

# **Facts and Fantasies about UC Berkeley Admissions: A Critical Evaluation of Regent John Moores' Report**

## **Asian Law Caucus**

**Andrew Barlow, UC Berkeley Sociology Dept. (visiting)**

**Loni Ding, UC Berkeley Ethnic Studies Dept.**

**Troy Duster, UC Berkeley & NYU Sociology Dept.**

**Equal Justice Society<sup>1</sup>**

**Peter Evans, UC Berkeley Sociology Dept.**

**Claude Fischer, UC Berkeley Sociology Dept.**

**Angela Harris, UC Berkeley School of Law (Boalt Hall)**

**Patricia Penn Hilden, UC Berkeley Native American Studies Program**

**Michael Hout, UC Berkeley Sociology Dept.**

**Elaine Kim, Associate Dean, UC Berkeley Graduate Division**

**Ian Haney Lopez, UC Berkeley School of Law (Boalt Hall)**

**National Center for Fair and Open Testing (FairTest)**

**Michael Omi, Chair, UC Berkeley Ethnic Studies Dept.**

**David Oppenheimer, Associate Dean, Golden Gate U. School of Law**

**Isidro Ortiz, Co-Chair, San Diego Latino Concilio on Higher Education**

**Olivia Puentes Reynolds, Co-Chair, Education Comm., Calif. Womens Agenda**

**Public Advocates, Inc.**

**Jay Rosner, Executive Director, Princeton Review Foundation**

**Alex Saragoza, UC Berkeley Chicano Studies Program**

**Testing for the Public**

**University of California Student Association**

**L. Ling-chi Wang, UC Berkeley Asian American Studies Program**

**Heather Zenone, UC Berkeley Graduate Opportunity Program**

**October 24, 2003**

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<sup>1</sup> All errors and omissions are the responsibility of the lead drafter, William C. Kidder of the Equal Justice Society (bill\_kidder@yahoo.com). Out of respect for students' privacy rights, in this Report we refrain from discussing SAT and high school GPA data about individual Berkeley applicants, which can sometimes lead to inadvertent disclosure of a particular student's identity.

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## Executive Summary

The preliminary report by John Moores, Chair of the UC Regents, recently sparked a flurry of controversy over UC Berkeley admissions when it was leaked to the media. Unfortunately, the Moores Report contributed to widespread misconceptions about comprehensive review at Berkeley, particularly regarding the admission of a small number of students with relatively low SAT scores. As professors, civil rights groups, and educational organizations, we offer this critical review because we believe that the policy recommendations included in the Moores Report are extremely harmful to UC Berkeley and to Californians.

In this analysis of higher education social science and Berkeley admissions data we reach the following conclusions:

- The 374 applicants admitted to Berkeley in 2002 with SAT scores below 1000 are qualified and talented. For instance, half graduated in the top four percent of their class.
- Comprehensive review, which takes account of factors such as leadership and the ability to overcome obstacles, allows Berkeley to admit a class that is both more diverse and stronger educationally than would be the case under a SAT-dominated process.
- Virtually all of the Berkeley applicants rejected with SAT scores above 1400 either had already withdrawn their applications, applied to extremely competitive engineering programs, or faced stiffer competition because they were not California residents.
- The small number of Berkeley admits with SAT scores under 1000 include a higher proportion of underrepresented minorities, but this is not evidence of “reverse discrimination.”
- The SAT is a weak predictor of grades at Berkeley and other universities. At UC, the SAT only explains about five percent of the variance in freshmen grades above that already accounted for by high school grades.
- The SAT has virtually no value in predicting graduation rates at Berkeley and other elite universities after controlling for factors such as institutional resources and students’ socioeconomic status. For example, there is zero correlation between SAT scores and graduation rates for African Americans at Berkeley.
- Berkeley students with SATs below 1000 are quite successful academically.

- One of Berkeley's strengths is that relative to peer institutions, it admits a large number of students from low-income backgrounds, including many first-generation college students.
- Misuse of the SAT would substantially erode socioeconomic diversity at Berkeley because there is a strong relationship between SAT scores, family income, and parental education. Among California high school students, every \$10,000 increase in family income corresponds to a rise in SAT averages.
- Every measure of socioeconomic status is more strongly related to SAT scores than to high school rank.
- The size of racial and ethnic disparities on the SAT are consistently larger than those found based upon high school grades or other factors used in comprehensive review. Over-reliance on the SAT is particularly harmful to underrepresented students of color.
- California high school students who learned English as a second language score 100 points lower on the SAT than those whose first language was English. Misuse of the SAT would undermine Berkeley's role as a gateway of opportunity for talented immigrants.
- In the 1980s, Berkeley misused the SAT by secretly imposing a SAT Verbal cut-off. This had a demonstrable disparate impact on Asian Pacific American applicants, particularly those from disadvantaged backgrounds.
- The SAT consistently underpredicts the college grades of women. Research demonstrates that if the SAT were unbiased, 200-300 more women would be admitted to Berkeley each year.

## **I. Background on the Moores Report Controversy**

UC Regent John Moores recently authored a 159-page confidential draft report (Moores Report), leaked to the *Los Angeles Times* and other newspapers, that purports to analyze admissions at the University of California's flagship Berkeley campus.<sup>2</sup> The Moores Report is largely focused on SAT scores, particularly the admission of some applicants with SAT scores below 1000. For example, the Moores Report begins with tables displaying 2002 Berkeley applicants, admittees, and enrollees at Berkeley by SAT band.<sup>3</sup> On the first page, bullet points emphasize that of the 36,472 applicants, 374 applicants were

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<sup>2</sup> John Moores, A Preliminary Analysis of the University of California, Berkeley Admissions Process for 2002 (Sept. 24, 2003 Draft).

<sup>3</sup> *Id.* at 2 tbls.1-4.

admitted to Berkeley with SATs under 1000 while 3,218 applicants with 1400+ SAT scores were denied admission.<sup>4</sup>

Moore concludes that he is “shocked” by the Berkeley admission data and that, “I just don’t see any objective standards.”<sup>5</sup> Moore also states, “It is outrageous. They don’t have any business going to Berkeley.”<sup>6</sup> UC Regent Ward Connerly not only argues “this is a damning report,” he also suggests that Berkeley may be violating Proposition 209 by using race as an “unstated factor” in admissions.<sup>7</sup> The Moore Report does not break down admission data by race and ethnicity, but in an article in the *San Francisco Chronicle*, Connerly contends that “it certainly looks as if the university is acting inappropriately. . . . And it also appears to me that a lot of people have been in on the act. This can only happen when there is somewhat of a conspiracy in the design and the execution of that design.”<sup>8</sup>

The Moore Report recently prompted the UC president to announce an investigation into UC undergraduate admission practices.<sup>9</sup> Thus, the present controversy implicates admission practices at all UC campuses and not just Berkeley alone. UCLA, for example, recently released admission data and defended the fact that it rejected 1663 applicants with SATs over 1400 and admitted 407 applicants with SATs under 1000.<sup>10</sup>

In a letter shared with the media, UC Berkeley Chancellor Robert Berdahl informed Regent Moore that the Report’s public release “has done singular damage to the Berkeley campus.”<sup>11</sup> Berdahl also states, “By saying ‘They don’t have any business going to Berkeley’ you have attacked the small percentage of high-achieving freshmen (5%) who have overcome substantial economic, social, and educational disadvantages to come to Berkeley ... They deserve more than derision from the chair of the Board of Regents.”<sup>12</sup>

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> Rebecca Trounson et al., *UC Berkeley Admissions Scrutinized*, L.A. TIMES, Oct. 4, 2003, at B1.

<sup>6</sup> Tanya Schevitz, *UC admissions under fire again*, S.F. CHRON., Oct. 10, 2003, at A1.

<sup>7</sup> Trounson et al., *supra* note 5, at B1.

<sup>8</sup> Schevitz, *supra* note 6, at A1, A16.

<sup>9</sup> Rebecca Trounson, *UC Probes Entry Policy*, L.A. TIMES, Oct. 7, 2003.

<sup>10</sup> Stuart Silverstein & Rebecca Trounson, *High, Low SATs Not Decisive at UCLA*, L.A. TIMES, Oct. 23, 2003.

<sup>11</sup> Sara Hebel, *Berkeley’s Chancellor Attacks University Regent for Publicly Questioning Admissions Practices*, CHRON. HIGHER EDUC., Oct. 20, 2003.

<sup>12</sup> *Id.*

Our report fleshes out Chancellor Berdahl’s criticism and then goes beyond it by assembling social science findings that dispel common misconceptions about the Berkeley admissions process and the SAT in particular.

## **II. Comprehensive Review and Core Educational Values: What the Data Show**

Last month the UC Board of Admissions and Relations with Schools conducted a major study of comprehensive review at UC (BOARS Report), and explained the purpose of comprehensive review as follows:

BOARS’ goal in recommending comprehensive review was to ensure continued excellence in the admissions process at selective campuses by enhancing the quality and depth of the selection review; to expand and deepen the conception of merit implicit in the freshman admission process by increasing the number of criteria considered and considering both academic and non-academic criteria for all applicants; and to maintain access to all campuses for students from throughout the eligibility pool by ensuring that all students are reviewed in the context of the opportunities and challenges they have experienced.<sup>13</sup>

We believe that comprehensive review at UC is based upon sound educational judgment. Here in Part II, we use social science to explain why keeping UC Berkeley accessible to students with a broad range of talents contributes to UC’s mission and serves the public interest. We also explain why it is wrong to conclude that the small number of Berkeley admits with relatively low SAT scores are unqualified.

