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Pepperdine University
Graduate School of Education and Psychology

THE SOCIAL, POLITICAL, ECONOMIC, AND LEGAL ASPECTS OF
AFFIRMATIVE ACTION ADMISSION LITIGATION FROM 2002-2007
FOR FIVE UNIVERSITIES

A dissertation submitted in partial satisfaction
of the requirements for the degree of
Doctor of Education in Organizational Leadership

by

Douglas V. De Mars

December, 2010

June Schmieder-Ramirez, Ph.D.—Dissertation Chairperson

This dissertation, written by

Douglas V. De Mars

under the guidance of a Faculty Committee and approved by its members, has been submitted to and accepted by the Graduate Faculty in partial fulfillment of the requirements for the degree of

DOCTOR OF EDUCATION

Faculty Committee:

June Schmieder-Ramirez, Ph.D., Chairperson

Laura Hyatt, Ed.D.

David Braga, Ed.D.

Eric R. Hamilton, Ph.D.
Associate Dean

Margaret J. Weber, Ph.D.
Dean

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DEDICATION

There is one regret that I have, in following this path to its conclusion. This one regret is that my father, Vernon F. De Mars, is not here to witness the culmination of my educational journey. My father began his career as an educator in Montana as a Principal of grades K-12. He earned a Masters Degree in Education, from the University of North Dakota. I do wish he could be here today to share this milestone in my life. I thank and love him for his guidance and for sharing his wisdom and knowledge about life and its challenges.

For years prior to entering into this program, I have remembered what our departed President shared with this great nation:

So let us begin anew—remembering on both sides that civility is not a sign of weakness, and sincerity is always subject to proof. Let us never negotiate out of fear. But let us never fear to negotiate.... And so, my fellow Americans: ask not what your country can do for you—ask what you can do for your country.
(Kennedy, 1961)

ACKNOWLEDGEMENTS

I would like to thank and acknowledge Dr. June Schmieder-Ramirez for her patience, guidance, and vision through this process. This has been a timely journey full of changes and challenges. Additionally, I would like to thank and Dr. Laura Hyatt and Dr. David Braga, for taking time out of their busy schedules to support this study. This has been a difficult issue to address for many, yet all involved have been supportive and honest as this has progressed over time.

There are people in our lives that make a difference in our journeys; one such person is my beautiful wife. She is my friend, cheerleader, coach, guide, and supporter. Having Jill at my side has meant the world to me through this process. I thank her for all of who she is. Thank you!

Family and friends have been supportive and pushed me through this portion of my life. Sometime pushed is not the most correct word to use, gently guiding me is another way of acknowledging their part. Thanks to Diane, Darlyne, Donna, Dorene, Debbie, and Dennis – my siblings and my mother Ruth De Mars. Thanks to my supportive friends.

One person which has followed this process from beginning to end was my Secondary Reviewer. Very special thanks to Kara Potter-Schneider. Kara always found time to support this study, even with her busy schedule of teaching, family and going to school at night.

Lastly, I would like to thank The Boeing Company for its financial support for this program. Had it not been for the Company's generous Tuition Re-Imbursement Program, this would not have been possible for me or others.

VITA

EDUCATION:

Ed.D. Organizational Leadership, Pepperdine University, Los Angeles, CA (Course Work Completed Nov 2004)

MBA, University of Redlands, Redlands CA (2002)

BS, Business and Management, University of Redlands, Redlands CA (1992)

Certificate – Industrial Technology, West Coast University, Los Angeles CA (1988)

WORK EXPERIENCE:

| | |
|--|-------------------------|
| Boeing Technical Customer Service – Commercial Airplanes Long Beach, CA Deputy Fleet Chief for DC-8/MD-10/MD-11 Fleets Long Beach, CA | Jan 2008 to Present |
| Fleet Readiness and Affordability C-17 Fleet Support Manager – Propulsion Boeing C-17 Support Systems Long Beach, CA | March 2002 to Dec 2007 |
| Principal Program Manager - Americas & Europe Rockwell-Collins Pomona, CA | June 1999 to Dec 2001 |
| Flight Engineer DC-10 Japan Airlines (JAL) Haneda, Japan Hawaii Aviation Contract Services Honolulu, HI | March 1997 to June 1999 |
| Project Manager / Technical Specialist Project Manager for DC-8/DC-10/MD-11 Aircraft Douglas Aircraft Company Long Beach, CA | Nov 1991 to March 1997 |
| KC-10 Base Support and Maintenance Supervisor Douglas Aircraft Company Long Beach, CA | Nov 1988 to Nov 1991 |
| C-17 Logistical Support – LSA Douglas Aircraft Company Long Beach, CA | March 1986 to Nov 1988 |

MILITARY EXPERIENCE:

| | |
|--|-------------------------|
| Aircraft Maintenance Travis A.F.B., CA | Oct 1975 to Oct 1979 |
| C-141 Flight Engineer Norton A.F.B., CA USAF Reserves | June 1980 to July 1984 |
| KC-10 Flight Engineer Instructor Chief Reserve Flight Engineer March A.F.B. CA & Travis A.F.B. CA USAF Reserves | July 1984 to March 1998 |

LICENSES:

Airframe and PowerPlant/ FAA

Flight Engineer - Turbojet/FAA

ABSTRACT

Litigation against colleges and universities has prompted the need to re-examine the legalities of the means by which they strive for a diverse student population. Court decisions have resulted in mixed signals about the use of various types of affirmative action policies. This study's method presented an analysis of archival data to provide a clear summary of requirements that should influence admissions and compared this summary with five universities' admission policies. The research questions and the literature review are organized around the S.P.E.L. model. The social, political, economic, and legal implications of 2002-2007 affirmative action admission litigation are explored in this multiple case study.

Three major conclusions were drawn: (a) the five universities use narrowly defined affirmative action criteria and include consideration of race/ethnicity or culture in their process for admitting students to their schools, (b) the universities provide some forms of economic support exclusively for students of certain ethnic or racial groups and/or socioeconomic backgrounds, and (c) the universities are in violation of the 14th Amendment in regards to their admission policies, and in addition all five universities are in conflict with state or voter approved legislation that limited or removed the use of race, gender, and ethnicity in admission programs and policies.

The results section includes guidelines for improvement in admission policies and affirmative action programs in order to guide colleges and universities to a legally acceptable means of establishing diversity. This study also points the way for schools to effectively implement their diversity policies within the parameters set by law and legal precedent.

Chapter One: Introduction

In 2005, former U.S. President Jimmy Carter released a book *Our Endangered Values: American Moral Crisis*. In the book there is a section discussing how issues have become polarized and are now a part of bipartisan politics. Carter says there is a sense of how discussion and dialogue has been pushed to the wayside on fundamental issues (Carter, 2005). The issue of affirmative action and the arguments for and against it is one such issue that can be placed into this category of polarization. Buford (1998) makes the same point in regards to how this issue has lacked honest and open debate. He states that what passes for debate is mainly a clash of opposing extremists with messages full of sound bites, catch phrases, and code words intended to confirm the biases of those already convinced of their position. One side is told that because of their disadvantage, they are victim and someone should give them a job. The other side is told that the opposing side wants to take jobs away and give them to someone disadvantaged. This study aimed to examine Buford's arguments and determine whether or not this researcher's assumption that affirmative action works rather well, at least in the context of employment, could be substantiated. This study did not examine other race-based initiatives that carry this label. Buford's main argument was that open-minded evaluation of both sides of the affirmative action issue is the first step toward a productive discussion. It is noteworthy that a critical problem in the social make-up of the United States is the lack of dialogue and inability and unwillingness to hear each other's point of view.

The argument for and against affirmative action began when these programs and policies were created by colleges and universities. The main argument is inclusive of

how a benefit or opportunity for one person is at the cost of another's opportunity. Each side of the argument has its own merit and its share of criticism from the opposing side. This study is part of a discussion about affirmative action and diversity issues that hopefully will continue. Dialogue must be included from all parties if there is to be any possibility of consensus and fairness regarding this issue both now and in the future. Thus, the literature review presents the most compelling arguments that could be found for each side of the debate.

Historically, college and university admission standards were GPA and SAT scores. After a multicultural and diverse student body became an important variable for acceptance of students, race and ethnicity became an additional variable for consideration. Numerous colleges and universities used this dual standard to provide a diverse population and felt it was their responsibility to provide a diverse educational experience that would benefit all who attend the university.

The path to the Supreme Court for the suits against the University of Michigan between 2002 and 2007, as well as the decision in 2007 for K-12 school districts, began in 1954 when the Supreme Court ruled on *Brown v. Board of Education* (1954). *Brown v. Board of Education*, and later litigations from 2000 through 2007, were based on the Court's interpretation of the 14th Amendment, which states there cannot be a separate and equal school for individuals if the separate is not equal for all.

Supreme Court rulings provided the precedent for future court rulings, which resulted in affirmative action and quotas being thrust into the forefront of litigation. As a result of the rulings, the discussion continues on a fundamental question regarding admissions policies: Which should take priority, merit or affirmative action? One major

argument against affirmative action is allowing one person to gain over the loss of rights of another. This action defeats the purpose of equal rights guaranteed by the 14th Amendment. It cannot be equal if there are two sets of rules, and these rules are used to benefit a person or group of persons to the exclusion of another person or group.

Affirmative action litigation has put colleges and universities in an unenviable position in regards to admissions policies and procedures. It is difficult to strive for a diverse student population that will reflect the larger population served by the institution while at the same time being told not to use race as a determining factor in admissions. Colleges and universities strive to have diverse student populations and must consider the 2002-2007 rounds of lawsuits and laws which place regulations and restrictions on how they implement admissions policies and standards. Most schools must now navigate carefully through local, state, and federal requirements on how they tailor their admission policies and procedures.

Statement of the Problem

Supreme Court decisions indicate that a narrowly tailored approach for affirmative action will be accepted (Kronholtz, Tomsho, & Golden, 2003), but colleges and universities have not been provided a clear interpretation of how to administer admissions policies while meeting the legal requirements set forth in regards to the 14th Amendment. This problem is further exacerbated by the mixed signals and rulings from the Appellate Court as well as some lower courts. An example of mixed signals was provided by the U.S. Supreme Court in *Regents of the University of California v. Allan Bakke* (1978) which upheld the lower court's ruling that employing race as one factor in selecting qualified applicants for admission was not a violation of the 14th Amendment.

At the same time, the Court also ruled unlawful the University Medical School's practice of reserving 18 seats in each entering class of 100 for disadvantaged minority students (Wilcher, 2003). The lack of guidelines and mixed signals poses great difficulty for schools. In many schools there is a conflict between the administration of the admissions policies and affirmative action programs and the intent—if not the letter—of the precedent provided by the Court's decisions. Schools thus continue to be at the mercy of students who claim to have been wronged or injured by schools with affirmative action and/or preference policies and programs. This type of litigation is costly for universities in both direct legal costs as well as indirect cost such as those incurred from disrupting admission policies.

Purpose of the Study

The purpose of this study was to examine various aspects of affirmative action and diversity policies for colleges and universities for a 5-year period between 2002-2007 and how they impact admissions policies and procedures. This study examined the social, political, economic, and legal impacts to colleges and universities. An analysis of documents provided a clear summary of requirements that should influence the admissions policies at these institutions of higher learning. These documents included court rulings, amicus briefs filed in response to lawsuits, state initiatives, state directives, and federal guidelines. Selected universities' admission policies were compared to the summary of requirements.

Research Questions

1. What are the social implications of 2002-2007 affirmative action admission litigation for five U.S. universities as well as the students and prospective students?
2. What are the political implications of 2002-2007 affirmative action admission litigation for five U.S. universities?
3. What are the economic implications of 2002-2007 affirmative action admission litigation for five U.S. universities as well as the students and prospective students?
4. What are the legal implications of 2002-2007 affirmative action admission litigation for five U.S. universities?

Significance of the Study

The results will provide suggested guidelines for improvement in admissions policies and affirmative action programs in order to guide colleges and universities to a legally acceptable means of establishing diversity. This study indicates how colleges and universities are at risk with admissions policies and procedures as well as options to preclude possible litigation for such policies. This topic is and will be at the forefront for admissions offices around the country for years to come. Numerous colleges and universities are going through significant changes due to the 2003 Supreme Court decisions in regards to affirmative action and diversity admission policies. These lawsuits are at the crux of changes that will impact admissions criteria for colleges and universities throughout the nation. These changes will likely also have an effect on the public, businesses, and government as time goes by.

Definition of Terms

- Diversity: Often the terms *diversity* and *affirmative action* have been used interchangeably when discussing admissions policies. For purposes of this study the definition of diversity will be that taken from the University of Oregon (2007):

The concept of diversity encompasses acceptance and respect. It means understanding that each individual is unique, and recognizing our individual differences. These can be along the dimensions of race, ethnicity, gender, sexual orientation, socio-economic status, age, physical abilities, religious beliefs, political beliefs, or other ideologies. (para. 1)

- Holistic: “Emphasizing the importance of the whole and the interdependence of its parts; concerned with wholes rather than analysis or separation into parts” (Holistic, 2009, para. 1). In the context of this dissertation, this term refers to a practice of considering a student’s application in view of his or her cultural background, individual experiences, economic needs, and so forth, rather than strictly on the basis of academic grades and scores on standardized tests. For example, Columbia University (2010) states:

as selective as admission to Columbia may be we still employ a holistic admission process in which every single application is given a thorough review and there is positively no minimum grade point average, class rank or SAT/ACT score one must obtain in order to secure admission at Columbia. (para. 1)

Similarly, Colorado State University (2008) states, “Although admission is selective and academic performance is emphasized in the admission decision, our holistic review process allows us to recognize personal qualities and experiences that can enrich the University and the Fort Collins community” (para. 4).

- Quotas: Racial quotas in employment and education are numerical requirements for hiring, promoting, admitting, and/or graduating members of a particular racial or ethnic group or groups. These quotas are determined and backed by governmental sanctions. When the total number of jobs or enrollment slots is fixed, this proportion may get translated to a specific number of slots that should be awarded to persons of a particular racial or ethnic group.
- S.P.E.L.: This acronym stands for categories that can be used to analyze a situation from various *frameworks*. These include the social, political, economic, and legal aspects of a situation (Schmieder-Ramirez, 2001, 2006; Schmieder-Ramirez & Mallette, 2006, 2007).

