

## Assessment Council News (ACN)

### Presidential Message

*By Deborah Whetzel, President*



July 2013

Hello IPAC! Welcome to our third edition of the 2013 Assessment Council News! It's hard to believe we're almost halfway through 2013 and our biggest event of the year, the annual conference, is only about a week away. I hope you are planning on joining us in Columbus, OH from July 21-24 where we have an exciting line-up of pre-conference workshops and a stellar slate of keynote speakers.

The pre-conference workshops will set the tone of the conference with an engaging and diverse set of topics:

- ½ day am, Jeff Feuquay, John Weiner, and Keith Pyburn, Balancing Legal Trends and Organizational Goals/Values in the Use of Personnel Assessment
- ½ day pm, Jennifer Hurd and Max Cote, Communicating the Value of Assessment and Selection
- 1 day, Matisha Montgomery and Rebecca Fraser, Developing and Conducting Structured Interviews
- 1 day, Anne Holloway-Lunch and Alix Roberts, Developing a Competency Model "101": An Applied Perspective.

Our keynote speakers have national and international reputations in the assessment field:

- Monday, July 22, 9-10, Paul Sackett, "Some things to know about group mean differences, adverse impact, fairness, and predictive bias"
- Monday, July 22, 3:30-4:30, Fritz Drasgow, " Predicting Performance with a Computerized Adaptive Personality Assessment "
- Tuesday, July 23, 9-10, Nancy Tippins, " Using Technology in Personnel Assessment "
- Tuesday, July 23, 3:30-4:30, Doug Reynolds, "Data-Driven Talent Management: Using assessment and technology to run better organizations "
- Wednesday, July 24, 10:30-11:30, Michael Zickar, "Social Media and Personnel Selection: The Good, the Bad, and the Ugly"

Getting to the Heart of Assessment is the theme of the 2013 conference and the program offers sessions designed to meet the needs of assessment and HR professionals. The program contains a wide variety of topics, so whether your interests are theoretical or applied, there is something for everyone.

Mike Willihnganz made an excellent point a couple years ago when he mentioned that during times of economic downturn, the competition for available positions is intense. This places an increased emphasis on the need for assessment systems to be efficient, precise, and legally defensible. Our conference

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venue provides an ideal opportunity to hone our skills and update our expertise, so if you have not already registered, there's still time to do so!

We also will have a town hall meeting (Monday at 4:30) in which you can shape the future of IPAC by sharing your ideas about how IPAC can increase its value-add to members.

Registration for the 2013 conference is open and we're getting lots of registrants so please register soon. In addition to the program itself, we have several social events (President's reception on Sunday, Social at Bar Louis on Monday, and Hospitality Suite each evening 8-12) designed to encourage a wide variety of learning and networking experiences.



Thanks to Lee Frier's efforts, our pre-conference workshops have been pre-approved for HR Certification Institute credit. In addition, the conference itself has been approved for general and strategic credit. See pages 18-20 for forms to be completed. Actual forms will be provided at the conference. Check out the conference page on [www.ipacweb.org](http://www.ipacweb.org). I look forward to seeing you in Columbus, Ohio!

### Resources

Keep your eyes on the IPAC website after the conference for links to keynote speaker videos and the conference presentations.

### Volunteers needed:

- As mentioned in the last ACN, after many decades of service to IPMAAC and IPAC, Bill Waldron is stepping down as our ECN committee chair and we are looking for someone who is interested in taking on the task of maintaining our website and keeping it up to date. Additionally, Bryan Baldwin is stepping down from his role of managing IPAC's linked in page. This involves approving new members and flagging inappropriate posts (typically promotions). If you'd like more information, please contact Bill Waldron at [elcomnet@ipacweb.org](mailto:elcomnet@ipacweb.org) or Michael Blair (President-Elect) at [Michael.Blair@sprint.com](mailto:Michael.Blair@sprint.com).
- Would you like to serve on the ACN editorial team? To learn more, please contact our IPAC-ACN editor, John Ford at [johnf@us.net](mailto:johnf@us.net) for more information.



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## LEGAL WATCH

By Ryan O'Leary, PDRI a CEB Company

### Revisiting Criminal and Credit Records Checks

In the last newsletter, we highlighted lawsuits filed by the Equal Employment Opportunity Commission (EEOC) against a handful of employers for allegedly violating Title VII by relying on credit checks. At issue was whether use of pre-employment credit checks had an unlawful disparate impact on protected class members. In this newsletter, we highlight lawsuits related to criminal records checks. In June 2013, the EEOC filed two lawsuits, one against BMW and the other against Dollar General (*EEOC v. BMW Manufacturing Co., Inc.*; *EEOC v. Dolgencorp LLC d/b/a Dollar General*). In both, the EEOC asserts each company discriminated against African American job applicants through the improper use of criminal background checks as an applicant screening tools which were not job-related and consistent with business necessity and resulted in disparate impact.

