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ABSTRACT

The implementation of any competency testing program must take into consideration the due process clause and the Equal Protection clause of the Fourteenth Amendment. Examples of the violation of the due process clause would be to implement a testing program without adequate notice or to cover material not taught. Instructional validity must be shown, preferably by a formal study by an outside or unbiased agency. The Equal Protection clause is violated when a disproportionate impact due to present effects of past intentional discrimination is shown. Three cases that mark milestones in testing are Griggs v. Duke Power Co., Washington v. Davis, and Debra P. v. Turlington. These three cases show consumers of competency testing for basic skills or occupational skills that documentation of different kinds of validity is necessary. Other cases have challenged the requirement of test passage as a diploma requirement, shown that tests can not be used for a purpose other than that for which they have been validated, and emphasized that tests can not perpetuate the effects of past discrimination. (YLB)

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The implementation of any competency testing program, whether it is a minimum competency testing program of basic skills or a competency testing program for occupational skills, whether it is implemented on a town, district, or on a statewide basis, must take into consideration that the due process clause and the Equal Protection clause of the Fourteenth Amendment.

Fourteenth Amendment

Examples of the violation of the due process clause would be to implement a testing program without adequate notice or to cover material not taught. It is not enough to assume material is taught, but instructional validity must be shown, preferably by a formal study by an outside or an unbiased agency. The Equal Protection clause is violated when a disproportionate impact due to present effects of past intentional discrimination is shown. Any program or policy which has the affect of perpetuating effects of past discriminatory policies is invalid. Examples of these would be the failure of the school district to implement curriculum designed to meet the needs of minority students, failure to provide remediation to students who previously attended segregated schools, and thus have learning deficiencies, lack of black administrators and teachers caused by discriminatory hiring practices or one-way bussing of black children.

Three Milestone Cases

Griggs v. Duke Power Co. Three cases in particular mark milestones in testing. In 1971, Griggs v. Duke Power Company, the Supreme Court held in part that under Title VII of the Civil Rights Act of 1964 that an employer was prohibited from requiring that employees pass the standardized general intelligence test as a condition of employment in/or transfer to jobs in that company. The test was not shown to be significantly related to successful job performance and the tests operated to disqualify black applicants at a substantially higher rate than whites. During the period from 1971 through 1976, many preemployment testing suits were settled on this basis. Many cases decided during this period of time quoted the judgement held in Griggs v. Duke Power Company. For a more indepth study of these cases see "Massachusetts Out-of-Step Ahead of the Times," May 1982.

Washington v. Davis. In 1976 a seemingly more conservative decision was held in Washington v. Davis. In this case two black police applicants brought a class action suit against the Commissioner of the District of Columbia, the Chief of Police, and the Commissioner of the U.S. Civil Service. Plaintiffs questioned the validity of a written personnel test used to ascertain the level of verbal skills of police recruits. They alleged discrimination because the test disqualified disproportionate numbers of blacks and claimed that the test bore no relationship to job performance. The test, they claimed,

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denied their right to due process under the Fifth Amendment. The District Court held for the defendant but the Appeals Court reversed citing Griggs. The test did have a differential racial impact and it had not been validated in terms of job performance. The Supreme Court reversed the Court of Appeals holding that the positive relationship that existed between the test and the success of the training program was sufficient to validate the test. The test was neutral on its face and a law or act is not necessarily unconstitutional solely because it has a racially disproportionate impact and the Government has the right to seek to upgrade the abilities of its employees.

This case seems to be a turning point in the court's posture on testing. From that point on, more cases were decided on the basis that discriminatory impact is not enough, the plaintiff must show intent to discriminate. In order to develop a case under the Fourteenth Amendment in education cases, a plaintiff must prove that the defendant school board intended to create and use a racial classification. If the effect of testing is that more black students than white students fail the test then that is proof of discriminatory impact. But then the plaintiff must show that the administrators of the test intended to discriminate by giving the test rather than giving it for some other legitimate reason. If the plaintiff fails to prove intent or if the defendant adequately rebuts the proof, then the court is required to evaluate the classification on the basis of a rational relation test.

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A rational relation test is similar to the job relatedness aspect of preemployment testing which was used in Griggs and many other cases. In Washington v. Davis (1976), the test bore no relationship to job performance. In this particular case, the test was validated against success of police recruits in the Police Academy, but the claim was that the test was being used to discriminate against potential policemen. The Supreme Court held for the defendant saying that the positive relationship that existed between the test and success of the training program was sufficient to validate the test. Thus, in Washington v. Davis, the courts begin to tend towards more conservative interpretation of the Fourteenth Amendment.