Limitations and Delimitations of the Study

This study is intended to be an extensive, but not a complete review of all legal cases and legislative changes in regards to affirmative action programs, which includes propositions, initiatives, and laws (state and federal) that are currently being used at colleges and universities. Current relevant court cases are included as references to significant legal rulings such as *Brown v. Board of Education* (1954). The legal cases included in Chapter 2 are discussed because of their impact and genesis on the recent Supreme Court decisions that have influenced the latest changes in state laws and current lawsuits. This study also includes recent publications that provide differing and opposing viewpoints regarding the research questions.

This study builds on the work of a dissertation by Alexander Hamilton, IV, (2002) which analyzed the time period 1978 to 2002. This study will encompass the years 2002

to 2007, which has been significant in Supreme Court decisions as well as state initiatives.

This study focuses on five specific universities in five regions of the United States: the Southeast, Midwest, South, Southwest, and West. The review of admission and affirmative action policies was conducted only for these universities. According to the Carnegie Foundation for the Advancement of Teaching (n. d.), each of these universities has the following characteristics: (a) a large public university, (b) offers accredited graduate programs as well as 4-year undergraduate degrees, (c) operates full-time, (d) is selective in admissions, and (e) and qualifies as a research university with very high research activity.

Summary

Litigation against colleges and universities has prompted the need for them to re-examine the legalities of the means by which they strive for a diverse student population. Court decisions have resulted in mixed signals about the use of various types of affirmative action policies. This study will present an analysis of archival data to provide a clear summary of requirements that should influence admission and will compare this summary with five universities' admission policies. The research questions center around the S.P.E.L. model. The social, political, economic, and legal implications of 2002-2007 affirmative action admission litigation will be explored in this multiple case study. The results will provide suggested guidelines for improvement in admissions policies and affirmative action programs in order to guide colleges and universities to a legally acceptable means of establishing diversity.

Chapter Two: Literature Review

Introduction

This chapter reviews literature and litigation pertaining to affirmative action in general and focuses especially on legislation related to college and university admissions. The chapter consists of a history of affirmative action debate and a discussion of the social, political, economic, and legal aspects of affirmative action that have an impact on college and university admission policies. The chapter also discusses legislation specific to the states within which the five universities examined in this dissertation are located.

Historical Analysis of Affirmative Action

This section presents a timeline of important adjudications and other events impacting policy or revealing attitudes about affirmative action. In addition to court cases, the timeline includes results of public opinion polls, presidential policy statements, and laws enacted by public vote. This timeline puts the topic into context for further discussion in the subsequent sections discussing the social, political, economic, and legal aspects of affirmative action.

The origins of the term *affirmative action* and associated policies began in the 1960s. There were three executive orders and one law passed to begin the affirmative action policies, all of which are enforceable today. The first Executive Order, E.O. 10925, was signed by John F. Kennedy in 1961. This Executive Order was the beginning of the Civil Rights Movement. It initiated the requirement that federal contractors “take affirmative action to ensure that all applicants are treated equally without regard to race, color, religion, sex, or national origin” (UC Irvine, 2010, para. 2). The Civil Rights Act of

1964 provided a law that supported affirmative action and subsequent programs. Additionally, the law was expanded to cover “Title I, barred unequal application of voter registration requirements, but did not abolish literacy tests sometimes used to disqualify African Americans and poor white voters” and Title II and III which outlawed discrimination in public accommodations and segregation. (Dirksen Congressional Center). In 1965 Executive Order 11246, signed into law by President Lyndon B. Johnson, required all government contractors and subcontractors to take affirmative action to expand job opportunities for minorities. The Office of Federal Contract Compliance was established in the Department of Labor to administer the Order. In 1967 Executive Order 11246 was amended by President Johnson to include affirmative action for women. Federal contractors were thus required to “make good-faith efforts to expand employment opportunities for women and minorities” (National Organization for Women, 2010, para. 6)

During the 1970s, there were additional legislation and legal additions to the affirmative action programs. The first action was by the Department of Labor, under President Richard M. Nixon, through Order No. 4, authorizing flexible goals and timetables to correct "underutilization of minorities by federal contractors.” In 1971 President Nixon expanded affirmative action by the inclusion of women and also racial or ethnic diversity (The Leadership Conference, 2010, para 5). During this timeframe, there was a significant change to affirmative action programs. The policy of *proper goals* and timetables to include all groups in affirmative action policies was challenged and in some cases reversed. In 1973 “The Nixon administration issued "Memorandum-Permissible Goals and Timetables in State and Local Government Employment Practices,"

distinguishing between proper goals and timetables and impermissible quotas. (The Leadership Conference, 2010, para. 8)

The 1970 also brought significant social changes reflected in changes in laws and in the status quo for colleges and universities in admissions and affirmative action programs. One significant change was in *Regents of the University of California v. Allan Bakke* (1978) when the U.S. Supreme Court decided that the University of California's affirmative action policies and programs for admissions violated rights in the admission process. Additionally, the Supreme Court also ruled in 1979 (*United Steelworkers of America v. Weber* (1979) to uphold "Kaiser Chemical Corporation's affirmative action plan giving 50 percent of skilled jobs to blacks until black employment at the plant reflected population figures" (para.). The Court also ruled that race-conscious affirmative action efforts designed to eliminate a conspicuous racial imbalance in an employer's workforce resulting from past discrimination are permissible, but only if they are temporary and do not violate the rights of white employees (American Council on Education, 2002) In California, the law prohibited preferential treatment but "does not prohibit reasonably necessary...actions necessary for receipt of federal funds" (California Secretary of State, n. d., para. 1).

The 1980s continued to be supportive of the previous efforts of advocating affirmative action programs. This was the post Bakke period. There were few or no significant changes to college and university admission policies during this time.. In 1983 Executive Order 12432 was issued by President Ronald Reagan, which directed each federal agency with substantial buying or grant making authority to create a Minority Business Enterprise development plan. (U.S. Department of Commerce, 2010,

para. 9) In 1985 there was an effort made to repeal this Executive Order, but was not supported by Congress or the White House. (Wilcher, 2003, para. 14)

The Supreme Court was also active during this period with rulings related to Affirmative Action. In 1986 the court ruled on *The Supreme Court in Local 128 of the Sheet Metal Workers' International Association v. EEOC*, 478 U.S. 421. The court upheld “a judicially-ordered 29 percent minority membership admission goal” for a union that had intentionally discriminated against minorities, confirming that courts may order race-conscious relief to correct and prevent future discrimination” (NAACP, 2007, para. 15). In 1987 the Court heard arguments in *Johnson v. Transportation Agency, Santa Clara County, California*, 480 U.S. 616. The Supreme Court ruled that “that a severe underrepresentation of women and minorities justified the use of race or sex as "one factor" in choosing among qualified candidates” (The Leadership Conference, 2004, para. 15) The last major Supreme Court decision in regards to Affirmative Action during the 1980’s was the Supreme Court in *City of Richmond v. J.A. Cronson Co.*, 488 U.S. 469. This case was whether the city of Richmond had a compelling interest in its hiring plan. “The city has failed to demonstrate a compelling governmental interest justifying the plan, since the factual predicate supporting the plan does not establish the type of identified past discrimination in the city's construction industry that would authorize race-based relief under the Fourteenth Amendment's Equal Protection Clause” (ACLU, 2009, para. iv).

The 1990s provided a shift in direction for affirmative action programs. Voters used state referendums to limit the use of admission preferences. There were changes on both the political and social fronts during this time period. The social changes became evident by the passage of state propositions such as California’s Proposition 209 that

abolished all public-sector affirmative action programs in the state with regards to employment, education, and contracting. (California Secretary of State, 1996) Voters in Washington State passed Initiative 200 banning Affirmative Action in higher education, public contracting, and hiring. (Broder, 1998)

The major policies of the 1990s started in 1994 with the Supreme Court ruling that upheld that “a federal affirmative action program remains constitutional when narrowly tailored to accomplish a compelling government interest such as remedying discrimination” (US Supreme Court Case, 1995). President Bill Clinton reviewed all affirmative action guidelines by federal agencies and declared his support for the programs by announcing the administration's policy of "Mend it, don't end it" (Carney/Washington, 1995, para. 14).

The Regents of the University of California voted to end affirmative action programs at all University of California campuses. “On July 20, 1995, after 12 hours of heated debate, the board of regents voted 15-10 to end race based preferences in admissions, hiring and contracting” (Frontline, 2010, para. 13). In 1995, the bipartisan Glass Ceiling Commission released a report on the endurance of barriers that deny women and minorities access to decision-making positions. (Redwood, 1996)

California's Proposition 209 abolished all public-sector affirmative action programs in the state with regards to employment, education, and contracting, but permits gender discrimination that is reasonably necessary to the normal operation of public education, employment, and contracting. (California Secretary of State, 1996)

Texas had two significant cases before the courts in 1997. The U.S. Court of Appeals for the Fifth Circuit ruled against the University of Texas, deciding that its law school's

policy of considering race in the admissions process was a violation of the constitution's equal-protection guarantee. This was in regards to the Hopwood lawsuit against the University of Texas. (Leadership Conference, 2009, para. 9)

In 1997 there were a significant number of changes and court cases in regards to the affirmative action issue. It started with the voters in Houston, Texas as they decided to change the direction of affirmative action programs in city contracting and hiring by rejecting an initiative that would banish such efforts. “Houston proved that the wording on an initiative is a critical factor in influencing the voters' response. Instead of deceptively focusing attention on preferential treatment voters were asked directly if they wanted to end affirmative action programs. They said no” (The Leadership Conference, 2006, para. 6).

Also in 1997, U.S. Supreme Court refused to hear review a case against Proposition 209, thus allowing the proposition to go into effect. (Wilcher, 2003, para. 26). In 1997 Bill Lann Lee was appointed Acting Assistant Attorney General for Civil Rights although he faced opposition to his confirmation because of his support for affirmative action when he worked for the NAACP Legal Defense and Educational Fund. (Dewar, 1997) Two lawsuits filed against the University of Michigan were filed in 1997. On October 14 Jennifer Gratz and Patrick Hamacher sued the University for its Undergraduate Admissions Policy and standards. This sparked a renewed controversy over Affirmative Action in higher education began in 1997 when two students who applied on separate occasions for admission to the University of Michigan were denied because of allocations set aside for minority students due to an affirmative action requirement. Jennifer Gratz and Patrick Hamacher filed suit against the University of Michigan and the College of

Literature, Arts, and Sciences for its admissions policies and process. It was their contention that the policies and processes in place were in violation of their civil rights. Both suing students' admission applications were based upon a set of standards for which they as well as all applicants were to be measured. The standards for admissions were grade point average, SAT scores, and other life experiences as variables, with the scores stated to be the main emphasis. The suing students both had higher GPAs than those that were eventually accepted by the University of Michigan.

Barbara Grutter sued the University of Michigan Law School, December 3, 1997. She filed a suit against the University of Michigan's Law School regarding the admissions process (*Grutter v. Bollinger*, 2002). The basis of this and the two similar suits was the university's practice of discrimination and failing to abide by previous court rulings. The result was years of litigation between the three students and the University of Michigan. In all, there were approximately 30 hearings or court proceedings that led to the final Supreme Court decisions in 2003. Barbara Grutter's suit was similar in nature, the admission policy. (University of Michigan, 2003) Additionally in 1997, the Texas Ten Percent Plan was passed by the Texas legislature, which ensures that the top 10% of students at all high schools in Texas have guaranteed admission to the University of Texas and Texas A&M system. (Diversity Inc., 2006)

The Supreme Court provided different decisions for each of the two cases that involved the University of Michigan, even though both were about the use of affirmative action in the admissions policies. The University of Michigan Law School was allowed to maintain its affirmative action program, because in the court's eyes it was narrowly tailored to enhance the school's diversity goals. The College of Literature, Arts, and

Sciences undergraduate admissions policies and program was not narrowly tailored and was found to be illegal.

Three years later in November of 2006, the voters of Michigan approved an initiative to eliminate the use of affirmative action programs. In 2007, other Supreme Court rulings related to affirmative action (from Seattle, Washington's School District No. 1 and Jefferson County, Washington, Board of Education) re-affirmed the requirement for a narrowly tailored policy in regards to race in determining school assignments.

The 1990's ended with two changes to state laws; the first was in California with the implementation of Proposition 209. "Ban on use of affirmative action in admissions at the University of California went into effect. UC Berkeley had a 61 percent drop in admissions of African American, Latino/and Native American students, and UCLA had a 36 percent decline. The State of Washington passed Proposition 200. Voters in Washington passed Initiative 200 banning affirmative action in higher education, public contracting, and hiring." (DiversityInc, 2006, para 33-34)

The next significant time period, was the 2000s. Numerous case filed in the prior decade were now being argued before the Supreme Court for rulings. This time period also had additional legislative changes at the state level. The latest change to one of the biggest proponents of affirmative action was in Michigan when the voters passed Proposition 2 in November of 2006. With passage of this proposition, the courts ordered three state universities within Michigan to comply with Proposition 2 for the 2008 class admissions. (Levin, 2006)

Many circuit courts throughout the country heard cases regarding affirmative action in higher education. The same District Court in Michigan made two different rulings regarding affirmative action with one judge deciding that the undergraduate program was constitutional while another judge decided the law school program was unconstitutional. Differing results from the courts and a mixed message to colleges and universities. One Florida Plan was approved by the Florida legislature, thus banning affirmative action. The Plan also included the Talented 20% Program that guaranteed the top 20% admission to the University of Florida system. This was put into place in 2000. (Graves, 2000)

In an effort to promote equal pay, the U.S. Department of Labor enacted new affirmative action regulations including an Equal Opportunity Survey, which required federal contractors to report hiring, termination, promotions, and compensation data by minority status and gender. In addition, the 10th Circuit ruled that the Disadvantaged Business Enterprise (DBE) as administered by the Department of Transportation was constitutional because it served a compelling government interest and was narrowly tailored to achieve that interest. The court also determined that the 1989 DBE program was unconstitutional. Both of these actions were in 2000. (DiversityInc, 2006, para. 36-37)

In 2002 California enacted a new plan allowing the top 12.5% of high school students' admission to the UC system, either for all four years or after two years outside the system. The program also guaranteed the top 4% of all high school seniors' admission into the UC system. (Governor's Budget Plan, 2001) The Sixth Circuit court upheld the

lower court ruling that the use of race as one of many factors in making admissions decisions at the University of Michigan's Law School was constitutional.