In BMW, the claimants were employees of a company that provided logistical services to BMW. That company conducted criminal background checks, but they were limited to convictions within the past seven years. The company ended its contract with BMW and the employees had to reapply for jobs at BMW and subsequently had to undergo another criminal background check. During that process, several employees were found to have criminal convictions and were told they were no longer eligible for employment. At issue appears to be the duration of time since the conviction. The EEOC states "The policy is a blanket exclusion without any individualized assessment of the nature and gravity of the crimes, the ages of the convictions, or the nature of the claimants' respective positions." While the Fair Credit Reporting Act allows for the use of criminal record checks in screening regardless of the time frame, the EEOC has considered limiting this to seven years.

In Dollar General, the company had made certain types of conviction a disqualifying factor for employment. One applicant with a six year old drug conviction

was given a conditional offer of employment despite having worked for years at a similar retailer while another was rejected for employment when records showed she had a felony conviction when she did not. The EEOC charges Dollar General's policy of conditioning all job offers on criminal background checks results in disparate impact.

The EEOC has long viewed criminal records checks as a particular threat to adverse impact against African American and Hispanic applicants resting on data showing they are convicted at a rate disproportionately greater than their representation in the population. EEOC guidance suggests such records checks are unlawful under Title VII in the absence of a justifying business necessity. Each of these cases highlight the aggressive position the EEOC is taking on this issue and their intent to ensure compliance with their 2012 guidance on the use of criminal records in employment decisions.

### Social Media and Employment Decisions

Recently, a number of states have enacted social media privacy laws which extend to hiring and employment. Such legislation (which has been introduced, is pending, or has been signed into law in at least 35 states) limit, or prohibit, employer access to personal accounts of employees and prospective employees. For example, Arkansas House Bill 1901 prohibits employers from requiring an employee or prospective employee to: (1) submit account information in order to gain access to the individual's social networking website account or profile, (2) add employer personnel such as supervisors or administrators to the list of contacts associated with the account, or (3) change privacy settings. In many cases, employers may not retaliate against employees or refuse to hire applicants who exercise their rights under this law. From March through June, California, Illinois, Maryland, Michigan, New Mexico, Utah, and Washington all added

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similar legislation. In almost all cases, the laws do not restrict the viewing or using of online information that the employer can obtain without usernames or passwords.

Additionally, a federal law may well be around the corner. In February 2013, the Social Networking Online Protection Act (SNOOPA) was reintroduced in Congress and is awaiting action in the House Education and Workforce Committee. If signed into law, SNOOPA would prohibit employers from: (1) requiring or requesting that an employee or applicant provide the information needed for accessing a private email or social networking account or (2) retaliating against employees, denying to promote employees, or refusing to hire applicants who refuses to provide such information, files a complaint, or serves as a witness in a related proceeding. Given the attention social media is receiving, and in light of the rapidly changing legal landscape, employers must monitor this area and adjust their practices as needed to ensure compliance.

### **Genetic Information Nondiscrimination Act (GINA) in Action**

As part of its 2013 to 2016 Strategic Enforcement Plan, the EEOC identified addressing emerging and developing issues in EEO law and one of its six national priorities. This includes genetic discrimination. In May 2013, the EEOC filed and settled the agency's first lawsuit to enforce genetic non-discrimination rights afforded by Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA). Title II prohibits the use of genetic information (i.e., "family medical history; information about an individual's or family member's genetic tests, such as tests to detect whether an individual has an increased risk of developing certain cancers or other diseases; and the fact that an individual or the individual's family member has sought or received genetic counseling or has participated in clinical research that includes genetic testing.") in making employment decisions in all aspects of employment because genetic information is not relevant to an individual's current ability to work. Additionally, employers are prohibited from requesting, requiring, or purchasing an applicant's or employee's genetic information.

In *EEOC v. Fabricut*, an employee working as a temporary memo clerk applied for a permanent position which was initially offered. However, as part of its pre-employment medical examination, Fabricut requested family history on a variety of specific conditions. As a result of the information provided, the company also requested additional testing to rule out carpal tunnel syndrome. While the testing ruled out the syndrome, the job offer was rescinded on the basis of the pre-employment medical examination where the doctor concluded the applicant had the condition. The EEOC sued, alleging the company violated GINA and a consent decree was filed concurrently, settling the same day. The applicant also brought a claim that job offer was revoked after the carpal tunnel syndrome diagnosis, in violation of the Americans with Disabilities Act of 1990 as amended (ADA). In settling, Fabricut agreed to pay the worker \$50,000 and take actions to prevent discrimination (e.g., disseminating anti-discrimination policies to employees, providing anti-discrimination training to employees with hiring responsibilities).

Since 2010, the EEOC has received 726 GINA charges. While GINA has been around for some time, many employers may still not understand that requesting family medical history violates the law. Filing of the lawsuit may have been an effective way to spread the word. This case also highlights the close connection between conduct prohibited under GINA and under ADA. GINA prohibits both the acquisition and the use of genetic information in employment contexts. The ADA prohibits employment discrimination on the basis of disability, but defines disability broadly to include "(a) a physical or mental impairment that substantially lim-

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its one or more of the major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment.” Given these two definitions, it is likely that GINA and ADA claims will be brought concurrently in cases where applicants feel they are victims of genetic discrimination.

