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# A Critical Analysis of the University of Georgia's Response to the United States Supreme Court Decisions in Grutter v. Bollinger and Gratz v. Bollinger

Rodney S. Lyn

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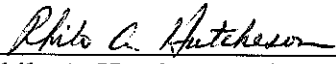
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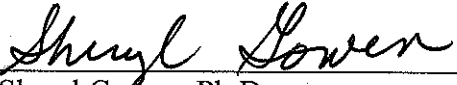
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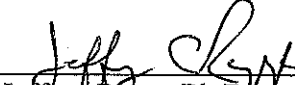
This dissertation, A CRITICAL ANALYSIS OF THE UNIVERSITY OF GEORGIA'S RESPONSE TO THE US SUPREME COURT DECISION IN GRUTTER v. BOLLINGER AND GRATZ ET AL. v. BOLLINGER, by RODNEY SHAWN LYN, was prepared under the direction of the candidate's Dissertation Advisory Committee. It is accepted by the committee members in partial fulfillment of the requirements for the degree Doctor of Philosophy in the College of Education, Georgia State University.

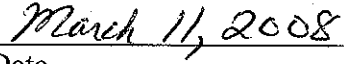
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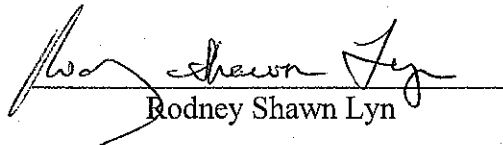
  
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## ABSTRACT

A critical analysis of the University of Georgia's response to the United States Supreme Court decisions in *Grutter v. Bollinger* (2003) and *Gratz et al. v. Bollinger* (2003).

by  
Rodney S. Lyn

Minority enrollments at selective colleges and universities have historically been low. Affirmative action programs have been a primary driver for increasing enrollments. These programs were called into question in the *Grutter* and *Gratz* US Supreme Court cases (2003). The Court's opinions in these cases provide direction for institutions in setting admissions policy. Using a qualitative methodology, this study examined the University of Georgia's response to the *Grutter* and *Gratz* Supreme Court decisions. The study utilized data from interviews with UGA officials, as well as documentary evidence, to chronologically reconstruct the actions that UGA initiated following the *Grutter* and *Gratz* decisions.

The study utilized a narrative analytic approach to analyze UGA rationale for its action. It assessed officials' statements to identify dominant narratives related to the use of race in admissions at UGA. This study positioned the dominant narratives of officials' relative to competing understandings of admissions, race and the law extracted from the scholarly literature. A metanarrative was developed to highlight commonly held assumptions in the debate around the use of race in higher education admissions. The metanarrative was found to be a useful tool for managing competing perspectives in efforts to develop viable policy approaches for admissions in the future. The study is

important in at least two ways: 1) it explains sources of conflict in the affirmative action debate and 2) it suggests the usefulness of narrative policy analysis for policy making related to race, diversity, and admissions in higher education.

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THE US SUPREME COURT DECISIONS IN GRUTTER v. BOLLINGER (2003) and  
GRATZ et al. v. BOLLINGER (2003)

by  
Rodney S. Lyn

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in  
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in  
The Department of Educational Policy Studies  
in  
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Georgia State University

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## CHAPTER 1

### INTRODUCTION

#### Statement of the Problem

Since the early twentieth century students of color have experienced significant increases in enrollment opportunities at institutions of higher education in the United States (US). The utilization of affirmative action programs in college and university admissions have yielded substantial gains in minority enrollments in higher education. Affirmative action programs have been a primary driver leading to significant increases in minority enrollments in higher education, generally, and at selective colleges and universities in particular (Long, 2007). Nonetheless, minority students continue to lag behind their white counterparts in rates of enrollment at institutions of higher learning. Equally disturbing is the trend whereby minority students are unevenly distributed among non-selective, selective, and highly selective institutions of higher education. Enrollment statistics indicate that in 2001 50% of the Blacks and Hispanics enrolled in higher education attended 2-year institutions (Chronicle of Higher Education Almanac, 2005). Among all minority students, Castellanos and Jones (2003) found that 47% are enrolled in two-year colleges. Although most hope to transfer to a four-year institution after two years, the national transfer rate from two-year colleges to four-year colleges for all students is estimated at a mere 22%. Studies indicate that transfer rates among Black and Hispanic students are much lower than the national average (Wassmer et al., 2004;

Castellanos and Jones, 2003; Richardson and Bender, 1987). In contrast to these enrollment figures, which show that half of all minorities attend 2-year institutions, 63% of all white students enrolled in higher education attend four-year institutions. These statistics raise questions about the extent to which the higher education system stratifies students and perpetuates separation and inequality. Is access to selective colleges and universities equitable? Are the social and economic benefits of attending a selective four-year institution accessible to all racial and ethnic groups?

Despite the benefits of affirmative action programs, the debate surrounding them has become increasingly polarized over the past three decades. Those defending affirmative action see it as a means through which to promote equal opportunity and social mobility for underrepresented racial minorities, many of whom have been excluded from consideration for employment and education opportunities in the past (West, 1993; Fish, 1993; Sher, 1975; Johnson, 1965). Supporters of affirmative action programs offer utilitarian arguments, including (1) schools and business have an urgent need for diversity, and (2) affirmative action programs help to reduce the effects of existing economic, political, social, and cultural structures that favor whites. Without these programs, proponents argue, racial segregation and social inequality will be further exacerbated.

Those attacking affirmative action programs have labeled them reverse discrimination. They argue that innocent whites who had nothing to do with past discrimination are themselves subject to discrimination from those implementing affirmative action programs (Lynch, 1990). The critics suggest that a level playing field can only be achieved when individual qualifications are assessed independently of racial

status (Beckwith, 1997; Crosby and VanDeVeer, 2003). This version of equal opportunity is based on the idea that a colorblind society is ideal, and it is unattainable as long as we utilize race as a factor in making admission (or hiring) decisions. Others criticize affirmative action policies for, as they see it, casting a cloud of illegitimacy over the achievements of minorities (Heilman, 2000). Some go further in saying that affirmative action programs weaken the competitive spirit of those who benefit from it (Steele, 1990).

In looking at the commonly accepted beliefs on both sides of the debate, Cahn (2002) asserts that most agree that injustices have occurred in the past, that victims deserve recompense, and that efforts should be undertaken to end further discrimination. However, there is substantial disagreement around identifying those that have been wronged, what they are due, and how to best provide compensation. In higher education, inconsistent answers to these questions have led to legal challenges to the use of race as a factor in college and university admission decisions.

In the 1970s and 1980s judicial rulings allowed institutions of higher education to consider race as a factor in admissions. These court decisions were based on the idea that diversity was a compelling state interest worth pursuing through use of affirmative action or race-conscious admissions policies (*University of California Regents v. Bakke*, 1978). Between 1996 and 2002, federal circuit courts began to find this rationale inadequate for the use of affirmative action in admissions. The circuit courts rendered judgments against race conscious admissions policies at University of Texas (*Hopwood v. State of Texas*, 1996), University of Georgia (*Johnson v. Board of Regents of the University of Georgia*, 2001), and the University of Michigan at Ann Arbor (*Gratz v. Bollinger*, 2001). As a

result of these decisions, some institutions discontinued the use of policies that considered race as a factor in admission decisions.

During the same time period, 1996-2000, United States (US) Circuit Courts heard similar cases involving the University of Washington (*Smith v. University of Washington Law School* 2000) and the University of Michigan at Ann Arbor (*Grutter v. Bollinger*, 2002). The circuit courts in these cases made judgments in favor of the continued use of race as a factor in admissions decisions. Clearly, the federal circuit courts were at odds on whether or not race could be used in admissions. Their contradictory rulings, as well as requests from state attorneys general and representatives from the higher education community, led the US Supreme Court in 2003 to hear two cases involving the use of race in graduate and undergraduate admissions at the University of Michigan. The Supreme Court had not weighed in on this topic for 25 years. Given the importance of these cases, a brief overview is provided in the paragraphs below, and a more extensive review is included in Chapter 2.

### *The University of Michigan Decisions*

In one of the two cases before the Court, *Grutter v. Bollinger* (2003), the plaintiff (Grutter) sued the University of Michigan when she was denied admission to the university's law school. She argued that the university's admission policy discriminated against her on the basis of race, a violation of her Fourteenth Amendment constitutional rights. The University of Michigan's policy indicated that applicants were assessed on a broad range of factors, including diversity. However, special emphasis was, in fact, placed on racial and ethnic diversity for groups which had been historically discriminated



against. The University argued that without such an emphasis, some of these groups might not be adequately represented in the student body. The US Supreme Court upheld the University of Michigan Law School's admissions policy. The Court asserted that the University's goal of enrolling a critical mass of minority students was a compelling governmental interest. The educational benefits of a diverse student body accrue to both enrolled students and society at-large. Thus, University of Michigan's consideration of race as a factor in admission was viewed by the Court as permissible, particularly since the University did not make race the defining feature for applicants' acceptance or denial.

In the second case, *Gratz et al. v. Bollinger* (2003), the plaintiffs, Gratz and Hamacher, sued the University of Michigan after being denied admission to one of its undergraduate colleges. Like Grutter, the plaintiff in the previous case, they argued that the University's admissions policy focused too heavily on racial status; it put them at a disadvantage because they were not an underrepresented minority. Under the admissions system in question, university staff members scored and awarded points to candidate applications on the basis of criteria including grade point average, test scores, state of residence, and racial classification. The Supreme Court found this admissions system unconstitutional. It ruled that race was weighted too heavily by the University. The Court asserted that "Because the University's use of race in its current freshman admissions policy is not narrowly tailored to achieve diversity, the policy violates the Equal Protection Clause" (Gratz, 2003, p. 268). Rather, the number of points awarded to underrepresented minorities had the effect of making race the decisive factor for virtually all minimally qualified underrepresented minority applicants.

The opinions by the US Supreme Court in these two cases are key references for establishing the constitutionality of admissions policies aimed at achieving racial diversity in higher education. The cases are not however without contradiction. In the *Gratz* case, the Supreme Court's opinion indicates that the admissions policy is not narrowly tailored to "further compelling governmental interests" because it automatically awards points to underrepresented minorities (Gratz, 2003, p 281). Ironically, this opinion was issued by the same court that acknowledged in the *Grutter* case, "a 'paramount government objective' that public institutions should be open to all segments of American society, including people of all races and ethnicities" (p. 334). The idea that consideration of race as a factor is acceptable (as stated by the Court in *Grutter*), but awarding points based on race is not (in the *Gratz* case) is at least a partial, if not a full, contradiction. Certainly, the very act of considering race in an admissions process means that some value, spoken or unspoken, must be assigned to it. The Supreme Court's inconsistency creates difficulty for institutions trying to interpret the Court's opinions in order to develop or revise their admission policies. The Court's inconsistency means that those institutions that change their admissions policies must either (1) duplicate the policy used by the University of Michigan in *Grutter*, (2) abandon race-conscious admissions altogether, or (3) develop an untested approach for considering an applicant's racial status that institution officials believe is within the range of acceptable policy as defined by the *Grutter* and *Gratz* decisions. The responses by colleges and universities around the country to the Court's decisions provide unique research opportunities for understanding how institutions of higher education come to understand and respond to

the legal parameters set by the US Supreme Court regarding the use of race in higher education admissions.

Since the *Grutter* and *Gratz* decisions in 2003, the responses from colleges and universities have not been well publicized, and researchers have had difficulty gaining access to institutions' responses. At the outset of this project, I was contacted by a research assistant for Dr. Gary Orfield at the Harvard Civil Rights Project to inquire about the progress of this study. She had been given my name by Dr. Ben Baez, my faculty advisor. She indicated that the Project was having an especially difficult time getting colleges and universities to talk about their response to the Supreme Court decisions (personal communication, January 2006). Some institutions have shared aspects of their responses. Among those institutions, there has not been a notable trend. Some institutions have continued the practice of considering an applicant's racial status in admission decisions while others have rescinded such considerations altogether. Following the 2003 rulings, for instance, President Larry R. Faulkner indicated that the University of Texas would move quickly to begin considering race in its admissions decisions. The University of Georgia's initial response was to assign two campus committees to study the issue (Selingo, 2005). It is not clear how representative these responses are of those across the country because studies on institutional responses are uncommon.

### Purpose of the Study

This purpose of this study is to examine the University of Georgia's response to the *Grutter* and *Gratz* Supreme Court decisions. The study reconstructs and analyzes

UGA's policy making activities related to admissions following the Michigan rulings. It aims to determine how the University of Georgia (UGA) responded to the *Grutter* and *Gratz* decisions and why. In order to understand why UGA responded in the manner that it did, this study will identify and examine the ways that UGA officials understand admissions, race and the law. Interviews will be the primary procedure used for data collection.

Important questions for this study are: How did UGA choose a course of action in responding to the Supreme Court cases? What informed its decisions? Who were the principal decision makers? To what degree do internal interests (e.g., goals) and external interests (e.g., legal considerations, political context) influence institutional officials' decisions? What is the potential impact of UGA's response on society? It is important to understand how institutions establish their admission policies. Access to higher education has been achieved by minorities through hard fought legal and political maneuvering, despite strong opposition from those who opposed racial integration and equal opportunity. Yet, underrepresented minorities continue to experience low enrollment rates and limited access to four-year colleges and universities relative to their white counterparts. Given these disparities, it is important that institutions divulge the manner in which they develop or modify policies that dictate how applicants are screened, the criteria that can be evaluated, and the value that can be assigned to any one criterion. Access to higher education has been shown to be a significant determinant of social and economic status in the US. As the history of access for minorities at predominantly white institutions shows, institutional admission policies, left unexamined, often obscure practices that privilege some over others.

## Research Questions

Initially, the following questions guided this study:

1. How has the University of Georgia responded to the *Grutter* and *Gratz* rulings, and how has it justified its actions?
2. How do University officials make meaning of race, admissions, and the law?
3. How do such meanings shape how the University responded to the rulings?

## Conceptual Framework

In examining UGA's response to the Michigan decisions, this study followed a qualitative research methodology. Qualitative research stresses the socially constructed nature of reality, the intimate relationship between the researcher and the subject of study, and the situational contexts that influence the inquiry (Denzin and Lincoln, 2000). Researchers in this tradition are interested in how people make sense of the world, that is, how they interpret their experiences and social interactions. In this study, I focused on obtaining data from UGA officials regarding how they responded to the Michigan decisions and why. The study uncovered the interpretations and meanings that UGA officials have made related to the admissions, race, and the law. UGA officials represent the institution by speaking for, thinking for, and acting on the behalf of the institution. By understanding their interpretations, this study sought to account for the institution's position and resulting policy response.

Qualitative methods are grounded by the epistemological orientation of social constructivism. This orientation acknowledges the pivotal role of social institutions in the meaning construction process. Social institutions create a context through which humans

can know the world (Crotty, 2003). They exist upon our entry into the world, and they shape the manner in which we understand what we view and experience. Social institutions provide individuals with pre-established categories, names and symbols for interpreting the world. Our ability to construct or shape meaning and understandings are inextricably tied to our institutions.

With respect to institutions of higher education, certain norms around behavior and practice exist. I utilized existing models of organizational behavior in higher education to examine institutional governance and decision making at UGA. Three models of governance in higher education inform my understanding of UGA's institutional governance. They are the bureaucratic, collegial, and political models (Baldrige et al., 1977). The existing literature suggests that no one model can account for governance practices in higher education (Cohen and March, 1986; Baldrige et al., 1977; Clark, 1963). The bureaucratic model characterizes the organization as a network of social groups focused on limited goals and organized for maximum efficiency. The behavior of individuals within a bureaucracy is governed by the principle of fixed and official jurisdiction, which is ordered by laws and administrative regulations. The organizational structure is hierarchical, with grade levels of authority represented by super- and subordinate offices and personnel (Weber, 1946). The bureaucratic model provides a useful way to understand formal, positional authority. Officials and managers possess thorough and expert training. They receive appointment and salaries as payment for service. Tenure is an earned right. Competency is the basis for promotion (Weber, 1946). Many of these characteristics can be observed in the modern university.

In the university as collegium model, decision-making is not, or should not, be a hierarchical process, as observed in a bureaucracy. Instead, the members of the institutional community, especially the faculty, participate fully in governance. This model diffuses authority and views organizational management as a shared responsibility (Baldrige et al., 1977). Aspects of this model are reflected in the maintenance of university senates at most institutions, including UGA.

The university can also be characterized as a political system. “[The political model] grapples with the power plays, conflicts, and rough-and-tumble politics to be found in many academic institutions” (Baldrige et al, 1977, p. 135). It is focused on policy forming processes. Policies often dictate the priorities to which organizational resources will be directed. The political model suggests that constituencies throughout the organization work to ensure that their interests and values are reflected in organizational decisions. However, policy decisions are left to administrators and, possibly, a small group of elites. Internal and external interest groups can exert a strong influence on policy decisions. In this model, conflict is natural.

Political systems follow a rational decision framework. Problems are addressed through the development and/or application of goals and objectives (Baldrige et al., 1977; Roe, 1994; Stone, 2002). Decision makers develop options and alternatives, consider consequences of each alternative, and choose the course of action with the most favorable consequences. There is usually a decision network, which gathers information and provides critical expertise. The political model offers a broad array of considerations from decision analysis. How did the given issue become recognized as a problem? Who has the right to legitimately make a decision on the issue at-hand, and how did that

legitimacy come about? Finally, how do value conflicts become manifest? These questions are central to the political model and they are useful for my analysis.

### *Narratives as ways of knowing*

As this study explores UGA's response to the *Grutter* and *Gratz* case, it will become evident that the meaning that UGA officials have assigned to admissions, race, and the law are influenced by the larger "world of meaning" in which UGA resides (Crotty, 2003). The social context in which we live leads each of us to see the world, as well as local policy issues, in certain ways. The designation of individuals as officials within an organization, such an institution of higher education, leads those individuals to behave according to certain rules. Furthermore, the situation of the organization within a social context affects the view, understanding, and behavior of officials and the organization they represent.

This study, a qualitative approach, with its social constructivist orientation, revealed that multiple interpretations of the issues related to affirmative action are not only possible, they are likely. UGA officials and others engaged in the debate around affirmative action understand the related issues in different ways. For both sides in the debate, the primary concern is selection criteria for admission. Stone notes (2002),

All selection criteria are decision rules that include some people and exclude others. The opponents' depiction of affirmative action emphasizes the people who are excluded by it (whites), thereby casting it as harmful and bad. Proponents emphasize the people who are included by it (blacks), thereby casting it as good. People, including you and me, probably respond to these portrayals according to



where their greater sympathies lie – with people who will be harmed or the people who will be helped (p. 391).

The debate around selection criteria are really about distribution of university places and the benefits attached to those places. Stone (2002) notes, “Any debate about whether to change current selection criteria is a conflict between people who benefit from the status quo and people who stand to gain from a change” (p.92). Conflict between groups is typically manifest through each side’s interpretation of admission policies and whether they are perceived as equitable and fair. Equity and fairness are both concepts that most agree are important goals, however, there is substantially less agreement about what these concepts look like in practice. Consequently, the debate around affirmative action in university admissions is a heated one.

This study utilized the contributions of Roe (1994) and Stone (2002) as both focal point and framework for investigation and analysis. Both critique rational approaches to policy analysis. Rational approaches to policy-making present categories of analysis as somehow above politics or outside it; rational approaches purport to offer a correct vantage point from which we can judge the goodness of the real world. Stone notes,

The very categories of thought underlying rational analysis are themselves a kind of paradox, defined in political struggle. They do not exist before or without politics, and because they are necessarily abstract (they are categories of thought, after all), they can have multiple meanings. Thus, analysis is itself a creature of politics; it is strategically crafted argument, designed to create ambiguities and . . . to resolve them in a particular direction. (Stone, 2002, p. 7)

Rational policy analysis rarely questions the categories or concepts being analyzed. Instead, the meaning of the categories is assumed to be understood universally. In reality, the meanings are numerous and often paradoxical. Rational policy analysis, with its scientific method, cannot settle questions around meaning. It rarely considers such questions. Often “the events, actions, and ideas in the political world seem to leap outside the categories that logic and rationality offer” (p. 7). What then are policymakers to do when politics gets messy, when rational models for understanding what is occurring break down?

Similarly, Roe (1994) asserts that many policy issues have become so uncertain, complex, and polarized, with their empirical, political, legal, and bureaucratic merits unknown or not agreed upon, that the conventional policy analysis approaches of economics, statistics, organizational theory, law, and public management are, on their own, insufficient. Though traditional policy analysis seeks to reduce uncertainty by providing clear, objective information, these approaches often increase an issue’s complexity and uncertainty (Roe, 1994). How can we make sense of the debate and what are the most appropriate policy approaches and next steps? Roe (1994) asserts “the only things left to examine are the different stories policymakers and their critics use to articulate and make sense of that uncertainty, complexity and polarization” (p. 3).

Narratives are a fundamental vehicle for humans to organize and understand the world. According to Cortazzi (2001), narratives are structures of knowledge and storied ways of knowing. They may be oral, such as descriptions of past events, or they may be written, such as transcripts of some oral proceeding. Narratives help the receiver, whether a hearer or reader, to understand the teller’s perspective as it relates to the meaning,

relevance, and importance of recounted experiences (Cortazzi, 2001). They utilize drama; they are emotionally compelling and often obscure the cause or source of some said problem (Stone, 2002). Narratives serve the purpose of persuasion (Stone, 2002; Roe, 1994). They shape events and they build group solidarity by sharing common values and helping others to know the world as the teller knows it (Cortazzi, 2001).

This issue of race in admissions is critical at UGA because the institution has struggled to enroll adequate numbers of underrepresented minorities. Low minority representation may be a problem from UGA's vantage point. However, it is not a problem that the institution has conceptualized in a vacuum. It is a problem as understood vis-à-vis some unmet goal (e.g. diversity, social justice, equal opportunity, etc.). Said another way, UGA likely recognizes low minority representation as a problem in the context of its goals around diversity or equal opportunity. These goals are justified and stabilized by policy narratives. By closely examining how UGA understands and rationalizes its goals around admissions, institutional policy narratives become evident. These narratives are a starting point for narrative policy analysis (Roe, 1994), the analytical approach utilized in this study.

### *Narrative Policy Analysis*

The data collected in this study was organized and understood as narrative. Narrative policy analysis views political decision-making as a process mediated and influenced by policy narratives (Roe, 1994). It proceeds with four steps. First, the analyst or researcher identifies the dominant policy narratives. These narratives take the form of stories, which can take the form of scenarios, which have beginnings, middles, and ends,

or arguments, which have premises and conclusions. The policy narratives of interest are those that dominate the issue in question. They establish, certify, or stabilize the assumptions for decision making around the issue in question (Roe, 1994). Second, the researcher must identify those policy narratives that do not conform to the definition of a story or that run counter to the dominant policy narratives. These narratives can be understood in at least two ways. They can be critiques that aim to unsettle or destabilize the dominant stories or counter-narratives, which provide a new version or altogether different understanding of the issue at hand. Critiques have the potential to destabilize a dominant story; however, they are not entirely effective in that they only tell us what to be against rather than what to be for. They intensify uncertainty because they fail to provide alternatives. The result is often that the dominant narrative persists. The best way to undermine a dominant policy narrative is to create a counter-narrative that promotes a new view of the issue(s).

The third step in narrative policy analysis requires the researcher to compare the two sets of narratives. The analyst uses the comparison to generate a metanarrative. “The metanarrative is the intertext that accounts for how two policy narratives, each the polar opposite of the other, can both be the case at the same time” (Roe, 1994, p. 156). Once the metanarrative is generated, the fourth and final step for the researcher is to determine if and how the metanarrative recasts the problem in such a way that it becomes more amenable to decision making or conventional analysis. The metanarrative provides an opportunity for a new story altogether to emerge. Roe (1994) warns that there are no guarantees that every policy issue will have a metanarrative or that metanarratives that emerge will always be policy relevant.

This study proceeds with narrative policy analysis as an analytical procedure for making sense of data collected. It will identify dominant narratives by UGA and their implicit meanings; it will situate narratives into a broader context, and provide critiques. My approach in critiquing the dominant narratives is informed by critical theory. Critical theory is concerned with issues of power and oppression. It seeks to identify the social relations that support them. It analyzes competing power interest between groups and individuals within society and identifies which group(s) gain and which lose in any given situation (Kincheloe and McLaren, 2000). Critical theory examines the social arrangements and processes at work in maintaining unequal power distribution; it exposes the tacit social ideological forces that dictate individual consciousness and ultimately prevent individuals from shaping their own lives (Kincheloe and McLaren, 2000). Critical theory challenges commonly held values, assumptions, and belief systems that are the basis for practice, ultimately showing that professed beliefs and observed practices are incongruent and hypocritical (Crotty, 2003; Schwandt, 2001). After reconstructing UGA's response to the Michigan decisions and the dominant narratives, I will pose critical questions around UGA's understandings around admissions, race and the law. What meanings has UGA assigned to these constructs? Do these meanings and their underlying assumptions intentionally or unintentionally perpetuate unequal distributions of power and capital among individuals? After exploring these questions, I provide a metanarrative to illuminate the common ground between competing versions of equity and fairness. With the metanarrative, I seek to reduce the uncertainty and complexity surrounding decision making related to the use of race in admission in higher education.

## Study Overview

I begin this study by providing, in Chapter 2, the background and context around the issue of race and admissions. The chapter is a review of the literature around civil rights and access to higher education for blacks in the US in the twentieth century. It focuses especially on the legal context, placing such activities in the broader social and political context of the time; a context whereby blacks were viewed by mainstream society as inherently inferior. The chapter highlights the unequal treatment of blacks in the early-to-mid twentieth century and the strategies blacks and other progressive-minded individuals used to confront racism and discrimination. Such strategies included the use of the courts and legislative processes at the federal level. The chapter concludes by reviewing the legal history of affirmative action in higher education admissions through the most recent Supreme Court decisions.

Chapter 3 details the research methods for this study. I follow a qualitative research tradition. Qualitative case study methods guide my study. Narrative policy analysis provides the process and direction for analyzing collected data. Interview techniques are the primary technique for data collection in this study. I begin chapter 4 by providing information on UGA's history around admissions and racial discrimination. The chapter situates UGA's past in the broader social context by summarizing two cases that led to the desegregation on the University of Georgia. The first case centered upon the admission for Horace T. Ward, a black man. The second case, which dealt with admission for Hamilton Holmes and Charlayne Hunter, led to the desegregation of UGA,

though not without incident. I also summarize a more recent case involving the use of race in admission, *Johnson v. Board of Regents* (1999).

In Chapter 4, I also utilize interview data and documentary evidence to chronologically reconstruct the actions that UGA initiated following the *Grutter* and *Gratz* decisions. These actions included: mobilizing institutional administrators to discuss policy options; activating the faculty to develop an institutional position statement on diversity; developing a method for measuring critical mass around racial diversity; and, refocusing admissions recruitment efforts to enhance student diversity.

The actions UGA initiated in its response to the Michigan decisions were informed by its understandings of admissions, race and the law. In Chapter 5, I utilize officials' statements to identify the dominant narratives related to the use of race in admissions at UGA. These narratives provide a basis for institutional policy decisions. The chapter shows that the ways that UGA understands admissions, race and the law are grounded in a broader social and historical context. These contexts influence the meanings that officials assign to goals around admissions. I argue that despite broad agreement around the value of equity in higher education admissions, there is little agreement on how equity should be operationalized in admissions policy. Differing conceptions and conflicting understandings among officials and constituencies make for increased complexity and uncertainty around what to do. The chapter demonstrates that for every narrative or argument supporting the use of race in admissions, there is an opposing and equally compelling narrative against it. The chapter identifies these narratives and provides critiques of them which reveal that well-meaning policy decisions may, in fact, have the opposite effect as the one that was intended. The chapter

illuminates the complexity and uncertainty associated with organizational governance and decision making around the use of race in admissions at UGA.

In Chapter 6, I consider the policy narratives in the debate to construct and present a metanarrative around race conscious admissions. A discussion of the metanarrative's implications is provided. I present problematic assumptions of the metanarrative, most notably that it reinforces the status quo. Ultimately, I argue that although the metanarrative has weaknesses, it is useful in that it reveals commonly held assumptions, which are often the basis for identifying a strategy to address the problem that most people will agree with, at least in part. From a policy perspective, there is substantial value in understanding where the majority's common ground is. The chapter concludes by summarizing the findings and implications of the study.

### Significance

Prior studies on university admission policies at predominantly white institutions have often focused on the impact of such policies on access and enrollment of the minority groups. In some case, studies have examined the challenges minorities have faced in persisting from matriculation through graduation at these institutions. Few, if any, studies have sought to analyze the admissions policy formation process at a predominantly white institution in a manner that questions how institutions come to make meaning of the law, how institutional goals are represented, and the role individuals play in the process. Further, who gets heard in the process and do represented values privilege one group over another? This study seeks to uncover the aspects of the policy making process that are often overlooked and unquestioned. In doing so, the study will add to the



body of knowledge that helps us understand policy making around the use of race in admissions at a predominantly white institution in the south.

## CHAPTER 2

### REVIEW OF THE LITERATURE

#### Background and Context

Why do higher education enrollment rates matter? And why is attendance at a four-year or four-year selective institution important? Socioeconomic status in the United States is generally related to educational attainment. The human capital built by education generates substantial economic returns (Perna, 2003; Bowen and Bok, 2000; Pascarella and Terenzini, 1991). On average college graduates earn significantly more than individuals with a high-school diploma. A recent Census Bureau (2004) survey indicates that college educated people earn, on average, \$51,000 per year, which is almost double the \$28,000 earned per year by high school graduates.

Beyond this earnings advantage for college graduates, Bowen and Bok (2000) assert that graduates of selective colleges and universities enjoy even greater economic return on investment in higher education than graduates of other institutions. The matter of attendance at selective institutions is also related to the establishment of diverse societal leaders. The US Supreme Court recently highlighted the significance of attending selective colleges and universities in this regard. In *Grutter v. Bollinger* (2003) the

court's opinion noted that when it comes to highly selective institutions, a handful of these schools accounted for the education of a significant number of US Senators and Representatives, as well as federal judges. These figures suggest that access to certain leadership positions in society is obtained through validation of one's ability by a selective institution of higher education. Conversely, those not attending a selective institution may encounter an uphill struggle in gaining access to society's most coveted leadership positions.

The fact that minorities enroll in college less often and are more likely to attend a less selective or two-year institution raises serious questions about issue of access to higher education, particularly at four-year, selective institutions. Given all that is at stake in selecting applicants for admission to these institutions, it is important to examine and understand the processes institutions utilize in determining admission policies. In doing so, there is a need to discuss the problem of limited minority access to higher education in a broader context. Such a context must include a review of the social injustice endured by blacks and the ways in which higher education became a site in the struggle for racial equality.

In the early 1900s, blacks fought an uphill battle against whites who maintained the longstanding view that Negroes were inherently inferior. In accordance with this view, whites utilized violence and oppressive social and political practices, including segregation, to ensure blacks remained second class citizens (Daniels, 2001). Between 1900 and 1914, over 1100 blacks were lynched, sometimes even within public sight (Daniels, 2001). Often blacks were the victims of sham court cases in which they were wrongly accused and convicted (Daniels, 2001). These and other publicly accepted

practices denied blacks equal access to education, employment, transportation, housing, voting rights, and legal representation. Indeed, they were denied the right to live.

Utilizing the leadership of the National Association for the Advancement of Colored People (NAACP), formed in 1908, blacks began to use legal tactics as a means of redressing racist practices across the United States (Daniels, 2001). Following favorable Supreme Court rulings for blacks in cases involving voting rights and housing rights, the courts became sites in which blacks could have their grievances adjudicated. Due to the glaring disparity between blacks and whites in educational opportunities at the post baccalaureate level, particularly in the South, the NAACP began focusing on equal educational opportunity for blacks (Daniels, 2001).

Court rulings in *Pearson v. Murray* (1936), *Gaines v. Canada* (1938), *Sweatt v. Painter* (1950), and *McLaurin v. Oklahoma State Regents* (1950) provided hope for racial equality in higher education. In these cases, black plaintiffs won admission into white universities to pursue degree programs not available in black colleges. In the *Pearson* (1936) case, Donald Murray, a black graduate of Amherst College, sought admission to the University of Maryland's Law School. He was denied admission on the sole ground of his color, which he argued was a violation of the Fourteenth Amendment of the Constitution of the US. The Baltimore City Court ruled in his favor, however, University Regents appealed the decision to the US Supreme Court. The Regents argued that "the admission of negro students is not required because the amendment permits segregation of the races for education, and it is the declared policy and the practice of the State to segregate them in schools" (Pearson, 1936, p. 480). They added that equality of treatment does not require that privileges be provided members of both races in the same place.

The State of Maryland's policy on higher education was to provide scholarships for blacks to attend out of state schools. The Regents argued that even if Murray was denied equal protection, the court should not order him admitted. Instead, the State should be given the option to open a law school for blacks. The Court found that for Murray to attend a Howard Law School in the nearest jurisdiction would have placed financial burdens on him beyond what any scholarship might provide. The Supreme Court affirmed the lower court's ruling that Donald Murray should be admitted to the University of Maryland.

