

**The perception and awareness of conflicting legal  
guidance concerning affirmative action admissions  
practices at two institutions of higher education in  
California**

Thesis submitted in accordance with the requirements of the  
University of Liverpool for the degree of Doctor of Business  
Administration (DBA)

by

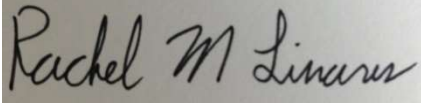
Rachel Elizabeth Marean Linares, MBA

March 2017

## Declaration

I certify that this work is original except as acknowledged in the text. I also testify that the material has not been submitted in whole or in part for a degree in any university. I have also acknowledged any help I received in preparing this thesis.

The Ethics Committee of the University of Liverpool granted ethics approval for this research.

Signed: 

Date:

## Abstract

Affirmative action in college admissions is a contentious topic which has inspired a significant amount of legislation affecting its use. This legislation exists independently at the state and federal levels, but when viewed together within the entire legislative framework, individual pieces of legislation contradict each other, providing confusing and conflicting legal guidance for higher education admissions counselors. Admissions counselors' daily activities are governed by this legislation, but without a high level of knowledge or awareness, admissions counselors could unknowingly engage in recruiting activities that violate one or more aspects of the related legislation. This study investigated the current level of knowledge in higher education admissions counselors at two public universities in the state of California regarding the conflicting legislation affecting the use of race-conscious admissions practices. This is important because the use of race-conscious admissions practices is the most divisive issue currently facing the American higher education system, and can have significant legal ramifications for institutions of higher education. While previous research has identified the effects of race-conscious admissions practices, it did not sufficiently identify the current legislation affecting the use of race-conscious admissions practices, the conflicting nature of the legislation, or the perception or awareness of the admissions counselors of the conflicting nature of the current legislation.

This study, therefore, aims to determine the perspective of the higher education admissions counselor, the overall level of awareness and knowledge regarding the multiple pieces and layers of legislation, and the level of awareness for the conflicting legal guidance created when the legislation is viewed as a whole. This research has the objective to better understand the individual pieces of legislation, their individual affects, and when combined, the nature of their conflicting guidance. To achieve this, in-depth, individual interviews were conducted with higher education admissions counselors at two public institutions located within the state of California. Conventional content analysis was used to analyze the multiple perspectives found within the primary data and illustrate the overarching themes expressed within the data.

The findings indicate that admissions counselors claim to have a low level of awareness and knowledge concerning the legislation affecting race-conscious admissions practices. Once they were provided a basic overview of the legislation, though, interviewees were able to discern that the legislation provided conflicting guidance. Additional findings suggest that admissions counselors do not fundamentally agree with the admissions practices that they follow, but are still adhering to the practices in spite of this. The

research concludes by recommending areas for further research, and suggesting specific actions that can be pursued as a means of implementing the knowledge created through this research.

### Key Words:

Affirmative Action; Conflicting legal guidance; Diversity; Higher Education Admissions; Race-conscious admissions practices.

## Acknowledgement

I would like to thank my supervisor Dr. Andreas Meiszner for his advice throughout my entire thesis journey. His patience, oversight and encouragement were critical to the completion of my research. I would also like to thank my second supervisor, Dr. David Higgins, for his guidance, oversight and encouragement which was crucial to the completion of my thesis. I would also like to thank all of the teaching staff from the program, for all of their contributions during my educational journey with the University of Liverpool.

I am thankful for the help provided by Hung Dang, Associate Vice President of Enrollment Management at California State University, Channel Islands, and Jim Maraviglia, Associate Vice President and Provost at California Polytechnic State University, San Luis Obispo. Without their help, I would not have been able to complete the interviews necessary for my research. I would also like to thank my colleague and friend Dr. Kimberly Tumlin, who was my sounding board, confidant and inspiration throughout my DBA studies, and whose continuous review and proofreading helped with the completion of my research.

Last but not least, I would like to thank my family for supporting me throughout this entire journey and who always encouraged me to follow this dream.

# Contents

Declaration.....	2
Abstract.....	3
Key Words:.....	4
Acknowledgement .....	5
List of Figures .....	9
List of Tables .....	9
List of Terminology and Abbreviations .....	10
1.0 Chapter One - Introduction.....	13
1.1 Research problem .....	14
1.2 Background .....	14
1.2.1 Federal-level legislation .....	16
1.2.2 State-level legislation.....	17
1.2.3 Conflicts in the legislation.....	18
1.3 Research rationale .....	18
1.4 Research objectives .....	22
1.5 Research question.....	22
1.6 Research structure .....	22
1.7 Summary .....	23
2.0 Chapter Two – Developing a Conceptual Framework .....	25
2.1 Establishing diversity as a conscious practice.....	27
2.2 Promoting diversity through admissions practices.....	28
2.3 The perception of race in the American Legal system.....	29
2.4 Foundational case for the use of race-conscious admissions practices .....	32
2.5 Secondary cases which refined the accepted use of race-conscious admissions practices .....	34
2.6 Foundational case for the prohibition of race-conscious admissions practices.....	36
2.7 Why are the conflicting groups of legislation allowed to exist?.....	38
2.8 Rawls’ Law of Fair Equality of Opportunity.....	41
2.9 Critical Race Theory .....	42
2.10 History of admissions practices in California .....	43
2.11 Admissions practices at California Polytechnic State University at San Luis Obispo.....	46
2.12 Admissions practices at California State University at Channel Islands .....	47

2.13 Perception of the legislation .....	48
2.14 Emerging points of discussion.....	49
3.0 Chapter three - research methodology .....	51
3.1 Theoretical and epistemological frameworks.....	52
3.2 Influences on choice of methodology.....	54
3.3 Grounded Theory methodology .....	56
3.4 Data collection techniques .....	57
3.5 Ensuring data validity.....	59
3.6 Research ethics .....	60
3.7 Summary .....	61
4.0 Chapter four - findings .....	62
4.1 Sampling method and study population.....	63
4.2 Data collection tool.....	64
4.3 Content analysis and code development.....	68
4.4 Emergent themes and points of discussion .....	72
4.5 Summary .....	75
5.0 Chapter five - discussion .....	77
5.1 Overview of the data analysis.....	79
5.2 Individual knowledge and awareness of research participants concerning the existing legislation	80
5.2.1 Factors contributing to knowledge gaps.....	87
5.3 Clarity, structure and compliance of CSU system admissions criteria and procedures .....	90
5.4 Alignment of practice and policies with actual admissions work .....	91
5.5 Interviewee's perception of the legislation .....	93
5.6 Awareness of contradictions created by legislation .....	95
5.7 Interviewee's perception of race-conscious admissions practices.....	97
5.8 Interviewee's expectations for training .....	98
5.9 Differences between the two campuses .....	98
5.10 Summary .....	102
6.0 Chapter six – personal reflection .....	103
6.1 Developing a scholarly perspective .....	104
6.2 My growth as a researcher .....	106
6.3 Reflection on action .....	109
6.4 Dealing with challenges .....	110

6.5 Summary .....	113
7.0 Chapter seven: conclusion .....	114
7.1 Review of research objectives .....	114
7.2 Research rationale and findings.....	115
7.3 Contributions to knowledge .....	118
7.4 Research limitations.....	120
7.5 Future areas of research .....	121
7.6 Conclusion .....	122
References .....	124
Appendices.....	164
Appendix 1: Interview questionnaire.....	164
Appendix 2: Interview Roadmap.....	168
Appendix 3: Planned training materials based on the priority of knowledge needed for specific pieces of legislation.....	171



## List of Figures

*Figure 4-1: Participant knowledge of federal-level legislation.*

*Figure 4-2: Participant knowledge of state-level legislation.*

*Figure 5-1: Comparison of Familiarity with Fisher case from ACE Study Participants and Research Project Interviewees*

*Figure 5-2: Sources of Information Consulted*

## List of Tables

*Table 2-1: CPSLO Enrollment Data (CSU Chancellor's Office, 2016)*

*Table 2-2: CSUCI Enrollment Data (CSU Chancellor's Office, 2016)*

*Table 4-1: Sample Population Characteristics*

*Table 4-2: Themes and categories discovered through content analysis*

## List of Terminology and Abbreviations

**Affirmative action in higher education:** A program that accords preferences on the basis of a characteristic desired in the incoming class, most notable on the basis of race or ethnicity (Issacharoff, 1988). Use of race as one factor among many which can be considered during the admissions process, as a means of admitting members of racial minorities for the sake of diversity (Sullivan, 1998).

**American Council on Education (ACE):** The major coordinating body for colleges and universities throughout the United States, representing almost 1,800 college and university presidents. Through the Center for Policy Research and Strategy, it provides research on evidence based emergent practices.

**Compelling interest:** Justification that the educational benefits of diversity as compelling and therefore appropriate foundation for institution-specific race- and ethnicity-conscious admissions practices (Espinosa, Gaertner & Orfield, 2015).

**Diversity:** Within higher education, is defined by four overall categories: race/ethnicity, religion (or lack of), socio-economic status, and sexual orientation (Cole & Ahmadi, 2010; Lake & Rittschof, 2012). Indicates the level of heterogeneity within a given population.

**Equal Protection Clause:** The fourteenth amendment of the United States Constitution, which states that no state “shall deny to any person within its jurisdiction the equal protection of the laws” (Legal Information Institution, 1993), and functions to prevent uneven distributions of resources and opportunities (Sunstein, 1982).

**Fisher v. The University of Texas at Austin (2013, 2015):** Brought against the University of Texas at Austin. Originally heard by the Supreme Court in 2013, was remanded back to the lower court, and then heard again by the Supreme Court in 2015. Upheld the viable use of an overall race-neutral admissions policy, with a small subset of a race-conscious policy, representing no more than 15% of the total admissions.

**Gratz v. Bollinger (2003):** Brought against the University of Michigan College of Literature, Science and the Arts (LSA). Disallowed quotas, emphasized the need for narrow tailoring of admissions practices concerning race, so that race alone cannot be a determining admissions factor.

**Grutter v. Bollinger (2003):** Brought against the University of Michigan Lay School. First case where a narrowly tailored admissions program was found to be narrowly tailored enough and the institution was able to prove a compelling interest for diversity. Implied a 25-year time limit on the use of race-conscious admissions.

**Higher education:** Education or learning at a college or university (Merriam-Webster Dictionary, 2016).

**Hopwood v. Texas (1996):** Brought against the University of Texas Law School. The Supreme Court actually rejected hearing this case, thereby upholding the decision of the 5<sup>th</sup> U.S. Circuit Court of Appeals that the use of race must be narrowly tailored, and that all applications (minority and non-minority) must be reviewed by the same entity.

**Minority:** Within higher education, typically defined as African American, Hispanic/Latino and Native American races (Sullivan, 1998).

**National Association of College Admissions Counselors (NACAC):** A professional organization comprised of more than 16,000 professionals who serve students as they make a choice about pursuing higher education.

**Narrow tailoring:** When the consideration of race present in a challenged policy is limited, and does not alone guarantee admission (Espinosa, Gaertner & Orfield, 2015).

**Race:** A category of humankind that shares certain distinctive physical traits; a family, tribe, people or nation belonging to the same stock; a group of individuals who share a common culture or history (Merriam-Webster Dictionary, 2016). A distinctive characteristic shaped by social, political and cultural elements. Perceived race is influenced by the cultural and social experiences of an individual, while the race by which someone self-identifies can in turn influence their experiences, perspectives and expression of their own race. This difference in perspective, opinion and expression is commonly used by institutions of higher education to demonstrate a diverse student body. When looking at an overall population, race can be considered in terms of majority vs. minority, where minority races are those that only comprise a small portion of a given population. As defined by the U.S. Department of Education, institutions of higher education are required to report student body diversity using the following racial categories: African American, American Indian, Asian American, Filipino, Hispanic/Latino, Pacific Islander, Two or More Races, Unknown, Non-Resident Alien and White.

**Race-conscious admissions practices:** Admissions practices that (1) involve explicit racial classifications as well as those that may be neutral on their face but are sufficiently motivated by a racial purpose and (2) bestow material benefits or other approaches to individual students at the exclusion of others (Espinosa, Gaertner & Orfield, 2015).

**Race-neutral admissions practices:** Admissions practices that, with respect to both language and intent, confer no benefit associated with individuals' race or ethnicity (Espinosa, Gaertner & Orfield, 2015).

**Regents of the University of California vs. Bakke (1978):** First Supreme Court ruling regarding the use of race in higher education admissions. Brought against the University of California, Davis Medical School. Supreme Court ruled against UC Davis Medical School, and effectively disallowed quotas, disallowed the use of separate admissions programs for minority/disadvantaged students, and established the use of strict scrutiny.

**Schuette v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary (BAMN) (2014):** Brought against the State of Michigan. Upholds state's rights to reject the right of a public institution to consider race in the admissions process. Recognizes the right of the voting public to use statewide voting as a legitimate tool to set policy, specifically policies restricting the use of race in public higher education admissions policies.

**Strict scrutiny:** The most rigorous level of judicial review which seeks to find a "compelling interest" that justifies any challenged race- or ethnicity-conscious admissions practices (Espinosa, Gaertner & Orfield, 2015).

**Supreme Court of the United States:** The highest court in the judicial branch of the U.S. government that has original jurisdiction over controversies involving ambassadors or other ministers or consuls but whose main activity is as the court of last resort exercising appellate jurisdiction over cases involving federal law (Merriam-Webster Dictionary, 2016)

## 1.0 Chapter One - Introduction

Affirmative action in higher education is regarded to be one of the most divisive issues facing the American higher education system (O'Neil, 1971). An institution's policies and practices for whom they choose to admit can be more reflective of the institutional mission and vision than any other characteristic of that institution (O'Neil, 1971). The students who are admitted and attend the institution represent by far the largest group on campus, and are the reason that the entire institution even exists (O'Neil, 1971). Admissions decisions are ultimately no more than mathematical predictions of which applicants are most academically and intellectually prepared to succeed at college (O'Neil, 1971).

Affirmative action in higher education is promoted through the use of an admissions program that accords preferences on the basis of a characteristic desired in the incoming class, most notable on the basis of race or ethnicity (Issacharoff, 1988). These practices, also known as race-conscious admissions practices are practices used by higher education admissions counselors to determine which applicants to admit into their institution where race is one factor within all of the admissions criteria. Race is a distinctive characteristic which can greatly influence the experiences and the perspective of the college applicant. While race is only one item of consideration in the admissions process, it can be one of the easier diversity-related characteristics to measure (Alger, 2013; Bernell, Mijanovich & Weitzman, 2009; Budescu & Budescu, 2012; Hunt, Wise, Jipguep, Cosier & Rosenberg, 2007; Juvonen, Nishina & Graham, 2006; Levey, 2004; Richard, Murthi & Ismail, 2007; Seaton & Yip, 2009). Admitting students of a variety of different ethnicities and races creates a diverse student body. This diverse student body has many positive impacts including creating a higher perception of safety and social satisfaction (Juvonen, Nishina & Graham, 2006), allowing for better prepared, more well-rounded professionals (Hurtado, 2005), and causing a decrease in prejudicial behavior (Allport, 1954; Budescu & Budescu, 2012; Pettigrew & Tropp, 2006; Tajfel, 1982; Zajonc, 1968). Institutions of higher education have a desire to create a diverse student body so that these positive impacts can support their overall mission, and can achieve creating a diverse student body by utilizing race-conscious admissions practices.

Institutions are interested in increasing both the overall student body diversity as well as numbers of specific minority groups. These goals are often incorporated into the institutional strategic plan, are translated into institutional practices by higher education administrators and are ultimately carried out by admissions counselors. It is up to the administrators and the admissions counselors to understand the legal framework that surrounds the use of admissions practices, specifically the use of race-conscious admissions practices. Unfortunately, there is an extremely complex set of conflicting legislation that

governs the use of race-conscious admissions practices. A recent study by the National Association of College Admissions Counselors (NACAC) identified the recent Supreme Court rulings (*Fisher* and *Schuette*) as having complicated the traditional responsibilities of admissions counselors and emphasized the need for training in this topic (NACAC, 2014). Another recent study released by the American Council on Education (ACE) has brought greater light and understanding of the awareness of race-conscious admissions practices, specifically in response to the *Fisher* and *Schuette* cases, from the perspective of enrollment management leaders. While this study created a baseline understanding for the two specific Supreme Court cases, it only addressed this from the viewpoint of higher education administrators, and it did not address the conflicting nature of all the legislation governing race-conscious admissions practices. This has created a gap in the knowledge, where it is unknown how aware admissions counselors are of the legislation and of its conflicting nature, and how this is impacting their responsibility of carrying out admissions practices that promote student body diversity within their institutions.

## 1.1 Research problem

Higher education admissions counselors and institutions of higher education have argued that race and/or ethnicity should be an allowable consideration to use within their mathematical predictions of which students to admit to an institution. The practice of considering race within higher education admissions is technically illegal, because it violates federal- and state-level legislation, but has been allowed by the Supreme Court to be used in limited situations. This existing legislation creates a complicated legal framework that must be understood in order to operate without undertaking illegal activities. This complicated framework actually acts to contradict itself, providing confusing and conflicting legal guidance for higher education admissions counselors. There is currently little known regarding the perspective of the admissions counselor, specifically if they are knowledgeable or aware of the conflicting legal guidance concerning race-conscious admissions practices. This must be understood in order to determine the course of action that will best help admissions counselors understand the legislation under which they work in order to prevent them from unintentionally engaging in illegal recruiting activities.

## 1.2 Background

Affirmative action and race-conscious admissions practices are the embodiment of two contradictory missions of higher education institutions. Institutions serve as both the ivory tower on the hill,

guarantying training to the smartest, as well as the level playing field where opportunity is granted to all. Affirmative action embodies the compromise between exclusivity and the opportunity for advancement. Colleges and universities are striving to recruit, enroll and graduate an increasingly diverse student body (Cantor & Englot, 2014) in order to uphold their commitment to society to prepare young adults to operate within a globalized economy (Taras & Rowney, 2007). Institutions must balance this need along with admitting students who they feel are academically prepared to study and eventually graduate successfully. Institutions of higher education are appropriate environments for creating and promoting diversity because they are a pathway through which students prepare to enter society (Park, 2015; Vasquez & Jones, 2006).

There are four essential freedoms enjoyed by colleges and universities that help create and support their educational environment: the ability to determine who may teach, the freedom to set what topics may be taught, the ability oversee how the topics are taught, and the choice to guide who is admitted to study (*Regents of the University of California v. Bakke*, 1978). The ability to utilize race-conscious admissions practices directly affects the last of these freedoms: the choice to guide who is admitted to study. Institutions of higher education strive to train the next generation of leaders. In order for leaders to be competent and systematically responsive to the interests and problems of every sector of people in society, the leaders must themselves represent every sector of society. Therefore, institutions of higher education must admit (and therefore graduate) students that represent every sector of society. If those sectors are not naturally represented through academic standards, other measures (such as race-conscious admissions practices) must be used to admit the underrepresented students (Anderson, 2011).

---

Midway University is a small, private liberal-arts college located in semi-rural Kentucky. The University was founded in 1847 as a female orphan school, and over the next 160 years evolved into a Bachelor and Master's degree-granting institution with campus locations throughout the state. Historically the student body has faced significant diversity challenges, as the majority of students came from within the state and were predominantly Caucasian, and students of a minority race/ethnicity accounted for less than one percent of the total student body. This lack of diversity was a problem highlighted by students as well as faculty and upper administration. The administration decided to exercise its right to decide who was admitted to study by admitting a higher number of minority students. In order to better understand the situation, the Admissions department conducted a study to determine what factors influenced the decision to attend. Within the study, past prospective students (high school students who had inquired about attending but who did not apply), past applicants (that did not accept an offer of admissions) as well as admitted students (who accepted an offer of admission but then did not attend) who self-designated as a minority race/ethnicity were contacted to determine the factors that most affected their decision to not attend Midway. There were two factors that were overwhelmingly present in the responses: respondents demonstrated a high unmet financial need, where basic financial aid was not enough to cover the cost of attendance; respondents also demonstrated trouble meeting the minimum academic requirements for admissions.

---

### 1.2.1 Federal-level legislation

According to guidance from the Supreme Court, college admissions departments can use race as a determining factor when admitting students, but only when used in a narrowly tailored manner. A total of five cases have created this understanding: *Regents of the University of California vs. Bakke* (1978), *Hopwood v. Texas* (1996), *Grutter v. Bollinger* (2003), *Gratz v. Bollinger* (2003), and *Fisher v. The University of Texas at Austin* (2013, 2015). In the case of *Regents of the University of California vs. Bakke* (1978), the Supreme Court abolished the ability to use quotas or predetermined numbers when admitting minority students (Anderson, Daugherty, & Corrigan, 2005). *Hopwood v. Texas* (1996) was not actually heard in front of the court, but the decision to not review the case upheld a lower court's decision that race can be considered when narrowly tailored and when applicants are reviewed as an entire group. The case of *Gratz v. Bollinger* (2003) established that race can be used as a factor within higher education admissions,



but it must be so narrowly tailored as to not create an unfair advantage (Peterson, Kowolik, Coleman, Dietrich, Mascarenhas, McCunniff & Taylor, 2004). *Grutter v. Bollinger* (2003) recommended a time limit (25 years) on the use of race in higher education admissions, and set forth the idea that admitting a ‘critical mass’ of minority students could be beneficial to institutions (Levey, 2004). *Fisher v. University of Texas at Austin* (2013, 2015) upheld that race could be used within a narrowly tailored portion of a holistic application process (where race was considered in only 10% of the application pool) and created a greater burden of proof on the institution to prove that there were no workable race-neutral alternatives (M. Long, 2015). These five cases have worked to establish and gradually refine the Supreme Court’s interpretation of affirmative action in higher education admissions.

In contrast, there are two pieces of federal-level legislation that work to prevent the use of race-conscious admissions practices. The case of *Schutte v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary (BAMN)* (2014) upheld the right of voters to use statewide voting to set state-level policy that restricts the use of race-conscious admissions practices at public institutions within their specific state. Additionally, the Fourteenth Amendment of the United States Constitution, also known as the Equal Protection Clause, sets forth that no state shall “deny to any person within its jurisdiction the equal protection of the laws” (Legal Information Institution, 1993). Equal treatment is also guaranteed under a wide range of federal equal employment opportunity (EEO) laws such as Title VII of the Civil Rights Act of 1964 (Title VII), The Equal Pay Act of 1963 (EPA), the Age Discrimination in Employment Act of 1967 (ADEA), Title I of the Americans with Disabilities Act of 1990 (ADA), Sections 102 and 103 of the Civil Rights Act of 1991, Sections 501 and 505 of the Rehabilitation Act of 1973, and the Genetic Information Nondiscrimination Act of 2008 (GINA). Affirmative action in higher education is historically seen as conflicting with the oldest of these laws, Title VII of the Civil Rights Act.

### 1.2.2 State-level legislation

Existing state-level legislation consistently denies the ability to use race and/or ethnicity as a factor in higher education admissions. Starting with California Proposition 209 and moving through eight other states, the state-level legislation uses the United States Civil Rights Act and the Equal Protection Clause of the United States Constitution to demonstrate that race-conscious admissions practices are discriminatory in nature and deny equal protection to all people. When viewed across the United States as a whole, state-level legislation creates an uneven playing field, with admissions counselor in nine states working under different legal guidance than those in the remaining forty-one states. Colleges and universities have no choice but to modify recruiting activities based on any existing legislation for their

state. These changes have direct repercussions and create new legal and political challenges for minority groups (Morfin, Perez, Parker, Lynn & Arrona, 2006).

### 1.2.3 Conflicts in the legislation

There are two different levels of conflict within the existing federal- and state-level legislation. First, there is conflict within the federal-level legislation. Five Supreme Court cases (*Bakke*, *Hopwood*, *Grutter*, *Gratz* and *Fisher*) all protect the ability to use race-conscious admissions practices as long as they conform to all of the requirements set forth by the Supreme Court. The United States Constitution prohibits the use of race-conscious admissions practices because it denies equal protection of the laws. One Supreme Court case (*Schuetz*) allows state-legislation to contradict the five previously mentioned Supreme Court cases. The second conflict comes between the federal-level and state-level legislation. Legislation in nine states contradicts the five Supreme Court cases (*Bakke*, *Hopwood*, *Grutter*, *Gratz* and *Fisher*) and prevents the use of race-conscious admissions practices at public institutions within those nine states. All of these conflicts create a complicated legal framework that higher education admissions counselors must navigate while working to uphold the mission and goals of their institution.

### 1.3 Research rationale

Higher education admissions counselors and institutions of higher education have argued that race and/or ethnicity should be an allowable consideration to use within their mathematical predictions of which students to admit to an institution. This practice acts as a way to boost minority enrollments in order to build student body diversity and to overcome unequal college preparation and lower access to higher education (Cabrera, Nora, Terenzini, Pascarella & Hagedorn, 1999; Heriot, 2011; Howell, 2010). Studying in a diverse student body benefits all parties involved including minority students, majority students and the institution itself (Alger, 2013; Anderson, 2011; Astin, 1993; Bowman, 2011; Gurin, Day, Hurdado & Gurin, 2002; Jayakumar, 2008; Park, 2012; Washington Higher Education Secretariat, 2013).

The practice of considering race within higher education admissions is technically illegal, because it violates federal- and state-level legislation. At the federal level, the Fourteenth Amendment of the United States Constitution, which guarantees that no state “shall deny to any person within its jurisdiction the equal protection of the laws” (Legal Information Institution, 1993). At the state level, nine individual states have enacted legislation banning the use of race and/or ethnicity at public institutions within their borders. In contrast the Supreme Court has issued five decisions which have set precedence for allowing

the use of race within higher education admissions, within certain restrictions. The Supreme Court has asserted that race is an accurate method to define underrepresented groups within the student body (Alger, 2013; Park, 2015) and that race-conscious admissions practices can (when narrowly tailored) support the educational goal of enrolling more minority students to create a diverse student body (Alger, 2005).

The existing legislation creates a complicated legal framework that must be understood in order to operate without undertaking illegal activities. This complicated framework actually acts to contradict itself, providing confusing and conflicting legal guidance for higher education admissions counselors. These admissions counselors are expected to recruit and enroll a diverse population of students but find themselves caught between the needs of the institution and complying with the conflicting state- and federal-level legislation. This makes it critical that admissions counselors receive guidance and training so that they understand the implications of the legislation specific to the state in which they work. A recent study by the National Association of College Admissions Counselors (NACAC) identified the recent Supreme Court rulings as having complicated the traditional responsibilities of admissions counselors and emphasized the need for training in this topic (NACAC, 2014). The guidance and training will not be effective, though, unless a baseline understanding of the admissions counselor's current knowledge of the legislation is established.

There is currently little known regarding the perspective of the admissions counselor and if they are knowledgeable or aware of the conflicting legal guidance concerning race-conscious admissions practices. The current literature gives some consideration and research from the perspective of high school guidance counselors, and their opinions on the college admissions process (Morgan, Greenwaldt & Gosselin, 2014), but does not give any consideration to that of college admissions counselors. Higher education admissions and selection methods (McDonough, 1994; Rigol, 2003), opinions on qualifications of college applicants (Lentner, 2010) and the overall college admissions process have received numerous research and attention, but no scholarly articles have been published relating to the perspective of college admissions counselors concerning the state and federal legislation affecting their use or the conflicting nature of the existing legislation. There is one recent study by Espinosa, Gaertner and Orfield (2015) which surveyed higher education admissions administrators specifically regarding the effects of the *Fisher* case, but this survey did not address the conflicting legal guidance and did not focus on the regular admissions counselor.

It is extremely important that this issue is addressed at this moment in time because of the Supreme Court's most recent decision, *Schuette v. BAMN*. With the *Schuette* case, the Supreme Court itself upholds states' rights to be able to pass legislation in conflict with the Supreme Court's own rulings. This further complicates the already confusing and conflicting legal guidance with which admissions counselors must comply. As mentioned earlier, proper training cannot take place until admissions counselors current knowledge level is known and understood.

---

In order to overcome the burden of unmet financial need and increase the student body diversity (as defined by the number of minority enrollments), Midway University administrators implemented the Pathways Scholarship program, which provided institutional financial aid to minority students in order to increase overall student body diversity. Recipients were selected after receiving admission to the university, with the amount of the scholarship based on the individual's amount of unmet financial need. During the first years of the program, the Pathways Scholarship program was able to increase minority enrollment to between three and four percent, representing a substantial increase from the historical levels of around one percent. By the 2010-2011 the program had been in existence for four years, and the Admissions department was able to gather data on the academic performance of the Pathways Scholarship recipients. There was overwhelming evidence (along with comments from faculty) that the Pathways Scholars were having significant academic trouble, sometimes to the point of dropping out after the first year or even the first semester. The suggestion was made by the faculty that the Admissions department was admitting minority applicants who did not meet the minimum academic requirements for admission, and was admitting academically unqualified minority students purely for the sake of increasing student body diversity. There were one or two instances identified where an applicant was admitted with less than the required academic requirements, but overwhelmingly the Pathways Scholars met the minimum admissions requirements.

I was invited to accept the challenge of researching, designing and implementing a race-conscious admissions program that would simultaneously increase student body diversity (as measured by the percentage of minority students) as well as the academic qualifications of the students, so that they had a higher likelihood of achieving academic success. Before I was able to accomplish this project, I left the University and began working at CSU Channel Islands (CSUCI). CSUCI was faced with a different issue, where the existence of state-level legislation prohibited the use of race-conscious admissions practices. Upon further investigation, I began to discover how the state-level legislation conflicted with the federal-level legislation, creating conflicting legal guidance. It was this realization that inspired this research project.

---

## 1.4 Research objectives

There are two primary research objectives within this thesis:

- To deepen the understanding regarding the contradictory legal guidance created by the existing federal- and state-level legislation concerning race-conscious admissions practices;
- To deepen the understanding regarding the perspective of admissions counselors relating to race-conscious admissions practices and the contradictory legal guidance that governs those practices.

## 1.5 Research question

Based on the objectives of the research, the following research question (RQ) has been created:

Research Question 1: What is the impact of the contradictory legal guidance with regards to admissions practices at California Polytechnic State University, San Luis Obispo (CPSLO) and CSUCI?

- a) What is the level of awareness of admissions professionals at CPSLO and CSUCI, and are they aware of the contradictory legal guidance with regards to race-conscious admissions practices?
- b) How has this level of awareness been created?
- c) How has the contradictory legal guidance impacted the admissions practices and policies at these two institutions? How are the practices and policies in alignment with what is actually happening?

## 1.6 Research structure

To explore the above research question, the research will use a single method design using primarily qualitative methods. The primary use of qualitative methods was deemed necessary because of the nature of the research, as explained further within Chapter 3.

The research started with a comprehensive literature review of existing literature concerning the different legislation and perceptions affecting the use of race-conscious admissions practices. This includes focusing on federal-level legislation and state-level legislation, as well as the perspective of the higher education institution, throughout Chapter 2. In order to provide context for the issue, literature focusing on race-conscious admissions practices (their implementation and effects) was reviewed to identify the

rational used to justify use of these admissions practices, as well as to identify elements that were used as rational to not allow use of these practices. Also providing context is a review of literature concerning the role of race as a measurement of diversity. Chapter 3 outlines the research methodologies and design chosen for the empirical phase of the research. Chapter 4 presents the data gathered during the empirical phase of the research including data about the admissions counselors at CPSLO and CSUCI, their level of awareness of the contradictory legal guidance, and how it has impacted their practices. Chapter 5 discusses how the findings support the Research Question. Chapter 6 provides a reflection of my journey as an action researcher and scholar practitioner. Chapter 7 outlines the proposed plan of action that was crafted based on the knowledge with this research, and proposes future avenues for research.

## 1.7 Summary

The overall aim of this research is to determine how the contradictory legal guidance for institutions of higher education is perceived by and is affecting higher education admissions counselors at CPSLO and CSUCI. In a previous role as an Admissions manager, I had been asked to research the legislation affecting my particular institution, and develop training information to guide my admissions counselors in recruiting using race-conscious admissions practices. I was immediately struck by the conflicting nature of the existing legislation and understood how confusing that could be not only to admissions managers but more so to the admissions counselors tasked at carrying out the day-to-day recruiting activities. My goal was to create a training program to educate my group of admissions counselors and how the conflicting legislation affected their daily work, but before I could create an effective training program, I needed to understand the current level of knowledge relating to the conflicting legislation. The results of this research will help me understand the extent of the program and will allow me to complete the development of a training program.

This research will be accomplished through a two-step approach. First, the research will explore the contradictory legal guidance created by the state-level and federal-level legislation in order to determine the exact limitations dictated by the legislation. Second, the research will examine the knowledge, understanding and perception that admissions counselors at CPSLO and CSUCI hold regarding the state-level and federal-level legislation regarding race-conscious admissions practices, and identify the sources of information that have worked to create this knowledge. Ultimately, this knowledge can be used to draft a training program focused on increasing the awareness of the conflicting nature of the existing legislation in admissions counselors at CPSLO and CSUCI. As a result of this, it is hoped that following the

completion of this thesis, the researcher can continue the project and administer the training program to the admissions counselors at the two institutions, and then measure if their knowledge improved as a result of the training program. If this is successful, this training program can be promoted to higher education administrators at other institutions in order to provide guidance and support admissions counselors as navigate the conflicting legislative limitations while supporting the institutional commitment to diversity.



## 2.0 Chapter Two – Developing a Conceptual Framework

The overall aim of this research is to determine how the contradictory legal guidance for institutions of higher education is perceived by and is affecting higher education admissions counselors. This literature review was conducted to: identify the existing research and knowledge concerning the history, creation and effects of existing legislation; define conflicting elements of existing legislation; and understand the current state of admissions counselor knowledge concerning existing legislation.

The literature review is a critical component of this scientific research as it explores the breadth and depth of knowledge already created within the academic research concerning diversity and its creation in higher education. It is a roadmap, showing what is known about a topic as well as what is not yet known (Denney & Tewksbury, 2012). The literature review works to establish a foundation of knowledge, provide the resources needed to refine the research question, and highlight any gaps in knowledge that can be explored. In this manner, the literature review creates the rationale for why a new investigation (or research) is needed (Denney & Tewksbury, 2012). The literature review works to support the research question and identify where the research will make a unique contribution to the field of knowledge. It identifies a backbone of theoretical concepts while simultaneously building a bibliography and library of source materials (Rowley & Slack, 2004).

This literature review drew on a large variety of different sources with the intent to evaluate the validity and contribution to the overall knowledge from each source. While academic literature was the primary focus of the review, pertinent professional literature was also consulted. It was important to balance the academic practitioner focus of this research by consulting and including both types of literature. Also critical to the literature review were the individual pieces of legislation, as well as articles interpreting and explaining the different applications and viewpoints of that legislation.

My research was inspired because of my employer and the need to investigate and justify one of our race-conscious admissions practices. My employer at the time, Midway University, had established an institutionally funded scholarship program (the Pathways Scholarship) which awarded annual scholarships to minority students. The scholarship program was started because of the overwhelming lack of diversity at the institution. Historically, minority students had accounted for less than one percent of the total student body. By the fourth year that the Pathways Scholarship program was in existence, it had helped to raise the minority enrollment to between three and four percent. We were awarding all of the funds available within the Pathways scholarship program, but institutional data was indicating (echoed with

resounding comments from faculty) that the students receiving the scholarships were not academically prepared for college and in some cases did not meet the minimum admissions criteria. It was suggested by the faculty that the admissions counselors were admitting applicants and awarding the scholarship based solely on their race, ignoring all other admissions criteria. I was tasked with identifying what could be done to increase overall minority recruitments (focusing on recruiting highly academically qualified students) so that the institution could prove that Pathways Scholarship recipients were qualified and deserving of the additional support and dispel the idea that race was the only criterion being considered for the scholarship recipients.

My first step in creating this literature review was to begin investigating race-conscious admissions practices and the academic research that has been conducted on their justification, use and effectiveness. Numerous articles directed attention towards the fundamental reason for using race-conscious admissions practices: the creation of diversity within the student body. The next step was to research how race related to diversity within higher education, with the focus on attempting to establish what rationale was used by institutions of higher education to use race and/or ethnicity as a measurement for diversity. The last step was to research what individual pieces of legislation affected the use of race and/or ethnicity in higher education, define the conflict created through the application of the legislation, and how the legislation and its conflicting nature affected the day-to-day activities of front-line admissions counselors.

My purpose in conducting this literature review is to establish that there is conflicting legal guidance created by the different pieces of legislation enacted to regulate race-conscious admissions practices. Further, I attempt to demonstrate that there is a lack of research concerning how this conflicting legislation is perceived by admissions counselors, and a lack of knowledge of how it affects the day-to-day operations of admissions counselors.

The following chapter starts with an introduction as to how diversity can be a conscious practice within higher education and the importance that it plays in creating a student body. The chapter continues into an illustration of the admissions practices used by the admissions department (and by extension admissions counselors) to influence the level of diversity within the student body. This is followed by an introduction to the Supreme Court case of the *Regents of the University of California v. Bakke* (1978) which was foundational to defending the use of race-conscious admissions practices. Three additional cases (*Gratz*, *Grutter* and *Fisher*) are then discussed. This is then contrasted by the *Schuetz* case, and other state and federal legislation that prohibits the use of race-conscious admissions practices. Next the

literature review discusses the American legal system and how conflicting legislation is able to exist, followed by an outline of the legislation and admissions practices in use in California (one of the nine states with state-level legislation restricting the use of race-conscious admissions practices and the location in which the research is being conducted). The chapter ends with an outline of the emerging points of discussion.

## 2.1 Establishing diversity as a conscious practice

Colleges and universities are striving to recruit, enroll and graduate an increasingly diverse student body (Cantor & Englot, 2014). There are a wide variety of reasons for creating a diverse student body, even being described by some authors as an imperative to be embraced (Smith, 2009). The arguments for having a diverse student body include combatting stereotyping (Ancheta, 2003; Yin, 2014), enhanced intellectual engagement (Park & Liu, 2014), preventing racial isolation on campus (Ancheta, 2003), encouraging interaction between different races (Ancheta, 2003), preventing groupthink (Taras & Rowney, 2007; Park & Liu, 2014), promoting cross-racial understanding (Yin, 2014) and preventing segregation between racial and class groups (Anderson, 2011). Some authors even go so far as to argue that diversity is required for successful human evolution and creating a smarter, more responsible group of societal leaders (Anderson, 2011; Park, 2015; Vasques & Jones, 2006; Wilson, 1992).

Institutions of higher education are appropriate locations for promoting diversity because they are a pathway through which students prepare to enter society (Park, 2015; Vasquez & Jones, 2006). College is a transitional time, one where it is considered appropriate to speculate, experiment and create, and where there can be a robust exchange of ideas (Chermerinsky, Days, Fallon, Karlan, Karst, Michelman, Schnapper, Tribe, Tushnet, Ancheta & Edley, 2003). Institutions are also charged with exhibiting stewardship and demonstrating a respect and concern for all stakeholders (McCuddy & Nondorf, 2009). Institutions of higher education are charged with preparing young adults to operate in a globalized economy (Taras & Rowney, 2007). If the environment in which college students learn does not reflect a diversity similar to what is found in the global economy, then the institution is not upholding this basic charge (Taras & Rowney, 2007).

The problem, as highlighted by the literature, is that diversity can be defined and measured in a multitude of different ways. There are four overall categories viewed as reliable and established methods to define diversity in higher education: race/ethnicity, religion (or lack of), socio-economic status, and sexual

orientation (Cole & Ahmadi, 2010; Lake & Rittschof, 2012). Of these categories, race/ethnicity has received the most research attention and is often used as a single membership variable (Bernell, Mijanovich & Weitzman, 2009; Budescu & Budescu, 2012; Hunt, Wise, Jipguep, Cosier & Rosenberg, 2007; Juvonen, Nishina & Graham, 2006; Richard, Murthi & Ismail, 2007; Seaton & Yip, 2009). Out of these four categories, the one which is commonly and most inconspicuously included in the typical college application is race and/or ethnicity. Race is a distinctive characteristic and greatly influences the experiences and perspective of the college applicant. It is important to note that the majority of authors denote that race is only one item that should be considered when admitting students, but admittedly it can be one of the easier characteristics to measure (Alger, 2013; Levey, 2004). Institutions are also required to report the ethnicity of their students on an annual basis to the federal government. None of the other three categories (religion, socio-economic status or sexual orientation) are reported or consistently tracked by institutions.

The diversity of a student body is ultimately created and controlled through recruitment overseen by the admissions department. “Recruitment is not a shot across the bow, it is deliberate and strategic, because shaping the applicant pool provides the opportunity for admitting a diverse class,” states Kendra Ishop, Associate Vice President for Enrollment Management at the University of Michigan. Admissions is focused on configuring an incoming class of students which meets the mission of the institution, not just admitting a random group of students. When the institutional mission includes an emphasis on diversity, or incorporates diversity as an institutional goal, the admissions department (and thereby admissions counselors) must devise a plan of admissions practices and procedures that will recruit and enroll enough students to meet the overall numerical and diversity goals.

## 2.2 Promoting diversity through admissions practices

The quest for diversity within higher education is the foundational reason that race-conscious admissions practices are used within higher education admissions. Admissions practices and procedures can be shaped in a variety of different ways, but historically one practice that is proven to contribute to the diversity of a student body is the use of race-conscious admissions practices. The consideration cannot be large within the overall scope of the admissions criteria – it must be narrowly tailored and not act as a decisive measure for every minimally qualified underrepresented minority applicant (*Regents of the University of California v. Bakke*, 1978).

