The *Luevano* Consent Decree and Public Personnel Reform

By J. Michael Martinez, JD, PhD

Special thanks to Dr. Stephen E. Condrey, program manager for the Human Resource Management Program at the Carl Vinson Institute of Government, and an adjunct professor in the School of Public & International Affairs at the University of Georgia.

The 1981 *Luevano* consent decree that resolved a legal challenge to the Professional and Administrative Careers Examination was one of the most influential public personnel developments of the 1980s and 1990s, widely influencing subsequent civil service reforms. The decree remains in effect as of this writing, although its effectiveness has been increasingly questioned in recent years. This article examines the terms of the decree and whether the stated goal of improving opportunities for blacks and Hispanics to secure positions in the federal civil service would be better accomplished through alternate measures.

The question of what constitutes "merit" and whether civil service examinations adequately test for merit has been, and remains, a key issue in public personnel administration since late in the nineteenth century. This article examines the controversy surrounding one examination—the Professional and Administrative Careers Examination (PACE)—and a subsequent lawsuit and consent decree on the issue. At its conclusion, the article assesses whether the so-called *Luevano* consent decree effectively resolved the problems identified in PACE, as well as the decree's effect on subsequent civil service reform.

The Underlying Issue: PACE and "Adverse Impact"

Civil Service Examinations

When Congress passed the landmark Pendleton Act in 1883, it recognized that the central problem in public personnel management was to identify merit. Accordingly, the task of the newly created U.S. Civil Service Commission (CSC) was to develop a measure of merit that stressed neutral competence as the basis for hiring and promotion instead of the patronage considerations that had marred much of federal personnel management since the Jacksonian era of the 1830s. Within a decade after its creation, the CSC had developed a competitive examination designed to identify merit

"of the achievement type" and which the commission believed was suitable for determining who should and should not be eligible for public sector employment.[1]

In the ensuing years, the federal government attempted to refine the type of examinations used to determine employment eligibility. In some instances, such as during World War II, decentralized examinations were used to meet the divergent needs of federal agencies. The demands of war mobilization and production required different agencies to use different tests to determine which candidates would meet specific agency needs. After the war ended, the CSC concluded that recentralization of personnel functions was needed to instill cohesion in federal employment. As a result, in 1954 the commission established the Federal Service Entrance Examination (FSEE) for most federal jobs. The exam was designed "as a 'universal' instrument for selecting college graduates in entry level positions."[2]

The FSEE was criticized as "overly general" because it did not adequately pose questions that were reasonably related to job performance. Recognizing this problem, in 1974 the CSC replaced the FSEE with PACE as the primary tool for selecting entry-level applicants in 118 professional and administrative occupations at the General Schedule ratings of GS-5 and GS-7. PACE would allow the CSC to create a large, centralized applicant pool from which specific federal agencies could select qualified candidates; however, most candidates who received passing scores could not realistically expect to secure federal employment. The statistics graphically illustrated this conclusion. Between fiscal years 1976 and 1980, only 35,419 of 723,563 candidates who sat for the exam actually were selected for federal jobs.[3]

PACE and Merit

PACE was designed to improve on the FSEE by testing the "knowledges, skills and abilities" necessary for candidates to assume professional and administrative responsibilities in government service. The CSC specifically developed the new exam in response to a landmark 1971 U.S. Supreme Court case, *Griggs, et al. v. Duke Power Company*. In *Griggs*, the court prohibited the use of selection methods for federal civil service employment that "cannot be shown to be related to job performance." Moreover, the court outlawed selection methods that discriminate on the basis of race.[4]

To compete for an entry-level job that was subject to PACE testing, an applicant had to possess a four-year college degree, three years of professional experience, or the equivalent combination of education and experience. The applicant was required to complete an application and sit for the examination. Test scores were converted into numerical scores, with 40 being the lowest possible score and 100 being the highest. A score of 70 or above was considered passing. Veterans were awarded five or 10 additional points depending on their length of service and whether they had incurred a disability during their time in uniform.[5]

