

The Courage I Know

Jessica Marie Delgado†

Being Latina at Boalt Hall is like being on an endangered species list. When I was asked to write this essay, I was very excited about the opportunity to memorialize my experience so that others might benefit from reading my story and so that my story and all the possibility it holds for my *gente* would not be erased or forgotten.

In 1995, the University of California Regents voted to abolish the use of affirmative action in admissions.¹ The Resolution was followed by the 1996 passage of the so-called California Civil Rights Initiative, Proposition 209,² which restricts the use of affirmative action at all levels of California government. After its passage by California voters, Proposition 209 was quickly enjoined by a federal district court judge, which left its viability uncertain.³ Challenges to the enforcement of the Proposition were defeated in 1997; however, the injunction was still in effect during the Spring 1997 admissions cycle. Nonetheless, Boalt proceeded as though the law were in full force. Worse, Boalt employed the most conservative interpretations of SP-1 and 209. This, in spite of the long tradition of working toward racial, ethnic, and gender parity at Boalt Hall, and the

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1. See University of California Board of Regents, Resolution SP-1 (adopted July 20, 1995). For an account of the Regents' decision, see Maria Diana Ramos, *Unqualified to Be Voiceless: Inaudible Screams Falling on the Deaf Ears of a Not So Color-Blind Society*, 11 BERKELEY WOMEN'S L.J. 1, 5-6 (1996). See also Kathleen Morris, Recent Development, *Through the Looking Glass: Recent Developments in Affirmative Action*, 11 BERKELEY WOMEN'S L.J. 182 (1996).
2. CAL. CONST. art. I, § 31.
3. The injunction was vacated by the Ninth Circuit Court of Appeals on April 8, 1997. See *Coalition for Econ. Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997). The petition for rehearing and the suggestion for rehearing *en banc* were denied. See *Coalition for Econ. Equity v. Wilson*, Nos. 97-15030, 97-15031, 1997 WL 160667 (9th Cir. Aug. 21, 1997). In fact, two Boalt Professors, John Yoo and Phillip Johnson, authored an *amicus* brief urging the denial. The U.S. Supreme Court denied *certiorari*. See *Coalition for Econ. Equity v. Wilson*, 118 S. Ct. 397 (1997) (mem.).

forecast from the University itself that the impact of SP-1 would be severe.

Severe is an understatement. Admissions and enrollment of people of color at Boalt, Hastings, UCLA, and UC Davis dropped dramatically.⁴ Only seven of the thirty-nine Latinas/os admittees enrolled this year. None of the fourteen African-American admittees enrolled. Our one African-American student for the Class of 2000 had deferred admission the previous year. With the Class of 2000, in came the re-segregation of Boalt Hall.

The mere thought of returning to Boalt for my last year of law school was gut-wrenching. While working in southern California this summer, I followed the news stories about my friends and fellow students, who were waging a fierce battle to raise consciousness about the impact of the Resolution and 209 on public education in California. While their courage and conviction was deeply inspirational, it was not enough to mitigate the despair I felt when I walked through the doors of Boalt Hall to attend the first day of classes in August.

I braced myself for tension in the classroom and hallways. I expected heated debate, strong opinions, and *mucho emocion*, something tangible—beside the noted absence of faces of color—to mark the change. Instead, the post-affirmative action era at Boalt had descended like a fog. For the most part, students and professors proceeded as though there had been no change—in spite of an enormous amount of media attention and community scrutiny. I know of only a few professors who talked about the change in their classes. More importantly, hardly any faculty members attended town-hall meetings or other events planned to foster community dialogue. Even the meeting organized by Dean Robert Cole, chair of the Ad Hoc Task Force on Diversity, to release the Task Force's report had a poor faculty showing. Furthermore, the faculty only recently began discussing the changes in admissions and admissions policy at their meetings—largely because of student pressure to do so.

Progressive student activism has been well-organized, committed, and impassioned. One group of students authored an amazing report, with detailed recommendations for retaining the school's promise of racial diversity while complying with the new restrictions.⁵ Students also organized demonstrations and town-hall meetings, but the result was a set of

4. See Daria Roithmayr, *Deconstructing the Distinction Between Bias and Merit*, 85 CAL. L. REV. 1449, 1450–51 n.3 (1997), 10 LA RAZA L.J. 363, 364–65 n.3 (1998).

