THE CHAIRMAN

U.S. MERIT SYSTEMS PROTECTION BOARD
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January 2000

The President
President of the Senate
Speaker of the House of Representatives

Sirs:

In accordance with the requirements of 5 U.S.C. 1204 (a)(3), it is my honor to submit this Merit Systems Protection Board report titled Restoring Merit to Federal Hiring: Why Two Special Hiring Programs Should be Ended.

This report discusses two special hiring programs created in 1981 by a Federal court consent decree that settled a lawsuit against the Federal Government. The lawsuit alleged that an employment test the Government used at that time for more than 100 entry-level professional and administrative occupations had an adverse impact upon African-American and Hispanic job applicants. The two hiring programs on which this report focuses, the Outstanding Scholar and Bilingual/Bicultural Programs, were created as a partial and temporary remedy.

In our report we show that today, some 18 years after the consent decree was approved, the hiring programs it created are no longer needed to achieve the goal of a representative workforce. We also show that both special hiring programs conflict with the first statutory merit system principles requirement that hiring be based on merit. In addition, we provide evidence that the Outstanding Scholar Program has been severely misused in recent years. Finally, we establish that the terms of the consent decree, which was intended to operate only until new employment tests could be developed to replace the one challenged in the 1981 lawsuit, have themselves become an impediment to the development of such replacement tests.

This report presents a strong case for ending the consent decree and the two hiring programs it created, and we present a recommendation to that effect. We also suggest ways to further improve how the Government assesses candidates for jobs in entry-level professional and administrative occupations.

Respectfully,



Ben L. Erdreich

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Executive Summary

Since its creation in 1883, the Federal civil service has been distinguished by merit-based hiring. However, since 1981 Federal managers have been permitted to use two court-approved hiring mechanisms that are not based strictly on merit. These mechanisms were part of a consent decree that settled a 1981 civil lawsuit challenging the Governments use of a written test for entry-level professional and administrative jobs because of that tests adverse impact on African-Americans and Hispanics.

The two hiring mechanisms that the consent decree adopted the Outstanding Scholar and Bilingual/Bicultural hiring authorities were intended to be used as short-term supplemental hiring tools while better, less biased assessment tools were being developed. Today, 18 years later, the consent decrees hiring mechanisms remain in use despite employment conditions that have changed so much that these non-merit-based authorities are no longer necessary to achieve a representative Federal workforce. In this report the U.S. Merit Systems Protection Board (MSPB or the Board) examines these hiring authorities in the context of the current hiring environment. We also offer recommendations for replacing the consent decrees mechanisms with more contemporary hiring tools in order to restore merit-based hiring to an important group of Federal jobs.

This report is about entry-level hiring for professional and administrative jobs. It addresses concerns the Board has with two special hiring methods, or authorities, that have been in use since they were approved by a Federal court in 1981 as part of a consent decree that settled a lawsuit, *Angel G. Luevano et al., Plaintiffs, v. Alan Campbell, Director, Office of Personnel Management, et al*. That lawsuit challenged the use of a written examination known as the Professional and Administrative Career Examination or PACE, asserting that the PACE had an adverse impact on African-American and Hispanic job seekers. Until that time, the PACE had been a key tool for entry-level hiring into more than 100 professional and administrative occupations.

Luevano Provisions

The *Luevano* consent decree allowed continued use of the PACE only until agencies or the Office of Personnel Management (OPM) developed valid alternative examinations. The consent decree established procedures for monitoring hiring into occupations subject to the PACE, and provided guidelines for creating replacement examinations. It also called for the newly created Outstanding Scholar and Bilingual/Bicultural hiring authorities to be operated under court supervision as supplements to competitive hiring under PACE or the examinations that would eventually replace the PACE. Finally, it brought the already existing Cooperative Ed-

ucation Program under court supervision as the third hiring mechanism adopted by the consent decree.

The *Luevano* decree anticipated a life of about 5 years for this package of hiring methods and the court s supervision over them. This estimate was based on an expectation that within a reasonable time one or more competitive examinations would replace the PACE. However, not until 1990 did OPM introduce the Administrative Careers with America (ACWA) examination as a comprehensive replacement for the PACE. In the meantime, the Outstanding Scholar and Bilingual/Bicultural hiring authorities became entrenched in managers inventories of hiring tools and their genesis as temporary supplements to competitive hiring faded from memory.

Transformed Environment

Today the *Luevano* consent decree and the two hiring authorities it introduced continue in force, and the consent decree appears to have contributed to the goal of ensuring representativeness in hiring for jobs once filled through the PACE. However, since 1981 there has been a sea change in how Federal agencies recruit and examine job applicants. Centralized examining prevailed when the consent decree was approved; decentralization is paramount today. Laws such as the Government Performance and Results Act; initiatives such as the Administrations National Performance Review (now the National Partnership for Reinventing Government); and technological changes such as the exponential growth of the Internet have been catalysts for decentralization and have contributed to a significant transformation in the Federal employment system.

In this environment, competitive hiring and other hiring methods discussed in this report serve well the goal of ensuring a representative workforce, and do so within the more desirable context of hiring based on merit. Minority groups are now well represented in hiring for Federal professional and administrative jobs, but not because of the consent decree. In recent years competitive examining has proven a better vehicle than the consent decrees hiring authorities for bringing African-Americans and Hispanics into covered occupations. Both African-Americans and Hispanics have been hired annually into professional and administrative jobs at rates equal to or better than their representation in the civilian labor force in the most recent year for which such data are available.

Further, technological advances have opened the door to better, easier-to-administer written tests that can be used for competitive examining and have less adverse impact on applicant groups than tests used two decades ago. Because merit-based hiring tools can be used with the same desirable results as non-merit-based tools, the Board concludes that there is no longer a need for the Outstanding Scholar or the Bilingual/Bicultural hiring authorities.

The Board also concludes that conditions are so changed that the reporting and oversight provisions of the consent decree are not needed either. Mechanisms have been introduced to hold agencies and managers accountable for their hiring decisions including decisions that affect the racial and ethnic mix of the workforce and tools have been developed to measure results and establish managers accountability.

Specific Concerns

A key Board concern with both of the hiring authorities introduced by the consent decree is their lack of any mechanism to distinguish who are the best among the eligible candidates for a given job. With respect to the Outstanding Scholar hiring authority, we have additional concerns: (a) its eligibility criteria a high baccalaureate grade point average or upper rank in class are highly questionable as valid predictors of future job performance; (b) it unnecessarily denies employment consideration to a large segment of the applicant pool who meet basic job qualification requirements but not the outstanding scholar criteria; and (c) over time it has become a primary hiring tool in a number of agencies, contrary to its purpose as a supplement to competitive hiring.

With respect to the Bilingual/Bicultural hiring authority which allows the Government to noncompetitively hire candidates if they meet minimum jobs qualification requirements and also have Spanish language abilities or knowledge of the Hispanic culture we found that by using competitive, merit-based hiring tools, the Government has been able to hire Hispanic job candi-

dates in representative numbers for jobs formerly filled through the PACE. This is true even in situations where it appears that consideration was not restricted, nor extra credit given, to candidates with bilingual or bicultural qualifications. Consequently, we believe that the Bilingual/Bicultural hiring authority is unnecessary and can be replaced by competitive hiring supported by tailored recruiting strategies and accountability measures that ensure fair consideration of all job applicants.

Finally, the Board perceives that the mere existence of the *Luevano* consent decree and its hiring authorities effectively discourages achievement of one of the goals of the consent decree development of replacement examinations for the PACE. As long as the Outstanding Scholar hiring authority is available, many agencies have little incentive to develop competitive examinations and find ways to use them. Likewise, as long as the Bilingual/Bicultural hiring authority exists, agencies need not bother to use competitive procedures that are already available to hire for jobs that require knowledge of foreign languages or cultures. Both *Luevano* consent decree hiring authorities offer managers speed, ease of use, and control over the hiring process compelling arguments for their use from the viewpoint of hard-pressed managers. However, the statutory merit system principles require protecting the public's interest in a merit-based civil service. Hiring the best candidate for a particular job frequently is neither a quick nor an easy proposition.

Recommendations

To restore merit to Federal hiring for entry-level professional and administrative positions:

The Attorney General of the United States should:

Petition the district court to terminate the *Luevano* consent decree in its entirety, to include abolishment of the Outstanding Scholar and the Bilingual/Bicultural hiring authorities.

Once the consent decree is terminated, the Director of the Office of Personnel Management should:

Publish guidance concerning the abolishment of the Outstanding Scholar and the Bilingual/Bicultural hiring authorities.

In competitive hiring, emphasize the use of bilingual or bicultural job requirements as selective factors or quality ranking factors whenever appropriate. Given the increasing proportion of the U.S. population that is Hispanic, agencies may be able to identify more positions in which knowledge of the Spanish language or Hispanic culture can be used as selective or quality ranking factors in order to hire Federal employees who can better serve the Hispanic population. Emphasis on this approach may also encourage agencies to make better use of selective factors and quality ranking factors to meet bilingual or bicultural needs involving other languages and cultures.

Seek, on an interim basis, to increase the availability of alternative examining processes such as the ACWA self-rating schedule, and promote their use among agencies until better written tests are more widely available.

Look for ways to make better use of the ACWA written test of cognitive ability and to implement new competitive examining processes for former PACE positions.

Focus attention on developing and improving employee selection tools for managers.

Remind departments and agencies of the steps they must follow if they wish to develop their own examining tools for filling former PACE positions, and assist interested organizations in doing so.

Encourage the continued and if possible expanded use of the Cooperative Education Program. Of the hiring mechanisms included in this study, this one uses one of the best predictors of future job performance (i.e., actual job performance), was foremost in terms of the percentage of its hires who are African-American, and was the most balanced with regard to the sex of new hires.

Assist departments and agencies in developing accountability models that address the requirements of the first statutory merit system principle (i.e., recruiting qualified individuals from appropriate sources in an endeavor to achieve a workforce from all segments of society; and selecting solely on the

basis of relative ability after fair and open competition that provides equal opportunity to all).

Department and agency heads should:

Ensure that their managers use the best and most practicable tools to fill jobs. With fewer positions being filled in many agencies, and with emphasis on the Federal workforce working better and at less cost to taxpayers, managers should take a long-term view of each entry-level hiring opportunity. This means knowing as much as possible about each candidate s qualifications for the job and making selections that are supportable on the basis of both relative merit and representativeness, as envisioned by the first merit system principle.

Develop and implement accountability models that address the requirements of the merit system principles, and hold managers accountable for the appropriateness and fairness of their hiring practices and decisions.

Overview

Purpose and Methodology

The heart of any merit system arguably is how it hires its workforce. This is as true for the civil service system of the U.S. Government as for any other system that employs, rewards, and advances individuals based on merit.

Critical to this enterprise are the examining and selection methods that the Government uses to operate its hiring systems. In accordance with its responsibility to monitor the health of the civil service, the U.S. Merit Systems Protection Board undertook a study of the kinds of examining and selection methods the Government uses to bring new employees into its entry-level professional and administrative jobs. We examined both merit-based hiring tools and special tools that are not merit-based, but instead were created to meet special requirements to increase minority representation in the workforce. In the course of the study we found that some of those special tools are not serving their intended purpose, and that merit-based tools accomplish that purpose well. In a merit system of Government, that is an important issue, and that problem became the focus of this report.

The study included hiring data for entry-level administrative and professional positions for the five-year period 1993-1997, as well as the base year 1992. The source of the data is the Government s Central Personnel Data File which is administered by the U.S. Office of Personnel Management, the staff of which we consulted with throughout the data collection and analysis phases of the project. We supplemented data analysis with focus group meetings in which Federal human resources officials participated, and we interviewed individuals with particular knowledge of the issues explored in the report. Appendix 1 provides additional details about the study purpose and methodology.

Background

Until well into the 1980 s Federal hiring included many centrally-administered steps. Although agencies had the authority to select and place candidates, examining and referring job applicants were actions largely conducted by the central personnel agency (the Civil Service Commission, or CSC, and its successor, the Office of Personnel Management, or OPM). Through 1981, examining for more than 100 entry-level professional and administrative occupations took the form of a written test called the Professional and Administrative Careers Examination, or PACE. The use of this centralized test was intended to provide consistent measurement of job candidates through valid criteria, and to ensure referral of the candidates most likely to succeed on the job. However, the significantly lower passing rates of African-American and Hispanic job seekers, compared to the passing rates of other race and national origin (RNO) groups, led to a civil lawsuit against use of the PACE charging adverse impact. That lawsuit, *Angel G. Luevano et al, Plaintiffs, v. Alan Campbell, Director, Office of Personnel Management, et al.*, was settled through a consent decree that:

> Set the groundwork for ending the PACE and replacing it with other examinations;
>
> Authorized the use of three noncompetitive hiring methods (authorities) as supplements to competitive hiring; and

Established reporting and oversight mechanisms through which the court would ensure enforcement of the consent decree during its life.

The court envisioned a finite life for the consent decree — five years but renewable — during which time it expected the PACE to be replaced with one or more new examinations.[1] However, the consent decree remains in effect some 18 years later, and the parties to the decree have not reached agreement on whether the two Governmentwide examinations[2] that OPM developed to replace the PACE do indeed meet the decree's requirements for replacement examinations.

Two of the hiring methods authorized by the consent decree, the Outstanding Scholar and the Bilingual/Bicultural Programs, were new programs adopted especially to improve hiring of African-Americans and Hispanics into covered positions, and thereby overcome the adverse impact the two groups had experienced as a consequence of the PACE.[3] This was made possible by exempting the programs from merit-based hiring requirements. Although not particularly desirable for a system centered on merit hiring, the situation was acceptable because the two programs were intended only to supplement normal competitive hiring practices, the programs were to be used under court supervision, and the life of the consent decree under which the programs operated was expected to be relatively short.

Now, however, with the consent decree heading towards its third decade, the Board is concerned about the continued existence of these programs that operate outside the bounds of merit hiring. Our concern is not merely that the life of the consent decree has not turned out to be short after all. Rather, there is evidence showing that hiring through merit-based, competitive processes is achieving the purposes that led to the creation of the special hiring authorities, rendering the noncompetitive, non-meritorious processes unnecessary. Further, the special authorities that the consent decree created are not achieving their intended purposes. For example, as the Board has noted previously,[4] white women came to be the primary group hired through the Outstanding Scholar Program, and other ethnic and racial groups were hired more often through this method than were African-Americans or Hispanics.

