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# You Be the Judge II

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Training Leader's Guide

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## About Paul C. Green, Ph.D.

Paul Green is an industrial organizational psychologist with over 25 years of experience in training and consulting. During the early stages of his career he consulted with a broad array of organizations, ranging from small entrepreneurial companies to very large international organizations. He is currently a professional speaker and author based in Memphis, Tennessee.

Dr. Green's primary area of professional practice is in the assessment of job candidates, using both tests and interviews. He has conducted approximately 5,000 selection interviews of candidates for a broad range of positions. In addition, he has been active in presenting papers at professional meetings and sharing his research in scholarly publications.

Based on his experience in assessment he developed the Behavioral Interviewing® Seminar, which has been attended by several hundred thousand managers worldwide. In addition, his interviewing techniques were adapted into a video production—*More than a Gut Feeling*—that was recognized by *Fortune Magazine* as being one of the all-time best-selling training films in any category. His book for candidates, *Get Hired*, is the authoritative resource for candidates preparing for today's interviews.

*Building Robust Competencies* (published by Jossey Bass) is an extension of Dr. Green's broad experience in developing competencies for use in selection interviews, performance appraisal, coaching, and training. The book was written for executives, managers, and trainers in response to the many inquiries about competency development and its application to human resource systems. It was designed to be a clear, and sometimes entertaining, explanation of how to use competencies to link interviews, appraisals, coaching, training, and compensation to the broad purpose of an organization.

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# You Be the Judge II

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Preparation Materials

## ● Preparation Materials

### Icon Key



Ask and Discuss



Book



Flipchart



Overhead



Read or  
Paraphrase



Video



worksneet

## Introduction

Hiring employees can be an expensive and lengthy process. Managers are often in a hurry to fill vacant positions in order to maintain the productivity of their departments. Managers are so focused on getting the position filled they may not realize they have asked an inappropriate interviewing question.

Keeping interviewers up-to-date on legal interviewing practices is invaluable to your organization. Court costs and legal fees as well as time off the job can cost your organization both money and bad publicity.

*You Be the Judge II* can help your interviewing staff create and ask legally defensible preemployment questions that will help you hire the right person and stay out of court.

Upon completion of the video training program, participants will be able to do the following:

- **Ask legal interviewing questions**
- **Take objective, job-related notes**
- **Avoid discrimination**
- **Hire on job-related issues only**
- **Avoid questions of age, race, sex, religion, and national origin**

### **Special Note:**

The video and training leader's guide are designed to provide general information about lawful and effective interviewing techniques. They are not intended, however, to provide legal advice about any situation or questions that might arise in the viewer's personal experience. If the viewer has any specific questions regarding employment laws as they relate to his or her activities, an attorney should be consulted.

## Training Session Checklist

Use this checklist to help you gather all necessary materials for the training session.

### Meeting Preparation

- Determine your training objectives.
- Measure the current status of your participants using the Pretraining Survey.
- Choose different ways to train to ensure transfer of information.

### Location

- Create a relaxed environment.
- Make sure all seats have a good view of the visuals.
- Make sure there is enough light to take notes when participants view the video.
- Provide an adequate writing surface for participants.
- Check for good acoustics.
- Verify that your room is accessible and equipped for participants with disabilities.

### Video Equipment

- Make sure the VCR is properly connected to the monitor.
- Test the VCR, and check monitor for proper picture, color, and volume.
- Make sure the tape is rewound and ready to play before beginning your session.
- Check all other equipment for proper operation.

### Materials

- Training Leader's Guide*
- Videotape *You Be the Judge II*
- American Media How-To Book—*Interviewing: More than a Gut Feeling*
- Overheads
- Paper and Pencil
- Additional Equipment

- Preparation Materials

## Tips for Transferred Learning

Keep in mind the following tips when conducting any adult training. You may wish to review these tips and incorporate them into your session planning.

1. Adults learn when they feel they need to learn.

Discuss ways your training will help participants improve job performance by learning how to motivate employees.

2. Adults learn through practical application.

Use the exercises found in this Training Leader's Guide or create your own to give participants an opportunity to practice skills they can take back to their jobs. Also, provide reinforcement tools for your participants to take back to their jobs for continued and reinforced learning.

3. Adults learn by solving realistic problems.

Discuss and analyze actual on-the-job situations. Allow the trainees to solve these real-life problems by using what they have learned.