5. See Cecilia V. Estolano et al., *New Directions in Diversity: Charting Law School Admissions Policy in a Post-Affirmative Action Era* (May 9, 1997) (unpublished report) (on file with the Boalt Hall Law School Library).

modest proposals by the Task Force that can only be expected to effect the smallest of changes.⁶

I worry about the future of legal education for communities of color, especially in California. It is difficult for me to imagine what the first-year classrooms must feel like for the few people of color in them. I had a little taste of it in October, when students organized walk-ins to bring attention to the tragic effect of Boalt's new admissions policy. Students of color from Boalt, Hastings, Stanford, and UC Davis walked into two first-year classes. In a gesture of solidarity, White students gave up their seats to students of color, who remained throughout the lectures. I was shocked when I walked in and could only locate two Latino students. There was not a single Latina first-year in that class; and, of course, there were no African-American women.

While participating in the action, I remembered my own experience as a first-year student. I am amazed at how time and circumstances shift memory. Boalt's commitment to diversity has been strong rhetorically; however, it has not always been substantiated by action. Life before SP-1 and Proposition 209 was not really much better. In the face of the current crisis, we have allowed retrenchment to move our yardstick for measuring social justice and equality of opportunity. Students of color have always had to fight with the administration to create a learning environment in which we could succeed. Boalt's ambivalence about racial diversity can be easily tracked in its hiring practices. Students have organized efforts to diversify the faculty for years. Yet, Boalt only recently suspended its disproportionate hiring of White men to hire a Latino and a White lesbian.

Even though there were more people of color admitted to and enrolled at Boalt Hall a few years ago, the climate has never felt comfortable. At times it has been hostile. During my first year, students of color were still healing from the distribution the year before of racist hate mail, targeted at students of color. I can remember more than a few tension-filled classes my first year when students or professors dared to discuss race or gender. More often than not, those discussions were initiated by a lone student of color who dared to speak. On the rare occasion when professors addressed race in the law, White students were uncomfortably silent. Many times, we were informed that considerations of race issues are extrinsic to the study of law—a reminder that we are only guests at the table, after all. Now, we're not even invited to sit at the table—though we can still cook their meals and wash their dishes.⁷

6. See Robert Cole et al., Report of an Ad Hoc Task Force on Diversity of Admissions, University of California, School of Law, Berkeley (October 14, 1997) (unpublished report) (on file with the Boalt Hall Law School Library).

7. I am inspired by a cartoon appearing in the *Los Angeles Times* this summer, *Drawingboard* by Jeff Danzinger.

Another point of friction in the diversity debate at Boalt Hall is law review admission. At the end of my first-year, which is when students compete for admission to the *California Law Review*, there was intense debate over the *Review's* admissions process. Some members of the law review wanted to adopt a quasi-affirmative action policy, namely by including a personal statement component to the write-on competition. Opposition to the policy change was strong, both within the law review itself, and in the larger Boalt community.⁸ Opponents stressed the importance of "fair competition" and relied on notions of merit in an attempt to defeat the proposed change. The proposal was successful and the number of people of color on law review increased dramatically. Shortly after the membership voted to change the policy, someone placed butcher paper on a wall in the law school inviting "any thoughts on *CLR* admissions vote results?" The following comments were handwritten:

Overt racial preferences=discrimination quotas=lawsuit

Diversity—the revenge of the "differently-abled"

Why stop at just *CLR*? Do not the same arguments that apply to *CLR* apply also to grades? Grades are determined by a color-blind system, they are important in obtaining jobs and clerkships, and are more likely "unequitable" in distribution too. Shouldn't 25% of all HHs [high honors] and Hs [honors] go to the underrepresented minorities [then]?

I am offended that race and ethnicity would even be a consideration.

One student asked:

Is the process discriminatory? Think before you answer. EITHER the process is skewed or women and people of color are inferior at writing.

