An Analysis of Federal Court Cases Involving Nine Selection Devices

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A content analysis of US federal court cases was conducted to assess the relative frequency of litigation associated with nine selection devices: 1) unstructured interviews; 2) structured interviews; 3) biographical information blanks; 4) cognitive ability tests; 5) personality tests; 6) honesty tests; 7) physical ability tests; 8) work sample tests; and 9) assessment centers. The outcomes of the cases (whether the devices were ruled to be discriminatory) for each of the nine types of selection devices were also examined. The possible implications of the current findings for organizations and researchers are discussed.

Introduction

Selection practices have important consequences for both organizations and individual job seekers. A variety of selection devices or techniques exist; and a good deal of research has been conducted on the reliability, validity, and utility of the different types of devices available for use in the staffing process (Gatewood and Feild 1998; Heneman, Heneman and Judge 1997). If organizations adopted selection devices solely on the basis of their psychometric properties and technical merit, their choices would be relatively easy, given the amount of empirical research evidence that exists. But organizations must also consider the potential legal implications of their choices regarding which predictors to employ. Over the past 30 years, the US legal/regulatory environment has played a significant role in shaping the selection practices of American firms (Arvey and Faley 1988). With the dawn of the new global era, the influence of the US legal system now also extends to multinational and transnational organizations with operations in the USA. In fact, a substantial number of foreign firms operating in the USA have been sued for discrimination in regard to their employment practices by their American employees (Schuler and Jackson 1996). It appears that growing globalization is leading to an increasingly complex legal environment that cuts across national boundaries.

Because of the perception of possible legal problems, some organizations have discontinued the use of some highly valid selection devices; and they have chosen, instead, to use less valid selection devices that are thought to be legally safer. It seems to be the case that some of the more sound selection devices available are often more apt to be viewed more negatively by applicants. Thus, some organizations may feel that their choice is either to use highly predictive, but legally risky selection devices, or to use less predictive, but legally safer devices (Cardy and Dobbins 1994; Cropanzano 1994). This apparent dilemma is in need of closer examination. Very little empirical information exists regarding the actual degree of litigation associated with the use of different types of selection devices. Cardy and Dobbins (1994) have also noted that more research is needed that investigates the legal challenges associated with various predictors. Since organizations' decisions on the use of selection methods often seem to hinge on their perceived legal implications, such research would seem useful. We need to determine if their concerns about potential legal problems are, in fact, justified.

The primary purpose of this study was to provide information on the legal consequences associated with nine types of selection devices: 1) unstructured interviews; 2) structured interviews; 3) biographical information blanks (BIBs); 4) cognitive ability tests (CATTs); 5) personality tests; 6) honesty tests; 7) physical ability tests; 8) work sample/performance tests; and 9) assessment centers. A content analysis of US federal court cases involving selection discrimination was conducted to determine how frequently the nine types of selection devices were legally challenged in court. A secondary objective of the current study was to investigate the outcomes of the cases involving the different selection devices (whether the devices were judged to be discriminatory).

It should be noted that the current study of federal court cases may not be representative of the larger population of legal challenges and cases associated with the selection devices. For example,
complainants pursuing discrimination cases under Title VII of the Civil Rights Act typically must first file charges with a state or local Equal Employment Opportunity Commission (EEOC) approved deferral agency (Gatewood and Feild 1998). Many cases lodged at the state EEOC level do not go on to the federal courts, as some may have been abandoned, dismissed, or settled. This complaint process may result in differences in the nature of cases at the state and federal court levels. At the state EEOC level, weak cases may be withdrawn or dismissed, and strong cases (for the complainant) may be settled. Thus, complainants' cases that find their way to the federal courts may be of an intermediate quality. Still, the analysis of federal court cases may provide some valuable information for both researchers and employers.

Federal court cases involving selection discrimination are time-consuming, expensive, and frequently damaging to the public image of the organization involved.

