to be submitted.

Paper purpose: Encourage Debate

- Authors are indebted to previous scholars who have highlighted the disparities between the UG and scientific knowledge and professional practice.

- Authoring agencies of the UG made unfilled promises in 1978 to keep the UG consistent with scientific knowledge.
- The UG are 33 years old and have never been updated.

- 
- The *Uniform Guidelines* embrace the situational specificity hypothesis
 - The emphasis of the *Uniform Guidelines* on local validation studies
 - The *Uniform Guidelines* and evidence for validity based on content similarity
 - The *Uniform Guidelines* and evidence for validity based on construct validity
 - The *Uniform Guidelines* and its 1950's perspective on separate "types" of validity

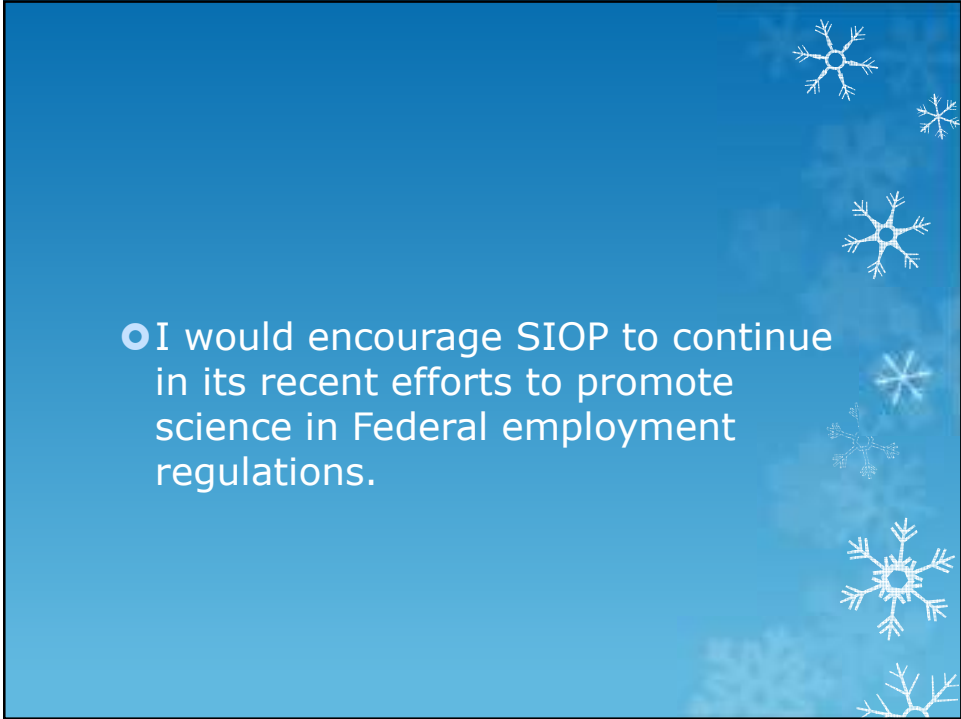
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- The *Uniform Guidelines* and meta-analysis as a source of validity documentation
 - The *Uniform Guidelines* and restrictions on transportability of evidence
 - The *Uniform Guidelines* position with respect to differential validity and differential prediction
 - The *Uniform Guidelines* and the diversity-validity dilemma

○ The *Uniform Guidelines* and false assumptions concerning adverse impact

- We suggest that an implicit assumption of the *Uniform Guidelines* is that adverse impact is an indication of a flawed test.
- We offer the alternative hypothesis that employment tests are an accurate assessment of subgroup differences in job-related attributes.
- Adverse impact is the norm and not the exception.
- Mean racial differences in employment test scores will be present for a very long time.

Science and Federal Regulations

- Many Federal regulatory agencies do a good job of keeping regulations consistent with scientific findings.
- Clearly, that is not the case with the UG.
- Many professional organizations are active in advising Federal regulators on changes needed in regulations to bring them into consistency with scientific knowledge.
- Until March of this year, that has not been the case with SIOP which had been silent on the issue for its 26 years of existence.

- 
- I would encourage SIOP to continue in its recent efforts to promote science in Federal employment regulations.



Art Gutman

I Think We All Agree

- UGESPs are outdated
- Don't reflect current knowledge in our field
- Situational specificity is passé
- They should at least be updated
- They probably never will be

McDaniel (and many others) Point to Following UGESP Excerpt

- A selection procedure based on inferences about mental processes cannot be supported solely or primarily on the basis of content validity. Thus, a content strategy is not appropriate for demonstrating the validity of selection procedures which purport to measure traits or constructs such as intelligence, aptitude, personality, common sense, judgment, leadership and spatial ability.
- **No court has ever upheld this guidance ... in fact**

Guardians v. Civil Service (1980)

2nd Circuit Outlined 5 steps for content validity that other courts have endorsed

- (1) suitable job analysis
- (2) reasonable competence in test construction
- (3) test content related to job content
- (4) test content representative of job content
- (5) scoring systems selecting applicants who are likely to be better job performers.