### **A. STUDENTS WITH RELATIVELY WITH LOW SAT SCORES CAN BE HIGHLY QUALIFIED FOR ADMISSION TO BERKELEY**

The Moores Report and media reports devote a great deal of attention to an extremely small proportion of admission decisions at Berkeley. The Moores Report and the *Los Angeles Times* reveal that in 2002, out of 10,859 admission offers, Berkeley offered admission to 264 applicants with 901-1000 SATs, 92 with

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<sup>13</sup> UC’s Board of Admissions and Relations with Schools, *Comprehensive Review in Freshman Admissions—Fall 2003 i* (Sept. 2003).

801-900 SATs, 22 with 701-800 SATs, and 3 with 601-700 SATs.<sup>14</sup> In other words, only 3.5% of total admission offers went to applicants with SATs of 1000 and below, and only 1.1% of offers went to those with SATs of 900 and below.

It is a mistake to label these students with SATs under 1000 as unqualified when they have other skills and attributes that will serve them well at Berkeley and will contribute to the overall learning environment at Cal. For example, UC President Robert Dynes reports that of the 374 Berkeley admits with SATs under 1000 in 2002, half graduated in the top four percent of their class, and that others “displayed outstanding talent and achievement in others areas such as leadership, community service, creative and performing arts, athletics, etc.”<sup>15</sup>

It is important to keep Berkeley accessible to those possessing talents other than standardized test-taking ability. For example, Dr. Martin Luther King, Jr. scored in the bottom quarter on most sections of the GRE.<sup>16</sup> Yet Dr. King went on to become one of America’s most stunningly effective communicators and leaders.<sup>17</sup>

Comprehensive review at UC Berkeley involves taking account of such traits as tenacity, leadership, and the ability to overcome obstacles, traits that serve UC’s mission and the public good. Psychologists find that non-cognitive measurement tools, which capture traits like perseverance, motivation, and leadership, can predict success in college about as well as the SAT.<sup>18</sup> Thus, admitting students who show leadership potential and the ability to overcome adversity is not a “feel good” admissions policy. Rather, important social policy

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<sup>14</sup> Trounson et al., *supra* note 5, at B1.

<sup>15</sup> Robert C. Dynes, Questions and Answers About UC Admissions (Oct. 6, 2003 Memorandum), at 1.

<sup>16</sup> *The Most Respected and Accomplished Black Man in the Recent History of Our Country Had Significantly Below-Average Scores on Standardized Tests*, J. BLACKS HIGHER EDUC., 26 (Spring 1997); Theodore Cross & Robert Bruce Slater, *Why the End of Affirmative Action Would Exclude All but a Very Few Blacks from America’s Leading Universities and Graduate Schools*, J. BLACKS HIGHER EDUC., 8, 12 (Autumn 1997).

<sup>17</sup> Regarding Dr. King’s writings and speeches, see A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. (James Melvin Washington, ed., 1986). Dr. King was a strong supporter of affirmative action. See Ronald Turner, *The Dangers of Misappropriation: Misusing Martin Luther King, Jr.’s Legacy to Prove the Colorblind Thesis*, 2 MICH. J. RACE & L. 101 (1996); Coretta Scott King, *Man of His Word*, N.Y. TIMES, Nov. 3, 1996, at E15.

<sup>18</sup> William E. Sedlacek, *Issues in Advancing Diversity Through Assessment*, 72 J. COUNSELING & DEVELOPMENT 549, 550 (1994); Terence J. Tracey & William E. Sedlacek, *Noncognitive Variables in Predicting Academic Success by Race*, 16 MEASUREMENT AND EVALUATION IN GUIDANCE 171, 173 (1984).

concerns are served by not simply admitting students based upon predicted freshmen grades. One example relevant to current world affairs is that Dwight Eisenhower, before he successfully led allied forces to victory in World War II, graduated in the middle of his class at West Point (61<sup>st</sup> out of a class of 168).<sup>19</sup>

Earlier this year in *Grutter v. Bollinger*, the Supreme Court recognized that having a diverse student body has “substantial” educational benefits for all students, so much so that this is a compelling governmental interest.<sup>20</sup> Moreover, the Court’s ruling was based on a large body of social science research about the value of diversity.<sup>21</sup> The Court declared:

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training.<sup>22</sup>

For reasons that will be detailed in the remainder of this report, the “openness and integrity” of Berkeley and the caliber of intellectual inquiry among its students are threatened by the misuse of the SAT. In Part III, for example, we will dispel prevalent misconceptions by showing that Berkeley students with SAT scores under 1000 are academically successful and that it is actually quite common for elite colleges and universities to admit applicants with SATs below 1000.

In this era of substantial UC budget cuts and tuition hikes, the move to place greater emphasis on the SAT appears to be a misguided attempt to preserve Berkeley’s reputation.<sup>23</sup> In other words, the emphasis in the Moores

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<sup>19</sup> Dwight Eisenhower Biography, available at <http://216.132.160.230/KoTrain/Courses/DE/DE Life Before The Presidency.htm> (last visited Oct. 19, 2003).

<sup>20</sup> 123 S.Ct. 2325, 2339 (2003).

<sup>21</sup> See e.g., DIVERSITY CHALLENGED: EVIDENCE ON THE IMPACT OF AFFIRMATIVE ACTION (Gary Orfield & M. Kurlander eds., 2001); COMPELLING INTEREST: EXAMINING THE EVIDENCE ON RACIAL DYNAMICS IN COLLEGE AND UNIVERSITIES (Mitchell Chang et al., eds., 2003); Expert Report of Patricia Gurin, reprinted at 5 MICH J. RACE & L. 363 (1999); Expert Report of William G. Bowen, reprinted at 5 MICH J. RACE & L. 427 (1999).

<sup>22</sup> 123 S.Ct. at 2341.

<sup>23</sup> Cf. BOARS Report, *supra* note 13, at 20 ([UC] “received very deep budget cuts for 2003-04 and we expect additional cuts in future years. . . {R}educing growth during a period of very rapid

Report on the SAT as a measure of “merit” and “standards” directs attention away from the fact that UC is confronting a dilemma over declining financial investment in admissions and student achievement.

Placing too much emphasis on the SAT, however, will undermine the quality of learning at Berkeley and will damage the University’s reputation. Chancellor Berdahl asserts that the release of the Moores Report has already “undermined confidence in the integrity of [Berkeley’s] admissions process.”<sup>24</sup> Even before this controversy, outgoing UC President Richard Atkinson, himself a psychologist and an expert on standardized testing, stated in a speech before the American Council on Education that, “America’s overemphasis on the SAT is compromising our educational system.”<sup>25</sup>

A much better way to improve education *and* uphold Berkeley’s stellar national reputation is to dedicate resources to support programs that have a proven track record of academic success. For example, Fullilove and Treisman’s research at Berkeley documents that students admitted through the Equal Opportunity Program (affirmative action) in the 1980s and enrolled in the Mathematics Workshop Program (MWP) had higher grades in Calculus than students who were admitted without affirmative action and who did not enroll in MWP.<sup>26</sup> This occurred despite the fact that the Equal Opportunity Program students had significantly lower SAT Math scores. The MWP affirmative action students also had higher graduation rates from Berkeley as well.<sup>27</sup> In short, diversity and excellence can and should be complementary virtues.

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growth in high school graduates poses very serious threats to opportunity for California students.”).

<sup>24</sup> Hebel, *supra* note 11.

<sup>25</sup> Richard C. Atkinson, Robert H. Atwell Distinguished Lecture on the American Council on Education Annual Meeting (Feb. 18, 2001), *available at* <http://www.ucop.edu/news/sat/speech1.html> (last visited Oct. 10, 2003). *See also* Kenneth R. Weiss, *SAT May Be Dropped as UC Entrance Exam*, L.A. TIMES, Feb. 17, 2001, at A1.

<sup>26</sup> Robert E. Fullilove & Philip Uri Treisman, *Mathematics Achievement Among African American Undergraduates at the University of California, Berkeley: An Evaluation of the Mathematics Workshop Program*, 59 J. NEGRO EDUC. 463, 474 tbl.3 (1990).

<sup>27</sup> *Id.* at 475 tbl.4. *See also* Lani Guinier, *Reframing the Affirmative Action Debate*, 86 KY. L.J. 505, 522 (1997-98) (discussing Uri Treisman, *Studying Students Studying Calculus: A Look at the Lives of Minority Mathematics Students in College*, 23 C. MATHEMATICS J. 362, 364-65 (1992)); *So Much for the Theory That Blacks Can’t Do Mathematics*, J. BLACKS HIGHER EDUC. 48-49 (Autumn 1999) (discussing Dr. Treisman’s research at Berkeley and UT-Austin).

It is also important to emphasize that because it so heavily focuses on the far extremes of the SAT distribution for UC Berkeley's applicant pool (and clearly misrepresents that data), the Moores Report is an example of the "tail wagging the dog" in the debate over recently adopted comprehensive review at Berkeley.

Lastly, the key finding reported in the *San Francisco Chronicle* article spurred by the Moores Report was that a high proportion of the Berkeley admits with relatively low SAT scores were minorities.<sup>28</sup> Our simple response is that this is true but unremarkable. It is a logical fallacy to suggest that this demonstrates "reverse discrimination" in the Berkeley admissions process. Conversely, it would be equally incorrect to assume that students of color were being discriminated against merely because admits with 1500+ SAT scores were disproportionately White.