Debra P. v. Turlington. A third case of particular interest to us is Debra P. v. Turlington (1979). In this celebrated case, students who failed the functional literacy exam required by Florida's Educational Accountability Act of 1976, challenged the exam in the courts in 1979. In 1978 the Act was amended to require passing scores on the exam as a prerequisite to receiving a diploma. Students who completed required number of credits but failed to pass the exam received a certificate of completion. The SSAT-II had two parts, a math and a communication skills component. It was to be administered in the third, fifth, eighth and eleventh grades. Test objectives were set by the Florida Department of Education. The exam was developed by ETS, field tested in March 1977 and first administered in October 1977. When this case came to trial, the SSAT-II had been

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administered three times. Students who failed were entitled to retake the exam. Significantly more black than white students failed on all three occasions.

Three claims were brought before the Court. First of all, the use of the exam violated the Equal Protection clause of the Fourteenth Amendment. Secondly, inadequate notice of the institution of the new requirement violated the student's Fourteenth Amendment due process rights. Finally, the use of tests recreated defacto segregation because a disproportionate number of black students were placed in compensatory classes on the basis of the test results. A close look at the Courts treatment of this particular case will give us some insight as to future decisions and also as to the posture which any institution, whether it is a state, township, or district, deciding to undertake a competency testing program should take.

The first of the three claims was that use of the exam is discriminatory and, therefore, violates the Equal Protection Clause of the Fourteenth Amendment. Since *Washington v. Davis*, disproportionate impact on a particular group is not sufficient to establish discrimination. It is, however, a relevant factor in showing discrimination. So is the fact that school administrators implemented the tests although they foresaw that more black students than Whites would fail. However, these factors were not enough to show intent to discriminate. The Court also examined the history of segregation in Florida schools, noting that the State had a dual system until 1967 with facilities provided for Black students being inferior. From 1967 to 1971 when the plaintiffs began their education, defacto segregation existed in the public schools. The transitional period of integration

from 1971 to 1979 created problems which wore most heavily on Black students. The Court found that the exams perpetuated the effects of past discrimination which had disadvantaged Black students. This amounted to the violation of the Fourteenth Amendment Equal Protection Rights, the Civil Rights Act of 1964, and Equal Protection Educational Opportunity Act.

Further, the rational relation test had to be examined here. Since the test categorizes students, it must have a rational relationship to some valid state interest. Here, the state had a valid interest in improving education and monitoring students' progress. On this basis, validity of the exam was held to be established. Thus, the Court considered the total aspect of the effect of segregation rather than the simple fact that more Blacks than Whites failed the test. The trial court had to consider the the impact of legislative action on the community, historical background, and sequence of events leading up to such a requirement including the fact that until 1967 Florida operated a dual school system. From 1967 to 1971 segregation persisted and predominantly Black schools remained inferior. Thus, the greater failure rate of Blacks on the tests could be attributed to unequal education they received during the dual school years. The decision was that testing would have to be discontinued until such time as the students taking the tests had been in the unitary or single school system for four years or for their high school period of time.

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The District Court found that Florida violated the equal protection clause of the U.S. Constitution, Title VI of the Civil Rights Act of 1964 and the Equal Education Opportunities Act, and defendants were enjoined or restricted from the use of the tests as a requirement for the receipt of diplomas until the 1982-83 school year. However, the Court found that the use of the examinations for remediation violated neither the Constitution nor the Statutes. That is important. It should be noted that only the diploma sanction, (withholding the diploma if the person failed the test) was being tested here and the Courts at no time felt that the use of the test for purposes of putting students in classes for remediation was a violation of anything.

In addition, inadequate notice of a new requirement for graduation violated the student's Fourteenth Amendment due process rights. The Court held that students have a property interest in graduating with a diploma upon fulfillment of previous credit and attendance requirements, because public education is compulsory and the traditional requirements for the granting of a diploma gave rise to a reasonable expectation of receiving one when those requirements have been fulfilled. Students who are denied a diploma suffer adverse economic and educational consequences, and have a liberty interest in being free of this stigma. Therefore, students are entitled to due process protection in denial of a diploma.