Other Examples

- In *Gillespie v Wisconsin* (1985), the 7th Circuit ruled neither the Uniform Guidelines nor the psychological literature express a blanket preference for criterion-related validity
- In *Police Officers v Columbus* (1990) the 6th Circuit, citing the 1987 SIOP Principles ruled that it is critical that selection instruments measure a substantial and important part of the job reliably, and provide adequate discrimination in the score ranges involved.
- Content validity supported in many subsequent cases, including the 2nd Circuit in *Gulino v. NY State*, 2006).

THUS

- Don't need "local" criterion validity studies cause they are rarely feasible
- However, police & firefighter tests have to be re-created because of security concerns ... don't we need some measure of assurance that they are criterion relevant & non-contaminated?
- Also, I thought those jobs required physical skills

So Where's The Debate

- This is really about adverse impact
- Even if the UGESP were abolished and replaced by the SIOP Principles we'd still have disagreement regarding test validation

Sharf Believes

- Adverse impact was judicially created and never debated in CRA-91
- So what - do we declare all judicial law unconstitutional (e.g., rules for disparate treatment & mixed motive cases)

Besides

- Plenty of debate on AI in aborted Civil Rights Restoration Act of 1990
- In fact, disagreement on Wards Cove led to Veto by President Bush (almost overridden)
- Examination of that debate reflects that neither the "right" nor the "left" knew the difference between AI case law and their tailbones

Also

- Only one justice (Scalia) advocates examining constitutionality of AI
- Kind of strange since he was 5th vote in favor of AI for age cases, and he, alone, favored using EEOC rules (based on UGESP) for evaluating AI

Validity Generalization

- Some point to *Bernard v. Gulf Oil* (1989) where 5th Circuit supported where criterion validity was found for two of five jobs and the 5th Circuit ruled found "sufficient similarity in the skills required for all five jobs."
- The Court also supported adjustments to correlation, ruling "although the unadjusted correlations are statistically significant, the adjusted figures, which are even higher than unadjusted, are better estimates of validity, and even they underestimate the true validity of the New Tests."

On the Other Hand

- In EEOC v. Atlas (1989), 6th Circuit rules "*Atlas' validity generalization theory ignores the teachings of Albemarle* by implying that no linkage or similarity between those jobs which had been previously researched by Hunter and those at the Company need be shown. The similarity was simply assumed."
- Similar ruling in Lewis v. Chicago (2005), but will leave for Ooutz who was an expert in that case.
- Also ... Mike Campion was expert on other side, and perhaps he can restage the debate right here, right now,

Multiple Choice Tests

- As an academician, it amazes me how much weight is accorded to MC tests. Those of us who teach, especially graduate students (e.g., me & McD) would never place that much reliance on such tests to separate average from superior students
- I think there's something to be said for alternatives with less adverse impact ... but once again I will defer to Ooutz on that one because he has factual data on this issue

That Said

- Griggs was a bad ruling because it addressed only the impact of the tests (and HS Diploma) and not the motive behind using them
- There was clearly a racial motive, and because it was never addressed, courts treat AI the same irrespective of the motives and efforts of employers

David Copus



James Outtz



The Promise

Section 5.

- *C. Guidelines are consistent with professional standards.* The provisions of these guidelines relating to validation of selection procedures are intended to be consistent with generally accepted professional standards for evaluating standardized tests and other selection procedures, such as those described in the Standards for Educational and Psychological Tests prepared by a joint committee of the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education (American Psychological Association, Washington, DC, 1974) (hereinafter "A.P.A. Standards") and standard textbooks and journals in the field of personnel selection.

The Objective

What would be the objective of abolishing or revising the Guidelines?

- Making the Guidelines consistent with scientific research and/or the Standards and Principles?

[Given the differences in the purpose of these documents when compared with the Guidelines, achieving consistency may not affect the application of the Guidelines very much.]

- Making employment selection procedures easier to defend?

[This should not be the ultimate goal for SIOP.]

- To roll back prohibitions against employment discrimination?

[This should not be the goal of SIOP.]

- To better ensure substantive, informed, and unbiased evaluation of employment selection procedures?

[This is an appropriate goal for SIOP.]

If ensuring more appropriate evaluation of selection procedures is the goal, does this require abolishment of, or major revisions to the Guidelines? If this is required, it raises a number of questions.