Someone replied:

They *are* inferior.

Another replied:

This is so deep. I must contemplate the possibilities. You are so smart. Tell it to the ASP (classes for minorities only designed to help minorities with their writing skills).

The following year, the controversy reared its ugly head again. This time, people attacked the statistical method used to score the competition, but attacks on the recently changed policy echoed arguments made by opponents of the original policy change the year before. Moreover, many people thought the policy should be abandoned, lest the *Review* fail

8. Among other things, the change was inspired by a threatened disparate impact lawsuit.

to comply with Proposition 209. In fact, a couple of non-member, White men threatened to sue for reverse discrimination.

Living through the hostility of the law review debate felt like spirit murder, but just when you think you've seen the worst of it, the insensitivity deepens to another level. This semester, my Constitutional Law professor announced that we might spend some classroom time discussing Proposition 209 and the accompanying Ninth Circuit opinions "for fun." Fun? My friend Walter turned to me, shook his head, and threw up his hands. Fun. Bearing witness to the exclusion of your community from higher education is anything but fun. In fact, it is the kind of experience that cuts to the quick of your soul. It is the kind of experience that reaches into the depths of your psyche and pulls out all those old voices that make you wonder what the fuck you are doing with your life. What did you think law school was going to be like? What made you think you would find fairness and truth here in this place that feeds the institutions that have hardly managed to give your people the smallest of crumbs they call justice? "[T]he master's tools will never dismantle the master's house. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change."⁹

During winter break, I was struck with the most intense lack of motivation I have experienced in my academic career. My grandmother had passed away during final exams, and I just didn't want to come back to law school. While it is true that I have felt less focused since she died, I also have felt a more general sense of loss and grief about the state of affairs at Boalt. The rhetoric that has animated the debate over affirmative action has prodded at deep wounds that are the result of my lifelong struggle with institutional racism. The Regents' Resolution and Proposition 209 are deeply inscribed with values about merit and qualifications that seek to deny the persistence and intractability of racism. As Boalt has modified its admissions policy to reflect its interpretation of the Resolution and the Proposition, it has necessarily adopted those values. The shift in policy is painful because it makes me feel unwelcome and unwanted at Boalt Hall. The contribution of folks like me is no longer valued or worthy. Thus, the school that I made a decision to attend (in large part based on its professed commitment to the legal education of students of color) has changed radically in the short time I have been here.

Not too long after mentioning the possibility that I might "take a break" from law school, a friend sent me these words of encouragement:

I confess to concern this morning about your allusions last night to not going to school this semester. . . . You are so close . . . to your dream of being done with school. You CAN do it . . . you will be a graduate of Boalt Hall School of Law—what an accomplishment for the Puente-Delgado *familia*. What a

9. AUDRE LORDE, *SISTER OUTSIDER: ESSAYS AND SPEECHES* BY AUDRE LORDE 112 (1984).

proud moment for your mother, aunts and uncles, *hermano, y su abuelita*, who is watching over you, guiding you, living within you. It is within reach . . . [y]ou have it in you—let yourself do it.¹⁰

I do feel compelled to finish, particularly because of the significance it bears to my family, where I am the first person to attend and complete college. Most importantly, though, I feel a sense of responsibility to my community to finish law school, especially now. The state of California needs Latina/o lawyers now more than it ever has before. The virulent attack on our rights has come in well-organized, heavily-financed form. It has, in large part, emanated from state actors who have cashed in on fragile race relations and changing demographics. But because those attacks have not been aimed at Latina/o communities alone, we are increasingly called upon to build coalition with other beleaguered communities. Latina/o lawyers are critical in this regard. This generation of lawyers of color has a heavy responsibility to our communities in California.¹¹

10. Letter from Diana (January 7, 1998) (on file with the author).

11. I am reminded of a moment in the march in support of affirmative action across the Golden Gate Bridge this Fall. I was walking across with a group of people when we came across Eric Brooks, the only African-American student in Boalt's Class of 2000, being interviewed by television reporters. An African-American man marching in front of me spotted Eric and pointed him out to others in his group. They clapped for him, and one man said, "It all ends and begins with you."