Race-neutral admissions practices take the opposite approach, where race and ethnicity are not considered at all. Other factors could be used to identify underrepresented minority groups (socioeconomic status, geographical location, age, gender), but race or ethnicity are not used, hence the name race-neutral admissions practices. Race-neutral admissions processes do not suffer the same conflicting legal guidance as do their race-conscious counterparts. Race-neutral admissions practices can take a variety of forms, including percentage plans admission (Contreras, 2005; Horn & Flores, 2003; Long, 2004; Long 2007; Saenz, 2010); race-focused financial aid programs (Espinosa, Gaertner & Orfield, 2015; Small, 2008); legacy admissions; articulation agreements (Coleman, Lipper & Keith, 2012; Espinosa, Gaertner & Orfield, 2015); and the use of a holistic review of applications (Gratz, 2003; Grutter, 2003).

Holistic review of applicants is the race-neutral strategy championed by the *Gratz* and *Grutter* Supreme Court Cases. *Grutter* specifically stipulates that a “highly individualized, holistic review” of every applicant file must be used whenever race is taken into account (*Grutter*, 2003). *Gratz* implies the use of holistic review, as it disallows the allocation of admissions “points” for any group based on race (*Gratz*, 2003). There are some authors who argue that race-neutral admissions processes can achieve a similar level of diversity as their race-conscious alternatives (Carnevale & Rose, 2004; Sander, 1997; Sander & Danielson, 2014) while not being restricted in their use by any legislation, but there is not substantial research to support this argument.

Prior to 1978 there were not any established limits or regulations that actively governed the use of race-conscious admissions practices. This changed, however, with the landmark Supreme Court case of *The Regents of the University of California v. Bakke* (1978).

### 2.3 The perception of race in the American Legal system

Race and ethnicity are complex, sociopolitical constructs that are variable and change over time (Harris, Consorte, Lang & Byrne, 1993; Jacobson, 1998; Snowden, 1983). Race is an invented category, a designation “coined for the sake of grouping and separating along lines of presumed difference” (Jacobson, 1998). Racial designations can often overlap, causing contradictions and creating an untidy system of differences. The logic of race is unstable because it is a construct of culture and politics, not of science and nature. Racial categories reflect the competing notions of the time and can be catalogued based on the historical organization of power and its disposition (Jacobson, 1998). Omi and Winant offer the position that “race is a matter of both social structure and cultural representation” (1994), p. 56).

Race functions as a social structure, in that it linked to the way in which society is organized and ruled. Additionally, it functions as a cultural representation in the way that it is used by humans to group themselves and others into a “bewildering array of sets, some of them overlapping, all of them in a state of flux” (Cavalli-Sforza, 1991).

The logic of race is unstable because of the conflict between science and the state. Scientists sought to identify racial classifications as early as the 18<sup>th</sup> century, when evolutionary biologists attempted to create a hierarchical categorization where skin color, physiognomy and geography could indicate specific characters, aptitudes and temperaments (Blumenbach, 1795; Linnaeus, 1758; Smedley, 1998). These studies have since been refuted (Gould, 1981) and it has been proven that there are no gene variants or genetically different human populations (Bonham, Warshauer-Baker & Collins, 2005).

Ethnicity theory came about in contrast to the biological explanation of race inferiority, and is the first social scientific approach to race in order to understand it as a socially constructed phenomenon (Omi & Winant, 2014). Treating race from the perspective of ethnicity defines it in terms of culture, rather than one of corporeal markers (body identity). Cultural orientations, such as spoken language, religious practice, cuisines and rituals are flexible and can be adopted. This treats race as more voluntary, less imposed upon one, and able to change (Omi & Winant, 2014). While this can make race harder to ‘assign’ to a particular individual or group, it has the positive effects of reducing the importance of racism while increasing the ability to assimilate different cultures and celebrate multiculturalism.

The state has had a continued impact on race, particularly in determining inequity in the United States (Ladson-Billings & Tate, 1995). Race law has gone through three distinct phases within the American legal system: classic, modern and neoliberal (Desautels-Stein, 2012). The classic phase occurred during the 18<sup>th</sup> and 19<sup>th</sup> centuries and was greatly shaped by the inferiority paradigm. The inferiority paradigm assumed that non-Whites were genetically different and considered uneducable (Clay, 1993; Takaki, 1993) and was the basis for educational research and the construction of education-related laws (Elliot, 1987) that were slanted negatively towards minority races (Herrnstein & Murray, 1994; Jensen, 1969). The U.S. Constitution itself is considered by some authors to form the foundation for subordinating and exploiting African Americans (Anderson, 1994) through its consideration of Blacks as three fifths a person and continuing (for a limited amount of time) the existence of the slave trade and fugitive slave laws. The framers of the Constitution had to balance the tension between property rights (which allowed African Americans to be treated as property) and human rights, ultimately choosing property rights (and the inherent byproduct of racism) over human rights (Bell, 1987; Tate, 1997). These elements within the

Constitution and the ability to persecute racial discrimination were subsequently negated through the addition of the Thirteenth Amendment, the Fourteenth Amendment and a wide range of federal equal employment opportunity (EEO) laws such as Title VII of the Civil Rights Act of 1964 (Title VII). This shift represents the transition into the modern phase of race law, occurring throughout the 20<sup>th</sup> century. With these pieces of legislation, the attempt was made to remove race from the law as well as its ability to operate as a background rule within the American legal system. The 1954 Supreme Court case of *Brown v. Board of Education* had a significant effect on the legal perspective of race as it helped propel the idea that it was immoral to make a judgment concerning the worth of a person upon the basis of his/her race (Desautels-Stein, 2012). This viewpoint was furthered by Justice Harlan's dissenting opinion in *Plessy v. Ferguson* where he championed the ability of the U.S. Constitution and the law to be colorblind. The progressive effect of this legislation shifted the importance of race and weakened its nature as a background rule of the legal system. When at one time a legal dispute would be settled solely based on race, it could then not be used to make any definitive judgements about a person. The neoliberal phase of race law (beginning at the start of the 21<sup>st</sup> century), continued to maintain a colorblind approach to the background rules of the legal system but also affected the foreground rules as well where race is openly acknowledged as a part of human identity and can be used to permit favor towards a disadvantaged group (Desautels-Stein, 2012). This has created an environment where the allowable recognition of differences conflicts with the legal system's disinclination to make regulations on the basis of racial identity.

"Law provides the raw materials through which the mechanisms of social categorization act" (Peery, 2017). By this definition, law shapes race and its social understandings while simultaneously giving it merit and importance. The law reflects how people experience race and gives definitive social categories that mark the boundaries of different races. Race and the law have a bidirectional relationship where each is influenced by the psychological underpinnings of social categorization (Peery, 2017).

The Supreme Court has identified racial balance as a potentially dangerous concept (Desautels-Stein, 2012) and has reacted by focusing on cultural diversity as a meaningful interest and the primary context within affirmative action cases. In cases dealing with racial identity and affirmative action in higher education, the Supreme Court has established that having "a racially and ethnically diverse student body...constitutes a compelling governmental interest" (Gratz, 2003). Specifically, within the *Bakke* decision the Supreme Court decided that "in order to justify the use of a suspect classification, [the Medical School] must show that its purpose or interest is both constitutionally permissible and substantial, and that its use of the classification is 'necessary...to the accomplishment' of its purpose or

the safeguarding of its interest" (*Bakke*, 1978). Thus, the law as constructed by the Supreme Court is that the use of race to create an ethnically diverse student body is constitutionally permissible.

Because this law is developed with a racially discriminatory purpose, it is subjected to a level of scrutiny higher than other laws in order to assure that current race-neutral rationales are an adequate justification of the law's existence (Forde-Mazrui, 2005). Laws that have a similar nature (even if there is no proof of a discriminatory motive) should be monitored just as closely. This will prevent the adoption of a covertly discriminatory law by those focused on discriminating. Ultimately, the race-neutral tendency of a law must not be assumed but must consistently be evaluated and determined.

## 2.4 Foundational case for the use of race-conscious admissions practices

The case of *The Regents of the University of California v. Bakke* (1978) is the first case where the use of race-conscious admission practices was challenged and supported in a limited application of the practice. The *Bakke* case illustrates how the use of race within higher education admissions was simultaneously limited and protected, and received the first guidelines as to what can be considered legal and illegal activities. Prior to the *Bakke* case, no legal precedent had been set, so higher education institutions were free to employ race in any form and with any level of emphasis within the admissions process. In the *Bakke* case a white plaintiff alleged that the medical school at the University of California, Davis, was discriminating against white students by reserving a specific number of seats for minority applications and utilizing a separate admissions track to admit those applicants. The Supreme Court decided in favor of the plaintiff, ruling that while this particular implementation of race-conscious admissions practices was unconstitutional, using a narrowly defined race-conscious admissions practice can be considered legal and constitutional.

Within the *Bakke* decision, the Supreme Court (and in particular Justice Lewis Powell) asserted that there are four essential freedoms enjoyed by colleges and universities that are unique to the higher education environment: the ability to determine who may teach, the freedom to set what topics may be taught, the ability oversee how the topics are taught, and the choice to guide who is admitted to study (*Regents of the University of California v. Bakke*, 1978). These freedoms are protected by the First Amendment of the U.S. Constitution, allowing a university the freedom to make these decisions (Chang, 2002). The last of these freedoms (the choice to guide who is admitted to study) is fundamental to the ability to create student body diversity as well as the ability to use race-conscious admissions practices. Colleges have a compelling interest in creating student body diversity (Alger, 2013) and as can be seen in the *Bakke* case,



have the protection of the Supreme Court and the U.S. Constitution to use race as one admissions consideration when pursuing this goal. Colleges and universities are considered experts in their own educational missions, are able to determine which admissions practices are appropriate, and should be regarded as experts in educational policy (Alger, 2013). There is not a one-size-fits-all model that can be applied to every institution. It is important that each institution have the latitude to be able to craft an admissions policy that fits their specific enrollment needs (Park, 2015).

This concept, that race should be narrowly tailored among a variety of plus factors, is critical and has been the basis for almost every other Supreme Court case that has followed the *Bakke* decision. Additionally, the *Bakke* case established that:

- Rigid quotas or predetermined numbers of admitted students cannot be used as admissions goals;
- There must be one, single admissions track that reviews all applicants;
- Race can be used as one among a variety of plus factors;
- Minority groups must be considered as a whole rather than individual racial/ethnic groups.

Justice Powell summed up these concepts, along with the overall validity of race-conscious admissions practices, by issuing his opinion that a “properly devised admissions program involving the competitive consideration of race and ethnic origin” is legal and does not violate the U.S. Constitution (Ancheta, 2003). *Bakke* set the precedent for all future cases, establishing that race/ethnicity can be a compelling interest and can be considered within the context of a university’s admissions program (Bakke, 1978). It also affirmed that any race-conscious admissions programs must stand the test of strict scrutiny, where the policy is questioned as to its constitutionality. Strict scrutiny is the most rigorous form of judicial review, where governmental actions are subjected to intense judicial examination in order to protect constitutional rights (Siegel, 2006). Strict scrutiny imposes three barriers that must be satisfied: the burden of proof is shifted to the government; the government must show they are pursuing a “compelling state interest”; and the regulation promoting that compelling interest must be “narrowly tailored” (Chemerinsky, 2002). If each of these barriers can be proven, then the test of strict scrutiny has been satisfied. For institutions of higher education, as long as the race-conscious admissions practice can withstand the test of strict scrutiny, then their admissions practices will be considered legal.

## 2.5 Secondary cases which refined the accepted use of race-conscious admissions practices

After the *Bakke* decision, twenty-five years passed before the next set of Supreme Court cases that definitively addressed race-conscious admissions practices. In 2003, the dual decisions of *Gratz v. Bollinger* and *Grutter v. Bollinger* upheld the perspective of the previous *Bakke* case, but further refined the allowed use of race-conscious admissions practices. In the case of *Gratz v. Bollinger*, two white plaintiffs alleged that the University of Michigan College of Literature, Science and the Arts was not adhering to the precedent set forth by *Bakke*, and did not use race as a narrowly tailored consideration. To the contrary, a minority applicant was almost guaranteed admission based on race regardless of how they measured against the other admissions criteria. The Supreme Court ruled in favor of the plaintiffs, supporting all of the tenets established by *Bakke* while also underscoring the validity of race as an acceptable admissions consideration and the requirement of creating a narrowly tailored consideration of race. Additionally, the court established that the institution must make reasonable efforts to achieve diversity through race-neutral alternatives (Peterson, Kowolik, Coleman, Dietrich, Mascarenhas, McCunniff & Taylor, 2004).

This additional requirement indicates a shift in the responsibility placed upon institutions of higher education. Instead of being able to arbitrarily implement a race-conscious admissions practice, institutions must now make a reasonable effort to use race-neutral admissions practices. Only when those are exhausted can they consider and implement race-conscious practices. In effect, this places an additional burden of proof and an additional barrier to institutions using race-conscious admissions practices, but ultimately still allows for their use.

In the case of *Grutter v. Bollinger*, a white plaintiff alleged that the University of Michigan School of Law also was not adhering to the precedent set forth by *Bakke* by admitting applicants with lesser test scores solely because they were of minority race, placing an overwhelming emphasis on race as an admissions factor. The Supreme Court found in favor of the University of Michigan, however, upholding their use of race as one factor among many within the application criteria. The university successfully demonstrated that the law school had “a compelling interest in enrolling a racially and ethnically diverse student body because of the educational benefits that such diversity provides” (Schmidt, 2012). Additionally, the Court felt that each applicant received a “holistic review” that insured race was only one defining feature of the overall application (Schmidt, 2012).

The *Grutter* case is significant because it highlights the admissions practices used by the University of Michigan School of Law as the first set of race-focused admissions practices that can hold up to the

scrutiny of the federal-level legislation. All previous cases were neither sufficiently narrowly tailored nor provided the holistic review process as shown by the University of Michigan Law School. This is significant, as the *Grutter* case represents the first race-conscious admissions process that was defended by the Supreme Court as successfully adhering to their previously established legal guidelines.

In an interesting addition to the *Grutter* case, the court suggested that the use of race-conscious admissions policies has a limited lifespan (Gutierrez, Preston & Green, 2004). One of the clearest components of the decision was the recommendation that consideration of race in admissions should have an end point 25 years from the decision, or around 2028 (Levey, 2004). This time frame is critical for institutions of higher education to note, as we are over halfway through this informally established deadline. There is no additional indication, either from the Supreme Court or within the literature, to indicate if or how this informal deadline will be enforced.

The most recent Supreme Court case to address the use of race-conscious admissions practices is the case of *Fisher v. The University of Texas at Austin*. In the *Fisher* case, another white plaintiff alleged that her race prevented her from being admitted in favor of minority students, even though her academic qualifications were higher. This case received special scrutiny in the media and by higher education administrators because of the manner in which UT Austin had structured its admissions process.

The admissions processes used by UT Austin are unique and represent an effort to combine race-neutral and race-conscious admissions practices. The university utilizes a two-pronged admissions process (Barnes, Chemerinsky & Onwuachi-Willig, 2015). The majority of the incoming class are “chosen” through automatic admission of the top 10% of all Texas High School graduating classes (Bealongsorn.utexas.edu, 2012). The remaining portion of the incoming class are admitted based on evaluation scores coming from two different matrixes: the Academic Index (AI), measuring the applicant’s test scores and high school academic performance; and the Personal Achievement Index (PAI), which is designed to measure a student’s leadership, awards, extracurricular activities and other attributes special to the applicant, including race (*Fisher vs. University of Texas at Austin*, 2013, 2015). This allows for the use of a race-neutral program to admit the majority of students (in 2013 it was 81%), while a race-conscious program admitted a smaller group of students (in 2013 only 19%) (Barnes, Chemerinsky & Onwuachi-Willig, 2015). The two-pronged admissions process was implemented because of two previous decisions: *Hopwood* and *Grutter*. The *Hopwood* decision caused the state of Texas to implement the Top 10% plan, placing the majority emphasis on the race-neutral process. This made the admissions process at the University of Texas at Austin compliant, but acted to reduce minority enrollments significantly (Lempert, 2015). After

the *Grutter* decision, the University decided it could include race within the application review for the small segment of applications that underwent holistic review. Although the University of Texas made majority use of a non-race-based practice (with the automatic admission of the top 10% and use of the Academic Index), the Personal Achievement Index (which utilized race/ethnicity) was what led to the questioning by the Supreme Court.

By deciding in favor of UT Austin, the Supreme Court affirmed that the admissions processes at UT Austin adhered to all of the tenets established in the previous cases:

- A race-neutral admissions process was implemented, using standardized test scores and academic performance as the only admissions criteria.
- A race-conscious admissions process was implemented only after the race-neutral process failed to maintain the levels of student body diversity. This process uses race as only one criteria within a holistic review of the applicants.
- There is a single track to the admissions process, whereby all applicants are evaluated using the holistic review.
- Specific quotas or required numbers of minority students are not used.

The culminating effect of the *Bakke*, *Gratz*, *Grutter* and *Fisher* cases is that the Supreme Court utilized its own judicial power, along with that of the First Amendment of the U.S. Constitution, to defend the use of race-conscious admissions practices as long as they followed a certain, narrow set of requirements. Through these actions, the Supreme Court demonstrated support for the idea that creating a diverse student body through the use of race-conscious and race-neutral admissions practices was foundational to institutions of higher education and deserved to be protected.

## 2.6 Foundational case for the prohibition of race-conscious admissions practices

Just as there have been Supreme Court cases protecting the ability to use race-conscious admissions practices, there has been one case that indirectly prohibits the use of race-conscious admissions practices. In the case of *Schuette v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary (BAMN)* (2014), the Supreme Court did not actually address the consideration of whether race-conscious admissions practices are permissible (when certain conditions are met), but instead addressed whether and in what manner voters (by state elections) can

choose to allow or prohibit the use of affirmative action within a wide variety of state programs, including higher education admissions (Bernstein, 2013).

The *Schuette* case was precipitated by the state of Michigan (through a voter referendum) amending the state constitution to prohibit state discrimination against or preferential treatment for any group or individual on the basis of race, sex, color, ethnicity or national origin in the realm of public education (Bernstein, 2013). The effect of this referendum (Michigan Proposal 2, passed in 2006) was that all public institutions of higher education located within the state of Michigan were restricted from using any sort of race-conscious admissions practices. Michigan had enacted Proposal 2 in the wake of the *Grutter* and *Gratz* decisions, using state-level legislation to ban the practice of race-conscious admissions programs, which had just been protected by the Supreme Court. A group of citizens and interest groups formed the Coalition to Defend Affirmative Action, Integration and Immigration Rights and Fight for Equality by Any Means Necessary (referred to herein as the Coalition) sued the governor of Michigan along with regents and boards of trustees of three state universities. The Coalition alleged that the state legislation violated the Fourteenth Amendment of the U.S. Constitution (also known as the Equal Protection Clause) and unfairly altered the political process in a manner that disregarded the rights of minority groups (Bernstein, 2013). At its core, *Schuette* asks the question “whether a state violates the Equal Protection Clause by amending its constitution to prohibit race- and sex-based discrimination or preferential treatment in public-university admissions decisions” (*Schuette v. BAMN*, 2013). With the Supreme Court’s decision to uphold *Schuette*, it indicated that a voting public can define or overrule the admissions policies and practices used within a state institution. By finding in favor of *Schuette*, the Supreme Court upheld state’s rights to enact their own set of legislation.

States are able to enact legislation contradictory to that of the federal government because of the multiple layers of legislation allowed within the U.S. system (de Sousa Santos, 1987). Each layer of legislation (transnational, national and local) holds force within its own geography and jurisdiction, even though it might cause conflicts with the other layer. States felt the need to enact their own legislation after the *Bakke*, *Gratz* and *Grutter* cases because they did not feel that there was a measurable effect on the use of race in higher education admissions (Sander & Danielson, 2014; Welch & Gruhl, 1988). States had the perception that institutions of higher education were not going to eliminate race-conscious admissions practices on their own unless directly instructed by the Supreme Court. As a result, nine states in total have enacted state-level legislation eliminating the use of race-conscious admissions practices (California, Texas, Florida, Washington, Michigan, Nebraska, Arizona, New Hampshire and Oklahoma).

The *Schuette* case illustrates the disconnect as well as the conflicting legal guidance created by the Supreme Court, state legislation and the United States Constitution. The Fourteenth Amendment of the U.S. Constitution provides that no state “shall deny to any person within its jurisdiction the equal protection of the laws” (Legal Information Institution, 1993). As a literal interpretation, this prohibits the use of race-conscious admissions practices. The First Amendment of the U.S. Constitution, as supported by the *Bakke* case (and further upheld in *Gratz, Grutter and Fisher*), protects the ability of colleges and universities to use race-conscious admissions practices in a very narrowly tailored manner. State legislation enacted in nine individual states prohibits the use of race-conscious admissions practices only within their borders, as further enforced by the *Schuette* case. The overall effect is that admissions counselors are operating under three different levels of legislation that are simultaneously protecting and restricting the use of race-conscious admissions practices.

## 2.7 Why are the conflicting groups of legislation allowed to exist?

“A legal system is more or less a sedimented terrain, a geological construct made of different laws composing different layers, all of them in force together but never in a uniform fashion, all of them in the same moment but always as a momentary convergence of different temporal projections” (de Sousa Santos, 1987). As described by this author, the Supreme Court, the United States Constitution and the state legislation represent three different layers within a legal system that is simultaneously working together and not working together. Each layer holds force when applied in its particular geography and situation, but at times it can be in conflict with other layers. There are three distinguishable legal spaces within the system: local, national and transnational (de Sousa Santos, 1987). Within this research, the state-level legislation occupies the space of the local law and the Supreme Court cases and the U.S. Constitution occupy the space of the national law. The local law affects only the local area, in this instance the area within a state’s border. The national law affects all entities that exist under that particular nationality, in this instance all states within the United States of America.

The current literature illustrates how both the local and national laws are in conflict with each other, as well as the national law in conflict with itself. The literature concerning the state and federal legislation illustrates that there are conflicting perceptions of both the legislation and the practice of affirmative action admissions practices. Those supporting the use of affirmative action admissions practices, mainly the Supreme Court, the U.S. Constitution and institutions of higher education, argue that these practices

are extremely useful in creating diversity, and can be used in a narrowly tailored manner so that they are considered constitutional and non-discriminatory. The majority of authors believe that affirmative action allows institutions to recruit and admit larger numbers of students from diverse backgrounds, resulting in student body diversity and adequate representation of minority groups (Colburn, Young & Yellen, 2008; Levey, 2004). They assert that creating racial diversity within a student body positively impacts critical thinking, leadership development, teamwork, reduces the possibility of bias, and contributes to overall student satisfaction (Park, 2015). Since developing critical thinking, leadership and teamwork skills are key to the mission and vision of institutions of higher education, diversity in the student body can be considered critical to the mission of the institution. Proponents argue that as long as the practice is subjected to and passes the “strict scrutiny” test, it demonstrates its constitutionality as well as its value to the institution in creating diversity and is therefore supporting the states interest (O’Neil, 1971).

Those against the use of affirmative action admissions practices, as supported by the state-legislation and the U.S. Constitution, argue that any affirmative action admissions practices are discriminatory in nature no matter how they are structured and must not be used. These authors assert that any use or consideration of race and/or ethnicity in any way during the admissions process is discriminatory and violates the Equal Protection Clause (Fourteenth Amendment) of the United States Constitution. Some of the more extreme authors argue that simply the act of considering race (regardless of what race is being considered) during the admissions process could actually push some students away from higher education (Clegg, 2011; Dale & Krueger, 1998; Levey, 2004). These authors believe that affirmative action is actually reverse discrimination because it potentially passes over more qualified students, compromises the academic mission of the institution, can actually lower the overall academic quality of the student body, and can be viewed as engaging in unsavory activities such as prioritizing racial and ethnic minorities (Clegg, 2011). They further assert that restricting use of race as an admissions factor will exclude minority populations from higher education (Arcidiacono, 2005; Chapa & Lazaro, 1998; Epple, Romano & Sieg, 2008; Highlin, 2007; Karabel, 1998; Light & Strayer, 2002). This argument is supported by the legal argument that any use of racial classifications are highly suspect, and could be irrelevant to any constitutionally acceptable legislative purpose (O’Neil, 1971). The greatest argument against using race-based admissions practices comes from those who suggest that race-neutral institutions are more likely to employ more creative and less divisive practices in order to diversify the student body, as supported by the argument that affirmative action admissions practices are one of the most divisive topics confronting higher education admissions (O’Neil, 1971).

Critical to this conflict is the understanding that the current legal framework within the United States does allow for conflicting legislation to be passed and enacted. The constitutions and legislation associated with the states claims the authority to deal with the entire lot of problems created by everyday life within its borders, reserving only select situations with which the state cannot cope to be reserved for and addresses by the federal government (Hart, 1954). The federal law assumes that states will oversee and execute this basic responsibility, and for the majority of the time will simply uphold the authority of the state (Hart, 1954). In some cases though, federal law supplants or displaces the state law, and takes over the authority for itself (Hart, 1954).

Ultimately, the state's systems are allowed to operate as they choose until the federal system decides to intervene, and these interventions are typically only in occasions requiring special justification (Hart, 1954). Even within these occasions, the federal law will make references and indications to state-level law, requiring any federal law to be dissected and broken down to determine the exact extent of its application (Hart, 1954).

When this structure is applied to the three pieces of legislation within this research, the U.S. Constitution holds the most authority within itself, as it protects the authority of the federal government and enforces basic judicial proceedings (Hart, 1954). After the U.S. Constitution, the Supreme Court's rulings hold the next level of authority, and can be equally enforced throughout all fifty states. The state-level legislation holds the next-most authority, but only in the nine states in which it has been enacted. Initially, it might appear that the Supreme Court rulings should overrule the state-level legislation in those specific nine states, but the most recent Supreme Court case, *Schuette v. BAMN* actually upholds the validity of a state-level ban on race-conscious admissions practices, and validates voters rights to exercise policy making authority over state government (such as public higher education institutions). Therefore, in the nine states with voter-enacted bans on affirmative action admissions practices, the state-legislation supersedes any ruling by the Supreme Court.

The effects of that this contradictory legal guidance has had on the admissions processes can best be illustrated when looking at the admissions processes used by public institutions within California, the first of the nine states to enact state-level legislation restricting the use of race-conscious admissions practices.



## 2.8 Rawls' Law of Fair Equality of Opportunity

Racial discrimination and its negative effects have had a significant effect throughout the United States for most of its existence. There have been many attempts to negate or combat racial discrimination particularly through enacting equal employment opportunity laws. In addition to these legislative methods, there are multiple philosophical theories that outline how equal opportunity should be created throughout society. Two of these theories are Rawls' concept of Fair Equality of Opportunity and Rawls' concept of the Original Position.

Rawls's Fair Equality of Opportunity Principle posits that social and economic opportunities are attached to offices and social positions that are equally open to all members of society. Ideally, any two people who have the same levels of ambition and talent should be allowed the same opportunity of success when competing for the offices or social positions and the social goods that come with those positions. Fair Equality of Opportunity can be viewed as the embodiment of nondiscrimination and completely mitigates any effects from bigotry, hatred or class division (Arneson, 1999).

Opportunity can be viewed as a three-way relationship between a desired goal, a person and group of obstacles. The person only has the chance of reaching the goal (actualizing the opportunity) if the obstacles are surmountable. If the obstacles are insurmountable, then the opportunity does not exist. When equality of opportunity is applied to this situation, each person working to attain the desired goal will encounter a similar difficulty of obstacles, with none of them being insurmountable. This does not guarantee equality of outcome, only that equality of opportunity is assured based on the difficulty of the obstacles.

Citizens of society should not face insurmountable obstacles that prevent them from attaining the same opportunities as others who have the same levels of ambition and talent. The obstacles that they face can include dynamic elements such as geographic location but can also include static elements such as family background, gender and race. In those instances where a static element such as race has worked to hinder a student's success, or has presented obstacles that are insurmountable in terms of gaining admission to higher education (such as school segregation leading to insufficient college preparation based on K-12 offerings; discrimination or exclusion from extracurricular activities) Rawls' concept of the Original Position lays the foundation for the argument that affirmative action admissions practices can work to level the playing field.

Rawls authored the concept of the Original Position, which allows members of society to agree upon society's governing principles without specific knowledge of the characteristics and attributes that they or each other member of society specifically embody. Otherwise put, there is a "veil of ignorance" that allows society members to fairly distribute all social primary goods (such as income, wealth, education, liberty and opportunity) in either an equal matter or in a manner that is to the advantage of the least favored (Aday, 2011). Otherwise put, if there are social and economic inequalities, they can be considered just and fair only if they "result in compensating benefits for everyone, and in particular for the least advantaged members of society" (Rawls, 1985).

Affirmative action admissions programs function exactly in this manner. It can be considered a social inequality to use a static characteristic (obstacle) such as race as a factor within an admissions program, but it results in compensating benefits for society (combatting stereotyping (Ancheta, 2003), encouraging interaction between different races (Ancheta, 2003), enhancing intellectual engagement (Park & Liu, 2014), preventing segregation between racial and class groups (Anderson, 2011), and creating a smarter, more responsible group of societal leaders (Anderson, 2011; Park, 2015; Vasques & Jones, 2006; Wilson, 1992)) as well as benefits for the least advantaged members of society (minority students who have faced almost insurmountable obstacles in their quest to attain admission to an institution of higher education).

## 2.9 Critical Race Theory

"Practitioners, often through storytelling and a more subjective, personal voice, examine ways in which the law has been shaped by and shapes issues of race" (Bell, 1994). Critical Race Theory (CRT) is a body of work focused on "breaking down the barriers of racism 'institutionalized in and by law'" (Bell, 1995) and eradicating all forms of oppression (Matsuda, Lawrence, Delgado & Crenshaw, 1993). It attempts to break down these barriers by challenging and exposing how the law and legal doctrine is used to perpetuate racial oppression (Bell, 1995; Calmore, 1992; Crenshaw, Gotanda, Peller & Thomas, 1995; Delgado, 1995a, 1995b, 1996; Harris, 1994; Matsuda, Lawrence, Delgado & Crenshaw, 1003). CRT was created in the post-civil rights period and focused on providing an innovative approach to examining race, racism and the law (Barnes, 1990; Crenshaw, 1988), building upon the legal scholarship and activism that started the civil rights movement (Crenshaw, 1988). CRT posits that racism is endemic in America, that it is a normal feature within society. White privilege, institutionalized racism and structural racism are three theories within CRT that illustrate how citizens of minority race are discriminated against within society. White privilege is compared to "an invisible weightless knapsack of special provisions, assurances, tools,

maps, guides, codebooks, passports, visas, clothes, compass, emergency gear, and blank checks” that the holder uses to more easily navigate society (Wildman, 2005). Some authors argue that white privilege functions as a type of a paperless affirmative action program (Ross, 1990). Institutionalized racism is created through systematic barriers that restrict access to the goods, services and opportunities provided through society because of the society member’s race (Jones, 2000). Structural racism is the maintenance and continuation of “racial hierarchies established in prior eras by embedding white privilege and nonwhite disadvantage in policies, institutions, and cultural representations” (Roberts, 2004). These three theories demonstrate how racism has become the ordinary business of society, embedded in the structures and thought patterns of society.

Within the education field, critical race theory challenges the dominant discourse by examining and questioning how educational policies and practices are used to subordinate minority racial and ethnic groups (Solorzano, 1998). The theories of white privilege, institutionalized racism and structural racism have not only been historically present within higher education admissions, but are still present today. There is a barrier to the entry of institutions of higher education that has been created and supported through legislation aimed at persecuting minority races. Many education-related laws have been slanted negatively towards minority races, limiting the ability for minorities to gain access to higher education institutions (Elliot, 1987; Herrnstein & Murray, 1994; Jensen, 1969). Despite the support from the *Grutter* decision (that affirmative action in higher education promoting diversity is a compelling government interest), those in higher education have imposed a perspective of race neutrality (Morfin, Perez, Parker, Lynn & Arrona, 2006). Within CRT, affirmative action works to counteract embedded structures and thought patterns as a remedial leveler. Affirmative action works to overcome the effects of discrimination by leveling the playing field. Using race as one characteristic within a holistic application review acts to lessen (slightly) how the admissions practices and policies (as shaped by the law) impact minority races.

CRT theorists construct the social reality from the exchange of stories related to an individual’s experience of a situation (Bell, 1989; Matsuda, 1989; P.J. Williams, 1991). This perspective lends itself to using an interpretivist viewpoint and qualitative data to construct the social reality as experienced by within the higher education admissions process, both by students and higher education admissions personnel.

## 2.10 History of admissions practices in California

California has long served as a national model for universal access to higher education, often considered the single most influential effort to craft a system of higher education (Douglass, 2010). The California

Master Plan for Higher Education was created in 1960, and created a three-tier system of higher education institutions designed to provide universal access to all California college attendees (Rendon, Novak & Dowell, 2005). This three-tier system consisted of the University of California (UC) system, the California State University (CSU) system, and the California Community College system. The UC system contains 10 research universities which grant up to a doctoral-level degree and currently enroll over 238,000 students. UC institutions typically accept the upper one-eighth of California high school graduates (Rendon *et al*, 2005). The CSU system contains 23 state colleges and universities which grant up to a master's level degree and currently enroll over 405,000 students. CSU institutions typically accept the upper one-third of California high school graduates (Rendon *et al*, 2005). The community college system awards up to an associate's degree and is open to all California high school graduates. The tiered system was created to allow students the opportunity to enroll in a range of institutions (highly selective for the UC institutions, moderately selective for the CSU institutions, and nonselective for the community colleges). The level of selectivity is also indicative of the strenuousness of admissions practices – UC campuses have a limited number of freshmen slots that are highly sought after, as compared to the community colleges where all high school graduates will be admitted.

In the early 1990s, though, race-conscious admissions practices (as well as affirmative action as a whole) came under political and legal scrutiny. The University Of California Board Of Regents reacted to this scrutiny in two ways. First, in 1996, the UC Board of Regents approved a policy of admissions by exception, which allowed campuses to admit a very small portion of students who do not meet the standard eligibility requirements. These students bypassed the two standardized academic measurements within the admissions criteria– the high school grade point average and the standardized test score. The effect that admission “by exception” had on minority enrollments was profound – in 1996, 11% of Hispanic and 23% of African American incoming freshman students were admitted “by exception”, compared with only 2% of Asian and Caucasian incoming freshman students (Card & Krueger, 2005).

Second, the UC Board of Regents voted to end affirmative action within the entire UC system starting fall 1998 (National Association for College Admission Counseling, 2001). Before this could go into effect, however, Proposition 209 was passed by the general public during the November 1996 election, and became law in 1998 after more than a year of appeals (Card & Krueger, 2005). Proposition 209 had an immediate effect on minority enrollment at California institutions causing the number of African American and Hispanic applicants to fall from one-half to one-quarter of previously seen numbers (Card & Krueger, 2005).

The UC Board of Regents was troubled by the enormous drop in minority enrollments and set about finding a race-neutral way to increase minority enrollments without explicitly considering race within the admissions process. In 2001, the UC Board of Regents approved a new admissions policy which allowed for a more holistic, comprehensive review of applications. This review allows evaluators to evaluate an applicant's academic achievements with consideration of the level and amount of opportunities available to them, as well as their ability to contribute to the intellectual life of the campus (UC Regents, 2016). There are a total of fourteen considerations which include: quality of the applicant's senior-year program; ranking in the top nine percent of their high school class; outstanding performance or completion of special projects in any academic field of study; and special talents, achievements or awards in a particular field. Individual institutions within the University of California system are allowed to choose which of the considerations will be used within their individual admissions practices, and publish the criteria so that prospective students and the public are aware of their specific criteria.

The California State University (CSU) system has historically held a more egalitarian admissions practice. The CSU's mission is to "provide access to all first-time freshman and upper-division transfer students who meet CSU's admission eligibility requirements within the constraints of campus capacity and budgeted resources" (Office of the Chancellor, 2002). The CSU system is considered a moderately selective system and uses a much simpler admissions policy, designed to encourage access to higher education and degree completion.

The CSU Chancellor's Office, which oversees the policies and procedures that are used at all CSU campuses, enforces the use of the same admissions criteria at all campuses. The CSU admissions policy is structured into a three-point basic eligibility index: complete required high school coursework; combination of standardized test scores (ACT/SAT) and high school grade point average; and successful graduation from high school. These three criteria are significantly less stringent than those in the UC system, and do not allow for a holistic review of applications. Applicants do not submit essays, letters of recommendation, or free-response questions to supplemental questions unless they are applying to a specific campus or program that is designated as "impacted". Impacted campuses are those where the campus does not have the capacity to accept all eligible applicants. These campuses petition for the right to be able to use a multi-criteria assessment, which allows applicants to be evaluated on supplemental admissions criteria, including standardized test scores, special talents, and socioeconomic and/or educational disadvantages can be utilized within the admissions decision (Rendon *et al*, 2005).

After the passing of Proposition 209, the CSU system did not have to make any changes to its admissions policies, since it was already using a basic, three-point eligibility index, or the slightly more complex multi-criteria assessment for impacted campuses, neither of which allow for the use of race and/or ethnicity. Even though there did not need to be any changes in the admissions processes, the CSU system saw the majority of overall declines in minority enrollments after the implementation of Proposition 209.

### 2.11 Admissions practices at California Polytechnic State University at San Luis Obispo

CPSLO operates as part of the CSU system, but because the campus is designated as an impacted campus, they are allowed to use a more expansive set of admissions criteria than what is used at CSUCI. Applicants must first meet the three elements of the basic eligibility index. The number of applicants that do meet this eligibility index is far higher than the enrollment capacity of the campus, rendering the campus as having an impacted designation. As an impacted campus, CPSLO is eligible to use a multi-criteria admissions process, or MCA, to evaluate qualified applications. This MCA includes additional criteria including standardized test scores, extracurricular activities, work experience, status as a veteran, status as a first-generation college bound student and other factors deemed important by the institution.

	2015 Enrolled Students	2011 Enrolled Students	2010 Enrolled Students	2004 Enrolled Students	2003 Enrolled Students	1997 Enrolled Students	1996 Enrolled Students
African American	161	135	125	168	165	280	288
American Indian	29	72	94	122	144	276	248
Asian American	2,107	1,713	1,548	1,443	1,459	1,356	1,457
Filipino	337	180	207	386	391	401	427
Hispanic/Latino	3,134	2,289	2,075	1,603	1,641	2,188	2,218
Pacific Islander	29	65	72	69	73	97	87
Two or More Races	1,388	861	632	0	0	0	0
Unknown	957	1,104	1,253	2,066	2,358	1,572	1,603
Non-Resident Alien	418	226	191	175	206	102	109
White	11,488	11,080	11,135	10,664	10,820	9,489	9,510

Total	20,048	17,725	17,332	16,636	17,257	15,761	15,947
-------	--------	--------	--------	--------	--------	--------	--------

**Table 2-1: CPSLO Enrollment Data (CSU Chancellor's Office, 2016)**

As can be seen in Table 2-1, minority enrollments have fluctuated dramatically over the past 20 years, ranging from 17.27% in 1996 to 12.58% in 2015. Minority enrollments is defines as those identifying as African American, American Indian and Hispanic/Latino. There was a distinct drop from 1996 to 2003 (17.27% and 11.3% minority enrollment, respectively), but the overall percentage has positively rebounded.

## 2.12 Admissions practices at California State University at Channel Islands

CSUCI operates as part of the CSU system, which has a slightly different approach to admissions requirements. CSUCI was not in existence during the mid-1990's, and therefore has only operated during a time when race-conscious admissions practices were restricted by Proposition 209. CSUCI is not an impacted campus, so in order to be admitted applicants only need to meet the three standard requirements: complete the required subject areas and number of classes in the high school coursework; meet the minimum score combination of high school grade point average and ACT or SAT score; and successfully graduate from high school.

	2015 Enrolled Students	2011 Enrolled Students	2010 Enrolled Students	2004 Enrolled Students	2003 Enrolled Students
African American	141	73	52	36	23
American Indian	23	17	14	20	16
Asian American	163	147	83	66	55
Filipino	178	43	35	41	45
Hispanic/Latino	2,879	1,193	767	447	319
Pacific Islander	5	4	3	5	7
Two or More Races	300	165	102	0	0
Unknown	350	965	1,554	252	223
Non-Resident Alien	11	8	7	4	1
White	1,868	1,379	976	931	662
Total	5,918	3,994	3,593	1,802	1,351

**Table 2-2: CSUCI Enrollment Data (CSU Chancellor's Office, 2016)**

In contrast with the numbers at CPSLO, minority enrollment numbers at CSUCI have consistently increased since its first admitted class in 2003, as can be seen in Table 2-2. A distinct trend in the data is that the number of Hispanic/Latino students is a significantly higher percentage of the total student population, ranging from 26.50% in 2003 to 51.42% in 2015. As a whole, minority enrollment numbers consistently represent between more than 25% of the total enrollment for every year of operation except for 2010 (CSU Chancellor's Office, 2016).

CSUCI has not experienced the same scrutiny as CPSLO in regards to its admissions practices. While this is likely in part that CSUCI does not use a holistic application review, it could also be attributed to the fact that minority enrollments are fast growing to soon become the majority.

The overall picture that can be seen within these two institutions is that they are striving to meet the most pertinent level of legislation in their situation – that of the state-level legislation. CPSLO does make use of a more holistic application review process but is careful to stop short of including race or ethnicity as part of the admissions criteria.

### 2.13 Perception of the legislation

There has been very little research conducted to determine if higher education admissions personnel are aware of the conflicting nature of the existing legislation as well as to determine the extent of their knowledge. A recent study released by the American Council on Education (ACE) has brought greater light and understanding of the awareness of the *Fisher* and *Schuetz* cases specifically, but only from the perspective of enrollment management leaders. This nation-wide study received responses from 338 nonprofit four-year institutions and represents the first nation-wide survey of admissions personnel. Of particular importance to this research were two distinct learnings from the ACE study:

- Institutions should not strive to use only race-conscious admissions practices or race-neutral recruiting practices, but should instead use them both within the overall recruiting strategy if possible.
- Institutions were waiting for the final *Fisher* decision (which occurred in late 2015) before trying to consider if or how their admissions practices and procedures should be modified.