In *Gaines v. Canada* (1938), a similar scenario played out. Lloyd Gaines, a black graduate of the state's institution of higher education for blacks, Lincoln University, sought and was denied admission to the Missouri State University Law School. The State of Missouri did not offer access to professional training in law for blacks. Like Maryland, it provided scholarships to blacks to attend law schools in other states. The US Supreme Court found that the State of Missouri discriminated against Gaines and other blacks by not providing in-state access to a professional legal education.

The basic consideration here is not as to what sort of opportunities other States provide, or whether or not they are as good as those in Missouri, but as to what opportunities Missouri itself furnishes to white students and denies to negroes solely upon the ground of color (*Gaines*, 1938, p. 348).

The Court asserted that the State of Missouri can only provide equal protection to blacks "only where its laws operate, that is, within its own jurisdiction" (p. 350). The Supreme Court concluded that Gaines was entitled to be admitted to the law school. In doing so, the Court reversed the judgment of the state supreme court. The *Pearson* (1936) and

*Gaines* (1938) rulings marked a pivotal point in access for blacks to equal training through higher education. It began to illuminate the problems with the “separate but equal” doctrine, which was legalized by the Supreme Court in *Plessy v. Ferguson* (1896).

Two additional cases provided favorable rulings for blacks around the “separate but equal” doctrine as it related to access to graduate and professional education. In *Sweatt v. Painter et al.* (1950), the Supreme Court ruled that the State of Texas violated the Equal Protection Clause by denying the petitioner, Sweatt, admission to the University of Texas Law School. Sweatt was granted access to the newly-established state law school for Negroes. However, the Supreme Court did not find substantial equality in the educational opportunities offered to white and Negro law students by their respective, segregated, institutions. The Court noted that there were significant differences between the two institutions in number of faculty, variety of courses and opportunity for specialization, scope of the library, and availability of law review and similar activities. Further, there were many intangibles that are difficult to measure but certainly important, such as reputation of faculty, experience of administration, position and influence of alumni, standing in the community, and prestige.

In *McLaurin v. Oklahoma State Regents for Higher Education et al.* (1950), the University of Oklahoma was forced by a federal district court to admit a black student because the state could not provide him with equal educational opportunities. McLaurin held a master’s degree and sought to earn a doctorate in education. The State of Oklahoma amended its segregation statute to allow McLaurin admission. However, it specified that the program of instruction should be delivered on a segregated basis. McLaurin had to sit in a “colored” student’s row in the classroom, at a designated table in

the library, and at a special table in the cafeteria. The US Supreme Court held that the conditions under which McLaurin was required to receive his education deprived him of the equal protection of the laws. They added, “The restrictions imposed upon appellant impair and inhibit his ability to study, to engage in discussions and exchange views with other students, and, in general, to learn his profession” (McLaurin, 1950, p. 638). Despite the fact that the Supreme Court had not explicitly denounced the “separate but equal” *Plessy* (1896) decision, the previously discussed rulings by the Supreme Court provided reason for the NAACP and other advocates for racial equality to be optimistic (Pratt, 2002).

Despite these rulings, Southern states were undeterred from their segregationist position. For example, Pratt (2002) notes, the “most notable features of Georgia politics in the mid-twentieth century were states’ rights, rural domination, and white supremacy, and the political figure who best symbolized this era in the state’s history was Eugene Talmadge” (p. 7). Talmadge was first elected Governor of Georgia in 1932 and went on to serve four terms. His perspectives on the matter of equal rights for blacks may best be represented by his own words: “I like the nigger, but I like him in his place, and his place is at the back door with his hat in his hand” (Pratt, 2001, p. 1). Such opinions were reinforced in 1948, when Herman Talmadge, son of Eugene, was elected to succeed his father as Georgia’s governor. In congruence with his father’s views, Herman Talmadge promised in 1950 that so long as he was Governor, Negroes would not be admitted to white schools (Pratt, 2001). So even as the courts began to back away from the separate-but-equal doctrine, the socio-political climate in mid-twentieth century Georgia reflected

a hard-nosed, unrelenting commitment by white politicians to maintaining power and privilege through racist practices, including segregation and intimidation.

*The Civil Rights Movement and Higher Education in the South*

Four years after the McLaurin (1950) and Sweatt (1950) decisions, the US Supreme Court heard arguments in four consolidated cases that became *Brown v. Board of Education* (1954). The Brown case made its way to the Supreme Court via the US District Court for Kansas, and it represented cases from two additional district courts that heard cases involving schooling in South Carolina and Virginia, plus another case from the Supreme Court in the State of Delaware. The US District Court for the District of Kansas ruled that although segregation in public education has a detrimental effect on black children, schools were substantially equal with respect to facilities, transportation, curricula, and educational qualification of teachers. The plaintiffs contended that they were denied access to schools attended by white children under segregation laws. They argued that public schools were not equal and could not be made to be equal, which was a violation of their Fourteenth Amendment rights (Brown, 1954).

The US Supreme Court ruled that separate educational facilities were inherently unequal. Segregation of children in public schools solely on the basis of race deprives minority children of equal educational opportunities even when facilities and other tangible factors seem equal. Of greatest importance, the Supreme Court ruled that the “separate but equal” doctrine, adopted in the *Plessy* (1896) decision, had no place in the field of public education. As a result of this ruling, many individuals and groups



supporting racial equality and integration believed that the legal precedent had been established to outlaw racial discrimination in the United States (Loevy, 1997).

By the early 1960s, however, there had been relatively little progress on the matter of school integration (the focus of *Brown v. Board of Education*), especially in the South, and civil rights protesters increasingly hoped for federal involvement (Loevy, 1997). This hope was a seed planted, at least in part, by President Dwight D. Eisenhower's support during the 1957 Little Rock (Arkansas) school crisis, where the Arkansas National Guard was federalized by President Eisenhower and directed to ensure the integration of Central High School in Little Rock (Loevy, 1997). This occurred despite bitter opposition to integration by then Governor Orval Fabus, who later closed public schools in Little Rock (Pratt, 2002). At the University of Mississippi in 1961 a similar scenario occurred when President Kennedy dispatched National Guard troops to ensure the admission of black students to the campus (Stern, 1995). These racial confrontations were common in the South in the early 1960s.

While media coverage on the Civil Rights Movement in the South was critical of civil rights activists, citizens in the North and West viewed media coverage more sympathetic to the plight of blacks (Loevy, 1997). Such coverage highlighted black non-violent demonstrations met by hostile southerners opposing integration and pervasive brutality (Lee, 2002). As a result of violent civil rights confrontations, President John F. Kennedy was forced into an advocacy role with regard to civil rights policy. In 1963 he forwarded a bill to Congress that would become the Civil Rights Act of 1964 (Jackson & Riddlesperger, 1995).

The two most notable changes that occurred as a result of the Civil Rights Act of 1964 were the desegregation of public places of accommodation and the instituting of equal employment opportunity in the United States (Loevy, 1997). The act also encouraged and gave incentives to local and state agencies to enact policies of their own to promote equal opportunity (Civil Rights Act of 1964 BNA Operations Manual, 1964). These incentives contributed to the development of a wide variety of affirmative action programs.

### *Affirmative Action in Higher Education*

Although the federal government did not directly design affirmative action policies for college admissions, it did mandate provision of equal opportunity by agencies and organizations receiving federal funds. In the case of college admissions, the federal government mandate for equal opportunity left colleges and universities the latitude to design their own policies. Loevy (1997) notes that many agencies and institutions receiving federal funding, including colleges and universities, began to place emphasis on hiring women and minorities.

The rationale for affirmative action programs was one of compensation; individuals disadvantaged by past discrimination should be given due consideration in hiring and admissions (Loevy, 1997). Many employers and institutions of higher education now made sure that minorities were represented in admission and hiring selection pools. Since admission to colleges and universities was competitive, these affirmative action programs meant, at least initially, that some women and minorities might be accepted who would not otherwise have been if traditional indicators were

considered (Loevy, 1997). This was the case in instances where institutions of higher learning set aside a given number of admission slots for minorities without comparing their applications with those submitted by white students. Such realities led to charges that admissions offices were practicing reverse discrimination. These accusations and perceptions led to judicial challenges, shifting public opinion, and greater polarization in the debate over racial equality.

### *Legal History*

By the early to mid-1970s, legal challenges to affirmative action in college admissions moved to the forefront and included well-known cases such as *DeFunnis v. Odegaard* (1973) and *Bakke v. University of California Regents* (1978). In *DeFunnis*, minorities applying for admissions at the University of Washington (UW) Law School were placed into a separate admission candidate pool altogether, meaning they were compared against other minorities but not against white students. Most of the minority applicants who were accepted in the year DeFunnis' admission was denied possessed scores below the cut-off level for white students, and the law school admitted that any minority possessing DeFunnis's profile would have been admitted. The Supreme Court did not decide whether or not DeFunnis's argument was good or bad. Since he had already been admitted to the law school, the case was dismissed as moot.

In *Bakke v. University of California Regents* (1978) which is probably the most well-known case regarding university admission, 16 seats were used for underrepresented groups. That is, out of 100 students admitted annually, 16 were from underrepresented groups including Blacks, Chicanos, Asian Americans, and Native Americans. When Alan

Bakke was rejected for admission at the University of California at Davis (UC) for the second time, he sued, arguing that he was not admitted solely because of his race. Other minority students with weaker academic records, he claimed, were admitted while he was not. While the U.S. Supreme Court found the UC admissions system unconstitutional, the plurality opinion allowed institutions to continue utilizing race as one of many factors in the admission process. It argued that the purpose of overcoming substantial, chronic minority underrepresentation in the medical profession is sufficiently important to justify the remedial use of race as a factor in admissions (Bakke, 1978). While the use of race as a factor in admissions was upheld by courts, including the U.S. Supreme Court, in these and other cases, the challenges to affirmative action programs continued in the years ahead. Despite these challenges, the precedent set in the *Bakke* case would not be overturned by courts at any level until the mid-1990s.

The 1996 *Hopwood v. Texas* decision by the US Circuit Court of Appeals for the Fifth Circuit found the justification for the use of race in admissions utilized in the *Bakke* decision inadequate. The court concluded, “The [University of Texas] Law School has presented no compelling justification, under the Fourteenth Amendment or Supreme Court precedent, that allows it to continue to elevate some races over others, even for the wholesome purpose of correcting perceived racial imbalance in the student body” (Hopwood, 1996, p. 934). Thus, the admission process at the University of Texas Law School, which scored applicants differently based on race, violated the equal protection clause of the Fourteenth Amendment of the United States Constitution. The court indicated that the Law school engaged in an unlawful practice by considering race as a factor in Law school admissions. As a result, all University of Texas system institutions

were barred from considering race in admission decisions. Colleges and universities in the states of Mississippi and Louisiana were also implicitly barred from considering race because the U.S. Fifth Circuit Court of Appeal is the presiding judicial authority for all three states. The controversy surrounding the consideration of race in college admissions intensified following the *Hopwood* decision, with conflicting decisions being rendered by multiple US District Courts. (Gorman, 2001).

In a case decided by the US Court of Appeals for the Eleventh Circuit, three white women sued the University of Georgia (*Johnson et al. v. Board of Regents of the University of Georgia*, 1999). The plaintiffs argued that they were denied admission to the University as a result of an admissions process that unfairly gave minorities an advantage over white students. Under the admissions system in question, a portion of the University's entering freshman class was determined through a formula that considered applicants' race. Non-white applicants received a diversity bonus, which in some cases created a decisive difference in their favor. In August 2001, the US Court of Appeals for the Eleventh Circuit found that the UGA process for admissions used race in an unconstitutional manner. In response, UGA reviewed the ruling and, rather than appealing to the Supreme Court, chose to defer to two similar cases at the University of Michigan that were believed to possess stronger merits for consideration by the Court. However, as a result of the ruling, UGA was forced to eliminate the use of race as a consideration in the admissions process.

In 2002, the Court of Appeals for the Sixth Circuit, which presides over Kentucky, Michigan, Ohio, and Tennessee, upheld the admissions policy at the University of Michigan Law School, putting it at odds with the Eleventh Circuit

(Alabama, Florida, Georgia) and the Fifth Circuit (Louisiana, Mississippi, and Texas). In the last two Circuits, courts had ruled against the use of race as a factor in admissions in cases involving the University of Georgia and the University of Texas law school (Schmidt, 2002). In addition, the passage of Proposition 209 in California and Proposition 200 in Washington, which barred the use of race as an admissions factor, spoke to the public controversy over race-conscious admissions (Gorman, 2001).

The court rulings in the various circuit courts between 1996 and 2002 sent mixed messages to institutions regarding the appropriateness of their admission policies. As a result, in 2002 attorneys general in 10 states submitted a brief that asked the U.S. Supreme court to take up the matter and provide clarity as to whether or not the 1978 Supreme Court *Bakke* decision is still binding. The brief noted, “If *Bakke* is still binding, the Court should describe ‘how an educational institution can structure its admissions process so that it is narrowly tailored’ to create a racially diverse student body without giving more consideration to race than acceptable” (Chronicle of Higher Education, 2002, p. A23). The Supreme Court agreed to hear two cases involving the use of race in admissions decisions, both of which involved the University of Michigan.

*The Grutter Decision.* In *Grutter v. Bollinger* (2003) the plaintiff (Grutter) sued in the US District Court for Eastern Michigan when she was denied admission to the University of Michigan Law School. She argued that the institution’s admissions policies discriminated against her on the basis of race, in violation of her Fourteenth Amendment rights. The admissions policies of the Law School focused on academic ability as well as assessment of other talents, experiences, and potential an applicant may possess (Grutter, 2003). The admission policy in question required admission officials to assess each

applicant based on all available information, including: a personal statement, letters of recommendation, an essay describing how the applicant would contribute to the Law School life and diversity, and the applicant's undergraduate grade point average (GPA) and Law School Admission Test (LSAT) score. Officials were also required to consider so-called "soft variables" such as recommenders' enthusiasm, the quality of the undergraduate institution and difficulty of coursework completed (Grutter, 2003). Admission decisions are neither guaranteed for applicants with high test scores or grade point averages, nor rejection a given for applicants with lower test scores. Rather, admission decisions were based on an assessment of each applicant across a broad range of factors, which includes an applicant's ability to contribute to the diversity of the student body.

While the Law School recognized many types of diversity, it admitted that particular emphasis was placed on "racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics, and Native Americans, who without this commitment might not be represented" (Grutter, 2003, p.234). This emphasis on under-represented minorities was the issue on which Grutter's lawyers hinged their case. They argued that the Law School used race as a predominant factor, which ultimately gave significant favor to certain minority applicants who were no more qualified than non-minority applicants.

The Court held that the Law School's use of race in its admission policy was narrowly tailored to further a compelling interest, and it did not violate the Equal Protection Clause. The Court's opinion asserted that the goal of enrolling a critical mass

of minority students is constitutional because the institution defines this concept by referring to significant educational benefits that occur as a result of having a diverse student body, including enhanced cross-racial understanding and the breakdown of stereotypes (Grutter, 2003). The court added that the university's policy is "flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes race or ethnicity the defining feature of the application" (Grutter, 2003, p. 322). Further, the court found that although there was an emphasis on ethnic diversity in the admissions policy, there was evidence that the Law School policy also gave significant weight to aspects of diversity beyond race (Grutter, 2003).

The Court noted that instances of government use of racial classification must be analyzed by the Court under strict scrutiny. But not all such uses are invalidated by strict scrutiny.

Not every decision influenced by race is equally objectionable, and strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the government's reasons for using race in a particular context (Grutter, 2003, p. 321).

In examining each government usage of racial classification, context matters (Grutter, 2003). "The Court endorses Justice Powell's view that student body diversity is a compelling state interest that can justify using race in university admissions (Grutter, 2003, p. 321).

*The Gratz Decision.* In *Gratz et al. v. Bollinger* (2003), the second case, the issue and admission policies in question were quite similar to those in *Grutter v. Bollinger* (2003). Petitioners Gratz and Hamacher, both of whom were white Michigan residents,



were denied admission to the University of Michigan College of Literature, Science, and the Arts (LSA), despite being “well-qualified” in one instance and “within the qualified range” in the second instance (Gratz, 2003, p. 265). The institution’s officials considered a wide range of factors in admission decisions, such as test scores, grade point average, high school curriculum, alumni relationships, geography, leadership, and race. The plaintiffs argued that a system that awarded twenty percent (20%) of the points needed for admission to certain ethnic minorities, which included African Americans, Hispanics and Native Americans, solely for their racial status, gave them an unfair advantage and was thus unconstitutional. It interfered with their right to compete for admission on an equal basis. The University of Michigan contended that the admissions process was narrowly tailored in the interest of educational diversity, which benefited all students.

In ruling the admissions program in this case unconstitutional, the court found that the University’s policy, which automatically awarded one-fifth of the points needed to guarantee admission to every underrepresented minority applicant, was not narrowly tailored to achieve educational diversity (Grutter, 2003). This meant that the Court believed that the race of an applicant was weighted too heavily by the University and without broader consideration to the other individual merits of the application. Judicial precedent, the Court asserted, allows for a consideration of each applicants profile, including race, but does not allow race to be a decisive factor. The opinion reads, “the LSA’s (College of Literature, Science, and the Arts) 20-point distribution (provided to every underrepresented minority) has the effect of making “the factor of race decisive” for virtually every minimally qualified underrepresented minority applicant” (Gratz, 2003, p. 267). This opinion makes clear that the court views race as a decisive factor in

admission decisions at the LSA, which it concludes violated the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

The Court reflected on the *Bakke* (1978) decision and its relevance in the current case. In *Bakke*, Justice Powell indicated that the use of race was permissible as a “plus” factor in an applicant’s file. He emphasized the importance of considering each applicant as an individual, assessing all qualities and abilities. The process Justice Powell contemplated did not suggest that any single characteristic should automatically ensure a specific identifiable contribution to a university’s diversity (Gratz, 2003). The Court concluded, “The current LSA policy does not provide the individualized consideration Justice Powell contemplated. . . Nothing in Justice Powell’s *Bakke* opinion signaled that a university may employ whatever means it desired to achieve diversity without regard to the limits imposed by strict scrutiny” (Gratz, 2003, p. 268). In rendering this decision, the Supreme Court was seen by many as reaching a split decision on the matter of using race in admissions decision. The Court ruled the use of race constitutional in *Grutter* (2003) but unconstitutional in *Gratz* (2003).

#### *Significance of Grutter and Gratz*

The significance of the Court’s opinion in *Grutter v. Bollinger et al.* (2003) is in the fact that it certified a framework for the continued use of race in college admission. In doing so, the Court explicitly acknowledged the First Amendment right of institutions to educational autonomy. That is, the “freedom of a university to make its own judgments about which applicants for admission have the potential to contribute most to the ‘robust exchange of ideas’ a university seeks to achieve” (Grutter, 2003, p. 333). Moreover, the

Court acknowledged several ideas that those supporting affirmative action have endorsed for years, including: (1) a recognition of the significance of access to selective institutions for minorities and society at-large; (2) the acknowledgement that, contrary to the assertions of some conservatives, race unfortunately still matters in American society; and (3) the validation that student diversity, specifically racial diversity, can contribute invaluablely to the educational experience for all students.

In addressing the significance of access to selective institutions, the Supreme Court opinion in *Grutter* explicitly recognized that, in particular, “law schools represent the training ground for a large number of the Nation’s leaders” (Grutter, 2003, p. 334). The court went further to quantify the significance of obtaining a law degree, reporting that individuals with law degrees account for almost half of all state governorships, more than half of the seats in the U.S. Senate, and about a third of all seats in the U.S. House of Representatives. And when it comes to highly selective law schools, the opinion indicates that a select groups of these schools accounts for 25 of the 100 United States Senators, 74 United States Courts of Appeals judges, and nearly 200 of the more than 600 United States District Court judges (Grutter, 2003). Thus, access to selective law schools “must be inclusive of talented and qualified individuals of every race and ethnicity” (Grutter, 2003, p. 335). Such language clearly articulates the position held by supporters of affirmative action and suggests that the Court recognizes that racial equality has yet to be achieved in this country.

In support of the third point above, that diversity contributes to the learning experience for all students, the court’s opinion validates research on diversity by scholars (e.g., Bowen and Bok, 1998) (Grutter, 2003). Benefits of a diverse student body are real.

While these studies were initially viewed by the court as only theoretical, arguments put forth in briefs by corporations appear to have swayed the justices. The majority opinion reads, “These benefits are not theoretical but real, as major American businesses have made clear” (Grutter, 2003, p. 333). The point of emphasis here is that in spite of claims by critics of race-conscious admissions that the consideration of race in admissions is without value, the Nation’s highest court has affirmed the position that America is not yet colorblind, has not yet achieved racial equality, and can benefit from the consideration of race as a factor in admissions to colleges and universities.

Despite the aspects of the *Grutter* ruling that may encourage institutions to continue the use of race-conscious admissions, there are a host of disincentives that face those institutions that consider doing so. First, the cost of considering applicants in a constitutional manner will now require holistic review, which is a more financially costly process. And the Supreme Court was clear that institutions can no longer refer to administrative challenges as an excuse for utilizing formulas over holistic review of applications for admission. Second, a majority of the Supreme Court justices indicated that colleges should consider race-neutral alternatives to affirmative action before adopting race-conscious admissions policies. Such a statement by the Court suggests that it frowns upon policies that explicitly consider race.

Most notably, conservative advocacy groups, including the Center for Equal Opportunity and the Center for Individual Rights, have launched campaigns to force full disclosure of race-conscious admission policies at public universities. These efforts seek to put universities on notice that they are being closely watched and will be challenged legally if admission policies seem to stray outside of the guidelines put forth by the

Supreme Court. Another result of this scrutiny is that as this information is publicly disseminated, institutions come under heavy public and political pressure to abandon race-conscious admission policies, even when they are operating within the confines of the law (Schmitd, 2004). This form of intimidation faced by institutions is bolstered by the fear of legal challenges that are costly and require well-articulated evidence-based claims about the institution's commitment to diversity and the resulting educational benefits it enjoys as a result (Caperton, 2004). In the current social and political context, institutions of higher education are faced with numerous internal and external considerations in selecting a policy direction. Given that access to higher education for minorities is an important topic, it is important to study how institutions of higher education understand and comply with the *Grutter* and *Gratz* decisions. This study will explore the response of one institution, the University of Georgia.

## CHAPTER 3

### METHODOLOGY

In this chapter, I describe the study's methodological approach and procedures. Specifically, I provide an overview of the study's case study approach. In chapter one, I described the study's analytical focus and procedure, known as narrative policy analysis (Roe, 1994). It is restated here to the extent that it is necessary to provide information about procedures followed for analysis in this study. Additionally, the chapter includes details on research participants, data collection and analysis, researcher role, and study limitations.

This purpose of this study is to examine the University of Georgia's response to the *Grutter* and *Gratz* Supreme Court decisions. The study utilizes interview data from UGA officials and relevant documentary evidence to reconstructs and analyze UGA's policy making activities related to admissions following the Michigan rulings. My aim in this study is to determine how the University of Georgia (UGA) responded to the *Grutter* and *Gratz* decisions and why. In making sense of UGA's decision making, this study identifies and examines the ways that UGA officials understand admissions, race, and the law.

#### Case study

This study follows a case study design. The defining characteristic of case study research is that the object of study is clearly limited (Merriam, 1998). The case is a bounded system. The object

of study could be a program, specific policy, or even the experiences of an individual. Case study methods provide a holistic and flexible framework through which the consequences of adopted practices related to policy decisions can be identified and explained (Merriam, 1998). This approach to inquiry provides a means for investigating complex social units that are vital to understanding the subject being studied. The case study offers insights and communicates meanings to its readers; it is anchored in real-life situations (Merriam, 1998).

Case study research is often qualitative inquiry. As previously noted, qualitative methods are grounded in the epistemological orientation of social constructionism. Crotty (2003) explains that social constructionism is the idea that knowledge and meaning is constructed as a result of human interactions with the world. Meaning does not spontaneously emerge; it is constructed and shaped through interactions with social institutions and their individuals. Qualitative research can be further defined in that the researcher learns primarily from data collected through observations, interviews, or documents. Data is analyzed using categorical aggregation or direct interpretation (Stake, 1995). Such knowledge is often communicated utilizing rich description rather than with numbers or symbols to communicate the context and interpretations of observed phenomena. The findings are supported by citations and the documentary evidence the researcher acquires from research participants (Merriam, 1998).

This study focuses on one institution of higher education: the University of Georgia. The selection of UGA for this study is purposeful in nature. I chose University of Georgia because of its prior involvement in litigation over the use of race in admissions decisions. Gall et al. (1996) suggest that case selection be conducted with a

focus on what the researcher would like to speak about at the end of the study. Stake (1995) asserts that cases should be selected such that what can be learned is maximized. UGA represented a good institution to study for the following reasons: (1) UGA utilized race as a factor in admissions decisions up until 2001; (2) UGA was directly involved in the litigation that led up to the *Grutter* and *Gratz* cases; (3) UGA has engaged in the development of different strategies for achieving diversity among the student body; and (4) UGA is closer to me in proximity than other similar institutions directly involved in affirmative action litigation. Given these facts, UGA is an excellent case for study.

#### Data Collection

In this study I utilized interviews and documents for collecting data. Merriam (1998) suggests that collecting data through interviews and documents is commonplace for case study designs. Interviews provide direct quotations from people about their experiences, opinions, feelings, and knowledge, while documents provide “excerpts, quotations, or entire passages” relevant to the details of the case (p. 69). While some qualitative case studies also collect data through observations, Merriam (1998) notes that it is “common for qualitative studies in education to employ only one, and at best two, of the three techniques for data collection” (p. 134).

Interviews provide a method for accessing people’s stories related to the issue of race in admissions that are at the heart of the *Grutter* and *Gratz* decisions and UGA’s response to them. Hearing and analyzing their stories helped me to understand the ways in which university officials constructed meaning of their experiences and how they saw their roles as individuals and institutional officers. Interviews also allowed access to the



context in which their understandings were established and in which actions were taken on behalf of the University. Supporting the use of interviews, Seidman (1998) notes that “the primary way a researcher can investigate an educational organization, institution, or process is through the experience of the individual people, the others who make up the organization or carry out the process [under study]” (p. 4). He adds that if “the researcher’s goal is to understand the meaning people involved in education make of their experience, then interviewing provides a necessary, if not always completely sufficient, avenue of inquiry” (p. 4).

As it relates to sample selection, I utilized purposeful sampling in this study. I intentionally selected participants for inclusion in the study. Merriam (1998) asserts that such sampling is based on the assumption that the researcher would like to gain insight and, therefore, must select a sample that will provide the most relevant information. This guidance relates to who should be interviewed, what type of documents should be reviewed, and what, if any, observations need to be made. In this study my focus was on the institutional viewpoints and the effects they had on UGA’s policy development process. In seeking to understand these factors, and following approval from the Georgia State University Institutional Review Board (Appendix G), I conducted my interviews utilizing purposeful sampling. Interviews were with administrators who were either directly involved in crafting the institutional response to the Supreme Court rulings and/or were administrators who had responsibility for implementing university policies related to admissions

In determining the number of participants and interviews, I followed the guidance of Seidman (1998). He suggests that researchers consider the principles of sufficiency

and saturation for guidance in determining how many subjects is enough. The principle of sufficiency deals with the questions of whether or not the sample reflects the range of participants. Saturation is reached once the researcher begins to hear the same information repeatedly from participants. In this study, interview participants represented the larger pool of individuals involved in UGA's interpretation and response; all were faculty or administrators. The length and total number of interviews was influenced by the data each yielded. When data started becoming excessively repetitious, meaning I had already learned the important details of what was being shared from other data sources, it made sense to end data collection.

#### *Interviews and study participants*

This study examines UGA's response to the *Grutter* and *Gratz* decisions. Since a university does not act or come to know anything independent of its officials, the knowledge of institution officials was critical to this study. I identified officials appropriate for inclusion in this study through communications with senior university officials. Key considerations for selecting individuals for inclusion in this study, as highlighted by Seidman (1998), included: the extent to which access to specific university officials could be established; the extent to which potential participants' experiences were central to my topic; and, the extent to which each interview might lead me toward a new source. I conducted 10 interviews with UGA officials to determine the actions they initiated as officers of the University in response to the *Grutter* and *Gratz* decisions. I conducted one additional interview. However, the individual chose to be excluded from the study. There were a total of four individuals contacted to participate in

this study that either declined to participate (two in total) or were not responsive to my requests and correspondence (two in total).

In establishing contact with potential study participants, Seidman (1998) advises that contact should be established when possible through the use of peers rather than through people above or below them in the institutional hierarchy. He also indicates that researchers must often gain access through a person who has responsibility for the operation or unit, a gatekeeper. My initial efforts to secure the participation of university officials in this study were met with some resistance. Two individuals that I targeted for interviews indicated that they were not interested in participating. One official referred me to the Office of Legal Affairs for clearance prior to agreeing to speak with me.

In spring 2006, I met with UGA's Executive Director of Legal Affairs, Mr. Steve Shewmaker. I explained to him that my study would focus on institutional governance and decision making around UGA's response to *Grutter* and *Gratz*. I made it clear to him that I was more interested in assessing UGA's decision making process and less interested in evaluating the impact of UGA's current policy. He agreed that the study was a worthwhile endeavor. Mr. Shewmaker provided his account of UGA's response to the Supreme Court cases. He named several individuals at UGA that he believed would be helpful to my study. I asked him if I could use his name in making contact with the individuals he named, and he agreed. Though I spent approximately 45 minutes meeting with Mr. Shoemaker, he chose not to be a participant in this study. Following our meeting, I began making contact with key UGA officials. Mr. Shewmaker's facilitation of my contact with key UGA officials prevented the need for an Open Records inquiry, which could have taken an indefinite amount of time. By establishing contact through a

gatekeeper and the institutional hierarchy, I was able to secure participation of UGA officials in this study.

Interviews in this study followed a structured format, with preset and standardized questions (Merriam, 1998). All research participants were asked the same questions. However, there was a semi-structured component to each interview. A rigid interview structure does not always allow the researcher to access particular perspectives of subjects. Often such a format is an oral form of a written survey. Merriam (1998) notes, “The major use of the highly- structured format in qualitative research is to gather common socio-demographic data from respondents” (p. 74). At the outset of this study, I was not aware of the specific actions UGA initiated in responding to the Michigan decisions. It would have been excessively limiting to not allow some degree of flexibility during interviews. Once a research participant provided information regarding a specific action that UGA initiated, it became necessary for me to pose additional questions regarding rationale, individuals involved, and related outcomes. A purely structured format would have limited, to a large extent, my ability to obtain information about findings that emerged from pre-formulated questions. Thus, there was a need for a semi-structured component to each interview. This structure is supported by Merriam (1998), who explains that in case studies, “emerging insights, hunches, and tentative hypotheses direct the next phase of data collection, which in turn leads to the refinement or reformulation of questions, and so on” (Merriam, 1998, p. 151). The semi-structured component provided sufficient flexibility for me to address issues that emerged during the interviews. It also provided guidance for selecting subsequent interviews.

Interviews began in a highly structured format. The following twelve (12) questions were asked of each research participant. They were developed based on what I wanted this case to reveal.

- Why did the University of Georgia consider race as a factor in admissions prior to 2001?
- Which university officials led the University of Georgia's response to the U.S. Supreme Court decisions in *Grutter v. Bollinger* (2003) and *Gratz et al. v. Bollinger* (2003)?
- When did meetings between university officials on this matter take place? Who was included in the meetings? To what extent were faculty, deans, students, staff, and senior administrators involved?
- How did the University come to understand the impact of the court rulings for UGA admission policies?
- What initial steps did the UGA take in response to the Court rulings?
- Why was the Freshman Task Force of the University Council Admissions Committee created? By whom? Moreover, for what purpose? How were individuals selected to serve on the task force?
- What was the role of the University Council and its admissions committee? Why was there a need for a task force?
- What did the task force do? How often did the group meet? What did they discuss?
- When and to whom did they present their first draft statement on the issue of diversity?

- What has the task force recommended?
- In drafting a new statement for UGA on diversity, what issues were discussed by the task force? How does it view the issue of diversity? In particular, why is racial diversity important?
- How have the task force and other university policy-makers come to understand race as an issue for admissions decisions?

When necessary, I posed follow-up questions to clarify participants' responses.

I conducted one 60-90 minute interview with each research participant, with one exception. In that case, I conducted two interviews with David Roberts, Albert Berry Saye Professor of History and Chair of the Freshmen Task Force from fall 2003 through spring 2005. Dr. Roberts was the lead faculty member in UGA's response to *Grutter* and *Gratz* during the period mentioned above. His memory of events surrounding UGA's response was detailed and extensive. Our first interview occurred on April 14, 2006; it was 75 minutes in length. The second interview occurred on June 29, 2006; it was 45 minutes in length. The interviews focused on recent experiences of participants relevant to the topic of study and reflection on the meaning of those experiences (Seidman, 1998). The interview lengths and frequencies were sufficient to obtain the data I sought, even to the point of redundancy, albeit a requirement for qualitative data collection. Interview data were vital to my reconstructing the response at UGA and how a rationale was created for action.

