Closing Message—Deborah Whetzel, Past-President

Hello IPAC! As my time as IPAC president comes to an end, this is my closing message to the membership. Looking back, we had another excellent year, thanks to the efforts of the Board, committee chairs, volunteers, and the membership. Our accomplishments include:

- Founding of Personnel Assessment and Decisions (see below under Resources)
- Resurrection of Assessment Council News (ACN)
- Great conference in Columbus (posting of 2013 Conference keynotes—a first!)
- Founding of the Great Lakes Employment Assessment Network (GLEAN)
- Updated website
- Dates of Denver 2014 conference and call for papers
- New officers, board members, and webmaster
- Continued sound financial footing

As many of you know, Mike Blair will be taking over in January as President and I look forward to see where he will take our organization in 2014. We had our elections for the new slate of officers and I’m happy to announce that Elizabeth Reed will be our new President-Elect. She was one of the people responsible for our successful conference in Columbus. She also has a vision of where IPAC can go in the future, and I’m very happy that she will be among our leaders. Reid Klion has agreed to serve for another term as our financial officer. He’s done such a great job for us, we are truly fortunate to have him continue. Our new Board member is Kathleen Walker, an Employment Services Manager from the City of Little Rock, AR. She will bring a practitioner’s perspective to the Board and we look forward to working with her.

Of course, transitions also mean that some of our Board members are leaving. Specifically, Jeff Feuquay, our fearless leader in 2012 will be stepping down. He was a terrific mentor to me when I took the reins in January of 2013. Also, Lee Frier will be leaving the Board. He has been extremely helpful in getting continuing education credit for our pre-conference workshops and for our conference. Hopefully, he’ll continue to provide advice as needed. Finally, Bill Waldron will be leaving the Board. He has had a long and distinguished history as our webmaster. Not only did he enable our web presence from the start, but he greatly upgraded our website just this past year.

Many thanks to all of you!!

(Continued on page 2)
(Continued from page 1)

Resources

In November, the Board voted unanimously to co-sponsor a practitioner-focused journal. The open-access journal (free to all via the Internet), will be called Personnel Assessment and Decisions and will be co-funded by IPAC and Bowling Green State University (BGSU). It will focus specifically on evidence-based assessment and will do so in a way that is short and accessible to practitioners as well as academics—getting the best evidence out to the field quickly. Novelty, clarity, and accessibility will be paramount. Articles will be limited to approximately 4,000 words and will have practical relevance and broad interest. Dr. Scott Highhouse will be the founding and managing editor for at least a 5-year term. He has already solicited notable I/O psychologists to be Associate Editors, many of whom have been our keynote speakers in past years. Dr. Dennis Doverspike will lead the Measurement Corner section of the journal. The BGSU library will support the open access format that will be housed on the BGSU website. Scott anticipates the first issue to be available in January 2015.

Stay tuned for a possible Webinar still in the planning stages, but we’ll keep you posted through the listserv and future editions of the ACN.

Volunteers needed:

Would you like to serve on the ACN editorial team? To learn more, please contact our IPAC-ACN editor, John Ford at johnf@us.net for more information.

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Opening Message—Michael Blair

I would like to echo the comments from my predecessor, colleague and friend, Deborah Whetzel in her message as our outgoing President for 2013. I would also like to thank her for the great leadership she exhibited in 2013. Deb has been a leader in the field of assessment since the day we first met, far too many years ago to count! She humbly thanked the Board, committee chairs, volunteers, and members for a successful year, but none of the many accomplishments she lists would have been possible without her guidance and leadership. So, on behalf of the Board and members, thank you Deb, for a fantastic 2013!

As we turn to 2014, IPAC and our members are poised for a year of growth, both as an organization and as professionals in the assessment arena. The 2014 conference in Denver, will be our 5th annual conference as an independent organization. Our first two years were about establishing ourselves and learning how to be an independent entity, no longer under the protective umbrella of a parent organization (IPMA-HR). The next two were more about stability and reflection - stabilizing our presence in the assessment community and reflecting on where we had been and where we wanted to go. This past year, our 5th year as IPAC, was about setting the stage for our future. As Deb indicated above, we brought back ACN, redesigned our website, founded our first regional affiliate in GLEAN, and founded Personnel Assessment and Decisions. We saw modest growth in our membership in 2013, and we had an exceptionally strong showing of new members, including student members, at our conference. These are signs of a strong and established organization poised for continued success. I am looking forward to 2014 and invite you to join me, the Board, our committee chairs, and our conference planners for an exciting year!