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In arriving at this decision, the Court asked several questions in determining whether the testing program was "fair." Were the test objectives taught in school? Was adequate remediation offered? Did the implementation procedure allow adequate notice and time for students to prepare? The first two questions were answered affirmatively in the initial court action. The Court held, however, that the implementation schedule was fundamentally unfair, because it did not allow sufficient time for students from the first graduating class to become aware of and to prepare for the exam.

One point of the plaintiffs was that the use of the tests recreated defacto segregation because a disproportionate number of blacks were placed in compensatory classes on the basis of the test results. The Court discounted this claim because it found that the purpose of the compensatory program was to assist students and not to discriminate. Students spend only a part of their school day in these classes and were moved out of them if their performance improved. So that the make up of a remedial classes was in fact fluid rather than static. Since the program will remedy the effects of past discrimination, it is approved even though it does affect black students disproportionately.

In summary the diploma sanction was found to be in violation of the Fourteenth Amendment rights to due process and equal protection. Use of the exam as a graduation requirement was enjoined for four years. This time was chosen because by 1983 all graduating students will have received all of their education in genuinely integrated schools. Much

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of the unfairness, engendered by the unequal education formally offered to black and white students would have been eliminated.

Needless to say, this decision was soon appealed. In 1981, on appeal, the Circuit Court upheld the lower court opinion with one notable exception. They did not find from the evidence presented that the Department of Education had proved that the material tested had been actually taught to the students. Since it is fundamentally unfair to base the diploma sanction on material that may not have been taught, the case was remanded for further findings on the subject. This finding warrants our consideration, since it brings up questions of validity. A great deal of effort goes into providing statistical evidence of content validity but this court decision uncovers another aspect of validity that may not have been considered. Quoting from the 644 Basic Report, 2nd Series, page 404,

The due process violation potentially goes deeper than deprivation of property rights without adequate notice. Whether it encroaches upon concepts of justice lying at the basis of our civil and political institutions, the State is obligated to avoid action which is arbitrary and capricious does not achieve or even frustrates a legitimate state interest is fundamentally unfair. We believe that the State administered the test that was at least on the record before us fundamentally unfair in that it may have covered matters not taught in the schools of the State. Testimony at trial by experts for both the plaintiffs and the defendants indicated that several types of studies were done before and after the administration of the tests. The experts agreed that of the several types of validity studies, content validity studies would be most important for competency exams such as the SSAT-II. The trial court apparently found that the test had adequate content validity but we find that holding upon the record before us to be clearly erroneous. In the field of competency testing, an important component of content validity is curricular validity defined by the experts as 'things that are currently taught.' This record is simply insufficient in proof that the test administered measures what is actually taught in schools in Florida.

Merle S. McClung (1979) has written extensively on the legal implications of competency testing. He defines curricular validity as a measure of how well test items represent the stated objectives of the curriculum. Curricular validity depends on the extent to which a test matches a school's curriculum intent. Later, Popham (1981) distinguishes between curricular and instructional validity. "Instructional validity is an actual measure of whether the schools are providing students with instruction in the knowledge and skills measured by the test." A test may well have curricular validity but not possess instructional validity, if what actually happened in the classroom did not match the stated curriculum objectives. "Instructional validity, therefore, focuses on curricular reality, not curricular intent."

Debra P. v. Turlington on remand in 1983, the District Court found the test to be instructionally valid. Department of Education experts presented the following evidence of content or "instructional" validity:

- Teacher surveys detailing the material they taught;
- District surveys including information on instructional variations, grades at which tested skills were taught and mastered, specific programs and remediation;
- Site visits to verify the surveys; and
- Student questionnaires.

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The Court accepted Department of Education evidence that students were exposed to mastery instruction of the tested skills. Certain unfair variables such as different learning rates and instructor competencies were not unconstitutional. The Court refused to extend the injunction against the diploma sanction, which in 1983 had run its allotted four years, because it found any remaining disproportionate affect on Blacks was the effect of lingering societal discrimination rather than the result of past school discrimination. The exam was seen as an affirmative attempt to remedy these affects by aiding students to achieve equally. Since the test is not unfair and remedies rather than perpetuates the effects of past discrimination, the diploma sanction may be imposed beginning in 1983.