It is the Board's position that between 1981 and today, employment conditions have so changed — and the representation of African-Americans and Hispanics so improved in the jobs covered by the consent decree — that neither these special hiring authorities nor the reporting and monitoring provisions contained in the consent decree are needed or justified. Our analyses of the 5-year period 1993-1997 show that competitive hiring and three other hiring methods that this report examines now yield proportionate representation of African-Americans and Hispanics in the workforce, and generally do a better job in that respect than the two special *Luevano* authorities. Therefore, with the intentions of the consent decree now satisfied, the Board sees no reason for continuing the two non-merit-based hiring authorities established by the decree, and urges an end to them and to the monitoring and reporting machinery the decree created.

Ways to Hire

In order to make informed judgments about the programs created by the *Luevano* consent decree, it is important to understand them within the context of the other ways the Federal Government hires new employees. In this report we identify six hiring methods — including the consent decree's Outstanding Scholar and Bilingual/Bicultural Programs — that Federal managers use to fill entry-level jobs for 112 professional and administrative occupations. The six methods are summa-

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[1] We provide additional information about the *Luevano* consent decree in appendix 2, and in appendix 3 we provide a short history of Federal hiring, with a focus on professional and administrative occupations.

[2] These are the Administrative Careers With America written test that was first used in 1990 and remains in OPM's inventory of assessment tools, but has not been used since November 1994, and the similarly named 157-question Administrative Careers With America self-rating schedule that is the instrument OPM now uses when it examines for former PACE positions.

[3] The third hiring method, the Cooperative Education Program, had existed for some time prior to the consent decree. The program allows agencies to employ students and ultimately to give them permanent appointments to the Federal service if their work is of sufficiently high quality and they complete their degree requirements.

[4] U.S. Merit Systems Protection Board, "Entering Professional Positions in the Federal Government," Washington, DC, March 1994.

rized below (additional information about each of them is presented in appendix 4).

1. Competitive hiring, which is distinguished by a process for (a) rating candidates, or assessing them against job-related criteria; (b) ranking candidates, or listing them in order of their relative knowledge, skill, and ability to perform the work; and (c) referring candidates in rank order, with upward adjustments to the rank order of individuals eligible for veterans preference. Competitive hiring is subject to the statutory Rule of Three, meaning that managers must select from among the top three candidates referred. Veterans preference rules ensure that no nonveteran is selected over an equally or higher ranked veteran. Competitive hiring also allows managers to require job candidates to possess in addition to minimum qualifications for the job certain specific capabilities such as bilingual skills when those capabilities are essential to satisfactory job performance. These additional job requirements are referred to as selective factors. A related technique permitted under competitive hiring is the use of quality ranking factors which are candidate characteristics or qualifications over and above minimum qualifications that would enhance job performance and for which candidates can be awarded extra credit in the rating and ranking process. Competitive hiring procedures are the key way in which the Government upholds the first statutory merit system principle s ideal of hiring based solely on relative knowledge, skill and ability.
2. There are three hiring methods that are exempt from competitive hiring requirements, but have a merit basis for their hiring decisions. The merit basis of these methods derives from the fact that either the selected individuals undergo some sort of job-related examination before receiving a permanent appointment, or the selected individuals receive a hiring advantage established by law to meet a public policy goal that is blind with respect to race, national origin, gender, or other prohibited employment factor. These three methods are:

   Cooperative Education Program.[5] This program allows students enrolled in 2- or 4-year college programs to work for Federal agencies while enrolled in college. Through a formal agreement between an agency and a college, the work experience is treated as part of the student s overall educational program. While participating in the program a student serves on an excepted service appointment. Upon completion of all requirements of his or her academic program, a student may without competition be converted to a competitive service appointment at the discretion of the agency.[6] Neither veterans preference nor the Rule of Three applies to these conversions. The conversion to a permanent, competitive service appointment is not guaranteed when the student enters the program. Rather, the agency s decision about converting a cooperative education participant is based on observation and assessment of the individual s performance on the job. The professional literature suggests a high level of validity for this type of selection criterion.[7]

   Veterans Readjustment Appointments, or VRA, Program. This program permits Federal agencies to hire qualified veterans into the competitive service without competition. Veterans are eligible for these appointments for specified time periods following their separation from the armed forces.[8] Agencies decide whether the applicant meets experience and education requirements for the job

[5] This program has been renamed and now is part of the Student Educational Employment Program Student Temporary Employment Program authorized by OPM s regulations (5 CFR 213.3202), but throughout this report we refer to it as Cooperative Education, or Co-op.

[6] In Federal Government terminology, a method of hiring that does not require competition is called either an authority for noncompetitive appointment to the competitive service (in cases where certain eligibility criteria must be met in addition to meeting minimum job qualifications) or a direct hire authority (usually justified by an extreme shortage of candidates). Both the Cooperative Education Program and the Veterans Readjustment Appointments Program fit the first category.

[7] Richard Wagner, Intelligence, Training, and Employment, *American Psychologist* 52, October 1997, pp. 1059-1069.

[8] The eligibility of veterans with service-connected disabilities of 30 percent or more is not time-limited.

and whether to require an examination. Individuals originally are hired for a 2-year period, and a permanent appointment is not guaranteed. Following 2 years of observing the individual s performance on the job, the agency decides whether to make the appointment permanent through noncompetitive conversion. This is essentially the same assessment process that is applied to cooperative education conversions and, as we noted, uses a selection criterion for which the professional literature suggests a high level of validity.

An Other category. This is a residual category we established for the purposes of this report. It includes a large number of special appointing authorities established by statute, executive order, or civil service rule. Some of these authorities permit noncompetitive appointments into the competitive service. An example of the special authorities included in this category is the authority to noncompetitively appoint former Peace Corps Volunteers to competitive service positions. No single authority in this category represents a large number of appointments, but collectively they do account for a relatively large number of hires each year. Appointments in this category are made without applying veterans preference or the Rule of Three. The agency making the appointment determines the individual s qualifications for the job by evaluating the training and work experience the individual gained in whatever job established the eligibility for the appointment. (This assessment method also is widely used by Federal agencies for hiring and internal selection under merit promotion programs.)

3. The two *Luevano* consent decree hiring authorities intended to supplement competitive hiring:

The Outstanding Scholar hiring authority. This hiring authority uses baccalaureate grade point average (GPA) or class standing as eligibility criteria for appointment. Like some of the other hiring methods described here, this authority operates without regard to veterans preference or the Rule of Three. It allows candidates who meet the eligibility criteria to be directly hired without competition to determine who, among the eligible candidates, are the best qualified. In this respect also, the Outstanding Scholar hiring authority is similar to other noncompetitive authorities we described. However, this authority differs greatly from the Cooperative Education Program and the VRA authority in that it allows eligible candidates to be appointed directly to permanent positions in the competitive service without a test period during which an agency can observe and assess performance. And, unlike the assessment period provided in other programs, GPA and class standing are not viewed in the professional literature as very predictive of future job performance.[9] More information on this hiring approach is provided in appendix 5.

The Bilingual/Bicultural hiring authority. This hiring authority is used when a job requires or performance in the job could be enhanced by proficiency in Spanish and English or knowledge of both Anglo and Hispanic cultures. In such situations this hiring authority permits the appointments of individuals who achieve merely passing scores on an appropriate examination if they have the appropriate bilingual ability or bicultural knowledge. As is the case with Outstanding Scholars, appointments under this authority are made without regard to veterans preference, the Rule of Three, or the relative knowledge, skills, or abilities of the individual compared to other candidates. The appointments are made directly to permanent jobs in the competitive service without a period during with employee performance can be assessed.

[9] P. Cohen, College Grades and Adult Achievement, A Synthesis, *Research in Higher Education*, vol. 20, 1984, pp. 281-293.

Changed Conditions

Decentralization of the Federal personnel system, and the accompanying widespread delegation of personnel authorities to Federal agencies have made managing and monitoring Federal hiring a very different proposition from what Government managers faced in 1981 when the Outstanding Scholar and Bilingual/Bicultural Programs were created. Putting personnel authorities in the hands of agency managers has focused attention on the need for workable ways to hold them directly accountable for the results of their personnel decisions.

While being held accountable for the work of their organizations has always been part of the environment for Federal managers, how accountability was accomplished has not always been well defined. At the time the Court approved the *Luevano* consent decree, and continuing for more than 10 years afterward, most accountability measures focused on numbers or other measurements that provided evidence of organizational activity but often told little or nothing about what the organization had really accomplished. Further, there was little emphasis on measuring accomplishments from multiple points of view, including that of the customers. When coupled with the highly centralized examining process that dominated Federal hiring at the time the PACE was in use, this environment left many loopholes in the efforts to hold Federal managers accountable for hiring decisions.

In such an environment the conditions and terms of the *Luevano* consent decree, and the special hiring authorities the decree created, represented a reasonable solution to the problem of underrepresentation of African-Americans and Hispanics. The decrees reporting, tracking, and oversight provisions helped measure progress against its goals, and the hiring authorities provided means within Federal managers control to achieve those goals. The consent decree represented a way to hold agencies and managers accountable for their actions in dealing with minority representation, it provided a means to measure the effects of managers hiring decisions, and it placed strict requirements on implementation of new hiring examinations.

But the intervening years have brought a sea change in accountability. The Administrations initiative in the early 1990s to redefine and reorient Federal executive branch agencies (begun as the National Performance Review and subsequently renamed the National Partnership for Reinventing Government) included a new emphasis on accountability. Legislation in the form of the Government Performance and Results Act and other good Government laws further expanded this emphasis and mandated ways to measure performance and hold each level of an organization accountable for its successes and failures. Consequently, Federal agencies now are legally required to define their missions in terms of outcomes and develop strategic plans to accomplish their missions with improved effectiveness and efficiency. A key element in those strategic plans is the development of performance indicators ways to measure performance and assign accountability for all important tasks. Hiring is such a task. Consequently, the stage has been set for the normal processes and machinery of Government to hold managers and other agency officials accountable for matters such as their hiring decisions and the demographic patterns those decisions yield.

The fact that accountability requirements are now firmly established as part of the Federal hiring system supports our assertion that the *Luevano* consent decree is no longer necessary to shape the actions of agencies and managers. Further, because the consent decree places stringent requirements on the procedures to be followed in creating new competitive examinations and because the decree mandates the use of the Outstanding Scholar and Bilingual/Bicultural Programs in certain circumstances, it has the unintended effect of discouraging what it was intended to spur the development of new examinations. Thus, as the situation has unfolded over the years, the consent decree has made restoration of merit-based hiring through written examinations more difficult, something that the parties to the decree never intended.

Hiring Practices and Outcomes

Agencies Hiring Practices

During the study period, the number of new hires into entry level professional and administrative jobs formerly filled through the PACE grew slightly each year, from a low of 4,084 in 1993 to a high of 5,966 in 1998. Hiring has not occurred at the same pace among all Federal agencies during this period; in fact, five agencies accounted for more than half of the new hires annually during these years.[10] Indeed, the five agencies that did the most hiring accounted for about three-fourths of the new hires in 1996 and about two-thirds of the new hires in 1997.

How agencies select new hires for former PACE positions is important to determining how well recent and current hiring practices support merit. In table 1 below we show what proportion of former PACE new hires entered the Federal workforce during each study year through each of the six methods discussed in this report.

Table 1. How people were hired into former PACE positions, 1993-1997 (by percent)

Hired through:	1993	1994	1995	1996	1997
Outstanding Scholar	46	42	41	34	35
Bilingual/ Bicultural	3	4	2	4	8
Cooperative Education	13	11	8	6	5
VRA	10	9	12	15	11
Competitive Examining	11	16	15	25	25
Other	18	18	22	17	17
Total	100	100	100	100	100
Number hired	4,084	4,534	5,140	5,863	5,966

Note: Column totals may not equal 100 percent because of rounding.

Table 1 shows the inconsistency between what the *Luevano* consent decree intended for the hiring programs it created and the reality of Government hiring during the study period. Rather than serving as a supplement to merit-based, competitive hiring, the consent decrees Outstanding Scholar Program became the dominant means of hiring into former PACE positions. While the table shows a decrease in this programs proportion of former PACE hiring over the 5-year study period, it also shows that the Outstanding Scholar hiring authority was the source for at least one-third of all new hires into these jobs during each of the study years, and in 1993 accounted for almost half of this hiring.

The reduction in use of the Outstanding Scholar authority in 1996 and 1997 was accomplished by increases in hiring through competitive examining. Even in 1996 and 1997, however, more hires into former PACE jobs were made through use of the Outstanding Scholar authority than through competitive hiring, the hiring method that the Outstanding Scholar authority is supposed to supplement. Use of other authorities has varied. For example, after 4 years of accounting for 2 to 4 percent of former PACE hiring, use of the Bilingual/ Bicultural authority doubled in 1997 to 8 percent. Increased hiring under this authority primarily reflects its 1997 use by the Treasury department, and to a lesser extent the Departments of Justice and Labor.

[10] During the study years the agencies most often included among the top five for hiring in the covered occupations were the departments of Justice and the Treasury and the military departments.

Use of the VRA authority has been fairly steady during the study period, varying by a very few percentage points from year to year, from a low of 9 percent of former PACE hiring in 1994 to a high of 15 percent in 1997. However, Cooperative Education conversions have been in decline since 1994. This latter trend follows a decision in March 1993 to count co-op students against agencies employment ceilings a decision that forced agencies to make some hard and generally unfavorable decisions affecting use of the coop program during a period of downsizing.

Combined, the two authorities created by the consent decree accounted for almost half of the new hires into former PACE positions in 2 of our 5 study years, and more than two-fifths of this hiring in the other 3 years. Even without including the effects of the Cooperative Education Program (the third authority authorized by the *Luevano* consent decree), these numbers are a clear indication that there has been widespread disregard for the consent decree s provision that the special hiring authorities are intended merely to supplement competitive hiring procedures.

