Unit 1
Gatewood, Feild, & Barrick, Chapters 1 & 2.

Before beginning to read the chapters, take time to read the dedication of the book as well as "about the authors" on xxii. You will enjoy them.

Page and paragraph designations. At the beginning of each objective, I have indicated the page number and the paragraph number of the text where the answer can be found. For example, "3,2" at the end of an objective would mean that the answer could be found on page 3, in paragraph 2 counting down from the top of the page. Sometimes I will refer to a section of the text that is at the top of a page but continued from a paragraph that began on the preceding page. I will indicate this as paragraph "0". Thus, "7,0" means that the answer can be found on page 7 at the top of the page. While I will be as accurate as I can be with these page and paragraph numbers, my computer sometimes makes mistakes. Therefore, if you cannot locate an answer in the paragraph that is indicated, look at the paragraphs that immediately precede and follow it. Please tell me if the page and paragraph numbers are wrong so that I can inform the other members of the class.

For the fun of it, read the last paragraph in the book - page 631, the section "That's All Folks!" - It really is true. Also, to get an idea of where we are headed in the course, look at Figure 1.2 on page 11 - that outlines the steps in the development of a selection program. I am going to start with equal employment opportunity (EEO) and affirmative action (AA) laws, then deal with the professional steps involved in developing a sound selection program that meets both legal and professional requirements, but first, I want you to become a little familiar with basic terms/concepts in personnel selection, hence the study objectives from Chapter 1.

Chapter 1

1. 4,4. A. The costs of selection become an important factor for the organization when there are large numbers of applicants. What must an organization do and how is this done?

   B. What is the irony of that and the result (the result is in 5,0 starting with So…..)

2. 8,2. How are selection and training related? This is a very important point to keep in mind.
3. 12,3-4. What are the two requirements for choosing the selection devices to be used?
4. 13,2. What is the purpose of validation? Note that this is true whether *empirical* validation (13,2) or *content* validation (13,3) is used. Don't worry right now about the differences between the two - later in the course we will be spending a lot of time on different validation procedures.
5. 14,2 Why is it that selection is an uncertain activity? Don't just say because the essence is "prediction": include a summary of the last two sentences in the paragraph.
6. 15,3-5. Not for the exam, but note the important points in the second sentence of 15,3 and in 15,5. The primary purpose of selection is to ***enhance the probability*** of making correct employment decisions – as indicated in the preceding study objective, everyone knows or should know that selection cannot always predict who will perform better than someone else due to the many factors that influence performance, including motivation, as stated in 15,5.

Chapter 2

7. 22,2 Not for the exam, but note the wording of the second objective carefully. The key words are to minimize the chance of **a judgment of discrimination against the organization**: not to prevent charges of discrimination. A company cannot prevent charges of discrimination but it can decrease the chance that the selection procedures will be ruled as biased by the courts. Also note that while the two objectives are not mutually exclusive, sometimes, as the authors state they do collide with one another.

8. 23,2 Explain why it is that the regulations appear to disregard the interests of business: That is, what is the key to understanding employment regulation as stated in the **4th and 5th sentences** in this paragraph?

   This is an important point for you to keep in mind. It really is true that at times the laws seem to be unfair to business. The Americans with Disabilities Act, for example, and the guidelines promulgated by the Equal Employment Opportunity Commission had companies "buzzing" for a number of years. They are very, very difficult for companies to follow – and, to make matters worse the early Supreme Court decisions differed considerably from the EEOC guidelines. The EEOC guidelines were very liberal (favoring the applicant/employee) while the Supreme Court decisions were much more conservative, narrowing down the application of ADA (which often works to the favor of the organization). Congress then passed the ADA Amendments Act (which took effect on Jan. 1, 2009) that restored, for the most part, the "broadness" of ADA, making it more akin to the EEOC guidelines. (Yep, welcome to the world of employee selection – just when you think you know what the rules are, they change!)

   Because lawsuits often take years to reach a final determination, what is "law" today may not be law tomorrow. Thus, all I can do in this class is to tell you what the current laws are and tell you to keep watch for future legal decisions.

9. In lecture, I am going to add two very important points here - learn them: (1) None of the laws, EEO or AA, require an organization to hire an unqualified minority; (2) Laws are only applicable if your selection system has an unequal effect on applicants because of some demographic characteristic - **A lousy selection system that affects everyone the same is NOT illegal.**

10. On page 25, Table 2.1 lists the major EEO laws. However, they are not categorized well, so I am going to present these laws in a different manner. I am also going to skip some of them and only cover the really major ones. I am also going to skip the Constitutional Amendments for now and return to those later, since they have quite different provisions than these first two sets of laws.

    Note carefully, that I do have several study objectives over this material at the end of this material.

    There are two very different categories of laws - those laws passed by Congress - the legislative branch of our government and administered by the **Equal Employment Opportunity Commission** and those passed by the executive branch of the government and administered by the **Office of Federal Contract Compliance Program** which is part of the **Department of Labor**. I am going to list the major ones for you and then explain the differences between the two sets of regulations.

    Equal Employment Opportunity Laws - administered by the EEOC

Note that all of the laws administered by the EEOC are relevant for all public and private employers with more than 15 employees including the US Congress (as amended in 1972) but excluding the military, private clubs, religious organizations, and places of employment connected to Native American reservations. Native American reservations are sovereign nations and thus not subject to these laws.

Title VII of the Civil Rights Act of 1964	race, color, religion, sex, national origin And, as amended in 1978, pregnancy, childbirth or related conditions
Civil Rights Act of 1991	Same as Title VII This is not actually a separate act - it amends Title VII (I'll explain in lecture)
Age Discrimination in Employment Act of 1967	people over 40 years of age
Americans with Disabilities Act 1990 (ADA)	Physically and mentally handicapped
ADA Amendments Act, 2008	Same as the ADA Again, this is not really a separate act – it amends ADA
Genetic Information Nondiscrimination Act, 2008	genetic information, which includes family medical history (not in text, but becoming increasingly important)

EEO and Affirmative Action Laws- administered by the OFCCP/Dept. of Labor

These laws are relevant only to **government contractors** that have contracts with the government. A "government contractor" is any organization that enters into a work contract with the government OR receives federal funds. WMU, for example, is considered to be a government contractor and thus must abide by these laws.

Executive Order 11246	race, color, religion, sex, national origin, and sexual orientation and gender identity (as amended in 2015 by President Obama)
Rehabilitation Act of 1973	physically and mentally handicapped
Vietnam Era Veterans Act of 1974 as amended March 2014 *	Any veteran, specifically including and emphasizing disabled veterans

*Yes, this is now an odd name for this Act. Prior to March 2014, the act only covered Vietnam era veterans and veterans from any era that were 30% or more disabled. Now it covers all veterans.

Okay, why are there two sets of laws? Well, as you can see, the laws administered by the OFCCP are relevant only to government contractors -- the government wanted to promote and encourage affirmative action as a social policy. Therefore, **the laws administered by the OFCCP require affirmative action while the laws covered by the EEOC do NOT** (affirmative action is VERY different than equal employment - we'll get to this a little later).

The penalties for noncompliance are also very different for the two sets of laws. Basically, the individual employee (or a group of employees) can file a law suit under the **EEOC** laws -- and if companies are found to be in violation, then the individual is compensated in some manner - and to make it more complicated if the organization is found to have unfairly discriminated against a member of a minority group the court can order the organization to implement an affirmative action program - **however, this only occurs after the organization has been found in violation of the law**. With **OFCCP** laws, if companies are found in violation, then the government can withhold or withdraw all of the federal money. However, individuals cannot file a lawsuit under these laws.

Let me summarize all of this for you:

There are three basic differences between the laws administered by the EEOC and the laws administered by the OFCCP:

A. The types of agencies covered by the laws

EEOC covers all private and public employers with more than 15 employees (with a few exceptions)

OFCCP covers **only** organizations that are government contractors.

B. Affirmative Action

EEOC laws do NOT require affirmative action programs; OFCCP laws DO (for organizations that have $50,000 of business with the gov. and 50 or more employees).

C. Penalties for noncompliance:

Individuals can bring a law suit under the EEOC laws and seek redress
Individuals cannot bring a law suit under OFCCP laws, rather noncompliance of OFCCP can result (only) in the withholding of federal grant monies (although the OFCCP can request a hearing with an administrative-law judge if an organization does not correct deficiencies, but that must be initiated and done by the OFCCP, not the individuals)

STUDY OBJECTIVES FOR THE PRECEEDING MATERIAL.

10A. Be able to state the groups/characteristics covered/protected by each law.

10B. EXPLAIN the three major differences between the laws administered by the EEOC and OFCCP (you do not have to learn the material in parentheses).

11. Based on the following material, be able to state the **specific** protected classes under Title VII – as designated in the *Uniform Guidelines on Employee Selection Procedures* (which I will talk about later). You don't have to include the material in parentheses.

(1) African Americans, (2) American Indians, now referred to as Native Americans (including Alaskan natives), (3) Asians (including Pacific Islanders), (4) Hispanics (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin regardless of race), and (5) females.

None of the following material will be on the exam. It is for clarification purposes only.

A. These laws cover <u>United States citizens</u> and non-citizens <u>with legal authorization to work</u> in the United States. They do not cover, for example, Hispanics who are living in this country but are citizens of Mexico unless they have legal authorization to work in the US. By the way, this means that international students are NOT covered by these laws since they only have student visas.

B. Individuals in other minority and religious groups can file a lawsuit, but the courts will then decide whether or not they are actually covered by the law before proceeding. The courts have spent a lot of time, by the way, determining what a "religion" is. I am not going to go into this detail in this class, however.

C. Although Asians are indeed a protected class according to Title VII and the *Uniform Guidelines*, several Asian sub-groups (the largest being Japanese) are often NOT *underrepresented* in work or school settings because as a group, they tend to perform better on cognitive ability tests (I will use the example of the SATs, ACTs, and GREs because you are familiar with them). Thus, some scholarship programs and affirmative action programs exclude Asians from consideration.

When you see something that states that *underrepresented* minorities are eligible that almost always translates into the fact that Asians are being excluded from consideration.

12. Not for the exam: Title VII and sexual orientation and gender identification. One of the most recent issues regarding Title VII is EEOC's aggressive efforts to expand the definition of sex discrimination to include lesbian, gay, bisexual, and transgender individuals. In 2015, Obama amended Title VII's complement law, Executive Order 11246 to cover the LGBT community and the EEOC quickly followed suit. However, amendments to Title VII require congressional approval, thus the EEOC is attempting to expand coverage through case law, rather than seeking congressional approval. They have pending law suits addressing: (a) sexual orientation, (b) refusal to hire an individual whose driver's license indicated the individual was female, but who, when interviewed, presented as a male, and (c) denying employees the use of restrooms consistent with their gender identity and intentional use of the wrong pronoun. All of these cases are in the lower courts and pending, thus, at this point in time, we do not know what the outcome of these efforts will be.

13. 26,5-27,0 (see what I am asking you to learn for the exam below). Notice the legal process. Congress passed Title VII of the Civil Rights Act of 1964. In 1989 in three significant cases, the Supreme Court interpreted this law in ways that many in Congress did not like. Thus, Congress enacted the Civil Rights Act of 1991 that, with one or two exceptions, negated the Supreme Court's decisions. Remember, that the courts can only interpret the laws that Congress passes. Therefore, the Supreme Court must now abide by the provisions in the Civil Rights Act of 1991. (Edward Kennedy, a liberal, was one of the two main framers of the Civil Rights Act that had to go under many revisions before Bush would sign it - Bush vetoed the first version).

FOR THE EXAM:

A. Explain, based on the material below, why court rulings and selection legislation shift and change over time due to the "branches" of our government as established by the Constitution of the United States.

B. Explain how politics affects the passage of laws and the interpretation of those laws (include the Supreme Court in your answer).

As illustrated by the CRA of 1991 (and also ADA and the ADA Amendments Act), what you are seeing is our government in action. The legislative branch (Congress) passes laws, the Supreme Court interprets those laws; if the legislative branch does not like how the

Supreme Court is interpreting the laws, then they change/amend the laws and the Supreme Court must abide by those new laws.

The way the laws are passed and interpreted have a great deal to do with whether we have a liberal or conservative President and Congress. Not surprisingly, democrats have typically supported the EEOC and AA laws, while republicans, who tend to preserve the rights of businesses, have not supported laws that put a great deal of burden on the organization. Moreover, the interpretations of the Supreme Court are highly influenced by the nature of the Court - whether it is a conservative or liberal Court.

The following material is not for the exam:

Most individuals are unaware of the power of a Supreme Court justice. It is the most sought-after type of appointment a president can make, because if he is successful in his appointees, he can "pack" the court with liberal or conservative justices. Because Supreme Court justices are appointed for life, these appointments can affect our laws for decades. I have included an optional article in the course pack in U1 that addresses this issue. Justice Scalia died in February 2016 leaving a vacant seat on the Court. He was a conservative, appointed by Reagan. The article starts, "The Supreme Court..stands at the threshold of an ideological transformation unmatched in nearly half a century, one that eventually could put in play legal precedents ranging from Roe v. Wade to Citizens United. Not since 1968 has a presidential election carried such momentous implications for the nation's highest court, now divided down the middle following the death of conservative icon Antonin Scalia." Besides Scalia's death, three justices are between the ages of 78 and 83: one is conservative, two are liberal. Thus, over the next few years, four new justices may be appointed replacing 2 conservatives and 2 liberals.

Current Supreme Court Justice demographics

1. Four conservative (appt. by Bush), four liberal (2 appt by Obama, 2 by Clinton).
2. Five men, three women (all women are liberals, 2 appt. by Obama, 1 by Clinton)
3. Five Catholic, three Jewish (all Jews are liberal)

14. 27,1 The CRA of 1991 had a large effect on the information needed to demonstrate adverse impact. What is now required (the second sentence in the paragraph)? What is the exception (third sentence)? What did complaining parties only have to demonstrate before the CRA of 1991 (last sentence)?

    Not for the exam: Although the above may not seem like a big difference to you at this point, it is very significant. This is one of the few provisions of the CRA of 1991 that made it more difficult for plaintiffs to pursue an adverse impact case. And, it is important. This was one of the main reasons why plaintiffs in the Walmart case were not successful in persuading the Supreme Court that the case should be a class action suit – because of Walmart's decentralized and highly discretionary promotional policies, most of the justices ruled that the plaintiffs had not satisfied this part of the law for the "class".

15. 27, 2. Not for the exam, but note the material about jury trials particularly the last two sentences. Jury trials are only possible for victims of **intentional** discrimination. I will talk about what constitutes intentional discrimination a bit later. For now, don't worry about it.

16. 27,3. What does the CRA of 1991 say about race norming? Be able to state what race norming is (2nd sentence).

    None of the rest of this material will be on the exam: For a more detailed treatment, see page 96,4. I will probably talk more about this in lecture, but there are several ways to race norm. One is simply to create separate ranked lists, based on test scores, and choose the top one from one list, the top one from the second list, etc. until all positions are filled. Another, more sophisticated approach, and the one actually used by the U.S. Employment Service, was the one described on page 96,4 that involved the use of percentile scores based first on race, sex, and national origin and then combined into one ranked selection list based on the percentile scores.

    It is not really possible for you to understand the significance of this provision in the CRA 1991. The GATB was used by ALL U.S. Employment Services and most state employment services. As a result of this decision about race norming, it was dropped completely. Yet, more was known about this test battery than any other test battery in terms of its validity for a wide variety of jobs.

17. 27,4. What are the arguments for and against race norming? Be sure to include the point that selection tests often measure no more than 25% of how well people perform. This is true – but again, remember selection procedures are designed to *enhance* prediction; they are certainly not perfect.

18. 29,2 Not for the exam. We will be looking at Americans with Disabilities Act in detail in a later unit. This has, indeed, had a very impact on selection procedures and has yielded a staggering number of court cases due to ambiguities in its provisions.

19. 35,2 How do the Constitutional Amendments differ from the EEO statutes? There are three important differences. First, they only cover federal, state and local governments. Second, they cover ALL citizens and are not restricted to demographic groups or characteristics. Third, the **intention** to discriminate must be proven rather than simply adverse impact (or what the book refers to as unequal effects of employment actions).

    Note: There are two types of unfair discrimination: intentional discrimination or disparate treatment (which is self-explanatory) and adverse impact or disparate impact (the unequal effect of employment actions). The distinction is VERY important – we will be covering this in the next few objectives.

20. 35,4 Not for the exam but note again the point that the well being of the organization itself is not of major concern.

21. 36, 1.

    A. State the difference between adverse impact and unfair discrimination. In order to answer this, you will have to define what is meant by adverse impact in your answer.

    B. Just to emphasize - learn the following point well: The presence of adverse impact (disproportionate selection) <u>does NOT mean that unfair discrimination has occurred.</u>

22. 36,2-3. State the names of and define the two types of unfair discrimination.

    Important! The text is a little confusing regarding disparate treatment. **Disparate treatment** is considered to be **intentional** discrimination, whether or not there is an explicit statement of such. Because of that be sure to include the "**even though there may not be an explicit**

statement of such" (or something similar) in your definition. In other words, even if employers do not "mean" to unfairly discriminate against members of a protected class, if they apply selection criteria differently to the various groups, then they have, by law, "intentionally" discriminated against the protected members.

Disparate **impact** is also tricky. Disparate impact means that even though there was no intent to discriminate because the same procedures were used uniformly for everyone that applied, the selection procedure **resulted** in disproportionate selections **based on characteristics/features related to protected class membership that are not valid or job related.**

23. 38,4-39,0. Because it is so hard to prove disparate treatment, most court cases are disparate impact cases. Thus, I am going to focus more on those. Based on the material below:

    A. Diagram and explain the "shifting burden of proof" procedure for Title VII disparate impact cases, including the three defenses available to organizations once a prima facie case has been established

    B. Be able to explain how the burden of proof model differs from that which we are familiar with in criminal cases.

    C. What is it called if plaintiffs have initially convinced a judge that a violation of Title VII may have occurred? (Answer: a prima facie case.) The English translation means at first face or first appearance.

Shifting Burden of Proof:

Plaintiff: adverse impact ----->	Defendant (organization) -------	>Plaintiff
prima facie case	validity, business necessity or or BFOQ	alternative procedure with less adverse impact is available.

This burden of proof, while it appears to be a subtle procedure, is VERY important and critical in court cases. In criminal cases, the burden of proof always rests with the "prosecutor" who must, beyond a reasonable doubt, prove that the defendant is guilty. In other words, the defendant is always assumed innocent. This is not true in EEOC disparate impact cases. In these cases: (1) the organization (defendant) is considered innocent in the first step, and the plaintiff must show that adverse impact has occurred; (2) once the plaintiff has demonstrated adverse impact, then the organization is considered **guilty** and must **prove its innocence** by using one of the three acceptable defense strategies; and (3) even if the organization successfully defends itself, the plaintiff can still show that alternative selection procedures with less adverse impact are available, and if the plaintiff can do so, then the plaintiff wins (however, see what I have to say below about this last step).

NOT FOR THE EXAM, but you should also be aware that very few plaintiffs have ever won a court case on proving that an alternative practice is available that has less adverse impact (I know of only two cases, but there may be more). Thus, while it is "legally possible" it has not been shown to be very practically possible. Therefore, the first two parts of this procedure are the most critical ones for both the plaintiff and the defendant.

NOT FOR THE EXAM: **The history of the burden of proof model.** The shifting burden of proof model was established by the Supreme Court in the first landmark court case, Griggs v. Duke Power (1971) that we will get to in Unit 3. It remained in effect until 1989 when the Supreme Court reversed it in the Wards Cove case - and put the burden of proof squarely and almost solely on the plaintiff. This made it very difficult for anyone to prove a case of adverse impact. The CRA of 1991 restored this shifting burden of proof procedure (with a few modifications).

24. 39,0-2. State and **explain** the three defenses that are available to organizations once an adverse impact prima facie case has been established. See below for details.

    (a) For validity, all you have to say is that the organization demonstrates that the selection procedure is job related.

    (b) For business necessity, **include what is typically looked at and what is not.**

    (c) For BFOQ, **include the point that it is legally impossible to frame a BFOQ defense for race, color, or national origin**. The BFOQ defense is available only for sex and religion.

    The next material is not for the exam, but there have been some interesting new developments (based on a number of law suits) about the BFOQ defense: Customer/client privacy (but not preference) has been ruled as a legal justification for hiring female/male workers in nursing homes and human service settings. For example, if a nursing home has primarily female elders they can restrict hiring to female nursing aides/assistants if part of the job of the aide/assistant is to bathe and/or help clients in the bathroom (or perform similar personal care tasks). However, in a recent court case, a nursing home that hired only white health-care providers due to the demands of its patients was ruled to be in violation of the law. This is consistent with previous rulings that a BFOQ defense is restricted to sex and religion.

