

EFFECTS OF UNIFORM GUIDELINES ON EMPLOYEE SELECTION  
PROCEDURES IN COLLEGE PLACEMENT OFFICES

by

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS . . . . .	11
Chapter	page
I. INTRODUCTION . . . . .	1
OVERVIEW . . . . .	1
PROBLEM . . . . .	4
PURPOSE STATEMENT . . . . .	7
SIGNIFICANCE . . . . .	8
RESEARCH QUESTIONS . . . . .	9
METHODOLOGY . . . . .	10
DELIMITATIONS OF THE STUDY . . . . .	12
CHAPTER SUMMARY . . . . .	12
ORGANIZATION OF THE STUDY . . . . .	13
II. METHODOLOGY . . . . .	14
OVERVIEW . . . . .	14
PART I. DEFINITION AND CONCEPT . . . . .	14
PROCEDURE . . . . .	18
MATERIALS . . . . .	21
Primary Sources . . . . .	21
Finding Tools . . . . .	22
Case Finders . . . . .	22
Statute and Regulation Finders . . . . .	24
Secondary Sources . . . . .	25
Nonlegal Research Sources . . . . .	25
PART II. DEFINITION AND RATIONALE . . . . .	26
DESIGN . . . . .	29
Survey Variables . . . . .	29
Applications . . . . .	34
QUESTIONNAIRE CONSTRUCTION . . . . .	35
SAMPLING PROCEDURE . . . . .	38
ANALYSIS . . . . .	39
III. LEGAL RESEARCH RESULTS . . . . .	45
OVERVIEW . . . . .	45
HISTORICAL PERSPECTIVE . . . . .	46
Griggs v. Duke Power Company . . . . .	52
McDonnell Douglas v. Green . . . . .	54
Washington v. Davis . . . . .	55
United States v. South Carolina . . . . .	57
Synthesis of the Decisions . . . . .	58

TITLE VII STANDARDS . . . . .	60
Adverse Impact . . . . .	60
Business Necessity . . . . .	62
APPLICATIONS OF TITLE VII COVERAGE . . . . .	68
Employers and Employment Agencies . . . . .	68
Employment Selection Practices . . . . .	71
Recovery under Title VII . . . . .	75
LEGAL AWARENESS OF COLLEGE PLACEMENT PERSONNEL . . . . .	80
UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES . . . . .	83
Scope and Purpose . . . . .	83
Definitions . . . . .	86
Adverse Impact . . . . .	87
Applicant . . . . .	90
Business Necessity . . . . .	90
Candidate . . . . .	91
Discrimination . . . . .	92
Disparate Treatment . . . . .	92
Employment Agencies and Employment Services . . . . .	92
Employment Decisions . . . . .	93
Rational Relationship . . . . .	94
Recruitment Practice . . . . .	94
Selection Procedure . . . . .	95
User . . . . .	96
Validation and Validation Studies . . . . .	96
Work Behavior . . . . .	97
Applications to College Placement . . . . .	98
CURRENTLY OPERATING PLACEMENT INTERVIEW SELECTION PROCEDURES . . . . .	102
SUMMARY . . . . .	104
IV. SURVEY RESEARCH RESULTS . . . . .	106
OVERVIEW . . . . .	106
MEASUREMENT . . . . .	107
Adjustments to the Measurement Scheme . . . . .	107
Omission from the Measurement Scheme . . . . .	110
Additions to the Measurement Scheme . . . . .	110
SURVEY RESULTS . . . . .	112
Sampling Response Rates . . . . .	112
Research Question 1 . . . . .	118
Research Question 2 . . . . .	121
Other Variables Analyzed . . . . .	122
SUMMARY . . . . .	136
V. DISCUSSION . . . . .	140
SUMMARY . . . . .	140
RESEARCH FINDINGS . . . . .	142

RECOMMENDATIONS . . . . .	150
BOOKS, PERIODICALS, AND UNPUBLISHED SOURCES . . . . .	156
CASES AND STATUTES . . . . .	160
Appendix	page
A. APPENDIX A: EXAMPLE OF UNIFORM GUIDELINES SURVEY INSTRUMENT . . . . .	163
B. APPENDIX B: INTRODUCTORY LETTER FORWARDED TO ORIGINAL SAMPLE . . . . .	170
C. APPENDIX C: EXAMPLE POST CARD USED IN MAILING TO ORIGINAL SAMPLE . . . . .	171
D. APPENDIX D: LETTER TO 230 PARTICIPATING PLACEMENT DIRECTORS . . . . .	172
E. APPENDIX E: EXAMPLE OF FOLLOW-UP (REMINDER) POST CARD . . . . .	173
F. APPENDIX F: FOLLOW-UP LETTER OF APPRECIATION TO RESPONDENTS . . . . .	174
G. APPENDIX G: VIRGINIA FOUR-YEAR INSTITUTIONS IN PILOT STUDY . . . . .	175
H. APPENDIX H: LETTER FORWARDED TO VIRGINIA COLLEGES IN PILOT STUDY . . . . .	176
VITA OF JAMES LEE MCBRIDE, JR. . . . .	177

LIST OF TABLES

Table	page
1. Descriptive Statistics on Interval Level Variables	117
2. Prohibitive & Neutral Interview Selection Criteria	119
3. Prima Facie Factors of Interview Selection Criteria	120
4. College Placement Officers Familiarity with Uniform Guidelines . . . . .	124
5. T-Tests on Staff Adequacy and Perceived Resource Needs . . . . .	132

LIST OF FIGURES

Figure	page
1. Research Design for Survey Research Question 1 . . .	27
2. Research Design for Survey Research Question 2 . . .	28
3. Extent of Legal Compliance . . . . .	41
4. Change Toward Compliance . . . . .	42
5. Historical Development of Discrimination in Employment Opportunities . . . . .	51
6. Placement Interview Selection Procedures . . . . .	103
7. Bar Graph of enrollments for first sample . . . . .	113
8. Bar Graph of enrollments for final mailing . . . . .	115
9. Graphs of Linear Trends . . . . .	128
10. Histogram of Respondents Perceived Needs . . . . .	131



## Chapter I

### INTRODUCTION

#### OVERVIEW

On August 25, 1978, the Equal Employment Opportunity Commission (EEOC), the Civil Service Commission, the Departments of Labor and Justice, the Office of Revenue Sharing, and the Treasury Department jointly issued The Uniform Guidelines on Employee Selection Procedures (43 Federal Register 38290 et seq., and herein Uniform Guidelines). The Uniform Guidelines "are designed to aid in the achievement of our nation's goal of equal employment opportunity without discrimination on the grounds of race, color, sex, religion, or national origin" (44 FR 11996). The basic principle of the Uniform Guidelines was adopted by the United States Supreme Court in the case, Griggs v. Duke Power Co. (401 U.S. 424, 1971), and has since been ratified and endorsed by Congress with the passage of Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972. In Griggs v. Duke Power Co. the Supreme Court said:

The objective of Congress in the enactment of Title VII is plain from the language of the statute. It was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on

their face, and even neutral in terms of intent, cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices (p.853).

The Uniform Guidelines are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards in complying with the Federal laws which prohibit discrimination in employment practices. More specifically, the Uniform Guidelines provide a framework for determining the proper use of tests and other procedures in employment selection decisions. Employment selection decisions:

[I]nclude but are not limited to hiring, promotion, demotion, membership (for example, in a labor organization), referral, retention, and licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law (43 FR 38296).

In general, the Uniform Guidelines state that no employee-related selection procedure should be practiced by a user in making an employment decision if it has an adverse impact on minorities and/or women, unless the selection procedure has been validated, and the user has searched for but found no alternative selection procedure with equal or better validity but with less of an adverse impact.

The intent of the Uniform Guidelines is to cover all users of employment selection procedures, including employment agencies, who are subject to Federal equal employment

opportunity law. The term employment agency as defined in 42 United States Code s 2000e (c) means "any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person". In Kaplowitz v. University of Chicago (387 F. Supp. 42, 1977), the United States District Court said:

We agree with plaintiffs [twelve female graduates of the law school] that a liberal construction of the term employment agency is required to best effectuate the purposes of Title VII, and that the Placement Office of the University of Chicago Law School is within the scope of the definition (p. 46).

College and university placement offices (herein college placement offices) and similar organizations may or may not be subject to compliance with the Uniform Guidelines depending on the services they offer. According to the Federal Register Vol. 44 (March 2, 1979), "If a placement office uses a selection procedure which selects some students for referral to an employer and rejects others, it is covered." On the other hand, "if the placement office refers all interested students to an employer, it is not covered, even though it may offer office space and provision for informing the students of job openings" (p. 11997).

PROBLEM

Traditionally, many college placement offices accommodated employers by reviewing interview schedules and eliminating or screening the names of students who failed to satisfy certain employer-specified criteria. Examples of employer-specified criteria include sex, ethnic origin, academic majors, and grade point averages. The problem arises when placement offices establish selection procedures which identify these criteria as prerequisites to interviewing by employers. If these procedures have an adverse impact on the selection and referral of minorities and/or women, they are in noncompliance with the Uniform Guidelines.

According to Issie L. Jenkins, Acting General Counsel of the EEOC, in the process of screening students from interview schedules, "college placement offices are, in effect, selecting some candidates for referral and rejecting others" (Jenkin's letter, June 4, 1979, p. 5). Jenkins further stated that college placement offices are covered as "users" under the Uniform Guidelines, and therefore, "if the criteria on which this selection procedure is based result in adverse impact [upon the referral of minorities and women], the placement office must either validate the criteria or eliminate the adverse impact" (p. 5). Regarding these statements, Lynne Davis Battle, the College Placement

Council's Manager of Government and Legal Affairs, has said "potentially serious legal problems are posed if a placement office utilizes a schedule which is restricted [closed] and filled by the employer on the basis of racial, sexual, religious, or national origin factors" ( Spotlight, October 1980, p. 4). The body of equal employment opportunity law specifically prohibits placement offices from using these criteria to establish restricted interviewing schedules.

A distinction is made between the use of the above prohibited criteria in establishing restricted schedules and the use of such "neutral criteria" as academic majors and grade point averages in establishing partially restricted schedules. It is assumed that interview schedules filled on the basis of neutral criteria pose fewer risks than those filled on the basis of prohibited criteria. "In pointing out this distinction," Battle (1980) stated, "the intent is not to suggest in any way that the use of a partial restricted schedule filled on the basis of neutral criteria is risk free" (p. 4).

These interpretations of the Uniform Guidelines present a problem which strikes at both the economics and the operational philosophy of college placement offices. According to Battle (1979) "a college placement office cannot afford to validate or to possess evidence of validation selection

criteria for thousands of jobs and employers" ( Spotlight, February 1979, p. 4). In accordance with the Uniform Guidelines, college placement offices could utilize employer validity studies; however, "they would still be required to have evidence that the selection procedure had been validated and furthermore, the placement office would still be held accountable if the employer's validation did not comply with the Guidelines" (Battle's letter, April 3, 1979, pp. 2-3). In either case, the resulting impact on college placement offices would impose a substantial financial burden.

At the same time, it would be economically unfeasible for employers to utilize a college placement office if they could not interview students who were qualified for the positions they have available. Jesse M. Smith, Executive Director of the College Placement Council, Inc. commented:

Companies are becoming cost- and result-oriented in regard to recruiting activities. More data are being collected and better records are being maintained, enabling firms to assess results in terms of dollar expenditures. This has led to increased awareness, fewer schools visited, greater emphasis on preselection activities, and more precise specification of the types of candidates being sought (1979, p. 22).

Placement interview selection schemes, such as random interview selection or first come -- first served scheduling, might not assist employers, and might lead them to seek more

cost-effective methods of interviewing student candidates. To this end, employers might decide to cease using the services which could be a genuine problem to the continued operation of many college placement offices.

The legal ramifications for college placement offices which fail to comply with the Uniform Guidelines are defined in "Questions and Answers on Uniform Guidelines on Employee Selection Procedures". As "users", placement personnel "who continue the use of a selection procedure with an adverse impact until the procedure is challenged increase the risk that they will be found to be engaged in discriminatory practices" (44 FR 12002). If adjudged to be in noncompliance, possible liabilities include payment of plaintiff's attorney's fees, and loss of Federal contracts, subcontracts or grants (p. 12002). These possible ramifications could extend beyond the placement office to the entire college or university community.

#### PURPOSE STATEMENT

The purpose of this study was twofold. First, the study was designed to disclose, from a historical perspective, the legislative and legal developments which culminated in the issuance of the Uniform Guidelines on Employee Selection Procedures. More specifically, the focus of this

historical perspective will traced the legislative and legal implications for college placement offices. Secondly, the study was designed to analyze the impact of the Uniform Guidelines, and subsequent court decisions, on the recent past, current, and near future policy decisions of college placement offices. The purpose of this analysis was: (1) to assess the degree with which a sample of college placement offices' policies on interview selection procedures are in compliance with the Uniform Guidelines; and, (2) to determine if college placement offices' policies on interview selection procedures are in a period of change as a result of the Uniform Guidelines.

#### SIGNIFICANCE

This study had significance for two reasons. First, was to assess the awareness of college placement personnel regarding current and potential implications of the Uniform Guidelines. These laws have been adopted for the purpose of aiding "in the achievement of our nation's goal of equal employment opportunity without discrimination on the grounds of race, color, sex, religion or national origin" (44 FR 11996). The legal and ethical purposes of college placement offices have been mandated to be consistent with the intent of equal employment opportunity law.



The concern here did not involve the quality or quantity of services placement offices provide for their constituents. Rather, the concern involved the procedural or operational manner by which certain of these services are delivered to constituents. It was in this regard that a thorough examination of current and potential implications of the Uniform Guidelines was significant.

A second reason for significance was to examine the extent to which college placement personnel were in compliance with the Uniform Guidelines. It was conceivable that the interview selection policies and procedures of some placement offices were in compliance with the law, whereas others were in question, and still others were in noncompliance. It was also conceivable that some college placement personnel were cognizant of the law and had changed or anticipated changing their interview selection procedures bringing them more into compliance.

#### RESEARCH QUESTIONS

The major research questions to be investigated in this study were: (A) What relevant legal developments can be associated with the federal Uniform Guidelines on Employee Selection Procedures?; and, (B) What are the effects of the Uniform Guidelines on the student interview selection and

referral procedures operating in contemporary college placement offices? As a means of answering these major questions, the following questions were also investigated:

1. What have been the major laws and court cases leading to the issuance of the Uniform Guidelines on Employee Selection Procedures?

2. In what ways have equal employment opportunity laws been interpreted to be applicable to college placement offices?

3. How do the interview selection criteria (screening and referral procedures) operating in selected college placement offices have an adverse impact on the employment opportunities of members of any minority or sex?

4. To what extent are college placement offices' policies on interview selection procedures in compliance with the Uniform Guidelines?

5. Are college placement office policies on interview selection procedures in a period of change as a result of the Uniform Guidelines?

#### METHODOLOGY

Two methods of research used in this study were: (1) legislative analysis and legal research as defined by Stat-sky (1975) and Cohen (1976); and, (2) survey research as

defined by Kerlinger (1973). Statsky (p. viii) stated that "individuals involved with the law should be able to go to the primary source material of statutes and regulations in order to assess whether they apply, and in order to apply them intelligently". Cohen (p. xv) defined legal research as a methodology and the techniques for using published sources of the law.

Kerlinger (1973) stated, "survey research studies large and small populations (or universes) by selecting and studying samples chosen from the populations to discover the relative incidence, distribution, and interrelations of sociological and psychological variables" (p. 411). The present study focused primarily on psychological variables which Kerlinger defined as "attitudes and opinions, on the one hand, and behavior, on the other" (p. 411).

The survey instrument for this study was designed with two objectives in mind. They were: (1) to assess the degree with which a sample of college placement office policies on interview selection procedures are in compliance with the Uniform Guidelines; and, (2) to determine if college placement office policies on interview selection procedures are in a period of change as a direct result of the issuance of the Uniform Guidelines. Both the legislative and legal, and the empirical research methodologies are

described in detail in Chapter II. A glossary of legislative and legal terms pertaining to this investigation will be included.

#### DELIMITATIONS OF THE STUDY

1. To date, no student has alleged a claim of discrimination against a college placement office on the basis of the Uniform Guidelines. Therefore, court opinions addressing the specific problem were nonexistent.

2. The major emphasis was on the legislative and legal developments since 1964.

3. Survey research has certain limitations.

4. Crossbreaks are not truly a statistical technique, but a method of data display which facilitates analysis.

#### CHAPTER SUMMARY

The Uniform Guidelines were developed to assist various organizations in complying with the federal laws which prohibit discrimination in employment practices. Certain of these practices have been interpreted by administrative regulatory agencies and by the courts as being applicable to college placement offices. This application tends to inhibit a relationship which has existed between placement personnel, and recruiting employers for many years. Employers

seek qualified candidates for employment and placement personnel accommodate the employers' needs by restricting interview schedules to only those students who meet specified qualifications. In so doing, placement personnel are making employment selection decisions within the scope of civil rights laws, and thus increase the probability of their involvement in future litigation. Placement personnel need to be aware of the statutory laws, court decisions, and administrative regulations which influence and prescribe the legal boundaries of their operating procedures.

#### ORGANIZATION OF THE STUDY

Chapter I includes an introduction, statement of the problem, purpose of the study, significance of the study, research questions, a brief statement about the methodology, delimitations of the study, and a summary. Chapter II describes the methodology. Chapter III incorporates a review of the professional literature with the legislative and legal research described in Chapter II. Chapter IV reports the findings of the survey research described in Chapter II. Chapter V provides a summary, discussion of the findings, and recommendations.

## Chapter II

### METHODOLOGY

#### OVERVIEW

Two research methods were used in this study. The first part of this chapter will discuss the procedures related to materials used in legislative analysis and legal research. The second part of the chapter will describe the survey research methodology used.

#### PART I. DEFINITION AND CONCEPT

The research methodology for the historical perspective of this investigation was legislative analysis and legal research as defined by Statsky (1975) and Cohen (1976). Statsky (p. viii) explained that "individuals involved with the law should be able to go to the primary source material of statutes in order to assess whether they apply and in order to apply them intelligently". Cohen (p. xv) stated that "legal bibliography is the description of the published sources and materials of the law," and further, that "legal research is the functional counterpart of legal bibliography -- it consists of the techniques and methodologies for using the published sources effectively and efficiently."

In this study, the scope of legislative analysis and legal research included congressional statutes, federal administrative agency regulations, court opinions, administrative agency decisions, and the United States Constitution. Laws that are passed by Congress are called statutes and according to Statsky (p. 2) "most, but not all, of statutory law deals with the conduct of government agencies". Administrative agencies are created to administer the statutes of legislatures. Gellhorn and Byse (1970) explained that several factors have led to the choice of administrative over the judicial or legislative and include: "(1) the need for expertness, (2) the need for specialization and continuity, (3) the desirability of sympathetic administration", and to those they added a fourth, "the tremendous volume of cases to be decided" (p. 6). In order to administer more effectively legislative statutes, administrative agencies write laws of their own called regulations. These regulations are "like" or "similar to" statutes and are often referred to as quasi-legislation.

The judicial branch of the government is comprised of the system of courts. In resolving or adjudicating disputes, the courts write laws in the form of judicial opinions. Statsky (p. 4) commented that "one of the frequent controversies before the courts that must be adjudicated is

whether or not statutes were intended by the legislature to apply to facts not anticipated by the legislature or not specifically mentioned in the language of the statute." There is a fourth kind of law, similar to the case law of judicial opinions, which is written by the judicial branches of administrative agencies. This law is referred to as administrative decisions. When administrative agency officers conduct hearings and write administrative decisions, they are said to be exercising their quasi-judicial powers. This power of quasi-adjudication does not represent the final say on the legislative intent of a statute. Parties who are dissatisfied with an administrative decision have the right of appeal to the appropriate courts.

The fundamental legal document of our society is the Constitution of the United States. Alexander and Solomon (1972) defined a constitution as "a body of precepts providing a framework of law within which orderly governmental processes operate" (p. 1). The Constitution of the United States established our form of government and, in Article V, provides "a process for proposing amendments by a two-thirds vote of each house of Congress or by a convention which shall be called by Congress upon application by two-thirds of the state legislatures" (p. 2).



As an example, consider the Constitution and amendments, various legislative statutes, judicial decisions, administrative regulations and decisions that relate to the present study. Under the Equal Protection clauses of the United States Constitution are the Fifth Amendment (prohibiting denial of Equal Protection by the Federal government) and the Fourteenth Amendment (prohibiting denial of Equal Protection by State governments or an arm of the state such as a state university). To further define these Amendments, Congress passed Title VII of the Civil Rights Act of 1964 which prohibits discrimination in employment on the basis of race, religion, color, sex or national origin. A series of disputes arose over the passage of this statute and the courts set about their task of interpreting and defining the law. In 1971 the United States Supreme Court handed down a landmark judicial decision in Griggs v. Duke Power Co. (401 U.S. 424) which established the plaintiff's prima facie case by stating that an employment practice, procedure or test, even though neutral on its face and neutral in its intent, that operates to exclude a disproportionate number of persons in a protected group (e.g., women or Blacks) is unconstitutional. Subsequent court decisions led to the adoption by administrative enforcement agencies (Department of Labor, Office of Personnel Management, EEOC, et al.) of

the Uniform Guidelines on Employee Selection Procedures. The present study, therefore, deals primarily with the legislative and judicial implications of that administrative regulation.

### PROCEDURE

Although there appears to be a clear division in the sense that the legislative bodies pass the statutes and the courts interpret them, Statsky (p.21) points out that in reality the relationship is much more complex. The complexity arises out of the need to determine legislative intent given the ambiguity of legislative language. Judges, in writing their opinions, must do their best "to uncover the intention of the statute on the basis of what the words of the statute appear to mean and on the basis of nonbinding principles of or aids to construction" (p. 22).