In 2003 the Supreme Court decided held that the University of Michigan's use of race, among other factors, in its law school admissions program was constitutional because the program furthered a compelling interest in obtaining "an educational benefit that flows from student body diversity" (Wilcher, 2003, para. 401). The Court also found that the law school's program was narrowly tailored, flexible, and provided for a holistic review of each applicant. The Court rejected the undergraduate admissions program at the College of Literature, Science, and the Arts, because it granted points based on race and ethnicity and did not provide for a review of each applicant's entire file. (Wilcher, 2006, para. 40)

In summary, states have made changes based on the public policies established by court rulings. There is a trend within the past 15 years; many universities must now modify their policies to comply with court rulings and state initiatives that have changed to a more conservative path. Those universities on which this study focused—the university in the Southwest, the university in the Northwest, and the university in the Midwest—are in states with initiatives passed by voters to curtail the use of affirmative action programs. The universities in the South and Southeast were in states that had executive directives aimed at a more conservative path concerning how they independently decided on how to change their respective state's public admission policies for their higher educational institutions. This is evident in the number of court cases that have made their way to the Supreme Court. The university in the South and the university in the Southeast were in states whose legislatures have also provided similar

initiatives to limit the use of affirmative action programs. These states chose a different path regarding affirmative action in admissions policies. For example, student applicants are guaranteed admission to the system as first-time freshmen if they: (a) graduate in the top 10% of their class from an accredited high school, (b) submit all required documentation by the appropriate deadline, and (c) enroll at the university within 2 years of high school graduation (University of Texas, 2003).

In addition, each university in this study has stated on its admission's website how it uses affirmative action. Sometimes the use is in conflict with the admission standards, which take precedence over the addition of affirmative action policies. Each university based student admissions on grades, SAT scores, academic background, special accomplishments, and public service. Each prospective student is considered for admission without regard to race, color, creed, religion, national origin, or sex/gender. However, students may submit a personal statement with their application that may discuss their life experiences, first generation college status, special circumstances that put academic achievements into context, and economic background. This conflict within the admissions process is the stimulus for recent legislative changes, such as Initiative 200 and Proposition 209. On the one hand, schools are to be color blind in the admissions process, but on the other they are forced to support affirmative action programs that contradict such processes in order to provide a better cross section of the populations within their respective spheres of influence.

Social Analysis of Affirmative Action

The social and political aspects of affirmative action are intertwined, yet a separation is made in this chapter in that (a) *definitions* of race and ethnicity are

considered primarily in the discussion of the social aspect (Lopez, 1997), while (b) *policies* that are based on those definitions are considered primarily in the discussion of the political aspect. This section discusses the concepts of race and ethnicity.

The majority of colleges and universities believe in and actively pursue a diverse student body. Many reasons exist, including the preparation of students to go forth into society with the ability to work with diverse groups and to share different life experiences. Often the method for this to be executable is through affirmative action programs, which have in the past included some forms of quota systems in admissions policies (Lowry, 2001). The problem that higher education institutions encounter is the blending of ethnic groups with changes in the political arena.

The definition or classification of “race, creed, color, or national origin,” which was referenced in Executive Order 11246, has changed and will continue to change over time (Lopez, 1997). In recognition of the changing nature of the concept of race, the U.S. Census Bureau, in 2000, expanded the number of race categories from the five previous racial categories (which included “other”) to 63 racial and mixed racial options by allowing individuals to check as many boxes as apply. That number did not include the ethnicity of Hispanic, which could be paired with any race (U.S. Census Bureau, n. d.). Mellinger (1997) points out that *race* is not a fixed term, but a fluctuating concept, a social construction fashioned in part by law. The fact that there is no scientific basis for these decisions has led to the constant struggles of courts to set explicit parameters of racial identity.

Mellinger (1997) also discussed how different ethnic groups who were once considered white now find this definition changing with time and politics. In cases

between 1878 and 1952, courts ruled that mixed-race applicants and those from Hawaii, China, Japan, Burma, and from the Philippines were not white, while those from Mexico and Armenia were white, though they vacillated over the ethnic status of those from Syria, India, and Arabia. These cases reveal that whiteness is a social construction and not a static, biologically defined ethnic group. Science has never found any consistently applicable physical basis for differentiation of race.

Takaki agreed that the primary question underlying the debate is whether the concept of race should be listed under the term ethnicity or whether race should be considered as a discourse category in its own right, on the grounds that although European ethnic groups such as Irish and Italian Americans have been victims of prejudice, the oppression suffered by African, Asian, Mexican, and Native Americans has been essentially different, not merely in degree and duration, but in the type of oppression (Takaki, as cited in Oliver, 1991).

McGowan (1996) provided a viewpoint on race and ethnicity based more on social factors than physical or genetic difference:

Although people from different “races” share certain gross morphological similarities, there is no gene or cluster of genes that determines race. Whatever physical or genetic differences exist are inconsequential to our daily lives and to public policy. Their only importance is that which we attribute to them. “Race” is thus a conclusion we come to - a category that represents decisions and biases influenced by many different factors. Because race is socially constructed, we can disagree about the way to draw race. (p. 130)

Much the same can be said about ethnicity, and the difference between race and ethnicity is sometimes unclear and contested. Ethnic categories are generally based more on cultural similarities among people than perceived physical differences between the group and others. But because ethnicity is related to culture, it is, if anything, a more

elusive concept than race (Lopez, 1997). Because culture is not an inherited characteristic; it is changeable.

In summary, race, ethnicity, culture, and even national origin are difficult concepts to define concretely, and much more difficult to quantify and compare. This fact highlights the difficulties discussed in the following sections about creating policies and laws regarding diversity and affirmative action.

Political Analysis of Affirmative Action

The political and legal aspects of affirmative action are intertwined, because the positions voiced by political figures and the opinions of the majority often form the basis for public policy and law. Yet a separation is made in this chapter. The political discussion in this section focuses on principles related to fairness and equality, opinions of political figures, and public opinion. This section discusses polls of public opinion because in a democratic society majority opinion does and should shape policies. On the other hand, the legal discussion in the later section focuses primarily on court decisions as well as state laws.

With the changing and blurred racial and ethnic lines today, it will be difficult to represent and foster equality in the future. Research suggests that as time passes, ethnic groups will be assimilated into or joined with another as society and laws interpret our changing social climate. Thompson provides a good example of implications that can be applied to affirmative action considerations. He recommends looking at the mistakes that have been made in affirmative action, using current societal interpretations of what discrimination is, reflecting on the past, and making changes that will positively affect the future:

It is worth considering, for example, whether a society with a history of discrimination should accept a principle of preferential appointment for some offices instead of a principle of equal opportunity. Even if we believe that the latter principle should determine the distribution of offices in a just society, we might argue that other principles are more appropriate to the society in which we live, and are more suitable for effecting a transition to a [just] society... What citizens need—and theorists help provide—is a better understanding of the implications of principles for the political choices that citizens and their representatives actually have to make.... (Thompson, 1984, pp.193-194)

Glazer (1991) provided an opposing view of discrimination: contending that since legalized racial discrimination ended in the 1960s with passage of the Civil Rights Act (1964), the Voting Rights Act (1965), and the Immigration Act(1965), the federal government has no grounds for categorizing people according to racial or ethnic groups, which, according to (Oliver, 1991), actually perpetuates rather than alleviates racism.

One very salient point, which confirmed and demonstrated how time and social changes have had an impact, was the Walter-McCarran Act of 1952, which finally permitted nonwhite aliens to be naturalized (Oliver, 1991). McGowan provided a viewpoint on the issue of social and distributive justice:

Although race and ethnicity may not accurately reflect the self-perception of many groups, these categories are socially salient because throughout our history people have been given better or worse treatment based on their perceived race and ethnicity. Racial and ethnic categories may not serve the educational mission of diversity very well, but they may do a better job of serving goals of reparations and distributive justice. (McGowan, 1996, p. 136)

Another principle in the affirmative action debate is the principle of justice, described by Velasquez, Andre, Shanks, and Meyer (2005) as dictating that (a) equals should be treated equally and unequals unequally; (b) individuals should be treated the same, unless they differ in ways that are relevant to the situation in which they are involved; (c) when some have done wrong they are given punishments that are not meted out to others; and (d) those who exert more efforts or who make a greater contribution to

a project receive more benefits from the project than others. These are perceived as fair criteria for treating people differently. In summary, need, merit, contribution, and effort justify differential treatment.

One other approach to admission is that of preferential treatment, preference of one person over another. One principle to justify preferential treatment is primarily backward-looking insofar as it is based in the claim that compensation is due to groups whose members have been unjustly discriminated against in the past, because presumably this would have lessened their chance of obtaining the same opportunities by merit. This approach appeals to the principle of *compensatory justice*, which states that whenever an injustice has been committed, “just compensation or reparation must be made to the injured parties” (Mappes & Zembaty, 1992, p. 293).

The use of preferential treatment and compensatory approach for past wrongs has its limits, based on counter-arguments to these principles. One significant question is, was the individual actually wronged or was it the ethnic group or race that was wronged in the past? Newton (1992) provides one such counter-argument. Strict justice, she maintains, precludes the use of any criteria other than merit or qualification when hiring or admissions decisions are made: “preferential treatment in schooling and employment is a morally unacceptable means of providing that compensation because it violates the very principle of equality that is the basis of the claim that racial and sexual discrimination is morally wrong” (p. 294). Her additional argument against the compensatory principle is the infinite regress argument:

Suppose we are required to give preference today to individuals belonging to groups that were discriminated against in the past in order to compensate them for past inequity of treatment. Will we be required to give compensatory preferential treatment in the future to members of groups denied equality of treatment by

today's compensatory programs? And what about the compensation due to those treated unequally by those future programs? (p. 294)

McGowan (1996) provided criteria for affirmative action programs and three distinct issues that must be considered; schools must decide (a) which individuals belong to which races and ethnicities, (b) whether racial or ethnical groups are internally uniform with respect to their contribution to diversity, (c) whether they will rely on a group's conception of itself or dominant social conceptions of a racial and ethnic group.

One claim that was made by the University of Michigan, and which was provided during the numerous court cases, was that diversity was shown to be beneficial to the educational outcome of the students. This statement was made by Bollinger, the president of the University of Michigan during the time the lawsuits were being filed. He states that only a relative handful of studies have specifically examined whether the racial, ethnic, or gender composition of the students on a campus, in an academic major, or in a classroom (i.e., structural diversity) has the claimed educational benefits claimed by Rudenstine, Bollinger, and others. Sax found that the proportion of women in an academic major field had no apparent impact on students' cognitive or affective development (Terenzini, Cabrera, Colbeck, Bjorklund, & Parente, 2001).

The National Association of Scholars (NAS) also refuted the claim made by the University of Michigan in regards to diversity benefiting students.

It states that the university falsely concluded that a positive relationship had been established between racial diversity and supposedly beneficial educational outcomes. Yet the Cooperative Institutional Research Program database on which the university relied took into account four intermediate variables and still found no relationship between racial diversity and educational outcomes. The four intermediate variables taken into

account as being possible benefits of campus racial diversity were (a) students' subjective assessments of the benefits they receive from interacting with diverse peers, (b) faculty assessments about the impact of diversity on student learning or on other outcomes related to the missions of the universities, (c) monetary and non-monetary returns such as personal income or other post graduate attainment that might result from having experienced more interaction with a diverse student body, and (d) tying diversity experience during the college years to a wide variety of educational outcomes. Again, the diversity of the student body appeared to make no difference in these outcomes, thus NAS concludes that the inference is false, although the university and its spokespersons have implied otherwise (Wood, 2001).

NAS President Stephen H. Balch (2001) observed that the consequences for America's future are so great that anything short of a fully candid treatment of the relevant facts is a disservice to the public interest. The NAS report thus benefits the country by clarifying the terms of the debate (National Association of Scholars, 2001).

There were additional viewpoints provided by Daniel Golden of the *Wall Street Journal*:

The commitment to diversity is not real... says Samuel Issacharoff,... None of these universities has an affirmative-action program for Christian fundamentalists, Muslims, orthodox Jews, or any other group that has a distinct viewpoint. How many schools reach out for neo-Nazi's? ... Even minority students find fault with the diversity argument. The term 'diversity' gets tossed around so much that it's offensive to students of color. we're just in college to enrich the education of white students. (Golden, 2003a, para. 1-2)

Contrary to the above studies, there were cases where students did derive benefits from affirmative action programs at colleges and universities. For example, Jennifer Brown, an African American sophomore from Denver, said that if she had not been

offered help from the program, she would not have attended college. Her parents did not go to college, her SAT scores were average, and she had never been to the Northeast. When invited to attend a “students of color” weekend at Amherst, all expenses paid, her first reaction was surprise, and she felt out of place among students whose parents could afford the full \$40,000 cost. Still, she was reassured when she learned about the college’s generous financial aid program (Dobbs, 2003).

One form of affirmative action, which is not often spoken of in public, is that of legacy students—those students who have had relatives previously attend the university to which they are applying. Former President Bush himself benefited from a form of affirmative action. He was admitted to Yale University as a legacy student because his father and grandfather were Yale graduates (Kinsley, 2003). Collin Powell and National Security Adviser Condoleezza Rice both agreed with the court decision in the University of Michigan case because of the use of quotas, although they both believe affirmative action has a positive role (CNN, 2004).

Krueger (2003) also acknowledges the problem of preferential admissions:

No one raises concern that preferences in admissions given to athletes, cheerleaders, and children of wealthy alumni causes self-doubt or stigma. The fact that this concern only raises to prominence when it comes to considering race as one of many factors in admissions illustrates how difficult it will be to overcome the lingering discrimination in American society. (pp. 20-21)

Former President Bush also provided two statements on this issue in 2003. He stated that some states are using innovative ways to diversify their student bodies and that diversity can be achieved without using quotas (U.S. Department of Education, 2003). In 2004, speaking in opposition to the University of Michigan case, he stated that he strongly support diversity of all kinds, including racial diversity in higher education, but that the

method used by the University of Michigan to achieve this goal was fundamentally flawed (McElroy, 2004).