Before closing, I would like address a few business items.

- The call for papers for the 2014 conference is out. If you missed it or set it aside in the “later pile”, please note the February 7th deadline is fast approaching. Kathlea Vaughn (conference chair), Rebecca Fraser (program chair), as well as a fabulous supporting cast are developing a great program and need your submissions. Our theme this year is Big Data and Assessments, but as always, submissions from all areas are welcome! Please see the website for additional information (http://ipacweb.org/news).

- John Ford, the Assessment Council News (ACN) editor, needs your help as well. ACN continues to bring us up to date, cutting edge, and innovative content that expands the field of assessment. It is a great venue to follow-up on a presentation or session from a previous IPAC conference or build on a poster or paper presented at SIOP elsewhere. For issue archives and information on how to submit an article, please see the website (http://ipacweb.org/acn).

- Now is the time to start thinking about or even drafting that first submission to the official IPAC journal, Personnel Assessment and Decisions. Scott will be providing more information in the coming months. I for one, would like to see his inbox filled to the max with the best our members have to offer shortly after his initial call for submissions!

We are currently in the midst of our membership renewal campaign. IPAC operates on a calendar year membership basis, so if you have not done so already, it is time to renew for 2014. Membership dues are only $75 and student membership is available for $25. Renew your IPAC membership today (http://ipacweb.org/application/).

In closing, I invite our members and readers to join other assessment professionals in one or both of IPAC’s discussion forums (http://ipacweb.org/discuss). Our listserv, which seems quaint compared to the social media outlets of today, is still quite viable and strong. Topics of the past few weeks include integrity testing in selection, establishing and measuring minimum qualifications, and test norming. Our LinkedIn group also offers a viable discussion format that continues to grow.

To contact me directly, feel free to send an email or connect with me on LinkedIn:
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www.linkedin.com/in/blairmichaeld
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LEGAL WATCH

By Ryan O’Leary, PDRI a CEB Company
and Brian O’Leary, U.S. Government Retired, Independent Consultant

2013 Year in Review

As 2013 came to a close, we took time to reflect on some of the events that have helped to shape the employment law landscape over the last year. From the Supreme Court’s rulings in Vance v. Ball State (where the court narrowly defined what constitutes supervision in racial and sexual harassment cases) and University of Texas Southwestern Medical Center v. Nassar (where the court held retaliation claims to a stricter standard of proof than other forms of discrimination) to new Office of Federal Contract Compliance (OFCCP) guidelines and Equal Employment Opportunity Commission (EEOC) enforcement actions, the year saw some key developments across a number of practice areas. We summarized the majority of those developments in this column and speculated on their impact.

Below we highlight four additional cases and regulatory changes that occurred in the last year which we have not addressed and that have the potential to have significant impact.

McReynolds et al. v. Merrill Lynch

On December 6, 2013, the District Court for the Northern District of Illinois gave final approval to the $160 million settlement for plaintiff’s class claims in McReynolds et al. v. Merrill Lynch. This is the third largest settlement in U.S. race-based litigation, according to Bloomberg. (Coca Cola agreed to a $192.5 million settlement in 2001 and Texaco agreed to a $176 million settlement in 1997.) More than 1,200 current and former Merrill Lynch employees could be eligible to take part in the settlement. In addition to the monetary settlement, Merrill Lynch will set up a leadership council to advise the firm on hiring and mentoring of African Americans. Since the suit was filed Merrill Lynch has been acquired by Bank of America, Corp.

The original complaint was filed in 2005 by George McReynolds, a broker in Merrill Lynch’s Nashville office. The central claim in the case is that African Americans weren’t given the same business opportunities as Whites in participating on investment teams and in account distribution. The suit was filed on behalf of current and former African American Financial Advisors and Financial Advisor Trainees. The lawsuit alleged that Merrill Lynch was engaging in both intentional and unintentional, or disparate impact, discrimination and denied African Americans business opportunities resulting in lower pay and higher attrition for African Americans.