Effectively, the ACE study shows that almost nothing is known about admissions counselor's knowledge and perception of the previously discussed legislation. With affirmative action in higher education widely



regarded as one of the most divisive issues facing the American higher education system (O'Neil, 1971) it is a problem that so little is known and understood.

## 2.14 Emerging points of discussion

The existing literature demonstrates that while there is understanding and knowledge about the individual pieces of legislation, there has not been any discussion regarding the cumulative effect of all of the pieces of legislation, how the legislation conflicts with itself, how this conflict is perceived by admissions counselors, and how the conflict affects the day-to-day operations of admissions counselors.

The literature demonstrates the individual effects of the legislation (state-legislation, Supreme Court cases and the U.S. Constitution) but it neither defines the contradictory legal guidance nor the limitations placed upon the day-to-day operations of admissions counselors. With the Supreme Court cases and the First Amendment of the U.S. Constitution being the only pieces of legislation that allow for the use of race-conscious admissions practices, there are questions as to how enforceable the Supreme Court rulings are. The Supreme Court itself even ruled that its own decision can be overruled by an existing state law, creating further conflicting guidance.

The timing of this issue is critical, as it has been 14 years since the *Grutter* decision was released. The Supreme Court itself suggested a twenty-five year time frame for its own allowance of race-conscious admissions practices, thereby indicating that the Court's support could end around the year 2028. The recent *Fisher* decision could be some indication that a combined admissions process (utilizing both race-conscious and race-neutral) could be the safest and yet most effective admissions practice for institutions to adopt. Additional research is needed, though, to determine the combination of race-conscious and race-neutral practices that will create the best levels of student body diversity.

All of these factors combine to underscore the importance of answering the research question as defined in section Chapter 1:

Research Question 1: What is the impact of the contradictory legal guidance with regards to admissions practices at CPSLO and CSU Channel Islands?

- d) What is the level of awareness of admissions professionals at CPSLO and CSUCI, and are they aware of the contradictory legal guidance with regards to race-conscious admissions practices?

- e) How has this level of awareness been created?
- f) How has the contradictory legal guidance impacted the admissions practices and policies at these two institutions? How are the practices and policies in alignment with what is actually happening?

### 3.0 Chapter three - research methodology

This chapter discusses the research methodology utilized within this study. The choice of methodology is a critical component of the research process, as it encompasses the philosophical and methodological approaches used by the researcher. The choice of methodology is particularly important to my research because it will address an issue that I have encountered first-hand within my career in higher education. Combining my work experience and abilities as a researcher will provide the opportunity to engage in action research and create actionable knowledge that should improve my field of work.

Qualitative research often requires that there is a relationship between the researcher and the researched. Research within the social sciences does not focus solely on the subject matter itself, but in how it creates meaning and importance for its audience (Bhaskar, 1979). I find an inherent value within the social aspect of the use of race-conscious admissions practices and the importance of student body diversity within higher education. As a human being, I am the only instrument sufficiently complex enough to comprehend and learn about other human's experiences (Lave & Kvale, 1995). Therefore it is my interactions both within my profession before my research was started as well as my interaction with the research subjects that will bring learning and understanding to the overall experience of using race-conscious admissions practices. It is not enough to just look at the facts of diversity and race-conscious admissions practices – the facts alone do not describe the entire picture, and are actually very lacking in describing the complex relationship between the admissions counselor and their work. It is instead the perception of how those facts are situated within the humanistic view of the world that can bring to light the true perceptions and values being researched. Because of this emphasis placed on values, it was important to choose a research methodology that will support the exploration and evaluation of the social and humanistic elements of diversity and race-conscious admissions practices.

This chapter contains an overall review of the research design, the research methods that will address the research question, and details of how the research question is supported and addressed by the literature review. This research is exploratory nature and is intended to provide baseline data enhancing current knowledge of admissions counselors. Specifically, this research focuses on the understanding that admissions counselors have towards individual pieces of legislation affecting race-conscious admissions practices and the conflicting legal guidance created by these different pieces of legislation. After this baseline level of knowledge is determined, the research will focus on how the conflicting legal guidance is affecting the day-to-day job responsibilities of the admissions counselors and if the admissions policies and practices used are actually in line with the existing legislation. Ultimately this project will guide the

development of a training program that is a tool for admissions administrators to advance workforce development of admissions counselors in light of conflicting legislation.

Methodologies used in this study were chosen to investigate the research question:

RQ1: What is the impact of the contradictory legal guidance with regards to admissions practices at CPSLO and CSU Channel Islands?

Considering this question, this research does not attempt to test existing theories, rather the purpose is to obtain insight and evidence with a final intent of creating an actionable plan to solve a problem. This research also seeks to establish a baseline, and eliminate a gap in literature from which future research can be based. The study seeks to understand the current level of knowledge held by admissions counselors, and then explore their perspectives and interpretations of how the existing conflicting legislation affects them and their daily work activities. This research aims to provide a more comprehensive and complete overview of potential impacts that the contradictory legal guidance has on admissions counselors and thereby the higher education industry as a whole.

### 3.1 Theoretical and epistemological frameworks

The methodological approach chosen for this study has been selected based upon the exploratory nature of the research and has received careful consideration for its possible theoretical applications.

There are two primary perspectives that have directed research paradigms within academic research: Positivism and Interpretivism. Positivism is focused on utilizing discrete, scientific methods that emphasize the use of facts, logic, verification and certainty (Thorpe & Holt, 2008). Positivism assumes that reality is external to the researcher and can only be observed in an objective manner (Easterby-Smith, Thorpe & Jackson, 2008). By transcending a subjective viewpoint, the researcher becomes free of the “fallacious notions which hold sway over the mind of the ordinary person” (Durkheim, 1982, p. 73). Because of this distanced approach, Positivism benefits from using a deductive research process. With deductive research the researcher is testing whether collected data is consistent with theories, hypotheses or assumptions that were created prior to the data collection (Thomas, 2006). Research focuses on construct elaboration, where abstract theoretical formulations are created concerning a particular phenomenon of interest (Edwards & Bagozzi, 2000; Morgeson & Hofmann, 1999; Pedhazur & Schmelkin, 1991). The emphasis on facts and verification lead to a much higher use of quantitative

research methods. Quantitative research focuses on generating numerical data and statistics through structured data collection and analysis. Systematized observations allow the researcher to make reasonable guesses and contribute greater confidence to the generalizability of results (Jick, 1979). The data is generated externally from the researcher, which might (in some opinions) create greater confidence in the validity and reliability of the data.

In contrast, Interpretivism appeals to the subjective viewpoint, placing the researcher square at the center of the research itself. Interpretivism assumes that the world can be viewed from multiple perspectives, each of which deserving equal respect (Hay, 2002). These different perspectives are created based on one's construct or reality, which is constantly changing and evolving (Berger & Luckman, 1966). Subjective research allows the researcher the ability to assess and interpret the attitudes, opinions and behaviors of a particular phenomenon (Kothari, 2004). This subjective nature makes Interpretivism more receptive to the use of qualitative data. Because of its subjective and reflective nature, Interpretivism lends itself to an inductive research process. Inductive research focuses on deriving concepts, themes or models from the evaluation of data, allowing themes that are frequent, dominant or significant to emerge without being constrained by structured methodologies (Thomas, 2006). The goal of Interpretivism and inductive research is to use qualitative research methods to not only bring to light new concepts and ideas, but to do so in a manner that uses systematic conceptual and analytic discipline so that credible, persuasive and defensible new theories are generated (Gioia & Pitre, 1990). Qualitative data is represented not by numbers, but through the description of natural language. Qualitative data seeks to uncover the unique variances and patterns that might be overlooked by just looking at statistics and numbers. Descriptions and linguistic analysis are used to paint a picture of the data. The researcher observes the phenomenon or situation, and uses the observed data to create an explanatory theory (Johnson & Onwuegbuzie, 2004). Qualitative analysis allows the researcher "to discover new variables and relationships, to reveal and understand complex processes, and to illustrate the influence of the social context" (Shah & Corley, 2006). Even though knowledge generated through qualitative inquiry can be viewed as unsystematic (Sutton, 1993), qualitative research illustrates a different perspective of the research and can illuminate the intricate details of relationships that can be applied to every-day management situations. The researcher begins with an area of study, and then allows the theory to emerge from the data (Strauss & Corbin, 1998). The data is used to generate ideas (or hypotheses) rather than have the idea (or hypothesis) and then test it with the data (Holloway, 1997). This allows the researcher to create a concept, a well-defined idea that captures the qualities that describe or explain the phenomenon of interest (Gioia, Corley & Hamilton, 2013).

I view my research through an Interpretivist lens (rather than a Positivist lens) because I find the most value in understanding and interpreting the humanistic and social elements within the research. I recognize that there within any situation, there are hard facts, details that can be quantified and easily categorized. While I see their value in contributing to the creation of abstract theoretical formulations, I place a higher value on interpreting the facts in order to understand the social elements involved within the situation. Contrary to the Positivist position which places emphasis on measurably defined concepts, I find greater value in understanding abstract concepts. I find importance in painting a complete picture with the data, and using the hard facts as a foundation for understanding the overall, complex relationship. This perspective predisposes my research techniques to be more inductive in nature and to focus on conducting qualitative research.

I view the use of language (as supported by qualitative data) as critical as it is able to provide a “precise and accurate description of what actually happened” (Bhaskar, 1979: p. 76). The language used by those being researched to describe the phenomena that they are experiencing only contributes to the richness of the research and the specificity of the decided action. Words define and illustrate the complexities that occur in the relationship between the research and those being researched (Jones, Torres & Arminio, 2013).

### 3.2 Influences on choice of methodology

The choice of methodology is greatly influenced by the action learning methodology imprinted upon me during my experience in the University of Liverpool DBA program. The action learning methodology focuses on creating actionable knowledge that bridges the rigor-relevance gap and allows management practitioners to bring meaningful research and knowledge into their workplace. As the researcher-practitioner, I do take the risk that being so close to the research process I will lose the higher-level perspective necessary for informed theorizing (Gioia, Corley & Hamilton, 2012). This is outweighed, though, by the benefit that I bring in my understanding of the higher education admissions system and my own sense-making and meaning-making that has occurred over my thirteen years’ experience in the industry. Minimizing the distance between myself (the researcher) and those being researched (higher education admissions counselors) is important to fully hear and understand what the participants are experiencing (Creswell, 2007). To keep the action research methodology, I will participate in two different roles: the “insider” based on my position within the organization as well as the “outsider” as the researcher, creating multiple perspectives within the research (Coghlan, 2001; Coghlan & Brannick, 2010).

There are three key advantages to working as an insider-researcher: I have a greater understanding of the culture which is being studied; I am not causing an unnatural flow of the social interactions within the culture; and I have an established understanding of the intimacy of the culture, which can promote the telling and judging of the truth (Bonner & Tolhurst, 2002). Overall this contributes to having a greater understanding of how the institution actually operates as well as knowledge of how to approach people within the institution.

Using one's self as an instrument within the data collection reflects a certain level of sensitivity, intuitiveness and receptivity on the part of the researcher (Rew, Bechtel & Sapp, 1993). As a researcher I believe that intellectuals and academics do not need to be removed from people's lives, that the researcher can be connected directly to people out in the world. This plurality, which can also be known as insider research, provides a richer, more personal view of the research. Having worked within higher education admissions for over thirteen years and experienced the exact situation being researched, I appreciate that this situation needs to be researched from a nuanced, flexible and creative standpoint.

The use of affirmative action in higher education is an extremely sensitive topic and is considered to be one of the most divisive issues facing the American higher education system (O'Neil, 1971). Because it is such a sensitive topic, conducting this research with an "insider" role could allow for research participants to more fully express their beliefs and perspectives. Institutions routinely face scrutiny from outside constituents regarding their admissions policies and practices, often facing accusations of considering race even with the use of race-neutral admissions practices. Because of my work history as well as my familiarity within the institutional culture, I will not disrupt the normal flow of social interactions, potentially leading to a more open sharing of information. Also, because the research question focuses on the accuracy of stated admissions policies compared with their actual practice and implementation, an insider role affords me the opportunity to know how the institution actually operates. This will assist with assessing the validity of the data collected by comparing the data with what I have actually witnessed within the institution. My role inside the institution does mean that I could have access to privileged information. As such I will need to be careful to minimize the effects of perceived bias and respect ethical issues related to the anonymity of individual participants (Smyth & Holian, 2008).

### 3.3 Grounded Theory methodology

In order to encompass the inductive, insider, Interpretivist nature of this research, the grounded theory methodology approach was selected. The grounded theory will allow the research to be conducted in a manner that imposes qualitative rigor but presents the research in a way that illustrates connections found within the data, the concepts that emerge and the resulting underlying theory (Gioia, Corley & Hamilton, 2012). Grounded theory approaches research from the perspective that theories should be derived from and emerge from the data. The original approach to grounded theory recommended that the researcher did not have any knowledge of the preexisting theories, instead beginning their research in the field and allowing a theory to emerge from the carefully collected data. Grounded theory takes this approach so that any theory derived from the data is grounded in the data and within the research situation. Because the theory is drawn directly from the data, it is more likely to offer insight, enhance understanding and create a meaningful guide to action (Strauss & Corbin, 1990). Grounded theory aims to bridge the gap between theory and empirical research (Glaser & Strauss, 1967). A newer approach to grounded theory allows the researcher to recognize the literature as an initial source, using it as a catalyst for beginning the inductive research process.

Theory consists of plausible relationships constructed between and among concepts or sets of concepts (Strauss & Corbin, 1994). It is important to note that while these relationships are defined as plausible (and not concrete) this plausibility can be strengthened through continued research. Grounded theory attempts to help researchers produce theory that is “conceptually dense”, or theory that has many strong relationships amongst concepts or sets of concepts (Strauss & Corbin, 1994). The process of conceptualizing this theory allows researchers to focus on the patterns of interaction between and among the actors or systems being researched (Strauss & Corbin, 1994). It is not focused on creating theories about the individuals within the system, but more so discovering the patterns of action and interaction that occur between the individuals. The end goal is to determine what occurs within certain conditions in order to predict potential consequences for future situations.

Grounded theory supports the action research process through its iterative nature. The action research process is built upon cyclical learning, where action is balanced by reflective learning in order to pursue practical solutions to pressing issues (Reason & Bradbury, 2001). Action research places significant respect upon people’s knowledge and their instinctual ability to identify, comprehend and address problems within their communities. Incorporating action research along with a grounded theory approach will allow me (as the researcher) to act at the center of the research process and use cycles of



research and learning to reflect upon and research a key issue that is facing myself and others in the higher education admissions profession. I will use data from the natural social world to express theory grounded in reality and focused on solving a real-world problem.

Strauss and Coburn detail a list of six characteristics of what they consider a grounded theorist:

1. Able to step back and critically analyze situations;
2. Ability to understand and recognize the tendency toward bias;
3. Ability to think abstractly;
4. Ability to be flexible and open to constructive criticism;
5. Sensitivity to the words and actions of others;
6. A sense of absorption and devotion to the work process (Strauss & Coburn, 1990, p. 7).

As a researcher, grounded theory provides the vision for what I want to accomplish, which is to understand the conditions that occurred within my research situation.

### 3.4 Data collection techniques

Data is collected through a variety of different means, but the method which was selected for this research project was the semi-structured interview. The semi-structured interview is a useful qualitative data collection tool because it allows for a balance of pre-planned key questions along with conversational, free-flowing remarks. My role as the researcher within a semi-structured interview is to interpret what is being said, identify any areas that need further clarification, and then elicit the additional clarification without stopping the flow of the conversation or causing the research participant to feel uncomfortable. The focus of theory creation is to determine the plausible relationships constructed between and among concepts (Strauss & Corbin, 1994). My research is attempting to determine the plausible relationship between the individual admissions counselor, the institution at where they work and the multiple layers of legislation affecting their use of admissions practices. Within the action research cycle, I am attempting to understand the research participant's ability to identify, comprehend and address problems within their community. Foundational to this research is to determine if they have even the basic awareness and baseline knowledge to be able to identify that there is a problem within their community.

As outlined by Kvale (1996), I embarked upon a seven-step process of developing and conducting the in-depth interview process: thematizing, designing, interviewing, transcribing, analyzing, verifying and

reporting. The thematizing process allowed me to clarify the purpose of the interviews, which was to assess the perception and knowledge level of the admissions counselors. Designing the interview was the next step, where elements from the literature review were used to guide and create the interview questions. Once the interview questions were crafted and approved, the interviews were conducted either in-person or via the telephone. Each session was recorded so that the fourth step, transcribing, could occur. The fifth step, analyzing, involved reading and rereading the transcripts many times in order to draw out the overarching themes present in the responses. Data validation was achieved by comparing the interview data with my own personal reflections, and the reflections of two colleagues who were given access to the interview data. The final step, reporting, is embodied through this research paper.

The use of grounded theory had three overall influences on the interview process. It had direct influences on the structure of the interviews, the number of the interviews, and the analysis of the interview data. The structure of the interviews was designed to uncover the patterns of interaction between the actors and the system being researched. It is the interaction of the admissions counselors with the higher education admissions system and the United States legal system that are of vital importance within this research project. The interview was also structured with the assumption that each research subject would have some level of anxiety. This was expected not only because of the subject matter, but because of the basic psychoanalytic assumption that anxiety is a natural characteristic of humans (Hollway & Jefferson, 1997). The semi-structured interview was a way to engage with the research subject in a way that enables them to discuss an issue that could create anxiety. The semi-structured nature allowed flexibility on the part of the researcher to determine which portion of the response to engage with in order to elicit additional information but not arouse anxiety.

Grounded theory influenced the number of interviews conducted, in that the number of interviews needed is dictated by when data saturation is achieved. The exact number of interviews that need to be conducted was not specified at the beginning of the research – as the researcher, I reflected after each individual interview to determine if data saturation had occurred. Once the interviews fail to contribute any new information or fail to create any additional variations of the studied phenomenon, the data can be considered to be saturated (Dawson, 2002; Guest, Bunce & Johnson, 2006). Continuing until the point of data saturation allows the theory to emerge to the fullest extent and not be limited by a predetermined notion of sample size.

The grounded theory methodology utilizes two levels of analysis in order to create a two-dimensional view. The first analysis focuses on interpreting the data using research participant-centric terms and

codes. The second analysis focuses on using researcher-centric concepts, themes and dimensions (Gioia, Corley & Hamilton, 2012; Van Maanen, 1979) to give additional structure to the codes developed during the first level of analysis. This dual reporting of voices allows for qualitatively rigorous demonstration of the links between the data and the sensegiving being conducted by the researcher. Once the data is transcribed, it can be analyzed through a series of code applications to determine themes that have a high prevalence of occurrence throughout all participants. With a small sample size, this coding process can be completed after each interview, creating multiple levels of analysis and providing the most opportunities to determine if the data has been saturated. This created a cumulative audit trail, which allowed for continual analysis of the data.

### 3.5 Ensuring data validity

Validation is a process used to evaluate the trustworthiness of the observations and interpretations within a research project (Mishler, 1990). Ensuring validity within qualitative studies is a critical component to ensuring the overall rigor of the research and reducing the possibility of researcher bias in the interpretation of the results. Validity can be accomplished through the process of triangulation, where multiple perspectives are used to analyze the research question (Guion, Diehl & McDonald, 2011) It is important to remember that the goal of triangulation is not to have a constant interpretation to the data. Inconsistencies will only highlight the potential strengths of different perspectives and can be an opportunity to uncover a deeper meaning to the data (Patton, 2002).

Data validity for this project can be achieved through two different ways: validation by study participants; and independent peer review. The time constraints on the study participants (because of the nature of the recruiting cycle) would prohibit them from taking additional time to review their answers and provide data validation in this manner. One of my colleagues (especially an admissions professional in a managerial role) would not be encumbered by the same time constraints, and by being privy to the results of the study, could be more amenable to implementing action based on the results of the study. Because of these two reasons, I secured the help of two different colleagues to review the study results, in order to determine their perception of the emerging themes. One colleague is employed as the Vice President of Enrollment Management at a public institution in California, giving them a high degree of familiarity with admissions practices and procedures. The second colleague holds a position as faculty within the College of Public Health at a large, public institution located within the state of Kentucky. This colleague brings an outside perspective, one that is familiar with higher education but without the direct knowledge

of admissions practices and procedures. Once the interview data had been transcribed, I removed all identifying data (specific references to campus) and provided the responses to the reviewers. Their comments and reflections were compared with my own in order to validate the overarching themes derived through the data analysis.

Securing this analysis from a colleague will have two benefits: first, it will guard against the possibility that I am engaging in lone researcher bias, and am allowing my past experiences to influence my interpretation of the data. Second, it will allow for additional insights or theme development to be achieved. This supports the view of qualitative research that there are multiple perspectives of the world that can be captured during the research process (Hammersly, 1992).

In addition to engaging in a colleague review of the data, I have engaged in reflexive journaling throughout the entire process of this research. Reflection is a manner of turning back on an experience and allowing for the identifications of themes within the researcher's thoughts. The creation and review of these journals and reflections allows me as the researcher to declare my own conceptual journey throughout this research problem.

### 3.6 Research ethics

For the purpose of this research, primary data was collected to explore the contradictory legal guidance concerning race-conscious admissions practices, and how admissions counselors operate within this environment. The target research participants are all employees of either CPCLO or CSUCI and work in the Admissions department. They are aged 18 and above. Permission to collect, transcribe and utilize the collected data for the purpose of this research project was granted by all of the participants at the beginning of the interview. Respondents participated voluntarily in the empirical data gathering portions of the research, and no coercion was used at any time during the research. The respondents were given a thorough explanation of the purpose of the research and the procedure of the research, and were given the option to not participate. Participants were informed that they had the choice to stop the interview at any time and/or refuse to answer specific questions. No compensation was given to any of the respondents for participating in the research. Because of the research methodologies and modalities used, it is extremely unlikely that any direct harm will befall the research participants. No private or identifiable information was collected, and the interviews were catalogued using a non-identifiable participant code to insure the integrity and quality of the data. Audio recordings and transcripts of the

interviews, and responses to the survey were stored in a secure location. No images of any sort were created during any phases of the empirical study. This research uses only the results of this data analysis – no further data analysis was performed. The qualitative data collected through this research was analyzed through commonly accepted analytical techniques. Additionally, this research was approved by the University of Liverpool Research Ethics Committee.

### 3.7 Summary

This chapter explained the theoretical and methodological frameworks that were chosen for the research portion of this study. The research used an inductive, Interpretivist approach due to the nature of the research question. The research is not testing a pre-existing theory, or attempting to see if the collected data supports a pre-existing theory, but instead attempts to generate new knowledge concerning the conflicting legislation affecting race-conscious admissions practices, and the related knowledge found in higher education admissions counselors. By using a grounded theory approach, multiple levels of qualitative analysis can bring out the reoccurring themes within the data, allowing the researcher to make sense of the situation as it is perceived by the admissions counselors.

## 4.0 Chapter four - findings

This chapter presents the findings from the empirical work outlined in Chapter 3, as collected from the individual in-depth interviews conducted with Admissions personnel at two public universities located in the state of California. The objective of collecting this data was to test Research Question One as well as explore one of the questions that emerged from the literature review presented in Chapter Two: what is the perception of and knowledge of the conflicting legal guidance relating to race-conscious admissions practices from the standpoint of the admissions counselor. Exploring this question will further the knowledge creation and discussion related to the impact of the conflicting legal guidance and how it affects the daily work of admissions counselors.

Action research is a participatory, democratic process focused on developing knowledge that can be applied in a practical manner to solve issues of pressing concern (Reason & Bradbury, 2001). The findings within this research were achieved by following the action research cycle with a focus on simultaneously creating self-development and organizational development. The action research cycle begins through experience, by observing and reflecting about an action within a given situation and its resulting consequences. This is followed by creating an understanding of the situation. Within this research, I have completed the initial observation and through the data collection am working to create an understanding of the situation as it is experienced by admissions counselors. The creation of this understanding begins by conducting a collaborative analysis with research participants leading to the formation of new theory and knowledge. Within Chapter Three, I describe this research analysis as occurring through two sets of actions strategies that address the research question. The first set of actions focus on analyzing the interview data in order to bring out the patterns, frameworks and models as expressed by the research participants. The second set of actions focus on analyzing the process of the researcher through the reflections collected throughout the research project. Together, these two cycles of analysis make a connection between the literature and theories presented in the literature review and the practice observed from the data.

My data collection process followed a four-step cycle for each interview that was completed: collect the data; take notes; code and categorize; and write memos. The first of these steps was to collect the data. This was accomplished through the use of in-depth individual interviews. The interviews were recorded electronically to allow the responses to be thoroughly transcribed. During the interview, I took notes in order to capture elements of the interview not discernible from the voice recording. This included notes on body language, tone of voice and the overall demeanor of the research participant. After each

interview was transcribed, I reviewed the transcript multiple times to code issues found within the responses and qualify concerns and issues expressed by the research participants. Once these categories were created, I reviewed them and worked to establish links between the categories and distill them into a set of overarching concerns that represented the research participants as a whole. These links can then be written into memos which document the knowledge created through the research and the proposed actions that can be taken with this new knowledge.

#### 4.1 Sampling method and study population

A purposive sampling approach was used within this research. My goal was to interview participants who met one basic criteria: they were employed within the admissions department at a public institution located within the state of California. There are multiple public institutions within California, so I focused on recruiting participants from the institution where I am employed (CSUCI) and a second campus close by in location (CPSLO). There are a total of thirteen employees within these two admissions departments, of which eight elected to participate in the interview process. The selection of the institutions was important because not only did the sample population include admissions counselors from my own institution, but the entire sample population operates in a state with state-level legislation in effect, creating the situation where the sample population works within the conflicting legal guidance on a day-to-day basis. It was also important that the two institutions utilized different admissions practices: CSUCI utilizes a three-point basic eligibility index while CPSLO utilizes a more holistic multi-criteria admissions process. Studying the responses from admissions counselors that used different admissions processes will allow for the best representation of the CSU system as a whole, since the two different admissions practices are authorized to be used by all of the CSU campuses.

The research participants were evenly split between CSUCI and CPSLO. Each campus was represented by four members of mixed genders. Each campus had one manager and three front-line admissions counselors participate in the interviews. Participants exhibited a wide range of work experience within higher education admissions, ranging from two years to twenty-one years.

<b>Sample Population Characteristics</b>			
	CSUCI	CPSLO	Combined
Gender			
Male	2	2	4
Female	2	2	4
Work Experience			
Mean	6.5	11	8.75
Range	2 – 12	2 – 21	2 – 21

**Table 4-1: Sample Population Characteristics**

4.2 Data collection tool

A semi-structured interview was the data collection tool used in gather the data used within this research. Interviews are valuable tools in collecting qualitative data as they allow the researcher to interact with the participant while capturing their concerns, practices and voice. Interviews are a way for researchers to explore and understand people’s thought process and corresponding behaviors (Stuckey, 2013). Participants are able to express their perceptions and knowledge related to the research topic, creating substantial amounts of qualitative data. There are three general types of interviews used in qualitative research: structured, semi-structured and narrative (Stuckey, 2013). The differences in these interviews centers on the amount of control exerted by the interviewer. Structured interviews are tightly controlled following a very specific set of questions that have a limited number of response categories (Stuckey, 2013). Responses are recorded according to these categories, which were set prior to the beginning of the research. Semi-structured interviews are structured by an outline, determined by the researcher, but the direction of the interview is dictated by the interviewee’s responses (Stuckey, 2013). The researcher follows the guide of the interview, but discussions are able to diverge from that guide so that the interviewee can express their views and experience using their own words. Narrative interviews have little structure, and allow the interviewee to recount events or actions with little guidance or structure from the researcher (Stuckey, 2013). The resulting data is rather unstructured, but allows for complete expression of the interviewee’s experience.

This research centers on the participant’s lived experience, documenting the meaning that they bring to the research topic, specifically the meaning they attribute to the studied legislation. The research participants all have experience working within higher education admissions, and the use of a qualitative



data collection method such as a semi-structured interview can capture the characteristics of the human experience and facilitate investigation of this experience (Polkinghorne, 2005). As an interpretivist researcher, I place value in understanding and interpreting the humanistic and social elements within this research. The use of a semi-structured interview allows for an overall adherence to fundamental questions that answer the key elements of the research question while still collecting data that reflects the expansive nature of the interviewee's views and experience. It also creates the opportunity to further explore individual comments that can help gain insight on the experiences of the research participants. My goal is to understand the societal elements involved with the use and perception of race-conscious admissions practices, allowing for the larger, abstract concept to be identified and explored. Because of these reasons, I chose to use a semi-structured interview as the method of data collection within my research.

The interview questions were developed based on an American Council of Education survey, conducted by Espinoza, Gaertner and Orfield (2015). Espinoza, Gaertner and Orfield (2015) focused on whether race-conscious policies and practices are needed in order to achieve the desired (and arguably needed) levels of diversity within institutions of higher education and explored the direct effects that the *Fisher* case has had on admissions practices. This survey was the first-of-its-kind, a national survey of undergraduate admissions and enrollment management leaders and what they perceive to be the challenges facing institutions of higher education in light of the *Fisher* decision.

This study attempted to create an understanding of how institutions are responding to increasing levels of legislation restricting the use of race in higher education admissions and the conflicting nature of the legislation. My research followed the basic premise of the study by Espinoza, Gaertner and Orfield (2015), but focused more closely on the conflicting nature of all of the pieces of legislation as well as the knowledge and perception by front-line admissions counselors. The survey questions used in the ACE study serves as the foundation for my interview questionnaire. The questions were adapted to focus more on the front-line admissions counselors and the overarching body of legislation.

Completion of the literature review helped to identify three overarching areas that have not received substantial research attention and that have the potential to be addressed within this research. First, there is little known regarding the perceived role and function of the conflicting legal guidance concerning race-conscious admissions practices. There has been a limited amount of study on individual pieces of legislation, but nothing that has addresses the effects of the legislation as a whole. Second, there is little known regarding admissions counselor's individual perceptions regarding the conflicting legal guidance

for race-conscious admission practices. Again, there has been a limited amount of study regarding individual perceptions, but this has only been conducted focusing on those in administrative roles within the admissions office. Lastly, there was a limited amount of research on factors within the institution and admissions office that influence the use of race-conscious admissions practices, but as with the previous topics it has not been researched from the perspective or standpoint of the front-line admissions counselor.

The interview questions developed into five different sections that focused on the following issues: categorical data on the background and experience of the interviewee; establishing an understanding of the level of knowledge related to the individual pieces of legislation; measuring the level of awareness concerning the conflicting legal guidance, its perceived impact on the admissions practices and policies used by the interviewee, and the extent to which their actual work is in alignment with the stated practices and policies; determining the interviewee's attitude and belief regarding the use of race-conscious admissions practices and different levels of legislation affecting those practices; and identifying potential avenues to provide or support future training.

The interview questions establish a baseline of topics that explore the admissions counselor's relationship and perception of the conflicting legal guidance related to race-conscious admissions practices. Within an individual interview setting, the researcher will have direct interaction with the interviewee, and can gauge not only their verbal answers, but their non-verbal cues. These behaviors can be noticed, and can cause follow-up questions to explore the answer more fully by the researcher.

The individual interviews were structured and conducted with a predetermined list of open-ended questions and activities crafted to bring out the perceptions and beliefs of the participants without imposing the opinion and preconceptions of the researcher. A table documenting a roadmap of the questions and objectives used within the interview questions can be found in Appendix Two.

Question One, consisting of one four-part question, focuses on providing categorical data about the individual interviewee. It is important to know how long the interviewee has worked in higher education admissions, how long they have worked at their current institution, and if/how long they worked in an admissions office at any other institutions prior to their current institution. This background information is important because it provides a frame of reference as to the experience of the interviewee and the extent to which they have been exposed to the use of or idea of race-conscious admissions practices. Interviewees that have worked in higher education admissions for a significant number of years or at

multiple institutions could have a greater opportunity to exposure to race-conscious admissions practices. Interviewees who have previously worked at a private institution or who have worked outside of the state of California also have a greater chance that they were exposed to working with race-conscious admissions practices. Each of these factors could have an influence on the level of knowledge or familiarity with race-conscious admissions practices and the corresponding legislation, so it is important to gather this information for each interviewee.

Questions Two through Four (three multi-part questions) focused on establishing the level of awareness and knowledge that interviewees have for the individual pieces of legislation. This data will directly answer Research Question 1a (What is the level of awareness of admissions professionals regarding the individual pieces of legislation). Interviewees were asked to assess their own level of knowledge on each of the individual pieces of legislation (sixteen pieces in total). The available choices were very knowledgeable, somewhat knowledgeable, having little knowledge, and no knowledge. This four-level scale replicated the same scale that was used in the study conducted by Espinosa, Gaertner & Orfield (2015). Having the interviewees indicate their own familiarity with the individual pieces of legislation because it could help determine any individual elements (such as geographical or time) that could affect the interviewee's knowledge level.

Questions Five and Six seek to answer if admissions professionals aware of the contradictory legal guidance with regards to race-conscious admissions practices, as well as Research Question 1c (How are the practices and policies in alignment with what is actually happening at the institution). This is one of the fundamental knowledge gaps exposed within the literature review. There has not been any published research indicating if admissions counselors are actually aware of the conflicting nature of the legislation affecting the use of race-conscious admissions practices. Question Five is open-ended in nature and provides the potential to explore the perceptions and experiences of the interviewee. It provides an arena for follow-up questions by the researcher to discuss and determine how and why the interviewee has formed their opinion and perception of the legislation. Question Six will also provide insight to the opinion and perception of the interviewee, this time from the perspective of questioning if the legislation has actually had its purported effect on the admissions process, and if the interviewee is inclined to follow the legislation. Institutions (specifically CPSLO, one of the surveyed institutions) have received criticism alleging that even though there is state legislation restricting the use of race and/or ethnicity within the admissions process, it is still considered (either intentionally or unintentionally) to some extent within the

admissions decision. Working as an inside researcher and having experience within admissions could allow the interviewee to feel more comfortable discussing and divulging information of this sensitivity.

Questions Seven through Ten seek to answer Research Question 1a (What is the level of awareness of admissions professionals regarding the individual pieces of legislation) but also to create new knowledge and awareness regarding the interviewee's perceptions and opinions of the studied legislation. There has not been any published research concerning admissions counselor's perspectives, views and opinions on the use of race-conscious admissions practices. Knowing this information can assist admissions managers in working with admissions counselors and ensuring that the admissions practices and procedures that are publicized are what is actually in effect.

Questions Eleven through Fourteen seek to understand some of the contributing factors that could have directly affected the level of knowledge exhibited by interviewees. A key component of this research project is to take action after understanding and defining the problem. Taking action will involve creating some sort of a training program, so it is important to first understand where interviewees have received information regarding race-conscious admissions practices. It is also important to understand the interviewee's perceived need for training, as this could indicate if there will be any resistance to attending any future training. Question Eleven in particular is a replica of a question that was used within the study by Espinosa, Gaertner & Orfield (2015).

#### 4.3 Content analysis and code development

The use of content analysis is a critical component to qualitative research because it allows for issues and ideas within the dialogue of the interviews to be categorized and defined. It allows for the perspective of the research participant, which is based on their reality and experience working within higher education admissions, to be expressed and interpreted (Berger & Luckman, 1966; Kothari, 2004). The language used by the research participants provides the most accurate description of what they have experienced, illustrating the complex relationship between them and the studied legislation. Content analysis has the ability to answer questions surrounding the concerns people have about an event, or for why they have or have not used a specific procedure (Ayres, 2007). Content analysis is especially useful for conducting exploratory work within an area where not much is known (Green & Thorogood, 2004). Content analysis supports the action research cycle because it can decipher the information collected from the research

'client' in order to better understand the problem that they are facing. It allows the researcher to diagnose and understand the problem as directly seen by the research participant.

There are three overall types of content analysis: conventional, directed and summative (Hsieh & Shannon, 2005). Conventional content analysis uses the data itself to create the coding categories. Directed content analysis derives coding categories from a preexisting theory or relevant research findings. Summative content analysis counts and compares keywords and/or content in order to interpret the underlying context of the data. The nature of this research combined with the chosen methodology of creating a theory based on information pulled from the data necessitates the use of conventional content analysis.

The interview transcripts were analyzed using content analysis after the completion of each interview. Once the interview was transcribed, the participant responses were evaluated to determine issues or pieces of reoccurring data that were central to the participant's perspective. These issues were recorded, documenting the frequency with which they were repeated (within the individual interview) and the tone with which the data was delivered. The frequency of occurrence and the tone of the participant were used in conjunction to categorize the issue within three levels:

- High – the issue is expressed with high frequency and elicits a strong, passionate view which is expressed by the majority of interviewees
- Moderate – the issue is expressed with moderate frequency and elicits a passionate view which is expressed by more than one interviewee
- Low – the issue is expressed occasionally and does not elicit a very passionate view.

Issues logged within the high issue category represent those that elicited the strongest, most passionate response from research participants. It also represents that more than one individual expressed this issue, making it relevant to the entire group of interviewees. Issues logged as moderate issues were expressed by more than one research participant, but did not receive as strong or passionate a response as those in the high issue category. Issues logged in the low issue category were expressed by only one research participant, and did not elicit a passionate or strong response. Once the data was categorized into high, moderate and low categories, the issues were reviewed again to consolidate the issues further with the goal of creating a small set of overarching themes (or coding categories) which could act to summarize the data. The issue, frequency and overarching theme are all outlined in the following table:

Issue	Frequency	Theme
<ul style="list-style-type: none"> <li>Not enough knowledge of the different pieces of legislation and their conflicting nature</li> </ul>	H	Individual level of knowledge
<ul style="list-style-type: none"> <li>I want to know more about the legislation</li> </ul>	H	Individual level of knowledge
<ul style="list-style-type: none"> <li>I didn't need to know more about the legislation because it doesn't affect my job</li> </ul>	M	Individual level of knowledge
<ul style="list-style-type: none"> <li>The conflicting legislation does not affect the CSU system</li> </ul>	H	Clarity of the CSU structure and its compliance with state legislation
<ul style="list-style-type: none"> <li>The CSU admission requirements are very defined and strict</li> </ul>	H	Clarity of the CSU structure and its compliance with state legislation
<ul style="list-style-type: none"> <li>This issue (the conflicting legislation) is not a concern for me</li> </ul>	M	Clarity of the CSU structure and its compliance with state legislation
<ul style="list-style-type: none"> <li>Each institution should have a different view and approach to race</li> </ul>	L	Clarity of the CSU structure and its compliance with state legislation
<ul style="list-style-type: none"> <li>Other campuses (not mine) are affected by the conflicting legislation</li> </ul>	L	Clarity of the CSU structure and its compliance with state legislation
<ul style="list-style-type: none"> <li>The rules for public institutions can and should be different (than those for private institutions) because of the mission of the public universities and the source of their funding</li> </ul>	H	Perception of legislation
<ul style="list-style-type: none"> <li>The Supreme Court should decide on the use of race-conscious admissions practices (not states) because then it would be uniformly followed throughout the nation</li> </ul>	M	Perception of legislation
<ul style="list-style-type: none"> <li>States like to do their own thing and not conform to the federal legislation</li> </ul>	L	Perception of legislation
<ul style="list-style-type: none"> <li>Public and private institutions should be held to the same restrictions</li> </ul>	L	Perception of legislation

<ul style="list-style-type: none"> <li>• Race should be combined with other factors when used in the admissions decision process</li> </ul>	L	Perception of race-conscious admissions practices
<ul style="list-style-type: none"> <li>• Race can be considered in order to create diversity</li> </ul>	L	Perception of race-conscious admissions practices
<ul style="list-style-type: none"> <li>• Race should not be a factor in admissions decisions</li> </ul>	L	Perception of race-conscious admissions practices
<ul style="list-style-type: none"> <li>• There can be a need for specific types of students in certain situations, different programs and unique geographic areas</li> </ul>	L	Perception of race-conscious admissions practices
<ul style="list-style-type: none"> <li>• Race-conscious admissions practices cause a problem for students because it allows institutions to justify any admissions practices</li> </ul>	L	Perception of the use of race-conscious admissions practices
<ul style="list-style-type: none"> <li>• Race is one of many factors that can explain student success and/or the benefit to them attending a specific institution</li> </ul>	L	Perception of the use of race-conscious admissions practices
<ul style="list-style-type: none"> <li>• Training should present information on all of the rulings and general opinions about how to apply all of the decisions in a holistic, best-practices model</li> </ul>	M	Expectation for needed training
<ul style="list-style-type: none"> <li>• Training should help counselors understand how to answer questions from prospective students and their parents on the admissions practices</li> </ul>	L	Expectation for needed training
<ul style="list-style-type: none"> <li>• General knowledge training would be of benefit to admissions counselors</li> </ul>	L	Expectation for needed training

**Table 4-2: Themes and categories discovered through content analysis**

The content analysis and subsequent code development was accomplished through multiple rounds of revisions. The end result was a set of five overarching categories which can summarize the data and findings from the research participants:

1. The level of comfort regarding the interviewees level of knowledge related to the legislation;
2. The clarity of the structure of the CSU system, its admissions criteria and procedures, and its compliance with state legislation;
3. The interviewee’s perception of the legislation
4. The interviewee’s perception of the use of race-conscious admissions practices;
5. The interviewee’s expectations for needed training.

These five categories express the overarching areas of content that can be used best describe the findings from the research, and will serve as the areas for discussion in Chapter Five.