In addition to Dr. Roberts, I interviewed members of UGA's senior administration and members of UGA's University Council (i.e. University Senate) Faculty Admissions Committee's Freshmen Task Force, which was mobilized to study and respond to the

Supreme Court cases. Interviews occurred over a three month period from between April 4, 2006 through June 29, 2006. The individuals I interviewed for this study included two individuals who were solely faculty and engaged in the University's response through work with the University Council Faculty Admissions Committee. The first of these was David Roberts, who was noted above. The second individual was Charles Keith, Professor of Biology and previous chair and member of the University Council Faculty Admissions Committee's Freshmen Task Force (2001-2003).

I interviewed two individuals who were faculty members but also held Associate Dean rank within their respective college or school. I interviewed Scott Weinberg, Professor and Associate Dean in the School of Landscape Design and Engineering and Chair (2005-2007). His roles as member and, later, chair of the Freshmen Task Force meant that he was involved in UGA's response. The second individual was Robert Gatewood, Professor and Associate Dean in the Terry College of Business and Chair of the Faculty Admissions Committee. This committee has oversight of the Freshman Task Force, which was a subcommittee of the Faculty Admissions Committee.

I interviewed three senior UGA officials who were directly involved in formulating UGA's response. They included Nancy McDuff, Associate Vice President for Enrollment Management and Director of Admissions; Delmer Dunn, Vice President of Instruction and Regents Professor of Public Administration; and, Matt Winston, Assistant to University President Michael Adams. Mr. Winston's name was provided to me initially by Mr. Shewmaker, Executive Director of Legal Affairs at UGA. Other participants referred to Mr. Winston as someone I should speak to. Mr. Winston represented President Michael Adams, an ex officio member, on the Faculty Admissions

Committee's Freshmen Task Force. Dr. Dunn held oversight responsibilities for admissions in his role as Vice President. Ms. McDuff involvement was more obvious; she was the Director of Admissions.

I conducted two additional interviews; one with a Dean and one with a faculty member who had served in several senior-level administrative positions for the University. Maurice Daniels, Dean and Professor in the School of Social Work, had been at UGA for 26 years at the time of our interview. He was also Director of the Foot Soldier Project for Civil Rights Studies at UGA, which illuminates the contributions of lesser known Civil Rights heroes. Dean Daniels was privy to conversations regarding UGA's response to the Supreme Court cases as a member of the Dean's group at UGA. I also interviewed Thomas Dyer, Professor and Director of the Institute for Higher Education. He had previously served UGA as vice president for instruction, interim provost, senior associate vice president for academic affairs, and associate vice president for student services. Dr. Dyer possessed extensive knowledge about UGA's history around race and affirmative action, as well as an understanding of UGA administrative structure and policy response mechanisms.

*Confidentiality.* In this study, I identify the University of Georgia as the institution being studied. The question in this study, how a specific institution, having previously been sued, responded to particular Supreme Court decisions requires that it be identified. There were concerns related to confidentiality for study participants. They have the right to be involved in determining how information they provide will be used and disseminated. This right exists to protect participants from vulnerability and potential harm (Seidman, 1998). The focus of this research is on the experiences and



understandings of UGA officials as officials. Therefore, absolute confidentiality of both research participants and the institution itself was not feasible. Collection of data related to institutional context is vital to the method being utilized in this study, one that aims to allow others access to the process and understandings of the university and its officials. Omitting all information related to the identity of the institution and its officials would lead to study findings that lack context and, consequently, have little meaning.

The need to identify this crucial context did not, however, supersede the rights of individuals who chose to be study participants. I offered to protect the identities of the participants in this study to the extent possible. First, participants were offered the option of being identified only as a faculty member, staff member, student, or administrator. This allowed participants the option of withholding any personally-identifying information, including department of employment, specific title, years employed by the University, and the like. Second, if requested, I was willing to classify specific information about study participants as confidential, provided the information is not available through public documents, trial transcripts, and so on. While providing the context is important to this study, it was not important enough to trump the rights of participants to withhold information that could place their jobs in jeopardy. All this information, of course, was included in the consent form. None of these measures were necessary. All participants in this study agreed to have their names and the information they shared disclosed as a part of this study.

## *Documents*

In addition to interviews, I utilized documentary evidence to understand UGA's response. Documents served two purposes. They provided contextual information regarding events at UGA following the Supreme Court decisions. Second, they served to validate interview data. Borg and Gall (1989) assert that anything connected to the subject being studied can qualify as data. Merriam (1998) suggests that documentary data are good sources for qualitative case studies because they can ground an investigation in the context of the problem being investigated. Documents are good sources because they are often easy to obtain, cost little or nothing, and can provide information that might otherwise take enormous effort to obtain. My review of documents included judicial records, university policy documents, committee meeting minutes, and other university reports and publications. These data provided additional insight to inform interview questions and confirm recorded data. The following documents were collected and reviewed include:

- Jennifer L. Johnson v. Board of Regents of the University of Georgia, Eleventh Circuit Court of Appeals. This was the case that UGA lost in defending the use of race in admissions.
- Two documents developed by the Ad hoc Committee of Administrators prior to the Supreme Court rulings. Both were short white papers. The first focused on the educational benefits of diversity. The second focused on conceptualizing what constituted a critical mass of minority students. Both were referenced with peer reviewed studies.

- Institutional Diversity Statement developed by the Freshman Task Force of the Faculty Admissions Committee. Approved by the University Council, March 18, 2004. This document represented UGA's new admissions policy.
- Memo from State of Georgia Attorney General's Office, dated October 22, 2004. It provided feedback to UGA regarding its Diversity Statement.
- Minutes from University Council (various) and committee reports from the Faculty Admissions Committee and Freshmen Task Force.
- E-mail correspondence between Freshmen Task Force members in 2006 (various), as well as e-mails with the UGA Office of Institutional Research.
- Admissions Committee, Freshmen Task Force *Proposal Regarding Critical Mass of Diverse Students*, January 12, 2006
- President Michael Adams' State of the University Address, January 12, 2006

### *Data Management*

The management and organization of collected data is vital to data analysis and interpretation. In order to analyze and interpret data, it must be accessible. As the sole researcher for this study, I designed and utilized a filing system for the organization of collected data. My files included participant consent forms, audiotapes of interviews, transcripts from interviews, interview notes, and documentary evidence (Seidman, 1998). I made copies and stored all collected data in a secure file cabinet.

I audio recorded interviews with participants to allow transference from audio into text as transcript. A verbatim record of each interview provided a relatively easy method for clarifying information participants provided or questions I posed (Seidman,

1998). By audio recording each session, I was able to assure research participants that I could accurately represent their words. Following Stake's guidance (1995), I offered research participants the opportunity to conduct member checks to ensure accuracy of observations and interpretations. In other words, research participants had an opportunity to examine paper drafts for accuracy and palatability where their actions or words are featured.

### Data Analysis

The taped recordings of interview proceedings were transcribed in fall 2006 by an experienced transcriber. Prior to analysis, the data were reduced using inductive methods. This is also known as coding. Merriam (1998) refers to the process as simply the assignment of shorthand designations to certain aspects, such as the content, of the text so that it can be easily retrieved. In coding and managing interview data, I utilized QSR International's Nvivo qualitative software, previously known as NUDIST or N6. Dey (1993) suggests the use of computers to manage data. "As qualitative research is notoriously voluminous, [the computer] is an important contribution to managing data efficiently" (p. 56). It is also helpful in coding and linking data. In this study, Nvivo was especially helpful in storing, organizing, and classifying data. It also linked commonly coded data together in one file upon request.

By analyzing collected data, I have attempted to make meaning of the data. These meanings are communicated as the findings of the study, which I have reported as descriptive accounts based on themes and categories that emerged from the data (Merriam, 1998). I utilize themed findings to communicate what I have come to know by

analyzing and categorizing the data. In other words, the themes I have constructed capture recurring patterns across the data, which informs the narratives or descriptive accounts I have utilized in telling the story of UGA's response.

The construction of categories began with reading the interview transcripts and relevant documents. During this process I made notes and observations and formed questions that helped me identify striking and important aspects of the data (Merriam, 1998). I followed this procedure for each piece of data, constantly comparing among the data for common occurrences and similarities. The patterns that emerged from the data became categories and themes, which I named according to concepts or terms that are evident to me in the data (Merriam, 1998).

First, I developed two classifications for my data. Dey (1993) notes, "Without classifying the data, we have no way of knowing what it is that we are analyzing" (p. 40). In his view, classifying and categorizing qualitative data is analogous to a method of funneling. By sorting data, it becomes possible to make comparisons across interviews. Classifying data lays the foundation for analysis (Dey, 1993). The first category I created was for all data pertaining to pre-Grutter actions by UGA. The other was for all data pertaining to post-Grutter action by UGA. These classifications were necessary because there was a substantial amount of data that provided information about policy developments at UGA prior to the Supreme Court decisions. These data were important to this study because they provided context that was important to understanding post-Supreme Court decision actions by UGA. However, these data were not vital to answering my research questions, which focused on post-Grutter actions. Thus, following Dey (1993), I classified the data with the study's research questions in mind. It quickly

became evident that some data, though useful in providing context, was not helpful in answering my research questions.

In determining how many categories to create, I followed Merriam's guidance. She suggests that researchers begin by dealing with that which is manageable, suggesting that fewer categories are beneficial in abstracting findings. I created categories to organize the data I designated as post-Grutter. These included: Freshmen Task Force's Concept of Diversity; Freshmen Task Force Defining Critical Mass; UGA Admissions Approach; President Adams' Policy Decision; and, Officials' Opinions and Perceptions. Each of these categories had a distinct set of data that provided insight into a particular aspect of UGA's response to the *Grutter* and *Gratz* decisions. The first category, Freshmen Task Force Concept of Diversity, included all data related to the work of the University Council's Freshmen Task Force in developing a diversity policy for the university. The second category, Freshmen Task Force Defining Critical Mass, included all data related the work of the Freshmen Task Force in operationalizing the UGA diversity policy with respect to critical mass. The third category, UGA Admissions Approach, included all data related to UGA's changes in recruitment practices following the Supreme Court decisions. The fourth category, President Adams' Policy Decision, included all data related to UGA President Michael Adams decision to discontinue race as a factor in admission decisions. The fifth category, Officials' Opinions and Perceptions, included all data related to the opinions and perceptions of UGA officials about UGA's response to the Supreme Court decisions. The categories helped me to reduce the data and understand the tasks and activities UGA had undertaken following *Grutter* and *Gratz*.

As I reviewed data in these categories, I searched for regularities, variations and singularities (Dey, 1993). I continued the process of data analysis by highlighting, coding data and interpreting data. Seidman (1998) suggests that by reflecting on common threads across the data, the findings become close at hand. I again reflected on my research questions and they guided me in extracting relevant themes from the data. My first research question focused on what UGA did. The data and categories created helped me to address this question. My second research question was, how do UGA officials make meaning of race, admissions, and the law? This question guided me in developing relevant themes around the meanings that UGA officials assign to admissions, race and the law. Thematic findings for admissions, race and the law are presented in Chapter 5.

The final research question for this study was: How do meanings around race, admissions, and the law shape how UGA responded to the rulings? And furthermore, is the answer useful for UGA, as well as others engaged in the debate, and, if so, how? In answering these questions, I utilized the themes that emerged from the data around admissions, race and the law. My steps were conceptually and procedurally informed by Roe's (1994) *Narrative Policy Analysis*, which was presented in Chapter 1. Dey (1993) tells us that data provide a basis for analysis, but they do not dictate it. Rather, the conceptual framework of the study should play a major part in rendering the data intelligible (Dey, 1993).

My first step was the identification of the policy narratives. Policy narratives are stories; they are the scenarios and arguments that underwrite and stabilize the assumptions for policymaking (Roe, 1994). Policy narratives were identified by reflection on case data, specifically the themes that emerged around race, admissions and the law,

as well as the rationale supporting those institutional views. Next, I identified counter-narratives and critiques of the policy narratives. Given the nature of my sample, institutional officials, I utilized the scholarly literature to obtain relevant critiques of UGA's policy narratives. The third step was to compare the policy narratives and their opposing narratives to establish a metanarrative. The metanarrative explains how two policy narratives, opposites of each other, can both be the case at the same time (Roe, 1994). Once the metanarrative was generated, I articulated the way in which I understood the narrative to provide direction for UGA moving forward. To some extent, this required a reflective approach to data analysis, which relies on the researcher's judgment and intuition in making sense of the data being studied (Gall et al., 1996). Though the reflective analysis method is subjective, it does require careful examination and re-examination of available data until such point that key features become evident. This is consistent with Merriam's assertion that findings put forth by the author should always be supported by recurring patterns that cut across the preponderance of data. The goal, simply stated, is that at the conclusion of the study there should be enough detail so that the conclusions reached make sense to the reader (Merriam, 1998). The findings that were identified using narrative policy analysis are discussed in Chapters 5 and 6.

### *Trustworthiness*

Questions of trustworthiness are about concepts commonly known as validity and reliability. That is, how congruent are findings with reality, and can the study be replicated to produce the same results? But are these questions appropriate for qualitative methods? Merriam (1998) is useful here. She notes that an assumption underlying



qualitative research is that reality is multidimensional and constantly changing. It is not a “single, fixed, objective phenomenon waiting to be discovered, observed, and measured” as in quantitative research (p. 202). The qualitative researcher is concerned with collecting data that help in understanding how people make meaning of their experiences. While they do want findings of the study to be supported by the data, they do not believe that there is an ultimate “truth” out there to be found.

In ensuring the rigor of this study to present interpretations consistent with the collected data, I utilized multiple sources for data collection. In most instances, data collected from one source were confirmed by other sources. Merriam (1998) terms this use of multiple sources “triangulation.” In addition, I attempted to enhance validity by simply stating and clarifying my own biases. By outlining my background, personal experiences, theoretical orientation, and research assumptions at the outset of the study, I provided myself, as well as others, an outline of my own predispositions. These predispositions have shaped, to some extent, my interpretations and findings. I firmly believe, however, that my findings are supported by the evaluated data. It is both the data and my predispositions, my ways of knowing, that together shaped this study. By declaring my biases at the outset of my work, I made known my intention of engaging in ethical research.

In thinking about generalizability, I am not using the findings of this research to make universal claims about admissions policy-making or practice. This is a case study focused on understanding, examining, and interpreting events and experiences in a bounded context. Yet, the intent of this study, to examine the policy response at UGA, is one that may inform other institutions engaged in similar processes. It may, at least, make

others aware of the possible implications of approaching admissions in a similar manner to the one observed in this study. It may be that, as Merriam (1998) suggests, others can make comparisons to their own situations. I do not hope to understand other institutions, or other university officials through this research, but this study may help others better understand the implicit meanings and embedded assumptions often overlooked in their own policy making processes.

### *Assumptions and Limitations*

This study is focused on a case. It is not generalizable. This study seeks meanings in a particular context. This study is conducted for its intrinsic value. While it may provide insights that are useful in other cases or contexts, such is not the purpose of the inquiry. Additionally, the study's participants are officials of the institution being studied. Their truthfulness and objectivity are concerns. The study design utilized strategies to attempt to validate findings through triangulation and documentary evidence. Rarely is it possible to validate all data. Validation is not always an easy and clear process.

There is a limitation associated with examining and using documents for data. As Gall et al. (1996) assert, in order to fully understand a document, the qualitative researcher must understand the context in which it was produced. Things that would be helpful might include “the author's purpose in writing it, the author's working conditions, the author's intended and actual audience, and the audience's purpose for reading it” (p. 362). In addition to this is the meaning created and assigned to the documents by the researcher as it is read. But this is the nature of qualitative inquiry – it does not seek “truth,” it looks to establish meaning.

### *Role as researcher*

For doctoral students, Seidman (1998) advises avoiding seeing research as something one consumes rather than produces. Doing research is seen as an elite occupation for only those at the top of the hierarchy. I am a black male doctoral student. During this study, I was aware that others I approached may take issue with my race and status as a student. I proceeded in this study while recognizing and navigating the conduits within UGA that dictated the degree of access I achieved in this study. This included recognizing institutional hierarchy, respecting the role of gatekeepers, and implicitly acknowledging the power dynamics related to race, gender, and positional authority in building rapport with research participants (Seidman, 1998). I have not felt notably limited in conducting this research as a result of any of these dynamics.

This is a qualitative research study. I am the primary instrument for gathering and analyzing data. I seek objectivity and the absence of premature judgment in my approach to this study. However, I bring my own biases to making sense of the experiences of others (Merriam, 1998). Although these biases have not dictated my findings, they have influenced them. I share background information about myself in the paragraphs that follow to disclose or clarify my biases.

I am a Black male naturalized US citizen. I am Jamaican by birth. I immigrated to the US with my family at the age of seven years old. I have lived in suburban metropolitan Atlanta for all of my life. My parents are Jamaican. They were both raised and schooled in Jamaica, a country then under British governance. They are both political conservatives, though not the most politically active of persons. Politics was rarely a topic of conversation in our household during my childhood and adolescence. Rarely, if

ever, did my parents discuss issues of race or suggest that they were discriminated against because of their race. Now, twenty-eight years after moving to the US, my parents occasionally share recent and distant experiences of what they believe to be racism and discrimination. We now freely engage in such dialogue. During my youth, however, my parents seemed more inclined to believe that one's position in society was related to a class-related hierarchy. For instance, they often portrayed the confrontations they experienced in their places of work as worker versus manager conflicts, rather than black versus white. Their culture and experiences growing up in Jamaica socialized them to see the world in class dynamics rather than in racial ones. From my most formative years, I began to understand the world by watching and listening to my parents. I was not particularly conscious of the extent of ongoing racial divisions in Georgia or in the US until my mid-to-late 20s.

As I reflect on my life, I recognize that I have always intermingled amongst various racial and ethnic groups. My family attended a racially diverse church when I was younger. Every school I attended prior to college was also racially diverse. The college I attended was a small, church-affiliated, private institution; Six hundred diverse students – but mostly white. I had little trouble fitting in there and never viewed myself as “the only black guy in the class” or the “only black guy living in the suite.” Again, I just did not view the world in those terms. My experiences to that point never raised questions about my views of others or my associations with others. I never had difficulty in finding friends whether black or white. My approach was never to figure out who the racists were or who saw me merely as a derogatory racial epithet. Instead, I just sought

out genuine people with whom I could build rapport. Generally speaking, this is still my approach to building relationships today.

Many of my black friends and classmates have been victims of racism and discrimination that I have not. At times during my high school and college years, I often asked myself how it was that I could go to the same schools and live in the same city yet have such a different experience. Surely I have been a victim of racism and discrimination. I am not as naïve as I once was about racial dynamics in Georgia and the US. But for whatever reason, those experiences are difficult for me to recognize and, even when I do recognize them, they do not stay in my consciousness for a notable length of time.

My experiences indicate that dichotomies of race, politics, religion, and the like are, indeed, false. I don't fit neatly into any of those purportedly dichotomous categories. However, many individuals in this country have had lives filled with experiences that reinforce the dichotomies associated with race. Existence in US society socializes all within it to recognize individuals in a racial sense. None of us, including me, can truly be outside of the racializing dynamics of our environment. My experiences and cultural background provide me with what I believe is a unique perspective on race and difference in the US. I am intrigued by racial and political differences. This is the case for two reasons. First, I recognize that race is one of the most divisive issues in our country. It is the source of constant conflict. Second, I am a consensus seeker by nature, one who often mediates disputes in search of a resolution. These interests have brought me to this study.

## Summary

In sum, this case study examines the University of Georgia's policy making response to the *Grutter* and *Gratz* Supreme Court rulings. The study seeks to understand how UGA officials come to understand the issues around admissions, which includes an analysis of the assumptions they make. Interviews and document analysis served as the primary modes of data collection. Interviews were structured in nature and were conducted with individuals who represent the university. Documents related to admissions policies and programs were examined. The study uncovers the perceptions of university representatives and the resulting institutional view or interpretations of *Grutter* and *Gratz*. The study explores a range of issues and meanings related to admissions, race and the law in higher education.

The next chapter begins with a review of the University of Georgia's desegregation. It shows that during the 1950s and 1960s UGA went to great lengths to exclude blacks from its institution. The chapter provides a summary of the details and context surrounding two prominent cases involving UGA. The balance of Chapter 4 utilizes interview and documentary data to reconstruct UGA's response to the *Grutter* and *Gratz* decisions.

## CHAPTER 4

### UNIVERSITY OF GEORGIA OFFICIALS SPEAK

#### Institutional Overview

The University of Georgia was founded January 27, 1785 by the Georgia General Assembly. It is the first state-chartered university in the United States, although it was not established until 1801. The University is located in Athens, Georgia, a medium size city with approximately 110,000 residents. It is located 60 miles northeast of downtown Atlanta. University of Georgia enrolls over 30,000 students, seventy-nine (79) percent of which are Georgia residents. UGA has approximately 10,000 employees, including almost 3,000 faculty members. The University of Georgia consists of 16 colleges and schools. Collectively they offer 19 baccalaureate degrees in more than 150 fields; 30 master's degrees in 128 fields; 20 educational specialist degrees; 3 doctoral degrees in 90 areas; professional degrees in law, pharmacy, and veterinary medicine; and, 139 study abroad and exchange programs. In 2005, UGA enrolled 4,711 freshmen students. Their average SAT and GPA were 1241 and 3.74, respectively. For 2008, *US News & World Report's* Best Colleges edition ranks UGA 22nd among national public research universities and 59<sup>th</sup> among national universities (<http://www.usnews.com/sections/education/index.html>). *Kiplinger's Magazine* ranks UGA 10th in its 2007 list of the 100 Best Values in Public Colleges (<http://www.kiplinger.com/tools/colleges/>).

The University of Georgia was involved in litigation leading up to the *Grutter* and *Gratz* cases. In 2001, UGA was sued for denying admission to three white women in *Johnson et al. v. Board of Regents of the University System of Georgia*. By no means was this the first time UGA was required to defend its admissions policies as it related to race. A review of UGA's history reveals that racial integration at the institution was resisted to the bitter end – as some saw it. This review provides the context necessary to understand the institution that is the focus of this study. In the next section, I detail three important cases involving race and admissions at University of Georgia. I then present initial findings from this study.

#### *Desegregation at the University of Georgia*

In 1950, Horace T. Ward, a black Morehouse College graduate, applied for admission to the University of Georgia's law school (Pratt, 2002; Daniels, 2001; Dyer, 1985). After being denied admission, Ward's attorney's filed suit against the university June 23, 1952, alleging that Ward was denied access to the institution solely because of his race, which was a violation of the Fourteenth Amendment of the U.S. Constitution (Pratt, 2002; Daniels, 2001; Dyer, 1985). In the years prior to Ward's attempt to racially integrate UGA, the University System of Georgia's solution to such attempts had been to offer out-of-state tuition grants to qualified black students for post baccalaureate studies (Pratt, 2002; Daniels, 2001; Dyer, 1985). Supported by NAACP legal counsel, Horace Ward refused the out-of-state tuition offer presented by state officials. Coincidentally, as Ward pursued his case against the university, he was called into military service by the U.S. Army (Pratt, 2002; Daniels, 2001; Dyer, 1985).



Noting the suspicion underlying Ward's draft into military service, student editors of UGA's *Red and Black* newspaper began writing articles supporting the case for Ward's admission to the University's law school. In an article titled "The Color is Black," Bill Shipp, managing editor of the paper, wrote:

Horace Ward became a casualty the day he was drafted. The Atlanta Negro who had sued for admission to the free, white University of Georgia suddenly found himself facing two years in the not-so-free, non-segregated Army. Whether some string-pulling "friend" of the University gave Ward a gentle shove toward militia or whether Fate, nobody's friend, caught up with him remains to be seen.

Nevertheless, Ward can be checked off as temporarily missing in action from the Many Years War of White vs. Black. He attempted to establish a beachhead on the vanquishing white frontier. He failed. Other will try. Some won't fail. Like it or not, "that old, black nigger" who sweeps your floors, shines your shoes and picks your cotton is out to stand on equal footing with you. . . . There is absolutely no logic in excluding the Negro from the white man's way of life, especially at a university. (cited in Pratt, 2002, p. 31)

Additional editorials in the *Red and Black* criticized Governor Herman Talmadge for his dogmatic support of racial segregation and went even further, suggesting that "continued segregation and suppression can and will cause the death of democracy by the hands of its own leaders" (Pratt, p. 31, 2002). In predictable fashion, such rhetoric from students received public rebuke by state officials who later coerced the student editors to resign their posts as editors (Pratt, 2002).

Meanwhile, as a result of his service in the military, Ward's case against the University was suspended from 1953 until 1955. During this period, state-sanctioned segregation remained under attack by the NAACP. Fearing a Supreme Court ruling unfavorable to the continuance of segregation in public education in the landmark case *Brown v. Board of Education* (1954), Georgia Governor Herman Talmadge and the Georgia Legislature developed a plan to adopt a private schooling system that would allow the state to channel state funds into tuition grants for student attending private schools (Pratt, 2002). Additional legislation aimed at maintaining segregated schools passed through the Georgia Legislature between 1954 and 1956 (Pratt, 2002).

On May 17, 1954, the Supreme Court handed down its decision in *Brown*. The Court held that the doctrine of separate but equal was unconstitutional and, therefore, had no place in public education. This ruling devastated the legal foundation on which states in the South maintained segregated public education.

In September 1955, Horace Ward fulfilled his obligation of service in the U.S. Army and promptly requested that his application for admission to the University be renewed. Over the ensuing year, the University System of Georgia exhausted all legal means to have Ward's suit against the University dismissed (Pratt, 2002, p. 51; Dyer, 1985). The case of *Horace T. Ward v. Board of Regents of the University System of Georgia* (1957) went to trial in December, 1956. In the end, the charges against the University were dismissed on the grounds that (1) Ward failed to submit a new application to the law school as required by guidelines developed while he served the Army, and (2) Ward had enrolled at Northwestern University's Law School, rendering his application to UGA moot (*Ward v. Board of Regents of the University System of*

*Georgia*, 1957). Although he was ultimately denied admission to UGA, the case of Horace Ward was the first concentrated attempt by blacks, represented by the NAACP, to gain admission to the University of Georgia.

During this period, other public and private institutions in Georgia faced increasing pressure to desegregate. At Emory University, Dyer (1985) reports that as early as 1948 *The Emory Wheel*, the student newspaper, called for “restricted” admission of blacks. The editor of the paper suggested that “students from Atlanta’s black colleges might be enrolled in courses unavailable at their own institutions and that outstanding students should be admitted to the Emory graduate school” (p. 313). Two years later, two black students seeking admission to Emory were quickly rejected. In 1951, students of the Candler School of Theology favored admission of blacks by a vote of 234 to 7 (Dyer, 1985). Shortly thereafter, however, the Student Bar Association declared itself unanimously opposed to the idea of admitting blacks. The Student Council, although being split on the issue, also supported continued exclusion of blacks at Emory (Dyer, 1985).

In July 1959, just over two years following the court ruling against Horace Ward, two black students from Atlanta declared their intention to seek admission to the University of Georgia. At the same time, gubernatorial candidate S. Ernest Vandiver, maintained the pledge of Georgia’s previous governors to maintain racially segregated schools at all costs. He stated:

We will not bow our head in submission to naked forces. We have no thought of surrender. We will not knuckle under. We will not capitulate. I make this solemn pledge. . . . When I am your governor, neither my three children, nor any child of

yours, will ever attend a racially mixed school in the state of Georgia. (as cited in Pratt, 2002, p. 67)

Maintenance of a segregationist stance was a requirement for the governorship at the time and Vandiver would eventually win 80 percent of the vote (Pratt, 2002). He would serve as Governor from 1959 to 1963.

The two black students applying to UGA were Hamilton Holmes and Charlayne Hunter. In response to their applications, both were informed that there was no dormitory space available, and since all freshmen were required to live in campus housing, they could not be admitted (Pratt, 2002; Dyer, 1985). Both students, under advice from NAACP lawyers, notified the registrar that they desired consideration for admission in winter quarter in 1960 (Pratt, 2002). However, when the students were to be considered for admission prior to the winter quarter, they were informed that since they had enrolled at another institution they would now be considered transfer students. And due to limited facilities, transfer students were not given priority in housing assignments (Pratt, 2002) because the change in institution was not necessary to continue their academic program (Dyer, 1985). The students appealed to the Board of Regents shortly thereafter while simultaneously filing suit against the University.

The trial of *Holmes v. Walter Danner* (1961), the UGA registrar, began in December 1960. Charlayne Hunter-Gault (1992) noted, “It was the biggest story in the state, if not the nation, that day, and I was at the center of it” (p. 157). The legal team representing Holmes and Hunter included Don Hollowell, Constance Baker Motley, Horace Ward, Vernon Jordan, and Gerald Taylor. According to Hunter-Gault, they worked tirelessly in preparation. A political victory for the legal team came as Constance

Baker Motley questioned UGA Registrar Danner on the stand. Hunter-Gault remembers Attorney Motley's style as deceptive, "often allowing a witness to get away with one lie after another without challenging him. It was as if she would lull them into an affirmation of their own arrogance" (p. 161). Hunter- Gault (1992) quotes Trillin's account of the episode.

At some point in every higher education case, Mrs. Motley, who has handled practically all such cases for the Inc. Fund, always asks the university registrar what she calls "the old clincher": Would he favor the admission of a qualified Negro to the university? The registrar, often a segregationist himself, has to answer yes, as Danner did during the Georgia trial, and face the newspaper stories the next day that begin, as the Atlanta Journal's began, "The University . . . registrar has testified in Federal Court here that he favors admission of qualified Negroes to the University." (p. 161)

Such tactics scored points for the plaintiffs. Yet, the facts of the case were most relevant inside the courtroom.

A review of the facts surrounding the case by the district court found that, indeed, housing facilities at the University of Georgia were taxed between 1959 and 1960. However, the reason limited facilities prevented Holmes' and Hunter's admission was due to racial discrimination. The court's opinion highlights the text of a letter from Dr. Harmon Caldwell, Chancellor of the University System, to UGA President Aderhold, which references a request from Howard Callaway, a Board of Regents member, for assistance in getting a white applicant admitted. The letter noted,

I have written Howard that it is my understanding that all of the dormitories for women are filled for the coming year. I have also indicated that you are relying on this to bar the admission of a Negro girl from Atlanta. (*Holmes v. Walter Danner*, 1961, p. 406)

The University's purpose was also evidenced in a letter from Breedlove Arrington, who was a white transfer student applicant denied admission to UGA. He wrote to UGA inquiring about his denial of admission, and he ultimately made a trip to Athens, where he spoke with an admissions counselor. He notes that the counselor indicated that there were several reasons why he could not be accepted. "One of them was because of my poor record at Tech and the other was that they did not have a quota from senior colleges due to segregational problems" (*Holmes v. Walter Danner*, 1961, p. 406). These letters incriminated UGA and state officials and added weight to the plaintiffs claims of racial discrimination.

The plaintiffs in the case also called into question the inappropriate questions that were posed by UGA officials to Hamilton Holmes during his admission interview. Questions included: Have you ever been arrested? Have you ever attended inter-racial parties? Do you know about the red light district in Athens? Have you ever attended houses of prostitution? (*Holmes v. Walter Danner*, 1961, p. 407). In her account of events, Charlayne Hunter-Gault (1992) indicated that her interview was "pretty routine, but the three-man panel was rough on [Hamilton Homes]" (p. 151). She added, "It was so patently ridiculous to be asking Turner High School's "Mr. Clean" such questions that it came close to undoing [Holmes]. . ." (p. 151).

After reviewing the evidence, much of it indicating that the University treated Holmes and Hunter differently from other white applicants, the judge ruled on January 6, 1961 that they must be admitted to the University immediately (Hunter-Gault, 1992; Pratt, 2002). The evening following the court order, 150 to 200 students hung a blackface effigy of Hamilton Holmes at the archway to the UGA campus. Pratt (2002) notes, “hundreds of students began to burn gasoline-soaked crosses and throw firecrackers as they screamed in anger, replete with all manner of racial epithets . . . hope and optimism for an easy integration process quickly vanished as Athens, Georgia showed its ugly side” (p. 85). The following Monday, as Holmes and Hunter were escorted onto campus, they were met by students, some of whom were shouting “nigger go home” (Pratt, 2002, p. 88).

Soon thereafter the students were informed that the judge in their case had ordered a stay to allow the state a chance to appeal the decision to the U.S. Fifth District Court of Appeals, which it did (Pratt, 2002; Daniels, 2001; Dyer, 1985). Chief Judge Elbert P. Tuttle, an appointee of President Dwight D. Eisenhower, upheld the order to admit both students to UGA. The U.S. Supreme Court then denied the state’s request to overturn Judge Tuttle’s decision (Pratt, 2002; Daniels, 2001; Dyer, 1985). Thus, Holmes and Hunter were admitted to UGA.