### **Standard of Causation in Title VII Retaliation Claims**

In April, the Supreme Court heard oral argument in *University of Texas Southwestern Medical Center v Nassar*, a Fifth Circuit decision examining the appropriate standard of proof for Title VII retaliation claims. At issue is whether a plaintiff is required to prove but-for causation (e.g., the employer would not have taken an adverse employment action but for the employee’s age, race, gender, etc.) or only that the employer had a mixed motive (e.g., that an improper motive was but one of multiple reasons for the action). The mixed motive standard represents a lower standard of proof.

Nassar was a physician employed by the university at the university medical center. He did not get along with his supervisor, also employed by the university, whom he accused of racial and religious bias. To diffuse the situation, Nassar arranged to resign his position at the university in favor of direct employment through the medical center which would bring a change of supervisors. However, he alleges that after he complained of discrimination, in retaliation for his allegation, he was prevented from being hired. The university argued that even without the alleged retaliation, Nassar would not have been hired because of an agreement between the medical center and the university which stipulated all physicians working at the center had to be university faculty. As such, the retaliation could not be the but-for cause of the loss of his position. Nassar argued that in a Title VII retaliation case it is enough that the retaliation may have been a motivating factor in the decision.

In *Price Waterhouse v Hopkins*, the Supreme Court, in a fractured decision, held that Title VII requires a plaintiff to prove only that discrimination was a motivating factor for an adverse employment action. However, in *Gross v FBL Financial Services, Inc.* they held in a 5-4 decision that the ADEA requires a plaintiff to prove that age was the “but for” cause of an adverse employment action. The mixed-motive standard was codified in the 1991 Amendment to Title VII. However, it does not explicitly address retaliation. Circuit Courts have since been divided on whether a general rule has been established for retaliation provisions in federal statutes leading to the grant of certiorari in this case to resolve the conflict.

During arguments, attorneys for University of Texas Southwestern Medical Center argued that different standards apply in ADEA and Title VII suggesting that Congress distinguished between retaliation and discrimination in both the Title VII amendments and also in enacting the ADEA. Attorneys for Nassar argued against two standards saying Congress would not have intended to create two standards in the same statute without explicating them. The ruling in this case will likely have significantly impact on employers and their ability to defend themselves against retaliation claims. Such claims are the most frequently brought against employers.

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### ***Wal-Mart Stores, Inc. v Dukes* Ruling Extended to Hiring**

In May 2013, the Sixth Circuit decided in *Davis v Cintas Corp* that the class certification denial was proper and dismissed the plaintiff's individual disparate treatment claim. The case was a nationwide sex discrimination class action brought against Cintas Corporation by female applicants who were not hired for entry-level sales representative jobs. The sales representative job was a typically male dominated position. In 2003, Cintas implemented a new hiring system. Davis alleges the hiring practices lead to gender discrimination and violated Title VII and that she herself had been subjected to disparate treatment. The case was consolidated with another pending case for pretrial proceedings and the plaintiff in both cases made a joint motion to certify as a class representing females denied employment for the sales representative job. The District Court denied the motion for class certification because of differences among hiring managers at different locations.

In *Davis v. Cintas Corp.*, the Sixth Circuit found that Davis could not establish the required commonality element for establishing a class as Davis argued that the discrimination was the result of individual hiring manager preference and not objective criteria in the nationwide hiring process. Additionally, they found the method used by Davis to calculate back pay relief was individualized. In making its decision, the Sixth Circuit relied exclusively on *Wal-Mart Stores, Inc. v. Dukes* and the "Wal-Mart Framework". *Wal-Mart Stores, Inc. v. Dukes* covered pay and promotion in employment class claims. The Sixth Circuit has extended that to pre-employment hiring class claims.

### **EEOC and the ADA Amendments Act (ADAAA)**

In May 2013, the EEOC updated guidance documents related to protections against disability discriminations and reflect changes made to the ADA Amendments Act (ADAAA) relevant to four conditions: cancer, diabetes, epilepsy, and intellectual disability. ADAAA significantly broadens the definition of disability under the ADA. For each of these conditions, individuals should be found to have a disability as each substantially limits major life activities. Additionally, individuals with a history of these conditions are regarded as having a disability under ADA. The updated documents address: (1) when an employer may obtain information from employees and applicants, (2) how to treat voluntary disclosure of a disability, (3) what types of reasonable accommodations an employer can provide, (4) how employers should handle safety concerns about employees and applicants that may be related to these disabilities, and (5) what preventative measures an employer may take to prevent disability-based harassment claims.