Who would have responsibility for this effort, given that the primary purpose of the Guidelines is to address discrimination in employment selection procedures? Would responsibility be given to:

- EEOC?
- EEOC + OFCCP + Dept. of Justice?
- APA?
- SIOP?
- Some combination of the above?
- Why only these organizations?

Once responsibility is established, who would make up the body of individuals assigned to spearhead this effort, and on what authority?

Once the individuals are identified, what would be the process?

- For example: drafts followed by public review, comment and testimony, then final document.

Who would be the major stake holders in such an effort? When the Guidelines were drafted in 1977, comments were received from over 200 organizations including the following:

- American Psychological Association
- Division 14 (SIOP)
- Civil Rights Groups
- The Ad Hoc Group on Employee Selection Procedures representing private industry
- The American Society for Personnel Administration and the International Personnel Management Association representing state and local governments
- Major industrial unions
- Building trades unions
- The American Council on Education
- Organizations representing persons with disabilities
- Licensing and certification agencies
- College placement officers

[Today, the stakeholders will have increased exponentially.]

[Could Consensus be reached?]

To establish the Standards or the Principles as a replacement for the Guidelines, there would have to be major revisions to both to make them directly applicable to federal, state, and local law.

[Currently, these documents do not, nor are they intended to address matters of public policy or federal, state, or local law.]

Example of the Problem

A key provision of the Guidelines is that a search for alternatives must be part of any validation study where adverse impact exists.

- How would this provision be addressed if either the Standards or the Principles were to replace the Guidelines?

Would the Standards and Principles have to be merged into one document in preparation for replacing or serving as the basis for major revisions to the Guidelines?

If these documents had to be merged:

- Who would be responsible for doing this?
- What would be the process?
- Who would be the stakeholders?

Here is a brief look at the level of consistency between the Standards, Principles, and Guidelines on key points targeted for discussion by this panel.

Purpose of the Standards, Principles, and Uniform Guidelines

Standards	Principles	Uniform Guidelines
<p>The <i>Standards</i> makes no attempt to provide psychometric answers to questions of public policy regarding the use of tests. In general, the <i>Standards</i> advocates that, within feasible limits, the relevant technical information be made available so that those involved in policy decisions may be fully informed.</p> <p>The <i>Standards</i> do not attempt to repeat or incorporate the many legal or regulatory requirements that might be relevant to the issues they address. In some areas, such as the collection, analysis, and use of test data and results for different subgroups, the law may both require participants in the testing process to take certain actions and prohibit those participants from taking other actions. Where it is apparent that one or more standards or comments address an issue on which established legal requirements may be particularly relevant, the standard, comment, or introductory material may make note of that fact. Lack of specific reference to legal requirements, however, does not imply that no relevant requirement exists.</p>	<p>The <i>Principles</i> is intended to be consistent with the <i>Standards</i>.</p> <p>Federal, state, and local statutes, regulations, and case law regarding employment decisions exist. The <i>Principles</i> is not intended to interpret these statutes, regulations, and case law, but can inform decision making related to them.</p> <p>This document is intended to be aspirational and to facilitate and assist the validation and use of selection procedures.</p> <p>It is not intended to be mandatory, exhaustive, or definitive, and may not be applicable to every situation.</p>	<p>The <i>Guidelines</i> are intended to establish a uniform Federal position in the area of prohibiting discrimination in employment practices on grounds of race, color, religion, sex, or national origin.</p> <p>The fundamental principle underlying the <i>Guidelines</i> is that employer policies or practices which have an adverse impact on employment opportunities of any race, sex, or ethnic group are illegal under title VII and the Executive order unless justified by business necessity.</p> <p>A selection procedure which has no adverse impact generally does not violate Title VII or the Executive order. This means that an employer may usually avoid the application of the guidelines by use of procedures which have no adverse impact.</p>