The “teaming” policy allows individual brokers to form “teams” in order to pool their efforts with clients. The “account distribution” policy allows local managers to reward those brokers that perform better. The claim was that African American advisors were segregated and excluded from the teams and the benefits and business resources they afforded. In addition, the policy let departing brokers hand off customers to other team members which had a disparate on African American brokers. At the time McReynolds filed the lawsuit, 2% of the brokers at Merrill Lynch were black, despite a 30-year old consent decree signed with the EEOC that required the brokerage to increase the proportion of African American brokers to 6.5%.

The suit worked its way through the Federal Courts for eight years and included two appeals to the Supreme Court. In the process a judge in Chicago denied the plaintiff’s motion to be certified as a class. An appellate panel reversed the lower court’s denial of class certification. Merrill Lynch appealed to the Supreme Court but was denied a hearing. A trial date was set for January 14, 2014 but Merrill Lynch decided to settle.

Sandifer v. U.S. Steel Corporation

On November 4, 2013, the Supreme Court heard oral arguments on a Fair Labor Standards Act (FLSA) case addressing the issue of whether or not steelworkers should be paid for time spent changing into their protective clothing. Section 203 (o) of the FSLA excludes from the definition of hours worked the time spent “changing clothes or washing at the beginning or end of each workday” if it has been excluded “by the express terms of or by custom or practice under a bona fide collective bargaining agreement.” However the term “clothes” is not defined in the FSLA.

Clifton Sandifer and a group of current and former steelworkers at the U.S. Steel Corporation’s Gary, Indiana plant sued their employer for violating the FLSA because they failed to compensate them for time spent putting on and taking off their work clothes in the plant’s locker room. The steelworkers union had a collective bargaining agreement in place with the U.S. Steel Corporation since 1947. According to the bargaining agreement, workers are not paid for the time it takes to put on (donning) their safety gear before they start work or the time it takes to take off

(Continued on page 6)
(doffing) their safety gear at the end of their shift.

Steelworkers must arrive early for each shift to put on their protective gear and travel to their work site in time for their shift to begin. Protective gear includes items such as flame-retardant suits, steel-toed shoes, hard hats, safety glasses, and hoods. Time spent putting on protective gear and traveling to their work site can be substantial for some workers due to the amount of safety gear required and the large size of the plants. In fact, some workers travel by bus from the locker room to the work site due to the size of the plant.

The steelworkers argue that Section 203 (o) is inapplicable because putting on safety gear does not fall within the meaning of the phrase “changing clothes”. They believe “changing clothes” refers only to changing from street clothes to work clothes. The U.S. Steel Corporation argues that safety gear is included within the language “changing clothes” and has been bargained with the union. The Supreme Court has not ruled on this case yet.


American Express Co. v. Italian Colors Restaurant is not an employment litigation case, but many legal experts feel it has implications for class action employment lawsuits. The case started when Italian Colors Restaurant, a neighborhood bistro in Oakland, California along with other merchants, felt they were overpaying for the right to accept American Express credit cards, and overpaying even more for American Express debit cards, which were required if they wanted to take the credit cards.

The issue that landed the case at the Supreme Court was whether merchants could band together in a class action before an arbitrator or would they have to arbitrate their claims individually. Merchants that accept payments from customers via American Express credit cards enter into standardized agreements with American Express. In these agreements there is a provision requiring the parties to arbitrate any disputes that arise out of the agreement as opposed to going through the courts. This provision also includes a waiver of the right for multiple merchants to pursue class arbitration against American Express.

The merchants, however, formed a class and sued. They argued that the cost to an individual merchant to arbitrate vastly exceeded the potential recovery possible and that American Express used its monopoly power to compel arbitration agreements that preclude the enforcement of congressionally created rights. The merchants indicated that the cost of proving each individual antitrust claim would be at least several hundred thousand dollars while the potential recovery would only be about $12,000 to $38,000. The district court dismissed the suit. Subsequently the Second Circuit held that individual arbitration could not be compelled. It then went to the Supreme Court.