Demographic Outcomes of Current Hiring Practices

The ultimate goal of the *Luevano* consent decree was to increase the representation of African-Americans and Hispanics in former PACE positions. As table 2 shows, during our 5-year study period Federal agencies had demonstrable success in increasing intake of these groups.[11]

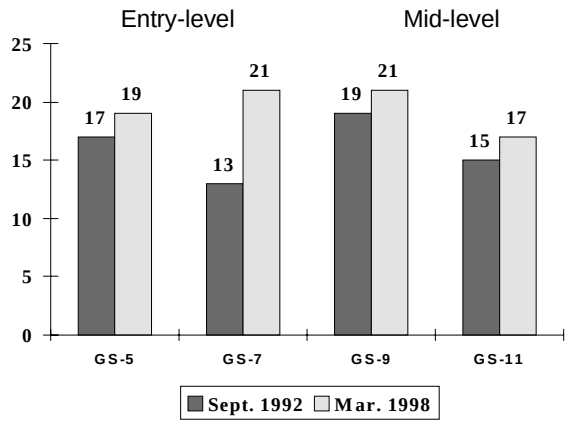
Increased intake of African-Americans and Hispanics into former PACE positions results, of course, in increased percentages of African-American and Hispanic employees in former PACE positions overall. Figures 1 and 2 compare the total representation of African-Americans and Hispanics in former PACE positions in 1992 with their representation in 1998. Information about higher grade levels is included to show the effect

Table 2. New Hires into former PACE jobs, 1993-97, compared with Civilian Labor Force data, by Race and National Origin

	Percent of total new hires who were:				
Year Hired	African-American	Hispanic	Asian/ Pacific Islander	Native American	White
1993	12.0	8.8	4.5	1.7	72.6
1994	13.8	10.3	5.5	1.6	67.6
1995	15.5	10.9	5.5	1.3	64.7
1996	12.6	12.2	4.6	1.0	68.5
1997	12.5	15.5	4.8	1.0	65.5
1994 CLF	10.6	10.0	3.3	0.7	75.4

Sources: Federal hiring data are from OPM s CPDF. The 1994 CLF data are from Bureau of Labor Statistics CPS data, Sept. 1994, as reported in OPM s Annual Report to Congress on the Federal Equal Opportunity Recruitment Program, CE-104, April 1995.
Note: Row totals may not equal 100 percent because of rounding.

Figure 1. Percent of African-Americans in ACWA (former PACE) occupations, selected grades, Sept. 1992 and Mar. 1998



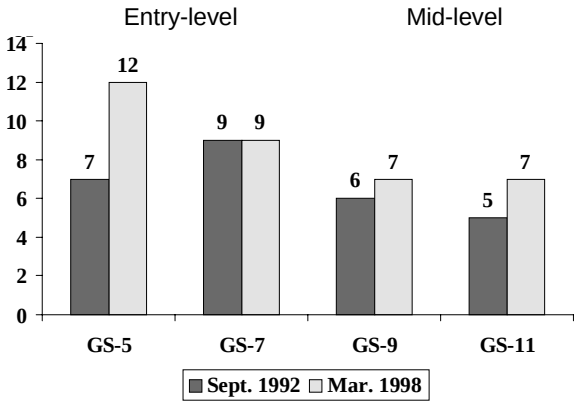
that hiring and promotions had on African-American and Hispanic representation at the intermediate or final target levels (GS-9 and 11) for individuals hired into former PACE occupations.[12]

The story these figures tell is one of an upward trend in the proportion of administrative and professional jobs occupied by African-American and Hispanic employees. Figure 1 indicates that for African-Americans there

[11] In addition, although not at issue in the consent decree, intake of Asian/Pacific Islanders and Native Americans into former PACE positions over the study period exceeded their representation in the civilian labor force (CLF) as of 1994. In fact, of the five race and national origin groups shown in table 2, every minority group except for Hispanics in 1993 has been hired into former PACE positions at an annual rate that exceeds the group s representation in the 1994 CLF.

[12] Individuals occupying former PACE jobs at these higher grade levels may be advanced trainees who are continuing to develop toward their higher full-performance jobs; full performance level employees; lead specialists with some duties and responsibilities beyond the full performance level; or first-line supervisors.

Figure 2. Percent of Hispanics in ACWA (former PACE) occupations, selected grades, Sept. 1992 and Mar. 1998



are gains at every grade level, while figure 2 shows substantial improvement in Hispanic representation at GS-5, but no gain at GS-7. Smaller percentage gains for Hispanics are reflected in the two mid-level grades.

When examining figures 1 and 2, it is useful to consider five points that affect the employee totals at each grade level. First, persons hired into former PACE positions require a minimum of 1 or 2 years after being hired (depending on whether they are hired at the GS-5 or GS-7 level) before they move to GS-9. Thus, in both figures, the individuals who were GS-9 s and -11 s in September 1992, and who came into the Federal Government at the GS-5 or -7 level, were hired before September 1992.

Second, to the extent that GS-12 or higher is the full-performance level for some jobs, the individuals in those jobs typically stay at GS-9 or GS-11 only long enough to meet minimum 1-year time-in-grade requirements and to demonstrate the competencies needed to advance further along their career paths. These people literally pass through the grades reflected in the figures. In addition, while many individuals remain at the full-performance level for their entire careers, others are selected for supervisory or managerial jobs and move further up the career ladder.

Third, hiring also takes place at grades above GS-7. When jobs in occupations formerly covered by the PACE are filled through hiring above the GS-7 level, they are not subject to the provisions of the *Luevano* consent decree. Instead, those positions are filled through other procedures and are outside the scope of this report. Nevertheless, individuals hired through those other means are included in the mid-level percentages in figures 1 and 2.

Fourth, not all new entrants to former PACE jobs are hired from outside Government. Figures 1 and 2 include the effects of internal selections (usually through merit promotion programs) which also are outside the scope of this report.

Finally, logic suggests that most organizations have more full-performance employees than trainees. Trainees are hired to fill newly established positions or positions vacated by separations and other staff losses. Thus, in figure 2 it is likely that the percentage drops that accompany the move from entry- to mid-level jobs reflect no loss in total Hispanic employees. Rather, the figures suggest that Hispanics are simply a smaller percentage of the larger number of mid-level jobs.

The available data indicate that Federal hiring in general has satisfied *Luevano* consent decree objectives regarding African-American and Hispanic intake and representation in the former PACE occupations. But the Government s success in increasing minority representation raises an important question: has this balance in hiring been achieved, and must it be sustained, by the special hiring authorities authorized by the *Luevano* consent decree, or can these outcomes be credited to and sustained by the more merit-based hiring methods that are so central to the civil service s merit system?

Effects of the Luevano Hiring Methods

To answer that question we compared how the various hiring methods discussed in this report contribute to diversity in the workplace, and the degree to which the consent decree s special programs (as opposed to other hiring authorities) are being used to further the employment of African-Americans and Hispanics. For this examination, we chose 1997, the most recent of our study years. Although the effects of the various hiring methods varied somewhat from year to year, those differences were relatively minor. We have chosen a year that is typical except in one respect: in 1997, agencies used the Bilingual/Bicultural hiring authority substantially more than in the other study years, and, conse-

Table 3. New hires into former PACE jobs in 1997 by Race and National Origin and hiring source

Hiring Source	Total New Hires	Percent of New Hires who were: African-American	Hispanic	Asian/ Pacific Islander	Native American	White
Outstanding Scholar	2,065	11	7	5	1	76
Bilingual/Bicultural	446	1	79	1	0	19
Co-op	314	25	10	6	1	57
VRA	676	17	20	4	>1	58
Competitive Examining	1,477	11	11	6	1	69
Other	988	16	10	5	3	66
New hires overall	5,966	12	16	5	1	66

Note: Row percentages may not equal 100 percent because of rounding and because records with an RNO code of other are included in the Total number of new hires counts.

Table 4. Outstanding Scholar Program hiring by Race and National Origin, 1993-97

Year Hired	Number Hired	Percent of Outstanding Scholars who were: African-American	Hispanic	Asian/ Pacific Islander	Native American	White
1993	1,871	9	5	4	1	80
1994	1,924	11	7	5	>1	74
1995	2,122	11	7	5	1	74
1996	1,972	11	6	5	>1	77
1997	2,065	11	7	5	1	76

Note: Row percentages may not equal 100 percent because of rounding and because records with an RNO code of other are included in the Number Hired figures.

quently, hired a larger number of Hispanics than in any other study year. Table 3 shows the relative effects of our six hiring methods during 1997.

We noted earlier (table 1) that slightly more than one out of every three new appointments to former PACE jobs in 1997 was made through the Outstanding Scholar hiring authority. However, as table 3 shows, only about 1 of every 10 of these outstanding scholars was African-American and about 1 of every 14 was Hispanic. By contrast, slightly more than three-fourths of all 1997 Outstanding Scholar appointees were white. In fact, these data indicate that competitive examining was as good a vehicle as Outstanding Scholar for hiring African-Americans and better for hiring Hispanics. In terms of RNO proportions by hiring method, in 1997 the Outstanding Scholar Program tied with competitive hiring for fourth place among the six authorities with respect to hiring African-Americans, and was dead last with respect to hiring Hispanics. These data make it clear that although the Outstanding Scholar appointing authority was intended to serve the consent decrees purpose of eliminating adverse impact on African-Americans and Hispanics, agencies have not put their primary emphasis on hiring those two groups when using that authority.

Outstanding Scholar hiring

Table 4 shows the effects of Outstanding Scholar Program hiring by RNO during the 5-year study period. The vast majority of Outstanding Scholar hires each year were white, while only 9-11 percent were African-American and 5-8 percent were Hispanic. Still, from 1994 through 1997, Outstanding Scholar Program hiring of African-Americans was at a rate just above that groups 10.6 percent representation in the 1994 CLF, the latest date the CLF data were collected (see table 2). Hispanic Outstanding Scholar hiring was below that groups 10.0 percent CLF representation for all 5 study years.

Of course, these hiring patterns are a consequence of how agencies have used the Outstanding Scholar appointing authority rather than a result of limitations inherent in the program. Agencies could redirect how they use this authority and obtain very different results. In fact, officials from both the Department of Justice and OPM have communicated to agency officials their concerns about the hiring patterns achieved through this program.

Department of Justice officials expressed their concern to agencies at a meeting with Interagency Advisory Group members[13] in August 1997, and in July 1998 an

[13] The Interagency Advisory Group comprises the HR directors of the largest departments and independent agencies.

OPM official wrote to the agencies to express concern about Outstanding Scholar appointments. The OPM communication occurred after our interviews for this study had been conducted. The Department of Justice and OPM both stopped short of calling for an end to the Outstanding Scholar appointing authority, focusing instead on ways to correct what could be construed as misuse of the authority. However, suggestions and expressions of concern are open to interpretation by those to whom they re offered and it remains to be seen whether agencies will heed them. Fact-finding for this study ended too soon after both of these expressions of concern to permit us to determine how they have affected agencies use of the Outstanding Scholar appointing authority.

Interviews conducted for this study left us with the impression that in the last few years until the summer of 1997 only sporadic attention had been paid to the monitoring of agency actions or hiring results under the consent decree. In addition, focus group discussions suggested that many HR specialists, agency recruiters, and managers who use the Outstanding Scholar hiring authority today are not even aware of the consent decree and its intent. This may help explain the pattern of Outstanding Scholar appointments.

While agencies have not concentrated the use of the Outstanding Scholar hiring authority on hiring African-Americans and Hispanics, they have used it to improve the representation of women in the Federal workforce. Of the various hiring mechanisms included in this study, this program has done the most to bring women into former PACE positions. As table 5 shows, more women than men in each racial and national origin group were appointed through this authority. Nearly three of every five Outstanding Scholar appointees in 1997 were women. While there are concerns about the overall representation of women in the Federal workforce, women are not one of the groups covered by the consent decree, and in aggregate they are not underrepresented in the occupations covered by the *Luevano* consent decree. Further, nearly three-fourths (74.4 percent) of the women appointed through the Outstanding Scholar hiring authority in 1997 were white, not African-American or Hispanic.

Table 5. Percentages of Outstanding Scholar appointments in 1997, by gender and Race/ National Origin designation

Race/National Origin	Male	Female	Total*
Native American/American Indian	0.2	0.6	0.8
Asian/Pacific Islander	2.3	2.5	4.8
African American	3.1	7.5	10.7
Hispanic	3.3	3.8	7.1
Caucasian	33.3	42.9	76.2
Unspecified	>0.1	0.4	0.5
All categories	42.4	57.7	100.0

Note: Some row entries may not equal the row totals because of rounding. This is also true of columns.
* This column is the groups proportion of all Outstanding Scholor appointments in 1997.

Table 6. Number of Hispanic hires into former PACE jobs by various hiring means, 1993-97

	Year Hired				
Hiring method	1993	1994	1995	1996	1997
Outstanding Scholar	95	144	156	114	146
Bilingual/Bicultural	68	109	54	139	354
Cooperative Education	60	44	47	25	31
VRA	53	73	147	181	134
Competitive	44	56	75	162	167
Other	41	41	81	93	95

Based on interviews and focus group sessions, it appears that the key argument in favor of keeping the Outstanding Scholar hiring authority is that it provides agencies control over a quick and relatively easy way to hire. However, selection through competitive examination now does at least as good a job of hiring African-Americans and a better job of hiring Hispanics than does the Outstanding Scholar authority. Also, competitive hiring procedures are now considerably faster than they were in the era of centralized examining that characterized the PACE and its successor, the ACWA written test. Therefore, speed and ease is not a persuasive argument for continuing a non-merit-based hiring authority. Further, focus group sessions produced information suggesting that the hiring of outstanding scholars has not been free from selection bias, and that the lack of guidelines for forwarding applicants names to selecting officials often makes the outcomes of this hiring method arbitrary.

Bilingual/Bicultural hiring

As we noted earlier, the Bilingual/Bicultural authority is used in instances where a job requires or job per-

formance can be enhanced by Spanish-English skills or knowledge of Hispanic and Anglo cultures. But how important is the Bilingual/Bicultural Program to the continued increase of Hispanic representation in the Federal workforce, especially since hiring through this program legally cannot be limited to Hispanics? Table 6, which provides a look at the hiring of Hispanics into former PACE occupations for our 5 study years, suggests some answers. (The table reports actual numbers instead of percentages of new employees.)

Table 7. Bilingual/Bicultural Program hiring by Race and National Origin, 1993-97

		Percent of Bilingual/Bicultural hires who were:				
Year Hired	Number Hired	African-American	Hispanic	Asian/ Pacific Islander	Native American	White
1993	135	0	50	3	1	42
1994	200	2	55	6	2	30
1995	119	2	45	8	1	31
1996	207	2	67	>1	>1	28
1997	446	1	79	1	0	19

Note: Row totals may not equal 100 percent because of rounding and because records with an RNO code of other are included in the Numbered Hired figures.