After identifying eligible candidates with a score of 70 or higher, the U.S. Office of Personnel Management (OPM), which replaced the CSC in 1979, prepared a rank-ordered list of applicants known as the "PACE Register." Federal agencies seeking to fill open positions within the 118 designated occupations had discretion either to consult

the PACE Register or elect to fill its open positions by promoting, reassigning, or transferring current employees. When an agency chose to use the register, it would request a list of eligible candidates from the local OPM area office. The requested list—called a "certificate" in agency parlance—was forwarded to the requesting agency, which then used the "rule of three." Under this rule, the agency could select any of the top three candidates, with preference given to veterans by statute.[6]

The OPM certificate was not the sole factor by which requesting agencies would fill positions. Depending on the request of the agency involved, the OPM could institute additional job-related requirements such as knowledge of a foreign language, certain types of computer skills, or other specialized training, education, or certifications. The willingness and ability to relocate or to travel extensively was a factor in some instances. As a result of additional requirements, even candidates with PACE scores significantly higher than 70 were not guaranteed a position in a federal agency. In fact, according to OPM's data for fiscal years 1976-1980, only 4.9% of applicants who sat for PACE were selected for PACE occupations. Table 1 provides the raw OPM data for those five years. Clearly, an applicant who sat for PACE could not harbor a reasonable expectation of securing employment in a federal administrative agency.[7]

Table 1: Raw Number of PACE Applicants Who Secured Federal Employment, FY 1976-1980

Fiscal year	Applicants who sat for PACE	Total number of competitive hires
1976	222,340	8,254
1977	185,691	8,521
1978	135,403	7,687
1979	112,323	6,283
1980	67,806	4,674
Total	723,563	35,419

Note. PACE = Professional and Administrative Careers Examination.

Four years after PACE was developed, the OPM joined with the Equal Employment Opportunity Commission, the U.S. Department of Labor, and the U.S. Department of Justice to issue a series of guidelines that became known collectively as the *Uniform Guidelines on Employee Selection Procedures* (hereinafter the *Guidelines*). The *Guidelines* represented the agencies' attempts to establish a rule for determining whether a particular examination had an "adverse impact" on a particular racial or ethnic group. Under the "four-fifths rule," any examination that resulted in a selection rate of less than 80% for members of a particular racial, ethnic, or gender group was deemed to have an adverse impact, regardless of the intent behind the development of the examination. The *Guidelines* did not absolutely prohibit the use of an examination that failed the four-fifths rule, but it did specify that such examinations must be validated through a series of fairly stringent validation standards.[8]

PACE's Proportionality Problem

During the late 1970s, an increasingly large group of detractors began to criticize PACE because of the significant differences between the proportions of white, black, and Hispanic job applicants who received a 70 or higher in the examination. Before these complaints were raised, the OPM generally did not collect data on the race and national origin of PACE applicants. Owing to growing number of questions about the examination's potential adverse impact on certain races, however, the agency collected sample data during the January 1978, April 1978, and April 1980 administrations of PACE. The four-fifths rule certainly supported the arguments voiced by PACE critics.

Table 2: Disparities in PACE Results by Race, January 1978 and April 1978

Scores	Whites	Blacks	Hispanics
Total number of PACE applicants	45,539	6,488	2,694
Number earning 70 or above (unaugmented)	19,177	323	347
Percentage of total	42.1%	5.0%	12.9%
Number earning 70 or above (augmented)	21,343	940	518
Percentage of total	46.9%	14.5%	19.2%
Number earning 90 or above (unaugmented)	3,861	17	40
Percentage of total	8.5%	0.3%	1.5%
Number earning 90 or above (augmented)	6,030	42	69
Percentage of total	13.2%	0.6%	2.6%

Note. PACE = Professional and Administrative Careers Examination. The unaugmented score