Among the techniques of legislative analysis, Statsky (1975) listed the following:

1. To identify the problem or evil that the authors of the legislation were probably trying to solve (pp. 64-82).
2. To identify the audiences and by implication the non-audiences of the legislation: expressio unius est exclusio alterius (pp. 83-98).

3. To identify, in the statute or regulation, a list of persons or events to which the legislation applies: eiusdem generis (pp. 99-105).
4. To determine whether the person or entity identified in the statute or regulation must do what the legislation states, or whether a choice is involved: mandatory vs. discretionary language (pp. 106-116).
5. To determine if preconditions to the applicability of the legislation or parts of it exist (pp. 117-122).
6. To determine what certain words, phrases, or clauses modify and mean (pp. 123-136).
7. To determine if the statute or regulation is prospective or retrospective (retroactive) in application (pp. 137-139).
8. To interpret an administrative regulation by interpreting the statute on which it is supposedly based (pp. 140-159).

Cohen (1976) stated that one of the major elements which shapes legal research techniques is stare decisis, the

fundamental doctrine that precedents should be followed (p. 4). Cohen (p. 5) explained:

The doctrine embraces the concept of fairness, the feeling that people similarly situated should be similarly dealt with, and that judgments should be consistent, rather than arbitrary, so that one may predict the consequences of contemplated conduct by reference to the treatment afforded similar conduct in the past.

Accordingly, to effect competent legislative analysis and legal research, the researcher must locate and analyze the text of the statute or regulation applicable to the problem; then research the judicial opinions which have been interpreted and applied to the legislative enactments in order to determine the court's understanding of the statute's terms. Cohen (p. 6) commented, "it is the court's interpretation of the statute, rather than the naked statutory language, which is binding under the doctrine of stare decisis."

The researcher, having located and analyzed appropriate legislative and legal sources, must employ a technique to determine if any recent changes have occurred in the statute, regulation, or court decision. Shepard's citations system provides a history of reported cases which enables the researcher to evaluate the present day worth of a judicial decision. Likewise, the system provides a history of statutory laws which "must be checked to ascertain whether it [the statute] has been amended, repealed or superseded by

subsequent legislative action or been affected by any judicial interpretation" (Cohen, 1976, p. 161).

### MATERIALS

The second major element identified by Cohen (1976) which shapes the methods of legal research "is the organizational structure of published legal materials" (p. 2). Both legislative analysis and legal research utilize search books to locate primary and secondary sources of the law. This legal bibliography mentioned by Cohen is divided into four components. They are: (1) primary sources; (2) finding tools; (3) secondary sources; and, (4) nonlegal research sources.

### Primary Sources

Cohen (p.3) considered statutes, judicial opinions and administrative regulations and adjudications as the primary sources of the law. This investigation used the research techniques previously described to report findings from the following primary sources related to the problem: (1) court decisions; (2) statutes enacted by the United States Congress; and, (3) regulations from federal administrative agencies.

### Finding Tools

Cohen (p. 11) described the need for finding tools as a method of subject access to the primary sources. He included in this category digests, codes, indexes, and encyclopedias. The American Digest System, United States Code Annotated, Corpus Juris Secundum, American Jurisprudence, and American Law Reports, Annotated are specific examples of finding tools.

### Case Finders

A major subject finding tool for case law in this study was the American Digest System published by the West Publishing Company. Cohen (1976) described this system as constituting "the most comprehensive index to judicial opinions available" (p. 53). The American Digest System is divided into nine segments according to dates. For the purpose of this investigation, a search was made of the Seventh Decennial Digest (1956-1966) to the present, General Digest 4th Series.

Talbutt (1979) explained that cases published in the National Reporter System are arranged by appropriate topics in the digest system. Thus, by using the cross reference system, the researcher may locate a desired topic in the American Digest System and be referred to the case reported in full in the National Reporter System.

Cohen (1976) cited three research methods for using the West Digest System: "the fact or descriptive word approach, the topical approach, and the case method" (p. 63). In the first approach the researcher determines the choice words and phrases to be searched in the Descriptive Word Index and locates cases described by similar words. The topical approach is useful when the researcher knows one or more of the major digest topics that are relevant to his/her problem. At the beginning of each digest volume is a list of topics and the researcher simply needs to turn to the desired topic. The case method allows the researcher to obtain the full citation of a case when the correct name of the case is known.

Two legal encyclopedias, American Jurisprudence and Corpus Juris Secundum were used in this study to locate relevant case citations. Each consists of over 400 alphabetically arranged topics or titles. Although the text of each title located at the upper part of the encyclopedia page is considered a secondary authority, Cohen (1976) noted "the footnote citations are indexes to primary authorities such as cases and statutes and to additional secondary authorities" (p. 265). Another finding tool utilized was the American Law Reports, Annotated. Similar to the American Digest System, the American Law Reports volumes provide

"a thorough and orderly discussion of a point of law based upon all the cases on the subject" (p. 40).

#### Statute and Regulation Finders

Statutes represent another primary source of the law. Statutory research (legislative analysis) in the present study involved some examination of early civil rights legislation. Cohen (1976) reported that "subject access to statutes is provided not by digests, but by codes" (p. 13). The appropriate sources for this search included Statutes at Large (the official form of federal statutory law), the United States Code, and United States Code Annotated.

The other primary sources of the law are the rules and regulations of administrative and executive agencies. The powers of administrative agencies were described previously as quasi-legislative and quasi-judicial. Cohen (1976) noted, however, that "the unique social, economic and legal force of this lawmaking and adjudication cannot be doubted" (p. 220). The appropriate sources used in this study included the Federal Register and the Code of Federal Regulations.



### Secondary Sources

Cohen (1976) stated, "under the doctrine of stare decisis only statutes and judicial opinions are authoritative, in that they are binding within the jurisdictions in which they apply" (p. 14). Secondary sources, such as treatises, legal periodicals and textual treatments of the law are not authoritative, and therefore, not binding on anyone. Cohen (p. 14) concluded that "legal arguments based upon the primary sources of the law, therefore, may be strengthened and supported by the citation of secondary materials." The Index to Legal Periodicals and the Index to Periodical Articles Related to Law were two examples of tools used to locate secondary sources.

### Nonlegal Research Sources

For many years the trend in legal opinion writing has been to cite only legal authorities. Cohen (1976) commented, "recent studies have noted the marked increase in the volume of nonlegal sources by the courts, and have concluded that lawyers must increasingly do research in the literature of other disciplines than law" (p. 15). General reference works, periodicals and newspapers, and dissertations and theses are examples of nonlegal sources. The nature of the present investigation necessitated an examina-

tion of nonlegal sources, especially the appropriate business and educational periodicals.

## PART II. DEFINITION AND RATIONALE

Kerlinger (1973) stated, "survey research studies large and small populations (or universes) by selecting and studying samples chosen from the populations to discover the relative incidence, distribution, and interrelations of sociological and psychological variables" (p. 411). The policy analysis survey in this investigation focused primarily on psychological variables which Kerlinger defined as "attitudes and opinions, on the one hand, and behavior, on the other" (p. 411).

Two objectives formed the basis of the rationale for the policy analysis survey research. They were: (1) to assess the extent with which a sample of college placement offices policies on interview selection procedures are in compliance with the Uniform Guidelines; and, (2) to determine if college placement offices' policies on interview selection procedures are in a period of change as a result of the Uniform Guidelines.

Figures 1 and 2 below are included to illustrate the strategy that relates to the survey research design. Following the Figures is a discussion of the rationale for the selection of the survey variables involved in the study.

Survey Research Design

RESEARCH QUESTION: To what extent are college placement offices' policies on interview selection procedures in compliance with the Uniform Guidelines?

Survey Variables	Corresponding Survey Items
(1) The prohibitive placement offices' policies on interview selection procedures which have been determined to be discriminatory practices within the Uniform Guidelines including the currently operating policies regarding sex, race, color, religion, and/or national origin.	Items 8, 9, 10, 11, and 12
(2) The neutral placement offices' policies on interview selection procedures which have been implied to be discriminatory practices within the Uniform Guidelines including the currently operating policies regarding academic major, grade point average, and/or degree level.	Items 13, 14, and 15
(3) The placement offices' written and/or verbal understanding of policies on interview selection procedures which, as <u>prima facie</u> evidence, comply with the Uniform Guidelines including policy statements regarding validation studies or assistance in voluntary or mandatory EEO affirmative action programs.	Items 4, 5, and 16

Figure 1: Survey Research Design for Research Question Re: Compliance with Uniform Guidelines.

Survey Research Design

RESEARCH QUESTION: Are college placement offices' policies on interview selection procedures in a period of change as a result of the issuance of the Uniform Guidelines?

Survey Variables	Corresponding Survey Items
(1) Indication and description of placement offices' policy changes on interview selection procedures since the enactment of the Uniform Guidelines which demonstrate movement toward compliance.	Item 17
(2) Indication and description of anticipated placement offices' policy changes on interview selection procedures which demonstrate movement toward compliance with the Uniform Guidelines.	Item 18

Figure 2: Survey Research Design for Research Question Re: Change Toward Compliance

## DESIGN

### Survey Variables

The policy analysis survey instrument (see Appendix A, Uniform Guidelines Survey Instrument) was designed with several objectives in mind. Two objectives of the survey were identified above. The third objective occurred by means of a series of demographic items (questions and statements) intended to identify certain characteristics of specific segments of the sample.

Two survey research questions were identified in this part of the study. The first survey research question was: To what extent are college placement offices' policies on interview selection procedures in compliance with the Uniform Guidelines? Three survey variables which served to answer this question included: (1) the prohibitive placement offices' policies on interview selection procedures which have been determined to be discriminatory practices within the Uniform Guidelines; (2) the neutral placement offices' policies on interview selection procedures which have been implied to be discriminatory practices within the Uniform Guidelines; and, (3) the placement offices' policies on interview selection procedures which, as prima facie evidence, comply with the Uniform Guidelines.

The descriptive measurement of this survey research question was accomplished in three ways. First, the currently operating prohibitive policies regarding sex and/or minority status were measured. The Uniform Guidelines state that practices involving selection and referral on the basis of sex and/or minority status are discriminatory, in noncompliance, and thus prohibitive. For the purposes of the study, sex referred to women, and minority status referred to individuals who are members of a protected race, color, religion, and/or national origin. National origin and citizenship status are not synonymous concepts. National origin refers to United States citizens who are of a foreign descent. Citizenship status refers to several classifications of persons, and includes United States citizens, persons with permanent visa status, and persons with student visa status. Whereas discriminatory practices on the basis of national origin are prohibited and in noncompliance with the Uniform Guidelines, practices involving the selection and referral of a specified status of persons on the basis of citizenship is not prohibited.

Secondly, the currently operating policies regarding the use of neutral selection criteria by college placement offices was measured. The specific use of "neutral criteria" (e.g., academic majors, grade point averages, and

degree levels) in college placement office screening and referral practices were, as yet, untested with regard to the Uniform Guidelines. The assumption was that their use presents less of a risk. However, the body of related law regarding the use of tests and other procedures as criteria in employment decisions led the researcher to make no such assumptions about risk.

The third survey variable to be measured was the currently operating college placement office policies on interview selection procedures which, as prima facie evidence, comply with the Uniform Guidelines. First, a college placement office is required, according to the Uniform Guidelines, to validate its own interview selection and referral criteria; or, to have in its possession the validation studies of employers who have requested that certain classifications of students be screened from their interview schedules. Although this is regarded as a somewhat impractical solution, it is a viable alternative. Secondly, an exception to the use of prohibitive and neutral criteria is made in the Uniform Guidelines. The law does not "preclude the use of selection procedures, consistent with Federal law, which assist in the achievement of affirmative action objectives." A "user" may utilize prohibitive or neutral practices in a voluntary or mandatory effort to comply with

equal employment opportunity (EEO) laws. Thus, it appeared that placement personnel, in providing this assistance to employers, "may be race, sex, or ethnic-conscious in taking appropriate and lawful measures to eliminate adverse impact from selection procedures" (44 FR 12001). Both validity studies and EEO programs remain prima facie evidence until they are adjudicated by a court or administrative agency.

Additionally, it should be explained that potentially all placement interviewing procedures could comply with the Uniform Guidelines. These procedures must not involve, however, the selection of students for interviews on the basis of prohibitive or neutral criteria. Each student in the interview process must be treated equally and neutrally. By design and execution, several placement interviewing procedures are more inclined to be void of selection criteria [e.g., random (lottery) procedures], whereas others must be more closely examined. Therefore, the determination of the fourth research question rested, in part, on the added factor of this interrelationship between operating interview procedures and the survey variables described above.

The second survey research question was: Are college placement offices' policies on interview selection procedures in a period of change as a direct result of the issuance of the Uniform Guidelines? Two survey variables



included: (1) documented placement offices' policy changes on interview selection procedures since the enactment of the Uniform Guidelines which demonstrate movement toward compliance; and, (2) anticipated (expected) placement offices' policy changes on interview selection procedures which demonstrate movement toward compliance with the Uniform Guidelines.

The descriptive measurement of this survey research question was accomplished in two ways. First, placement personnel were asked to respond to a survey item which demonstrated that they had changed their policies on interview selection procedures since the enactment of the Uniform Guidelines. To confirm whether each policy change had brought them more into compliance, they were asked to describe briefly their current policies. Secondly, placement personnel were asked to respond to an item which indicated whether they anticipated or expected their offices' policies on interview selection procedures to change. Again, this was intended to measure movement toward compliance with the Uniform Guidelines. To confirm whether the anticipated policy change brought them more into compliance, respondents were asked again to describe briefly their expected policies on interview selection procedures.

A third objective of the study was to determine how the respondents to the research questions above were related to certain demographic data. Several sources were identified for the determination of the demographic information. Among them were:

1. Resources needed by placement personnel to conduct validation studies.
2. Primary informational sources of placement personnel re: Uniform Guidelines.
3. Various classifications of placement offices and their personnel.
4. Currently operating placement interview selection procedures.

### Applications

The first perceived application of this methodology was to address the two survey research questions. Responses to the survey instrument were analyzed on both individual and collective item bases. This analysis allowed for the operating selection practices to be described on the basis of compliance and changes toward compliance. The specific procedures of analysis are discussed in a latter section of this chapter.

A second application of the survey was to furnish to the respondents a partial summary of the results. By design, the cover letter accompanying the survey form

offered each respondent the opportunity to designate whether they would like to receive this partial summary. If they indicated that they would, the researcher mailed to them a summary analysis on the compliance trends of other institutions with which they shared similar characteristics. Determination of the similarity of characteristics among institutions was accomplished by means of the sampling procedure, and by responses to certain of the demographic items. Additionally, the mailing included examples of specific interview selection procedures which meet or exceed the compliance requirements of the Uniform Guidelines.

#### QUESTIONNAIRE CONSTRUCTION

The mailed questionnaire used in the current investigation was entitled "The Uniform Guidelines On Employee Selection Procedures in College and University Placement Offices" (Appendix A). The rationale for the organization, design, and procedural aspects of the instrument were derived from Dillman's (1977) "Total Design Method". Dillman stated that the researcher must accomplish three essential tasks to maximize responses to mailed surveys. They are: (1) minimize the costs for responding; (2) maximize the rewards for doing so; and, (3) establish trust that those rewards will be delivered (p. 12).

In the current study, the only cost borne by each respondent was the amount of time needed to complete certain information requested. All postage costs were the responsibility of the researcher. Additionally, return-addressed envelopes were provided to respondents whenever necessary.

The reward or "social usefulness" of the questionnaire was established in primarily two ways. First, the implications of the federal legislation under study was of importance to many college placement personnel. Thus, their participation in the research would have some intrinsically professional rewards. Secondly, this researcher's offer to share with the respondents a summary profile of the results served as a reward for their participation. All placement directors who indicated their desire to review the findings were provided the summarized results.

Two aspects of the study attempted to establish trust in the respondents. First, and near the latter stages of its development, the questionnaire was piloted among eight (8) placement directors at institutions of various size and academic emphasis within the Commonwealth of Virginia (see Appendix G, Institutions Included in Pilot Study). Their input into the revisions of the final draft was considered, and their qualitative comments communicated to the respondents who comprised the initial sample. Secondly, and

approximately one month after data analysis began, the researcher mailed a follow-up letter to those respondents who requested summary profiles (see Appendix F, Follow-up Letter of Appreciation). This letter extended to the respondents the researcher's appreciation for their participation and a brief review of some early findings (e.g., total participants, response rates, etc.). Once the study was completed and accepted, a more formalized letter and summarized packet of results was forwarded.

Dillman (1977) reported rather impressive response rates to forty-eight (48) mailed survey questionnaires which employed his "Total Design Method" either in part or completely (pp. 21-25). He stated that "the average response rate for the 48 surveys was 74 percent", and "that no survey obtained less than a 50 percent response rate" (p. 21). The organization and design of the survey instrument used in this study attempted to replicate Dillman's "Total Design Method". Procedurally, Dillman's suggested mailing and follow-up steps were implemented with one exception. That is, the instrument was not re-mailed to non-respondents. Due to the confidentiality promised all participants, the researcher had no way of identifying those who chose not to respond.

### SAMPLING PROCEDURE

The target population for this study was the career planning and placement offices at four-year institutions of higher education in the United States that were listed in the 1980-1981 Directory of Career Planning and Placement Offices published by the College Placement Council, Inc.

Hinkle, et al. (1979) defined a simple random sample as "a sample selected in such a way that (1) each member or element of the population has an equal probability of selection and (2) all members of the sample are selected independently of one another" (p. 123). Ary, et al. (1972) explained that "[w]hen a researcher employs this method, he is committing himself to selecting a sample in such a way that his biases are not permitted to operate" (p. 163).

Due to the legalistic nature of the current study, the random sampling involved a two-part procedure. In the first procedure, five hundred (500) four-year institutions were drawn randomly (without replacement) from the listing in the College Placement Council's directory. The Career Planning and Placement directors of these institutions were mailed a cover letter which explained the nature of the study (Appendix B). Attached to the cover letter was a return-addressed and postage-paid post card (Appendix C). If the director decided to participate in the study, s/he completed the information requested and returned the post card.

From the number of returned post cards, some determination was made regarding which institutions would comprise the final sample (mailing). If two hundred and fifty (250) or less directors decided to participate, all respondents were included in the final mailing. If many less than two hundred (200) directors decided to participate, another random sample would be drawn, and the first part of the sampling procedure would be repeated.

In the second part of the sampling procedure, those directors who decided to participate were mailed another cover letter (see Appendix D), and the questionnaire, along with a return-addressed and postage-paid envelope. Approximately ten (10) days after this mailing, a reminder post card was forwarded to all participants who had not requested a summary profile of the results (Appendix E). Again, one week later, a second reminder post card was forwarded.

### ANALYSIS

Analysis of the two survey research questions and the demographic survey items was accomplished by means of the Statistical Package For The Social Sciences or SPSS (Nie, et al., 1975). The descriptive measurement design for the first survey research question (i.e., extent of compliance) required the development of a computational formula. The

descriptive measurement design for the second survey research question (i.e., change toward compliance) was based on both the indication and description of respondent's operating procedures. These descriptive measurement designs are illustrated in Figures 3 and 4 below.



Descriptive Measurement Design for Extent of Compliance

	Prohibitive Criteria			Neutral Criteria			Validation/EEO Criteria	
	Yes	No		Yes	No		Yes	No
Sex	Item 8	Item 8	Academic major	Item 13	Item 13	Placement validation	Item 4	Item 4
Race	Item 9	Item 9		Grade point average	Item 14		Item 14	Employer validation
Color	Item 10	Item 10	Degree level		Item 15	Item 15	EEO programs	
Religion	Item 11	Item 11						
National origin	Item 12	Item 12						

SUMMARY TABLE

	Compliance	Noncompliance
Prohibitive Criteria	Items 8-12 "No"	Items 8-12 "Yes" to any
Neutral Criteria	Items 13-15 "No"	Items 13-15 "Yes" to any
Validation/EEO Criteria	Items 4, 5, 16 "Yes" to any	Items 4, 5, 16 "No" to all

Figure 3: Descriptive Measurement Design for Research Question Re: Compliance with Uniform Guidelines.



**Descriptive Measurement Design for Policy Changes**

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**Research Question BY Compliance with Uniform Guidelines**

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	Compliance	Noncompliance
<b>DOCUMENTED CHANGE</b>	Item 17 -- Indication and description of policy changes on selection procedures since the enactment of the Uniform Guidelines which demonstrate movement toward compliance.	Item 17 -- Indication and description of policy changes on selection procedures since the enactment of the Uniform Guidelines which demonstrate movement away from compliance.
<b>ANTICIPATED CHANGE</b>	Item 18 -- Indication and description of anticipated policy changes on selection procedures which demonstrate movement toward compliance.	Item 18 -- Indication and description of anticipated policy changes on selection procedures which demonstrate movement away from compliance.

**Figure 4 : Descriptive Measurement Design for Research Question Re; Change Toward Compliance**

Additional analyses on the survey research questions and on the other demographic survey items was performed using four standard SPSS programs. These programs were: Subprogram Frequencies (pp. 181-202); Subprogram Crosstabs (pp. 218-248); Subprogram T-Test (pp. 267-275); and, Subprogram Oneway (pp. 422-433). Subprogram Frequencies provides information on the distributional characteristics of a variable, as well as some summary statistics. Subprogram Crosstabs "computes and displays two-way to n-way crosstabulation tables for any discrete variables..." (p. 218). Additionally, Crosstabs provides statistical analysis of joint frequency distributions by certain tests of significance (e.g., the chi-square statistic). Subprogram T-Test "provides the capability of computing Student's  $t$  and probability levels for testing whether the difference between two sample means is significant" (p. 267). Finally, Subprogram Oneway permits analyses of variance for factorial designs where the researcher "is limited to problems involving only one independent variable" (p. 422). Subprogram Oneway also provides an optional test for linear trends across the categories of the independent variable.