On January 11, 1961, the second day of classes, an angry mob responded again and made their views on integration known. Hunter-Gault (1992) notes,

I did not know it at the time, a hotly disputed last-minute defeat of the basketball team at the hands of Georgia Tech had helped create anything but a mood of

sweet reasonableness in the crowd that marched from the gym to the dormitory.

(p. 182)

Just after 10:00 pm, a crowd ranging from 500 to 2000 marched toward the Center Myers dormitory (Pratt, 2002). Members of the group threw bricks and bottles at Charlyne Hunter's first-floor dormitory window, while others threw rocks and firecrackers at media personnel, set fires in nearby woods, and scuffled with police (Pratt, 2002; Hunter-Gault, 1992). Dyer (1985) noted that police used tear gas and water hoses to end the uprising. Charlayne Hunter remained in the dormitory during the riot but escaped without injury. University officials indicated that a total of 60 window panes in the dormitory were broken, ten of which were in Hunter's room (Dyer, 1985; Hunter-Gault, 1992).

As a result of this incident, Holmes and Hunter were suspended for their own safety by Dean of Students Joseph A. Williams under orders from Governor Vandiver (Hunter-Gault; 1992; Pratt, 2002; Daniels, 2001; Dyer, 1985). Much suspicion surrounded the riot, some suggesting it was encouraged by state officials. One of the names often mentioned in connection to the riot was "Peter Zack Geer, executive secretary to the governor, who in fact issues a statement saying, 'The students of the university have demonstrated that Georgia youth are possessed with the character and courage not to submit to dictatorship and tyranny'" (Hunter-Gault, 1992, p. 190). Evidence to substantiate this claim was never found. Six Klansmen were arrested and accused of disorderly conduct in relation to the riot. They were released on \$205 bond (Hunter-Gault, 1992). A court order reinstated Hamilton and Holmes five day later.

Holmes and Hamilton endured additional ostracism in the years ahead. They were subjected to racial epithets as were those who were cordial to them. Holmes later told a



journalist that he made no friends while attending the University. Pratt (2002) suggests that UGA's white students sent their message loud and clear: while the law allows black folks to attend this institution, they would most certainly not be welcomed.

The efforts by state and university officials to exclude blacks from admission were representative of the climate of racial segregation and intolerance that pervaded the South during the 1950s and 1960s. In recent years, UGA has made efforts to improve minority representation and redress its history of minority exclusion. These efforts have also been challenged in the courts, with plaintiffs arguing that minority candidates received unfair preferences in the admissions process.

#### *Pre-Grutter/Gratz Litigation at UGA*

In 1999, three Caucasian plaintiffs filed suit against UGA in *Johnson et al. v. Board of Regents of the University System of Georgia* on grounds that the university's use of race in admissions violated the Equal Protection Clause of the Fourteenth Amendment. They also alleged that UGA's use of gender violated Equal Protection and Title IX. UGA asserted that its freshman admissions policy did not unlawfully discriminate because the policy was narrowly tailored to serve a compelling interest in ensuring a diverse student body (*Johnson et al. v. Board of Regents of the University System of Georgia*, 1999). The federal district court found in favor of the plaintiffs in July 2000. UGA appealed the ruling to the US 11<sup>th</sup> Circuit Court of Appeals.

The Circuit Court notes the relevant facts of the case as follows. In 1969, the federal government, through the Office of Civil Rights, determined that the University of System of Georgia was maintaining a dual-track system of higher education based on

race. In 1970, it ordered the University System to develop and implement a desegregation plan to include affirmative action programs. Such programs were implemented. By March 1989, the Office of Civil Rights advised the State of Georgia that the university system had satisfactorily complied with the remedial measures. Georgia's system of higher education was now in compliance with federal laws. No additional desegregation programs were required moving forward (*Johnson et al. v. Board of Regents of the University System of Georgia*, 1999).

Between 1990 and 1995, UGA's admissions policy for freshmen applied objective academic criteria differently depending upon the race of the applicant. For instance, the pre-set minimums for SAT scores and GPAs were set lower for black students than for non-blacks. In 1995, UGA revised its policy due to concerns around the constitutionality of its dual track admissions process. The revised policy was the one questioned in the *Johnson* case. It divided candidates for admission into three groups based on objective academic criteria. The top tier gained automatic admission while those at the bottom were rejected. The middle tier selected for additional review had to meet certain minimum scores to be considered. All applicants in this middle pool start with a score of zero. Each file was given an individual qualitative review by admissions officers. Plaintiffs in this case were in the middle pool, neither granted automatic admission or rejection.

Applicants were scored on a number of factors and those with a certain rating or higher are admitted. First, a total of twelve factors were considered, plus three objective academic factors, including GPA, SAT score and curriculum quality. These accounted for 67% of the possible points awarded as a part of the review. An additional 18% of the

possible points were available based on leadership/activity or other factors self reported by applicants, including: “parent of sibling ties to UGA, hours spent in extracurricular activities, hours spent on summer work, hours spent of school-year work, and first generation college” (*Johnson et al. v. Board of Regents of the University System of Georgia*, 1999, p. 1241). Finally, three additional factors were considered, accounting for 15% of the maximum points available. These included race/ethnicity, gender, and Georgia residency. Points advantages accrued to underrepresented minorities, males and Georgia residents.

The plaintiffs’ review scores led UGA to deny them admission. However, they argued that had they been of male gender and/or an underrepresented minority, their individualized review score would have led UGA to grant them admission. The US Court of Appeals for the Eleventh Circuit found that the UGA process for admissions used race in an unconstitutional manner. The Court noted, “UGA fails to meet its burden of showing that its 1999 freshman admissions policy is narrowly tailored” (*Johnson et al. v. Board of Regents of the University of Georgia*, 1999, p. 1251). The Court also added, “In our view, UGA does not even come close to making that showing” (*Johnson et al. v. Board of Regents of the University System of Georgia*, 1999, p. 1251).

In response, UGA reviewed the ruling and, rather than appealing to the Supreme Court, chose to defer to two similar cases at the University of Michigan that were believed to possess stronger merits for consideration by the Court. However, as a result of the ruling, UGA was forced to eliminate the use of race as a consideration in the admissions process. It had discontinued consideration of gender in 1999 following the legal challenge in this case. Following this ruling and the *Grutter* and *Gratz* decisions,

UGA had a difficult task in interpreting and developing an admissions policy that promotes racial diversity that could hold constitutionally under strict scrutiny.

This case study is limited to examining the University of Georgia's response after the Supreme Court decisions involving the University of Michigan. The case analyzes the actions taken and the rationales that supported them. In examining UGA's institutional response, this case concentrates on the issues and problems of access to and diversity in institutions of higher education. The information collected, reviewed, and analyzed in this case provides insight into how institutional actors at UGA view, confront, and address problems of equal opportunity, access, and diversity in higher education.

The US Supreme Court decisions in *Grutter* and *Gratz* provided guidance for institutions of higher education in dealing with legal conflicts associated with racial diversity and admissions policies. In the *Grutter* decision, the Court acknowledged that diversity contributes to the learning experience for all students. It contributes to cross-racial understanding and the breakdown of stereotypes (*Grutter*, 2003). Despite these benefits, the Court implied that any admissions policy that focuses too heavily on race, such that it becomes a decisive factor in admissions, is unconstitutional. In summary, diversity may be an appropriate goal for which institutions consider race in their admissions decisions. However, any policy that considers race as a factor must be tailored such that each applicant's profile is given a holistic review that takes broad indicators of merit into account.

As previously noted in this study, the *Grutter* decision provides a specific policy structure whereby an institution can legally consider race in admissions decisions. Institutions face a variety of disincentives in adopting such a policy structure. For

example, the increased cost associated with a holistic review of each application would likely have a negative fiscal impact on institutions – many of which have recently faced difficult budget years. That is to say, institutions would have to expend significantly greater resources to employ admissions reviewers for read each file, rather than simply applying a mechanical formula for ranking applicants. Additional disincentives might include:

- Public relations problems associated with a perceived affirmative action program, leading to loss of alumni or donor financial support
- Institutional costs of future legal challenges to admissions policies
- Addressing the ambiguous issue of exhausting race-neutral alternatives, as the Supreme Court requires, before utilizing race-conscious strategies.

In the current social and political environment, there are many considerations that institutions must make in establishing their admissions policies. The story that follows is a case study of the University of Georgia’s response to the Supreme Court decisions.

#### Presentation of Findings – Initial Results

The University of Georgia’s response to the *Grutter* and *Gratz* US Supreme Court decisions regarding the use of race in admissions was crafted by faculty members and administrators serving in a variety of capacities between fall 2003 and spring 2006. Faculty participation occurred through UGA’s University Council, which is the operational equivalent of a university senate. This study reveals that the most notable policy activities during this period were dominated by the Freshmen Task Force, a subcommittee of the University Council’s Faculty Admissions Committee. This group was

comprised of faculty members that served on University Council's Faculty Admissions Committee. The work of the Freshmen Task Force was informed in a significant way by an ad hoc committee of administrators who were convened by Vice President for Instruction, Del Dunn, at the request of UGA's President, Michael Adams in 2002, which was a year prior to the rulings. During the same year, UGA established an Office of Institutional Diversity. Its director held the title of Associate Provost for Institutional Diversity.

The following account of UGA's response to the *Grutter* and *Gratz* decisions highlights the activities of the ad hoc committee of UGA administrators and the Freshman Task Force. The overview also includes various activities and decisions that occurred at UGA during the period under study. These include the legal interpretations of UGA's Office of Legal Affairs and changes in various aspects of UGA's approach to admissions recruitment and policy.

At University System of Georgia institutions, the Board of Regents sets minimum criteria for admission, called the Freshman Index. This index is calculated using a student's high school grade point average in college prep courses as well as the score achieved on the SAT or ACT. The required Freshman Index score for research institutions, like UGA, is higher than required scores for Regional or Four-year, State colleges and universities. Beyond these requirements, at the University of Georgia, the authority to set standards for admission and make exceptions to those standards resides with the University's President. The President has a standing advisory committee on matters of admission through the University Council called the Faculty Admissions Committee (N. McDuff, personal communication, 2006). Dr. Michael Adams, the UGA

President, asked the Faculty Admissions Committee to examine the Supreme Court decisions and what they meant for UGA in fall 2003, only 3 months after the Supreme Court rulings.

The Faculty Admissions Committee consists of approximately 25 individuals representing various colleges and relevant administrative units across the University. In 2003-2004, the committee was chaired by Robert Gatewood, a Professor and Associate Dean for Academic Programs in the Terry College of Business. The work of the Faculty Admission Committee is done by standing subcommittees that report back to the full committee for final approval of various recommendations and activities. The Committee has four subcommittees. The Freshmen Admissions Committee (commonly referred to as Freshmen Task Force) works with the Admissions Office to set policy for admission of freshmen. I examine its activities in this study. The Transfer Committee advises on policy matters related to transfer students. The Student Conduct Committee reviews files of students who have criminal history and/or a suspension or expulsion from school or other behavioral problems. The Athletic Review Committee advises on admission policy for student athletes (R. Gatewood, personal communication, 2004).

At the request of Del Dunn, Vice President for Instruction, the Freshmen Task Force began meeting in November 2003 to examine how the University should respond to the *Grutter* and *Gratz* cases (S. Weinberg, personal communication, 2006; C. Keith, personal communication, 2006). The group initially consisted of three faculty members and a numerous ex-officio members. The group was initially chaired by Charles Keith, Professor of Cellular Biology and staffed by Nancy McDuff, Director of Admissions, who was an ex-officio member of the Committee. Other members of the Freshmen Task

Force for the 2003-2004 academic year included: Del Dunn, Vice President for Instruction; Robert Gatewood, Chair of the Faculty Admissions Committee and Associate Dean in the Terry College of Business; Mary Atwater, faculty member in the College of Education; Karen Bauer, Director of the Office of Institutional Research; and, Scott Weinberg, faculty member in the College of Environmental Design.

*Administration's Ad Hoc Committee on Diversity, 2002-03*

A starting point for the Freshmen Task Force was reviewing work that had been completed in the previous year by an ad hoc committee made up of administrators who were convened by Vice President for Instruction, Del Dunn, at the request of UGA's President, Michael Adams. This ad hoc committee had been charged with developing a definition of diversity for UGA and considering strategies to address UGA's needs around diversity. The ad hoc committee discussed possible responses by institutions across the country to the then soon-to-follow *Grutter* and *Gratz* decisions (D. Dunn, personal communication, 2006). Committee member Nancy McDuff, Director of Admissions and Vice President for Enrollment Management, indicated that the process for interpreting what the *Grutter* and *Gratz* rulings meant for UGA took a substantial amount of time because the rulings were multi-faceted. That is to say, the rulings did provide a framework for utilizing race as a factor in admission, but they also implicitly warned institutions to proceed very cautiously in dealing with race as a factor in admissions. The faculty and administrators at UGA, therefore, had much to consider and discuss.



Members of the ad hoc administrator committee, which was an informal group, included Del Dunn; Matthew Winston, Assistant to the President; Keith Parker, Associate Provost for Institutional Diversity; Anne Crowther, Associate Vice President for Instruction; Nancy McDuff, Director of Admission; and, Tom Jackson, Associate Vice President for Public Affairs (D. Dunn, personal communication, 2006). Del Dunn, chair of the committee, suggested that from very early on UGA was considering strategies to enhance diversity while not making race explicit. During my interview in summer 2003, Dr. Dunn stated, “I think all along there was always a competing strategy, which is, are there other ways we can achieve our [diversity] goals?” What can we expect to achieve if we do make race an explicit criterion for admission or use it in a very overt way, versus other alternatives” (D. Dunn, personal communication, 2006). The committee also discussed the legacy of segregation. According to Dr. Dunn, “[The legacy] is one that the parents and grandparents of these kids that we’re trying to recruit have memories of and have images of what the institution [UGA] was like” (D. Dunn, personal communication, 2006, p. 5). Dr. Dunn suggested that UGA has its own history to overcome.

In providing an overview of the committee’s work relative to activities by faculty, Dr. Dunn stated, “I think [this committee] focused on a more practical discussion. It was broader in terms of what might be done. I don’t think this committee was preparing an alternative strategy. I think we focused on looking at our numerous options” (D. Dunn, personal communication, 2006, p. 5-6). Dr. Dunn also indicated that the committee spent a substantial amount of time discussing the lack of scholarship money and need-based aid. They also highlighted UGA’s disadvantage relative to other states because UGA cannot use state funding for scholarships, which makes recruitment more difficult.

Another point of discussion was whether it was constitutionally permissible to use race as a criterion for awarding financial aid. Dr. Dunn continued,

The lawyers, who are typically conservative in their interpretations said, well, the [*Grutter*] decision doesn't say that, so if it doesn't say it, you're vulnerable [to being sued]. And it's kind of interesting," he added. I mean this is not just true for [UGA], it's true for other states as well. Universities have been reluctant to act on the *Grutter* decision. It's clear that institutions can be sued and that creates havoc and so they avoid creating ways to use race in admissions (p. 6).

Here, Dr. Dunn provides some insight into the mindset of UGA and like institutions. He clearly states that lawsuits cause substantial disruptions to the business of the university. Such disruptions are related to public relations, fiscal operations, and admissions practices. He implies that institutions would rather discontinue utilization of race than to leave themselves open to legal challenges. The data will show that this thinking re-emerges later in the UGA response.

In an effort to inform their discussions, the ad hoc committee of administrators developed two background documents, one focused on the educational benefits of diversity (Appendix A) and a second which summarized the concept of critical mass (Appendix B). The document on the educational benefits of diversity begins by noting:

In the 21<sup>st</sup> century, there has come a need to demonstrate that racial and ethnic diversity in higher education has a positive effect on the educational outcomes and experiences of college students. It is also important to provide evidence that racial and ethnic diversity enhances learning and teaching in classrooms in all universities. Hence, and both anecdotal information from both faculty and

students and research findings are provided to support the consideration of race and ethnicity, as well as other measures of diversity, in the admissions process at the University of Georgia. (UGA Administration's Ad Hoc Committee on Diversity, 2003, p. 1)

The rationale suggests that UGA's past efforts to pursue racial and ethnic diversity among students has been focused on enhancing students' experiences and learning. The balance of the two-page document cites seven studies or papers that support the concept of diversity as an important factor for the learning environment in institutions of higher education. It asserts that faculty members believe diversity benefits students by (1) allowing a broader variety of experiences to be shared and (2) allowing for introduction of new issues and perspectives by students of color. The paper adds to the faculty perspective by noting, "student diversity does not lower the quality of the institution or the quality of students," and "Diversity does not create tension and arguments (UGA Administration's Ad Hoc Committee on Diversity, 2003, p. 1).

In representing the benefits of diversity to students, the committee's white paper on diversity points out that students who interact with students of other races or ethnicities experience a variety of benefits, including: intellectual engagement, active thinking, high levels of satisfaction with college, an appreciation for multicultural environment, increased cultural awareness, enhanced ability to work cooperatively with others, and an increased likeliness among white students to question and change some of their beliefs about students of color (UGA Administration's Ad Hoc Committee on Diversity, 2003).

The committee's second background document is entitled "Critical Mass." The document calls for a critical mass of underrepresented students. It defines critical mass as "a number of underrepresented students that encourages them to participate in the classroom and not feel isolated" (UGA Administration's Ad Hoc Committee on Diversity, p. 1, 2003). It adds that critical mass "ensures that a typical academic class will have a sufficient number from any group of students that they are seen as participating as individuals, rather than as representatives of a particular group (UGA Administration's Ad Hoc Committee on Diversity, p. 1, 2003). Furthering this point, the document highlights a concept from social psychology, the concept of a solo minority. According to Gudeman (2000), they note:

A solo minority is more likely to be objectified and treated as a representative of a category than as a unique person. In that context, we [UGA] may be seen as achieving a critical mass of any given underrepresented student group when we cease to have solo representatives of that group in our classroom. (UGA Administration's Ad Hoc Committee on Diversity, p. 1, 2003)

These statements by UGA indicate a desire to unsettle stereotypes, whereby underrepresented minorities are understood by white students as speaking for their entire race. In this effort, UGA seems to assert that underrepresented minority students are individuals, often distinct from others within their racial group.

My analysis of the data collected for this study revealed that this document, generally, and the statement regarding the concept of a solo minority, specifically, was pivotal in shaping the actions and deliberations of UGA's Freshmen Task Force. The

summary of the case findings in the pages ahead will further detail the nature of this relationship.

*University Council's, Freshmen Task Force 2003-2004*

The Freshmen Task Force was given the task of developing a definition of diversity for the University. It was to be a statement that would define the components of diversity and summarize the university's approach to operationalizing it (Weinberg, 2006; Dunn, 2006; Keith, 2006; Roberts, 2006). This diversity statement was to serve as the University's policy on diversity for admissions decisions. Between November 2003 and February 2004, the Freshmen Task Force met to develop the statement, entitled *Diversity at the University of Georgia* (Appendix C). The statement was presented to and approved by the University Council's Executive Committee on March 3, 2004 and approved by the full University Council on March 18, 2004. The introductory paragraph of the statement captures the overarching thrust of the document. It reads:

The University of Georgia is the flagship institution of higher education in the state of Georgia. It has a duty to prepare its students to function effectively, to be leaders, and to be citizens of the state, region, and nation. Part of this duty is to prepare students to work in a diverse environment. This duty includes an obligation to expose students to a robust exchange of ideas within a student body representing the greatest possible variety of backgrounds. Such exposure is an essential part of our obligation to prepare students to interact in an increasingly diverse workforce and society, both domestically and internationally. In order to provide a diverse learning environment, the University will adopt policies and

practices to increase diversity among its entering students. (UGA Diversity Statement, 2004, p. 1)

UGA indicates here that it has an obligation to provide students with broad exposure to individuals of varying backgrounds and to prepare citizens, leaders and workers to co-exist in domestic and international contexts. The diversity statement specifies the inclusion of four dimensions of diversity: racial and ethnic diversity, geographic diversity, linguistic diversity, and experiential diversity.

In concluding, the document indicates, “UGA will engage in a ‘highly individualized, holistic review’ of applicants’ files, and give ‘serious consideration to all the ways in which an applicant might contribute to a diverse educational environment.” The statement adds, “No policy, either explicitly or implicitly, will lead to automatic acceptance or rejection based on the specific diversity considerations discussed above” (UGA Diversity Statement, 2004, p. 2). This language is clearly focused on addressing legal concerns about the extent to which diversity will influence admission decisions at UGA. Specifically, the notation by UGA in the policy about “holistic review” and the promise that the diversity policy will not lead to “automatic acceptance or rejection” are both representative of the language the Supreme Court used in its *Grutter* and *Gratz* rulings. Overall, the document puts forth UGA’s understanding of why diversity is important, but it also attempts to allay concerns that diversity might lead to strong advantages for some (underrepresented minorities) at the expense of others (whites).

When asked about challenges the Freshmen Task Force faced in developing the diversity statement, Dr. Charles Keith, chair of the Task Force for the 2003-04 academic year, indicated that a memorable challenge was whether or not the committee was

“honesty considering a broad definition of diversity and not just using the other elements of diversity as a smoke screen” (p. 6). In other words, the entire reason that the committee was asked to look at diversity at UGA was because of a need to clarify the use of race in admission decisions. The other components of diversity, including geographic, linguistic, and experiential, were not being examined or scrutinized in a meaningful way. There was inadequate evidence in this study to establish the University’s commitment to experiential, linguistic, or geographic diversity. Race was the component of primary focus because racial/ethnic minorities constitute a protected class for legal standing in a way that other diversity components did not (e.g., geographic diversity).

The approval by the UGA University Council of the diversity statement in March 2004 represented what UGA hoped would be a close to its response to the *Grutter* and *Gratz* cases. It hoped to proceed with a holistic review of admission applications, giving consideration to how applicants contributed to the four dimensions of diversity. As it turns out, UGA was far from concluding its response to the Supreme Court cases.

#### *Student Recruitment as Response*

During the period in which the University Council’s Freshmen Task Force was working to put a new policy in place, UGA’s administration and Office of Admissions recognized a need to increase the institution’s emphasis on student recruitment as a means of creating a more diverse student body. Ms. Nancy McDuff, Director of Admissions, indicated that following much of the litigation leading up to the Michigan decisions, UGA returned to an admissions approach whereby grades, test scores, and high school curriculum were the factors used to make most admission decisions. Shortly

thereafter, UGA recognized that if it could not achieve the diversity it sought through selection and scholarship methods exclusively, both of which were riddled with challenges. The institution would have to focus more heavily on recruitment (N. McDuff, personal communication, May 9, 2006). Specific to changes the administration sought, Ms. McDuff indicated,

We have to involve the entire [University] community. And so we got a much larger buy in around the campus to being involved and helping us recruit a more diverse student body. And diverse in a very broad sense, but specifically making sure that we were getting the racial diversity that we had before, and had lost with some [policy] changes, and we needed to go back towards. (N. McDuff, personal communication, May 9, 2006)

The idea put forth here was that the Admissions Office could not, by itself, create a diverse student body, particularly absent race-conscious admission policies. The Admission Office could lead the effort, but there needed to be collective buy-in and support from faculty, staff, students, administrators and even alumni. Each group needed to contribute to promoting what UGA has to offer prospective students. I asked Ms. McDuff how these changes came about. She replied,

Some of it was educating folks to the important role that they play in helping to recruit students. A student wants admission to the university, but their decision where they're ultimately going to enroll is very an academic decision. And so it's very helpful when faculty members talk to students at that stage. . . . So the idea was to try to get the right information to the students at the right time,



communicated by the right individual. (N. McDuff, personal communication, May 9, 2006)

This approach simply meant connecting prospective students with those individuals from UGA that could best answer their questions and share their own perceptions of UGA.

The philosophical shift around student recruitment at UGA was talked about by other faculty members and administrators I interviewed at UGA. Matt Winston, Assistant to the President, indicated in our conversation that he was a big supporter of this idea and worked to engage others in supporting it. In describing the shift in recruitment approach by UGA, Mr. Winston indicated that he thinks of UGA's approach as similar to an intercollegiate athletics model of recruiting. Mr. Winston provided an example, stating,

Hershel Walker or David Pollack or one of the [athletic department] alums pick up the phone and call [high school recruits] and say look, I played [here]. You can be successful and do what I did . . . The [UGA] quarterback coach or the linebacker coach goes and visits with these students or call these [high school athletes] and says, I want you to come and play linebacker for me . . . it's very personal . . . when student athletes from high school come [to campus] for visits, they stay with current athletes on the UGA team. They serve as hosts . . . the student athlete gets involved in recruiting the [high school athlete] that comes behind him. (M. Winston, personal communication, April 24, 2006).

The lesson that Mr. Winston and UGA have taken from the model is simply to work toward engaging the entire campus community in recruitment efforts. This includes faculty members, administrators, staff, students, and alumni and alumnae. He added, "All the vice presidents have a list of students to call. We have faculty members who

volunteer to make calls; we have students who make calls” (M. Winston, personal communication, April 24, 2006). Mr. Winston indicated that with this new philosophy the University cannot place all the blame or all the credit with the Admissions Office if the University falls short of its recruitment goals. Student recruitment at UGA must be a process in which all community members participate.

Mr. Winston also indicated that UGA staff had increased recruitments efforts around the state, with tours and visits to cities and towns across the state. Some admissions staff are now permanently stationed and housed in areas in southern Georgia to place increased emphasis on reaching those students. Other UGA staff and administrators also place increased emphasis on engaging minority alumni and alumnae following the Michigan decisions. Mr. Winston indicated that UGA hired a staff fellow in the Alumni Office to have someone onboard “who wakes up everyday thinking, how can I help serve my minority alumni, getting them involved, getting them engaged, and give back in ways that are meaningful to them” (M. Winston, personal communication, April 24, 2006). Mr. Winston indicated that it is not uncommon for black alumni and alumnae to leave traditionally white institutions and lose connection with their institutions. By engaging graduates through programs, like receptions and tailgates, UGA is working to engage its alumni and alumnae. Mr. Winston is hopeful that these efforts will improve UGA’s relationship with its alumni and alumnae, which he hopes leads to increased alumni and alumnae participation in student recruitment, career related networking, and service as UGA advocates.

My conversations with two other individuals, one a dean and the other a faculty member, confirmed that UGA has placed an increased focus on expanding recruitment

efforts to engage more members of the university community. At the same time, two faculty members I interviewed indicated that they knew nothing of expanded recruitment efforts. Given the voluntary nature of faculty involvement in these efforts, these findings were not surprising. Nancy McDuff, Associate Vice President for Admissions and Enrollment Management, suggests that although buy-in across campus may not be as high as what is seen at some private institutions, there has been a “marked improvement” in campus-wide engagement in recruitment since she arrived in 1995 (N. McDuff, personal communication, May 9, 2006). She adds,

But I have to give a lot of credit, the provost and the senior administration said diversity is important. We’re going to put money into it. We’re going to encourage deans for their colleges to be more diverse, to work with admissions in getting the students here. So I think that it took buy-in from the top and encouragement from the top.” (N. McDuff, personal communication, May 9, 2006)

Overall, the data suggest that UGA is investing more energy and resources in recruitment, and these efforts involve a greater portion of the University community than in the past. As a result, minority students were being contacted earlier than in the past and learning more about what UGA had to offer. To this point in UGA response, the institution had drafted and approved a University Diversity Statement and initiated efforts to place greater emphasis on student recruitment. I now pick up on the occurrences that followed UGA’s approval of its Diversity Statement.

*Board of Regents Respond*

Throughout the process of developing the Diversity Statement, Mr. Steve Shewmaker of UGA's Office of Legal Affairs advised the Freshman Task Force. In fact, Mr. Shewmaker attended many of the meetings of the Freshman Task Force to serve in an advisory capacity. Once the University Council approved the Diversity Statement, UGA's Office of Legal Affairs forwarded the statement to the Board of Regents of the University System of Georgia's Office of Legal Affairs for review. On September 28, 2004 the University System forwarded the Diversity Statement to the State of Georgia Attorney General's Office for review and comment. On October 22, 2004 the State Attorney General's Office sent a five-page memo to the University System's Office of Legal Affairs containing its comments and legal concerns regarding the UGA Diversity Statement (Appendix D). In a memo from Dennis R. Dunn, Deputy Attorney General for the State of Georgia, the Attorney General's Office spelled out several legal concerns regarding the UGA Diversity Statement. Mr. Dunn noted, "It is clear that the proposed policy does attempt to follow the general principles derived from the *Gratz* and *Grutter* cases..." (Dunn, p. 4, October 22, 2004). However, "The [diversity] policy is not specific as to how minority status affects the review of an application, but instead indicated only that this and other factors should be considered in striving to obtain a diverse student body" (Dunn, p. 1-2, 2004). He added:

Should the use of race as a factor in the admissions process be challenged in the future, it will be incumbent on the University to explain the necessity for the use of that criteria in the admissions process in order to have it survive the "strict scrutiny/narrow tailoring" analysis mandated by the Constitution. It is clear from

the Michigan cases, that this will be a fact-intensive inquiry. The University should be prepared to expand upon why it has determined that it currently lacks the type of general diversity necessary for academic goals that are a part of its educational mission and how alternative race-neutral methods have failed to achieve these goals. It would be necessary for the University to factually demonstrate what its interpretation of a “critical mass” of minority students is and why that too is necessary to fulfill its academic responsibilities. Finally, the University should expect a searching inquiry into the results of the applications of this admissions process and the use of these diversity factors. (Dunn, p. 4, October 22, 2004)

This feedback from the State Attorney General’s Office illuminated several potential shortcomings in the UGA Diversity Statement. Had UGA attempted race-neutral efforts to achieve its diversity goals? How was it defining what constituted a critical mass of minority students? Was the proposed admissions process narrowly tailored such that race would not be a decisive factor in applicants’ admission status? The Attorney General’s Office implied that UGA might be opening itself up to another lawsuit. As a result of the feedback from the State Attorney General’s Office, the University of Georgia delayed the implementation of its new Diversity Policy to further consider the concerns of the Attorney General’s Office (D.D. Roberts, personal communication, April 14, 2006).

#### *Freshmen Task Force Reconvenes*

In November 2004, the Freshman Task Force reconvened to begin addressing the concerns spelled out by the State Attorney General’s Office. David Roberts, a history

professor, chaired the Freshman Task Force for this task. When I asked Dr. Roberts how he came to chair the Freshmen Task Force, he indicated that it was “essentially by default” (D.D. Roberts, April 14, 2006). He explained that in 2004 he was appointed to the University Council’s Faculty Admissions Committee for the first time. Committee members are routinely required to sign up for a subcommittee. Dr. Roberts chose the subcommittee dealing with the freshmen year, known as the Freshmen Task Force. The Freshmen Task Force generally has three faculty members. They included David Roberts, Robert Gatewood, who was Chair of the larger Faculty Admissions Committee, and Mary Atwater, a faculty member from Mathematics. Dr. Roberts recalls that at the first meeting, in November 2004:

I see Nancy McDuff and [Robert] Gatewood, who I hadn’t even ever met sort of looking at each other and said, ‘somebody will have to be the chair, David, would you do it?’ And so I said, well yea, okay. I had just finished [a] book and so it wasn’t a bad time to do it (D.D. Roberts, April 14, 2006).

There does not seem to be any particular reason that David Roberts was selected to serve in this capacity. Two additional faculty members joined the subcommittee because of their prior service and involvement on the Freshmen Task Force. They were Charles Keith, who was the former chair, and Scott Weinberg. A total of 10-15 ex-officio members were a part of the committee. Regular participants in Freshmen Task Force meetings included the above noted faculty members, plus Steve Shoemaker (Executive Director of Legal Affairs), Del Dunn (Vice President for Instruction), Nancy McDuff (Director of Admissions), Meg Amstutz (Assistant to the President), and Matt Winston (Assistant to the President).

According to Dr. Roberts, the charge to the Freshmen Task Force from Steve Shewmaker, Executive Director of UGA Legal Affairs, was to supplement the Diversity Statement with greater detail as to (1) “why we don’t think we currently have diversity, (2) the kind of diversity that we think is necessary for the kind of educational outcomes that we want. And how will we know when we’ve got that level of diversity? How will we monitor our progress towards it so at some point we would be able to say we don’t need to take race, ethnicity, or any of these things into account in admissions” (personal communication, April 14, 2006). The concerns of the Attorney General’s Office were focused broadly on the issue of diversity in admissions but more specifically with the issue of race and ethnicity. That is, how will UGA consider race and ethnicity in the admissions process?