### **Pattern or Practice and the Vulcan Society**

In May 2013, the Second Circuit issued a ruling in *United States and The Vulcan Society, Inc., et al v. City of New York, et al.* This is a long running case which started as a disparate impact claim and became a pattern or practice case centered on the city's entry-level firefighter exam. Of note is that this case provides some clear guidance on how employers faced with Title VII lawsuits can rebut a plaintiff's attempt to establish a prima facie case of pattern or practice. Under the divided ruling, if a plaintiff claims an employer is operating under standard operating procedures of discrimination against a class of people, an employer can respond with what-

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ever they have to show that if they were operating in such a way they did not intend to do so (e.g., affirmative action plans, diversity initiatives, attempts to produce an unbiased testing procedure). This gives the employer a broad opportunity to present in rebuttal *any* evidence that shows they lacked intent. In their ruling, the court stated that statistics are not required. While the case is not over, this could potentially ease the burden on employers at the summary judgment stage.

### **Be on the Look Out (BOLO): Supreme Court to Decide Important Affirmative Action Case**

The Supreme Court is expected to rule soon in their long awaited decision in *Fisher v. University of Texas at Austin*. In this landmark affirmative action case, Fisher alleges she was denied admission to the university because she was white. She argued that the university's affirmative action program, which it uses to admit minority students who do not automatically qualify by graduating at the top of their class, subjected her to discrimination. The District Court and Fifth Circuit ruled in favor of the university. Fisher appealed and was granted a writ of certiorari by the Supreme Court.

The university asserts that it has the right to consider race as a component of its admission process citing precedent established in *Grutter v. Bollinger*. Fisher counters by asserting the university inherently meets its goals by admitting every student in the state in the top 10% of their high school class despite claims by the university that student population should include a critical mass of minority students and as such affirmative action is necessary. At the time of this writing, the court has not ruled. But a decision is pending any day. More to follow on this case in the next newsletter as the ruling will have a significant impact on the shape of affirmative action.

### **References**

*Davis v Cintas Corp.*, No. 10-1662

*EEOC v BMW Manufacturing Co.*, Case No. 7:13-cv-01583

*EEOC v Dolgencorp LLC d/b/a Dollar General*, Case No. 1:13-cv-04307

*EEOC v Fabricut*, Case No. 13-cv-248-CVE-PJC

*Fisher v University of Texas at Austin*, No. 11-345

*Gross v FBL Financial Services, Inc.*, 557 U.S. 167

*Grutter v Bollinger*, 539 U.S. 306

*Price Waterhouse v Hopkins*, 490 U.S. 228

*University of Texas Southwestern Medical Center v Nassar*, U.S. No. 12-484

*United States and The Vulcan Society, Inc., et al v City of New York, et al.*, No. 11-5113

*Wal-Mart Stores, Inc. v Dukes*, 131 S. Ct. 2541

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## A Small, Quick Commentary on Big Data and Predictive Analytics

By Dennis Doverspike

Big Data. Predictive Analytics. Since the movie Moneyball, it seems everywhere you turn you run into someone touting the potential of big data and predictive analytics for all sorts of management operations, including human resource management. The obvious question for public sector human resource professionals is *what is the impact of big data and predictive analytics on personnel management, especially selection? Is Big Data and Predictive Analytics another management fad? Is Big Data and Predictive Analytics anything new or is it old wine in massive, modern wine barrels?*

In this article, I am going to share some of my opinions on the big data, predictive analytics movement. I will admit I am no IT expert. My perspective is not that of a computer expert, I approach the question of the future impact of big data and predictive analytics from one corresponding to a human resource expert with interests in recruitment and selection. My intent is not even to provide a definitive answer to the questions asked in the previous paragraph, but rather to define what I see as some basic issues or topics in starting a conversation concerning big data in public sector assessment. I will also admit others have made similar points including the excellent book by Nate Silver.<sup>1</sup>

The issues I address in this brief commentary include:

- Is There Big Data in HR?
- Old Wine?
- Do We Need Theory and Past Research?
- On Intrinsic Versus Extrinsic Predictors
- A Question of Utility

### Is There Big Data in HR?

Given the faddish nature of the big data-predictive analytics movement, the argument has been made that human resource decision making, especially selection, does not involve enough cases or observations, or bytes, to qualify as true big data. The counter argument is that “Big” is relative to the field of inquiry.

I tend to go along with the “big is relative” argument. Just a few years ago, as a researcher I was happy to see 500 cases. Now I regularly conduct research looking at 5 million test takers. From my perspective, 5 million observations is big; as soon as you get over a million people taking your test, most analyses result in significant outcomes. So, I think there is no question that selection,

especially in the private sector, has moved into the big data era.

### Old Wine?

The old wine applies more to the use of predictive analytics than to big data. Those who argue that there is nothing new in predictive analytics have a valid point. Statistics have been around since the late 1800s and have been applied to human resource selection problems since the early 1900s. So, predictive analytics has been around for close to 100 years and, of course, the subject of criticism for close to 100 years. Nevertheless, again we can say that predictive analytics has been used in public sector selection for many years.

### Do We Need Theory and Past Research?

Perhaps one of the most controversial and confusing aspects of the big data-predictive analytics debate is whether there is a need to rely upon theory and past research. Of course, even this debate is not new, as Industrial-Organizational Psychology was once criticized for its reliance on “dustbowl empiricism.”