4. Adults learn in an informal environment.

Design your training room to be as informal as possible. Avoid classroom-style seating. If appropriate, encourage training participants to wear casual clothing. Encourage discussion and interaction to make participants feel more comfortable.

5. Adults learn by different training methods.

Vary your training methods. Combine discussions, role-plays, case studies, self-evaluations, and action planning in your training session. Using a variety of methods reinforces your message and promotes audience involvement.

6. Trainers learn through follow-up methods.

Follow-up methods are crucial when determining the success of transferred training. Feedback from your participants' managers; follow-up surveys or training sessions; three-, six-, and nine-month skill-testing sessions, etc., can help you evaluate the information being used on the job site.

## Possible Session Agendas

Two session agendas have been provided to help guide you through your *You Be the Judge II* session. You will modify these agendas to meet the needs of your participants. A blank agenda sheet is also provided on page 10 if you wish to create your own agenda.

### 2-Hour Session

Activity	Time	Page
Introducing the Session to Participants	15 minutes	14
Interviewing Terminology and Definitions	20 minutes	15
Show and Review Video	40 minutes	16
<b>Break</b>	<b>10 minutes</b>	
Exercise from the Book <i>Interviewing: More than a Gut Feeling</i>	20 minutes	17
Session Debrief	15 minutes	29

### 4-Hour Session

Activity	Time	Page
Introducing the Session to Participants	15 minutes	14
Interviewing Terminology and Definitions	20 minutes	15
Show and Review Video	40 minutes	16
<b>Break</b>	<b>10 minutes</b>	
Exercise from the Book <i>Interviewing: More than a Gut Feeling</i>	20 minutes	17
Interviewing and the Law Discussion	20 minutes	18
Legal or Illegal Interviewing Questions	20 minutes	22
<b>Break</b>	<b>10 minutes</b>	
Note-Taking Exercise	20 minutes	23
Designing Legal Interviewing Questions	30 minutes	25
What Would You Do?	20 minutes	27
Session Debrief	15 minutes	29

- Preparation Materials

## Trainer's Personalized Session Agenda

You may wish to plan a session that is different from the agendas provided on page 9. Below is a blank agenda to assist you in outlining your session.

<b>Activity</b>	<b>Time</b>	<b>Page</b>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

## Invitation Memo to Participants

This memo can be sent to your participants approximately one to two weeks prior to your training session. Modify the memo to fit your specific needs.

(Today's Date)

TO: (Participant's Name)  
FROM: (Trainer's Name)  
RE: ***You Be the Judge II*** Training Session

As part of the management staff at (company name), you are responsible for interviewing qualified candidates for your department. Due to this responsibility you are invited to attend a (length)-hour session on the potential legal ramifications of the interviewing process. This session, entitled ***You Be The Judge II***, provides useful information on conducting legally defensible interviews in an interesting and easy-to-understand format that will enable you to:

- Ask legal interview questions
- Take objective, job-related notes
- Avoid discrimination
- Hire on job-related issues only
- Avoid questions of age, race, sex, religion, and national origin

This session will be held on (date) in (location) at (time). Please contact me at (ext.) if you have any questions regarding this session.

Enclosed you will find a Pretraining Survey. Please take the time to complete and return it by (date). Your feedback will help us place emphasis on critical areas that are relevant to our organization.

You will also need to bring with you a copy of a job description from your department. If you are going to be interviewing for an open position, bring the job description from that position.

- Preparation Materials

## Trainer's Instructions for the Pretraining Survey and Posttraining Assessment

1. Complete the Invitation Memo to Participants and enclose a copy of the Pretraining Survey (included with the Participant Materials) for each of the participants. Ask them to complete this survey and return it to you at least five days before the training session.
2. Use the Pretraining Survey to evaluate the needs of your participants. This survey will allow you to design the training session to emphasize areas or topics of importance.
3. A Posttraining Assessment is also provided for use at the end of the training session, to determine if your training goals have been met, or if further education and training are necessary.

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# You Be the Judge II

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Training Materials

Trainer's  
Instructions:



## Introducing the Session to Participants

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Time Required: 15 minutes

Materials Needed: Overhead 1

Objective: To set the stage for a positive learning environment and clearly explain the goals and objectives of the session.