David Roberts reflected on the Attorney General’s letter. He stated, “The other thing the Attorney General is starting to say, he wanted us to be very careful to make sure we had done everything we could.” That is, we needed to be certain that we had exhausted all other race-neutral strategies and approaches in pursuing a diverse student body. In reflecting on how his Task Force dealt with this matter, Dr. Roberts indicated that the Task Force had some spirited discussions, suggesting a notable amount of disagreement among Task Force members (D.D. Roberts, personal communication, April 14, 2006). The source of disagreement was whether or not UGA had, in fact, exhausted all avenues in an effort to achieve a diverse student body. Committee members raised the issue of need-based financial aid. Dr. Roberts indicated that there seemed to be evidence that UGA had an inadequate amount of need-based financial aid. He stated,

It seems to me that we know there's a much larger pool of potentially strong black students out there than apply, but many of them don't apply because they don't think they can afford to come here. And in many cases, they can't afford to come here. So unless we make a priority of need-based aid, can we really expect to win a lawsuit? That's going to be the criterion, and can we expect the Attorney General to back us up? (D.D. Roberts, personal communication, April 14, 2006)

A second issue, according to Dr. Roberts, was the matter of UGA's budget for recruitment of minority students. He went on to add that while the University has fine staff people coordinating and overseeing recruitment of minority students, there seemed to be evidence that the size of the budget the University dedicates to this part of its student recruitment effort was substantially below that of comparable universities. A few committee members were concerned about these two issues - minority recruitment and need-based financial aid. They felt that the University might need to consider fully addressing outstanding questions in these areas prior to moving forward with the Diversity Statement (D.D. Roberts, personal communication, April 14, 2006). It was at this point that Steve Shoemaker, Executive Director of Legal Affairs, told the committee that they should deal with and address the question, how will we know when we have sufficient diversity in the classroom? What does critical mass at UGA look like? (D.D. Roberts, personal communication, April 14, 2006).

I asked Dr. Roberts, "If these were the only questions the Freshmen Task Force had to deal with, say nothing of linguistic, experiential or geographic diversity, wasn't this entire exercise exclusively about the use of race in admissions?" Dr. Roberts indicated that part of the issue was expediency. He suggested that the Task Force did care



about diversity broadly. He stated that the committee wanted to make sure that it made it clear that they weren't just talking about race and that they did care about diversity in all four areas. For instance, he stated,

We wanted to get statistics for how many of our classes have students from South Georgia or how many different counties, things like that. We even talked about trying to get experiential data, how many nontraditional students, students over 25 or whatever it is, how many have lived abroad. I mean we could get those kinds of things. (D.D. Roberts, personal communication, April 14, 2006)

However, Dr. Roberts suggested that issues of expediency and practicality limited the focus of the Task Force to racial/ethnic diversity and critical mass. Dr. Roberts explained the decision to focus the time and resources of the committee on further detailing UGA's concept of critical mass.

The key is we were able to I think recognize that, without in any way marginalizing or back burnering the other categories, that what we really needed to be able to specify to actually get this policy operational, if that doesn't sound too much like bureaucratese, would be to go ahead and specify what we mean in terms of critical mass with regard to race, and not worry about critical mass with respect to all these categories because that would have taken us forever. (D.D. Roberts, personal communication, April 14, 2006)

It seems reasonable that the Task Force wanted to move as expeditiously as possible in addressing the concerns identified by the Attorney General's Office. However, it is not clear to me how concerned UGA is about linguistic, geographic, and experiential diversity. The resources of the institution around diversity to this point appear focused on

race as the key issue. That seems appropriate given that the institution was responding to the Supreme Court cases addressing the use of race in admissions. Further, racial/ethnic minorities constituted a protected class in legal terms, whereas other groups (e.g., south Georgia residents) did not. The institution outlined diversity as having four dimensions it valued. A full investigation of the extent to which UGA has focused on the non-race dimensions, though not clear, were beyond the scope of this study. The next step for the Freshmen Task Force was to determine how UGA could develop a definition of critical mass with respect to race and ethnicity.

### *Defining Critical Mass*

The decision by the Task Force to define critical mass was an effort to respond to the Attorney General's letter, which stated that "the University should be prepared to expand upon why it has determined that it currently lacks the type of general diversity necessary for academic goals that are a part of its educational mission" (D. Dunn, p. 4, 2004). As early as January 2005, the Freshman Task Force had established that it was plausible to think about critical mass in terms of the number of university classes that had solo minorities. This term, solo minority, was examined by the Administration's Ad Hoc Committee in the background document it drafted on critical mass in 2003. This document was an addendum to the University's initial Diversity Statement, approved in March 2004. The term solo minority, and the literature that supports it, were at the center of the Task Force's thinking around racial diversity and critical mass. The Task Force chair, David Roberts, acknowledged that contrary to the first idea of critical mass, there was also the option to simply look at the aggregate student population, with the idea that

increasing the numbers of underrepresented minorities will have some desired effect over the full course of an undergraduate experience (D. Roberts e-mail to Task Force, 1/31/2005).

In the spring of 2005, the initial attempts of the Freshmen Task Force to begin carrying out this task were unproductive and frustrating. One Task Force member referred to the deliberations as “painstaking” (S. Weinberg, personal communications, 2006). Another indicated that the Task Force went “around and around” debating whether to focus on freshmen year courses or core courses and even whether or not graduate students should be considered (D.D. Roberts, personal communication, June 29, 2006). The challenges of reaching a clear consensus among a 10 to 15-person committee led the Freshman Task Force, which is a subcommittee of the Faculty Admissions Committee of University Council, to establish an even smaller subcommittee. This was a subcommittee of the subcommittee, which would define critical mass and determine if all minority groups would be included or only some (D.D. Roberts, personal communication, April 14, 2006). Task Force chairperson David Roberts chose the members of the subcommittee to define critical mass. In addition to Dr. Roberts, members of this subcommittee included Nancy McDuff, Director of Admissions, and Robert Gatewood, chairperson of the larger Faculty Admissions Committee. Dr. Gatewood was later replaced at the end of academic year 2005 by Scott Weinberg, a faculty member and incoming chair of the Faculty Admissions Committee.

Task Force members agreed that their approach to defining critical mass would focus on enrollment in a set of core courses typically taken by students at the freshmen level. As David Roberts put it, “We had to determine what subset of courses would give

us the best snapshot of the undergraduate educational experience” (D.D. Roberts, personal communications, April 14, 2006). Nancy McDuff worked with Karen Bauer, Director of Institutional Research, and Del Dunn, Vice President for Instruction, to develop an appropriate subset of courses. A total of twenty-three (23) courses were identified that approximately 80% of freshmen were taking. The idea was that for these courses, as David Roberts indicated, “Ethnic or racial breakdown could be readily monitored over the years, which it would have to be, and it would give us a fair representation of the kind of experience our students were having” (D.D. Roberts, personal communications, April 14, 2006). In addition to a representative sample of courses, an equally important question was how many minorities and what combinations do we have to have across these courses?

The next step was to determine how many students of color were in those courses, breaking the number down by racial and ethnic groups based on self selection of students on their admission forms. Again, Nancy McDuff and Karen Bauer led the analysis of the course enrollments and provided the findings to subcommittee members. The data showed:

- Overall, there were 705 sections of the 23 identified courses reviewed. These ranged in class size from a small English section of four to a large Political Science section of 400. There were hundreds of sections of 20-30 students, especially in the labs and in English and Freshmen Seminar classes.
- None of the large class (100 or more students) had an instance of homogeneous White or European-American enrollments. That occurred most often in the classes with 11 to 30 students.

- The 705 sections included 26,211 student enrollments (not individual cases, as a student may be enrolled in more than one of the classes/sections).
- These enrollments included:
  - 50 persons self identified as American Indian or Native American
  - 1326 as Asian or Pacific Islander
  - 1359 as Black or African American
  - 435 as Hispanic
  - 714 as Multiracial
  - 21,528 as White
  - This group also included 799 enrollments to unknown ethnicity

Of the 705 sections, 186, or 26 percent, included at least two students from at least two different grouping of persons of color (Proposal regarding critical mass of diverse students, Freshmen Task Force, January 12, 2006).

After reviewing this information, the Task Force subcommittee began to consider how to establish an appropriate critical mass such that the learning environment would truly be diverse. Dr. Roberts indicated that the starting point for this discussion among the Task Force members was their consensus around avoiding “solo minorities” (D.D. Roberts, personal communication, April 14, 2006). In summarizing the deliberations of the Task Force around this idea, Dr. Roberts stated:

It concerns the problems that seem to arise when a class includes only one member of a given racial or ethnic group. You don't get the benefits of a diverse educational environment if you have, say, a single African American student in a class of 30. . . . Research suggests that that person feels like he or she is on the

spot, speaking for his or her ethnic group. And the person tends to be perceived that way by the other people in the class. So we wanted at least two members of a given ethnic group so that it's clear that African-Americans, for example, don't have a single African-American point of view. The same, obviously, with Latinos and the other groups. (D.D. Roberts, personal communication, April 14, 2006)

Dr. Roberts' point was that the Task Force wanted to dispel the stereotypes by increasing the number of each minority group in a classroom, which increases the possibility of differing opinions within the racial group as represented in the classroom.

The Task Force defined critical mass by thinking about ways in which they could work toward decreasing the numbers of solo minorities. They ultimately decided that they wanted to see two students from at least two underrepresented minority groups in the majority of the 23 freshmen courses they previously identified as representative of the undergraduate experience. Dr. Roberts stated it in the following manner:

This is something that could be tracked over time, with the goal being the achievement of this two plus two representation in at least 51% of classes in the subset meeting the criterion. At the time of the assessment, 25% of the courses in the subset were meeting this criterion. The Task Force proposed that the University could use this approach as a way to track its progress toward meeting critical mass. At such time that UGA met critical mass, they proposed, it could discontinue the use of race in admissions. (D.D. Roberts, personal communication, April 14, 2006)

Scott Weinberg provided further insight into the committee's thoughts and deliberations. He suggests that the Task Force was initially satisfied with the idea that

two of any one minority group was enough (versus two of any two minority groups).

After approximately a month of additional discussion, he stated, the Task Force came to agree,

Our students really need to go ahead and have contact with more than just one group. So if we're looking at that, we need to have two groups. So now our critical mass became two of two. We started saying well, if two and two is good, how is three groups of two? And then we said well . . . in a small 24-person class, that's 25% of the class. And we just don't have the numbers at UGA to do that. It's just not realistic. So we came up totally amongst ourselves with saying that okay, we've reached critical mass when we have two groups of two people of two different groups. (S. Weinberg, personal communication, May 9, 2006)

This reveals that though the Task Force agreed upon two students from two underrepresented racial/ethnic minorities in the said courses, there was discussion about less or more representation in these courses. The process of defining critical mass was not a simple one, according to Task Force members. The exercise took a substantial amount of time, resources, research, deliberation and commitment. In the end, Task Force members reached a consensus in December 2005 that the above-mentioned approach to measuring critical mass was appropriate for UGA.

*Critical mass versus quotas.* The approach of the Task Force to measuring critical mass included numerical targets. A simple examination of their goals around critical mass reveal that; they indicate that critical mass at UGA is having at least two of any two minority groups in 51% or more of core freshmen courses. My reflection on this goal led me to ask Chairman Roberts if there was any concern among Task Force

members that quantifying critical mass in this manner might lead to accusations that the UGA was utilizing quotas in their pursuit of racial and ethnic diversity. He responded:

Yes, absolutely. We discussed that again and again. . . . As I remember it, and I read the court cases too, it's quite possible to think in terms of numerical targets without establishing quotas. It's a subtle distinction, but surely plausible. Still, we certainly worried about it, though when you read the letter from the [State] Attorney General's Office, you'll see that he seems to be almost mandating us to come up with something specific. We've got to have a specific target so that we can document that we've got a problem and not merely a vague subjective feeling but also so we'll know when we no longer have a problem. . . . The key is that we're not proposing to admit immediately the numbers necessary to reach the target; that would be to establish a quota. We were simply proposing that since we are well short of our target at present, we start taking race or ethnicity into account is a subset of admission decisions. From there we would continue to monitor the subset of courses over the years. When we had reached the target, which could well take a number of years, we would cease using race or ethnicity as a factor in admissions. That seemed to us the way to overcome the Attorney General's key objection. (D.D. Roberts, personal communication, June 29, 2006)

This rationale suggests that UGA believed that it needed to establish a specific manner in which to track the problem on inadequate diversity and its progress in addressing it. The proposal does seem different from a specific quota. However, it would be likely to increase the underrepresented minority population. I base this on the fact that the UGA proposal indicated that 25% of the current courses in the subset meet the criterion for the



two plus two approach, and the institution would utilize race as a factor in admission over time to increase this percentage to 51%. Though the projected increase in underrepresented minorities on campus is not specified by UGA, it seems clear that the proposed approach would lead to an increase of underrepresented minorities on campus. It remains unclear the specific extent of increase that the UGA proposal would attain in terms of an overall percentage of students. It seems unlikely that this approach would increase minority representation at UGA, the state's flagship institution, to levels proportionate the minority representation in the state at-large.

*Freshmen Task Force – Final Recommendations*

On January 12, 2006 David Roberts, chair of the Freshmen Task Force, e-mailed committee members a proposed final draft of the committee's six-page *Proposal Regarding Critical Mass of Diverse Students*. The purpose of the e-mail was to provide committee members a final opportunity to provide any feedback or concerns regarding the committee's proposal. Dr. Roberts e-mail notes:

At our last task force meeting, we agreed that I'd circulate such a revision, and that we could decide from there whether we need to discuss it at another meeting or whether we are ready to forward it to the full Admissions Committee.

Obviously, Nancy [McDuff], Scott [Weinberg], and I feel that it's ready to go, but we want to be sure everyone is on board and that we have made everything as clear as possible. (D.D. Roberts, personal communication, January 12, 2006)

The six-page proposal Dr. Roberts forwarded to committee members indicated that while all areas of diversity are important, the proposal focused on race and ethnicity because

the 2003 US Supreme Court decisions concerning the University of Michigan “focused on specific decisions that must be made if race and/or ethnicity are to be used in admissions selection” (Freshmen Task Force, p. 1, January 12, 2006). The introductory section adds,

In light of our overall concern with diversity, as outlined in our statement “Diversity at the University of Georgia” (approved by University Council March 18, 2004), we must determine, first, what constitutes a “critical mass” of students of color and, second, how to assess our progress towards achieving this critical mass. Such determinations have proven difficult for colleges and universities throughout the country, and no institution has developed a model that we can simply apply here at the University of Georgia. In what follows, we propose a definition of critical mass and a mechanism for assessment that we believe appropriate to our particular situation. But in doing so, we have drawn on the professional literature on educational diversity as well as the considerable discussion. . . of what is and is not permissible in light of the 2003 Supreme Court rulings. (Freshmen Task Force, p. 1, January 12, 2006)

The proposal (Appendix E) goes on to specify (1) the racial and ethnic categories considered under discussion, (2) the premises around diversity that informed Freshmen Task Force deliberations, (3) the data assessing racial/ethnic demographics in core courses for Fall 2004, (4) a definition of critical mass for UGA and an approach to quantifying and tracking it over time. According to Dr. Roberts, the entire committee approved the final draft (D.D. Roberts, personal communication, April 14, 2006). The next step was to present it for approval to the full Admissions Committee and then the

University Council, after which it would have presumably gone back to the University System of Georgia's Office of Legal Affairs and the State Attorney General's Office.

*President Adams Intervenes*

On January 12, 2006, President Michael Adams announced in his annual *State of the University* address (Appendix F) that UGA would not resume its prior policy of considering race or ethnicity as factors in admission decisions. In his address, President Adams provided some background and rationale for his decision. He indicated that the University's strategy of engaging the entire campus community in recruitment had contributed to "very good" freshmen enrollment numbers. He praised those members of the campus community who contributed to the success. President Adams went on to note that UGA went as far as the 11th Circuit Court of Appeals with the *Johnson* case in 2001 in making every effort to maintain as much flexibility as possible in determining how it could admit students. The 11<sup>th</sup> Circuit Court of Appeals ruled the UGA admissions approach unconstitutional. President Adams added, "In 2003, the Supreme Court ruled on the Michigan case in a manner which frankly raised as many questions as it answered and could open us, if followed, to further litigation" (Adams, 2006, p. 4). It becomes evident here that President Adams believes that following the *Grutter* ruling at UGA would lead to additional litigation. It is not known whether or not this would have been the case.

President Adams then thanked the faculty members and administrators who had served on the Freshmen Task Force of the University Council for their efforts in helping UGA to think through an appropriate response to the Michigan decisions. He rendered his decision on how UGA would proceed on the matter of race in admission by stating:

The use of race as a factor in admissions decisions differs, however, from targeted recruitment of students from underrepresented populations. For four years running we have used no racial, gender or legacy preferences in admissions, instead admitting students on the basis of demonstrated academic achievement and some additional file reading, while becoming much more aggressive about recruiting. Given the litigious nature of American society today - the value of a spot in the UGA freshman class is so great that people are willing to sue us to get in - I believe that, after thinking this through carefully and monitoring closely our collective efforts over the past four years, the best course for UGA in the immediate future is to keep the focus on recruiting and enhanced scholarships rather than on questionable legal remedies. In other words, I prefer to spend the available resources on potential students rather than lawyers. (Adams, p. 4, 2006)

President Adams based his decision on three factors. First, he indicated that the litigious nature of society places a heavy financial burden on the institution. Substantial fiscal resources would potentially be lost by UGA in continuing to defend against lawsuits related to race and admissions. President Adams indicated that those resources would be better utilized on students rather than on lawyers. Second, President Adams suggested that the Michigan decisions raised as many questions as they answered. That is, the decisions were somewhat vague in specifying what institutions could and could not do with regard to race and admissions. Third, President Adams indicated that UGA's increased focus on recruitment was, in fact, yielding positive results with regard to racial and ethnic diversity.

Coincidentally and ironically, President Adams' announcement came on the same day that Dr. David Roberts distributed the final proposal of the Freshmen Task Force to the committee for approval. The Freshmen Task Force was at the end of two and a half years of difficult work. All of the time, effort, debate, and consensus building of the Freshmen Task Force could be seen, at its most basic level, as a total waste of resources.

*Reactions to President Adams' decision.* Members of the Freshmen Task Force had varied reactions to President Adams' decision not to move forward with consideration of race in admission decisions. As one Task Force member stated, "Let's put it this way, it's frustrating. It's frustrating to have put in that much effort to pull together what I thought was a legally defensible policy and to not have it [move forward]" (Freshmen Task Force member, personal communication). The same individual, though frustrated by the decision, stated that he understood the rationale that President Adams used in making the decision. He indicated that this seemed to be the general sentiment from other Task Force members involved in this study. My interviews with faculty members support this assertion.

According to Matt Winston, the University spent \$3M in the first lawsuit and additional lawsuits could be expected given (1) the competition for admission to the University and (2) the somewhat vague language of the US Supreme Court in the *Grutter* decision. The Court stated that institutions should exhaust all possible race-neutral strategies for achieving a diverse student body prior to considering race as a factor. During this study, it was not clear what, if any, race-neutral strategies UGA had utilized or exhausted.

## UGA's Governance and Decision-Making

The bureaucratic model has a degree of applicability for UGA, despite the assertion by Baldrige (1977) that colleges and universities are not standard bureaucracies. The bureaucratic model is useful in understanding the hierarchical structure of the institution and positional authority of its officials. The initial response of UGA to the Supreme Court cases was to convene senior administrators to discuss what the university might do. These individuals possess formal, positional authority. In this context, the initial step by UGA to convene administrators was an appropriate.

It is also possible to deem UGA's initial step as appropriate through a political model lens. In the political model, decision makers follow a rational decision framework, whereby policy options are identified and considered alongside the associated consequences. Decisions in this model are subject to politics and interest group pressures. Because the data on the UGA response shows that the convening of administrators was not the totality of the institution's response, it is evident that the initial gathering of administrators was only a first step in the University's response. The engagement of the University Council in responding to the Supreme Court cases was inconsistent with the bureaucratic model of governance. Faculty participation in governance through university senates represents governance by consensus. This approach runs counter to that observed in pure bureaucracies, which leave organizational decision-making to those with expertise and positional authority.

Faculty participation in governance through the University Council at UGA is consistent with the collegial model of governance. Decision-making in this model occurs with the participation of community members, especially the faculty. Authority in the

collegial model is diffused. Organizational management is a shared responsibility. Faculty participation in governance has a long standing precedent that extends back to the late nineteenth century (Duryea, 1973). For example, in 1889, the trustees at Cornell University established a University Senate composed of the president and full professors. This was representative of the trend in twentieth century higher education toward diffusion of governance participation, with greater faculty participation in institutional decision-making (Duryea, 1973). Today, university faculty members serve regularly on standing and ad hoc committees and on university councils and/or senates. Faculty participation in institutional governance is a norm in US higher education. This is the case at the University of Georgia, where faculty outwardly engaged in the institution's response to the *Grutter* and *Gratz* Supreme Court decisions.

The work of the university community, particularly faculty and administrators, led to the development of two proposals for guiding university admissions post *Grutter* and *Gratz*. The first proposal was criticized by the State of Georgia Attorney General's Office as lacking specificity. The second proposal was never voted on by the University Council because President Adams circumvented and nullified the work of the Freshmen Task Force and University Council. President Adams used his positional authority, reverting to the bureaucratic model of governance, to dictate that UGA would no longer continue the use of race in admissions. The reasoning behind President Adams' decision suggests that he approached the issue from bureaucratic and political frames.

The political model of governance leaves decision-making to administrators. Decisions are made through a rational decision making framework in which numerous options are studied and their various consequences weighed by decision-makers. Interest

groups or varied constituencies usually influence decisions in this model. Constituencies in institutions of higher education often include faculty, current students, prospective students and their families, alumni, donors, politicians, and the public at-large. On any given policy issue, an institution can expect varying levels of interest by each of these constituencies. In providing the rationale for his decision on race and admissions, President Adams made reference to some of the above-listed constituencies. He indicated that individuals were willing to sue UGA to gain admission. This reference is evidence that prospective students and their families are a constituency that influenced his decision. These individuals and families are often supported by conservative think tanks. President Adams also referred to a desire to spend limited financial resources on students and scholarships rather than on legal fees. This reference, while seemingly a demonstration of financial responsibility and concern for current students, is a reminder that financial resources are not unlimited.

One of the primary responsibilities of the college president today is securing financial support to meet the needs of the institution. Rates of college enrollment have constantly increased over the past three decades (National Center for Education Statistics, 2005). As a result, institutional needs have expanded over the past century. More than ever colleges and universities need additional faculty and staff, academic and student life facilities and programs, and equipment of all sorts. Today, selective institutions compete with each other for talented students, often utilizing merit-based scholarship packages to attract such students. All of these factors place an increased fiscal burden on institutions to acquire the financial means by which to meet these demands. The college president, as chief executive officer for the institution, must balance the internal and external interests



of the institution to ensure that adequate funding, both public and private, is secured to support the college or university (Duryea, 1973).

There is no evidence in the data collected to indicate that donors, alumni, or state officials influenced President Adams' decision to discontinue the use of race in admission at UGA. However, the conservative political climate in Georgia is well established. President Adams and UGA received notice from the State of Georgia Attorney General's Office that the direction they were proposing through their initial Diversity Statement was on unstable legal footing. There is insufficient data to establish whether or not President Adams' considered potential backlash from these constituencies in rendering his decision.

The seeming disregard by President Adams for the work of the University Council begs the question, why did President Adams and the senior administration engage the faculty in UGA's response to the Supreme Court cases? The participation of the University Council appears to have been ineffective in facilitating shared governance and decision making. The collegial model of governance showed promise during UGA's response, but, as often is the case in higher education, the model collapsed prior to the realization of its ideals (Baldrige, 1977).

The participation of faculty in institutional governance is standard practice in higher education. Birnbaum (1989) estimates that the university senate is present on 60 to 80 percent of all college campuses. In his study of them, he indicates that the clear weight of evidence and authoritative opinion suggests that the academic senate does not work. He notes, "[The senate] has been called weak, ineffective, an empty forum, vestigial, unrepresentative, and inept" (p. 232). Some view it as purely ceremonial. Birnbaum

(1989) helps to clarify the senate's role by providing three criteria for examining its effectiveness: 1) the extent to which it efficiently considers institutional problems and, through rational processes, develops rules, regulations and procedures that resolves them, or 2) the extent to which it formulates goals and policies representative of its constituencies, or 3) the extent to which, through interaction in the senate forum, it develops shared values leading to consensus. Birnbaum (1989) suggests that senates appear to do none of these well.

In this case study at UGA, the University Council was far from efficient, though it may not be solely responsible for its inefficiency. The work of the University Council and Freshmen Task Force required two and a half calendar years. Presumably, it would have taken the University Council a full three years to complete its revision to the initial UGA Diversity Statement and provide recommendations to the President. The slow pace at which the work of the University Council proceeded in this case seems consistent with Birnbaum's observation. He notes, "The committees of the senate report, but usually it has taken so long to study the issue that the matter is long since passed" (Birnbaum, 1989, p. 237). In this case, the University Council was unable to complete its recommendations because any such recommendations would have been moot given President Adams' announcement of UGA's direction on the matter of race in admission.

The work and existence of the university senate in this case, on its face, appears to be a total waste. However, the university senate fulfills certain latent functions that are vital to the institution (Birnbaum, 1989). Among other things, the university senate serves as a symbol. They are symbols of administrators' acceptance of the idea of faculty participation in institutional governance. Inversely, they are symbols of recognition and

acceptance by faculty of the legitimate authority of administrators and governing boards. Thus, the senate is a symbol of cooperation between administrators and faculty. Faculty senates also function as status providers. They bestow higher levels of importance on those faculty members who participate in committee work with high status administrators. It provides opportunities for informal leaders, amongst the faculty, to have their status confirmed. It also provides a channel through which disruptions to administrative work can sometimes be minimized.

The idea of that the senate is a garbage can for decision making is possible as well (Cohen and March, 1986). Following this view, the senate serves as venue for allowing participants, problems and solutions to attach to each other, as if in a large container. This is what is often referred to in organizational administration as the garbage can decision making model). This can lead to increased uncertainty among the body about the most appropriate course of action, due in part to a lack of consensus. Lack of consensus can lead to a sluggish pace in studying the options and arriving at a solution. Often it is not the case that the decision emerges from the garbage can. Often, the decision has been made prior to the issue being raised or the garbage can serves as a venue for infighting that ultimately eliminates some solutions while providing a forum for all members to be heard by their peers. When peers cannot be convinced of the value of certain ideas, it is difficult for resentful faculty members to hold the administration responsible. In this way, the senate also serves as scapegoat.

Universities are organized anarchies, loosely coupled systems with individuals and subunits of the system making autonomous or semiautonomous decisions (Cohen and March, 1986). Institutions of higher education “need structures and processes that

symbolically reinforce their espoused values, that provide opportunities for individuals to assert and confirm their status” (Birnbaun, 1989, p. 241). In this light, the values of academic senates become clearer. Their ability to resolve problems and make decisions is less important when their other latent functions are considered.

### *Governance analysis*

The three models of higher education governance presented have been conceptually useful for this study’s approach to understanding UGA’s organizational response to the Supreme Court decisions in *Grutter* and *Gratz*. Individually, none of the models provides a framework for understanding UGA’s actions. The bureaucratic model is lacking in accounting for the impact of informal powers and influence on organizational decision-making. It does well in describing the structure of the organizations, like UGA, but it leaves much to be contemplated around the dynamic processes that characterize the organization in action (Baldrige, 1977). Further, the bureaucratic model says little about the critical process through which policy is developed. Thus, the model says nothing about the politics within the process of management and decision-making (Baldrige, 1977). UGA should not be portrayed exclusively as a standard bureaucracy, although it exhibits elements of a bureaucracy.

The collegium, as model, is somewhat helpful in UGA’s case. As noted above, it accounts for the maintenance and participation of a faculty senate, the University Council, in governance and decision making. In this study the faculty senate played an integral role in shaping the direction of the institution. It is unclear to what extent President Adams’ engagement of the University Council was a sincere effort to share

authority for decision making. Shortcomings of this model include the fact that it emphasizes consensus without accounting for the exchanges that precede consensus. In this way it fails to adequately acknowledge conflict (Baldrige, 1977). The collegial model reflects an ideal regarding shared governance. It is more a utopian vision of governance than it is a model that accurately reflects practices in higher education.

The political model is helpful in considering the role of social context, including political climate, public opinion, interest group pressures, and other factors. More than the two previous models, the political model has potential for representing the complexity of decision making in higher education. Concepts like power, authority and shared governance take on varied meanings depending on the issue, who it affects and why it's important. Decisions in the political model are often confusing and muddled; it is not always clear who the winners and losers are. Though not totally adequate for explaining governance and decision making, the political model is useful for initiating in-depth analysis of organizational decision making in a context that includes factors both within and beyond the walls of the college or university.

Overall, UGA's response and decision making process raises questions about the viability of the collegial model of governance in higher education. This model is characterized by faculty participation in institutional governance. In this context, the university president is seen as first among equals. The decisions made by UGA in response to the use of race in admissions circumvented participation by faculty. No faculty members were invited by President Adams or senior administrators to provide their perspective on a proposed course of action prior to a final decision. Faculty members engaged in the work of the University Council's Freshmen Task Force

expressed frustration with this fact. UGA's initial decision making process following the Michigan decisions seemed to value participation of faculty in determining the institutions direction around race in admission. However, the value UGA has placed on faculty participation in governance is in question given the exclusion of faculty in charting its current course. It is beyond the scope of this study to establish whether or not this exclusion of faculty is typical institutional behavior or an outlier of sorts. The exclusion of faculty in this case is troubling.

### Summary

In this chapter, I have utilized data to answer my first research question; how has the UGA responded to the *Grutter* and *Gratz* rulings, and how has it justified its actions? I have presented a chronological account of events surrounding UGA's response to the Supreme Court cases. In review, the University of Georgia's response to the *Grutter* and *Gratz* decisions included five actions. First, an ad hoc committee of administrators, which was initially convened prior to the Michigan decisions, drafted two documents. The first document summarized the benefits of diversity in higher education. The second summarized the concept of critical mass. Both of these documents were used by the University Council in drafting UGA's Diversity Statement. This was UGA's second action. Following feedback from the Board of Regents and State Attorney General's Office, the Freshmen Task Force of the University Council worked to elaborate on UGA's Diversity Statement by drafting a proposal specifying how it UGA would operationalize the statement. This addendum to the Diversity Statement focused on defining critical mass.

At the same time that the Freshmen Task Force completed its work, President Michael Adams announced his decision to discontinue the use of race in admissions at UGA. According to President Adams, this decision was based on the success UGA experienced in minority recruitment, absent race-based admissions, as well as the legal challenges that President Adams believed to be imminent with continued race-conscious admissions. Moving forward from that period, UGA's response has been an increased focus on recruitment of students.

Three models of higher education governance provide theoretical guidance in examining UGA's actions. As previously summarized, the bureaucratic, political, and collegial models of governance all have applicability in this case. The most notable concern in reviewing UGA's response is its lack of fidelity in upholding the value of collegiality through a more shared and communicative decision-making process.

In the next chapter, I present my interpretations of how UGA understands race, admissions, and the law, as supported by narratives that emerged from case data. The next chapter examines the rationale for institutional decisions and the broader social context within which UGA made its decisions.

## CHAPTER 5

### ANALYTICAL RESULTS

The University of Georgia's understandings of admissions, race, and the law are reflected in the ways that administrators and faculty members think and speak. Their understandings are reflected in their policy deliberations, statements, documents, and decisions. My interviews with various UGA representatives, as well as my review of relevant documents, revealed distinct views by officials for admissions, race, and the law, respectively. That is to say, UGA officials have particular understandings or assumptions they make about admissions, about race, and about the law. These understandings stabilize and undergird decision making at UGA in its response to the *Grutter* and *Gratz* decisions, where the issues around admissions, race, and the law intersect.

In this chapter I present these understandings. They represent policy narratives around the use of race in admissions at UGA. The narratives provide a basis for institutional decisions. I show that the manner in which UGA thinks about the topics of focus are situated in a broader social and historical context. UGA's understanding of race, admissions and the law has not developed in a vacuum. It has developed in a context where competing arguments make for increased uncertainty about what to do. In this context, there is constant struggle and debate about the problems associated with admissions and the most appropriate solutions. The chapter demonstrates that the issue of race in admissions is complex; for every narrative or argument supporting the use of race



in admissions, there is an opposing and compelling narrative against it. Policy decisions surrounding the use of race in admissions are contradictory and paradoxical. Though they are often well-intentioned, policy decisions may have as much negative effect as positive effect. The chapter illuminates the complexity and uncertainty associated with organizational governance and decision making around the use of race in admissions at UGA. I begin each section by introducing the views of UGA officials on admissions, race, and the law, respectively. I then identify the narratives that support these views and those that represent critiques or counter-narratives.

### UGA on Admissions

#### *Admissions as means to diversify*

The findings in this case also illustrate that UGA views admissions as a means for creating a diverse student body. In this light, admission is a process that supports institutional goals related to diversity. Prior to President Adams' decision to discontinue consideration of race in admissions, UGA's response to *Grutter* and *Gratz* focused on the recruitment and selection aspects of admission to promote racial and ethnic diversity. No other substantive interventions were evident at UGA for promoting racial diversity. This suggests that the admission process is understood by UGA as the primary strategy for achieving its goals related to diversity.