Under any race-neutral admissions process, and even if the SAT were the only admission criteria, one end of the Berkeley admit pool will include a disproportionate number of underrepresented minorities and the other end of the admit pool will include a disproportionate proportion of White applicants. More importantly, under comprehensive review Berkeley weighs applicants' many kinds of talents to create a robust definition of merit.

For example, half of the 374 Berkeley admits in 2002 with SATs under 1000 graduated in the top four percent of their class."<sup>29</sup> If Berkeley is picking up a small share of the system-wide admits under the UC Four Percent Plan, it hardly proves discrimination if some of these applicants have low SAT scores. By definition, once those students passed the threshold required for UC eligibility, the SAT was not a factor in their admission.

Focusing on SAT scores alone is particularly misleading because racial and ethnic SAT score differences are larger than HSGPA differences or other elements of comprehensive review.<sup>30</sup> As the former presidents of Princeton and Harvard observe, because group differences in SAT averages will persist even under race-neutral admissions, "The only way to create a class in which black

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<sup>28</sup> Schevitz, *supra* note 6, at A1.

<sup>29</sup> Dynes Memorandum, *supra* note 15, at 1.

<sup>30</sup> William T. Dickens & Thomas J. Kane, *Racial Test Score Differences as Evidence of Reverse Discrimination: Less than Meets the Eye*, 38 INDUS. REL. 331 (1999).

and white students had the same average SAT scores would be to discriminate *against* black candidates.”<sup>31</sup>

A related consideration is that part of UC Berkeley’s race-neutral admissions policy is to keep the doors of opportunity open to students who have impressive achievements despite being stuck in high schools with fewer opportunities. The unfortunate fact remains that K-12 inequalities are still linked to racial and ethnic membership in California. For example, school district spending in Beverly Hills per average daily attendance is 150% of the spending in Baldwin Park.<sup>32</sup> There are also substantial racial/ethnic differences in access to Advanced Placement (AP) courses.<sup>33</sup> Thus, it is not surprising that those admitted to Berkeley with SAT scores under 1000 include a higher proportion of underrepresented minorities.

B. BERKELEY ADMITS VIRTUALLY ALL IN-STATE APPLICANTS WITH HIGH SAT SCORES WHO DO NOT WITHDRAW THEIR APPLICATIONS

The Moores Report emphasizes that 3,218 applicants with SAT scores above 1400 were denied admission to Berkeley,<sup>34</sup> but this conclusion is quite misleading. Chancellor Berdahl looked into these rejected applicants in the SAT 1400+ group and found that four other factors explained the findings in the Moores Report:

In the case of denied students with high scores, we found that in virtually every case one or more of four factors was at work. Either (1) the students had withdrawn their applications and were thus coded as “non-admits” when they had not in fact been denied

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<sup>31</sup> WILLIAM G. BOWEN & DEREK BOK, *THE SHAPE OF THE RIVER* 16 (1998) (emphasis in original). See also *INEQUALITY BY DESIGN: CRACKING THE BELL CURVE MYTH* 46 (Claude S. Fischer et al., eds., 1996) (“Race-neutral selection processes pass disparities in the applicant pool through the freshman class. Therefore, we cannot read a gap in test scores as if it reflected an edge that the admission process gives to some students at the expense of others.”).

<sup>32</sup> Hanif S. Hirji, *Inequalities in California’s Public School System: The Undermining of Serrano v. Priest and the Need for a Minimum Standards System of Education*, 32 *LOY. L.A. L. REV.* 583, 598 (1999).

<sup>33</sup> Jennifer L. Shea, Note, *Percentage Plans: An Inadequate Substitute for Affirmative Action in Higher Education Admissions*, 78 *IND. L.J.* 587, 614-15 (2003) (“In California, the inequities in public high schools become apparent by considering the number of Advanced Placement (“AP”) classes offered at various high schools. According to the State Education Department, 129 public high schools do not offer any AP classes. In addition, African American and Hispanic students comprise 45% of the high school population, but only 13% of the AP test takers.”).

<sup>34</sup> Moores Report, *supra* note 2, at 2.

admission; (2) they were out-of-state applicants, for whom, in accordance with faculty policy, the campus establishes higher standards than for in-state students; (3) their GPA's and other academic factors were below average for Berkeley admits; or (4) they had applied to one of three very highly competitive majors in the College of Engineering.<sup>35</sup>

Similarly, UC President Dynes reports that 98% of California resident applicants with SATs of 1400+ were admitted after excluding the three highly competitive majors and those who had below-average GPAs.<sup>36</sup>

The major report on comprehensive review by UC's Board of Admissions and Relations with Schools (BOARS Report), which was provided to the Regents weeks *before* the release of the Moores Report, indicates that quite a large number of applicants to Berkeley end up canceling their applications.<sup>37</sup>

Within the "admit" category alone, there were almost 2,200 applicants who cancelled their applications in 2002. The Moores Report states that Berkeley offered admission to about 10,900 applicants.<sup>38</sup> Using the same data, the BOARS Report states that the number of actual admits, after excluding those who cancelled their applications, was actually 8,707 in 2002.<sup>39</sup> Thus, the Moores Report analysis relies upon phantom rejected applicants, such as those who may have accepted early admission at Ivy League schools or those who wanted to go to another university to stay closer to home for family/economic reasons.

## II. Why the SAT Does Not Equal Merit

### A. THERE IS NO LEGITIMATE RATIONALE FOR INCREASED RELIANCE ON THE SAT

The Moores Report starts from the premise that the SAT is the measure of merit *par excellence*. For example, Moores argues, "So it would seem reasonable that most, if not all, UCB admitted students would have received college

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<sup>35</sup> Letter from UC Berkeley Chancellor Robert Berdahl to UC President Robert Dynes (Oct. 6, 2003) (UCB Public Doc. No. 32514132).

<sup>36</sup> Dynes Memorandum, *supra* note 15.

<sup>37</sup> BOARS Report, *supra* note 13.

<sup>38</sup> Moores Report, *supra* note 2, at 18 (listing this figure as 10,906). *Id.* at 2 (listing this figure as 10,859).

<sup>39</sup> BOARS Report, *supra* note 13, at B-4.

admission test scores at least in the top 12.5% scored by California high school seniors.”<sup>40</sup> He suggests that comprehensive review may be a “mechanism whereby less competitive students could gain admission to U.C.”<sup>41</sup> Finally, Moores recommends that Berkeley “should have *compelling reasons* to admit applicants with an SAT I score under 1200.”<sup>42</sup> However, a major shortcoming is that Regent Moores does not provide any compelling reasons why the SAT *should* dominate the admissions process at Berkeley.

The consent decree approved last June by a federal judge in *Castaneda v. Regents of the University of California* is quite instructive about the need to maintain a sound admissions policy at Berkeley.<sup>43</sup> This was a lawsuit filed in 1999 by the NAACP Legal Defense and Educational Fund, MALDEF, ACLU, Lawyers’ Committee for Civil Rights of the San Francisco Bay Area, and the Asian Pacific American Legal Center of Southern California.<sup>44</sup> These civil rights groups argued that UC Berkeley’s post-affirmative action admissions policies discriminated against qualified students of color by relying too heavily on the SAT and unfairly advantaging students from wealthy districts where substantially more Advanced Placement (AP) courses were offered.<sup>45</sup>

The personal examples of the named plaintiffs rejected by Berkeley in 1998 are a testament to the need to look beyond the SAT to ensure that Berkeley’s doors remain open to the diverse talents of Californians. Jesus Rios, the son of farm workers and the first in his family to attend college, graduated in the top four percent of his class in Hollister.<sup>46</sup> Jacqueline Castaneda of Redwood City, who was also the first in her family to attend college, graduated in the top ten percent of her class, and won many awards in mathematics, including best geometry student.<sup>47</sup> Kareema Williams of Upland High School won numerous awards in math, science and history, was president of Junior Achievement and

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<sup>40</sup> Moores Report, *supra* note 2, at 3.

<sup>41</sup> *Id.* at 3.

<sup>42</sup> *Id.* at 17 (emphasis in original).

<sup>43</sup> NAACP Legal Defense and Educational Fund et al., *Settlement Reached in Suit Over Discriminatory Admissions Process at UC Berkeley*, Press Release, June 17, 2003, available at [http://www.naacpldf.org/whatsnew/doc\\_berkeley.html](http://www.naacpldf.org/whatsnew/doc_berkeley.html) (last visited Oct. 15, 2003).

<sup>44</sup> Pamela Burdman, *Lawsuit Against UC Berkeley Claims “Colorblind” Admissions is Unjust*, S.F. CHRON., Feb. 3, 1999, at A13.

<sup>45</sup> Evelyn Nieves, *Civil Rights Groups Suing Berkeley Over Admissions Policy*, N.Y. TIMES, Feb. 3, 1999, at A11.

<sup>46</sup> Charles R. Lawrence II, *Two Views of the River: A Critique of the Liberal Defense of Affirmative Action*, 101 COLUM. L. REV. 928, 942 (2001).