#### Demonstrating Validi

What does this have to say to us as consumers of competency testing whether designed for basic skills or occupational skills. If you are contemplating the administration of any testing program, documentation of different kinds of validity is seen to be necessary. Statistical evidence of reliability and traditional kinds of validity have already been shown by my predecessors, but how does one go about assembling the kind of data needed to show instructional validity as called for in the Florida case. This case is surely going to set precedents in the future. We should take a lesson from this.

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One kind of evidence consists of instructional materials such as textbooks, syllabus, teacher's lesson plans. From these materials inferences can be made regarding what goes on in the classroom. But there is no absolute assurance that the content of instructional materials is actually taught, since the teacher is free to depart from the text at any point in time. Another kind of evidence consists of an attempt to describe actual classroom transactions. Classroom transactions are ongoing and transitory and are very difficult to document. Collecting this kind of data is an overwhelming task and terribly expensive. There is no clear answer but some kind of data lying between these two surely will be necessary.

Data can be gathered by the agency which is contacted to do the testing but it would be more compelling to the court if this kind of data were assembled by an outside independent contractor. In addition, a careful description of the content of the test is also necessary. Popham remarks,

When a test has been carefully described evidence regarding the match between teaching and testing will be far less contestable in court. Suppose for example that a state department of education assembles the curriculum review committee composed of citizens and educators representing diverse constituencies, The Department then asks this group to review match between the emphasis of the tests as described in this set of test specifications and systematically sample textbooks, course outlines, and lesson plan materials. If the procedural conduct of the review is above reproach, the Committee's findings will constitute strong evidence regarding the fairness of the test.

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Ms. Pullin, (1981), the attorney who represented the plaintiffs in Debra v. Turlington makes her concern quite clear. To quote from her article,

When the testing section of the State Department of Education conducts its own validity, reliability, and curricular match studies, the impartiality of those studies can be questioned. Also questionable are studies undertaken by the same company that wrote the test or by another test publisher with a vested interest in generating additional business in the State. Similarly technical studies conducted by a state employee in another agency create the appearance of if not the occasion for bias. Finally, curricular match studies conducted by any company in the business of writing remedial instructional materials provide on an occasion for bias in evaluation.

It would appear that all validation efforts should parallel the implementation of the testing program. Kinds of evidence to be collected in advance would be instructional materials, and classroom transaction records. One must be sure that a representative sample of the district or the state has been taken.

#### Alleged Flaws in Testing Program

Other flaws in the Florida testing program were described by the Plaintiffs in the proceedings. Now, this is what the people who brought the suit were complaining about. Even though the court denied these claims, it is probably instructive for us to look at these charges to be sure that none of these mistakes are made in our own testing programs. This is what the plaintiffs alleged made the Florida test in violation of the Fourteenth Amendment:

1. Public input into test design. The plaintiffs alleged that the Department of Education failed to solicit public input into the design of the test and its definition. For our purposes, this would parallel industrial input into our examinations.

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2. The drafting of specifications after the writing of the items. Good test development procedures mandates drawing up a very clear and specific set of specifications prior to design of such items.
3. Lack of research relative to selection of the cut-off score. The plaintiff felt that there was inadequate research and that the cut-off score was arbitrary. In one case, I believe, there was a matter of three points difference between passing and failing and the denial of a diploma.
4. The research methodology relative to the construct validity of this test. Now, again there's a parallel for us to be seen here. Construct validity of the Florida test meant that a successful score was equivalent to functional literacy. In our case, we feel that a passing score is congruent to occupational competence. It is a great temptation to disregard the notion of construct validity in dealing with our tests since they deal with skills. However, this particular case brings this into question for us.
5. The failure to follow APA Standards for the design and implementation of this test which affect the lives of the takers in a significant fashion. APA Standards are published in a small and useful handbook and are not at all hard to follow.
6. The failure of the Department of Education to adequately publicize what the test is and its inherent limitation.
7. The reliability of the test.

All of these points are covered in the APA Manual on test development. With respect to the plaintiffs' contentions that the tests suffered from numerous flaws, the Court held that these objectives were without merit. However, quoting from Ms. Pullin's article, "Perhaps we should not be surprised that the Judge would uphold the use of a test even after finding that it contained errors of considerable magnitude. But it is surprising that professional educators proceeded to make critical decisions about students without evidence that the test was a valid instrument."