**Review and Research Questions**

*Previous Analyses of Court Cases*

Very little general information exists regarding the percentage of litigation associated with different types of selection devices. Campion and Arvey (1989) examined federal and State court decisions involving the interview between 1979 and 1987, and reported that the interview was an issue in only 1% of the cases reviewed. Their review, however, was not limited to the area of selection. All cases that included the interview as a 'fair employment practice issue' were included in their sample. Thus, cases related to promotions, layoffs, job assignments, transfers, and training were presumably included in their review. A more recent study by Williamson, Campion, Malos, Roehling, and Campion (1997) investigated the link between interview structure and litigation outcomes. Williamson, *et al.* (1997) located 99 federal district court cases from 1972 through 1994 where the interview was the 'primary basis' for some personnel decision that resulted in litigation. Their study was similar to Campion and Arvey's (1989) in that the sample was not limited to selection cases. Some 64% of Williamson *et al.*'s (1997) court cases did involve 'new hires', but the remaining cases involved the use of the interview in promotions, job assignments, transfers, training, and 'other employment decisions'. The studies reviewed above provided useful information regarding the risks of the use of the interview for personnel decisions, in general. But data is still lacking on the relative legal risks of the major predictors used strictly in the selection of new employees.

*Possible Differences in Relative Litigation*

It is possible that selection devices differ in terms of the percentage of legal challenges associated with them. Two possible explanations for potential differences in the rate of litigation by selection device may be derived from: 1) the applicant reactions literature, and 2) the validity evidence supporting the selection devices.

One reason to suspect possible differences in litigation rates associated with different selection devices is due to job applicants' differing perceptions of selection methods. Some scholars have suggested that applicants' reactions to selection devices may influence a number of important organizational processes and outcomes. Applicant reactions or attitudes toward selection devices may influence decisions to reject or accept employment offers, and they may influence commitment levels, climate perceptions, organizational citizenship behaviors, job satisfaction, and even job performance. (Gilliland 1993; Herriott 1989; Rynes, Bretz and Gerhart 1991). Of particular relevance to the current study, it has also been suggested that applicant reactions may be related to the likelihood of litigation (Gilliland 1993; Macan, Avedon, Paese and Smith 1994; Smith, Reilly, Millsap, Pearlman and Stoffey 1993).

A number of different frameworks and perspectives have been offered that may help to understand the process by which applicant reactions can influence the above-mentioned outcomes. For example, Gilliland (1993) has proposed the use of organizational justice theory as a means of understanding applicants' reactions to selection procedures. More specifically, he proposed that the following four procedural justice dimensions may form the basis for fairness reactions: 1) perceived job relatedness; 2) opportunity to demonstrate one's abilities; 3) interpersonal treatment; and 4) the propriety of questions. Macan *et al.* (1994) also proposed the use of four characteristics of selection methods to explain applicant reactions. Those characteristics are: 1) face validity; 2) perceived fairness; 3) perceived control; and 4) perceived performance. Additionally, it has been suggested that the frequency of use of a predictor may influence its perceived acceptability (Steiner and Gilliland 1996). Individuals may assume that a device that is widely used must be valid. Cardy and Dobbins (1994) have also suggested formalization as a factor influencing perceived fairness. They hypothesized that more formalized selection devices would be seen as more unfair, and would be associated with a higher percentage of EEO and legal complaints.

Research has provided some data on applicant reactions to the nine selection devices of interest in the current study (unstructured
interviews, structured interviews, BIBs, cognitive ability tests, personality tests, honesty tests, physical ability tests, work sample/performance tests, and assessment centers). The literature indicates that favorable applicant reactions are associated with unstructured interviews (Smith, et al 1993; Steiner and Gilliland 1996), work samples (Schmidt, Greenthal, Hunter, Berner and Seaton 1977; Smith, et al 1993; Steiner and Gilliland 1996), and assessment centers (Dodd 1997; Macan et al 1994; Smith, et al 1993).

The literature suggests that less favorable applicant reactions may be associated with structured interviews (Cardy and Dobbins 1994; Gilliland and Honig 1994), BIBs (Cardy and Dobbins 1994; Smith, et al 1993), cognitive ability tests (Kluger and Rothstein 1991; Macan et al 1994), personality tests (Smith, et al 1993; Steiner and Gilliland 1996), honesty tests (Steiner and Gilliland 1996), and physical ability tests (Kravitz, Stinson and Chavez 1994). Thus, from the applicant reactions perspective, one would suspect that those selection devices associated with less favorable reactions (structured interviews, BIBs, cognitive ability tests, personality tests, honesty tests, and physical ability tests) would be associated with a higher percentage of litigation than selection devices that lead to more favorable reactions (unstructured interviews, work samples, and assessment centers).