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1. Start the session by introducing yourself and paraphrasing the following point:

**Have you ever felt so comfortable with an applicant that the conversation started to veer off on a personal tangent? Maybe you begin to discuss the new neighborhood the applicant lives in, the spouses' job, or even the prospect of children. Seems harmless, right? This type of conversation is often viewed as an "icebreaker" when, in fact, it can lead to a potential lawsuit.**

**Asking the wrong questions may mean a lawsuit against you as the interviewer and your organization.**

2. Show overhead 1 and read or paraphrase the following:  
***You Be the Judge II* can help you create and ask legally defensible preemployment questions. Today, we will be watching a video which will help you learn how to:**
  - **Ask legal interview questions**
  - **Take objective, job-related notes**
  - **Avoid discrimination**
  - **Hire on job-related issues only**
  - **Avoid questions of age, sex, religion, and national origin**
3. Have the participants introduce themselves to the group and share with the group a past interviewing experience.
4. Introduce yourself as facilitator.

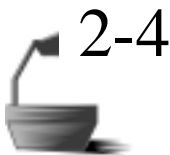
## Interviewing Terminology and Definitions

Time Required: 20 minutes

Materials Needed: Interviewing Terminology and Definitions Worksheet, Overheads 2–4

Objective: To review some of the interviewing terminology and definitions.

Trainer's  
Instructions:



1. Read or paraphrase the following:  
**Whenever the law is involved we can be sure that there will be terms and definitions that we are unfamiliar with. Before we watch the video, *You Be the Judge II*, let's make sure we all have a complete understanding of some commonly used terms relating to the legal side of interviewing.**
2. Distribute the worksheet and then read or paraphrase the following:  
**Take a few minutes to define each of the terms on your worksheet. If you are unsure of a word, leave it blank.**
3. After participants have had several minutes to work on their own, put them into small groups and have them review their definitions again.
4. Once participants have had an opportunity to compare notes, go over the overheads 2–4 with the correct definitions.

● Training Materials

Trainer's  
Instructions:



## Show and Review Video

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Time Required: 40 minutes

Materials Needed: Video—*You Be the Judge II*

Objective: To show the video and discuss as a group.

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1. Prior to viewing the video, take five minutes to discuss the following questions:
  - **Think back to interviews you've had before joining this organization. What questions were you asked that you suspect were illegal?**
  - **What are the ramifications for our organization when an interviewer asks discriminatory questions?**
2. View the video *You Be the Judge II*.
3. Encourage participants to take notes on the ideas presented in the video.
4. After viewing the video, take five to ten minutes to discuss the following questions:
  - **What is the one thing you have learned from this video that you'll apply in the next interview you conduct?**
  - **Explain how not treating all applicants the same can be considered discriminatory.**
  - **Has anyone ever been in an interview when an applicant volunteered information on a subject you suspected or knew was illegal? What was the subject? How did you handle it?**

## Exercise from the Book *Interviewing: More than a Gut Feeling*

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Trainer's  
Instructions:



Time Required: 20 minutes

Materials Needed: American Media How-To Book—*Interviewing: More than a Gut Feeling*, Overhead 5

Objective: To reinforce the legal aspects of interviewing.

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1. Ask participants to turn to page 12 of *Interviewing: More than a Gut Feeling*. As the facilitator, read through page 12 aloud. When complete, ask participants to read pages 38 to 42 on their own. Allow five to eight minutes for reading. Once finished, participants should work through the Self-Check starting on page 43.
2. At the end of the exercise, apply any information that may be specific to your organization.
3. Show overhead 5 and read or paraphrase the following:  
**Page 12 of the book referred to federal legislation that requires the use of legal questions in order to avoid litigation. Let's take a closer look at that legislation, The Civil Rights Act of 1964.**

**The author emphasizes the need for bona fide occupational qualifications (BFOQ) when going through the new-employee hiring process. Keep this book, *Interviewing: More Than a Gut Feeling*, handy as a quick reference on acceptable and unacceptable interviewing questions.**

## Interviewing and the Law Discussion

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Time Required: 15 minutes

Materials Needed: Interviewing and the Law Handout, Overheads 6–8

Objective: To educate participants on the legal compliance required in the interviewing process.

**Note:** You may wish to invite a member of your Human Resources Department to participate in this discussion.

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Trainer's Instructions:



1. Take the time to really know the content of the printed materials. Three overheads are provided to help with the material flow. If possible, have an expert teach the material. Share the information in an open format rather than reading verbatim. Add any other relevant material for your discussion.
2. Provide the Interviewing and the Law Handout prior to the discussion.
3. Read or paraphrase the following:

Is It Legal?