Additionally, the researcher performed an SPSS List Cases procedure (pp. 137-139) on all raw data entries and transformed (i.e., computed) variables. This procedure per-

mitted data verification by: (1) checking to make certain input format statements are processing information in the desired columns; (2) checking to see whether or not variable transformations are producing the correct or desired results; and, (3) examining the values of specific cases for entry, coding, or card order errors.

## Chapter III

### LEGAL RESEARCH RESULTS

#### OVERVIEW

Chapter III presents the legal research of this investigation and addresses the first major research question of the study: What relevant legal developments can be associated with the federal Uniform Guidelines on Employee Selection Procedures? More specifically, the legal research answers the following questions: (1) What have been the major laws and court cases leading to the issuance of the Uniform Guidelines?; (2) In what ways have equal employment opportunity laws been interpreted to be applicable to college placement offices?; and, (3) How do the interview selection criteria (screening and referral procedures) operating in selected college placement offices have an adverse impact on the employment opportunities of members of any minority or sex? The research is organized emphasizing two themes: one is historical, and the other is topical. Historically, the chapter begins with an investigation of the Civil Rights Act of 1964, and ends with an analysis of the Uniform Guidelines on Employee Selection Procedures (1978). Topically, the chapter examines each of the statutes above, as well as, other relevant legislative enactments. Applica-

ble case law research is presented throughout the chapter to support both themes. . Additionally, and because of the focus of the study, relevant aspects of the legal awareness and procedural development in college placement offices are investigated.

### HISTORICAL PERSPECTIVE

The most comprehensive and most litigated federal statute on employment discrimination is Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972. According to Kaplin (1978) these federal antidiscrimination statutes are of greater importance than any state statutes "because of their national scope and comprehensive coverage of problems and remedies, and because they take precedence over any conflicting state law" (p. 109). In Allen v. City of Mobile, (331 F. Supp. 1134, U.S.D.C., S. D. Alabama, 1971), the court stated that the purpose of Title VII "is to provide that all persons, white and black, be brought up to the starting line in the race for jobs and compete under equal rules" (p. 1146).

The basic prohibition regarding discriminatory employment practices is outlined in Section 703(a) of Title VII, 42 U. S. C. section 2000e-2(a), as amended by Public Law 92-261 section 8(a) March 24, 1972, and states:

(a) It shall be an unlawful employment practice for an employer --

(1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

With the passage of the original Civil Rights Act of 1964, many people in the government believed that the majority of employers would comply voluntarily with the law. In those situations where alleged violations did arise, it was anticipated that the conciliation efforts of the EEOC would provide satisfactory resolutions. By 1972, however, evidence showed that this was not the case. Miner and Miner (1978) explained:

[T]he EEOC had a backlog of more than 30,000 complaints of Title VII violations, the Justice Department was being accused of dragging its feet in bringing Title VII suits, and civil rights advocates were extremely disappointed at the lack of progress in equal employment opportunity (p. 8).

During the 92nd Congress, several sweeping amendments were made to Title VII. The legislative enactment was entitled "The Equal Employment Opportunity Act of 1972".



Two of the major provisions of the enactment included: (1) the establishment of direct administrative enforcement powers for the Equal Employment Opportunity Commission; and, (2) the extension of coverage of Title VII to all employees of educational institutions. According to McCulloch (1981), Title VII, as amended,

[I]s the most significant vehicle for claims of discrimination because it has the broadest scope; because EEOC has assumed jurisdiction of enforcement of other civil-rights statutes in the federal areas; and because the most significant judgments and settlements in civil-rights employment discrimination cases have come in Title VII cases (p. 9).

Sape (1976) stated, "[o]f significance to educational institutions (and to all employers) is the general proposition that the Congress views the problems of employment discrimination as a major national interest and concern..." (EEO-5). In light of this fact, Sape emphasized that, as employers, higher educational institutions are not above the jurisdiction of Title VII legislation.

Since the enactment of Title VII, the courts have redefined "discrimination" in employment practices on a number of occasions. In the early years following the 1964 Act, the courts considered the motives or intent behind particular employment practices. Miner and Miner (1979) stated, "[i]f it was found that the employer had an 'evil intent' not to hire persons because of their race, color, religion,

national origin, or sex, then the employment practice was indeed discriminatory and in violation of the law" (p. 6.). The courts, however, found that it was almost impossible to prove evil-motive or evil-intent, and few convictions resulted.

The courts, attempting to broaden their definition of discrimination in employment practices, developed the theory of unjust-treatment or "denial-of-equal-treatment". Applying this standard, the courts found employers guilty of discrimination if all job applicants or all employees were not treated equally in such employment practices as hiring, promotion, discipline, etc. The problem with both the "denial-of-equal-treatment" and the "evil-intent" theories was that neither took into account the effects of past (prior) employer discriminatory practices. Miner and Miner (1979) commented that this meant many minority persons would not qualify for certain jobs "because of unequal training or educational opportunities in the past, separate seniority units, or lack of specific job experience" (p. 7).

Next, the courts adopted the adverse impact doctrine, and it is this doctrine which has become the basic test for determining discriminatory employment practices. This doctrine embodies the concept that "any personnel procedure or policy that produces discriminatory results is unlawful

unless it can be justified on the grounds of job-relatedness or business necessity" (Miner and Miner, 1978, p. 21). Under the adverse impact doctrine, the courts have taken an "ad hoc" or "situational" approach, thus reviewing the facts of each case independently. The three basic questions that the courts consider in each case are:

1. Is there proof of discrimination? Whether discrimination is defined as evil intent, unequal treatment, or adverse impact, this proof must be shown by the party charging a violation of Title VII.

2. What employment practices are causing the discrimination? If the court is convinced that there is in fact discrimination in employment, it has to be shown that certain practices are causing the discrimination.

3. Can the employment practices in question be justified on the grounds of business necessity that is related to job performance? The burden of proof at this point is clearly on the employer to show a relationship between the practice in question and job performance (pp. 21-22).

Figure 5 below illustrates the historical development of the courts' thinking regarding discrimination in employment opportunities.

Historical Nature of Discrimination  
in Employment Opportunities

Terms Applied	Concept of Discrimination	Interest Protected and Type of Conduct Proscribed
<p>1. Evil-Intent or Evil-Motive</p>	<p>Discrimination consists of acts causing harm to an individual that are motivated by personal antipathy to the group of which that individual is a member. Proof of discrimination requires evidence of acts, motive (a mens rea), and harm.</p>	<p>Individual economic interest of complainant. Protected against deliberate denials of employment opportunities based on racial prejudice.</p>
<p>2. Denial-of-Equal-Treatment or Unequal Treatment</p>	<p>Discrimination consists of causing economic harm to an individual by treating members of his minority group in a different and less favorable manner than similarly situated members of the majority group. Proof involves evidence of differential treatment and harm. Defense of justification available.</p>	<p>Recognition of the individual's interest in securing the same treatment as whites. "Unequal treatment" which may be evidence of racial animus.</p>
<p>3. Adverse Impact</p>	<p>Discrimination consists of conduct that has an adverse effect on minority group members as compared to majority group members. Defense of justification for compelling reasons of business necessity is recognized.</p>	<p>Group interest in seeing that its members are not harmed in employment because of discrimination elsewhere in the society. Individual interest in economic opportunities. Protected against all types of conduct where the injury is foreseeable. Covers all industrial-relations systems because their consequences are foreseeable.</p>

SOURCE: Adapted in part from Blumrosen, A. W. Strangers in Paradise: Griggs v. Duke Power Co. and the concept of employment discrimination. 71 Michigan Law Review 59, at 67 (November 1972).

Figure 5: Historical Nature of Discrimination in Employment Practices.

Griggs v. Duke Power Company

The operative definition with respect to discrimination in employment practices was delivered by the U. S. Supreme Court in Griggs v. Duke Power Co. (401 U.S. 424, 1971). Mr. Chief Justice Burger stated that the Court:

[G]ranted writ in the case to resolve the question of whether an employer is prohibited by the Civil Rights Act of 1964, Title VII, from requiring a high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to jobs when (a) neither standard is shown to be significantly related to successful job performance, (b) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants, and (c) the jobs in question formerly had been filled only by white employees as a part of a longstanding practice of giving preference to whites (pp. 425-426).

In the case, thirteen Black employees alleged that certain employment practices of the Duke Power Company were in violation of the Civil Rights Act. In 1955, Duke Power instituted a policy requiring a high school education for job placement in any company department except their Labor department. In 1965, two standardized aptitude tests (the Wonderlic Personnel Test and the Bennett Mechanical Comprehension Test) were added to the high school education policy as requirements for transfer to other company departments. The District Court applied the "evil-motive" concept of discrimination to the these requirements. On appeal, the Fourth Circuit Court of Appeals applied the "denial-of-e-

qual-treatment" concept holding that the company's different treatment of similarly situated black and white employees constituted discrimination.

In applying the adverse impact doctrine to Duke Power's job requirements, the Supreme Court stated that the intention of Title VII was to remove artificial, arbitrary, and unnecessary barriers to employment when those barriers operated invidiously to discriminate on the basis of racial or other impermissible classifications. Further, the Court stated that the "touchstone" of Title VII is "business necessity", or the relationship which exists between an employment practice and job performance. If an employment practice operates to exclude minorities, women, or other "impermissible classifications", and that practice cannot be shown to be related to job performance, then the practice is illegal and prohibited. The Court stated that Congress has forbidden the use of tests or other measuring procedures as the "controlling force" in employment decisions unless those procedures can demonstrate a reasonable measure of job performance. Mr. Burger said that Congress has commanded "that any tests used must measure the person for the job and not the person in the abstract" (p. 436).

In review of the Griggs decision, several important issues remained unresolved. First, the burden of proof in

Griggs, as in all Title VII cases, was on the employer Duke Power. The Supreme Court's decision, however, failed to set down any specific guidelines for determining burden of proof. Secondly, an important question needed to be addressed: Would the Supreme Court consider the issue of discriminatory employment practices under the U. S. Constitution, and if so, what standard would it choose to apply? The allegation of discrimination in Griggs was brought to the Court under Title VII. The Court resolved that the appropriate standard was an affirmative demonstration of the relationship between the employment selection practices and measures of job performance.

McDonnell Douglas v. Green

The Supreme Court commented on the first of these issues in McDonnell Douglas v. Green (411 U.S. 792, 1973).

The Court said:

The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination. This may be done by showing (i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications. (p. 802).

Once the prima facie case of racial discrimination is established, the burden of proof shifts to the employer "to articulate some legitimate, nondiscriminatory reason" for the employment selection decision (p. 802).

Washington v. Davis

The Supreme Court confronted the question of constitutional standards regarding discrimination in employment practices in the case of Washington v. Davis (426 U.S. 229, 1976). Respondents, two rejected Black applicants, alleged that the District of Columbia Police Department's recruiting procedures, including a written personnel test (Test 21), were racially discriminatory and violated the Due Process Clause of the Fifth Amendment. Respondents alleged that Test 21, a test designed to determine whether applicants had acquired a particular of verbal skill, "bore no relationship to job performance and excluded a disproportionately high number of Negro applicants" (p. 229).

The District Court concluded that a positive relationship between the Civil Service Commission's Test 21 and the requirements of the police training program was sufficient to validate the test. The Court of Appeals reversed the lower court's decision, however, and applied the statutory standards of Title VII enunciated in Griggs to the constitu-



tional issue in question. The Appeals Court stated also, "that lack of discriminatory intent in denying and administering Test 21 was irrelevant; the critical fact was rather that a far greater proportion of blacks -- four times as many -- failed the test than did whites" (p. 237). Reversing the Court of Appeals' decision, the U. S. Supreme Court said, "[w]e have never held that the constitutional standard for adjudicating claims of invidious racial discrimination is identical to the standards applicable under Title VII, and we decline to do so today" (p. 239).

Citing Bolling v. Sharpe (347 U.S. 497, 1954), the Supreme Court stated that their decisions had never held a statutory law unconstitutional solely because it had a racially disproportionate impact. Further, "had respondents, along with all others who had failed Test 21, whether white or black, brought an action claiming that the test denied each of them equal protection of the laws,...., it is most likely that their challenge would have been sustained" (p. 245). The Court noted that:

Under Title VII, Congress provided that when hiring and promotion practices disqualify substantially disproportionate numbers of blacks are challenged, discriminatory purpose need not be proved, and that it is an insufficient response to demonstrate some rational basis for the challenged practices. It is necessary, in addition, that they be 'validated' in terms of job performance in any one of several ways, perhaps by ascertaining the minimum skill, ability, or potential necessary for the position at issue and determining whether

the qualifying tests are appropriate for the selection of qualified applicants for the job in question" (pp. 246-247).

The Court emphasized, however, that they were not disposed to adopt the more rigorous Title VII standards for the purposes of applying the Fifth and Fourteenth Amendments.

### United States v. South Carolina

In the case of United States v. South Carolina (445 F. Supp. 1094, 1977), the South Carolina Education Association, the National Education Association, and nine individuals (class plaintiffs) brought action against the State's Board of Education, Retirement System, and Budget and Control Board alleging that the use of minimum scores on the National Teacher Examination (NTE) to certify teachers and determine their pay levels violated the Fourteenth Amendment and Title VII of the Civil Rights Act. Plaintiffs contended that, historically, more blacks than whites failed to achieve the required minimum scores, which resulted in the creation of a racial classification in violation of constitutional and statutory law.

The U. S. District for South Carolina applied two tests to determine if plaintiffs had been denied due process under the Fourteenth Amendment. Citing Washington v. Davis, the court first decided that plaintiffs failed to prove that the

State intended to create and use a racial classification with its use of NTE scores for determination of certification or pay scales. In the absence of discriminatory intent, the court applied the "rational relationship" standard as defined by the Supreme Court in McGowan v. Maryland (336 U.S. 420, 425-26, 1961). The court concluded that the State's objective in using the NTE scores did not involve express differentiation by race or other "suspect" class.

The District Court shifted the burden of proof to defendant State of South Carolina regarding plaintiff's alleged violation of Title VII. The State produced evidence to justify the Educational Testing System's validity study to meet the "business necessity" test of Griggs. Based of this evidence, the court concluded:

The standardized tests [NTE] do reflect individual achievement with respect to specific subject matter content, which is directly relevant to (although not sufficient in itself to assure) competence to teach, and thus the use of these scores for certification purposes survives the business necessity test under Title VII (p. 1116).

On January 16, 1978, the Supreme Court affirmed the judgment of the U. S. District Court (see 98 S.Ct. 756).

### Synthesis of the Decisions

These decisions demonstrate an evolution in the thinking of the Supreme Court regarding both the issues of burden

of proof and application of statutory and constitutional standards. First, the adverse impact doctrine of Title VII and the disproportionate impact doctrine of the Fifth and Fourteenth Amendments are not considered interchangeable standards by the Court. Secondly, the party alleging discrimination under the Constitution bears the burden of proof throughout the legal proceedings. The party alleging discrimination under Title VII, however, maintains the burden of proof until a prima facie case is established. If the party establishes the prima facie case, the burden of proof shifts to the employer who must demonstrate the job-relatedness or business necessity of the employment practice. Finally, should the party alleging employment discrimination choose to raise both a constitutional and a statutory challenge, the Court interprets each independently. In this regard, a finding of discrimination under the Fifth or Fourteenth Amendment would eliminate the Court's need to consider a violation under Title VII. A finding of nondiscrimination under the Fifth or Fourteenth Amendment, however, would necessitate the Court's consideration of the allegation under Title VII. Thus, it is quite possible for an employer's practice to meet the test of constitutional standards, and at the same time, be in violation of the statutory requirements of Title VII.

## TITLE VII STANDARDS

Employment practices which discriminate exclusively on the basis of sex and/or minority status have diminished greatly since the enactment of Title VII. Examples of these practices include company policies excluding Blacks from the workforce, or denying promotional opportunities to women. Beginning with Griggs, however, the courts began to examine the more discrete or "facially neutral" practices in which employers, labor unions, employment agencies and other organizations engaged. Examples of these selection practices include tests and test batteries, educational requirements, physical abilities, and many others. The result has been the application of two important standards in determining discriminatory employment practices. These standards are the doctrines of adverse impact and business necessity.

### Adverse Impact

Adverse or disparate impact refers to a substantially different rate of selection as the result of an employment decision which disadvantages the members of some protected group. Protected groups have been defined by Title VII and the courts to include persons of a particular race, sex, religion, or national origin. Blumrosen (1972) commented:

It is now clear that the standards of necessity under [T]itle VII are to be judicially established, after careful scrutiny of the situation,

so that adverse impact on minorities will not be permitted simply because it would be more convenient for the employer (p. 82).

Initially, the party claiming adverse impact bears the burden of proof in establishing a prima facie case of discrimination. Normally, the plaintiff must establish one of two bases on which to challenge. First, is "on the inference that the discriminatory system had in fact adversely affected [the] plaintiff", or secondly, "on the grounds of respondent's [i.e., employer's, union's, etc.] doubtful credibility because of their discriminatory practices" (Blumrosen, 1972, p. 87). In either of the above situations, there must exist some "rational connection" between the discrimination and the harm done to the plaintiff.

Generally, the plaintiff can establish his/her burden of proof by demonstrating, through the use of statistical evidence, that a facially neutral practice has an adverse impact and that one group has fared more poorly than others (72 Columbia Law Review 900, at 909, 1972). Statistical demonstration occurs in one of two ways. The first demonstration considers whether new applicants, as a class, are rejected by the challenged employment practice in some greater proportion. The second focuses on the actual employment results for the particular business to determine whether the percentage of hired or promoted is less than the

proportion in the relevant labor market (84 Yale Law Review 98, at 107, 1974). When the plaintiff establishes successfully his/her prima facie case, the burden of proof shifts then to the employer who must demonstrate job-related business necessity for the employment selection practice.

### Business Necessity

The courts have concluded that the only justification for an employer's continued use of a personnel selection procedure which results in adverse impact is job-related business necessity (Miner and Miner, 1978, p. 23). The leading case on the doctrine of business necessity is Griggs v. Duke Power Co. Citing the Griggs decision, Wilson (1972) emphasized that the "touchstone (of permissible employment practices) is business necessity" (p. 851). In other words, employment selection practices must be related to job performance and must be necessary to the employer's business.

The business necessity doctrine has been applied to the full range of personnel selection practices including recruitment, hiring, transfer and promotion, and admission into apprenticeship programs. Two federal appeals courts have pointed out that employer inconvenience, additional associated expenses, or a certain amount of disruptive activity do not meet the business necessity test. In Robinson v. Lorrillard (444 F.2d 791, 1971), the court held:

[T]he applicable test is not merely whether there exists a business purpose for adhering to the challenged practice. The test is whether there exists an overriding legitimate business purpose such that the practice is necessary to the safe and efficient operation of the business. Thus, the business purpose must be sufficiently compelling to override any racial impact; the challenged practice must effectively carry out the business purpose it is alleged to serve; and there must be available no acceptable alternative policies or practices which would accomplish the business purpose advanced, or accomplish it equally well with lesser differential impact (p. 798).

In United States v. Bethlehem Steel Corp. (446 F.2d 852, 1971) the court indicated:

Necessity connotes an irresistible demand. To be preserved, the seniority and transfer system [or other challenged practice] must not only directly foster safety and efficiency of a plant, but also must be essential to those goals.... If the legitimate ends of safety and efficiency can be served by a reasonably available alternative system with less discriminatory effects, then the present policies may not be continued (p. 662).

The Supreme Court considered the issue of sex as a business necessity in Phillips v. Martin Marietta Corp. (400 U.S. 542, 3 FEP Cases 84, 1971). In the case, the employer had refused to hire females with pre-school-aged children, yet did not impose the same exclusion on males. The Fifth Circuit held that the discrimination was not against women as a class, but between classes of women with children and those without (Player, 1976, p. 112). Additionally, the lower courts noted that the discrimination involved the "sex-plus" factor (i.e., discrimination based



upon a proscribed classification "plus" a permissible classification). The permissible, non-suspect factor was children.

The Supreme Court reversed the lower court's opinion per curiam and stated:

Under Title VII of the Civil Rights of 1964, an employer may not, in the absence of business necessity, refuse to hire women with pre-school-age children while hiring men with such children (p. 542).

In another case, a Pennsylvania District Court ruled that an employer's denial of maternity leave did not meet the test for business necessity (Wetzel v. Liberty Mutual Insurance Co., 372 F. Supp. 1146, vacated on other grounds, 424 U.S. 737, 1974). And more recently, the Supreme Court held in General Electric Co. v. Gilbert (97 S. Ct. 401, 1976) that excluding pregnancy from disability insurance programs failed to meet the business necessity test of Title VII.

The Fifth Circuit court ruled on business necessity as it relates to discrimination on the basis of religion or national origin. In Young v. Southwestern Savings and Loan Ass'n. (509 F.2d 140, 1975), the court held that discrimination resulted when an employee was required to attend religious observances conducted by the employer. In Rogers v. Equal Employment Opportunity Com'n., (454 F.2d 234, 1971), the court found that a violation of Title VII

resulted when an employer segregated customers served by employees on the basis of the race or national origin of the employees. The Supreme Court has indicated, however, that discrimination on the basis of citizenship is not prohibited in Title VII. In Espinoza v. Farah Manufacturing Co. (414 U.S. 811, 1973), the Court rejected the EEOC's contention that it was discriminatory for an employer to refuse to hire a non-U. S. citizen. The Court noted that citizenship, as a selection device, would likely have more of an adverse impact on persons of foreign national origin.