A former U.S. Court of Appeals Chief Judge showed how the *Brown v. Board of Education* (1954) and *Grutter v. Bollinger* (2002) cases were similar in outcomes:

It is noteworthy that taken together, the two decisions mirror a major societal phenomenon: over the past 50 years, many African Americans have abandoned *assimilation* as a model of integration in favor of today's ideal of diversity. (Edwards, 2004, p. 974)

Edwards (2004) also noted how perception played a role in societal views of merit in regards to African Americans around the year 1962. Before racial conscious remedies were employed, a few African Americans who succeeded were seen as different, as having made it despite their race. In other words, an African American who succeeded on merit was considered an exception, to whom the stereotype of inferiority did not apply. Merit was thought of as something that a typical black person did not possess. Edwards did offer a new approach in diversity and integration, which he hoped would reinvigorate the ideal of integration. He considered it important to value one's distinct identity, with one's cultural background becoming a benefit that allowed "persons who are different [to] learn from one another by engaging in a dialogue made possible by mutual respect" (p. 977). Edwards contends that cultural "integration does not require assimilation, but can be born of a respectful and open exchange of ideas and opinions" (Edwards, 2004, p. 977).

There are opposing views that are more conservative provided by *The New Criterion*. They published a series of articles, which provided a more conservative viewpoint of the affirmative action debate. Williams (2001) provided an analogy using the Orwellian term *doublethink*, which means the power of holding two contradictory

beliefs simultaneously, and accepting them both. Williams expanded upon this in her accounting of affirmative action; it is not about assuring equality of opportunity but artificially enforcing equality of outcomes, thus it perpetuates preferential treatment and discrimination based on race, sex, ethnic origin, or some other approved badge of victim status.

According to Canady, a Florida Republican who was on the Subcommittee of the House Judiciary Committee and a sponsor of the 1997 Civil Rights Act:

By promoting a system of raced-based entitlement, affirmative action is keeping America from evolving into a color-blind society where people are judged on their abilities, not on the color of their skin. Affirmative action is a system of racial preferences and quotas that deny opportunity to individuals solely because they are not members of a preferred race or ethnic group. (Canady, 2000, p. 1)

Canady goes on to condemn race-based preferences as a moral failure. He believed that preferences discriminate because they deny opportunities to non-protected groups and in fact can be deemed government imposed discrimination.

Carl Cohen, professor at the University of Michigan and self-proclaimed liberal, also vehemently opposes affirmative action programs because of their un-intended and unjust outcomes, although the motives might be well intentioned. He felt that affirmative action which guaranteed equal protection should mean the same for all persons. In addition, he felt that whatever the intended end result of preferences, they would still be unjust. Cohen (2001) stated that “ preferential affirmative action... has driven race relations... to a point lower than it has ever been” (para. 1-2).

The social and political debate continues over whether affirmative action and quotas in admission processes provide a worthwhile benefit to some ethnic groups, while restricting others from competing by the same standards. There are different

philosophies used in business decisions, which are also relevant to the affirmative action admission's programs.

utilitarianism: defines right or acceptable actions as those that maximize total utility, or the greatest good for the greatest number of people. The second is virtue ethics; assumes that what is moral in a given situation is not only what conventional morality requires, but also what a mature person with good moral character would deem appropriate. Lastly, justice; evaluates ethicalness on the basis of fairness: distributive, procedural, and interaction. (Ferrell, Fraedrich, & Ferrell, 2002, p. 57)

Public opinion polls. Within the last few years, while the University of Michigan's court cases were working their way to the Supreme Court, there was, and continues to be, political and social change throughout the country. According to Waldmeir (2003):

Poll after poll reveals that the American public disapproves of preferences based on race alone. A recent survey of 1,600 college and university faculty members showed that a majority did not favor using gender or race for special preference. (para. 12)

There are vast quantities of data collected and published surrounding the emotional issues of affirmative action. One poll worth mentioning was taken by the Washington Post, the Henry J. Kaiser Family Foundation, and Harvard University, from March 8 to April 22, 2001. The poll consisted of 1,709 adults across the country. The question to those polled was: "...In order to give minorities more opportunity, do you believe race, or ethnicity should be a factor when deciding who is hired, promoted, or admitted to college, or that hiring, promotions, and college admissions should be based strictly on merit and qualifications other than on race or ethnicity?" (Washington Post, 2001, para. 1).

The poll results were very similar when broken down by race, geographic location, age, and educational backgrounds: 92% responded that these policies should be

based strictly on merit and qualifications, while 5% responded that race or ethnicity should be a factor (Washington Post, 2001). In addition, 94% of whites, 86% blacks, reported that decisions should be based on merit and qualifications. The regional response was similar: East – 93%, Midwest – 92%, South – 92%, West – 92% and overall 92% felt that merit and qualification should be factors while only with 5% felt that race or ethnicity should be a factor. If this poll represents the current social path of the country, it should be noted that the majority of all polled are in agreement to provide for those who have the qualifications and through merit should be afforded the opportunities in admissions, promotions, hiring, and so forth.

Section summary. The social ills and wrongs of the past were treated with laws about quotas, affirmative action policies, and programs to alleviate or change the country's course and theoretically to provide for an even playing field for all. For the past 35 years these policies or programs have had an impact on equality but have not changed what has happened in the past. It was within the last 200 years that the Chinese and the Irish were discriminated against, and at present both groups have in many respects successfully assimilated into the mainstream. However, the African Americans and Hispanics have held to the belief of being wronged in the past. There are more ethnic groups living in the United States now than 50 years ago. More and more people are coming to America to seek prosperity. The polls discussed in this section indicate that the prevailing opinion is that riches and success are here for the taking for those who are willing to work hard and commit themselves to a better way of life.

In California, there is a shift in majority and minority population that will occur within the next 10 years. Currently, the Hispanic community makes up approximately

36% of the state's population and will soon pass the white majority of 43% (U.S. Census Bureau, 2001). When this happens, an interesting question should be posed. Should California put into effect additional protections and opportunities for the new white minority because they are white? This example demonstrates how the times are changing concerning demographics and social impacts. This possibility of protection sounds a little humorous at first, but if taken at face value it is a possibility. When we look at some policies, many of them seem to insist that if you are a minority, then affirmative action should be enacted no matter what your race.

Economic Analysis of Affirmative Action

The economic issues that affect affirmative action are far reaching and are at the crux of social and political issues. The basis of economics is supply and demand. There is a greater demand for public colleges and universities admissions due to the cost associated with tuition and fees when considering the price of private colleges and universities (College Board, n. d.). The University of California's admission numbers show that the supply of seats available does not meet the demand by students; 52,470 of the state public high school seniors applied for admission as freshman in 2004. Of these, 43,786 were admitted (University of California, 1999, 2006, 2007). This does not include the demand for seats by out-of-state and foreign students that apply. Admission to public schools is in such high demand because the cost difference is significant for California colleges and universities, as detailed in the Appendix: Comparison of In-State and Out-of-State Tuition. In the case of in-state tuition, the axiom that "you get what you pay for" does not hold. Because public colleges and universities are subsidized by the states in which they reside, the differences in cost for public versus private universities

are transparent. Although the economic cost to students is significantly lower at state universities, the true value of education, public versus the private sector, will be equal or very close in substance, value, and worth.

In 1995, University of Michigan's liberal arts college admitted 74% of its 16,000 applicants. That same year, the University of Michigan's Law School accepted only 27% of 4,000. Once again, the demand of student applicants far exceeded the supply of seat openings available at the university (Center for Equal Opportunity, 2005).

Wheelan (2002) noted the significance of how important the economics of education was. He suggested that a college education is an investment that would yield about 10% return, a much larger return than any Wall Street investment. Also he pointed out that sometimes the "law of unintended consequences" makes predicting outcomes a very complex issue (p. 29)

The unintended consequence of affirmative action is the person who is overlooked through this process and is therefore denied the ability to improve him or herself on an equal ground with those who were admitted to colleges and universities under affirmative action policies at colleges and universities. This is evident by the Appellate and Supreme Court cases that have been heard and ruled upon.

The Foundation for Teaching Economics (2006) provided basic definitions for economic terms. One definition that is applicable to the affirmative action debate is price discrimination: the practice of charging different groups of consumers (in this case students who have applied for admission) different prices for the same good or service. This applies to affirmative action because schools are offering the service of an education and are not applying equal admissions to all that have applied. If the basis of admissions

is Scholastic Aptitude Test (SAT) and Grade Point Average (GPA), all students would be admitted equally and pay the same price for the education.

The term *human capital* is another economic term associated with the affirmative action issue. Buford (1998) provides a view on how affirmative action benefits society through the use of hiring women and minorities: Although discrimination is not as rampant as it was in the past, minorities and women are still underrepresented in many types of jobs. Affirmative action programs ensure that qualified minorities and women are included in the pool of potential candidates for skilled positions, so that those with the most appropriate qualifications are placed in these positions. The failure to hire talented women and minorities (if due to lack of consideration of their appropriate qualifications) is a poor use of human resources, and will ultimately harm the workplace and the national economy.

Although this statement is related to the business world, the affirmative action programs at higher education institutions directly ensure that qualified minorities and women are provided the opportunity to better themselves, and be a contribution to society and the business community. Affirmative action programs provide an opportunity for students and graduates to a better financial future, which would have been different without the programs. Graduates who benefited from affirmative action in the past say they have received better jobs, earned more money, and ultimately are living better lives because of the opportunity they received through these programs (National Conference of State Legislatures, 2006).

Buford (1998) also provided his view on the doctrine of market economy. His pointed out that affirmative action did not have a huge downside to the economy as some

suggest. Affirmative action is beneficial to the extent that it prevents discrimination in hiring, which imposes cost not only on an individual but on society. To the extent that affirmative action ensures that the most qualified applicants are matched with a job, then human resources are not put to their best use. This benefits the economy and decreases the workers' reliance on social services. In addition to providing individuals with the opportunity to better their lives, Buford notes that companies also derive a benefit by being culturally diverse in the workplace because they can work effectively in the global environment.

Rodgers and Spriggs (2002) explained a difference in human capital in regards to the Armed Forces Qualification Test (AFQT). They looked at the differences in the test scores and possible reasons for the disparity. Two plausible reasons were provided. Both were of a social-economic nature. The first issue is the difference in education levels of white parents being higher. The second is the number of siblings and female-headed households for blacks. They concluded that the gap in test scores between blacks and whites was because blacks had more female heads of households and more siblings while whites were more likely to be the children of professionals.

The California State Legislature in 2001 also recognized affirmative action and merit being at odds with economic issues.

In 2000 the California Legislature increased funding to \$1.2 billion for the Cal Grant Program. . . . Proponents argue considering socioeconomic factors moves us beyond looking at race and aids students who need the most help financially, while still increasing diversity on campuses. (Samuelson & Michelau, 2001, p. 38)

The U.S. Department of Education (2005) also recognizes the importance of socioeconomic indicators in student preferences, such as parents' education, family

structure, family income, and parents' occupation. Accordingly, some educational institutions have replaced preferences based on racial or ethnic category with preferences based on an applicant's socioeconomic status. University admissions committees might favor students who have performed well despite having faced various social and economic obstacles. According to advocates of socioeconomic preferences, a student from a single-parent family living in a neighborhood with high concentrations of poverty who has a B+ average and a 1,000 score on the SAT "is likely to be more resourceful and capable than a student from a wealthy suburban home who has access to expensive after-school tutoring programs and has achieved an A- average with a 1,200 score on the SAT" (U.S. Department of Education, 2005, p. 27).

Certain minority students may benefit under many socioeconomic preference plans because their racial and ethnic groups are disproportionately disadvantaged according to socio-economic factors. According to the U.S. Department of Education (2005) the following statistics confirm this point:

For example, 22.7% of African Americans and 21.4% of Hispanics live below the poverty line compared with 7.8% of non-Hispanic whites. Poor African Americans are six times as likely to live in concentrated poverty as poor whites. While black income is 60% of white income, black net worth is just 9% of white net worth....by the year 2015 Hispanics and African Americans will constitute 78% of those having no parent with a high school diploma. (p. 27)

Kahlenberg (1998) is more specific and provides the three basic standard indicators of socioeconomic status:

1. One is the concentration of poverty. Sociologists have shown that it is a disadvantage to grow up in a poor family and in a neighborhood with concentrated poverty, because such children often lack positive role models and peer influences. Because of housing discrimination and perhaps because of

choice, blacks are much more likely to live in areas with concentrated poverty than whites of equal income. One study found that in Los Angeles, affluent blacks making between \$75,000 and \$100,000 live in neighborhoods with higher mean poverty rates than whites with incomes in the \$5,000 - \$10,000 range.

2. Another important difference between blacks and whites of the same income level has to do with differences in wealth. While median black family income is on the border of 60% of white income, median black net assets are 9% that of whites. Middle class blacks earning \$45,000 to \$60,000 annually have lower net worth on average than whites with incomes between \$5,000 and \$15,000. Family wealth affects a child's life chances in a number of ways. For example, the *Wall Street Journal* found that blacks are less likely to take LSAT preparation courses, which cost as much as \$1,000. For the average black, whose net worth is one-tenth the average of whites, the cost of the LSAT course is the equivalent of \$10,000 from a white perspective.
3. Another important difference between blacks and whites of equal income levels has to do with family structure. Among children under 18, 76% of whites but just 33% of blacks live with two parents. A single-parent family provides half the income and half the number of parents to nurture a child.

There are other implications to the socioeconomic issue in regards to socioeconomic differences for black and white students with possible perceptions and misconceptions and stereotypes. Coleman (2003) pointed out that when socioeconomic status is taken into account, blacks are more likely to graduate from high school and college than their white counterparts. In addition, blacks have more education than whites

but yet are more likely to earn lower wages. The real question is not whether affirmative action creates a self-fulfilling prophecy of lower performance, but why blacks continue to out-perform and exert greater efforts than whites, given lower returns (Coleman, 2003).