The second reason to suspect possible differences in litigation rates for different selection devices centers around the nature of the validity evidence supporting the various devices. While initial complaints may not be linked to the validity evidence associated with different types of selection devices, it seems likely that the types of cases that end up being litigated in the federal courts may be a function of lawyers’ assessments of the soundness (validity) of specific types of selection devices. Some devices (e.g., unstructured interviews) may be seen as more appealing targets for litigation than other types of devices (e.g., work samples) because of differences in the validity evidence for the selection devices.

A good deal of research has been conducted on the validity of selection devices. Several studies have found that the predictive validity of the structured interview is quite high (Campion, Pursell, and Brown 1988; Weisner and Cronshaw 1988; Wright, Lichtenfels and Pursell 1989). The research literature suggests that BIBs and cognitive ability tests are among the most valid predictors available to organizations (Hunter and Hunter 1984; Reilly and Chao 1982; Reilly and Warech 1993). Work samples (Hunter and Hunter 1984; Reilly and Warech 1993) and assessment centers (Gaugler, Rosenthal, Thornton and Bentson 1987; Reilly and Warech 1993) also appear to be highly valid selection devices. Evidence indicates that personality tests are moderately valid selection devices (Barrick and Mount 1991; Tett, Jackson and Rothstein 1991). Honesty or integrity tests appear to be highly valid predictors of job performance, although the validity coefficients for the prediction of theft are somewhat lower (Ones, Viswesvaran, and Schmidt 1993; Sackett and Wanek 1996). The existing literature on physical ability tests suggests that they are good predictors of performance for some jobs (Blakley, Quinones, Crawford and Jago 1994; Fleishman and Mumford 1988; Hogan 1991). The sole selection device investigated in this study that seems to have limited usefulness is the unstructured interview. Research indicates that the predictive validity of the unstructured interview is quite low (Hunter and Hunter 1984; Reilly and Chao 1982; Reilly and Warech 1993). Thus, from the validity evidence perspective, one would expect that selection devices with less solid validity evidence supporting their use, such as unstructured interviews, would exhibit a higher percentage of litigation than other selection devices with more solid validity evidence behind them.

**Current Research Questions**

The primary objective of the current study was to provide some empirical data on the relative degree of litigation associated with nine types of selection devices. Given the costs associated with selection discrimination litigation, such information may be of interest to employers. The current study may also provide some insights regarding explanations for possible differences in the litigation rates associated with the nine types of selection devices. While applicant reactions may, possibly, influence initial complaints against selection devices, we suspected that the strength of the validity evidence associated with the different predictors would better explain any potential differences in litigation rates in the current sample of actual court cases.

A secondary objective was to investigate potential differences in the outcomes of the court cases involving the different selection devices (whether the devices were ruled to be discriminatory). It is possible that applicant reactions to selection devices may influence case outcomes. For example, a statistically naïve court might be swayed by the perceived fairness or face validity of a particular selection device (Gilliland 1993; Smith, et al 1993). However, it seems more probable that the actual validity evidence associated with a specific selection device would exert a stronger influence on the case outcomes. The courts’ exposure to
validation concepts and techniques has grown over the past 30 years, and their degree of statistical sophistication has most likely increased. Therefore, we suspected that differences in the validity evidence associated with the different predictors would better explain any potential differences in litigation outcomes.

Method

Data

All federal court cases in the USA involving hiring discrimination that were reported in the legal bulletin, *Fair Employment Practice Cases (FEP Cases)*, from 1978 through 1997, were initially identified. The *FEP Cases* report the full text and opinions of federal (and state) court rulings concerning different types of employment discrimination cases. Other sources of employment discrimination cases are available (e.g., *Employment Practice Decisions*); however, the use of only *FEP Cases* (and its standardized format) was thought to aid in minimizing the possibility of coding and judgment errors, thereby enhancing reliability and validity. Only cases that involved hiring or selection discrimination were included in the study; thus, cases that involved discrimination related to promotions, job assignments, transfers, training, layoffs, etc., were not of interest. The year 1978 was chosen as the starting point for the case search because in August of 1978, the various federal agencies collaboratively published the *Uniform Guidelines on Employee Selection Procedures*. These guidelines led to greater consistency regarding the interpretation of selection practices and standards (Arvey and Faley 1988).

