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# The *Uniform Guidelines* Is Not a Scientific Document: Implications for Expert Testimony

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This short commentary starts with the premise that the *Uniform Guidelines on Employee Selection Procedures* (Equal Employment Opportunity Commission, Civil Service Commission, Department of Labor, & Department of Justice, 1978) will not be revised. That premise is speculation, but like Sharf (2011), I view the current *Uniform Guidelines* as a policy/political document rather than a scientific/professional document. They reflect the values of the sponsoring agencies, which I view as advocating for increased employment opportunities for the members of protected groups. That the *Uniform Guidelines* reflected the science at the time of their adoption reflects a belief on the part of the sponsoring agencies that guidelines consistent with scientific standards as they were articulated at that time also served the superordinate goal of increasing employment opportunities for members of protected groups. Changes in scientific findings that detract from this superordinate goal do not provide anything to motivate the sponsoring agencies to pursue a change in the *Uniform Guidelines*, and indeed these *Guidelines* have not changed.

This distinction between a policy/political document and a scientific/professional document sets up the point I wish to develop in this commentary, which is that because the *Uniform Guidelines* are not a scientific/professional document, it is thus inappropriate to rely on them as the basis for one's professional opinion. Yet psychologists serving as expert witnesses in challenges to selection systems do at times offer the *Uniform Guidelines* as the basis for their opinion.

The acceptable basis for expert testimony is addressed in the Federal Rules of Evidence, and these rules are influenced by Supreme Court decisions regarding the basis for accepting an individual's testimony. *Daubert v. Merrell Dow Pharmaceuticals* (1993) is the key decision in this arena (Thornton & Wingate, 2005). *Daubert* laid out a set of factors that may be used by the courts to determine whether an individual's testimony meets the expert standard. Two of these factors are whether the proposed expert's testimony is based on peer-reviewed publication and whether the testimony is based on a position that has gained general acceptance in the relevant scientific community. Thus, appropriate bases for testimony in selection cases are the peer-reviewed literature and the consensus documents that reflect concepts and procedures that have gained acceptance in the scientific community, namely, the *Standards for Educational and Psychological*

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*Testing* (American Educational Research Association, American Psychological Association, & National Council on Measurement in Education, 1999) and the *Principles for the Validation and Use of Personnel Selection Procedures* (SIOP, 2003).

McDaniel, Kepes, and Banks (2011) document a number of issues on which the *Uniform Guidelines* depart from the peer-reviewed literature and from the *Standards* and *Principles*. Should an individual offer testimony on one of these issues (e.g., that content validity is not applicable to a test that purports to measure a construct which reflects unobservable mental processes) and rely solely on the *Uniform Guidelines* as the basis for their opinion, then I suggest that there is no basis for this being accepted as expert testimony and propose that such testimony be challenged on those grounds.

This should not be taken as an argument that psychologists should not or may not adhere to the *Uniform Guidelines*. It is certainly appropriate for a psychologist to advise an organization regarding whether or not various choices in the design and implementation of a selection system would adhere to the *Uniform Guidelines*. Psychologists may, in fact, at times recommend a course of action consistent with the *Uniform Guidelines* but inconsistent with the scientific literature, the *Standards*, or the *Principles*. The key is that the basis for such a recommendation is not a scientific claim, but rather some other factor,

such as avoiding scrutiny from a regulatory agency.

In summary, while the *Uniform Guidelines* may not be revised and may continue to be used as the basis for administrative decisions by the sponsoring agencies, I argue that it is time to shine a spotlight on the inconsistency between the standards for expert testimony and an individual offering the *Uniform Guidelines* as the basis for expert testimony.

## References

- American Educational Research Association, American Psychological Association, & National Council on Measurement in Education. (1999). *Standards for educational and psychological testing* (2nd ed.). Washington, DC: American Educational Research Association.
- Equal Employment Opportunity Commission, Civil Service Commission, Department of Labor, & Department of Justice. (1978). Uniform guidelines on employee selection procedures. *Federal Register*, 43, 38290–39315.
- McDaniel, M. A., Kepes, S., & Banks, G. C. (2011). The *Uniform Guidelines* are a detriment to the field of personnel selection. *Industrial and Organizational Psychology: Implications for Science and Practice*, 4, 494–514.
- Sharf, J. C. (2011). Equal employment vs. equal opportunity: A naked political agenda covered by a scientific fig leaf. *Industrial and Organizational Psychology: Implications for Science and Practice*, 4, 537–539.
- Society for Industrial and Organizational Psychology (SIOP). (2003). *Principles for the validation and use of personnel selection procedures* (4th ed.). Bowling Green, OH: Author.
- Thornton, G. C. III, & Wingate, P. H. (2005). Industrial and organizational psychologists as expert witness: Affecting employment discrimination litigation post *Daubert*. In F. J. Landy (Ed.), *Employment discrimination litigation* (pp. 167–198). San Francisco, CA: Jossey-Bass.