In terms of actual numbers of Hispanics hired annually, the Bilingual/Bicultural hiring authority was ranked first or second in importance for 3 of the 5 study years, establishing it as an important contributor to Hispanic hiring. Interestingly, the Outstanding Scholar hiring authority was the vehicle that yielded the greatest number of Hispanic new hires for former PACE occupations in 3 of the 5 years before falling to third and fourth place in the most recent 2 years.

However, there is a second and very important story contained in table 6. This is based on the fact that competitive hiring and VRA appointments have grown in importance as sources for Hispanic intake into former PACE jobs. Competitive hiring has steadily improved its relative importance in Hispanic hiring, rising from fifth place in 1993 to second in 1997. The VRA authority climbed from fourth place in 1993 to first place in 1996, but slipped back to fourth place in 1997. In 1995 and 1996, more Hispanics were hired into former PACE jobs though the combination of competitive hiring and VRA appointments both of which have a merit basis than through the combination of Outstanding Scholar and the Bilingual/Bicultural Programs.

Because of the Government s increasing success in using merit-based procedures to hire Hispanic employees, we think that a large proportion (if not all) of the employees hired during each study year through the Bilingual/Bicultural Program could just as successfully have been hired competitively if the hiring agencies had combined competitive procedures with the use of selective factors or quality ranking factors. An example of a program that is successful in this regard is the Immigration and Naturalization Service s (INS) use of a competitive examination to select among applicants for its 8,000 Border Patrol Agents. Almost 40 percent of those agents are Hispanic. Further, their strong VRA employment showing verifies that substantial numbers of Hispanics are eligible for veterans preference, suggesting that the application of veterans preference that is required in competitive hiring does not put Hispanics at a disadvantage.

Another important point, as we have noted, is that the consent decree does not limit the Bilingual/Bicultural hiring authority to Hispanic hiring. As table 7 shows, agencies appear mindful of this fact. Over our five study years, the Hispanic proportion of employees hired through the Bilingual/Bicultural Program varied from a low of 45 percent in 1995 to a high of 79 percent in 1997. As demonstrated by the experience of the INS, however, comparable results can be achieved through competitive hiring procedures, especially when there is a job related need for English-Spanish language skills or Anglo-Hispanic cultural knowledge.

Taken together, these points raise serious questions about the need to continue the non-competitive Bilingual/Bicultural hiring authority. Hispanic job applicants have demonstrated that they compete successfully if given an equal opportunity to do so and if they are appropriately recruited and fairly treated during the assessment and selection processes. Therefore, we do not believe that elimination of the Bicultural/Bilingual au-

thority would lessen Hispanic hiring gains into former PACE occupations even though that authority has contributed to those gains. Rather, eliminating the authority would ensure that Hispanic employment gains were made as a consequence of the appropriate use of selective or quality ranking factors during competitive hiring or the use of hiring authorities such as the VRA, which are based on earned entitlements and do not take into account race, color, ethnicity, or sex. In concert with an intensified commitment to Hispanic hiring by top Federal managers and better targeted recruitment efforts, that approach should lead to full representation based on merit.

Factors that Support Eliminating the Luevano Hiring Authorities

There is ample evidence that the Outstanding Scholar Program alone cannot be credited with achieving full representation of African-Americans and Hispanics in former PACE jobs in the Federal workforce. Similarly, representative Hispanic hiring was achieved during our study period even without the Bilingual/Bicultural Program. The study findings regarding the Outstanding Scholar and the Bilingual/Bicultural hiring authorities cause the Board concern about their continued use. This is particularly so in the context of the requirements of the first statutory merit principle,[14] which expresses the ideal for both hiring and advancement in the Federal Government. According to this principle, Federal hiring should ensure that:

> Recruitment is from appropriate sources in an effort to make the workforce reflective of the population it serves;
>
> Fair and open competition is held, assuring equal opportunity to all qualified applicants; and
>
> Selection is based solely on the candidates relative ability, knowledge, and skills.

The hiring authorities created by the *Luevano* consent decree fail to meet these expectations. The sections below describe in detail the arguments against continued use of Outstanding Scholar and Bilingual/Bicultural Program hiring.

Outstanding Scholar Program

Reliance on questionable selection criteria. As we have seen, the Outstanding Scholar hiring authority, which determines employment eligibility solely on the basis of grade point average or class standing,[15] has become a primary hiring tool. Indeed, many Federal managers appear to have been seduced by what they perceive as a truism that a high GPA translates to good job performance as well as by the relative simplicity and speed of the hiring process permitted by the Outstanding Scholar Program.

Whether grade point average warrants the faith managers apparently have placed in it depends on how well GPA predicts future job performance. This is an issue that can easily get so technical that it becomes obscure, but there are several major issues surrounding prediction of job success that should be considered.

The purpose of any employment selection device (which we collectively call tests for this discussion) is to try to predict which job applicants are most likely to do well in the actual job. In a merit-based system such as the U.S. Civil Service, where the law requires hiring and advancement to be based on relative merit, a selection devices predictive value is very important.

The validity of a test is a measure of its ability to predict success on a particular job. It is expressed as a nu-

[14] 5 U.S.C. 2301(b)(1).

[15] The specific qualifications required are a baccalaureate grade point average of 3.5 or higher out of a possible 4.0, or class standing that puts the individual in the top 10 percent of the graduating class, or a major subdivision such as a college of arts and sciences.

merical value. A test that is perfect in its predictive capability would have a validity of 1.00, and a test that has absolutely no predictive capability has a validity of 0.00. No single employment test achieves 1.00; relatively few achieve a value as high as .40 or .50. Among the best commonly used predictors are work sample tests (.54); general mental ability tests (.51), structured interviews (.51), and assessment centers (.36).

What does a given validity measure actually mean, in terms of prediction? The measure is used to estimate how much of the variability in employees performance on the job in question can be predicted by performance on the test in question. The estimate is made by squaring the validity measure to arrive at the percentage of variance (in job performance) accounted for by the test. Thus, performance on a test with a validity measure of .51 can predict 26 percent of the variability in how well people do on the job (.51 x .51 = .2601, or 26 percent). It would not be possible to explain the remaining three-fourths of the variability in employees job performance through the test.

Grade point average does not fare even as well as this hypothetical test in terms of predictive validity. The validity, or even the general usefulness, of grade point average as a selection tool has been the subject of considerable debate among those who study or use employment tests. Some researchers suggest that GPA has virtually no predictive value for job performance.[16] To quote one researcher who reviewed 108 correlations in a meta-analytic study, there is little relationship between grade averages and job success correlations. [17] A similar finding was reached in another study of 209 correlational studies: * * * academic indicators such as grades and test scores account for only 2.4 percent of the variance in occupational performance criteria such as income, job satisfaction, and effectiveness ratings. [18]

Another researcher had findings that support a conclusion in the Board s 1993 study of Federal hiring[19] that possession of a college degree appears to have a positive although not necessarily quantifiable relationship to future job success:

> [I]t is difficult to demonstrate that grades in school are related to behaviors of importance in the job market. * * * However, school activities and attainment of a masters degree do have a positive relationship to job success and subsequent promotion. * * * [College] graduation was a better predictor of success than were grades.[20]

Other studies suggest that the validity of GPA is as high as .30.[21] However, the authors of a key paper that reached this conclusion based their study on a very homogeneous population. In the case of former PACE jobs, where GPA is used to predict job success in situations in which the applicants have studied in many different academic fields in many different schools, and are candidates for jobs in many different occupations, it is unlikely that such a high validity could be achieved. In these instances we estimate that a GPA validity of .20 or lower is more likely, meaning that GPA might predict about 4 percent of the variability in job performance.

One of the many reasons why the Outstanding Scholar criteria are not good predictors of job success is that neither GPA nor the alternate criterion of class standing offer a common basis against which to compare all candidates. Instead, the outcomes of both measures are subject to many factors, making them in the words of one practitioner we interviewed rubber yardsticks.

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[16] Daniel Masden, The Use of Educational Achievement, Grade Point Average and Biodata in Personnel Selection, (undated, unpublished report prepared in response to an internal administrative request), Research, Development, and Validation Unit, Technical Services Division, Nevada Department of Personnel.

[17] P. Cohen, College Grades and Adult Achievement, A Synthesis. *Research in Higher Education*, vol. 20, 1984, pp. 281-293.

[18] G.E. Samson, M.E. Graves, T. Weinstein, and H.J. Walberg, Academic and Occupational Performance: A Quantitative Synthesis, American Educational Research Journal, vol. 21, no. 2, Summer 1984, pp. 311-321.

[19] U.S. Merit Systems Protection Board, Entering Professional Positions in the Federal Government, Washington, DC, March 1994, pp. 52-53.

[20] A. Howard, College Experiences and Managerial Performance, Journal of Applied Psychology Monograph, vol. 71 (1986).

[21] Philip L. Roth, Craig A. DeVier, Fred S. Sweitzer, III, and Jeffrey S. Schippmann, Meta-Analyzing the Relationship Between Grades and Job Performance, *Journal of Applied Psychology*, American Psychological Association, October 1996, p. 553.

The academic institution, the program of study, the grading practices of professors all of these can dramatically affect GPA or class standing. Other factors play a role as well, such as what the student does outside of class time. Does he or she work to pay tuition, and does the work cut into study time and result in lower grades? Is the student heavily involved in extracurricular activities, spreading his or her time and talent very thinly, but learning in the process how to budget time for success in many areas, or is he or she spending most waking hours single-mindedly pursuing studies? Each of these scenarios offers a different way to prepare students for the workplace and each affects grades and class standing in different ways.

The use of GPA or class standing to distinguish among candidates for a particular job where the academic program is a direct fit with the work (e.g., engineering degrees for engineering jobs, law degrees for lawyers, accounting degrees for accountants) lends some apparent logic to using GPA as a selection instrument. Indeed, in these situations a predictive validity as high as .30 such as was reported in the research study cited earlier might be approached or achieved. But when the GPA or class standing is based on academic programs as diverse as English, botany, physical education, home economics, and chemistry, and the jobs are as diverse as personnel management specialist, writer-editor, general investigator, highway safety manager, and hospital housekeeping manager, the utility of either GPA or class standing as a predictor of job performance and a basis for employment decisions is truly questionable.

We think most Federal managers would be shocked to learn that with a likely validity of only about .20, grade point average probably addresses only about 4 percent of the variability in employees performance on the job. Further, we believe managers should know that the time they save using the Outstanding Scholar authority to fill vacancies quickly may well be offset by lower productivity of candidates hired through a process so unlikely to predict future job success. Better predictors such as work samples and mental aptitude tests are available for hiring for former PACE occupations, and tools are being developed to measure other competencies proven to be important, such as emotional intelligence. Strategically-minded managers should choose such devices over a process that has little more than speed of hiring to recommend it. This is especially important because most employees who remain in professional and administrative jobs past the first year remain Federal employees for life. Thus, every effort should be made to provide Federal managers with selection tools that help identify the best job candidates, and managers should use those tools.

Despite the questionable predictive value of GPA, a number of managers profess satisfaction with the quality of the individuals hired as outstanding scholars. If managers are correct in their positive view of the quality of these employees, an argument might be made that the results mitigate our concerns with this hiring authority s assessment methods. However, evidence of the high quality of individuals hired under the Outstanding Scholar Program is sparse and largely anecdotal. One of the few documented efforts to measure the quality of Outstanding Scholar appointees is a 1994 study of Federal hiring that MSPB conducted. In reporting the results of that study,[22] we observed that in terms of awards and performance ratings over 8 years, Outstanding Scholar entrants were doing better than individuals who had been hired either competitively from OPM certificates or through Schedule B-PAC, a now-defunct hiring process that, like the Outstanding Scholar Program, did not require examining. We further observed that these results suggested that the academic achievement requirements of the Outstanding Scholar Program offered some assurance of high-quality selections.[23] However, our 1994 study also found a positive connection between possession of a college degree and subsequent high quality performance. Therefore, it is very possible that the high quality reported for these Outstanding Scholar Program selectees was a

[22] U.S. Merit Systems Protection Board, op. cit., p. 52.

[23] Our 1994 study findings were based on a small population of 400 selections identified as Outstanding Scholar appointments out of a total of 40,160 selections made in 1984.

consequence of their having college degrees rather than high GPAs.

Taken as a whole the evidence supports the view that the eligibility criteria of the Outstanding Scholar Program represent an exception to merit hiring that no longer can be justified.

Inconsistency with fair and open competition. In addition to being of questionable predictive value, the Outstanding Scholar Program is inconsistent with the first statutory merit system principles expectations that employee selection will follow fair and open competition. Instead, Outstanding Scholar hiring limits employment consideration to a relatively small group of graduates of 4-year colleges and universities, denying consideration to a vastly larger candidate pool that otherwise meets the qualification requirements for the covered occupations.

One means of ensuring fair and open competition is a provision of civil service law specifically requiring public notice of each vacant competitive service job for which the employing agency seeks applicants from outside Federal service.[24] An action that OPM has taken to support fair and open competition is to establish job qualification standards. These standards help members of the public determine whether they are qualified for Federal jobs. According to these standards, only 16 of the 112 former PACE occupations actually require a college degree. Appropriate work experience is sufficient to qualify candidates for the remaining occupations. In the absence of qualifying work experience, possession of a 4-year college degree without any GPA restrictions is an alternate means of qualifying for former PACE positions. Fair and open competition would assume that both categories of candidates those who qualify based on work experience and those who possess 4-year college degrees with or without a 3.5 GPA would be permitted to compete for all former PACE jobs.

Figure 3. Job fair announcement that appeared on the campus of a mid-sized eastern U.S. University campus in November 1997

JOB FAIR

FRIDAY, NOV. 7, 1997
11:00 AM - 3:00 PM
U.C. BALLROOM

CIVILIAN POSITIONS WITH THE FEDERAL GOVERNMENT

** ALL MAJORS SEEKING BUSINESS RELATED CAREERS, 3.5+ GPA REQUIRED

** ENGINEERING MAJORS, 2.9+ GPA PREFERRED

** COMPUTER SCIENCE-RELATED MAJORS, 2.9+ GPA PREFERRED

** PHYSICS & MATH MAJORS, 2.9+ GPA PREFERRED

However, as a result of the consent decrees Outstanding Scholar hiring authority, since 1981 Federal managers have been able to ignore most of the qualified candidates, and instead limit consideration to a substantially smaller pool of individuals meeting very narrow academic requirements. Each time an agency limits consideration to applicants meeting Outstanding Scholar Program requirements, it bars many qualified job applicants from employment consideration. At the same time, that agency fosters an image of the Federal Government as an employer willing to consider only college graduates with high grades or high class standing for many occupations, even though the jobs often dont require possession of a college degree. Further, for some of the occupations for which outstanding scholars are hired, the relationship between the academic field of study and the job is unclear or nonexistent. Figure 3, which depicts an actual job fair announcement that appeared on the campus of a mid-sized eastern U.S. university campus in November 1997, is an example of how this image is projected on college campuses. Students may find it hard to grasp the logic of the Governments requiring a 3.5+ GPA for all majors seeking business-related careers while accepting only a 2.9 or better GPA for students in engineering, computer science, physics, and math (the latter are non-PACE occupations).