In June 2013, Judge Scalia, writing for the court’s 5-3 majority (Justice Sotomayor recused herself because she had heard the case in a lower court) said that it does not matter that individual lawsuits may be too expensive or impractical if the individuals had previously agreed to arbitration – even if that very agreement might be a product of monopoly tactics. Some legal experts feel that arbitration agreements are a means by which employers can stave off the risk of class action litigation and feel that employer interest in mandatory arbitration programs is growing.

OFCCP, Protected Veterans, and Individuals with Disabilities

Arguably, one of the most important Federal regulatory changes in 2013 was the OFCCP’s final release of regulations updating Section 421 of the Vietnam Era Veterans’ Readjustment Assistance Act of 1973 (VEVRAA) and Section 503 of the Rehabilitation Act of 1974 in the Federal Register. These regulations prohibit federal contractors and subcontractors from discriminating against protected veterans/individuals with disabilities (IWDs) in employment contexts and require employers to take affirmative action to recruit, hire, promote, and retain veterans/IWDs. The final rules were designed to strengthen the affirmative action provisions of the regulations and to aid contractors in their efforts to recruit and hire protected veterans/IWDs and to improve job opportunities for these individuals.
Each of the final rules imposes new obligations on federal contractors regarding veterans and individuals with disabilities (IWDs). The updated regulations expand contractors’ affirmative action and non-discriminatory obligations and impose new record keeping, posting, and notice requirements designed to allow the OFCCP to evaluate compliance. Highlights of the final rules include:

- Requiring contractors to establish annual 8% hiring benchmarks for veterans at each affirmative action location. Contractors can choose to use a benchmark that is equal to the national percentage of veterans in the civilian labor force. Alternatively, they can establish their own benchmark using data from the Bureau of Labor Statistics (BLS) and Veterans’ Employment and Training Service/Employment and Training Administration (VETS/ETA) and other factors that reflect the contractor’s unique hiring circumstances.

- Establishing a nationwide 7% utilization goal for qualified IWD representation in each job group (or for the entire workforce if there are 100 or fewer employees) at each affirmative action plan location. Annual utilization analyses must be conducted to identify problem areas and programs established to strive to address those problem areas.

- Requiring contractors to collect and maintain data as well as prepare metrics regarding the number of veterans/IWDs who apply for jobs and the number of veterans/IWDs they hire (including external hires, internal promotions, and transfers).

- Requiring contractors to invite applicants to self-identify as protected veterans/IWDs at both pre- and post-offer phases of the application processes. Note that the American’s with Disabilities Act (ADA) prohibits the collection of this information. However, the OFCCP has stated that after the effective date of the regulation, contractors are not at risk for collecting the information as the new regulation supersedes the ADA.

- Requiring contractors to allow OFCCP to review documents related to compliance checks or focused review.

Each of these regulations has been approved by the Office of Management and Budget (OMB) and each goes into effect in March 2014. However, contractors with a written affirmative action program (AAP) already in place on the effective date have additional time to come into compliance with the AAP requirements. It will be interesting to evaluate the impact of these new regulations on veteran/IWDs employment over time and the burdens placed on contractors and subcontractors.

**Conclusion**

The past year was packed with events that have helped to shape the employment law landscape. Each has the potential to significantly impact a number of practice areas. We will continue to monitor and speculate on their impact and report on new litigation and regulations in the coming year.
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Holiday Stocking Stuffers: Some Rare Nuggets

By Dennis Doverspike, Professional and Scientific Affairs Committee Chair

By the time you read this edition of the column, the holidays may be over and the new year started; so Happy New Year to all you faithful ACN readers. Instead of my classic rambling on one topic, I have decided to share several different pieces of information.

End of Year Review – Big Data

In the past, I had a tradition of using this column to do an end-of-the-year review and then engage in prognosticating. I will do a mini-version this year in that I think the trends for the year can be summed up in branding, which I discuss briefly below, and in the terms Big Data and Predictive Analytics.