The data indicated that in the January 1978 and April 1978 administrations of the exam sampled by the OPM, approximately 42% of white test takers earned at 70 or higher, while only 12.9% of Hispanics and 5% of blacks achieved comparable scores. Table 2 provides the raw data from the 1978 samples. Yet even these figures on scores of 70 or above did not illustrate the extent of the disparities. With a glut of highly qualified applicants competing for some positions, in many cases, the threshold score necessary to procure employment was closer to 90. Table 2 shows an even greater adverse impact by race for scores of 90 or higher, especially those augmented by the veterans' preference. Slightly more than 13% of whites received a score of 90 or higher, while only 0.6% of blacks and 2.6% of Hispanics did so.[9]

In light of the clear disparities in PACE results by race—the legal definition of adverse impact—it was only a matter of time before the examination was challenged. The challenge came on January 29, 1979, when Angel G. Luevano and a group of plaintiffs representing a nationwide class of blacks and Hispanics filed suit against then-OPM Director Alan Campbell, alleging that PACE discriminated against class members in violation of Title VII of the Civil Rights Act of 1964. Based on the number of PACE applicants who were black and Hispanic, the class included more than 100,000

members. Scrambling to answer the suit, the OPM asked for, and was granted, four time extensions for filing an answer, which it finally did on December 14, 1979.[10]

For almost two years, the parties litigated the case, exchanging requests for admissions, interrogatories, and the production of documents. At the end of several rounds of settlement negotiations, the parties jointly moved on January 9, 1981, for a court order granting preliminary approval to a consent decree to settle the case. After a minor amendment, the U.S. Court of Appeals for the District of Columbia Circuit granted the order for a consent decree on February 26, 1981, and the final decree was approved on November 19 of that year.[11]

The *Luevano* Consent Decree and "Life After PACE"

Phase-Out of PACE

Under the terms of the consent decree, the OPM agreed to phase out PACE no later than three years after the settlement. One year after the effective date of the decree, 50% of applicable appointments to federal administrative agencies had to be made using alternative examination procedures. Within two years, the goal was 80% of appointments. Three years after the decree went into effect, all applicants would have to be examined using alternative procedures. During the phase-out period, the OPM would be required to undertake "all practicable efforts" to minimize the adverse impact of PACE. One such effort was providing financial assistance to applicants by offering the examination free of charge. The OPM assistance program was to be administered in selected areas where large numbers of blacks or Hispanics lived. Although the program was primarily designed to assist members of the identified class, it was not limited to the class.[12]

In place of PACE, the OPM or a particular agency seeking to hire personnel was directed to develop an examination and examination procedures that were specifically related to the job or a group of job categories where the vacancy existed. To ensure that the new system did not also result in an adverse impact, the consent decree required the OPM to establish a monitoring committee made up of representatives from both plaintiffs and defendants in the lawsuit to oversee the development of test content and validation procedures, and to oversee all steps associated with implementation. The monitoring committee was directed to report back to the federal appeals court on a regular basis.[13]

The court ordered that after an appropriate replacement examination and procedures were developed, the results would have to be disseminated to the OPM and agency offices around the country. Moreover, the OPM and affected agencies would have to provide for training so that agency testing personnel would be informed of the requirements contained in the consent decree. Over the objection of some class members—who insisted on the immediate elimination of PACE—the court concluded that the terms of the consent decree required a three-year implementation period to ensure that the OPM and the appropriate agencies had adequate time to replace the examination.[14]

The Outstanding Scholar and Bilingual/Bicultural Programs

The consent decree did not allow the OPM to wait for black and Hispanic applicants to apply for public sector jobs. Instead, it required the agency to develop two recruitment programs to remedy the negative effects of past discrimination. Called the Outstanding Scholar and the Bilingual/Bicultural programs, these two recruiting systems applied to all GS-5 and GS-7 occupations that were originally subject to PACE testing.[15]

The Outstanding Scholar Program makes all graduates from accredited colleges and universities who have obtained an overall grade point average (GPA) of 3.5 or higher out of 4.0 or who stood in the top 10% of their graduating class eligible for appointment to GS-5 and GS-7 positions in the covered occupations without going through an examination procedure. The program does not ensure that every Outstanding Scholar will receive a federal appointment, but it does mandate that such applicants must be considered before other applicants are considered. Neither the OPM nor the consent decree set a time limit after graduation for Outstanding Scholar eligibility and, presumably, an applicant can receive an unlimited number of Outstanding Scholar appointments.[16]