Nearly every aspect of this case illustrates that UGA understands the admissions process as the primary means by which it can establish a diverse student body. This seems reasonable because the admission process dictates which individuals are granted access to UGA and which are not. In this study, institution officials repeatedly expressed

the desire to ensure adequate student diversity, with special emphasis on racial diversity. Most of the work of UGA's University Council Freshmen Task Force was driven by the understanding that admissions decisions and racial diversity go hand-in-hand. Through the Freshmen Task Force, the University sought to create admission policies and practices that promoted racial diversity.

This study previously summarized changes in recruitment practices at UGA following the Supreme Court decisions. UGA initiated these changes with the goal of ensuring adequate racial diversity. President Michael Adams' satisfaction with this approach suggests that UGA was satisfied that its increased focus on recruitment yielded adequate progress in ensuring racial diversity in its student body. The comments of President Adams and the feedback from UGA officials I interviewed all support the notion that admissions is the primary means through which UGA can and will continue to promote diversity. Prior to *Grutter* and *Gratz*, the selection component of the admissions process at UGA (versus the recruitment component currently being used) was a key strategy for promoting racial diversity. The changes to admissions at UGA following *Grutter* and *Gratz* led to the institution's increased utilization of recruitment as the key admissions component for promoting racial diversity.

The finding that UGA understands admissions as a primary means for promoting racial diversity is not surprising. Higher education began its use of the admissions selection process as a primary tool for promoting racial diversity at predominantly white institutions in the 1970s. Affirmative action in higher education was born out of the Civil Rights Act of 1964. One of the early challenges to the use of race in admission decisions came in the *Bakke* (1978) case. In putting forth the swing vote that invalidated quotas but

permitted other types of affirmative action, Justice Powell argued that colleges and universities have the freedom to admit those students that it believes will contribute to a robust exchange of ideas. He further indicated that racial and ethnic diversity are appropriate considerations but only when considered as one of a broad array of factors. Justice Powell's ruling set a precedent that guided higher education admission practices for 25 years. The recent *Grutter* (2003) ruling by the Supreme Court reaffirmed this aspect of Justice Powell's opinion in the *Bakke* case. These Supreme Court decisions promote an understanding of admissions in higher education as a tool for promoting diversity, with racial and ethnic diversity often being a primary focus for institutions. UGA understands the admissions process is closely related to diversity. Next I consider the relationship between race and diversity at UGA.

#### *Admissions as competition*

The data in this case suggest that UGA officials view admissions in at least two ways. The first of these views indicates that admissions are a competitive process among selective institutions for the most talented students. This competition is intense generally but even more so for the smaller pool of academically gifted minority students. The various approaches to admissions that UGA utilizes in this competition include recruitment efforts, scholarship awards and selection policies and processes. Following the Supreme Court's Michigan decisions UGA's efforts to maintain or improve its competitiveness in admissions, particularly around minority recruitment, focused on the recruitment and selection aspects of admissions. Post *Grutter* recruitment efforts at UGA are representative of a shift in officials' thinking about who is responsible for recruiting

students. All stakeholders on campus have a role to play in the recruitment process. Data suggest, as I noted in Chapter 4, that the University has placed an increased focus on making student recruitment a campus-wide endeavor. Though it is not clear that the culture around student recruitment at UGA has totally shifted, certainly the activities and process related to student recruitment has changed.

Interviews with UGA officials indicate that UGA views admissions as a competition among selective institutions. For instance, two different UGA administrators talked about how parents and prospective students make the decision to attend a particular institution among the many they can choose from. Nancy McDuff, UGA's Director of Admission, stated:

An African-American student who has the academic qualities to get into UGA can go pretty much any place they want to go. . . . And if they are being recruited by Tulane and University of Michigan and NYU, they are probably going to ask, who loves me most? Well, who loves me the most may be driven by who gives me the most money, whether I need it or not. It's a signal of being valued. (N. McDuff, personal communication, May 9, 2006)

Ms. McDuff suggests that scholarship offers by institutions to prospective students play a role in students' decisions regarding which institution to attend. Ms. McDuff added that UGA has very limited resources to utilize in awarding scholarships, and the resources the institution possesses cannot be directed toward race-based scholarships. These factors contribute to what she sees as "a fierce competition" for highly qualified prospective students (N. McDuff, personal communication, May 9, 2006). She added that UGA must

approach admissions from three vantage points, from the selection side, from the recruitment side and from the scholarship side.

UGA's understanding of admissions as competitive is spelled out further by Mr. Matt Winston, Assistant to the UGA President. In our meeting, Mr. Winston talked about UGA's initial reaction to the *Grutter* and *Gratz* decisions as focusing on ramping up student recruitment efforts. He stated, "that was our initial response... and that is again, sink the resources into the actual recruitment and marketing of the student. . ." (M. Winston, personal communication, April 24, 2006). Like Ms. McDuff, Mr. Winston also talked about the problem of lack of funds for scholarships. He stated:

The University of Georgia doesn't have the flexible scholarships that many, many other institutions have. And that's a big challenge for us. And it's one of those things where new families use that as a measuring stick of your commitment. It's unfortunate for us, and that's why we've got to keep working on it because it is not the case that we don't want students here. (Winston, personal communication, April 24, 2006)

I asked Mr. Winston why UGA lacks the scholarship dollars that other comparable institutions possess. He suggested that UGA has historically received strong funding support from the State of Georgia. The institution did not embrace a culture of fundraising until recently. He referred to the billion dollar plus endowments of comparable state universities, which give those institutions flexibility to support students in a variety of ways. He provided University of Virginia (UVA) and University of North Carolina (UNC) as two public universities that UGA competes with for students and Emory as a private institution. Their endowments are substantially higher than UGA's,

which has an endowment of approximately \$500 million. In 2005, UVA had a \$3.2 billion endowment and Emory University had a \$4.3 billion endowment (National Center for Education Statistics, 2005). Larger endowments give institutions greater flexibility and resources for admissions recruitment and scholarships. “So that’s what we are competing with . . . and we are competing for the same students” (M. Winston, personal communication, April 24, 2006). Clearly, UGA is aspiring to be viewed as an elite institution, and it must acquire the best students despite limited resources. These circumstances create a difficult environment for policy decisions around admissions.

Admissions in higher education and at UGA can be understood as highly competitive. There are a given number of students in the prospective pool, and there are many opportunities for these students, particularly minority ones, to attend any one of several institutions. UGA is a state flagship institution of higher education. However, it does not have resources on par with other selective state flagships and selective private institutions. Prospective student decisions are informed, in part, by scholarship offers and UGA is at a disadvantage relative to its peer institutions. UGA views this as a disadvantage that it must overcome by focusing more heavily on recruitment.

UGA’s understanding of admissions as a competitive, zero sum game is supported by recent trends in higher education that impact the admissions process. In the US, a “college for all” ethos has emerged due, at least in part, to the belief that the majority of occupations today and in the future require skills that can be acquired only through secondary education (Davies & Hammack, 2005, p. 89). The US system of higher education has transformed into a mass, and increasingly universal, enterprise. Enrollments trends over the past three decades have shown steady increases, with the

greatest increases observed over the past 10 years (National Center for Education Statistics, 2005). Higher education has become larger, less exclusive, and more differentiated and internally stratified (Davies and Hammack, 2005).

The trends involve parents, students, colleges and universities, and industry. More institutions than ever are classified as selective. The average SAT scores needed to enter top institutions have steadily risen in the last decade, and top-ranked students in the US are increasingly concentrated in prestigious colleges and universities (Davies and Hammack, 2005). Increasingly, there is a national market for well-accomplished students and prestigious colleges. There is a growing perception among students and parents that choosing the right college is increasingly a pivotal career investment (McDonough, 1994). These beliefs are reinforced by the college ranking industry, which ranks and stratifies colleges and universities. This ultimately creates and/or reinforces public perceptions of prestige among institutions. Thacker (2007) notes that excessive media interest in the “best colleges” feeds the frenzy of college admissions among students, parents, and institutions. Prospective students increasingly view acceptance into a name-brand college as a prize to be won. As a result, students and their parents strategically engage in tactics that have the greatest potential to improve their profiles when they apply to selective colleges and universities (Davies and Hammack, 2005). These include increased participation in high school advanced placement courses, construction of college portfolios, enrollment in test preparation courses, and the use of private admissions management counselors.

Selective colleges and universities have contributed to the frenzy around college admissions by paying close attention to their rankings. The rankings systems of major

magazines and newspapers are well-publicized, and university administrators are increasingly sensitive to their public images. Institutions have raised admission standards and tuition and fees to ever-higher levels while offering more merit scholarships to attract highly qualified students (Winston, 1999; Thacker, 2007). Between 1981 and 2003, state-funded merit aid grew at a rate of 14.1% per year while need-based aid grew at a rate of only 7.7% (Heller, 2000).

With regard to college rankings, US higher education is composed of several segments, with varying levels of prestige within each. Davies and Hammack (2005) identify the most prestigious segment as including famous Ivy League universities (e.g., Harvard, Yale), elite 4-year liberal arts colleges (e.g., Amherst College, Williams College), and flagship public universities (e.g., University of California at Berkeley, University of Wisconsin). They argue that the current open market in higher education for students, faculty and credentials means that no institution is guaranteed its place in the status hierarchy. Nationwide, colleges and universities are jockeying to acquire the individuals and designations that will increase their public prestige. Despite the existence of an open market for such capital, Davies and Hammack show that substantial movement up or down in the hierarchy is uncommon. They assert that, although the hierarchy is not impenetrable, as evidenced by moderate shifts in research rankings of institutions, there is much stability among the elite, selective institutions. Marginson (2006) also helps us to think about the landscape of competition in higher education. She highlights what she sees as the typical segmentation of competition in higher education. She puts forth three segments of competition, with segment one (1) being the elite



research universities, segment two (2) being the aspirant research universities, and segment three (3) being the teaching-focused college or university.

The Marginson (2006) model is useful in that it provides a categorical framework that allows for placement of institutions into tiers representing selectiveness. One shortcoming of this model is that it does not allow for the possibility that non-research institutions can be thought of as elite or prestigious. This categorizing system misses the elite private liberal arts colleges. I have expanded the Marginson (2006) model (see Figure 5.0) to be inclusive of these institutions, which might include, for example, Oberlin, Amherst, Williams, and other like institutions.

Figure 5.0. Typical segmentation of competition in higher education (adapted from Marginson, 2006)
Segment 1 – Elite Colleges and Research Universities Self-reproducing, combining historical reputation, research performance, and student quality/degree status. Driven by status attraction/accumulation not revenues per se. Non expansionary in size. Limitless ambitions for social status and power. Wealthy. Relatively closed.
Segment 2 – Aspirant colleges and research universities Struggling to live as Segment 1 but unable to break in. Tendency to brain drain of best students and researchers to Segment 1. May engage in selected commercial activities to generate revenues, but not so efficient in commercial terms. Resource scarcity. Semi-open.
Segment 3 – Teaching-focused (university or other) Student volume-and revenue driven. Some are private for profit institutions, or public sector operation with large commercial component, tending to expand. High resource scarcity. Tendency to hyper-market and shaving costs/ quality under market pressure. Open.

Each institution exists within one of these segments. In agreement with Davies and Hammack, Marginson (2006) asserts that firm barriers retard upward mobility of institutions from one segment to another, especially the movement of “wannabees” into

the top segment (p. 8). The segments, with their varying levels of prestige, ensure that degrees from Segment 1 institutions are elite degrees or goods that confer advantages on a select few. As with all competitions, the advantages of winning (admission to selective colleges) are in the gaining of access to the goods being sought. An important point, however, is that the advantage of elite degrees are preserved by the fact that they are denied to most. Said another way, what winners win, losers lose. The next section explores this more explicitly.

#### *Admission as social and economic capital*

The previous section asserted that UGA views admissions as a competition between universities for talented students. In this section I show that UGA also views admissions as a social currency or capital. UGA recognizes that it is the State of Georgia's flagship institution. It is well-regarded by citizens, peer institutions, and employers across the state. UGA implicitly acknowledges the value of admission in its language and documents. The legal challenges the institution faced in years past were about more than simply admission, they were about the social benefits that are attached to a degree from UGA. The institution appears keenly aware of this dynamic. UGA proceeded with notable caution in establishing its approach to admission.

The University of Georgia understands that its granting of admission to prospective students is synonymous with distribution of a commodity, or at least a path to obtaining a commodity. Admission often leads to a degree from UGA, a state flagship and a selective institution of higher education. The data suggest that UGA officials believe that a degree bestows on its recipient a higher status in society relative to those

individuals that have not earned a degree or have not earned a degree from a selective institution like UGA.

The data reflecting UGA's view, that admission is equivalent to the awarding of social capital, is located in two very important documents. The first document is the transcript from President Michael Adams' State of the University Address, delivered January 12, 2006. In this address, President Adams acknowledged the value of a degree from UGA. In talking about the litigious nature of our society, President Adams stated that "the value of a spot in the UGA freshman class is so great that people are willing to sue us to get in" (Adams, p. 4, 2004). This statement suggests that the UGA administration understands quite well the value that society places on admission to and a degree from UGA.

The second document is the UGA Diversity Statement, which was approved by the faculty through University Council in 2004. Among other things, the statement reads, "As part of its duty to prepare students for the public and private sectors, the University of Georgia should ensure that the paths of leadership be open to all" (University Council, p. 1, March 18, 2004). Reflecting back on the US Supreme Court decision in *Grutter*, the Court was very clear about the role of selective institutions in determining the future leaders of our nation. The Court indicated that access to selective institutions has historically led attendees of these institutions to acquire leadership positions at extraordinarily high levels. The UGA Diversity Statement, which notes that "paths of leadership should be open to all," is similar in spirit to the language used by the Supreme Court (University Council, March 18, 2004, p. 1). Both statements, by UGA and the Supreme Court, support the notion that admission to UGA provides access to a social

capital that is recognized and valued by society. It is a currency that society uses to award social status, jobs, and leadership positions.

Others have highlighted the benefits of a college degree generally, and the benefits of a college degree from a selective institution specifically. These benefits are directly tied to admissions. Pascarella and Terenzini (1991) extensively reviewed the literature on private rate of return on acquiring a bachelor's degree. They reported that the private rate of return was between 9.3 and 10.9 percent. Said another way, individuals who attained a bachelor's degree might expect to earn approximately nine to ten percent more per year than those with only a high school diploma. Findings from Pascarella and Terenzini (1991) also show that institutional type and institutional quality exerted an influence on net earnings. A significant net earning advantage accrued to individuals who attended a major research university. Academic selectivity of the institution attended yielded a positive effect on income. Bowen and Bok (1998) examined the impact of attending a selective college and concluded, among other things, that there is a real and substantial wage premium associated with enrollment at an academically selective institution. Perna (2003) also examined annual earning by educational attainment and whether or not observed differences in earnings by educational level were associated with variables other than college attendance. She found that average annual earning vary based on educational attainment, with males having a bachelor's degree earning \$12,570 per year more than those who had a high school diploma. For women, the difference in earning was \$9,406. Both Perna (2003) and Pascarella and Terenzini (1991) assert that 79% of the observed difference in earnings is directly attributable to attaining a bachelor's degree versus other factors (e.g., ability, motivation). These findings affirm

the common understanding at UGA that admission provides access to social and economic capital. It is the case that selective institutions, like UGA, confer advantages on some by denying them to others. Understood in this context, admission and the college degree become a currency, and prospective students must position themselves to increase their chances of obtaining it.

### Counter-narratives on Admissions

The dominant narrative that emerges from analysis of UGA's approach to admissions is the view that institutional decisions regarding admissions are based solely on the merits of the applicant. For all levels of education in the US, merit is synonymous with grade point averages and achievement tests. Hence, these are the most appropriate measures with which institutions should assess the qualification of applicants for admission. While UGA purports to value diversity of all sorts, it does not consider diversity factors in reviewing applicant files. UGA makes admission decisions based on demonstrated academic achievement. If UGA considers factors unrelated to academics in making admission decisions, they do not explicitly state what those factors are or how they are weighted in admission decisions.

A closer look at the narrative around admission and merit shows that secondary schools and achievement tests (e.g., the Scholastic Aptitude Test) act as sorting mechanisms, categorizing students according to scores and demonstrated talent. As this narrative's logic goes, students that work hard and apply themselves to their studies will, accordingly, obtain the best grades and test scores. In this philosophical orientation, schools create a meritocracy, a hierarchical social structure organized by ability. The

orientation assumes that no external impediments stand in the way of success for able, hard-working individuals (deMarrais and Lecompte, 1999).

The basis for a narrative around merit can be thought of as resting on the foundation of functionalist sociology and its perspectives on the purposes of schooling in society. According to functionalists, educational systems are one of the structures that serve to transmit societal values, norms, skills, and attitudes from one generation to the next (Parsons, 1959). Schools, for instance, perpetuate the accepted culture. The concept of an accepted culture implies that there is social consensus around the values, attitudes, and behaviors that should be transmitted. Schools contribute to stratification of individuals according to capacity and qualifications such that society will be best served. The most important positions will be filled by the most qualified individuals (Davis and Moore, 1945). Conflict is incongruent with consensus, and therefore it is not desirable in society. It is something to be avoided. When conflict does occur, society takes the necessary steps to establish a new consensus. Functionalists assume that there is consensus on how power is used and to whom it is allocated. They view the social system as benign and accept existing class structures as appropriate (deMarrais and Lecompte, 1999). In their view, schooling serves to reinforce the social order. The functionalist perspective is synonymous with American egalitarian notions of equal opportunity and fair play. In such a social system, individuals can control their social and economic fate through hard work and preparation. The functionalist narrative claims that our society is a meritocracy. Indeed, the idea seems to have broad appeal when reflecting on, for example, the practices of our educational system. The functionalist narrative around merit has not gone unchallenged.

### *Critique of meritocracy*

Theorist including Marx (1998) and Dahrendorf (1989) put forth Conflict Theory to challenge the functionalist perspective and narrative. Their perspective suggests that the ideas espoused in the dominant narrative around college admissions, that of a meritocracy, are mythical. Conflict theorists assert that tensions in society characterize social organization and that these tensions are the result of irreconcilable clashes along economic and cultural lines over power (deMarrais and LeCompte, 1999). Inequality over property and resources is the primary source of conflict. To the extent that educational institutions are linked to future economic opportunities, they too are institutions in which conflict is likely to play out.

According to deMarrais and LeCompte (1999), conflict theorists were the first to establish that educational attainment of males in the US was a good predictor of their socioeconomic status.

They further noted that the educational attainment and socioeconomic status of sons tended to be the same as that of their fathers, indicating that status seemed to be inherited rather than transcended. Thus, the system of class status seemed much more rigid than the egalitarian ideology that America purported.” (p. 11)

Individuals’ interaction with the educational system is closely related to placement in the labor market. Conflict theorists assert that the educational system reproduces social status among the populous.

The work of Rist (1970) found that schools and teachers tend to magnify class differences by sorting students into groups according to social class rather than based on ability. In this way, schools show a tendency to push lower income students into

occupational niches based on their social class. The result is that initial class differences are reinforced by schools, such that students from lower class families are relegated to lower class jobs while middle and upper class youth are provided with the opportunities, support and resources to ensure a mid-level to high social position. In addition to this reproduction of social position, the dominant class (i.e., white, middle class, males) controls the major social and political institutions and utilizes them to ensure that their social position is not threatened.

*Cultural capital.* The educational system, which includes formative schools as well as colleges and universities, transmit and reproduce social class (Bernstein, 1977; Bourdieu, 1977). The concept of cultural capital explains the transmission of cultural and economic wealth. Cultural capital includes language, social roles, cultural background, knowledge, and skills passed from one generation to the next (Bourdieu, 1977). These are forms of knowledge that distinguish one group from another. Cultural capital differs according to social class. It is a resource, and, as with other resources, the value of a specific form of cultural capital varies. Value is directly related to who possesses the capital and how much of it they possess. The most valuable forms of cultural capital are those possessed by the dominant culture (Bourdieu, 1977; deMarrais and Lecompte, 1999). It could be said that the exchange rate for cultural capital from the dominant culture is higher than for other groups. For primary and secondary education, differential treatment of students according to social class would certainly facilitate reproduction of cultural capital and social class. For instance, if students are grouped exclusively with other class alike students, the cultural capital one brings to school is the only capital one will ever obtain at school.



In higher education, cultural capital is useful for understanding competition among institutions and among students seeking admission. Indeed, Bourdieu (1977) and other conflict theorists provide assertions that critique those of functionalists, regarding how social class and the educational system structure society. Specifically, conflict theorists critique the ideas espoused by functionalists that our society is a meritocracy. From their perspective, institutions of higher education are not simply awarding admission to those that have earned it. They acquire certain individuals who in most cases possess a high currency or cultural capital. Markers of such cultural capital include high grade point average in combination with high achievement test scores. But why do institutions see these students as prized and vice-versa? It may be that when institutions acquire the most highly sought after students, they increase not only their prestige but also their power to bestow this prestige on others. These are individuals the institution chooses. Stated differently, institutions of higher education seek to acquire prestige so that they become empowered to selectively award it to those that “earn it.” In higher education, a college degree is a form of cultural capital. The value of a degree varies depending on the prestige that is attached to the degree, which is a function of the selectivity and elite status of the institution granting the degree.

### *Summary*

Competition among institutions for the “best” students and between students to get into the “best” colleges feeds a cycle of reproduction of social class. Prestigious colleges can only become prestigious if they find ways to entice or continue enticing those students who have the best grades and scores to attend their institution. Once a

college or university becomes known as prestigious or elite, its capital (i.e., a degree) becomes more valuable, and it becomes more powerful. Clearly, when colleges and universities award degrees, they are granting individuals access to a social, economic and cultural capital that is not commonly held. Put simply, the value of a degree varies depending on the prestige that is attached to the degree, which is a function of the selectivity and elite status of the institution granting the degree.

The point that I emphasize here is that the idea that US society is a meritocracy is a fallacy. Without access to cultural capital and opportunities, the hardest lower class individuals will, on average, have a difficult time ascending to the upper levels of the social hierarchy. The widely accepted notion that either US society or the educational system is a meritocracy results in reproduction of social class and power.

These narratives are representative of differing philosophical orientations related to the purposes of education in society. The tenets of these theoretical orientations provide the foundation for previously discussed understandings around admissions, but they also inform the narrative constructions on race and the law presented in the balance of this chapter.

### UGA on Race and Diversity

Interviews with UGA faculty and administrators and my review of relevant documents suggest that UGA understands race in several ways. First, race is understood in a historical context. That is to say, UGA officials recognize the unfavorable track record of the institution in providing access to racial minorities. UGA officials acknowledge the institution's history of racial segregation, and they understand that they

are constantly under the microscope of minorities, the media and the general public around this issue. UGA understands that it has a legal obligation, and maybe a moral one as well, to ensure that the institution is accessible to all groups, especially racial and ethnic minorities. One administrator very candidly stated, “We know what our history is” (M. Winston, personal communication, April 24, 2006). Another acknowledged that UGA, a 220 year-old institution, had only been integrated for approximately 45 years. “[We have] such a long history that’s hard to overcome” (personal communication).

According to Nancy McDuff, UGA’s admissions policies are guided by its current goal to create a diverse educational environment. My analysis of the data suggests that the university’s philosophy to promote racial diversity does not appear to be justified in terms of retribution or compensation for past wrongs (i.e., racial discrimination and segregation). Rather, the promotion of racial and ethnic diversity is justified as a strategy to create a diverse educational environment. Thus, UGA understands race as an important component of institutional diversity. This understanding appears distinct from the institutions understanding of its history regarding racial segregation.

UGA emphasizes the value it places on race as a part of institutional diversity in interviews and documents. Scott Weinberg, chair of the Freshmen Task Force, stated, “What we’re trying to do at the university is provide good experiences for our students, and real world experiences” (S. Weinberg, personal communication, May 9, 2006). The UGA Diversity Statement also provides good insight into UGA’s view of race and diversity. According to the statement,

[UGA] has a duty to prepare its students to function effectively, to be leaders, and to be citizens of the state, region, and nation. Part of this duty is to prepare

students to work in a diverse environment. This duty includes an obligation to expose students to a robust exchange of ideas within a student body representing the greatest possible variety of backgrounds (University Council, p. 1, March 18, 2004).

This statement suggests that diversity at UGA is important because it promotes interaction between students of diverse backgrounds and prepares them for future leadership roles and/or future roles in a diverse workforce.

Much of the literature on diversity in recent years has focused on the educational benefits of diversity, particularly for white students. Studies and review of this nature have attempted to assess the impact of increased diversity on a host of outcomes, including cross-racial understanding, tolerance for diverse perspectives, and interactions with individuals of a different race or ethnicity (e.g., Pike, Kuh et al., 2007; Kuklinski, 2006). The purpose of this research was often, if not always, aimed at providing an evidence base to support the continued use of race as a factor in admission decisions. Accordingly, much of this research was used by the defense attorneys for the University of Michigan in the *Grutter* and *Gratz* cases.

The University of Georgia has embraced these studies, as reflected by their use of them as a starting point for their efforts to develop a race conscious admissions policy following the *Grutter* (2003) and *Gratz* (2003) decisions. The dominant narrative here is that diversity is a compelling interest worth pursuing through race-based admission policies because a diverse student body increases the interaction between students of different backgrounds. Such interaction promotes greater tolerance and understanding, among other things. As this narrative's rationale goes, it is critical that today's students,

who must work in an increasingly globalized environment, graduate with an understanding of different viewpoints than their own. The prevailing understanding of admissions throughout higher education over the past three plus decades has been one that places the admissions selection process at the center of efforts to promote diversity amongst the student body. The University of Georgia's understanding is consistent with this predominant thinking in higher education.

In promoting racial diversity, what is it that UGA expects will occur when students of different racial and ethnic backgrounds attend college together? Does UGA attach difference to race and ethnicity? It is reasonable to deduce from UGA's Diversity Statement that the institution expects to increase the differences among students with its diversity statement and admissions policy. These will be differences in race (i.e., skin color), as well as linguistic characteristics, geographic origin, and experiences. The summary of racial and ethnic diversity in UGA Diversity Statement reads:

The proportion of students of color (African American, Latino, Asian American and Native American) at the University of Georgia is small enough that students are likely to be a "solo minority" or part of a very small group of students, particularly in the small non-lecture format classes where their contributions to discussion are most valuable. As Gudeman has pointed out, research in social psychology has demonstrated that "A solo is more likely to be objectified and treated as a representative of a category than as a unique person." (University Council, p. 1, March 18, 2004)

The statement goes on to indicate that race-neutral alternatives have failed to achieve the critical mass of racially and ethnically diverse students to achieve a rich learning

environment. These statements suggest that UGA recognizes that solo minorities are categorized or maybe even stereotyped into the racial group to which they belong. They are not viewed by classmates as individuals independent of their racial group. It seems then that UGA seeks to reduce the number of solo minorities by increasing the number of minorities on campus. In doing so, the institution expects to provide white students with increased opportunities to observe the differences in opinions and perspectives that exist among minorities. UGA wants to dispel the myth that, for example, all black or African-American students think alike.

The initial UGA Diversity Statement stopped short of specifying how the institution would remedy the problem of inadequate minority enrollments using admissions selection. This is the primary reason that the State of Georgia Attorney General's Office asked the University System of Georgia to suggest to UGA that it further define its Diversity Statement to specify how it would operationalize its Diversity Statement. UGA justifies its diversity goals by pointing to a body of literature that highlights the educational benefits of racial diversity. The evidence base in this literature was robust enough to convince the US Supreme Court of the benefits of diversity. Overall, UGA's promotion of racial diversity is premised on the idea that diversity enriches the learning environment and promotes cross-racial understanding. Implicit in this narrative is another understanding of race, one that views it as a signifier of differences among individuals. Next, I examine the narratives and critiques that run counter to UGA's understandings of race and diversity. To be sure, the existing critiques of affirmative action may be innumerable. My goal in the next section is not to provide

an exhaustive review but rather to highlight some of the relevant counter-narratives and critiques.

### *Race in Context*

Both political conservatives and progressives have put forth narratives and critiques of policies that utilize race as a factor in admissions. Before examining those narratives and critiques, it may be useful to briefly examine the context around race in the US that informs the subsequent arguments. By looking back at the origins of race as construct, the narratives and critiques presented by conservatives and progressives may be better understood by readers.

Though the construct of race existed as early as the 16<sup>th</sup> century, the assignment of individuals to race groups as a way to structure society became prevalent in the US in the 17<sup>th</sup> century. The understanding by Europeans of indigenous people as savage or primitive dictated that they classify such individuals as inferior (Smedley, 2005). Blacks were enslaved to further the social and economic goals of wealthy whites, and the use of racial categories was a means by which to establish social position. In the latter part of the 18<sup>th</sup> century, ideas about racial difference and scientific origins began to emerge. Smedley (2005) suggests that even Thomas Jefferson contributed to this trend in writing about the character of the Negro in *Notes on the State of Virginia*. By the early 20<sup>th</sup> century, intelligence testing became a particular interest of scientists.

During the early 20<sup>th</sup> century, the eugenics movement became popularized in the US. Mainstream eugenicists applied the discoveries of Austrian horticulturalist Gregor Mendel (1822-1884), regarding the transmission of traits in peas, to humans. Eugenicists

promoted the idea that human characteristics, “such as pauperism, a tendency to wander, moral laxity and feeble-mindedness, to name a few, were transmitted from generation to generation in predictable Mendelian ratios” (Selden, 2000, p. 235). The only way to promote human improvement, given the genetic transmission patterns, was to implement policies that manipulated the heredity of the populace. It is the idea that the best should marry the best, and procreation among the inferior should be limited through sterilization (Selden, 2000). For decades progressive scholars have worked to discredit the widespread belief that race was an indicator of biological and genetic differences. The discourse of eugenicists tended to empower the already powerful, while disenfranchising those who had, what Selden terms, the least “social purchase” (p. 236). Selden shows that eugenicist thinking was popular in the US. The impact of such thinking has been the normalization of blacks as abnormal, lacking intelligence, delinquent, and criminal.

In the latter half of the twentieth century, some psychologists reinforced eugenicists’ rhetoric, at least in part, by asserting that racial group variation on intelligence tests reflected genetically determined differences in group ability. Their conclusions were that descendants from Africa were intellectually inferior to European descendants (Smedley, 2005). Recent advances in genetics disprove this assertion. Racial categories and characteristics were used by eugenicists and others who had the power to create knowledge as a means of justifying social inequality as something that was natural (Smedley, 2005).

Today, the consensus among scientists in numerous fields of study is that race is not genetically discrete or scientifically meaningful (Smelden, 2005; Selden, 2000). Yet,



the idea that racial differences exist persists. Smedley suggests that ideas about inherent racial differences are embedded in the US social psyche. She notes,

Race essentializes and stereotypes people, their social behaviors, and their social ranking. In the United States..., one cannot escape the process of racialization; it is a basic element of the social system and customs of the United States and is deeply embedded in the consciousness of its people. Physical traits have been transformed into markers or signifiers of social race identity. (p. 22)

As a result of this context, race as difference is taken as a given. It goes unquestioned.

Earlier in this study, I highlighted the denial of access to higher education that minorities had to overcome in the mid-to -late twentieth century. In recent decades, institutions of higher education in the US have made efforts to increase access to higher education by utilizing race as a factor in admissions. UGA utilized such an approach prior to 2001. But does the continued use of racial categories, as a way of categorizing and understanding individuals, support stereotypes, which always cause harm? Stated differently, is the continued use of race in admissions beneficial to underrepresented minorities or does it unintentionally hurt them by reinforcing racially based understandings as natural. Clearly, the establishment of differences as racially based has been historically used by those whites intent on maintaining social inequality.

#### Counter-Narratives on Diversity

On one side of the debate, some aim to ensure traditional categories of merit as the only criteria by which admissions selection is based. Narratives and critiques by those in this group often focus on reverse discrimination and colorblindness. On the other side,

progressives have taken issue with diversity as a rationale for admissions decisions. Their critiques have focused on the contradictions implicit in arguments for the use of race in admissions. Progressives have sought to highlight the idea that perceived social differences, like those associated with race and ethnicity, are social constructions. The continued use of racial categories may be counterproductive. There is also a need to assess the assumptions on which diversity policies rest. The sections that follow present the narratives and critiques related to these ideas.

### *Reverse discrimination and colorblindness*

Political conservatives have been very critical of efforts to use admissions as a means for promoting racial diversity. According to them, race should not be a consideration in admission decisions. The process of admissions should focus on selecting the most qualified prospective students. In their view, qualifications are based on merit, which is another way to say academic performance, understood as grade point averages and SAT scores. Those that work hard will succeed. They argue that any effort to explicitly consider race as a factor in admission decisions is reverse discrimination. Their attack on affirmative action is a combination of a critique and a counter-narrative.

As a critique, conservatives opposed to affirmative action have labeled it reverse discrimination. Nunn (1974), for instance, suggests that though blacks were subjected to discrimination in the past, the compensation for those injustices is simply correction of bad practices, like Jim Crow policies. If institutions use race in awarding jobs or educational admission it makes the initial error twice as bad. Lynch (1990) conducted research in the mid-1980s that highlighted the white male “casualties” of affirmative

action programs (p. 90). The purpose of such arguments is to unsettle the arguments that support the use of race in admissions or hiring decisions.