In last issue’s column, A Small, Quick Commentary on Big Data and Predictive Analytics, I provided my thoughts on HR and Big Data. For those who missed the column, at least as applied to HR, I concluded that predictive analytics does not really appear to be a new phenomenon, but that we should continue to improve in terms of our use of statistical modeling and prediction.

However, I would feel remiss if I were not to mention a recent article (December 2013) by Don Peck in the Atlantic Monthly, entitled They're Watching You at Work. He gives examples of how a new technology of assessment is developing and expanding around Big Data. As applied in human resources, this field can be referred to as people analytics. This includes elaborate games that allow for the collection of vast amounts of data. More radical uses of technology include the use of employee badges that record information on employee interactions during the workday. One of the more interesting approaches discussed by Peck is that used by Gild, a company that sources potential job applicants by an elaborate analysis of the data exhaust left by individuals through their electronic interactions.

Now a critic might reply that most of what is discussed is old wine in new bottles. Various types of simulations and games have been used in selection since WorldWar2, and probably before. Many elaborate fit algorithms have yet to have their utility demonstrated. Still, the trends should not be ignored, especially by those in the public sector. As support for the arguments of critics, Peck ends his article with one of the best and worst examples of the use of predictive analytics, Google’s discovery of conclusions regarding selection of employees that have been in most undergraduate textbooks for the last 30 years.

I would encourage everyone to read the article. It can be found at: http://www.theatlantic.com/magazine/archive/2013/12/theyre-watching-you-at-work/354681/

Branding

One of my goals is to make this column more interactive; this represents a first attempt. Branding in the public sector has become a hot topic. HR Magazine, published by SHRM, recently ran a column (December 2013) entitled A Tarnished Public Sector Brand, where the author argued that economic change as well as the government shutdown would make it more difficult to attract young job seekers due to the loss of the image that job security was offered in the public sector. The most recent IPMA-HR News (see the November 2013 issue, articles by Amanda Cuda, Branding: What You Can Learn from the Private Sector, and Tim McManus, A Better Brand Can Drive Talent to You), featured two separate articles on branding. I presented on the Timeless Dance of Seduction: Managing the Public Sector Brand at the 2013 IPAC Conference. If you are a member you can find the PowerPoint at: http://www.ipacweb.org/Resources/Documents/conf13/doverspike2.pdf.

I am planning a future column on branding in the public sector. To help out and make the column interactive, I invite you to complete a short survey at: https://akron.qualtrics.com/SE/?SID=SV_0Oh7i9mp2C44udn.

GLEAN

The Great Lakes Employment Assessment Network (GLEAN) had its first mini-conference and is off to a great start. If you are a member of IPAC and live in the Great Lakes geographic area, please consider also joining GLEAN. If you are interested in being added to our mailing list, you can email me at dd1@uakron.edu or contact Liz Reed. We also have a facebook page at: https://www.facebook.com/groups/greatlakesemploymentassessmentnetwork/
Our plan is to offer both networking and continuing education through local and regional conferences. The idea is to share the tremendous expertise in this Great Lakes region, while cutting costs of attending national conferences.

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If you are a licensed psychologist and would like to receive acknowledgement of your expertise in your specialty, then you should become familiar with the American Board of Organizational and Business Consulting Psychology (ABOBCP, http://www.abpp.org/i4a/pages/index.cfm?pageid=3314). For those unfamiliar with OBCP specialty, it replaced the older specialization in Industrial-Organizational Psychology, and now covers both Industrial & Organizational (Division 14) and Consulting Psychology (Division 13), as well as areas such as assessment, coaching, military, and national security psychology. If you are a licensed psychologist, and interested in applying, all the instructions can be found on the ABPP webpage. If you have any questions, you may feel free to contact me, although the website contains everything there is to know, and has a much more accurate memory.

Happy Holidays and Happy New Year

Note

Dennis Doverspike is the Chair of the IPAC Professional and Scientific Affairs Committee. He is a Full Professor of Psychology at the University of Akron, Senior Fellow of the Institute for Life-Span Development and Gerontology, and Director of the Center for Organizational Research. He holds a Certificate in Organizational and Business Consulting from the American Board of Professional Psychology (ABPP) and is a licensed psychologist in the State of Ohio. He is a long term public employee and university professor. He can be reached at dennisdoverspike@gmail.com.