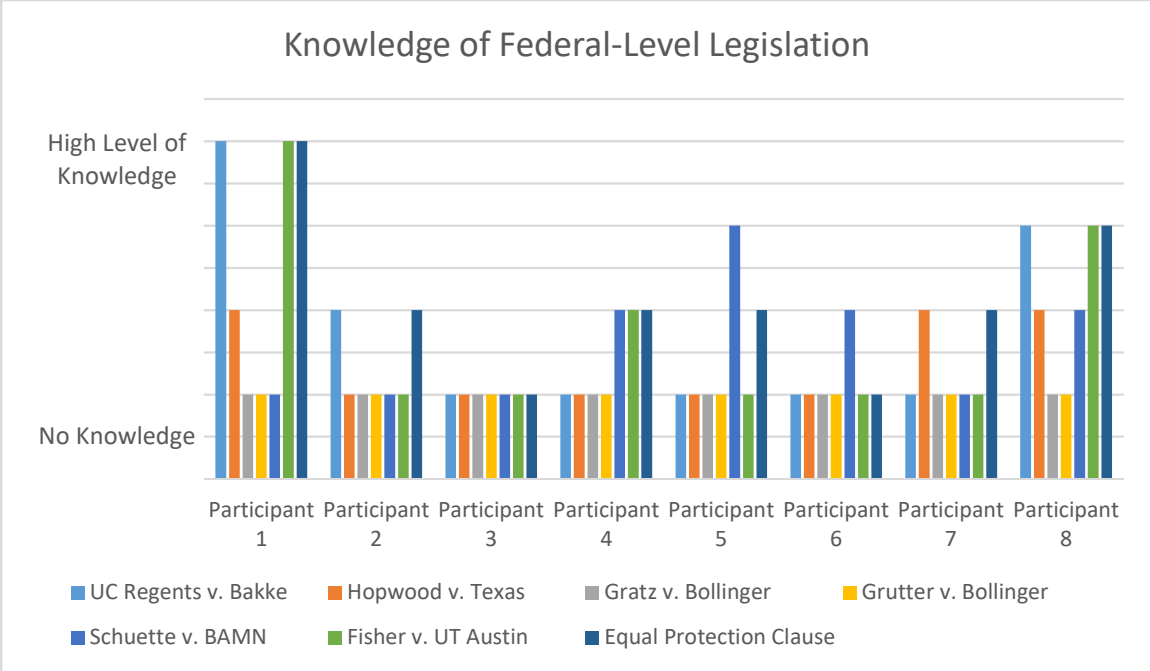
This process of content analysis within the action research process was important because the actual problem was not known prior to the completion of the interviews and the resulting data analysis. As the action researcher, based on my experience within higher education admissions I viewed the potential for a problem to be present. I could not define where the problem was, however, until I was able to observe and understand the research participant's situation, needs and responsibilities (Berg, 2004).

The evolution of the content analysis and resulting codes and categories reflected my expectations for the potential location of the problem in this situation, and represents the third step within the action research process. The categories are not created arbitrarily, but evolve from the context of the situation and the gathered data. The information and data was gathered through the semi-structured interviews, but the content analysis actually allowed for the problem to be isolated, and potential resolutions identified. I personally identified with all of these categories except for the structure of the CSU system. All of my admissions experience has come from private institutions outside of California, so I did not have a natural inclination or personal awareness of this category.

#### 4.4 Emergent themes and points of discussion

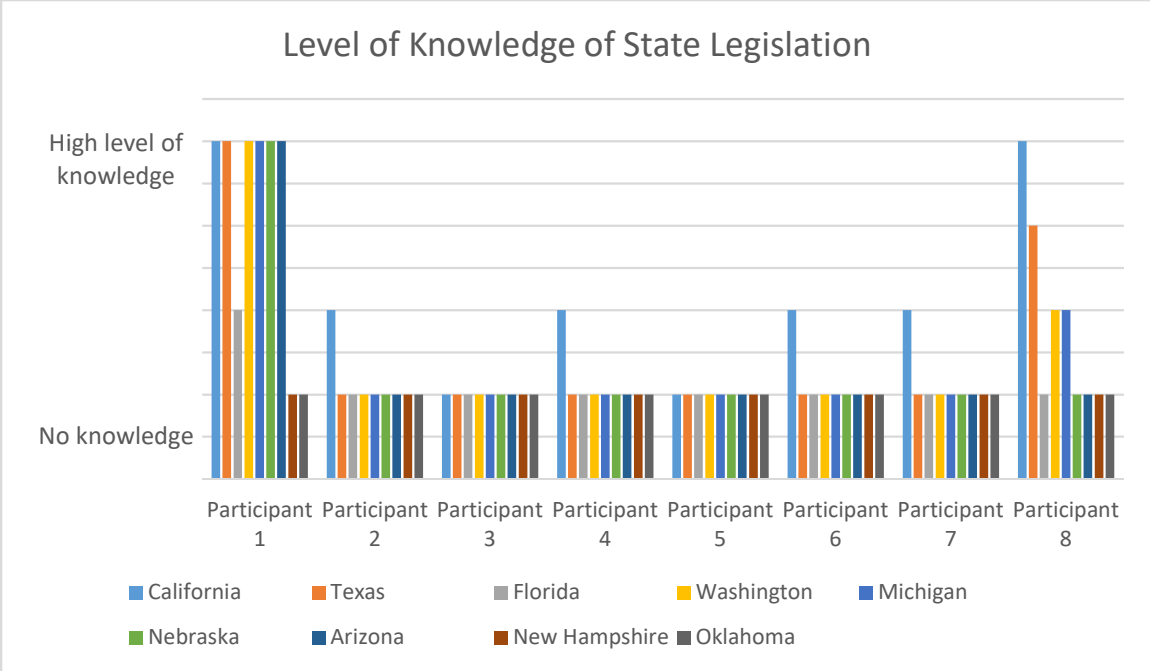
One of the most significant findings in the data, and the issue which occurred with the highest level of frequency was the knowledge and awareness of the interviewees regarding the studied legislation. The overwhelming response from participants was that they had very little to no knowledge concerning the individual pieces of legislation that affect the use of race-conscious admissions practices. As a starting point in the interview questions, interviewees were asked to rate their familiarity with all of the individual legislative elements related to the use of race and/or ethnicity in higher education admissions: six Supreme Court cases; nine state bills/initiatives; and one amendment from the United States constitution for a total of sixteen pieces of legislation. The majority of interviewees (75%) claimed to have very little to no knowledge of the individual pieces of legislation.





**Figure 4-1: Participant knowledge of federal-level legislation.**

When separated out into knowledge relating to the federal- and state-level legislation, the results were similar to the overall level of knowledge claimed by the participants. As seen in Figure 4-1, a significant number of participants claimed to have no knowledge regarding the majority of the Supreme Court cases related to the use of race-conscious admissions practices. Interview participants echoed these results within individual comments made throughout the interviews. Only one participant claimed to have a high level of knowledge in multiple pieces of federal legislation, with the majority of interviewees demonstrating little or no knowledge in the individual pieces of legislation. The cases of *Gratz v. Bollinger* and *Grutter v. Bollinger* consistently received no recognition from any of the participants.



**Figure 4-2: Participant knowledge of state-level legislation.**

The results were similar in responses to the familiarity and knowledge of state-level legislation. As seen in Figure 4-2, research participants claimed to also have a very low level of knowledge concerning the individual state legislation. There was a higher overall level of knowledge concerning the state-legislation from California (Proposition 209), but the majority of the state legislation was claimed to be unknown to the majority of interviewees.

Of near equal importance in the findings was the second overarching theme and the unanimous response that interviewees feel the actual admissions decision making process is completely in alignment with the procedures stated by the CSU system. Not only was this stated specifically in response to Question Six, but most interviewees gave additional clarification to their answer by stating the specific admissions process that their campus followed (the basic eligibility index or the expanded multi-criteria admissions criteria index) and how they adhered specifically to the requirements set forth within that process.

Regarding the third theme, the perception of the legislation, the majority of interviewees (87.5%) indicated that they could perceive the conflicting nature of the existing legislation. When initially asked, the majority (62.5%) indicated that they did not have enough knowledge to perceive the conflict, but after reading a brief statement outlining the effects of each level of legislation, almost all of this sub-group changed their responses to indicate that they could perceive the conflicting nature of the legislation. The research participants did not perceive the application of their specific state-level ban to be unfair. In

California, Proposition 209 only affects the public institutions, not the private institutions. Despite the difference in the legislation, the overwhelming majority (87.5%) indicated that they did not feel unfairly restricted when compared with their counterparts at private institutions.

The fourth theme, relating to the perception of race-conscious admissions practices, demonstrates that interviewees actually support the use of race-conscious admissions practices. When asked if race-conscious admissions practices should or should not be allowed, the majority (75%) of participants responded that race-conscious admissions practices should be allowed as long as they are narrowly tailored and conform to the specifications set forth by the Supreme Court. The remaining participants (25%) responded that race-conscious admissions practices should not be used in any format. None of the participants indicated that race-conscious admissions practices should be used in a completely unrestricted manner. When asked which entity should have the final decision regarding the use of race-conscious admissions practices (the Supreme Court, state legislators or the voting public), the Supreme Court received the most support, with the voting public and state legislators receiving the same, lesser amount of support.

The fifth theme illustrated within the interviews, expectations for a training program, received overall support from the interviewees. The majority of interviewees (62%) indicated that they were not comfortable in their understanding of the discussed legislation, and indicated that they would benefit from receiving additional training. While interviewees indicated that there had been some consultation of sources of information to gain knowledge relating to race-conscious admissions practices, participants indicated that it was not enough and that additional training was needed. The top three most commonly consulted sources of information include the participant's supervisor or administrator, professional organizations and individual personal research.

#### 4.5 Summary

The findings from this research project represent the third phase of the action research cycle, where the gathered data is analyzed to determine and create descriptive accounts of the problems and issues that confront the interviewees. Semi-structured interviews were the chosen data collection instrument because of the manner in which they support an interpretivist perspective and create data able to provide insight on the humanistic and social elements of the studied situation. Once the data was collected, it was analyzed through a conventional content analysis which allowed the coding categories to evolve

directly from the data itself. The end result was a set of five overarching categories which can summarize the data and findings from the research participants:

1. The level of comfort regarding the interviewees level of knowledge related to the legislation;
2. The clarity of the structure of the CSU system, its admissions criteria and procedures, and its compliance with state legislation;
3. The interviewee's perception of the legislation
4. The interviewee's perception of the use of race-conscious admissions practices;
5. The interviewee's expectations for needed training.

These five categories express the overarching areas of content that can be used best describe the findings from the research, and will serve as the areas for discussion in Chapter Five.

## 5.0 Chapter five - discussion

This section addresses the data discovered through the research project as they relate to the specific research question and the emerging questions uncovered through the literature review. The knowledge discovered will be discussed in terms of its ability to inform and create new policy as well as create a plan of action to implement within CSUCI, the CSU system and the higher education industry as a whole. As has been shown through the literature review, there are three types of legislation that are creating the contradictory legal guidance affecting race-conscious admissions practices: the United States Constitution, the state-level legislation found in nine states, and six Supreme Court cases. The United States Constitution, specifically the Fourteenth Amendment, provides that no state “shall deny to any person within its jurisdiction the equal protection of the laws” (Legal Information Institution, 1993). Commonly referred to as the Equal Protection Clause, the Fourteenth Amendment acts to prevent the uneven distributions of resources and opportunities (Sunstein, 1982). Within the framework of this research, the Fourteenth Amendment prevents the resource and opportunity of attending college from being restricted based on any characteristics, but more specifically states that race and/or ethnicity cannot be used as considerations within the admissions process. State-level legislation was implemented in nine states where the voting public and state legislators did not believe that admissions practices at public universities would not follow the guidelines set forth by the Fourteenth Amendment. These states enacted this additional layer of legislation, lending support to the standpoint that race-conscious admissions practices should not be used in higher education. States are within their rights to implement legislation in addition to the federal-level legislation because multiple layers of legislation are allowed by the U.S. Constitution (de Sousa Santos, 1987).

In contrast, the Supreme Court cases, five in total, work to protect the use of race-conscious admissions practices within higher education admission as long as the program is narrowly tailored in its implementation, and that the institution has a demonstrated and justifiable reason for using the program (where race-neutral programs would not produce the same level of diversity during the admissions process).

Therein lies the contradictory guidance, with one layer of federal-legislation allowing race-conscious admissions practices, while a second layer of federal-level legislation and a layer of state-level legislation eliminate the ability to use race-conscious admissions practices. Higher education admissions counselors in forty-one states operate under conflicting guidance from the Supreme Court and the Fourteenth Amendment of the U.S. Constitution, while admissions counselors in the remaining nine states operate

under conflicting guidance from the Supreme Court, the U.S. Constitution and the state-level legislation. The issue is further complicated by the Supreme Court case of *Schuette v. BAMN*, which protects the rights of voters to use state elections to allow or prohibit the use of affirmative action within their particular state (Bernstein, 2013). The Supreme Court is protecting the use of race-conscious admissions practices while simultaneously allowing for it to be restricted.

There are three overarching situations that an admissions counselor can find themselves working within, based on the geographic location of their institution and the type of institution where they work: public institution within a state governed by state-level legislation; public institution within a state without state-level legislation; and private institution anywhere within the United States.

Public institutions within a state governed by state-level legislation are completely restricted from using race and/or ethnicity as a criterion within their admissions process. As illustrated by the studied institutions, this creates the situation where strict admissions criteria, focused on measurable academic qualifications and limited holistic review characteristics are used to determine admission to public universities. These admissions counselors are tasked with fulfilling organizational directives on student body diversity through any race-neutral admissions practice.

Public institutions within a state that has not enacted state-level legislation and any private institution within the United States can use race and/or ethnicity within the admissions criteria as long as it is used in a narrowly tailored manner. These admissions counselors can use any admissions criteria, including race and/or ethnicity to fulfill organizational directives on student body diversity as long as it falls within the scope set forth by the Supreme Court decisions. These institutions have the ability to use race and/or ethnicity in order to create and maintain student body diversity (Cantor & Englot, 2014). Race and/or ethnicity can be used as a criterion within their admissions processes, but must be able to withstand the strict scrutiny of their admissions practices. In order to prove that the race-conscious admissions practice has been narrowly tailored, these institutions must demonstrate that:

- There is a compelling need to create a diverse student body;
- The admissions procedure must be narrowly tailored so that race is only one consideration (within a list of many) to determine admissibility;
- Race-focused admissions policies must be reviewed periodically to determine if there is a continuing need for the policies;

- The institution must make reasonable efforts to achieve diversity through race-neutral alternatives (Peterson, Kowolik, Coleman, Dietrich, Mascarenhas, McCuniff & Taylor, 2004).

If any of these four elements is missing and the institution cannot demonstrate or provide proof of each, the institution faces being accused of implementing a discriminatory and unconstitutional admissions procedure.

The culminating effect of these multiple layers of legislation is that admissions counselors need to have a comprehensive understanding of the legislative system in order to know which admissions practices and procedures are legal at their specific institution.

### 5.1 Overview of the data analysis

As presented in Chapter Four, semi-structured interviews were the selected method of data collection, resulting in a rich set of descriptive data expressing the problems and issues as experienced and perceived by the interviewees. This data was analyzed using a conventional content analysis in order to bring out the patterns, frameworks and models as expressed by the research participants. The interview transcripts were analyzed after the completion of each interview, creating a cumulative audit trail that tracked the data analysis throughout the entire interview process. Once the interview was transcribed, the participant responses were evaluated to determine issues or pieces of thematic data that were central to the participant's perspective. These issues were recorded, documenting the frequency with which they were repeated (within the individual interview) and the tone with which the data was delivered. There were three levels used to categorize these issues:

- High – the issue is expressed with high frequency and elicits a strong, passionate view which is expressed by the majority of interviewees
- Moderate – the issue is expressed with moderate frequency and elicits a passionate view which is expressed by more than one interviewee
- Low – the issue is expressed occasionally and does not elicit a very passionate view.

Issues logged within the high issue category represent those that elicited the strongest, most passionate response from research participants. It also represents that more than one individual expressed this issue, making it relevant to the entire group of participants. Issues logged as moderate issues were expressed by more than one research participant, but did not receive as strong or passionate a response as those in

the high issue category. Issues logged in the low issue category were expressed by only one research participant, and did not elicit a passionate or strong response.

After completing content analysis of the interview responses, there are five clear themes within the data:

1. The individual level of knowledge of the interviewee;
2. The clarity of the structure of the CSU system, its admissions criteria and procedures, and its compliance with state legislation;
3. Interviewee's perception of the legislation;
4. The interviewee's perception of the use of race-conscious admissions practices;
5. Interviewee's expectations for a training program.

These themes serve as the outline for the discussion below.

## 5.2 Individual knowledge and awareness of research participants concerning the existing legislation

The theme which had the highest frequency related to the individual level of knowledge of the interviewee. This theme was echoed within the comments from the two peer reviewers as the strongest theme expressed throughout the interview data. As illustrated in Figure 4-1 and Figure 4-2, the majority of participants claimed to have little to no knowledge regarding any of the individual pieces of legislation. When asked in Interview Question number eight "Are you confident in your understanding of the current state and federal legislation..." the majority of interviewees stated specifically that they were not confident in their knowledge. Numerous comments were made throughout every interview that the interviewee was not aware of the majority of Supreme Court cases and the state-level legislation. Even from the interviewees who claimed that they were comfortable with elements of the legislation, they still qualified their confidence as being confident in knowing what is allowed with their job function, not actually claiming confidence in understanding the legislation itself. These responses work to dodge the actual question and demonstrate an attempt to obscure the issue that they are not confident in their understanding and knowledge of the legislation. Additionally, the interviewee's body language demonstrated an uneasiness with the question. Throughout the entire interview, participants commented repeatedly that they did not have a high level of knowledge of the legislation:

*"I can't say that I do because I'm not familiar with any of the cases"*



*“Well because I have no knowledge, I don’t know how it (the legislation) affects it (use of affirmative action).”*

*“Well, my knowledge is very limited, which is embarrassing, so I can’t really, I don’t feel like I have an idea on that to be honest.”*

*“I don’t, because I don’t really have knowledge in any of this area, I wouldn’t really be able to give an example.”*

This level of knowledge is contrary to what has been shown through the literature review. As demonstrated through the ACE study, eighty-nine percent of participants reported familiarity with the *Fisher* case (Espinosa, Gaertner & Orfield, 2015). Within this research project, only twenty-five percent of participants reported a moderate- to high-level of knowledge specifically to the *Fisher* case. This indicates a significantly lower level of knowledge and awareness in the sample population as compared to the levels demonstrated in the existing literature. It is possible that this awareness is influenced by several of the issues highlighted within this chapter, including the existence of state-level legislation in California and the structure of the CSU admissions practices.

Within the theme of individual participant knowledge, the issue with the highest frequency of occurrence and the strongest emphasis from the interviewees was that they did not have enough knowledge of the individual pieces of legislation, which directly affected their ability to initially perceive the conflicting nature of the legislation. Because there is such a strict guide of what can be considered during the admissions processes at the CSU campuses, it could be concluded that the majority of interviewees have not explored the allowed use of race-conscious admissions practices in general. As illustrated by the comments of a particular participant:

*“I just know the processes where I am and the processes have been at the places where I’ve worked. I would always follow the processes as laid forth by my employer. And where I currently work obviously we’re a state-funded institution so we follow all state guidelines. I know that those things are not something that are used in the selection process, so I would say that’s enough for me to know what we use in the selection process.”*

This theme was evident throughout each iteration of the audit trail and was expressed by every research participant. Both external reviewers noted this theme within their reflections, as well as the researcher within the personal reflections.

Affirmative action in higher education is regarded to be one of the most divisive issues facing the American higher education system (O'Neil, 1971), yet the majority of interviewees within this research project indicated having very little to no knowledge concerning the legislation that has shaped and influenced this issue. This illustrates the problem as discovered through the research, that admissions counselors, particularly those working on the front-lines, could be limited by having little to no knowledge of the most divisive issue facing their profession.

The responses raise the question of there being the possibility of a direct relationship between the policies and practices in use within these two institutions and the level of knowledge exhibited by the interviewees. Both of the researched institutions completely restrict the use of race and/or ethnicity as an admissions factor. The interviewees are extremely aware of this restriction as illustrated within the following quotes:

*"Where I currently work obviously we're a state-funded institution so we follow all state guidelines. So I know that those things (race-conscious admissions practices) are not something that are used in the selection process, so I would say that's enough for me to know what we use in the selection process."*

*"Right now it doesn't really impact me directly, because working for the California State University, we don't discriminate in our admissions processes."*

*"We follow the law and we are guided by Proposition 209 so it's very clear what we can and cannot do."*

As can be seen from the quotes above, the base level of knowledge regarding the individual pieces of legislation could be missing because the interviewees are not required to have that knowledge in order to function at their current positions. A consistent theme in the interview responses is that because of the location in which they worked, both within the state of California and within the CSU system, they did not need this information in order to fulfill their job responsibilities, and as such had not considered or explored the above mentioned legislation. Interviewees that work at state-funded public institutions within the state of California are not allowed to use any distinguishing characteristics (race, ethnicity, gender, religion, etc.) within the higher education admissions process. Within the CSU system, a simple, three-point admissions criteria is used to admit students unless the campus is designated as an impacted campus and requests permission to use a multi-criteria admissions or comprehensive review process. Even then, if approved to use a comprehensive review process, race and ethnicity are restricted

characteristics. Interviewees frequently pointed out that because they are not allowed to consider race and/or ethnicity within the admissions process, they did not need to have additional knowledge concerning the related legislation and had not felt the need to investigate any of the specific legislation. In this manner, the state-level legislation is acting in contrast to Critical Race Theory because it doesn't even allow for the opportunity to examine and question educational policies and practices. The discussion cannot even be had because the legislation disallows the opportunity to modify educational policies even if race-conscious admissions practices are found to be of value.

The higher education system within California was built to insure and promote equality of access, not diversity of the student body. From one perspective it could be said that because California is not allowing institutions have the ability to create a student body that reflects the diversity found in the global economy it is not upholding its basic charge as an institution of higher education (Taras & Rowney, 2007). In contrast, however, the California higher education system, with its three tiers of institutions, is focused on providing universal access to all California residents, promoting the idea that having access to college is more important than influencing the diversity of the student body (Douglass, 2010).

After viewing the results in aggregate, it was important to explore the level of awareness of the three separate levels of legislation: federal (Supreme Court cases), state and the U.S. Constitution. The majority of interviewees indicated no knowledge on the majority of the Supreme Court Cases. This was reinforced by comments throughout the interviews indicating that the interviewee had little knowledge of this legislation. The cases of *Gratz v. Bollinger* and *Grutter v. Bollinger*, despite being two of the most pivotal of the Supreme Court cases, were unknown to every participant. The cases which were the most well-known were the oldest case, *Regents of the University of California v. Bakke*, and the most recent case, *Fisher v. UT Austin*. This distinct gap of knowledge could indicate a specific problem regarding the level of knowledge of the research participants, because the Supreme Court cases that were the most unknown to interviewees have had some of the greatest impacts on the overall position created and supported by the Supreme Court. The *Gratz* and *Grutter* cases give significant context to the overall position of the Supreme Court regarding the use of race and/or ethnicity in higher education admissions, so to not be aware of these cases represents a significant gap in knowledge. There is a possibility that these responses could have been influenced by the serial position effect, or the tendency for individuals to remember the beginning and end items in a uniformly spaced list (Murdock, 1960, Neath, 1993). Items in the middle of a list tend to be spatially indistinguishable, and are more prone to begin forgotten. Additionally, when the list of Supreme Court cases was read during the interview, they were read in chronological order from

oldest to most recent. The claimed level of knowledge regarding the oldest and the newest Supreme Court cases could be an indication that this knowledge is subject to the serial position effect.

The only case that has occurred when all interviewees have been employed and working in higher education admissions is the *Fisher* case. Even with this being the most recent case and the case receiving a significant amount of media coverage, only three interviewees indicated that they had any level of knowledge concerning the case.

---

I originally had not wanted to include interview data from the Admissions managers within this data set, but after completing the first four interviews at CSUCI, I was astounded by the knowledge gap exhibited between the manager and the three staff. After viewing this within the data, I adjusted my communication with CPSLO to request interviews with their admissions counselor and the manager of the admissions department in order to examine if the knowledge gap between manager and front-line admissions staff seen at CSUCI also existed at CPSLO.

---

The participant responses demonstrate that the majority of interviewees claim to have very little knowledge concerning the state-level legislation affecting the use of race and/or ethnicity in higher education admissions. Of the nine pieces of state-level legislation, the legislature with the highest level of knowledge is California Proposition 209. Even though Proposition 209 was passed in 1996, before all but one of the interviewees were working in higher education admissions, it was expected that the interviewees would at least have a basic knowledge of the state legislation directly affecting the state in which they are employed. While Proposition 209 did receive the most recognition (75% of participants indicated some level of knowledge), the majority claimed to have only a very low level of knowledge. Two interviewees, who are both in managerial positions, claimed to have a high level of knowledge regarding the majority of the state-level legislation. One participant in particular had experience working in multiple states affected by state-level legislation, which possibly contributed to their knowledge and awareness with the majority of existing state-level legislation.

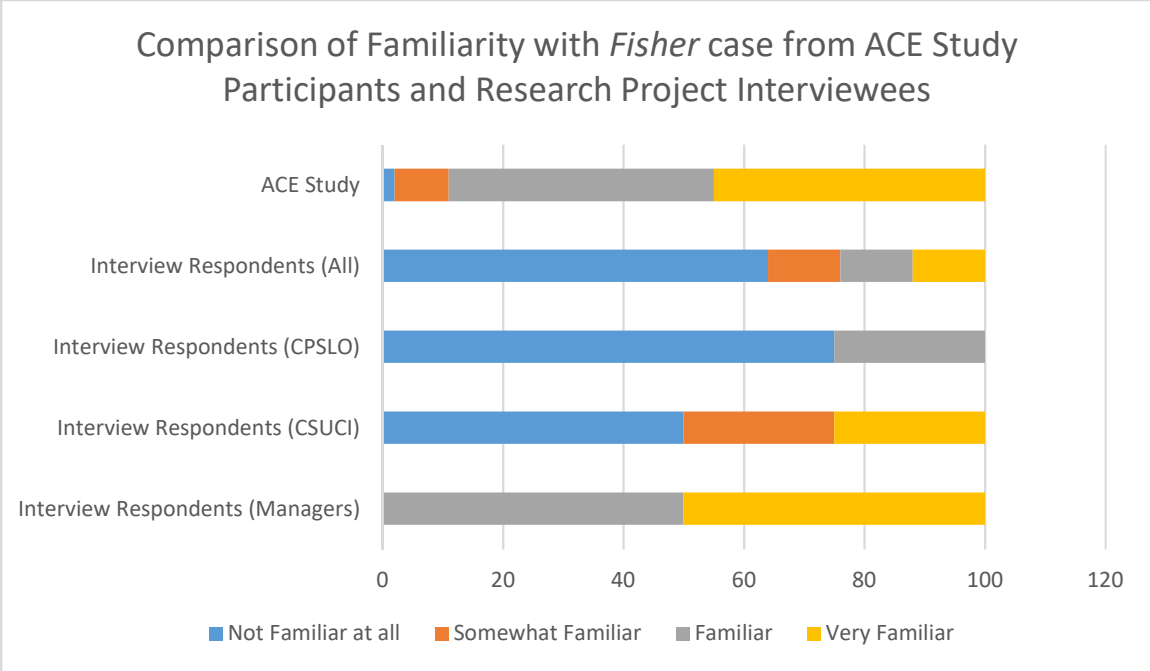
The Texas Top-Ten Percent plan was indicated with the second most level of knowledge. Since this is the legislation in question within the most recent Supreme Court case, the *Fisher* case, this could have caused the additional recognition and knowledge of Texas's state legislation. The two most recent pieces of state

legislation, those from New Hampshire and Oklahoma, were completely unknown to all of the interviewees.

There is the possibility that a small level of correlation is present between geographic location and the level of knowledge of the state-level legislation. All the interviewees live and work within California, and 75% indicate some level of knowledge related to California Proposition 209. This potential relationship is supported through numerous comments throughout the interviews, with references to working in California and working in the CSU system being mentioned by all.

The responses indicated that interviewees claim to have greater familiarity with the Fourteenth Amendment of the U.S. Constitution (the Equal Protection Clause) than with the Supreme Court cases or the state-level legislation. The U.S. Constitution is the oldest of all the pieces of legislation, but has a direct effect on the every-day lives of all of the interviewees. Therefore, it could be understandable that the majority of interviewees have some level of knowledge of the U.S. Constitution and of the Equal Protection Clause.

Also of interest was the level of knowledge concerning the most recent Supreme Court case, the *Fisher* case. The ACE study established the level of familiarity (knowledge) with the *Fisher* case demonstrated by higher education admissions administrators located at 338 non-profit four-year institutions (Espinosa, Gaertner & Orfield, 2015).



**Figure 5-1: Comparison of Familiarity with Fisher case from ACE Study Participants and Research Project Interviewees**

As illustrated in Figure 5-1, the claimed level of knowledge exhibited by the research project interviewees is lower than that determined by Espinosa, Gaertner & Orfield (2015). A total of 45% of respondents to the ACE study indicate that they were very familiar with the Fisher case, as compared with only 12% of the research interviewees. A total of 44% of the ACE respondents indicated they were familiar with the Fisher case as compared with only 12% of the research interviewees. Conversely, 9% of the ACE respondents indicated that they were somewhat familiar with the Fisher case as compared with 12% of the research interviewees. Only 2% of the ACE respondents indicated that they were not familiar with the Fisher case while an overwhelming 64% of research interviewees had no knowledge of the case. There are two possible causes for this difference in knowledge. First, the participants in the ACE study are all in administrative positions within their respective institutions, and might be required to have this knowledge or awareness of the guiding legislation because of their job responsibilities. Indeed, when comparing the responses of the two research project interviewees who are in managerial roles, their claimed level of knowledge is more consistent with that demonstrated by the admissions administrators who participated in the ACE study. Second, the ACE study respondents are from throughout the entire United States, while the research project interviewees are all located in California, leading to a geographically restricted survey population. This geographical restriction, combined with the fact that California does have state-level

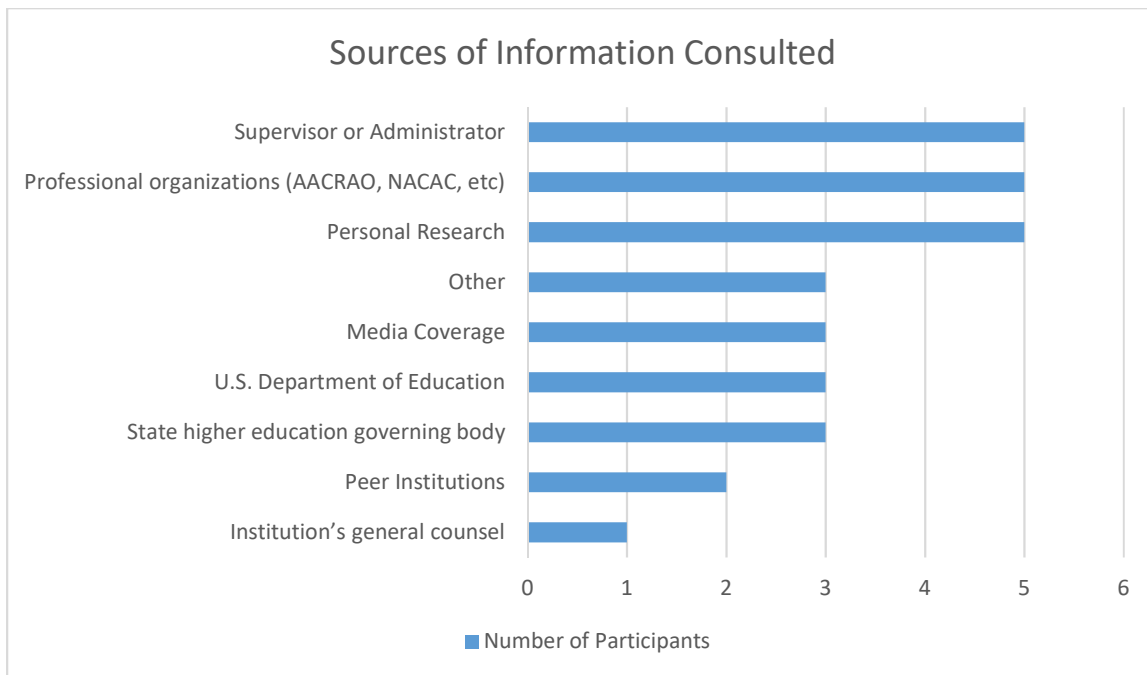
legislation restricting the use of race-conscious admissions practices, could have affected the awareness of the *Fisher* case cultivated by the interviewees.

### 5.2.1 Factors contributing to knowledge gaps

Based on the interview data and the feedback from the colleague reviewers, there were three factors identified as being potential contributing factors to the interviewee's level of awareness of the existing legislation: knowledge needed for job performance; sources of information consulted by interviewees; and access to training or discussions regarding the existing legislation.

Because all the interviewees work in California at public institutions, they are restricted from using race and/or ethnicity within their admissions processes. As such, they have not had the need to examine their processes and determine if they fit within the narrow qualifications set forth by the Supreme Court. Their job does not require any background knowledge other than to know what is dictated by California Proposition 209. Multiple comments within the interviews indicated that since knowledge of the legislation was not needed to fulfill job responsibilities, knowledge of the studied legislation was not pursued. This mindset demonstrates the ability of state-level legislation to supplant and have authority superior to that of the federal-level legislation. As discussed in the literature review, the constitutions and legislation associated with the states claims the authority to deal with the entire lot of problems created by everyday life within its borders (Hart, 1954). The state of California perceived that the problem of reverse-discrimination (through affirmative action) was a problem present within its borders, particularly at government institutions including public institutions of higher education. The state of California asserted its right to govern the processes and procedures within its borders by enacting Proposition 209 in 1996. Even though Proposition 209 directly contradicts the Supreme Court decisions in *Bakke*, *Gratz*, *Grutter* and *Fisher*, it is upheld through the U.S. Constitution as well as the decision of *Schuette v. BAMN*, which protects the state's rights to enact its own set of legislation relating to admissions policies and practices at its own public institution (Sander & Danielson, 2014; Welch & Gruhl, 1988). Additionally, Proposition 209 does not conform to the current phase of race law (neoliberal) because instead of openly acknowledging race as part of human identity and allowing it to permit a small amount of favor towards a disadvantaged group, it eliminates the ability to consider that disadvantaged group at all. The merit and importance of race is eliminated within the higher education admissions practices in California.

The source and quality of information potentially contributed to the level of knowledge seen within the interviewees. Most interviewees indicated that they have consulted less than half of the listed sources of information. This could indicate an overall lack of interest or desire to diversify sources when conducting any sort of research on this topic.



**Figure 5-2: Sources of Information Consulted**

Interviewees identified the top three sources of information sought in order to learn more about the studied legislation as: their administrator or supervisor; professional organizations; and personal research. Considering personal research as a reliable source of information can be problematic because as shown by the responses, the participants are already disinclined to learn about the studies pieces of legislation because it does not relate to their needed job responsibilities. While the interviewees might have indicated that they used personal research, the level of knowledge indicated in the interviews leads to questions about the thoroughness of the personal research or the participant's ability to retain the information gathered through personal research. The same question can be asked of the information gathered from the supervisor or administrator. Within the interview results, the two participants who are in managerial positions did claim to have an overall higher level of knowledge regarding the studied legislation. If this is a reliable indication of the knowledge gap between managers and front-line admissions counselors, it raises the question of knowledge retention. If managers claim and ultimately



do have a higher level of knowledge, and admissions counselors are consulting them concerning the studied legislation, there could be potential problems with either the admissions counselors' retention of any learned knowledge, or the manager's ability to share and teach their knowledge. Further research is needed to clarify the prevalence and potential effects of either potential problem.

The consulted sources of information detailed through this research is different to the results within the ACE study. Espinosa, Gaertner and Orfield (2015) indicated professional organizations, the institution's general council and media coverage as the top three sources of information. Individual CSU campuses do not retain individual legal counsel, instead utilizing legal counsel housed in the centralized Chancellor's Office. This could be a possible explanation for why the research respondents did not consult general counsel. Media coverage is similar in nature to undertaking personal research. As seen by the comments throughout the interviews, interviewees were not seeking information on the studied legislation, and would therefore not be likely to seek out or watch any related media coverage.

The one source of information consistent between the two studies are professional organizations, such as the American Association of Collegiate Registrars and Admissions Officers (AACRAO) and the National Association for College Admission Counseling (NACAC). Since this source was highlighted in both the research and the ACE study, it could potentially be considered the most viable source for promoting both the knowledge created through this research as well as any training materials. Both admissions administrators and front-line admissions counselors are consulting these organizations, and as such the organizations could prove to be a viable avenue for knowledge distribution.

The majority of interviewees (62.5%) indicated that they had neither attended a training focused on the use of race-conscious admissions practices nor remembered discussed this topic during a staff or department meeting. Not only are interviewees not seeking out this information on their own, they are not being exposed to information or discussion about this topic by their administrators. One response indicates that there could be related trainings or discussions offered to the campus, but because of their work responsibilities they are unable to attend. When asked if they had attended any training sessions or workshops, the participant responded:

*I have not, no. I'm never here when they have them, unfortunately. I'm always on the road."*

This response indicates that there could be related trainings being offered at the specific campus, and that the interviewee has an interest in attending (thereby potentially increasing their level of knowledge and awareness) but because of scheduling the interviewee is unable to attend.

Overall, the lack of a training program, the low number consulted sources of information, and the limited knowledge needed to function within the CSU admissions practices are all potential contributing factors to creating the low level of knowledge seen in the interviewees. It is interesting to note that the one interviewee who had experience working at an institution of higher education outside of the state of California claimed to have the highest level of overall knowledge related to all levels of the studied legislation. This could indicate that it is the combined effects of working in California and working at the CSU system that has had the strongest influence on the level of knowledge cultivated in the interviewees. Further research is needed to determine if this is valid.

### 5.3 Clarity, structure and compliance of CSU system admissions criteria and procedures

The second theme identified through the content analysis relates to the clarity of the admissions criteria and procedures used throughout the CSU system. The CSU is exceedingly careful and explicit in its instructions of how applicants are to be admitted, and specifically states that race and/or ethnicity are not to be used in any way within the admissions process. As the moderately selective layer within the entire California higher education system, the CSU maintains a basic set of requirements for entrance, but does have the same level as the more selective UC system. These requirements are explicitly stated on both surveyed institution's websites, and were quoted multiple times throughout multiple interviews. The stated goal of the CSU enrollment management policies is to preserve the mission to provide access to as many first-time freshmen and upper-division transfer students as possible based on campus capacity and budgeted resources. Based on the language, the pervading thought is that the system exhibits stewardship and demonstrates a respect and concern for all stakeholders by maintaining an equal and unbiased admissions policy.

The CSU Chancellor's Office sets the admissions policies for the entire system. It encourages all campuses to use the standard admissions criteria, but allows campuses designated as impacted campuses (or having more qualified applicants than available seats in class) to employ a more stringent multi-criteria admissions index. In this manner, the CSU Chancellor's Office is able to craft two different admissions policies that attempt to fit the specific enrollment needs of all the CSU campuses (Park, 2015). Campuses utilizing the multi-criteria admissions index are then able to use additional criteria to help determine which students to admit as well as create student body diversity without using race and/or ethnicity, thereby making a reasonable effort to achieve diversity through a race-neutral alternative (Peterson, Kowolik, Coleman, Dietrich, Mascarenhas, McCunniff & Taylor, 2004).

As demonstrated through the literature review and the interview responses, the contradictory nature of the legal guidance has had a limited impact on the studied institutions because there is existing state-level legislation in the state in which these institutions are located. The existence of state-level legislation in the form of California Proposition 209 has negated the effects of the other types of legislation. California Proposition 209 supersedes the federal-level legislation and any of the Supreme Court rulings, and works to uphold the Equal Protection Clause of the U.S. Constitution. Therefore, the admissions practices and policies in effect at the studied institutions are in compliance with the state-level legislation in that they eliminate the use of race and/or ethnicity within higher education admissions.

All of the interviewees indicated within their interview responses that they strictly adhere to the admissions processes as set forth by their individual institutions and by the CSU system as a whole. The admissions counselors receive strict oversight from their managers, as well as the CSU system, the general public and the media. Because of these multiple layers of scrutiny, the interviewees were emphatic in their interview responses that there is no room or ability to deviate from the admissions practices and policies, and allow race and/or ethnicity to enter into the admissions decision at all. There were no indications of any kind that interviewees would deviate in any way from these processes.

#### 5.4 Alignment of practice and policies with actual admissions work

The policies and procedures are slightly different when comparing CPSLO and CSUCI. CSUCI uses the standard admissions eligibility review index, which has three different elements: required high school courses (15-units total); grades in specific courses and test scores (ACT or SAT); graduation from high school (includes passing the California High School Proficiency Exam or passing a General Education Development program). If all three of these criteria are met, then the college applicant is eligible for admission to the campus and does not need to meet any other criteria (unless applying to a specific degree program, at which time the academic department might have additional admissions criteria). Since the university is not exceeding its enrollment capacity, CSUCI currently accepts all eligible applicants. CPSLO currently receives significantly more qualified applicants than it has enrollment capacity, causing the campus to be designated as an “impacted campus”. Because CPSLO is an impacted campus, the university files an impaction policy with the CSU Chancellor’s Office, thereby becoming eligible to use a comprehensive review process to screen applications. In addition to the three requirements from the eligibility index, CPSLO also considers participation in extracurricular activities, work experience, veteran status, first-generation college bound status, local domicile area, and other factors deemed important by

the institution. Research participants from CPSLO were quick to point out that neither race nor ethnicity are characteristics included in the comprehensive review process. The existence of two different admissions practices within the same overall system is just an example of how one overall policy will not address every campuses enrollment needs. The CSU system is attempting to craft an admissions policy that allows campuses to fit their specific enrollment needs (Park, 2015).