For me, this is a no-brainer. Of course, we need to rely upon both theory and past research. As an excellent example of why we do, we can turn to Bryant’s interview with Laszlo from the *New York Times*.<sup>2</sup> The conclusions basically amount to unstructured interviewing using crazy, trick questions does not work as well as behaviorally based interviewing. It is nice to see a consistent finding from a great deal of interviewing research confirmed by Google, but hardly surprising to any one that knows and reads the literature; what is amazing is that so many big companies still use such poor interviewing techniques.

So the answer to this one is easy, of course we need theory and research. We could add a basic caveat from introductory statistics classes – correlation is not causation.

### On Intrinsic Versus Extrinsic Predictors

By the very nature of big data and predictive analytics, it tends to depend on extrinsic variables for prediction as opposed to intrinsic variables. I believe this is a major, overlooked characteristic of big data and predictive analytics as applied to human resource modeling.

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Selection in the public sector has traditionally relied upon merit as defined in terms of knowledge, skills and abilities (KSAs), which are intrinsic characteristics. However, big data and predictive analytics tend to rely upon extrinsic variables established based on empirical relationships; extrinsic variables would include demographic data, biographical information, and personal history. Rightly or wrongly, in the United States, we have preferred the use of intrinsic over extrinsic variables. Furthermore, it is difficult to see how the use of extrinsic variables can be supported given the public sector ideal of merit based hiring.

### Question of Utility

The question of utility is one that seems to have been ignored by most proponents and critics, both seem to assume the only money that matters is that of the organization or employer. Thus, the common argument is that even a small increase in predictive accuracy is valuable because the organization is engaging in a huge number of decisions, even if each individual organizational effort is of rather low cost (for example, robocalls or spam emails).

However, individuals also care about utility, but the impact of bad decisions on the individual is overlooked. Now, in the case of marketing mailers, it may be a reasonable assumption to overlook the cost to individuals. However, in making selection decisions in the public sector, individual utility is an area of major concern. Given the low rates of accuracy of some big data predictions, human resource managers should be especially concerned over the possible utility to individuals, as well as the resulting negative reactions of rejected applicants.<sup>3</sup>

### Teaser of Coming Attractions

So what can we conclude? Offering my opinion, as it related to public sector selection, I believe it is clear that:

Selection does now involve big data issues and, although having characteristics of a fad, our need to deal with big data is here to stay. This is probably even truer of recruitment, which shares more characteristics of marketing, than of public sector selection.

Predictive analytics are really nothing new and, hopefully, we will continue to improve in terms of our use of statistical modeling and prediction.

We do need theory and also a reliance on past research.

This leads me to my last two points, which I believe have been ignored in the discussion over the use of big data-predictive analytics, especially as applied to the public sector.

In public sector selection, given the emphasis on merit-based hiring, there is a need to discuss the implications of using extrinsic variables as opposed to intrinsic characteristics. This is not a new debate, but it is one that seems to have remained below the surface in debates over the use of big data-predictive analytics.

The utility of decisions to individuals needs to be considered, especially given what appears to be the low levels of predictive accuracy achieved through big data efforts.

Here then comes the teaser part. I hope in coming columns to return to these last two issues: 1) the intrinsic-extrinsic dichotomy and 2) the question of utility and applicant reactions in big data-predictive analytics.

### Notes

<sup>1</sup>Nate Silver (2012). *The Signal and the Noise: Why So Many Predictions Fail — but Some Don't*. New York, NY: Penguin. For additional reading see Joseph Walker (2012), *Meet the New Boss: Big Data; Companies Trade In Hunch-Based Hiring for Computer Modeling*, Wall Street Journal Online, Thursday, September 20, 2012 As of 11:16 AM [online.wsj.com/article/SB10000872396390443890304578006252019616768.html?mod=wsj\\_share\\_tweet](http://online.wsj.com/article/SB10000872396390443890304578006252019616768.html?mod=wsj_share_tweet).

<sup>2</sup>Adam Bryant, *Corner Office: Laszlo Block; In Head-Hunting, Big Data May Not Be Such a Big Deal*, New York Times online, June 19, 2013, [www.nytimes.com/2013/06/20/business/in-head-hunting-big-data-may-not-be-such-a-big-deal.html](http://www.nytimes.com/2013/06/20/business/in-head-hunting-big-data-may-not-be-such-a-big-deal.html) (thanks to Bryan Baldwin for pointing out this article).

<sup>3</sup>Doverspike, D. (2005). *Utility - A matter of perceptions*. *International Public Management Association for Human Resources News*, August, 30-31.

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## *What's Wrong with Congress? The Science of Personnel Testing Provides Clues*

*By Dennis Christopher Anderson and Lance Anderson, Global Skills Exchange Corporation (GSX)*

Congress' troubles indicate that a thorough review of the institution is worthwhile. In particular, the approach of industrial/organizational psychologists and assessment specialists in particular, has much to offer the discussion on congressional reform. Industrial/organizational psychologists should participate in this discussion because substantial evidence suggests that the current selection process for legislators (e.g., Members of Congress) may not accurately reflect the knowledge, skills, and abilities (KSAs) they need to fully enact their duties as individuals and as a collective institution.