The fact that an employment selection practice has an adverse impact on some protected group does not absolutely render that practice illegal. Specifically, Title VII [in 42 U.S.C.S. section 2000-2(e)(1)] permits employment discrimination on the basis of sex, religion, or national origin where any of these classifications is a "bona fide occupational qualification" [BFOQ] reasonably necessary to the normal operation of that particular business or enterprise." According to Pearson (12 POF 2d), the "BFOQ" exception focuses upon two questions:

[F]irst, whether the job under consideration requires a worker of a particular religion, sex, or national origin, and second, whether such requirement is reasonably necessary to the normal operation of the employer's business (p. 58).

Several points regarding the "BFOQ" exception should be noted. First, the concepts of "business necessity" and "BFOQ" are not synonymous. Secondly, the "BFOQ" exception does not apply to race as a classification. Finally, and for all practical purposes, "BFOQ" is used seldomly as an employer's defense "in cases other than those alleging sex discrimination" (Agid, 1979, p. 532). The Supreme Court provided the following description of the "BFOQ" exception in Dothard v. Rawlinson (97 S. Ct. 2720, 1977):

In Diaz v. Pan American World Airways, 422 F.2d 385, 388, the Court of Appeals for the Fifth Circuit held that 'discrimination based on sex is valid only when the essence of the business operation would be undermined by not hiring members of one sex exclusively.' In an earlier case, Weeks v. Southern Bell Telephone and Telegraph Co., 5 Cir., 408 F.2d 228, 235, the same court said that an employer could rely on the bfoq exception only by proving 'that he had reasonable cause to believe, that is, a factual basis for believing, that all or substantially all women would be unable to perform safely and efficiently the duties of the job involved.' See also Phillips v. Martin Marietta Corp., 400 U.S. 542, 91 S. Ct. 496, 27 L. Ed. 2d 613. But whatever the verbal formulation, the federal courts have agreed that it is impermissible under Title VII to refuse to hire an individual woman or man on the basis of stereotyped characterizations of the sexes... (pp. 2728-29).

One final issue to consider regarding the business necessity doctrine is the validation of personnel selection procedures. For the most part, the issue of validity is beyond the scope of the present investigation. It is a com-

plex and controversial issue, yet it affords a viable procedure for accomplishing legally the stringent requirements of business necessity.

Interwoven throughout the issue of validity and validation studies is the matter of employment tests. The EEOC has defined employment tests to include "any paper-and-pencil or performance measure used as a basis for any employment decision and all formal, scored, quantified or standardized techniques of assessing job suitability" (cited in Miner and Miner, 1978, p. 28). Any test which has an adverse impact on a protected group must demonstrate a validated relationship to job performance. Validation, therefore, demonstrates "a high degree of practical and statistical correlation between success on the test and success on the job" (Player, 1976, p. 181).

Prior to the issuance of the Uniform Guidelines, the Supreme Court reviewed several cases involving the validation of specific employment tests. In two decisions, Griggs and Albemarle Paper Co. v. Moody (422 U.S. 405, 1975), the employer failed to validate the job-related business necessity for using the tests. In United States v. South Carolina, however, the Supreme Court affirmed a district court's decision which stated in part:

The standardized tests [National Teachers Examinations] do reflect individual achievement with respect to specific subject matter content,

..., and thus the use of these scores for certification purposes survives the business necessity test under Title VII (p. 1116).

Interpretations on the issues of employment tests and validation criteria have broadened somewhat since these earlier analyses of Title VII legislation.

#### APPLICATIONS OF TITLE VII COVERAGE

Since the enactment of Title VII, there have been literally thousands of employment discrimination cases heard by the courts and the adjudicating bodies of administrative agencies. Most of this litigation involves employer practices and issues beyond the scope of the present investigation. College placement offices have been the subject of sparse litigation relating to discriminatory employment practices. Their working relationship with employers in the private and public sectors, however, makes applicable to their operations certain legal standards of Title VII.

#### Employers and Employment Agencies

Coverage under Title VII is established through definitions. The entities included within the scope of these definitions are employers, employment agencies, and labor organizations. Applicable to the present investigation are the proscriptions of Title VII that relate to employers and employment agencies.

Player (1976) explained that three elements comprise the definition of "employer" in section 701(b) of Title VII. They are: (1) an employer is a "person", which includes individuals, corporations, partnerships, trusts, labor unions, and governments; (2) the "person" must be "engaged in an industry affecting commerce", and includes activities which have an exceedingly slight and indirect impact on commerce; and, (3) the "person" must have "fifteen or more employees for each working day of twenty or more calendar weeks in the current or previous calendar year" (p. 97). Employers cannot fail or refuse to hire, discharge, or otherwise discriminate because of a person's race, religion, sex, or national origin.

Educational institutions are defined as "employers". They are permitted in section 703(d) (2) to discriminate on the basis of religion if the institution is supported substantially by a particular religion. They are not, however, permitted to discriminate on the basis of sex, race, or national origin.

Employment agencies are singled out in Title VII because of their key position in the hiring process. Section 701(c) of the Act, as amended, defines an "employment agency" as:

[A]ny person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work

for an employer and includes an agent of such a person.

This definition embraces state agencies and local employment services that receive federal assistance (BNA, Inc., 1973, p. 35). Employment agencies cannot fail or refuse to refer for employment, or otherwise discriminate because of a person's race, religion, sex, or national origin.

College placement offices, as such, do not fall within the scope of the definition of "employer" under Title VII. A controversy has developed, however, among several court decisions over the question of whether a college placement office falls under the definition of "employment agency". In Kaplowitz v. University of Chicago (387 F. Supp. 42, 1974), twelve women graduates brought a complaint against the law school's placement office charging that it operated an employment agency, and that it had committed acts of sex discrimination. The District Court held that:

[T]he law school was an employment agency within the meaning of the Civil Rights Act: but that the law school was not required to make a determination as to whether particular firms engaged in discrimination or to prohibit those firms from interviewing at the school as [the] law school performed its duty once it legally referred all prospective employees, including women, to the law firms for employment (p. 42).

Two more recent decisions criticized the District Court's finding in Kaplowitz. In Cannon v. University of Chicago (Illinois, 559 F. 2d 1063, 1976), the court noted

that the opinion in Kaplowitz "did not need to make an express finding that the law school acted as an employment agency" (footnote 24: p. 1076). In Bonomo v. National Duckpin Bowling Congress, Inc. (469 F. Supp. 467, 1979), the court commented that "the broad construction afforded the term 'employment agency' in Kaplowitz appears largely out of step with the prevailing view..." (p. 472). It should be emphasized that neither the Cannon case, nor the Bonomo case involved a college placement office. To date, the specific issue remains untested; however, several points tend to indicate that the Kaplowitz court opinion may be correct. These points are reviewed in the final section of this chapter.

### Employment Selection Practices

Many employment selection practices do not fall under the proscriptions of Title VII, which expressly prohibits discrimination on the basis of a person's membership in a protected class. As stated previously, the courts have recognized the discriminatory impact of these "facially neutral" practices, and thus, have extended Title VII coverage to encompass them. Of particular concern to college placement and recruiting personnel are certain "neutral" practices which the courts have interpreted as having an adverse impact upon minority persons and women.



This concept of adverse impact upon minorities and women can be misleading. Typically, challenges are brought to the attention of the court by adversely affected groups because those groups have suffered prior discriminatory selection practices at the hands of nonminority/male-dominated employment systems. In many cases, the courts have interpreted these selection practices as having an adverse impact, and thus, as being in noncompliance with Title VII. In so interpreting the selection practice, however, the court establishes a standard which it must then apply equally to all groups. McCulloch (1981) stated further:

[I]f the entity utilizing the selection device chooses to forego the use of that device in assessing any particular group of candidates, such as minorities or females, it would be discriminatory for it to continue to use the device to screen out nonminorities or males (p. 46).

In McDonald v. Santa Fe Trail Transportation Co. (423 U.S. 923, 1976), the Supreme Court held that white plaintiffs have standing to sue under Title VII since the interest protected by the statute is the elimination of injury due to employment discrimination.

Most court-interpreted standards on employment selection procedures have some direct or indirect implications for college placement personnel. By virtue of their student and employer services, placement offices serve a key role in

the employment selection opportunities of minority persons and women. Of particular relevance are the court decisions on "facially neutral" selection procedures involving educational requirements.

Employer's educational requirements for jobs have been the subject of much litigation. McCulloch (1981) noted that "[e]ducation is an item most employers seek, especially because it tells the employer something about the candidate's minimum abilities to read, write, and understand" (p. 78). The leading case in this area was Griggs v. Duke Power Co., where the Supreme Court struck down the high school diploma requirement for certain jobs. Subsequently, the courts ruled against the high school diploma requirement in United States v. Georgia Power Co. (474 F. 2d 906, 1973), Stallworth v. Monsanto Co. (13 FEP Cases 825, 1974), Stevenson v. International Paper Co. (516 F. 2d 103, 1975), Watkins v. Scott Paper Co. (530 F. 2d 1159, cert. denied 429 U.S. 861, 1976), Donnell v. General Motors Corp. (576 F. 2d 1292, 1978), and in many others. The Donnell case represents a good example of the court's process in determining these cases. In the case, applicants to the General Motors--United Auto Workers apprenticeship program were required to possess a high school diploma with at least a "C" final grade average, or at least one year algebra or

geometry with a "C" final average. The applicant, having met these requirements, was then required to pass a General Educational Development (GED) test. The Eighth Circuit Court of Appeals held that:

(1) plaintiff established prima facie case of discrimination; (2) employer failed to justify educational requirements for apprenticeship programs; and (3) plaintiff was entitled to award of attorney fees for appellate portion of litigation in sum of \$1,000 and, on remand, district court must consider question of attorney fees for proceedings on trial court level (p. 1293).

College degree requirements have also been subject to litigation. In EEOC Decision 70-402 (Case No. DC-68-2-379S, January 19, 1970), the Commission held that employer's use of a college degree, as a pre-hiring standard for a sales representative job, discriminated "against Negroes (as a class) because of their race within the meaning of Title VII" (p. 4152). In another opinion, the Tenth Circuit Court of Appeals in Spurlock v. United Airlines, Inc. (475 P. 2d 216, 1972) upheld a college degree requirement for airline pilots on the basis that the job involved the safety of large numbers of people. The Spurlock decision is consistent with the "BFOQ" exception to Title VII. Recalling, exceptions that are "reasonably necessary" can be made to the business necessity doctrine, especially where safety and efficiency are involved.

The courts have interpreted that the use of educational requirements by employers is discriminatory unless it is a justified "BFOQ" exception, or it can be validated as a business necessity. This legal application to employers in business and industry applies equally to employment agencies, labor unions, et al. McCulloch (1981) offered, "[t]he firm requirement of a high school diploma or a college degree should not be imposed unless the employer concludes it is absolutely necessary" (p. 78). He commented further, that employers should be "wary" of absolute rules regarding the application of educational requirements for any jobs (p. 54).

#### Recovery under Title VII

There are three associated costs to employers, employment agencies, and labor unions which result from Title VII enforcement. First, these entities may suffer a "loss of economic efficiency because it [Title VII] forbids the overt use of race or color as a job requirement." Secondly, there may be an associated cost when facially nondiscriminatory practices that can achieve economic efficiency are held to be unlawful. Thirdly, there is an "anticipatory" cost if the entity substitutes less efficient selection practices in an effort "to achieve results that reduce his risk of expo-

sure to enforcement machinery of fair employment law" (84 The Yale Law Review 98, at 102). A consent decree entered into in January 1973 between the Bell System (AT&T and all Bell System Companies), and the EEOC and U. S. Department of Labor provides an example of the scope of these associated costs. The estimated cost of the settlement was \$38 million for the first year, and between \$25 to \$35 million per year for the next five years ( Daily Labor Reports, No. 14, January 19, 1973, p. 1, and cited in Miner and Miner, 1978, p. 9).

The doctrine most often used to describe the philosophy of recovery under Title VII is "rightful place." Agid (1979) defined this doctrine as: "the goal of relief awarded in Title VII suits is to restore employees and applicants as nearly as possible to the position they would have occupied but for the unlawful discrimination" (pp. 810-811). In Watkins v. Scott Paper Co. (530 F.2d 1159, cert. denied, 429 U.S. 861, 1976), the Fifth Circuit endorsed the doctrine as follows:

The rightful place theory is an equitable accommodation between two countervailing interests. The first interest is that of prior discriminatees to achieve what would have been theirs in the absence of discrimination. The countervailing interests are those of employers, employees, and consumers--in maintaining safety and efficiency--and those of employees who acquired their positions within the discriminating system and who would suffer unfairly if required to give up such positions to members of an affected class. See Patterson v.

American Tobacco Company, 4 Cir. 1976, 535 F.2d 257.

Agid said that the ramifications of the "rightful place" doctrine are extensive, and stated that there are three general categories of final relief that should be considered in every case. They are: "(1) proscriptive -- ending the old system or [discriminatory] practice; (2) corrective -- assuring that the new system or practices will be fair (neutral); and, (3) compensatory -- adjusting for past wrongs (through a variety of devices)" (pp. 811 & 821). A good example of the scope of recovery under the above categories was provided by the Fifth Circuit in James v. Stockham Valves & Fittings Co. (559 F.2d 310, 1977, cert. denied, 98 S. Ct. 767, 1978). The court's remedial order: (a) enjoined employer's segregated facilities and discriminatory practices, including the use of a high school diploma and age requirements; (b) mandated the development of objective standards for admission into apprenticeship and training programs; (c) mandated the development of a job posting system for apprenticeship and supervisory positions; (d) required a retroactive seniority system in promotion and apprenticeship programs for affected employees; (e) required new transfer and training goals and timetables to compensate employees denied opportunities to acquire skills necessary for advancement; (f) included back pay and front pay awards; and (g) awarded interim attorney's fees.

The proscriptive and corrective portions of a court or EEOC order are designed to change a formerly discriminatory system of employment selection practices into a neutral system. The compensatory portion is, however, an attempt on the part of the adjudicating body to countervail for the effects of past discrimination. The most obvious form of compensatory recovery under Title VII is back pay awards. The application of back pay relief to college placement offices is, however, largely outside the realm of feasibility since students are not considered as employees of an educational institution.

Two other forms of Title VII compensatory recovery do have some limited application to college placement offices. These are awards for punitive damages and for attorney's fees. Punitive damages are awarded where a defendant's behavior is egregious. The courts have been reluctant, however, to award compensatory "tort" damages for personal injuries in Title VII cases; or, to punish employers with damage awards that have no relationship to injuries suffered (Player, 1976, p. 204). Also see EEOC (Stamps) v. Detroit Edison Co. (515 F.2d 301, 1975). The Supreme Court did note in Johnson v. Railway Express Agency (421 U.S. 454, 460, 1975), however, that where class race discrimination is involved, plaintiff's attorney should consider cause for action under 42 U.S.C. section 1981.

The award of attorney's fees "to prevailing plaintiff has come to be standard in Title VII case[s] under section 706(k)" (Agid, 1979, p. 863). The formal application of this award was approved by the Supreme Court in Albemarle Paper Co. v. Moody. The Court stated that "attorneys' fees should 'ordinarily' be awarded--i.e., in all but 'special circumstances'--to plaintiffs successful in obtaining injunctions" under Title VII.

Apparently, the courts have created a double standard regarding the award of attorney fees for defendants (i.e., employers, et al.) in Title VII cases. In Christiansburg Garment Co. v. NEOC (98 S. Ct. 694, 1978), the Supreme Court held that compensatory awards to defendants were permitted only "upon a finding that the plaintiff's action was frivolous, unreasonable or brought without foundation, even though it is not brought in subjective bad faith" (p. 701). Agid (1979) offered, "the fact that the plaintiff ultimately loses the case is not dispositive since discovery and trial can lead to facts unknown at the outset" (p. 868).

The Uniform Guidelines on Employee Selection Procedures are discussed in a later section of this chapter. Those guidelines include within their scope an additional standard of damages not within the range of recovery discussed above. Specifically, that standard involves the suspension or loss



of federal contracts and/or subcontracts to entities receiving federal assistance. The far-reaching implications of that standard are addressed in later sections.

#### LEGAL AWARENESS OF COLLEGE PLACEMENT PERSONNEL

College placement and recruiting personnel have been aware of and concerned about legislative and legal developments in the area of civil rights for a number of years. Prior to the Griggs decision, Ash (1968) commented, "whenever an employer's choice of sources for recruiting applicants is directed by a desire to avoid interviewing people of certain racial or religious groups, there is no question that he is evading the intent of the law [Title VII]" (p. 110). Ash considered a variety of personnel selection procedures including recruiting practices, interviewing policies, educational requirements, referral systems, application blanks, tests and inventories, and training qualifications. He stated that companies were beginning to realize that the "whole" scheme of their personnel selection process was subject to the Civil Rights Act, and surmised that the "What can I get away with?" attitude was lessening among employers (p. 114). Ash concluded:

What the law does is require them [employers] to do what they should have been doing anyway -- to consider only characteristics and accomplishments that are related to job performance and to ignore those that are not (p. 116).

In another statement regarding selection procedures, Purdy (1972) commented that "the foremost developments in the area of placement, recruitment, and employment practice have been those aimed at avoiding discrimination" (p. 43).

Sandler (1971-72) reported that lawsuits brought by women under the Equal Pay Act had resulted in more than \$30 million in back pay awards, and that sex discrimination complaints under Title VII had "increased markedly" (p. 49). She warned placement and recruiting personnel that women were becoming "less willing to look the other way when faced with discriminatory practices" (p. 49). Burton (1975), reporting on employers' problems with minority recruiting, indicated that conventional selection techniques "require further adjustments to meet the unique demands of recruiting females" (p. 71). Additionally, he reported on a study conducted by the American Society for Personnel Administration (1966) which presented evidence that nonwhite test performance [aptitude and personality scores] was not an accurate selection criteria when applied to minority students.

While these comments may be indicative of many placement and recruiting personnel, they are not universal. A close examination of the literature reveals that some do not appear to be fully aware of the intent or impact of the civil rights laws. For instance, Milano (1977) stated that

"it is no longer possible or practical to grant employment interviews to all students who seek them" (p. 32). In the author's defense, he did recommend the preselection technique as an alternative procedure. This procedure mitigates a placement offices' responsibility by shifting the duty of selection to the employer. More recently, Rogers (1979) reported on the findings of mailed survey responses from 170 American corporations -- estimating that they interviewed over 200,000 candidates for entry-level positions during the 1978-1979 year. Regarding the role that grade point averages play in the consideration of candidates, Rogers found approximately 63% of the respondent employers indicated "that grades play a very important to critical role, and almost all (97 percent) rate grades as being of some importance" (pp. 55-56).

Similar to their counterparts in business and industry, college placement personnel appear to be aware of the laws prohibiting individual and class discrimination on the basis of sex and minority status. At the same time, these laws protect persons from discrimination which results from the use of facially neutral criteria. The awareness of placement personnel regarding the use of these criteria is addressed in subsequent parts of this study.

It is evident from the latter part of the discussion above that certain of these neutral criteria remain important to employers in their employment considerations of college students. When employers place an emphasis on grades and other academic qualifications, problems can result for placement personnel. This is the case when employers request that placement personnel accommodate interview schedules on the basis of such qualifications. This manner of accommodation has been adjudged discriminatory in paralleling Title VII actions. The 1978 Uniform Guidelines address specifically the scope and use of neutral criteria, and emphasize the illegalities associated with these manners of accommodation.

## UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

### Scope and Purpose

The Uniform Guidelines on Employee Selection Procedures (43 FR 38290 et seq, August 25, 1978) cover other major federal equal employment opportunity statutes including Title VII, the Equal Pay Act of 1963, Executive Order 11246, Federal fair-employment and revenue-sharing statutes, and statutes and regulations enforced by the Civil Service Commission and the Department of Justice. The Uniform Guidelines do not apply to the Age Discrimination in Employment Act of

1967, or to the Rehabilitation Act of 1973; however, McCulloch (1981) stated that "there will be a strong temptation for those enforcing these statutes to look to the Guidelines for direction in a very complicated area" (p. 24).

The Equal Pay Act of 1963 is an amendment to the Fair Labor Standards Act of 1938. In 29 U.S.C. section 206(d) (1), the Act provides that:

No employer having employees subject to any provisions of this section shall discriminate,...., between employees on the basis of sex by paying wages to employees...at a rate less than the rate at which he pays wages to employees of the opposite sex...for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions....

McCulloch explained that, due to the proliferation of lawsuits under Title VII, the Act is relatively unused. Violations of the Equal Pay Act are also violations under Title VII, but the converse is not necessarily true (p. 11).

Executive Order 11246 (30 FR 12319) prohibits contractors, who conduct their business with the federal government, from discriminating on the basis of race, color, creed, or national origin. Adopted in October, 1965, the order was amended in 1968 by Executive Order 11375 (32 FR 14303). The amendment changed the word "creed" to "religion", and added "sex" to the other prohibited bases of dis-

crimination. According to McCulloch, the order delegated presidential authority for enforcement to the Secretary of Labor, who,

...was empowered to cancel, terminate, or suspend contracts or condition their continuance upon a program of future compliance, to bar violators from future contracts, to recommend that enforcement action be commenced against violators by the Department of Justice or by EEOC, to investigate compliance, to exempt contractors from the requirements of the executive order, and to impose pre-award standards (p. 12).

McCulloch noted that "little or no substantive law evolving from the administrative hearing process has been developed thus far under Executive Order 11246" (p. 15).