The initial set of hiring discrimination cases that was identified was further reduced to include only those cases that involved the nine selection devices of interest in the current study (unstructured interviews, structured interviews, BIBs, cognitive ability tests, personality tests, honesty tests, physical ability tests, work sample/performance tests, and assessment centers). It might be noted that a few of the cases involved more than one challenged selection device. *FEP Cases* does not specify which devices are the ‘primary’ versus ‘secondary’ targets of litigation; it simply describes the predictors that are being challenged. Thus, if a case described two selection devices as being challenged, both were included. Cases were dropped if a precise determination could not be made regarding the specific type of selection device involved in the hiring discrimination charge. For example, some of the cases involving the interview were dropped due to insufficient detail needed to determine whether the interview was structured or unstructured. Some additional cases were dropped because they dealt primarily with procedural issues, and did not centrally involve any of the nine selection devices of interest. The final sample consisted of 158 cases.

Since the primary purpose of the current research was to assess the overall legal consequences associated with the nine selection devices, the cases were not limited to a particular statutory basis or a specific type of charge. In the sample, the breakdown of cases by type of charge was as follows: race – 49%; religion – 3%; sex – 31%; national origin – 3%; age – 12%; handicap – 2%; and other – 1%. Regarding court level, the sample included 105 district court cases and 53 appellate court cases.

Procedure

The written case information reported in *FEP Cases* was coded using a content analysis form developed specifically for the current study. Each case was coded by two graduate students (Ph.D. candidates who had previously taken a doctoral level seminar on HRM staffing). Prior to the actual coding, the graduate students were given the content analysis form and the written coding instructions, and they were trained in their task. The coders independently coded 20 cases in a practice session, and then met jointly with the first author to discuss the degree of agreement between their coding classifications. The graduate students then coded all of the selection discrimination cases. The cases that produced differing classifications were identified and discussed to arrive at the final classifications. To assess the reliability of the coding procedure, the degree of agreement between the two coders’ initial classifications was computed for each variable measured. The reliability figures are reported below.

Measures

The content analysis form included classes and class definitions for the nine selection devices investigated in the current study. The degree of agreement between the two coders’ initial classifications of the selection devices was 92%. The court’s ruling on whether the challenged selection device was found to be discriminatory was coded as ‘Yes’, ‘No’, or ‘Don’t Know’, and the degree of interrater agreement for this variable was 96%. Additionally, the date of the case, the type of discrimination charge, and the court level were coded, and the degree of agreement figures for these three variables were 100%, 98%, and 100%, respectively.
The primary objective of the current study was to provide information on the relative degree of litigation associated with nine different types of selection devices. Table 1 presents the nine types of selection devices, and the frequencies with which they were challenged in federal court cases from 1978 through 1997.

The unstructured interview was, by far, the most frequently challenged selection device ($f = 91$). As mentioned previously (in the Method section), a number of cases involving the interview were also deleted from the sample because a determination could not be made as to whether they were unstructured or structured. Given the frequency of use of the unstructured interview, it is likely that many of these deleted cases involved the unstructured interview. Thus, the frequency figure reported above is probably an underestimate. Cognitive ability tests ($f = 28$) and physical ability tests ($f = 22$) were the next most frequently challenged devices. The remaining six selection devices were associated with relatively few (or no) legal challenges. Regarding the types of cognitive ability tests, a closer examination revealed that specific ability or aptitude tests accounted for the majority of the challenges ($f = 14$). Very few general intelligence or intellectual aptitude tests ($f = 2$) or general aptitude test batteries ($f = 2$) were involved in the selection discrimination cases. Regarding physical ability tests, the most frequently challenged were fitness tests ($f = 8$).

Simply examining the frequencies of legal cases associated with the selection devices may be somewhat misleading because some devices are employed by more organizations than other selection devices. For example, 71% of organizations employ the unstructured interview, whereas only 12% employ assessment centers. To adjust for the extent of organizational usage, and to explore the possibility of differences in the actual rates of litigation, a chi-square goodness of fit test (Siegel 1956) was used to compare the observed distribution of legal challenges by predictor to the expected distribution. The expected distribution was developed by taking survey estimates of the extent of organizational use of the various selection devices, and then converting those estimates to normalized values. The survey estimates are shown under the note to Table 1. To arrive at the expected percentage for any given selection device, one would take the survey estimate for that selection device, and divide that figure by the total of all of the survey estimates ($71 + 29 + 17 + 20 + 17 + 7 + 11 + 63 + 12 = 247$). For example, the expected percentage for the unstructured interview would be $71/247$, or 29%. This conversion process, or normalizing process, allows one to adjust the sample data for extent of use, and then check to see if any selection device is over or under-represented in terms of the percentage of legal cases associated with it. The observed and expected percentages are presented in the last two columns of Table 1, and the analysis indicated that they were significantly different, $x^2$ (8, 158) = 168.57, $p < 0.05$. Next, Bonferroni simultaneous confidence intervals (Miller 1981) were calculated for each selection device category (at the 0.05 level of significance) to assess whether the category was significantly over- or under-represented.