<sup>47</sup> Complaint ¶ 21, *Rios v. Regents of the Univ. of Cal.*, (N.D. Cal. Feb. 2, 1999) (Case No. 99-0525).

the Science Alliance, worked part-time, and volunteered with youth.<sup>48</sup> Joanna Espina from Fairfield graduated in the top five percent of her class, and her classmate Justine Certeza was the senior class president and an academic decathlete.<sup>49</sup>

The UC Regents' policy of comprehensive review seeks to take into account "multiple measures of achievement and promise, while considering the context in which each student has demonstrated academic accomplishment."<sup>50</sup> Before comprehensive review, in 1998, Berkeley rejected 750 African American, Latina/o, and Filipina/o applicants with HSGPAs above 4.0, and among applicants with 4.0+ HSGPAs, Whites had significantly higher admission rates than underrepresented minority applicants.<sup>51</sup> UC's adoption of comprehensive review was critical to settling *Castaneda*.<sup>52</sup>

Regent Moores' recommendation to increase reliance on the SAT, were it to become the admission policy at Berkeley, is legally suspect in light of the fact that as a recipient of federal funding, the University of California is subject to Title VI of the 1964 Civil Rights Act. The U.S. Department of Education regulations promulgated pursuant to Title VI prohibit both intentional discrimination and admission criteria and practices that have an unwarranted disparate impact on racial and ethnic minority groups.<sup>53</sup> Assume, for example that Moores' policy recommendations are forced upon UC Berkeley. If California civil rights groups then filed a complaint with the Department of Education alleging a violation of Title VI regulations, they would have the initial burden of establishing that the magnitude of the disparate impact is both statistically and practically significant, which is not a particularly difficult burden given the size of racial and ethnic differences on the SAT, as discussed in Section IV.<sup>54</sup>

Once plaintiffs meet this burden, the burden would shift to UC Berkeley to

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<sup>48</sup> *Id.* at ¶ 23.

<sup>49</sup> *Id.* at ¶¶ 19, 22.

<sup>50</sup> Berdahl Letter, *supra* note 35, at 2.

<sup>51</sup> *Rios* Complaint, *supra* note 47, at ¶¶ 7, 46.

<sup>52</sup> NAACP Legal Defense and Educational Fund et al., *Settlement Reached in Suit Over Discriminatory Admissions Process at UC Berkeley*, Press Release, June 17, 2003, available at [http://www.naacpldf.org/whatsnew/doc\\_berkeley.html](http://www.naacpldf.org/whatsnew/doc_berkeley.html) (last visited Oct. 15, 2003).

<sup>53</sup> 34 C.F.R. § 100.3(vii)(2).

<sup>54</sup> *Cf. Watson v. Fort Worth Bank and Trust*, 487 U.S. 977, 994 (1988) (noting that establishing disparate impact in a Title VII case is "relatively easy" when appropriate statistical proof is proffered).

establish the “educational necessity” of its new use of the SAT in admissions.<sup>55</sup> These concerns are precisely what prompted many civil rights groups to file *Castaneda* in federal court. In other words, while Regent Moores suggests that UC Berkeley officials are departing from merit-based standards when they admit applicants with SATs below 1200, in reality the burden is on Moores to advance compelling reasons for his increased reliance on SAT scores in admissions. In the remainder of Part III, we establish that empirical and educational evidence overwhelmingly weighs against such heavy reliance on the SAT at Berkeley.

B. THE SAT IS A WEAK PREDICTOR OF COLLEGE GRADES AT BERKELEY AND ELSEWHERE

Typically, the College Board attempts to justify the SAT based on its value as a predictor of freshmen grades in college.<sup>56</sup> However, freshmen grades are only a starting point for validating admission criteria. As a public institution, UC Berkeley’s admissions policy must be accountable to Californians, and should be firmly rooted in the institutional goals of the University of California.<sup>57</sup> For example, the Law School Admission Council’s recommendation regarding legal education applies with equal force to undergraduate admissions:

A sound admission program is not merely an exercise in predicting first-year academic performance. Its goal is much broader— assembling a class of individuals who contribute to each other’s learning experiences, and who possess talents and skills that will

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<sup>55</sup> *Board of Educ. v. Harris*, 444 U.S. 130, 151 (1979) (showing of disparate impact is rebutted by evidence of educational necessity); *Larry P. v. Riles*, 793 F.2d 969, 982 (9<sup>th</sup> Cir. 1986) (as amended) (“Once a plaintiff has established a prima facie case, the burden then shifts to the defendant to demonstrate that the requirement which caused the disproportionate impact was required by educational necessity.”).

Also note that Proposition 209 does not preempt Title VI, since Proposition 209 by its own terms defers to Title VI when federal funding eligibility is at issue. See Cal. Const. Art. I, § 31.

<sup>56</sup> See e.g., BRENT BRIDGEMAN ET AL., PREDICTIONS OF FRESHMAN GRADE-POINT AVERAGE FROM THE REVISED AND RECENTERED SAT I: REASONING TEST (2000), College Board Research Report No. 2000-1; WARREN W. WILLINGHAM ET AL., PREDICTING COLLEGE GRADES: AN ANALYSIS OF INSTITUTIONAL TRENDS OVER TWO DECADES (1990).

<sup>57</sup> Note, *The Relationship Between Equality and Access in Law School Admissions*, 113 HARV. L. REV. 1449, 1456 (2000) (“[T]he institution must define merit in a way that enables the institution to create selection criteria that evaluate the skills necessary for participation within the institution. If the selection criteria identify and reward other attributes, access is granted arbitrarily because individuals are chosen based on something other than their capacity to engage in the activity at issue.”).

contribute to the profession, frequently talents and skills *not* measured by the LSAT or captured in undergraduate grades.<sup>58</sup>

Yet, even to the extent that grades are a valid measure of the “merit” of students admitted to Berkeley, UC research severely undermines the College Board’s claim that SAT scores measure merit as so defined. For example, the UC Office of the President evaluated the SAT’s predictive value in one such study of 78,000 freshmen who entered seven UC campuses, including Berkeley, between 1996 and 1999.<sup>59</sup> This UC study found that high school GPA explained 15.4% of the variance in freshmen grades, while the SAT explained 13.3% of variance.<sup>60</sup> High school GPA combined with SAT scores explained 20.8%.<sup>61</sup> In other words, the SAT only adds 5.4% to the predictive power of high school GPA taken by itself.<sup>62</sup> For these and other reasons the UC Latino Eligibility Taskforce chaired by Eugene Garcia, then dean of the Graduate School of Education at Berkeley, recommended doing away with the SAT.<sup>63</sup>

Regarding the modest predictive validity of the SAT, UC is not atypical. In *Grutter v. Bollinger* and *Gratz v. Bollinger*, the landmark University of Michigan affirmative action cases, Stanford psychologist Claude Steele provided an expert report on behalf of Michigan in which he concluded that the SAT is a poor predictor:

Moreover, the SAT adds hardly any predictive power in the prediction of freshman grades over what one gets from using high school grades alone. That is, using the SAT only increases one’s prediction of freshman grades by about 3% or 4% over what one could predict using high school grades alone. And as the criterion measures get farther away in time from when the SAT is taken—as

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<sup>58</sup> LAW SCH. ADMISSION COUNCIL, NEW MODELS TO ASSURE DIVERSITY, FAIRNESS, AND APPROPRIATE TEST USE IN LAW SCHOOL ADMISSIONS 8 (1999) (emphasis in original).

<sup>59</sup> Saul Geiser & Roger Studley, UC and the SAT: Predictive Validity and Differential Impact of the SAT I and SAT II at the University of California (2001). UC Santa Cruz was excluded because in many courses that institution issued narrative evaluations rather than letter grades. Also note that this study included two cohorts with affirmative action and two post-Proposition 209 cohorts.

<sup>60</sup> *Id.* at 3 tbl.1.

<sup>61</sup> *Id.* at 3 tbl.1.

<sup>62</sup> Some UC officials are much more fond of the SAT II than we are, but that is a debate for another day. The same goes for the new version of the SAT that will go into effect in a couple years.

<sup>63</sup> UNIV. OF CAL LATINO ELIGIBILITY TASKFORCE, LATINO STUDENT ELIGIBILITY AND PARTICIPATION IN THE UNIVERSITY OF CALIFORNIA: YA BASTA!, REPORT NO. 5 (1997). See also Z. Byron Wolf, *Task Force Urges Regents to Drop SAT Requirement*, DAILY CALIFORNIAN, Sept. 19, 1997, at 1.

for sophomore grades, graduation rates, and professional success—the correlation with the SAT get substantially smaller.<sup>64</sup>

In short, the SAT only weakly correlates with the first-year performance of Berkeley undergraduates. Comprehensive review is a tool to make sure that certain criteria like SAT scores do not so dominate the admissions process at UC that students possessing other kinds of talent and merit are unfairly excluded, which can degrade the quality of the Berkeley educational experience for all students.

#### C. THE SAT IS AN EVEN WEAKER PREDICTOR OF COLLEGE GRADUATION RATES AT BERKELEY AND ELSEWHERE

Graduation rates are probably a better stand-in for academic merit than freshmen grades, yet the SAT is even less predictive of graduation rates than college grades. In fact, at Berkeley and other selective institutions the SAT bears virtually no relationship to graduation rates. Adelman of the Department of Education argues, “[Freshmen grades have] nothing to do with the principal goal of students at four-year colleges and their families: completing a bachelor’s degree. Nor do state legislatures give a hoot about grades when they judge the performance of public universities: Performance means *graduation rates*.”<sup>65</sup>

Some scholars assume that the SAT is a sound indicator of merit and argue, “Students who would flourish at a college where most of their peers also had a combined SAT of 1000 will have a tough struggle to survive where the average is 1300.”<sup>66</sup> The Moores Report appears to share this view. However, the evidence presented in this section demonstrates that students with relatively low SAT scores are quite successful at elite colleges and universities, and at Berkeley in particular.