In order to determine if the additional state-level legislation would have any effect on the admissions counselor's decision to enforce the strict admissions eligibility index, interviewees were asked if they felt unfairly restricted by the state-level ban, especially in comparison to their private-institution counterparts within the state of California. Overwhelmingly, 87.5% of responses indicated that they do not feel unfairly restricted by Proposition 209. The majority of interviewees stated that because they are at a public institution and receive state funding in order to operate, they felt that respecting the legislation and exactly following the admissions eligibility index is exactly how they should operate:

*"Public institutions should have a standard on how they should admit students."*

*"I don't think that it's unfair that we are restricted in not being able to use race as an admissions qualifier because we're public, so we're here to serve everyone in the state."*

*"To me it's understandable that there are differences in a processes between a private and public institution."*

Regardless of their indicated knowledge of the state-level legislation California Proposition 209, all of the interviewees were extremely clear in their understanding of its impact on the admissions practices and policies in force at their institution. All interviewees indicated that they feel their actual admissions work is in alignment with the practices and policies stated by the institution, as well as stated by the CSU system as a whole. During the interviews, interviewees demonstrated an extreme importance in emphasizing how closely they followed the stated admissions procedures. Their tension was almost palatable, especially from the two interviewees who were in management roles. They seemed to overemphasize their campus's adherence to the restrictions implemented through California Proposition 209. This is likely because of the recent scrutiny that California institutions have received as a whole, including accusations that admissions departments are still considering race within the admissions process even though this strictly prohibited by California Proposition 209 (Lott, 2014). Because of this scrutiny, interviewees were very careful to state that their institution is very careful to say that they followed the standard admissions eligibility index. Overall, 100% of the responses indicated that they feel the actual

work in the admissions process is completely in alignment with the published policies and procedures. This theme was echoed in the comments of the colleague reviewers, in that interviewees were clear to state their understanding of their campus's practices and how those aligned with California Proposition 209. This demonstrates the affect that the state-level legislation has had on the interviewees, making them emphatic in stating their adherence to the published admissions processes at their institution, and how these processes comply with the existing state legislation.

### 5.5 Interviewee's perception of the legislation

The third theme, the perception of the discussed legislation, was directly affected by the claimed knowledge level of the interviewees as well as the structure of the CSU admissions policies. One unexpected discovery within the research is that admissions counselors did not perceive any unfairness in the legislation affecting their institution, specifically that public institutions were subject to Proposition 209 while their private counterparts were not. Interviewees did not indicate frustration or concern that they are required to follow different restrictions and indicated nearly complete agreement that because they worked at a public institution, they should be held to a different standard. This response was unexpected and deserves further research as it directly influences the admissions counselor's inclination to follow the institution's admissions practices. There was a consistent adherence to the idea that public institutions can and should be held to a different standard when it comes to the legislation restricting race-conscious admissions practices:

*"It's apples and oranges. Private institutions are a different element and they should be different. To me it's understandable that there are differences in processes between a private and public institution."*

*"Public institutions should have a standard on how they admit students. Private institutions are privately funded and they can do whatever they want."*

*"I know private institutions have more freedom to make their own admissions decisions, but I don't think that it's unfair that we are restricted in not being able to use race as an admissions retirements, because we're public, so we're here to serve everyone in the state."*

Even though the legislation does not equally affect private and public institutions, interviewees supported the different standards, referencing the fact that the public institutions exist in order to provide universal college access to all California residents (Rendon, Novak & Dowell, 2005).

There were differing opinions as to whether race-conscious admissions practices should be used. One

---

I did not anticipate this response, as it was contrary to my own personal opinion. Having worked at a private institution where I had the freedom to dictate admissions practices, I anticipated that the interviewees would feel unfairly constrained by California Proposition 209, and might be inclined to find a way to work around the restrictions. I was extremely surprised when so many of the interviewees indicated that they respected being held to a higher standard, and that they were not unfairly limited by the existence of the state-level legislation. Additionally, from my knowledge of Rawls' Law of Fair Equality of Opportunity, my perception was that public institutions should be the institutions that help individuals overcome almost insurmountable obstacles in their quest to attain a college education. Educational policies at the K-12 level, access to college-level preparation, ability to participate in extracurricular activities and actual discrimination are all obstacles that can prevent minority students from being admitted to college. Using admissions criteria that allows race to be one factor is a way to mitigate these past transgressions.

---

response indicated support for the use of race conscious admissions practices in order to create student body diversity:

*"If you look at the numbers, the numbers are going to show you that the campus is not very diverse, and I think in order for a campus, for any student on a campus to get a holistic experience, you need to have that interaction with different races, different ethnicity groups."*

This response supports the view within the current literature that race and/or ethnicity is a reliable and established method that can be used to define diversity in higher education (Bernell, Mijanovich & Weitzman, 2009; Budescu & Budescu, 2012; Cole & Ahmadi, 2010; Hunt, Wise, Jipguep, Cosier & Rosenberg, 2007; Juvonen, Nishina & Graham, 2006; Lake & Rittschof, 2012; Richard, Murthi & Ismail, 2007; Seaton & Yip, 2009). Race is an easy characteristic to measure (Alger, 2013; Levey, 2004) and as such is viewed as a reliable metric of student body diversity. In order to have the most holistic and influential college experience, exposure to different races and ethnicities is needed (Ancheta, 2003;

Anderson, 2011; Park & Liu, 2014; Yin, 2014). This embodies the foundational reason for the Supreme Court ruling in the *Bakke* case – that colleges have a compelling interest to create student body diversity (Alger, 2013) because having a diverse student body combats stereotyping (Ancheta, 2003; Yin, 2014), enhances intellectual engagement (Park & Liu, 2014), promotes cross-racial understanding (Yin, 2014) and is required when creating a smarter, more responsible group of societal leaders (Anderson, 2011; Park, 2015; Vasques & Jones, 2006; Wilson, 1992). This is also supported through Rawls’ concept of the Original Position, that even through using race as one admissions criteria might create a small social inequality, it creates a greater benefit for the least advantaged members of society as a whole as well as society. Through the data, we see that interviewees do support the use of race-conscious admissions practices, ultimately because they do see the value in creating a diverse student body.

The opposite view was also seen within the participant responses, where the use of race and/or ethnicity should not be allowed within higher education admissions:

*“Personally I think that it (race) should not be a factor in college admissions. I just feel that people should be evaluated on their accomplishments, that all applicants should be evaluated the same based on...whatever criteria, whether it be academic test scores, extracurricular activities, all of that information should be paramount.”*

This response supports the view that the use of any racial classifications is suspect and should not be allowed to be considered within higher education admissions (O’Neil, 1971).

## 5.6 Awareness of contradictions created by legislation

When asked if the sixteen pieces of legislation create conflicting legal guidance concerning the use of race and/or ethnicity in higher education admissions, 37.5% responded yes initially, with the remaining 62.5% responding they did not have enough knowledge to make that decision. A brief statement was then read to this sub-group explaining the overall effect of each group of legislation. These participants were then asked again if they felt there was conflicting legal guidance. A total of 80% of this sub-group responded that yes, there was conflicting guidance, while only 20% responded that no, that the legislation did not create conflicting guidance. Based on the ultimate answer, 87.5% of total responses indicated that they perceive there to be conflicting legal guidance concerning the use of race and/or ethnicity in higher education admissions.

The majority of the initial responses being “don’t know” aligns with the low level of knowledge regarding the individual pieces of legislation and can be seen in the following quotes,

*“Well right now it doesn’t really impact me directly, because working for the California State University, we don’t discriminate in our admissions processes. If I were to say transfer to a different institution of higher education in a different state it would affect me, but, it’s never really been a concern for me because our admissions requirements have always been the same and they’ve never included race or ethnicity or anything like that.”*

While the majority of interviewees did not initially indicate an awareness of the contradictory legal guidance, the addition of a short description was able to create a near consensus in the opinion that the existing legislation creates conflicting legal guidance.

There are three potential influential forces of the level of interviewee’s awareness of the existing legislation that were identified within this research: knowledge needed for job performance; sources of information consulted by the interviewee; and access to training or discussions regarding the existing legislation.

The overwhelming influencer on the level of admissions counselor’s level of awareness as it related to the specific pieces of legislation appears to be their employer and geographical work location within the state of California. All interviewees referenced the fact that they work within the CSU system as a reason that they were not more knowledgeable of the existing legislation.

*“Well right now it doesn’t really impact me directly, because working for the California State University (system), we don’t discriminate in our admissions processes.”*

*“I know that those things are not something that are used in the selection process, so I would say that’s enough for me to know what we use in the selection process.”*

The quotes above reflect the general feeling of comments received from all interviewees. They indicated that their knowledge of the legislation is not as extensive as it could be because of the admissions processes they utilize and the university system in which they work. Because of the state-level legislation California Proposition 209, their institutions (publicly funded institutions) cannot consider race or ethnicity in any capacity within the admissions process. Because they cannot consider race or ethnicity at all, the admissions counselors have neither made it a priority to learn about the topic nor dedicated the time necessary to learn about the topic. The overall responses indicate that if it is not considered an



essential job function or knowledge necessary to perform their job, they do not have a driving force to learn about the existing legislation.

### 5.7 Interviewee's perception of race-conscious admissions practices

The fourth theme focused on the interviewee's perception of race-conscious admissions practices. This is a gap within the current literature, and represents new knowledge created through this research. There have not been any published studies regarding the opinion and perception of race-conscious admissions practices, and to what extent admissions counselors believe that race and/or ethnicity should actually be used within the admissions process. The responses were almost overwhelmingly in favor of using race within a narrowly tailored manner, as evidenced by being indicated by 75% of the interviewees. The remaining 25% percent indicated that the use of race and/or ethnicity should be completely restricted. It was interesting that none of the interviewees indicated that the use of race and/or ethnicity should be completely unrestricted. This echoes the recommendations of the Supreme Court that in order to resist questioning in regards to constitutionality, the use of race must be narrowly tailored and withstand the test of strict scrutiny (Siegel, 2006). This information does suggest that admissions counselors, those employees directly responsible for crafting the demographics of the incoming class of students value race-conscious admissions practices as a tool for achieving the specific enrollment needs of the institution (Park, 2015). Additionally, the admissions counselor's responses suggest that they would like to act in accordance with Rawls concept of the Original Position, where they are operating under a "veil of ignorance" that allows them to distribute the social primary good of admission to college in a manner that is to the advantage of the least favored.

This knowledge is important for two reasons: primarily, it is the first identified piece of information suggesting how admissions counselors perceive race-conscious admissions practices. Their opinion has not been determined or explored in any of the previously published literature. Secondly, it indicates that while the interviewees accept and operate under the stated admissions practices, they do not necessarily agree with them. The manner in which the admissions practices are set up at the two studied institutions do not allow for any deviation in practice, but this raises the question for other institutions whether their admissions counselors are actually adhering to admissions practices with which they disagree.

## 5.8 Interviewee's expectations for training

The last theme focused on desired subject matter for a training program focused on increasing awareness and knowledge relating to the conflicting legislation. Overwhelmingly, the recommendation was to create a training program that gave a holistic view of all pieces of legislation. This actionable data can be used to directly address the problem of the lack of knowledge documented by this research project.

There is a mixed perception as to the need for knowledge concerning the legislation affecting the use of race and/or ethnicity in higher education admissions. The majority of responses indicated that the knowledge was not needed to fulfill their job responsibilities; therefore they did not try to gain any of this knowledge. In alignment with the lack of knowledge, sixty-two percent of the responses indicated that they were not comfortable with their own level of knowledge concerning the studied legislation. This can indicate that the interviewees were actively aware of their lack of knowledge, and justified it through the admissions practices used at their particular institution.

## 5.9 Differences between the two campuses

After viewing the results in aggregate, it was interesting to explore the level of awareness claimed by the two different groups of interviewees: those from CPSLO and from CSUCI. The employment location of the interviewees dictates the type of admissions processes and criteria used, which could potentially have an effect on the level of awareness claimed by the interviewees. Interviewees from CPSLO use a more in-depth multi-criteria admissions review which incorporates additional admissions criteria (but still not including race and/or ethnicity). This multi-criteria admissions review is more stringent than the process used at CSUCI. While there appears to be an overall lower level of familiarity with the conflicting legislation based on the institution, this does not provide a definitive indication whether the type of admissions processes and criteria used have an effect on the knowledge level of the interviewee.

The participants at CSUCI claim to have a higher level of knowledge than participants from CPSLO. On fourteen of the sixteen individual pieces of legislation, participants from CSUCI indicate a higher average level of knowledge. The specific pieces of legislation where the participants at CPSLO claimed to have a higher level of knowledge are *Hopwood v. Texas* and *Schuetz v. BAMN*. This difference could have been influenced by three different dynamics found within the interview data. First, more CSUCI interviewees reported attending trainings related to the use of race/ethnicity in higher education admissions than CPSLO interviewees (50% attended training sessions as compared to only 25%, respectively). This raises the question of whether CSUCI provided more opportunities for training and education on this topic to

their employees to a greater extent than CPSLO. Second, CSUCI interviewees reported that they consulted a larger number of sources in order to learn more about state and federal legislation (consulted 53% of the listed sources compared to 30%, respectively). Lastly, CPSLO utilizes a more stringent, multi-criteria admissions process instead of the simpler, three-step admissions process utilized by CSUCI. The additional attention needed to oversee the multi-step admissions process could possibly take time and attention away from pursuing information and learning more about the different pieces of legislation.

Interviewees from the two campuses indicated different levels of knowledge regarding the *Bakke* and *Fisher* cases. The higher claim of knowledge regarding the oldest and most recent Supreme Court cases could be evidence of serial position effect, or the tendency for individuals to remember the beginning and end items in a uniformly spaced list (Murdock, 1960, Neath, 1993). Interviewees indicated little or no knowledge of the Supreme Court cases that happened in the middle of the time frame, but indicated higher knowledge regarding the oldest and newest cases. The consistently higher claim of knowledge regarding the oldest and the newest Supreme Court cases could indicate that this knowledge is subject to the serial position effect.

Interviewees from the two campuses claimed a higher level of knowledge regarding California Proposition 209. Again, this could be expected because Proposition 209 has a direct effect on the admissions counselor's work activities. The only other state-level legislation that had any level of knowledge indicated (all by the same interviewee) was the legislation from Texas, Washington and Michigan. Of the three, Texas's Top-10 Percent Plan has received the most media coverage, as it relates to the *Fisher* Supreme Court Case. Michigan's Proposal 2 has also received media coverage, as it relates to the *Schuetz* Supreme Court case, but it has overall received less coverage than the *Fisher* case.

There is a significant gap of knowledge indicated within the respondents from CSUCI. One interviewee indicated a very high level of knowledge relating to all but three of the state-level legislation, demonstrating that they were very knowledgeable with 66% of the state-level legislation. This participant was a manager, however, with work experience in multiple states which could have contributed to their increased knowledge of the state-level legislation. Interviewees from CPSLO claimed to have at least some level of knowledge in all Supreme Court cases except for *Grutter v. Bollinger* and *Gratz v. Bollinger*. Those from CPSLO claimed the highest level of knowledge with the *Schuetz* case. This differs from the overall aggregate data, which indicated that the highest level of knowledge was seen related to the *Fisher* and *Bakke* cases. This raises the question how CPSLO admissions counselors could have gained their knowledge relating to the *Schuetz* case since it is neither the most recent case, nor the most publicized

case. It is possible that because the *Schuette* case upheld the voting public's ability to impose a state-level restriction on higher education admissions policies, and this was how California Proposition 209 was implemented, that this created a higher level of knowledge and awareness of the *Schuette* case, but this should be explored through future research.

The existing literature does not provide any indication or research concerning the individual opinions of admissions counselors regarding the use of race and/or ethnicity in higher education admissions. Even though admissions counselors are the employees tasked with abiding by and operating within the contradictory legal guidance, there is no data published to indicate if they believe in and support the laws that they have to follow.

Within the interviews, interviewees were asked which of the three entities that can decide an implement legislation (Supreme Court, state legislators, or voting public) should be allowed to make the final decision regarding the use of race and/or ethnicity in higher education admissions. During the interviews, the majority of interviewees sounded surprised when asked this question, possibly indicating that no one had ever before considered their opinion. While the Supreme Court received the most responses as the most appropriate entity to make the decision regarding the use of race and/or ethnicity in higher education, there was no clear majority. It is interesting that even though all the interviewees are operating under legislation enacted by the state legislators and the voting public, a higher number indicated the belief that the Supreme Court is the most appropriate entity to decide how race/ethnicity can be used. This is evidenced through the following quotes:

*"In my opinion it would be the Supreme Court only because that's, they're supposed to represent the masses. They're supposed to represent the entirety of the country, which should be objective to a certain degree. It should represent, should be representative of all parties involved, in my opinion."*

*"I would just say it's (the Supreme Court) the highest, it's the highest level of authority in these type of situations. I think that everybody has a stake, but there's often times that things are voted on by the public and then they are raised to a higher level to determine whether or not they are constitutional or appropriate."*

Interviewees were also asked their opinion on whether race and/or ethnicity should be used within the higher education admissions process and to what extent it should be used. A total of 75% of the interviewees indicated that the use of race and/or ethnicity should be allowed within narrowly tailored

conditions, in direct contrast to what is allowed within California and the CSU system. When asked for a reason, the majority indicated that creation of student body diversity was an acceptable reason for using race and/or ethnicity within the admissions process.

*“I believe that the guidance from the Supreme Court seems to make the most sense, that race is tempered with other factors that are related to student success, and that have been proven by research to matter. So race is just one of many factors that would be able to explain a student’s success and what benefit they can offer a campus.”*

This could indicate support for previous research indicating that the use of race and/or ethnicity is viewed as a reliable and established method to define and create diversity (Bernell, Mijanovich & Weitzman, 2009; Budescu & Budescu, 2012; Hunt, Wise, Jipguep, Cosier & Rosenberg, 2007; Juvonen, Nishina & Graham, 2006; Richard, Murthi & Ismail, 2007; Seaton & Yip, 2009).

Both interviewees who selected completely restricted indicated that entrance into college should be completely objective, and that any use of individual characteristics, including gender, race, and ethnicity should not be allowed:

*“Personally I think that it (race) should not be a factor in college admissions. I just feel that people should be evaluated based on their accomplishments, that all applicants should be evaluated the same based on the same criteria, whether it be academic test scores, extracurricular activities. All of that information should be paramount because we’re talking about applying to college and our job is to potentially find applicants that will be successful and to help make them successful. So in my opinion I just don’t think that anything outside of what may be a measurement of how someone would, or whether someone would be successful in an academic environment should be used.”*

In a direct contrast to these statements, these two specific interviewees indicated that they believe the Supreme Court should have responsibility for making this decision. Their quotes and belief on the restriction of race and/or ethnicity appear to contradict the actions and the opinion of the Supreme Court, the entity whom they believe is most qualified to make this decision.

The percentage of interviewees that indicated they are not comfortable in their understanding of the discussed legislation is the same as those indicating they would benefit from receiving additional training. Only three participants, including the two who indicated the highest overall knowledge of the related legislation, indicated that they were comfortable in their understanding and knowledge.

## 5.10 Summary

The developing discussion presented in this chapter supported through the adoption and use of content analysis has sought to draw focus towards the overall knowledge and perception of admissions counselors regarding the conflicting legal guidance and individual pieces of legislation affection race-conscious admissions practices. It is important to note that while content analysis did draw out several thematic expressions within the data, it could not be definitively said that data saturation was achieved or demonstrated within the data set. The sample size can be considered appropriate for a qualitative study (Creswell, 1998; Kuzel, 1992; Morse, 1994), but only having participants from two of the total twenty-three campuses within the CSU system provides a very tight institutional locus for the data samples. Therefore, while the data indicates that the discussed thematic expressions can be representative of the specific research subjects, making stronger conclusions will require additional interviews and research.

Out of all the reviewed pieces of literature, there is only one that truly relates to the current situation and the sought knowledge: the study conducted by Espinosa, Gaertner and Orfield (2015) which studied the effect of the *Fisher* case from the perspective of admissions administrators. These authors emphasize the importance of pursuing additional research focused on creating straightforward, practice-relevant resources that can be used to educate admissions counselors and administrators in how to legally and creatively utilize race-conscious admissions practices.

## 6.0 Chapter six – personal reflection

Action research does not exist just to describe, interpret and analyze, but to act on a situation to make it better than it was before. This process does more than just create actionable information to improve the situation, but also creates actionable knowledge about the researcher that can be utilized in order to improve their research and reflection skills. In an ideal situation, the research leads to action, knowledge and learning (Cherry & Bowden, 1999) seen in both the organization and the researcher. In the researcher, particularly as explored by the Liverpool DBA program, action research leads to the development of the student as a scholar-practitioner. At the end of the program, though, it is important to reflect upon my journey so that I can define my own progress as a scholar, a practitioner and a scholar-practitioner. It is important to reflect on these three roles, as they represent the multiple perspectives that create the overall scholar-practitioner.

The metaphors that I use to describe my life reflect the cognitive framework within which I make sense of my own actions and the actions of others (Cornelissen, Oswick, Christensen & Phillips, 2008; Fauconnier & Turner, 2003; Heracleous & Jacobs, 2008; Lakoff & Johnson, 1980; Turner 1996). The metaphors that I use to describe my role as a scholar-practitioner reveals how I interpret my world as well as how my thoughts and behaviors are shaped in my organizational life. The metaphors that I use to describe my life can be categorized into three different roles: scholar, practitioner and scholar-practitioner. As a scholar, I would describe myself as a learned thinker focused on the detailed study of a specific subject. I am working to develop a deep knowledge and understanding of a narrow subject, becoming a subject matter expert. While there is some collaboration, the majority of the work and research is done in solitude using reflection-on-action to reflect after situations. I might work my entire life researching this narrow topic, hoping to produce knowledge that fills a gap between other scholar's works and striving to create a truly new and earthshattering piece of knowledge. The scholar role can be hard to talk to, sometimes being so transfixed and wrapped up in the research that communicating with "normal" people can be a challenge. As a practitioner, I would describe myself as one who is focused on moving myself and my organization forward, working to solve problems that restrict the growth and success of the organization so that there can be progress. My knowledge is broad and encompasses many subject areas, but does not master any one in particular. Problems are studied as soon as they are presented, a solution identified and an action implemented in a rapid-fire manner. This problem-solving is done in a group environment, coordinating with individuals internal and external to the organization. There is no time for reflection, as the practitioner continuously moves from problem to problem. The practitioner is much more personable,

but lacks the depth of knowledge to be able to adequately describe the logic and knowledge behind the solutions they are implementing.

When the two are combined into the role of scholar-practitioner, I would describe myself as the bridge between the academic scholar and the real-world practitioner. The scholar-practitioner uses scholarly practices and techniques to implement change and solutions to real-world problems. The scholar-practitioner can “speak” the academic language in order to explain the theory behind the action yet is also able to explain the situation in real-world terms. As a scholar-practitioner, I shift between the two roles, using them throughout the research/action process as needed. Some of the work is conducted in solitude while the rest is completed with a team of colleagues and fellow researchers. Reflection-in-action is utilized, allowing for feedback to be generated while still in the situation.

The result of combining these two different roles in order to create the scholar-practitioner can cause an identity struggle, where pre-defined individual role expectations for the scholar and the practitioner are challenged by the expansive nature of the scholar-practitioner role. I myself have experienced this identity struggle, when elements from my scholarly nature conflict with my practitioner role. Over the course of my DBA program, I have started to alleviate some of this identity struggle, but will need to continue working to eliminate the pressure to conform to one identity or the other.

Along with solidifying my own interpretation of what it means to be a scholar-practitioner, I have also begun the journey towards becoming a reflexive, action researcher. This is my first experience in the dual role of researcher and practitioner, and challenged me to work concurrently as an insider and outsider to the research. This was, though, a tremendous opportunity for growth, and upon reflection I have identified specific areas of growth, adversity and learning within myself.

## 6.1 Developing a scholarly perspective

In the action research process presented by Shani and Pasmore (1985), there are four factors which influence and represent the entire process: context, quality of the relationships, quality of the action research process itself and outcomes. Of these four factors, the one that experienced the greatest change between the start and end of my research project was the context in which my research was conducted. The context in which the action research is conducted can be defined by the goals, characteristics and economic environment in which the action research project takes place. Understanding the context and the environment in which the research is conducted is extremely important as it influences the success of



the research. If the goals of the organization, the characteristics of the organization and those within it, and the economic environment in which the organization operates are not conducive to the research, this can indicate whether the research will be successful. The context defines whether or not the organization is ready and capable of participating in the action research process. When I first started this research project, I could sense that there was some reluctance on the part of Midway University, in part to the sensitive nature of my research. The university was historically perceived (by the community, faculty, staff and students) as having a student body that was almost completely Caucasian, and as not being proactive enough to implement any initiatives to change the diversity of the student body. This perception was fundamental to the inception of the Pathways Scholar program and the pressure put upon admissions counselors to ensure that the program produced the intended results. When I first proposed focusing on student body diversity through my research project, I perceived the reaction given by upper administration to be one of hesitation because they did not want significant attention brought to the lack of diversity in the student body and the overall ineffectiveness of the Pathways Scholar program. In this aspect, the context in which I was attempting to begin my research project, the overall goals, characteristics and economic environment at Midway University, was not the most supportive environment. As I progressed through my DBA coursework and demonstrated the usefulness of my module research projects, the perception from upper administration changed and became more positive and supportive. This changed once I made the decision to leave the university, presenting me with the challenge of finding a new context in which to pursue my research.

Once I secured a new job at CSUCI, I began exploring the context of my new employer, and discovered a completely different set of goals, characteristics and economic environment. With the restrictions in place because of the state-level legislation (California Proposition 209), the admissions department was unable to focus on affecting the student body diversity any further than attempting to recruit more qualified applicants of a minority race/ethnicity. Basically, whatever applicants demonstrated that they met the admissions criteria were automatically admitted to the institution. Therefore, the student body diversity is dictated by the diversity of the qualified applicants. Despite this restriction, the admissions administrators were extremely open and welcoming when I approached them to request their help with my research project. Even though they could not see an immediate direct benefit for their staff, they were very supportive and helpful.

Reflexivity is the process of critically reflecting on one's biases and predispositions (Schwandt, 1997). Reflexivity is also the process of acknowledging one's own place within the setting and context of the

research so that a critical examination can be completed (Schwandt, 1997). Working at two different institutions throughout the course of my research has allowed me the opportunity to think reflexively upon my thoughts and the situation at two very different institutions. After thinking reflexively, I believe that the difference in context between the two locations reflects the two different missions of the institutions. Midway University is a small, private, liberal-arts institution which generates the majority of its funding through student tuition. This creates a heavy emphasis on generating increasingly higher enrollments each year in order to sustain the institution and fund new initiatives. Midway University's culture became very business-like. In contrast, CSUCI is a publicly funded institution which receives the majority of its revenue from the state of California. As long as the minimum enrollment goals are met, the university will receive the funding it needs for operations and for continued institutional growth. From my perspective, because CSUCI operates in a more egalitarian system and is supported in full by the state, it is more altruistic in its mission and is truly dedicated to serving the students. This is not to say that Midway University is not focused on serving its students, but administration must constantly worry about maintaining the institution's financial health, sometimes at the expense of programs or initiatives that would benefit the students. I would not have seen or understood this difference had I not had the opportunity to work and conduct this research project at both institutions.

## 6.2 My growth as a researcher

The most important element in action research is reflection: it lies at the core of action research (Somekh, 1995). As a reflective researcher, I need to first look at my personal response to the world, people and events around me, recognize what this response is, and use it to inform my choice of action, communication and understanding. Prior to starting in the DBA program, I did not value bringing this reflectivity into the research process. I believed that as the researcher, I did have to maintain objectivity and separate myself fully from the research. My personal response to the world, people and events around me did not factor into my research, and needed to be kept completely separate.

Prior to my experience in Liverpool's DBA program, I considered myself to be a competent researcher, having worked with one of my colleagues on several small, academically focused projects that centered around horses and learning. These projects were structured according to the traditional research method, utilizing a positivist lens that valued hard, quantifiable facts over the humanistic or social elements. My first real research project focused on encouraging learning and retention of knowledge for a large group of college students. The students were taking a lower-level college course that I was teaching in

partnership with my colleague, and we wanted to see if teaching a hands-on skill through the use of a rubric would encourage higher test scores and better retention of knowledge. My colleague and I were only concerned with demonstrating (through scoring using our self-designed rubric) that students who were exposed to the rubric during their lessons achieved higher scores when they demonstrated the hands-on skill and were scored using the same rubric. We had two groups of students who did not receive the rubric during the lesson, and two groups of students who did receive the rubric during their lesson. All four groups were then graded according to the rubric when they demonstrated their ability to complete the hands-on skill.

From our Positivist perspective, my colleague and I focused on using a discrete, scientific method to emphasize the use of facts, logic, verification and certainty (Thorpe & Holt, 2008). We used a strict, scientific method to verify if and how the use of the rubric influenced the overall test scores. The only data that mattered were the rubric scores. We did not talk with the students about their experience using the rubric, or their experience of even learning the hands-on skill. Their experience and the humanistic element of the situation was not considered by our research. The only data element that mattered was their score. We engaged in a structured, systematized observation with the goal of making a reasonable generalization as to how rubrics could affect the learning of hands-on skills.

My foundational research experience was completely different from the research perspective that I have developed over the course of my studies with the University of Liverpool. I value it tremendously as it was my first research project and ended in the publication of my first academic paper. I fully recognize, though, how my researcher style has evolved to embrace social constructionism and the idea that as humans, we have created social constructs and grand narratives about how we see the world (Etherington, 2004). There are a multitude of these constructs and narratives, and all are viewed as having equal value and contributing to the shared understanding of the world (Etherington, 2004). My perception of the problem associated with the legislation affecting race-conscious admissions practices is different from admissions counselors working at public institutions in California, but I value their perceptions just as much as my own.

Having been exposed to more of the interpretivist perspective of research, I thoroughly enjoy exploring how meanings and perceived identities shape perceptions of truth and reality, and how those are expressed through language, stories and behaviors (McLeod, 1997). As an interpretivist, I believe that the world can be viewed through multiple perspectives which each deserve equal respect (Hay, 2000). I find value in understanding these different perspectives, and through them interpreting the humanistic and

social elements within the situation. My experience coming from a private institution in a state without restrictions on race-conscious admissions practices was completely different and unique from the experiences held by my colleagues at CSUCI and CPSLO. The majority of these colleagues have not worked outside of the CSU system let alone the state of California. This limitation in experience has created an entirely different perspective, but one which demonstrates the humanistic and social elements that they experienced within their situation. The situation can be overall better understood once both perspectives are studied and interpreted, defining their humanistic and social elements.

Strauss and Coburn created a list of six characteristics of what they consider a grounded theorist: the ability to step back and critically analyze situations; the ability to understand and recognize the tendency toward bias; the ability to think abstractly; the ability to be flexible and open to constructive criticism; a sensitivity to the words and actions of others; and a sense of absorption and devotion to the work process (1990). As I have progressed throughout my DBA experience, I have begun to recognize these six characteristics and take an inventory of where I am in my progression of these skills. While I feel that I have made substantial progress in critically analyzing situations, being flexible and open to constructive criticism, being sensitive to the words and actions of others and being devoted to my work process, I am lacking in my progress to recognize bias and think abstractly. I have a tendency to follow the processes that have already been done, and struggle with creatively thinking of alternative methods or approaches. I constantly have to remind myself to push my creative boundaries and look for new and innovative methods and practices.

One of the new methods that I did discover within this research was the use of grounded theory as a research methodology. Grounded theory provides the vision and methodology for what I want to accomplish, which is to understand the conditions that occurred within my research situation. Now that I have been exposed to and utilized this methodology with some success, I will work to use this methodology in my future research pursuits.

Freedman and Combs (2002) suggest that having a 'not-knowing' attitude allows researchers to listen deconstructively and seek new knowledge from what they are hearing. I identify with this perspective, and appreciate how maintaining a 'not-knowing' attitude can allow me to discover new knowledge rather than seeking knowledge that will fit within or reinforces what is already known about the world. In the beginning of my professional career, I embodied in some form an "I know all" attitude. I began to recognize this attitude within the first two modules of the DBA program, and have actively worked to

change my perspective, maintaining a 'not-knowing' attitude. This attitude will help me stay open to discovering new knowledge as it emerges from my current and future research.

As I progressed through my research project, there were two overall areas where I learned "in the action" of my research. The first area focused on the process of crafting the interview questions. Since my previous research experience had been very quantitative in nature, I did not have extensive experience building semi-structured questions. My first drafts were arguably more like a survey than an actual interview, eliciting short, brief answers rather than open, text-rich answers that would lend themselves to qualitative analysis. It took many rounds of crafting the questions for me to start to understand how to better craft my questions.

Along with crafting the interview questions, I better developed my skills in actually facilitating the interviews. I realize that there is an important relationship between the researcher and those being researched, the storyteller and the listener, or the knower and the knowledge (Etherington, 2004). Each one brings something unique to the research relationship and it is only when both are explored and appreciated that meaning and understanding can be created. I had already established a relationship with some of the interviewees as a colleague and peer, but now I was sitting across the table from them asking rather probing questions concerning their opinions and knowledge on a somewhat controversial topic. Just because I have created a good "recipe" for my research doesn't mean that I will be able to produce the data I am looking for. I truly had to stretch my interview skills and make sure that I was carefully questioning my interviewees to make sure that I was getting a forthright answer. There were two interviewees in particular who truly tested my interviewing skills. The first interviewee was challenging because even though they had no knowledge regarding my research topic, they seemed to want to provide lengthy and detailed answers, even though the answers held very little substance. The second interviewee was challenging because they seemed overcautious in talking about race-conscious admissions practices, as if I was looking to trick them into admitting that they did somehow consider race during their admissions processes. This interviewee answered the questions very succinctly, and needed additional probing at each question to bring out a more detailed and language-rich answer.

### 6.3 Reflection on action

Schön (1983) describes reflection-on-action as thinking back on the lessons that have been learned in order to identify where knowing-in-action could have occurred and created an unexpected outcome.

Reflecting on the learning process is critical to define the researcher's starting point and ending point. Within my research project, there was one lesson in particular that had an unexpected outcome on my personal support of race-conscious admissions practices. When I began this research project, I believed that institutions should be allowed to use race-conscious admissions practices in whatever manner they chose as long as they conformed to the guidelines set forth by the Supreme Court. I remember being astonished that individual states could (from my perspective) unfairly restrict public institutions from choosing their own practices and having such an influence over how the institutions admitted their students. Coming from a private institution background, I had always worked in an environment where the prevailing thought was "we can do whatever we want and admit anyone that we want to."

My change in jobs, and beginning to work at UCLA was the catalyst that triggered my shift in perspective. One of my colleagues at UCLA had worked at the university for many years, and had been at the institution when the California state legislation Proposition 209 was implemented. His firsthand account of the turmoil caused by Proposition 209 allowed me insight as to the experience of living through the implementation of this significant piece of state-level legislation.

#### 6.4 Dealing with challenges

I continuously faced challenges at every step throughout this research project. While these challenges were very frustrating to encounter and overcome, they have strengthened my skills and resolve to become a better action researcher. My challenges centered around five elements: my positivist "roots" in research; my fluctuation in employment during the course of my research project; not working in a learning organization; the unpredictability of the Supreme Court; and my own perception of race-conscious admissions practices.

As this was my first experience with action research, I constantly struggled against unconsciously returning to my qualitative, positivist roots. My previous research experience influenced how I approached my research problem, developed my interview questions, analyzed the data, and wrote my research paper. I constantly struggled against trying to analyze qualitative data in a quantitative way. It took the constant reinforcement from my thesis supervisors to make sure that I maintained my focus on analyzing and presenting my data in a qualitative manner.

One of the greatest challenges to my overall research was the fact that I changed jobs three times within the time frame of this research project. I initially started at Midway University, which exhibited an

identifiable problem and had the initial desire to find a workable, practical solution to the problem. From there, I moved to California and secured a position at the University of California at Los Angeles (UCLA), within a very small department in the School of Management. I moved from overseeing a complete staff of admissions counselors and support staff focused on undergraduate recruiting, to being an admissions counselor myself within a small executive education program. I did not have a way to directly apply my research concept (race-conscious admissions practices) to this new job. After a little more than a year at UCLA, I secured a new position at CSUCI overseeing the Student Business Services department and focusing on the financial aspects of higher education. Even though my job focus was financial, I worked very closely with the Enrollment Management department, and was able to build strong ties and relationships with the management and general admissions counselors. These relationships were what allowed me to discover a new way to pursue my research within my new institution, and also what helped secure access to the interviewees for my project. Upon reflection, it would have been easier to complete this research had I remained at Midway University for its entirety, but I believe that I experienced a greater personal learning opportunity by being challenged to adapt and adjust my research so many times. Action research is undertaken in an attempt to change the current way an organization's membership thinks and acts (Gioia & Chittipeddi, 1991). Had I attempted to continue my research focused on Midway University while not actually working at that institution, I would have faced significant issues and roadblocks, and most certainly would have received resistance being a former employee wanting to influence current policies and practices.

Garvin (2000) defines the learning organization as follows: "A learning organization is an organization skilled at creating, acquiring, interpreting, transferring and retaining knowledge and at purposefully modifying its behavior to reflect new knowledge and insights." This research demonstrates that the admissions offices within the two institutions, CSUCI and CPSLO, are not examples of learning organizations when it comes to race-conscious admissions practices. Neither office had made an attempt to create or acquire any knowledge related to race-conscious admissions practices because it was not knowledge needed within their immediate knowledge base. Even though the knowledge is critical to understanding one of the most divisive issues within higher education admissions, admissions managers did not make it a priority to create this knowledge within their admissions counselors. One characteristic of a learning organization is that its knowledge is shared across the organization, rather than being limited to a privileged few (Garvin, 2000). As illustrated by this research, knowledge concerning race-conscious admissions practices was limited to only the managers, and had not been diffused to the front-line admissions counselors. Seeing this consolidation of knowledge concerns me as a researcher and as a

manager within higher education. As an institution of higher education, I believe it is our responsibility to not only promote and inspire learning within the students but also within the staff and administration. CSUCI and CPSLO are both suffering from blind spots, or areas where scanning for information has been narrow or misdirected (Garvin, 2000). Because these two institutions are subject to state-level legislation eliminating the use of race-conscious admissions practices, the existence of the legislation created a blind spot in regards to race-conscious admissions practices. Just because it cannot be used within these specific institutions does not mean that there is a valid reason to have knowledge about this type of admissions practices.

The unpredictability of the Supreme Court added another challenging element to my research project. The *Fisher* case was originally the focus of my project, when it had originally been reviewed by the Supreme Court in 2013. When the decision to remand the case back to a lower court was announced in the summer of 2013, I questioned my ability to continue to use the case as the focus of my project. The original decision had been hailed as the landmark decision that would have significant reverberations on higher education admissions. With the case being remanded back to a lower court, there was no guarantee that it would reach the Supreme Court for a second time. Because I did not have that guarantee, I had to adjust my research project and made the decision to instead focus on the conflicting nature of all of the legislation affecting race-conscious admissions practices (rather than the influence of only one piece of legislation).

One specific response within the research challenged the way that I perceived race-conscious admissions practices. Question 10 asked whether participants felt that public institutions were unfairly restricted from using race-conscious admissions practices, in contrast to their private institution counterparts which have no such restrictions. My perspective on the question was influenced greatly by the fact that all of my prior experience in higher education admissions had been at a private institution which did employ race-conscious admissions practices. Because I had fought for and used this practice in my previous experience, and I myself believed that the public institutions were unfairly restricted, I anticipated that the majority of research participants would indicate that they felt the same way. I was overwhelmed when in fact only one participant voiced their belief that the restrictions were unfair – the vast majority (87%) did not feel that public institutions were unfairly restricted. I was amazed and humbled with these answers, because to me this indicated that the research respondents understood the overarching mission of the public institution to serve their entire constituent base in a manner that promotes equality, not equity. Equity and equality present somewhat opposing requirements. Equality is defined as an



expectation of even-handed treatment, where people should receive the same treatment (Strike, Haller & Solits, 1998). With this definition of equality, group differences such as race, social class, ethnicity, sex and disability are not taken into consideration, since individuals assimilated into society are not hampered by these differences (Strike et al, 1998). In direct contrast, equity recognizes the fact that society has discriminated and oppressed minority groups, and made them to feel inferior to the majority population (Caldwell et al, 2007). In recognizing that these groups have not assimilated into society, they can now receive unequal treatment in an effort to mitigate the previous discrimination, oppression and relegation of inferiority (Caldwell et al, 2007). The research participants could see what I initially could not, that adhering to the use of race-neutral admissions practices was fundamental to the equality embraced by and promoted by the CSU system. Coming from a private institution background, I had not been exposed to this same thinking, and was tremendously influenced by the perspective of the research participants. Seeing this viewpoint expressed in the majority of research participants made me reflect on my previous experience, especially from the standpoint of contrasting the work focus of a private institution versus a public institution. I had always professed the basic understanding in mission and vision, telling myself that despite the higher price tag and aura of exclusivity that surrounded private institutions, that we really had the same focus as our public counterparts. But when I was exposed to the interviewee responses I saw how different it was, and am committed to embracing that sense of equality myself.

## 6.5 Summary

Qualitative research is part craft – the right way to do things – and part art – having a nuanced understanding of how to conduct the research (Hammersly, 2004). This learning will take a lifetime – it isn't something that can be achieved within one research project. The process of becoming an action researcher will take my entire lifetime to fully develop. This research only represents my very first step and my first opportunity at trying to balance the craft and art of qualitative research. My DBA studies and the completion of this research project has stimulated my interest in action research and has convinced me of the value that it can bring to academics and practitioners alike. I believe that my research is valuable and am only committed to continuing and expanding this research project to include interviewees from all of the CSU campuses. This research will provide the knowledge that is needed not only for my own learning, but for learning within the CSU system and the overall higher education admissions profession.