A number of recent developments of the 112<sup>th</sup> Congress (2011-2013) suggest that it is necessary to reexamine the process through which legislators are selected as these developments have important implications for congressional productivity and democratic representation. These recent developments include:

- Moving from crisis to crisis (e.g., the debt ceiling, the fiscal cliff, failure to pass a budget),
- Lawmaking was at recent historical lows,
- Gridlock was high,
- Political parties were more polarized than at any time since the late 19<sup>th</sup> century<sup>1</sup>, and perhaps not surprisingly,
- Only a mere 16 percent of Americans approved of their performance (Mendes 2013).

The duties of Members of Congress can be inferred from various sources. One source is provided by the National Center for O\*NET Development (2013) where the tasks needed by "Legislators" are listed. This list is provided in Exhibit 1. To verify the accuracy of this list, we compared it to the congressional powers described in Article I, Section 8, of the U.S. Constitution, which allows legislators to engage in lawmaking on virtually any issue. The tasks listed in O\*NET seem to capture this.

One solution to improve congressional performance is improving the selection procedure used for individual Members of Congress. To the degree that the current process does not adequately encompass the needed KSAs, there could be performance implications. For example, if a Member of Congress lacks skill in arithmetic reasoning, he or she may not be able to perform effectively on a budget committee. If a Member of Congress lacks skill in judgment or decision-making, he or she may not be able to make effective decisions during key legislative debates. Finally, if a Member of Congress lacks ne-

gotiation skills, he or she may have difficulty crafting legislation with other members. Exhibit 2 lists some of the knowledge, skills, and abilities that we think might be key to performing effectively as a Member of Congress.

A number of interrelated problems surround the selection of Members of Congress, including:

- The challenge of raising campaign funds,
- The persistently high reelection rate of incumbents,
- The increasing average vote share received by incumbents, and
- The difficulties raised by gerrymandering (Jacobson 2004).

Moreover, a substantial challenge for the selection process is that many of the actors involved in selecting Members of Congress (i.e., voters, political parties) place minimal emphasis on whether the individual selected can perform the duties necessary to fulfill their obligations.

We are defining the selection process for Members of Congress as the formal and informal processes that determine congressional election outcomes. In particular, these processes include a number of (generally sequential) steps that determine which individual(s) are selected to serve in the institution:

- Parties recruit individuals to run for Congress;
- Candidates decide to run for their party's nomination;
- Party electorates choose (through primaries/conventions) which candidate they want to serve as their party's nominee;
- Winner(s) of primaries/conventions run against each other in general election; general electorate chooses winner of the election;
- Winner of general election is sworn in as a Member of Congress.
- Throughout each of the above steps, campaign contributors donate to candidates.

Bias and error are introduced to this process to the extent that the actors in the stages above do not take into account the knowledge, skills, and abilities that are required of Member of Congress to fulfill their duties.

In particular, the political parties, when deciding to recruit candidates for office, are likely to use criteria that are un-

*(Continued on page 16)*

**Exhibit 1. Tasks conducted by “Legislators,” Source: O\*NET (<http://www.onetonline.org>)**

1. Analyze and understand the local and national implications of proposed legislation.
2. Appoint nominees to leadership posts, or approve such appointments.
3. Confer with colleagues to formulate positions and strategies pertaining to pending issues.
4. Debate the merits of proposals and bill amendments during floor sessions, following the appropriate rules of procedure.
5. Develop expertise in subject matters related to committee assignments.
6. Hear testimony from constituents, representatives of interest groups, board and commission members, and others with an interest in bills or issues under consideration.
7. Keep abreast of the issues affecting constituents by making personal visits and phone calls, reading local newspapers, and viewing or listening to local broadcasts.
8. Maintain knowledge of relevant national and international current events.
9. Make decisions that balance the perspectives of private citizens, public officials, and party leaders.
10. Negotiate with colleagues or members of other political parties in order to reconcile differing interests, and to create policies and agreements.

**Exhibit 2 Some Knowledge, Skills, and Abilities that May Be Important to Performance as a Legislator****Knowledge**

1. **Law and Government**—Knowledge of laws, legal codes, court procedures, precedents, government regulations, executive orders, agency rules, and the democratic political process.
2. **History and Archeology**—Knowledge of historical events and their causes, indicators, and effects on civilizations and cultures.
3. **Communications and Media**—Knowledge of media production, communication, and dissemination techniques and methods. This includes alternative ways to inform and entertain via written, oral, and visual media.
4. **Economics and Accounting**—Knowledge of economic and accounting principles and practices, the financial markets, banking, and the analysis and reporting of financial data.

**Skills (Basic and Cross Functional)**

1. **Speaking**—Talking to others to convey information effectively.
2. **Persuasion**—Persuading others to change their minds or behavior.
3. **Negotiation**—Bringing others together and trying to reconcile differences.
4. **Complex Problem Solving**—Identifying complex problems and reviewing related information to develop and evaluate options and implement solutions.
5. **Judgment and Decision Making**—Considering the relative costs and benefits of potential actions to choose the most appropriate one.