Professor Steele correctly concludes that the SAT is worse at forecasting graduation rates than freshmen grades, and this holds true at elite institutions generally and Berkeley specifically. One of the more important studies on this point is *The Shape of the River*, the landmark study of the College and Beyond (C&B) group of 28 selective colleges and universities including Stanford,

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<sup>64</sup> Expert Report of Claude M. Steele in *Gratz v. Bollinger* and *Grutter v. Bollinger*, reprinted at 5 MICH. J. RACE & L. 439, 442-43 (1999).

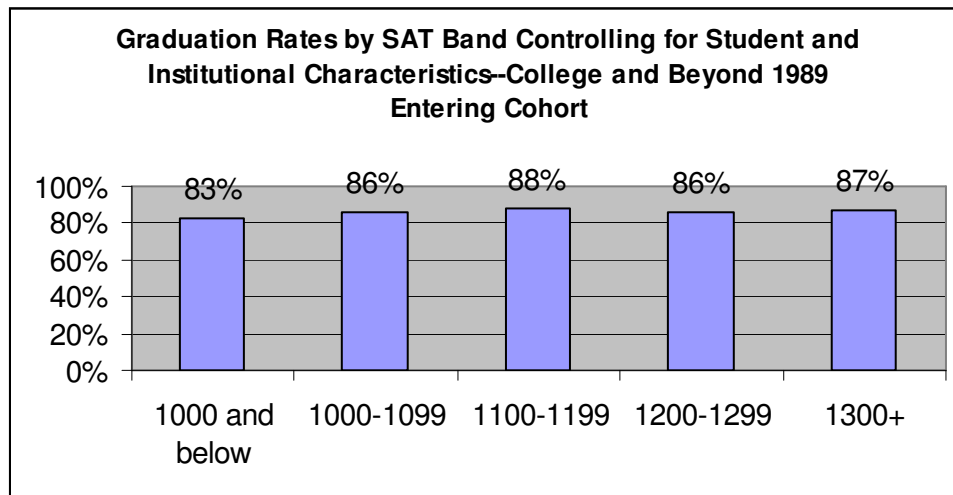
<sup>65</sup> Clifford Adelman, *Why Can't We Stop Talking About the SAT?* CHRON. HIGHER EDUC. Nov. 5, 1999, at B4. (emphasis in original).

<sup>66</sup> See e.g., Stephan Thernstrom, *The Black-White Student Mismatch Problem in University Admissions*, 6 J. BLACKS HIGHER EDUC. 62, 64 (1994-95).

Princeton, and the University of Michigan-Ann Arbor.<sup>67</sup>

In this study, William Bowen and Derek Bok, the former presidents of Princeton and Harvard respectively, found that after controlling for school selectivity, high school grades, socioeconomic status and other characteristics, SAT scores bore little relationship to graduation rates, and no relationship above scores of 1000.<sup>68</sup> These findings are displayed in Chart 1. Bowen and Bok report that students with SAT scores under 1000 had graduation rates of 83% at the 28 C&B colleges and universities. Among the students in this cohort entering in 1989, those with SATs in the 1000s had graduation rates of 86%, those with SATs in the 1100s graduated 88% of the time, those in the 1200s had graduation rates of 86%, and those above 1300 graduated 87% of the time.<sup>69</sup>

Chart 1<sup>70</sup>



Rather than focusing myopically on SAT scores, UC Berkeley is better off directing institutional resources to help students succeed, particularly those from disadvantaged backgrounds. For example, in *Whitewashing Race*, a new book by UC Press, several professors (including five UC faculty) compare Berkeley and Stanford graduation rates and conclude that a supportive educational environment is far more important than SAT scores:

<sup>67</sup> BOWEN & BOK, *supra* note 31. 70% of the C&B students attended private colleges and universities, while 30% attended 4 large public universities. *Id.* at xxxvii. Bowen and Bok attempted to include UC Berkeley and UCLA in this study but could not due to data limitations. *Id.* at xxxviii n.5.

<sup>68</sup> Note that the SAT was recentered in 1995, which basically means that a 900 score in the early 1990s is equivalent to a score of 1000 today.

<sup>69</sup> BOWEN & BOK, *supra* note 31, at 66 fig.3.6.

<sup>70</sup> *Id.* at 66 fig.3.6.

The UC Berkeley-Stanford comparison has intriguing policy implications. Though Stanford is a private institution, it does not subject its students to the laissez-faire, competitive treatment conservatives suggest is so effective in producing high graduation rates. Indeed, it is extraordinarily nurturing and uses its impressive endowment to put services in place that make it very difficult for its students—black or white—to fail. Stanford’s support services play an important role in its students’ lives. Students are not forced to sink or swim. UC Berkeley, on the other hand, a public, state-supported university treats its students to laissez-faire practices and rewards its most competitive survivors. Yet Berkeley’s graduation rate (for blacks and whites) is lower than Stanford’s. This suggests that high graduation rates are less a matter of SAT scores and are more likely related to a supportive, nurturing educational environment.<sup>71</sup>

The focus on the SAT draws attention away from UC Berkeley’s institutional responsibility to foster an environment in which all of its students can succeed.

The College Board’s own research documents a low correlation between SAT scores and graduation rates. However, to maximize the effect, the College Board usually combines data across colleges. This approach inflates the value of the SAT by not controlling for institutional effects, such as those between Berkeley and Stanford in the example above.<sup>72</sup> Consequently, when Willingham of ETS studied SAT-graduation relationships *within* each of nine colleges, the correlation coefficient dropped to only 0.15, meaning that the SAT explained merely two percent of the variance in graduation rates at these colleges.<sup>73</sup>

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<sup>71</sup> MICHAEL K. BROWN ET AL., *WHITEWASHING RACE: THE MYTH OF A COLOR-BLIND SOCIETY* 244 (2003). See also BOWEN & BOK, *supra* note 31, at 63 (finding in the C&B database, “[A]mong students of the same gender with similar SAT scores, high school grades, and socioeconomic status, those who attended the most selective schools graduated at higher rates than did those who attended less selective schools.”). In general, the more selective the institution, the greater its level of institutional resources.

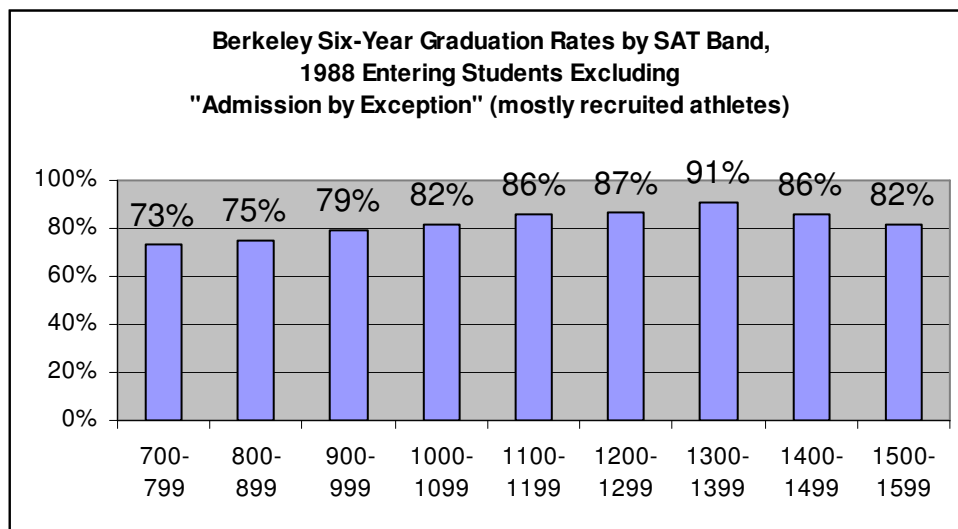
<sup>72</sup> See NANCY W. BURTON & LEONARD RAMIST, *PREDICTING SUCCESS IN COLLEGE: SAT STUDIES OF CLASSES GRADUATING SINCE 1980*, 17 (2001), College Board Research Report No. 2001-2. (“Pending further research, one cannot be sure what part of a correlation [between the SAT/GPA and graduation] is due to the institution-level relationship of selectivity to retention and what part is due to the predictability of individual students’ graduation from their grades and SAT scores.”). See also REBECCA ZWICK, *FAIR GAME? THE USE OF STANDARDIZED ADMISSIONS TESTS IN HIGHER EDUCATION 93-94* (2002) (“To some extent, then, the apparent association between test scores and graduation will reflect the fact that some *schools* have both higher test scores and higher graduation rates than others.”).

<sup>73</sup> BURTON & RAMIST, *supra* note 72, at 17 (citing WARREN W. WILLINGHAM, *SUCCESS IN COLLEGE: THE ROLE OF PERSONAL QUALITIES AND ACADEMIC ABILITY* (1985)).

Another major national study by Astin looked at longitudinal data from the Cooperative Institutional Research Program, and found that the SAT only explained 7% of the variance in graduation rates.<sup>74</sup>

The graduation data from Berkeley for students with SATs under 1000 are particularly instructive given Regent Moore's pointed remarks regarding the few hundred admittees in this range. Chart 2 displays Berkeley data obtained from Gregg Thomson, the Director of UC Berkeley's Office of Student Research, who found that for students entering Berkeley in 1988, "SAT scores account for almost none of the variation in graduation rates."<sup>75</sup> Among students admitted in the regular process, which included affirmative action but not recruited athletes admitted by exception, those with SATs of 900-999 graduated 79% of the time, while those with far higher SATs of 1400-1499 graduated 86% of the time and those with 1500-1599 SATs graduated 82% of the time.<sup>76</sup>

Chart 2<sup>77</sup>



<sup>74</sup> ALEXANDER W. ASTIN, WHAT MATTERS IN COLLEGE 193 (1993) (reporting for a sample of 38,000).