## 7.0 Chapter seven: conclusion

This thesis is based on an action research project focused on understanding the perception and knowledge level of higher education admissions counselors regarding the conflicting legal guidance concerning race-conscious admissions practices. It has a theory-practice focus and multiple avenues for action. The work presented here originated from questions posed at my place of employment, allowing me to embark upon this research in the role of scholar-practitioner. The role of scholar-practitioner is critical to understanding and creating new knowledge regarding a problem that I myself am facing in my professional practice. As a scholar-practitioner, I have a deep understanding and appreciation of the social complexities of this situation yet I can approach it from an analytical and academic perspective. Having this role allows me to approach this problem from an action research standpoint, utilizing cycles of observation, planning and action to create a solution and contribute to the broader body of knowledge within my profession.

This chapter summarizes the new knowledge that has been created through this research and the implications that it creates for admissions managers within the higher education community. It catalogues the overall findings, outlines key areas of knowledge creation and identifies future action that will be taken to complete the action research cycle. It also details the future research agenda that can be pursued by myself and other scholar-practitioners hoping to further the knowledge and understanding on the use of race-conscious admissions practices.

### 7.1 Review of research objectives

This study investigated the conflicting legal guidance created by federal- and state-level legislation concerning race-conscious admissions practices in higher education, and how the conflict was perceived by and affected admissions counselors at two institutions in the state of California. This research had the objective of determining the potential impact of the contradictory legal guidance on the admissions practices and counselors at CPSLO and CSUCI (RQ1). Creating an understanding and awareness of this objective is critical to the current narrative found in the higher education admissions profession because the use of affirmative action in higher education is regarded as one of the most divisive issues facing the American higher education system (O'Neil, 1971). Institutions of higher education have historically enjoyed the freedom to determine who is admitted to study, but the use of race-conscious admissions practices has received much attention since it is technically a discriminatory practice and therefore

violates certain pieces of federal- and state-legislation. The research objective attempts to define the boundaries of race-conscious admissions practices as allowed within the legislation along with creating an understanding of how the legislation is perceived within the industry.

The research objective was pursued through a literature review and through the use of individual interviews conducted with admissions counselors from two public institutions within a state which has existing state-level legislation restricting the use of race-conscious admissions practices. The literature review worked to establish the base line level of knowledge concerning existing research, and to identify specifically what is the contradictory legal guidance created by all levels and pieces of legislation affecting the use of race-conscious admissions practices. The United States legal system is a multi-layered system made of different laws combined together to work in force but never in a uniform fashion. Since they do not work in a uniform fashion, there are often laws on one level that conflict with laws on a different level. As established within the literature review, existing state- and federal-legislation are in conflict with each other regarding the use of race-conscious admissions practices. The law maintains a colorblind approach to race within the background rules of the legal system, but in the foreground rules acknowledges race as a part of human identity that can be used to permit favor towards a disadvantaged group. As the second portion of the research project, the individual interviews worked to answer Research Question 1, specifically the level of awareness, perception and influence of the previously mentioned legislation. As the entity that is tasked with carrying out institutional admissions practices and policies, admissions counselors feel the direct effect of this legislation, as it is their daily activities which are governed by the legislation. There are significant implications for their daily practices depending on their geographical location and institution at which they work, and how they perceive race-conscious admissions practices and the associated legislation is important for higher education admissions managers to know and understand.

## 7.2 Research rationale and findings

Admissions counselors at institutions of higher education are faced with the complex task of admitting an incoming class of students that reflects the mission and vision of their institution. This task is complex because among other considerations, admissions counselors are striving to recruit and admit an increasingly diverse incoming class each year. Admitting a diverse incoming class is critical to the mission of an institution because it creates a diverse student body. Creating diversity within the student body is important because studying in a diverse student body has numerous positive effects on student and

graduates including combatting stereotyping (Ancheta, 2003; Yin, 2014), enhancing intellectual engagement (Park & Liu, 2014) and promoting cross-racial understanding (Yin, 2014). All of these elements help these young adults prepare for operating within a diverse and globalized economy (Taras & Rowney, 2007) which is overall goal of the institution.

Admissions counselors have several tools that can be used to measure student body diversity, but one of the most reliable and well-established methods is race (Bernell, Mijanovich & Weitzman, 2009; Budescu & Budescu, 2012; Hunt, Wise, Jipguep, Cosier & Rosenberg, 2007; Juvonen, Nishina & Graham, 2006; Richard, Murthi & Ismail, 2007; Seaton & Yip, 2009). Using race as one narrowly tailored consideration within the overall admissions process means that the admissions counselors are utilizing race-conscious admissions practices. The use of race-conscious admissions practices is not completely unrestricted but is governed by an intricate system of contradictory legislation. There is a long and complicated legal history that has created a conflicting and multi-layered system of legislation that is confusing to navigate. Within this system there are three types of legislation that are creating the contradictory legal guidance affecting race-conscious admissions practices: the United States Constitution, the state-level legislation (nine states in total), and Supreme Court cases (six in total). These sixteen pieces of legislation represent opposing standpoints on the use of race-conscious admissions practices, with five supporting their use and eleven eliminating their use. Within this system, the majority of Supreme Court cases protect the ability to utilize race-conscious admissions practices, while one Supreme Court case, all of the state legislation and the United States Constitution all prohibit the use of race-conscious admissions practices. The overall effect of these multiple layers of legislation is that admissions counselors must be aware of and understand the legislation affecting their institution so that they can refrain from participating in illegal admissions practices.

A literature review was conducted to understand the existing knowledge and research concerning race-conscious admissions practices and their use in creating student body diversity, as well as to identify emerging points of discussion that could be explored through this research project. Based on this literature review, I (the scholar-practitioner) identified that there was a lack of knowledge regarding the conflicting nature of the legislation regulating the use of race-conscious admissions practices as well as a lack of understanding of the admissions counselor's knowledge level and perception of the legislation. In order to understand the risk posed to admissions counselors based on their awareness of and understanding of the legislation affecting race-conscious admissions practices, this research project utilized an Interpretivist perspective and grounded theory methodology to gather data concerning the

legislation and admissions counselors. Utilizing an Interpretivist perspective allows the researcher to assess and interpret the attitudes, opinions and behaviors of a particular phenomenon (Kothari, 2004). Within this research, the attitudes, opinions and behaviors being assessed are those of the higher education admissions counselors, and the particular phenomenon is the conflicting nature of the legislation associated with race-conscious admissions practices. The literature review provided the data related to understanding and defining the conflicting nature of the legislation. Based on this data, I developed a semi-structured interview and administered it to admissions counselors employed at two public institutions of higher education located within the state of California (a state which has state-level legislation banning the use of race-conscious admissions practices). These interviews generated data concerning the counselor's claimed level of knowledge regarding the individual pieces of legislation and awareness of the conflicting legal guidance created by the same legislation. Interviews were the primary source of data as the conversation and language generated through the interviews provides the most accurate and precise data on what is actually being experienced by the admissions counselors in their daily work activities. This use of language is critical in order to understand the phenomena (conflicting legal guidance) as it is experienced by the admission counselors. In keeping with the grounded theory methodology, conventional content analysis was the primary type of analysis conducted in order to draw forth theory that was based upon the patterns of interaction between the admissions counselors and the conflicting legal guidance. Content analysis of the primary interview data identified five overarching themes as expressed by the interview participants:

1. The individual level of knowledge of the interviewee;
2. The clarity of the structure of the CSU system, its admissions criteria and procedures, and its compliance with state legislation;
3. Interviewee's perception of the legislation;
4. The interviewee's perception of the use of race-conscious admissions practices;
5. Interviewee's expectations for a training program.

These five themes summarize the data as expressed by the interviewees and shape the overall contributions that this research can make to the existing literature.

### 7.3 Contributions to knowledge

There are two overall contributions that this research has made towards the knowledge related to race-conscious admissions practices. First, there is support for the belief that the use of race and/or ethnicity should be allowed within the higher education admissions process in a narrowly tailored manner. The responses from the interviews indicated support the perspective that race-conscious admissions practices can be used to promote diversity within institutions of higher education. This perspective is in alignment with the majority of the Supreme Court cases, which specifically allow for the use of race-conscious admissions practices within a narrowly tailored practice, as well as Rawls concept of the Original Position, which allows for social and economic inequalities that result in benefits for the least advantaged members of society as well as society itself. Understanding that admissions counselors indicate support for the use of narrowly tailored race-conscious admissions practices is important for two reasons: first, this research presents the first piece of information potentially indicating how admissions counselors perceive race-conscious admissions practices. There is no previously existing research or literature that has focused on the issue of race-conscious admissions practices from the perspective of the admissions counselor. Second, it indicates that while the respondents accept and operate under the stated admissions practices at their institution, they might not necessarily agree with these practices. The manner in which the admissions practices are set up at the two studied institutions do not allow for any deviation in practice (completely eliminating the ability to consider race), but this is not in alignment with the beliefs of the admissions counselors, that race could be considered within a strictly tailored manner.

The second contribution of knowledge is that there is potentially a significant knowledge gap between admissions counselors and admissions administrators regarding the legislation affecting race-conscious admissions practices. This can be demonstrated in two different ways. First, when comparing the results of the study by Espinosa, Gaertner and Orfield (2015) with the results from this research, there appeared to be a gap in knowledge of the participants in the two studies, with admissions administrators claiming a higher level of knowledge than that of the front-line admissions counselors. Second, differences in the claimed level of knowledge appeared to be present when comparing the knowledge level of the participants of this research, where those in managerial positions claimed to have significantly higher levels of knowledge than that of the front-line admissions counselors. These two comparisons illustrate the potential existence of a knowledge gap. It is important to note the small sample size of this research project. While the data indicates the possibility of data saturation, this can only be confirmed by increasing the sample size to include a larger number of the twenty-three total CSU campuses and

analyzing the resulting data to determine if the additional data changes the thematic trends expressed within the data analysis.

Based on these two contributions to the existing knowledge, there are two areas for immediate action that have been set in motion, but have not actually been enacted at this point in time. These areas are: a training program specifically with CSUCI and CPSLO; and presenting this research project and resulting data at the CSU Enrollment Management annual conference.

Since CSUCI and CPSLO were the two institutions which facilitated my research, these were the two logical locations to implement a training program focused on correcting the problem identified through my research: the lack of knowledge and awareness of the legislation affecting race-conscious admissions practices. I have entered into discussions with the Vice Presidents of Enrollment at both institutions to plan offering a mandatory training for their admissions staff. This training will provide an overview of race-conscious admissions practices as well as the associated legislation. The training will not just be a recitation of facts covering the different items of legislation, but will be crafted in a manner that will allow the admissions counselors to start to develop discretionary judgment in relation to discerning situations where race has been used as an element of an admissions decision. This can be accomplished using case studies, situational analysis and role playing. It is important not just to provide a recitation of the facts relating to the conflicting legislation, but to encourage the training participants to develop the background knowledge of the legislation that can be used to shape analytical and critical thinking skills that can be applied in a variety of situations. Every admissions application is different, highlighting different skills and applicant characteristics. Using a "standard" analysis will not allow for the best analysis of the application, thus requiring the training program to teach participants how to develop the ability to determine on a case-by-case basis the strength of an applicant. Equally as important is empowering the admissions counselors with the confidence and ability to justify their admissions decision to their peers, their managers and potentially the general public. This ability can only be developed through the application of discretionary judgement. After the training has been completed, I will contact the original research participants and re-administer a follow-up interview. This interview will feature the same first three questions from my initial interview, along with several open-ended questions that will determine the extent of knowledge and if the participant's perception of race-conscious admissions practices has been altered as a result of the training. This follow-up interview will measure the effectiveness of the training program.

The second area for immediate action can be actualized by presenting at the CSU Enrollment Management annual conference. Within the CSU system, there is an annual conference of Admissions managers and counselors, where any employee that works in the admissions department at any of the 23 CSU campuses can attend. Over the course of this two-day conference, admissions counselors attend professional development and training sessions. I have submitted a proposal to facilitate a workshop that will present information addressing the knowledge gap discovered through my research. I will not actually present my research, but instead the information about race-conscious admissions practices and the corresponding legislation. At the beginning of the workshop, I will ask participants to complete a quick survey consisting of the first three questions from my interview. This survey will act to provide a base-level understanding of the admissions counselors' level of knowledge concerning the individual pieces of legislation. The workshop will then present background information on the legislation and will end with a discussion of the conflicting nature of the legislation, and how the counselors perceive the legislation. After the conference, I will contact the workshop attendees and conduct a follow-up interview to determine how much of the knowledge has been retained, and to compare this knowledge against the survey taken at the beginning of the workshop.

My overall goal from this research is to stimulate and encourage dialogue (at a local, state and national level) concerning the use of race-conscious admissions practices. The topic has been identified repeatedly as one of the most divisive issues facing the American higher education system (O'Neil, 1971). Within the state of California, the passage of Proposition 209 in 1996 has effectively stopped the discussion within the entire public university system. Criticize from the general public and scrutiny from media have effectively eliminated not only the possibility to use race as a tool to increase student body diversity, it has pushed sentiments to the point where admissions professionals do not even want to talk about the subject. My goal with this research project is to restart the discussion surrounding the use of race-conscious admissions practices within the state of California, and demonstrate that it is possible to still discuss the practice and the implications and effects that using race as an admissions criterion can have on student body diversity. There is plenty of discussion related to whether colleges are adhering to it, but little discussion as to whether it should still be in effect.

#### 7.4 Research limitations

This research project has one overall limitation. Because the sample population was limited to only two public institutions located within the state of California, it cannot claim to be representative for all



institutions of higher education in the United States. This research project was limited by having only interviewed respondents who work at public institutions within California, which likely limited the diversity of the answers. The opinions of admissions counselors who work at private institutions within California or those at public and private institutions in a state without existing state-level legislation are currently unknown. This limitation can be overcome in two ways: first, by continuing the data collection and interviewing admissions counselors at the remaining twenty-one campuses within the CSU system; and second, by expanding the data collection to include admissions counselors at institutions throughout the United States. By including admissions counselors from the remaining twenty-one campuses, this research has the potential to define the perspective and experience for the entire CSU system. The CSU system is the largest producer of bachelor degree graduates in the United States and produces more than half of the bachelor degree recipients in the state of California. California and the California Master Plan for Higher Education have long served as a national model for systems of higher education (Douglass, 2010). Understanding the perception of race-conscious admissions practices by those practicing within the CSU system can become a model for other institutions throughout the United States. This understanding can then be confirmed (or refuted) by expanding the research to include other institutions throughout the United States, thereby creating a comprehensive understanding and application of this research project.

## 7.5 Future areas of research

This study has highlighted issues in the area of race-conscious admissions practices and has identified four areas in need of further research. One of the greatest areas to continue to be researched is regarding the perception of the legislation regulating race-conscious admissions practices. This was highlighted as one of the overarching themes within the content analysis. In the literature, Espinosa, Gaertner and Orfield (2015) demonstrated that enrollment management leaders have a high familiarity with the *Fisher* case. This research project demonstrates that admissions counselors at two institutions in California do not have a high level of familiarity with the *Fisher* case as well as with the other pieces of legislation affecting race-conscious admissions practices. There is a significant amount of territory between these two studies that is still unknown in terms of the perception of the studied legislation. This research project should be continued to include interviewees from all twenty-three campuses throughout the CSU system. Once this is completed, it can be expanded strategically to other institutions in other states until it can be considered representative of admissions counselors throughout the entire United States.

As identified within the content analysis of this research project, there is some uncertainty over who admissions counselors perceive to be the deciding entity for the use of race-conscious admissions practices. Responses were nearly equal between all three of the listed choices: the Supreme Court, state legislators and the voting public. Perception of which entity is entitled to be the deciding force on this topic could indicate if there is any possibility that admissions counselors would not adhere to the published admissions practices.

The data also identified that there is a disconnect between the opinion of the allowed use of race-conscious admissions practices and the knowledge of the related legislation. The majority of interviewees indicated that race should be allowed to be used in a narrowly tailored manner, yet there was little to no knowledge regarding the legislation that would make this use of race even possible.

The most significant area for further study, as highlighted through the work of Espinosa, Gaertner and Orfield (2015) is the creation of straightforward, practice-relevant resources that can be used to education admissions counselors and administrators in how to legally and creatively utilize race-conscious admissions practices. This is an allowable practice in forty-two states, and any identified resources could have a significant effect on the admissions practices in those states.

## 7.6 Conclusion

Through this research project the primary data has enabled me to develop a more appreciative understanding of the context in which this wider discussion can be placed. The discussion of the use of race within higher education admissions has been forefront in the higher education admissions world and continues to be the most divisive issue facing today's American higher education system (O'Neil, 1971). The context of this discussion, the environment which has changed after the *Fisher* and *Schuette* decisions, had not been explored in terms of its effect on the perception of admissions counselors concerning not only the most recent Supreme Court cases but the entire set of legislation affecting race-conscious admissions practices. This research project, and the knowledge it has created concerning the perception of admissions counselors, adds to the context and furthers the understanding of the conflicting legal guidance concerning race-conscious admissions practices.

Ultimately, the use of race-conscious admissions practices is a divisive topic, but one that has lasting implications on the admissions practices at every institution of higher education in the United States. The necessity of understanding the effects of the legislation which governs the use or restriction or race-

conscious admissions practices is underscored by findings throughout the literature and through this research project. This research project has offered a foundation for scholars and practitioners to understand how conflicting legislation can exist, and how it affects the daily lives and practices of higher education admissions counselors. Additionally, this study has contributed to the development of a scholar-practitioner and has shaped a research agenda with the potential to contribute greatly to the existing scholarly work.

## References

- "A Statement of Principles of Good Practice." National Association for College Admission Counseling 37.1 (1963): 95. 2014. Web. 6 May 2015.
- 'Affirmative' (2004) *Connection (0895-6405)*, 18, 4, pp. 9-10, Education Research Complete, EBSCOhost, viewed 17 April 2013.
- 'Blend It, Don't End It: Affirmative Action and the Texas Ten Percent Plan After Grutter and Gratz' (2005) *Harvard Latino Law Review*, 8, pp. 33-92.
- 'Creating the Playing Field: State and Federal Regulation' (2006) *ASHE Higher Education Report*, 31, 5, pp. 111-124, Academic Search Complete, EBSCOhost, viewed 8 January 2011.
- "Critical mass". Def. 2. *Merriam Webster Online*, Merriam Webster, n.d. Web 24, < <http://www.merriam-webster.com/dictionary/critical%20mass>>
- "Ethics and Practice." Ethics and Practice. American Association of College Registrars and Admissions Officers, 23 Apr. 2010. Web. 06 May 2015.
- "Higher Education". *Merriam-Webster Dictionary* 2016. Web. 14 Aug. 2016.
- 'Keep schools' right to limited use of race in admissions', n.d., *USA Today*, n.d., Academic Search Complete, EBSCOhost, viewed 17 April 2013.
- 'LEADING CASE: I. Constitutional Law: F. Fourteenth Amendment – Equal Protection Clause – Public-University Affirmative Action – Fisher v. University of Texas at Austin' (2013) *Harvard Law Review*, 127, p. 258.
- Legal Information Institution (1993) *US Constitution: Amendment XIV*, Legal Information Institution, Ithaca, NY.
- "Race". *Merriam-Webster Dictionary* 2016. Web. 14 Aug. 2016.
- 'Race-Based Affirmative Action in College Admissions Appears to Be Declining' (2008) *The Journal Of Blacks In Higher Education*, 61, p. 36, JSTOR Arts & Sciences I, EBSCOhost, viewed 9 December 2012.
- "Regents of the University of California v. Bakke | The Oyez Project at IIT Chicago-Kent College of Law." *The Oyez Project at IIT Chicago-Kent College of Law | A Multimedia Archive of the Supreme Court of the United States*. N.p., n.d. Web. 21 Apr. 2013. <[http://www.oyez.org/cases/1970-1979/1977/1977\\_76\\_811/](http://www.oyez.org/cases/1970-1979/1977/1977_76_811/)>.

Regents of the University of California v. Bakke, 438 U.S. 265, 306 (1978).

'Schuette v. BAMN: What the Supreme Court's Decision Means for Higher Education Institutions Pursuing Diversity Goals.' (2014) *College Board*.

"Supreme Court". *Merriam-Webster Dictionary* 2016. Web. 14 Aug. 2016.

'Taking Aim at Race-Based Preferential Admissions at Private Colleges and Universities' (1995) *The Journal Of Blacks In Higher Education*, 10, p. 14, JSTOR Arts & Sciences I, EBSCOhost, viewed 9 December 2012.

Aberson, CL. (2007) 'Diversity experiences predict changes in attitudes toward affirmative action', *Cultural Diversity And Ethnic Minority Psychology*, 13, 4, pp. 285-294.

ACT (2013) *The Condition of College & Career Readiness 2013*, Iowa City, IA: ACT.

Adam, M. (2006) 'New College Diversity Laws: Banning Racial Exclusion?', *Education Digest: Essential Readings Condensed For Quick Review*, 72(3), pp. 31-36.

Aday, J. (2011) 'Fitting Square Pegs into Round Holes: How Race-Based Affirmative Action in Higher Education Admissions is an Inadequate and Inequitable Means to an End.', *University of Massachusetts Law Review*, 6(1), pp. 125-157.

Addis, A. (2007) *The Concept of Critical Mass in Legal Discourse*, *Cardozo Law Review*, 29(1), p. 97.

Adler, K. (1998) 'Degree upgrades: a new service, a new market and a new strategy for higher education', *Journal of Marketing for Higher Education*, 9(1), pp. 11-24.

Alger, J.R. (2013) 'A supreme challenge: Achieving the educational and societal benefits of diversity after the Supreme Court's Fisher decision', *Journal Of Diversity in Higher Education*, 6(3), pp. 147-154, PsycARTICLES, EBSCOhost.

Alger, J. (2005) 'Putting the Michigan Rulings Into Practice', *Chronicle Of Higher Education*, 51(25), p. B28, Education Research Complete, EBSCOhost.

Alon, S. (2011) 'The diversity dividends of a need-blind and color-blind affirmative action policy.' *Social Science Research*, 40(6), pp. 1494-1505.

American Association of Colleges and Universities (2013) *Making quality a priority as Americans go to college*. Retrieved from <http://www.aacu.org/leap/presidentstrust/compact/documents/compact.pdf>

American Council on Education, WC (1999) *Making The Case For Affirmative Action In Higher Education: What You Can Do To Safeguard Affirmative Action On Campus And In Your Community* n.p. ERIC, EBSCOhost.

Ancheta, A., & Harvard Civil Rights Project, C (2003) 'Revisiting Bakke and Diversity-Based Admissions: Constitutional Law, Social Science Research, and the University of Michigan Affirmative Action Cases. Briefing Paper', ERIC, EBSCOhost.

Anderson, C. (1994). *Black labor and White wealth: The search for power and economic justice*. Edgewood, MD: Duncan & Duncan.

Anderson, P. (1999) 'Complexity theory and organization science', *Organization Science*, 10(3), pp. 216-232.

Anderson, E. (2011) 'Affirmative Action Is About Helping All of Us', *Chronicle Of Higher Education*, 57(38), pp. B11-B13, Education Research Complete, EBSCOhost.

Anderson, G., Daugherty, E., & Corrigan, D. (2005) 'The Search for a Critical Mass of Minority Students: Affirmative Action and Diversity at Highly Selective Universities and Colleges', *Good Society Journal*, 14(3), pp. 51-57, Academic Search Complete, EBSCOhost.

Andrews, R., & Swinton, O. (2014) 'The Persistent Myths of "Acting White" and Race Neutral Alternatives to Affirmative Action in Admissions', *Review of Black Political Economy*, 41, pp. 357-371.

Antonio, A. (1998) *The impact of friendship groups in a multicultural university*. Unpublished doctoral dissertation, University of California, Los Angeles.

Antonio, A.L. (2001) 'The role of interracial interaction in the development of leadership skills and cultural knowledge and understanding', *Research in Higher Education*, 42(5), 593-617.

Arcidiacono, P. (2005) 'Affirmative action in higher education: How do admission and financial aid rules affect future earnings?' *Econometrica*, 73(5), 1477-1524.

Arcidiacono, P., Aucejo, E., Coate, P. & Hotz, V. (2011) '*The Effects of Proposition 209 on California's College Enrollment and Graduation Rates*'.

Arms, L. (2007) 'It's Not All Black and White: Race-Based Admissions Purport to Achieve a Critical Mass of Diversity, but in Reality Merely Mask a Pre-Determined Quota of the Ideal Integrated Society', *South Texas Law Review*, 49, p. 205, LexisNexis Academic: Law Reviews, EBSCOhost.

Arneson, R.J. (1999) 'Against Rawlsian equality of opportunity', *Philosophical Studies*, 93(1), pp.77-112.

[Astin, A. \(1993\) \*What Matters in College? Four Critical Years Revisited\*. San Francisco: Jossey Bass.](#)

Atkinson, R. (2001) 'Standardized Tests and Access to American Universities', *American Council on Education*. UC Office of the President: Presidential Papers – Richard Atkinson.

Axelrod, R., & Cohen, M. D. (2000) 'Complexity and organization science', *Organization Science*, 10(3), pp. 216-232.

Ayers, D. (1996) Politics: The Initiatives: Affirmative Action Measure Nears a High-Profile Finish, N.Y. Times, Nov. 4, 1996.

Ayres, L. (2007) 'Qualitative research proposal – part I: posing the problem.' *Journal of Wound Ostomy Continence Nursing*, 34, pp. 30-32.

Backes, B. (2012) Do Affirmative Action Bans Lower Minority College Enrollment and Attainment? Evidence from statewide bans. *Journal of Human Resources*, 47(2), pp. 435-455.

Baldwin, B. (2009) 'DEFINING RACE: COLORBLIND DIVERSITY: THE CHANGING SIGNIFICANCE OF 'RACE' IN THE POST-BAKKE ERA', *Albany Law Review*, 72, p. 863.

Barnes, R.D. (1990) 'Race consciousness: The thematic content of racial distinctiveness in critical race scholarship', *Harvard Law Review*, 103, pp. 1864-1871.

Barnes, M., Chemerinsky, E., & Onwuachi-Willig, A. (2015) 'Judging Opportunity Lost: Assessing the Viability of Race-Based Affirmative Action After *Fisher v. University of Texas*', *UCLA Law Review*, 62(2).

Barton, P. (2003) *Parsing the achievement gap: Baselines for tracking progress*. Princeton, NJ: Educational Testing Service

Bay, D., & Daniel, H. (2001) 'The student is not the customer: an alternative approach', *Journal of Marketing for Higher Education*, 11(1), pp. 1-19.

Beaver, W. (2009) 'FOR-PROFIT HIGHER EDUCATION: A SOCIAL AND HISTORICAL ANALYSIS', *Sociological Viewpoints*, 25, pp. 53-73, Academic Search Complete, EBSCOhost.

Bell, D.A. (1987) *And we are not saved: The elusive quest for racial justice*. New York: Basic Books.

Bell, D.A. (1989) 'The final report: Harvard's affirmative action allegory', *Michigan Law Review*, 87, pp. 2382-2410.

Bell, D. A. (1994) *Confronting authority: Reflections of an ardent protester*. Boston: Beacon Press.

Bell, D. (1995) 'Who's Afraid of Critical Race Theory?' *University of Illinois Law Review*, pp. 893-910.

- Benson, R., Heagney, M., Hewitt, L., Crosling, G. & Devos, A. (2014) 'Diversity and Achievement: Is Success in Higher Education a Transformative Experience?', *Australian Journal of Adult Learning*, 54(2), pp. 8-31, ERIC.
- Berg, B. (2004) *Qualitative Research Methods for the Social Sciences*, Boston, MA: Person Education, Inc.
- Berger, P. & Luckman, T. (1966) *The Social Construction of Reality: A Treatise in the Sociology of Knowledge*. Garden City, NY: Doubleday.
- Bernell, S.L., Mijanovich, T., & Weitzman, B.C. (2009) 'Does the racial composition of the school environment influence children's body mass index?', *Journal of Adolescent Health*, 45, pp. 40-46.
- Bhaskar, R. (1979) *Philosophy and the human sciences*. Brighton, Sussex: Harvester Press.
- Bial, D., & Rodriguez, A. (2007) "Identifying a Diverse Student Body: Selective College Admissions and Alternative Approaches", *New Directions for Student Services*, 118, pp. 17-30.
- Blokhuis, J. (2009) 'Defending the Defenders of Affirmative Action in Higher Education', *Philosophy Of Education Yearbook*, (2009): 301-304. *Education Research Complete*. Web.
- Blumenbach, J. F. (1795) *De generis humani varietate nativa liber [On the natural varieties of mankind]*. Göttingen, Germany: A. Vandenhoeck.
- Boaler, J. (2003) 'When Learning No Longer Matters – standardized testing and the creation of inequality', *Phi Delta Kappan*, 84(7), pp. 502-506.
- Bonham, V.L., Warshauer-Baker, E. & Collins, F.S. (2005) 'Race and ethnicity in the genome era: the complexity of the constructs', *American Psychologist*, 60(1), p.9.
- Bonner, A. & Tolhurst, G. (2002) 'Insider-outsider perspectives of participant observation', *Nurse Researcher*, 9(4), pp. 7-19.
- Bowen, D. (2011) *American Skin: Dispensing with Colorblindness and Critical Mass in Affirmative Action*, University of Pittsburgh Las Review, 73, pp. 383-384.
- Bowen, W., & Bok, D. (1998) *The Shape of the River: Long-term consequences of considering race in college and university admissions*. Princeton: Princeton University Press.
- Bowman, N. (2011) 'Promoting participation in a diverse democracy: A meta-analysis of college diversity experiences and civic engagement.', *Review of Educational Research*, 81, pp. 29-68.



- Bowman, N. (2012) 'Structural Diversity and Close Interracial Relationships in College'" *Educational Researcher* 41(4): 133-135.
- Braverman, I., Blomley, N., Delaney, D. & Kedar, A. eds. (2014) *The expanding spaces of law: A timely legal geography*. Stanford University Press.
- Brint, S. (2011) 'No Longer Separate, Not Yet Equal: Race and Class in Elite College Admission and Campus Life by Thomas J. Espenshade and Alexandria Walton Radfort', *American Journal of Education -Chicago-*, 117, pp. 429-432, British Library Document Supply Centre Inside Serials & Conference Proceedings, EBSCOhost.
- Brislin, R.W., (1986) 'Research Instruments,' *Field methods in cross-cultural research: Cross-cultural research and methodology series*, 8, pp. 137-164.
- Brown, C. (2008) 'The Use of Complex Adaptive Systems as a Generative Metaphor in an Action Research Study of an Organization', *Qualitative Report*, 13(3), pp. 416-431, ERIC, EBSCOhost.
- Brown, E. (2004) "Can For-Profit Schools Pass the Ethics Test", *The New York Times*, December 12, A3.
- Brown, S., & Hirschman, C. (2006) 'The End of Affirmative Action in Washington State and Its Impact on the Transition from High School to College', *Sociology of Education*, 79(2) pp. 106-130.
- Browne, B., Kaldenberg, D., Browne, W., & Brown, D. (1998) 'Student as customer: factors affecting satisfaction and assessments of institutional quality', *Journal of Marketing for Higher Education*, 8(3), pp. 1-14.
- Brydon-Miller, M., Greenwood, D., & Maguire, P. (2003) 'Why action research?', *Action Research*, 1(1), July, pp.9-28.
- Buckley, J., Buckley, M., & Chiang, H. (1976) 'Research Methodology & Business Decisions', *National Association of Accountants*.
- Budd, R., Thorp, R., & Donohew, L. (1967) *Content analysis of communications*. New York: Macmillan.
- Budescu, D., Budescu, M. (2012) 'How to Measure Diversity When You Must', *Psychological Methods*, 17(2), pp. 215-227, ERIC.
- Burd, S. (2005) "Republicans To Hold Hearings on Charges in '60 Minutes' Report", *The Chronicle of Higher Education*, February 11, A28.

Cabrera, A.F., Nora, A., Terenzini, P.T., Pascarella, E. and Hagedorn, L.S. (1999) 'Campus racial climate and the adjustment of students to college: a comparison between White students and African-American student"', *The Journal of Higher Education*, 70(2), pp. 134-60.

Caldas, S. (2008) 'The Incongruities of Grutter', *Society*, 45(1), pp. 30-34, SPORTDiscus with Full Text, EBSCOhost.

Caldwell, C., Shapiro, J., & Gross, S. (2007) 'Ethical Leadership in Higher Education Admission: Equality vs. Equity', *Journal Of College Admission*, 195, pp. 14-19, ERIC, EBSCOhost.

Calmore, J. (1992) 'Critical Race Theory, Archie Shepp, and Fire Music: Securing an Authentic Intellectual Life in a Multicultural World', *Southern California Law Review*, 65, pp. 2129-2231.

Cancian, M. (1998) 'Race-Based versus Class-Based Affirmative Action in College Admissions', *Journal Of Policy Analysis And Management*, 1, p. 94, JSTOR Arts & Sciences IV, EBSCOhost.

Cantor, N. & Englot, P. (2014)'“Defining the Stakes: Why We Cannot Leave the Nation’s Diverse Talent Pool Behind and Thrive.’ In *The Future of Affirmative Action: New Paths to Higher Education After Fisher v. University of Texas*, pp. 27-34. New York: The Century Foundation.

Card, D. & Krueger, A. (2005) 'Would the Elimination of Affirmative Action Affect Highly Qualified Minority Applicants? Evidence from California and Texas', *Industrial and Labor Relations Review*, 58(3), pp. 416-434.

Cárdenas, V. & Truehaft, S. (2012) *All-In Nation: An America That Works For All*. Center for American Progress and Policylink.

Carnevale, A. & Strohl, J. (2013) *Separate and Unequal: How Higher Education Reinforces the Intergenerational Reproduction of White Racial Privilege*. Washington, DC: Georgetown Center on Education and the Workforce.

Carpenter, D. & Ramires, A. (2012) 'Exploring the Underachievement Gap', *Christian Higher Education*, 11(2), pp. 115-130, ERIC.

Carey, K. (2010) 'Why Do You Think They're Called For-Profit Colleges?', *Chronicle of Higher Education*, 56(41), p. A88, Academic Search Complete, EBSCOhost.

Carter, R. T., & Goodwin, A. L. (1994) 'Racial identity and education'. In L. Darling Hammond (Ed.), *Review of research in education*, 20, pp. 291-336).

Casti, J.L. (1997) *Would-be worlds: How simulation is changing the frontiers of science*. New York: John Wiley.

Castleman, B. & Page, L. (2013) 'The not-so-lazy days of summer: Experimental interventions to increase college entry among low-income high school graduates', *New Directions For Youth Development*, 140, pp. 77-97.

Cavalli-Sforza, L.L. (1991) "Genes, People and Languages," *Scientific American*, p. 104.

The Century Foundation (2013) *Bridging the Higher Education Divide: Strengthening Community Colleges and Restoring the American Dream*. New York: The Century Foundation.

Centola, D. (2013) 'A Simple Model of Stability in Critical Mass Dynamics', *Journal of Statistical Physics*, 151(1-2), pp. 238-253.

The Century Foundation (2014) *The Future of Affirmative Action: New Paths to Higher Education Diversity After Fisher v. University of Texas*. New York: The Century Foundation.

Cetin, R. (2003) 'Planning and implementing institutional image and promoting academic programs in higher education', *Journal of Marketing for Higher Education*, 13 (1-2), pp. 57-75.

Chace, W.M. (2011) 'Affirmative Inaction: Opposition to affirmative action has drastically reduced minority enrollment at public universities; private institutions have the power and the responsibility to reverse the trend', *American Scholar*, 80(1), pp. 20-31, Education Research Complete, EBSCOhost.

Chambers, C. & Association for the Study of Higher Education (2012) 'Affirmative Action on the Docket. Commentary', *Association For The Study Of Higher Education*, ERIC, EBSCOhost.

Chang, M.J. (1996) *Racial diversity in higher education: Does a racially mixed student population affect educational outcomes?* Unpublished doctoral dissertation, University of California, Los Angeles.

Chang, M.J. (1999) 'Does racial diversity matter?: The educational impact of a racially diverse undergraduate population', *Journal of College Student Development*, 40, pp. 377-395.

Chang, M.J., Witt, D., Jones, J. & Hakuta, K. (Eds.) (2003) *Compelling interest: Examining the evidence on racial dynamics in colleges and universities*. Stanford, CA: Stanford University Press.

Chapa, J. (2001) 'The Hopwood decision in Texas as an attack on Latino access to selectively higher education programs.'

Chapa, J. (2005) 'Affirmative Action and Percent Plans as Alternatives for Increasing Successful Participation of Minorities in Higher Education', *Journal of Hispanic Higher Education*, 4(3), pp. 181-196.

Chapa, J. & Lazaro, V. (1998) Hopwood in Texas: The Untimely End of Affirmative Action. In *Chilling Admissions: The Affirmative Action Crisis and the Search for Alternatives*, edited by Gary Orfield and Edward Miller, p. 51-70. Cambridge, MA: Civil Rights Project at Harvard University.

Charles, L. (2003) 'Affirmative Action for Diversity Is Upheld', *Washington Post, The*, n.d., Regional Business News, EBSCOhost.

Checkland, P. & Poulter, J. (2010) 'Soft systems methodology'. In: Reynolds, M. & Holwell, S. (ed.), *Systems approaches to managing change: a practical guide*. London: Springer [Online].

Chemerinsky, E. (2002) *Constitutional Law: Principles and Policies*. Aspen Law & Business.

Chermerinsky, D., Days, D., Fallon, R., Karlan, P., Karst, K., Michelman, F., Schnapper, E., Tribe, L., Tushnet, M., Angheta, A., & Edley, C. (2003) *Reaffirming Diversity: A Legal Analysis of the University of Michigan Affirmative Action Cases*. Harvard University Civil Rights Project 17.

Cherry, N. & Bowden, J.A. (1999) *Action research: a pathway to action, knowledge and learning*, Melbourne: RMIT University Press.

Cherry, R. (2005) 'Race-Based Affirmative Action Admissions Policies: Why University of Michigan Supporters Were Wrong', *The Georgetown Journal Of Law & Public Policy*, 3, p. 501, LexisNexis Academic: Law Reviews, EBSCOhost.

Chinn, G. (1996) 'Bake to the wall: the crisis of Bakkean diversity', *William and Mary Bill of Rights Journal*, 4, pp. 881-947.

Chu, D., Strand, R., & Fjelland, R. (2003) 'Theories of complexity', *Complexity*, 8 (3).

The Civil Rights Project (2013) 'The Research Basis for Affirmative Action: A Statement by Leading Researchers.'

Clark, C. & Antonio, A. (2010) 'Rethinking Research on the Impact of Racial Diversity in Higher Education', *The Review of Higher Education*, 36(1), pp. 25-50.

Clay, W.L. (1993) *Just permanent interests: Black Americans in Congress 1870-1992*. New York: Amistad.

Clegg, R. (2011) 'Affirmative Discrimination and the Bubble', *Academic Questions*, 24(4), pp. 403-411, Education Research Complete, EBSCOhost.

Clemens, M. (2012) 'Characteristics of Complex Systems'. New England Complex Systems Institute (NECSI).

Clinedinst, Melissa. 2015. *State of College Admission*. Arlington, VA: National Association for College Admission Counseling. <http://www.nacacnet.org/research/PublicationsResources/Marketplace/research/Pages/StateofCollegeAdmission.aspx>.

Coghlan, D. (2008) 'Exploring insight: the role of insight in a general empirical method in action research for organization change and development', *Revue Sciences de Gestion*, 65: 343-55.

Coghlan, D. (2011) 'Action research: exploring perspectives on a philosophy of practical knowing', *Academy of Management Annals*, 5, pp.53-87.

Coghlan, D. & Brannick, T. (2010) *Doing action research in your own organization*. 3rd ed. London: Sage.

Cohen, J. (2004) 'Let the Michigan Affirmative Action Decisions Generate a Critical Mass', *Journalism & Mass Communication Educator*, 2004, Education Research Complete, EBSCOhost.

Colburn, D., Young, C. & Yellen, V. (2008) 'Admissions and Public Higher Education in California, Texas, and Florida: The Post-Affirmative Action Era', *Interactions: UCLA Journal Of Education & Information Studies*, 4(1), pp. 1-2.

Cole, D. & Ahmadi, S. (2010) 'Reconsidering campus diversity: An examination of Muslim students' experiences'. *Journal of Higher Education*, 81(2), pp. 121-139.

Coleman, A., Lippert, K. & Keith, J. (2012) *Beyond Federal Law: Trends and Principles Associated with State Laws Banning the Consideration of Race, Ethnicity, and Sex Among Public Education Institutions*. American Association for the Advancement of Science and Education-Counsel, LLC.

Coleman, A. & Taylor, T. (2014) 'Emphasis Added: *Fisher v. University of Texas* and Its Practical Implications for Institutions of Higher Education.' In *The Future of Affirmative Action: New Paths to Higher Education Diversity After Fisher v. University of Texas*, edited by Righard D. Kahlenberg, p. 43-56. New York: The Century Foundation.

Coleman, A., Taylor, T. & Lipper, K. (2014) *The Playbook: A Guide to Assist Institution of Higher Education in Evaluating Race- and Ethnicity-Neutral Policies in Support of the Mission-Related Diversity Goals*. College Board.

Contreras, F.E. (2005) 'The Reconstruction of Merit Post-Proposition 209.' *Educational Policy*, 19(2), 371-395.