Deficiencies in the Guidelines

The Assumption of Situational Specificity and Emphasis on Local Validity

Standards	Principles	Uniform Guidelines
<p>When a test is used to predict the same or similar criteria (e.g., performance of a given job) at different times or in different places, it is typically found that observed test-criterion correlations vary substantially. In particular meta-analytic analyses have shown that in some domains, much of this variability may be due to statistical artifacts such as sampling fluctuations and variations across validation studies in the ranges of test scores and in the reliability of the criterion measures.</p> <p>Thus, statistical summaries of past validation studies in similar situations may be useful in estimating test-criterion relationships in a new situation....</p>	<p>At times, sufficient accumulated validity evidence is available for a selection procedure to justify its use in a new situation without conducting a local validation research study.</p> <p>In these instances, use of the selection procedure may be based on demonstration of the generalized validity inferences from that selection procedure coupled with a compelling argument for its applicability to the current situation.</p> <p>Although neither mutually exclusive nor exhaustive, several strategies for generalizing validity evidence have been delineated: (a) transportability, (b) synthetic validity/job component validity, and (c) meta-analytic validity generalization.</p>	<p>Sect. 7B Criterion-related validity studies conducted by one test user, or described in test manuals and the professional literature, will be considered acceptable for use by another user when the following requirements are met.</p> <ol style="list-style-type: none"> 1. Validity evidence. Evidence from the available studies meeting the standards of section 14B below clearly demonstrates that the selection procedure is valid. 2. Job similarity. The incumbents in the user's job and the incumbents job or group of jobs on which the validity study was conducted perform substantially the same major work behaviors, as shown by appropriate job analyses both on the job or group of jobs on which the validity study was performed and on the job for which the selection procedure is to be used, and

Deficiencies in the Guidelines

The Assumption of Situational Specificity and Emphasis on Local Validity

Standards	Principles	Uniform Guidelines
<p>When a meta-analysis is used as evidence of the strength of a test-criterion relationship, the test and the criterion variables in the local situation should be comparable with those in the studies summarized.</p> <p>If relevant research includes credible evidence that any other features of the testing application may influence the strength of the test-criterion relationship, the correspondence between those features in the local situation and in the meta-analysis should be reported.</p> <p>[What about construct-irrelevant variance?]</p>	<p>Meta-analysis requires the accumulation of findings from a number of validity studies to determine the best estimates of the predictor-criterion relationship for the kinds of work domains and settings included in the studies.</p> <p>While transportability and synthetic validity/job component validity efforts may be based on an original study or studies that establish the validity of inferences based on scores from the selection procedure through a content-based and/or a criterion-related strategy, meta-analysis is a strategy that only can be applied in cases in which the original studies relied upon criterion-related evidence of validity.</p>	<p>3. Fairness evidence. The studies include a study of test fairness for each race, sex, and ethnic group which constitutes a significant factor in the borrowing user's relevant labor market for the job or jobs in question.</p>

Standards	Principles	Uniform Guidelines
<p>Any significant disparities that might limit the applicability of the meta-analytic findings to the local situation should be noted explicitly.</p>	<p>The rules by which the researchers categorized the work and jobs studied, the selection procedures used, the definitions of what the selection procedure is measuring, the job performance criteria used, and other study characteristics that were hypothesized to impact the study results should be fully reported.</p> <p>Generalizing validity evidence from meta-analytic results is often more useful than a single study.</p> <p>However, if important conditions in the operational setting are not represented in the meta-analysis (e.g., the local setting involves a managerial job and the meta-analytic data base is limited to entry-level jobs), a local individual study may be more accurate than the average predictor-criterion relationship reported in a meta-analytic study.</p>	

Deficiencies in the Guidelines

Guidelines Embrace Three Types of Validity: Content, Construct, and Criterion-related

Source of Validity Evidence

Standards	Principles	Uniform Guidelines
<p>Evidence Based on Test Content</p> <p>Evidence Based on Response Processes</p> <p>Evidence Based on Internal Structure</p> <p>Evidence Based on Relations to Other Variables</p> <p>Evidence Based on Consequences of Testing</p> <p>This evidence about consequences is directly relevant to validity when it can be traced to a source of invalidity such as construct underrepresentation or construct-irrelevant components. Evidence about consequences that cannot be so traced is not directly relevant to the validity of the intended interpretations about the test scores.</p>	<p>Content-Related Evidence</p> <p>Evidence Based on Response Processes</p> <p>Evidence Based on the Internal Structure of the Test</p> <p>Evidence Based on the Relationship Between Scores on Predictors and Other Variables</p> <p>Evidence Based on Consequences of Personnel Decisions</p> <p>In recent years, one school of thought has advocated incorporating examination of consequences of the use of predictors in the determination of validity. This perspective views unintended negative consequences as weakening the validity argument.</p>	<p>There are three concepts which can be used to validate a selection procedure. These concepts reflect different approaches to investigating the job relatedness of selection procedures and may be interrelated in practice. They are (1) criterion-related validity, (2) content validity, and (3) construct validity.</p> <p>Sec. 5. <i>General standards for validity studies.</i> –A. <i>Acceptable types of validity studies.</i> For the purposes of satisfying these guidelines, users may rely upon criterion-related validity studies, content validity studies or construct validity studies, in accordance with the standards set forth in the technical standards of these guidelines, section 14 below.</p>