Many people who complete an interviewing course express serious concerns over the legality of their selection interviews. These concerns are legitimate and should be openly addressed. In fact, the vast majority of interviews create some opportunity for legal action because of:

- Lack of preparation.
- Little relationship between the interview questions and the job requirements.
- Failure to use a structured interview plan designed to get job-related information.

The Interview as Test

In addition, federal guidelines concerning the evaluation of selection instruments indicate that the interview is regarded as a test. Any lawsuits involving interviewing techniques will probably refer to guidelines regarding

standards for test validation (*Principles for the Validation and Use of Personnel Selection Procedures, Second Edition*). That is, the interview, as far as the law is concerned, is not different from a test. In fact, an interview is viewed as a test and will be evaluated in a courtroom in the same manner that any test would be evaluated.

### Reliability

Because the interview is a test it is important for it to have the positive qualities associated with a good test. The first of these characteristics is *reliability*. Interviews must generate consistent information for decision making even though different interviewers may be doing interviews. In this regard, research shows that to ensure a reliable interview, interviewers must use a structured process. Having a structured interview means that the interviewer should have a series of preplanned interview questions tied to specific job requirements. Then, the interviewer must gain meaningful information about the person's ability to do the job. Using a structured interview and gaining behavioral examples is quite different from relying on your gut feeling. In fact, reliance on your gut feeling will probably create an unreliable interview and could create legal problems.

### Validity

When using the interview in selection, it is also necessary to consider *validity*. Validity means that the interview measures an applicant's skills for a specific job, or the interview generates information that will predict job performance. However, to date, it has been very difficult to establish good measures of validity of an interview, primarily because of the difficulty of doing research in this area. One can, however, make a case for the validity of an interview if that interview has the following characteristics:

- Is based on job analysis
- Contains questions that provide evidence about important job-related skills
- Systematically relates interview information to a specific job



- Training Materials

## Identifying Protected Classes

Note that laws regarding the employment interview deal primarily with protected classes, which include persons who can be identified by race, color, religion, sex, disability, or national origin. These laws also apply to persons between the ages of 40 and 70. Accordingly, one should be particularly careful to use reliable and valid selection processes when dealing with any individual who falls into a protected class. Persons who do not fall into protected classes have a much weaker legal basis for instituting legal action against an organization because of its employment process.

Both federal and state laws are constantly changing with regard to employee selection. In order to have a current legal perspective on your selection interviews, you should first contact your human resources or personnel department. The department should be in contact with an attorney who specializes in this area.

## Relevant Court Cases

The courts have addressed these topics in many cases. In the case of *United States v. Hazelwood School District* (1976), the court indicated that the interviews did not use clear-cut job-analysis information or stated criteria for selection of a teacher.

In the case of *Weiner v. County of Oakland* (1976), the court decided that questions reflecting bias are unlawful. Consequently, one should avoid asking questions that reflect bias or cause sensitivity to persons because of race, religion, color, sex, physical disability, or national origin.

In addition, the case of *Harless v. Duck* (1977) showed that an interview could have an adverse impact on a person in a protected class and still be legal if the interview is characterized by questions that are related to on-the-job performance.



## The Americans with Disabilities Act

On July 26, 1990, President Bush signed into law the Americans with Disabilities Act. This act is recognized by organizations across the U.S. as the most sweeping civil rights legislation since the Civil Rights Act of 1964. Organizations must comply with the legislation which became effective for employers with 25 or more employees on July 26, 1992, and became effective for employers with 15 or more on July 26, 1994. The intent of the Americans with Disabilities Act (ADA) is to prevent discrimination against qualified people with disabilities in employment, public services, transportation, public accommodations, and telecommunication services.

What the ADA means to organizations and their managers is that they can no longer screen out individuals with disabilities in the hiring process, nor can they discriminate in any area of employment, including compensation, promotions, benefits, or firing. Organizations will no longer be able to conduct preemployment medical screening, with the exception of drug screening, or make preemployment inquiries into the nature of an applicant's disability. Organizations must be aware of physical barriers in their work environment, as well as provide up-to-date, relevant job descriptions to their workers.

● Training Materials

Trainer's  
Instructions:



## Legal or Illegal Interviewing Questions

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Time Required: 20 minutes

Materials Needed: Legal or Illegal Interviewing Questions Worksheet, Slide Chart of Legal and Illegal Interview Questions

Objective: To gain experience identifying lawful and unlawful interview questions.