25. The easiest defense for a company to "win" is based on validity. The hardest is a defense based on BFOQ. For the exam be able to rank order the three defenses in regard to which is the easiest for a company to base a defense on: 1. validity, 2. business necessity, 3. BFOQ.

26. A. 40,5. State the two components of the RLM. You can see how difficult this becomes - as discussed in 42,1-2, major debates surround what the RLM is.

    B. Now go back to 40,2 and be able to provide the formula for an acceptable, legal, stock statistic - that is one that takes into account the skill level of the demographic group in the relevant geographical region/labor force.

    None of the rest of the material in this study objective will be on the exam, but I want to give you a little history with respect to the population comparison. The formula for the population statistic was changed based on the Supreme Court's ruling in the Wards Cove decision in 1989. This change was one of the few rulings from that cases that was incorporated into the CRA of 1991.

    The general population comparison statistic became an acceptable way to demonstrate adverse impact as a result of the first major court case in personnel selection, Griggs v. Duke Power in 1971. The general population comparison statistic consists of comparing simply **the percentage of minorities in the position compared to the percentage of minorities in the relevant geographical region** without regard to skill level; that is **without** regard to the number of minorities or people in the geographical region **who were qualified for the job**.

    Up until Wards Cove in 1989, the courts accepted this comparison. This comparison is usually a more liberal comparison and worked in the favor of the plaintiff rather than the company. Think about it. For a position such as computer programmer or engineer, the percentage of minorities who were qualified would probably be much smaller; hence the

general population comparison works in favor of the plaintiff, while the current one works in favor of the company (defendant).

I firmly believe the current population comparison is a much more reasonable comparison than is a comparison with the general population – that comparison simply doesn't make a lot of sense to me.

27. In order for the EEOC laws to apply to a protected class (any of the protected classes covered by the EEOC laws), protected class members must comprise at least 2% of the RLM. **Learn this percentage**.

    This next part is not for the exam, but this is why the RLM is so important. For some reason, the authors of your text don't make this point until page 60, but because of its importance and relevance to the current material, you should know this now.

28. 42,5-43,0 Be able to apply the four-fifths rule to an example, similar to the one I have attached. Complete the attached example and bring it to lecture - I will discuss it in lecture.

    Before you complete the exercise, note the "three rules" at the top of the page.

29. Not for the exam, but note how confusing these cases can get. Not only are there major disputes over what the RLM is but also about the appropriate statistics to use. One statistic may show evidence of adverse impact while another may not. There is as current debate in the courts about statistical significance vs. practical significance. I am not going to talk about it in this class because it has only recently been raised and is not close to being resolved. Anyway, court cases often focus on the appropriate statistic to use **before** the case goes any further. You are beginning to get an idea of why some drag on for YEARS (some take as long as 10-20 years to resolve).

FOUR-FIFTHS RULE SAMPLE PROBLEM
(Note: This is a flow statistic)

Three rules to remember:

1. **Comparisons must be made between the appropriate groups**. For example, females are compared to males (not to whites, Asians and Hispanics); Asians are compared to Whites and Hispanics (not to males and females).
2. You do **NOT** compare white females to white males, white females to Asian females, Asian males to white males, etc. Only the major categories are compared (i.e., white vs. African American, Asian vs. white, and female vs. male).
3. **The selection or passing rate of ANY group must be at least 80% of the passing rate of the MOST FAVORABLY TREATED GROUP**, regardless of whether that group is the nonminority group. For example, if the above data indicate that the passing rate of Asians is higher than the passing rate of whites, then the passing rate of Hispanics would be compared to the passing rate of the ASIANS, not to the passing rate of the whites.

Number of Applicants

	Males	Females	Total
Whites	120	45	165
Asians	60	20	80
Hispanics	20	7	27
Total	200	72	272

Number of Applicants Passing

	Males	Females	Total
Whites	70	15	85
Asians	26	8	34
Hispanics	6	2	8
Total	102	25	127

According to these data, what groups, if any, were adversely affected by the selection procedure? Write out all of the steps.

PSY 6430 **Unit 2**:

Part of Chapter 2, Gatewood, Feild, & Barrick

Article: Affirmative Action in the United States

1. EEOC Title VII cases. Title VII cases are tried in the federal court system. Based on the material below, (a) learn this court structure, (b) the number of judges involved in district court trials, circuit court (appeals) trials, and the Supreme Court, and (c) also, after lecture, be able to explain why different parts of the country can have different laws by referring to this court process.

   Basic court structure: There are **92** district courts in the U.S. These 92 districts feed into eleven larger judicial units called circuits. Each circuit has its own Court of Appeals - therefore there are **11** Courts of Appeals (Michigan is in the Sixth Circuit along with Kentucky, Ohio and Tennessee). The 11 circuits then feed into the U.S. Supreme Court.

   In most cases (see below for the exceptions), the cases are heard by judges, not juries. One judge hears the case at the district court level, three at the circuit court level and nine at the Supreme Court level.

   Not for the exam: **Jury trial exceptions**: As briefly noted in the study objectives for U1, the CRA of 1991 permits either party (the individual or the organization) to request a jury trial for (1) intentional discrimination cases (2) when plaintiffs want to recover compensatory or punitive damages. However, because the vast majority of cases are adverse/disparate impact cases not disparate treatment (intentional discrimination) cases, most are still tried only by judges.

2. BEFORE an individual can pursue redress in court under Title VII all cases must first go through the EEOC. I have included an outline of the EEOC administrative process at the end of these study objectives. I will discuss this in lecture, and you will be responsible for answering the following about that process:

   A. Under which step in the process does a company legally admit "wrong doing", that is, having unfairly discriminated against a minority group if the company settles?

   B. If, in the pre-determination step, the EEOC determines no probable cause for the complaint, can the individual pursue the case in court? Why or why not? (from lecture)

   C. What initiates (1) a Conciliation Agreement and (2) a Consent Decree?

   D. What organization oversees (a) a Conciliation Agreement and (2) a Consent Decree?

   E. What types of concessions is a company usually required to make in a Consent Decree, unlike provisions that may be required by the company if it settles in one of the previous steps?

3. I have included the EEOC's charge statistics from 1997-2015 in the course pack. This is just FYI, but see the following material that will be on the exam.

   For the exam:

   Based on the following, (a) how many charges of discrimination were made in 2015, and (b) rank order the top four types of claims (I am excluding retaliation claims). You do **not** need to learn the percentages.

In 2015, there were over 89,000 charges of discrimination made to the EEOC.

Charge	Percentage	Charge	Percentage
Race	35%	National Origin	11%
Sex	30%	Religion	4%
Disability	30%	Color	3%
Age	23%	Equal Pay	1%
		Genetics	0.3%

4. Based on the following material be able to state why the number of EEOC cases relating to recruitment and selection has increased over the past 4 years in comparison to the immediately preceding years.

   When I taught this class in 2011, there weren't as many recent EEOC cases relating to recruitment and selection – most focused on unfair discrimination after hire, most notably harassment. However, that has changed over the past four years. **The EEOC developed a Strategic Enforcement Plan for 2013-2016, which has now been extended to 2018. The top priority is eliminating barriers in recruitment and hiring** (for all protected groups covered by the EEO laws you learned last unit). Because of that, many cases relating to recruitment and selection have occurred. That trend will continue at least through 2018.

   The following will not be for the exam, but the others are: (2) protecting immigrant, migrant, and other vulnerable workers; (3) addressing emerging and developing issues (including ADA, pregnancy, and LGBT issues); (4) enforcing equal pay laws; (5) preserving access to the legal system; and (6) preventing harassment through systematic and targeted outreach.

   Consistent with this SEP, the EEOC has stepped up its efforts to prevent unfair selection decisions based not only on LGBT issues but on criminal and credit background checks, which adversely affect African American and Hispanic applicants. We will deal this more in U8, but things have not quite worked out as the EEOC had intended. Many court decisions have chastised the EEOC for being too aggressive in their efforts and have actually ordered EEOC to pay up to $1 million to cover the legal costs for the companies they brought law suits against. Nonetheless, they are still pursuing this issue aggressively. Again, time will eventually tell how this shakes out.

5. I know this is a bit odd, but turn to 60,1 in Gatewood, Feild, & Barrick (you will see the connection in a moment).

   A. 60, 1. State one reason why organizations may opt to negotiate a settlement even if the charge has little substantiating evidence.

   B. The second reason why organizations settle is for public relations reasons. Learn this reason as well. As an example, a huge boycott was organized when Texaco was accused of unfair discrimination and the facts of the case came to light; they were losing a tremendous amount of business, contributing to why they settled rather than going to court.

   The following material is not for the exam: In the most recent big settlement, Merrill Lynch agreed to a $160 million settlement. In 1996, Texaco agreed to a $172 million settlement; Abercrombie & Fitch agreed to a $50 million dollar settlement as part of a consent decree in 2005; in another, Home Depot agreed to a $5.5 million dollar settlement as part of a consent

decree (2004); in another, Ford agreed to a $3.8 million dollar settlement under a consent decree. Ford indicated that they settled under a consent decree because they wanted to avoid the costs and uncertainties of litigation

The rest of the unit is going to focus on affirmative action

6. Equal Employment Opportunity vs. Affirmative Action. Define EEO and AA as I do below.

   Equal employment opportunity means that every person who is equally qualified has an equal opportunity for employment, promotions, etc. This, of course, is a professional selection issue - that is exactly what selection procedures are designed to do.

   Affirmative Action seeks to overcome the *(current and documented)* underrepresentation of minorities in the work place by increasing the number of members of protected classes at a faster rate than what would occur simply through EEO. AA is a social concept, not a professional selection issue, except as codified in the laws.

   The following material will not be on the exam: Minorities are often given preferential treatment in AA plans -- if two individuals are equally qualified or have reasonably similar qualifications and one is a member of a protected class, then the protected class member would be given the first opportunity for the job. **Note again, as I indicated in U1, that none of the laws require an organization to hire someone who is not qualified**, but it's often a grey area - particularly given the social and legal pressures to increase diversity within organizations.

Gatewood, Feild, & Barrick, Chapter 2, 47,3-51,0

Turn to page 47,3, "Affirmative Action Programs"

7. 48,1 Learn the three situations in which a company would adopt an AAP.

   Not for the exam but note that the first one relates to the fact that the laws administered by the OFCCP target all federal contractors and require AA programs. The third one is actually debatable right now. Because of some of the provisions in the CRA of 1991, most lawyers and professionals are advising organizations *not* to adopt voluntary AA programs. Nonetheless, learn all three for now.

   Not for the exam: A little history lesson. Western is, of course, a Federal Contractor. In 1990, the Department of Labor ruled that WMU was NOT acting in good faith when selecting members of protected classes. WMU thus entered into a conciliation agreement (the next to last negotiation step) with the DOL. As a result, WMU had an aggressive AA program during the early 90s. Interestingly, this agreement never reached the newspapers until 1992 - and then the Kalamazoo Gazette had only a very short article. Few members of the university even knew of its existence. Both the DOL and the EEOC conducted audits of WMU in 1995, and our procedures were not found to be discriminatory, thanks to our former VP of Institutional Equity, Mr. David Glenn (now retired), and the agreement was "lifted". Mr. Glenn was hired in 1988 and was immediately faced with the DOL audit that was conducted in 1989.

8. 49,3-4. Based on the material that follows:

   A. Explain why the courts have historically excluded white males from filing a (reverse) discrimination lawsuit under Title VII.

   B. But what are they permitted to challenge in court under the law?

Voluntary AA programs are indeed controversial. As the authors state, the language in Title VII causes some problems. However, over the years, the courts have stated that the intention of the framers of Title VII was to protect individuals who had been *subjected to unfair discrimination in the past* and because white males did not fall into that category, the courts maintained that white males were not protected by Title VII. The recent views of the courts have changed this a bit - although white males have not yet been granted the OK to file under Title VII (*in the absence of a voluntary AAP*); they can, however, question the legality of *voluntary affirmative action programs*.

The following is not for the exam: White males can file under some of the **state** civil rights acts and have done so. A few have been successful in winning disparate treatment cases.

9. More on voluntary AAPs. Based on the following material:

   A. What language in the CRA of 1991 calls the legality of voluntary AAPs into question and why?

   B. What is meant by a "mixed motive" as it relates to selection or placement/promotion of an employee?

   Unlike the authors, most people cite the CRA of 1991, not Title VII for the current controversy over voluntary AAPs. I suspect the authors did not want to go into this amount of detail because they would have to explain yet another court case that involved wheels within wheels – and another decision by the Supreme Court that was negated by the CRA of 1991.

   But, back to the point: Under the CRA of 1991, it is unlawful to *use protected status as a **motivating** factor in selection*.

   This language was written to protect members of protected groups. It was written in response to a Supreme Court decision involving a "mixed motive" case (Price Waterhouse v. Hopkins, 1989). The case involved a situation where the plaintiff, a female, was able to show that characteristics related to her being a female were *motivating* factors in her not being selected to be a partner in the firm. However, the company maintained that it would have made the same decision had those characteristics not been taken into account. Hence the term "mixed motive": the organization used both illegitimate and legitimate motives (reasons) for denying her the position. The Supreme Court ruled in favor of the company.

   The framers of the CRA of 1991 wanted to negate this decision and make it illegal for a company to even consider a characteristic associated with protected status when making a selection decision; hence the framers adopted the language that it was unlawful to use protected status as a *motivating factor*. **However, notice that language could also make *any* AAP illegal, because one cannot have an AAP without using protected status *as a motivating factor in selection***.

   Because of this language in the CRA of 1991, most legal experts have advised organizations *not* to implement voluntary AAPs and to *abandon their current ones* until this matter is resolved in the courts. Although the CRA has been implemented for several years now, the courts are treading lightly on this issue and there have not been any major court cases, at least that I know of. I don't know of any pending cases, either.

10. 49,5 Please see the study objective below my explanatory paragraph.

The text lists three characteristics that a voluntary AAP must have (assuming the CRA of 1991 will not cause the courts to consider all voluntary AAPs to be illegal). These are also the three characteristics that *any* AAP must have even if court ordered or implemented under the OFCCP. Also, the first and second ones listed are actually the same.

For the exam: Instead of learning those three learn the following: (a) must be temporary, (b) must be designed to correct a documented imbalance between minorities and nonminorities, and (c) cannot completely bar the advancement/hire of nonminorities (e.g., quota systems are not legal - goals are OK, but quotas are not.)

The following material is not for the exam. The latter characteristic is also why courts have ruled that point systems in university admissions are illegal. It is OK to take race/ethnic background into account, but not to assign a specific number of points to an applicant based on race/ethnic background. That was one of the main reasons, if not the main reason, that the undergraduate admissions system at University of Michigan was found to be illegal.

Article: Affirmative action in the United States

11. 1, 1st clm, 1. What two things gave impetus to affirmative action? Notice the second one. I haven't talked about this one, but this is also one of the reasons that universities give for affirmative action.
12. 3, 2nd clm, last sentence – 4, 1st clm,0. State the name of the politician who brokered the first civil rights act through Congress. I am pointing this out because most people attribute civil rights bills to Kennedy. Kennedy did advance the civil rights of minorities, but his executive orders did not have "teeth." It was LBJ that was really responsible for the advancement of and passage of Title VII.
13. 4, 1st clm, 1. State the percentage of citizen approval for the passage of the CRA of 1964.
14. 8. 1st clm, Proposal 2.

    A. Prop 2 bans public affirmative action programs that give preferential treatment to groups or individuals in in what three areas?

    B. What are the exemptions? The drafters of the bill were very savvy. These "exemptions" would have occurred even if not written into the law because federal law supersedes state law, but they could have led to challenges to the law based on the conflict with federal law. By writing the exemptions in, the challenges could not be made on that basis.

    Prop 2 does complicate things for public employers and public universities. For example, WMU is required by federal law to have an affirmative action program for employees because it is a federal contractor; however, this does not "hold" for student admissions or student scholarships, thus these programs have to be crafted very carefully and use different criteria (such as income) rather than face, gender, color, ethnicity or national origin.
15. 9&10, sections 3.1 and 3.2. Be able to list/state these two arguments in favor of AA. You do not have to explain them (they are pretty self-explanatory), just list/state them.
16. 11, section 3.3. Provide the argument that proponents of AA make with respect to fair vs. equal (first sentence). Include the point that proponents recognize the AA is inherently unequal.

17. 11, section 3.3 Proponents of AA perceive AA to be an effort toward inclusion rather than a discriminatory practice (i.e., "reverse" discrimination). According to this perception, why are special efforts at "inclusion" necessary?

    This next part will not be on the exam, but again, note carefully, as in the fair vs. equal argument, this rationale is based on **historical prejudices and exclusionary practices.** –AA is only advocated (and is only legal) when a current imbalance exists that can be tied to prejudicial practices.

18. 12, section 4.1. State the "bias" argument against AA, including the groups that are stated. You don't have to explain it – it is self-explanatory. I am referring to it as the "bias" argument just so you will know which argument I am referring to if/when I ask you this question on the exam.

    This next material is not for the exam, but note that this argument could also be called the "reverse" discrimination argument. However, I want you to specifically include "Asians" in your answer because "Asians" are protected under Title VII; however, as I have indicated before in this class, they are not typically underrepresented in work settings or universities because as a group, their test scores, GPAs, etc. are usually higher than those of any other group.

    Again, this next part is not for the exam, but notice that it is indeed typical for universities/colleges to give preference (affirmative action) to athletes, legacies, and while not stated here, males, given that females, as a group, have much better academic credentials than males. In 2003, an investigative report by USA Today (May 23, 2003, 13A) reported that it was standard practice for private colleges (particularly the elite private colleges) to give preferential treatment to males because otherwise females would dominate admissions and comprise 60-75% of the student body.

    The USA Today article asked the following question: Why is affirmative action for race/ethnicity so controversial when no one questions preferential treatment for athletes, legacies, and males?

19. 12, section 4.2. Provide the argument in the first sentence for the "Mismatch effect".

20. 13, section 4.3. Provide the argument (second sentence) for the "Class inequality".

None of the remaining study objectives will be on the exam, but see below for material for you to consider.

OK, why these laws? That is, does unfair discrimination really exist? Does equal employment opportunity exist? Is affirmative action necessary? In the next study objectives I present some of the cases that I briefly talked about the first day of class. I have also provided some articles in the course pack.

21. The Wal-Mart case. I have talked about this. The case was a class action suit representing more than 1.6 million current and former female employees, which made it the largest EEOC case ever. And, by the way, Wal-Mart settled a disabilities discrimination suit in 2001 for $6.8 million.

    Although not included in the articles in the course pack, here are some of the complaints and issues. Two-thirds of its hourly employees are female, but they hold only one-third of the store management jobs. Women in every job category have been paid less than men with the

same seniority, in every year since 1997, even though female employees on average have higher performance ratings and less turnover than men. Some female managers were being paid $20,000-$25,000 less than their male counterparts.

Female managers were required to go to Hooters bars as well as strip clubs for meetings and office outings. The most senior human resources executive at Wal-Mart approves of Hooters as a place to have Wal-Mart meetings. One manager in CA told a woman she should get "dolled-up" to be promoted. Others were called "a worthless broad" or asked to wear lower cut-shirts. When one woman applied to work in hardware, the manager said, "We need you in toys. You're a girl, why do you want to be in hardware?" Another manager told a female employee that "God made Adam first, so women would always be second to men." A female manager was told she got paid less than a less qualified male because she "didn't have the right equipment." Managers have repeatedly told women that "men need to be paid more than women because they have families to support," and "men are here to make a career and women aren't. Retail is for housewives who just need to earn extra money."

22. Texaco. In 1996, Texaco entered into a $176.1 million settlement. In 1994, a class action suit was filed by minority employees of Texaco alleging that minorities were systematically passed over for promotions and were subjected to a racially hostile environment. In November 1996, the New York Times disclosed the existence of tape recordings wherein executive employees responsible for responding to requests from the EEOC for information referred to minorities as **"black jelly beans" that "all seemed to be glued to the bottom of the bag."** (One of the executives wore a hidden recording device and taped the meeting.) The tapes also disclosed a conspiracy by executives to alter, withhold, or destroy corporate documents requested by the plaintiffs in discovery (the EEOC investigation phase). Approximately two weeks later, Texaco agreed to settle the lawsuit for the record-breaking amount of money, in addition to numerous affirmative action commitments.

23. Lest you think the above cases are old and not representative of **2016**, see the material I have included about the recent EEOC press releases.

    A. The EEOC has sued Taylor Shellfish, the largest producer of shellfish in the US, for ongoing racial harassment and retaliatory discipline against a black maintenance mechanic. From his first week of employment, the employee was regularly called variations of “nigger” as well as “spook” and “boy”. His supervisor “welcomed” him to the job by saying that he was the first black person to work at Taylor for a long time, and that his father used to run “his kind” out of town. When the employee notified management of the abuse, he was told to “get a thicker skin” and “put his head down and do what he was told.” The law suit is pending.