The Uniform Guidelines have been developed from "court decisions, the previously issued guidelines of [administrative] agencies, and the practical experience of the agencies, as well as the standards of the psychological profession" (43 FR 38296). They represent a recognition on the part of the Federal Government to tenure a uniform set of principles on the question of employment selection practices. The purpose statement of the Uniform Guidelines is presented in Section 1(B) of the enactment and reads:

These guidelines incorporate a single set of principles which are designed to assist employers, labor organizations, employment agencies, and licensing and certification boards to comply with requirements of Federal law prohibiting employment practices which discriminate on grounds of race, color, religion, sex, and national origin. They are designed to provide a framework for determining the proper use of tests and other selection

procedures. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles (p. 38296).

On March 2, 1979, the EEOC, Office of Personnel Management, Departments of Justice and Labor, and the Office of Revenue Sharing issued "Questions and Answers on Uniform Guidelines on Employee Selection Procedures" (44 FR 11996 et seq.). The intent of Questions and Answers is "to interpret and clarify, but not to modify, the provisions of the Uniform Guidelines" (p. 11996).

#### Definitions

Among the techniques of legislative analysis, Statsky (1975) suggested that the researcher examine the language of a statute to determine what certain words, phrases, or clauses modify and mean (pp. 123-136). The present section was developed from the language of the Uniform Guidelines, from the explanations found in Questions and Answers, and from the interpretations of other primary and secondary source materials. Much of the language in the Uniform Guidelines is applicable primarily to employers, and thus has limited relevance for college placement offices. Therefore, the selected terminology defined in this section was based on the researcher's assessment of relevance as applicable to placement operations.

Many of the concepts defined in the Uniform Guidelines are exactly alike or similar to those defined in Title VII. Primarily through court interpretations, however, the scope of these concepts has broadened significantly. It should be reemphasized that the precise language of administrative legislative enactments, and the courts' interpretations of that language, are primary sources of the law. For this reason, the reader should place an emphasis on those definitions so cited.

Secondary and nonlegal source interpretations, although sometimes speculative, are generally developed from an extensive review of primary source materials. Often, these interpretations depict an insightful view of legislative and case law development, as well as a preview of future trends in development. The terminology, as defined in this section, is based upon the researcher's regard to be both precise and speculative.

#### Adverse Impact

"A substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group" (43 FR 38307).

Adverse impact is determined first for the overall selection process for each job. If the overall selection process has a adverse impact, the



adverse impact of the individual selection procedure should be analyzed.... If there is no adverse impact for the overall selection process, in most circumstances there is no obligation under the Guidelines to investigate adverse impact for the components, or to validate the selection procedures used for that job (44 FR 11998).

McCulloch (1981) commented that adverse impact is the focal point of the Uniform Guidelines. He explained that "[t]he federal equal-opportunity effort seems thoroughly and forcefully directed toward eliminating adverse impact by making it almost impossible to legally continue with any selection device that has such an impact" (p. 25). Miner and Miner offered that "[t]he proof of discrimination based on adverse impact involves statistics, and EEO litigation increasingly is characterized as 'a numbers game'" (p. 7). Adverse impact does not exist if the worst-performing group is achieving at a rate 80 percent as well as the best-performing group (McCulloch, p. 25). The "groups" covered under the Uniform Guidelines include: (1) Blacks; (2) American Indians (including Alaskan natives); (3) Asians (including Pacific Islanders); (4) Hispanics (including Mexicans, Puerto Ricans, Cubans, Central and South Americans, and others of Spanish culture or origin, regardless of race); (5) Females; and, (6) Males.

The "bottom line" approach has been adopted in the Uniform Guidelines for assessing adverse impact. By this

approach, federal regulatory agencies will consider the end result of all selection criteria used in making one employment decision. Two exceptions to the "bottom line" approach are outlined as follows:

(1) where the selection procedure is a significant factor in the continuation of patterns of assignments of incumbent employees caused by prior discriminatory employment practices, (2) where the weight of court decisions or administrative interpretations hold that a specific selection procedure is not job related in similar circumstances (43 FR 38297).

The first exception refers to active and documented efforts on the part of an employer to neutralize a previously discriminatory employment system. Two court decisions are cited in the text of the guidelines as examples of the second exception. In Gregory v. Litton Systems, Inc. (472 F.2d 631, 1972), the Ninth Circuit found the employer in violation of Title VII for refusing to hire applicants solely on the basis of an arrest record since such a record, by itself, was not indicative of a person's inability to perform a job consistent with the trustworthy and efficient operation of a business. In Dothard v. Rawlinson (433 U.S. 321, 1977), the Supreme Court indicated that minimum height and weight requirements, which failed to meet the business necessity test, were discriminatory practices.

## Applicant

"The concept of an applicant is that of a person who has indicated an interest in being considered for hiring, promotion, or other employment opportunities. The interest might be expressed by completing an application form, or might be expressed orally, depending upon the employers practice" (44 FR 11998). Employers must justify any employment standard they impose which discourages applicants of a race, sex or ethnic group at a disproportionate rate. However, if a person voluntarily withdraws formally or informally from employment selection consideration, s/he is no longer considered to be an applicant.

## Business Necessity

In Griggs v. Duke Power Co.,

[T]he Supreme Court indicated that the burden on the user was a heavy one, but that the selection procedure could be used if there was a 'business necessity' for its continued use; therefore, the Federal agencies will consider evidence that a selection procedure is necessary for the safe and efficient operation of a business to justify continued use of a selection procedure" (44 FR 12002).

In application, the Uniform Guidelines identify the following as one example of how the business necessity doctrine must be adhered to:

The evidence demonstrating that the selection procedure is a representative work sample, a representative sample of the work behavior(s), or

a representative sample of a knowledge, skill, or ability as used as a part of work behavior and necessary for that behavior should be provided (essential) (43 FR 38305).

Throughout the Guidelines, the word "essential" (as noted above) denotes that supporting evidence of job-relatedness "is considered critical" (43 FR 38304). In Johnson v. Uncle Ben's Inc. (628 F.2d 419, 1980), the court indicated that the educational requirements imposed on a group of Mexican-Americans were lawful if they met the business necessity test and were valid under the EEOC's Uniform Guidelines.

#### Candidate

"The term 'candidate' has been included to cover those situations where the initial step by the user involves consideration of current employees for promotion, or training, or other employment opportunities, without inviting applications. The procedure by which persons are identified as candidates is itself a selection procedure under the Guidelines" (44 FR 11998). The authors of the law recommended that records should be kept for both applicants and candidates who are at any stage of the selection process.

## Discrimination

"The use of any selection procedure which has an adverse impact on the hiring, promotion, or other employment or membership opportunities of members of any race, sex, or ethnic group will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure has been validated in accordance with these guidelines..." (43 FR 38297). Throughout the Guidelines, "ethnic group" refers to persons of any religion or national origin.

## Disparate Treatment

Disparate or unequal treatment "occurs where members of a race, sex, or ethnic group have been denied the same employment, promotion, membership, or other employment opportunities as have been available to other employees or applicants" (43 FR 38300). A distinction is made between the principle of disparate impact and the Guideline's concept of validation regarding selection procedures.

## Employment Agencies and Employment Services

A. Where selection procedures are devised by agency. "An employment agency, including private employment agencies and State employment agencies, which agrees to a request by an employer or labor organization to devise and utilize a

selection procedure should follow the standards in these guidelines for determining adverse impact. If adverse impact exists the agency should comply with these guidelines. An employment agency is not relieved of its obligation herein because the user did not request such validation or has requested the use of some lesser standard of validation than is provided in these guidelines" (43 FR 38299-38300).

B. Where selection procedures are devised elsewhere. "Where an employment agency or service is requested to administer a selection procedure which has been devised elsewhere and to make referrals pursuant to the results, the employment agency or service should maintain and have available evidence of the impact of the selection and referral procedures which it administers. If adverse impact results the agency or service should comply with these guidelines. If the agency or service seeks to comply with these guidelines by reliance upon validity studies or other data in the possession of the employer, it should obtain and have available such information" (43 FR 38300).

#### Employment Decisions

Employment decisions that may be covered by Federal equal employment opportunity law include but are not limited to,

...hiring, promotion, demotion, membership (for example, in a labor organization) referral, retention, and licensing and certification, to the extent that licensing and certification may be covered.... Other selection decisions, such as selection for training or transfer, may also be considered employment decisions if they lead to any of the decisions listed above ( p. 38296) .

#### Rational Relationship

The demonstration of a rational relationship (as that term is used in constitutional law) between a selection procedure and a job "does not meet the requirement of Title VII of the Civil Rights Act of 1964, or of Executive Order 11246,...., and will not meet the requirements of these Guidelines for a validity study" (44 FR 12002) .

#### Recruitment Practice

"Recruiting procedures designed to attract members of a particular race, sex, or ethnic group, which were previously denied employment opportunities or which are underutilized, may be necessary to bring an employer into compliance with Federal law,...., but recruitment practices are not considered by these guidelines to be selection procedures" (43 FR 38296-38297) .

## Selection Procedure

"Any measure, combination of measures, or procedure used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs, or probationary periods and physical, educational, and work experience requirements through informal or casual interviews and unscored application forms" (43 FR 38308). McCulloch (1981) expanded on the concept of selection procedure with:

Thus, if the user... considers some unsolicited resumes, then the standards that determine which resumes are considered and which are not is a test and covered by these guidelines; if there is an interview relied upon, a skill requirement, a license requirement, or an educational requirement or preference it is a test. In sum, any concept or criterion used to affect any decision relating to any candidate, from the time the candidate, or his or her resume, passes through the door of the employer, employment agency, union, or testing service, until the time the employee retires, could be considered a test. In fact, if benefits are given to retired employees and their surviving spouses, then the test concept could even continue until the time the employee dies (p. 25).

The initial basis for determining the impact of a selection procedure is the "total selection process." This "refers to the combined effect of all selection procedures leading to the final employment decision..." (44 FR 11998).



## User

"Any employer, labor organization, employment agency, or licensing or certification board, to the extent it may be covered by Federal equal opportunity law, which uses a selection procedure as a basis for any employment decision" (43 FR 38308). If a user has adopted a voluntary or mandatory equal employment opportunity affirmative action program,

...the Federal enforcement agencies will consider the provisions of that program, including the goals and timetables which the user has adopted and the progress which the user has made in carrying out that program... (43 FR 38298).

While the design and execution of these programs may be race, color, or ethnic conscious, "selection procedures under such programs should be based upon the ability or relative ability to do the work" (p. 38298). Thus, in determining whether a user's selection procedure has adverse impact, enforcement agencies will take into account the general EEO posture of the user with respect to the job classifications for which the procedure is used (44 FR 12001).

## Validation and Validation Studies

"Validation is the demonstration of the job relatedness of a selection procedure. The Uniform Guidelines recognize the same three validity strategies recognized by the Ameri-

can Psychological Association" (44 FR 12001). These three strategies are:

(1) Criterion-related validity--a statistical demonstration of a relationship between the scores on a selection procedure and job performance of a sample of workers.

(2) Content validity--a demonstration that the content of a selection procedure is representative of important aspects of performance on the job.

(3) Construct validity--a demonstration that (a) a selection procedure measures a construct (something believed to be an underlying human trait or characteristic, such as honesty) and (b) the construct is important for successful job performance (44 FR 12001).

McCulloch stated that even when validity of a selection procedure is established, government enforcement effort requires more. He explained:

It requires validation of each step in the selection process. It requires retesting. It requires continued exploration of alternative selection procedures for each step in the selection to possibly identify selection procedures having a lesser adverse impact yet still predictive of successful job performance. And, if the job changes to any substantial degree, it requires that the entire process start all over again (p. 31).

#### Work Behavior

Activities which are performed to achieve the objectives of the job. They "involve observable (physical) components and unobservable (mental) components." Work behavior can be the performance of one or more tasks, and

although knowledge, skills, and abilities are not behaviors, they may be applied in work situations (43 FR 38308).

#### Applications to College Placement

College placement offices are addressed specifically in Questions and Answers (44 FR 11997). In Question 4, the authors of the legislation were asked: "Are college placement offices and similar organizations considered to be users subject to the Guidelines?" The response was that they may or may not be covered as "users" depending upon the services they offer. Specifically, "[i]f a college placement office uses a selection procedure as a basis for any employment decision, it is covered...." The authors provided, as an example, the case where a college placement office "selects some students for referral but rejects others...." On the other hand, "if the placement office refers all interested students to an employer, it is not covered, even though it may offer space and provision for informing the students of job openings" (p. 11997). The authors completed their response to Question 4 with a statement that appears to support the finding of the District Court in Kaplowitz v. University of Chicago. The statement reads:

The Guidelines are intended to cover all users of employee selection procedures, including employment agencies, who are subject to Federal equal employment opportunity law (p. 11997).

In an article to placement and recruiting personnel, the Executive Director of the College Placement Council, Inc. stated that "[t]he language of the guidelines clearly includes employers and colleges (i.e., placement offices)" (Smith, 1979, p. 22). In March 1979, selected representatives of the College Placement Council met with representatives of the EEOC's general counsel office (reported in Spotlight, 1, 9, May 1979). One of the items discussed at the meeting was the application of the Uniform Guidelines to placement offices.

The Placement Council representatives expressed concern about the requirement to validate employers' requests for interviews on the basis of students' academic disciplines or majors, grade point averages, and degree levels. They contended that employers' activities on college campuses should be regarded as "recruitment" efforts, and therefore, not subject to the Uniform Guidelines. In this regard, practices in "college placement offices would be treated only as recruitment of a pool of qualified applicants" (p. 4). A follow-up letter addressing these concerns was forwarded to Constance Dupre, Associate General Counsel of the EEOC on April 3, 1979.

Issie L. Jenkins, Acting General Counsel of the EEOC, responded on June 4, 1979. The letter stated that

"[c]ollege placement offices are specifically covered as 'users' under the Guidelines if they select some individuals for referral to an employer and reject others" (Jenkin's letter to Jesse M. Smith, p. 5). In the letter, reference was made also to Questions and Answers (4, 44 FR 11997). The response outlined basically the information included in Question 4 with one additional inference. A college placement office would be in compliance with the Uniform Guidelines if it,

...could elicit from students signing up for interviews the types of information in which an employer has demonstrated an interest, e.g., grade point averages, majors, disciplines, etc., refer all interested students and leave any further screening to the employer (Jenkin's letter, p. 5).

The keyword in the quote above is "elicit." It denotes the student's voluntary contribution of the employer-requested information. Jenkins (p. 6) noted that this letter was not intended to be an opinion or interpretation of the EEOC under Section 701(b) (1) of Title VII.

One final issue regarding the application of the Uniform Guidelines to college placement offices involves liability and awards of damages. Questions and Answers (44 FR 12002) outlines the issue as follows:

Users who choose to continue the use of a selection procedure with an adverse impact until the procedure is challenged increase the risk that they will be found to be engaged in discriminatory practices and will be liable for back pay awards, plaintiffs' attorneys' fees, loss of Federal contracts, subcontracts or grants, and the like.

Additionally, the response informs the user that "[v]alidation studies begun on the eve of litigation have seldom been found to be adequate" (p. 12002).

The impact of back pay awards on college placement offices is negligible since the persons who would suffer from any adverse impact are students, not employees. Plaintiffs' attorneys' fees have become, however, an almost automatic award in cases where the employment entity is in non-compliance. The amount of these associated costs are determined, in part, by the extent of the litigation and, in part, by a consensus of the adjudicating body. The "loss of Federal contracts, subcontracts or grants, and the like" for institutions receiving such assistance is a genuine concern for college placement personnel. The concern is complicated by the fact that the scope of Federal assistance loss has not been determined. Speculating on this topic, two judicial approaches appear feasible. First, a noncomplying placement office could be considered an entity within itself in the court's judgment. In this regard, the probable loss of Federal assistance would be to the placement office alone. Secondly, a noncomplying placement office could be adjudged as but one operational function within the organizational structure of the college or university. In this instance, the probable loss of Federal assistance could extend beyond the placement office to the entire university

community. The far-reaching effects of this judgment should be of greatest concern to noncomplying placement personnel.

#### CURRENTLY OPERATING PLACEMENT INTERVIEW SELECTION PROCEDURES

Each year, college placement personnel coordinate and schedule hundreds of thousands of student job interviews. In 1980, Dennis and Gustafson updated a 1972 study and surveyed the present attitudes of personnel managers and/or professional recruiters toward college placement offices and campus recruiting. Their findings "showed that college campuses remained the best source of young college educated talent for respondent companies" (p. 75). Hess, et al. (1980) stated that "literally dozens of different procedures exist to facilitate" on-campus interviewing, and that "the basic elements of the process are quite similar from institution to institution" (p. 27).

The various interview selection procedures operating at the majority of college campuses can be categorized by certain similar aspects (Milano, 1977; Hummel, 1977; Shier, 1979; Reardon, 1980). Figure 6 below provides a listing and brief description of these selection procedures, and includes the researcher's assessment regarding compliance in accordance with the Uniform Guidelines.

**Placement Interview Selection Procedures**

Terms Applied	Description of Procedure	Requirements for Compliance with Uniform Guidelines
1. Interview Limits	Students are restricted in the number of organizations they can interview.	If all students are restricted equally, and no schedules are restricted on the basis of prohibitive and/or neutral criteria.
2. Open Sign Up	Employers' schedules are posted and students sign-up on a first come--first served basis.	If all employers' schedules are completely open to all students, and none are restricted on the basis of prohibitive and/or neutral criteria.
3. Points	Students are given a set number of points, and bid those points for a space on an interview schedule.	If all students are given an equal number of points, and no schedules are restricted on the basis of prohibitive and/or neutral criteria.
4. Pre-selection or Pre-screening	Employer information is posted, and interested students submit their resumes through the placement office. The office forwards those resumes to the employers who review them and select the students they desire to interview.	If all interested students' credentials are forwarded and no resumes are screened nor schedules restricted on the basis of prohibitive and/or neutral criteria.
5. Priority Cards	Students are given a designated number of priority cards which, when used, guarantees them an interview. When the cards are exhausted, students fall into an interview waiting list system.	If all students receive an equal number of priority cards, and no schedules are restricted on the basis of prohibitive and/or neutral criteria.
6. Random (lottery) selection	Each student's name and/or assigned number is drawn at random. If drawn, s/he may sign on an interview schedule.	If all students have an equal chance, and no schedules are restricted on the basis of prohibitive and/or neutral criteria.
7. Resume Books	Students' resumes are collected and compiled into a booklet which is either forwarded to the employer, or used by the employer while visiting the campus. Generally, employers contact students by letter or telephone either to create their own schedule; or, to have the student sign-up in the placement office.	If all interested students resumes are included in the booklet(s), and thus made available to employers, this procedure is in compliance.

Figure 6: Currently Operating Placement Interview Selection Procedures



Figure 6 above illustrates that all placement interview selection procedures can comply with the Uniform Guidelines. The problem to be addressed in the next and final chapters concerns the question of whether or not they do.

#### SUMMARY

Beginning with Title VII, the phrase "all persons regardless" has exhibited the essence of civil rights legislations and adjudications. The federal government and the courts have mandated, rather consistently, two controlling standards that pertain to individual and class civil rights. Those standards are equality and neutrality.

Initially, the central objective of the Civil Rights Act was to improve minority employment by requiring employment entities to adopt "colorblind standards." Administrative and judicial interpretations of the law (initiated with the Griggs v. Duke Power Co. decision) have required, however, something more than "colorblind intent" (84 Harvard Law Review, at 1116). Today, the failure of any entity to comply with either the equality or the neutrality standard has been interpreted as discriminatory and in violation of the law.

The 1978 Uniform Guidelines have serious implications for college placement personnel where their interview selec-

tion and referral practices fail to assist students equally and neutrally. Judgments against placement operations could be proscriptive, corrective, and/or compensatory in effect. Furthermore, there exists the potential loss of Federal assistance, the extent to which is undetermined. In an article to placement and recruiting personnel, Seeloff (1978, p. 41) warned, "[p]rudence and caution must be exercised to deter disruptive recruiting and placement practices that inhibit free enterprise aspects of an open system of recruiting college students."

## Chapter IV

### SURVEY RESEARCH RESULTS

#### OVERVIEW

In the previous chapter, thorough legal and legislative research was conducted to address one of two major questions of the study: What relevant legal developments can be associated with the federal Uniform Guidelines on Employee Selection Procedures? As a means of answering the question, three more specific questions were addressed. Briefly, the researcher's responses to those questions considered the major laws and court cases which have led to the issuance of the Uniform Guidelines; the ways in which equal employment opportunity laws have been interpreted to be applicable to college placement offices; and, the ways in which the interview selection criteria operating in college placement offices have an adverse impact on the employment opportunities of minority persons and women.

This chapter addresses the second major question of the current investigation: What are the effects of the Uniform Guidelines on the student interview selection procedures operating in contemporary college and university placement offices? To answer this question, two more specific questions were addressed: (1) To what extent are college place-

ment offices' policies on interview selection procedures in compliance with the Uniform Guidelines?; and, (2) Are college placement offices' policies on interview selection procedures in a period of change as a direct result of the Uniform Guidelines issuance in August 1978?

Additionally, via the survey research undertaken, a number of factors related to contemporary college placement offices were considered. Measurement of these related factors occurred by means of several demographic items used in the survey research methodology. Each factor is explained more fully as it is presented.

## MEASUREMENT

### Adjustments to the Measurement Scheme

During the developmental phases of the survey instrument, the researcher decided to include as many item response categories for certain questions as could be logically considered. This decision was made with the full understanding that some of the response categories would have to be collapsed and regrouped to better facilitate statistical analyses. The final results of the collapsed items and a partial rationale for these decisions are presented in the following discussion (also see Appendix A, Survey Instrument).