Closely connected to the reverse discrimination critique is the counter-narrative of colorblindness. It builds on the reverse discrimination critique, which positions whites as innocent victims, in an effort to supplant affirmative action narratives with a more compelling narrative. They frame Civil Rights legislation as being focused on ensuring that all citizens are treated equally regardless of race, rather than as a legislative intervention aimed at protecting the rights of those subject to recurring racial discrimination (Connerly, 1996; Eastland, 1996). In 1996 California voters passed a referendum banning the use of race in admission for their state. Ward Connerly (1996), the chairman of the Yes on Proposition 209 campaign, noted, “We ended our season of denial that different standards were being applied to our citizens based on race, gender, and ethnicity. We rejected the premise that race still matters, that America is a racist nation” (p. 65). These kinds of arguments have been particularly effective in destabilizing affirmative action.

### *Diversity naturalizes difference*

Current studies on diversity in higher education focus on identifying the effects of diversity on students and society at-large (Bowen & Bok, 1998; Gurin et al., 2002; Pike et al., 2007; Hurtado, 2005; Kuklinski, 2006). Many, if not all, of these studies have been part of a well-established strategy for establishing the benefits of diversity with the overarching goal of maintaining the use of race in admissions. This strategy is nowhere more evident than in the legal strategy utilized by the University of Michigan lawyers in

the *Grutter* and *Gratz* Supreme Court cases. The UGA approach to diversity is also grounded in the findings from these studies. I previously showed that UGA's Freshmen Task Force went to great lengths to propose a method for measuring and monitoring the institution's racial diversity to determine whether or not it was sufficient. Maybe this was the appropriate course of action given that the Supreme Court ruling in *Grutter* suggests that institutions have a consistent method for assessing progress. The assumptions of UGA's approach to such measurement will be examined in a subsequent section. Next I present some critical questions for contemplation regarding the continued fixation on measuring diversity and its benefits.

The use of diversity as a rationale for affirmative action has become the norm. Baez (2004) has termed this approach as the "social-science strategy," with its sole focus on empirical verification of the benefits of diversity (p. 287). Baez is critical of the social-science approach. He argues that this strategy, with its focus on reducing individuals to biological characteristics for the purpose of study is flawed. Such studies reduce individuals to racial or ethnic categories for the purpose of study. The underlying narrative is that individuals are racially different (Baez, 2004). If we situate this narrative in a broader historical context, simply considering the information previously presented in this paper, it becomes evident that the social-science strategy naturalizes differences as racial in origin. The strategy keeps alive the long standing genetic and biological understandings of race. The social-science strategy ultimately, "produces and naturalizes racial differences, legitimates the institutional processes that use them, and ensures their continued relevance in organizing society" (Baez, 2004, p. 286). That is to say, the current research aimed at verifying the benefits of diversity gives continued significance

to race as construct and the idea that differences are racially or biologically based. This contributes to the continued use of racial categories as a means of structuring social life. Rarely will this benefit underrepresented minorities. Rather than questioning or unsettling the previous discourses around racial differences, the current social-science strategy actually mirrors them (Baez, 2004). Indeed, this is troubling.

Yet, we must recognize that the social-science strategy is not only aimed at increasing racial diversity for the benefit of white students. It also seeks to promote a more equitable distribution of social capital, which is understood as access to selective institutions. The efforts of social scientists have the potential to decrease the material effects of race-meanings (e.g., discrimination, lack of access to resources, etc.) (Baez, 2004). Nonetheless, there may be counterproductive, unintended consequences to such a strategy. Appropriately, Baez (2004) utilizes the contributions of Said (1978), who helped us understand that what we hear and read about people or cultures with which we are not familiar influences what we expect to see or experience. These expectations lead us to see what we have read and come to expect. It is the case then that texts and the attitudes attached to them, create the reality that they appear to describe (Baez, 2004). The issue with studies of the social-science strategy for diversity promotion is that they provide written evidence of the benefits of diversity for consumption by others. These studies, while well-intentioned, add support to the discredited idea that difference is racial and biological. These studies are broadly disseminated and consumed as was observed in the *Grutter* and *Gratz* cases. The result is that such written evidence structures what we expect to see and, accordingly, what we actually observe and experience. Baez (2004) notes,

Certainly, that race differences can be studied with regard to educational benefits means that such differences do not always signify something bad; but in taking for granted the fact of those differences, these studies perpetuate the idea that they always signify something essential about individuals.” (p. 301)

The studies fail to account for the possibility that differences may be social or cultural constructs, not biological productions. Even as it seeks to supplant previous racist meanings given as biological difference, these studies represent an approach to understanding individuals that actually reproduces such individuals.

The University of Georgia’s approach to promoting and understanding diversity is consistent with the social-science strategy. Clearly, proponents of this strategy are supporters of equal opportunity and access for minorities in higher education. Nonetheless, there may be unintended consequences associated with this approach. Hence, it warrants further consideration.

In the debate around diversity in higher education, it is evident that institutions make assumptions about the significance of race. For example, being black and attending schools with whites means that majority white students will learn something about people who are different from them. The implicit message here is that black students and white students are different in some meaningful way simply because they have different skin color, say nothing of commonalities in other more meaningful and potentially common characteristics. These might include cultural, religious, or political characteristics, to name a few. Unfortunately, many of these characteristics rarely, if ever, enter the discussion regarding diversity in higher education. The critique of the current diversity

strategy among institutions provided here, that individuals are racially different, raises critical questions for decision makers at UGA and in higher education.

*Diversity's unstable assumption*

In the previous section, I presented a critique of diversity that suggested that fixating on racial characteristics of the student body may have unintended negative consequences for minorities. In this section, I briefly restate UGA's approach to measuring critical mass, and I examine the stability of the assumptions that it makes about diversity and critical mass. The critique that follows suggests that the assertion that diversity helps students who are different to learn from one another should be, at the very least, reconsidered.

In January 2006, when President Michael Adams announced that UGA would no longer consider race in admission decisions, the Freshmen Task Force of the University Council had just completed its work in outlining how UGA would operationalize the race-focused component of its Diversity Statement for admissions policy. Their proposal to operationalize the measurement of critical mass among the student body was previously summarized in this study. Briefly restating it, the recommendation of the Task Force regarding defining and operationalizing critical mass suggested that UGA could be said to achieve a critical mass of racial and ethnic minorities when "students have courses with at least two students from at least two different groupings of persons of color 51 percent of the time" (Freshmen Task Force, p. 4, January 12, 2006). This measure of critical mass would have allowed UGA to annually monitor its progress toward achieving critical mass.

It appears plausible that with this policy recommendation, the Freshmen Task Force was attempting to begin unsettling the false assumptions that students, and the broader society, make about individuals according to their race. The Task Force was attempting to put a policy in place that would have ensured a minimum of two racial or ethnic groups with at least two members each in the majority (51%) of freshmen core courses at UGA. Members of the Task Force have acknowledged that with this recommendation they were implicitly making several points. First, a single minority in a classroom does not equate to racial diversity. Second, a single minority individual becomes subject to intense pressure to speak for his or her entire race. Furthermore, the individual's opinion is often interpreted as representative of the entire race, rather than as that of a unique individual. Since there is only one minority in the hypothetical class, there is no opportunity for class members to potentially learn that all members of a given minority group do not necessarily have consistent opinions on any given topic. The Freshmen Tasks Forces' proposal to measure critical mass was focused on promoting greater understanding between students from different racial and ethnic backgrounds, with particular emphasis on the benefits to white students.

Indeed, white students may benefit from having a greater number of minorities in the classroom and on campus, but the full degree of any such benefit is not fully understood. It may also be that the purported benefits to white students rest on unstable assumptions about how majority and minority students communicate. Using Bourdieu's (1977) notion of cultural capital, I question the extent to which minorities feel comfortable engaging with white classmates and sharing their perspectives about the world.



Our current thinking about diversity, as the UGA case illustrates, rests on the idea that the educational experience and outcomes of students are enriched by how and with whom they attend college. As the thinking goes, the classroom becomes a more potent learning environment when it is diverse because students of differing racial/ethnic backgrounds can engage in dialogue that enriches their understanding of one another. On average, minority students are more likely to come from working-class families. Casey (2005) suggests that far less talking takes place in working-class homes than. Her assertion is supported by Bernstein (1977), whose work on linguistic codes ties closely with Bourdieu's notion of cultural capital. Bernstein found that children from lower class families were exposed to far less verbal communication, and, further, the linguistic structure of their communications were far less complex than those of children in middle and upper class families. Bourdieu (1977) suggested that language, social roles, cultural background, knowledge, and skills are passed from one generation to the next and that these elements equate to cultural capital. He argues that acquisition of this capital is critical to reproduction of social class.

In thinking about the basis for arguments for diversity policies, the irony is that current diversity initiatives in higher education "place a premium on discourse" (Casey, 2005, p. 34). Working-class students may be least likely to speak up in class given that they are most likely the ones least familiar with the norms of the academy. However, this is the model that that higher education has embraced. Casey (2005) notes,

For working-class students, an inability or unwillingness to crack the cultural code that demands their speech, coupled with the sometimes acute embarrassment associated with their particular brand of difference, may result only in continued

silence. . . . What is to be gained by speaking about or through a less privileged experience in a selective college setting? (p. 34-35)

In addition to this point, education has long been seen as a means of social mobility. Those from working-class families aspire to do better than their parents did. College attendance is associated with more prestigious careers, economic advantages and better quality of life (Pascarella and Terenzini, 1991). Working-class students often attend college to pursue the status that some of their middle and upper-class peers, most of whom are white, take for granted. Working-class students often see their personal experiences as irrelevant vis-à-vis the experiences of their peers and the life they are pursuing.

If this is the case, working-class pride would have no place in academia, which is set up to instill superiority and training for white collar occupations. Given these variables, it is reasonable to believe that working-class students might prefer to fit in and adopt dominant culture norms and ideas rather than differentiate themselves for the purposes of informing or educating the dominant culture students on their differing opinion. By sitting quietly and watching in classroom setting, the working-class student reduces the risk of exposing potential lack of academic preparation or awkward details of a personal nature (Casey, 2005). The current diversity discourse fails to recognize that traditionally disadvantaged groups do not stand in equal relation to the enterprise of higher education, and thus cannot be made to serve equally the purposes of a diverse academy. “Let’s be clear: the working-class student’s difference, implicitly constituted as lack, is what college is designed to erase” (Casey, 2005, p. 35).

The examination of the diversity discourse in the context of working-class students reveals that the use of diversity and critical mass, as proposed by UGA's Freshmen Task Force, may overlook certain types of differences and/or fail to consider the implications of those differences in the context of selective colleges and universities. The current ways of thinking about diversity may allow institutions to sidestep dealing with some of the more difficult dimensions of difference, like class. In maintaining their current understanding of diversity, institutions run the risk of diversifying only in the ways that least threaten their established modes and ideals (Casey, 2005).

### *Summary*

This section presented counter-narratives and critiques on UGA's narrative that student diversity enriches the learning environment and promotes cross-racial understanding. The section included three critiques and one counter-narrative to UGA's narrative around diversity, admissions, and race. The compelling counter-narrative of colorblindness was closely related to the critique of reverse discrimination. Together they have been an effective narrative for opponents of race conscious admissions as they have worked toward unsettling affirmative action in college admissions. The section also provided critiques of diversity which suggested that a fixation on measuring and tracking racial composition ultimately leads institutions to naturalize differences as racial in origin. The final critique questioned the applicability of a diversity model that privileges the exchange of perspectives between students. It suggested that working-class students may be more likely to abstain from any activity that leads classmates to analyze or dissect personal information that may be underappreciated by mainstream students.

## UGA on the Law

In this case study, the most common occurrence across the data is UGA's use of the law as a guide for its response to the *Grutter* and *Gratz* decisions. UGA officials made frequent references to the law as guiding force during interviews. This is not surprising because the issue of race in admissions became a topic of focus at UGA as a result of legal actions against UGA. Thus, the questions being examined by the institution are legal ones, at least in part. The data shows that the individuals engaged in UGA's response viewed the law as bounding and guiding the possible responses of the institution to *Grutter* and *Gratz*. This included the Supreme Court decisions, as well as the feedback UGA received from the State Attorney General's Office through the University System of Georgia Central Office. Both directly influenced UGA's response.

The initial response by UGA around this issue was based on the Supreme Court decisions. Interviews with the individuals responsible for UGA's response provide insight into the role of law in UGA's response. Dr. Robert Gatewood, chair of the Faculty Admissions Committee in 2004 and 2005, indicated in our conversation that UGA and the Admissions Committee were awaiting the Michigan rulings, and once published UGA began to consider them as it developed a new admissions process (R. Gatewood, personal communication, May 23, 2006). Professor Scott Weinberg, a member of the Freshmen Task Force in 2004, also referred to the Supreme Court cases. He stated, we wanted to make sure that what we were doing was not in opposition to the Supreme Court's ruling" (S. Weinberg, personal communication, May 9, 2006). Mr. Matt Winston started his description on UGA's response by stating, "Well, I will start by saying or sharing what our interpretation of the *Grutter* and *Gratz* cases were" (M. Winston, personal

communication, April 24, 2006). These statements reflect an understanding of the law as bounding the institution's possible responses.

This case study has previously communicated that the State of Georgia Attorney General's Office was involved in critiquing UGA's initial Diversity Statement. The feedback of the Attorney General's Office provided direction to UGA's response. Dr. David Roberts, Chair of the Freshmen Task Force from 2004-2006, indicated that his task as chair was to lead the Task Force in a review of the feedback from the Attorney General's Office and find a way to address the concerns it outlined. This view of the role for the Freshmen Task Force was further supported in the majority of my interviews with UGA officials. These responses seem reasonable because UGA had been engaged in costly litigation on this issue. It seems reasonable that UGA would utilize the opinions of the Supreme Court judges and the State's Attorney General to develop an appropriate response. Overall, these actions by UGA suggest that institution officials view the law as a governor of institutional policy.

The data in this study did not reveal any point at which UGA officials questioned the moral or legal bases of the Supreme Court rulings. Institution officials and committees posed questions about the appropriate process for admissions or whether or not race should be considered as a factor in admissions. The law is seen by officials as the rules that are to be followed and not questioned. This behavior is not unusual; it is what is expected of officials and institutions.

## Counter-Narratives of the Law

Some, however, question the impartiality of the law. Critical theorists assert that the law is a discourse. It represents how we speak and write but also how we behave, interact with each other, think, value, and feel (Baez, 1999). A discourse has the potential to create the knowledge that guides institutional practices. The question they ask is who dictates the law, who decides what belongs within the text that is the law and what should be left out (Baez, 1999)? Judges make these decisions when they put forth their opinions.

Just as UGA officials and other policymakers utilize stories and narratives in justifying their actions, Baez helps to reveal that judges also tell stories with the same intentions. Baez (1999) goes on to argue, that judges are not neutral or objective. They do not simply apply “the rules of the rational legislature acting in accordance with the will of the people” (p. 431). The stories judges tell are not impartial. “Legal interpretation [by judges] is ideological; the legal system serves the interests of those who control its institutions and rules” (Baez, 1999, p. 417). This idea subscribes to the previously presented Marxist notions that state apparatuses (e.g., courts, government agencies, etc.) serve the interests of the dominant class. The force of this ideology is implicit and silent. It often goes without recognition. Instead, most people see court opinions, or the law, as impartial rules of our daily practices. The point is simply that the rules are not impartial, they do not benefit all equally, and they provide a license whereby individuals can impose discriminatory practices on others without being questioned or feeling guilty. It is, according to Baez, that the stories judges tell become law, and the law becomes practice, which benefit some at the expense of others.

Naff (2004) also supports the idea that the law is not impartial, though she does not describe herself as a critical theorist. She reviews the rulings of the US Supreme Court around affirmative action from *Bakke* (1978) to *Grutter* and *Gratz* (2003). She highlights the shifts in the Court's stance on affirmative action over the past 25 years, noting that what it once viewed as constitutional is now unconstitutional. The shift in stance has not occurred due to changes in the law or due to constitutional amendments. Rather, affirmative action rulings have reflected the ideological stances of the justices sitting at the time any given decision was rendered. Her work supports Baez's to a large degree, though it reads more as an understanding of a phenomenon and less as an understanding of the organization of the social system.

The insights and critiques of the law levied by Baez and other critical theorists are provocative, and they are grounded in an advanced understanding of the complexity of the social world. It is difficult to imagine a grand strategy to counter the shortcomings of the law outlined by Baez. Indeed, his is a critique, not a story. Nonetheless, it raises questions that must be considered. How does the judicial system impact different groups? That seems to be a practical question; one that policy makers can consider.

### Summary

This chapter explored how UGA understands admissions, race and the law in the context of its response to the *Grutter* and *Gratz* Supreme Court decisions. I provided insight into the meaning that UGA assigns to admissions; they understand it as a means for creating a diverse learning environment, as a competition for quality students and as social and economic capital. The dominant narrative that emerges from the data is that

institutional decisions regarding admissions are based on the merits of the applicant. It can be said that UGA subscribes to the view that we live in a meritocracy. The critique of UGA narrative was grounded in Conflict Theory. It suggested that, contrary to the espoused ideals of a meritocracy, the educational system stratifies and reproduces the social status of individuals according to class.

The chapter explored the meaning UGA assigns to race and diversity. It understands it as an important component of diversity, which enriches the learning environment by facilitating cross-racial communication and understanding. The section provided historical context for understanding race and diversity. It also presented the counter-narrative of colorblindness, which was closely related to the critique of reverse discrimination. Two additional critiques on diversity were presented. The first suggested that a fixation on measuring and tracking racial composition ultimately leads institutions to naturalize differences as racial; diversity policies essentialize individuals. The final critique questioned the applicability of a diversity model that privileges the exchange of perspectives between students. It suggested that working-class students may not be suited to serve as the actors they are expected to be. This has the potential to disrupt assumptions related to inter-racial dialogue and understanding.

The third area of focus in this chapter was the law. It was shown that UGA understands the law as bounding possible actions around the use of race in admissions. The critique of the law suggested that it is not impartial. Rather, it serves the interest of some at the expense of others.



### *Understanding Difference*

Overall, this chapter has communicated the ways in which UGA understands admissions, race, and the law. It has presented data to support findings, which revealed the underlying assumptions for each understanding. I provided competing interpretations of admissions, race and the law to demonstrate the complexity and uncertainty that surround the debate, though it was not exhaustive.

This chapter has also focused on assessing interpretations around admissions, race and the law by UGA and others engaged in the debate. Every understanding of these concepts represents an argument in favor of seeing the world in one way or another. More frequently than not, there are multiple understandings of what appears to be a single concept (Stone, 2002). This chapter shows that the ways in which UGA and others in the debate understand admission, race, and the law is situated in a broader context, one that reflects history, social arrangements, and roles.

Most in the debate would agree that equity and justice are ideals worth pursuing, however, consensus disintegrates as soon as discussions ensue regarding what these concepts look like in practice. Each interpretation is embedded with hidden arguments and assumptions. As a result, there are multiple and conflicting understandings of race, admissions and the law. Accordingly, individuals' conceptions for what is appropriate for policies are at odds. A single policy can mean two different things, depending on perspective. Affirmative action can be a strategy to promote social justice at the same time it is reverse discrimination. This is a policy paradox (Stone, 2002).

The conflicting understandings around the concepts involved in the debate on affirmative action are questions of meanings. Meanings vary in part because attempts to

accurately communicate our experiences and perspectives are limited by our modes of communication. As humans our pattern has been to name and categorize everything, as if it always creates distinction and common understanding. However, categories do not always create distinction; they do not always provide clarity of understanding about what some is or is not. Categories are limited human constructs that have boundaries. They exist in a world where continua often make more sense. Stone (2002) helps to clarify the point. She asks: Is (or are) a Siamese twin(s) with one head and two lower bodies one person or two people? “There are no objective answers to [this] question because nature doesn’t have categories, people do” (p. 379). Though we might dismiss the question as a rarity, it is a question more similar in nature to the questions we face in contemporary policy debates. Something can be two things at once. Our ways of classifying what things are is limited. The multiple and conflicting understandings around admissions, race, and the law are reflective of varied ways of making sense of the past and conceptualizing the role that social institutions should play in promoting equity and justice for the future. A major point here is that the boundaries that humans create are inherently unstable. They are what we fight over. Is the policy just or unjust? Is it equitable or inequitable? These questions are answered depending on how we construct the boundaries that define the concepts in play (Stone, 2002).

This chapter has highlighted the complexity of the affirmative action debate, specifically, and policy debates generally. In the midst of such complexity and polarization, what should policy actors do? In the next chapter, I examine the narratives presented in this chapter in hopes of generating a metanarrative that simplifies decision

making. I consider its implications for future decisions at UGA around the use of race in admissions.

## CHAPTER 6

### DISCUSSION AND CONCLUSION

This study has proceeded with the understanding that narratives are the fundamental vehicle for communicating humans' experiences and their beliefs about the world. I used the narratives from UGA officials to reconstruct UGA's response to *Grutter* and *Gratz* decisions and, also, to provide insights into their views around admissions, race and the law. In the previous chapter, I situated the dominant narratives by UGA within the context of the broader debate around the use of race in admissions. The narratives are incongruent; they create a climate of uncertainty about what to do. The differences between opposing sides is substantial. UGA has already initiated a course of action in response to the Michigan decisions. Its response is ongoing in that they will continue to monitor their student diversity. UGA will likely modify institutional policies as it perceives necessary for ensuring a diverse student body. What can UGA and others learn from closer examination of the narratives that are the basis for the debate? Is there a new way to see the issue of race in admissions?

This chapter begins by presenting a metanarrative. Roe (1994) indicates that the metanarrative is generated by the analyst or researcher through consideration of the two sets of narratives that dominate the debate. Once developed, the researcher can determine if or how the metanarrative recasts the issue in a way that makes it more amenable to policy intervention. The debate around affirmative action is one where the values and

interests of opposing camps are so fundamentally divided; no middle ground exists. The metanarrative considers differences and polarization between groups and turns it into another story altogether. To be clear, the metanarrative is not a solution to the debate around the use of race in admissions. Rather, as Roe (1994) notes, “the metanarrative finds a set of common assumptions that make it possible for opponents to act on an issue over which they still disagree” (p. 156). The goal of this chapter is to present the common assumptions around the affirmative action debate in the form of a metanarrative. A discussion of the metanarrative’s implications is provided. The study concludes by summarizing the findings and implications of the study. I begin by presenting the metanarrative.

In establishing a metanarrative around admissions, I focus on shared beliefs and understandings between the dominant narratives rather than on their differences. The metanarrative is a new narrative. It situates spoken and unspoken assumptions in a new light. In this case, the metanarrative represents commonly held views around culture, social institutions, diversity and race, and access to higher education. It illustrates that there is a story in which most, but not all, individuals agree. It provides a point from which decision making may be less complex and uncertain.

### The Metanarrative

In the US, cultural norms have evolved over time. Dominant features in US culture include our system of government, a democracy, and our belief in a meritocratic society where each individual has a chance to achieve the highest of goals (Jandt, 2007). One of the key components of our democracy is the rule of law. It is a broad principle

that that indicates that all citizens are bound by a set of clearly defined and universally accepted laws. The rule of law is vital to maintaining order, and it provides all citizens with due process in adjudicating grievances (US Department of State, 2007).

In the US, merit is widely accepted as the basis for awarding social and economic capital. In a meritocracy the talented are chosen and moved ahead of others on the basis of their achievements (Davis and Moore, 1945). Social institutions play a pivotal role in assessing talent and awarding capital accordingly. The educational system stratifies individuals (Rist, 1970; deMarrais and Lecompte, 1999). Access to higher education is particularly important because earning a college degree is associated with higher level of income and social status (Perna, 2003; Pascarella and Terenzini, 1991). Accordingly, the access of citizens to selective colleges and universities is highly sought after. The understanding of the US as a meritocracy is an ideal and, though desirable, it is not always realized equally among the citizenry. Some individuals and groups have better opportunities and life chances than others. The rule of law ensures that groups of people who have been unjustly excluded from higher education in the past have equal access. The benefits of higher education should be open to all. In higher education, policies related to admissions play a significant part in certifying which individuals merit admission. Such policies should treat individuals equitably.

The US and global community consist of individuals who are different from each other in numerous ways. Cultural norms reproduce certain understandings of the world (Jandt, 2007). Higher education should expose students to the ideas and views of individuals who view the world differently than they do (Boyer, 1987). Interaction between individuals from different backgrounds and with different experiences is

valuable. It provides a way to access the experiences of others and their views of the world. It helps to broaden our understanding of the world (Boyer, 1987). The assembly of diverse students by institutions of higher education is likely to facilitate communication between students that have markedly different life experiences (Bowen and Bok; 1998, Kuklinski, 2006; Pike et al., 2007).

Race is a one of the components of student diversity. It continues to matter in society in important ways. Racial categories were established to serve the social and economic interests of some at the expense of others (Smedley, 2005; Seldon, 2000). During the nineteenth century, for instance, society was organized along racial lines. At that time the lived experiences of blacks were far less divergent than they are today.

Today, more than ever, there is considerably variation in the lived experiences of blacks in the US. Despite this fact, race continues, on average, to tell us something about individuals' lived experiences. Being black or African-American, for instance, continues to be associated with certain lived experiences (e.g., racism and discrimination, poverty, lack of adequate educational resources). Unfortunately, race still matters in the US. There is a need in higher education to ensure that all citizens, particularly those who have been longstanding victims of racism and discrimination, have equal opportunities and access to the American Dream. Access to higher education should be based on the merit of the applicant. The criteria that constitute merit are not always clear. There remains a need to negotiate its meaning. At a minimum, institutions should consider assessing students' grade point average as an indicator of merit.

*Common assumptions*

Some will look to the metanarrative to provide a solution per se. However, remember, this is not its purpose. The metanarrative aims to identify common assumptions between opponents that make it possible for them to take action on an issue on which they still disagree (Roe, 1994). From a policy making perspective, the story put forth in the above noted metanarrative has broad appeal. To some extent, it summarizes the obvious. It places our desire to ensure equal opportunity in higher education into a broader context, one that is explicit about social, cultural and political norms. By doing so, it highlights the things that individuals often take for granted but on which most can agree: that we live in a democracy where the rule of law prevails; that our cultural norms privilege merit as the measure of talent; that social institutions in education bestow capital on meritorious individuals; that race is still associated with lived experiences; that understanding of others is part of a meaningful education; and, that efforts should be taken to ensure that all citizens have equal opportunities to selective colleges and universities.

Collectively, these points construct a meaningful, broadly accepted story around college and university admissions. They provide a foundation on which any effort related to the race of use in admission, whether for or against, could begin. Certainly, this story can and has been presented by advocates on both sides of the debate in modified versions. As with any policy narrative, their goal is to lead others to see the issue in the manner that they do. Certainly the metanarrative may be helpful for policy decisions around race in admission. The metanarrative attempts to unite opponents around common assumptions and understandings. From a policy making perspective, it can provide useful



findings that help to shape policy proposals such that they are palatable and likely to enjoy broad support.

On the issue of racial diversity in higher education, the metanarrative is somewhat instructive. It suggests that the primary basis for admission to a selective college or university must always be based primarily on merit, which is understood as academic achievement and preparation for higher education. However, institutions should make every reasonable and legal effort to ensure that underrepresented students (e.g. minority, low income) have access to higher education. These groups have lower odds of receiving adequate preparation for higher education, and they may also be more likely to be first generation college students. Such students may need additional support during the admissions process. Selective institutions of higher education should seek out and support these students.

The metanarrative does not provide a specific policy proposal; it provides a barometer for the types of policy that have the greatest likelihood of gaining broad support. UGA's response to the Supreme Court decision is consistent with the metanarrative. The UGA policy of placing greater emphasis on recruitment of underrepresented minorities, while remaining focused on academic credentials, is the sort of policy the metanarrative supports. While the policy is seemingly race-neutral, it is implicitly race-conscious. UGA officials recognize that race and socio-economic status continue to structure society in important ways. Young people who are poor or from minority groups tend to have lower chances of adequate preparation for higher education. As a result of these facts, UGA officials will continue to pay attention to race as a factor in admissions, though they may do so through recruitment. For the time being, the

metanarrative around the use of race in admission support such an approach. It may help UGA to continue expanding opportunities for minorities in higher education.

### Problems with the Metanarrative

The metanarrative is not, however, without shortcomings. Its assumptions may seem stable and broadly accepted; however, I argue that they are not. The metanarrative's assumptions are at least questionable and, at most, likely supportive of a deeply entrenched social system that, indeed, reproduces social class. From my perspective, the metanarrative sanitizes reality. Most of its assumptions are inaccurate. It supports the status quo, which has not and does not serve minorities well. Broad acceptance of the metanarrative's assumptions does not validate it as an accurate portrayal of reality.

#### *Unequal benefits from the social system*

In Chapter 5, I presented the contributions of Conflict Theorists in critiquing the role of social institutions, the law, and the ideal of a meritocracy in the US. Their critique suggested that social institutions (e.g., the educational system) stratify and reproduce individuals according to social status. Social institutions serve the interest of the dominant class most. These are individuals who are male, white and economically advantaged. In large part, I agree with these critiques. If these criticisms are accurate, the social system does not treat blacks and other underrepresented minorities equitably.

The metanarrative suggests that the definition of merit is subject to debate. However, the outcome of such a debate may be moot. By conceptualizing merit as something that includes factors not traditionally understood as merit (e.g., race, income,

life experiences), those supporting the use of race in admissions hope to expand access for minorities and counteract the shortcomings of the social system. Though I support such efforts, they seem grossly inadequate for counteracting a social system that continually places minorities on the margins from the start. Simply broadening the concept of merit will not, on its own, restructure the stratifications in our society in a meaningful way. Relatively few minorities are served well enough by their local schools and communities to be in a position to be considered for admission to selective colleges and universities. The social system does not promote social mobility. It favors those who understand and possess its cultural capital.

*Diversity and unequal accrual of benefits.* The metanarrative includes the idea that higher education should expose its students to different understandings and views of the world. A popular argument for this approach has been for institution's to develop goal statements and initiatives focused on enhancing diversity. This too may fail to truly benefit minority students in a meaningful way. In higher education, too often diversity seems to be its own end. It is often difficult to decipher what institutions mean by diversity and even why it matters so much. They just want more of it. The truth is likely that diversity is really about racial diversity, and diversity policies are a way to enhance minority student body. Advocates for diversity present three benefits of diversity: 1) cross-racial understanding that challenge and erode racial stereotypes, 2) more dynamic classroom discussions, and 3) better preparation for participating in a diverse workforce (Yosso et al., 2004). These benefits are often articulated in relation to white students, who make up the vast majority of the student population. Yosso et al. (2004) further highlight the problems inherent in the diversity rationale.

The unquestioned majority story within this rationale is that students of color are admitted so that they can help white students become more racially tolerant, liven up class dialogue, and prepare white students for getting a job in a multicultural, global economy. How this scenario enriches the education of students of color remains unclear. Seemingly, students of color benefit from merely being present at a predominantly white institution and attending college with white students.

(Yosso et al., p. 8, 2004)

As this thinking goes, diversity policies, then, should be permissible simply to enrich the educational experiences of white students. But what is the benefit for minority students? It seems that diversity benefits the predominantly white student body, and those benefits are used as a rationale to justify access to selective institutions for blacks, who are not adequately represented in most cases. But why are blacks and other minorities underrepresented in the first place? Research has confirmed that genetic and biological explanations of intelligence are false. It is evident that the social system is not serving all citizen groups equally. Given the historical exclusion of blacks from higher education, admission policy should focus on ensuring access and benefits to these students independent of diversity quotas. Yet, over the past 25 years, most of the efforts to continue the use of race as a factor in admission decisions have been based on the need to promote diversity.

*Merit and social justice are irreconcilable*

The need for diversity should not be a substitute for policies focus directly on ensuring access for minorities to selective college and universities. Policies that ensure

access for minorities are often based on social justice rationale (Johnson, 1965). Current understandings of diversity allow institutions and their faculties and administrators to argue that they are working toward equal access and equal representation for racial and ethnic minorities because diversity policies mandate increased access for underrepresented racial and ethnic minorities. However, the diversity policies rarely include references to social justice or retribution for historical discrimination against minorities. Even while diversity policies have been challenged in the courts, the problems of unequal access and underrepresentation for minorities persist as problems facing higher education and the nation. These are problems that are not being examined or redressed by the courts. Diversity arguments may be a distraction in ongoing efforts to redress racial discrimination and promote equal opportunity for minorities (Bell, 2003). They keep dialogue on race and admissions centered on merit of individuals' and benefits for the student body. There is considerable less discussion about persisting social inequalities that impact minorities.