    B. Wells Servicing, an oil and gas company paid $1.2 million to settle an EEOC suit for race harassment and retaliation.

    Hispanics were regularly called “wet backs” and “beaners” and shovels were referred to as “Mexican backhoes”. Native Americans were regularly called “wagon burners” and supervisors stated, “Custer should have killed all of the Indians”. Blacks were regularly referred to as “niggers” and were told to “nigger a pipe down”.

    C. Texas Roadhouse Restaurant paid $1.4 million to settle a sexual harassment and retaliation suit, that involved female employees, including teens being sexually harassed and pressured for sexual favors in exchange for employment benefits or as a condition of

avoiding adverse employment action. Although the owners and high level managers had received multiple complaints, they permitted the abuse to continue for 4 years. The supervisor was not fired until he was seen on a surveillance video touching a 17-year-old female employee in his office at the restaurant during work hours.

D. General Dollar paid a former employee $277,565 for disability discrimination. The cashier, an insulin-dependent diabetic, had asked on several occasions to be allowed to keep her juice at her cash register to prevent a hypoglycemic attack. Her requests were denied. When alone in the store one day, in response to symptoms of a hypoglycemic attack (and to protect the store), the cashier took a bottle of orange juice and drank it before she paid for it. As soon as the medical emergency passed, she paid for the juice that cost $1.69 plus tax. The company fired her because it violated their pay before use policy even though they were aware that she drank the juice because of her diabetes and she had requested to keep juice at her register, but was denied. Don't you wonder about some individual's common sense, or lack thereof?

E. The EEOC is suing Dash Dreams, a grower and wholesale distributor of orchids, for pregnancy discrimination. The company fired employees at the end of their maternity leave. Female employees were told in staff meetings not to get pregnant, that they had too many children, and that the next person to get pregnant should stay home and consider herself fired. Also, pregnant employees were not reinstated or rehired when they attempted to return to work after the birth of their children but were fired.

F. The EEOC is seeking participants for a class action suit against Lawler Foods for refusing to hire non-Hispanics. African-Americans and non-Hispanic applicants (including whites) have been told they would not be hired for entry level jobs because they were not Hispanic or could not speak Spanish. Again, a fascinating case because while African-Americans are involved, so too, are nonminorities.

24. AA and Michigan

I have included articles in the course pack that deal with the (a) Michigan Civil Rights Initiative (more commonly known in MI as Prop 2), (b) Grutter v. Bollinger, the University of Michigan law school admissions controversy, and (c) Gratz v. Bollinger, the University of Michigan undergraduate admissions controversy. These are also discussed in the Affirmative Action in the United States article.

Those of you from Michigan may know that both the undergraduate and law school admission systems of the University of Michigan were challenged. The original lawsuits were filed in 1995. Both cases ended up in the Supreme Court in June 2003. The law school admission system was found to be legal, while the undergraduate admission system was found to be illegal. The decisions really do make sense when you look at the details. The undergraduate system, at the time, had a point system that added on 20 points to the point score of any underrepresented minority. The Supreme Court found this to be an arbitrary approach that did not allow individualized consideration. (There were some other considerations as well, but this was the major one). However, it did rule that race could be taken into consideration as part of the admissions process and ruled in favor of the law school admission process.

On the heels of that, in November of 2006, Michigan voters passed legislation – a constitutional amendment - that bans public institutions from using affirmative action

programs that give preferential treatment to groups or individuals based on their race, gender, color, ethnicity or national origin *for public employment, public education or public contracting purposes.* Basically, this legislation got on the ballot because of the widely publicized UM cases.

In 2013, the number of blacks enrolled as freshman at UM and the number of blacks enrolled in the UM law school had both dropped 30% in comparison to the numbers before Prop 2.

On Nov. 5, 2012, the 6th Circuit Court of Appeals, in an 8-7 vote, ruled that this amendment was unconstitutional because: "it deprived members of a racial minority groups in MI of their 14th Amendment right to equal protection under the law by embedding the issue of affirmative action into the state's Constitution, where it was prohibitively difficult for a minority group to challenge."

The MI state attorney general, Bill Schuette, announced he would appeal to the US Supreme Court (the same day the decision was handed down) and did.

On April 22, 2014, the Supreme Court upheld the Michigan Civil Rights Initiative as constitutional.

25. More current/recent events: AA and admissions, Fisher v. University of Texas. In 2015, the Supreme Court agreed to hear a case involving AA and the University of TX, and rendered its decision in June 2016. This is a very complicated case and the second time it has reached the Supreme Court.

    In 2008, Abigail Fisher, a white student, claimed she was denied admission because of her race. The case had the potential to eliminate diversity as a rationale for admissions (that is, that public universities should reflect the diversity of its citizens)– which is a ruling that came from the Supreme Court 2003 UM Law School decision.

    In 2009, The US District Court upheld the UT admission policy. The case was appealed and the 5th Court of Appeals upheld the decision. The case was then appealed to the Supreme Court. In June 2013, the Supreme Court vacated (set aside) the decision and remanded it back to the Circuit Court, requiring them to consider very specific previous case law.

    In 2014, the 5th Circuit Court again found in favor of UT. The case was appealed to the Supreme Court again, in what is referred to as Fisher II. Justice Scalia (a conservative) died before the case was heard and Justice Kagan (a liberal) recused herself because of earlier involvement in the case, leaving seven justices to decide the case. In a very surprising decision, in June 2016, the Supreme Court ruled in favor of UT, with a vote of 4-3. Justice Kennedy, a conservative, ruled in favor of UT, although he had never before voted to uphold an AA plan. This was an unexpected landmark decision.

    Sherrilyn Ifill, the president of the NAACP Legal Defense and Educational Fund Inc., stated, "Universities all over the country are breathing a sigh of relief. The court very compellingly reaffirmed the importance of diversity."

Unit 2
Lecture Outline: EEOC administrative process

A. No Fault Settlement
1. Complaint is filed with EEOC
2. BEFORE data are collected by EEOC, a settlement is attempted
3. Informal fact finding, settlement attempted again.
4. If settled, no wrong doing admited by the company.

B. Pre-determination: Investigation
1. EEOC can investigate and subpoena company records
2. Company invited to respond: if it does the material is used by EEOC
3. EEOC determines probable or no probable cause
4. If no probable cause, EEOC withdraws but individual may pursue a remedy in court (with little chance of success)
5. If settled, no wrong doing admitted by the company

C. Conciliation Agreement
1. Initiated by finding of probable cause
2. If settled, may involve some major concessions.
3. EEOC, NOT the courts, oversee the agreement and compliance, It is considered a PRIVATE agreement between parties - not a legal agreement: EEOC can file a lawsuit in the future if necessary.
4. If settled, no wrong doing admitted by the company.

D. Consent Decree
1. Law suit filed
2. BEFORE litigation, settlement attempted again.
3. If settled, costly. Usually involve lump sum payouts including BACK payments (not usually done in conciliation agreements) Also may involve AA program, again something not usually required in conciliation agreements.
4. No wrong doing admitted by the company
5. COURT oversees compliance because the lawsuit was filed.

Unit 3: Legal issues continued and the Americans with Disabilities Act.

Gatewood, Feild, & Barrick, parts of Chapter 2

Gatewood, Feild, & Barrick, Chapter 2, pages 45-59

1. 45,1. Memorize the name of the joint guidelines and the date they were issued.
2. 45,1. Learn the following two reasons why these guidelines are important.

   (1) They are a joint statement by all of the federal agencies charged with the enforcement of EEO laws. Before this, the EEOC and the Department of Labor had issued separate guidelines that conflicted with respect to certain procedures and selection specialists could not conform to both. Imagine the confusion. These guidelines ended that confusion.

   (2) While not legally binding, the courts give "great deference" to the guidelines. That is, the courts have ruled that these guidelines will be used almost as checklist for any court case.
3. 45,2 Not for the exam, but note that anything used in the selection process is covered by the guidelines: academic degree requirements, application blanks, job interviews, performance appraisals for promotions, etc. This includes, by the way, Internet searches of an applicant's social media, which we will take up in U8. Use of social media searches can get an organization into a great deal of trouble because those making selection decisions can become aware of protected characteristics of applicants.
4. 46,1 Per the Uniform Guidelines, state the restrictions regarding using skills and abilities as selection requirements? You should mention two things. Include, for the second one, the five-year rule of thumb.

   Not for the exam but this second provision may cause you problems as a selection specialist. Many companies when hiring for entry level jobs want to assess supervisory or management potential as well. This can be illegal (if, and only if, of course it has a disproportionate effect on protected classes).
5. 46,1 A. Describe the various forms of selection cutoff scores, ranking them from least restrictive to most restrictive.

   B. What two things must an organization demonstrate if the latter two forms of cutoff scores are used?

   Not for the exam, but this is very important when determining the type of validity procedure to use. We will come back to this point in the unit on validation procedures. But basically, if you use anything but a pass/fail cut-off procedure, you *must* use an empirical validity procedure (as opposed to using content or construct validity). This won't mean much to you now since you don't know what empirical, content, and construct validity are.
6. 46,3-47,0. Not for the exam: Record keeping is absolutely critical. Court cases are won or lost on the records an organization maintains. I can't think of a reasonable question to ask over it, however, so this won't be on the exam.
7. 51,2 and Table 2.4, page 57. Griggs v. Duke Power (1971) was the first landmark case decided by the Supreme Court. This is the case that established adverse impact and the shifting burden of proof model. All professionals in the field know this case well and it is still referred to in recent decisions.

Learn the three major findings of this court case from Table 2.4. The first one means that disparate impact (in contrast to disparate treatment) was established as a form of unfair discrimination. Prior to this, the plaintiffs had to show "intent." You can use my wording or the wording of the text for your answer.

8. 52,5.Georgia Power had conducted a validation study that supported the job-relatedness of their tests, but the court found fault with this study. What major ruling came from this case about validation studies (not the material in italics, but the material beginning, "One failure…"? If you prefer, you can use the wording from Table 2.4, page 57, point 2.

9. 56,2 Not for the exam, but the following point is excellent: We know more about what *not* to do than what we can do. This often puts selection specialists in very difficult positions.

10. 57,1-58,1. In Ricci v. DeStefano. the Civil Service Commission voided the promotional exam for the fire department because it had adverse impact on black applicants and blacks threatened to file a law suit based on that adverse impact.

    A. 58,1 What groups filed a lawsuit, based on what grounds?

    B. 58,1, point 1 only. What major point did the Supreme Court use as a rationale for their decision? (again, just the first point on page 58,1).

Americans with Disabilities Act

Note about my material below: I believe that the way the authors deal with the Americans with Disabilities Act and the Americans With Disabilities Amendment Act is confusing. They first present the ADA but only later do they deal with ADAAA. They don't tie the two together or sufficiently stress the changes brought about by the ADAAA. Thus, I explain these below and in the study objectives for this unit.

I reference the following article in some of the material: Bennett, A. D., & Randolph, S. E. (2011). Is everyone disabled under the ADA? An analysis of the recent amendments and guidance for employers. *Employee Relations Law Journal, 36*(4), 3-14. It is an excellent article that you can download for free through our university system, but didn't want to include the article in the course pack because only such a small part was relevant for this class.

11. Based on the following material:

    A. Paragraph 1: After the ADA was passed (and before the ADA Amendments Act was passed in 2008) most of the lawsuits filed with respect to ADA were about what?

    B. Paragraph 2: Describe the highly unique situation that occurred with respect to the EEOC and the Supreme Court. Include as part of your answer, the position adopted by the EEOC guidelines and the position/rulings made by the Supreme Court.

    C. Paragraph 3: Basically, what does the ADAAA of 2008 do? Include as part of your answer whether it codifies the original EEOC guidelines or the later Supreme Court decisions into law.

    D. Paragraph 6: What major type of disability has resulted in the highest percentage of lawsuits?

E. Paragraph 7, first sentence: Why have the EEOC's guidelines have created confusion regarding what is considered a "mental disability" under ADA, and how do these guidelines differ from the intent of the framers?

F. Paragraph 8: Individuals who have the same disability are not affected in the same way. Not only does the degree of the disability differ, but the extent to which the disability interferes with major life activities and the extent and nature of accommodations required by individuals differs. What burden does this place on organizations that is unique to ADA?

The ADA, which was passed in 1990, has had a profound effect on selection and placement within organizations. Moreover, it became one of the most controversial pieces of legislation ever passed. The Supreme Court began hearing ADA cases around 1999. Interestingly, most of the major lawsuits were related to who was covered by the ADA - that is, who was actually considered to have a "*physical or mental disability* that *substantially* limits one or more *major life* activities."

A situation highly unique to ADA occurred. The EEOC always issues guidelines related to the major aspects of EEO and AA legislation for companies and individuals. In the past, the courts **always** gave "great deference" to those guidelines when rendering decisions. However, in the case of ADA, the EEOC guidelines and the Supreme Court decisions were *not* in concert with one another. The EEOC guidelines took a strong advocate stance (for individuals) while the Supreme Court narrowed its application and interpretations, ruling in a manner that decreased the number of individuals who were covered by the act. The confusion that this caused cannot be overstated. First of all, companies had no clue about what was acceptable and what was not (and who would be considered as disabled under the law and who would not). Second, some of the district and circuit courts abided by the EEOC guidelines while some did not, which created different practices/laws for different parts of the country. Moreover, many of the courts that ruled in accordance with the EEOC guidelines found their decisions overturned by the Supreme Court. This created chaos.

In 2008, President Bush (reluctantly) signed the ADA Amendments Act (ADAAA) of 2008, which went into effect on Jan. 1, 2009. The amendments are designed to negate the conservative Supreme Court decisions (which favored organizations) and broaden the coverage of ADA back to what its framers called the "original intent" of those that wrote and passed ADA. For the most part, this legislation is consistent with the original EEOC guidelines (although there are some exceptions of course). I will talk about the changes that resulted from the ADAAA in this unit. Note that this is the same process that occurred with the Civil Rights Act of 1991 that we talked about in the last unit.

To give you an idea of the extent to which the Supreme Court narrowed the coverage of ADA, before those decisions, it was estimated that ADA would protect the then estimated 43 million Americans with physical and mental disabilities; after the decisions, it was estimated that coverage was reduced to only 13.5 million (Bennett & Randolph, 2011). Since the effective date of ADAAA in 2009, with the scope of the coverage restored, claims of unfair discrimination under ADA increased by 42% (Bennett & Randolph, 2011).

Also, in 2013 the American Medical Association classified “obesity” as a disease and the EEOC issued new guidelines rescinding their exclusion of obesity under ADAAA. Given this, even more individuals in our country will be covered. In those same guidelines, the EEOC clarified that cancer, diabetes, and epilepsy are considered physical disabilities under ADAAA.

To make matters even worse, the framers of the original legislation included "mental disabilities" as well as physical disabilities, but did not include any clarifying language or provide much guidance with respect to that aspect of the ADA. Yet, now, the **highest** percentage of lawsuits that are filed are related to mental disabilities rather than physical disabilities.

The inclusion of “mental disabilities” has become a major problem because the framers of ADA intended that only mental disorders as defined in the DSM (Diagnostic and Statistical Manual of Mental Disorders) be considered mental**,** however EEOC's guidelines state that the DSM is "relevant" but not the only diagnoses that may be covered**.** People have actually sought claims because they have "chronic lateness syndrome" and "sexual impulse control disorder." One court decision ruled against a company who fired an individual for bringing a loaded gun to work, on the grounds that carrying the gun resulted from a psychiatric disorder (chemical imbalance in this case). In another, a mentally disabled individual was discharged for threatening to kill coworkers and was granted a trial to determine whether or not she was a qualified individual with a disability when she applied for reinstatement.

The final problem created for organizations with respect to the ADA is that *each and every case must be handled on an individual basis* due to the very nature of physical and mental disabilities. Individuals who have the same disability are not affected in the same way. Not only does the degree of disability differ, the extent to which the disability interferes with a major life activity and the extent and nature of accommodations that individuals require in the work place differ. Thus, while no one disputes the importance or the worthiness of the goals of the ADA, it has created a considerable burden for organizations.

Gatewood, Feild, & Barrick

12. 29,3 Give the ADA's definition of someone who is disabled. Note the 3rd one - that one gets pretty interesting.

    Not for the exam, but the ADA also protects individuals who are “associated” with individuals who have physical and mental disabilities. Cases have been brought by employees who have been discriminated against (a) because their child was diagnosed with developmental disabilities or (b) because they lived with someone who was HIV+.

13. Learn the following for the exam: It is estimated that 25% of the labor force and over 900 disabilities are covered by this act.

    Those sheer numbers should help make it clear why this act is so difficult for employees, given that each and every case must be handled on an individual basis.

14. 29,3. Not for the exam, but note the groups of individuals who are not covered. With respect to those currently using illegal drugs, this means that organizations *can* administer drug tests for selection purposes, when relevant.

    Medical marijuana use and marijuana use has recently become a “hot bed” for organizations and ADA. I address this further in SO 26. But the issue is far from settled.

15. 29,4. What, in addition to a physical or mental impairment must be present in order for a person to be "disabled" under the first part of the definition. I might ask the question in the following way as well: If a person has been diagnosed with a physical or mental disability, is the person necessarily covered by ADA? Explain.
16. Not for the exam but ADAAA altered the definition of "major life activities", broadening back to the EEOC's original definition under ADA.

    The EEOC originally defined "major life activity" very broadly to include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, reading, breathing, sleeping, learning, working, sexual function, reproduction, sitting, standing, bending, lifting, reaching, thinking, concentrating, and interacting with others.

    Many ADA lawsuits involved determination of what a major life activity is. The Supreme Court narrowed the list of what was considered a "major life activity."

    The ADAAA expanded the definition of major life activities to (a) those originally identified by EEOC and added (b) major bodily functions (e.g., functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions).
17. 30,2-3. These two cases are very important. The issue discussed here is officially called "mitigation." It is critically important and has been the subject of an untold number of cases, two of which are presented in the text. Mitigation means *"correction or amelioration" of a disability due to prosthetic devices or medication*.

    For the exam:

    A. What does "mitigation" mean in context of ADA?

    B. (1) Prior to ADAAA, what did the Supreme Court rule about the determination of whether an individual is disabled with respect to mitigation?

    (2) Also, based on the following material, state what the original EEOC guidelines said about mitigation.

    The original EEOC guidelines held that disabilities should be considered in their *unmitigated* state.

    This is one of the reasons the ADAAA was passed – to return this provision to the way EEOC dealt with it – that is that disabilities should be considered in their unmitigated state.

    C. Based on the following material be able to say what the current law is about mitigation based on ADAAA - be sure to include the part that **excludes** eyeglasses and contact lenses.

    The ADAAA states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability. In other words, disabilities are to be considered in their unmitigated state with the exception of eye sight.
18. 30,4-31,0. Not for the exam but this is the case that caused Congress to redefine what a "major life activity is" and include EEOC's original definition when it passed ADAAA (see study objective 16 above).
19. Based on the following material:

A. What is the direct threat clause in ADA?

B. How did the Supreme Court expand the direct threat clause in Chevron USA v. Echazabal?

There is another critical issue that has been decided in the courts about who is covered that is not included in the text: what is called the *direct threat* clause of ADA. *ADA states that even if a person has a disability as defined by ADA,* ***if the person poses a direct threat to the safety or health of others in the work place or for its customers****, the employer can legitimately not hire that person*.

In Chevron USA v. Echazabal), the Supreme Court had to decide whether the direct threat clause applied *only to others* (other workers, customers, etc.) or *also to the person himself/herself*.

In that case, Chevron had refused to hire Echazabal in an oil refinery because it thought that the toxic solvents and chemicals at the refinery would increase the damage and abnormalities in his liver, which had been caused by Hepatitis C. Echazabal filed a law suit.

The Ninth Circuit Court ruled in favor of Echazabal and against Chevron. However, the Supreme Court reversed the Ninth Circuit Court and ruled that an employer *could deny a job to a person because of a direct threat to the health or safety of* ***that individual***.

20. The ADAAA deals with three other important issues, which I state below.

(1). Short-term impairments: If a disability is episodic, in remission, or is a **severe temporary** impairment, it is covered. Before 2011, neither the EEOC nor the courts considered temporary impairments, such as a broken leg, broken hip, torn tendons/ligaments, etc., to be "disabilities" under ADAAA. However, there have been three court cases since 2011 and in each case the courts ruled that **severe temporary** disabilities are covered (cases were heard Courts of Appeal for the Fourth and Seventh Circuits – in all three cases, the courts of appeal reversed the lower district court rulings). Given that there hasn't been a Supreme Court case yet, stay tuned for this one. It may change.

For the exam:

When are short-term impairments covered under ADAAA?

