

Section 4:**Boalt Hall and the Mismatch Effect:
An Illustration of the Need for Our Study**

This section addresses the following points:

- In recent years, the bar passage rate at Boalt Hall, one of California's most elite law schools, has plummeted, down to an 82% rate for first-time takers in 2007.
- Strong circumstantial evidence suggests that the difficulties Boalt's students are having with the California Bar are strongly related to the school's admissions policies.
- Boalt's minority students may be disserved by the school's preferential admissions policies if mismatch is affecting the bar passage rate of its graduates.
- The Boalt Hall community, including Dean Edley, have taken a leading role in preventing the disclosure of Bar data and prevent our proposed studies.

Bar Passage Slump

Boalt Hall – the law school of the University of California at Berkeley – is often ranked as the nation's strongest public law school. Its students generally come from the top five percent of all applicants to law school, and its bar passage rate has historically been correspondingly high. In 2000 and 2001, for example, new Boalt graduates taking the July California bar exam passed at rates of 94% and 90%, respectively. In recent years, however, a rapidly growing number of Boalt students have failed the California Bar. In July 2005, the first-time California bar passage rate for Boalt graduates was only 87%. In July 2006, it fell to 85%, and in July 2007, it dropped to an unprecedented 82% -- lower than the bar passage rate for some third- and fourth-tier law schools.

What is causing this precipitous drop? And which students are paying the price? It is impossible to know for sure the answers to these questions without access to the data we are seeking from the California State Bar. But circumstantial evidence suggests that Boalt students have fallen victim to an increasingly serious version of the mismatch effect.

Before the passage of Proposition 209 – the 1996 California initiative that prohibited consideration of race in state university admissions -- Boalt Hall had practiced affirmative action in a fairly conventional form. Hispanics were given substantial preferences in admissions, and blacks were given even larger preferences. National data from the early 1990s shows that such preferences produced significant disparities in bar passage rates across racial lines: typically rates of around 95% for whites, 80% for Hispanics and 65% for blacks – for a composite rate of 90%, close to Boalt’s historic average. In the first year of Prop 209’s implementation, Boalt decided to admit students almost entirely on the basis of academic credentials. The result was that only a single African-American (and relatively few Hispanics) enrolled at Boalt in 1997 – an outcome that attracted national attention, and ridicule, to the law school. (Boalt’s rival, UCLA, adopted class-based preferences after Prop 209 and enrolled ten blacks in 1997 without taking race into explicit account).

Since 1997, Boalt has been engaged in a variety of efforts to achieve substantial minority enrollment without getting “caught” for violating the Prop 209.¹ To a significant degree, this has involved the school’s covert use of different admissions standards to students of different races. But in recent years, the school has also changed its standards by giving more weight, in marginal admissions cases, to factors thought to facilitate minority admissions.

An example of this practice lies in the weight given to undergraduate grade point average. At most law schools, the key factors considered in admissions are an applicant’s LSAT score, his undergraduate grades, and where he attended college. Of the three, LSAT is given the most weight because bookshelves of studies have demonstrated that it is the strongest single predictor of law school performance. They are also the best single predictor, among factors known at the time of application to law school, of success on bar exams. Boalt, however, decided to start giving greater weight to undergraduate grade performance, perhaps believing that this would give a boost to minority admissions. At the same time, it gave commensurately less weight to LSAT scores, especially in marginal admissions cases.

The nature of Boalt’s policy can be seen in the data annually compiled by US News & World Report in its rankings of American law schools. US News asks schools to report the 75th percentile and the 25th percentile of LSAT scores of enrolled students, and the 75th percentile and the 25th percentile of students’ undergraduate grades (UGPAs). Among students enrolled in Boalt’s Class of 2004, the 25th percentile LSAT score at Boalt was 163 – the eighth-highest number among American law schools. The 25th percentile UGPA at Boalt was 3.5 – the sixth-highest number on the law school list. For the Class of 2005, the 25th percentile LSAT at Boalt dropped to 162; for 2006, it dropped to 161, and in 2007, it dropped to 160. For the class of 2007, the 25th percentile LSAT at Boalt was tied for the lowest such number among any law school on the top 20 list at US News. The gap between the Boalt’s 25th percentile LSAT and its 75th percentile LSAT (a

¹ Even before Prop 209’s adoption, Boalt Hall was the subject of a lengthy federal investigation and entered into a consent decree to stop using explicitly separate admissions processes for applicants of different races.

measure of how widely the skills of students at the school are dispersed) was 8 points – by far the largest gap at any top-twenty law school and 70% larger than the average gap. At the same time, the 25th-percentile UGPA of Boalt students was 3.65, the 4th-highest number among American law schools. In other words, Boalt was both shifting its admissions process towards undergraduate grades and loosening standards at the bottom, thus admitting a growing number of students who could be predicted to have trouble on law school and on the bar exam.