**Abilities**

1. **Oral Comprehension**—The ability to listen to and understand information and ideas presented through spoken words and sentences.
2. **Written Comprehension**—The ability to read and understand information and ideas presented in writing.
3. **Problem Sensitivity**—The ability to tell when something is wrong or is likely to go wrong. It does not involve solving the problem, only recognizing there is a problem.
4. **Inductive Reasoning**—The ability to combine pieces of information to form general rules or conclusions (includes finding a relationship among seemingly unrelated events).

(Continued from page 14)

related to the knowledge, skills, and abilities necessary for individuals to serve as Members of Congress. For example, The following provide a closer look at these biases and errors: 1) The parties' criteria for recruiting candidates include the individual's ability to win during the general election and ability to reflect party values (i.e., ideology) in office (Cohen et al. 2008). 2) Primary election voters choose candidates based on a number of factors, including name recognition, electoral experience, and ideology. 3) At the general election, voters choose candidates based on party identification, name recognition, overall economic performance, and the incumbent's job approval (Jacobson 2004). 4) Finally, donors contribute to candidates because they share the same party identification, they share the same ideology, they want something from the candidate, or because they desire access to the candidate.

Of these factors listed above, only electoral experience could plausibly be related to the knowledge, skills, and abilities required to perform the duties of Members of Congress. Thus, the critical actors during the selection process for Members of Congress – voters, donors, and political parties – are likely to introduce bias and error as it appears unlikely that the criteria they use are correlated with the knowledge, skills, and abilities defined in Exhibit 2. This situation is exacerbated by the fact that it is difficult to unseat incumbent candidates; therefore, candidates selected for the wrong reasons often stay in office despite the quality of challengers.

To address this problem, we suggest a "Legislator/Candidate Quality Assurance" program. The goal of such a program would be to ensure that candidates and legislators have an understanding of the knowledge that they will be expected to display when serving in office. In particular, this could include establishing an independent "Certified Legislative Professional" (CLP) program wherein candidates for legislative office demonstrate their KSAs necessary to fulfill their duties as legislators. The process for developing a CLP certification program could follow the general certification and assessment process established elsewhere (e.g., Institute for Credentialing Excellence, 2004).

Enterprising candidates and/or legislators could deploy their "successful" certification as a tool for displaying competence to voters, donors, and political parties. Likewise, candidates and/or legislators who fail to receive the CLP could expect to have this fact used against them during their election/reelection campaigns.

In sum, this approach has the potential to provide a tool for the public benefit. A contrast between: 1) the KSAs of legislators and the tasks for Members of Congress defined by the Constitution, and 2) the criteria employed by voters, donors, and political parties indicates that little overlap is likely to exist between the two. Thus, we propose establishing a certification program for legislative professionals to provide quality assurance to those who make laws throughout the United States. Further, this tool could provide additional benefits to the public through the selection of better lawmakers.

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<sup>1</sup>These findings are from DW-Nominate scores obtained from Voteview (<http://voteview.com/dwnominate.asp>). Using congressional roll-call votes, DW-Nominate measures each individual Member of Congress' ideology. After the data is aggregated to include all Members of Congress, DW-Nominate indicates the degree of polarization between the two major political parties in the United States. Additional detail on DW-Nominate is provided by Poole and Rosenthal (2007).

**An expanded version of this article will be presented by the authors at this year's IPAC's conference. Neither the article nor the presentation represent the policies or positions of IPAC or of the Assessment Council News.**



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<input type="checkbox"/> Assessing and Developing Executives' Business Acumen	7/23/13	10:30am-12:00pm	1.5
<input type="checkbox"/> Assessing and Developing Executives' Business Acumen	7/23/13	1:30pm-3:00pm	1.5

**Sessions pre-approved for General credit**

**Total** \_\_\_\_\_

<input type="checkbox"/> Some things to know about group mean differences, adverse impact, fairness, and predictive bias	7/22/13	9:00am-10:00am	1.0
<input type="checkbox"/> Innovations in Selection for Emergency Communications Personnel	7/22/13	10:30am-12:00pm	1.5
<input type="checkbox"/> Building Assessments from an Internal Consultant Lens	7/22/13	11:00am-12:00pm	1.0
<input type="checkbox"/> Training and Experience Evaluations: Predicting Performance and Practical Application	7/22/13	2:00pm-3:00pm	1.0
<input type="checkbox"/> Outsourcing Public Safety Testing: Potential for huge cost savings and larger, more qualified, diverse and satisfied candidate pool.	7/22/13	2:00pm-3:00pm	1.0
<input type="checkbox"/> Predicting Performance with a Computerized Adaptive Personality Assessment	7/22/13	3:30pm-4:30pm	1.0
<input type="checkbox"/> Using Technology in Personnel Assessment	7/23/13	9:00am-10:00am	1.0
<input type="checkbox"/> Excuse Me, May I Weigh Your Bag for the TSA Job Analysis?	7/23/13	10:30am-11:30am	1.0
<input type="checkbox"/> The Art and Science of Behaviorally Anchored Rating Scales (BARS)	7/23/13	10:30am-12:00pm	1.5
<input type="checkbox"/> O*NE T and Beyond: Using Occupational Classification Systems to Guide Practice	7/23/13	11:00am-12:00pm	1.0