[24] 5 U.S.C. 3327.

This exclusionary effect of the Outstanding Scholar hiring authority might be less objectionable if the program were used to supplement other hiring methods. However, as we have noted, the program has become the single most-used hiring method for former PACE positions, and in some instances the only one. Viewed in this context, agencies are fortunate that potential job applicants who meet OPM s qualifications requirements but not the criteria of the Outstanding Scholar Program and who thus have been barred from employment consideration have not challenged agencies use of the Outstanding Scholar Program.

Inconsistency with selection based on relative merit. Making distinctions among qualified applicants to determine who are the best candidates lies at the heart of merit-based selection. Such distinctions help organizations ensure that selection consideration is limited to those demonstrating the greatest likelihood of success on the job. However, the Outstanding Scholar hiring authority includes no provision to make distinctions among candidates meeting its eligibility criteria. Consequently, managers may make selections at will from among a group of candidates who have been identified through a highly questionable assessment technique. While this hiring approach was justified in the consent decree as a means of addressing the adverse impact that affected two classes of job applicants during the life of the PACE, it is not justified in today s environment. As we noted earlier, during our focus group discussions we heard anecdotes about how this unstructured hiring approach has led to hire at will decisions based on very questionable criteria. The Outstanding Scholar hiring authority represents a potential for abuse that is insidious but hard to detect or measure.

The Bilingual/Bicultural Program

The Board s concern with this hiring method lies in the fact that it permits the hiring of individuals who need not be the best qualified or even well qualified compared to other candidates. The Bilingual/Bicultural hiring authority contains no provisions for making distinctions among eligible candidates. Instead, a manager may select any individual with a merely passing score on a qualifying examination, regardless of how that person s score compares with the scores of other candidates. This is permissible as long as the person selected possesses job-related Spanish-English language skills and/or knowledge of both Hispanic and Anglo cultures. Thus, like the Outstanding Scholar hiring authority, the Bilingual/Bicultural Program fails to meet one of the distinguishing features of merit-based hiring selection based solely on relative merit. This exception to merit was justified at the time the consent decree was approved because of the adverse impact that Hispanic job applicants had encountered from use of the PACE, but that justification pales in today s environment. As discussed earlier, Hispanic intake into former PACE occupations now equals or exceeds Hispanic representation in the civilian labor force, and competitive hiring sustains that level of intake.

Maintaining targeted levels of Hispanic intake through competitive hiring practices most likely would mean using, as we have noted, selective factors and quality ranking factors. While the Bilingual/Bicultural Program is a creation of the consent decree, it actually had its genesis in these tools. In fact, the use of selective and quality ranking factors pre-dates the consent decree and its Bilingual/Bicultural Program by years. While such factors are not limited to language or cultural abilities, OPM and its predecessor agency, the Civil Service Commission, both recognized that for many jobs the ability to speak a second language or knowledge of a second culture could be required for satisfactory job performance, or could be important to superior job performance. The now-defunct Federal Personnel Manual recognized language ability and cultural knowledge as examples of selective and quality ranking factors to be used in the process of competitive examining. And that is an important difference from the way such factors are used in the Bilingual/Bicultural Program: normal, traditional use of these staffing tools requires competitive examining procedures to be followed, including rating and ranking candidates. The evidence shows that in today s environment competitive hiring already does the job that the Bilingual/Bicultural hiring authority was created to do.

Avoidance of Veterans Preference

Both the Outstanding Scholar and the Bilingual/Bicultural hiring authorities allow appointments to be made

without considering veterans preference status.[25] Although many managers may not consider this a problem, the effect is to deny an earned entitlement (preference in Federal job-seeking) to all persons with veterans preference, including African-Americans and Hispanics. Interestingly, we have anecdotal evidence that at least some agencies apply veterans preference when considering candidates under the Outstanding Scholar Program, even though this is not required. Such inconsistency is an indication that the program and its intent are not well understood, and that with the passage of time the Outstanding Scholar Program has, in some respects, come to be treated by agencies as if it were one of their competitive hiring tools.

Although some agencies may apply veterans preference in the Outstanding Scholar hiring process, the intake of veterans through use of the *Luevano* hiring authorities does not compare favorably with veterans hiring through competitive procedures. For the most recent 5-year period, just over 6 percent of all Outstanding Scholar hires and nearly 8 percent of all Bilingual/Bicultural hires had veterans preference, compared to almost 18 percent of competitive hires.

[25] It is not unusual for noncompetitive hiring procedures to exclude consideration of veterans preference. For example, the Cooperative Education Program also allows appointments without consideration of this preference. Conversely, Veterans Readjustment appointments require veterans status and are closed to nonveterans. However, those noncompetitive mechanisms use work samples or other highly valid selection tools as their basis for permanent appointments, something that cannot be said of the two special *Luevano* consent decree authorities.

Ways to Restore Merit to Hiring

One issue associated with ending the hiring authorities and other provisions of the *Luevano* consent decree is that of how Federal managers would fill positions in covered occupations. Existing hiring methods, together with refinements to some of them, would ensure that managers would have no trouble hiring if the Outstanding Scholar and Bilingual/Bicultural hiring authorities were eliminated. Here are the ways that we see hiring into covered positions could be accomplished in a post-*Luevano* setting:

Use Existing Competitive Hiring Methods

As a result of delegations of examining authority, in most cases agencies are already free to develop and implement their own examining instruments. However, the stringent oversight provisions of the *Luevano* consent decree have made this a practical impossibility for most agencies, and even if the Luevano provisions were eliminated, most agencies would not immediately be in a position to develop new examinations. Until agencies are able to exercise the option of developing their own examining instruments, the simplest competitive examining approach that could be taken would be to turn to OPM s current competitive examining tool.

The ACWA Rating Schedule. OPM s current competitive examining tool is the ACWA rating schedule, a 157-item multiple-choice, self-rating form available to all agencies. This instrument credits candidates with a passing score if they possess the minimum qualifications for the job. Then a standardized rating schedule is used to make distinctions among qualified applicants, and scoring is based on the individuals life and work experiences. Possessing a bachelors degree is one way to meet minimum qualification requirements, so this tool often is simply a way to distinguish among college graduates. Being a competitive hiring tool, this method generates referrals subject to veterans preference requirements and the Rule of Three. The ACWA rating schedule is the instrument used to conduct much of the competitive examining identified earlier in tables 1, 3, and 6. Agency-specific replacement exams account for the rest of the hires shown in those tables.

Agencies pay OPM a fee for the use of this rating schedule. This is because, as a result of congressional budget action a few years ago, OPM now conducts examining (and all other aspects of the staffing process) on a fee-for-service basis.[26] Currently, OPM charges $585 to apply the ACWA rating schedule to examine candidates and prepare a certificate of eligibles for a single position based on a case examining approach.[27] Different charges apply when OPM is asked to examine for more than one position.

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[26] Agencies have three examining options: perform the work themselves; buy services from OPM, or buy services from any other agency with delegated examining authority. The requirements of the *Luevano* consent decree are sufficiently stringent to discourage agencies without strong test development capability from attempting to develop their own examining instruments.

[27] For an explanation of case examining, see U.S. Merit Systems Protection Board, The Role of Delegated Examining Units: Hiring New Employees in a Decentralized Civil Service, Washington, DC, August 1999, p. 8, or U.S. Merit Systems Protection Board, Entering Professional Positions in the Federal Government, Washington, DC, March 1994, pp. 68-69.

The point we wish to make is the same one Congress appears to have had in mind: human resources functions, including staffing, entail costs. Agencies generally can absorb examining costs indirectly through paying to maintain their own capability, or they can pay directly by buying the services. Given the budgetary implications, it seems logical that agency managers would want to get the most for their money. This is an argument for using the best practicable tools regardless of who does the actual examining.

The ACWA rating schedule seems an adequate examining tool, but only for the short term. This is because it relies on assessing life and work experience and training, but is applied to a population (entry-level candidates) that as a whole has not yet gained a great deal of experience. Thus, while the instrument may be well designed, the distinctions it makes are not very fine. This probably helps explain why many agencies reported to us their managers dissatisfaction with the quality of candidates referred by OPM from this rating schedule.[28] For the longer term, a better approach would be to use written tests (such as the one described below), which are better predictors of future job performance.

The ACWA Written Test. OPM developed the ACWA written test as a replacement for the PACE in September 1990. In addition to a multiple-choice section addressing cognitive ability, the test contains a bio-data self-rating component that helps reduce possible adverse impact on any applicant groups.

Although it remains in OPM s inventory of assessment tools, the ACWA written test has not been used since November 1994. As noted in appendix 3, its fate was sealed by a combination of events that included reduced hiring as a result of Federal downsizing; agencies objections to centralized testing in a hiring environment that was fast becoming decentralized; and agencies memories of unsatisfactory experiences with centralized examining during periods of significant hiring. Further, agencies were predisposed against this written test because of fears that it would suffer the same fate as the PACE, namely a court challenge alleging adverse impact on one or more classes of applicants. Finally, by 1994 agencies had gained substantial control over the hiring process through use of the Outstanding Scholar and Bilingual/Bicultural hiring authorities. With increased delegation of examining authority on the horizon, most agencies were not interested in returning to centralized examining. What agencies did not recognize was that when the ACWA written test was shelved, they lost an instrument that could help them make better hiring decisions. And they also didn t realize that the test did not have to be used in the same way that had given rise to their objections in the past.

While there seems to be widespread skepticism among Federal managers about the value of written tests, that skepticism is ill-founded. Well designed and properly used written tests are quite valuable, as private sector practices verify. The American Management Association (AMA) recently reported on the practices of 1,085 private sector organizations that responded to an AMA survey. The report indicates that nearly half (48.1%) use one or more methods of psychological measurement to assess individual abilities and behaviors. * * * [P]sychological measurements are performed by 39% of firms grossing less than $10 million annually, compared with 54% of billion-dollar companies. [29] Of the AMA survey respondents using psychological tests for job applicants, 80 percent indicated that they use written tests, and 39 percent said they use computerized testing.[30]

The ACWA written test is far better at predicting future job performance of candidates for entry-level positions than either of the *Luevano* consent decree authorities. It also is better than the ACWA rating schedule that replaced it. However, the rating schedule has had the advantage of quick turn-around and ease of application for single-job vacancies. To make the written test appeal to Federal managers, OPM needs to use it dif-

[28] This information comes from agencies replies to questions MSPB sent them when gathering information for an MSPB twenty-year retrospective report on OPM that is currently being drafted.

[29] American Management Association, Job Skills Testing and Psychological Measurement, A Research Report, American Management Association, New York, NY, 1998, p. 2.

[30] Ibid., p. 8.

ferently from in the past, ideally, in a way that recognizes managers requirements for efficiency and timeliness. The test does not have to be a centrally-administered first hurdle facing job applicants, and it does not have to be administered in a manner that mirrors the administration of examinations such as the Law School Aptitude Test or the Graduate Record Examination. We understand OPM currently is reviewing new ways to use the ACWA written test, and that a number of Federal organizations are interested in participating in pilot programs to test innovative options. MSPB supports this OPM initiative, and offers the following suggestions to help stimulate thinking about different ways to use the written test. All of the suggestions rely on using advances in technology that have occurred since the ACWA written test was introduced.

Use the written test later in the screening process. The ACWA written test could be used at some point in the examining process after the initial screening of applicants. This would mean that agencies could continue to advertise their former PACE jobs as they do now either one job at a time or as multiple vacancies. After receiving applications from interested individuals, the agency could conduct whatever preliminary screening it considered appropriate. Then the agency could schedule all or the top group of candidates for the ACWA written test, with administration and scoring on-line at a computer terminal. The test score would become part of the overall record of each applicant and would be used in combination with other information (assessments using other tools) to determine each applicant s rating and relative ranking. In this way, applicants with test scores below 70 could still be considered for employment as long as their combined scores were 70 or above. Although the written test score would be important to determining employment eligibility, that score would be neither a first hurdle that must be cleared, nor the only factor considered. This is an additional way to minimize the possible adverse impact that may attend use of a written test on a pass/fail basis.

Whether involved in large-or-small scale hiring, the value of this alternative approach to both the agency and the applicants is in the additional information about the applicants that would be available to managers. In today s environment managers often know too little about job candidates to make well-informed hiring decisions. This can lead to hiring in haste and repenting at leisure. If a manager does not recognize a selection error during the 1-year probationary period following appointment, and/or does not act to correct such an error by terminating the employee during that period, then repenting at leisure can mean accepting marginal performance for years or having to take formal action against a poor performer. This prospect should be sufficient incentive for managers to want to learn as much as possible about job candidates before hiring them.

Difficulties associated with this approach include the time commitment required of applicants who are asked to take the examination as the next step in the employment process, and assuring test security. The experience of the U.S. Border Patrol, a component of the Immigration and Naturalization Service, is informative with respect to the time commitment issue. The Border Patrol has been using on-line testing to help meet a congressional mandate to hire 1,000 new border patrol agents per year in recent years. One consideration in administration of this written test was the time commitment it requires. The INS test development staff were able to develop a very short test that could be administered and scored as quickly as the candidates could complete it. The Border Patrol experience shows that applicants pursuing a specific job in a specific agency are willing to make the time to take the test. Those applicants are rewarded by learning within minutes of taking the test whether they have done well (which, in the case of the Border Patrol, means they quickly learn whether they will advance to the next level of screening).

Another example of applicants being willing to find time for an extensive examination process is found in the Presidential Management Intern (PMI) Program. The PMI Program is prestigious, beginning with a nomination by the candidate s university and involving significant and lengthy competition for not more than 400 vacancies per year among a field of more than 1,000 candidates who are about to obtain their masters or professional degrees. Involving both written material and interviews with panels, the assessment process takes

several days. There is no shortage of candidates despite the lengthy process. Neither, we note, do managers mind the extensive, time-consuming assessment process required of this program since it does not require their personal involvement. What matters to the managers is that they are able to select from an extremely high-quality group of candidates and the selection process moves at a reasonable speed.