### Table 1: Frequencies and percentages of charges by selection device

<table>
<thead>
<tr>
<th>Selection devices</th>
<th>Observed frequencies</th>
<th>Observed percentages</th>
<th>Expected percentages(^a)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unstructured interviews</td>
<td>91</td>
<td>57</td>
<td>29</td>
</tr>
<tr>
<td>Structured interviews</td>
<td>9</td>
<td>6</td>
<td>12</td>
</tr>
<tr>
<td>BIBs</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>Cognitive ability tests</td>
<td>28</td>
<td>18</td>
<td>8</td>
</tr>
<tr>
<td>Personality tests</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>Honesty tests</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Physical ability tests</td>
<td>22</td>
<td>14</td>
<td>4</td>
</tr>
<tr>
<td>Work sample tests</td>
<td>7</td>
<td>4</td>
<td>26</td>
</tr>
<tr>
<td>Assessment centers</td>
<td>1</td>
<td>1</td>
<td>5</td>
</tr>
<tr>
<td>TOTALS</td>
<td>158</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Note: \(^a\) The expected percentages represent normalized values based on surveys of extent of organizational use of the selection devices in the USA. Estimates of use of unstructured interviews (71%), structured interviews (29%), BIBs (17%), and cognitive ability tests (20%) were drawn from Terpstra and Rozell (1993). Estimates of use of personality tests (17%), honesty tests (7%), physical ability tests (11%), work sample tests (63%), and assessment centers (12%) were drawn from the Bureau of National Affairs (1988).
The Bonferroni analyses indicated that structured interviews, work samples, and assessment centers were significantly under-represented. Unstructured interviews, cognitive ability tests, and physical ability tests were significantly over-represented. The analysis of BIBs (observed percentage = 0; expected percentage = 7), personality tests (observed percentage = 0; expected percentage = 7), and honesty tests (observed percentage = 0; expected percentage = 3) was complicated by the fact that Bonferroni confidence intervals cannot be calculated when the observed sample proportion or percentage is 0. However, when 1% was substituted for 0, BIBs and personality tests were still found to be significantly under-represented. Honesty tests were not found to be under-represented when 1 was substituted for the actual observed percentage (0).

A secondary objective of this study was to investigate the outcomes of the legal challenges to the various selection devices. Table 2 presents the litigation charges and outcomes by type of selection device. The unstructured interview was one of the selection devices that was least likely to survive a legal challenge. It was found to be not discriminatory in 59 percent of the cases. Physical ability tests (58%) and cognitive ability tests (67%) exhibited similar survival rates. Work sample tests (86%) fared quite well; and structured interviews (100%) survived all of the legal challenges to their use. The small (or non-existent) frequencies associated with BIBs, personality tests, honesty tests, and assessment centers made it impossible to assess the ‘survivability’ of these selection devices.

Only a partial test of differences in litigation outcomes was possible due to the low frequencies associated with five of the nine selection devices (unstructured interviews, structured interviews, cognitive ability tests, and physical ability tests). The obtained test statistic was not significant, $\chi^2 (3, 133) = 6.08, p > 0.05$. A perusal of the data suggests that if the sample size had been larger, however, structured interviews (9 of 9 charges were ruled not discriminatory) would have been found to be significantly more likely to survive legal challenges than the other selection devices.

### Discussion

The primary purpose of this study was to provide some much needed information on the legal risks associated with different types of organizational selection devices. Employers’ perceptions of the potential legal consequences associated with various selection devices seem to play a significant role in their decisions regarding the types of predictors that they adopt and use. Thus, the data on US legal challenges provided by the current study may have important practical implications.