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1. Read or paraphrase the following:

**Review the questions on this worksheet. Place an “L” by those questions you believe are acceptable and legal to ask during an interview. Place an “I” by those questions you believe are inappropriate and illegal to ask during an interview. If you decide the question is illegal, rewrite the question so it is legal.**

2. Distribute the Legal or Illegal Interviewing Questions Worksheet.

3. After participants have had time to fill out the worksheet, pass out the Slide Charts of Legal and Illegal Interview Questions. Have participants go back over their worksheets and correct their own worksheet using the slide chart.

4. Once everyone has reviewed their worksheet, make sure everyone understands the correct answers. Questions that do NOT suggest bias are 2, 6, 9, 11, 13, and 15.

\* Note to facilitator: Slide Charts of Legal and Illegal Interview Questions can be purchased from American Media. Call your Training Consultant to order.

## Note-Taking Exercise

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Time Required: 20 minutes

Materials Needed: Note Page for Note-Taking Exercise

Objective: To challenge the participants' listening skills and to practice taking factual, objective notes.

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Trainer's  
Instructions:



1. Read or paraphrase the following:  
**We have had an opportunity to read and write legally defensible interviewing questions. Now let's make sure we're comfortable with the documentation process that follows the interviewing questions we ask.**
2. Distribute the Notes Page and ask participants to listen carefully and take notes while you read the following job description only one time through to your group.  
**Markison Corporation is looking to fill a replacement opening for an Employee Relations Specialist. This person must be willing to work a Tuesday-through-Saturday schedule. The hours are from 11:30 a.m. to 8:30 p.m. The position will report to the Manager of Human Resources and have a dotted-line report to the Director of Staffing. Qualified in-house applicants must have six years of related human resources experience, and outside applicants must have seven years related experience and background in the chemical engineering field. An MBA or related masters degree is a plus but not required. Minority status is a must for in-house applicants. This position must be filled by December 31. The new hire should start on or before February 10. Relocation expense will**

- Training Materials

**be covered up to \$15,000. We would like to see seven in-house applicants on Monday, five outside applicants on Wednesday, and be down to three final candidates on Friday. The salary range is \$40,000 to \$52,000, based on experience.**



3. Have participants find a partner and compare factual information from the job description. Allow five minutes for information exchange.

4. Read the following to the entire group and solicit volunteers for the correct answers.

- **What is the name of the company that is hiring for the position?**
- **Is the position a new opening or a replacement?**
- **True or False. This position reports directly to the Director of Staffing.**
- **Is this company looking only at minority-status candidates?**
- **When does the new hire need to start working?**
- **What candidates do they want to see on Wednesday?**
- **How many candidates does the company want in order to make a final decision?**



5. Read or paraphrase the following:

**How did everyone do? If you were able to answer six or more of these questions correctly, your note-taking and listening skills are very good. If you didn't score so well, it is important that you take extra care when listening to candidates during the interview and really hear what is being said.**

## Designing Legal Interview Questions

Time Required: 30 minutes

Materials Needed: Designing Legal Interview Questions Worksheet, Job Descriptions

Objective: To understand how to design legal interview questions.

Trainer's Instructions:



1. Read or paraphrase the following:  
**In the video Dr. Green tells us that the most important thing to remember is to ask questions that directly relate to job requirements. Each of you should have brought a job description from your department. Let's take those out and work on designing some legal interview questions for that position. We are going to design questions for both the technical and performance skills.**

2. Distribute the Designing Legal Interview Questions worksheet.
3. Show overheads 9–10, and read or paraphrase the following:  
**Before you begin designing your questions, let's review the difference between technical and performance skills.**



**Technical skills are skills that call upon specific technical knowledge or experience, such as using specific kinds of machines, using specific kinds of computer hardware and software, or manipulating tools in prescribed and precise ways.**



**Performance skills are the tasks and responsibilities assigned to the position that may relate to managing other employees, making and being responsible for decisions, following established guidelines, following**

- Training Materials

**policies and procedures, dealing with other departments, dealing with the public, and receiving an assignment and reporting its results when completed.**

4. Give participants 15 minutes to design the technical and performance skill questions.
5. If time permits, break participants up into small groups and have them pass their questions around the group. Have participants use their slide chart to check for any questions that may be considered illegal.



## What Would You Do?

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Time Required: 25 minutes

Materials Needed: What Would You Do? Worksheet

Objective: To help participants determine what information they should not use when making a hiring decision.