The Bilingual/Bicultural Program requires applicants to sit for an appropriate civil service examination and receive a passing score, but it also rewards Spanish-language skills. If a Spanish-speaking applicant is applying for a GS-5 or GS-7 position where "job performance would be enhanced by having bilingual and/or bicultural skills," the applicant can be appointed even if other applicants receive higher test scores. To demonstrate an applicant's eligibility, the agency may employ a "reasonable questionnaire" that tests oral proficiency in Spanish, as well as "requisite knowledge of Hispanic culture."[17]

As appealing as these programs appeared to some critics of PACE, many observers feared that the new programs were no better—and maybe a good deal worse—than PACE. The Merit Systems Protections Board (MSPB) summarized the concerns voiced by many critics in a 2000 special report titled *Restoring Merit to Federal Hiring: Why Two Special Hiring Programs Should Be Ended*. With respect to the Outstanding Scholar Program, the MSPB found that the high eligibility criteria were "highly questionable as valid predictors of future job performance." Moreover, the Outstanding Scholar program effectively denied job opportunities to the large segment of the applicant pool that did not have a college GPA of 3.5 or higher, but which could competently handle job requirements. Finally, the Outstanding Scholar Program became a "primary hiring tool in a number of agencies, contrary to its purpose as a supplement to competitive hiring." At least one independent study has found no necessary correlation between college grades and job performance.[18]

As for the Bilingual/Bicultural Program, the MSPB report questioned whether the practice of noncompetitively hiring candidates who met minimum job requirements and possessed Spanish-language skills, as well as an appreciation for Hispanic culture, was appropriate. In the report authors' view, "We found that by using competitive, merit-based hiring tools, the Government has been able to hire Hispanic job candidates in representative numbers for jobs formerly filled through PACE." Even in

situations when "extra credit" was not given to candidates through the program, the candidates secured employment through merit-based practices in numbers comparable to the numbers achieved through noncompetitive hiring. Consequently, the MSPB concluded that the goals of the Bilingual/Bicultural Program could be met without resorting to noncompetitive hiring.[19]

Schedule B and Problems of Noncompetitive Hiring

Although the OPM had three years to phase out PACE and develop a new civil service examination following the *Luevano* consent decree, the agency announced on May 11, 1982, that it would abandon PACE immediately.

In its stead, the OPM announced, the agency would use Schedule B appointment authority to select personnel on a temporary basis. Schedule B is one of three appointment authorities in "excepted service," and it essentially involves hiring personnel on a decentralized, noncompetitive basis. Under this new hiring method, individual agencies generally exercise broad discretion in determining appropriate measures of a candidate's competence and qualifications. Schedule B is described in the *Code of Federal Regulations* as permissible for "positions other than those of a confidential or policy-making character for which it is not practicable to hold a competitive examination."[20]

Schedule B hiring authority was first created in 1910, but, prior to 1982, it had been used sparingly and primarily for student cooperative education programs and for employing university faculty to operate agency training programs. The OPM's proposed use of Schedule B was a creative response to a difficult situation, but it was not an altogether natural fit. Because personnel appointed pursuant to Schedule B were not part of the "competitive service," if they sought to move beyond the GS-5 or GS-7 level, they still had to qualify anew for promotion. Thus, personnel who secured employment at the GS-5 or GS-7 level under Schedule B sometimes found their efforts to advance stymied by the same or similar barriers that they would have faced when PACE was still in use.[21]

In 1988, two scholars, Carolyn Ban and Patricia W. Ingraham, published research about whether "life after PACE," as they labeled the post-1982 practice of federal personnel management, resulted in increased or decreased employment opportunities for members of racial and ethnic minority groups. Ban and Ingraham found that many agencies preferred Schedule B to PACE because the former allowed them more flexibility in matching applicants with specific skills to needs within the agency. Nonetheless, by decentralizing personnel functions, Schedule B made it more difficult to monitor agency hiring practices, and, with the loss of its oversight capability, the OPM had fewer opportunities to correct abuses. "Schedule B was originally implemented as a temporary solution to the problem created by the consent decree," the researchers concluded. "If it becomes institutionalized, inevitably pressure will build to swing the pendulum back toward more control and oversight."[22]

Twelve years after the Ban and Ingraham study was published, the MSPB found that federal hiring under the Outstanding Scholar Program, the Bilingual/Bicultural Program, and other noncompetitive systems generally did not substantially increase the number of

new hires within the groups of people covered by the *Luevano* consent decree. Table 3 presents data from one year—1997—when hiring under the Outstanding Scholar and Bilingual/Bicultural programs was especially pronounced. The table shows that approximately 11% of outstanding scholars were black and about 7% were Hispanic. More than 75% were white. When compared with appointment qualification rates under PACE, these figures from 1997 suggest that the Outstanding Scholar Program increased the percentage of blacks hired. The figures are worse for Hispanics.[23]

Table 3: Percent of New Hires Into Former PACE Jobs in 1997, by Race and National Origin and Hiring Score

Hiring source	Total new hires	Blacks	Hispanics	Asians/Pacific Islanders	Native Americans	Whites
Outstanding scholar	2,065	11%	7%	5%	1%	76%
Bilingual/Bicultural	446	1%	79%	1%	0	19%
Cooperative education	314	25%	10%	6%	1%	57%
Veterans	676	17%	20%	4%	>1%	58%
Competitive exams	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. Percentages may not equal 100 owing to rounding. PACE = Professional and Administrative Careers Examination.

Aside from comparing hiring data using PACE and other systems, however, the key issue is whether the Outstanding Scholar Program is preferable to competitive hiring. According to these data, blacks fare about the same under competitive hiring as they do under the Outstanding Scholar Program. Hispanics fare worse. These data, in the words of the MSPB report, "indicate that competitive examining was as good a vehicle as Outstanding Scholar for hiring African Americans and better for hiring Hispanics."[24]

As for the Bilingual/Bicultural Program, blacks perform considerably better under competitive examinations than under this program. Not surprisingly, Hispanics have higher employment rates under this program. Taken out of context, the improved hiring of Hispanics might be a persuasive argument for retaining the program; however, the MSPB examined employment figures for 1993-1997 and reached a different conclusion. Table 4 summarizes the raw number of Hispanic hires during the five years examined by the board. The numbers indicate that the Bilingual/Bicultural Program ranked first or second as the method through which Hispanics were hired during three of the five years studied. Notice, however, that the number of Hispanic veterans increased fairly significantly during the study period. Coupled with increases in competitive hiring, the result is that more Hispanics were hired into jobs that had formerly been subject to PACE testing through veterans' preferences and other competitive examinations—both of which have a merit basis—than through the Outstanding Scholar and Bilingual/Bicultural Program combined. In any case, OPM

effectively retired these programs in November 2007 in the wake of two MSPB decisions, *Dean v. U.S. Department of Agriculture*, and *Olson v. U.S. Department of Veterans Affairs*.[25]

Table 4: Raw Number of Hispanic Hires Into Former PACE Jobs by Various Hiring Methods, 1993-1997

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
Veterans	53	73	147	181	134
Competitive exams	44	56	75	162	167
Other	41	41	81	93	95

Note. PACE = Professional and Administrative Careers Examination.

Add to these data the problems with Schedule B, and by the 1990s it appeared that life after PACE was not a substantial improvement over life under PACE. Designed to be an interim measure, Schedule B had evolved into a primary federal hiring practice. In fact, the OPM took so long to develop new testing procedures that even Schedule B was challenged as creating an adverse impact on the groups covered by the *Luevano* consent decree. Recognizing the developing controversy, the OPM finally unveiled a new examination, the Administrative Careers With America (ACWA) examination.[26]

ACWA

The OPM unveiled the ACWA written test in 1990. Employing a multiple-choice format and containing items designed to assess cognitive ability, the examination also included a bio-data self-rating component that helped to reduce the adverse impact on any particular group. Although it was a centralized exam, ACWA was written so that it could be adapted to some extent to an agency's needs. The examination covered six broad occupational groupings, each with its own scoring key, as well as a seventh group with specific minimal educational requirements. The exam was first administered in June 1990, and it initially seemed to be an improvement over PACE and Schedule B.[27]

As with PACE, the ACWA written test was administered to many applicants, but only a small percentage secured federal employment as a result of sitting for the examination. By March 1993, more than 75,000 applicants had sat for ACWA, but only 3,500 of those test takers had actually gotten federal jobs afterward. Fearful that these figures were indicative of continued problems in administering centralized employment testing, and in the wake of reduced federal hiring, the OPM decided to abandon the ACWA written test in November 1994.[28]

The OPM supplanted the ACWA written test with a rating schedule consisting of a 157-item multiple-choice self-rating form that was available to all federal agencies. The form credits applicants with a passing grade if they possess the minimum qualifications

necessary for the job the agency has to fill. For applicants who meet that threshold, a standardized rating schedule is used to identify the ones with the best qualifications for the job, with points being awarded for an individual's life and work experiences. Because applicants often are required to possess a bachelor's degree as a minimum qualification, in many ways the ACWA rating schedule is a tool for choosing an appropriate employee from among a large pool of college graduates.[29]

Owing to congressional budget action in 1999, the OPM began charging agencies a fee to administer the ACWA rating schedule. As of 2000, the basic fee to apply the schedule to a pool of applicants and prepare a certificate of eligibility for a single position was $585.00. The OPM charges different rates, depending on the number of applicants that must be tested in a single administration. Agencies need not buy these services from the OPM, however. They have the option to prepare their own examinations or buy appropriate examinations from any federal agency with "delegated examining authority," but most agencies prefer to deal directly with the OPM rather than running afoul of the *Luevano* consent decree.[30]

Luevano and Next Steps in Civil Service Reform

In the more than two decades since the *Luevano* consent decree went into effect, the OPM has struggled with the concept of merit and the need to hire competent personnel in a nondiscriminatory manner. With the agency's decision to abandon PACE, interim measures such as increased Schedule B hiring, the ACWA written test, and the ACWA rating schedule have improved on the pre-1981 hiring situation to some extent. Nonetheless, each of the programs and instruments developed after PACE has been flawed, thereby leading to another round of civil service reform.

In June 2000, the OPM announced a new 10-point plan to increase Hispanic hiring in federal agencies. Noting that Hispanics comprised 10.8% of the civilian labor force but only 6.4% of the federal labor force, the agency fashioned its new plan around aggressive recruitment at high schools, colleges, and cooperative education centers. Coupled with diversity training for key federal managers and increased monitoring, the plan was designed to bolster Hispanic employment and improve on the gains made since PACE was abandoned.[31]

The *Luevano* consent decree remains in effect, despite its "temporary" nature, but the question remains whether it should be eliminated and replaced by merit-based hiring. In his essay "The State of the Federal Civil Service Today: 'Aching for Reform,'" Steve Nelson, director of MSPB's Office of Policy and Evaluation, argued that *Luevano* is no longer useful. In his view, the steps taken by the OPM after PACE was rejected have not resulted in widespread increases in hiring from the groups covered in the decree. Because competitive hiring is a better way to achieve the goals of promoting diversity, he argued that the decree should be withdrawn and that alternative hiring practices should be put in place.[32]

The current selection process can be reformed by retaining the current ACWA rating schedule and augmenting it with a new version of the ACWA written test. The MSPB recommended this action in 2000 as a means of combining the flexibility of the

rating schedule with the rigorous nature of the written exam. In the MSPB's opinion, the written examination was a reliable indicator of future job performance because it was so well tailored to job requirements. Allowing agencies to develop their own alternative examinations in instances where those alternate examinations were well-constructed would go a long way toward reforming federal hiring practices. As an example, the MSPB cited the case of the Immigration and Naturalization Service—now divided into Citizenship and Immigration Services—which had successfully prepared an immigration officer examination for three separate occupations. In its conclusion, the MSPB noted that "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, and the validation requirement of the *Uniform Guidelines on Employee Selection Procedures.* Consequently, ending the consent decree should not open the door to a proliferation of poorly constructed selection instruments that have an unlawful adverse impact."[33]

Notes

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[3] *Luevano v. Campbell*, 93 F.R.D. 68, 74-76 (D.D.C. 1981).

[4] *Griggs v. Duke Power Co.*, 401 U.S. 424, 430 (1971).

[5] Nelson, W. R. (1982). Employment testing and the demise of the PACE examination. *Labor Law Journal*, 729-50.

[6] Ban. C., & Ingraham, P. W. (1988), op cit., 709.

[7] 93 F.R.D. 68, 74.

[8] 93 F.R.D. 68, 74-75; U.S. Merit Systems Protection Board. (2000). *Restoring merit to federal hiring: Why two special hiring programs should be ended.* Washington, DC: MSPB.9 93 F.R.D. 68, 75.

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[11] 93 F.R.D. 68, 75-76; Nelson, W.R. (1982), op cit.

[12] 93 F.R.D. 68, 78-79.

[13] 93 F.R.D. 68, 92.

[14] Ban, C., & Ingraham, P. W. (1988), op cit.

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[17] Agencies can use *Luevano*. (2004, January 4), op cit.; U.S. Office of Personnel Management. (n.d.), op cit.

[18] U.S. Merit Systems Protection Board. (2000), op cit., viii; College grades and adult achievement: A synthesis. *Research in Higher Education*, 20, 281-293.

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[21] Van Riper, P. (1958). *History of the United States civil service*. Evanston, IL: Peterson & Company, 207.

[22] Ban, C., & Ingraham, P. W. (1988), op cit.

[23] U.S. Merit Systems Protection Board. (2000), op cit., 10.

[24] Ibid.

[25] *Dean v. U.S. Department of Agriculture, 99* M.S.P.R. 533 (2005), aff'd on recons., 104 M.S.P.R. 1 (2006), and *Olson v. U.S. Department of Veterans Affairs, 92* M.S.P.R. 169 (2002), 100 M.S.P.R. 322 (2005), aff'd on recons. Sub nom. *Dean v. Department of Agriculture, 104* M.S.P.R. 1 (2006). See also U.S. Merit Systems Protection Board. (2008). Removed from the toolkit of hiring flexibilities: Outstanding Scholar and Bilingual/Bicultural authorities. *Issues of Merit, 13*, 7.

[26] U.S. Merit Systems Protection Board. (2000), op cit., 33.

[27] U.S. Merit Systems Protection Board. (2000), op cit., 39; U.S. Merit Systems Protection Board. (1994). *Entering professional positions in the federal government*. Washington, DC: MSPB, i-iii.

[28] Agencies can use *Luevano*. (2004, January 4), op cit., 2; Brophy, M. (1992, March 12). ACWA program used to fill 3,500 entry-level jobs since 1990. *Federal Jobs Digest*, 18.

[29] U.S. Merit Systems Protection Board (2000), op cit., 21.

[30] U.S. Merit Services Protection Board. (1999). *The role of delegated examining units: Hiring new employees in a decentralized civil service*. Washington, DC: MSPB, 8.

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Author

J. Michael Martinez, JD, PhD
Attorney at Law
Part-time Instructor of Political Science
Kennesaw State University
2310 Hawthorne Trace
Monroe, GA 30655-4039
(770) 207-8890
mike_martinez-corporatecounsel@dart.biz

Dr. J. Michael Martinez, JD, is an attorney with a manufacturing company in Monroe, Ga., and he teaches political science at Kennesaw State University. He has written many articles and book chapters on legal issues. Peter Lang published his most recent book, *Administrative Ethics in the Twenty-first Century (with William D. Richardson)*, in 2008.