The unstructured interview was found to be the most frequently challenged of the nine selection devices studied. Nearly 60% of the selection discrimination charges involved the unstructured interview. The analyses comparing the observed percentages to the expected percentages also indicated that the unstructured interview was significantly over-represented in terms of the legal challenges associated with it. Additionally, it might be noted that a number of the cases involving the interview were deleted from the initial sample because a determination could not be made regarding whether they were structured or unstructured. It is likely that several of the excluded cases involved the unstructured interview. Thus, the current findings suggest...
that organizations that use the unstructured interview, primarily because they perceive it to be a legally safe selection practice, may wish to reconsider their choice of selection practices. Cognitive ability tests and physical ability tests were also found to be significantly over-represented in the current study, suggesting that these two selection devices may also be associated with a relatively greater degree of legal risk. Conversely, five selection devices were found to be significantly under-represented—structured interviews, work samples, assessment centers, personality tests, and BIBs.

The results of the current study may also provide some insights into possible reasons for the observed differences in relative litigation rates. Applicant reactions to the nine selection devices were not measured directly in the current study. Still, the overall pattern of findings in the current study seems to suggest that the validity evidence explanation may be more viable than the applicant reactions explanation for differences in relative litigation rates. The applicant reactions literature would explain the observed litigation rates associated with only four of the nine selection devices (cognitive ability tests, physical ability tests, work samples, and assessment centers). On the other hand, the validity evidence perspective would explain the observed litigation rates associated with seven of the nine selection devices. The two exceptions, cognitive ability tests and physical ability tests, were over-represented in terms of observed litigation rates, although the general validity evidence supporting these two devices is relatively strong. Perhaps some types of selection devices are challenged on different legal grounds than other selection devices. For example, cognitive ability tests and physical ability tests may be challenged more frequently because of a belief that a job analysis would not support their use, rather than on the basis of low criterion or content validity. The selection devices may also vary in terms of the classes of jobs they are typically used for; and job classes may vary in terms of specific workforce demographics that may be differentially related to the degree of legal risk. The current study’s analyses also involved expected distributions that were based on surveys of organizations’ reported use of the nine selection devices. These survey figures, however, may be rather rough approximations of the total usage of the selection devices. Some predictors that are used earlier in the staffing process may be administered to relatively more job applicants than other predictors that are used later.

Perhaps future research could more accurately estimate the actual degree of legal risk associated with different types of selection devices. Future research might also try to identify, in a more controlled fashion, the variables that explain and predict the occurrence of legal challenges in the federal courts. In general, however, the findings of the current study suggest that the validity evidence associated with different selection devices may be linked to differences in relative litigation rates. The current findings seem to suggest that applicant reactions may not be related to litigation in the federal courts. But future research may still find that applicant reactions are linked to initial complaints regarding alleged discrimination in the selection process.

A secondary objective of the current study was to investigate the outcomes of the legal challenges to the different selection devices. It was thought that selection devices associated with stronger general validity evidence found in the published literature might be more likely to survive legal challenges than selection devices associated with weaker validity evidence. Only a partial test (involving unstructured interviews, structured interviews, cognitive ability tests, and physical ability tests) of this idea was possible because of the small cell frequencies; and the analysis produced non-significant results. Still, the structured interview survived 100% (9 of 9) of the legal challenges mounted against it, while the unstructured interview survived only 59% of its legal challenges. A larger sample might have detected significant differences between the outcomes of different types of selection devices. Ideally, specific case-related information would have been gathered regarding the organizations’ attempts to defend themselves against the legal challenges. For example, the type and quality of an organization’s validation studies might be strongly related to surviving a legal challenge. In the current study, the authors had hoped to code the type of validation effort (e.g., predictive, concurrent, content, construct, synthetic validity, or validity generalization) and the quality of the validation study. Specific validation information was generally lacking, however. Perhaps future research could examine the relationship of the organization’s defense efforts to the eventual case outcome.

In closing, it is hoped that the current study has provided some information and insights that may prove useful to both researchers and practitioners. Very little information currently exists regarding the legal consequences associated with the use of different types of selection devices. Additionally, little is known regarding possible explanations for differing litigation rates associated with different selection devices. Caution must be exercised in generalizing from the results of the current study because the sample of federal court cases may not be representative of the larger
population of legal complaints and cases, but, overall, the current findings are somewhat encouraging. The apparent dilemma between using highly valid, but legally risky selection devices, or using less valid, but legally safer devices may not be as serious as was thought. The current results suggest that some valid selection devices (e.g., structured interviews, BIBs, personality tests, work samples, and assessment centers) may also be relatively safe to use from a legal perspective. The expanded use of sound selection devices may help organizations achieve greater success in the increasingly competitive global business environment in which they operate (Terpstra, Mohamed, and Rozell 1996; Terpstra and Rozell 1993).

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