

LEGAL RAMIFICATIONS OF WRITING ASSESSMENT

Speaker: *William Lutz*, Rutgers University,
Camden

Introducer/

Recorder: *Chris Anson*, University of Minnesota

William Lutz, who holds a law degree and is a member of the Pennsylvania Bar, addressed the importance of considering the legal constraints under which testing must operate. Lutz began by distinguishing the different kinds of testing programs: those conducted within an institution and those conducted outside the institution. External testing programs, such as those conducted by a school district or by a state agency, are governed by a series of laws and court decisions. Internal testing programs, such as course placement and proficiency testing, come under fewer legal constraints and exist, at present, in a legal nether world. However, there is enough legal precedent to warrant caution by anyone involved in any testing program.

According to Lutz, testing programs may be attacked from a variety of legal approaches. Title VI of the Civil Rights Act prohibits any practice that would have the effect of restricting an individual, on the grounds of race, color, or national origin, "in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit." It is important to note that this law would judge a testing program by its

specific skills and/or specific curriculum objectives.

2. Mere correlation between the test and the curriculum is not sufficient. There must be evidence, obtained from a regular process, that classroom activities are related to curriculum goals and test specifications.
3. All test items must be carefully developed and evaluated to ensure that they conform to curriculum and instructional practices. Moreover, there must be evidence that any bias related to racial, ethnic, or national origin minority status has been eliminated.
4. If possible, other measures of performance and ability should be used in conjunction with test results.
5. Cut-off scores should be the result of a well-documented process of deliberation that conforms to state and federal statutory requirements. There should be no suggestions of arbitrariness or capriciousness in setting cut off scores.
6. Students should be informed well in advance of what it is they need to know to perform well on the test. Students should also be informed in advance as to the nature of the test.
7. Options should be available for those students who fail the test. These should include, at the very least, the option to re-take the test, and institutional help to prepare and/or correct deficiencies.
8. Students should have access to their test scores and a full explanation of those scores.

Finally, Lutz suggested that anyone conducting a testing program should do the following immediately:

1. Conduct a full, impartial review of the testing program, and document this review.
2. Examine all the documentation in the program, and write any necessary additional documentation.
3. Correct all the deficiencies identified in the program, and then document the process by which the deficiencies were identified and corrected.
4. Institute two procedures as a permanent part of the testing program:

- (1) a formal process for administering and conducting the testing program, including full documentation;
- (2) a formal review of the program conducted at regular intervals by an outside, impartial, objective reviewer.

Lutz concluded by saying that we live in a litigious age, and prudence suggests that those involved in testing be professional and institute the guidelines and take the steps he outlined in his talk.