Cancian (2004), from the University of Wisconsin, ran a simulation that involved moving from affirmative action programs based on race and ethnicity to a class or socio-economic based program, with results that were not as promising as some had hoped. Within this simulation, parents' income, level of education, and number of parents were used as the criteria. The simulations revealed some of the potential complications involved in moving from affirmative-action programs based on race and ethnicity to programs based on socioeconomic disadvantage. Cancian found that:

Class-based programs would not achieve the same results as programs targeting racial and ethnic minority youths: many minority youths would not be eligible and many eligible youths would not be members of racial or ethnic minority groups. Thus the argument that class-based affirmative action is a more politically palatable means to achieve a similar end is not fully supported. In addition, the difficulty of developing criteria by which to identify disadvantaged youths raises questions about the feasibility of a class-based approach. (pp.103-104)

The economic or cost benefit for higher education can sometimes be a cultural bias as to whether medical school is a good investment. One graduate noted that to friends who are the first people in their family to go to college, the idea of being \$200,000 in debt after medical school was absurd (Smith, 2004). Many do not perceive the value, or return on investment, for post-graduate education versus going directly to work after college.

It is not that everyone wants to attend a state university, it is the economic reality of our society that influences the demand for a quality education that can be afforded by families living below the upper-middle class of the nation. If students of today want to

get ahead economically, it is a general belief that a 4-year degree is required. According to Williams and Swail (2005), the after-tax median earnings in 2003 for a high school graduate were \$17,332, compared to \$37,949 for a college graduate, while master's degree holders enjoyed a median after-tax salary of \$44,615. In summary, it is now imperative to have a college degree as a minimum for a middle-class lifestyle, and to succeed beyond that, a graduate degree is required.

Legal Analysis of Affirmative Action

This section discusses court decisions, state laws, and legal issues facing colleges and universities regarding these court decisions. The section ends with a prediction of more conservative Supreme Court rulings in the future.

Court decisions. Years before Jennifer Gratz and Barbara Grutter were born, the foundation of the lawsuits, which they instigated, had been laid. The case was *Brown v. Board of Education*; the year was 1954. The basis for *Brown v. Board of Education* was the 14th Amendment. In this suit, Brown contended that separate but equal was not equal. It was also the end of an era where *Plessy v. Ferguson* was no longer the benchmark for separate but equal.

In May of 1896, Mr. Plessy filed suit with the Supreme Court based on a law within the state of Louisiana that was in violation of the 13th and 14th Amendments.

The first section of the statute enacts ‘that all railway companies carrying passengers in their coaches in this state, shall provide equal but separate accommodations for white, and colored races, by providing two or more passenger coaches for each passenger train, or by dividing the passenger coaches by a partition as to secure separate accommodations: provided, that this section shall be permitted to occupy seats in coaches, other than the ones assigned to them, on account of the race they belong to. (*Plessy v. Ferguson*, 1896, § 537)

This doctrine held as precedent until *Brown v. Board of Education* was decided and overturned the separate but equal doctrine some 58 years later on May 17, 1954.

The case of *Brown v. Board of Education* was the landmark precedent for breaking down the concept of separate but equal in education. It did not stop segregation in 1954, but did start change within the United States. Chief Justice Warren delivered the majority opinion for this case. He noted that in previous cases, Black plaintiffs had been denied admission to schools attended by white children under laws requiring or permitting segregation according to race. Although the plaintiffs alleged that segregation deprived them of an equal educational opportunity, in three of the four cases a federal district court judge denied relief to the plaintiffs on the so called “separate but equal” doctrine announced by *Plessy v. Ferguson*, 163 U.S. 537. In contrast, in the Delaware case, the Supreme Court of Delaware adhered to that doctrine, but ordered that the plaintiffs be admitted to the white schools because of their superiority to the Black schools. Chief Justice Warren explained that in the case of *Brown v. Board of Education*, the schools for whites and Blacks were equalized in many respects but it was the effect of segregation on education that needed to be examined. (*Brown v. Board of Education*, 1954) In summary, the court decided that even though there was evidence that the black schools and white schools in these areas were substantially of equal quality, the effect of segregation was negative and segregation should not be continued.

The next pivotal lawsuit, in regards to affirmative action and education was the *Regents of the University of California v. Allan Bakke* (1978). This case involved a white male medical school applicant who filed suit against the Regents of the University of California. Bakke alleged his rights were violated under Title VI of the Civil Rights Act

of 1964 as well as his rights under the 14th Amendment. This lawsuit and resulting judgment also set precedence for the University of Michigan lawsuit. The case was similar to the Gratz and Grutter cases in that the court determined quotas are not legal, but taking race and other factors into account are permissible for colleges and universities in their admission process. Justice Powell provided the court's decision:

This case presents a challenge to the special admissions program of the petitioner, the Medical School of the University of California at Davis, which is designed to assure the admission...of a specified number of students from certain minority groups. The Superior Court of California sustained respondent's challenge....The court enjoined petitioner from considering respondent's race or the race of any other applicant in making admissions decisions. It refused, however, to order respondent's admission [***759] to the Medical School, holding that he had not carried his burden of proving that he would have been admitted but for the constitutional and statutory violations. (438 U.S. 265, 98 S Ct., 1978)

The same case was then taken to the Supreme Court of California denied the plaintiff's request for an injunction but ordered the university to admit him.

In providing the decision, Justice Powell also allowed schools to use race as a factor in the admission process "insofar as it orders respondent's admission to Davis and invalidates petitioner's special admissions program, but is reversed insofar as it prohibits petitioner from taking race into account as a factor in its future admissions decisions" (§ 98). This was the basis of future arguments, it furthered the argument of narrowly tailoring the affirmative action programs as justification for such admission policies used by colleges and universities. This ruling was used as precedence in the Gratz and Grutter lawsuits.

Cheryl J. Hopwood v. State of Texas (1996) was the next case for the affirmative action admissions policy at the University of Texas Law School. The university had announced that:

in the wake of the recent U.S. Supreme Court decisions concerning college admissions, the university has been reshaping its policies with the expectation of implementing changes this fall for the admissions cycle ahead. It is especially vital that the University of Texas ... re-institute affirmative action. (para. 4-5)

Four white plaintiffs, residents of Texas, applied for admission to the 1992 entering law school class and were rejected despite being better qualified than many admitted minority candidates (78 f. 3d 932, 1996). She enlisted the help of the Center for Individual Rights (2007) to help her challenge the school's system of racial preferences. Her lawsuit culminated in a Fifth Circuit Court of Appeals ruling in her favor 4 years later. The legal principle put forth by the Appeals Court is that the 14th Amendment forbids state universities from using race as a factor in admissions. The Supreme Court declined to review the case, thus in principle banning affirmative action. The main results of this case were schools within the state of Texas adopted race-neutral criteria for their admissions policy (University of Texas, 2007). There were also additional laws put into place for allowing a percentage of students to be accepted into the university under the top 10% of graduating high school students.

Jennifer Gratz applied for admission for the 1995 fall term at the University of Michigan. She was informed in April of 1995 that her academic record was less competitive than the students who were admitted in the initial review. In 1997, Patrick Hamacher also applied to the University of Michigan and was turned down for a similar reason. Gratz and Hamacher filed suit against the University of Michigan alleging their 14th Amendment rights and their rights in Title VI of the Civil Rights Act of 1964 were violated by the admissions' policy (*Gratz and Hamacher v. Lee Bollinger et al.*, 2003).

Barbara Grutter also filed suit against the University of Michigan Because she had applied to the law school in 1996 and was not accepted. She filed suit in 1997 against the university for similar reasons as *Gratz and Hamacher v. Lee Bollinger et al.* (2003). In June of 2003, both cases were heard by the Supreme Court and decided. The court provided more or less a split decision as to the use of affirmative action and quotas.

In the case of *Grutter v. Bollinger et al.* (2003), it was decided by the court that the school was within the law. The official admissions policy was designed to enroll a "critical mass" of students who were members of underrepresented minority groups such as African-Americans, Hispanics, and Native Americans. First, the policy required admissions officials (a) to evaluate each applicant on the basis of all information available in the applicant's file, including a personal statement, letters of recommendation, an essay describing how the applicant would contribute to law-school life and diversity, the applicant's undergraduate grade-point average, and the applicant's law school Admissions Test score, and (b) to look beyond grades and scores to such "soft variables" as recommenders' enthusiasm, the quality of the applicant's undergraduate institution, the applicant's essay, and the areas and difficulty of the applicant's undergraduate course selection. Second, the policy did not (a) define diversity solely in terms of racial and ethnic status, or (b) restrict the types of diversity contributions eligible for "substantial weight." The United States Court of Appeals for the Sixth Circuit held that the law school's admissions policy did not violate the 14th Amendment. This Court ruled as follows:

- The law school had a compelling interest in attaining a diverse student body, and the admissions policy's race-conscious program bore the hallmarks of a narrowly tailored plan.
- The law school (a) would have liked "nothing better than to find a race-neutral admissions formula" (539 U.S. 306,123 S. Ct. 2325, 2003); and (b) would terminate the race-conscious program as soon as practicable.
- The school should omit only those racial classifications that would violate the equal protection clause or the Constitution's Fifth Amendment.
- The prohibition against discrimination was coextensive with the equal protection clause.

The case of *Gratz and Hamacher v. the Lee Bollinger et al.* was also decided in June of 2003. This decision by the court favored the plaintiffs, Gratz and Hamacher because the Court found that “the manner in which the University considers the race of the applicants... violates these constitutional and statutory provisions...” (539 U.S. 306,123 S. Ct., 2003, § 2325)

In this case, the Supreme Court followed a similar result as with the Bakke decision. The two cases were heard and the decisions handed down had almost identical results. In one case, the affirmative action policy was decided to be illegal and the other legal. The court left the door open for new and different challenges to the law with respect to affirmative action and quotas in academia and education.

In summary, despite the fractured opinion in the student assignment cases, all nine justices affirmed the Court’s decision in *Grutter, Petitioners v. Bollinger et al.* (2003)

that promoting the educational benefits of diversity is a compelling reason for affirmative action and can legally be pursued through a narrowly tailored race-conscious means.

State laws enacted. During the same period of time, while many of the lawsuits were being adjudicated, some states went to the polls and passed initiatives that would curtail, if not eliminate, affirmative action in the admission processes of many states and schools. California, Texas, Florida, and Washington had state initiatives which modified or removed affirmative action or race as part of the admission process for their respective state colleges and universities. Texas started the process by establishing a race-neutral policy after the Hopwood lawsuit (Brunner, 2003).

California passed Proposition 209 in 1997, which prohibits the state, local governments, districts, public universities, colleges, and schools, and other government instrumentalities from discriminating against or giving preferential treatment to any individual or group in public employment, public education, or public contracting on the basis of race, sex, color, ethnicity, or national origin (Knol, 2009).

In 1998, Washington State passed, by public ballot, Initiative 200 that bans race and gender discrimination by state and local governments in the operation of public employment, public education, or public contracting. It was passed into law by a significant majority of votes, marking the first time in state history that a major civil rights law was enacted by direct popular vote rather than by decisions of elected officials, bureaucrats, and universities. The prior laws, “While initially striving for equal opportunity regardless of color, it appears that state affirmative action programs gradually created an ingrained preference system based on race and gender” (Holland, 1999, para. 5).

Florida passed a law that ended affirmative action within the state. It was called One Florida. It also enabled the students who were among the top 20% in their class, regardless of ACT or SAT score, to be accepted in one of the states colleges or universities. The Florida Department of Education (n. d.) provides a way for all students to be admitted to a university in the State of Florida. Students eligible for the Talented 20 Program are guaranteed admission to 1 of 11 universities and are given priority for the awarding of funds from the Florida Student Assistance Grant, a needs-based student assistance program. Florida is the only state in the nation to guarantee admission through these requirements. The result of these types of laws being implemented provides a basis for precedence in future litigation as far as affirmative action in education, as well as in public works and business within states with such laws. There was a ballot measure proposed for Michigan, which was similar in intent, to that of the California Proposition 209. In November of 2006, the Michigan voters passed Proposition 2. This Proposition amended the state's constitution: Ban public institutions from using affirmative action programs that give preferential treatment to groups or individuals based on their race, gender, color, ethnicity or national origin for public employment, education or contracting purposes. Public institutions affected by the proposal include state governments, local governments, public colleges and universities, community colleges, and school districts (Land, 2006).

Current legal challenges for academic institutions. The University of Virginia and three other schools have found themselves defending their admissions policies and affirmative action programs. Andrews (2004) reported that the U.S. Department of Education was investigating the University of Virginia's undergraduate admissions

policies after a New York father alleged that his son's 2003 application was rejected in favor of other students with similar qualifications due to affirmative action. The Center for Equal Opportunity, a conservative group that opposes affirmative action, has filed similar complaint against University of Virginia's School of Law, along with the others against North Carolina State University, the University of Maryland's medical school, and the College of William and Mary's Law School.

Golden (2003b) states that schools must also be aware of financial aid programs and scholarships when looking at admissions. According to Kent Syverud, dean of Vanderbilt Law School and a former University of Michigan professor who testified in the Michigan case:

The court didn't mention financial aid or scholarships in its decisions. But because aid is so closely linked to admissions, many schools fear that race-conscious scholarships and other programs would be interpreted by lower courts as impermissible under the standard set in the Michigan cases. Already, the court's decision have accelerated conservative legal activists' challenges of minority scholarships. (University of Michigan, 2003, para. 1-4)

The professor went on to state that minority scholarships are common in undergraduate institutions around the country, but many colleges and universities recently changed these into scholarships that have race as one factor among many, even at the risk of alienating some minority students, alumni, and donors.

California State Senator Ray Haynes recognized the change needed within California, noting that statewide recruitment programs are designed to provide academic services to students from disadvantaged backgrounds and support them on the road to higher education, shifting the focus from race to need-based programs. He went on to state that we must rise above race and gender-based remedies and instead focus on the truly disadvantaged and those who need real help (Haynes, 2001).

Changes in the supreme court. During the George W. Bush administration there were two opportunities for a change to the court's ideological make up. President Bush provided two Justices to the Court. This may have a direct impact on affirmative action programs. The first change was the nomination of John Roberts as Chief Justice; the other addition to the court was Samuel Alito as an Associate Justice. With this change in the court's composition, there is a significant difference in Republican versus Democrat justices. The court now has seven justices nominated by the Republican Party Presidents and two from Democratic Party Presidents. The possibility of more conservative rulings in the near term is very probable.