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**Sessions pre-approved for General credit (Continued)**

**Total \_\_\_\_\_**

<input type="checkbox"/> From a #2 pencil to a touch screen tablet: Nationwide Testing's journey from paper and pencil to online assessment services	7/23/13	2:00pm-3:00pm	1.0
<input type="checkbox"/> Data-Driven Talent Management: Using assessment and technology to run better organizations	7/23/13	3:30pm-4:30pm	1.0
<input type="checkbox"/> How to Validate an Exam Using a Content Validation Strategy	7/24/13	8:30am-10:00am	1.5
<input type="checkbox"/> The Good, The Bad, and The Ugly — Blazing Trails With Z-scoring	7/24/13	9:00am-10:00am	1.0
<input type="checkbox"/> Legal Trends and Implications for HR Assessment	7/24/13	9:00am-10:00am	1.0
<input type="checkbox"/> Social Media and Personnel Selection: The Good, The Bad, and The Ugly	7/24/13	10:30am-11:30am	1.0

This conference has been pre-approved for **12.5 General recertification credit hours**. To earn 12.5 General recertification credit hours for attending this conference, attendees will enter the **program ID #** obtained at the conference along with the conference dates to their online recertification application at [www.hrci.org](http://www.hrci.org).



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## Upcoming Conferences and Workshops

### July

- July 10** PTC/MW. SPECIAL EVENT! BREAKFAST WORKSHOP (8:30-11:30 am). Dr. Eric Dunleavy, DCI Consulting Group, Washington, DC. "EEO Update." GMU, Arlington, VA. Contact: [www.ptcmw.org](http://www.ptcmw.org)
- July 21-24** International Personnel Assessment Council. Annual Conference. Columbus, OH. Contact: [www.ipacweb.org](http://www.ipacweb.org)
- July 30-Aug 2** Industry Liaison Group & OFCCP. National Conference. Indianapolis, IN. Contact: [www.nationalilg.com](http://www.nationalilg.com)
- July 31-Aug 4** American Psychological Association. Annual Convention. Honolulu, HI. Contact: [www.apa.org](http://www.apa.org)

### August

- Aug 3-8** American Statistical Association. Annual Convention. Montreal, Canada. Contact: [www.amstat.org](http://www.amstat.org)
- Aug 9-13** Academy of Management. Annual Conference. Orlando, FL. Contact: [www.aonline.org](http://www.aonline.org)
- Aug 16-18** Chicago School of Professional Psychology in Los Angeles. IOOB Conference. "Shift Ahead: Preparing Organizations to Meet Tomorrow's Challenges." Los Angeles, CA. Contact: <http://ioob2013.com>
- Aug 23** PTC/MW. SPECIAL EVENT! BREAKFAST WORKSHOP (8:30-11:30 am). Dr. Wayne Cascio, University of Colorado. "Using HR Metrics to Improve Strategic Organizational Decisions." GMU, Arlington, VA. Contact: [www.ptcmw.org](http://www.ptcmw.org)

### September—October

- Sept 11** PTC/MW. LUNCHEON MEETING. Speaker to be announced. GMU, Arlington, VA. Contact: [www.ptcmw.org](http://www.ptcmw.org)
- Sept 12-13** American Psychological Association. Conference. "Work & Well-Being." Chicago, IL. Contact: [www.apaexcellence.org/events/details/540](http://www.apaexcellence.org/events/details/540)
- Sept 21-25** International Public Management Association for Human Resources. Conference. Nashville, TN. Contact: [www.ipma-hr.org](http://www.ipma-hr.org)
- Sept 30-Oct 1** American Conference Institute. Conference. "Wage & Hour Claims and Class Actions." San Francisco, CA. Contact: [www.americanconference.com/wagehoursnf](http://www.americanconference.com/wagehoursnf)
- Sept 30-Oct 4** Human Factors & Ergonomics Society. Annual Conference. San Diego, CA. Contact: [www.hfes.org](http://www.hfes.org)
- Oct 9** PTC/MW. LUNCHEON MEETING. Speaker to be announced. GMU, Arlington, VA. Contact: [www.ptcmw.org](http://www.ptcmw.org)
- Oct 14-19** American Evaluation Association. Annual Conference. Washington, DC. Contact: [www.eval.org](http://www.eval.org)
- Oct 18-19** Society for Industrial and Organizational Psychology. Leading Edge Consortium. "Talent Management." Richmond, VA. Contact: [www.siop.org](http://www.siop.org)

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The ACN is the official newsletter of the International Personnel Assessment Council, an association of individuals actively engaged in or contributing to the professional, academic, and practical field of personnel research and assessment. It serves as a source of information about significant activities of the Council, a medium of dialogue and information exchange among members, a method for dissemination of research findings and a forum for the publication of letters and articles of general interest. The Council has approximately 300 members.

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