In 2003, Dr. Sander used public record requests to obtain admissions data from seven public law schools, including Boalt Hall. Analysis of the data shows that, in admitting its Class of 2005 and 2006, Boalt gave far less weight to LSAT scores than any of the other law schools, and also admitted students with weaker credentials relative to the main body of the class.

The Need for a Thorough Study of Mismatch Effects

Mismatch theory suggests that when a student receives an admissions preference into a competitive school, the student may actually learn less than if she attended a school at which her credentials were closer to those of her classmates. The notion is that students with weak relative credentials can be left behind in class, and that if the curriculum is highly demanding, the hurdles faced by such a student only increase with the passage of time. There is very strong evidence that a high proportion of black law students in American law schools face such mismatch effects. Blacks are four times as likely as whites to fail bar exams on their first attempt, and studies suggest that half of this gap can be attributed to the mismatch effect and the operation of preferences. (For more on the mismatch theory, see **Section 1: Summary** of this press kit.)

Boalt's strategy of admitting students with relatively low LSAT scores to work around Prop 209 should, in principle, worsen the mismatch effect. By increasing the "credential distance" between students at the bottom of the class and the rest of their classmates, Boalt's practices would aggravate the learning problems related to mismatch. Boalt's internal data should show an increasing correlation between entering credentials and law school grades for the Classes of 2004 through 2007, with students coming in with low credentials getting particularly poor grades and later having particularly poor bar results. One would also expect that the correlation of law school GPA and bar performance would have increased at Boalt during these years. These predictions from mismatch theory are reflected in the available data. Boalt's dropping bar performance in 2005 through 2007 fell lock-step with its declining admissions standards. And in an unusually candid letter to students in January 2008, Dean Edley conceded that the bar problems were highly-correlated with problems in law school. He wrote that *students in the top third of the class had a 100% bar passage rate, while students in the bottom third of the class had a 51% pass rate*. This is precisely what mismatch theory predicts.

It is a reasonable inference that students in Boalt's Class of 2007 who arrived with relatively weak credentials (for Boalt) passed the bar at rates of around 50% or lower. We also know, from data on other California law schools, that a "relatively weak" student

at Boalt would be in the middle of the class at a second- or third-tier law school, and would have an expected first-time bar passage rate in the neighborhood of 80%. The harm from the mismatch effect is not just that it enrolls students in programs from which they have poor chances of ultimately becoming a lawyer; it is also that these same students would be likely to flourish in other programs. Of course, being more certain about these types of tradeoffs is a basic goal of our proposed research with the State Bar data.

Resisting Disclosure

Dean Edley's letter to the students did not mention the role played by the school's admissions standards in producing the drop in bar-passage results. But in communications with friends, Edley acknowledged problems in the school's practices, noted the school had "gotten the message" from the poor bar results, and would work to reduce the credentials gap among Boalt's students.

A big problem, of course, is that while Dean Edley may get the message, the students victimized by the school's practices do not. Like other law schools, Boalt does not provide admitted students with any information about how other students with the same credentials fare at the school and on subsequent bar exams. Students who in fact have a high probability of running into problems at Boalt – and who often would flourish at a less elite school – have no way of finding out about these relative tradeoffs.

In fact, the Boalt Hall community has made extraordinary efforts to prevent any study of the mismatch problem with the California Bar data. Dean Edley wrote to other law deans in the fall of 2006, urging orchestrated action to discourage the Bar from undertaking our proposed study. William Kidder, a graduate of Boalt who worked with the law school's faculty on admissions issues and now works for the University of California's Vice President for Student Affairs, wrote a January 2007 memo that grossly distorted the facts about our proposed study and disingenuously argued that it would lead to disclosure of private student information. The Equal Justice Society, which led efforts to mobilize opposition to our proposed study in the Fall of 2007, is led by Boalt graduate Eva Paterson and has a number of Boalt faculty, students and graduates among its key supporters.

Why is Boalt Hall so opposed to the careful study of a problem that may have affected Boalt's own students? We think the answers are obvious: a fear of disclosure, transparency, and accountability.

For More Information:

... about the privacy of bar-takers, see **Section 3: Privacy Issues**

... about Project SEAPHE, visit our website at **www.seaphe.org**