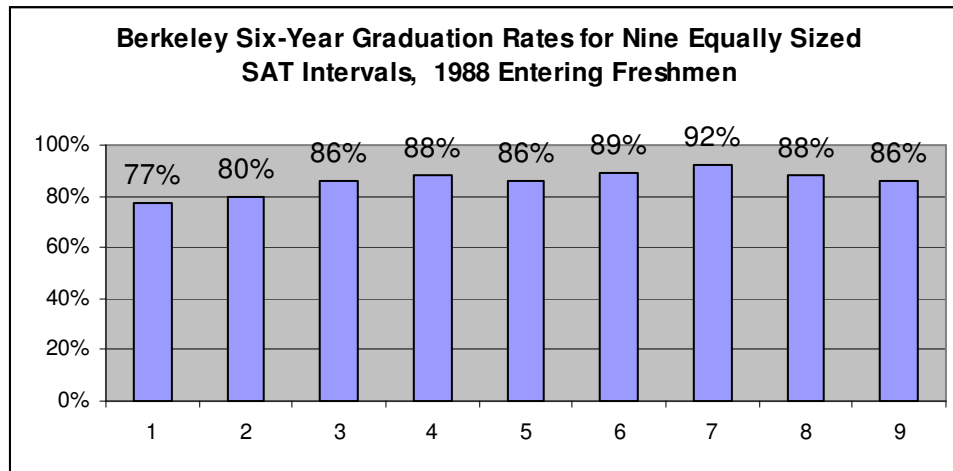
<sup>75</sup> Gregg Thomson, Is the SAT a "Good Predictor" of Graduation Rates? The Failure of "Common Sense" and Conventional Expertise and a New Approach to the Question 5 (1998) (unpublished paper presented at the California Association of Institutional Research annual meeting). Thomson's paper discredited earlier misleading claims made about Berkeley graduation rates in STEPHAN THERNSTROM & ABIGAIL THERNSTROM, AMERICA IN BLACK AND WHITE: ONE NATION, INDIVISIBLE 406 (1997) and Abigail Thernstrom & Stephan Thernstrom, *Letter to the Editor*, N.Y. TIMES, June 1, 1998.

<sup>76</sup> Thomson, *supra* note 75, at 4-5.

<sup>77</sup> *Id.* at 4-5. Thomson notes that "admitted by exception" predates and is separate from affirmative action.

Recall that in Part II, the proportion of Berkeley admits with SAT scores under 1000 was extremely small. The same was true of 1988 freshmen. Thus, when the Berkeley data is presented in nine equally sized SAT intervals rather than bands of 800-899, etc., we see even more clearly that the relationship between SAT scores and graduation rates is meager. This is demonstrated in Chart 3.

Chart 3<sup>78</sup>



Moreover, this Berkeley data by SAT scores in Charts 2 and 3 do not control for differences in high school grades, nor do the Charts account for the fact that students with low SAT scores at Berkeley “have on average decidedly more socioeconomic disadvantage.”<sup>79</sup> In other words, after holding high school GPA constant, Thomson found that “graduation rates do not increase as the SAT I Total quintile increases.”<sup>80</sup> Although the number of cases where this occurred was small, the study found that Berkeley students with high GPAs and low SATs had higher graduation rates than students with high SATs and low GPAs.<sup>81</sup> Finally, Thomson reports that there is “zero correlation” between SAT scores and eventual graduation rates for the African Americans.<sup>82</sup>

More recent data on graduation rates by SAT band could not be obtained from official sources in time for this report. However, it is worth noting that the 2003 data on six-year graduation rates is consistent with the argument above, particularly the point about making a commitment to investing in student

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<sup>78</sup> *Id.* at 4-5.

<sup>79</sup> *Id.* at 5.

<sup>80</sup> *Id.* at 12.

<sup>81</sup> *Id.* at 15.

<sup>82</sup> *Id.* at 6.

success at Berkeley. In fact, among Berkeley freshmen entering in 1996 (the next to last class with affirmative action), six-year graduation rates for African Americans and Latina/os are already the same or higher as the *overall* graduation rate at UC Riverside.<sup>83</sup>

#### IV. The SAT: An Effective Tool of Social Stratification at Berkeley

Regent Moores believes that the SAT is the best yardstick for measuring merit, arguing that those with high SATs deserve to attend Berkeley and those with lower scores “don’t have any business going to Berkeley.”<sup>84</sup> In fact, he recommends that UC Berkeley should have “compelling reasons” whenever it admits applicants with SAT scores below 1200.<sup>85</sup> Yet, in this Part we will establish that the SAT actually rewards *unearned* privilege by class, race, and gender to a greater extent than other measures used in the admissions process.<sup>86</sup> Misuse of the SAT is therefore contrary to the University of California’s original Charter, which directs UC to admit “a representation of students . . . [so] that all portions of the state shall enjoy equal privilege therein.”<sup>87</sup>

##### A. THE SAT IS STRONGLY LINKED TO SOCIOECONOMIC STATUS

UC BOARS found that a quarter of admitted students to Berkeley in 2001-2003 were the first in their families to attend college.<sup>88</sup> A recent survey from UC’s

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<sup>83</sup> Compare UC Berkeley Office of Student Research, Current Six-Year Graduation Rates, New Freshmen Fall 1996 Cohort (2003), available at [http://osr.berkeley.edu/Public/STUDENT.DATA/current\\_grad\\_rate.html](http://osr.berkeley.edu/Public/STUDENT.DATA/current_grad_rate.html) with UC Riverside, Spring 2003 Schedule of Classes: Graduation Rates (2003), available at <http://www.students.ucr.edu/schedule/spring2003/gradrates.html>

Thus, the argument that underrepresented minorities are better off attending less selective UC campuses is flatly contradicted by the evidence. For examples of this argument see James Traub, *The Class of Prop. 209*, N.Y. TIMES, May 2, 1999 § 6 (Magazine), at 44; Stephan Thernstrom & Abigail Thernstrom, *Reflections on the Shape of the River*, 46 UCLA L. REV. 1583, 1626-28 (1999) (book review).

<sup>84</sup> Schevitz, *supra* note 6, at A1.

<sup>85</sup> Moores Report, *supra* note 2, at 17 tbl.17.

<sup>86</sup> Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953, 957 (1996) (“[W]e seek to highlight the way that certain paper-and-pencil tests have been used as ‘wealth preferences’ or poll taxes to determines who gets to participate as full citizens in our democracy.”).

<sup>87</sup> ANDREA GUERRERO, SILENCE AT BOALT HALL: THE DISMANTLING OF AFFIRMATIVE ACTION 2 (2002) (quoting Section 14 of the Organic Act of 1868, California Stats 1867-68, p.248).

<sup>88</sup> BOARS Report, *supra* note 13, at 7 tbl.3.

Center for Studies in Higher Education found that Berkeley enrolled almost three times as many low-income students as Stanford and Harvard.<sup>89</sup> Another survey by the James Irvine Foundation found that Berkeley was among the top universities in enrolling low-income students.<sup>90</sup> These statistics reflect an important dimension of diversity that contributes immensely to the intellectual atmosphere at Berkeley. Over-reliance on the SAT threatens to close Berkeley's doors to students from modest economic backgrounds.

Regarding the link between social class and SAT scores, Chancellor Berdahl of UC Berkeley stated the following in a recent letter to UC President Dynes regarding the Moores Report:

More important, in accordance with Regental policy, Berkeley does endeavor to preserve some level of access for low-income students. Because SAT I scores, in particular, are *very highly correlated with family income and education level*, it is likely that some students with otherwise strong academic and personal qualifications will present relatively low SAT I scores.<sup>91</sup>

Indeed, 62% of the group of admits to Berkeley in 2002 with SATs below 1000 come from homes in the bottom quarter based on family income.<sup>92</sup> A large body of educational data supports Chancellor Berdahl's conclusion. As demonstrated below, there is a consistent and striking relationship between SAT performance and measures of wealth and income.

For instance, Chart 4 displays data collected by the College Board on SAT performance by family income bracket. Among the more than 90,000 college-bound seniors in California who reported their family income in 2003, with every \$10,000 increase in family income, there is a lock-step increase in SAT scores. California college-bound seniors who come from families with under \$10,000 in annual income average 835 points on the SAT. Students from families with \$50,000 to \$60,000 average 1007 points on the SAT. California college-bound seniors from families with \$100,000+ income, average 1122 points on the SAT.

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<sup>89</sup> Wendy Lee & Brian Whelan, *Poll finds 60 percent of UC-Berkeley students from immigrant families*, U-WIRE, Jan. 20, 2002 (available at 2002 WL 100286238).

<sup>90</sup> Helen Hwang, *UC enrolls largest percentage of low-income students in nation, study finds*, DAILY CALIFORNIAN, March 21, 2002.

<sup>91</sup> Berdahl Letter, *supra* note 35, at 2 (emphasis added).

<sup>92</sup> Dynes Memorandum, *supra* note 15, at 2.