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Trainer's  
Instructions:



1. Distribute the What Would You Do? Worksheet.
2. Ask participants to read through the situations and underline information that they should not base their hiring decision on, then write two questions they should ask this candidate that would be appropriate.
3. Once they've finished, have participants break into small groups and compare answers. The answers are provided for you below.
  1. The applicant for a forklift position is a 5'3", slightly built woman. She and her two small children have just moved to town. Her application gives her last place of employment as a woolen mill, where she ran the dock for a number of years.
    - What experience do you have working a forklift?
    - Tell me about a time when you had a lot of material on the dock to load. How did you handle it?
  2. This applicant for your secretarial position has been an office manager for 10 years. Her experience has included many of the tasks you need done, plus a few that would make life a lot easier around the office. Something is bothering you, though. For a woman with that much experience, she looks very young. In fact, this Asian woman looks like she is 19. Her references are going to be hard to check because most of them are in Vietnam.
    - In the event that you are hired, we are going to need to see proof that you are eligible to work in the United States.
    - Tell me about a time when you had many tasks to do. How did you prioritize them?

- Training Materials

3. This applicant for your accounting manager opening looks somewhat promising. His education is excellent, and his resume shows long-term commitment to employers. However, his work record has huge time gaps unaccounted for. He is in a wheelchair, and you wonder about mobility issues in your accounting department, which contains a large and cluttered work area.
  - Is there any reason why you couldn't perform any of the job functions on the job description?
  - What were your job responsibilities at your last job?
4. This applicant for director of research and development has the vast experience you are looking for. He is an older man, and you wonder how far from retirement he is and if he has the enthusiasm needed to deal with the ups and downs of this position. You also want someone who will commit to this position for many years.
  - What would be your long-range plans if you were to get this position?
  - This position has a lot of ups and downs and takes an enormous amount of energy. Can you give me a specific example in your last job where you were being overloaded with projects coming at you from all sides? How did you handle it?

## Session Debrief

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Time Required: 10 minutes

Materials Needed: Posttraining Assessment, Session Evaluation

Objective: To provide feedback, information, and transferred knowledge to participants.

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Trainer's  
Instructions:



1. Distribute the following documents to participants:
  - **Posttraining Assessment**
  - **Session Evaluation**
2. Be sure to allow a few minutes to answer any questions that participants may have about the legal side of interviewing.

### Answers to the Posttraining Assessment

1. **True or False.** The following statement is not an appropriate interviewing question. “You said you were in the Navy for a number of years. Tell me a little about what you learned from that experience.”
2. **True or False.** It is acceptable to ask about an applicant’s spouse to break the ice during an interview.
3. **True or False.** Bob is interviewing someone with a hearing impairment. It is OK for Bob to hand the applicant a job description and ask the applicant if he or she can perform all of the essential functions.
4. **True or False.** It is important to listen to your gut feeling about a candidate more than it is to listen to what the candidate has to say.
5. **True or False.** Notes from an interview can be subpoenaed if a case is brought against your company for discriminatory hiring practices.
6. **True or False.** The best way to make sure your questions are legal is to ask only job-related questions.
7. **True or False.** If you think an applicant is too young to be working, it is acceptable during the interview to ask them how old they are.
8. **True or False.** There are no jobs that are gender specific. Males and females can apply for any position. *Bathroom attendants are considered gender-specific jobs.*

- Training Materials

Notes:

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# You Be the Judge II

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Participant Materials

# Pretraining Survey

**Instructions:** The questions below highlight key interviewing skills. Consider the questions and write your answers in the space provided.

1. What topics are illegal to discuss during the interview process?
2. What is an illegal question? Briefly define and then write a short example.
3. Among the following, which are illegal questions to ask during an interview?
  - a. “You mentioned living on Third and Locust. Isn’t that a German area?”
  - b. “Have you ever been arrested?”
  - c. “In case of an emergency, what are the names and addresses of the people we should notify?”
  - d. A and C are illegal
  - e. All are illegal
4. What is the purpose of keeping notes from the interviews you conduct?
5. Are notes from interviews considered “discoverable” information for a lawsuit?
6. **True or False.** If the interviewer mentions an illegal topic first, then it is OK to continue discussing it.
7. **True or False.** It is important to listen to your gut feeling about a candidate more than it is to listen to what the candidate has to say.
8. **True or False.** If you think applicants are too young to be working, it is acceptable during the interview to ask them how old they are.