In summary, the court decisions discussed in this section do not offer clear guidelines for colleges, universities, and public school districts. Some affirmative action measures were deemed unconstitutional while others were considered to be acceptable. The state laws, however, were all in the direction of ending affirmative action. California, Texas, Florida, and Washington had state initiatives which modified or removed affirmative action or race as part of the admission process for their respective state colleges and universities. Likewise, changes in the Supreme Court are likely to result in rulings that are less supportive of affirmative action.

Chapter Summary

The problem for colleges and universities using affirmative action and quotas began with *Regents of the University of California v. Allan Bakke* (1978). As a result of the Bakke ruling by the Supreme Court, there was not a clearly defined set of guidelines or directions to follow in regards to the question of affirmative action/diversity and preferences in determining a student's admission, but a narrowly tailored approach will

be accepted. In the 2002-2007 Supreme Court rulings, *Gratz and Hamacher v. Lee Bollinger et al.* (2003) as well as *Grutter, Petitioners v. Bollinger et al.* (2003), the Court once again did not provide specific admissions guidelines in either case, thereby continuing to provide conflict between the court's interpretations. These conflicting rulings from the Supreme Court continue to plague colleges and universities in their quest to balance affirmative action programs that are used for racial and ethnic preferences.

These Supreme Court rulings placed colleges and universities in a precarious position as far as admissions policies are concerned because the courts have continuously ruled with conflicting results and have not provided definite guidance. The Supreme Court rulings seem to indicate that it is not acceptable to use quotas in admissions policies, but a narrowly tailored diversity and affirmative action policy will be deemed legal and acceptable.

The lack of guidelines and mixed signals by the Supreme Court continue to be at the forefront of litigation for schools. Schools continue to be at the mercy of students who claim to have been wronged or injured by schools with affirmative action and/or preference policies and programs. This type of litigation is costly for the universities in direct legal costs as well as being disruptive to the admissions policies. By March 2003, University of Michigan had spent \$9 million in legal costs related to the affirmative action cases and the university had yet to have the case heard by the Supreme Court. The \$9 million did not include the time spent by the university's in-house counsel or administrators and staff working on public relations issues regarding the Gratz and Grutter cases (Miller, 2003). There have been numerous citizens, politicians, leaders,

corporations, and institutions that have become involved showing support for and against the arguments on affirmative action programs (University of Michigan, 2003).

Within each area of this discussion there are differing viewpoints and more often than not, are polarized positions, as far as possible outcomes to this debate and issue. For each argument to support affirmative action programs there is an argument to oppose such programs. The critical path in determining value or worth of these programs is the ability to have a dialogue by both sides of the arguments. Polarizing the issues will not make it go away; it will only continue to build walls that must eventually be brought down for the resolution of this conflict and differing viewpoints.

Most people have become involved in the debate on affirmative action because of being personally involved as a student or as a relative of one. This involvement can also extend past the families to neighborhoods and through cultural groups. In most cases, it is for wanting a better life for the students that are directly involved in the application process of colleges and universities.

The issues and arguments are complex and will transition from one argument to another. To assist in visualizing the different aspects and how they affect the various issues, Table 1 provides a summary of the S.P.E.L. challenges relating to this issue. As Table 1 illustrates, there are many issues that are intertwined or can be used within the different areas of the S.P.E.L. model. It also illustrates how complex the issues of affirmative action programs are in relation to college and university admissions policies and procedures.

Table 1

S.P.E.L. Summary of Effects

| Analysis Category | Effect on Individual | Effect on Society |
|-------------------|--|---|
| Social | <ul style="list-style-type: none"> • Ability to increase personal socio-economic status | <ul style="list-style-type: none"> • Changing demographics and social Implications related to race/ethnicity or culture as individuals within a group become examples of increased socio-economic status of a group |
| Political | <ul style="list-style-type: none"> • Political position varies with opinion polls and audience | <ul style="list-style-type: none"> • Polarization of issues by party lines • State directives & propositions |
| Economic | <ul style="list-style-type: none"> • Cost of education • Future economic benefit of a college education • Opportunity costs | <ul style="list-style-type: none"> • Benefit of human capital gained or lost • Economically depressed regions can re-tool for information age or remain in poverty and competition for low-wage jobs |
| Legal | <ul style="list-style-type: none"> • Personal gains due to individual court rulings • that indicate policies are in direct conflict with law | <ul style="list-style-type: none"> • Short and long term effects of lawsuits on university policy • Increased or continued adjudication until policies are brought into compliance with legal precedent and law |

Chapter Three: Methods

Introduction

The purpose of this study was to examine various aspects of affirmative action and diversity policies for colleges and universities and how they impact admissions policies and procedures. This study summarized relevant data that relates to affirmative action policies and programs and their effect on student admissions at five universities that have such programs. The researcher identified, obtained, and analyzed the data through a structured approach, using content analysis for theme identification.

Research Questions

The research questions were as follows:

1. What are the social implications of 2002-2007 affirmative action admission litigation for five U.S. universities as well as the students and prospective students?
2. What are the political implications of 2002-2007 affirmative action admission litigation for five U.S. universities?
3. What are the economic implications of 2002-2007 affirmative action admission litigation for five U.S. universities as well as the students and prospective students?
4. What are the legal implications of 2002-2007 affirmative action admission litigation for five U.S. universities?

Nature and Design of the Study

A qualitative approach was used in this multiple-case study. Creswell (1998) provides three important reasons, relevant to the present research, for conducting a qualitative study: (a) numerous variables can be accounted for, (b) “the topic needs to be explored” (p. 17), and (c) “involves the studied use and collection of a variety of empirical materials [including] visual texts” (p. 15). The most compelling reason to use the qualitative approach in this study was that the topic needed to be explored and discussed in depth, but the study also incorporated several variables (S.P.E.L.) and included a variety of empirical materials as described in the section titled Sources of Data.

Inclusion Criteria for Colleges and Universities

The following criteria were used to select colleges and universities for this study:

1. They made important changes to their affirmative action and admission policies as a result of challenges in court.
2. They were located in the following states, which have had important affirmative action initiatives passed by voters: California, Florida, Michigan, Texas, and Washington.

Sources of Data

Sources of data for this study were both private and public and included “official memos, minutes, records, and archival material” (Creswell, 1998, pp. 120-121). This study relied mainly on public documents from Web sites as well as private materials that had been presented in public forums. The data sources were divided into two main

categories: (a) documents published by the universities included in the study and (b) legal documents. In this study, coding was performed on the documents that were published by official university departments. The legal documents were used as a source for comparison with the university-published data sources.

University-published data sources. The following documents were reviewed and analyzed:

- Each of the five universities' Web-based admissions requirements (including visuals within the admissions Web pages)
- Each of the five university's Web-based affirmative action policies
- Recent articles and documents relevant to affirmative action that were published by the college and the university administrations

Legal document data sources. The following documents were reviewed and used as a basis for analysis of the university-published documents:

- Supreme Court and appellate court decisions related to affirmative action
- Amicus briefs provided in Supreme Court rulings, including positions for each side of the legal argument, some of which date back to the late 1800s
- Current nationally relevant court cases, such as *Brown v. Board of Education*
- Legislative changes, which include propositions, initiatives, and laws (state and federal) that applied to these universities
- Recent changes in the Supreme Court's composition state propositions and directives, and federal acts

Procedures of Analysis

Analysis of university-published documents. *Coding process.* One technique used to analyze content for this paper was textual analysis. McKee (2001) describes textual analysis as follows:

When we perform textual analysis on a text, we make an educated guess at some of the most likely interpretations that might be made of that text. Textual analysis is a methodology: a way of gathering and analyzing information in academic research. . . . by asking new questions, and coming up with new ways of thinking about things, you can get different kinds of knowledge.. (p. 138)

Each research question was addressed by including the relevant term as a category for which to search in the archival data. The basic analysis was of key words within the archival data, as well as how and where the key words were used in relation to the topic or issue being analyzed.

The following steps were based on coding procedures developed by Lincoln and Guba (1985) and were followed in this study as described here:

1. Lincoln and Guba refer to the first process as separating data into units. Because this study was based on the S.P.E.L. model, instead of extracting categories from the data, (a) social, (b) political, (c) economic, and (d) legal frames were used as the overall topics or units.
2. The next step was to identify key words for attributes that fell into these overall categories. Lincoln and Guba refer to this process as *categorization*. Table 2 shows the type of key words the researcher looked for as related to in he overall topics or units (categories), although other words with similar meanings could be added to this list as they were identified. The researcher and the second coder

followed a color-coding strategy to ensure uniformity: red for historical, orange for social, yellow for political, green for economic, and blue for legal.

- The next step was to identify actions that were typical of the identified categories. For example, actions typical of the economic category might include offering scholarships with ethnic, racial, or socioeconomic inclusion criteria. Lincoln and Guba refer to this process as *filling in patterns* or *bridging*.

Table 2 shows major themes and key words that were extracted during the coding process.

Table 2

Description of Coding Process

| Category | Key Terms | Actions that Exemplify Category |
|-----------|--|---|
| Social | Affirmative action Quota Minority Ethnicity Ethnic Race Racial Diverse Diversity Discrimination | Uses quota to obtain diverse student body Explicitly encourages members of racial or ethnic groups or minority groups to apply States that percentages of ethnic and racial groups match that of the surrounding communities or of the United States Contains photographs of various ethnicities of students or faculty members States that student body is ethnically or racially diverse (may want to not use these minor ones) Gives percentages of ethnic/racial groups States that faculty is ethnically or racially diverse States intention to maintain or increase ethnic / racial or cultural diversity of student body Describes a policy of theirs as “affirmative action” |
| Political | Law, policy, state/ mandate | Changes to political power in government |
| Economic | Tuition, fees, scholarship, grant, funds, funding | Certain ethnic or racial group(s) given preference for scholarships, grants, or other financial benefits |
| Legal | Law, policy, state/ mandate | Court Rulings. Legal action will follow lawsuits as well as State led or voter led initiatives to change laws |

Reviewers. This researcher acted as one of the reviewers. A secondary reviewer also independently coded the data to provide a second opinion and voice in the review of all documents. The secondary reviewer used the same data and methods as the researcher when looking at the material. Once all of the material was independently reviewed by each person for key content, the researcher and reviewer discussed the outcome for each category. Then the results were combined for the findings section. The secondary reviewer is a graduate of Pepperdine whose educational background includes a B.A. in Liberal Arts (2001) with an emphasis in Science and a M.A. (2002) in Education with a Teaching Credential. The secondary reviewer is also a tenured teacher in the Irvine Unified School District with 5 years of teaching experience within public schools.

Review of legal documents. The legal documents were reviewed by reading each document and highlighting sections that were most relevant to university admissions policies regarding affirmative action. Major themes and key words that were extracted during the coding process are shown in Table 2. The results were entered into tables as shown in Chapter Four.

The Researcher's Personal Bias

The results of this study created two points of conflict that must be addressed. The first was dual standards. Colleges and universities base the majority of their admissions on a set of standards for admission. The standards are based on GPA, SAT and coursework completed by prospective students. The use of affirmative action programs in admissions sets up a conflict when two sets of standards are applied. The majority of students must meet the required standards for admission, others do not. This in itself is discrimination in the

admission process. This researcher does not believe colleges and universities hold the view that they are discriminating against students but believe they are providing an opportunity to students who may not otherwise be able to attend. This is placing one group above another in the admission process. In addition to the dual standards in admission, there is the issue of allowing legacy students admission when the standards for admissions are not met. This is an issue for some schools because of alumni contributions to their alma mater.

The second area of conflict was the question of what was more important to colleges and universities: money or students. There is a group of students who are admitted solely on their physical prowess, that is, for athletic scholarships. Each year hundreds of students, at large colleges and universities are admitted based on what they can do on the field or in a stadium. Athletic programs are very costly to colleges and universities but do offer monetary benefits if schools do well in playoffs. The number of students who graduate on an athletic scholarship is below the average for the student body as a whole. The money issue goes off the field and into outside areas for colleges and universities.

Recently the university in the Southwest has been admitting more students from out of state. The main reason is out-of-state tuition is higher for those students applying. So, it may be partly a diverse student population that the colleges and universities are after, but also financial gain for the colleges and universities. (Sanchez, 2009)

The basic question or ideal in this study was this: If you discriminate *for* one individual, will you then be discriminating *against* another individual in the same act? The answer, in this author's mind, is clearly in the affirmative.

Therefore, the researcher found this study interesting in that there are two sets of rules that under which colleges and universities operate. The first was standards that apply to the main body of applicants. The second involved programs to admit individuals who did not meet the same standards, but were awarded benefits of those who have met the standards because of mandates and social expectations to achieve a diverse student body.

Chapter Four: Results of Analysis

The tables summarizing the affirmative action policies and programs were compared with relevant Supreme Court and Appellate Court cases, state initiatives and directives, and federal guidelines. Tables include data for the five universities on which this dissertation focuses, in five regions of the United States: the East, Midwest, South, Southwest, and West. Tables 3 through 9 are crucial in so far as recognizing how colleges and universities appear to have conflicts between (a) the affirmative action policies and programs; (b) their admission policies and standards for admissions; and (c) legal precedent set by recent lawsuits, state mandated changes through voter initiatives, and state directives.

Research Questions

The research questions were as follows:

1. What are the social implications of 2002-2007 affirmative action admission litigation for five U.S. universities as well as the students and prospective students?
2. What are the political implications of 2002-2007 affirmative action admission litigation for five U.S. universities?
3. What are the economic implications of 2002-2007 affirmative action admission litigation for five U.S. universities as well as the students and prospective students?
4. What are the legal implications of 2002-2007 affirmative action admission litigation for five U.S. universities?

Admissions Process

Holistic approach to admissions. Many schools now use a holistic approach in the admission process. Standards are used in almost all college and university admissions, but the holistic approach allows flexibility around the standards. Within the application, each student is asked to provide a statement or essay on his or her life and experiences. This is a part of the holistic approach for deciding on admission.

Variation in admission process to achieve diversity. Most schools develop short term and long-term goals for providing cultural diversity and their plan on how to achieve these goals. Included are:

- Texas public universities are held to the “Ten Percent” plan which guarantees the top 10% of all high school graduates admission to the universities.
- An academic and personal review is part of the review process at the university in the Southwest. This is part of the holistic view of the student.
- The university in the Northwest does call out a specific group; it asks if students applying for admission were in the military.
- The university in the South is required by law to inform the state and publish the admission requirement one year prior to implementation.
- The university in the Midwest was sued for its admission policies and was found to be in violation of the 14th Amendment. In addition, the voters passed an initiative to prohibit race or ethnicity in the admissions process. However, the school has adopted similar processes as other schools to skirt the requirement of a narrowly tailored policy by using a holistic approach.