Survey Question 2. The following responses remained unchanged:

Response 1 -- Federal Register/Code of Federal Regulations  
(n = 18)

Response 2 -- College Placement Council, Inc. Publications  
(n = 84)

The following responses were grouped into a new category:

Response 3 -- Regional Placement Association Publications (n = 6)

Response 4 -- State Placement Association Publications (n = 2)

Response 5 -- Conventions, Seminars, and Workshops (n = 18)

This new category was entitled "Regional and State Association Publications and Meetings" (n = 26). The researcher believed that college placement conventions, seminars, and workshops are generally sponsored and better attended at the regional and state associational levels.

The following responses were specified as missing data and not included in the analyses:

Response 6 -- Public Media Sources (n = 2)

Response 7 -- Other (n = 5)

Response 8 -- None of the Above and No Other Source (n = 22).

Survey Question 7. The following responses remained the same:

Response 1 -- Professional Staff (n = 115)

Response 2 -- Funding (n = 110)

Response 3 -- Secretarial Staff (n = 90)

Response 4 -- Computerized Assistance (n = 42)

Response 5 -- Validation Guidelines (n = 67)

Response 6 -- Consultation Assistance (n = 33)

However, Response 7 -- Other (n = 1) was specified as missing data and discarded from analyses.

Survey Question 21. Response 2 -- Open Sign-Up (n = 152) remained unchanged. The following responses were grouped into a new category entitled "Other Selection Procedures" (n = 24):

Response 1 -- Interview Limits (n = 6)

Response 3 -- Points (n = 1)

Response 4 -- Pre-selection/Pre-screening (n = 7)

Response 5 -- Priority Cards (n = 2)

Response 6 -- Random/Lottery Selection (n = 1)

Response 7 -- Resume Books (n = 1)

Response 8 -- Other (n = 8).

Survey Question 26. The following responses remained the same:

Response 1 -- Comprehensive (n = 85)

Response 2 -- Liberal Arts (n = 72)

The responses below were grouped into a new category entitled "Specialized Academic Emphases" (n = 24):

Response 3 -- Technical (n = 10)

Response 4 -- Business (n = 10)

Response 5 -- Professional (n = 1)

Response 6 -- Other (n = 2)

It should be noted that two original categories of the sampled institutions' primary academic emphases (i.e., Technical and Business) accounted for 87.5% of the responses in the newly created grouping.

#### Omission from the Measurement Scheme

Survey question 19 concerned the internal auditing of placement office student interview selection and referral procedures by another department or division within respondents' institutions. This variable was omitted since only six (6) respondents indicated that internal audits of their office procedures had been conducted, and only three (3) verified their audits by specifying the department, month and year.

#### Additions to the Measurement Scheme

Three new variables were computed to enhance the findings of the present study. The first of the variables was

"Compliance" with the Uniform Guidelines. A complete rationale for the legalistic measurement of this variable is presented descriptively and graphically in Chapter II. Recalling briefly, a college placement office's compliance or noncompliance with the Uniform Guidelines was measured by the following formula:

Noncompliance = a "Yes" response to any of the prohibitive interview selection criteria, or a "Yes" response to any of the neutral interview selection criteria.

Compliance = "No" responses to all of the prohibitive interview selection criteria + "No" responses to all of the neutral interview selection criteria; OR,

Compliance = a "Yes" response to the possession of all employer validation studies; or, a "Yes" response to conducting internal validation studies; or, a "Yes" response to screening students in conjunction with employers' EEO affirmative action policies.

Two additional variables, "Professional Staff Adequacy" and "Support Staff Adequacy" were defined for each of the respondent college placement offices. "Professional Staff Adequacy" was defined by the ratio:

$$\frac{\text{Total No. of FTE Administrative Positions} \times 1,000,000}{\text{Total Enrollment of the Institution}}$$

"Support Staff Adequacy" was defined by the ratio:

$$\frac{\text{Total No. FTE Secretarial/Support Positions} \times 1,000,000}{\text{Total Enrollment of the Institution}}$$



The reason for multiplying each of the ratios by one million (1,000,000) was to generate an integer number which represented more systematically the sampled institutions. Before performing this procedure, the SPSS program rounded the initial ratios to zero (0) or one (1). Thus, multiplication by 1,000,000 resulted in one- to four-place integers which provided a better means to observe comparisons.

## SURVEY RESULTS

### Sampling Response Rates

As a result of the first random sampling of five hundred (500) college placement officers at four-year institutions, two hundred and thirty (230) or 46.0% returned post cards and decided to participate in the study. On the basis of the institutions' enrollments, the 230 returned post cards were very representative of the original random sample. Only a slight decrease (3.77%) occurred among institutions with enrollments of 4999 or less. The bar graph of enrollments in Figure 7 below graphically represents the number of respondents of the first sample in equal range categories (i.e., 500 per category).

## Enrollment Graph — Response Frequency for Post Card Mailing (230 of 500 or 46.0%)

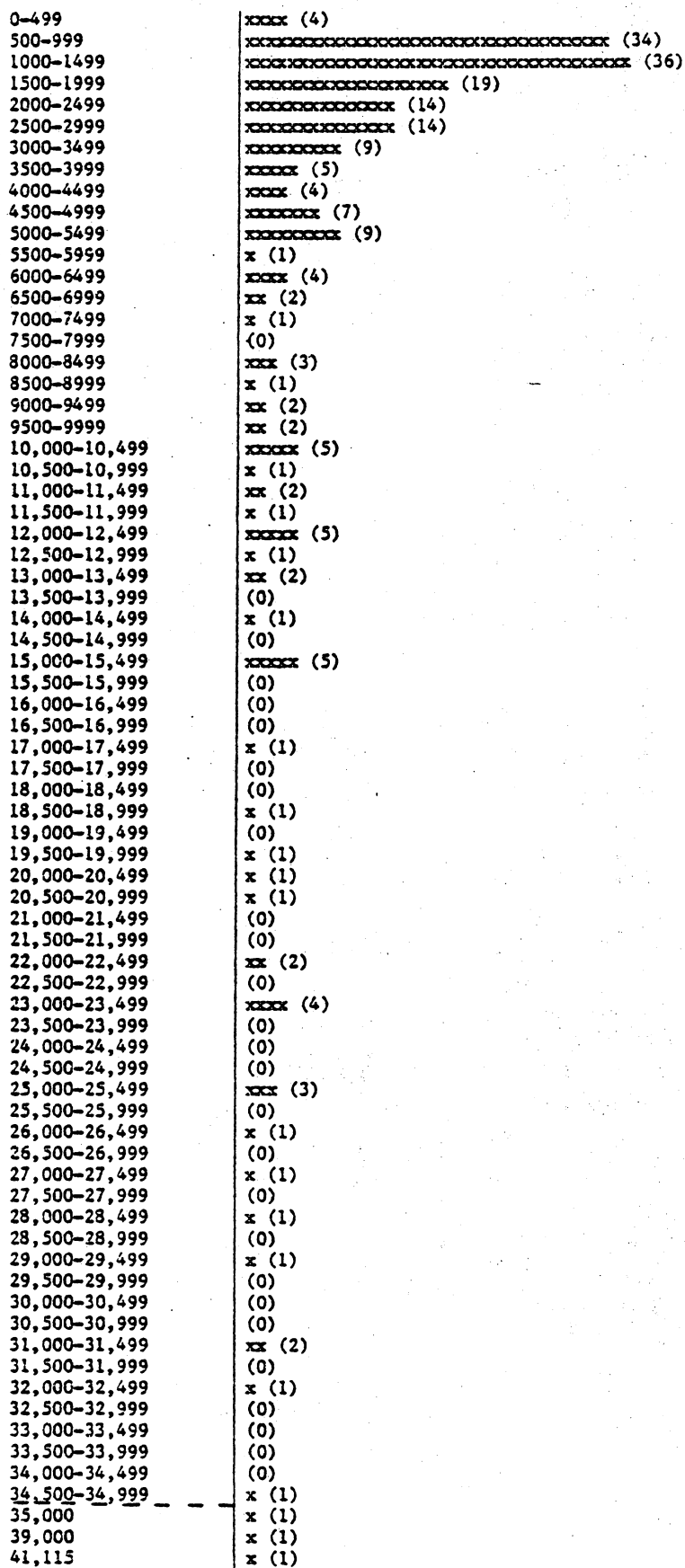


Figure 7: Bar Graph of enrollments for first sample.

At this point, the decision was made not to draw another random sample. Thus, the researcher decided to mail the final survey instrument to all 230 placement officers.

Of the 230 college placement officers who were mailed the final survey instrument, one hundred and eighty-four (184) or 80.0% returned it before the extended deadline. The bargraph of enrollments in Figure 8 below graphically represents the number of respondents in the final sample in equal range categories (i.e., 500 per category).

Enrollment Graph -- Response Frequency For Final Mailing (184 or 230 or 80.0%)

0-499	xxxxx (5)
500-999	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (25)
1000-1499	xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx (25)
1500-1999	xxxxxxxxxxxxxxxxxxxxxxxx (18)
2000-2499	xxxxxxxxxxxxxxxxxxxx (13)
2500-2999	xxxxxxxxxx (7)
3000-3499	xxxxxxxxxx (8)
3500-3999	xxxxxx (5)
4000-4499	xxxxx (4)
4500-4999	xxxxx (4)
5000-5499	xxxxxx (5)
5500-5999	xxx (2)
6000-6499	xxxxx (4)
6500-6999	x (1)
7000-7499	xxx (3)
7500-7999	x (1)
8000-8499	x (1)
8500-8999	(0)
9000-9499	xxx (3)
9500-9999	xxx (3)
10,000-10,499	xxxxxxxx (6)
10,500-10,999	x (1)
11,000-11,499	x (1)
11,500-11,999	x (1)
12,000-12,499	xxxxxxxx (6)
12,599-12,999	x (1)
13,000-13,499	x (1)
13,500-13,999	(0)
14,000-14,499	x (1)
14,500-14,999	(0)
15,000-15,499	xxxxx (4)
15,500-15,999	(0)
16,000-16,499	x (1)
16,500-16,999	(0)
17,000-17,499	xx (2)
17,500-17,999	(0)
18,000-18,499	(0)
18,500-18,999	(0)
19,000-19,499	(0)
19,500-19,999	x (1)
20,000-20,499	x (1)
20,500-20,999	x (1)
21,000-21,499	(0)
21,500-21,999	x (1)
22,000-22,499	(0)
22,500-22,999	x (1)
23,000-23,499	xxx (3)
23,500-23,999	(0)
24,000-24,499	(0)
24,500-24,999	(0)
25,000-25,499	x (1)
25,500-25,999	x (1)
26,000-26,499	x (1)
26,500-26,999	(0)
27,000-27,499	x (1)
27,500-27,999	(0)
28,000-28,499	(0)
28,500-28,999	x (1)
29,000-29,499	xx (2)
29,500-29,999	(0)
30,000-30,499	(0)
30,500-30,999	(0)
31,000-31,499	xx (2)
31,500-31,999	(0)
32,000-32,499	(0)
32,500-32,999	(0)
33,000-33,499	(0)
33,500-33,999	(0)
34,000-34,499	xx (2)
34,500-34,999	(0)
35,000-35,499	(0)
35,500-35,999	(0)
36,000-36,499	x (1)

Figure 8: Bar Graph of enrollments for final mailing.

Of the 184 respondents, one hundred and seventy-eight (178) or 96.7% were identified as the career planning and/or placement directors of their respective institutions. Additionally, none of the survey instruments were returned completely unanswered. Based on the high percentage of returned forms and the thoroughness of the respondents' answers, no additional follow-up studies were conducted.

To provide additional information, Table 1 below presents several descriptive statistics on the interval level variables that were associated with the sample. Although no significant conclusions can be surmised from Table 1, the information may prove useful to the reader throughout the subsequent discussion of results.

Table 1  
Descriptive Statistics on Interval Level Variables

Variable Identification	Range		Mean	Median	Standard Deviation
	minimum	maximum			
Total Enrollments	106	36,000	6683.77	2800.50	8238.76
FTE Administrative Positions	0	15	2.20	1.38	2.35
FTE Secretarial/Support Positions	0	25	2.02	1.27	2.65
Percent of Women Students	7	100	54.35	51.42	17.84
Percent of Minority Students	0	100	13.84	8.32	18.72
Respondents' Total Years of Experience	0	35	7.68	5.28	6.98

Research Question 1

The first research question under consideration was the extent with which college placement offices' policies on interview selection procedures were in compliance with the Uniform Guidelines. Based on the current study, one hundred and twelve (112) or 60.9% were found to be in compliance while seventy-two (72) or 39.1% were found to be in noncompliance. Tables 2 and 3 below present a graphic representation related to these findings; however, neither table displays the final computational means of measuring either compliance or noncompliance.

Table 2

Absolute Frequency Responses and Adjusted Frequency Percentages to Prohibitive  
and Neutral Interview Selection Criteria

Group	Not Using As An Interview Selection Criteria	Using As An Interview Selection Criteria
<b>Prohibitive</b>		
Sex	175 (98.9%)	2 (1.1%)
Race	177 (98.9%)	2 (1.1%)
Color	176 (98.3%)	3 (1.7%)
Religion	175 (98.3%)	3 (1.7%)
National Origin	173 (97.7%)	4 (2.3%)
<b>Neutral</b>		
Academic Major	78 (43.8%)	100 (56.2%)
Grade Point Average	131 (73.6%)	47 (26.4%)
Degree Level	97 (55.1%)	79 (44.9%)

Note. Adjusted Frequency Percentages exclude missing data for each case.



Table 3

Absolute Frequency Responses and Adjusted Frequency Percentages to Prima Facie  
Factors of Interview Selection Criteria

Group	Not Used in Conjunction With Selection Criteria	Used in Conjunction With Selection Criteria
Possess Employer Validation Studies	11 (6.0%)	173 missing <sup>a</sup>
Conducting Internal Validation Studies	144 (82.3%)	31 (17.7%)
Possess Employers' Voluntary/ Mandatory EEO Policy	77 (72.0%)	30 (28.0%)

<sup>a</sup> Depending upon their response to the previous survey question, the majority (94.0%) of the respondents did not answer this question.

Furthermore, in two chi-square tests for significance, no significant relationships were found to exist between compliance, and either respondents' familiarity with the Uniform Guidelines, or their membership in the College Placement Council, Inc. Additionally, there were no significant findings reported for two t-test procedures performed between compliance, and either professional staff adequacy or support staff adequacy. Although the observed mean score of professional staff adequacy was slightly higher for institutions that were in compliance, the reverse was true when the mean score for support staff adequacy was observed. This observation tends to indicate that the addition of personnel (i.e., professional and/or secretarial and support administrative positions) does not result in placement offices complying more with the Uniform Guidelines.

#### Research Question 2

The second research question under consideration involved whether college placement offices' policies on interview selection procedures were in a period of change as a direct result of the Uniform Guidelines issuance in August 1978. Of the respondents who included verifying statements, twenty-three (23) or 13.3% indicated that they had changed their interview selection and referral policies to be more

in compliance while one hundred and fifty (150) or 86.7% indicated no change. Additionally, no significant relationships were found between respondents' changed selection policies, and either external audits of their policies (i.e., by federal or state agencies), or their membership in the College Placement Council, Inc.

As a follow-up question on the survey instrument, twenty-one (21) or 12.6% of the respondents indicated that they planned in the near future to adopt new interview selection policies which would bring their operations more into compliance. No significant relationships were reported between respondents' adoption of new policies, and either external audits of their policies or their membership in the College Placement Council, Inc.

#### Other Variables Analyzed

Additional statistical analyses were performed on a number of existing survey variables, as well as on the newly computed variables. The findings presented in the discussion below follow a topical order as these variables appeared in the survey instrument. It should be noted that expectancy tables were constructed on all appropriate chi-square tests. With these tables, certain observations regarding the expected cell frequencies in comparison to the actual findings have been made.

One of the first major concerns of the researcher was to determine how familiar college placement officers were with the Uniform Guidelines on Employee Selection Procedures. Table 4 below presents the absolute frequency of responses and adjusted frequency percentages of respondents' answers to this survey item.

Table 4

Absolute and Adjusted Frequencies of College Placement  
Officers Familiarity with Uniform Guidelines

Group	Absolute Frequency	Adjusted Frequency
Very Familiar	16	8.9%
Somewhat Familiar	79	43.9%
Not Very Familiar	39	21.7%
Not At All Familiar	46	25.6%

The fact that almost half of the placement officers responded that they were "not very" or "not at all" familiar with the law suggested the need for a more systematic search for reasons why. Thus, a series of chi-square tests of significance and one-way analysis of variance tests were performed.

When respondents' familiarity with the law was crosstabulated with their primary sources of information regarding the Uniform Guidelines, a significant relationship was found to exist,  $\chi^2 (6) = 27.27, p < .001$ . By comparing the expected cell frequencies, the respondents who used primary legal/legislative sources (i.e., the Federal Register or Code of Federal Regulations), and the secondary informational sources published by the College Placement Council, Inc. were more familiar with the regulations than those who had acquired their information from regional or state association publications and meetings.

Next, respondents' familiarity was compared with attempts to validate internally their use of student interview selection and referral criteria. Although no significant relationship was observed,  $\chi^2 (3) = 7.70, p = .0526$ , the researcher did notice that placement officers who were "very familiar" with the Uniform Guidelines were more inclined to conduct validation studies. A discrepancy

existed, however, in the observation that those who were "not very familiar" were also more inclined to conduct these studies. This apparent discrepancy will be discussed further in the final chapter.

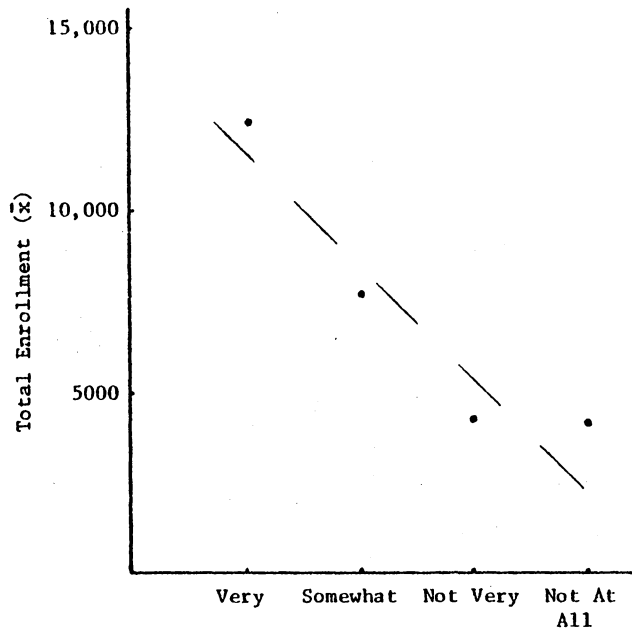
The survey item regarding placement officers' familiarity with the Uniform Guidelines was crosstabulated with three additional survey items. They were: the perceived adequacy of the placement offices' staff and facilities (survey question 6); the offices' membership in the College Placement Council, Inc. (survey question 24); and, the respondents' major field of study for the last degree they received (survey question 30). No significant relationships were observed between familiarity and any of these three items. In comparison to expected cell frequencies, however, the data seemed to indicate that respondent institutions which were members of the College Placement Council, Inc. were more familiar with the Uniform Guidelines than were non-member institutions.

Additionally, the researcher considered the relationship between the total enrollments of the sampled institutions and respondents' familiarity with the regulations. With total enrollment as the dependent variable, a significant relationship was found to exist,  $F(3, 174) = 5.834, p < .001$ . Applying a test for linear trend to the data, the

researcher observed that the larger (i.e., on the basis of total enrollment) the institutions, the more familiar were the respondents with the Uniform Guidelines,  $F(1,174) = 15.269, p < .001$ . (Note: Linear trend accounted for all the difference between groups).

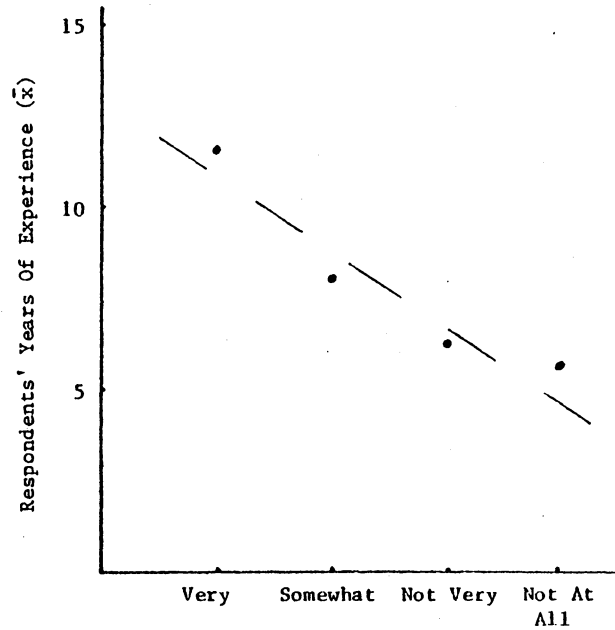
Likewise, respondents' total years of experience in the placement field (as the dependent variable) and their familiarity with the Uniform Guidelines was observed as a significant relationship,  $F(3,174) = 3.831, p < .05$ . Again applying a test for linear trend to the data, the researcher learned that the more years respondents had worked in the placement field, the more familiar they were with the law,  $F(1,174) = 10.996, p < .01$ . (Note: Linear trend accounted for all the difference between groups). Figure 9 below graphically displays both of the findings involving the tests for linear trends.





Familiarity With Uniform Guidelines

$F(1,174) = 15.269, p < .001$



Familiarity With Uniform Guidelines

$F(1,174) = 10.996, p < .01$

Figure 9. Graphs of Linear Trends.