# Interviewing Terminology and Definitions

**Instructions:** Review the terms below and write your definition of each term as it applies to the legalities of interviewing.

**1. Adverse Impact**

**2. Behavior-Based Interviewing**

**3. Bona Fide Occupational Qualifications (BFOQ)**

**4. Competencies**

**5. Discriminatory Questions**

**6. Disparate Treatment**

**7. Performance Skills**

**8. Protected Classes**

**9. Technical Skills**

## Interviewing and the Law

There are many important legal guidelines to follow when preparing for an interview. Even the well-planned interview can be legally questioned. Consequently, each interviewer must attempt to conduct a reliable and valid interview, and to communicate effectively the skills required for the job. Follow these guidelines to protect yourself and your organization.

Opportunities for legal action in the interview:

- Lack of preparation
- Questions unrelated to the position
- Lack of structure

Is your interview valid?

- Is it based on a thorough job analysis?
- Do question probe for job-related skills?
- Is the interview information related to job requirements?

Avoiding asking questions about:

- Sex
- Race
- Color
- Religion
- National Origin

- Disability
- Age

## Legal or Illegal Interviewing Questions

**Instructions:** Place an “L” before the questions you feel you can legally ask in an interview and an “I” before those you believe are illegal to ask in an interview.

1.    \_\_\_    How long have you lived in this state? Is your family here?
2.    \_\_\_    How long were you in the military?
3.    \_\_\_    Is English your native language?
4.    \_\_\_    Is Johnson your maiden name?
5.    \_\_\_    Are you the main “breadwinner” in your family?
6.    \_\_\_    What kind of work did you do from 1985 to 1988? There’s a gap on your resume for those years.
7.    \_\_\_    Where does your husband/wife work?
8.    \_\_\_    You’re on crutches. Is that a permanent condition?
9.    \_\_\_    What university courses have you taken that might apply to this position?
10.   \_\_\_    I’m not familiar with eastern religions. What holidays do you celebrate that we don’t?
11.   \_\_\_    You said your father works for this company. What is his name?
12.   \_\_\_    This job requires some traveling. Is that going to cause troubles at home for you?
13.   \_\_\_    Do you belong to any organizations that you feel would enhance your ability to do this job?
14.   \_\_\_    Do you have a green card?
15.   \_\_\_    You said you were in the Navy for a number of years. Tell me a little about what you learned from that experience.

# Note Page for Note-Taking Exercise

# Designing Legal Interview Questions

**Instructions:** Develop technical and performance skills questions based on a job description.

Technical Questions:

- 1.
- 2.
- 3.
- 4.
- 5.

Performance Questions:

- 1.
- 2.
- 3.
- 4.
- 5.

## What Would You Do?

**Instructions:** Read through the situations and underline information that you believe should not be used to base a hiring decision on, then write two questions to use that would be appropriate.

1. The applicant for a forklift position is a 5'3", slightly built woman. She and her two small children have just moved to town. Her application gives her last place of employment as a woolen mill, where she ran the dock for a number of years.

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2. This applicant for your secretarial position has been an office manager for 10 years. Her experience has included many of the tasks you need done, plus a few that would make life a lot easier around the office. Something is bothering you, though. For a woman with that much experience, she looks very young. In fact, this Asian woman looks like she is 19. Her references are going to be hard to check because most of them are in Vietnam.

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3. This applicant for your accounting manager opening looks somewhat promising. His education is excellent, and his resume shows long-term commitment to employers. However, his work record has huge time gaps unaccounted for. He is in a wheelchair, and you wonder about mobility issues in your accounting department, which contains a large and cluttered work area.

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4. This applicant for director of research and development has the vast experience you are looking for. He is an older man, and you wonder how far from retirement he is and if he has the enthusiasm needed to deal with the ups and downs of this position. You also want someone who will commit to this position for many years.

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## Posttraining Assessment

**Instructions:** Read the statements and determine whether the statement is true or false. Circle your answer.

1. **True or False.** The following statement is not an appropriate interviewing question. “You said you were in the Navy for a number of years. Tell me a little about what you learned from that experience.”
2. **True or False.** It is acceptable to ask about an applicant’s spouse to break the ice during an interview.
3. **True or False.** Bob is interviewing someone with a hearing impairment. It is OK for Bob to hand the applicant a job description and ask the applicant if he or she can perform all of the essential functions.
4. **True or False.** It is important to listen to your gut feeling about a candidate more than it is to listen to what the candidate has to say.
5. **True or False.** Notes from an interview can be subpoenaed if a case is brought against your company for discriminatory hiring practices.
6. **True or False.** The best way to make sure your questions are legal is to ask only job-related questions.
7. **True or False.** If you think applicants are too young to be working, it is acceptable during the interview to ask them how old they are.
8. **True or False.** There are no jobs that are gender specific. Males and females can apply for any position.