- Cornelissen, J., Oswick, C., Christensen, L. & Phillips, N. (2008) 'Metaphor in organizational research: Context, modalities and implications for research: Introduction', *Organization Studies*, 29, pp. 7-22.
- Cortes, K. (2010) 'Do bans on affirmative action hurt minority students? Evidence from the Texas Top 10% Plan', *Economics of Education Review*, 29(6), pp. 1110-1124.
- Cosby, F., Iyer, A. & Sincharoen, S. (2006) 'Understanding Affirmative Action', *Annual Review Psychology*, 57, pp. 585-611.
- Crenshaw, K.W. (1988) 'Race, reform, retrenchment: Transformation and legitimation in anti-discrimination law', *Harvard Law Review*, 101, pp. 1331-1387.
- Crenshaw, K., Gotanda, N., Peller, G., & Thomas, K. (Eds.) (1995) *Critical Race Theory: The Key Writings That Formed the Movement*. New York: The New Press.
- Creswell, J. (1998) *Qualitative inquiry and research design: Choosing among five traditions*. Thousand Oaks, CA: Sage.
- Creswell, J. (2007) *Qualitative Inquiry & Research Design: Choosing Among Five Approaches*. Sage Publications: Thousand Oaks, CA.
- Cummings, J. (2001) 'Work Groups, Structural Diversity, and Knowledge Sharing in a Global Organization', *Management Science*, 50(3), pp. 352-364.
- Dale, S. & Krueger, A. (1998) 'Estimating the payoff to attending a more selective college: An application of selection on observables and unobservables.' NBER Working Paper 7322.
- Daugherty, L., Martorell, P. & McFarlin Jr., I. (2014) "The Texas Ten Percent Plan's Impact on College Enrollment", *Education Next*, 14(3), pp. 62-69.
- Daugherty, L., McFarlin, I. & Inman, A. (2014) 'Texas ten percent plan brings more students to the state's flagship universities: But automatic admission causes drop in comparable private and out-of-state colleges', *Education Next*, 14(3).
- Davila, F. & Mayo, J. (2002) '1-200 Didn't Erase Color on Campus', *Seattle Times*, pp. 1, A18.
- Davis, K. (2013) 'Following Fisher', *Diverse: Issues in Higher Education*, 30(12), pp. 12-15, Academic Search Complete, EBSCOhost.
- Dawson, C. (2002) *Practical research methods: A user-friendly guide to mastering research*. Oxford: How To Books, Ltd.

- Dawson, T.L. (2002) 'New tools, new insights: Kohlberg's moral reasoning stages revisited', *International Journal of behavior Development*, 26(2), pp. 154-166.
- de Sousa Santos, B. (1987) 'Law: a map of misreading. Toward a postmodern conception of law', *Journal of Law and Society*, pp.279-302.
- de Wet, C.B. (2010) 'Reaching Critical Mass: Women in Faculty and Administrative Roles', *Forum On Public Policy Online*, 2010, 2, ERIC, EBSCOhost.
- Delgado, R. (1995a) *The Rodrigo Chronicles: Conversations About America and Race*. New York: New York University Press.
- Delgado, R. (Ed.). (1995b). *Critical Race Theory: The Cutting Edge*. Philadelphia, PA: Temple University Press.
- Delgado, R. (1996). *The Coming Race War? and Other Apocalyptic Tales of American After Affirmative Action and Welfare*. New York: New York University Press.
- Denson, N. & Chang, M. (2009) 'Racial Diversity Matters: The Impact of Diversity-Related Student Engagement and Institutional Context', *American Educational Research Journal*, 2, p. 322, JSTOR Journals.
- Desautels-Stein, J. (2012) 'Race as a Legal Concept', *Columbia Journal of Race and Law*.
- Dickson, L. (2006) 'Does ending affirmative action in college admissions lower the percent of minority students applying to college?', *Economics of Education Review*, 25(1), p. 109-119.
- Dietrich, E., Moja, T. & Pazich, L. (2014) 'Struggling with Equity', *Widening Participation & Lifelong Learning*, 16(1), pp. 1-4, Education Research Complete, EBSCOhost.
- Dobbs, M. (2004) 'Universities Recofd Drop in Black Admissions.' *Washington Post*, P. A1, November 22.
- Doolittle, P. E. (2002) Complex constructivism: A theoretical model of complexity and cognition.
- Douglass, J.A. (2010) 'From Chaos to Order and Back? A revisionist Reflection on the California Master Plan for Higher Education @50 and Thoughts About its Future', *Center for Studies in Higher Education*.
- Douglass, J. & University of California, B (2013) 'Affirmative Action, the Fisher Case, and the Supreme Court: What the Justices and the Public Need to Know. Research & Occasional Paper Series: CSHE.2.13', *Center for Studies in Higher Education*.
- Durkheim, E. (1982) *The Rules of Sociological Method and Selected Texts on Sociology and its Method*. Basing-stoke: Macmillan.
- Easterby-Smith M., Thorpe, R. & Jackson, P.R. (2008) 'Management Research', Third ed: SAGE.

- Edwards, J. & Bagozzi, R. (2000) 'On the nature and direction of relationships between constructs and measures', *Psychological Methods*, 5, pp. 155-174.
- Ellis, B. & Herbert, S. (2011) 'Complex adaptive systems (CAS): an overview of key elements, characteristics and application to management theory', *Informatics In Primary Care*, 19(1), pp. 33-37, Academic Search Complete, EBSCOhost.
- Elliot, R. (1987) *Litigating intelligence: IQ tests, special education, and social science in the courtroom*. Dover, MA: Auburn House.
- Engoren, M. (2006) 'Affirmative Action in Higher Education and Secondary Schools', *Georgetown Journal Of Gender & The Law*, 7(3), pp. 883-893, Business Source Complete, EBSCOhost.
- Epple D., Romano, R. & Sieg, H. (2008) 'Diversity and Affirmative Action in Higher Education', *Journal Of Public Economic Theory*, 10(4), pp. 475-501, Business Source Complete, EBSCOhost.
- Erasmus, Z.Z. (2010) 'Confronting the Categories: Equitable Admissions without Apartheid Race Classification', *South African Journal Of Higher Education*, 24(2), pp. 244-257.
- Espenshade, T., Radford, A. & Chung, C. (2009) *No Longer Separate, Not Yet Equal. Race and Class in Elite College Admission And Campus Life*. n.p.: Princeton, N.J.: Princeton University Press, 2009.
- Espinosa, L., Gaertner, M. & Orfield, G. (2015) *Race, Class & College Access: Achieving Diversity in a Shifting Legal Landscape*. American Council on Education.
- Etherington, K. (2004) *Becoming a Reflexive Researcher: Using Our Selves in Research*, London: Jessica Kingsley Publishers.
- Fauconnier, G. & Turner, M. (2003) *The way we think: Conceptual blending and the mind's hidden complexities*. New York, NY: Basic Books.
- Fink, A. (2000) 'The Role of the Researcher in the Qualitative Research Process. A Potential Barrier to Archiving Qualitative Data', *Forum: Qualitative Social Research*, 1(3).
- Fletcher, J. & Mayer, A. (2014) 'Tracing the Effects of Guaranteed Admission Through the College Process: Evidence From a Policy Discontinuity in the Texas 10% Plan', *Contemporary Economic Policy*, 32(1), pp. 169-186.
- Fombrum, C. (1996) *Reputation: Realizing Value from the Corporate Image*, Harvard Business School Press: Boston, MA.



- Forde-Mazrui, K. (2005) 'Learning Law Through the Lens of Race', *Journal of Law and Politics*, 21(1), pp. 1-30.
- Forman, J. & Damschroder, L. (2008) 'Qualitative content analysis', *Empirical Research for Bioethics: A Primer*. Oxford, UK: Elsevier Publishing, pp. 39-62.
- Francis, A. & Tannuri-Pianto, M. (2012) 'The redistributive equity of affirmative action: Exploring the role of race, socioeconomic status, and gender in college admissions.' *Economics of Education Review*, 31, pp. 45-55.
- Freedman, J. & Combs, G. (2002) *Narrative Therapy with couples... and a whole lot more! A collection of papers, essays and exercises*, South Australia: Dulwich Centre Publications.
- Fry, R. (2004) 'Latino youth finishing college: The role of selective pathways.' *Pew Hispanic Center*.
- Fullwood III, S. (2014) 'The Supreme Punt', *Chronicle of Higher Education*, pp. 29-32, Education Research Complete, EBSCOhost.
- Funtowicz, S. & Ravetz, J. (1994) 'Emergent complex systems', *Futures*, 26, pp. 568-582.
- Gaertner, M. & Association for Institutional Research (2011) 'Assessing a New Approach to Class-Based Affirmative Action', *Association for Institutional Research*, ERIC, EBSCOhost.
- Gaertner, M. & Hart, M. (2013) 'Considering Class: College Access and Diversity', *Harvard Law & Policy Review*, 7(2), pp. 367-403, Index to Legal Periodicals & Books Full Text (H.W. Wilson).
- Garces, L. (2012) 'Racial diversity, legitimacy, and citizenry: The impact of affirmative action bans on graduate school enrollment', *The Review of Higher Education*, 36(1), 93-132.
- Garces, L. (2013), 'Understanding the impact of affirmative action bans in different graduate fields of study', *American Educational Research Journal*, 50(2), 251-284.
- Garces, L. (2015) 'The Legal Context and Social Science Evidence in *Fisher v. University of Texas*.' In *Affirmative Action and Racial Equity: Considering the Fisher Case to Forge the Path Ahead*, edited by Uma M. Jayakumar and Liliana M. Garces, with Frank Fernandez. New York: Taylor and Francis.
- Garces, L. & Jayakumar, U. (2014) 'Dynamic Diversity: Toward a Contextual Understanding of Critical Mass', *Educational Researcher*, 43(3), pp. 115-124.

- Garces, L. & Mickey-Pabello, D. (2015) 'Racial diversity in the medical profession: The impact of affirmative action bans on underrepresented student of color matriculation in medical schools', *Journal of Higher Education*, 86(2), 264-294.
- Garces, L. & University of California, L (2012) 'The Impact of Affirmative Action Bans in Graduate Education', *Civil Rights Project/Proyecto Derechos Civiles*, ERIC, EBSCOhost.
- Garvin, D. (2000) *Learning in Action: A guide to putting the learning organization to work*. Cambridge: Harvard Business School Press.
- Gatfield, T. (1998) 'The international product lifecycle theoretical framework and its application to marketing higher education to international countries: an Australian/Asian perspective', *Journal of Marketing for Higher Education*, 9(1), pp. 1-10.
- Gandara, P. (2005) *Over the ivy walls: The educational mobility of low-income Chicanos*. Albany: State University of New York Press.
- Garces, L. & Cogburn, C. (2016) Navigating legal barriers while promoting racial diversity in higher education. *School Integration Matters: Research-Based Strategies to Advance Equity*, p. 189.
- Gell-Mann, M. (1994) *The quark and the jaguar: Adventures in the simple and the complex*. London: Little, Brown.
- Ghosh, R. (2012) 'Diversity and Excellence in Higher Education: Is There a Conflict?', *Comparative Education Review*, 56(3), pp. 349-365, ERIC, EBSCOhost.
- Gioia, D.A. & Chittipeddi, K. (1991) 'Sensemaking and sensegiving in strategic change initiation', *Strategic Management Journal*, 12(6), pp. 433-448.
- Gioia, D., Corley, K., & Hamilton, A. (2012) 'Seeking Qualitative Rigor in Inductive Research: Notes on the Gioia Methodology', *Organizational Research Methods*, 16(1) pp. 15-31.
- Gioia, D. & Pitre, E. (1990) 'Multiparadigm perspectives on theory building', *Academy of Management Review*, 15, pp. 584-602.
- Glaser, B. & Strauss, A. (1967) 'The discovery of grounded theory.' *Weidenfeld & Nicolson, London*, pp.1-19.

Glover, J., Friedman, H. & Jones, G. (2002) 'Adaptive Leadership: When Change is Not Enough (Part One)', *Organizational Development Journal*, 20, pp. 15-32, British Library Document Supply Centre Inside Serials & Conference Proceedings, EBSCOhost.

Gose, B. & Schmidt, P. (2001) 'Ruling Against Affirmative Action Could Alter Legal Debate and Admissions Partners', *Chronicle of Higher Education*, 48(2), p. A36.

Gould, S. J. (1981) *The mismeasure of man*. New York: Norton

Graglia, L. (1995) 'Hopwood v. Texas: Racial Preferences in Higher Education Upheld and Endorsed', *Journal of Legal Education*, 45(1), pp. 79-93.

Gratz v. Bollinger, 539 U.S. 244, 2003.

Green, J. & Thorogood, N. (2004) *Qualitative Methods for Health Research*. London: Sage Publications, pp. 173-200.

Grifone-Field, T., Piersol, M. & Naticchia, C. (1992) 'An admission career: How does it happen?', *Journal of College Admission*, Summer, pp. 10-14.

Groseclose, T. (2014) *Cheating: AN Insider's Report on the Use of Race in Admissions at UCLA*, Indianapolis, IN: Dog Ear Publishing.

Grutter, Gratz, and Menacher v. Bollinger, 02- 241, 02-515 US, 2003.

Grutter v. Bollinger, 539 U.S. 306, 2003. Krugman, Paul. "For Richer." New York Times Magazine, 2002.

Guion, L., Diehl, D. & McDonald, D. (2011) *Triangulation: Establishing the validity of qualitative studies*. University of Florida.

GUP, T. (2012) 'Life Lessons in Diversity', *Chronicle Of Higher Education*, p. B20, Education Research Complete, EBSCOhost.

Gurin, P. (1999) 'The Compelling Need for Diversity in Higher Education', *Michigan Journal of Race and Law*.

Gurin, P., Dey, E., Hurdado, S. & Gurin, G. (2002) 'Diversity and higher education: Theory and impact on educational outcomes', *Harvard Educational Review*, 72, 330-366.

Gurin, P., Lehman, J.S. & Lewis, E., with others (2004). *Defending diversity: Affirmative action at the University of Michigan*. Ann Arbor: University of Michigan Press.

- Gutierrez, K. & Green, P. (2004) 'Re-Examining Race-Based Admissions Processes of American Institutions of Higher Education Using Multi-Dimensional Ethical Perspectives', *Journal Of Educational Administration*, 42(2), pp. 236-248, ERIC, EBSCOhost.
- Gutinier, L. & Sturm, S. (2001) *Who's qualified*, Boston, MA: Beacon.
- Hadley, E. (2005) 'Did the Sky Really Fall? Ten Years After California's Proposition 209', *Brigham Young University Journal of Public Law*, 20(1), pp. 103-138.
- Hagedorn, L., Chi, W., Cepeda, R. & McLain, M. (2007) 'An Investigation of Critical Mass: The Role of Latino Representation in the Success of Urban Community College Students', *Research In Higher Education*, 48(1), pp. 73-91, ERIC, EBSCOhost.
- Hajnal, Z., Gerber, E. & Louch, H. (2002) 'Minorities and Direct Legislation: Evidence from California Ballot Proposition Elections', *The Journal of Politics*, 64(1), pp. 154-177.
- Hallinan, M.T. & Teixeira, R.A. (1987) Opportunities and constraints: Black-White differences in the formation of interracial friendships. *Child Development*, 58, pp. 1358-1371.
- Hammersly, M. (1992) *What's wrong with ethnography?* London: Routledge.
- Hancock, L. & McCormick, J. (1996) 'What to Crop?', *Newsweek*, pp. 59-67.
- Harpalani, V. (2015) 'Narrowly Tailored but Broadly Compelling: Defending Race-Conscious Admissions After *Fisher*', *Seton Hall Law Review*, 45(3), p. 761.
- Harris, A. (1994) 'Forward: The Jurisprudence of Reconstruction', *California Law Review*, 82, pp. 741-785.
- Harris, M., Consorte, J. G., Lang, J., & Byrne, B. (1993) 'Who are the Whites? Imposed census categories and the racial demography of Brazil', *Social Forces*, 72, pp. 451-462.
- Harris, A. & Tienda, M. (2010) 'Minority Higher Education Pipeline: Consequences of Changes in College Admissions Policy in Texas', *The ANNALS of the American Academy of Political and Social Science*, 627(1), pp. 60-81.
- Hart, H. (1954) 'The Relations between State and Federal Law', *Columbia Law Review*, 54 (4), pp. 489-542.
- Harvey, W. (2008) 'The weakest link: A commentary on the connections between K-12 and higher education', *American Behavioral Scientist*, 51(7), pp. 972-983.
- Hay, C. (2002) *Political Analysis: A Critical Introduction*. Basingstoke: Palgrave.

Heilig, J., Reddick, R., Hamilton, C. & Dietz, L. (2010) 'Actuating Equity: Historical and Contemporary Analyses of African American Access to Selective Higher Education from Sweatt to the Top 10 Percent Law', *Harvard Journal of African American Public Policy*, 17, pp. 11-26.

Henderson-King, D. & Kaleta, A. (2000) 'Learning about social diversity the undergraduate experience and intergroup tolerance', *Journal Of Higher Education*, 71(2), p. 142-164, Scopus®, EBSCOhost.

Heracleous, L. & Jacobs, C. (2008) 'Understanding organizations through embodied metaphors', *Organization Studies*, 29, pp. 45-78.

Heriot, G. (2011) 'Just Say No to Affirmative Action', *Academic Questions*, 24(4), pp. 449-466, ERIC, EBSCOhost.

Herrnstein, R. J., & Murray, C. (1994) *The bell curve: Intelligence and class structure in American life*. New York: Free Press.

Heron, J. & Reason, P. (2008) 'Extending epistemology with a co-operative inquiry', in P. Reason and H. Bradbury (eds), *Handbook of Action Research*, 2nd edn. London: Sage. pp. 367-380.

Herrold, T.Y. (2013) 'Political Process Equal Protection and the Repeal of Affirmative Action in Higher Education: The Sixth Circuit Splits from the Ninth', *Texas Journal on Civil Liberties & Civil Rights*, 18(2), pp. 153-179, Academic Search Complete, EBSCOhost.

Heilman, M. & Alcott, V. (2001) 'What I think you think of me: Women's reactions to being viewed as beneficiaries of preferential selection', *Journal of Applied Psychology*, 86, pp. 547-582.

Heilman, M. & Herlihy, J. (1984) 'Affirmative action, negative reaction? Some moderating conditions' *Organizational Behavior and Human Performance*, 33, pp. 204-213.

Heilman, M., Lucas, J. & Kaplow, S. (1990) 'Self-derogating consequences of sex-based preferential selection: the moderating role of initial self-confidence', *Organizational Behavior and the Human Decision Process*, 46, pp. 202-216.

Hicklin, A. (2007) 'The Effect of Race-Based Admissions in Public Universities: Debunking the Myths about Hopwood and Proposition 209', *Public Administration Review*, 67(2), pp. 331-340.

Hinrichs, P. (2012) 'The effects of Affirmative Action Bans on College Enrollment, Educational Attainment, and the Demographics Composition of Universities', *Review Of Economics and Statistics*, 94(3), pp. 712-722.

- Hinz, S. (2015) 'Interest Groups Vie for Public Support: The Battle Over Anti-Affirmative Action Initiatives in California and Michigan', *Education Policy*, p. 1-24.
- Hodum, R. & James, G. (2010) 'An Observation of Normative Structure for College Admission and Recruitment Officers', *The Journal Of Higher Education*, 3, p. 317, JSTOR Arts & Sciences I, EBSCOhost.
- Hoffman, J. & Lowitzki, K. (2005) 'Predicting College Success with High School Grades and Test Scores: Limitations for Minority Students', *The Review of Higher Education*, 28(4), pp. 455-474.
- Holland, J. H. (1992) *Adaptation in natural and artificial systems: An Introductory analysis with applications to biology, control, and artificial intelligence*. Cambridge, MA, USA: MIT Press.
- Holland, J. H. (1996) *Hidden order: How adaptation builds complexity*. USA: Perseus Books.
- Holland, J. H. (1998) *Emergence: From chaos to order*. USA: Perseus Books.
- Holloway, I. (1997) *Basic concepts for qualitative research*. Oxford: Blackwell Science.
- Hollway, W. & Jefferson, T. (1997) 'Eliciting Narrative Through the In-Depth Interview', *Qualitative Inquiry*, 3(1), pp. 53-70.
- Holsti, O.R. (1969) *Content analysis for the social sciences and humanities*. pp. 602-611.
- Hoover, E. (2007) 'Admissions Plan Goes beyond Numbers', *Chronicle Of Higher Education*, 54(3), p. A25, ERIC, EBSCOhost.
- Hopwood v. Texas, 78 F. 3d 932, 955 (1996).
- Horn, C. & Flores, S. (2003) *Percent Plans in College Admissions: A Comparative Analysis of Three States' Experiences*. Cambridge, MA: The Civil Rights Project at Harvard University.
- Horn, C. & Flores, S. (2012) 'When Policy Opportunity is not Enough: College Access and Enrollment Patterns among Texas Percent Plan Eligible Students', *Journal of Applied Research on Children: Informing Policy for Children at Risk*, 3(2), article 9.
- Howell, J.S. (2010) 'Assessing the Impact of Eliminating Affirmative Action in Higher Education', *Journal Of Labor Economics*, 28(1), pp. 113-166, Business Source Complete, EBSCOhost.
- Hsieh, H. & Shannon, S. (2005) 'Three Approaches to Qualitative Content Analysis', *Qualitative Health Research*, 15 (9), pp. 1277-1288.

- Hunt, M.O., Wise, L.A., Jipguep, M.C., Cozier, Y.C. & Rosenberg, L. (2007) 'Neighborhood racial composition and perceptions of racial discrimination: Evidence from the Black women's health study', *Social Psychology Quarterly*, 70, pp. 272–289.
- Hunter, R. & Bartee, R. (2003) 'The Achievement Gap: Issues of Competition, Class, and Race', *Education and Urban Society*, 35(2), pp. 151-160.
- Hurtado, S. (2001) Linking diversity and educational purpose: How diversity affects the classroom environment and student development. In G. Orfield & M. Kurlaender (Eds.), *Diversity challenged: Evidence on the impact of affirmative action* (pp. 187-203). Cambridge, MA: Harvard Education Publishing Group.
- Hurtado, S. (2002) Creating a climate of inclusion: Understanding Latina/o college students. In W.A. Smith, P.G. Altbach, & K. Lomotey (Eds.), *The racial crisis in American higher education: Continuing challenges for the twenty-first century* (pp. 121-136). Albany, NY: State University of New York Press.
- Hurtado, S. (2005) The next generation of diversity and intergroup relations research. *Journal of Social Issues*, 61, pp. 595–610.
- Hurtado, S., Dey, E.L., Gurin, P. & Gurin, G. (2003) College environments, diversity, and student learning. In J.C. Smart (Ed.), *Higher education: Handbook of theory and research*, 18, pp. 145-190): Dordrecht, The Netherlands: Kluwer Academic Publishers.
- Hurtado, S., Milem, J., Clayton-Pederson, A.R. & Allen, W.R. (1998) Enhancing campus climates for racial/ethnic diversity: Educational policy and practice. *The Review of Higher Education*, 21(3), pp. 279-302.
- Hurtado, S., Milem, J.F., Clayton-Pedersen, A.R. & Allen, W.R. (1999) *Enacting diverse learning environments: Improving the campus climate for racial/ethnic diversity in higher education*. ASHE-ERIC Higher Education Reports Series, 26(8). San Francisco: Jossey-Bass.
- Issacharoff, S. (1998) 'Can Affirmative Action Be Defended?', *Ohio State Law Journal*, 59(3), pp. 669-695.
- Jackson, D. (2012) 'SANDER, THE MISMATCH THEORY, AND AFFIRMATIVE ACTION: CRITIQUING THE ABSENCE OF PRAXIS IN POLICY', *Denver University Law Review*, 89(1), pp. 245-268.
- Jacobson, M.F. (1999) *Whiteness of a different color*. Harvard University Press.
- James, O.R. (2010) 'Dog Wags Tail: The Continuing Viability of Minority-Targeted Aid in Higher Education', *Indiana Law Journal*, 85, p. 851, LexisNexis Academic: Law Reviews, EBSCOhost.

- Jaschik, S. (1994) 'Government finds few scholarships reserved for ethnic or racial minorities', *Chronicle Of Higher Education*, 40(21), p. A36, Teacher Reference Center, EBSCOhost.
- Jaschik, S. (2012) 'Affirmative Action on the Docket', *Inside HigherEd*, February 21, 2012.
- Jaschik, S. (2014) "More Pressure Than Ever: The 2014 Survey of College and University Admissions Directors." *Inside Higher Ed*, September 18.
- Jayakumar, U. (2008) 'Can higher education meet the needs of an increasingly diverse and global society? Campus diversity and cross-cultural workforce competencies.' *Harvard Educational Review*, 78(4), pp. 615-651.
- Jensen, A.R. (1969) 'How much can we boost IQ and scholastic achievement?', *Harvard Educational Review*, 39, pp. 1-123.
- Jick, T. (1979) 'Mixing Qualitative and Quantitative Methods: Triangulation in Action', *Administrative Science Quarterly*, 24, pp. 602-611.
- Joan, B. (2003) 'Affirmative action foes field skeptical queries', *USA Today*, n.d., Academic Search Complete, EBSCOhost.
- Johnson, R. & Christensen, L. (2000) *Educational research: Quantitative and Qualitative approaches*. Boston: Allyn & Bacon.
- Johnson, R. & Onwuegbuzie, A. (2004) 'Mixed Methods Research: A Paradigm Whose Time Has Come', *Educational Researcher*, 33(14).
- Johnson, B. & Turner, L. (2003) 'Data collection strategies in mixed methods research.' *Handbook of mixed methods in social and behavioral research*, pp. 297-319.
- Jones, C.P. (2000) 'Levels of Racism: A Theoretic Framework and a Gardener's Tale', *American Journal of Public Health*, 90(8), pp. 1212-1215.
- Jones, S., Torres, V. & Arminio, J. (2013) *Negotiating the Complexities of Qualitative Research in Higher Education: Fundamental Elements and Issues*, Routledge.
- Juvonen, J., Nishina, A. & Graham, S. (2006) 'Ethnic diversity and perceptions of safety in urban middle schools', *Psychological Science*, 17, pp. 393– 400.
- Kahlenberg, R. (2010) *Affirmative action for the rich: Legacy preferences in college admissions*. New York, NY: Century Foundation Press.



Karabel, J. (1998) No Alternative: The Effect of Color-Blind Admissions in California. In *Chilling Admissions: The Affirmative Action Crisis and the Search for Alternatives*, edited by Gary Orfield and Edward Miller, pp. 33-50. Cambridge, MA: Civil Rights Project at Harvard University.

Kemmis, S. (1985) 'Action research and the politics of reflection', *Reflection: Turning experience into learning*, pp. 139-163.

Kemmis, S. & McTaggart, R. (1988) *The Action Research Planner* (3<sup>rd</sup> ed.). Geelong, Australia: Deakin University Press.

Kenna, R. & Berche, B. (2012) 'Critical Masses for Academic Research Groups and Consequences for Higher Education Research Policy and Management', *Higher Education Management And Policy*, 23(3), ERIC, EBSCOhost.

Keshavarz, N., Nutbeam, D., Rowling, L. & Khavarpour, F. (2010) 'Schools as social complex adaptive systems: A new way to understand the challenges of introducing the health promoting schools concept', *Social Science & Medicine*, 70, pp. 1467-1474.

Khatri, P. & Yukti Ahuja, S. (2011) 'Towards developing an ethical institutional brand', *On The Horizon*, 19(3), pp. 196-206, Education Research Complete, EBSCOhost.

Kidder, W. (2003) 'The struggle for access from Sweatt to Grutter: A history of African American, Latino and American Indian law school admissions, 1950-2000', *Harvard Black Letter Law Journal*, 19, pp. 1-42.

Kim, J.K. (2005) 'From Bakke to Grutter: Rearticulating Diversity and Affirmative Action in Higher Education', *Multicultural Perspectives*, 7(2), pp. 12-19, ERIC, EBSCOhost.

Kleiner, C. (2000) 'Wanted: a whole rainbow of talent', *U.S. News & World Report*, 129, 11, p. 92, Academic Search Complete, EBSCOhost.

Klinger, C. & Murray, N. (2012) 'Tensions in higher education: widening participation, student diversity and the challenge of academic language/literacy', *Widening Participation & Lifelong Learning*, 14(2), pp. 27-44, Education Research Complete.

Kogut, B. & Singh, H. (1988) 'The effect of national culture on the choice of entry mode', *Journal of International Business Studies*, 19(3), pp. 411-432.

Kondracki, N. & Wellman, N. (2002) 'Content analysis: Review of methods and their applications in nutritional education.' *Journal of Nutrition Education and Behavior*, 34, pp. 224-230.

- Kothari, C.R. (2004). *Research methodology: Methods and techniques*. New Age International.
- Kozol, J. (1991) *Savage Inequalities*. New York: Crown Publishers.
- Kreiner, G., Hollensbe, E. & Sheep, M. (2006) 'Where is the "Me" among the "We"? Identity work and the search for optimal balance', *Academy of Management Journal*, 49, pp. 1031-1057.
- Kuzel, A. (1992) 'Sampling in qualitative inquiry.' In *Doing qualitative research*, ed. B. Crabtree and W. Miller, p. 31–44. Newbury Park, CA: Sage.
- Ladson-Billings, G. & Tate, W.F. (1995) 'Toward a critical race theory of education.', *Teachers college record*, 97(1), p. 47.
- Lake, R., Landrum, R., Turrisi, R. & Harless, C. (1998) 'University image: the benefits of assessment and modeling', *Journal of Marketing for Higher Education*, 9(1), pp. 53-68.
- Lakoff, G. & Johnson, M. (1980) *Metaphors we live by*. Chicago, IL: University of Chicago Press.
- Lane, L. & Birds, R. (2013) 'Contextual admissions and affirmative action: developments in higher education policy in England', *Perspectives: Policy and Practice in Higher Education*, 17(4), p. 135-140, Scopus, EBSCOhost.
- Lave, Jean & Kvale, Steinar (1995). What is anthropological research? An interview with Jean Lave by Steinar Kvale. *Qualitative Studies in Education*, 8(3), 219-228.
- Ledford, D. (2011) 'Is Race Neutrality a Fallacy? A Comparison of the U.S. and French Models of Affirmative Action In Higher Education"', *Texas International Law Journal*, 46(2), pp. 355-378. Academic Search Complete, EBSCOhost.
- Lehmuller, P. & Gregory, D. (2005) 'Affirmative Action: From before "Bakke" to after "Grutter"', *NASPA Journal*, 42(2), pp. 430-459.
- Lempert, R. (2015) Fisher v. University of Texas at Austin: History, issues and expectations. Available at: <http://www.brookings.edu/blogs/fixgov/posts/2015/12/09-fisher-v-university-of-texas-austin-history-lempert> [Accessed July 1, 2016].
- Lentner, M. (2010) 'College Admission Counselor Perceptions: The Influences of Extracurricular Activity Involvement on the College Admission Decision', *Counselor Education Master's Theses*, paper 66.
- Levey, C.A. (2004) 'Troubled Waters Ahead For Race-Based Admissions', *Texas Review Of Law & Politics*, 9, p. 63, LexisNexis Academic: Law Reviews, EBSCOhost.

- Levine, J.M. (2006) 'Stigma's Opening: Grutter's Diversity Interest(s) and the New Calculus for Affirmative Action in Higher Education', *California Law Review*, 94(2), pp. 457-530, Business Source Complete, EBSCOhost.
- Lewin, K. (1946) 'Action research and minority problems'. In Lewin, G. W. (Ed.), *Resolving Social Conflict*. London: Harper & Row.
- Licata, J. & Maxham, G. (1998) 'Student expectations of the university experience: levels and antecedents for pre-entry freshman', *Journal of Marketing for Higher Education*, 9(1), pp. 69-91.
- Liebersohn, S. (1969) 'Measuring population diversity', *American Sociological Review*, 34, pp. 850 – 862.
- Light, A. & Strayer, W. (2002) 'From *Bakke* to *Hopwood*: Does Race Affect College Attendance and Completion?', *Review of Economics and Statistics*, 81(1), pp. 34-44.
- Lim, M. (2013) 'PERCENT PLANS: A "WORKABLE, RACE-NEUTRAL ALTERNATIVE" TO AFFIRMATIVE ACTION?', *Journal of College & University Law*, 39(1), pp. 127-164.
- Lindkvist, K. (1981) 'Approaches to textual analytics.' In K.E. Rosengren (Ed.), *Advances in content analysis*, pp. 23-41. Beverly Hills, CA: Sage.
- Linnaeus, C. (1758) *Systema naturae [The system of nature] (10th ed.)*. Stockholm, Sweden: Laurentii Salvii, Holmiae.
- Lipson, D.N. (2007) 'Embracing Diversity: The Institutionalization of Affirmative Action as Diversity Management at UC-Berkeley, UT-Austin, and UW-Madison', *Law & Social Inquiry*, 32(4), pp. 985-1026.
- Liptak, A. (2014) Court backs Michigan on affirmative action. *The New York Times*.
- Lizotte, B. (2006) 'The Diversity Rationale: Unprovable, Compelling', *Michigan Journal of Race and Law*, 11(2), pp. 625-650.
- Lott, M. (2014) 'UCLA prof says stats prove school's admissions illegally favor blacks', *Fox News*, May 13, 2014.
- Lott, J., Ramseyer, J. & Standen, J. (2011) 'Peer Effects in Affirmative Action: Evidence from Law Student Performance', *International Review Of Law And Economics*, 31(1), pp. 1-15, EconLit, EBSCOhost.
- Lomibao, S., Barreto, M. & Pachon, H. (2004) 'The Reality of Race-Neutral Admissions for Minority Students at the University of California: Turning the Tide or Turning Them Away?', Los Angeles: Tomás Rivera Policy Institute, University of Southern California.

- Long, B. (2003), 'Diversity by Any Other Name: Are There Viable Alternatives to Affirmative Action in Higher Education?', *Western Journal Of Black Studies*, 27(1), pp. 30-34.
- Long, M.C. (2004a) 'College applications and the effect of affirmative actions', *Journal of Econometrics*, 121, pp. 319-342.
- Long, M.C. (2004b) 'Race and College Admission: An Alternative to Affirmative Action?', *Review of Economics and Statistics*. 86(4), 1020-1033.
- Long, M.C. (2007) 'Affirmative Action and Its Alternatives in Public Universities: What Do We Know?', *Public Administration Review*, 67(2), pp. 315-330.
- Long, M.C. (2015) "Is There a "Workable" Race-Neutral Alternative to Affirmative Action in College Admissions?', *Journal of Policy Analysis And Management*, 34(1), pp. 162-183.
- Long, M. (2015) "The Promise and Peril for Universities Using Correlates of Race in Admissions in Response to the *Grutter* and *Fisher* Decisions".
- Loo, C. & Rolison, G. (1986) 'Alienation of Ethnic Minority Students at a Predominately White University', *Journal of Higher Education*, 57, pp. 58-77.
- Lynn, M. & Adams, M. (2002) 'Introductory overview to the special issue critical race theory and education: Recent developments in the field', *Equity & Excellence in Education*, 35(2), pp.87-92.
- Macy, M. (1990) 'Learning Theory and the Logic of Critical Mass', *American Sociological Review*, 55(6), pp. 809-826.
- Maharidge, D. (1996) *The Coming White Minority: California's Eruptions and America's Future*, New York: Times Books.
- Mahrer, A.R. (1988) 'Discovery-oriented psychotherapy research', *American Psychologist*, 43(9), pp. 694-702.
- Malamud, D.C. (1997) 'Assessing Class-Based Affirmative Action.' *Journal of Legal Education*. 47, 452.
- Malcom, S. & Malcom-Piqueux, L. (2013) 'Critical Mass Revisited: Learning Lessons From Research on Diversity in STEM Fields', *Educational Researcher*, 42(3), pp. 176-178.
- Mangan, K.S. (2000) 'The Unusual Rules for Affirmative Action in Medical Schools', *Chronicle Of Higher Education*, 47(13), pp. A57-58, ERIC, EBSCOhost.

- Maramba, D., Sulè, V. & Winkle-Wagner, R. (2015) 'What Discourse on the Texas Top Ten Percent Plan Says about Accountability for Diversity', *Journal of Higher Education*, 86(5), pp. 751-776, Education Research Complete.
- Marin, P. & Lee, E. (2003) *Appearance and Reality in the Sunshine State: The Talented 20 Program in Florida*. Cambridge: MA: The Civil Rights Project at Harvard.
- Marwell, G. & Oliver, P. (1994) 'Reply: Theory Is Not A Social Dilemma"', *Social Psychological Quarterly*, 57(4), p. 373.
- Marwell, G., Oliver, P. & Prael, R. (1988) 'Social Networks and Collective Action: A Theory of the Critical Mass. III', *American Journal of Sociology*, 94(3), pp. 502-534.
- Matsuda, M.J. (1989) 'Public response to racist speech: Considering the victim's story', *Michigan Law Review*, 87, pp. 2320-2381.
- Matsuda, M.J., Lawrence, C.R., Delgado, R., & Crenshaw, K.W. (Eds.) (1993) *Words that wound: Critical race theory, assaultive speech, and the First Amendment*. Boulder CO: Westview Press.
- McCuddy, M. & Nondorf, J. (2009, 'Ethics in College and University Admissions: A Trilogy of Concerns and Arguments', *International Journal Of Educational Management*, 23(7), pp. 537-552, ERIC, EBSCOhost.
- McDonough, P. (1994) 'Buying and Selling Higher Education: The Social Construction of the College Applicant', *The Journal of Higher Education*, 65(4), pp. 427-446.
- McDonough, P. & Robertson, L. (1995) 'Reclaiming the educational role of chief admission officers', *Journal of College Admission*, Spring, pp. 22-31.
- McLaughlin, J., McLaughlin, G. & McLaughlin, J. (2015) 'Using composite metrics to measure student diversity in higher education', *Journal of Higher Education Policy and Management*, 37(2), pp. 222-240, Business Source Complete.
- McLeod, J. (1997) *Narrative and Psychotherapy*, Thousand Oaks: SAGE Publications.
- McTavish, D. & Pirro, E. (1990) 'Contextual content analysis.' *Quality and Quantity*, 24, pp. 245-265.
- Meeuwisse, M., Severiens, S. & Born, M. (2010) 'Learning Environment, Interactions, Sense of Belonging and Study Success in Technically Diverse Student Groups', *Research in Higher Education*, 51, pp. 528-545.
- Milem, J., Chang, M. & Anotnio, A. (2005) *Making diversity work on campus: A research-based perspective*. Washington, DC: Association of American Colleges and Universities.

Mishler, E. (1990). 'Validation in inquiry-guided research: The role of exemplars in narrative studies.' *Harvard Educational Review*, 60(4), pp. 415-442.

Mooney, M.A. (2014) 'When Diversity Drops: Race, Religion and Affirmative Action in Higher Education', *Journal For The Scientific Study Of Religion*, 53(1), pp. 224-226, Academic Search Complete, EBSCOhost.

Moran, R.F. (2006) 'Of Doubt and Diversity: The Future of Affirmative Action in Higher Education', *Ohio State Law Journal*, 67(1), pp. 201-243.

Morfin, O., Perez, V., Parker, L., Lynn, M. & Arrona, J. (2006) 'Hiding the Politically Obvsious: A Critical Race Theory Preview of Diversity as Racial Neutrality in Higher Education', *Educational Policy*, 20(1), pp. 249-270.

Morgan, D.L. (1993) 'Qualitative content analysis: A guide to paths not taken', *Qualitative Health Research*, 3(1), pp. 112-121.

Morgeson, F. & Hofmann, D. (1999) 'The structure and function of collective constructs: Implications for multilevel research and theory development', *Academy of Management Review*, 24, pp. 249-265.

Morse, J. (1994) 'Designing funded qualitative research.' In *Handbook for qualitative research*, ed. N. Denzin and Y. Lincoln, pp. 220–35. Thousand Oaks, CA: Sage.

Moses, M., Yun, J. & Marin, P. (2009) 'Affirmative Action's Fate: Are 20 More Years Enough?', *Education Policy Analysis Archives*, 17(17), ERIC, EBSCOhost.

Murdock, B. (1960) 'The distinctiveness of stimuli', *Psychological Review*, 67, pp. 16-31.

Muses, S. & Jayakumar, U. (2012) *Creating campus cultures: Fostering success among racially diverse student populations*. New York: Routledge.

Myers, C. (2007) 'A Cure for Discrimination? Affirmative Action and the Case of California's Proposition 209', *Industrial and Labor Relations Review*, 60(3), pp. 379-396.

National Association for College Admission Counseling (2001) 'Affirmative Action in College Admission', Issue Paper, Summer. Washington, D.C.

National Association for College Admission Counseling (2014) 'Career Paths for Admission Officers: A Survey Report'. July 2014. Washington, D.C.

National Center for Education Statistics (2016). Integrated Postsecondary Education Data System <https://nces.ed.gov/ipeds/>

- Neath, I. (1993) 'Distinctiveness and serial position effects in recognition', *Memory & Cognition*, 21(5), pp. 689-698.
- Nichols, J., Orehovec, P. & Ingold, S. (1998) 'Using logistical regression to identify new 'at-risk' freshmen', *Journal of Marketing for Higher Education*, 9(1), pp. 25-37.
- Norris, J.M. (2005) 'Pawns or Professionals: The 21st Century Admission Counselor', *Journal Of College Admission*, 189, pp. 8-13, ERIC, EBSCOhost.
- NPR Staff (2013) 'What Happens Without Affirmative Action: The Story of UCLA'. [online]. Available from: <http://www.npr.org/2013/06/23/194656555/what-happens-without-affirmative-action-the-story-of-ucla>
- O'Neil, R. (1971) 'Preferential Admissions: Equalizing the Access of Minority Groups to Higher Education', *The Yale Law Journal*, 80 (4), pp. 699-768.
- O'Neill, R. (2008) 'The Supreme Court, Affirmative Action, and Higher Education', *Education Digest: Essential Readings Condensed For Quick Review*, 73(8), pp. 14-20, ERIC, EBSCOhost.
- Office of the Chancellor (2002) 'The California State University Enrollment Management Policy and Practices', Admission Priorities.
- Oliver, P. & Marwell, G. (1988) 'The Paradox of Group Size in Collective Action: A Theory of the Critical Mass. II', *American Sociological Review*, 53(1), pp. 1-8.
- Oliver, P. & Marwell, G. (2002) "Whatever Happened to Critical Mass Theory? A Retrospective and Assessment", *Sociological Theory*, 19(3), pp. 293-311.
- Oliver, P., Marwell, G. & Teixeira, R. (1985) "A theory of critical mass: I. Interdependence, group heterogeneity, and the production of collective action", *American Journal of Sociology*, 91(3), pp. 522-556.
- Omi, M. & Winant, H. (1993) 'On the Theoretical Concept of Race.', *Race, Identity and Representation in Education*, New York: Routledge, pp. 3-10.
- Omi, M. & Winant, H. (1994) *Racial Formation in the United States from the 1960s to the 1990s*, New York: Routledge.
- Orfield, G. & Harvard Civil Rights Project (2001) *Diversity Challenged Evidence On The Impact of Affirmative Action*, n.p.: ERIC, EBSCOhost.