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A further warning from Ms. Pullin in trying to produce the curricula match is interesting. She says that the problem of curriculum match is compounded when minimum competency testing attempts to test the ability of the students to apply basic skills in a real-world situation. "Test makers should take care that the real-world context that it provides does not confound the student who would otherwise perform an underlying skill. An example, a student who has never seen a federal income form may well be so confused by it that he/she would be unable to demonstrate the basic ability to add, subtract or divide." Also, the nature and depth of instruction offered by students varies from track to track within a school and may differ considerably in similar programs in different schools. One final comment from Ms. Pullin, "The Court did not endorse minimum competency testing as a strategy for insuring educational accountability. However, it did require that whatever mechanism the state uses to meet constitutional standards be equitable and that the state bear the burden of demonstrating that this testing program is appropriate."

In a similar case, *Brookhart v. Illinois State Board of Education*, (1983), fourteen variously handicapped children who had failed parts of the minimum competency tests challenged the Peoria School District's requirement of passage of this test in order to receive a diploma rather than a certificate of completion. The tests comprised reading, language arts, and math components, were administered every semester, could be retaken until a student was 21.

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Refresher courses were available. The passing score was 70 percent on each segment. This requirement was established in 1978. The Court noted that deference is due to the school's educational and curricular decisions and that the desire to insure the value of the diploma was admirable. The Court will interfere in such a decision only to protect the individual rights. The Court held as follows: Denial of diplomas to handicapped children who have received education and related services required by the Education for all Handicapped Children Act but who cannot pass the minimal competency test is not a denial of a free appropriate public education. There is no per se violation of the Act because a handicapped student fails the test. Second, the 1 1/2 years notice of the minimum competency test requirement was not enough time to allow reasonable preparation for the test. Because failure stigmatizes students in a way that adversely affects future employment and educational opportunities and because it results in the deprivation of a right to a diploma previously conferred by state law, this denial of diploma invokes due process protections. The sanction must be imposed fairly since it deprives students of protected liberty and property interests. The court found that 1-1/2 years did not allow these students enough time to prepare for the tests. These students were often not exposed to the material tested and their individualized programs of instruction were not developed to meet the goal of passing minimum competency tests. More notice was required so that students could prepare or make informed

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decisions to concentrate on goals that seemed more appropriate. The court did not indicate what the time limit should be. The final decision was that diplomas must be issued to those plaintiffs who met the graduate requirements other than the minimum competency test since it would impose hardship on those individuals to require them to return to school for remedial work. In the future, students were advised to bypass the Courts and take advantage of the remedial courses offered. So again, the same reasoning held that the time to institute the test has to be long enough to allow people to prepare, or as in the previous case, to outlive the vestiges of the effects of segregation, and that the test must cover material that is already taught.

1982 in Georgia, *Anderson v. Banks*, Black and EMR students challenged the school district's requirement that students who scored ninth-grade level in math and reading sections of the California Achievement Test (CAT) in order to receive a diploma beginning in 1978. Citing *Debra P.*, the Court held that the diploma sanction cannot be imposed on students who attended school prior to the abolition of the dual system. However, upon graduation of the last class who had attended under this dual system, the school district can reinstate the diploma requirement provided it can show that the increased educational opportunities thereby afforded outweigh any lingering connections between prior discrimination and the diploma sanction. The Court came to this conclusion despite the fact that the surrounding circumstances differed from those of *Debra P.* The dual system persisted

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in Georgia until 1970 with the Black system being inferior. Rather than making bonafide efforts toward remediation for Black students after the imposition of integrated schools, Georgia instituted an ability tracking system which in fact resegregated classes, with a disproportionate number of blacks in the lower tracks. This situation remained until an Office of Civil Rights investigation in 1980. Black students were educally disadvantaged until after the dissolution of the tracking system. The Courts only acknowledgement of this system was a mention of prior discriminatory school practices. It was also established at the trial that CAT had never been locally validated as recommended by the APA whenever a test is used for other than its original purpose. CAT officials testified that the level of bias shown in the test results was considerably higher than the CAT considered acceptable. However, the court held that school's actions were entitled to a presumption of validity unless plaintiffs could show that there is no rational connection between those actions and a legitimate interest in improving education. The students' performance had in fact improved. The availability of remediation was important and the schools did offer remediation. A two-year notice of the new requirement was adequate so long as students who failed were offered a chance to retake the tests and remedial classes. The school was required to show that the tests covered only material taught. If not, the requirement constituted a due process violation regardless of its rational relationship to a legitimate goal. This case again confirms

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the findings of Debra P. but also brings up another point--that a test cannot be used for a purpose other than for which it has been validated. The CAT was not validated to be a prerequisite for diploma as this State was trying to do.