This article first appeared in the Quarterly Newsletter of the Personnel Testing Council of Metropolitan Washington (www.PTCMW.org). It is re-printed with the permission of the authors and PTC/MW. Dr. O'Leary writes a regular column, Legal Watch, that is published on the PTC/MW website.
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Joel Wiesen, Ph.D., Director of Testing
jwiesen@aptestingservices.com
(617) 244-8859
## Upcoming Conferences and Workshops

### February

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<td>Feb 7</td>
<td>HR Leadership Forum. Breakfast Meeting. Speaker to be announced. Arlington, VA.</td>
<td>Contact: <a href="http://www.hrleadershipforum.org">www.hrleadershipforum.org</a></td>
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<td>Feb 18</td>
<td>PTC/MW. LUNCHEON MEETING. Dr. John Jones, General Dynamics Information Technology, Chicago, IL. “Personnel Assessment Strategies for Addressing Employee Collusion with External Threats.” GMU, Arlington, VA.</td>
<td>Contact: <a href="http://www.ptcmw.org">www.ptcmw.org</a></td>
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<td>Feb 19-22</td>
<td>Academy of Human Resource Development. Annual Conference. Houston, TX.</td>
<td>Contact: <a href="http://www.ahrd.org">www.ahrd.org</a></td>
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### March

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<tr>
<td>Mar 12</td>
<td>PTC/MW. LUNCHEON MEETING. Speaker to be announced. GMU, Arlington, VA.</td>
<td>Contact: <a href="http://www.ptcmw.org">www.ptcmw.org</a></td>
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*(Some of the information in this calendar was reprinted with permission from the PTC/MW Newsletter calendar which was compiled by Lance W. Seberhagen, Seberhagen & Associates, sebe@erols.com.)*
Upcoming Conferences and Workshops

April


Apr 8-10  Human Capital Institute.  Annual Conference.  Orlando, FL.  Contact:  www.hci.org

Apr 9  PTC/MW.  LUNCHEON MEETING.  Speaker to be announced.  GMU, Arlington, VA.  Contact:  www.ptcmw.org


May


May 4-7  American Society for Training & Development.  Annual Conference.  Washington, DC.  Contact:  www.astd.org

May 14  PTC/MW.  LUNCHEON MEETING.  Speaker to be announced.  GMU, Arlington, VA.  Contact:  www.ptcmw.org

May 14-17  Society for Industrial and Organizational Psychology.  Annual Conference & Workshops.  Honolulu, HI.  Contact:  www.siop.org


If you have regional organization news or an item to add to the calendar, please contact the Editor by e-mail at johnf@us.net or by telephone at (202) 254-4499.
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About the ACN

The ACN is the official newsletter of the International Personnel Assessment Council, an association of individuals actively engaged in or contributing to the professional, academic, and practical field of personnel research and assessment. It serves as a source of information about significant activities of the Council, a medium of dialogue and information exchange among members, a method for dissemination of research findings and a forum for the publication of letters and articles of general interest. The Council has approximately 300 members.

The ACN is published on a quarterly basis: January, April, July, and October. Respective closing dates for submissions are December 1, March 1, June 1, and September 1.

Submissions for Publication: Prospective authors are invited to send in their articles, research reports, reviews, reactions, discussion papers, conference reports, etc., pertaining to the field of personnel research and assessment. Topics for submission include, but are not limited to:

- Technical
- Practical – lessons learned, best practices
- Legal
- Technology/Tools
- Statistics/Measurement
- Book reviews

Articles and information for inclusion should be submitted directly to the Editor via e-mail, at johnf@us.net. Articles will be accepted only by electronic submission (Word compatible). Submissions should be written according to the Publication Manual of the American Psychological Association, 5th edition. The editor has the prerogative to make minor changes (typographical/grammatical errors, format, etc.); substantial changes will be discussed with the author. Submissions more than 1500 words should include an abstract of maximum 100 words, preferably with three keywords.

If you have questions or need further information, please contact the editor.

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