Palmer, R. (2010) 'The Perceived Elimination of Affirmative Action and the Strengthening of Historically Black Colleges and Universities', *Journal Of Black Studies*, 40(4), pp. 762-776, Education Research Complete, EBSCOhost.

Palmer, S.R. (2001) *A Policy Framework For Reconceptualizing The Legal Debate Concerning Affirmative Action In Higher Education*, n.p.: ERIC, EBSCOhost.

Parilo, M. (2012) 'NON-STRICT STRICT SCRUTINY: THE FIFTH CIRCUIT AND THE GRUTTER STANDARD IN FISHER v. UNIVERSITY OF TEXAS AT AUSTIN', *Boston College Journal of Law & Social Justice*, 32, pp. 35-46.

Park, J. (2012) 'When race and religion collide: The effect of religion on interracial friendship in college', *Journal of Diversity in Higher Education*, 5(1), pp. 8-21.

Park, J. (2015) 'Race Still Matters: The Continued Need for Race-Conscious Admissions Policies', *New Labor Forum (Sage Publications Inc.)*, 24(1), pp. 15-18, Academic Search Complete, EBSCOhost.

Park, J. & Denson, N. (2013) 'When Race and Class Both Matter: The Relationship between Socioeconomic Diversity, Racial Diversity, and Student Reports of Cross-Class Interaction', *Research in Higher Education* 54(7), pp. 725-745, Education Research Complete.

Park, J., Denson, N., & Bowman, N. (2013) 'Does socioeconomic diversity make a difference? Examining the effects of racial and socioeconomic diversity on the campus climate for diversity', *American Educational Research Journal*.

Park, J. & Liu, A. (2014) 'Interest Convergence or Divergence? A Critical Race Analysis of Asian Americans, Meritocracy, and Critical Mass in the Affirmative Action Debate', *Journal of Higher Education*, 85(1), pp. 36-64.

Pascarella, E.T., Edison, M., Nora, A., Hagedorn, L.S. & Terenzini, P.T. (1996) 'Influences on students' openness to diversity and challenge in the first year of college', *The Journal of Higher Education*, 67(2), 174-195.

Pazich, L. & Teranishi, R. (2014) 'Comparing Access to Higher Education in Brazil and India using Critical Race Theory', *Widening Participation & Lifelong Learning*, 16(1), pp. 50-69, Education Research Complete, EBSCOhost.

Peckham, V. (1997) 'Scholarships and the Race-Based Cases', *Foundation News & Commentary*, 38, 6. Available at: <http://www.foundationnews.org/CME/article.cfm?ID=1667>.



- Pedhazur, E. & Schmelkin, L. (1991) *Measurement, design, and analysis: An integrated approach*. Hillsdale, NJ: Lawrence Erlbaum Associates.
- Peterson, M., Kowolik, J., Coleman, G., Dietrich, S., Mascarenhas, A., McCunniff, M. & Taylor, G. (2004) 'Perspectives on Affirmative Action in Academic Dental Institutions: The U.S. Supreme Court Rulings in the University of Michigan Cases', *Journal Of Dental Education*, 68(9), p. 932, Supplemental Index, EBSCOhost.
- Phillip, A. (2011) 'The Diversity Imperative: College admissions office continue to adjust to affirmative action policies in wake of *Grutter* and *Gratz*', *Diverse: Issues in Higher Education*, 28(18), pp. 16-17
- Polkinghorne, D. (2005) 'Language and Meaning: Data Collection in Qualitative Research', *Journal of Counseling Psychology*, 52 (2), p. 137-145.
- Pratt, M. & Foreman, P. (2000) 'Classifying managerial responses to multiple organizational identities.' *Academy of Management Review*, 25, pp. 18-42.
- Qiang, F. (2006) 'A THEORY OF AFFIRMATIVE ACTION IN COLLEGE ADMISSIONS', *Economic Inquiry*, 44(3), pp. 420-428.
- Raelin, J. A. (2008). *Work-based learning*. San Francisco: Jossey-Bass.
- Raelin, J. A., & Raelin, J. D. (2006). Developmental action learning. *Action Learning: Research and Practice*, 3, 45-67.
- Rawls, J. (1974) 'Some reasons for the maximin criterion.', *The American Economic Review*, 64(2), pp.141-146.
- Rawls, J. (1985) 'Justice as fairness: political not metaphysical.', *Philosophy & Public Affairs*, pp.223-251.
- Rawls, J. (2009) *A Theory of Justice*, Harvard University Press.
- Ray, D. & Sethi, R. (2010) 'A Remark on Color-Blind Affirmative Action', *Journal of Public Economic Theory*, 12(3), pp. 399-406.
- Reason, P. and Bradbury, H. eds., 2001. *Handbook of action research: Participative inquiry and practice*. Sage.
- Reason, P. & Bradbury, H. (2008) *Handbook of Action Research*, 2<sup>nd</sup> edn. London: Sage.
- Regents of University of California v. Bakke, 438 U.S. 265 (1978).
- Rendon, L., Novack, V. & Dowell, D. (2005) 'Testing Race-Neutral Admissions Models: Lessons from California State University-Long Beach', *The Review of Higher Education*, 28(2), pp. 221-243.

- Revans, R.W. (1981) 'The nature of action learning', *Omega*, 9 (1), pp. 9-24.
- Rew, L., Bechtel, D. & Sapp, A. (1993) 'Self-as-instrument in qualitative research.' *Nursing Research*, 42(5), pp.300-301.
- Riccucci, N. (2016) 'Fisher v. University of Texas and the Status of Affirmative Action Implications for Social Equity'. *Review of Public Personnel Administration*, p.0734371X15608420.
- Richard, O.C., Murthi, B.P.S. & Ismail, K. (2007) 'The impact of racial diversity on intermediate and long-term performance: The moderating role of environmental context', *Strategic Management Journal*, 28, pp. 1213–1233.
- Richman, A. (2010) 'The End of Affirmative Action in Higher Education: Twenty-Five Years in the Making?', *DePaul Journal For Social Justice*, 4(1), pp. 61-96, Academic Search Complete, EBSCOhost.
- Rigol, G. (2003) 'Admissions Decision-Making Models: How U.S. Institutions of Higher Education Select Undergraduate Students', *The College Board*.
- Roberts, D.E. (2004) 'The Social and Moral Cost of Mass Incarceration in African American Communities', *Stanford Law Review*, 56, pp. 1271-1305.
- Robinson, N., & California Univ,, (2003) 'Undergraduate Access to the University of California after the Elimination of Race-Conscious Policies', ERIC.
- Rodriguez, S., Wan, Y. & Learning Point (2010) 'Connecting Research about Access to Higher Education to Practice. An Introductory Guide for Educators.' *Learning Point Associates*.
- Ross, T. (1990) 'Innocence and Affirmative Action', *Vanderbilt Law Review*, 43, pp. 297.
- Roulston, K., deMarrais, K., & Lewis, J. (2003). Learning to interview in the social sciences. *Qualitative Inquiry*, 9(4), 643–668.
- Roulston, K., McClendon, V.J., Thomas, A., Tuff, R. Williams, G. & Healy, M. (2008) 'Developing reflective interviewers and reflexive researchers', *Reflective Practice*, 9(3), pp. 231-243.
- Sabbagh, D. (2011), 'The paradox of decategorization: Deinstitutionalizing race through race-based affirmative action in the United States', *Ethnic And Racial Studies*, 34(10), pp. 1665-1681, PsycINFO, EBSCOhost.

Sabbagh, D. (2011) 'The Rise of Indirect Affirmative Action: Converging Strategies for "Promoting Diversity" in Selective Institutions of Higher Education in the United States and France', *World Politics*, 3, p. 470, Project MUSE, EBSCOhost.

Saenz, L. (2010) *Education policy by ballot box: Examining the impact of anti-affirmative action initiatives*. Ph.D. dissertation, University of Colorado at Boulder, United States – Colorado.

Sandelowski, M. (2000) 'What ever happened to qualitative description?', *Research in Nursing and Health*, 23, pp. 334-340.

Sander, R. & Danielson, A. (2014) 'THINKING HARD ABOUT 'RACE-NEUTRAL' ADMISSIONS', *University Of Michigan Journal Of Law Reform*, 47(4), pp. 967-1020, Academic Search Complete, EBSCOhost.

Savas, G. (2014) 'Understanding critical race theory as a framework in higher educational research', *British Journal of Sociology of Education*, 35(4), pp. 506-522, Education Research Complete, EBSCOhost.

Sawires, J. & Peacock, M. (2000) 'Symbolic Racism and Voting Behavior on Proposition 209', *Journal of Applied Social Psychology*, 30(10), pp. 2092-2099.

Schmidt, P. (2012a), 'Supreme Court Hearing in Texas Admissions Case Exposes Gaps in Affirmative-Action Law', *Chronicle Of Higher Education*, ERIC, EBSCOhost.

Schmidt, P. (2012b), 'Court Strikes Down Michigan's Ban on Race-Conscious College Admissions', *Chronicle Of Higher Education*, 59(13), p. A17, Education Research Complete, EBSCOhost.

Schmidt, P. (2014), 'Supreme Court Exposes Affirmative Action at Colleges to Continued Political Assault', *Chronicle of Higher Education*, 60(33), pp. A3-A4, Education Research Complete, EBSCOhost.

Schneider, C.Q & Wagemann, C. (2010) 'Standards of Good Practice in Qualitative Comparative Analysis (QCA) and Fuzzy-Sets', *Comparative Sociology*, 9, pp. 1-22.

Schrag, P. (1998) *Paradise Lost: California's Experience, America's Future*, New York: New Press.

Schuetz v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary, 572 U.S. \_\_\_\_ (2014).

Schwab, G. (2014) 'Supreme Court Deals Affirmative Action Another Blow, But Impact on Colleges and Universities Likely Limited', *Higher Education Highlights*, Summer 2014, p. 7-8.

Schwandt, T. (1997) *Qualitative inquiry: a dictionary of terms*. Thousand Oaks, CA: Sage Publications.

Schwarzshild, M. (2013) 'A Class Act? Social Class Affirmative Action and Higher Education', *San Diego Law Review*, 50(2), pp. 441-467, Academic Search Complete, EBSCOhost.

Seel, R. (2000) 'Culture and complexity: new insights on organisational change', *Organisations and People*, (2), pp. 2-9.

Shah, S. & Corley, K. (2006) 'Building better theory by bridging the quantitative-qualitative divide', *Journal of Management Studies*, 43(8), pp.1821-1835.

Shani, A. & Pasmore, W. (1985) 'Organization inquiry: towards a new model of the action research process', in D.D. Warrick (eds), *Contemporary Organization Development: Current Thinking and Applications*. Glenview, IL: Scott, Foresman. Pp. 438-448.

Shapiro, J.P. & Stefkovich, J.A. (2001) *Ethical leadership and decision making in education: Applying theoretical perspectives to complex dilemmas*, Mahwah, NJ: Lawrence Erlbaum Associates.

Shapiro, J.P. & Stefkovich, J.A. (2005) *Ethical leadership and decision making in education: Applying theoretical perspectives to complex dilemmas*, 2nd Ed. Mahwah, NJ: Lawrence Erlbaum Associates.

Shettle, C., Roey, S., Mordica, J., Perkins, R., Nord, C &, Teodorovic, J. (2007) *America's high school graduates: Results from the 2005 NEAP High School Transcript Study* (NCES Publication No. 2007467). Washington DC: U.S. Government Printing Office.

Shiffrin, S.V. (2003) 'Race, labor, and the fair equality of opportunity principle.' *Fordham L. Rev.*, 72, p.1643.

Shteynberg, G., Leslie, L., Knight, A. & Mayer, D. (2011) 'But Affirmative Action hurts Us! Race-related beliefs shape perceptions of White disadvantage and policy unfairness.' *Organizational Behavior and Human Decision Processes*, 115(1), pp. 1-12.

Sidhu, D.S. (2013) 'A Critical Look at the 'Critical Mass' Argument', *Chronicle of Higher Education*, 59(24), p. A60, Education Research Complete, EBSCOhost.

Siegel, S. (2006) 'The Origin of the Compelling State Interest Test and Strict Scrutiny', *bepress Legal Series*, p. 1514.

Silman, T. J. (2006) *Race, Class Rank, and College Admission Probability* (Doctoral dissertation, Georgetown University).

Small, L. (2008) 'Meredith, Colorblind Constitutionalism, and the Impact on Higher Education', *Journal of Law & Education*, 37(3), p 453-460.

Smedley, A. (1998) *Race in North America: Origin and evolution of a worldview (2nd ed.)*. New York: Perseus Publishing.

Smedley, B.D., Myers, H.F. and Harrell, S.P. (1993) 'Minority-status stresses and the college adjustment of ethnic minority freshmen', *Journal of Higher Education*, 64(4), pp. 434-52.

Smith, D. (2009) *Diversity's promise for higher education: Making it work*. Baltimore: John Hopkins University Press.

Smith, A. (2013) 'Tailored Affirmative Action Allowed in Higher Education', *HR Magazine*, 58(8), p. 8, Business Source Complete, EBSCOhost.

Smyth, A. & Holian, R. (2008) 'Credibility Issues in Research from within Organizations', in p. Sikes & A. Potts (Eds.) *Researching education from the inside*, pp. 33-47, New York, NY: Taylor & Francis.

Snowden, F. M. (1983) *Before color prejudice: The ancient view of blacks*. Cambridge, MA: Harvard University Press.

Solorzano, D. (1998) 'Critical race theory, race and gender microaggressions, and the experience of Chicana and Chicano scholars', *Qualitative Studies in Education*, 11 (1), pp. 121-136.

Sowell, T. (2004) *Affirmative Action Around the World: An Empirical Study*. New Haven: Yale University Press.

Spann, G. (1997) 'Proposition 209', *Duke Law Journal*, 47(2), pp. 187-325.

Spears, B. (2012) 'CASENOTE: "IF THE PLAINTIFFS ARE RIGHT, GRUTTER IS WRONG": WHY FISHER V. UNIVERSITY OF TEXAS PRESENTS AN OPPORTUNITY FOR THE SUPREME COURT TO OVERTURN A FLAWED DECISION', *University Of Richmond Law Review*, 46(4), pp. 1113-1139.

Spector, R. (1991) 'Minority Scholarships: A New Battle in the War On Affirmative Action', *Iowa Law Review*, 77, p. 307, LexisNexis Academic: Law Reviews, EBSCOhost.

Speyer, M. (2004), 'Our Numbers Are up! (Is That Good?)', *Journal Of College Admission*, 182, pp. 8-15, ERIC, EBSCOhost.

Spradley, J. (1979) *The ethnographic interview*. New York: Holt, Rinehart and Winston.

Stacey, R.D. (2011) *Strategic management and organisational dynamics: the challenge of complexity*. 6th ed. Harlow: Pearson.

Stanley, C. (2014) 'The Chief Diversity Officer: An Examination of CDO Models and Strategies', *Journal of Diversity in Higher Education*, 7(2), p. 101.

Starratt, R.J. (1994) *Building an ethical school*. London: Falmer Press.

Strauba, S.E. (1997) 'The wisdom and constitutionality of race-based decision-making in higher education admission programs: A critical look at Hopwood v. Texas', *Case Western Reserve Law Review*, 48(1), p. 133, Academic Search Complete, EBSCOhost.

Strauss, A. & Corbin, J. (1990) *Basics of qualitative research* (Vol. 15). Newbury Park, CA: Sage.

Strauss, A. & Corbin, J. (1994) 'Grounded theory methodology', *Handbook of qualitative research*, 12, pp. 273-85.

Strike, K., Haller, E. & Soltis, J. (1998) *The ethics of school administration*. 2<sup>nd</sup> Ed. New York: Teachers College Press.

Sterrett, W.M. (2005) 'Current Issues Involving Affirmative Action and Higher Education', *Journal Of College Admission*, 187, pp. 22-28, ERIC, EBSCOhost.

Stuckey, H. (2013) 'Three types of interviews: Qualitative research methods in social health', *Journal of Social Health and Diabetes*, 1(2), pp. 56-59.

Stulberg, L., & Chen, A. (2014) 'The Origins of Race-conscious Affirmative Action in Undergraduate Admissions: A Comparative Analysis of Institutional Change in Higher Education', *Sociology of Education*, 87(1), pp. 36-52, Education Research Complete, EBSCOhost.

Sturm, S. & Guinier, L. (1996) 'The future of affirmative action: Reclaiming the innovative ideal.', *California Law Review*, 84(4), pp. 953-1036.

Sullivan, K.M. (1998) 'After Affirmative Action"', *Ohio State Law Journal*, 59(3), pp. 1039-1054.

Sunstein, C.R. (1982) 'Public Values, Private Interests, and the Equal Protection Clause', *The Supreme Court Review*, pp. 127-166.

Sutton, R.I. (1993) 'The virtues of closet qualitative research'. *Organization Science*, 8, pp. 97-106.

Synnott, M.G. (2014) 'The Recent History of Affirmative Action Policies in Higher Education and the U.S. Supreme Court', *Proceedings Of The South Carolina Historical Association*, pp. 37-48, America: History and Life with Full Text, EBSCOhost.

Syverud, K.D. (2004) 'Expert Report of Kent D. Syverud in "Grutter v. Bollinger"', *Peabody Journal Of Education*, 79(2), pp. 136-140, ERIC, EBSCOhost.

Swink, D.R. (2003) 'BACK TO BAKKE: AFFIRMATIVE ACTION REVISITED IN EDUCATIONAL DIVERSITY', *Brigham Young University Education & Law Journal*, 1, p. 211.

Takaki, R. (1993) *A different mirror: A history of multicultural America*. Boston: Little, Brown.

Tanabe, C.S. (2009) 'From the Courtroom to the Voting Booth: Defending Affirmative Action in Higher Education Admissions', *Philosophy of Education*, p. 291-300, Education Research Complete, EBSCOhost.

Taras, V. & Rowney, J. (2007) 'Effects of Cultural Diversity on In-Class Communication and Student Project Team Dynamics: Creating Synergy in the Diverse Classroom', *International Studies in Education Administration (Commonwealth Council for Educational Administration & Management (CCEAM))*, 35(2), pp. 66-81.

Tashakkori, A. & Teddlie, C. (2003) *Handbook of Mixed Methods in Social & Behavioral Research*. Sage Publications, Inc.

Tate IV, W.F. (1997) 'Chapter 4: Critical race theory and education: History, theory, and implications', *Review of research in education*, 22(1), pp.195-247.

Taylor, S.J. & Bogdan, R. (1984) *Introduction to qualitative research methods: The search for meanings*. New York: John Wiley & Sons.

Terepka, J. (2006) 'Pangloss' Wisdom: College Counseling as an Ethical Activity', *Journal Of College Admission*, 190, pp. 2-7, ERIC, EBSCOhost.

Terrell, M. (2011) 'Bucking Grutter: Why Critical Mass Should Be Thrown Off the Affirmative-Action Horse', *Texas Journal on Civil Liberties & Civil Rights*, 16(2), pp. 233-262.

Tesch, R. (1990) *Qualitative research: Analysis types and software tools*. Bristol, PA: Falmer.

Thernstrom, A., Glazer, N., Wood, T., La Noue, G., & Krauss, M. (2003), 'SYMPOSIUM: THE SUPREME COURT'S MICHIGAN DECISIONS', *Academic Questions*, 2003, Education Research Complete, EBSCOhost.

Thomas, D. (1999) 'Cultural diversity and work group effectiveness', *Journal of Cross-Cultural Psychology*, 30(2), pp. 242-263.

Thomas, D. (2006) 'A General Inductive Approach for Analyzing Qualitative Evaluation Data', *American Journal of Evaluation*, 27, pp. 237-246.

- Thomas, E.C. (2007) 'Racial Classification and the Flawed Pursuit of Diversity: How Phantom Minorities Threaten 'Critical Mass' Justification in Higher Education', *Brigham Young University Law Review*, 2007, p. 813, LexisNexis Academic: Law Reviews, EBSCOhost.
- Thomas, W. & Garrett, M. (1999) 'U.S. and California Affirmative Action Policies, Laws and Programs', *Effects of Affirmative Action: Policies and Consequences in California*, pp. 25-58.
- Thorpe, R. & Holt, R. (2008) *The SAGE Dictionary of Qualitative Management Research*. Los Angeles, California; SAGE, 2008.
- Tienda, M. & Niu, S. (2006a) 'Capitalization on segregation, pretending neutrality: College admissions and the Texas Top 10% law.' *American Law Economics Review*, 8(2), pp. 312-346.
- Tienda, M. & Niu, S. (2006b) 'Flagships, feeders, and the Texas Top 10% law: A test of the "brain drain" hypothesis', *The Journal of Higher Education*, 77(4), pp. 712-739.
- Tienda, M., Leicht, K., Sullivan, T., Maltese, M. & Lloyd, K. (2003) *Closing the gap? Admissions and enrollments at the Texas public flagships before and after affirmative action*. Princeton, NJ: Texas Top 10% Project.
- Tierney, W. (2007) 'Merit and affirmative action in education: Promulgating a democratic public culture', *Urban Education*, 42(5), pp. 385-402.
- Turner, M. (1996) 'Conceptual blending and counterfactual argument in the social and behavioral sciences', In *Counterfactual thought experiments in world politics*. Princeton, NJ: Princeton University Press. Pp. 291-295.
- United States v. Virginia Military Institute*, 518 US 515 (1996).
- University of California (2003) 'Under-graduate Access to the University of California After the Elimination of Race-Conscious Policies', Office of the President, Student Academic Services.
- UCLA Undergraduate Admission. *Freshman Selection* – [online]. Available from: [http://www.admission.ucla.edu/Prospect/Adm\\_fr/FrSel.htm](http://www.admission.ucla.edu/Prospect/Adm_fr/FrSel.htm).
- University of California Office of the President, (2003) 'University of California Applications, Admissions, and Enrollment of California Resident Freshmen for Fall 1995 Through 2002.' Available at <http://www.ucop.edu/news/factsheets/flowfrc9502.pdf>
- Van Maanen, J, (1995) *Crossroads Style as Theory*. *Organization Science*, 6(1), p. 133-143.



- Vince, R. (2004). Action learning and organizational learning: Power, politics and emotion in organization. *Action Learning: Research and Practice*, 1, 63-78.
- Volokh, A. & Feng, S. (1995) 'Measuring the Damage From Race-Based Preferential Admissions at UCLA', *The Journal Of Blacks In Higher Education*, 9, p. 94, JSTOR Arts & Sciences I, EBSCOhost.
- Walpole, M., McDonough, P., Bauer, C., Gibson, C., Kanyi, K. & Toliver, R. (2005) 'This Test is Unfair: Urban African American and Latino High School Students' Perceptions of Standardized College Admissions Tests', *Urban Education*, 40(3), pp. 321-349.
- Walsh, J.P. (2008) 'Swept Under the Rug: Integrating Critical Race Theory into the Legal Debate on the use of Race', *Seattle Journal for Social Justice*, 6, pp. 673-907.
- Washington Higher Education Secretariat (2013), *Diversity in higher education remains an essential national priority*. Retrieved from <http://www.acenet.edu/advocacy-news/PublishingImages/Full-Size-NYT-Fisher-Ad.pdf>
- Wang, G. & Shulruf, B. (2013) 'Admission Model and Equity in Higher Education', *Asia-Pacific Education Researcher (Springer Science & Business Media B.V.)*, 22(1), pp. 111-117, Education Research Complete, EBSCOhost.
- Wang, Q. & von Tunzelmann, N. (2000) 'Complexity and the functions of the firm: breadth and depth', *Research Policy*, 29, pp.805-818.
- Weber, R. (1990) *Basic content analysis*. Beverly Hills, CA: Sage.
- Weir, A. (2001) 'Should Higher Education Race-Based Financial Aid be Distinguished from Race-Based Admissions?', *Boston College Law Review*, 42, p. 967, LexisNexis Academic: Law Reviews, EBSCOhost.
- White, F., Charles, M. & Nelson, J. (2008) 'The Role of Persuasive Arguments in Changing Affirmative Action Attitudes and Expressed Behavior in Higher Education', *Journal of Applied Psychology*, 93(6), pp. 1271-1286, Business Source Complete, EBSCOhost.
- White, L. (2000) *The Compelling Need For Research On The Benefits Of Racial Diversity In Higher Education And What Will Happen If Higher Education Fails To Make The Case For Diversity*, n.p.: ERIC, EBSCOhost.
- Wickelgren, A. (2005) 'Affirmative Action: More Efficient Than Color Blindness', *Texas Journal on Civil Liberties & Civil Rights*, 10(2), pp. 165-188.

- Wightman, L. (1997) 'The threat to diversity in legal education: An empirical analysis of the consequences of abandoning race as a factor in law school admission decisions', *New York University Law Review*, 71(1), 1-53.
- Wildman, S. M. (2005) 'The Persistence of White Privilege', *Washington University Journal of Law & Policy*, 18, p. 245-265.
- Wilkinson, D. & Birmingham, P. (2003) *Using research instruments: A guide for researchers*. Psychology Press.
- Williams, P.J. (1991) *The alchemy of race and rights: Diary of a law professor*. Cambridge, MA: Harvard University Press.
- Williams, P.J. (2014) 'Race From Equality', *Nation*, 298(20), pp. 10-11, Academic Search Complete, EBSCOhost.
- Wilson, T., Holt, T. & Greenhalgh, T. (2001) 'Complexity and clinical care', *British Medical Journal*, 323, p. 685-688.
- Winlke-Wagner, R., Sule, V. & Maramba, D. (2014) 'When Race Disappears: College Admissions Policy Discourse in the State of Texas', *Educational Policy*, 28(4), pp. 516-546.
- Winter, G. (2004) 'After Ruling, 3 Universities Maintain Diversity in Admissions.' *New York Times*, April 13, p. A22.
- Wood, T.E. (2003) 'Race, Admissions, and Litigation after Michigan', *Academic Questions*, 16(3), pp. 18-22, ERIC, EBSCOhost.
- Yang, L. & Miller, G.J. (2008) *Handbook of research methods in public administration* (2<sup>nd</sup> edicion). New York: M. Dekker.
- Yin, T. (2014) 'Is "Diversity" Diverse Enough?', *Asian American Law Journal*, 21, p. 89.
- Yosso, T., Parker, L., Solórzano, D. & Lynn, M. (2005) From Jim Crow to affirmative action and back again: A critical race theory discussion of racialized rationales and access to higher education. In R. Flodden (Ed.) *Review of Research in Education*, 28, pp. 1-27. Washington, DC:American Educational Research Association.
- Yun, J. & Marin, P. (2009) *Critical mass and college context: Expanding the theory*. Paper presented at the annual meeting of the American Educational Research Association, San Diego, CA.

Zelnick, B. (1996) *Backfire: A Reporter's Look at Affirmative Action*. Washington, DC: Regerny Publishers.

Zimmerman, B., Lindberg, C. & Plsek, P. (1998) *Edgeware: Lessons from complexity science for health care leaders*, Irving, Tex.: VHA Inc.

## Appendices

### Appendix 1: Interview questionnaire

- Please tell me about your work experience in higher education admissions.
  - a. How long have you worked in admissions?
  - b. How long have you worked at **(your current institution)**?
  - c. Did you work in admissions at any other institutions prior to **(your current institution)**?
  - d. How long did you work for this prior institution?
- Using a scale of 1-4, where 1 indicates very knowledgeable and 4 indicates no knowledge at all, how would you rate your knowledge regarding the following Supreme Court cases:

	Very knowledgeable	Knowledgeable	Somewhat knowledgeable	No knowledge at all
Regents of the University of California v. Bakke	1	2	3	4
Hopwood v. Texas	1	2	3	4
Gratz v. Bollinger	1	2	3	4
Grutter v. Bollinger	1	2	3	4
Schuetz v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary (BAMN)	1	2	3	4
Fisher v. The University of Texas at Austin	1	2	3	4

- Using a scale of 1-4, where 1 indicates very knowledgeable and 4 indicates no knowledge at all, how would you rate your knowledge regarding the following state legislation:

	Very knowledgeable	Knowledgeable	Somewhat knowledgeable	No knowledge at all
California Proposition 209	1	2	3	4
Texas Top-10 Percent Plan	1	2	3	4
Florida Talented Twenty Plan	1	2	3	4
Washington Initiative 200	1	2	3	4
Michigan Proposal 2	1	2	3	4
Nebraska Initiative 424	1	2	3	4
Arizona Proposition 107	1	2	3	4
New Hampshire House Bill 0623	1	2	3	4
Oklahoma State Question 759	1	2	3	4

- Using a scale of 1-4, where 1 indicates very knowledgeable and 4 indicates no knowledge at all, how would you rate your knowledge regarding the Equal Protection Clause of the U. S. Constitution, also known as the 14<sup>th</sup> Amendment:

	Very knowledgeable	Knowledgeable	Somewhat knowledgeable	No knowledge at all
Equal Protection Clause	1	2	3	4

- Based off of what you know concerning the previously mentioned Supreme Court cases, state legislation and the Equal Protection Clause, do you feel that these three elements create conflicting legal guidance regarding the use of affirmative action in higher education admissions? Why or why not?
  - If answered yes:** Please describe what you know to be the conflicting legal guidance between the three items mentioned (the Supreme Court cases, the state-level legislation, and the Equal Protection Clause of the U.S. Constitution).
    - How do you feel that this conflicting legal guidance has impacted the admissions policies and practices at **(your institution)**?

- b. ***If answered no:*** The Supreme Court cases related to affirmative action in higher education conflict with both the Equal Protection Clause of the U.S. Constitution, and state-level legislation enacted in 8 different states. The Supreme Court cases protect the use of affirmative action programs within higher education admissions, as long as the program is narrowly tailored in its application, and that the institution has a demonstrated and justifiable reason for using the program (where race-neutral programs would not produce the same level of diversity during the admissions process). The Equal Protection Clause states that no state “shall deny to any person within its jurisdiction the equal protection of the laws” prohibiting any practice or law that has a racially discriminatory purpose. The state-level legislation eliminates the ability for public institutions to use race and/or ethnicity as a factor within the admissions decision. In light of this explanation, do you perceive that there is conflicting legal guidance caused between the three items mentioned?
- i. How do you feel that this conflicting legal guidance could impact the admissions policies and practices at **(your institution)**?
- Do you feel that the policies and practices stated by **(your institution)** are in alignment with what is actually happening within the admissions process?
    - a. Please explain.
  - In looking at the three different entities that have created the previously discussed legislation, who do you feel is best able to determine the allowed use of race/ethnicity in higher education admissions: the Supreme Court, state legislators or the voting public? Why?
  - Do you feel confident in your understanding of the current state and federal legislation concerning the use of race/ethnicity in higher education admissions? What has contributed to that confidence?
  - What level of restriction do you feel is most appropriate for race/ethnicity within higher education admissions: completely restricted, usable under narrowly tailored conditions, or completely unrestricted. Why?
  - Are public institutions that operate under a state-level ban on the use of race/ethnicity unfairly restricted when compared to their private institution counterparts? Why?

- What sources of information have you consulted in order to learn more about state and federal legislation concerning the use of race/ethnicity in higher education?

	Yes	No
Your supervisor or administrator		
The institution's general counsel		
Your state's higher education governing body or coordinating board		
U.S. Department of Education		
Peer institutions		
Professional organizations (AACRAO, NACAC, etc)		
Media coverage		
My personal research		
Other – please explain		

- Have you attended any trainings related to race-conscious admissions practices (either the use of or the prohibition of)?
  - If yes:** what types of trainings have you attended?
  - If yes:** what department or organization presented the training?
- Have race-conscious admissions practices (either the use of or the prohibition of) been discussed in any staff meetings or department meetings?
  - If yes:** What was the context of the discussion?
- Do you feel that you would benefit from having some sort of training or discussion related to the use and/or restriction of race-conscious admissions practices?
  - If yes:** What types of training or discussion would you like to see?
  - If yes:** What specific questions do you have that you would like to see covered in this training or discussion?

## Appendix 2: Interview Roadmap

Question	Objective
Q1.a: How long have you worked in admissions?	Provide background information about the experience and prior knowledge of the interviewee. If they worked at the institution for many years or worked in another state with similar state-level legislation, they might have additional experience that augments or increases their knowledge (when compared to others with lesser experience).
Q1.b: How long have you worked at (your current institution)?	
Q1.c: Did you work in admissions at any other institution prior to (your current institution)?	
Q1.d: How long did you work for this prior institution?	
Q2: Using a scale of 1-4, how would you rate your knowledge of the following Supreme Court cases:	Determine the extent of the interviewee’s knowledge regarding the specific Supreme Court cases, if the knowledge of state-level legislation extends past the state in which the interviewee works, and if there is any awareness of the constitution. Interesting to see if there is any correlation between these and the length of experience. Follow-up questions will help determine which legislation has the most awareness and what is being remembered.
Q3: Using a scale of 1-4, how would you rate your knowledge of the following state legislation:	
Q4: Using a scale of 1-4, how would you rate your knowledge regarding the Equal Protection Clause of the U.S. Constitution, also known as the 14 <sup>th</sup> Amendment:	
Q5: Based off of what you know concerning the previously mentioned Supreme Court cases, state legislation and the Equal Protection Clause, do you feel that these three elements create conflicting legal guidance regarding the use of affirmative action in higher education admissions? Why or why not?	Test RQ2 directly
Q5.a: If the interviewee indicates that yes there is conflicting legal guidance, ask them to describe what they view as the conflicting information, and	Identify if there conflict is perceived and what is causing the conflict – test RQ2 directly



<p>how the conflicting legal guidance has influenced their actual institution.</p>	
<p>Q5.b: If interviewee indicates that no there is not awareness of the conflicting legal guidance, gives a brief overview of the nature of the three items, and then asks if the interviewee perceives that there could be a conflict in the legal guidance. Then asks how they think this conflicting legislation could influence their actual institution.</p>	<p>Attempts to set a uniform base of knowledge, then attempts to identify if the conflict is perceived and what is causing the conflict - tests RQ2</p>
<p>Q6: Do you feel that the policies and practices state by (your institution) are in alignment with what is actually happening within the admissions process?</p>	<p>Identify if stated enrollment practices are actually in effect, or if public accusations of affirmative action continuing behind the scenes is correct.</p>
<p>Q7: In looking at the three different entities that have created the previously discussed legislation, who do you feel is best able to determine the allowed use of race/ethnicity in higher education admissions: the Supreme Court, state legislators or the voting public? Why?</p>	<p>Identify which legislation is preferred or viewed as most correct</p>
<p>Q8: Do you feel confident in your understanding of the current state and federal legislation concerning the use of race/ethnicity in higher education admissions? What has contributed to that confidence?</p>	<p>Identify individual perception of knowledge and contributing factors</p>
<p>Q9: What level of restriction do you feel is most appropriate for race/ethnicity within higher education admissions: completely restricted, usable under narrowly tailored conditions, or completely unrestricted. Why?</p>	<p>Identify which admissions practice is most preferred</p>
<p>Q10: Are public institutions that operate under a state-level ban on the use of race/ethnicity unfairly</p>	<p>Identify perceived equality of the legislation</p>

restricted when compared to their private institution counterparts? Why?	
Q11: Which of the following sources of information have you consulted in order to learn more about state and federal legislation concerning the use of race/ethnicity in higher education?	Identify which sources of information are used as resources
Q12: Have you attended any trainings related to race-conscious admissions practices (either the use of or the prohibition of)?	Evaluate the level of training and structured knowledge the interviewee has received
Q13: Have race-conscious admissions practices (either the use of or the prohibition of) been discussed in any staff meetings or department meetings?	Determine if managers are communicating about this topic with their staff and potentially providing direction to help guide actions where there is the conflicting legal guidance
Q14: Do you feel that you would benefit from having some sort of training or discussion related to the use and/or restriction of race-conscious admissions practices?	Determine interviewee's desire for additional guidance

Appendix 3: Planned training materials based on the priority of knowledge needed for specific pieces of legislation

<u>Item</u> of <u>Legislation</u>	<u>Year</u>	<u>Effect on Higher Education Admissions</u>
<i>Grutter v. Bollinger</i>	2003	<ul style="list-style-type: none"> <li>• Passed in a 5:4 vote</li> <li>• University of Michigan Law School</li> <li>• Found for the first time a narrowly tailored admissions program that also satisfied the institution’s compelling interest for diversity</li> <li>• Admissions counselors are required to analyze each applicant on an individual basis</li> <li>• Race can be considered along with a variety of other diversity factors</li> <li>• Awarding extra points for race/ethnicity is unconstitutional and cannot be used</li> <li>• Required periodic review of institution to determine if racial preference are still needed to create the desired level of diversity</li> <li>• Implied a 25-year time limit on the use of race-based admissions</li> </ul>
<i>Gratz v. Bollinger</i>	2003	<ul style="list-style-type: none"> <li>• Passed in a 6:3 vote</li> <li>• University of Michigan College of Literature, Science and the Arts (LSA)</li> <li>• Disallows the use of quotas</li> <li>• Emphasized that admissions practices must be narrowly tailored</li> <li>• Asserted that race cannot be the determining admissions factor</li> </ul>
<i>Hopwood v. Texas</i>	1996	<ul style="list-style-type: none"> <li>• Supreme Court actually denied reviewing the case, thereby upholding the decision of the lower courts</li> <li>• University of Texas Law School</li> <li>• 5<sup>th</sup> U.S. Circuit Court of Appeals holds that consideration of race when narrowly tailored and adhering to strict scrutiny is constitutional</li> <li>• Minority and non-minority applications must be reviewed by the same entity in order to give equal consideration</li> </ul>
Texas Top-Ten Percent Plan	1997	<ul style="list-style-type: none"> <li>• Allowed the Texas public universities to guarantee admission to the top ten percent of each high school class, but allows institutions to</li> </ul>

		<p>limit the amount of students admitted in this manner to 75% of the incoming class</p> <ul style="list-style-type: none"> <li>• Institutions can choose themselves the method used to admit the remaining 25% of the incoming class</li> <li>• Also allowed “educationally and economically disadvantaged” students to have some level of preferential admissions treatment</li> <li>• Faced some criticism because of the segregated nature of Texas high schools, and because some students with satisfactory test scores and GPA’s were prevented from being admitted to the state’s flagship universities</li> </ul>
<i>Schuette v. Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN)</i>	2014	<ul style="list-style-type: none"> <li>• Passed in a 6:2 vote</li> <li>• State of Michigan</li> <li>• Upheld a state law that outlawed race-conscious admissions to that state’s public universities</li> <li>• Recognized the right of voters to use statewide voting as a legitimate tool to set policy</li> <li>• States can reject the right of an institution to consider race</li> </ul>
<i>Regents of the University of California v. Bakke</i>	1978	<ul style="list-style-type: none"> <li>• Passed in a 6:3 vote</li> <li>• University of California, Davis Medical School</li> <li>• Disallows institutions from setting aside admissions “spots” for which a disqualifying qualification is race – this is in nature a quota</li> <li>• Separate admissions programs for minority and disadvantaged groups violate the Equal Protection Clause and cannot be used</li> <li>• Grants college and universities the right to use race as one “plus factor” within a multidimensional admissions process</li> <li>• Established strict scrutiny, where affirmative action policies can be considered legal if subjected to intense scrutiny</li> </ul>

		<ul style="list-style-type: none"> <li>• Race cannot be a deciding factor in admissions</li> </ul>
<i>Fisher v. University of Texas at Austin</i>	2013; 2015	<ul style="list-style-type: none"> <li>• 2013 – voted 7:1 to remand back to the lower court for re-examination</li> <li>• 2015 – passed in a 4:3 vote</li> <li>• University of Texas at Austin</li> <li>• Case was originally remanded back to the Federal Appellate Court in New Orleans for re-examination</li> <li>• Places obligation on the University to demonstrate that race-neutral admissions strategies were considered but determined less effective than race-conscious strategies. If any race-neutral strategy is determined to work about as well at a tolerable increase of expenses, it must be used (and the race-conscious strategy must not be used.)</li> <li>• Upon reexamination, the court upheld the admissions program as constitutional and narrowly tailored, and determined that the University had completed its due diligence in demonstrating race-neutral admissions strategies would not have the same effect on minority enrollments.</li> </ul>
Equal Protection Clause	1868	<ul style="list-style-type: none"> <li>• An addition to the United States Constitution</li> <li>• Provides that no state “shall deny to any person within its jurisdiction the equal protection of the laws”</li> <li>• Defines laws or practices that have the purpose to subordinate or disadvantage a race as having a racially discriminatory purpose and as unconstitutional</li> <li>• Prevents discrimination based on race, sex, disability, sexual orientation</li> <li>• Was the basis for <i>Brown vs. The Board of Education</i> which ended segregation in public schools</li> </ul>
California Proposition 209	1996	<ul style="list-style-type: none"> <li>• Modifies the California State Constitution to prohibit granting preferential treatment for any state services, including admission to public institutions</li> <li>• First attempt by citizens to amend the state constitution</li> </ul>