Standards	Principles	Uniform Guidelines
	<p>Although evidence of negative consequences may influence policy or practice decisions concerning the use of predictors, these <i>Principles</i> and the <i>Standards</i> take the view that such evidence is relevant to inferences about validity only if the negative consequences can be attributed to the measurement properties of the selection procedure itself.</p>	<p>New strategies for showing the validity of selection procedures will be evaluated as they become accepted by the psychological profession.</p>

Deficiencies in the Guidelines

The assumption that adverse impact is a fault of a test and not a reflection of real population differences in job-related abilities and skills:

Standards	Principles	Uniform Guidelines
<p>Fairness in Access to the Construct(s) as Measured</p> <p>Accessibility can best be thought about by contrasting the knowledge, skills, and beliefs that reflect the construct(s) the test is intended to measure with knowledge and skills that are not the target of the test but are required to respond to the test tasks or test items that are intended to measure the construct.</p> <p>For some test takers, individual characteristics, such as age, cultural background, disability and/or English language proficiency, may restrict accessibility and thus interfere with the measurement of the construct(s) of interest.</p>	<p>Subgroup differences resulting from the use of selection procedures are often viewed as a negative consequence of employment selection. Group differences in predictor scores or selection rates are relevant to an organization and its employment decisions, yet such differences alone do not detract from the validity of the intended test interpretations.</p> <p>If the group difference can be traced to a source of bias or contamination in the test, then the negative consequences do threaten the validity of the interpretations.</p>	<p>The fundamental principle underlying the guidelines is that employer policies or practices which have an adverse impact on employment opportunities of any race, sex, or ethnic group are illegal under title VII and the Executive order unless justified by business necessity.</p> <p>Once an employer has established that there is adverse impact, what steps are required by the guidelines?</p> <p>As previously noted, the employer can modify or eliminate the procedure which produces the adverse impact, thus taking the selection procedure from the coverage of these guidelines.</p> <p>If the employer does not do that, then it must justify the use of the procedure on grounds of "business necessity."</p>

Standards	Principles	Uniform Guidelines
<p>Threats to the Fair and Valid Interpretations of Test Scores</p> <p>A prime threat to fair and valid interpretations of test scores is the presence of construct-irrelevant aspects of the test or testing process that may result in the systematic lowering or raising of scores for identifiable groups of test takers.</p> <p>Such construct-irrelevant components of scores may be introduced by inappropriate sampling of test content, lack of clarity in test instructions, item complexities that are unrelated to the construct being measured, and/or use of scoring criteria that may favor one group more than another.</p>	<p>Alternatively, if the group difference on the selection procedure is consistent with differences between the groups in the work behavior or performance predicted by the procedure, the finding of group differences could actually support the validity argument.</p> <p>In this case, negative consequences from test use constitute a policy issue for the user, rather than indicate negative evidence concerning the validity of the selection procedure.</p>	<p>This normally means that it must show a clear relation between performance on the selection procedure and performance on the job.</p>

Standards	Principles	Uniform Guidelines
<p>Standard 3.6</p> <p>Where credible evidence indicates the possibility that test scores may differ in meaning for relevant subgroups in the intended test taker population, the reliability and validity of score interpretations for intended uses for individuals from those subgroups should be examined.</p> <p><i>Comment: Subgroup mean differences do not in and of themselves indicate lack of fairness, but such differences should trigger follow up studies to identify the potential causes of such differences. Both construct underrepresentation and sources of construct irrelevant variance should be investigated as potential causes of subgroup differences through quantitative and/or qualitative study.</i></p>		

Deficiencies in the Guidelines

The emphasis on differential validity and differential prediction

Standards	Principles	Uniform Guidelines
<p>Fairness as Lack of Bias</p> <p>The term <i>predictive bias</i> may be used when evidence is found that differences exist in the patterns of associations between test scores and other variables for different groups, bringing with it concerns about bias in the inferences drawn from the use of test scores.</p> <p>Differential prediction is examined using regression analysis. One approach examines slope and intercept differences between two targeted groups (e.g., Black vs. White), while another examines systematic deviations from a common regression line for any number of groups of interest.</p>	<p>The fourth meaning views fairness as a lack of predictive bias. This perspective views predictor use as fair if a common regression line can be used to describe the predictor-criterion relationship for all subgroups of interest; subgroup differences in regression slopes or intercepts signal predictive bias.</p> <p>There is broad scientific agreement on this definition of predictive bias, but there is no similar broad agreement that the lack of predictive bias can be equated with fairness.</p> <p>Thus, there are multiple perspectives on fairness.</p>	