# Session Evaluation

Please circle the number that best describes your evaluation of the training session.

	<b>Strongly Agree</b>	<b>Agree</b>	<b>Uncertain</b>	<b>Disagree</b>	<b>Strongly Disagree</b>
This training program concentrates on the importance of a legally defensible interview.	5	4	3	2	1
This training program helped me understand the importance of a legally defensible interview.	5	4	3	2	1
As a result of this program, I am more confident in <b>MY</b> ability to ask job-related, legally defensible interview questions.	5	4	3	2	1
The objectives of the program were clearly presented.	5	4	3	2	1
Opportunities to ask questions and discuss issues were sufficient.	5	4	3	2	1
The session was well organized.	5	4	3	2	1

The best part of the program was: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This program could be improved by: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Additional comments: \_\_\_\_\_

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I would recommend this session to others (circle one).

Yes

No

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# You Be the Judge II

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O v e r h e a d s

## Learning Objectives

Upon completion of the video training program *You Be the Judge II*, you will be able to:

- Ask legal interviewing questions
- Take objective, job-related notes
- Avoid discrimination
- Hire on job-related issues only
- Avoid questions of age, race, sex, religion, and national origin

## Interviewing Terminology and Definitions

1. Adverse Impact – Employment practices that appear neutral but have a discriminatory effect on a protected group.
2. Behavior-Based Interviewing – Interviewing based on past experience that can be used to describe the presence or absence of a skill. The job candidate thinks of a specific event that relates to questions that have been asked by the interviewer.
3. Bona Fide Occupational Qualifications (BFOQ)—The Civil Rights Act permits discrimination on the basis of gender, religion, or national origin (but not race or color), if such factors can be shown to be bona fide occupational qualifications reasonably necessary for the operation of the business.

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4. Competencies – A written description of measurable work habits and personal skills used to achieve a work objective.
  5. Discriminatory Questions – Federal legislation mandates that organizations cannot discriminate against an applicant because of age, sex, marital status, ethnic origin, religious preference, sexual preference, or disabilities.
  6. Disparate Treatment – Protected groups are intentionally treated differently from other employees.
  7. Performance Skills – **W**ork habits that reflect on areas such as coping, creativity, versatility, interpersonal relations, etc.

8. Protected Classes – Groups protected by EEO designations include women, African Americans, Hispanics, Native Americans, Asian Americans (including Pacific Islanders), people age 40 and older, the disabled, and veterans. In some instances, protected groups may include white males.
9. Technical Skills – Technical skills are skills that call upon specific technical knowledge or experience, such as using specific kinds of machines, using specific kinds of computer hardware and software, or manipulating tools in prescribed and precise ways.

## The Civil Rights Act of 1964

The employment section of the Civil Rights Act of 1964 is Title VII.

- Title VII prohibits discrimination based on race, color, religion, sex, and national origin.
- The law applies to all private sector employers with 15 or more employees and to labor unions.
- The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing Title VII of the Civil Rights Act of 1964.

## Interviewing and the Law

Interviewers create legal action because of:

- Lack of preparation
- Little relationship between the interview questions and the job requirements
- Failure to use a structured interview plan designed to get job-related information

## Interview Validity

- Is based on a job analysis
- Contains questions that provide evidence about important job-related skills
- Systematically relates information to a specific job

## Court Cases

- United States v. Hazelwood Schools (1976)
- Weiner v. Country of Oakland (1976)
- Harless v. Duck (1977)

## Technical Skills

Technical skills are skills that call upon specific technical knowledge or experience, such as using specific kinds of machines, using specific kinds of computer hardware and software, or manipulating tools in prescribed and precise ways.

## Performance Skills

Performance skills are the tasks and responsibilities assigned to the position that may relate to managing other employees, making and being responsible for decisions, following established guidelines, following policies and procedures, dealing with other departments, dealing with the public, and receiving an assignment and reporting its results when completed.

Notes: