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United States District Court, District of Columbia.

Carolee Brady HARTMAN, et al., Plaintiffs,
v.
Bruce S. GELB, Defendant.

Civ. A. No. 77–2019 (CRR). | July 9, 1992.

Opinion

MEMORANDUM OPINION AND ORDER OF CHARLES R. RICHEY UNITED STATES DISTRICT JUDGE

CHARLES R. RICHEY, District Judge.

***1** By Order of May 7, 1992, this Court referred to Special Master Stephen A. Saltzburg discrete issues regarding the implementation of a remedy in the above-captioned case. *See Hartman v. Gelb,* Civ. 77–2019 (D.D.C., May 7, 1992). After considering further briefing and argument, the Special Master outlined his recommendations to the Court. *See Report and Recommendation of the Special Master Regarding Foreign Service Officers,* filed June 8, 1992 (hereinafter, "Master's Report"). The Special Master has made the following suggestions: (1) that those women who registered for the December 1984 examination are eligible to participate in the reevaluation for foreign service officer ("FSO") positions; (2) that 52 FSO slots should be set aside for *Hartman* class members; (3) that the Defendant should set aside a minimum of 15 slots each year for three years, with the remainder of seven slots to be allocated in the fourth year, if necessary; (4) that a ratio of 8:1 should be used to determine how many class members will be invited to compete for each available FSO slot;[1] (5) that late claims be allowed until the time that the rank-order listing is prepared, and then late claims be permitted upon a showing of good cause; (6) rank-ordering should be based upon the USIA cones of the foreign service entrance examination, and that the USIA is free to consider the overall test score in making job offers; and (7) certain additional information should be provided in the notice to the class members.[2]

The parties were afforded an opportunity to file any opposition to the Master's Report for the Court's consideration. *See* Order, *Hartman v. Gelb, supra* (D.D.C., June 18, 1992). Upon consideration of the Master's Report, the parties' objections thereto, the record herein and the applicable law, the Court shall adopt the Master's Report in part. However, the Court shall not adopt the Special Master's recommendations with respect to the ability of December 1984 testtakers to participate in the class relief and the number of slots to be reserved for class members who applied for FSO positions at the United States Information Agency ("USIA") during the 1978 to 1984 period. For the reasons stated herein, the Court finds that the Defendant shall reserve 39 foreign service officer positions in the USIA for these class members over the next three (3) years.

1. ***Recommendations of the Special Master to which the Parties Have Not Objected.***
The parties have *not* objected to three of the Master's recommendations. Specifically, the parties do not oppose the Master's recommendation with respect to late claims and have not objected to the Master's suggestion that eight (8) class members should be invited to compete for each FSO slot set-aside by the Court for the class. Moreover, the parties do not object to the Master's proposal to include certain additional information in the notice to be mailed to the class members. *See* Master's Report at 22–23. The Court also agrees with the Master's analysis of these points. Accordingly, the Special Master's recommendations with respect to the 8:1 ratio of invitees to available FSO slots, the filing of late claims and the inclusion of additional material in the notice to the class shall be adopted by the Court.

2. ***The Ability of the December 1984 Examinees to Participate in the FSO Reevaluation Process.***
***2** Prior to deciding the appropriate number of FSO slots to be reserved for the *Hartman* class, the Court must resolve the

dispute as to whether the class includes those women who took only the December 1984 foreign service officer examination and who did not obtain FSO employment at the USIA thereafter. According to this Court's 1988 Opinion and Order in the above-captioned case, the plaintiff FSO class consists of those women who "unsuccessfully applied" for FSO positions between October 8, 1974 and November 16, 1984. *See Hartman v. Wick,* 678 F.Supp. 312, 338 (D.D.C.1988). The Defendant contends that those women who took the December 1984 examination are not included in the class due to the November 16, 1984 closing date for the class. *Id.* at 328. Upon closer evaluation of the record, the Court must conclude that the Defendant is correct.

The instant confusion over the membership of the class revolves around what constituted an "application" for FSO employment at the USIA during the relevant time period. As the Plaintiffs point out, the initial step in applying for an FSO position required one to register to take the foreign service examination. *See, e.g., Plaintiffs' Memorandum on the Issue of Whether the 1984 Entry Level Foreign Service Officer Applicants Are Members of the Class,* filed June 12, 1992, at 2–5 (citing, Pl.Ex. 208 at 8–9, 13). Thus, in order to take the December 1984 examination, an applicant must have completed this registration process on or before October 19, 1984—well before the November 16, 1984 cutoff date for participation in this class action lawsuit. *Id.* (citing, Nov. 28, 1984 letter to Mr. H. Carter, Attachment A). Contrary to the Plaintiffs' claim, however, registration does not complete the application process. Rather, in order to be considered for an FSO position, a candidate must have completed the foreign service examination. *See Hartman,* 678 F.Supp. at 339, n. 18. *See also* Pl.Ex. 208 (which treats the examination as an integral part of the examination process). Those class members with examination scores above a given baseline were then obligated to proceed to the oral assessment panels as well as to the medical and security reviews. *Hartman,* 678 F.Supp. at 339, n. 18.

The Court's discussion of the *Palmer* reevaluation process elucidates what constitutes an "unsuccessful applicant" for purposes of the FSO group of *Hartman* Plaintiffs. Although the Court found that discrimination permeated the entire hiring process, the peculiarities of the FSO hiring process led the Court to adopt the *Palmer*-style of reevaluation for the Plaintiff FSO candidates. In adopting the *Palmer* reevaluation scheme, the Court contemplated that the class members participating in the remedial process for FSOs would have at least completed the foreign service examination. *See Id.* at 339 (list of eligible candidates must include "the names, addresses *and scores* of women who applied to the Foreign Service Officer at USIA or, for the years in which all foreign service applicants took one joint examination, a rank-order list of women *who failed the USIA "cones" on the Foreign Service exam"*) (emphasis added).[3]

***3** Defining an "unsuccessful applicant" in the FSO process based upon whether the applicant registered *and* took the examination makes sense. Almost by definition, the USIA could not reevaluate a female candidate under this Court's *Palmer* rubric if she does not have a test score for ranking purposes; the *Palmer* method does not provide for the administration of tests to those who merely filled out the registration card. Moreover, defining an "unsuccessful applicant" as one who registered for and completed the foreign service examination comports with the Court's findings regarding the extent of the Defendant's liability. Absent evidence detailing a pattern of discrimination beyond November 16, 1984, the Court presumed that the Defendant would properly implement this Court's Orders and therefore denied prospective relief to the Plaintiffs. *See Hartman,* 678 F.Supp. at 340–341. Given the denial of prospective relief, it would make no sense to include the December 1984 testtakers in the Plaintiff class; the timetable of the evaluation process[4] would have insured that the December 1984 examinees would presumptively benefit from the Defendant's ability to "learn from its mistakes" in processing women's applications highlighted in the Court's November 16, 1984 Opinion and Order. *See Id.* at 340 (citing, *inter alia, Local 28, Sheet Metal Workers Int'l Ass'n v. E.E.O.C.,* 478 U.S. 421 (1986)).

3. *The Appropriate Number of FSO Positions to be Reserved for Members of the Hartman Class*

Extrapolating on the basis of data provided by Dr. Siskin in the Court's 1987 remedial hearing and data regarding the USIA's recent FSO hiring patterns, the Special Master has recommended that 52 FSO slots be reserved for the *Hartman* class over a four-year period. The Plaintiffs object to the Master's recommendation. Plaintiffs claim that the appropriate figure is either 216 slots over a number of years, the full extent of shortfall identified by Dr. Rosenblum in the 1984 liability hearing, or, alternatively, 75 slots, representing a composite of the 216 figure based upon reserving 50 percent of the USIA's FSO positions for class members over a three-year period. The Defendant, on the other hand, contends that Dr. Siskin's data reveals the appropriate number of FSO set-asides to be zero (0). Alternatively, Defendant claims that the Court should plug in the Defendant's most recent hiring statistics[5] into Dr. Siskin's formula and should limit to number of available slots to 41.

Upon carefully evaluating the record herein, the Court must conclude that the appropriate number of FSO slots is 39. First, contrary to the Plaintiffs' claim, Dr. Rosenblum's finding of a shortfall of 216 foreign information specialists[6] does not directly translate into the number of FSO slots to be reserved for the *Hartman* class. Dr. Rosenblum's data dramatized the

existence of a pattern and practice of discrimination in hiring at the USIA. The Court repeatedly emphasized that the Rosenblum data established a *prima facie* case of discrimination, which the Defendant could rebut through its own evidence. *See Hartman,* 600 F.Supp. at 370–372. The Rosenblum data did not purport to show the degree of relief to which Plaintiffs would be entitled, nor could it do so as the parties agreed to bifurcate the Court's consideration of liability and remedy. In fact, the Court noted at the conclusion of its 1988 Opinion on remedies that the exact number of slots to be set-aside for the *Hartman* class would depend upon the actual hiring patterns at USIA and on the USIA's ability to absorb the new hires. *See Hartman,* 678 F.Supp. at 340 (deferring consideration of Plaintiffs' request for 75 appointments from the special register because the Court "does not know how many Foreign Service Officers are appointed each year or whether the agency would argue, and be able to show, that twenty-five appointments per year would be inappropriate").

***4** As the Master explained, Dr. Rosenblum's statistical data examined USIA's hiring practices at a particular point in time, *i.e.,* as of 1978. *See Id.* at 374 (noting that, although Rosenblum "analyzed the Agency's workforce at a specific point in time," the Defendant's data did not rebut Plaintiffs' *prima facie* case). While Dr. Rosenblum's data established a pattern and practice of discrimination for the reasons articulated in the Court's 1984 Opinion, it is not a sufficient basis, standing alone, for the Court to determine the appropriate remedy for the applicants for FSO positions during the 1978–1984 period.[7] Instead, the Court must attempt to make whole the class members who are victims of discrimination without creating a windfall for the class members at the expense of the employer. *See, e.g., Local 28, Sheet Metal Workers v. E.E.O.C.,* 478 U.S. 421 (1986). Absent an agreement between the parties as to the number of slots to be reserved for the *Hartman* class,[8] the Court can complete this task only by examining the hiring patterns of the Defendant for the 1978–1984 period in order to determine the number of FSO hiring decisions that were likely to have been affected by the pattern and practice of discrimination.[9] *See, e.g., Berger v. Iron Workers Reinforced Rodmen, Local 201,* 843 F.2d 1395, 1438 (D.C.Cir.1988), *clarified on reh'g,* 852 F.2d 619 (D.C.Cir.1988), *cert. denied sub nom.,* 490 U.S. 1105 (1989) (district court must craft Title VII relief to fit the exact nature of the violation); *Hammon v. Barry,* 813 F.2d 412, 425 (D.C.Cir.1987), *cert. denied sub nom.,* 486 U.S. 1036 (1988) ("the remedy tailored to address a violation must be tailored to fit that violation") (citing, *Wygant v. Jackson Bd. of Ed.,* 106 S.Ct. at 1846); *Thompson v. Sawyer,* 678 F.2d 257, 294–295 (D.C.Cir.1982).

In determining the appropriate number of reserved FSO positions, the Court must first decide whether to rely upon Dr. Siskin's data, the Defendant's more recent hiring data, or some combination thereof. After careful consideration, the Court must conclude that the best alternative is to rely on Dr. Siskin's model which was presented at the 1987 Hearing on remedies. *See* Ex. 1, attached to Special Master's Report. The Special Master's decision to exclude the Defendant's recent hiring data is entirely correct. The Defendant did not present this information in the 1987 Hearing on remedies and Plaintiffs were never afforded an opportunity for cross-examination. More importantly, the Court cannot countenance the Defendant's attempt to undermine Dr. Siskin's testimony at this late stage. Although, as a general matter, more recent evidence is preferable to outdated material, the Defendant alone was in possession of the hiring statistics at USIA. The Plaintiffs' witness should not be subject to impeachment *in absentia* merely because the Defendant now has more recent hiring statistics at its disposal. Specifically, the Defendant's attempt to cross-examine Dr. Siskin by discrediting the sample size and the actual hiring shortfall on the basis of the recently-available hiring data is belated and unfair.

***5** According to the Defendant, Dr. Siskin's testimony self-destructs. Defendant argues that Dr. Siskin's comparison of the agency's hiring to the available census data for "writers and artists not elsewhere classified" and "technical writers" reveals that the FSO Plaintiffs are not entitled to any reserved positions pursuant to the Court's 1988 Order. There does not appear to be any dispute that, under these two categories identified by the Defendant, there is no statistically significant shortfall during the relevant time period. However, it is also undisputed that when Dr. Siskin employed the census category of "editors and reporters", the cross-mapping technique yielded a statistically significant hiring shortfall of 39 FSO positions during the 1978–1984 time period. *See* Ex. 1, attached to Master's Report. The Defendant claims that the Court is precluded from considering the "editors and reporters" matrix because this is precisely the same matrix which the Court rejected in its evaluation of Dr. Wolfbein's testimony at the liability stage.

Albeit creative, the Defendant's argument fails. Although the Defendant has qualms about the Court's reliance upon the "editors and reporters" category for cross-mapping purposes, the Defendant's claim of unfairness is wholly unpersuasive. Defendant's own expert, Dr. Wolfbein, used this precise category for cross-mapping in the liability phase. Moreover, the Defendant did not challenge Dr. Siskin's use of this category at the 1987 Hearing on remedies. Furthermore, contrary to the Defendant's claims, this Court did *not* find that the "editors and reporters" category was an inappropriate basis for examining the USIA's hiring shortfall. Instead, the Court twice adverted to the fact that Dr. Wolfbein's use of this category actually enhanced the magnitude of the hiring shortfall for female FSOs. *See Hartman,* 600 F.Supp. at 371–72, n. 4; *id.* at 374. The Court did not opine on which categories were more appropriate for cross-mapping purposes and held only that Dr. Rosenblum selected reasonable categories for his cross-mapping analysis. *Id.* at 372. Thus, the Plaintiffs were not precluded from using a more favorable analysis of the hiring shortfall at the remedial stage of the proceedings, especially when the

analysis spotlights a hiring disparity which was introduced at the liability stage according to the Defendant's own evidence.

Because the Court finds that the December 1984 examinees are not class members and are therefore not eligible to participate in the FSO reevaluation process, the Court disagrees with the Special Master's attempts in fashioning a remedy for the testtakers in December of 1984. *See* discussion, *supra,* at 3–6. Thus, the Court shall not add an additional 13 slots to the number in Dr. Siskin's data to account for the shortfall in 1986 FSO hiring. The appropriate number of slots to be reserved for the *Hartman* class members who applied for FSO positions during the 1978–1984 period is therefore 39. The Court finds that filling these 39 positions over a three-year period would remedy the discrimination in hiring with the greatest alacrity possible without placing an undue burden on the Defendant. Moreover, the Court finds that, in order accommodate the Plaintiffs' concern that class members do not overwhelm any entering FSO class,[10] the Court shall order the Defendant to hire at least 13 class members in each entering FSO class for the next three years. This number is reasonable given the Defendant's own estimate that the number of entering FSOs in the USIA's recent classes hovers around 30. *See, e.g., Defendant's Memorandum in Support of His Objections to the Special Master's Recommendations Regarding Relief for Foreign Service Class Members,* filed June 18, 1992, at 12, n. 7.

4. *Whether the Rank–Ordered List Should be Formulated on the Basis of the Score on the USIA Cones of the Foreign Service Examination.*

***6** In October of 1991, counsel for the parties *jointly* devised a Notice to the Class which provided as follows:

> In compliance with this Court's Order, the USIA has compiled a rank order list, by score for each year for the years 1978–1979, of unsuccessful female applicants for entry-level positions in the Foreign Service with the Agency. For the years 1980–1984, when USIA participated in the Foreign Service Entrance Examination along with the Department of State and other federal agencies, these rank order lists were compiled from the scores of the USIA's Information/Culture "cone" or subtest on the examination.

Class Notice to Female Applicants to Entry Level Foreign Service Information Officer/Entry Level Foreign Service Information Officer Positions with the United States Information Agency from January 1, 1978 to November 16, 1984, at 2, attached to Praecipe, *Hartman v. Gelb, supra,* filed October 2, 1991. Despite the fact that the Notice advised class members that the rank-ordering would depend upon the score on the USIA cones of the examination, the Defendant now claims that the rank-order list of candidates should be determined according to the score on the entire foreign service examination. For the reasons stated herein, and for the reasons articulated by the Plaintiffs and the Special Master, the Court shall reject the Defendant's claim.

The Defendant's request to alter the rank-ordering procedure at this late stage must be denied for several reasons. As the Plaintiffs point out, altering the rank-ordering procedure—to which the Defendant himself agreed—at this late stage would only add another obstacle to the participation of female applicants. *See Plaintiffs' Memorandum of Points and Authorities on the Issue of the Appropriate Ranking Process for Entry Level Foreign Service Applicants from 1978 Through 1984,* filed June 12, 1992, at 4–5. Moreover, using the scores on the USIA cones of the examination for purposes of developing the rank-ordered list tracks the Court's 1988 Opinion, *see* 678 F.Supp. at 339, and also logically follows from the Court's refusal to adopt the Plaintiffs' proposed composite formula. *See Plaintiffs' Memorandum on the Issue of the Appropriate Ranking Process, supra,* at 1–2.

Adopting the Special Master's recommendation would not disrupt the Defendant's hiring process. Under the Special Master's proposal, to which Plaintiffs do not object, the Defendant is free to consider a candidate's overall score in deciding which candidates are the best qualified for the 39 reserved FSO positions. In this way, the Defendant will not be forced to hire "sub-standard" candidates and will, in fact, be offered a wider array of candidates from which to choose. The Court shall adopt the Special Master's recommendation with respect to the preparation of the rank-ordered lists and with respect to the role of the overall test scores in the hiring process.[11]

***7** For all of these reasons, the Court shall adopt the Special Master's recommendations with respect to the notice to be provided to class members, the 8:1 ratio of invitees to reserved positions, the filing of late claims, and the procedure for developing the rank-ordered list of FSO candidates. However, for the reasons stated herein, the Court finds that the December 1984 examinees are not "unsuccessful applicants" within the definition of the Plaintiff class and therefore these women may not participate in the FSO reevaluation process. The Court also finds that the USIA shall reserve 39 FSO positions for members of the Plaintiff class and shall award 13 such positions each year, for the next three (3) years, to the

most qualified candidates among the Plaintiff class. The Court shall issue an Order of even date herewith in accordance with the foregoing Memorandum Opinion.

ORDER

Upon consideration of the Special Master's Report, the parties' objections thereto, the applicable law and the record herein, and for the reasons articulated in the Court's Memorandum Opinion of even date herewith, it is, by this Court, this 9th day of July, 1992,

ORDERED that the Special Master's Report and Recommendation shall be, and hereby is, adopted in part and rejected in part; and it is

FURTHER ORDERED that the Defendant's Motion to Exclude those women who took only the December 1984 foreign service examination from the pool of candidates eligible to participate in the foreign service officer *Palmer* reevaluation process shall be, and hereby is, GRANTED; and it is

FURTHER ORDERED that the Plaintiffs' Motion to Reserve either 216 or, alternatively, 75 foreign service officer positions for the class shall be, and hereby is, DENIED; and that the Defendant's Motion to Reserve zero foreign service officer positions shall be, and hereby is, DENIED; and it is

FURTHER ORDERED that, for the reasons articulated in the Court's Memorandum Opinion of even date herewith, the Defendant shall reserve a total of 39 foreign service officer positions for the members of the Plaintiff class, and that the Defendant shall fill at least 13 of these positions each year for three (3) years; and it is

FURTHER ORDERED that, without objection of the parties, the Special Master's Recommendation as to the 8:1 ratio for inviting class members to compete in the reevaluation process shall be, and hereby is, ADOPTED, and that, based upon this 8:1 ratio, a total of 312 members of the Plaintiff class shall be invited to compete for the 39 foreign service officer positions to be reserved by the Defendant; and it is

FURTHER ORDERED that, without objection of the parties, the Special Master's Recommendation with respect to the filing of late claims shall be, and hereby is, ADOPTED, and that, all claims shall be accepted for review until the time when the rank-ordered list is completed, and that, after the rank-ordered list is completed, any late-filed claim may be considered only if the late claimant can demonstrate good cause for failing to meet the deadline; and it is

***8** FURTHER ORDERED that, without objection of the parties, the Special Master's recommendation as to the need to provide further information to the Plaintiff class shall be, and hereby is, ADOPTED, and that the parties shall devise a completed notice in accordance with the recommendations articulated at pages 22–23 of the Special Master's June 8, 1992 Report; and it is

FURTHER ORDERED that the Special Master's Recommendation with respect to the procedure for determining the rank-ordering shall be, and hereby is, ADOPTED, and that the Defendant shall prepare a rank-ordered list of the candidates based upon their scores on the USIA cones of the foreign service entrance examination; and that the Defendant is free to consider each candidate's overall score on the examination in determining which Plaintiffs are the most qualified to fill the 39 reserved positions; and it is

FURTHER ORDERED that, consistent with this Court's May 7, 1992 Order, the parties shall mail invitations to participate in the FSO reevaluation process to the appropriate class members on or before 4:00 p.m. on July 15, 1992.

Footnotes

[1] However, the Master also recommends that this ratio be adjusted should circumstances warrant.

[2] The Special Master recommended expediting the time within which parties may file any objections to the Master's Report with the Court. The Court accepted this recommendation in part, allowing a slight extension of time at the Defendant's request without

objection from the Plaintiffs. *See* Order, *Hartman v. Gelb, supra* (D.D.C., Jun. 18, 1992).

[3] The Court did not fashion relief only for those applicants who survived every stage of the hiring process. Rather, the Court determined that any woman who took the examination qualified as an "applicant". Moreover, the Court did not require that FSO candidate class members have completed every stage of the hiring process because some female candidates may have been excluded from further consideration in the FSO hiring process as a result of the discriminatory impact of the examinations themselves.

[4] These prospective Plaintiffs obviously would not have known of their test scores on or before November 16, 1984, and therefore would not have been considered during the period when the agency was proven to be discriminating in hiring on the basis of gender. Moreover, because candidates who pass the examination remain under consideration for approximately 18 months after their testing date, *see* Tr. of June 2, 1992 Hearing before the Special Master, at 24, allowing the December 1984 testtakers to participate in the class relief would extend the Defendant's liability beyond the November 16, 1984 date on which the Defendant's liability ceased as a matter of law.

[5] The Defendant's statistics are referred to as Exhibit 2 in the Master's Report. The Master's calculations based upon a composite of the Siskin data and the Defendant's data are attached to the Master's Report at Exhibit 3.

[6] In its 1984 liability Opinion, the Court depicted Dr. Rosenblum's calculations in chart form. *See Hartman v. Wick,* 600 F.Supp. 361, 370 (D.D.C.1984).

[7] Although the Plaintiff class includes women applicants for FSO positions during the entire 1974–1984 period, only those women who applied during the 1978–1984 period are entitled to participate in the *Palmer*-type of reassessment process. *See* Order, *Hartman v. Gelb, supra,* (D.D.C., Oct. 5, 1988). Those class members who applied for FSO positions during the 1974–1977 period may participate in the *Teamster* hearings. *Id.* Because the 1974–1977 applicants will be made whole through the *Teamster* process, to which the Plaintiffs agreed, the Court must reject the Plaintiffs' claim that evaluating the discriminatory hiring shortfall only for the 1978–1984 period unfairly prejudices them. Even if the FSO class had not been dissected into two parts as a result of the Defendant's recordkeeping snafu, under the Supreme Court's decision in *Wygant v. Jackson Bd. of Ed.,* 478 U.S. 267 (1986) and its progeny, the Court still would have been obliged to link the number of reserved FSO positions to the actual injury to be remedied.

[8] The Court in *Palmer* did not have to determine the number of slots to be set aside because the parties agreed to reserve 75 slots for the *Palmer* class. *See Hartman,* 678 F.Supp. at 322, n. 6. The Court hoped that the parties in this case could similarly reach an agreement on the number of FSO positions to be reserved. Although the parties did participate in the Court's mediation program, this process apparently did not succeed in removing the roadblocks to compromise on this issue.

[9] Contrary to the Plaintiffs' claim, this remedial procedure does not unravel the Court's 1984 liability Opinion and does not support the conclusions of Defendant's witness, Dr. Wolfbein. As Plaintiffs will recall, Dr. Wolfbein attempted to rebut the Plaintiffs' *prima facie* case of discrimination by showing that, during the 1973–1978 period, the agency hired more women than were available in the relevant labor market at that time. *See Hartman,* 600 F.Supp. at 372–374. The Court rejected Dr. Wolfbein's conclusion that there was no discrimination because, *inter alia,* his categorical samples were unreasonably small. *Id.* at 373. Nothing in the instant Memorandum Opinion alters the Court's finding on this point, and Dr. Rosenblum's findings on the pattern and practice of discrimination in hiring stand. In short, Dr. Wolfbein's data are irrelevant to the Court's determination regarding compensation for the victims of this class-wide discrimination.

[10] *See Plaintiffs' Memorandum of Points and Authorities Regarding Relief for Female Applicants to Foreign Service Officer/Foreign Service Information Officer Positions,* filed June 20, 1991, at 8–9.

[11] The ability of the Defendant to consider a candidate's overall score in the foreign service entrance examination in making an employment decision should be addressed in the notice to the class members.