Each school has a standard for ACT/SAT/GPA requirement. Some schools have a requirement for specific classes, such as engineering and math requirements for admissions. With the requirements or standards in place, these scores are not required if the holistic approach to admission is used.

Results for Analysis of Social Effects

Research Question 1 asked: What are the social implications of 2002-2007 affirmative action admission litigation for five U.S. universities as well as the students and prospective students? Table 3 shows that all five (a) contain photographs of various ethnicities of students or faculty members, and (b) states an intention to maintain or increase ethnic/racial or cultural diversity of student body. In contrast, only one states that the student body is ethnically or racially diverse and only one (not the same school) states that the faculty is ethnically or racially diverse. Pictures of diverse individuals on the Web site do not necessarily indicate a philosophy of the university on admissions, but this is of interest as an indication that the university wishes to promote an image of an ethnically diverse student body and faculty.

Two out of the five universities (40%) overtly use a quota, according to the primary reviewer, for all universities (100%) the secondary reviewer was undecided whether or not there was a quota system being used. One university (20%) explicitly encourages members of racial or ethnic groups or minority groups to apply. None of the schools (0%) showed percentages of ethnic or racial groups, and there was no indication for any of the schools of whether or not percentages of ethnic and racial groups match that of the surrounding communities or of the United States. All (100%) contained photographs of various ethnicities of students or faculty members, yet only one (20%)

stated that the student body is ethnically or racially diverse. None (0%) gave percentages of ethnic or racial groups.

Table 3

Social Analysis of Affirmative Action Programs, Policies, and Procedures

| Actions that Exemplify Social Category | SE | MW | S | NW | SW |
|--|----|-------|-------|-------|-------|
| Uses quota to obtain diverse student body | U | Y (U) | U | U | Y (U) |
| Explicitly encourages members of racial or ethnic groups or minority groups to apply | Y | U (N) | U (N) | N | U (N) |
| Percentages of ethnic and racial groups match that of the surrounding communities or of U.S. | U | U | U | U | U |
| Contains photographs of various ethnicities of students or faculty members | Y | Y | Y | Y | Y |
| States that student body is ethnically or racially diverse | N | Y | N | N | N |
| Gives percentages of ethnic/racial groups | N | N | N | N | N |
| States that faculty is ethnically or racially diverse | Y | N | N | U (N) | N |
| States intention to maintain or increase ethnic / racial or cultural diversity of student body | Y | Y | Y | Y | Y |

Note. Y = yes or true, N = no or false, U = undecided or unconfirmed. Parentheses indicate the second reviewer's decision when it was not in agreement with the first reviewer's decision.

For only one university (20%) did both reviewers determine that the Web site content stated that the faculty is ethnically or racially diverse, although one reviewer was undecided about whether an additional university made such a statement. Each of the universities (100%) stated an intention to maintain or increase ethnic, racial, or cultural diversity of student body.

Results for Analysis of Political Effects

Research Question 2 asked: What are the political implications of 2002-2007 affirmative action admission litigation for five U.S. universities as well as the students and prospective students? Table 4 shows that for each of the five schools there were voter-led or state-led initiatives related to affirmative action. Three were voter-led (SW, NW, & MW) and two were state-led (SE & S). Among these plans, those that simply banned affirmative action programs were Proposition 209 (W), Proposition 2, (MW), Initiative 200 (NW), and the One Florida plan (SE). On the other hand, two that proactively included admission of a percentage based on academic achievement were (a) the Talented 20% Plan that guarantees the top 20% admission to the university in the Southeast system (SE) and (b) the Texas Ten Percent Plan (S).

Table 4

Political Analysis of Affirmative Action Programs, Policies, and Procedures

| Actions that Exemplify Political Category | SE | MW | S | NW | W |
|---|----|----|---|----|---|
| One Florida Initiative | Y | | | | |
| Talented Twenty Percent | Y | | | | |
| Proposition 209 | | | | | Y |
| Initiative 200 | | | | Y | |
| Texas Ten Percent Plan | | | Y | | |
| Proposition 2 | | Y | | | |
| Voter or state led initiatives | Y | Y | Y | Y | Y |

Note. Y = yes or true, N = no or false, U = undecided or unconfirmed

Results for Analysis of Economic Effects

Research Question 3 asked: What are the economic implications of 2002-2007 affirmative action admission litigation for five U.S. universities as well as the students and prospective students? What are the legal implications of 2002-2007 affirmative action admission litigation for five U.S. universities as well as the students and prospective students? Table 5 shows that all five schools (100%) do give preference to certain ethnic or racial group(s) for scholarships, grants, or other financial benefits. To break this down into specific types of preferences, (a) two out of the five (20%) give grants for students qualifying under affirmative action, although both reviewers were undecided about two of the universities, so it may be that four out of the five (80%) gave grants for affirmative action;

(b) three out of five (60%) gave student loans for students qualifying under affirmative action; (c) and four out of five (80%) have some type of admission privilege based on student socio-economic status.

Table 5

Economic Analysis of Affirmative Action Programs, Policies, and Procedures

| Actions that Exemplify Economic Category | SE | MW | S | NW | SW |
|--|----|----|---|----|----|
| Certain ethnic or racial group(s) given preference for scholarships, grants, or other financial benefits | Y | Y | Y | Y | Y |
| Grants for affirmative action students | Y | U | N | U | Y |
| Student Loans | Y | Y | U | U | Y |
| Admission based on Socio-Economic student condition | Y | Y | U | Y | Y |
| Demographic areas based on economic conditions | Y | Y | U | Y | Y |

Note. Y = yes or true, N = no or false, U = undecided or unconfirmed

Results for Analysis of Legal Effects

Research Question 4 asked: What are the legal implications of 2002-2007 affirmative action admission litigation for five U.S. universities as well as the students and prospective students? Table 6 specifies which initiatives and propositions were used by states to change the legal grounds for student admission with the intention to affect affirmative action.

For the university in the Southwest, both reviewers observed that several potential conflicts existed because of narrowly defined affirmative action criteria in admissions policy description, admissions review procedures, statement of diversity goals, and scholarship criteria. In the cases of the official affirmative action statement, both reviewers were undecided about whether or not a conflict (having narrowly defined affirmative action criteria) was clearly apparent.

Table 6

Legal Analysis of Affirmative Action Programs, Policies, and Procedures

| Actions that Exemplify Legal Category | SE | MW | S | NW | SW |
|--|----|----|---|----|----|
| One Florida Initiative | Y | | | | |
| Proposition 2 | | Y | | | |
| Texas Ten Percent Plan | | | Y | | |
| Initiative 200 | | | | Y | |
| SP-1 & SP-2 | | | | | Y |
| Proposition 209 | | | | | Y |
| Lawsuits against colleges and universities | | Y | Y | | |
| State or Voter led initiatives | Y | Y | Y | Y | Y |

Note. Y = yes or true, N = no or false, U = undecided or unconfirmed

For the university in the Southwest, both reviewers observed that in statements about consideration of race, ethnicity, or culture, in only two areas (in statement of diversity goals and in scholarship criteria) potential conflicts existed

with legal precedent. In three areas (admission policy description, admission review procedures, and affirmative action statement), both reviewers were undecided about whether or not potential conflicts existed with legal precedent regarding statements about consideration of race, ethnicity, or culture.

Table 7

Points of Conflict Between the University in the Southwest's Affirmative Action Programs, Policies, and Procedures and Legal Precedent

| Areas of Potential Conflict | Admissions Policy Description | Admissions Review Procedures | Affirmative Action Statement | Statement of Diversity Goals | Scholarship Criteria |
|---|-------------------------------|------------------------------|------------------------------|------------------------------|----------------------|
| Uses simple quota | NC | U | NC | NC | NC |
| Uses narrowly defined affirmative action criteria | C | C | U | C | C |
| Includes consideration of race / ethnicity or culture | U | U | U | C | C |

Note. C = conflict, N = no conflict, or U = undecided

Table 8 shows that for the university in the Southeast and the university in the Northwest (40%), at least one coder was undecided about whether or not a simple quota was used, while for the other universities (60%), it was clear that a quota was not used and thus no potential conflict existed. Table 8 shows that for all five universities (100%), in some part of their literature there was the use of narrowly defined affirmative action criteria, thus putting them in conflict with legal precedent. For all five universities

(100%) their statements about consideration of race, ethnicity, or culture might put them in conflict with legal precedent.

Table 8

Points of Conflict Between All Five Universities' Affirmative Action Programs, Policies, and Procedures and Legal Precedent

| Areas of Potential Conflict | SE | MW | S | NW | SW |
|---|----|----|----|--------|----|
| Uses simple quota | U | NC | NC | U (NC) | NC |
| Uses narrowly defined affirmative action criteria | C | C | C | C | C |
| Includes consideration of race / ethnicity or culture | C | C | C | C | C |

Note. C = conflict, N = no conflict, or U = undecided

Table 9 shows that conflicts occur within the university in the Southwest programs, policies, and procedures when (a) use of a quota is accompanied by explicit encouragement of groups targeted for affirmative action, (b) political agendas are linked to explicit encouragement of groups targeted for affirmative action, (c) scholarship preferences are explicitly linked to encouragement of groups targeted for affirmative action, (d) scholarship preferences are explicitly linked to absence of percent matches, (e) scholarship preferences are based on a political agenda, or (f) laws and legal precedent are violated by the presence of explicit encouragement, absence of percent match, and political agendas.

By the university in the Southwest's statement about not following SP 1 and 2 it admits to going directly toward a target number for admission, which appears to be outside the legal guidelines.

Table 9

Points of Conflict for the University in the Southwest Affirmative Action Programs, Policies, and Procedures Within University-Published Documents

| | Social: (Y) Uses Quota | Social: Explicit Encourage- ment | Social: (N) Percent Match | Political | Economic: Scholarship Preference | Legal |
|---|---------------------------------|---|------------------------------------|-----------|--|-------|
| Social: (Y) Uses Quota | | - | - | - | - | - |
| Social: Explicit Encourag ement | C (U) | | - | - | - | - |
| Social: (N) Percent Match | U | U | | - | - | - |
| Political | U | C | U | | - | - |
| Econ- omic: Scholar- ship Prefer- ence | C | C | C (U) | C | | - |
| Legal | C (U) | C | C (U) | C | C | |

Note. C = conflict, N = no conflict, or U = undecided; in reference to Tables 7 - 10, (Y) = yes or true, (N) = no or false, (U) = undecided or unconfirmed. Parentheses indicate the second reviewer's decision when it was not in agreement with the first reviewer's decision.

Summary

The data were presented according to findings related to social, political, economic, and legal frameworks. The data showed that the programs, policies, and procedures at all five of the universities use affirmative action and diversity programs and this can be interpreted as being in conflict with their admission standards. The data in Tables 7 through 9 show that there is a potential conflict within each university's admission process when programs, policies, and procedures are examined.

Chapter Five: Conclusions, Implications, and Recommendations

Introduction

In this study, information from state, private, and federal databases was used to help determine the social, political, economic, and legal impact of various court decisions on university admission policies. This information included Supreme Court and Appellate Court cases, state initiatives and directives, and federal guidelines. In this chapter, these sources are discussed in comparison with the data resulting from the analysis described in Chapter Four.

This chapter includes a section that discusses general conclusions based on interpretations of the findings. This chapter also presents other plausible alternative explanations to the researcher's inferences. The theoretical framework used in this study is the S.P.E.L. Model (Schmieder-Ramirez & Mallette, 2007). Conclusions were organized according to this framework. In addition, important implications for policy practice are noted. Recommendations are made for the benefit of universities wanting to achieve student diversity while complying with laws passed at the state and federal level.

Lastly, this chapter contains recommendations for further study. Additional research regarding academic success/graduation rate of students admitted under the veil of diversity should be conducted. Also, one can look at the graduation rate in relation to students admitted under the holistic approach versus those admitted under a point system.

Restatement of the Problem and Purpose

The problem investigated by this study was that universities had limited directions for application of affirmative action rulings from federal and state courts in regards to

admission policies. The difficulty resides in interpretation of the rulings while adhering to the 14th Amendment. The universities remain vulnerable because of students who claim to have been wronged by admission policies that utilize racial and/or socioeconomic preference. The specific universities studied in this research are a university in the Southeast, a university in the Midwest, a university in the South, a university in the Northwest, and a university in the Southwest. The purpose of this study was to examine the social, political, economic, and legal impacts of affirmative action and diversity policies on colleges and universities admissions policies and procedures.

Conclusions

The following three major conclusions were drawn based on the findings of this research.

Conclusion 1: Social and political. According to the results from Table 9, the five universities examined in this study appear to be in violation of the 14th Amendment in regards to their admission policies. The universities use narrowly defined affirmative action criteria and include consideration of race/ethnicity or culture in their decision process for admitting students. For example, each university includes short-answer response questions as part of their admission application. One or more of these questions provides an opportunity for the applicant to discuss his or her cultural background. The university in the Southeast states in its Application Review Procedures that short-answer and essay questions help admission officers consider the applicant within the context of each applicant's own experiences with family, high school, local communities, and within the context of his or her cultural background (University of Florida, 2007).

Similarly, the university in the Southwest states, in its Freshman Selection Overview, that while California law prohibits the consideration of an applicant's race or gender in individual admission decisions, the university also has a mandate to reflect the diversity of the state's population in its student body (University of California, 2006). While not directly stated that affirmative action is used in the admissions process, one can infer that methods such as reviewing a student's short-answer responses can provide information to determine the race/ethnicity or cultural background of the student to help the university attain its desired goal of a culturally diverse student body.

Conclusion 2: Economic. The findings revealed that the universities provide economic support for students of certain ethnic or racial groups and/or socioeconomic backgrounds. In addition to state and federal college funding sources, the five schools in this study provide financial support to students. These schools explicitly state on their financial aid Web page that certain scholarships or awards are available for students of particular backgrounds. According to the university in the Southwest's Web page, students must participate in a face-to-face interview to be considered for an award. Such practices provide an opportunity for the school to note a student's ethnicity or cultural background. The university in the South also provides financial assistance to students of varying so-called underprivileged backgrounds. The financial assistance may be in the form of a scholarship or loan.