Another concern under investigation involved respondents' primary sources of information regarding the Uniform Guidelines. First, respondents' primary sources of information were compared to the institutions' membership in the College Placement Council, Inc. (CPC), and a significant relationship was found,  $\chi^2 (2) = 6.912, p < .05$ . Significantly more respondents from College Placement Council member institutions indicated that their primary sources of information about the regulations were the Federal Register/Code of Federal Regulations and CPC publications than did respondents from non-member institutions. Respondents from non-member institutions tended to obtain more of their information about the law from regional and state association publications and meetings.

Secondly, respondents' primary sources of information regarding the Uniform Guidelines were compared with their major fields of study for the last degrees received. Again, a significant relationship was observed between these two items,  $\chi^2 (8) = 21.47, p < .01$ . By comparing expected cell frequencies with the data, several observations were made. It appeared that the Federal Register/Code of Federal Regulations was used more often by respondents with fields of study in Educational Administration and General Education. College Placement Council publications were used more fre-

quently by respondents with fields of study in Business/Business Administration and in General Degree Areas. Lastly, regional and state association publications and meetings appeared more often as the primary sources for respondents with academic backgrounds in Counseling and Student Personnel.

Additionally, a one-way analysis of variance procedure was performed to determine if a relationship existed between respondents' total years of experience in the placement field (as the dependent variable) and their primary sources of information about the Guidelines. No significant relationships could be reported.

Following the survey item involving the placement offices' adequacy with respect to staff and facilities (survey question 6), was an item asking respondents to rank order their perceptions of the three (3) most needed resources required by them to conduct validation studies as outlined in the Uniform Guidelines. The histogram presented in Figure 10 represents the frequency response rates of the placement officers' perceived resource needs. Additionally, t-tests procedures were performed to determine if relationships existed between either the offices' professional staff adequacy or support staff adequacy, and each of the six (6) perceived need areas. These findings are presented in Table 5 on the page following Figure 10.

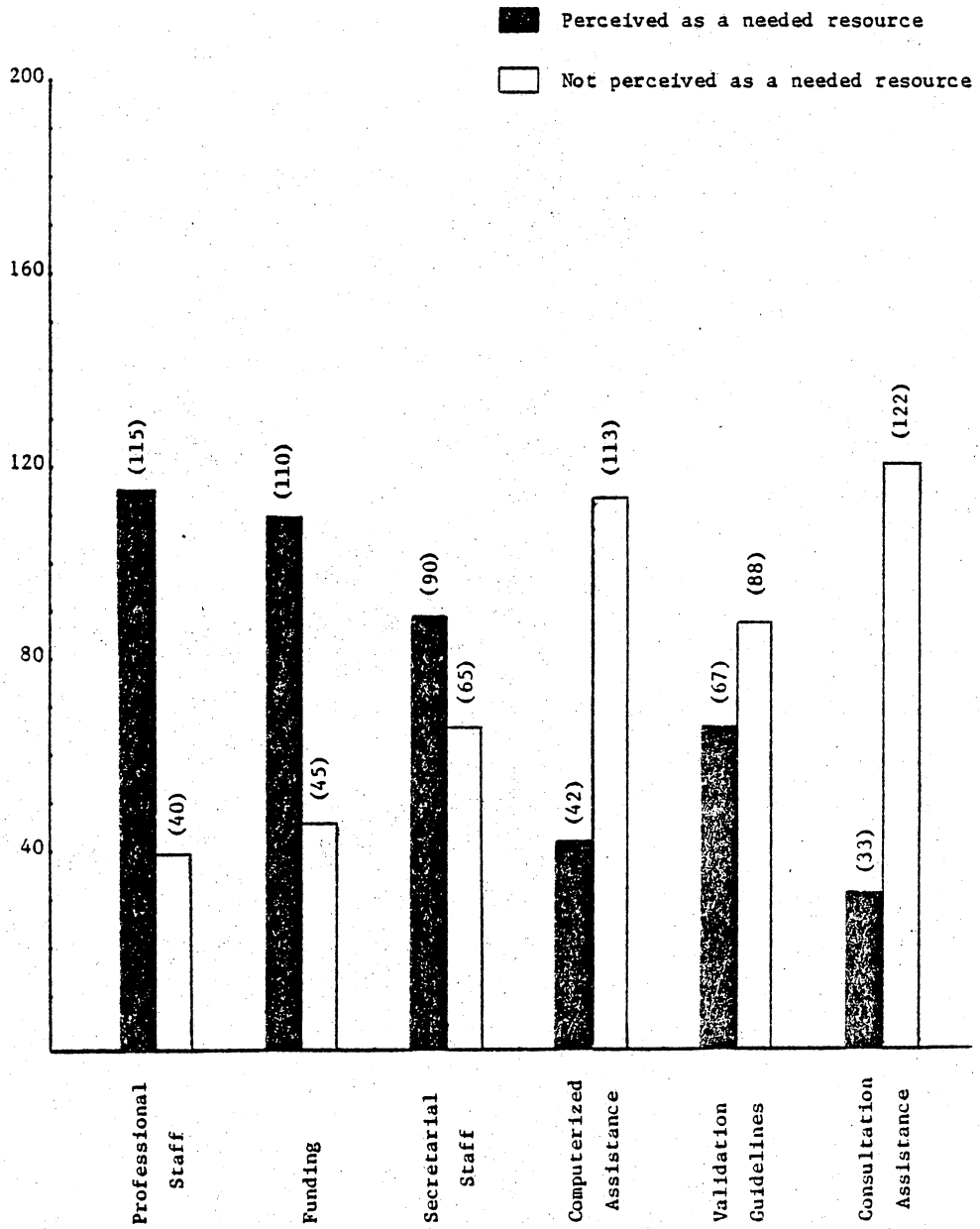


Figure 10. Histogram denoting frequencies of respondents' perceived resources needed to conduct validation studies as outlined in Uniform Guidelines.

Table 5

## T-Tests on Professional/Support Staff Adequacy and Respondents' Perceived Resource Needs

Group	Professional Staff	Funding	Secretarial Staff	Computer Assistance	Validation Guidelines	Consultation Assistance
Professional Staff Adequacy	NS <sup>a</sup>	$t(58.75)^b = 2.52, p < .05$	NS	NS	$t(151)^c = 3.30, p < .01$	NS
Support Staff Adequacy	NS	NS	NS	NS	NS	NS

<sup>a</sup>NS = non-significant

<sup>b</sup>Separate variance estimate

<sup>c</sup>Pooled variance estimate

By observing the mean scores of the two significant findings presented in Table 5 above, the following can be concluded. First, those institutions which demonstrated a higher professional staff adequacy ratio indicated less of a perceived need for additional funding to conduct validation studies. And, although the findings for support staff adequacy were non-significant, the observed mean differences demonstrated a similar trend. Secondly, those institutions which demonstrated a higher professional staff adequacy ratio indicated more of a perceived need for guidelines to conduct validation studies as outlined by the Uniform Guidelines. Again, the relationship between support staff adequacy and respondents' perceived need for validation guidelines was non-significant; however, the trend (i.e., observed mean differences) tended to support the finding above.

Next, t-tests were conducted to observe the relationships between the primary student selection and/or referral policies of the placement offices and the institutions' total enrollments, the percentage of women students, and the percentage of minority students. No significant relationships were reported for any of these tests; however, one observation was made. The trend of mean differences tended to indicate that "Other Selection Procedures" occurred more

frequently than "Open Sign-Up Procedures" in larger institutions. As a note of caution, the use of "Other Selection Procedures" in one or two of the largest schools sampled would account for this observed trend.

The researcher also considered the relationship existing between the primary areas of financial support [i.e., public/state-supported (n = 82), or privately-supported (n = 95)], and the survey item asking whether respondents' placement office procedures on student interview selection had been audited externally by a state or federal agency (n = 9). The finding was significant,  $\chi^2 (1) = 10.02, p < .01$ , indicating that public/state-supported institutions were more likely to be audited by external agencies. The external agencies most identified by respondents as having performed the audits since August 1978 included the Equal Employment Opportunity Commission; the Department of Health, Education, and Welfare; the Department of Labor; and, the Office of Civil Rights. Next, t-tests were performed to determine if relationships existed between both professional and support staff adequacy, and the sampled institutions primary areas of financial support. Observed on the basis of their professional staff adequacy, the results demonstrated that privately-supported institutions were in excess of three (3) times more adequately staffed when compared

with public/state-supported institutions,  $t$  (113.59) = 5.86,  $p < .001$ . Considering their support staff adequacy, the findings showed that privately-supported institutions were in excess of two (2) times more adequately staffed than were public/state supported-institutions,  $t$  (129.72) = 5.60,  $p < .001$ .

Finally, one-way analysis of variance tests were performed to consider the relationships between both professional and support staff adequacy (as the dependent variables), and the primary academic emphasis of the sampled institutions (i.e., comprehensive, liberal arts, or specialized -- including technical, business, and professional). A significant relationship was found between professional staff adequacy and primary academic emphasis,  $F$  (2,176) = 12.806,  $p < .0001$ . Observed mean differences indicated that placement offices at predominantly "Liberal Arts" and "Specialized" institutions were almost three (3) times more adequately staffed with professional personnel than were placement offices at "Comprehensive" institutions. A significant relationship was also found to exist between support staff adequacy and primary academic emphasis,  $F$  (2,176) = 6.128,  $p < .01$ . Here, observed mean scores indicated that "Specialized" institutions were almost three (3) times more adequately staffed, and that "Liberal Arts" institutions were



in excess of two (2) times more adequately staffed with secretarial/support personnel when compared to "Comprehensive" institutions.

### SUMMARY

The major research question considered in this chapter concerned the effects of the Uniform Guidelines on the student interview selection and referral procedures operating in contemporary college and university placement offices. Of the two hundred and thirty (230) institutions included in the final mailing, one hundred and eighty-four (184) or 80.0% responded. One of the major effects measured was compliance of student interview and referral procedures, and one hundred and twelve (112) or 60.9% were found to be operating within the scope of the law. The other major effect measured was changes in placement offices' interview selection policies that were a direct result of the Uniform Guidelines issuance. Here, twenty-three (23) or 13.3% who responded indicated that they had changed their policies to be more in compliance, with another twenty-one (21) or 12.6% indicating future plans for change.

Additionally, via the study's existing and newly created variables, the significance of other relationships was investigated. Using a variety of statistical tests, the following observations were made:

1. Respondents who used primary legal/legislative sources and secondary College Placement Council, Inc. publications were more familiar with the Uniform Guidelines than were respondents who acquired their information from regional and state placement association publications and meetings.
2. There was a linear trend from which was observed: as the total enrollment of respondents' institutions increased, their familiarity with the law increased.
3. There was another linear trend from which was observed: as respondents' total years of experience in the placement field increased, their familiarity with the law increased.
4. Respondent institutions that held membership in the College Placement Council used legal/legislative sources and CPC publications as primary sources of information more often than did non-member institutions.
5. Respondents with fields of study in Educational Administration and General Education used the Federal Register or Code of Federal Regulations most

often; respondents with Business/Business Administration degrees and those in General Degree Areas used College Placement Council publications most often; and, respondents with Counseling and Student Personnel degrees used regional and state association publications and meetings most often as their primary sources of information about the Uniform Guidelines.

6. Institutions which demonstrated a higher ratio of professional staff adequacy indicated less of a perceived need for additional funding to conduct validation studies.
7. Institutions which demonstrated a higher ratio of professional staff adequacy indicated more of a perceived need for guidelines to conduct validation studies as outlined by the Uniform Guidelines.
8. Placement offices at public/state-supported institutions were more likely to be audited by a federal or state agency than those at privately-supported institutions.

9. Placement offices at privately-supported institutions were in excess of three (3) times more adequately staffed with professional personnel, and in excess of two (2) times more adequately staffed with secretarial and support personnel than were those at public/state-supported institutions.
10. Placement offices at "Liberal Arts" and "Specialized" academic institutions were almost three (3) times more adequately staffed with professional personnel than were those at "Comprehensive" institutions.
11. Placement offices at "Specialized" institutions were almost three (3) times more adequately staffed, and at "Liberal Arts" institutions almost two (2) times more adequately staffed with secretarial and support personnel than were those at "Comprehensive" institutions.

These findings present some interesting and valuable information for college and university placement personnel, and will be interpreted more fully in the next and final chapter.

## Chapter V

### DISCUSSION

#### SUMMARY

The Uniform Guidelines on Employee Selection Procedures were developed to assist various organizations in complying with the federal laws which prohibit discrimination in employment practices. Certain of these practices have been interpreted by administrative regulatory agencies and by the courts to be applicable to college and university placement offices. This application inhibits a relationship which has existed between placement personnel and recruiting employers for many years. Employers seek qualified candidates to fill positions, and placement offices accommodate employers' needs by restricting interview schedules to only those students who meet certain qualifications. In so doing, a problem arises for placement personnel where they are making employment selection decisions within the scope of the civil rights laws, and thus increasing the probability of their involvement in future litigation.

The current study investigated the above problem from two perspectives as it was related to college placement offices' coverage under the Uniform Guidelines. First, a legal research methodology was implemented to trace the his-

torical and topical development of civil rights legislative and case law. The purpose of this research was to address the relevant legal developments that could be associated with the Uniform Guidelines. Secondly, survey research methodology was undertaken which involved a national sample of college placement offices. The purpose of the survey research was to measure the effects of the Uniform Guidelines on currently operating placement offices' student interview selection and referral practices.

The findings of the legal research indicated that the federal government and the courts have mandated, rather consistently, two controlling standards that pertain to individual and class civil rights. Those standards are equality and neutrality. Failure of any entity to comply with either of these standards, except in limited instances, has been judged discriminatory under civil rights laws.

The 1978 Uniform Guidelines have serious implications for college placement offices in which interview and referral practices fail to assist all students equally and neutrally. Based on existing civil rights litigation, judgments against college placement offices could be proscriptive, corrective, and/or compensatory in effect. Furthermore, there exists the potential for loss of governmental funding, the extent of which remains undetermined.

The findings of the survey research indicated that the majority of college placement offices sampled (i.e., 60.9%) were operating student interview selection and referral systems within the compliance standards of the Uniform Guidelines. Almost categorically, placement officers supported student interview systems that were void of prohibitive selection criteria (i.e., sex, race, color, religion, or national origin). On the other hand, the placement officers indicated more discriminatory trends where neutral selection criteria (i.e., academic majors, grade point averages, or degree levels) were concerned. Additionally, 25.9% of the respondent institutions indicated that they had either changed, or were planning to change their interview selection procedures to be more in compliance with the law.

Thus, the effects of the Uniform Guidelines on contemporary college placement offices investigated in this study were revealing. These effects are addressed more fully in the next two sections of this chapter.

#### RESEARCH FINDINGS

Finding 1. The regulations of the Uniform Guidelines on Employee Selection Procedures which affect college and university placement offices are well founded historically in civil rights laws and litigations. Still undetermined

is the scope of the impact these laws could have on a contemporary placement office. Until a test case is adjudicated, the one can only speculate about the outcome. To this end, the researcher believes that a placement office's use of either prohibitive or neutral interview selection or referral criteria, without the use of an accepted standard of prima facie evidence, would lead a court or regulatory adjudicating body to render a decision against that office.

Finding 2. The most frequent observation in respondent placement officers' use of non-complying neutral criteria occurred with respect to academic majors (56.2%), followed by degree levels (44.9%), and finally grade point averages (26.4%). Several placement officers were in possession of employers' voluntary and/or mandatory equal employment opportunity affirmative action policies (28.0%), while others were attempting to conduct internal validation studies (17.7%). Interestingly, of those respondents who had requested employers' validation studies, zero (0.0%) possessed all they had requested. Thus, the findings indicated that even though the majority (approximately 60%) of placement offices were in compliance with the Uniform Guidelines, almost forty percent were in noncompliance.

Finding 3. Regarding the placement officers who indicated that they had changed their student interview selec-



tion procedures as a direct result of the Uniform Guidelines' issuance (13.3%), three different approaches were described most frequently. First, placement officers noted that they had adopted less restrictive or completely neutral selection and referral systems. Thus, they were avoiding the most obvious forms of adverse impact. Secondly, placement officers explained that they had asked employers to refrain from requiring discriminatory criteria on interview schedules. Lastly, placement officers reported that they had mitigated their liability by shifting the burden of responsibility for interview selection to the employers. Most often, this shift of responsibility occurred where placement personnel adopted preselection/prescreening systems.

Finding 4. Slightly more than half of the placement officers sampled (52.8%) indicated that they were either somewhat or very familiar with the Uniform Guidelines. The finding that respondents' familiarity with the law was significantly related to their primary sources of information was both predictable and important. Whereas one might predict that people who read primary legal/legislative sources such as the Federal Register or Code of Federal Regulations would have a reasonable understanding of the law, it was important to find that the information provided by the College Placement Council's publications was significantly more

informative than regional and state placement association publications and meetings.

Finding 5. In Chapter IV, a discrepancy between placement officers' familiarity with the law and their attempts to conduct internal validation studies was noted. Specifically, one observation indicated that placement officers who were "very familiar" with the law were more likely to conduct internal validation studies. The other observation that placement officers who were "not very familiar" with the Guidelines possessed almost the same level of knowledge does not make sense. As prima facie forms of evidence, the criteria for validation studies in the Uniform Guidelines are quite complex and complicated. It would seem that only placement officers who were at least "somewhat", if not "very familiar" with the law would be knowledgeable enough to conduct them. Therefore, the researcher believes that those respondents who indicated "not very familiar" with the law may have erred in either their reading of and/or response to the question about internal validation studies.

Finding 6. The finding that both the size of the institutions' enrollments and the respondents' total years of experience in the placement field were related significantly to familiarity with the Uniform Guidelines was noteworthy. The linear trend tests demonstrated that

familiarity increased as both enrollments and years of experience increased. It is likely that as institutions increase in enrollments, more placement personnel are added to meet increased student needs. Thus, there is the increased probability that, as a staff grows, one or more people become familiar with new developments and pass along that information to others. In a similar way, the longer one works in the placement field, the more likely they are to learn about new developments in the area.

Finding 7. The finding that respondents' primary sources of information were related to their membership in the College Placement Council, Inc. was understandable. Membership in the organization brings with it an institution's receipt of several CPC originated publications. Two of these publications, the Journal of College Placement and Spotlight were cited earlier in this study as important secondary sources. Oftentimes, both of the above publications included citations of other primary sources including the Federal Register and Code of Federal Regulations. Thus, the finding holds that CPC member organizations more frequently obtainly their information from such sources than do non-member institutions.

Finding 8. Regarding the six perceived needs identified by respondents, additional professional staff, funding,

and secretarial staff were the three most frequently selected. Although these were certainly reasonable additions which potentially could lead a placement office to conduct validation studies, several possible inconsistent factors should be noted. First, the median total enrollment (2800.50), and the medians of FTE administrative and secretarial/support positions (1.38 and 1.27 respectively) suggested to the researcher that respondents may have expressed a more general claim for assistance. Secondly, the opposite trends observed in the t-test procedures which considered the relationships between compliance, and both professional and support staff adequacy indicated that additional staff did not direct placement offices to be more in compliance with the law. Thus, the second factor above apparently contradicts those placement officers who believe that additional personnel would assist their operations to be more in compliance with the Uniform Guidelines.

Finding 9. The finding that institutions which demonstrated a higher ratio of professional staff adequacy required less funding was consistent. Larger total enrollments dictate larger staffs and more facilities, which would include more substantial budget allotments. Additionally, the finding that institutions which demonstrated a higher ratio of professional staff adequacy expressed a perceived

need for guidelines to conduct validation studies was consistent. Drawing from the significant relationship between total enrollments and respondents' familiarity, and the researcher's observations in Finding 5 above, a larger staff would be more familiar with the law, thus recognizing the need for more specific guidelines on validation studies.

Finding 10. The finding that placement offices at public/state-supported institutions were more likely to be audited by an external federal or state agency ( $n = 9$ ) was not surprising. Generally, the types of financial support these institutions receive brings them under a closer scrutiny by both governmental levels. Interestingly, no respondent reported an audit conducted at the state level.

Finding 11. This conclusion was drawn from comments written by the respondents on page 6 of the survey instrument, and represented the researcher's attempt to present objectively their contributions. First, approximately ten (10) of those who indicated they were new to the placement field commented on their need for more information regarding the Uniform Guidelines. Two respondents inquired as to why the College Placement Council was not keeping them better informed. Secondly, seven (7) respondents noted the problems associated with the Uniform Guidelines. The problems they identified ranged from very qualitative (e.g., "these

regulations border on the ridiculous"), to very specific (e.g., "the problems extend beyond our placement operation into our sponsorship of paid internships and cooperative education programs"). Two respondents from smaller institutions commented that they experienced enough problems simply bringing employers to recruit on their campuses. Finally, two respondents reported adopting interview selection and referral systems that had increased their liability under the Uniform Guidelines. In both cases, respondents described systems whereby placement personnel conducted prescreening interviews prior to permitting students to sign on an employer's schedule.

finding 12. The laws involving the civil rights of individuals appear to be entering yet another stage in their evolution. Recent indicators from President Reagan's Administration (i.e., the President's Task Force on Regulatory Relief chaired by Vice President Bush) show a policy movement away from some of the more traditional views of civil rights laws. It is very doubtful that this movement will attempt any drastic changes aimed at the intent of these laws. It is likely, however, that the movement may lessen the sanctions (i.e., generally those involving compensatory awards and fines) which have become rather standard procedure in civil rights cases. If this movement becomes a

reality, large employers will be the least affected since their losses due to discriminatory practices will be decreased. Smaller employers, and colleges and universities will continue to feel the detrimental effects of monetary fines and the withdrawal of federal and state contracts, subcontracts, and grants.