Standards	Principles	Uniform Guidelines
<p>Standard 3.7</p> <p>When criterion-related validity evidence is used as a basis for test score interpretations about future performance on some criterion, differential prediction should be evaluated for subgroups for which credible prior evidence or theory suggests the likely existence of such differential prediction, where sample sizes permit.</p>	<p>There is agreement that issues of equitable treatment, predictive bias, and scrutiny for possible bias when subgroup differences are observed, are important concerns in personnel selection; there is not, however, agreement that the term "fairness" can be uniquely defined in terms of any of these issues.</p>	

Summary

"The bulk of the Guidelines deals with questions such as those discussed in the above paragraphs. Not all such questions can be answered simply, nor can all problems be addressed in the single document. Once the guidelines are issued, they will have to be interpreted in light of changing factual, legal, and professional circumstances."

Abolishing the Uniform Guidelines would be an inappropriate objective (particularly for SIOP) for a number of reasons including the following:

1. The stated purpose of the Guidelines is to "prohibit discrimination in employment practices on grounds of race, color, religion, sex, or national origin."
 - Why should SIOP take the lead or participate in an effort to abolish such a document? In my opinion it would be a public relations nightmare.
2. Many provisions of the Guidelines are unrelated to scientific research. Therefore, why abolish the entire document?
3. If the Guidelines were abolished, what would be the replacement?
 - There is no readily available or feasible process for replacing the Guidelines (too many stakeholders with competing/conflicting interests).
4. Even if the Guidelines were abolished, the case law that has been generated would remain.
5. Some provisions of the Guidelines (e.g., the search for alternatives) have been the impetus for major advances in employment selection research.¹ Again, why abolish the entire document?

¹ See, for example, Outtz, J. (2011) The Unique Origins of Advancements in Selection and Personnel Psychology; In S. Zedeck (Ed) APA Handbook of Industrial Organizational Psychology, Vol. 2, Selecting and Developing Members

The appropriate goal for any revision of the Guidelines should be to better ensure substantive, informed, unbiased evaluation of employment selection procedures.

Suggested methods for achieving this goal:

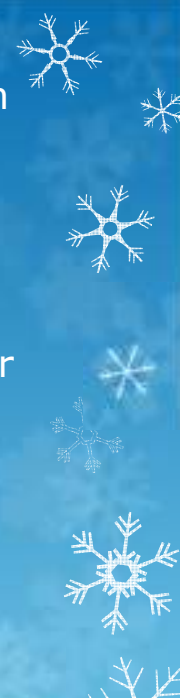
- Position papers that address key provisions of the Guidelines that warrant more careful interpretation in light of current scientific research and standards of acceptable professional practice.
- Lobbying federal enforcement agencies to adopt these position papers or produce their own.
- SIOP members seeking roles in litigation to provide information regarding current scientific research and standards of accepted professional practice in employment selection.

James Sharf

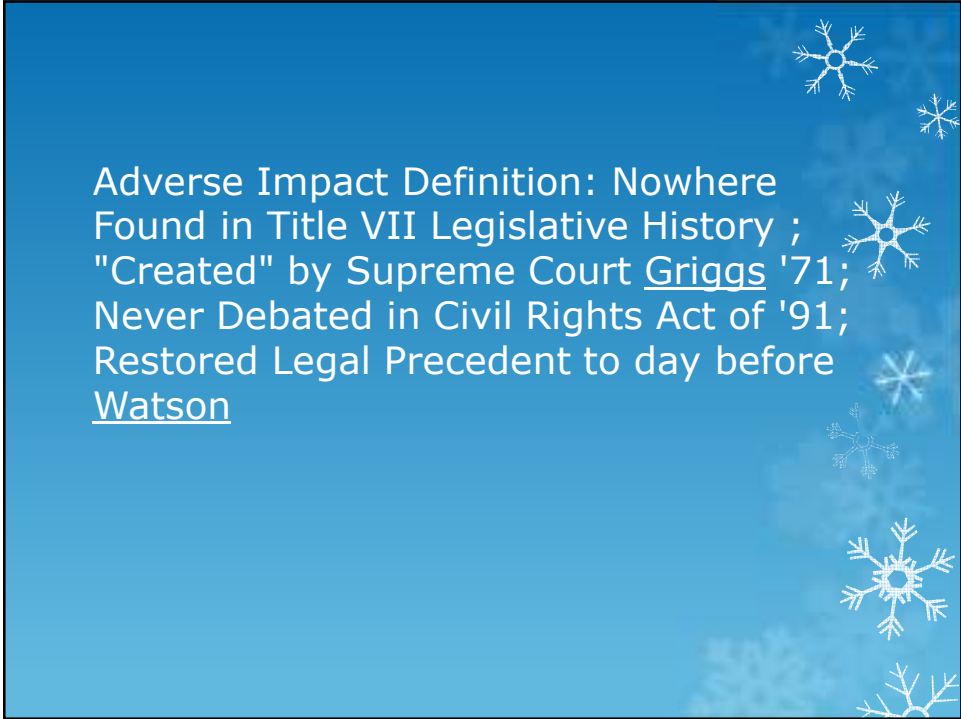


Sharf's Bet: *Uniform Guidelines*
Won't Be Touched !