Technology has made great strides since 1994 when the ACWA written test was removed from use. With some innovative applications of available technological advances, OPM and the agencies should be able to turn that test, or one or more derivatives of it, into tools of choice. We strongly encourage exploration of this possibility.

Test without announcing specific job vacancies. A second suggestion that we believe deserves exploration is to offer the ACWA written test on a scheduled or walk-in basis throughout the country, and to provide each test taker with a notice of his or her score, called a notice of rating. Agency vacancy announcements could then ask applicants to include a copy of their notice of rating with their applications. To address situations where interested individuals do not have notices of rating, the announcements could also include information on how, where, and when applicants could take the test, and could even indicate that the agency would offer the test (as in the previous suggestion) to those who apply but do not have a notice of rating. That notice of rating becomes an additional piece of information for the hiring agency to consider.

The idea of offering the test on some sort of regular schedule without first advertising a vacancy or building a register of eligible candidates (i.e., a standing list of qualified applicants) may better allow the test to fit into today's hiring environment. Many agencies hire only small numbers of former PACE employees annually, often only one or two at a time, providing no justification for establishing and maintaining a register. Even when larger numbers of jobs are being filled at one time, agencies and applicants seem happy with the current, decentralized system, where job announcements invite applications for jobs in specific agencies, occupations, and duty locations.

To work, the alternative suggested here, like the previous ones, would require innovative or at least different use of technology. The payoff for agencies would be the availability of a single yardstick against which to measure all applicants without that yardstick serving as a pass/fail bar to further consideration. We see scoring under this scenario being conducted in the manner described for the previous suggestion.

Keep the written test as first screen. For agencies with large numbers of positions to fill, the ACWA written test could be used in much the way it originally was as a first screen, possibly to winnow the field of applicants, or alternatively only to give some initial sense of relative order to the candidate field. The bio-data component of the test (called the Individual Achievement Record) would be particularly helpful if the test is used in this fashion, since it should reduce the possibility of adverse impact. Perhaps even the familiar first screen for the written test could be accomplished in improved ways. In particular, even in this role it could be considered only one component of a broader examination, so that passing or failing the test would not be the sole determinant of an applicant's employment eligibility. This would mean providing managers multiple ways to assess candidates for various job competencies, and allowing the results of candidates' scores to be combined with the ACWA written test score to determine the final rating, and thus ranking, of each candidate.

Improve Upon Existing Tools

Although MSPB supports using the written ACWA test in new ways, we also recognize that the science and art of test development continues to evolve, and that recent advances are already making the ACWA test outdated. OPM is currently working with a consortium of States to develop a new generation of tests, and we are told that the resulting tests could encompass the former PACE occupations. In theory, the new generation of tests could further reduce the likelihood of adverse impact while serving as good predictors of future job performance.

It is encouraging to note that part of the focus of the OPM-State consortium's effort is on how to improve the speed and ease of administering and scoring tests.

The goal appears to be to make available a test or set of tests that can be used under the control of the employing agency, and that provides valid information about candidates potential almost instantaneously. Certainly Federal managers would join us in applauding the development of such tests. When tests resulting from this effort become available, we would encourage their introduction into the Federal inventory of hiring tools, and the concurrent withdrawal of the ACWA instruments.

Develop Alternative Examinations

If a job is unique to a particular agency or small group of agencies, a specific examining tool could be developed to fill it. Alternatively, agencies could devise their own alternative examining procedures to cover all the former PACE occupations. As we have noted, developing examining instruments is not a task to be undertaken lightly. However, the Immigration and Naturalization Service successfully developed and implemented its immigration officer examination for three occupations that were originally subject to the PACE. Capitalizing on advances in test development that have occurred since development of the ACWA written test (from which the immigration officer examination is derived), INS has the benefit of a shorter and better instrument for predicting future job performance when assessing candidates for key agency occupations.

Ending the *Luevano* consent decree would free agencies from its constraints, but when developing new examinations they would still be subject to the requirements of Title VII of the Civil Rights Act of 1964, as amended,[31] and the validation requirement of the Uniform Guidelines for Employee Selection Procedures. [32] Consequently, ending the consent decree should not open the door to a proliferation of poorly constructed selection instruments that have unlawful adverse impact.

Use Other Hiring Procedures

Finally, with or without an end to the *Luevano* consent decree, agencies continue to have the option of filling former PACE positions through the four other procedures discussed in this report competitive hiring, (modified by selective certification and selective placement factors where appropriate), VRA, Cooperative Education, and the catch-all group of authorities we call other. If the Outstanding Scholar and Bilingual/ Bicultural Programs were no longer available, many agencies would simply change the frequency with which they use the other hiring methods.

In addition, agencies undoubtedly would continue to use selection methods not covered by this report. These include hiring at grades above the entry-level and selecting individuals for covered entry-level positions through internal (usually merit promotion) procedures. Both of these approaches to filling vacancies are outside the boundaries of the *Luevano* consent decree; both use competitive selection procedures established by the agency; and both already contribute to the mix of new employees in covered occupations.

[31] 42 U.S.C., sections 2000e *et seq*.

[32] 43 Fed. Reg. 38290 (1978).

Summary and Conclusions

Today, Federal managers have substantial hiring flexibility. This flexibility gives them both the means and the opportunity to demonstrate their commitment to the values deemed important in Federal hiring, including focusing on merit, achieving a representative workforce, and giving additional consideration to individuals eligible for veterans preference.

The Outstanding Scholar Program and Bilingual/Bicultural Program were created for an important purpose. Agencies following the guidelines established by the 1981 consent decree that created these two authorities found in these authorities ways to address imbalances in the hiring of African-Americans and Hispanics. These imbalances also were addressed by the already-existing Cooperative Education Program, the third hiring authority authorized by the consent decree.

Approval of the consent decree presupposed that the courts involvement would be time-limited and that the Outstanding Scholar and other consent decree appointing authorities would be used only as supplements to other hiring mechanisms. However, the decree remains in force some 18 years after its initial approval, and the Outstanding Scholar Program, rather than remaining a supplementary program, has become a primary source for new hires into former PACE positions. While the Bilingual/Bicultural Program has been used in a manner more consistent with the terms of the consent decree, we have seen that its goals have been and can continue to be achieved just as well or better through competitive hiring.

Federal hiring practices have changed substantially in the 18 years since the consent decree was approved, and so has the management of Federal agencies. Emphasis on measuring results and on holding managers accountable for their actions and accomplishments has called greater attention to managerial tasks, including managing human resources. Accountability tools that did not exist 18 years ago now provide greater incentive than do the terms of the consent decree to staff in a manner consistent with the merit system principles.

The consent decree had a purpose in 1981. African-American and Hispanic job seekers were so disproportionately unsuccessful in their efforts to gain jobs filled through the PACE that some intervention was essential. Ending the PACE and implementing the two *Luevano* consent decree hiring authorities helped change the hiring picture. What is important to understand is that the hiring picture now is very different from 1981.

Both African-Americans and Hispanics have made major employment gains in former PACE positions. At least since 1993 their annual intake into professional and administrative jobs (among which are the former PACE jobs) has exceeded their representation for those jobs in the 1994 civilian labor force (the latest date the CLF data were collected). The evidence suggests that representative African-American and Hispanic hiring now can be sustained without the non-merit-based hiring authorities provided by the consent decree. The evidence further suggests that the Outstanding Scholar Programs record of hiring African-Americans and Hispanics has been dismal in recent years and the goals of the consent decree have been better met by authorities that exist apart from the consent decree.

Today, the twin goals of hiring based on merit and achieving a workforce representative of society appear attainable through competitive hiring processes that have evolved and continue to evolve. Hiring is far more decentralized than in 1981. Changes in competitive procedures have led to better matches between agencies needs and job applicants interests. The speed of the process has generally improved as well, at least when compared to the centralized process that characterized hiring under the PACE. But in some cases the improvements in Federal hiring have been accompanied by the use of assessment tools that, when compared to written tests, are weaker predictors of job performance.

We think agencies could make smarter and better use of the already-developed ACWA written test and for the short term the ACWA rating schedule now in use. We also think OPM and agencies should take advantage of advances in test development to improve the ACWA written test and should use advances in technology to improve test administration. It is time to restore merit to hiring as Federal managers seek to ensure that a highly qualified and representative workforce serves the citizens of the United States.

Recommendations

To restore merit to Federal hiring for entry-level professional and administrative positions:

The Attorney General of the United States should:

Petition the district court to terminate the *Luevano* consent decree in its entirety, to include abolishment of the Outstanding Scholar and the Bilingual/Bicultural hiring authorities.

Once the consent decree is terminated, the Director of the Office of Personnel Management should:

Publish guidance concerning the abolishment of the Outstanding Scholar and the Bilingual/Bicultural hiring authorities.

In competitive hiring, emphasize the use of bilingual or bicultural job requirements as selective factors or quality ranking factors whenever appropriate. Given the increasing proportion of the U.S. population that is Hispanic, agencies may be able to identify more positions in which knowledge of the Spanish language or Hispanic culture can be used as selective or quality ranking factors in order to hire Federal employees who can better serve the Hispanic population. Emphasis on this approach may also encourage agencies to make better use of selective factors and quality ranking factors to meet bilingual or bicultural needs involving other languages and cultures.

Seek, on an interim basis, to increase the availability of alternative examining processes such as the ACWA self-rating schedule, and promote their use among agencies until better written tests are more widely available.

Look for ways to make better use of the ACWA written test of cognitive ability and to implement new competitive examining processes for former PACE positions.

Focus attention on developing and improving employee selection tools for managers.

Remind departments and agencies of the steps they must follow if they wish to develop their own examining tools for filling former PACE positions, and assist interested organizations in doing so.

Encourage the continued and if possible expanded use of the Cooperative Education Program. Of the hiring mechanisms included in this study, this one uses one of the best predictors of future job performance (i.e., actual job performance), was foremost in terms of the percentage of its hires who are African-American, and was the most balanced with regard to the sex of new hires.

Assist departments and agencies in developing accountability models that address the requirements of the first statutory merit system principle (i.e., recruiting qualified individuals from appropriate sources in an endeavor to achieve a workforce from all segments of society; and selecting solely on the basis of relative ability after fair and open competition that provides equal opportunity to all).

Department and agency heads should:

Ensure that their managers use the best and most practicable tools to fill jobs. With fewer positions being filled in many agencies, and with emphasis on

the Federal workforce working better and at less cost to taxpayers, managers should take a long-term view of each entry-level hiring opportunity. This means knowing as much as possible about each candidate's qualifications for the job and making selections that are supportable on the basis of both relative merit and representativeness, as envisioned by the first merit system principle.

Develop and implement accountability models that address the requirements of the merit system principles, and hold managers accountable for the appropriateness and fairness of their hiring practices and decisions.

Appendix 1
Study methodology and acknowledgment

The primary data source for this report was the Federal Government's Central Personnel Data File, or CPDF, which is maintained by OPM. With OPM assistance, we collected and analyzed data for hiring into former PACE occupations during the 5-year study period spanning 1993-97. The data elements pertained to hiring authorities, the selected individuals' race and national origin, gender, and age, and the hiring agency. We consulted OPM staff throughout the collection and analyses processes in order to ensure our understanding of the coding employed by agencies when new-hire information is entered into the data base.

In addition, we conducted a series of four focus group meetings with human resource staff from a variety of agencies. Most of the participants were based in the Washington, DC, area. The purpose of the focus groups was to explore agencies' college recruitment strategies and to obtain views about hiring authorities, primarily the Outstanding Scholar Program. Finally, we conducted a small number of interviews with individuals who have particular knowledge of specific topics covered in the report.

This study was initially conceived as a research project by Dr. Arthur T. Johnson, who at the time was a Professor and Chairman of the Department of Public Administration at the University of Maryland, Baltimore County. When the study was initiated, Dr. Johnson was working with the Board's Office of Policy and Evaluation during a sabbatical. As originally envisioned, the project would have led to a somewhat different Board report and a separate research paper exploring the various ways people first enter the Federal Government in former PACE jobs. The original design included a college placement office survey that collected information about how well Federal agencies recruit on campuses and how college students perceived Federal agencies as potential employers.

During the data analysis phase two things happened: (1) analysis of the data strongly suggested a redirection of the study's focus to the issues that this report addresses; and (2) Dr. Johnson was selected to fill the vacancy of Provost for the University of Maryland, Baltimore County, which effectively ended his sabbatical. Final work on the report then shifted to a permanent staff member in the Board's Office of Policy and Evaluation, with Dr. Johnson remaining involved in an advisory role. The Board is pleased to have had and is grateful for Dr. Johnson's participation in this study.

Appendix 2
An overview of the Luevano consent decree and the jobs it affects

Understanding the Luevano Consent Decree

Because the *Luevano* consent decree is central to this report, it is important to understand its provisions. The decree did not immediately abolish the PACE. Rather, it provided for an interim 3-year period during which the PACE could remain in use until one or more alternative examining procedures could be developed. To help oversee the transition, the court retained jurisdiction over the consent decree for a 5-year period. If, during this period, adverse impact on African-Americans or Hispanics resulted from use of the PACE or from the use of the replacement examinations expected to be developed the hiring agency had to use all practicable efforts to overcome that adverse impact. All practicable efforts means to use the three special programs specified in the consent decree to help achieve racial balance in hiring.

The three special programs (Outstanding Scholar, Bilingual/Bicultural, and Cooperative Education) were to be used temporarily as supplemental hiring tools to overcome adverse impact caused by the use of the PACE or the early use of any of the replacement examinations. The decree required the defendant agencies to collect data to help them identify adverse impact, to document the steps taken to overcome any adverse impact they found, and to report to OPM annually on their efforts to maximize use of the special programs. These reporting requirements provided a means not only for agency self-evaluation, but also for the court, the Justice Department, OPM, and the attorneys for the *Luevano* plaintiffs to monitor hiring in former PACE occupations during the period of the court s jurisdiction.

The court s clear expectation was that OPM or individual agencies would develop alternative exams and then the PACE would be abolished. Examinations for several high-population occupations were, in fact, developed, but when OPM abolished the PACE, over 100 occupations remained for which no alternative examining procedures had been developed. For those occupations, OPM authorized agencies to use a noncompetitive (Schedule B-PAC) appointing authority. Although not intended as a permanent PACE replacement, that hiring authority remained in effect so long that it too was challenged in court. In 1987 the same judge who had approved the *Luevano* consent decree ruled that the continued use of the Schedule B-PAC authority was illegal. A few years later, OPM finally introduced a written test replacement for the PACE, the Administrative Careers With America examination, or ACWA.