(2). Reverse discrimination claims are explicitly "not cognizable" (not recognized or, in other words will be dismissed by the courts). In other words, discrimination against nondisabled individuals is not a violation of ADAAA and will not be considered illegal if nondisabled individuals are disadvantaged due to the favorable treatment of disabled individuals.

For the exam:
What does the ADAAA say about reverse discrimination cases brought by nondisabled individuals?

(3). Although we have not gotten yet to the concept of "reasonable accommodation," I am going to talk about it now because of ADAAA. Individuals covered under the "regarded as" clause are not entitled to reasonable accommodation. This actually makes sense if you think about it – these individuals do not actually have a disability, thus they don't need accommodations. By the way, this clause may become more relevant now that obesity is covered by ADAAA.

For the exam:

What group of individuals covered by ADA are *not* entitled to reasonable accommodation?

21. 31,1. ADA prohibits the use of qualification standards, employment tests, or selection criteria that tend to screen out individuals with disabilities unless what? This will become very important later when we talk about job analysis – all physical and mental requirements that are job-related must be stated in the job analysis upon which selection instruments are based if they are to be considered legal.
22. 31,2. If selection tests will be administered, what is it important for employers to do early in the application process?
23. 31,3. Be able to answer the following questions just with a yes or no (I may also ask them as T or F questions):

    A. May an employer make pre-employment inquiries about a person's disability?

    B. If a person's disability is obvious, unless limited to specific job-related tasks, can the employer ask questions about the nature or severity of the person's disability?

    C. May employers ask individual with disabilities to request any accommodations that are necessary to take employment tests in advance?
24. 32,0. At what point in time can an organization request the applicant to take a medical examination? This is VERY important.
25. 32,0 Note that the employer can make an offer contingent upon the outcomes of the exam, but only under certain conditions. What are those conditions?
26. 32,0

    A. Learn the point that the ADA does not consider drug testing to be a medical examination, therefore, drug testing can take place before an offer is extended.

    B. Based on the following provide a brief explanation of why drug testing is not considered to be a medical examination under ADA.

    A little explanation again. ADA does not consider drug testing to be a medical examination because those currently using illegal drugs are excluded from coverage by ADA. So it's not exactly that drug testing is not considered to be a medical examination, but it is not considered to be a medical examination *under the ADA.*

    None of the rest of the material in this study objective will be on the exam: The medical marijuana laws that have recently been passed have **not** changed this. This is becoming a nightmare. Twenty-three states and the District of Columbia have passed legislation legalizing marijuana for medical use.

    To date, courts have ruled **against** plaintiffs when cases have been brought to court. First, the state laws do not authorize either worksite use of marijuana or being impaired at work and they do permit organizations to have a zero tolerance policy for drug use. Second, federal law still trumps state laws and marijuana is an illegal drug in this country. Nothing has reached the Supreme Court, but the 9th Circuit Court has ruled that medical marijuana users are not covered by ADA, even though it is legal under state law (in this case CA).

    Although an individual who is a medical marijuana patient likely suffers from a medical condition that would constitute a disability under ADA, ADA's exclusion of current drug

users is widely understood to mean that individuals engaged in the illegal use of drugs are not protected under ADA. "Medical marijuana patients living in states where medical marijuana is legal may face an impossible choice: continue their marijuana use to alleviate their debilitating medical condition, and put their livelihood at risk, or continue their employment without the benefit of medical marijuana and suffer chronic and at times excruciating pain." One attorney, arguing in favor of his client stated, aptly, that if his client lost the case (which he did) the state medical marijuana statues will benefit only the unemployed.

Four states and the District of Columbia have legalized marijuana use (not simply medical marijuana use). Obviously, although a slightly different issue – drug testing in general, not accommodation under ADA - given the above, it is HIGHLY unlikely that courts would rule in favor of a plaintiff who was not hired or, after hire, disciplined or dismissed due to drug testing showing positive for marijuana.

Obama has told the Department of Justice not to pursue conflicts between federal and state laws regarding marijuana (including legalization), however, until the federal law is changed, federal courts must abide by federal law.

For a terrific article on this see:

Gies, T. P., & Brant, G. D. (2015). Legalization of marijuana: What it means for employer drug testing. *Employee Relations Law Journal, 41*(1, Summer), 35-46.

27. Based on the following material and the attached one-page article:

A. Be able to state when psychological tests cannot be administered as a pre-employment selection test. The answer: when the test is a test of mental disability, such as the MMPI and some personality tests.

B. What is the most cautious approach to the administration of psychological tests during the selection process?

I have attached a one-page article on the use of *psychological tests* as selection instruments, which are particularly controversial. Once again, note the confusion. Certainly, the most cautious approach is to administer psychological tests *only post-offer, with the offer made contingent upon the outcome***.**

The problem arises in the gray areas - what is a test of mental disability? Clearly the MMPI falls within that category. Do personality tests? Some do, some don't, and some questions on those tests do and some don't. Note, in the attached article, that Consulting Psychologists Press who publishes the California Personality Inventory (one of the most used personality tests in business and industry) deleted 28 questions they felt might have posed problems. But the courts are still out with respect to whether such a test would be considered a test of pathology – no court case has involved the use of this test as yet (well, at least that I know of).

Historically, often companies, particularly fire and police departments have used tests such as the MMPI to screen out a large number of applicants prior to interviews, since interviews are so time consuming. They then made offers based on the interview. They can no longer do that under ADA. But they can administer these tests post-offer and make employment contingent upon the scores.

28. 32,1 When doesn't an employer have to provide a "reasonable accommodation?"

29. 32,2 Not for the exam: Too many cases/lawsuits to mention have dealt with an organization's failure to provide reasonable accommodations. I can't begin to deal with all of them and most of them are not very relevant to personnel selection and placement, however, there are three that are relevant to personnel selection specialists: reassignment, attendance, and getting along with others (being rude, obnoxious, yelling at others in the work place, insubordination, etc.) that I will deal with in subsequent study objectives. For an excellent recent article on all reasonable accommodations see the following article (it is too long to include in the course pack given that not much of the article is really relevant to personnel selection and placement):

    Berkowitz, A. D., Downes, J. I., Ericsson, K., & Patullo, J. (2014). The latest developments on coverage and reasonable accommodations under the amended ADA. *Employee Relations Law Journal, 40*(2), 3-24.

    The EEOC gives excellent examples of the types of accommodations that are considered reasonable on their web site: eeoc.gov.

30. 33,1 Not for the exam: Reassignment as an accommodation. Reassignment as an accommodation can influence selection and placement.

    As indicated, ADA does not require that *preferences* be awarded to individuals with disabilities, however, there is controversy over whether a qualified disabled employee should be reassigned as a reasonable accommodation and hired for a *vacant* position or whether a more qualified applicant can be hired.

    The Supreme Court **has** ruled that if there is a vacant position and if a *union contract* that designates that seniority rights will be used to fill that position exists, the union contract takes precedence over an individual who has a disability. This is the case discussed in the second sentence of 33,1.

    What we don't know at the moment is whether a **more** qualified individual can be hired for the job if a currently employed disabled individual is qualified and has requested the job as a reasonable accommodation. The circuit courts are split on this issue. Two have ruled that reassignment is mandatory given that the disabled individual was qualified for the job; two have ruled that the employer is not required to reassign the disabled person but is able to hire the more qualified applicant/person. Nothing has reached the Supreme Court yet.

31. For the exam: based on the following what critical steps should an organization take to ensure documentation of what the essential functions of the job.

    Bennett & Randolph, in their 2011 article, indicate that given the broad coverage under ADAAA, the new "battleground" for organizations will be *who is considered to be a "qualified individual".* This is relevant to selection specialists because *the person must be able to perform the essential functions of the position with or without reasonable accommodation.* I'll return to the accommodation issues re attendance and getting along with others in a moment. But first, the critical steps:

    A. The job analysis should include a list of the essential job functions (which typical job analyses don't do now as noted in 32,3 – yet job analyses are the responsibility of selection specialists)'

    B. Job descriptions (that explicitly state the essential functions) need to be developed based on the job analysis for every position and updated frequently.

    C. Employees should sign off on the job descriptions.

32. Back to absences/time off from work due to disabilities as an accommodation and getting along with others as a major life activity, which needs to be accommodated if not getting along with others is due to a disability (usually mental disability) or due to the medication that the person is taking because of the disability.

    For the exam, based on the following material, explain why/how absences and rude, insubordinate and disruptive behavior is relevant to personnel *selection* and selection specialists.

    As a selection specialist, when you conduct a job analysis, it is now VERY important that you list "regular attendance" and "getting along with colleagues, supervisors, and/or customers" as *essential* functions of the job (if they are, of course), supporting that by the job responsibilities.

    The following material is not for the exam but is interesting: Telecommuting as an accommodation. As an accommodation for not being able to attend work on a regular basis and not getting along with others, cases have arisen with respect to whether telecommuting is a reasonable accommodation. To date, the courts have **not** supported telecommuting. But only two cases have been decided, both in district courts. Also interestingly, the article provides data indicating that (nondisabled) call center employees improved their productivity by 13% when they were allowed to work from home. Working from home also decreased turnover and increased employee satisfaction. Again, stay tuned…

    For an excellent article on this, see:

    Rocco, D. A. (2014). Telecommuting as a reasonable accommodation: A remote possibility? *Employee Relations Law Journal, 40*(3), 48-52.

THE END, FINALLY!!

INSERT ARTICLE ON PSYCHOLOGICAL TESTING

Psy 6430 Unit 4. Correlation, Statistical Significance, and Reliability

Gatewood, Feild, & Barrick, Chapter 5, 167,4-172,1 and then Chapter 4, Reliability

1. Introduction to this unit's material: None of the material in this study objective will be on the exam, but I need to explain some things about the material in this unit.

   I have found that before I can cover reliability and validity, I need to review correlation. Correlation is often used to determine the reliability and validity of selection procedures, and when I have tried to teach reliability and validity before correlation (the way Gatewood, Feild, & Barrick organize the material in the text), students have been confused. Further, Gatewood, Feild, & Barrick discuss correlation in some detail as it relates to validity, but only mention it briefly when talking about reliability.

   The following material describes how correlation is (a) often/typically used to determine the "reliability of a selection procedure" and (b) the "validity of a selection procedure." The material also explains what is meant by "validity" and "reliability."

   A correlation coefficient indicates the extent or degree of relationship between two variables.

   Reliability. Correlation is used to determine whether the scores on a selection instrument are "consistent" or, in more technical terms, "reliable." For example, in order to be useful for selection purposes, the score that a person receives on a selection instrument must be reasonably the same each time he/she takes that test. Assume that math is required to perform well on the job. Thus, a company administers a math test to an individual. The individual obtains a score of 75. If the individual took the math test a day later and only scored a 20, the test would not be useful for selection purposes. Why? Because you would have no way of knowing whether a "75" or a "20" was indicative of what his/her math skills really were.

   If a person takes the same test twice (or two tests that measure the same thing) then the person's score should be about the same. If the scores are the same, the test is considered "reliable." When used in this manner, the resulting correlation is referred to as a *reliability* correlation coefficient.

   Validity. Correlation is also used to answer the following question: *Is the score that a person receives on a personnel selection instrument related to a measure of his or her job performance? And, if so, to what degree are these two related?* If scores on the selection instrument and the measures of job performance are highly correlated for *current* employees, then it indicates that the selection tests are related to the job and can be used *in the future* to select individuals for the job. "Validity" is the technical term for proof that the selection instrument is indeed related to the job. When used to determine the validity of a selection procedure, the resulting correlation is referred to as a *validity* correlation coefficient.

2. Learn the following designations.

   A. r stands for the correlation coefficient

   B. x stands for the selection test or instrument

   C. y stands for the measure of job performance

   D. rxy stands for a correlation between a test and a measure of job performance = validity correlation coefficeint

   E. rxx standards for a correlation between two administrations of the same test = reliability correlation coefficient

3. Turn to Gatewood, Feild, & Barrick, page 167,4 (Empirical considerations in criterion-related validity strategies). Again, remember that GF&B discuss correlation only in terms of validity but it is also relevant to determine reliability.

   FOR THE EXAM: learn the following: (a) predictor = selection test or instrument and (b) criterion = measure of job performance

4. 168,4

   A. Know the two important elements of a correlation coefficient, and recognize they are independent of each other. A -.85 validity coefficient would indicate a *stronger* relationship between x and y than a +.45.

   B. What does it mean when there is a negative or inverse relationship?

5. Not for the exam: At the end of the study objectives for this unit, I have inserted diagrams of a fairly high positive correlation, a fairly high negative correlation, and a zero correlation. This may help you understand. I'll talk more about this in lecture, but if every single data point fell exactly on the line I have drawn on the *top* diagram, then the correlation would be a +1.00. However, because many of the data points do not fall on the line, the correlation is less than +1.00. Similarly, in the second diagram, if all of the data points fell exactly on the line I have drawn, the correlation would be a perfect -1.00 correlation. But they do not. Thus, the correlation is less than -1.00.

6. **Not for the exam but important.** Keep in mind for a validity correlation coefficient: If (a) people who score well on the test also perform highly on the job, and (b) if people who score poorly on the test also perform poorly on the job, then we know that our tests are job related and can be used to predict the job performance of future applicants. Another way to say this is that if there is a high positive correlation between the test scores and the job performance measures, then if we know how a person scores on the test, we can reasonably predict how he or she is likely to perform on the job. (A high negative correlation between a test and job performance can also be used to predict performance, but selection instruments that are correlated negatively with job performance are rarely used.)

   I think students sometimes get confused about this because you need to determine the validity or job relatedness of a selection instrument for *current* employees (because you need to have test scores and job performance measures in order to correlate the two), but once you establish the validity of the selection instrument for those current employees, you administer it to those who apply for the position in the future, and use it to *predict* their job performance.

7. 169, 0. *Note very well that if a correlation is NOT statistically significant, then the selection test is not considered to be a valid predictor of the criterion measure (performance).* That is, unless the validity correlation coefficient you obtain is statistically significant at the .05 level, you should not use it to select applicants for a job.

8. 168,4-170,0. Based on the following material:

   A. Explain why we need to use statistical significance in order to determine the validity of selection tests. Summarize the points about the correlation of test scores and performance scores *for a particular sample/group of employees* versus using correlation to determine the relationship for all future/potential employees (or, in other words, the population of employees).

   B. What does a 0.05 level of significance mean? This is also relevant for reliability coefficients, but I am going to talk about it in terms of validity coefficients. Be sure to learn the boldfaced material.

   This should be a review, but many people don't understand it. In fact the book is a bit misleading (it's not wrong, it's just a bit misleading because they don't go into sufficient detail). So do not learn what the authors say about a .05 level of significance. Because this is such an important concept in selection and placement I want you to understand clearly what statistical significance means. It is also the case that Dr. Huitema spends a good deal of time on this concept in statistics because it is so misunderstood.

   Be sure you understand this, and certainly be sure that you are able to provide the information I have boldfaced.

   SOA: Why we need to use statistical significance. Let's assume that we have a correlation coefficient of .50 between some test and a performance criterion for ten employees. If we are concerned *only* with the performance of *these particular ten employees*, we can accept this correlation as an adequate description of the degree of relationship between the two variables for this group. However, in selection, we are interested in generalizing beyond this particular sample of individuals. We want to know whether the test and performance criterion are related for **all potential employees** or, to use statistical terms, the **population** of employees (and hence, whether we could expect the test to be related to job performance for a group of applicants to whom we will administer the test in the future).

   Obviously, the 10 cases actually examined would constitute only a very small sample of that whole "population" of potential employees. If we correlated the test and the performance criterion for 10 other employees, the correlation would be higher or lower. So given that the correlation would not be the same for another group of individuals, how do we know whether our test is, in fact, valid? This is what statistical significance tells us.

   SOB: What does a 0.05 level of significance mean? Statistical significance answers a rather simple question: Given the correlation we obtained with our particular sample, what are the chances that the real correlation between the test and performance measure is actually zero?

   When we say that a correlation is significant at the .05 level, we mean (a) that the chances are not greater than five out of 100 that the correlation for the whole population of potential employees is zero given that (b) we obtained the correlation we

did (e.g., .50 in my example) or larger (c) for our sample which contained a specific number of individuals (e.g., in my example, for ten individuals).

In other words, what are the chances that we are wrong - that the validity coefficient for the whole population of potential employees would be zero given that we obtained a validity coefficient of .50 based on 10 employees. The minimum correlations significant at the .05 level can be found by consulting tables of the significance of correlations in any stat textbook.

In order for a correlation to be statistically significant at the .05 level based on a sample size of 10, it must be .63. Thus our correlation coefficient of .50 based on 10 employees is ***not*** statistically significant at the .05 level. The chances are greater than 5 out of a hundred that that the actual correlation between the test and the performance criterion for the **whole population of potential employees is actually zero**. Thus, we must conclude that our test will NOT predict the job performance of job applicants - it is not considered valid.

9. Based on the following material be able to answer the questions below.

   A. Assume that we obtained a .35 correlation between test scores and performance criterion scores and that the correlation was statistically significant at the .05 level. Does this mean that the true correlation between the test and the performance criterion for the population of employees is .35? Explain.

   B. Again, assume that we obtained a .35 correlation that was statistically significant at the .05 level. Does this imply that if you correlated the test scores with criterion scores for different samples of individuals, there is a 95% probability that the correlation would be .35? Explain.

   Note very well that statistical significance tells us nothing about the magnitude or size of the correlation. In the example in SO 8, the .05 significance level does NOT mean that the true correlation between the test scores and our criterion is .50 or even approximately .50. It simply means that there is more than a 5% probability that the correlation is zero.

   Furthermore, it does NOT mean that if you correlated test scores and criterion scores for different samples, there is a 95% probability that you would obtain the exact same correlation. Statistical significance only tells you the likelihood that the correlation would not be zero.

10. 170,1 Point #1. Not for the exam, but at the end of the study objectives I have given you a table indicating the relationship between the sample size and the magnitude of the correlation that is necessary for statistical significance.

11. 170,1-171,0 Point #2.

    A. What does it mean when we say that a "validity coefficient computed on a small sample size is *less reliable* than one based on a large sample"?

    B. Explain, based on the material below, why a validity coefficient computed on a small sample is less reliable than one computed on a larger sample.

    A larger sample means that the correlation coefficient that you obtain is going to be more stable *because you are sampling a greater number from the population*. With smaller samples, your correlation coefficient will be less stable due to measurement error introduced by sampling errors - that is, it will vary more from sample to sample.

12. 170,1 Point # 1 (yes, go back to point # 1). Based on the material below, explain *why* it is that as the sample size *decreases*, the correlation required to achieve significance *increases*.

    The reason is because of the unreliability that occurs when you compute a correlation coefficient using a small sample size. That is, we know, as I explained above, that the correlation is going to vary more across samples if you use a small sample size (even though, theoretically there is only one true correlation for the population). Because of that variation, the magnitude of any one correlation coefficient from any one small sample must be larger in order to compensate for the fact that the correlation from that sample may, indeed, be wrong, or more technically, may not be as representative of the true correlation for the entire population.

13. 171,1. *Regardless of the reason*, in essence, what is wrong with a small sample size? Hint: the material that begins with "The problem is this". Also include the material in the following sentence that begins, "Therefore…"

14. 172,1. In the study conducted by Schmidt (this is a terrific study, by the way):

    A. What was the original sample size? (you can round this to 1500 as I do in the ppt)

    B. How many individuals were in the smaller samples?

    C. What proportion of the coefficients calculated on the smaller samples were statistically significant, indicating that the test was valid?

    D. What are the implications of these results?

OK, now to reliability: Turn to page 102,1

15. 104,2

    A. State the fundamental definition of "reliability."

    B. Based on the material below, summarize what is meant by the (a) "stability", (b) "dependability", and (c) "consistency" of a test.

    One of the confusions about reliability is that there are different "types" of reliability.

    Stability. One type is stability. If you gave a test on two different days, would the individuals get approximately the same scores?

    Dependability. This refers to whether the test accurately samples the content you want to test for. For example, when you test for math, you can have a wide variety of math problems - but (a) did the test include a right number of addition, subtraction, multiplication, and division items, and (b) would test scores differ if different addition, subtraction, multiplication and division items were included.

    Consistency. This refers to whether different items or different parts of the same exam are measuring the same thing. For example, if you administer a test designed to measure mechanical ability or intelligence, is it the case that all of the items on that test do, in fact, measure mechanical ability or intelligence?

    The rest of this material will not be on the exam. With a perfectly reliable test, a person would get exactly the same score on that exam if it were given at different times, exactly the same score on two tests that measured the identical thing (such as math ability), and exactly

the same score if you split an exam in half and scored each half of the exam separately. But the probability of that happening is very, very low because measurement error creeps in.

16. 104,5 State and explain the components that make up an obtained score.