Conclusion 3: Legal. All five universities are in conflict with state or voter passed legislation that limited or removed the use of race, gender, and ethnicity in admission programs and policies. The university in the Midwest and university in the South have past lawsuits against them in regards to their violation of legislation.

In *Cheryl J. Hopwood v. State of Texas* (1996) the Fifth Circuit Court of Appeals ruled in the plaintiff's favor deciding that race cannot be used in admissions. Likewise, in *Gratz and Hamacher v. Lee Bollinger et al.*, the Supreme Court ruled that the university was in violation of the 14th Amendment.

In California, the voters passed Proposition 209 banning the use of affirmative action in all public-sector areas such as employment, education, and contracting. Also, the Regents of University of California passed SP-1 indicating the university system prohibited the consideration of race, religion, sex, color, ethnicity, or national origin as criteria for admission to the university or to any program of study according to the affirmative action policy (Affirmative Action and Diversity Project, 2006). However, on May 16, 2001, the Regents rescinded SP-1. The voters in the state of Washington passed Initiative 200, which bans affirmative action in higher education, public contracting, and hiring.

Implications

The findings and conclusions suggest the following three major implications with respect to opportunities provided to students who may not have had the experience otherwise as well as the opportunities taken away from students who were academically better suited but denied admission because of their race:

1. The social implications of 2002-2007 affirmative action admission litigation would be that students should be admitted without acknowledgment of race, ethnicity, sex, etc. However, according to the data reviewed it seems that students of diverse backgrounds are sought after for admission. Much emphasis is placed on the words *cultural* and *diversity* in the universities' admission procedures. Even though the universities do not directly ask for a student's race or ethnicity, the universities do provide opportunities for students to mention or discuss their socio-economic background, other hardships faced, or parent educational level through the writing of essays. Such opportunities allow students to mention their race or ethnicity if they so choose, or give indications to such information, which in essence gives the university insight into achieving its diverse student population.
2. The political implications of 2002-2007 affirmative action admission litigation is voters and states stating that they do not want race, sex, ethnicity, etc to be considered in the process of admitting students. This is evidenced in the passing of Proposition 209 in California as well as SP-1 and SP-2 in the UC system. In Florida, it is evidenced in the One Florida Initiative. However, the universities are choosing to ignore such political decisions by rescinding the ban on affirmation action so that diversity can be obtained on their campuses. The university in the South indicates in its "Statement on reinstatement of affirmation action in admission" on September 2003 that it is necessary to reinstate affirmative action so that it can be in a position to compete nationally for talented

minority students. By universities choosing to ignore such decisions, it is possible that a broader range of student diversity can be achieved.

3. The economic implications of 2002-2007 affirmative action admission litigation would suggest that students who demonstrate financial need, without regard to race, ethnicity, sex, etc should be eligible to receive such funding to attend the university. Yet, this is in conflict with the evidence that the five universities are providing race based scholarship opportunities.
4. The legal implications of 2002-2007 affirmative action admission litigation is that any university that chooses to ignore such legislation passed either by the voters or the government are in violation. However, the consequences of being in violation are not defined.

Implication 1: Social and political. Affirmative action programs can benefit an individual and provide an opportunity that otherwise would not have been possible, yet Canady, a Florida Republican who was on the Subcommittee of the House Judiciary Committee and a sponsor of the 1997 Civil Rights Act, provided his view on affirmative action that preferences discriminate in and of themselves. By affording opportunities to some individuals, they deny opportunities to other individuals. Although affirmative action attempts to be a remedial measure, because of scarcity in available benefits in fact creates new victims of a government-imposed discrimination (Canady, 2000).

Another university spoke out on how affirmative action admission policies have unintended consequences. President James L. Doti (2003) of Chapman University published an article outlining his view of how affirmative action admission policies affect students:

The goal of affirmative action was to increase diversity and through that diversity create a multicultural society that reflects our common humanity. What we get instead is a situation where self-esteem of African-Americans and Hispanics suffers and a myth is created that their level of academic performance is subpar (para. 4-5).

President Doti (2003) pointed out that one cost of affirmative action admission policies is that “an opportunity for one [student] means a closed door for another” and “admitting one student means another student is denied admission” (para. 7, 11). At the end of the article, President Doti quoted Dr. Martin Luther King: “I have a dream that my four children will one day live in a nation where they will not be judged by the color of their skin but the content of their character.... injustice anywhere is a threat to justice everywhere” (para. 12). This illustrates how changes in policies will always affect a group or groups in some way.

Changes were made recently in admission policies by the regents of the university in the Southwest and these changes have angered the Asian community. In 2009, the admissions officials enacted changes to limit the number of Asian students in future admissions. It will increase White students, while leaving Black and Hispanic students at current levels. The basis for this change was to mirror the percentages of the state’s population to the percentages of Asian students in the university system (Chea, 2009).

Implication 2: Economic. Sander (2004) of the university in the Southwest law school provided an in-depth analysis of affirmative action admission for law schools. He submitted an article for the *Stanford Law Review* in which he said:

This article is on the effects racial preferences in admissions have on the largest class of intended beneficiaries: black applicants to law school. The principal question of interest is whether affirmative actions in law schools generate benefits to blacks that substantially exceed the costs to blacks.

The “costs” to blacks that flow from racial preferences are often thought of, in the affirmative action literature, as rather subtle matters, such as the stigma and stereotypes that might result from differential admission standards....The principal “cost” I focus on is the lower actual performance that usually results from preferential admissions. (pp. 369-370)

Sander (2004) also provided results of his study as far as how the affirmative action admission policies actually harmed the students who were admitted under these programs. He stated that:

blacks fail to complete law school at a disproportionate rate, for mostly academic reasons...Of all black students in the LSAC-BPS study who began law school in 1991, only 45% graduated from law school, took the bar, and passed on their first attempt. The rate for whites was over 78%. After multiple attempts, 57% of the original black cohort became lawyers. But this still means 43% of the black students starting out never became lawyers, and over a fifth of those who did become lawyers failed the bar at least once. (p. 454)

The scholastic issue for blacks was one part of the problem as Sander’s reported. The next issue was to be seen in the job market for the students that did pass the bar. “The second-most-powerful predictor of earnings is not the law school prestige (a distant third), but law school grades” (pp. 555-459)

This example of how lawyers will capture the better paying jobs is directly related to how well they do in law school. So, if students do not do well, which is reflected in their grades, then their chances of finding a selective law firm is a direct result of lower grades.

Sanders (2004) was questioned numerous times during the drafting and submission of his article, and as one can imagine, this took great courage to question affirmative action policies by a university system that appears to directly violate state law in its admission policies.

Implication 3: Legal. Additionally, universities are using new and innovative ways to target certain minorities for admission.

University of Michigan administrators also have started using a demographic software program called Descriptor Plus from the College Board, the SAT Company. Using census and College Board data, the program helps schools find and target prospective students from disadvantaged or underrepresented neighborhoods and high schools. The Descriptor data included the percentage of “nonminority” students, family income, and parents’ educational levels in those areas. Descriptor Plus, which costs \$15,000 a year and is currently in use by about 40 U.S. colleges “helps us identify clusters of students with-out using race, ethnicity, or gender,” says Lester Monts, senior vice provost for academic affairs at Michigan. Education officials in states with bans are helping one another. In February, the University of Michigan convened a meeting of counselors and financial aid experts from the University of Texas, the University of Washington, UC-Berkley, and the University of Georgia to swap ideas. (Levine, 2007, p. 35)

This action by colleges and universities demonstrate how they view the laws and lawsuits which have taken place over the last 4 years. By taking this action they are trying to skirt or by-pass the changes in their respective state laws. Future lawsuits will be probable if this type of information is made more public.

Results of State Mandates and Propositions

In a sense, colleges and universities are “gaming the system” by using companies to target and identify minorities for AA programs and by using a holistic approach to admission. The political and legal aspects of admission are in conflict. On the one hand, lawsuits rule in favor of students and against schools using quotas and loosely tailored programs for AA (Judicial Branch), while the legislative branch pushes for AA programs. The Executive Branch will go with whatever the populous believes is the current political direction. For example, President Bush changed his path due to community backlash (U.S. Department of Education, 2003).

Most arguments are for providing an opportunity based on racial and or ethnic lines. This negates standards. The majority of students will be required to meet a minimum standard for admission. By allowing some targeted students for admission that do not meet the standard creates conflict within the community. Everyone agrees publicly not to discriminate, but this action publicly supports discrimination against students who met the standards for admission but do not have minority or other “underprivileged” status.

Recommendations

The following section provides recommendations for future research, future methodological enhancements, and future policy recommendations.

Recommendations for future research. Based on the findings of this project, this researcher recommends the following research questions for future research:

1. What benefits are received other than achieving campus diversity for admitting students who do not meet the desired academic abilities?
2. What is the graduation rate of students admitted under universities’ holistic approach rather than a standardized point system?
3. Of the students that are admitted freshman year, what percent graduate within the typical 4-year timeline? How many obtain a job in their field of study?

Recommendations for future methodological enhancements. This researcher encountered some limitations while conducting this study that could be overcome through the consideration of specific methodological enhancements when designing future studies on this topic. One limitation was the wording on the universities’ Web sites, that possibly disguised their use of affirmative action in their admissions practices.

This may have led to the number of “undecided” categories in the tables in Chapter Four.

Recommendations for policy. Given the findings of this research—that all five universities are in conflict with state or voter passed legislation that limited or removed the use of race, gender, and ethnicity in admissions programs and policies—it is recommended that these and other schools take proactive measures to bring their policies, procedures, and publications in line with law and legal precedent, in order to avoid being vulnerable to lawsuits.

Final Summary

The problem to which this study was directed was that Supreme Court decisions indicate that a narrowly tailored approach for affirmative action will be accepted, but colleges and universities have not been provided a clear interpretation of how to administer admission policies while meeting the legal requirements set forth in regards to the 14th Amendment. The purpose of this study was to review affirmative action policies in place by universities and to analyze their respective policies based on changes in the social , political, legal and economic changes that have occurred during the period of 2002-2007.

Based on the findings, the study concluded that during this 5-year period, colleges and universities used affirmative action practices and policies in admissions programs in direct violation of laws enacted to avoid such practices and despite state and voter passed legislation.

Outwardly, it appears that colleges and universities do not intend to abide by the intent of laws that were enacted to limit the use admissions based on race, culture or

minority status. Colleges and universities find loopholes or ways around the law to continue the use of current admission policies and programs for Affirmative Action in admission.

It is recommended that colleges and universities use a more narrowly tailored guideline in future Affirmative Action Admission Policies, or bear the cost of litigation.

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APPENDIX

Comparison of In-State and Out-of-State Tuition

Annual Cost for College/University – Public vs. Private California

| College / University | Tuition | Fees | Room & Board | Room Only |
|-----------------------|-----------|---------|--------------|-----------|
| USC | \$29,988 | \$524 | \$8,988 | \$4,960 |
| UCLA | \$16,956* | \$6,576 | \$11,187 | - |
| U.C. Davis | \$16,956* | \$6,313 | \$8,768 | - |
| Pepperdine University | \$28,630 | \$90 | \$8,640 | \$5,540 |
| Cal State Long Beach | \$10,170* | \$2,685 | \$5,800 | - |
| Harvey Mudd College | \$29,533 | \$684 | \$9,845 | \$5,030 |
| Claremont McKenna | \$29,010 | \$200 | \$9,780 | \$4,870 |
| Public Average | \$0 | \$5,191 | \$9,313 | - |
| Private Average | \$29,295 | \$375 | \$8,585 | |

Annual Cost for College/University – Public vs. Private –Florida

| College / University | Tuition | Room & Board | Room Only |
|-----------------------------|----------|--------------|-----------|
| Florida State - Tallahassee | | | |
| In District Tuition | \$0 | \$6,778 | \$3,600 |
| In State Out of District | \$3,208 | \$6,778 | \$3,600 |
| Out Of State | \$16,340 | \$8,640 | \$5,540 |
| University of Florida | | | |
| In District Tuition | \$0 | \$6,260 | \$3,940 |
| In State Out of District | \$3,093 | \$6,260 | \$3,940 |
| Out Of State | \$17,224 | \$6,260 | \$3,940 |
| University of Miami | \$29,020 | \$8,906 | \$56,224 |

Annual Cost for College/University – Public vs. Private - Texas

| College / University | Tuition | Room & Board | Room Only |
|------------------------------|----------|--------------|-----------|
| University of Texas - Austin | | | |
| In District Tuition | \$0 | \$6,972 | N/A |
| In State Out of District | \$6,972 | \$6,972 | N/A |
| Out of State | \$16,310 | \$6,972 | N/A |

| | | | |
|------------------------------|---------------------|---------|---------|
| University of Texas - Dallas | | | |
| In District Tuition | \$0 | \$6,244 | N/A |
| In State Out of District | \$6831 | \$6,244 | N/A |
| Out of State | \$15,111 | \$6,244 | N/A |
| Baylor University Fees | \$19,050 \$2,020 | \$6,485 | \$3,346 |

Annual Cost for College/University – Public vs. Private – Washington

| College / University | Tuition | Room & Board | Room Only |
|----------------------------------|-------------------|--------------|-----------|
| University of Washington | | | |
| In District Tuition | \$0.0 | \$6,592 | \$3,300 |
| In State Out of District Fees | \$5,077 \$903 | \$6,592 | \$3,300 |
| Out of State | \$19,830 | \$6,972 | \$3,300 |
| Gonzaga University Fees | \$23,140 \$438 | \$6,700 | \$3,400 |

Annual Cost for College/University – Public vs. Private - Michigan

| College / University | Tuition | Room & Board | Room Only |
|--------------------------|-----------------|--------------|-----------|
| University of Michigan | | | |
| In District Tuition | \$0 | \$7,344 | N/A |
| In State Out of District | \$9,213 | \$7,344 | N/A |
| Out of State | \$27,602 | \$7,344 | N/A |
| Kalamazoo Fees | \$25,644 N/A | \$6,709 | \$3,273 |

Note. Each table was created using CNNMoney.com Tuition Calculator, 2006. *Amount for out-of-state tuition and resident tuition = \$0