The court had anticipated that the replacements for the PACE would be introduced in a timely manner (they were not) and that the supplemental hiring authorities would cease to be used 5 years after the creation of the alternative examining procedures. Today, the parties interpret the consent decree as still allowing those supplemental hiring authorities to be used.

Understanding the Jobs Covered in This Report

At the time of the court challenge that led to the *Luevano* consent decree, the PACE covered 127 different occupations. By the time the PACE was abolished in

1982, that number had been reduced to 118 by the introduction of nine occupation-specific examinations. These 118 occupations are the ones covered by the written replacement examination, called the ACWA, or Administrative Careers With America, that briefly replaced the PACE beginning in 1990. The occupations are listed in the table that appears at the end of this appendix. Other new examinations have further reduced the number of former PACE occupations after the PACE was abolished, but the number today remains above 100. The occupations are diverse, including safety management, community planning, foreign affairs, social services, labor relations, communications management, budget administration, hospital housekeeping management, writing and editing, loan specialist, archivist, and inventory management, to name only a few.

Former PACE positions represent a small but disproportionately important segment of the Federal workforce. This point was made by a GAO official during testimony before a congressional subcommittee during a hearing on the PACE before it was abolished. With the increased professionalization of the Federal workforce between 1979 and 1999, his 1979 assessment about the significance of these entry-level jobs is if anything even more true today, although the PACE is no longer the entry vehicle:

> While the PACE accounted for only about 5 percent of the individuals hired in 1978, the test is important because it is the entry route into Federal service for more college graduates than any other single method and because the types of jobs covered by the test often lead to higher level career positions.[1]

This report is about jobs at the entry, or trainee, level, because they are what the PACE was used to fill. That means the jobs are assigned grades GS-5 or GS-7 of the General Schedule (the Government s 15-grade white-collar pay schedule). The lower grade, GS-5, is the normal appointing grade, with advancement to GS-7 usually occurring after a year of satisfactory service. Initial appointment at GS-7 is possible for candidates meeting certain superior academic achievement requirements established by OPM.[2] A GS-7 appointment is solely at the discretion of the employer. When former PACE positions are filled above GS-7, hiring is accomplished through procedures that are outside the scope of this report.[3]

Individuals appointed to former PACE positions are expected either to progress beyond GS-7 or leave (or be removed from) their jobs. Competent employees are promoted without competition until they reach the full-performance levels for their particular jobs. The full-performance level is defined by the agency, and may vary by job, geographic or hierarchical location, agency, or agency component. For many former PACE positions, the full performance level is GS-9 or GS-11; for others it is GS-12. Collectively, these three grades are called mid-level grades. For a very few former PACE positions, the full performance level is GS-13, the lowest of three senior-level grades.[4]

With respect to job qualifications, by law only OPM has authority to establish specific minimum education requirements for Federal civil service jobs. Of the more than 100 former PACE occupations, OPM has established minimum education requirements for only 16. Thus, most former PACE jobs do not (and did not when that examination was used) require a 4-year college degree, although most who took the examination were college graduates or soon would be.

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[1] Testimony of Clifford I. Gould, Deputy Director, Federal Personnel and Compensation Division, General Accounting Office, reported in Professional and Administrative Career Examination Hearing before the Subcommittee on the Civil Service of the Committee on Post Office and Civil Service, House of Representatives, May 15, 1979, Serial No. 96-32, U.S. Government Printing Office, Washington, DC, 1979, p. 7.

[2] Currently, the requirements for superior academic achievement are: a GPA of at least 3.0 on a 4.0 scale, based on 4 years of education or during the last 2 years of the curriculum; or a GPA of 3.5 on a 4.0 scale for courses completed in the major field or required in the major field in the last 2 years of school; or ranking in the top third of the graduating class in the school or major subdivision; or membership in specifically identified national honor societies.

[3] Thus all PACE data in this report are for GS-5 and GS-7 jobs only. In a few instances data are given for mid-level positions (GS-9, GS-11, and GS-12), but those exceptions are specifically noted.

[4] The General Schedule has 15 grades, the lowest being GS-1 and the highest GS-15. For professional and administrative occupations, the even numbered grades below GS-12 are usually not used.

The 118 Occupations Covered by the Written ACWA Examination

Group 1 Health, Safety, and Environmental Occupations

Series	Title
O015	Safety and Occupational Health Management
0023	Outdoor recreation Planning
0028	Environmental Protection Specialist
0673	Hospital Housekeeping Management
0656	Public Health Program Specialist

Group 2 Writing and Public Information Occupations

Series	Title
1001	General Arts and Information
1035	Public Affairs
1052	Writing and Editing
1053	Technical Writing and Editing
1147	Agricultural Market Reporting
1412	Technical Information Services
1421	Archives Specialist

Group 3 Business, Finance and Management Occupations

Series	Title
0011	Bond Sales Promotion
0106	Unemployment Insurance
0126	Food Assistance Program Specialist
0346	Logistics Management
0393	Communications Specialist
0501	Financial Administration and Programs
0560	Budget Analyst
0570	Financial Institution Examining
1101	General Business and Industry
1102	Contract Specialist
1103	Industrial Property Management
1104	Property Management
1130	Public Utilities Specialist
1140	Trade Specialist
1145	Agricultural Program Specialist
1146	Agricultural Marketing
1149	Wage and Hour Law Administration
1150	Industrial Specialist
1160	Financial Analysis
1163	Insurance Examining
1165	Loan Specialist
1170	Realty
1171	Appraising and Assessing

Group 3 Business, Finance and Management Occupations

Series	Title
1173	Housing Management
1176	Building Management
1910	Quality Assurance Specialist
2001	General Supply
2003	Supply Program Management
2010	Inventory Management
2030	Distribution Facilities and Storage Management
2032	Packaging
2050	Supply Cataloging
2101	Transportation Specialist
2110	Transportation Industry Analysis
2125	Highway Safety Management
2130	Traffic Management
2150	Transportation Operations

Group 4 Personnel, Administration and Computer Occupations

Series	Title
0142	Manpower Development
0201	Personnel Management
0205	Military Personnel Management
0212	Personnel Staffing
0221	Personnel Classification
0222	Occupational Analysis
0223	Salary and Wage Administration
0230	Employee Relations
0233	Labor Relations
0235	Employee Development
0244	Labor Management Relations Examining
0246	Contractor Industrial Relations
0301	Miscellaneous Administration and Programs
0334	Computer Specialist (Trainee)
0341	Administrative Officer
0343	Management Analysis
0345	Program Analysis
1715	Vocational Rehabilitation

Group 5 Benefits Review, Tax and Legal Occupations

Series	Title
0105	Social Insurance Administration
0187	Social Services
0526	Tax Technician
0950	Paralegal Specialist
0962	Contact Representative
0965	Land Law Examining
0967	Passport and Visa Examining
0987	Tax Law Specialist
0990	General Claims Examining

Group 5 Benefits Review, Tax and Legal Occupations

Series	Title
0991	Workers Compensation Claims Examining
0993	Social Insurance Claims Examining
0994	Unemployment Compensation Claims Examining
0996	Veterans Claims Examining
0997	Civil Service Retirement Claims Examining

Group 6 Law Enforcement and Investigation Occupations

Series	Title
0025	Park Ranger
0080	Security Administration
0132	Intelligence
0249	Wage and Hour Compliance
1169	Internal Revenue Officer
1801	Civil Aviation Security Specialist
1810	General Investigator
1811	Criminal Investigator
1812	Game Law Enforcement
1816	Immigration Inspection
1831	Securities Compliance Examining
1854	Alcohol, Tobacco, and Firearms Inspection
1864	Public Health Quarantine Inspection
1889	Import Specialist
1890	Customs Inspector

Group 7 Positions with Positive Education Requirements

Series	Title
0020	Community Planning
0101	Social Science
0110	Economist
0130	Foreign Affairs
0131	International Relations
0140	Manpower Research and Analysis
0150	Geography
0170	History
0180	Psychology
0184	Sociology
0190	General Anthropology
0193	Archeology
1015	Museum Curator
1420	Archivist
1701	General Education and Training
1720	Education Program

Appendix 3
A short history of Federal hiring, with emphasis on professional and administrative jobs

From its establishment in the 1880 s until the early 1940 s, the U.S. Civil Service Commission applied a highly centralized examining system to fill positions in the competitive service. Central control of examining was seen as essential to eliminating political influence in hiring and to ensure that relative merit was the sole basis for hiring.

Centralized examining proved incapable of meeting the demands for new employees as the civil service expanded when the United States entered World War II. Decentralized examining was introduced, accompanied by notable efforts to bring cohesion into a civil service system that had previously developed in a largely haphazard manner.[5] Decentralized examining continued after the war, although some nationwide competitive examinations were also used for specific groups of occupations.

In 1954 the U.S. Civil Service Commission resumed its earlier heavy reliance on centralized examining with the introduction of the Federal Service Entrance Examination, or FSEE, an entry-level examination for most professional Federal jobs. In 1974 the FSEE was replaced by the PACE (Professional and Administrative Careers Examination), which was used for selecting entry-level applicants for 127[6] professional and administrative occupations. One purpose of this centralized test was to create a large applicant pool from which to select well qualified candidates. The vast majority of candidates with passing scores were not expected to be selected. Between fiscal years 1976 and 1980, only 35,419 of 723,563 applicants who took the PACE were selected.[7]

In the late 1970 s, the PACE became the focus of a legal challenge which asserted that the test had an adverse impact on two minority job applicant groups, African-Americans and Hispanics.

As appendix figure 1 shows, in FY 1978 there were significant differences in the proportions of white, African-American, and Hispanic job applicants who achieved passing scores of at least 70 on the exam. The figure also shows that for each of the three groups, veterans passes at higher rates than nonveterans. However, individuals eligible for veterans preference still had to achieve the threshold passing score of 70 before the additional 5 or 10 points were added to their scores, so their preference-eligible status did not increase their numbers with passing scores.

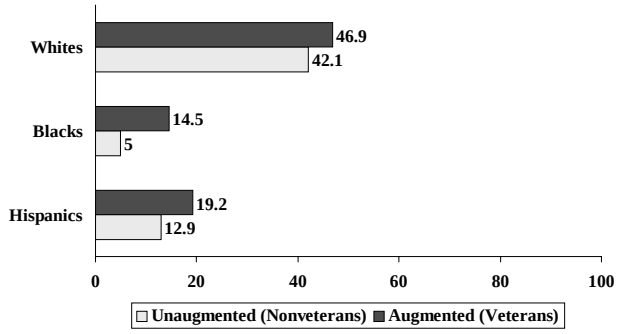
Although large, the racial/national origin disparities evident in appendix figure 1 do not begin to adequately indicate the true effect of the test s adverse impact on

[5] Patricia W. Ingraham and David H. Rosenbloom, The State of Merit in the Federal Government, An Occasional Paper Prepared for The National Commission on the Public Service, Washington, DC, June 1990, p. 9.

[6] Although the PACE covered 127 occupations when the court challenge to it was initiated, the number of occupations fluctuated as positions were added or dropped a consequence of creating or dropping other tests. By the time the PACE was abolished in 1982, it applied to 118 occupations. (Source: U.S. Merit Systems Protection Board, In Search of Merit: Hiring Entry-Level Federal Employees, Washington, DC, September 1987, p. 1.)

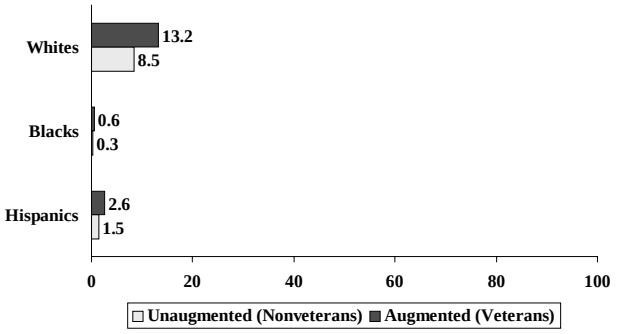
[7] Ibid.

Appendix Figure 1. Percent of White, African American and Hispanic job applicants who achieved passing (minimum 70) scores on the PACE in FY 1978



Source: Consent decree, p. 18, and Professional and Adminstrative Career Examination Hearing before the Subcommittee on the Civil Service of the Committee on Post Office and Civil Service, U.S. House of Representatives, 96th Congress, 1st Session, May 15, 1979.

Appendix Figure 2. Percent of White, African-American, and Hispanic job applicants who achieved a score of 90 or above on the PACE in FY 1978



Source: Professional and Adminstrative Career Examination Hearing before the Subcommittee on the Civil Service of the Committee on Post Office and Civil Service, U.S. House of Representatives, 96th Congress, 1st Session, May 15, 1979.

selections. This is because for many jobs a score of 90 or higher was necessary to receive an employment offer.

As appendix figure 2 shows, this higher threshold virtually guaranteed that the vast majority of individuals in the PACE selection pool would be white. Since the figure shows a threshold score of 90, the larger numbers in the augmented group (persons eligible for veterans preference) are influenced by adding 5 or 10 points to their earned scores. For example, an augmented score of 90 could be achieved by adding 5 points to an earned score of 85 or 10 points to an earned score of 80.

In 1981, the Carter administration negotiated and the Reagan administration entered into the *Luevano* consent decree, one stated purpose of which was to eliminate adverse impact against blacks and against Hispanics [8] in Federal hiring for jobs that were subject to the PACE. The court intended to accomplish this by having OPM develop alternative examining procedures which will eliminate adverse impact against blacks and Hispanics as much as feasible and which validly and fairly test the relative capacity of applicants to perform the jobs [covered by the PACE requirement]. [9]

To accomplish this stated goal as the PACE was phased out of existence and replaced by alternative examinations, the court directed agencies to use three hiring methods identified in the consent decree. These were the already-existing College Cooperative Education and other work study programs, and two new programs especially created under the terms of the consent decree: a new Outstanding Scholar Program and a Bilingual/Bicultural certification process. The consent decree specifically stated that

> the special programs are *supplemental* to the interim use of the PACE and alternative examining procedures to assure equal employment opportunity in the Federal service. *It is not the intent that the use of these special programs shall replace the interim use of the PACE or the use of alternative examining procedures, other than as may be necessary to effectuate the purposes of the Decree.* (emphasis added).[10]

The decree applied only to external hiring procedures of 45 specifically identified executive and legislative branch departments and agencies. Agencies were instructed to notify specific colleges and universities

[8] *Luevano* consent decree, p. 3.