    Not for the exam, just more explanation about the concept of the “true score.” The "true score" concept is often alien to students in our program, and therefore conceptually confusing to them. The "true score" is conceptually perceived to be the person's actual knowledge or ability with respect to the attribute being assessed. But in any testing procedure, measurement error creeps in, so that the score that the person actually obtains rarely is the person's "true score."

    The error can be due to many things: the person may not be feeling well that day, the test itself may not sample an adequate number of items (for example, my essay examinations do not include all of the study objectives), the wording of an item may be defective or be interpreted incorrectly by the person taking the test, etc. I am sure you have all experienced the problem of taking an exam and not answering a question correctly that you really did know for some reason related to your physical condition, some reason related to the testing conditions (not enough time so you were hurrying), or the way the question was worded. This is “measurement error.” See also the examples in Table 4.1 on page 107. They are excellent examples.

17. 109,3

    A Describe the test-retest method of reliability.

    B. What is the resulting correlation coefficient called, and why?

    C. What does the coefficient indicate?

    The example in 109,4-110,2 will help but I am not going to ask any questions over it.

18. 110, 2- 111,2

    A. Why is an interval that is too short between test administrations inappropriate?

    B. Will an interval that is too short between test administrations underestimate or overestimate the reliability of a test? Why?

19. 111,2 last sentence. In general, how long should the test-retest interval be?

20. 111,3-4

    A. Why is an interval that is too long between test administrations inappropriate?

    B Will an interval that is too long between test administrations underestimate or overestimate the reliability of a test? Why?

21. 112,2. Test-retest is a suitable method if we are interested in what aspect of the measure? If the measure has high test-retest reliability what can we conclude?

22. 112,3. Describe the parallel or equivalent forms method of estimating reliability. How is the reliability measure determined? What is the reliability coefficient called and why?

23. 112,3

    A. If the two forms are administered on different occasions, with a relatively long interval in between, what is the reliability coefficient called and why? Note that if the coefficient is

high it would indicate both that the forms are equivalent and the scores of individuals are stable over time.

B. Also, based on the following, be able to state what it would mean if the coefficient was low. If the coefficient is low, the error could be due to (1) nonequivalence of forms; (2) instability of scores over time; or (3) some combination of the two.

24. 113, Figure 4.4. Not for the exam, but note the three criteria used to determine form equivalency. If ever you need to create equivalent forms of tests, refer back to this. If these three things don't exist, it is no doubt due to the fact that you have incorrectly sampled the items from the universe of items. Or, your random sampling went awry for some reason.

25. 114,3.

A. Does equivalent/parallel form reliability tend to underestimate or overestimate reliability and why?

B. Is test-retest or parallel form reliability generally preferable?

26. 114,5.What is an internal consistency reliability estimate and what does it show?

27. 127, 1 (the material after the formulas, beginning with "Therefore..") If given a reliability coefficient be able to statistically interpret it as the authors have done in terms of the percentage of differences due to true differences due to what is being measured and the percentage due to error. Be prepared - a reliability coefficient is interpreted much differently than a validity coefficient as you will see in U5 - many students confuse them.

28. 129,5. Although the authors are right in terms of how high a reliability coefficient should be, I am going to give you a rule of thumb. Learn the following numbers: When predictors are being used in selection, generally the reliability coefficient should be no lower than .85 and preferably it should be .90.

29. A 129, 5 Generally speaking, how do individual differences among respondents affect estimates of reliability. Do they increase or decrease reliability estimates? For example, which of the following in general would result in a higher reliability?

1. You administer a math exam to a group of 25 high school students, 25 community college students, and 25 college engineering students, wait six weeks and then re-administer it to them.

2. You administer a math exam to a group that consists 75 college engineering students, wait six weeks and then re-administer it to them.

B**.** In the ppt slide, I have diagrams that illustrate why the above occurs. Be able to reproduce those two diagrams. I have also included this slide at the end of the study objectives for this unit for your convenience.

30. 131,3 In general, how does the length of a measure affect estimates of reliability? It may help to think of within-subject data – the more data points you collect for an individual, the more confidence you have that the data actually represent the person's true performance, not simply momentary fluctuations due to unknown factors in the environment.

31. 133,1.

A. Explain how and why the difficulty of the test questions affects estimates of reliability. And, what difficulty is best – include the material in the parentheses (134,2).

B.. In the ppt slides, I have diagrams that illustrate this. Be able to reproduce the two diagrams.

And, yes, they are the same diagrams as I asked you to learn in Q29B. The statistical reason for the answers to both 29A and 31A are identical.

32. 137,4. Not for the exam, but note the very important caution in these paragraphs. Just because a test is commercially available and published by a reputable publisher, does NOT mean it meets testing standards.

33. 137,5. Why should any user carefully search for and insist on reliability information?

35. 138. Not for the exam, but this is an excellent table. It may come in handy some day.

THE END

INSERT PPT SLIDE OF HIGH POSITIVE, HIGH NEGATIVE AND ZERO RELATIONSHIP
SLIDE # 8 U4

Magnitude of Correlations Needed to Achieve Significance for Various Sample Sizes

Sample Size	.05 Level	.01 Level
3	0.98	1.00
4	0.95	0.99
5	0.88	0.96
6	0.81	0.92
7	0.75	0.87
8	0.71	0.83
9	0.66	0.80
10	0.63	0.76
11	0.60	0.73
12	0.57	0.71
13	0.55	0.68
14	0.53	0.66
15	0.51	0.64
20	0.44	0.56
25	0.40	0.50
30	0.36	0.46
35	0.33	0.43
40	0.31	0.40
50	0.27	0.36
70	0.23	0.30
100	0.19	0.25

INSERT PPT SLIDE #47: RELIABILIBY DIAGRAMS FOR DIFFERENCES IN PARTICIPANTS

Unit 5: Gatewood, Feild, & Barrick, Chapter 5, Validity

1. 143,1. Not for the exam, but why is it that we want to know how well a predictor is related to job performance criteria that are important to us?

   Again, keep in mind that the *predictor* is the selection instrument – the measure that you want to use to predict the future job performance of an applicant. I have explained this before, but I want to return to it. You need to determine the validity or job relatedness of a selection instrument for *current* employees, but once you establish the validity of the selection instrument for those current employees, you administer it to those who apply for the position in the future, and use it to *predict* their job performance.

   To illustrate: Assume that you have a positive correlation (that is statistically significant) between the test scores and performance appraisal scores for *current* employees. And, current employees who scored between 50-75 on the exam also had high performance appraisal scores, indicating they perform well on the job. Now, you administer the exam to job applicants. If an applicant scores between 50-75, you can *predict* that he/she will also perform well on the job on the basis of what you know about the relationship between the exam scores and performance appraisal scores for your current employees.

2. 143,6-144,0. What is the difference between reliability and validity? I'll help. Reliability tells us how dependable (stable, dependable or consistent) a measure is but it does not tell us whether or not the measure is related to job performance. Validity tells us whether **what** is measured is indeed **related to job performance**.

3. 144,1. Explain how reliability and validity are related to each other. Be able to give and explain an example of a measure that is reliable but not valid.

4. 144,2. What two factors determine the *maximum possible* correlation between X and Y? (don't learn the formula).

5. 144,5-145,0 Not for the exam: The authors use the term “criterion-related validity” as the second major category of validation. In the past, they have referred to this as “empirical validation.” I am not sure why they changed their terminology, but it is in the case within the field, this type of validation procedure is more commonly referred to as “criterion-related validity” rather than empirical validity.

   Criterion-related is sometimes also referred to as "empirical validity" to contrast it with content validity. With both types of criterion-related validity, test scores are correlated with measures of job performance whereas with content validity, determination of job-relatedness does NOT use statistical procedures - rather content validity is based on expert judgment (a job analysis).

6. 145,2-3. State the first two reasons why content validation is often used. (Don't learn the third one in 145,4)

   The rest of this study objective will not be on the exam: Content validity is much more widely used in selection than is criterion-related validity. Only large organizations can afford and have sufficient numbers of employees to conduct criterion-related studies. Also, an organization must have a good performance criterion measure for job performance, which may not exist for many jobs even in large organizations. Thus, ever since the Supreme Court decision in 1995 (Rudder v. District of Columbia) that stated that content validity was

acceptable as a form of defense in adverse impact cases, more and more organizations have been using this approach. Selection specialists, however, still tend to be more comfortable with criterion-related validity because of the statistical confirmation of the job relatedness of a selection instrument (the statistical significance of the correlation between the test scores and job performance scores).

7. 146,2

   A. How do content validity and criterion-related validity differ with respect to the emphasis given to the type of selection procedure?

   B. How do content validity and criterion-related validity differ with respect to the basic method used to determine the validity of a selection procedure? All I want you to notice here is that criterion-related validity (both concurrent and predictive) require some type of statistical correlation between the test and performance criterion while content validity does not – rather, content validity relies completely on expert judgment.

   The first point is VERY important. *If you use criterion-related validity you can select an off-the-shelf test or write your own. But since it is cheaper to use an off-the-shelf test that is what is usually done. However, if you conduct a content validity study, then you should plan on writing the selection instrument yourself.* If you select an off-the shelf test it will probably NOT meet the requirements of content validity.

8. 146,3. Explain (a) what face validity is, (b) why it is NOT really a form of validity in the technical sense, but (c) why it is important even though it is not a form of validity in the technical sense.

9. 147,1, point 1. What is the "heart" of any validation study and why?

10. 147,2. List the major steps (A-E) involved in the conduct of a comprehensive job analysis for content validity - don't include the 5 steps under D although these are indeed required. Note that these have been stated in the Uniform Guidelines and are an absolute must to include in any job analysis upon which content validity is based. (You can use this same method for criterion-related validity, but you have some other options as well.)

    Again, note carefully, that you do NOT correlate the test scores with the performance criterion scores as the last step.

11. 155,2. Indicate when content validity is not acceptable according to the Uniform Guidelines. To answer this, learn the first point and the following: when cutoff scores are grouped according to magnitude or ranked ordered. I am asking you to learn these two specifically because these are the two that are most violated in practice.

    I have not asked you to learn the second one because this is true of either content or criterion-related validity strategies. You should never test for KSAs that an employee is expected to learn on the job, regardless of the validity procedure.

12. 156,1. Be able to explain why concurrent and predictive validity are both referred to as criterion-related validity or "empirical" validity. That is, how are these approaches similar?

13. 156,2.

    A. Explain what "concurrent validity" is. The example on the following pages will help.

B. Be able to indicate how you would conduct a concurrent validity study using the steps indicated in Table 5.1 on page 159.

14. As indicated in 156,2, **a selection test/instrument is *only* considered to be related to a performance criterion when the correlation between them is statistically significant at the .05 level.** ***Add this as the last step in conducting a concurrent validity study.***

15. 159,5-160,0.

A. What is an advantage of concurrent validity?

B. Based on the below, explain the *basic reason* that accounts for *all* of the weaknesses that are related to concurrent validity. Note that all of the factors listed in these paragraphs are examples of this reason.

C. Based on the below explain why these differences affect concurrent validity.

D. State at least three specific differences between current employees and future applicants that can affect the results of a concurrent validity study (note that the ones listed in 159,0 are not specific enough – you will have to get your examples from the paragraphs that follow).

Material for 15 B and C. Basically, all the weaknesses associated with concurrent validity have to do with differences between your current employees and the applicants who apply for the job in the future. You are conducting your study with one sample of the population (your *current* employees) and you are assuming, statistically, that your *applicants* are coming from the same *population* of individuals. However, your applicants may not be from the same population – that is, they may differ in important ways from your current employees (ways that affect how they would score as a group on the test **and/or** how they would perform on the job).

16. Based on the following material and the ppt be able to answer the questions below.

A. What does *restriction in range* mean? Be able to illustrate your explanation by reproducing the diagrams from the ppt. And, yes, these diagrams should look very familiar. They are the same ones I had you learn last unit. In the last unit, I did not give you the technical name for the statistical concept/reason – it is restriction in range.

B. Be able to provide a diagram that represents restriction in range on the test scores but **not** the performance score, and vice versa. I have not given you examples of these – I am asking you to do this to make sure you understand the concept of restriction in range.

C. How does restriction in range affect the correlation between test scores and a performance criterion scores? And, does restriction in range underestimate or overestimate the validity of a predictor/exam?

Before really understanding the weaknesses related to concurrent validity, you need to understand one more concept related to correlation: *Restriction in range*.

As you have learned, in criterion-related validity studies, the ultimate proof that your selection test is job related is that the correlation between the test scores and performance criterion scores is statistically significant. Correlation tells you the degree of relationship that exists between the two measures. A *high positive* correlation means that (a) individuals who have a high test score also have a high performance criterion score, (b) individuals who

have a middling test score also have a middling performance criterion score, and (c) individuals who have a low test score also have a low performance criterion score.

Clearly, in order to determine that such a relationship exists between the test scores and the performance criterion scores, you need individuals in your sample who obtain *high*, *medium*, and *low* scores on the *test* and also who obtain *high*, *medium* and *low* scores on the *performance criterion* score. If you only have individuals in your sample who score high on the test and high on the performance criterion score, you will get a zero correlation between the test and the performance criterion; that is, you need a *range of scores* on *both* measures in order to determine the extent to which the scores are related to each other.

Any procedure that eliminates or reduces the entire range of scores (high scores, medium scores or low scores) will reduce your ability to determine whether a relationship truly exists between the test and the performance criterion score.

The term *restriction in range* refers to situations where high scores, medium scores or low scores on *either* or *both* the test and performance criterion are eliminated or reduced. When restriction in range occurs, the *true correlation* or relationship that exists between the test and the performance criterion will be *underestimated*.

Again, look at the diagrams in the ppt. related to this study objective The diagram on the top represents a situation where there is a range of scores on *both* the test and the performance appraisal. And, a positive correlation results. However, assume now that you used a concurrent validity approach (I am exaggerating the example in order to demonstrate the point). And, also assume that all of your current workers score well on the exam because they are very experienced and also perform very well on the job. In other words, you have *restricted your range* by eliminating those who would score poorly and "middling" *on the exam* and perform poorly or "middling." That is***, and to repeat because many students have forgotten to mention both on the exam***, you have restricted your range of ***both the test scores and the performance scores***.

That situation is illustrated by the diagram on the bottom of the ppt slide. You end up with a zero correlation. However, because your current employees are not representative of the applicants who would apply, you have just greatly underestimated the validity of your test.

17. 159,1-160,0

A. Explain specifically why differences in tenure or the length of employment of current employees may affect the results of a concurrent validity study – thus, making them less applicable.

Let's take an extreme example to help explain this. Suppose you had an aging work force. That is, most of your employees had been on the job for many, many years. If that is the case, then you would expect them to perform better on any job related test than job applicants who had not had such experience. Not only that, but you would expect the job performance measures to be higher for very experienced workers than for less experienced workers. *Thus, you have restricted your range of both the test scores and performance scores.* The effects of job tenure on both the test scores and the job performance criterion thus decrease the probability that you would get the same correlation if you correlated the test scores and job performance measures of less

experienced workers – workers who are likely to be more similar to the job applicants (unless, of course, you have a pool of very experienced applicants for some reason).

B. Explain why rejected applicants, turnover (including those who were fired), and promotions may affect the results of a concurrent validity study. Again, let's look at an extreme example. Based on your current selection procedures (before you attempt to validate your new selection procedures), you reject some applicants who clearly would not have performed well on the job. In addition, (a) some individuals who could not perform well left the company and (b) some who did not leave voluntarily were fired. That leaves you with job incumbents who are, in general, better job performers than otherwise would have been the case. You would again, as above, expect this group of job incumbents to score better on the selection test and have better performance measures than your group of applicants. You have restricted your range of scores on both the test and the performance criterion by using your current workers as the sample for your validity study.

18. 160,1

A. Explain what "predictive validity" is.

B. Be able to explain how you would conduct one of these studies based on the steps provided in Table 5.1 on page 159. **Again, add the statistical significance test as the last step.**

19. 160,4 What are the two ***practical*** weaknesses of "a pure" predictive validity study?

Not for the exam but note that neither is a methodological weakness as are the weaknesses related to concurrent validity – rather they are both procedural/practical implementation weaknesses. Note the second weakness – last sentence in the paragraph. Companies in general are not often willing to hire applicants *randomly* - without using the information obtained on the selection procedure. It may well be that random selection will result in some poor employees so it is understandable that companies and managers strongly resist this procedure.

20. 161, Figure 5.5.

A. Based on the following, explain which type of predictive validity study is the best from a measurement/professional perspective, and why.

The best predictive validity study design is the follow-up or random selection. This type has no problems whatsoever from a measurement perspective; it is completely "uncontaminated" from a measurement/professional perspective.

B. Based on the following, explain (a) whether using the present system to select applicants is likely to underestimate or overestimate the validity of your test and why.

Using the current selection system to select employees is the most practical type of predictive validity study to do. However, it is very likely to *underestimate* the validity of the test. If your current selection system is valid those who are selected for the job will perform well on the job; hence, you will be *restricting the range of scores on your performance criterion measure,* and therefore you are likely to get a lower correlation between the test and the predictor than if you randomly hired.

C. Based on the material below, **explain** both the professional and legal reason why you should *not* use the third method described – select by predictor.

Professional reason. This method really reduces the chances that you will find your selection procedure valid even when it is. In other words, it greatly underestimates the true validity of the selection procedure. This is because you are only selecting individuals who score well. *If* the selection procedure is highly related to job performance, everyone who is selected will perform well on the job, which will restrict the range of scores on both the test and the job performance criterion. Hence, you are likely to get a very low correlation between the two.

Legal reason. If adverse impact occurs, you open yourself up to an unfair discrimination law suit: You have adverse impact, but you do not know whether the test is job related.

21. 162,3, point 4. Note the fourth requirement for conducting a criterion-related validity study Indicate the number of employees that are often required and what will happen if the sample is too small. Actually you can conduct a study with 50 - 100 employees - **learn this number**. The reason why the sample must be large is because of the statistical significance requirement. That is why many companies use content validity instead of either concurrent or predictive validity.

22. Not for the exam, but Table 5.2 on page 165 is excellent. If you are faced with conducting a validity study, you should use this table to help you decide which validation strategy is most appropriate.

23. 164,4-167,3. I am not going to ask any questions about construct validity – this is a very confusing concept, and from a practical standpoint, is not used much, if at all, in personnel selection. But I do want to explain it just for your information, if you ever need to know about it.

    Even though companies rarely, if ever, use construct validity it is ALWAYS included in testing courses. Basically you first hypothesize underlying "constructs" or hypothetical traits that are relevant to job performance. Per the example in the text, you hypothesize that people who work well in teams are extroverted, have a high need for affiliation, participated in team activities growing up, etc. Then you develop a measure that attempts to measure those constructs. Now you have to determine whether your measure is actually measuring those constructs by correlating your measure with other measures that supposedly measure those "constructs." If the correlations are statistically significant, then you can conclude that your measure is "construct valid." Thus, construct validity really has to do with test construction, NOT validity (not whether or not the measure is job related). After you use construct validity to develop and construct a test of some hypothetical construct, then you must conduct a validity to study to show that in fact the measure is related to the job. And, because you are dealing with "hypothetical constructs" that cannot be observed, you cannot use content validity to justify the use of the selection measure, you must use a criterion-related study.

    Again, not for the exam, but the material below explains why construct validity is not very appropriate or relevant for selection specialists who are hired by an organization.

    The only professionals I know who actually use construct validity are professional test developers when attempting to create a new test of some construct such as personality or

intelligence. I have never, ever seen a test specialist do this. Why? Time and money. The job of a selection specialist is to identify and validate selection procedures that will predict who will perform well on the job. Since construct validity deals with the construction of such measures as intelligence, personality, etc., there are typically professionally developed tests available. And, given that once the test is developed, you still have to conduct a criterion-related validity study, it does not make any sense in terms of time and money for a selection specialist to construct tests when off-the-shelf tests are already available (and probably better constructed than what the selection specialist could do since construction is done by professionals who expect to sell their tests).

24. 172,3. What is the coefficient of determination, how is it symbolized and what does it mean? On the exam I may ask you to statistically *interpret* a validity coefficient such as .50. If I do, **this is what you should say: 25% of the differences in individuals' job performance can be accounted for by the differences in their test scores.**

25 Note that you interpret a *validity* coefficient very differently than you interpret a *reliability* coefficient, even though they are both correlation coefficients. Go back to SO27 in Unit 4, page 127,1 and restudy how to interpret a reliability coefficient. Note that it is very different. You do NOT square a reliability coefficient when you interpret it - I am not going to go into the mathematics - *but you do not square it because you are correlating a measure with itself.*

For the exam:

A. Be able to statistically interpret both a reliability coefficient (127,1) and a validity coefficient (the preceding study objective objective).

B. If given an example of a reliability procedure and a validity procedure, be able to recognize the difference between an example of a reliability coefficient and a validity coefficient. For example, if an example indicates that test scores are correlated with a performance criterion measure, then the resulting correlation coefficient would be a validity coefficient. On the other hand, if an example indicates that scores from two administrations of the same test or scores from two equivalent tests are correlated, the correlation coefficient would be a reliability coefficient.