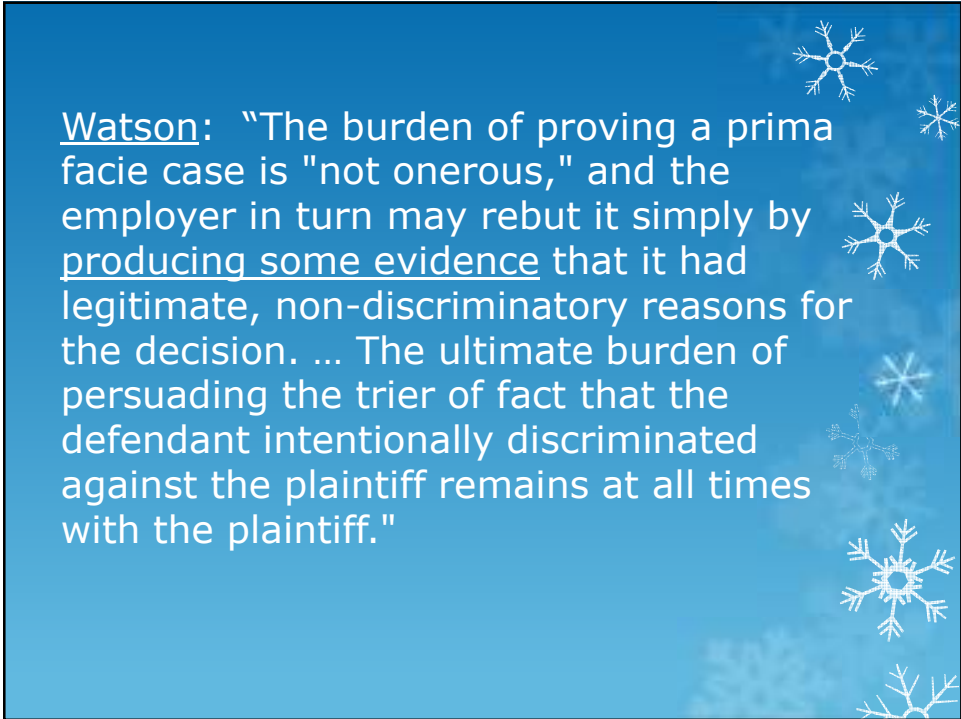
Because: Political Third Rail of
Stealthy Redistributive (Equal
Results) Agenda



“The lawyer.. is not an umpire, but an
advocate. He is under no duty to
refrain from making every proper
argument in support of any legal
point because he is not convinced of
its inherent soundness. His personal
belief in the soundness of his cause or
of the authorities supporting it is
irrelevant.” American Bar
Association, Code of Professional
Responsibility



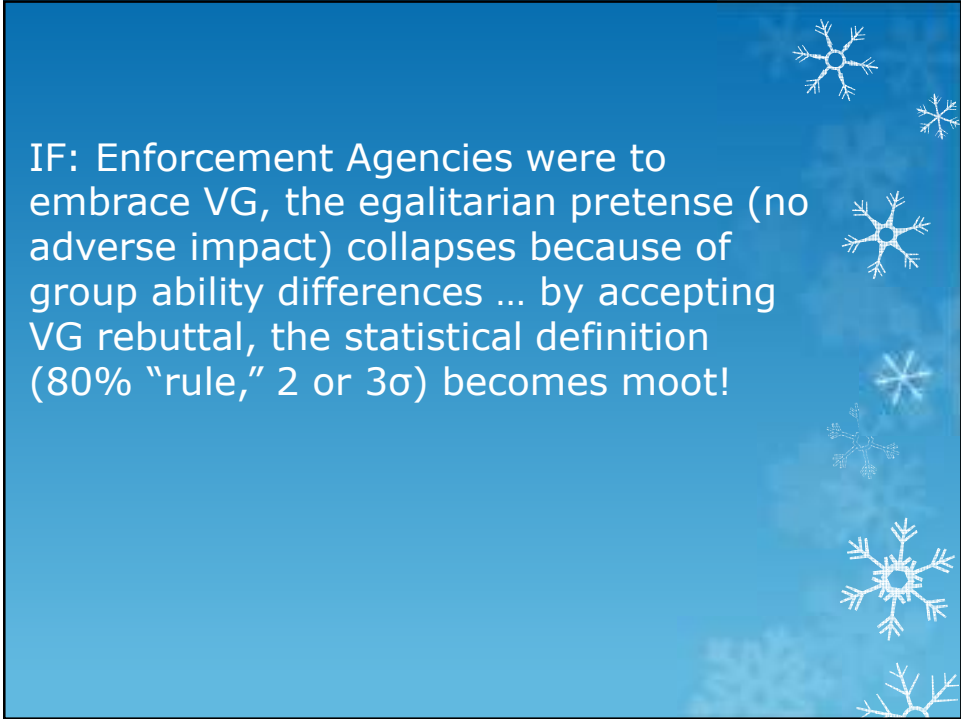
Adverse Impact Definition: Nowhere
Found in Title VII Legislative History ;
"Created" by Supreme Court Griggs '71;
Never Debated in Civil Rights Act of '91;
Restored Legal Precedent to day before
Watson