Chart 4<sup>93</sup>

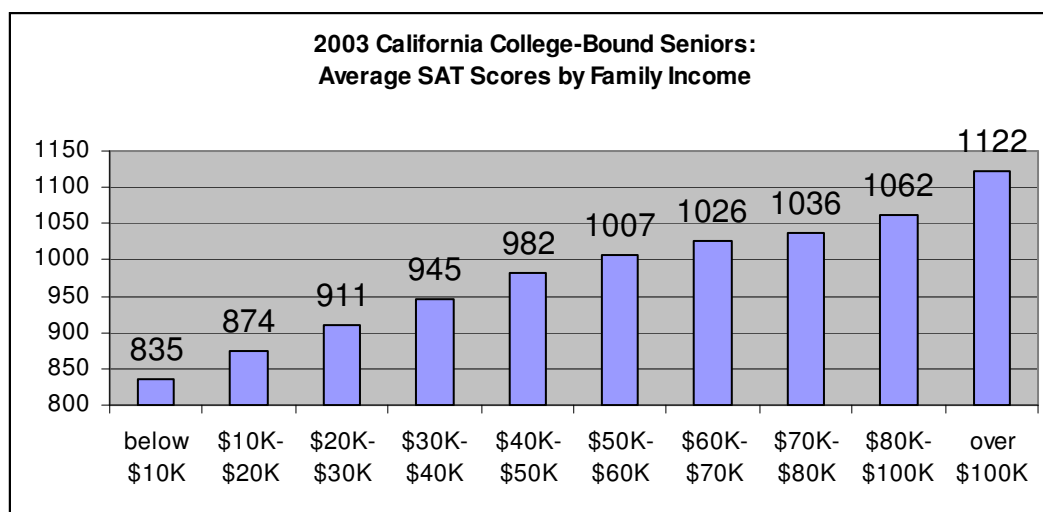


Chart 5 documents a similar relationship between SAT performance and parental education level. Among the nearly 120,000 college-bound seniors in California who reported parental education level in 2003, students whose parents did not obtain high school diplomas averaged 840 points on the SAT. College-bound seniors whose parents' highest level of education is graduating from high school average 944 points on the SAT. Students whose parents graduated from college averaged 1063 points on the test, and those whose parents obtained graduate degrees averaged 1134 points on the SAT.

It is hardly surprising then, that 78% of the group of admits to Berkeley with SATs below 1000 come from families where neither parent attended college.<sup>94</sup> The California data in Charts 4 and 5 parallels the connection between income and SAT performance nationwide,<sup>95</sup> and is part of a consistent pattern spanning decades.<sup>96</sup>

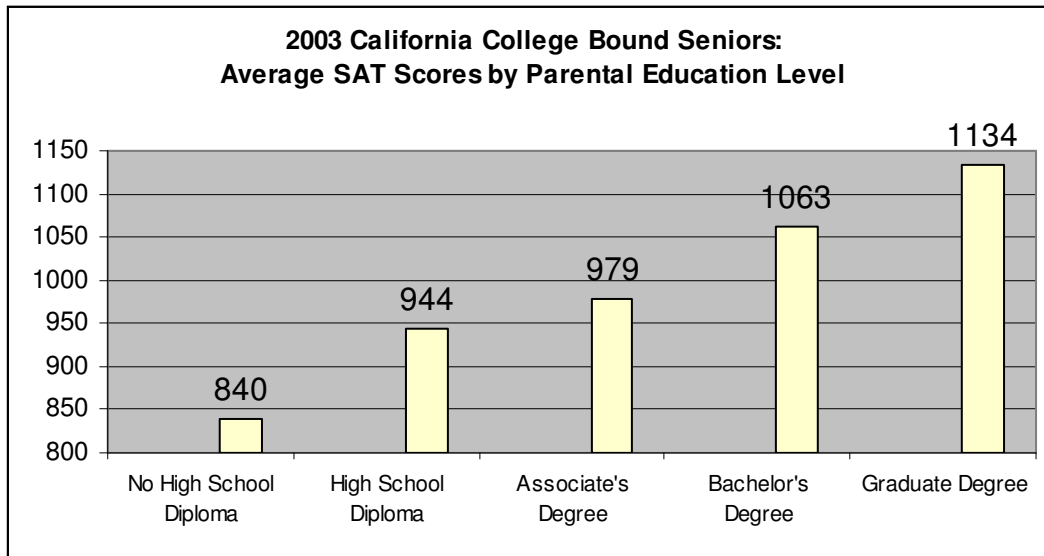
<sup>93</sup> COLLEGE BOARD, 2003 COLLEGE-BOUND SENIORS CALIFORNIA REPORT 7 tbl.4-2 (2003), available at [http://www.collegeboard.com/about/news\\_info/cbsenior/yr2003/html/r...](http://www.collegeboard.com/about/news_info/cbsenior/yr2003/html/r...) (last visited Oct. 10, 2003).

<sup>94</sup> Dynes Memorandum, *supra* note \_15, at 2.

<sup>95</sup> COLLEGE BOARD, 2003 COLLEGE-BOUND SENIORS TOTAL GROUP REPORT 7 tbl.4-2 (2003), available at [http://www.collegeboard.com/about/news\\_info/cbsenior/yr2003/html/r...](http://www.collegeboard.com/about/news_info/cbsenior/yr2003/html/r...) (last visited Oct. 10, 2003).

<sup>96</sup> DAVID OWEN & MARILYNE DOERR, NONE OF THE ABOVE: THE TRUTH BEHIND THE SATs xix, 198, 227, (revised ed., 1999) (discussing SAT-income link in 1980s and 1990s); Susan & Guinier, *supra* note 86, at 987-89.

Chart 5<sup>97</sup>



Just as important, the wealth preference on the SAT is significantly more extreme than other measures such as class rank. After reviewing several earlier studies in *The Case Against the SAT*, the most extensive scholarly critique of the SAT, Crouse and Trusheim conclude, “[E]very measure of socioeconomic background is more strongly correlated with SAT scores than with high school class rank.”<sup>98</sup>

More recently, the College Board investigated a random national sample of 1999 SAT test-takers and found that socioeconomic status correlated .32 with SAT Verbal scores and .28 with SAT Math scores.<sup>99</sup> In contrast, high school GPA only correlated .12 with socioeconomic status and high school rank had an insignificant correlation of .07 with socioeconomic status.<sup>100</sup> The College Board authors conceded that differences in grading standards between high schools could not adequately explain the greater association between SAT scores and socioeconomic status compared to high school grades.<sup>101</sup>

#### B. THE SAT IS STRONGLY LINKED TO RACE/ETHNICITY

<sup>97</sup> COLLEGE BOARD, 2003 COLLEGE-BOUND SENIORS CALIFORNIA REPORT, *supra* note 93, at 7 tbl.4-2.

<sup>98</sup> JAMES CROUSE & DALE TRUSHEIM, *THE CASE AGAINST THE SAT* 126 (1988).

<sup>99</sup> LAWRENCE J. STRICKER ET AL., *MEASURING EDUCATIONAL DISADVANTAGE OF SAT CANDIDATES* 10 tbl.9 (2002), College Board Research Report No. 2002-1. This report used a combination of family income and parental education as its measure of socioeconomic status. *Id.* at 3.

<sup>100</sup> *Id.* at 10 tbl.9.

<sup>101</sup> *Id.* at 12.

In this section we demonstrate that SAT scores have a stronger relationship with racial and ethnic group membership than other criteria. In addition, the misuse of the SAT has a disproportionately harmful impact on students of color.

Chart 6 documents the significant racial and ethnic disparities on the SAT among California's college-bound seniors in 2003. African Americans averaged 863 points, Chicana/os 887, Latina/os 894, American Indians 976, Asian Pacific Americans 1053, and Whites 1084. Here it is important to point out not merely that the racial/ethnic gaps on the test are significant; in fact that often gets unwarranted attention when discussed out of context. Rather, the key finding is that, like the social class studies discussed above, research consistently documents that the size of racial and ethnic disparities on the SAT reports are significantly larger than the gap in high school grades.

For example, a recent analysis of national College Board data revealed that it was equally difficult for White college-bound seniors to rank in the top ten percent of their class as it was for them to obtain 600+ scores on the SAT Math or Verbal sections.<sup>102</sup> In contrast, for African Americans and Chicana/os, obtaining a 600+ score on either section of the SAT was twice as difficult as ranking in the top tenth of the class.<sup>103</sup> These findings are quite consistent with earlier studies from the 1990s and 1980s documenting the relative disparate impact of the SAT, particularly for African Americans.<sup>104</sup>

#### Chart 6<sup>105</sup>

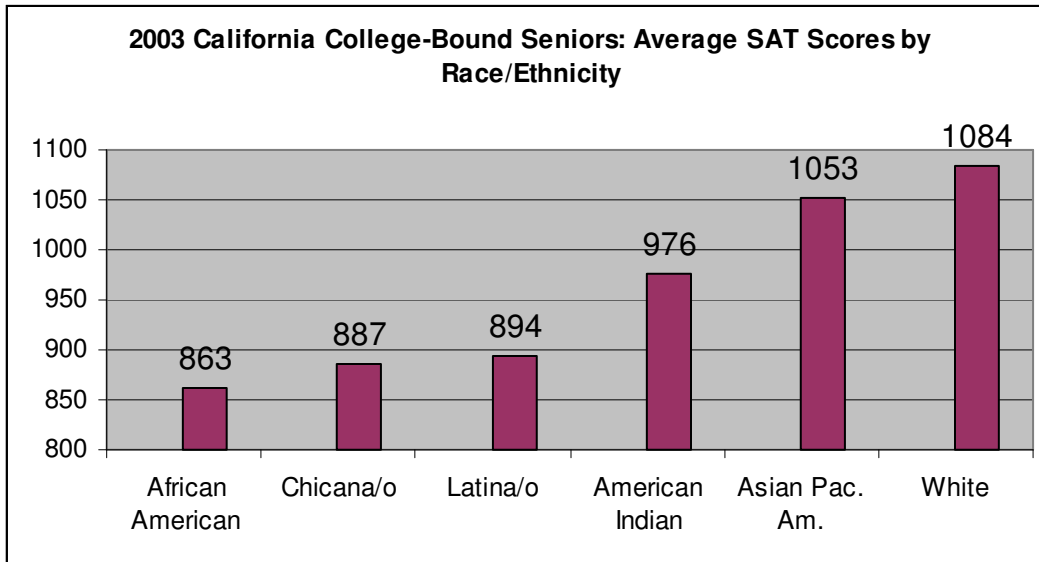
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<sup>102</sup> William C. Kidder & Jay Rosner, *How the SAT Creates 'Built-In Headwinds': An Educational and Legal Analysis of Disparate Impact*, 43 SANTA CLARA L. REV. 131, 144 (2002).