Another case along these lines was in California in 1979, Larry P. v. Riles. This case is also frequently cited in the literature. The plaintiffs were Black children wrongfully placed in special classes for the educable mentally retarded on the basis of their performance on the standardized IQ tests. The test used was found to be racially and culturally biased having a discriminatory impact on Black children and not to have been validated for the purpose for which they were used, the placement of Black children into dead-end isolated and stigmatizing groupings. The Court held that this constituted Equal Protection violation. The defendant school district was held to have acted with unlawful segregative intent because it knew that this procedure would result in the placement of disproportionate numbers of black students in EMR classes and simply assumed that they were in fact more retarded individuals among the black population. The District Court invalidated California's system of classifying black children for educable mentally retarded classes. The Court held that use of standardized intelligence tests that are racially and culturally biased and have not been validated for the purpose of placing children into EMR classes, violated the California constitution in the United States constitution and statutes. The Court permanently discontinued the use of the IQ tests for this particular activity.

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### Conclusion

Now, where does this all leave us, the consumer of competency tests of various types. The rulings of the Court should not really unduly frighten us. But some effects of these rulings should be emphasized.

The statement that students have a constitutional property interest in a diploma only means that this interest will be constitutionally protected, not that a diploma can never be denied or requirements regarding it changed. Any such changes or denial must be implemented in a manner that follows the due process requirements in both the procedure and the substance.

Courts are extremely deferential when it comes to examining the validity of educators' decisions on education. From *Griggs v. Duke Power Co.* and *Washington v. Davis*, defendants went through all kinds of proof to show that their employment tests were job related, had content, construct, and predictive validity. However, in the school cases the court seemed to accept the schools' assurances that testing would improve education. Judges realized how difficult these plans and decisions are to make and they don't want to have to be in the position to make them. Judicial intrusion has been and will continue to be minimal. Courts only intervene to protect individual constitutional statutory rights, not to tell the schools what to do.

In another related issue, there are cases that held schools liable for damages by graduating students who can't read. The courts have dismissed such claims on the basis that judicial intervention is not appropriate. The Policy decisions represent the discretion of the educators. As such, they are largely free from suits for damages resulting from these policies. There is a tremendous difference between judicial intervention

to protect the individual's constitutional right to due process or equal protection and judicial intervention to award money damages because an individual claims he was personally injured. None of these cases that we reviewed awarded monetary damages. They all involved injunctive relief of a sort as to interfere as little as possible with what the schools were doing and still prevent further constitutional violations.

On discrimination claims the courts have come along way from the days of Griggs when all the plaintiff had to do was to show disparate impact and sit back while the defendant tried to show that his test was absolutely necessary. Now the courts perform a totality of circumstances analysis, in which the impact is only one factor to be considered and balanced against legitimate state goals. The one damning claim here appears to be when the use of the test perpetuates the effects of past discrimination. When this is raised, the Courts become very interested in any history of past discrimination on the part of the school district. In Larry P., the court examined the past discriminatory uses of the IQ tests itself. Even this can be overcome if the school knows that the test is being used to eliminate the effects of past discrimination.

Even where the use of tests as a graduation requirement or diploma sanction has been enjoined there has been no problem with other uses of the tests--remediation, monitoring student progress, or accountability.

The demand that schools be able to show that the tested material was taught is likely to infringe upon local school autonomy even more than the competency testing program already does. It will require a degree of standardization, monitoring and reporting in order



to refute claims that the material wasn't taught.

It seems on this last note, we have more to worry about than any other previous material. The instructional match, between the test specifications and the actual day-to-day activities in the classroom seems to me to be a fruitful area of investigation for the future. In quoting Popham, one more time,

Some educators might view the new legal requirement that competency tests must measure what has been taught as an invasion of the judiciary of their turf. The appeals court ruling reminds us, however, of the fundamental injustice of testing students in what they have not been taught. The court has directed educators to attend more carefully to the congruence between tests and the educational programs whose affects these tests are supposed to measure. Our task is to comply with the Courts' requirements in a manner that does not detract from the quality of our educational efforts. How to do this is no trivial puzzle, but difficult puzzles are always the most satisfying to solve.

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