Last time I taught the class, students asked me to add sample exam questions for this study objective. I have done that below. I have provided the answers at the end of the study objectives for this unit.

1. A large, pharmaceutical company has administered test a technical knowledge test to its sales representatives and correlated it with their total sales volume (total amount of products sold). The test scores and performance scores were correlated. The resulting correlation coefficient was .60. Provide a statistical interpretation of this correlation coefficient.

2. A real estate firm has administered a technical knowledge test to its 200 real estate agents. They administered an equivalent test to the same employees one month later and correlated the test scores from the two tests. The resulting correlation coefficient was .80. Provide a *statistical interpretation* of this correlation coefficient.

26. 172,3 What are common validity coefficients (not the coefficients of determination but the actual correlation coefficients)?

The following material will not be on the exam. Note how low the correlations may be. This means that typically (only) 10% to 25% of the differences between the job performance of individuals can be accounted for by differences in their test scores.

Remember, the purpose of selection instruments is to *enhance* predictions about how well individuals will perform on the job, not to make perfect predictions, which we know is impossible. All selection specialists know this.

Some people dismiss tests because we cannot perfectly predict performance and thus will make selection errors even when we use them. On the other hand, many people who do not understand tests, place too much weight on them, basically, because they have a quantifiable number "to hang their hats on."

The correct position is to recognize that predictions made by selection instruments are not and cannot be perfect, yet they are certainly better than "nothing" – that is making random hires without the information that tests can give us. They are quantifiable and they can and do enhance our predictions about who will do well on the job and who will not. And they are certainly better than subjective opinions.

Now skip to page 190. I want to deal with one more validation procedure.

27. 190,2 and 192,2. What is meant by "validity generalization"?

    Basically, this means that where adequate validity generalization evidence is available, the results can be generalized to settings having *very similar* or *the same* jobs. A separate validation study for each job in each organization is not needed. For example, most manufacturing organizations have a position called a set-up mechanic. Thus, if several organizations conducted validity studies for the same selection test/procedure and that test was shown to be valid in each of those organizations, then you could use that same test in your organization without having to conduct your own validity study. Or if you have a computer systems analyst position in your company, you could use validity data from other organizations to support the use of a particular selection procedure without doing your own validity study.

    Clearly, this would be a great advantage for small organizations and would also save even large organizations considerable amounts of money.

28. Not for the exam. Validity generalization, although a bit controversial, is generally accepted by testing experts. However, it remains legally controversial. Until the legal issues are resolved, I do NOT recommend that you attempt to use this approach, thus I am not going to spend a lot of time on it. However, I do want you to know something about the legal status of validity generalization so I will cover that in the next study objective.

29. 196,2 Frank Landy is referring to a court decision that was then codified in the CRA of 1991 that indicates that the only acceptable criterion measure is *actual job performance*.

    FOR THE EXAM: Based on the material below, provide two reasons why this language (that is, the only acceptable criterion measure is actual job performance) makes the legality of validity generalization questionable..

    (1) The criterion measures used in criterion-related validity studies that are used for validity generalization often include *personnel data* such as absenteeism, turnover, accident rates, etc. which are not, technically, *performance* data.

(2) If the courts interpret the "*actual*" in actual job performance literally, then only the *performance of the workers from the/your specific organization* would be acceptable criterion measures. That is, you cannot use studies conducted in other organizations (validity generalization) because the criterion measures used in those studies are not the job performance measures of the employees in the specific organization.

30. I am also going to skip the material on synthetic validity – it is highly unlikely you would ever use this approach. But basically, just for those of you who are curious, synthetic validity permits small organizations that have a number of similar positions (positions that share some of the same job requirements) to conduct a criterion-related validity study, rather than relying on content validity.

    I believe that this approach has basically become "obsolete" since the Supreme Court ruled that content validity is an acceptable defense for adverse impact. Prior to this ruling, it was not clear whether the Supreme Court would accept content validity, as opposed to criterion-related validity as a defense, hence, job component validity was a way that you could do a criterion-related study in spite of small samples as long as there were similar/related jobs in an organization.

    However, you should also be aware that selection specialists still prefer the statistical evidence of validity that comes from a criterion-related study (as I do). It is much less prone to human errors in judgment that can result from a content validity study. Nonetheless, it is a practical reality that criterion-related studies are much more costly; hence organizations are likely to use content validity primarily now.

31. 202,1. In the survey conducted in 1993 (the random sample of 1,000 companies listed in Dun's Business rankings) with organizations who had 200 or more employees, what percentage indicated that they had validated their selection techniques? This is rather chilling given both implications of selection and the legal mandates. Those organizations are very vulnerable to legal charges and penalties.

    Not for the exam: Obviously that study is very old and I'd like to see an update. However, interestingly, I read a 2014 article by a lawyer that suggested that companies completely drop their testing programs due to potential legal problems. That seems to me to be very naïve given that interviews, background checks, etc., that is anything that is used to make a decision about selection and promotion is subject to legal scrutiny if adverse impact occurs.

SO25: Answers to the exam questions

1. This is a validity coefficient because test scores were correlated with the performance measure of total sales volume. Thus, you square the correlation coefficient and it means that 36% of the differences among individuals in their total sales volume can be accounted for by differences in their test scores on the technical knowledge test.

2. This is a reliability coefficient because the technical knowledge test was administered to the same real estate agents twice, a month apart. Thus, you do not square the correlation coefficient and it means that : 80% of the differences in individual scores on the technical knowledge test is due to true differences in knowledge, while 20% is due to error.

THE END.

Unit 6: Job Analysis: Gatewood, Feild, & Barrick, Chapter 7, and the material in the course pack that describes the Position Analysis Questionnaire.

I have provided a written description of the U9 & U10 task analysis project at the end of this unit's study objectives. Please bring this material and the materials on the task analysis from U9 in the course pack to class on Wednesday. I am going to describe your task analysis project.

1. 249,5-250,0. Not for the exam but note the legal standards. There are too many things to learn for the exam - but if you ever need to conduct a job analysis refer back to these pages. If you do not follow every one of these guidelines your job analysis will not be legally acceptable.
2. I mentioned the following point in the last unit, but I am going to review it again because it is so important: Even though in the criterion-related validity does not require a job analysis from a professional perspective, as long as the correlation between the test scores and job performance measures are statistically significant - the courts do require one for all types of validation procedures. That is why I am going to emphasize job analysis to the extent I am to the exclusion of a lot of other material.

   FOR THE EXAM:

   A. Usually legal and professional guidelines are consistent with one another. However, how do they differ with respect to job analysis and criterion-related validity?

   B. From a legal perspective, what is *fatal* to any type of validity study in a court challenge?

3. 251,4. As the authors state, they focus almost exclusively on tasks analyses. This is appropriate given that (a) task analyses are the most versatile type of job analysis procedure because they can be used for any type of validation procedure (content, concurrent, predictive, and validity generalization), and (b) they *must* be used for content validation. And this chapter does provide the major (different) ways task analyses are done. Thus, it is an excellent reference and you should refer back to it for alternatives.

   FOR THE EXAM: State the types of validation procedures a task analysis can be used for and the fact that they must be used for content validity.

4. Not for the exam: Study Objective 3 notwithstanding, I am going to focus on a different type of job analysis procedure as well in this unit; one based on job components and can be done using a commercially available structured job analysis procedure called the Position Analysis Questionnaire. I think its good for you to know about this alternative.
5. 253,4 Not for the exam. As the authors note the interview is typically used in conjunction with other methods - rarely, if ever, is it a "stand alone" procedure unless there are only 1 or 2 job incumbents. In 258,1, they state more strongly that the interview should not be relied upon as the sole method when the job analysis is used for selection purposes. This is excellent advice.
6. 255,3 and Table 7.1 on page 256.

   A. State the four components of a task statement.

B. Based on the following material, be able to answer why, after the job interview, you need a larger representative sample of job incumbents to review them. Include the material in italics.

This is THE standard format for a task statement regardless of how the tasks are obtained – that is, through interviews or subject matter expert (SME) workshops. Usually you conduct interviews or SME workshops first, then develop a set of tasks, have the people you interviewed and/or other job incumbents review them for completeness and accuracy, and then include them in a questionnaire that you send to a representative sample of job incumbents (and/or others, such as supervisors).

Answer to B. Why did you need a larger representative sample of incumbents to review them? First, professionally, to ensure their accuracy: *Your sample from the interviews may be incorrect because it is based on a small number of individuals*. Second, legally, if your selection procedures are challenged: *You will be shot down immediately if you haven't included a representative sample of incumbents in your job analysis process, which includes representation from geographical locations (if applicable) and members of protected classes (which, legally, is the most important consideration).*

7. 255,3 and Table 7.1 on page 256 (again) – and also see the examples on 256-257. Be able to write two task statements for a job you have previously held. Pay particular attention to the way in which task statements are written. The format must follow the format given in the text -no deviations. **Look at the way the verb is written -** it is a *present tense, singular verb* (that means there is an "s" at the end of the verb).

8. Not for the exam but also note on page 258, Figure 7.4 how the KSAs and additional information are tied to the specific task statement. This is a legal requirement for a task analysis.

9. 257,3-3 List three (any three) limitations of the job analysis interview.

10. 262,2-263,0 Section 14c of the Uniform Guidelines discusses the technical standards for the job analysis if it is to be used for <u>content</u> validation. <u>All</u> of the rating scales listed in the text MUST be included.

A. Learn these four scales and be able to provide them on the exam.

B. Based on the below, be able to answer: Because of ADAAA, what other additional scale should be added?

Because of ADA, You should also add an additional scale: is it an essential job task?

11. Based on the below, state the three scales that must be included for <u>KSAs</u> if your analysis is to be used for content validity.

Many task inventories used for <u>content</u> validity also include a section in which incumbents are asked to rate the KSAs as well. This is a very good practice since these were inferred from the tasks.

Further, to be used for <u>content validation</u> the following three pieces of information MUST be collected for the KSAs: (1) Whether each KSA is necessary for the successful performance of the job; and (2) whether the KSA is required upon entry to the job or can be learned on the job and (3) how difficult it is to obtain the KSA - what sort of education and/or experience is required.

12. In 263,3 - a suggestion is made to obtain the name of the individual who fills out the form. I **strongly** disagree. Based on the following:

    A. Be able to state why I argue against having employees put their names on the job analysis form.

    B. Describe a procedure that can be used for maintaining the confidentiality of individuals who complete the questionnaire but permits the determination of whether you have a representative sample.

    You will get more accurate information from the incumbents if they feel that the information will not be used "against" them - notice that one advantage mentioned by the authors is that the name is useful when combined with personnel file data - this is exactly what employees are afraid of when you conduct a job analysis. When I have conducted job analyses, even one-on-one interviews, I have almost always had to assure and reassure the individual that the information was confidential in the sense that it would be combined with information obtained from others and that his/her information would *never* be identifiable or given to his/her superiors unless combined with the information from others.

    To protect the confidentiality of employees and ethically tell them no one will know about their answers, whoever is in charge of the job analysis should have a master list of the names of the individuals who are sent questionnaires, numbers assigned to these individuals (and the code should include all of the relevant information such as geographical location, sex, protected class, etc.), and these numbers should be placed on the questionnaire. However, the names should be known only to the person in charge of the analysis.

13. 265,3-4. What are the two advantages of a task inventory? What are the disadvantages?

14. In lecture, I am going to discuss an important court case related to job analysis when it is used for a content validity study. The name of the case is Kirkland v. NY State Department of Correctional Services. After lecture, be able to state the two important aspects of this case.

15. 266-268, Critical Incident Technique. I am not going to cover this because of the disadvantage stated in 268,1: this approach does not end up with information that represents the full scope of the job. Hence, while it is very useful to develop questions to ask in interviews, and I have used it to develop interview questions, it is not a sound procedure for a stand-alone job analysis.

16. 268-269. Not for the exam, but SME workshops are very useful. I have used this method very frequently in the past for the creation of the task statements and then determination of the relevant KSAs. It is much more efficient than conducting interviews. Once I obtained the information from the SMEs, I wrote it up, had them verify the information, and then I developed a task inventory that was sent to all or a sample of incumbents.

17. Not for the exam. The material in the rest of the chapter (270-292) provides excellent instruction and examples of how to get from the task analysis and task inventory to the selection of actual tests and selection procedures. You should refer to this when you need to.

18. 295,2: Core Competencies. Not for the exam again. Many companies are developing core competencies. Please see the cautionary note in 295,4-296,0.

Position Analysis Questionnaire (PAQ). In this new edition, the authors talk about the PAQ earlier, in Chapter 5 in conjunction with "job component validity" (page 197). Previously, they had included it in this chapter. I am going to use the material from the earlier edition when talking about this job analysis procedure. I understand why they moved it – some individuals have begun to use this without conducting a local criterion-related validity study; thus the authors present it as a separate form of validity. However, I do not recommend that at this point in time, given the controversy surrounding its use in this manner. There isn't any controversy, however, if you conduct a **local** validity study using this as a job analysis procedure; thus that is the way I am going to talk about it.

From the couse pack.

19. First page of the excerpt: Not for the exam. Note the comments made about the PAQ; it is a commonly used job analysis procedure with an excellent history and reputation. It takes a very different approach to analyzing a job. Instead of identifying specific job-related tasks, it identifies general human "attributes" (or components) required for the job.

    This questionnaire is NOT good for managerial and executive positions, but the authors who developed it (McCormick & Jeanneret) subsequently developed its companion, the *Professional and Managerial Position Questionnaire* (PMPQ), which is also of very high quality.

20. In lecture I am going to explain how the PAQ was developed – it will help you understand this method of job analysis. I am also going to talk about the underlying rationale for the PAQ in detail.

    A. **FOR THE EXAM**: Based on the following material and my lecture, be able to state the underlying rationale (the two basic assumptions) of the PAQ.

    The first underlying rationale (assumption) of the PAQ is that there are a limited number of human attributes and all jobs can be characterized by the extent to which each attribute is required for any particular job. That is, there are a certain number of human attribute "building blocks" (the authors of the PAQ identified 187) and each job can be constructed from these building blocks by identifying which of these blocks to what degree is required for this particular job in comparison to all other jobs that exist.

    The second underlying rationale of the PAQ: The PAQ assumes that each human attribute is normally distributed across all jobs.

    B. **FOR THE EXAM**: (1) Based on the following, describe how the important job attributes for each job determined by the PAQ. (2) Include the material on percentiles and be able to indicate/interpret what a percentile score on an attribute/job component means.

    Each job is compared to the normal distribution for each attribute to determine how much of that attribute is required for that job in comparison to all other jobs. The data are then typically reported in percentiles – for example one job may fall at the 90^{th} percentile for the use of manually powered tools, which means that 90% of all jobs that exist require LESS of this attribute than your job. Hence, it is a very important attribute for your job.

21. 283, point #1. Who/what group is best prepared to use the PAQ for an analysis?

Not for the exam. As you will see in a moment, one of the disadvantages of the PAQ is that it requires the reading level of a college graduate. Thus, it is best if trained job analysts administer the form – that is, use it in an interview with a job incumbent. This is very time consuming as the administration usually takes about 3 1/2 hours. You cannot simply give this questionnaire to job incumbents to complete on their own unless they can read at a college graduate level.

22. 285, 1. Not for the exam. Note that the analysis really must be done by the PAQ services. PAQ Services has the database to score and analyze it.

23. Based on the following be able to answer:

A. Can the PAQ be used in a content validity study? Explain.

B. If you use the PAQ, what type of validity study must you conduct?

Because the PAQ is *results in the identification of general human attributes*, not work task statements it *cannot* be used as the job analysis procedure for *content*. Thus, whenever you use the PAQ you must ultimately conduct a criterion-related validation study (again, remember that both concurrent and predictive validity studies are forms of criterion-related validity studies).

24. 285,2.

A. What disadvantage does the PAQ have with respect to reading level? As I indicated in study objective 21, this is why the authors state that trained job analysts are the best ones to conduct the analysis using the PAQ, in contrast to job incumbents or job supervisors.

B. What disadvantage does the PAQ have with respect to the fact that it scores the basic work *elements/components* rather than the specific tasks of a job? State the results of the Arvey and Begalla study that illustrates this problem. This is why the PAQ cannot be used for content validity.

25. 285,3 The PAQ cannot be used to develop job descriptions. Even though selection specialists have not typically been responsible for developing job, based on the below, why has this become a *major* disadvantage?

The fact that the PAQ cannot be used to develop job descriptions has become a more serious disadvantage since the passage of ADA. Although the selection specialist in the past has not been responsible for the development of job descriptions, the ADA, for all intents and purposes, **requires job descriptions prior to any selection (a little known requirement).** Thus, it might save the organization time in the long run to use a job analysis procedure, such as a task analysis that can form the basis of both a selection system and a job description.

26.

A. 286,1. The PAQ provides a standardized, quantitative means for collecting job information. Why is this an advantage?

B. Learn the following points: (a) Because of its standardized format, the PAQ is the best job analysis procedure to use if you are using *validity generalization* to determine the validity of your test (ignore, for the moment, that validity generalization may not be legal if challenged in court). (b) Why? For validity generalization you must prove that your job is very similar to the job in the other organization that conducted the original criterion-

related validity study. Because the PAQ is standardized and provides quantitative data, it is much easier (and provides a more accurate comparison) to compare the same job (or similar jobs) in different organizations.

C. 286, 2. What *professional technical* advantage does the PAQ have? Note that it is one of the few methods of job analysis for which we have extensive reliability and validity data.

D. Based on the material below, what *legal* advantage does the PAQ have?

An excellent *legal* advantage of the PAQ that is not stated is that the PAQ has stood up in court and is *highly* recommended by the EEOC. So if in doubt, (and you are doing a criterion-related study) this procedure is a very safe bet.

27. Turn to the next page, which is page 344. Learn the following steps required to select tests based on a PAQ analysis. The handout talks about the PAQ from 344-350; however it is much too detailed for our purposes, so I am going to summarize the steps for you.

Assume that you have completed a PAQ analysis. To select tests:

(A) Analyze data on-line using PAQ Services;

(B) Based on the PAQ report that indicates the tests in the GATB that are most relevant, locate tests similar to these (note the real neat information you get from the report – see Figure 8.14, page 349, and Figure 8.15 on page 351- you can even get a list of potential substitutes for the GATB tests). Note that you cannot use the GATB tests – these are the sole property of the U.S. Employment Service and they do NOT make them available to private employers.

(C) **EMPIRICALLY validate these tests**;

This next part won't be on the exam, but students often forget this step and the next one, so I want to provide a bit of explanation. Remember, I am recommending that you use the PAQ *only as job analysis procedure*. While the report suggests tests that are likely to be job related, and even gives you *predicted* validity coefficients, you have not yet shown that the tests are valid for your jobs. Thus, you *must* conduct an empirical validity study with your employees once you select the tests based on the PAQ analysis.

D) Check the statistical significance of the correlation between X and Y.

The End

Units 9 & 10: Task Analysis Project

You are going to develop a task analysis. The task analysis is the first step in the development of a task inventory (job analysis questionnaire) that is then sent to all or a sample of job incumbents. I am not going to have you develop the actual questionnaire or ask you to get ratings for the task statements and KSAs. The project consists of just the first step – the identification of the task statements and the KSAs for each task statement.

The task analysis is the most versatile job analysis procedure because, if you recall, (a) it can be used for both content and criterion-related validity studies, and (b) is *required* for content validity studies.

The task analysis is due Monday, April 24 and will be worth 70 points. You must complete this project or receive a zero. You cannot use the make-up exam to replace this. 12. Also, I will deduct points for lateness - see the syllabus.

I suggest that you start it immediately - it is a time consuming project. If you want your grade before you decide whether to take ME2, the deadline is Monday, April 17.

There is a resource on the internet that will make this project a lot easier and a lot less time consuming called O*NET (Occupational Information Network). This is a job analysis system developed by the Department of Labor.

The web site address is onetonline.org. *Don't ignore this or (a) your project will take a lot longer than necessary, (b) will be a lot more difficult for you, and (c) it won't be nearly as good!*

In the course pack, in Unit 9, I have provided sample task analyses that students have completed in the past. These are excellent models and all were done with the use of O*Net.

*Note that the tasks on O*Net are not detailed enough. You will use the material from the text to write and format the tasks and KSAs.* However, (a) the tasks and KSAs on O*Net will help you considerably. Also the material at the end of the task analysis section in the sample projects– the sections that begin with the heading, "Work Activities" were modeled after the material from O*Net.

To see an O*NET model, I recommend you go to the web site, and use a "Bartender" as an example position. First, click the *Find Occupation* button on the main page. Then under *Job Family,* select "Food preparation and serving related," and click the *GO* button. Then click on "Bartender".