#### RECOMMENDATIONS

Recommendation 1. In recent months, the researcher observed a decrease in the frequency with which information about the Uniform Guidelines was addressed in College Placement Council publications. The current study indicated that placement officers were unlikely to read primary legal/legislative sources. The study also indicated that information which was disseminated via regional and state association publications and meetings did not tend to increase placement officers' familiarity about the law. At the same time, this investigation supported both the popularity and authority associated with the College Placement Council's publications.

Thus, it is recommended that the College Placement Council staff, and especially their Manager of Governmental and Legal Affairs, increase the dissemination of information about the Uniform Guidelines through their newsletters, journals, and special mailings.

Further, it is recommended that membership in the College Placement Council, Inc. not be a criteria for receipt of this information by non-member institutions. In this regard, CPC could suggest to non-member placement personnel their need to know about coverage under the Uniform Guidelines and offer them information at some cost.

Recommendation 2. The findings of this study indicated that placement officers who had worked the fewest years in the field were least familiar with the Uniform Guidelines.

Thus, it is recommended that the College Placement Council, Inc. accumulate a packet of information regarding the Uniform Guidelines, as well as all other civil rights legislation which affects college placement offices, and forward this packet to all new placement personnel, regardless of their membership in the organization.

Recommendation 3. Two of the major components not addressed in this study were: (1) the impact of the Uniform Guidelines on the employers who recruit in college and university placement offices; and, (2) the extent of the impact these same employers have on the interview selection and referral practices operating in contemporary college placement offices.

Thus, it is recommended that future research address both of the components identified above.



Recommendation 4. A rather surprising finding of the current study involved the number of institutions sampled which identified open sign-up procedures as the primary policy for the selection and/or referral of students for interviews with employers. Of the seven (7) interview selection procedures described in Figure 2, the open sign-up system may tend to increase the frequency of screening students from employers' schedules. Other selection and referral systems either treat all students more equally and neutrally, or mitigate the placement offices' liability by shifting the responsibility of selection to recruiting employers.

Thus, it is recommended that further study be made into and information disseminated about other, more neutral or less liable student interview selection and referral systems.

Recommendation 5. The researcher observed via the survey instrument data analysis that placement officers infrequently requested and/or required validation studies or equal employment opportunity policy statements from recruiting employers. As prima facie forms of evidence, the placement officer's possession of these documents mitigates the liabilities associated with civil rights litigation.

Thus, it is recommended that more information be forwarded to placement officers regarding prima facie forms of evidence, and when necessary, placement officers request and require such documentation before they agree to screen students from employers' schedules.

Recommendation 6. The frequency with which audits of public/state-supported institutions by several federal agencies was of concern. The fact that placement officers verified the occurrence of these audits since the issuance of the Uniform Guidelines in August 1978 was even more alarming. To date, no known information regarding the premises or outcomes of federal regulatory agency audits has been communicated to placement personnel.

Thus, it is recommended that further investigation be conducted into both the extent of and criteria used in federal agency auditing, and as a result, this information be communicated to all public/state-supported college and university placement personnel.

Recommendation 7. Currently, there is a consortium of large employing organizations in Washington D.C. which are planning to initiate a proposal to exempt college and university placement offices from coverage under the Uniform Guidelines (Battle, Spotlight, p. 3). The College Placement Council, Inc. is monitoring developments; however, no proposal has been finalized. This study pointed out several

problems and concerns encountered by college placement personnel, especially those related to such prohibitive factors as lack of adequate funds, staff, and specific guidelines for validation.

Thus, it is recommended that the College Placement Council compile all appropriate information (including relevant information from the current study) to add support to the consortium's proposal.

Recommendation 8. The federal district court's implication in Kaplowitz v. University of Chicago that college placement offices were covered under the definition of employment agencies in Title VII legislation remains untested. In this regard, the College Placement Council, Inc. recently initiated a series of articles to examine the coverage of placement offices under individual state statutes (Battie, Spotlight, 1982, p. 3). Specifically, this examination involves the legal ramifications for placement officers who charge fees to employers for facilities used or services rendered. Thus far in the series, state statutory language appears vague or inconsistent with respect to the direct or indirect charging of fees by college placement personnel.

Thus, it is recommended that CPC continue to examine state statutes and to report findings in their current publications.

Further, it is recommended that CPC provide to all regional and state associational affiliates summary reports for address and dissemination at annual meetings.

Recommendation 9. The following are recommended as additional considerations to enhance future research:

It is recommended that future studies focus on the findings of the observed linear trends to consider the question of whether placement offices' staff and facilities increase in some proportion to the enrollment growth rate of an institution.

It is recommended that future research address the reason(s) why placement offices at privately-supported institutions appear significantly better staffed than those at public/state-supported institutions.

It is recommended that future research consider the reason(s) why placement offices at liberal arts and specialized academic institutions appear significantly better staffed than those at comprehensive institutions.

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## Appendix A: Example of Uniform Guidelines Survey Instrument

UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES  
IN COLLEGE & UNIVERSITY PLACEMENT OFFICES

This survey is an attempt to assess several important issues now confronting college and university placement personnel. Please answer all the questions. If you wish to comment on any questions or qualify your answers, please feel free to use the space in the margins. Your comments will be read and taken into account.

Thank you for your help.



Return this questionnaire to:

James L. McBride, Director  
Career Planning and Placement Center  
Radford University - Box 5910  
Radford, VA 24142

UNIFORM GUIDELINES ON EMPLOYEE SELECTION PROCEDURES  
IN COLLEGE & UNIVERSITY PLACEMENT OFFICES

**INSTRUCTIONS:** Please CIRCLE the number of the ONE response which answers each question.

1. How familiar are you with the Uniform Guidelines on Employee Selection Procedures?

- 1 VERY FAMILIAR
- 2 SOMEWHAT FAMILIAR
- 3 NOT VERY FAMILIAR
- 4 NOT AT ALL FAMILIAR

↳ If you responded NOT AT ALL FAMILIAR, your responses and comments to the remaining items are still most valuable. Therefore, please continue.

2. Which one of the following identifies your primary source of information about the Uniform Guidelines? (Circle only one answer)

- 1 FEDERAL REGISTER/CODE OF FEDERAL REGULATIONS
- 2 COLLEGE PLACEMENT COUNCIL, INC. PUBLICATIONS
- 3 REGIONAL PLACEMENT ASSOCIATION PUBLICATIONS
- 4 STATE PLACEMENT ASSOCIATION PUBLICATIONS
- 5 CONVENTIONS, SEMINARS, WORKSHOPS
- 6 PUBLIC MEDIA SOURCES
- 7 OTHER (please identify the source) \_\_\_\_\_
- 8 NONE OF THE ABOVE and NO OTHER SOURCE

3. Is your office requesting from all recruiting employers studies which validate their use of student interview selection and referral criteria?

- 1 NO
- 2 YES

↳ 4. (If YES) Are you in possession of all the validation studies you have requested?

- 1 NO
- 2 YES

5. Is your staff currently attempting to validate internally your use of student interview selection and referral criteria?

- 1 NO
- 2 YES

6. Does your placement office have adequate staff and facilities to conduct validation studies as outlined by the Uniform Guidelines?

- 1 NO
- 2 YES

↳ 7. (If NO) Please RANK ORDER below the three (3) most needed resources by writing numbers in the corresponding blanks, so that: 1 = most needed resource; 2 = second most needed resource; and 3 = third most needed resource.

- \_\_\_\_\_ PROFESSIONAL STAFF
- \_\_\_\_\_ FUNDING
- \_\_\_\_\_ SECRETARIAL STAFF
- \_\_\_\_\_ COMPUTERIZED ASSISTANCE
- \_\_\_\_\_ VALIDATION GUIDELINES
- \_\_\_\_\_ CONSULTATION ASSISTANCE
- \_\_\_\_\_ OTHER (please specify) \_\_\_\_\_

-2-

In responding to each of the next eight (8) items, please use the lead question provided below.

QUESTION: Is it a current procedure in your placement office to screen interview schedules (by removing the names with or without notice to the students) on the basis of any of the following employer-specified criteria?  
(Circle one response for each item)

## 8. Sex

- 1 NO
- 2 YES

## 9. Race

- 1 NO
- 2 YES

## 10. Color

- 1 NO
- 2 YES

## 11. Religion

- 1 NO
- 2 YES

## 12. National Origin

- 1 NO
- 2 YES

## 13. Academic Major

- 1 NO
- 2 YES

## 14. Grade Point Average

- 1 NO
- 2 YES

## 15. Degree Level

- 1 NO
- 2 YES

└── (If you responded YES to any of the items #8. - #15. above)

## 16. Is this screening procedure done in conjunction with employers' voluntary or mandatory equal employment opportunity affirmative action programs?

- 1 NO
- 2 YES
- 3 NOT CERTAIN

PLEASE TURN OVER

-3-

17. Have your office policies regarding the selection of students for interviews changed as a direct result of the Uniform Guidelines issuance in August 1978?

1 NO  
2 YES

(If YES) Please describe what changes have occurred: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

18. In the near future, do you anticipate adopting new policies (re: the selection of students for interviews) which will bring your operation MORE into compliance with the Uniform Guidelines?

1 NO  
2 YES

(If YES) Please describe what changes will occur: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

19. Have your office procedures regarding the selection of students for interviews been audited by another department/division within your institution?

1 NO  
2 YES

(If YES) When did this audit occur?

\_\_\_\_\_ MONTH \_\_\_\_\_ YEAR

(ALSO) Please identify the name of the department/division.

\_\_\_\_\_ DEPARTMENT/DIVISION

20. Have your office procedures regarding student interview selection been audited by a state or federal agency?

1 NO  
2 YES

(If YES) When did this audit occur?

\_\_\_\_\_ MONTH \_\_\_\_\_ YEAR

(ALSO) Please identify the name of the state or federal agency.

\_\_\_\_\_ AGENCY

-4-

Next, a few questions about your particular office operation.

21. Which one of the following BEST describes the primary policy of your placement office regarding the selection and/or referral of students for interviews with employers? (Circle only one answer)

- 1 INTERVIEW LIMITS whereby students are restricted (limited) in the number of organizations with whom they can interview.
- 2 OPEN SIGN-UP where employers' schedules are posted, and students sign-up on a first come--first served basis.
- 3 POINTS are given to students, who then bid them for spaces on employers' interview schedules.
- 4 PRE-SELECTION (PRE-SCREENING) whereby students submit their credentials, your office forwards this information to employers who review and select the students who they desire to interview.
- 5 PRIORITY CARDS whereby students are given a designated number of cards which, when used, guarantee them an interview.
- 6 RANDOM (LOTTERY) SELECTION whereby each student's name and/or assigned number is drawn at random, and if drawn, the student can sign on an interview schedule.
- 7 RESUME BOOKS are compiled and either forwarded to employers, or kept in your office for employers to review.
- 8 OTHER (please describe briefly)

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22. How many full-time equivalent administrative positions (except secretarial) comprise your placement office staff?

\_\_\_\_\_ FULL-TIME ADMINISTRATIVE POSITIONS

23. How many full-time equivalent secretarial and support positions comprise your placement office staff?

\_\_\_\_\_ FULL-TIME SECRETARIAL & SUPPORT POSITIONS

24. Is your placement office a member of the College Placement Council, Inc.?

- 1 NO
- 2 YES

25. Which classification below identifies the primary area of financial support for your college or university?

- 1 PUBLIC/STATE-SUPPORTED
- 2 PRIVATELY SUPPORTED

PLEASE TURN OVER



-5-

Finally, the remaining questions are included to help develop the summary profiles mentioned in the cover letter.

26. Which of the following BEST describes the primary academic emphasis of your institution? (Circle only one number)

- 1 COMPREHENSIVE (e.g., a relatively proportional representation of four or more academic areas including technical and non-technical)
- 2 LIBERAL ARTS (e.g., Humanities, Art, Social Sciences, etc.)
- 3 TECHNICAL (e.g., Engineering, Architecture, etc.)
- 4 BUSINESS (e.g., Management, Accounting, Finance, etc.)
- 5 PROFESSIONAL (e.g., Law, Medicine, etc.)
- 6 OTHER (please describe)

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27. Please identify in the space below your institution's total opening enrollment for the Fall 1981 term.

\_\_\_\_\_ TOTAL ENROLLMENT FALL 1981

28. In the space below, please estimate the proportion (percentage) of WOMEN students enrolled at your institution for the Fall 1981 term.

\_\_\_\_\_ % OF WOMEN STUDENTS

29. In the space below, please estimate the proportion (percentage) of MINORITY students enrolled at your institution for the Fall 1981 term.

\_\_\_\_\_ % OF MINORITY STUDENTS

30. Please identify in the space below your major field of study for the last degree you received.

\_\_\_\_\_ MAJOR FIELD FOR LAST DEGREE

31. How many total years of experience do you have in the placement field?

\_\_\_\_\_ TOTAL YEARS OF EXPERIENCE

32. If this questionnaire was completed by someone other than the placement officer to whom it was mailed, please identify your position title.

\_\_\_\_\_ POSITION TITLE

-6-

Is there anything else on which you would like to comment regarding the focus of this study as it relates to the Uniform Guidelines on Employee Selection Procedures? If so, please use the space below for that purpose.

Also, please feel free to write any other comments you may have.

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*Your contribution to this effort is greatly appreciated. If you would like a summary profile of the results, simply include your mailing address on the return envelope (NOT on this questionnaire). Your name is not necessary.*

## Appendix B: Introductory Letter Forwarded to Original Sample of 500 Placement Directors



Redford University

Radford, Virginia 24142  
(703) 731-5373

Career Planning and Placement Center

September 18, 1981

Dear Director:

During the past several years, college and university placement offices have been affected by various equal employment opportunity laws. One set of laws which has had a direct impact upon our office operations is the "Uniform Guidelines on Employee Selection Procedures". I am completing a study to assess the current impact of this federal legislation.

Consequently, I have developed a survey instrument (questionnaire) designed to make such an assessment. I recently piloted the questionnaire among placement officers at eight four-year institutions of various size and emphasis. All had positive reactions, and encouraged by their comments, I am moving to the final phase of my research.

I would like your participation in completing the questionnaire which will take about ten (10) minutes of your time to answer. Enclosed you will find a return-addressed post card. If you decide to participate, simply complete the information on the post card, and mail it to me no later than September 30, 1981. Shortly thereafter, you will receive the survey instrument.

I would greatly appreciate your cooperation in this research project. Your responses to the questionnaire will be grouped with those of other placement offices so that any given institution will not be able to be identified. Since the survey sample includes colleges and universities on a national scale, your contributions will be very valuable to all interested placement officers.

Thank you.

Sincerely,

James L. McBride, Jr.  
Director  
Career Planning and Placement

Appendix C: Example of Post Card Used in Mailing To Original Sample

Yes, I WILL PARTICIPATE IN THE STUDY.  
CHECK  
PLEASE COMPLETE THE ADDRESS INFORMATION BELOW:  
NAME \_\_\_\_\_  
ADDRESS \_\_\_\_\_  
INSTITUTION \_\_\_\_\_  
CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_  
TOTAL ENROLLMENT (FALL 1981) \_\_\_\_\_

James L. McBride, Director  
Career Planning and Placement  
Radford University - Box 5910  
Radford, VA 24142-5910

## Appendix D: Letter To 230 Participating Placement Directors



Radford University

Radford, Virginia 24142  
(703) 731-5373

Career Planning and Placement Center

October 12, 1981

Dear Director:

First, let me thank you for deciding to participate in my study. In order for the data analysis to be meaningful, please follow through with your decision by completing and returning the enclosed questionnaire. Again, let me reinforce for you the fact that your responses will be grouped with those of other placement offices so that no specific institution can be identified.

The "Uniform Guidelines on Employee Selection Procedures In College & University Placement Offices" questionnaire should take about ten (10) minutes of your time to complete. There are no "right" or "wrong" answers, so please make every attempt to respond to each item. Once you have completed the form: (a) fold it lengthwise; (b) place it in the return-addressed envelope; and, (c) mail it to me no later than October 30, 1981.

I will be compiling the data during the month of November, and writing up the results shortly thereafter. As an added incentive for your help, I will be happy to mail you a summary profile of the results. To receive your summary profile, simply print or type a return address on the envelope I have enclosed. No name or institutional affiliation is necessary.

I greatly appreciate your interest and cooperation in this research project. If you should need to contact me, please feel free to do so.

Sincerely,

James L. McBride, Jr.  
Director  
Career Planning and Placement

## Appendix E: Example of Follow-Up (Reminder) Post Card

## A REMINDER

On October 12, 1981, you were mailed a questionnaire entitled "Uniform Guidelines On Employee Selection Procedures In College & University Placement Offices". If you have already returned the questionnaire, please disregard this reminder notice.

If you have not yet mailed your questionnaire to me, please do so as soon as possible.

If you never received the questionnaire or if you have misplaced it, call me at (703)731-5373 and I will mail you another form immediately.

Thank you.

James L. McBride, Jr.  
RUS BOX 5910  
Radford, VA 24142

## Appendix F: Follow-Up Letter of Appreciation to Respondents Requesting Summary Profiles



Radford University

Radford, Virginia 24142  
(703) 731-5373

Career Planning and Placement Center

December 18, 1981

Dear Director:

Let me thank you for your completion and return of the "Uniform Guidelines on Employee Selection Procedures in College and University Placement Offices" survey instrument. You might be interested to know that a total of two hundred and thirty (230) four-year institutions comprised the final sample. Of those, one hundred and eighty-four (184) completed and returned the instrument prior to the extended deadline (response rate = 80.0%). Additionally, of the 184 respondents, 97.8% could be identified as the career planning and/or placement directors of their respective institutions. Finally, better than 90% of the returned instruments were completed "in full".

This letter is not the summary profile I promised you. It is simply a notice to inform you that I will be busy during the next two months compiling and analyzing the data. A total of one hundred and twelve (112) of you have requested summary profiles, and I plan to forward them to you during the month of March. I apologize if that date presents you any concerns, but the analysis and synthesis of my findings will require some time.

Meanwhile, please be aware that I sincerely appreciate your effort. Should you have any specific questions or additional comments, please do not hesitate to contact me.

Sincerely,

James L. McBride, Jr.  
Director, Career Planning  
and Placement Center

Appendix G: Virginia Four-Year Institutions Included in Pilot Study

UNIFORM GUIDELINES QUESTIONNAIRE  
INSTITUTIONS INCLUDED IN PILOT STUDY

Hampton Institute  
James Madison University  
Old Dominion University  
Virginia Commonwealth University  
\*Hampden-Sydney College  
Longwood College  
University of Richmond  
University of Virginia

\* denotes a non-member in the College Placement Council, Inc.



## Appendix H: Letter Forwarded to Virginia Colleges Included in Pilot Study

Dear Respondent:

Attached you will find the Uniform Guidelines survey instrument of which I spoke to you on the telephone. As I explained, the primary purpose of this pilot study is to provide an examination of the form in terms of clarity and content. Please write your comments on the form and add any other comments you wish to make on a separate sheet of paper.

The input you provide regarding such things as the instrument's format, content, etc. will be most valuable in designing the final draft. When you have finished, please make certain that you enclose the survey form and any additional comments you have in the return-addressed envelope. I will be reviewing your comments in order to help develop a more effective instrument.

Again, let me express to you my appreciation for your willingness to assist me in this endeavor. Also, let me assure you that your responses will not be included in my analyses, and thus, they will be strictly confidential.

Best wishes for a prosperous year.

Sincerely,

James L. McBride, Jr.  
Director of Career Planning and Placement  
Tyler Hall  
Radford University  
Radford, Va. 24142

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EFFECTS OF UNIFORM GUIDELINES ON EMPLOYEE SELECTION  
PROCEDURES IN COLLEGE PLACEMENT OFFICES

by

James Lee McBride, Jr.

(ABSTRACT)

Beginning with the Civil Rights Act of 1964, Congress and the courts have legislated and adjudicated laws in an effort to eliminate discrimination in employment opportunities on the grounds of race, color, sex, religion, or national origin. In 1978, the Uniform Guidelines on Employee Selection Procedures were jointly issued by several federal administrative agencies and have included within their framework the types of employment selection practices operating in many contemporary college and university placement offices. These regulations have serious implications for college placement offices in which interview selection and referral practices fail to assist all students in fair and equitable ways. This study investigated from two perspectives the problems for college placement personnel that are associated with these guidelines.

First, legal research methodology was implemented to trace the historical and topical development of relevant legislative and case law. The findings of the legal research indicated that the federal government and the courts had mandated, rather consistently, two controlling

standards that pertain to individual and class civil rights. Those standards are equality and neutrality. Failure of an entity to comply with either of these standards, except in limited instances, had been judged discriminatory under civil rights laws. Based on existing litigations, judgments against college placement offices could be proscriptive, corrective, and/or compensatory in effect. Furthermore, there exists the potential for loss of governmental funding, the extent of which remains undetermined.

Secondly, the findings of the survey research indicated that a majority of college placement offices sampled (60.9%) were operating student interview selection and referral systems within the compliance standards of the Uniform Guidelines. Almost categorically, placement officers supported student interview systems that were void of prohibitive selection criteria (sex, race, color, religion, or national origin). On the other hand, the placement officers indicated more discriminatory trends where neutral selection criteria (academic majors, grade point averages, or degree levels) were concerned. Additionally, 25.9% of the respondent institutions indicated that they had either changed, or were planning to change their interview selection procedures to be more in compliance with the law.

The survey research also led to significant findings among several demographic characteristics related to college placement offices, their personnel, and the Uniform Guidelines. Those characteristics included: college

placement officers' familiarity with and primary sources of information about the regulations; certain perceived resource needs; the adequacy of placement office staffing; and, governmental auditing of interview selection and referral procedures.

In combination these research findings indicated several factors which college placement personnel need to be aware of in order to bring their operations into legal compliance.