<sup>103</sup> *Id.* at 144-45.

<sup>104</sup> Stephen R. Shalom, *Dubious Data: The Thernstroms on Race in America*, 1 RACE & SOC'Y 125, 132 (1998) (reporting on the SAT's greater adverse impact compared to high school grades and other measures for the 1995 cohort of college-bound seniors); CROUSE & TRUSHEIM, *supra* note 98, at 92, 94 (reporting national SAT and high school rank data for the 1984 cohort of college-bound seniors); Dickens & Kane, *supra* note 30, at 338 (1982 sample from the High School and Beyond database).

<sup>105</sup> COLLEGE BOARD, 2003 COLLEGE-BOUND SENIORS CALIFORNIA REPORT, *supra* note 93, at 7 tbl.4-2.



In addition, among California College-Bound seniors, those whose first language was English scored 100 points higher on the SAT than students who grew up first learning another language, including a 74 point gap in SAT Verbal scores.<sup>106</sup> This is of particular concern for Asian Pacific Americans, the largest ethnic group at Berkeley, as well as other groups with a high proportion of immigrants. A recent report by Berkeley’s Advisory Committee for Asian American Affairs found that among Asian Pacific American undergraduates at Berkeley, an extremely heterogeneous group, nearly 30% were born outside of the U.S. and about 70% were either born outside the U.S. or were the children of immigrants.<sup>107</sup> This is an example of excellence through diversity, and Berkeley’s role as a gateway of opportunity for California immigrants should be celebrated.

Recall that the U.S. Department of Education’s Title VI regulations prohibit federally funded institutions like Berkeley from using admission criteria that have an unwarranted disparate impact on racial and ethnic minority groups.<sup>108</sup> In fact, Berkeley’s recent history demonstrates that using SAT cut-offs -- a necessary implication of Regent Moores’ claim that students with SATs under 1000 “have no business going to Berkeley” and requiring that Berkeley have “compelling reasons” for admitting those with SATs below 1200 – caused

<sup>106</sup> *Id.* at 7 tbl.4.2.

<sup>107</sup> CAMPUS ADVISORY COMMITTEE FOR ASIAN AMERICAN AFFAIRS, ASIAN PACIFIC AMERICANS AT BERKELEY-- VISIBILITY AND MARGINALITY: A REPORT TO CHANCELLOR ROBERT BERDAHL 17 (Jan. 2001). See also Heather Kim, Diversity Among Asian American High School Students (1997), ETS Policy Information Report.

<sup>108</sup> 34 C.F.R. § 100.3(vii)(2).

Asian Pacific American applicants to be harmed by precisely this kind of unfair exclusion. Misuse of the SAT will also certainly curtail the diversity admitted Asian Pacific Americans, Latina/os, and other groups because of the relationship between SES and test scores. For example, a recent College Board study found that the correlation between SAT scores and SES is highest among Asian Pacific Americans and Latina/os.<sup>109</sup>

The Moores Report ignores the issue of the SAT's disparate impact by portraying holistic/subjective admissions as the favorite villain in the UC Berkeley admissions process; the facts, however, do not support this simplistic explanation.<sup>110</sup> For example, in the 1980s it was revealed that despite repeated denials about using a SAT cut-off, a "smoking gun" internal memorandum from the director of admissions to the vice chancellor documented that Berkeley had in fact adopted a SAT Verbal cutoff score.<sup>111</sup>

The Asian American Task Force on University Admissions, a national group chaired by two California judges, concluded that Berkeley's SAT verbal cut-off "precipitated an unfair and devastating impact on many unsuspecting victims—those Asian applicants who were either recent immigrants or poor and disadvantaged."<sup>112</sup> When confronted with the memo at a California legislative hearing, Berkeley Chancellor Ira Michael Heyman issued an unprecedented apology and conceded that Berkeley's admission policies "indisputably had a disproportionate impact on Asians."<sup>113</sup>

Another more recent example involving Asian Pacific Americans disrupts the Moores Report's "SAT/GPA = Objective Standards = Fairness" assumption.

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<sup>109</sup> STRICKER ET AL., *supra* note 99, at 10-11.

<sup>110</sup> See Moores Report, *supra* note 2, at 4, 131, 133.

<sup>111</sup> DANA Y. TAKAGI, THE RETREAT FROM RACE: ASIAN-AMERICAN ADMISSIONS AND RACIAL POLITICS, 34, 96 (1992) (quoting Asian American Task Force on University Admissions, Task Force Report 8 (1985)). See also Grace W. Tsuang, Note, *Assuring Equal Access of Asian Americans to Highly Selective Universities*, 98 YALE L.J. 659, 673-74 (1989).

<sup>112</sup> TAKAGI, *supra* note 111, at 34. The Moores Report includes a FrontLine article that comments on this controversy, "Critics blamed the drop on the school's subjective admissions policies, which they said placed too much weight on extracurricular activities." Moores Report, *supra* note 2, at 131. Yet more reliable accounts, including by UCSC Professor Takagi and the Asian American Task Force on University Admissions, suggest that it was the SAT cut-off in combination with the elimination of Asian Pacific Americans from Berkeley's Equal Opportunity Program that precipitated the sharp drop in Asian Pacific American admission rate at Berkeley in 1984. See TAKAGI, *supra* note 111, at 34.

<sup>113</sup> *Id.* at 127-29.

A major study by Princeton demographer Marta Tienda and her colleagues compared admission at the two Texas flagships (University of Texas-Austin and Texas A&M) for several years before and after affirmative action was banned by *Hopwood v. Texas*.<sup>114</sup> Soon after the end of affirmative action, the Texas Ten Percent Plan guaranteed admission to those whose high school rank was in the top tenth.

Thus, the Texas Ten Percent Plan is objective and transparent in the sense that any graduate in the top ten percent can be assured of admission without fretting over the quality of her personal statement, extracurricular activities, etc. Yet, Tienda et al. found that in 1997-2000 without affirmative action, at Texas A&M Asian Pacific Americans' odds of admission relative to Whites were worse compared to 1992-96.<sup>115</sup> At UT-Austin the same Ten Percent Plan had the opposite effect between White and Asian Pacific American applicants with similar class rank and test scores.<sup>116</sup> Clearly then, admissions is more complicated than the Moores Report suggests, and it does not logically follow that increasing reliance on the SAT will make UC Berkeley admissions any more fair and rational.

### C. THE SAT AND GENDER BIAS

A large body of research, much of it compiled by the College Board and ETS, documents that the SAT usually underpredicts the success of women in college.<sup>117</sup> Moreover, a study by Leonard and Jiang confirms this pattern at Berkeley in particular.<sup>118</sup> Leonard and Jiang investigated 10,000 Berkeley freshmen and found that while high school grades fairly predicted women's and men's cumulative GPA at Berkeley, the SAT significantly underpredicted

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<sup>114</sup> MARTA TIENDA ET AL., CLOSING THE GAP?: ADMISSIONS & ENROLLMENTS AT THE TEXAS PUBLIC FLAGSHIPS BEFORE AND AFTER AFFIRMATIVE ACTION 17, tbls.4-6 (2003), available at <http://opr.princeton.edu/papers/opr0301.pdf> (last visited Oct. 13, 2003). See also *Hopwood v. Texas*, 78 F.3d 932 (5th Cir. 1996), *rev'd in part by Grutter v. Bollinger*, 123 S.Ct. 2325 (2003).

<sup>115</sup> TIENDA ET AL., *supra* note 114, at 17, tbls.4-6.

<sup>116</sup> *Id.* at 17, tbls.4-6.

<sup>117</sup> See e.g., JOHN W. YOUNG & JENNIFER L. KOBRIN, DIFFERENTIAL VALIDITY, DIFFERENTIAL PREDICTION, AND COLLEGE ADMISSION TESTING: A COMPREHENSIVE REVIEW AND ANALYSIS 22-24 (2001), College Board Research Report No. 2001-6; WARREN W. WILLINGHAM & NANCY S. COLE, GENDER AND FAIR ASSESSMENT 345 (1997); Dana Keller et al., *Relationships Among Gender Differences in Freshman Course Grades and Course Characteristics*, 85 J. EDUC. PSYCHOL. 702 (1993).

<sup>118</sup> David K. Leonard & Jiming Jiang, *Gender Bias and the College Predictions of the SATs: A Cry of Despair*, 40 RESEARCH IN HIGHER EDUC. 375 (1999).

women's grades.<sup>119</sup> The authors found that 200-300 more women a year would be admitted to Berkeley if the SAT was unbiased and that the issue of gender bias was most pronounced at highly selective flagship public universities.<sup>120</sup>

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<sup>119</sup> *Id.* at 388-391.

<sup>120</sup> *Id.* at 392.