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The Neglected Report of the President's Advisory Commission on Educational Excellence for Hispanic Americans

Special Tests for Hispanics?

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In 1971 the Supreme Court held that Duke Power Plant's requirement that job applicants possess a high school diploma and pass an intelligence test was a violation of the Fourteenth Amendment's Equal protection clause. The reason was that more blacks than whites were rejected from possible employment because they more often failed to possess a diploma and tended to score lower on the examination. Though there was no evidence that Duke Power had intended to discriminate, Chief Justice Burger thundered that this was no matter:

"Good intent or absence of discriminatory intent does not redeem employment procedures or testing mechanisms that operate as 'built-in headwinds' for minority groups and are unrelated to measuring job capability."

In one sense, this decision was sensible, though arguably, not for the High Court to make; namely, that there does seem to be something offensive about screening out candidates with examinations that include material not obviously relevant to job performance. Asking someone applying for work as a bus driver the name of the company that built the first double-decker bus, for example, is just irrational. Whether it is unconstitutional, well, I'll let that dog lie.

The disturbing portion of this ruling was the idea that any tests that happened to have the effects of flunking more non-whites than whites were suspect and open to litigious challenge. This is the now famous, or as some of us think, infamous doctrine known as "disparate impact."

Initially, this weapon against potential discrimination was wielded against employers. Later it was turned on colleges and universities, whose admission policies in emphasizing grades and test scores had the "disparate impact" of denying more blacks and Hispanics entrance. Interestingly, that Southeast Asians, Indo-Pakistanis, and Middle-Easterners were

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entering post-secondary education in numbers beyond their percentages in the broader population was not taken as a sign that that admission policies favored them over whites.

Now it seems that some are seeking to apply the logic of disparate impact to primary and secondary educational testing. This past September in a report almost entirely ignored by the press, the President's Advisory Commission on Educational Excellence for Hispanic Americans attacked the idea that Hispanic children who fail tests should be held back from progressing to the next grade level or graduating. They also directly rebuked the two-decade long effort to increase educational standards in the schools that aims to prepare pupils for the increasingly technology-based economy.

"[I]n the current rush to implement world class standards supported by systems of accountability in the nation's public schools, state education leaders have compromised the future of Hispanic students by making high stakes decisions based on inaccurate and inadequate testing information."

Hyperbolically titled, "Our Nation on the Fault Line: Hispanic American Education," the report also complained, without citing a source, that "[h]undreds of thousands of Hispanic students, many lacking functional fluency in English, are assessed with a myriad of tests entirely in English."

To latter of which, one might respond, so what? Why do the authors of this report feel that it is morally repugnant that children who cannot read English at grade level are being held back and that those who cannot read a diploma are denied graduation?

But let us continue. The report then goes on an extended yarn about the inadequacy of current tests but surprisingly does not bother to examine the various state tests and explain specifically why they are bunk. Rather, the authors appear to declare that all tests on which Hispanics tend to perform worse than whites are suspect -- which sounds a lot like disparate impact.

As for the suggestion that perhaps students without a grasp of English could be tested in Spanish, the Commission deep-sixes this idea and insists that "[t]ests that purport to have equivalent test versions in English and Spanish need to show empirical evidence that, in fact, there [sic] equivalent." And what kind of evidence would be adequate? Presumably one would have to show that on a particular test administered in both languages that Hispanics and English-speaking whites score the same. Otherwise, there would be disparate impact, and that's not acceptable.

The authors later temper their hostility to exams and say that they are not against testing per se, nor do they disdain holding all children to challenging educational standards and refusing to pass those who do not meet such standards. Instead, they are against flunking students who have not been given adequate schooling. So it's not the tests -- really, it's the schools' fault. This comes close to implying that the tests aren't biased and that Hispanic students don't possess the knowledge and skills they should.

Thus the Commission recommends that "school systems and opportunities-to-learn are made equitable for Hispanic children across the United

States" in order to assure "experiential homogeneity." In short, open a cash pipeline to schools that serve Hispanics. How many Hispanics must attend a school for it to qualify? This question isn't answered anywhere in the ninety-seven pages of the report. And what about the evidence that the connection between per pupil spending and educational achievement is tenuous at best? It's ignored.

But when, one asks, can the cash flow be shut off? If lower Hispanic test scores are the result of an inferior educational experience, then how can it be determined that "experiential homogeneity" has been achieved? Seemingly it would be when Hispanic test scores equal those of whites. But if scores don't rise high enough, then the money will have to keep coming. And the report itself admits that this approach to increasing educational achievement "is the one most likely to take multi-generations to accomplish." This is the very antithesis of good management and policy, insofar as it rewards continued educational failure with more funds.

While the rest of American public schools are being slowly reformed so that they teach and test students on the basis of world class educational standards, the President's Advisory Commission on Educational Excellence for Hispanic Americans is telling reformers, 'Please don't hold Hispanic children to the same educational standards and high stakes tests that other American pupils must meet. Just turn over control of the schools to Hispanics, and keep the money coming.' I wonder what Warren Burger would have to say about all this.

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