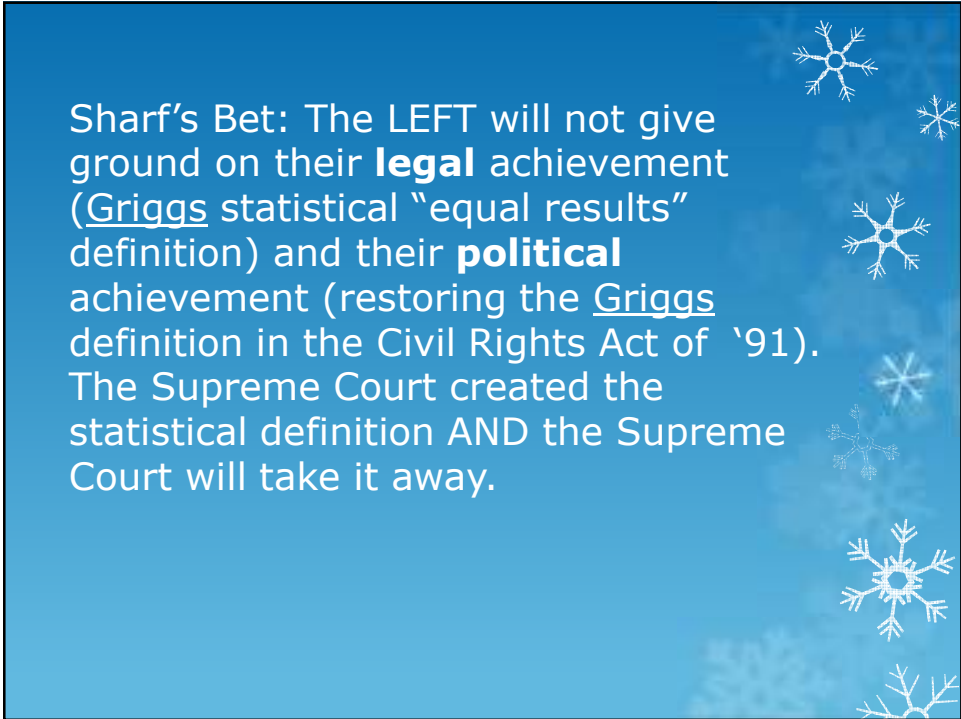
Watson: "The burden of proving a prima
facie case is "not onerous," and the
employer in turn may rebut it simply by
producing some evidence that it had
legitimate, non-discriminatory reasons for
the decision. ... The ultimate burden of
persuading the trier of fact that the
defendant intentionally discriminated
against the plaintiff remains at all times
with the plaintiff."

Sharf : Invited by EEOC Chair to Comment on Enforcement Manual at Commissioners' Meeting; Suggested Revising UGESP to Incorporate Validity Generalization; Meeting Canceled: Presentations to Commissioners Posted on EEOC website ... ("third rail")

LEFT	RIGHT
Equal Employment	Equal Opportunity
Gov't redistribute wealth/ reduce inequality	Market place: reward talent
Group rights	Individual rights
Equal results: but for discrimination...	Valid decisions



IF: Enforcement Agencies were to embrace VG, the egalitarian pretense (no adverse impact) collapses because of group ability differences ... by accepting VG rebuttal, the statistical definition (80% "rule," 2 or 3σ) becomes moot!



Sharf's Bet: The LEFT will not give ground on their **legal** achievement (Griggs statistical "equal results" definition) and their **political** achievement (restoring the Griggs definition in the Civil Rights Act of '91). The Supreme Court created the statistical definition AND the Supreme Court will take it away.

Audience Questions