Instructions

1. You may conduct the task analysis for one job incumbent. Do NOT do the task analysis for a job that you currently hold or have held in the past. I want you to have the professional experience of collecting information about a job that you are not familiar with. It is harder than it may appear to be.
2. The job may either be a part-time job or a full-time time.
3. You will be developing task statements for the position, identifying the KSAs required for the position, and identifying the physical activities/requirements, environmental conditions, and typical working incidents/activities (here is where many job analysts put things like persuading individuals, working under stress; things that are critical for ADA now. For

examples of typical working incidents see Figure 7.3 on page 254-255, and the work activities section for the bartender in O*NET).

For each task statement, the format should be the format provided in Figure 7.4 on page 258 of Gatewood, Feild, & Barrick.

Note that this differs from the format provided on O*NET. O*NET provides the END result of a task analysis and inventory, NOT the starting point of a task analysis. That is, on O*NET, they simply list all of the relevant/important tasks in one section, and all of the relevant KSAs in another section *without* linking the KSAs to the task statements. Again, this is fine for the *end* product, but does not meet the legal requirements for a task analysis. If you simply presented this end product in court, you would lose your court case. For the court case, you must provide the *initial* analysis as well; an analysis that ties/links the KSAs to *particular* task statements.

4. You should have from between 15 - 30 task statements depending upon the nature of the job. Part of the problem with writing task statements is determining how specific or how broad they should be. You will understand this difficulty more when you attempt to write them.

5. O*NET task analyses have the following sections AFTER the tasks, tools & technology, and KSAs:

A. Work Activities
B. Detailed Work Activities
C. Work Context
D. Job Zone
E. Education
F. Credentials
G. Interests
H. Work Styles
I. Work Values
J. Related Occupations
K. Wages and Employment Trends
L. Job Openings on the Web
M. Sources of Additional Information

For your task analysis, I am only going to require the following sections as part of the analysis:

Work Activities	Work Styles
Work Context	Education and Licensure/Certification

Steps

Before Beginning

1. **How to Write Task Statements**. Read Gatewood, Feild, & Barrick pages 255-257: *An Example*. I have also provided a task statement worksheet in Unit 9 of the Course Pack that is the same as the one provided in Table 7.1. It will provide the structure for you if you want to use it.

   For additional instruction on writing task statements, see page 272, 2-3.

2. **How to Write and Determine KSAs**. Read Gatewood, Feild, & Barrick, pages 276-277 and Figure 7.10 on page 278. I will hold you to all of the guidelines on these pages and you will lose points if you do not follow them.

Note that there is disagreement and considerable confusion when attempting to distinguish between a skill and an ability. As the authors say, it really doesn't matter as long as the skill/ability is listed but note that a skill always has some **level of competency** attached to it.

However, in order to introduce an "understandable" difference, I am going to require that a skill include a **numerical qualifier**: When writing a skill always, always include a numerical qualifier or explicit statement of competence (e.g., see the third skill in Figure 7.10). If there is not a numerical qualifier or explicit statement of competence standard, then the attribute should be listed as an ability.

Many task statements *will not* have any skills associated with them. You can see this in Figure 7.4 on page 258.

On page 276-277, pay particular attention to # 3, 4, 6, & 7- I often get questions from students about these, particularly #3. Note carefully that if something like statistical abilities or high level math abilities are required and stated as either an ability or skill, you do not then have to list the more basic abilities/skills associated with them (in this case, for example, addition, subtraction, multiplication, etc.). The higher-level ability/skill covers these. That prevents you from having an extremely long list of skills/abilities.

3. **How to Document Work Activities, Work Context, Work Styles, and licensure/certification requirements**: See O*NET and Gatewood, Feild, & Barrick, pages 278-280 point 5.

4. **Planning the Analysis**. You should plan to meet with the job incumbent at **least 3 times,** each for about an hour and a half to two hours to collect the information. Some students have had to meet with job incumbents 4 times. I have provided instructions for each meeting below.

5. **Before your First Meeting**. You should obtain any written documentation that exists about the job - for example, a job description and/or organizational chart.

   You should locate the job title/position using O*NET. Once you locate the position using the *Find Occupation* button on the main page, and the *Job Family*.

   This will save you untold amounts of time. You can use the information to prepare for the interview, and then again when you are writing the task statements and KSAs based on your interview!

<u>Conducting the Meetings</u>

6. **First meeting**. You should focus on collecting *task statements* and task statements *only*. Individuals find it easier to do all of the task statements first, and then go back and determine the KSAs for each task statement in the second meeting.

   I have also found that it is easier for individuals if you first ask them simply to state the major aspects or areas of their job. Once you have that list, then you take the first major area, and ask the job incumbent to tell you the tasks or job duties within that area; then move to the second major area; and so forth.

7. **Second meeting.** You should type up the tasks and meet with the job incumbent to determine the KSAs. At that second meeting:

   A. Ask the job incumbent to review the list of tasks to make sure each one is accurate, and that you have listed all of the major tasks (that is, that you have not missed anything).

B. Then present each task statement to the job incumbent and ask what KSAs are required for that task. Depending upon how long this takes, you may want to continue with C below or schedule a third meeting to obtain the final information for the task analysis.

C. Finally, ask about the Work Activities, Work Context, Work Styles, and Licensure/Certification requirements as indicated from the O*NET task analyses. BE SURE TO ASK ALL OF THE WORK CONTEXT questions from O*NET that are relevant for the position you are analyzing – this is critical for ADA.

8. **Third meeting**. Type up the entire document and have the *job incumbent review it one more time*. If revision is required, then you should ask the incumbent to review the revised version.

Final Report and Some Grading Criteria

9. Task Analysis Report Format. See the models in U9 in the course pack.

A. Description of the company and position. Include the name of the position in the company and the corresponding O*NET position name (if there is a corresponding O*NET position).

B. Description of the method/steps you used to develop the task analysis. How many times did you meet with the job incumbent? What did you do during each meeting? How long was each meeting?

C. Task statements with KSAs linked to each task statement

D. Work Activities

E. Work Context: Environmental Conditions AND Physical Requirements

F. Work Styles (these also get at key ADA requirements – getting along with others, dependability, coming to work regularly, etc. See the Bartender position for examples).

G. Education and Licensure/Certification

10. All sections must be included. The tasks and KSAs must be written/formatted as described above.

11. I will deduct points for grammatical and spelling errors. You will lose credibility in a professional setting for bad writing. I will also deduct points if you do not include page numbers!

PSY 6430, Unit 7: Tests

1. Gatewood, Feild, & Barrick, Chapters 11-14

2. Szostek & Hobson (2011). Employment test evaluation made easy: Effective use of the Mental Measurements Yearbook. *Employee Relations Law Journal, 37*(2), 67-74.

This unit is going to be a survey of different types of tests.

1. Before Chapter 11, go to page 83, Locating existing selection measures. 83, 2-84, 0. State the advantages of using an off-the-shelf existing selection measure

2. 85,3 State the name of the most important source for information on tests.

   Not for the exam, but there is now a 20th edition that was published in 2016. You can access it online for free through WMU's library system, although I found it hard to find. You can find it by first accessing: http://libguides.wmich.edu/psychology, then clicking on the tab at the top "Finding Psych Tests" and scrolling down to Mental Measurements Yearbook.

3. 88,2 Not for the exam, but note the caution about developing selection measures: I agree.

Szostek & Hobson article

4. 67,3-68,0 (a) What percentage of Fortune 100 firms have used the MBTI in their selection and promotion process and (b) according to the MMY, is this appropriate?

   The next material is not for the exam. I have been arguing against the MBTI for years. Yet, its popularity in business and industry cannot be overstated. Business schools love it. Just about every executive in a major business organization can tell you his/her profile on the MB. Yet, it has no validity or reliability. To make matters worse re MBTI, it is based on Jungian psychology (1921), which has no status whatsoever in modern day psychology. I have included an article in your course pack about this from the Washington Post.

5. 69,1. What have the courts said about MMY?

6. 70,2 Are most reviews in the MMY positive or negative? This is the same point that GFB made in U4. Just because a test is commercially published, it does not at all mean that it is a good test. This is obviously a very important point.

7. 72,5. Not for the exam, but the authors make very important points here – and if you are working for an organization in selection, remember, you are the "client." The steps outlined on 73-74,0 are excellent.

Now go to Chapter 11, page 468.

8. 469,2-5 (Note that 8A is not for the exam, but 8B, C, and D are required for the exam).

   A. Not for the exam: The classic interpretation of scores on **aptitude** tests have been that the KSAs are genetic; for example, you have artistic aptitude or you don't, you have mechanical aptitude or you don't. Thus these tests were seen as predicting whether or not you could be successful in those fields, not necessarily whether you had prerequisite skills/abilities that you acquired through formal training and education.

      Tests like the ACTs, SATs, and GREs used to be considered *aptitude* tests - hence, once upon a time, there was a strongly stated belief that you could not study for these tests and

improve your scores. In fact, once upon a time, even ETS, the developers of the GREs stated that in their information about the test.

B. 469, 4 Explain why the distinction between aptitude and achievement tests is arbitrary and thus why these terms are being replaced with the term "ability" tests.

C. 469,4 What can't tests measure? This is a very common misperception.

D. Based on the following, be able to answer: Even though tests cannot measure innate or unlearned potential, why is it that they are useful for the prediction of future learning?

They can measure *the prerequisites that are necessary for further learning in a specified area*, and thus can predict future learning/performance.

9. 469,6. Not for the exam, but mental ability tests are commonly called "intelligence tests" and still are today. As the book states, many of the early court cases were highly critical of the use of intelligence tests in selection.

10. 471,1

A. Why is it that all mental ability tests are not interchangeable?

B. Although mental ability tests are not interchangeable, what are the four the main abilities that are typically measured in these tests? (the ones mentioned in this paragraph)

11. 472,3. Not for the exam. But note why selection specialists should refer to these types of tests as mental ability tests rather than as IQ or intelligence tests, even though they are the same type of test. I don't know if you can follow the implications - but the authors are resisting the general (and often traditional testing notion) that there **IS** actually something called "intelligence" or IQ that exists within a person. They are taking the approach I adopt - mental abilities are, in fact, learned skills just like other "abilities." What is tested by intelligence tests - are the skills presented in Table 11.1 on page 471, or as stated in the last sentence of this paragraph, "an individual's ability to mentally manipulate words, figures, numbers, symbols, and logical order".

12. 473,1 What have the validity studies uniformly concluded?

Not for the exam, but several studies have shown mental ability tests to have higher validities than any other type of selection procedure, with the exception of work samples.

Again, not for the exam, but do look at the validity coefficients in Tables 11.3 (page 473), 11.4 (475), and 11.5 (page 476).

13. 474,3 (last sentence). What have been the results of validity generalization studies when data have been examined for the same job in different organizations?

14. 479, 5 (second conclusion) How do task differences among jobs affect the magnitude of the validity coefficients of mental ability tests, and what are the implications of this for the validity of mental ability tests and different jobs?

15. 480,3. How do the results of the meta-analyses about the validity of tests differ from what is stated in the Uniform Guidelines and, what is the implication "following from that"?

16. 481,1-3.

A. What is meant by differential validity?

B. What is the argument about test bias that is typically used to provide a rationale for differential validity?

C. What are the conclusions of studies of differential validities? This is important.

17. 481,5-482,0 What have been the results of meta-analysis studies with respect to differences among demographic groups in cores on cognitive ability tests? Provide the information in both the second and third sentences.

18. 484,1. Adverse impact is likely to occur when using cognitive ability tests.

What three things make a defense against adverse impact likely? That is, why is it likely that organizations can defend the use of cognitive ability tests even though they have adverse impact?

19. 486,1. If selection of a diverse workforce is a goal of an organization that wishes to use mental ability tests because of their validity, what is the main option?

20. 486,4. Not for the exam, but note the legal confusion regarding validity generalization.

21. 487,1. What two factors should be taken into account when deciding whether or not to use cognitive ability tests?

Not for the exam: The discussion in this paragraph is excellent. What are the goals of an organization? Cognitive ability tests are indeed the most feasible, least costly of the *valid* selection instruments. Thus, the question does indeed become: Is the organization willing to limit their use and pay the costs of other selection procedures that have less adverse impact?

22. 491,1-496,2. Not for the exam. The tests described in this section are, indeed, very popular tests - thus you should refer to this section if you are looking for a test. I am not going to have you learn anything specific about any of these tests.

However, you should note the material on page 494 about physical abilities analysis – check out the validity correlation coefficients in 494,5. These are VERY high coefficients – remember, that the typical correlation coefficient ranges from about .25 to .50.

A lot of work has been done on physical ability tests because of their extensive use to select police officers and fire fighters.

23. 497-501. Not for the exam, but if you are planning on selecting on off-the-shelf test using MMY this material will tell you what to look for. Also, the chapter summary on 500-501 is excellent.

24. Go to page 505. The data and information on personality testing is difficult. Read 505,2-507,1. Clearly there is some good work going on but the topic is still emerging and in the state of flux. If you decide to use personality tests - read this chapter carefully. Note the caution given in 524,0. Clearly, the authors are not giving overwhelming support to the use of personality tests for selection.

FOR THE EXAM

A: What name is given to the recent model that indicates that personality characteristics can be grouped into dimensions? 506,3

B. What do the data indicate about adverse impact and personality tests? 507,0

25. 517,1. What two traits appear to be universal predictors of performance? What three traits were found to be "contingent" predictors?

26. Although not directly addressed by the authors in this section, remember if you use a personality test you must use criterion-related validity to support it because personality traits cannot be directly observed (this relates back to material about when *content validity cannot* be used).

    FOR THE EXAM: Be able to recognize and state that if you use a personality test you must use a criterion-related validity study because personality traits cannot be directly observed.

27. 521,1-522,0

    A. Explain the legal issue with respect to ADA raised by the use of personality tests. – the last sentence in 521,2 provides an excellent summary. Basically, if the test can and is sometimes used to diagnose mental/psychiatric disorders, then it will be considered a medical examination **and can only be administered post-offer**. Please note the bold face!

    If it deals with other types of "personality traits" (honesty, integrity, positive commitment toward work, loyalty) then it probably will not be considered a medical examination. I dealt with this earlier in the class as well – my strong advice is that you treat every personality test as a medical examination until things are clarified in the courts.

    B. 596,1 Although not related to EEO and AA laws, what is a second legal issue that you must be concerned about if you use personality tests as selection instruments?

28. Go to 537. 537,4 Not for the exam, but note the two limitations of other selection procedures that are reduced with performance tests. Both have to do with verbal behavior – and are very reasonable. Performance tests are indeed behavioral samples of actual work behavior and thus really are the types of tests that behavior analysts are most comfortable with, but note in the next study objective want their limitations are.

29. 538,3 What are three limitations to performance tests? They can be summarized easily-something like the following: (a) it is often difficult to ensure that they are actually representative of the job activities (note the example of stress interviews), (b) applicants must already have the KSAs being tested – they cannot cover specialized things that must be learned on the job, and (c) they are very costly (both to develop and administer).

30. 550,0, last few sentences. Provide a summary comparison of cognitive ability tests and performance tests in terms of (a) validity, (b) adverse impact, and (c) cost.

31. 551-565,1. Assessment centers have been highly successful in many organizations but they are very time-consuming and costly to develop. I doubt that many of you will end up designing an assessment center, thus I am not going to ask you to learn anything about them.

32. Now go to page 576,0. Also read 591,0 – if for nothing else but the entertainment. I, like the authors, am appalled that a legitimate book on selection procedures must include a section on graphology, but at least its use appears to be declining.

    FOR THE EXAM. What does the evidence say about how graphology works for selection?

33. A. 575,5 What does the law say about the use of polygraph testing for selection, in general?

B. 576,3 What is the major drawback of polygraph testing – and the reason why it is illegal in most situations? When answering this, don't just say "false positives" – rather, explain what false positives are. While not for the exam, you may find the discussion in 577,3 interesting.

Not for the exam but note the specific provisions of the Employee Polygraph Protection Act of 1988 on pages 577,3-578,0. It details when polygraph tests are not acceptable and when they are.

34. Paper and pencil integrity tests:

A. 578,2 Not for the exam, but note that a few states have passed laws against the use of paper and pencil integrity tests – so be careful if you use them. Check out the state laws first. Once again, the reason is due to high false positives.

B. **FOR THE EXAM**: 583,1, last sentence. Integrity tests have been shown to validly predict what types of behaviors?

Not for the exam but note in 583,4, the way that Sackett & Wanek believe integrity tests should be used. In other words, near the end of the selection process and given to those who have passed other KSA-related tests. I also found the material in 584,1 interesting as it relates to the acceptance of the applicants – also see 585,2 about this issue.

35. Drug testing

A. 586,1. Not for the exam, but the prevalence data are interesting.

B. 587,1 **FOR THE EXAM**: State the reason one court rejected the legality of using paper and pencil overt drug use tests. By the way, I have a hard time believing individuals would, in fact, answer these questions honestly.

C. **FOR THE EXAM:** 588,5 What is the current legal status of drug testing? Include in your answer when organizations are at less risk and when they face more risk.

Not for the exam, but in 588,6-589,0 note the legal questions that may surface with drug testing, and the guidelines given on 590,3-591,0. Basically, don't institute drug testing until you consult with a very, good lawyer.

By the way, I disagree with their statement in pt. 4 at the top of 589: Drug users are not covered by ADA. As they say later, in 589,4, former drug users are covered.

36. I am not going to ask any more questions about graphology if you want, read the validity studies on 593. And if you really want a good chuckle, read 594. I admire the authors for their approach to this topic - they make great fun of it that encourages the reader to do so as well.

THE END

PSY 6430, Unit 8: Application blanks, reference checks, background checks, and interviews

Ok, this unit is going to be disjointed - like the last one was. I want to cover some material in an abbreviated way that I have not covered previously.

Gatewood, Feild, & Barrick, parts of Chapters 9 and 10.

Article in course pack: Skeletons in the closet? Legal developments in screening applicants and employees.

Gatewood, Feild, & Barrick, parts of Chapters 9 and 10.

1. 338,3-345. Not for the exam. While I "concede" that weighted application blanks, biographical information blanks, and biodata application forms that have items related to personal and biographical information are valid, I am uncomfortable with them because of the types of questions that are often asked. See Table 9.2 on page 340 and Table 341 on page 341 as examples. I would object to answering these type of questions. The authors address this issue later, in 350,2 where they state that invasion of privacy litigation is expected to increase in the future.

   Also, given the material in 344,1 that indicates that they do not significantly enhance prediction over general mental ability tests and Schmidt and Hunter's implied advice that "as far as the prediction of overall job performance is concerned, an employer would do about as well by simply using a readily available general mental ability test and avoiding a biodata inventory," I am not going to ask you to learn anything about them for the exam.

2. 344,7-345,0 Note that people do falsify academic credentials, information about former employers and information about salaries. You should always check this information.

   A. What percentage of 1,000 resumes contained major misstatements according to ResumeDoctor.comSM? Feel free to round to ~45%

   B. Popular press articles suggest what fraction (range) of applicants list inaccurate dates of employment?

   Not for the exam, but in a recent survey of college students, 41% indicated that they had previously included at least one false statement on a resume or application to get a job and 70% said they were willing to do that. Not only that, but a study of **executives** found that 40% had lied about their education, 35% had lied about accomplishments or job missions, and 25% had lied about responsibilities and skills.

   Not for the exam. Western Michigan University had its own case of falsification of credentials, which, unfortunately, was not discovered until after the person had left and secured another job. See the article I have included at the end of the study objectives about William Hamman who claimed he had both a Ph.D. and a medical degree when he did not. No one checked his references when he was hired. Needless to say, it's quite an embarrassment for the university, but perhaps no more embarrassing than Notre Dame hiring a football coach that faked his credentials! In 2001, George O'Leary was only in the job of head football coach when it was learned that he claimed to have a master's degree in education from a nonexistent university and had played pro football for three years. He immediately quit (before he was fired)!

3. 345,4 Statements on applications similar to the following have been shown to decrease faking by what amount? "Deliberate attempts to falsify information can be detected and may be grounds for either not hiring you or for terminating you after you begin work."

Not for the exam but every application form should include the statement at the very bottom of 346,2. It is easier to fire a person for lying than it is for any misrepresentation of actual information (if you did not check it out before hand).

4. 347,2 Why is the "the more the better" a danger for employers when they use application forms? Your summary should include the following: (a) they are covered by the federal and state EEO and AA laws; (b) under those laws, it is **assumed** that **all** questions on the form are used to make employment decision; (c) therefore, under a charge of discrimination, the burden of proof may be on the employer to demonstrate that **all** application questions are fair, and not discriminatory.