[9] Ibid., p.3.

[10] Ibid., p. 26.

about the special programs and encourage those schools to disseminate program information to their students. The court retained jurisdiction for five years after the cessation of the use of PACE results for the job category and the implementation of an alternative examining procedure for that job category at the GS-5 or GS-7 level. [11] The 5-year period could be extended by the court and has been. Consequently, the decree remains active nearly two decades after its signing.

Within a year of the decree's approval, OPM announced its decision to abolish PACE without any phase-out period, even though the court had anticipated such a period. New competitive examinations were established for a few occupations formerly under the PACE, but for most of the occupations OPM announced the establishment of a new Schedule B hiring authority as the means of hiring new employees into former PACE positions. Schedule B is one of three categories of the excepted service. It is used for hiring into positions for which it is not practicable to hold a competitive examination; thus it applies to jobs that are filled without normal competitive procedures. Creating this Schedule B-PAC authority had multiple effects:

Agencies were relieved of many uniform procedural requirements associated with competitive examining and hiring;

The recruitment and selection process for former PACE occupations was completely decentralized, leaving each agency to fend for itself at a time when competitive hiring was still largely centralized; and

Since employees were hired into the excepted service through a Schedule B appointing authority that applied only to GS-5 and GS-7 positions, they could not advance beyond GS-7 without being selected through some subsequent competitive process. Thus, their careers in PACE occupations could not be assured merely as a result of initial selection and good performance.[12]

As a result of losing a legal action that challenged the Schedule B-PAC authority, OPM eventually abolished that authority and concurrently introduced a written examination known as Administrative Careers With America (ACWA). This centralized examination covered positions formerly filled under the PACE and replaced the PAC-B hiring authority, alternative examinations, and any examining delegations authorized for the PACE positions. ACWA covered six broad occupational groupings, each with its own scoring key, plus a seventh group with specific minimal education requirements for which examining was conducted through review of candidates' training and experience. The ACWA was first administered in June 1990.

As with the PACE, the ACWA written test produced an abundance of applicants, of whom only a small percentage proved successful in their pursuit of a Federal job. For example, in a little more than 2 years after its inception in 1990, ACWA produced approximately 3,500 hires from more than 75,000 applicants.[13] The ACWA written test was abandoned in November 1994, partly because of a slowdown in Federal Government hiring which contributed to even higher numbers of applicants who, although successful at the examination stage, never were selected for employment. It was also abandoned because it retained the structural disadvantages of centralized examining.

Since then, former PACE positions have been filled from external sources through the processes covered by this report, as well as through internal selection processes (e.g., merit promotion or reassignment) which are not included in this report. Under terms of the consent decree, agencies may not use delegated examining for positions covered by the decree unless the Department of Justice first approves the examining instru-

[11] Ibid., p. 6.

[12] While the vast majority of employees so appointed were able to secure competitive appointments, a small number were not. This remained a problem until OPM authorized noncompetitive conversion of these Schedule B-PAC employees around the same time it abolished this authority following a successful court challenge to it by the National Treasury Employees Union in 1990. For more information about the Schedule B-PAC authority and the demise of the PACE, see the following reports by the U.S. Merit Systems Protection Board: In Search of Merit: Hiring Entry-Level Federal Employees, September 1987, and Entering Professional Positions in the Federal Government, March 1994.

[13] Michael Brophy, ACWA Program Used to Fill 3,500 Entry-Level Jobs Since 1990, *Federal Jobs Digest*, Mar. 12, 1993, p. 18.

ment. Although not accomplished through delegated examining, most hiring for former PACE positions is conducted through decentralized processes. This means the agencies themselves control most of the process. They may perform the staffing work themselves or may contract the work with another agency, including OPM. When OPM conducts the examining for agencies, it is through the ACWA self-rating schedule discussed in the text of this report.

While standing lists of qualified applicants (called registers) were commonly used for Federal hiring until fairly recently, their use has been much reduced in recent years. Decentralization has led to a shift from use of registers to case examining, where individual jobs or small numbers of jobs are advertised and filled as needs arise. We note, however, that some organizations are using the Outstanding Scholar Program to develop what essentially are registers for former PACE positions. This is an awkward use of the programs hiring authority, since there is no provision in the consent decree for agencies to further examine the individuals who meet the Outstanding Scholar eligibility criteria. How, then, are referrals to be managed and distinctions made among the individuals when a position is to be filled? This is one of the problems associated with how use of the Outstanding Scholar Program has developed over time.

In sum, Federal hiring has undergone many changes since the birth of the Federal civil service, and particularly over the past three decades. Entry-level hiring for former PACE positions has been subjected to additional stresses and pressures by the various decisions made and actions taken as a result of the *Luevano* court challenge that led to abolishment of that examination. A key effect of the consent decree that settled that challenge was the creation of two new hiring tools which now, nearly two decades later, have become well established as common hiring devices for entry level jobs. It seems important now to remind managers, human resources professionals, and the parties overseeing the outcomes of the consent decrees requirements of the expectations that were created when the decree was approved. It also seems appropriate to question the continued need for the decree and its special hiring and reporting requirements in light of changed circumstances.

Appendix 4
Further information about the six hiring methods included in this report

Competitive Examining

Competitive examining involves measuring applicants who possess established minimum qualifications against uniform criteria and placing them in rank order. The examining process may be either assembled (which means using some sort of actual test, usually written or performance-based) or unassembled (which typically means assessing applicants training and experience against uniform criteria). The examining tools usually have been validated, which means that candidates scores are believed to be useful in predicting future job performance. Although increasing use is being made of unassembled exams, written tests usually have greater predictive value for entry-level jobs than do assessments based on evaluating the candidates education and experience.[14]

Applicants with passing scores are ranked according to their scores after 5 or 10 points are added to the scores of those eligible for veterans preference. The successful candidate is selected following the rule of three, which requires the selecting official to choose from among the top three available candidates on a list of eligibles (called a certificate).

Under current decentralized examining procedures, agencies are permitted to devise their own examination procedures for filling most jobs. (They must also, then, be able to defend the appropriateness of those procedures if challenged.) However, the *Luevano* decree requires agencies to follow stringent procedural requirements if they wish to use their own examination procedures for filling former PACE jobs. In combination with the high cost of properly developing, constructing, and validating tests, the net effect of the *Luevano* requirements has been that no agency has developed its own examination for the full range of former PACE positions. (In a few instances agency-specific examinations have been developed for a single or small number of former PACE occupations.) Instead, when competitive procedures are used to fill former PACE positions, the OPM examination is used.

OPM s replacement examination for most of the 112 occupations covered by the PACE was a written test called the Administrative Careers With America (ACWA) examination. It consists of a written test and biographical data reported by the candidate. For the 16 former PACE occupations that OPM has determined require specific academic credentials, the PACE was replaced by an evaluation of candidates training and experience. The written test/biodata version of the ACWA examination has not been used since 1994, although it remains in OPM s test inventory. Candidates examined by OPM for former PACE occupations now are rated and ranked after completing another instrument called the ACWA rating schedule. This is a multiple-choice, 157-question self-rating instrument that distinguishes among qualified candidates on the basis of their life experiences. This self-rating instrument is the only competitive procedure used today for the broad spectrum of former PACE positions.

[14] For more information about Federal examining and hiring practices, see U.S. Merit Systems Protection Board, The Rule of Three in Federal Hiring: Boon or Bane?, Washington, DC, December 1995, pp. 3-8.

Veterans Readjustment Authority

The Veterans Readjustment Authority permits Federal agencies to hire qualified veterans into the competitive service without requiring that they compete with other candidates. In Federal Government terminology, a method of hiring that does not require competition is called either a direct hire authority (usually justified by an extreme shortage of candidates) or an authority for noncompetitive appointment to the competitive service (in cases where certain eligibility criteria must be met in addition to meeting minimum job qualifications).

Veterans are eligible for VRA appointment for 10 years after their separation from active duty or until specific dates, depending on whether they are Vietnam-era or post-Vietnam-era veterans, whichever provides the later date of eligibility. There is no time limit on eligibility for a veteran with a service-connected disability of 30 percent or more.

Agencies decide whether the applicant meets experience and education requirements for the job and may or may not require an examination. A permanent appointment is not guaranteed. Individuals originally are hired for a 2-year period. Following 2 years of observing the individual s performance on the job, the agency decides whether to make the appointment permanent through noncompetitive conversion. The literature suggests a high level of validity for this type of selection criterion.[15] In this report we treat both VRA initial placements and subsequent conversions to permanent jobs as new hires.

Cooperative Education Program

The Cooperative Education Program today is encompassed in the Student Educational Employment Program Student Temporary Employment Program authorized by OPM regulations.[16] This program under the name Cooperative Education was authorized by regulation before the *Luevano* court case was initiated. (In this report we use the programs original name.)

The Cooperative Education Program permits students to work with a Federal agency while enrolled in college. Through a formal agreement between the agency and the college, the work experience is treated as part of the student s overall educational program. While participating in the program a student serves on an excepted service appointment. Upon completion of all requirements of his or her academic program, a student may be converted without competition to a competitive service appointment. This action is solely at the discretion of the agency. As in the case of the VRA appointing authority, work experience or work samples form the basis of the selection process. No examination is required for conversion.

The College Cooperative Education Program is one of the appointing authorities specifically named in the *Luevano* consent decree as an approved hiring method for former PACE positions. The decree specifically includes students from junior colleges and other 2-year colleges as well as students from 4-year academic institutions. Presumably, the inclusion of students in 2-year programs was in deference to the fact that many former PACE occupations do not require a baccalaureate or higher degree.

Because this appointing authority is included in the consent decree, its use to fill former PACE positions is subject to reporting requirements contained in the decree.

The Outstanding Scholar Program

The Outstanding Scholar Program is a creation of the *Luevano* consent decree. This program permits the direct hire of any individual with a baccalaureate degree who has at least a 3.5 grade point average (GPA) on a 4.0 scale or is in the top 10 percent of his or her graduating class (or of a major subdivision, such as a College of Arts and Sciences). Either measurement of academic performance is the sole criterion for determining employment eligibility.[17] Assembled or unassembled exam-

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[15] Richard Wagner, Intelligence, Training, and Employment, *American Psychologist* 52, October 1997, pp. 1059-1069.

[16] 5 CFR 213.3202

[17] Job applicants must meet the minimum qualification requirements for the job sought. Under OPM s qualifications standards, possession of a baccalaureate degree is one way to meet the minimum qualifications for GS-5 in former PACE occupations. In addition, the academic criteria of the Outstanding Scholar Program meet Superior Academic Achievement criteria established by OPM for appointment (at the agency s discretion) to GS-7 instead of GS-5.

inations are not required. Candidates who meet the Outstanding Scholar requirements may be hired without competing with others, and neither the rule of three nor veterans preference is applicable. The individual s date of graduation is not a factor.

Although this specific program was established by the consent decree, it has its genesis in the recognition of outstanding scholars that was present when both the PACE and, earlier, the FSEE were used. Unlike the current version, however, these earlier approaches to qualifying and referring outstanding scholars for employment had a clear link to a written test, whether the FSEE or the PACE. Since the FSEE was used as far back as 1955, it is clear that GPA and class standing have played a role in Federal entry-level hiring for entry-level professional and administrative occupations for more than 40 years. Nevertheless, the validity of GPA as a predictor of job performance is under debate, with no clear agreement about the relationship between GPA and predicted job performance.[18] This is among the reasons that earlier MSPB reports have been critical of GPA use in the Outstanding Scholar Program.

The Bilingual/Bicultural Program

The *Luevano* consent decree established a Bilingual/Bicultural Program that applies to any former PACE job in which job performance or interaction with the public would be enhanced by employees having bilingual (Spanish-English) and/or bicultural (Hispanic-Anglo) capability. This hiring authority requires an examination but permits hiring with only a passing score if the candidate possesses appropriate Spanish and English language proficiency or Hispanic cultural knowledge. Applicants who have passed a qualifying examination can be hired regardless of their score or relative ranking if they demonstrate the required level of oral Spanish language proficiency and/or the requisite knowledge of Hispanic culture [19] via a questionnaire or interview. The language of the consent decree does not preclude hiring non-Hispanics using this hiring authority, as long as they possess the appropriate language skills and cultural knowledge.

If an agency has not used this program and adverse impact against Hispanics has occurred in the agency s hiring, the consent decree requires that the agency demonstrate:[20]

> That each former PACE position it filled required little or no public contact or that job performance would not be enhanced by bilingual/bicultural personnel; or
>
> That the positions filled were in geographical areas without a significant proportion of Hispanic or Spanish speaking people among the groups intended to be served by the job category in question.

This Bilingual/Bicultural Program is related to the device of using selective factors and quality ranking factors in hiring, something Federal managers have been able to do for many years. (A selective factor is a knowledge, skill, or ability that is essential to performing the duties of the position to be filled in a satisfactory manner, and a quality ranking factor is a knowledge, skill, or ability that helps identify superior candidates.) However, as authorized by the consent decree, the program both expands and limits the application of those concepts. It expands the concepts by allowing minimally qualified persons who possess the requisite bilingual or bicultural skills to be appointed without regard to their examination scores relative to other candidates. It limits the concepts by restricting the programs application to Spanish-English bilingual capability and Hispanic-Anglo cultural knowledge rather than opening it to all languages and cultures.

Other Hiring Authorities

This is a residual category we have established for the purposes of this report. It encompasses a large number of special appointing authorities established by a variety

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[18] See for example, Robert Bretz, Jr., College Grade Point Average as a Predictor of Adult Success: A Meta-Analytic Review and Some Additional Evidence, *Public Personnel Management* 18, Spring 1989, pp. 11-22; David Dye and Martin Reck, College Grade Point Average as a Predictor of Adult Success: A Reply, *Public Personnel Management* 18, Summer 1989, pp. 235-241; Daniel Masden, The Use of Educational Achievement, Grade Point Average and Biodata in Personnel Selection, (undated, unpublished report prepared in response to an internal administrative request), Research, Development, and Validation Unit, Technical Services Division, Nevada Department of Personnel.

[19] Consent decree, p. 28.

[20] *Ibid*., p. 25.