   Not the for the exam, but these are the same issues that are raised when organizations use social media and google searches to vet applicants. More on this later…

5. 347, Table 9.5. Not for the exam. You should evaluate every application form using the questions in Table 9.1. By far the vast majority of application forms used by companies have "inadvisable" questions and do put the organization in jeopardy. Organizations are fortunate that not many individuals/applicants know these laws.

6. Note the research described on 348,2-349,2.

   For the exam, 349,2. A review of federal court cases revealed that questions related to what were the most likely to lead to litigation? And, what percentage of those cases was won by plantiffs?

7. 352,3 What laws determine the legal status of pre-employment inquiries, and thus what should employers research FIRST when reviewing their application forms?

8. 352,3. When state laws and federal laws differ, which set of laws does the EEOC favor? Why? State laws cannot be more "restrictive" than federal laws, because federal laws supersede state laws. However, state laws can be more permissive (inclusive) in the sense of favoring individuals (not states or the government typically). For example, see the material in 353,2 about criminal convictions.

9 354-357 Table 9.6. I won't ask anything on the exam but - carefully note the information that is considered to be illegal or at least inappropriate and place the company in the position of having to defend the use of questions. Most companies ask for this information on application blanks! Just FYI, why is it inappropriate to ask about marital status, children and child care? Why is it undesirable to ask about military experience? Note the information on age: you should not ask date of birth - or any other information that reveals age- such as dates when a person graduated from high school, college, etc. What's wrong with height and weight questions? Note the legal status of arrests and convictions. Note that it is inappropriate and often illegal to ask about arrests - arrests do NOT indicate that the person was convicted of a crime - only the he or she was arrested.

   By the way, Table 9.6 is relevant to interviews as well. In the past, I have been asked by the chair of our department to distribute these guidelines to faculty and graduate students when are interviewing an applicant for one of our faculty positions or interviewing applicants to our graduate programs.

10. 362,4. What are companies now using technology to do with respect to resumes? Many of our students have told me this is happening.

    Have any of you encountered this in your job hunting?

11. 364,1. What two legal issues are particularly salient with online screening?
12. 365-373 Not for the exam. T&E evaluations can be very helpful in documenting past experiences and relevant KSAs - and they have higher validity than seeking this information through an interview. Of particular interest is the *behavioral consistency* method, described on pages 374--377. I have seen this used by a number of organizations over the years, and was impressed. This is actually an excellent first step in any job applicant screening. I strongly recommend it. Moreover, it can be developed and used easily in small organizations.

    Note that many people try to collect the type of information collected in a behavioral consistency T&E in an interview, but an interview is usually not long enough to obtain this type of information and does not result in a written permanent product from the applicant that others in the organization can then evaluate. It's much better to have candidates address job related KSAs in this manner.
13. 370,5-371,0 For at least semi-skilled jobs, what is and what is not a good educational predictor of success? I expect this is true for most jobs that don't require advanced degrees – GPAs correlate highly with mental ability tests which as you previously learned are among the most valid types of predictors.
14. 374,7-375,0. As indicated in 370,1, behavioral consistency T&E's have been found to have very high validity. Briefly describe this type of T&E evaluation.
15. 379,2. What is the principal purpose of a reference check? And, what role, therefore, does it primarily play in selection?
16. 380,2 end of the paragraph. Not for the exam, I am going to revisit this issue soon, but note that over 50% of the companies that were contacted had someone refuse to provide information for fear of legal action and 25% had a policy not to provide any information beyond employment verification. The reason for this will become clearer to you in a moment. If I were an ex-employer, by the way, I would adopt this position/policy.
17. 381,4. Taken together, what do studies show about the relationship between reference ratings and measures of employee success? Interesting, since all companies use these – but again, remember that reference checks are primarily used to screen out applicants. On the other hand, you should react to reference checks appropriately – remembering a point that the authors have made a few times: the applicants select the references.
18. 384,3. Defamation is the reason why ex-employers are reluctant or refuse to give out any information in reference checks.

    For the exam be able to state why ex-employers may refuse to give out information in reference checks and include in your answer what defamation consists of, that is the definition provided in the first sentence.

    Not for the exam but note in 385,2 that libel, slander or defamation are in fact becoming major issues for organizations. There are now firms that individuals can hire who will call their former employers, posing as potential employers, to determine what the organization is saying about the individuals. So you do need to be very careful, and you need to make sure everyone in the organization is careful. That's one of the reasons I believe it is good practice to ban any former supervisor, peer, etc. from talking to anyone who is conducted a reference check - it is too hard to control what people will say in that type of interaction. At the minimum the policy should be that ALL reference checks be directed to Human Resources.

There are now a number of companies that will pretend to be a potential employer, call your references, and tell you what they say about you. For one of these services see: http://checkyourreference.com/

19. Negligent hiring.

A. 385,4-386,0 Explain what negligent hiring means.

Not for the exam, but note carefully the wording of point 3 on page 386 - the employer knew or ***should have known***. Western, as any university, is vulnerable to these charges based on any charge that may harm a student.

B. 386,3. Be able to explain the "Catch 22" situation that organizations can find themselves in regarding reference checks.

C. 388,4 How can an organization get out of this "Catch 22?" Why does this procedure protect an organization?

Not for the exam, but note in 388,1 that employers can also get in trouble if they refuse to give out any information. Read the case in 388,2-3 and then go back and read the case in 385,1.

20. 392,2 end of paragraph. What is a very good indicator of the reference giver's attitude toward the person written about? The material that starts "Other research suggests...."

21. 393,2. Not for the exam, but note the "troubling" recent finding.

Chapter 10: The Selection Interview.

22. 420,2. In terms of assessing KSAs during interviews, what three types of things are best evaluated in the interview?

Not for the exam, but the authors make an extremely valid point in 418,2 You should not spend your time during the interview attempting to assess factors that can be more easily, more reliably and more efficiently collected by other means.

23. A. 422,3. How useful are unstructured, get acquainted interviews? Explain.

B. 423,1. State the findings of the series of studies conducted by Barrick, Stewart and colleagues about first impressions in an interview (starting with the material The results from four separate studies…)

24. 433,1. A. What are the conclusions of several studies that have examined the influence of demographic characteristics of the applicants on interview outcomes and (b) whether the applicant and interviewer share demographic characteristics? This has not been the case historically, thus the EEOC laws seem to have had the desired effects.

25. 433,4. What are two ways to reduce any effects due to age, race, sex, and other demographic variables?

Not for the exam, but note the material in 434,2 carefully re legal outcomes when companies use unstructured vs. structured interviews.

26. Not for the exam, but you may find the material in 438,2-439,1 interesting since many of you will soon be interviewing for positions.

27. 440,4-441,0. The authors provide an excellent environmental analysis of why interviewers give more weight to negative information than to positive information in an interview - what is it?

28. The information on 441-445 is excellent but I won't ask anything about it. I have used and really like the behavior description interview. In fact, most companies are now using this procedure. Before interviewing for a position, you should google interview questions and practice your answers.
29. 452,3 What do the data say about the validity of a panel interview vs. the validity of an individual interview?

Skeletons in the closet article

30. 26, 1-2.

    A. Before obtaining a consumer report, what two things must employers do?

    B. Be able to state the following: Consumer reports include credit checks, criminal background checks, and motor vehicle records, among other checks. I am primarily including this information because of recent developments in credit and criminal background checks, although employers should be aware of all of the checks covered by the FCRA.

31. 26, 3.

    A. If the employer (or the employer's agent) is going to take an adverse action (denying employment for example), what must the employer do? (I am only looking for a brief answer here – inform the employee and include the appropriate legal forms).

    B. And, what is the employer's final obligation?

32. 27,1. Not for the exam, but notice the cost to the organization for violating the above.
33. 28,2.

    A. One in how many Americans now have a criminal record?

    B. What percentage of employers are now conducting criminal record checks?

34. 28,4-29,1. Not for the exam, but note that the use of criminal record checks is not illegal re Title VII unless intentional discrimination or adverse impact occurs that cannot be justified by validity or business necessity. That is the same standard that is applied for any selection procedure.
35. 29,1. What two protected groups have disproportionate arrest and conviction rates? This of course, implies that the use of arrest and conviction checks will result in adverse impact for these two groups.
36. 30,1. Why are arrests and convictions treated differently?

    Not for the exam, but one of our graduate students, Jacob Bradley, attended an employment law seminar by Miller Canfield law firm for HR professionals in GR and Kalamazoo in 2015. About **one-half** of those present indicated that they had looked at the arrest records of applicants and employers. Their advice (which is consistent with all of the literature) was to never, ever ask about arrest records. The reason? You cannot legally reject an applicant based on an arrest record but if you have that information it can be used against the company. For example, if an employer found out that an applicant or employee had been arrested for spouse abuse, but not convicted, the company cannot legally reject or terminate the person because of it. However, if that person later violently assaulted a coworker at work, the employer can be sued for negligence because they knew, based on the arrest record, that the person had a propensity for violence.

37. 31,4-33,1. Not for the exam, but note that many State Attorneys General and the courts have rebuked the EEOC for its actions/policies. In a recent court case, the court imposed a $1 million fine for the EEOC re its advocacy of a case related to this; and, as discussed in 32,2, another imposed a $750,000 fine/penalty.

    However, as discussed in this section, currently, as of 2016, 19 states and over 100 cities and counties have adopted "ban the box" legislation (for criminal convictions, with exemptions for jobs – such as Department of Education, health services jobs, armed security services) for government jobs. Seven states have banned the box for private jobs (again, with exceptions for some jobs). Obama is pressing for Congress to pass a law banning the box on federal applications, and presidential candidate Hilary Clinton (at the time I wrote these study objectives), has stated that, "…as president, I will take steps to 'ban the box'".

    On the other hand, the Attorneys General for 10 states have sent letters to the EEOC taking issue with its stance on criminal background checks. The EEOC did not change its position. The Attorney General of Texas filed a law suit against the EEOC with District Court challenging the lawfulness of the EEOC's guidelines. It was dismissed, but Texas has appealed to the Court of Appeals for the Fifth Circuit.

38. 36,3. Not for the exam but note the pending federal legislation. This is a "stay tuned" issue.

39. 36,4-37,2. Not for the exam, but again note that the courts have again seriously rebuked the EEOC for the cases it has pursued. The latest update on the Freeman case is that when it was appealed to the Fourth Circuit Court of Appeals, the court affirmed the decision by the District Court. Although the courts and the EEOC are expected to continue to "butt heads" over this issue, it is also expected that the EEOC will continue to aggressively pursue law suits involving credit checks.

    But again note the number of states that have passed laws and the number of states that have bills pending.

40. 38,2. Of the sample surveyed, (a) what percentage of recruiters viewed an applicant's social network site, (b) what percentage rejected a candidate based on his/her profile, and (c) what percentage have hired a candidate based on his/her profile? Feel free to round these last two to ~70%.

    Not for the exam but note very carefully the reasons why hiring managers rejected a candidate including bad mouthing a previous employer. I have included a description of a recent study that provides a little more detail at the end of these study objectives. This study found that "only" 60% of hiring managers checked social media – I think the difference in numbers may be "recruiters" vs. "hiring managers" but I am not sure. Anyway, regardless, the implication is obvious – check your social media for these things before you apply for jobs!

41. 38,3. What is the first and foremost risk? Why (top of page 39)?

42. 39,3. Not for exam: Note the material re requiring social media passwords. Yes, I find it astonishing that employers would even ask or think they have a legal right to ask, but a number of employers have been doing this. As the article states, there is no federal law prohibiting this, but 12 states, including Michigan, have enacted laws that ban this. I anticipate a federal law will follow.

43. 41, 3. Not for the exam: Very, very interesting. The common practice of physicians asking about family medical history when conducting medical exams can result in liability under GINA.
44. 43, 2 on. Again, not for the exam, but several states have enacted legislation to protect unemployed applicants, and New York City (44,2), effective June 2013, made unemployment a protected status.

THE END

Kalamazoo Gazette: Dec. 13, 2010

BY PAULA M. DAVIS, Kalamazoo Gazette and MARILYNN MARCHIONE, AP Medical Writer

KALAMAZOO — A former Western Michigan University researcher and former United Airlines pilot, who claimed credentials as a cardiologist, has been exposed a fake physician.

Hired in 2004, William Hamman was on the WMU's payroll through this past February when he had concluded his work for the university's Center of Excellence for Simulation Research.

The center, which Hamman co-directed, applies flight-crew-simulation techniques to medical teams working on procedures. Among other places, Hamman did simulation training at Bronson Methodist Hospital.

In his work in Kalamazoo and elsewhere, he helped secure millions in grants, had university and hospital posts, and bragged of work for prestigious medical groups.

But it turns out Hamman isn't a cardiologist or even a doctor.

The **Associated Press found** that the 58-year-old has no medical residency, fellowship, doctoral degree or the 15 years of clinical experience he has claimed. He attended medical school for a few years but withdrew and didn't graduate.

His pilot qualifications do not appear to be in question — he holds the highest type of license a pilot can have, a Federal Aviation Administration spokeswoman said. However, United Airlines grounded him in August after his medical and doctoral degrees evaporated like contrails of the jets he flew.

He resigned in June as an educator and researcher at William Beaumont Hospital in Royal Oak, after a credentials check revealed discrepancies, a hospital spokeswoman said.

Hamman did not return several phone calls and e-mails seeking comment.

David Nacht, an Ann Arbor employment lawyer, acknowledged that his client did not have the medical and doctoral degrees he had claimed from the University of Wisconsin-Madison in the 1980s. "It's Mr. Hamman's desire that he clear up any misconceptions about his background that he has caused. He wants to be completely straightforward about it," Nacht said.

Doctors who worked with Hamman are stunned, not just at the ruse and how long it lasted, but also because many of them valued his work and were sad to see it end.

"I was shocked to hear the news," said Dr. W. Douglas Weaver, who was president of the cardiology group when it gave Hamman a training contract for up to $250,000 plus travel a few years ago.

"He was totally dedicated to what he was doing, and there is a real need for team-based education in medicine," said Weaver, a pilot himself from Henry Ford Hospital in Detroit.

Asked whether WMU checked Hamman's credentials, university spokeswoman Cheryl Roland said that he "did not come through our regular faculty hiring channels. Apparently there was a breakdown some place … It was something that was overlooked."

She said that Hamman was hired by previous College of Aviation Dean Rick Maloney, who is also a former United Airlines pilot. Maloney, who longer works for WMU, did not reply to a reporter's request for comment Monday.

In 2005, WMU's Center of Excellence for Simulation Research got a $2.8 million grant from the Michigan Economic Development Corp. to expand simulation training into medical settings. Matching funds from other groups brought the total to $4.2 million. The center also won a $150,000 grant last year from the American College of Cardiology Foundation.

Hamman co-directed the center along with Dr. William Rutherford, a physician (his medical degree was verified by the Kalamazoo Gazette) who retired three years ago. Rutherford is also a former pilot and executive at United Airlines.

"The research he was doing did not really require an MD or a Ph.D," Roland said of Hamman on Monday. The simulations did not focus on the technical skill of performing medical procedures but on how medical teams work together. Hamman would videotape heart attack treatment drills, for instance, and deconstruct what doctors did right and wrong. He spoke at Northwestern University and for the AMA and the American College of Emergency Physicians.

"He had this incredible set of skills and expertise from his time with the airline industry," Roland said."That's really what he brought to our College of Aviation."

Hamman ended his work directing the WMU center in January 2009 to take the position at Beaumont but continued working on simulation research for the university until February.

Roland said they learned about Hamman's apparently fake medical credentials this summer, months after he was no longer a WMU employee. "We were certainly disappointed to learn that he had so misrepresented his background and his credentials," she said. Roland said after learning about Hamman, officials did an internal investigation that included analyzing his research and notifying the agencies that extended grant dollars.

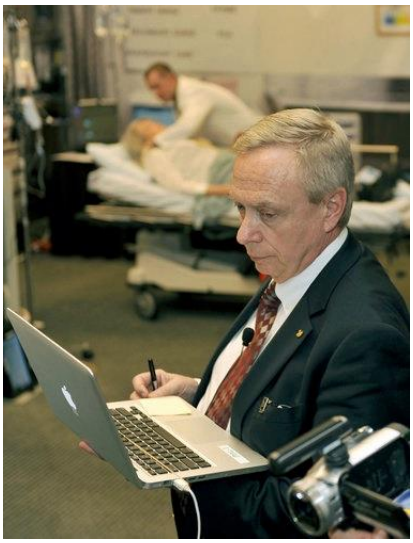
"At this point we'll make sure going forward the publication record is corrected, clearly representing the author according to his credentials," Roland said.

Following Hamman's departure, Roland said the university has reviewed employee

credentials to check their veracity.

There is no indication Hamman ever treated a patient, though his teamwork training had him videotaping in emergency rooms and other settings where patients were being treated.

Hamman does have an associate's degree in general aviation flight technology and a bachelor of science degree from Purdue University. He also has "type ratings" to fly half a dozen very large commercial planes, according to the FAA.



60% Employers Use Social Media to Screen Job Candidates

By: Amy McDonnell on April 28, 2016.

If you've ever found yourself accidentally checking out a job candidate's wedding photo album on Facebook, cringing at a candidate's Instagram quote, or following along with a candidate's live-Tweeting of their run-in with Ryan Gosling at the grocery store – when all you initially meant to do was get a peek into their personalities and qualifications – you're far from alone: Today, not only do the majority of employers go on social media to check up on candidates, but the number of those who do has increased 500 percent over the last decade.

According to CareerBuilder's annual social media recruitment survey of more than 2,000 hiring managers and HR professionals and more than 3,000 full-time U.S. workers, 60 percent of employers revealed they use social networking sites to research job candidates. This is up significantly from 52 percent last year, 22 percent in 2008 and 11 percent in 2006, when the survey was first conducted. Additionally, 59 percent of hiring managers use search engines to research candidates – compared to 51 percent last year.

Falling down a rabbit hole of someone's Wikipedia page or Facebook comment threads happens to the best of us — but when it comes to gleaning information on candidates through social profiles, professionalism and relevance on the part of hiring managers and recruiters is key. Forty-nine percent of hiring managers who screen candidates via social networks said they've found information that caused them not to hire a candidate – on par with the 48 percent who said the same last year.

These are the top pieces of content that turned them off:

- Provocative or inappropriate photographs, videos or information – 46 percent
- Information about candidate drinking or using drugs – 43 percent
- Discriminatory comments related to race, religion, gender, etc. – 33 percent
- Candidate bad-mouthed previous company or fellow employee – 31 percent
- Poor communication skills – 29 percent

To be clear, most hiring managers aren't intentionally looking for negatives (only 21 percent of employers say they're looking for reasons not to hire a candidate) – they simply stumble upon them. Hiring managers in information technology and sales are the most likely to use social networks to screen candidates, at 76 percent and 65 percent respectively.

Why employers seek out social media profiles

While it's true some employers use social media to look for reasons not to hire a candidate, the majority are using it as a resource to get a more holistic view of the person they're thinking of bringing into their organization. They may also want to get a peek into a candidate's side interest in graphic design or volunteer work at a local hospital – items not necessarily listed on their resume.

As Rosemary Haefner, chief human resources officer of CareerBuilder, says:

Tools such as Facebook and Twitter enable employers to get a glimpse of who candidates are outside the confines of a resume or cover letter."

Many employers are looking at candidates' networking profiles as an expanded resume of sorts – and expect candidates to have an online presence. In fact, more than 2 in 5 employers (41 percent) say they are less likely to interview job candidates if they are unable to find information about that person online — a 6 percent increase since last year.

Six in 10 employers who currently use social networking sites to research job candidates (60 percent) are "looking for information that supports their qualifications for the job," according to the survey.

What does that mean, exactly?
- For some occupations, this could include a professional portfolio.
- 53 percent of these hiring managers want to see if a candidate has a professional online persona.
- 30 percent want to see what other people are posting about the candidate.

What else do employers want to see?

About one-third of employers who screen candidates via social networks (32 percent) say they found information that caused them to hire the candidate. Examples of such information included:
- Candidate's background information supported job qualifications – 44 percent
- Candidate's site conveyed a professional image – 44 percent
- Candidate's personality came across as a good fit with company culture – 43 percent
- Candidate was well-rounded, showed a wide range of interests – 40 percent
- Candidate had great communication skills – 36 percent

Social media lurking doesn't end when candidates become employees, either:
- 41 percent of employers say they use social networking sites to research current employees.
- Nearly a third (32 percent) say they use search engines to check up on current employees.
- More than 1 in 4 (26 percent) say they have found content online that has caused them to reprimand or fire an employee.

Keeping it in perspective

While information discovered via social networking profiles can be relevant, it's important for employers to keep a level head about it all. Look for positives first, and if you find a less-than-promising picture or comment by a potential employee, remember that you are looking at a piece of their online presence and may not always be seeing the full story. Whatever information you find — positive or negative — consider it in the context of all that the candidate is bringing to the table. Ask yourself, "How essential is this information to the role at hand and the person's potential efficacy as an employee?"