Many of the disadvantages attributable to racism and racial discrimination (e.g., social, economic and educational) remain present today in the US. In dissenting in the *Gratz* decision, Justice Ginsburg noted that “we are not far distant from an overtly discriminatory past, and the effects of centuries of law-sanctioned inequality remain painfully evident in our communities and schools” (Gratz, 2003, 299). She added,

In the wake of a system of racial caste only recently ended, large disparities endure. Unemployment, poverty, and access to health care vary disproportionately by race. Neighborhoods and school remain racially divided. African-American

and Hispanic children are all too often educated in poverty-stricken and underperforming institutions.” (p. 300)

These social problems demand immediate, sustained attention. The current popular approaches to admissions, which focus on diversity, seems to accept disparate outcomes between majority white versus majority black primary and secondary schools in the US, as well as other racial disparities (Bell, 2003). Were these disparate outcomes absent, we might not need race conscious admission policies in higher education today. There seems to be minimal focus by higher education on policy and litigation that aim to eliminate these disparities than on the need for diversity in higher education. Arguments for diversity in higher education may be helpful in increasing the number of minorities who gain admittance to selective institutions. However, it is inadequate in addressing the racial disparities that persist.

Arguments for diversity are inadequate for rectifying the effects of past injustices. In other words, diversity arguments do not provide a social justice remedy to address historical racial discrimination, and ongoing institutional racism (Morphin, 2005). Instead, diversity arguments seem to reject redistributive and compensatory arguments for affirmative action programs. Redistributive arguments rest on an egalitarian philosophy whereby society’s resources are distributed with a focus on rectifying racial disparities which occur due to differences related to income, area of residence and other forms of social capital. Compensatory arguments assert that affirmative action policies are a form of compensation to minorities for injuries received from years of systematic exclusion (Kim, 2005). Diversity arguments state that policies that consider race as a factor in admissions benefit not only the disadvantaged groups but also society at-large.

Despite the purported benefits to minority students (i.e., increased access to higher education) diversity policies are inadequate for confronting the inequities that persist between whites and minorities in K-12 education, employment, and housing. The causes of racial inequity and disparities remain unaddressed even where minorities might benefit from higher education diversity policies.

### *Summary*

Given the aforementioned problems with the metanarrative around admissions, it is difficult to imagine how it has any real potential to mitigate, through policy, the social ills minorities face. To be clear, the metanarrative is a policy analyst's tool. It provides a story that reflects the common assumptions of most of the individuals engaged in the debate. The metanarrative provides a set of assumptions that help policy makers to develop proposals that are likely to be at least somewhat palatable to opposing sides. Despite its usefulness in this regard, I have attempted to show in this section that the metanarrative may simply reinforce the status quo. The metannarrative takes the social system and meritocracy as givens; they are reinforced through the metanarrative despite the possibility that they do not serve all citizens equally as many believe they do. In this light, the use of policy interventions to mitigate social inequalities is unlikely. The realities of the current social, cultural, and political arrangements and practice in US society have the possibility of instilling or reinforcing feelings of hopelessness and cynicism toward meaningful change.

The aforementioned findings are personally disappointing. By nature, I am a pragmatic consensus seeker. I initiated this study of race, affirmative action, and higher

education with the hope of promoting greater consensus and identifying solutions to promote greater equity in higher education. I utilized narrative policy analysis because I believed it had potential for illuminating narratives and meaning of those in the debate, as well as an intertext of common beliefs and assumptions. It was my hope that the intertext might provide a new approach for resolving conflicts in the debate around affirmative action. My findings suggest that despite the existence of a metanarrative, which can be used to build broad support for policies around race in admissions, it is likely that such policies will simply reinforce the status quo. The current social system is one that privileges some over others and the metanarrative does not overcome or address this reality. The metanarrative is bound to the policy issue under study, which is the use of race in admissions. However, this policy issue is situated within a larger social context that is characterized by numerous inequities that create the need for policies that increase access of minorities to selective institutions. The metanarrative does not have the reach to deal with such problems. My study of one problem, access to higher education, has illuminated a more pressing problem, a flawed social system. It is beyond the scope of this study to fully address the flaws in the social system. However, there may be opportunities to promote changes that benefit minorities, despite the shortcomings of the current social and political structure.

### Agency and Social Progress

The metanarrative presented earlier is imperfect because its assumptions reinforce the current social system in many ways. My criticism of the social system has been informed by Conflict Theorists. However, their view of the world is itself incomplete. Critics have



suggested that conflict theory is overly deterministic and one-sided; it fails to account for the role that individuals play in shaping their own lives (deMarrais and LeCompte, 1999).

Giroux (1983) has asserted,

[Conflict] theorists have overemphasized the idea of domination in their analysis and have failed to provide any major insights into how teachers, students, and other human agents come together within specific historical and social contexts in order to both make and reproduce the conditions of their existence. (p. 259)

Giroux suggests that conflict theorist accounts of social structure almost suggest “that history is made behind the backs of the members of society” (p. 259). Such versions of reality, he argues, leave little to no room for human agency. Agency is the capacity, conditions or state of acting or of exerting power in the world (Merriam-Webster, 2000).

It is Giroux’s contention that there are opportunities for individuals to resist rather than passively accept the forces exerted upon them by the social system. Plainly stated, people have the capacity to make choices that ultimately create and shape history; individuals can and do play a role in shaping their destinies. A sole reliance of conflict theory for understanding the world would incorrectly provide a rationale for not examining the role individuals play in shaping the future. For instance, it is important to examine the role that both teachers and students play in examining outcomes of our schools and universities.

The current social system in the US presents significant challenges for addressing racial and socio-economic disparities that persist. In many ways the social system ensures that disparities do exist. Policy efforts aimed at addressing disparities are well-intentioned but sometime serve the purpose of reinforcing the status quo. However, there are

opportunities for individual and even group agency, and there are examples of successes that have resulted from such efforts. For example, the decisions of individuals to resist unjust practices led to the Civil Rights Movement in the US. As a result, racist and discriminatory practices were challenged and found to be unlawful. There is reason to continue pursuing opportunities that show promise for reducing social disparities. Individual action has the potential to shape the future. Progress is being made, albeit slowly. I have shown that the current social system is far from perfect. However, I am not aware of a social structure that provides individuals with a greater degree of freedom and opportunity in shaping their own lives. The social institutions within our social system need much work. Agency provides hope for the future.

### Conclusion

Despite the hope that agency provides for improving the problem of social inequality, we must understand that each of us understands the world differently. A central theme in this study has been that there are varied and conflicting interpretations around the use of race in admissions. Reconciling our views to obtain consensus is impossible. This is true even within interest groups and coalitions much more across groups. The issues surrounding affirmative action are complex and polarizing. Our interpretations of these issues will continue to be sources of conflicts.

In public policy, we can only know concepts like equity, merit, and justice because we have created them as ways of understanding our interactions with each other. A major problem is that we fail to realize that there are multiple understandings of what these concepts mean in practice. In political terms, what equity, merit, and justice mean

depend upon the meaning that individuals have assigned to them. Despite consistent efforts by scholars to resolve social problems through rational empirical analysis, science cannot settle questions of meaning.

Narrative policy analysis is a novel approach to establishing meaning in highly complex debates, like affirmative action. The approach is not perfect by any standard. Its weakness is that it runs the risk of reinforcing the status quo, but this issue is not unique to narrative policy analysis; it is common in all widely accepted models of policy analysis. The hope of agency provides an opportunity to promote the changes that progressives seek. Narrative policy analysis represents a meaningful strategy for identifying what people really mean when they agree with value laden goals like, for example, equal opportunity. By establishing meaning, narrative policy analysis is a useful approach for analyzing difficult problems. It reveals commonly held assumptions, which are often the basis for identifying a strategy to address the problem that most people will agree with, at least in part.

Traditional policy analysis misses the essence of policy making: the struggle over ideas. Every policy proposal or interpretation is laden with particular understandings and meanings. Each individual will read it differently; each constructs boundaries around categories to establish meaning. Our constructions and/or interpretations of boundaries are the source of our conflicts; they are what divide us (Stone, 2002). At the same time, differing conceptions of boundaries force us to interact with others. It forces us to show others how we see the world and, likewise, try to understand how they see it as well. We interact in hopes of persuading others to understand a given issue (e.g., affirmative action) in the same way that we do. In the end, our differences may be irreconcilable, but

our desire to understand one another often serves as a catalyst for communication (Stone, 2002). While differences divide us, our aspirations and values unite us. Most people can agree that equity, fairness, and justice are values worth pursuing. That agreement is the glue that binds us together as a community.

At the University of Georgia, events following the *Grutter* and *Gratz* decisions have been consistent with national trends. UGA has discontinued the use of race in admissions decisions. However, their approach to admission, an increased emphasis on minority recruitment, illustrates that they understand that race still matters in Georgia and the US. Though I favor continued use of race in admissions, UGA's position is not unreasonable. In the current context, it is difficult for an institution to fight this fight alone. The potential costs include time, money, public image, loss of political support, and loss of students. From an organizational management perspective, these are potentially devastating costs on any institution. UGA's strategy seems consistent with a well known political strategy. Stone (2002) notes,

Probably the most fundamental principle of politics is this: Try to stage the fight in an arena where the rules and the fans are on your side. Savvy political actors, if they lose in one arena, will try to move the contest to another venue, in which they have a better chance of success. (p. 403)

By all accounts, UGA is still committed to promoting student diversity. Its approach has shifted, but it seems intent on promoting access for underrepresented minorities. The institution may have had a difficult fight to face had it continued the use of race in admissions. All that considered, it may still be a fight worth facing.

The issue of race in admissions is one that selective institutions must fight collectively. The realities on the ground are simply that a single institution, like UGA, risks a lot if it pursues this battle. But given the stakes, it is critical that institutions, like UGA, continue to utilize court supported strategies like that outlined in *Grutter*. Selective institutions would be well-served to establish an alliance focused on promoting equal access and opportunity for K12 and higher education. The issue under study here is complex; the solutions must be multifaceted and far-reaching.

In the past, affirmative action in higher education admission has been an effective approach to redressing the problem of limited access for minorities to selective colleges and universities. However, the need for such program point to systemic problems which produce disparate outcomes between majority and minority students. Efforts to address access to higher education for minorities will always be necessary as long as the educational system produces unequal results. Policy interventions are needed across all our social institutions. Simply placing greater emphasis on recruiting minorities does not change the social context that creates the need to do so. This should trouble us all.

The focus on race in the US has always been problematic. It is likely to remain problematic. Even worse than focusing on race are those that pretend that it does not continue to play a significant role in shaping individuals' lives. Colorblind policies may move us backward. Decisions like UGA's, to discontinue the use of race in admissions, have led some to suggest that we have gone from Jim Crow policies to affirmative action policies and back again (Yosso et al, 2004). Such an assertion may overstate the severity of the problems minorities face today vis-à-vis the 1950s and 1960s. However, the point is taken. UGA's decision comes at a time when research indicates that maintaining

minority enrollment at selective institutions will require the continued use of race in admissions (Long, 2007). There is reason for continued concern.

There is considerable work remaining in the fight for racial equality and justice in higher education and our broader society. In 2007, educational opportunities for racial minorities are far fewer than for their Caucasian counterparts. There is an unjust disparity in access to selective institutions between underrepresented minorities and white students. Indeed, this trend is consistent with the patterns observed in decades past, where exclusion of blacks and other minorities was intentional.

The trend among selective institutions seems to be airing on the side of caution. It suggests that there is a growing impact of legal pragmatism around race-conscious admission in higher education. This is particularly discouraging in light of the *Grutter* decision, which gave institutions a legal framework for considering race in admissions. The development, at UGA and more broadly, represent a set-back for those favoring race-conscious admissions.

Our country and higher education have a long way to go to address social inequities that persist between races. But each step forward matters. Each selective institution can lead and catalyze others to act. The landscape in higher education around this issue is still developing. In the months and year ahead, we will begin to see the full impact of *Grutter* and *Gratz* cases on UGA, specifically, and higher education, broadly.

### Implications

The examination of the use of race in admissions in this study has revealed some of the complexity surrounding the debate. I hope it has illuminated, at least in part, why

the issue of using race in college admissions is so polarizing. Yet, in this context, institutional officials must make decisions regarding admissions policy. The political model of decision making is one that takes account of many factors. However, decision-makers can quickly become overwhelmed with information and considerations. There is a need for an approach that can reduce complexity surrounding the issue of race based admissions to establish common ground among divergent views. Narrative policy analysis is such an approach.

For UGA, the governance and decision making analysis in this study suggests a need to revisit the concept of shared governance. The concept refers to the idea that faculty and staff should have opportunities to participate in decision-making regarding the operation of their institutions. In higher education, high-turnover among top-level administrators is common. Faculty and staff are often in the best position to provide background information regarding the institution's previous actions on a given issue. While all decisions are not necessarily shared, certainly it would be important to give the faculty a voice in which students are admitted to the institution. The collegial model of governance in higher education has a long tradition. It is a part of what makes colleges and universities unique institutions.

It seems obvious that UGA should continue to monitor its racial diversity. The US Supreme Court provided a framework in the *Grutter* decision that allows for the consideration of race in admissions once race neutral options have been exhausted. It stands to reason that UGA should revisit its admissions policy if the current approach proves inadequate for providing minority access. At such time UGA revisits its admissions policies, narrative policy analysis may be useful in establishing a plausible

policy direction. Certainly, other factors should bound decisions by officials, including the law and the social and political contexts. Equally important is that officials consider the institution's deontological imperative. UGA is an institution that has had a turbulent past around race and admissions. It is important to move beyond that past in both word and deed.



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Appendix A

The Educational Benefits of Diversity

Document prepared by UGA Ad Hoc (administrators') Committee

## Introduction

In the 21<sup>st</sup> century, there has come a need to demonstrate that racial and ethnic diversity in higher education has a positive effect on the educational outcomes and experiences of college students. It is also important to provide evidence that racial and ethnicity diversity enhances learning and teaching in classrooms in all universities. Hence, and Both anecdotal information from both faculty and students and research findings are provided to support the consideration of race and ethnicity, as well as other measures of diversity, in the admissions process at the University of Georgia.

## Faculty

In anecdotal reports from University of Georgia faculty and in a study conducted at Carneige Research-I institutions<sup>1</sup>, professors reported the following benefits of broad classroom diversity:

1. Student diversity allows a broader variety of experiences to be shared.
2. Students of color help raise new issues and perspectives.
3. Student diversity does not lower the quality of the institution or the quality of students.
4. Diversity does not create tension and arguments.

In addition, most faculty members believe that racial and ethnic diversity impacts on students in the following ways: the issues they consider, how they read class material, and their choices related to research and class projects. Finally, it was found that diverse research teams increases faculty learning.

## Student

Students' ideas about racial and ethnic diversity are very important to providing evidence that student diversity is important. Students at both the University of Michigan and at other four-year institutions reported that diversity experiences were related to intellectual engagement, active thinking, and academic skills.<sup>2</sup>

Providing opportunities for diverse groups of students to interact with each other has been thought to increase learning. Informal interactive racial and ethnic diversity does influence higher kinds of intellectual engagement and self-assessed academic skills for White students, African American students, Asian American students, and Latino students.<sup>3</sup> In a longitudinal study, it was found that White, African American, Mexican American, and Asian American college students who reported high levels of satisfaction with college attended racial/cultural awareness workshops and socialized with a student with a different racial/ethnic background

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1 Maryuma, G. and Moreno, JF (2000). "University faculty views about the value of diversity on campus and in the classroom" in: Does Diversity make a Difference?, American Council on Education. 9-33.

2 Gurin, P, Dey, EL, Hurtado, S, and Gurin, G (2002). Harvard Educational Review 72, Number 3. 330-366.

3 *Ibid.*

than their own, had professors who included course content on ethnic and racial issues and research on writing addressing ethnicity and race, and graduated from a college or university that is committed to increasing their number of women, faculty and students of color, creating a diverse multicultural environment, and an appreciation for multiculturalization.<sup>4</sup> This was especially true for White students.

In a study at the University of Wisconsin-Whitewater, which has a plan to enhance diversity and cultural awareness, 75% of the juniors and seniors felt they have become more culturally aware and accepting of persons from different races and cultures since entering college, while 80% agreed that it is important to promote cultural understanding.<sup>5</sup> It was also found that students who had friends from a different racial or ethnic background were more likely to think that promoting racial understanding was important.

Students at predominantly White colleges and universities who studied with students from a different racial ethnic background stated that they had gained the ability to work cooperatively with others without detriment to their capacity to work independently or their competitiveness after four years of college.<sup>6</sup> This finding indicates that this kind of experience enhances job-related skills. In a study of former students from a leading private university, it was found that the percentage of White students who questioned their beliefs about other races increased by 11.5% from 1989 to the 1994 cohort (Luo & Jamieson-Drake, 2002).<sup>7</sup> In addition, the percentage of students who questioned their beliefs about the nature of humans or society increased by 18.7%. When White students have an opportunity to interact with students of color, they are much more likely to change some of their beliefs.

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4 Villalpando, O (2002). *NASPA Journal* 40 (1):124-139

5 Johnson, SM, and Lollar, HL (2002). *Journal of Education Policy* 17(3):305-320.

6 Hurtado, S. (2001). Linking diversity and educational purpose: How diversity effects the classroom environment and student development. In G. Orfield & M. Kurlaender (Eds.). Diversity challenged: Evidence on the impact of affirmative action (187-203). Cambridge, MA: Civil Rights Project, Harvard University

7 Luo, J., & Jamieson-Drake, D. (2002). Size matters: Exploring the educational value of increasing student diversity. Paper presented at the annual forum of the Association for Institutional Research, Toronto, Canada.

Appendix B

Critical Mass

Document prepared by UGA Ad Hoc (administrators') Committee

## Critical Mass

A “critical mass” of any group of students means that there will be “meaningful numbers” or “meaningful representation” in the educational environment. As an example, a “critical mass” of students from underrepresented groups can “mean a number [of these students] that encourages [them to] participate in the classroom and not feel isolated.”<sup>1</sup> A sufficient “critical mass” is also necessary so that students from underrepresented groups “do not feel ... like spokespersons.”<sup>2</sup> Achieving a “critical mass” thus ensures that a typical academic class will have a sufficient number from any group of students that they are seen as participating as individuals, rather than as representatives of a particular group.

A useful concept in the discussion of critical mass is the idea from social psychology of a “solo minority.” As Gudeman points out “a solo is more likely to be objectified and treated as a representative of a category than as a unique person.”<sup>3</sup> In that context, we may be seen as achieving a critical mass of any given underrepresented student group when we cease to have solo representatives of that group in our classroom. Central to the concept of critical mass is the link of this concept to the educational value of diversity.

Court cases have dealt with critical mass in the context of race and ethnicity. In such a context, a “critical mass” of students contributes to the value of education on a campus because when “critical mass” is present in the classroom “racial stereotypes lose their force because nonminority students learn there is no ‘minority viewpoint’ but rather a variety of viewpoints among minority students.”<sup>4</sup> This “enables [students] to better understand persons of different races.”<sup>5</sup> Diversity enriches classroom discussion and leads to a deeper understanding of a variety of viewpoints presented in that discussion, as reported both by students<sup>6</sup> and by faculty.<sup>7</sup> A “critical mass” of students from underrepresented groups is thus essential to produce the educational benefits of a diverse student body.<sup>8</sup>

Critical mass is difficult to quantify, in part because it is a qualitative rather than a quantitative concept. Further, the *Grutter* decision indicates that attention to admitting a “critical mass” of underrepresented students does not “transform” this goal “into a quota.”<sup>9</sup> Basically, the goal of “critical mass” is to avoid “solos” as defined above. It also avoids racial quotas by giving “substantial weight to diversity factors besides race.”<sup>10</sup> The University’s proposed policy defining diversity in admissions decisions meets this requirement.

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<sup>1</sup> *Grutter v Bollinger et al.* 539 U.S. 02-241 (2003) pp 5-6, quoting University of Michigan Officials.

<sup>2</sup> *Ibid.*

<sup>3</sup> Gudeman, RH (2000) *College Missions, Faculty Teaching, and Student Outcomes in a Context of Low Diversity.* In *Does Diversity Make a Difference?* American Council on Education. p 51.

<sup>4</sup> *Grutter v Bollinger et al.* 539 U.S. 02-241 (2003) p 7.

<sup>5</sup> *Op. cit.*, p 18.

<sup>6</sup> Gurin, P, Dey, EL, Hurtado, S, and Gurin, G (2002). *Harvard Educational Review* 72, Number 3. p 14 and Table 3.

<sup>7</sup> Maryuma, G. and Moreno, JF (2000). “University faculty views about the value of diversity on campus and in the classroom” in: *Does Diversity make a Difference?*, American Council on Education. p14.

<sup>8</sup> See *Grutter v Bollinger et al.* 539 U.S. 02-241 (2003) p 21.

<sup>9</sup> *Op. cit.*, p 23.

<sup>10</sup> *Op. cit.*, p26.

Appendix C

Diversity at the University of Georgia

Document prepared by UGA's University Council



## Diversity at the University of Georgia

The University of Georgia is the flagship institution of higher education in the state of Georgia. It has a duty to prepare its students to function effectively, to be leaders, and to be citizens of the state, region, and nation. Part of this duty is to prepare students to work in a diverse environment. This duty includes an obligation to expose students to a robust exchange of ideas within a student body representing the greatest possible variety of backgrounds. Such exposure is an essential part of our obligation to prepare students to interact in an increasingly diverse workforce and society, both domestically and internationally. In order to provide a diverse learning environment, the University will adopt policies and practices to increase diversity among its entering students.

### **The Dimensions of Diversity**

Diversity encompasses the breadth of knowledge, skills and experiences in a student body. A broadly diverse learning environment benefits the whole university, both because students of differing cultural, racial, ethnic, and experiential backgrounds bring differing perspectives to the University community, and because alumni of such a learning environment gain greater legitimacy in the eyes of the citizenry of Georgia, the nation, and the world. As part of its duty to prepare students for the public and private sectors, the University of Georgia should ensure that the paths of leadership be open to all. The University of Georgia should seek to "assemb[le] a class that is both

exceptionally qualified and broadly diverse”.<sup>1</sup> Since AY 2002, the University reviews many applicants on an individualized basis, giving consideration to factors other than quantitative test scores, grades, and curriculum. That review should explicitly include contributions to diversity.

Elements of diversity that will be considered include, but are not limited to:

*Racial and ethnic diversity.*

The proportion of students of color (African American, Latino, Asian American and Native American) at the University of Georgia is small enough that those students are likely to be a “solo minority” or part of a very small group of students, particularly in the small non-lecture-format classes where their contributions to discussion are most valuable. As Gudeman has pointed out, research in social psychology has demonstrated that “A solo is more likely to be objectified and treated as a representative of a category than as a unique person.”<sup>2</sup>

Race neutral alternatives at the University of Georgia have failed to achieve the critical mass<sup>3</sup> of racially and ethnically diverse students to

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<sup>1</sup> *Grutter v Bollinger et al.* Respondents brief, as quoted. 539 U.S. 02-241 (2003)

<sup>2</sup> Gudeman, RH (2000). “College missions, faculty teaching, and student outcomes in a context of low diversity.” In *Does Diversity Make a Difference?* American Council on Education. p51.

<sup>3</sup> The University of Michigan Law School noted in *Grutter v. Bollinger et al.* that “critical mass” is “not by any means a quota.”, and does “not envision or employ any numerical target of range of targets” (Respondents brief, pp5-6).

achieve a rich learning environment in our academic community.<sup>4</sup> The University rejects quotas and other mechanical approaches that treat any single factor as a defining feature of an applicant's file. Nevertheless, it has a compelling interest in considering race and ethnicity as one among many factors in consideration for admission.

***Geographic Diversity.***

As the flagship and Land Grant institution of the University System of Georgia, the University of Georgia has a mission to support the economic development of the entire state. Our students therefore should be exposed to viewpoints from the entire state, not from any one geographic region.

Although our first priority is to educate the students of the state of Georgia, it is also important that University of Georgia students be exposed to perspectives from other parts of the nation and world.

The University will therefore include consideration of geographic diversity among factors considered in admissions decisions.

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<sup>4</sup> For example, the 2003 National Survey of Student Engagement, a national survey of freshmen and seniors at 437 colleges and universities conducted by Indiana University, found that University of Georgia respondents were less likely than those at similar universities to have a serious conversation with a person of another race or ethnicity. They were also "less positive than their counterparts on the question of whether their institution helps them understand people of other ethnic and racial backgrounds." (Dendy, LB, University of Georgia Press Release, October 22, 2003.)

### *Linguistic Diversity*

Linguistic diversity is one measure of different cultural perspectives that contributes to the learning environment at the University of Georgia. The state of Georgia enjoys increasing linguistic diversity.<sup>5</sup> However, in 2003, only 0.3% of incoming first-year students (including both international students and Georgia residents) reported that English was not their first language. In order to graduate culturally competent students, prepared to meet the demands of a changing state and world, the University will include linguistic diversity as a factor in admissions decisions.

### *Experiential Diversity*

In today's society, the variety of life experiences is constantly expanding. The University should strive to enroll students with varying perspectives derived experientially from circumstances, challenges and opportunities. It would enhance the educational experience of all University students if the student body were to represent the broadest possible spectrum of socioeconomic backgrounds and a range of other qualities and experiences.<sup>6</sup> Additionally, the educational environment is enhanced by

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<sup>5</sup> In the year 2000, over 750,000 Georgia respondents, age five and up, reported that language other than English was the primary language spoken at home (Georgia MapStats from FedStats). Languages reported included many African, Asian, and European languages. (U.S. Department of Education. "Survey of the States' Limited English Proficient Students and Available Education Programs and Services, 2000-2001.")

<sup>6</sup> For example students who have been required to work to supplement the family income, who have the primary responsibility of caring for siblings, who have worked full-time, who have raised a family, or who have served in the military could bring a different perspective to the classroom. Still other students may

the participation and perspectives of students who have special talents in areas such as the fine and performing arts, debate, or athletics. Finally, some instructional programs could benefit from increased gender diversity.

This diversity of backgrounds and life experiences constitutes experiential diversity, and it is of benefit to the entire University community. For these reasons, experiential diversity in the student body will be sought after and valued by the University

### **Conclusion**

In order to enhance diversity in the student body, the University of Georgia will engage in a "highly individualized, holistic review" of applicants' files, and give "serious consideration to all the ways in which an applicant might contribute to a diverse educational environment."<sup>7</sup> No policy, either explicitly or implicitly, will lead to automatic acceptance or rejection based on the specific diversity considerations discussed above.

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have had experiences including, but not limited to: a) living abroad for an extended period; b) growing up in a single-parent home, in foster care, or in another challenging family situation; c) facing difficult challenges due to their religious affiliation, sexual orientation, or gender identification or loss of a parent or sibling; or d) to overcoming sickness or disability.

<sup>7</sup> *Grutter v Bollinger et al.* 539 U.S. 02-241 (2003) p 25.

Appendix D

Memo from Department of Law, State of Georgia to Board of Regents of the University  
System of Georgia (with reference to UGA's Diversity Statement)



Department of Law  
State of Georgia

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THURBERT E. BAKER  
ATTORNEY GENERAL

UNIVERSITY OF GEORGIA  
VP INSTRUCTION

RECEIVED

2004 OCT 25 AM 9: 31

UNIVERSITY OF GEORGIA  
400 CAPITOL SQUARE SW  
ATLANTA, GA 30334-1300  
OFFICE OF  
LEGAL AFFAIRS  
Writer's Direct Dial:  
404-656-5614  
Fax 404-657-9932

October 22, 2004

Elizabeth E. Neely, Esq.  
Associate Vice Chancellor for Legal Affairs  
Board of Regents of the University System of Georgia  
270 Washington Street, S.W.  
Atlanta, GA 30334-1450

RE: Review of Draft Plan to Implement a Diversity Policy  
in Undergraduate Admissions at the University of Georgia.

Dear Ms. Neely:

On September 28, you requested our office review a proposed "Implementation of Diversity Policy" by the University of Georgia. The proposal had been forwarded to you by Stephen Shewmaker, the Executive Director for Legal Affairs for the University, with a request that our office comment on any legal concerns there might be in using the concepts discussed in the undergraduate admissions process. It is my understanding that the University intends to otherwise use this process and is planning on printing its admissions materials incorporating this policy on or after November 1, 2004.

It appears that this policy has been developed over time by the "Freshman Task Force Subcommittee of the Admissions Committee" and has already been approved by the Faculty Admissions Committee for use in evaluating applications for undergraduate admission to the graduating Class of 2009, i.e., students to be first admitted for the 2005-06 academic year. The policy statement was apparently framed to address four dimensions of diversity which had been previously approved by the University Council on March 18, 2004. Those four criteria are:

1. Racial and Ethnic Diversity;
2. Geographic Diversity;
3. Linguistic Diversity; and,
4. Experiential Diversity.

Those criteria are separately addressed as a part of a statement approved by the Council on that date and were not intended to be the sole criteria for evaluating "diversity." Under the Council statement, racial and ethnic minorities are defined to include "African American, Latino, Asian American and Native American" applicants. The policy is not specific as to how this minority

status affects the review of an application, but instead indicates only that this and other factors should be considered in striving to obtain a diverse student body.

\* This request for advice comes against the back drop of significant legal developments over the past several years in the role of diversity, and in particular racial diversity, in admissions policies for institutions of higher learning.<sup>1</sup> Most importantly, the U.S. Supreme Court has specifically considered the role of diversity in making admissions decisions in state institutions of higher education, including the role of race as a component of "educational diversity." *Gratz v. Bollinger*, 539 U.S. 244, 123 S. Ct. 2411 (2003), and *Grutter v. Bollinger*, 539 U.S. 306, 123 S. Ct. 2325 (2003). These cases addressed the admissions policies of the University of Michigan undergraduate and law schools, respectively.

These decisions clarify some fundamental tenets which must underlie any decisions made in relation to an admissions process where the race of an applicant will be known and considered, such as the one proposed for the University. First of all, the use of race in this kind of a process requires that any court reviewing an admissions decision apply a "strict scrutiny" analysis to determine whether the consideration of race is appropriate. *Gratz v. Bollinger*, 123 S. Ct. at 2427; *Grutter v. Bollinger*, 123 S. Ct. at 2337-38. This means that the use of race must be narrowly tailored to further a compelling governmental interest and to assure that it is designed for "pursuing a goal important enough to warrant use of a highly suspect tool." *Grutter* at 2338; see also *Gratz* at 2427.

The Supreme Court's decisions have identified "diversity" in the area of higher education as one such compelling interest which could meet the "strict scrutiny" standard mandated under the U.S. Constitution. "Diversity", as the Court refers to it, is not limited "solely in terms of racial and ethnic status." *Grutter* at 2332, 2344. Instead, in reviewing and approving an admissions policy for the University of Michigan Law School, the Court noted that "there are many possible bases for diversity admissions." *Id.* at 2344. The Court noted that factors demonstrating diversity could include travel experiences, language abilities, personal or family hardships,

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<sup>1</sup> Previous undergraduate admissions policies of the University have been reviewed and found unconstitutional. See *Johnson v. Board of Regents*, 106 F. Supp. 2d 1362 (S.D. Ga. 2000), *aff'd*, 263 F.3d 1234 (11<sup>th</sup> Cir. 2001). See also *Wooden v. Board of Regents*, 32 F. Supp. 2d 1370 (S.D. Ga. 1999), *vacated and remanded sub nom. Tracy v. Board of Regents*, 208 F.3d 1313 (11<sup>th</sup> Cir. 2000), *after reinstatement aff'd in part and rev'd in part*, 247 F.3d 1262 (11<sup>th</sup> Cir. 2001); *Tracy v. Board of Regents*, 59 F. Supp. 2d 1314 (S.D. Ga. 1999), *vacated and remanded*, 208 F.3d 1313 (11<sup>th</sup> Cir. 2000); *dismissed for lack of standing* U.S. Dist. LEXIS 11320 (S.D. Ga. June 16, 2000), *reconsideration denied* 2000 U.S. Distr. LEXIS 11262 (S.D. Ga. July 24, 2000).



community service experiences or careers in other fields before applying for admission to the law school. *Id.*

If the race of the applicant is to be considered as one factor demonstrating "diversity", it may only be used as a "plus" in reviewing a particular application for admission. *Grutter* at 2342. The applicant's race cannot be considered in a manner that would "insulate the individual from comparison with all other candidates for the available seats." *Id.*

In other words, an admissions program must be "flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight."

*Grutter* at 2342, quoting *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 317 (1978) (Powell, J., concurring).

This was  
responsibility  
all  
applicants?  
change  
boxes?  
control pt. seems clear, but not the example

The Michigan Law School admissions process was able to survive this "strict scrutiny" analysis and demonstrate that its program was narrowly tailored to meet the compelling governmental goal of education diversity. In approving of that program, the Court noted that the Law School's review of applicants was a "highly individualized holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment." *Grutter* at 2343. The Law School had no policy of automatically accepting or rejecting any applicants and could demonstrate factually that it accepted "nonminority applicants with grades and test scores lower than underrepresented minority applicants (and other nonminority applicants) who are rejected." *Id.* The Law School was also able to demonstrate that it had sufficiently considered workable race-neutral alternatives to obtain a "critical mass" of minority students but had rejected those alternatives for proper reasons such as the detrimental effects on the academic quality of admitted students. *Id.* at 2345.

\* \*

In both *Gratz* and *Grutter*, it is clear that the Court viewed these cases as being extremely fact-intensive. The Court went to great lengths in its opinions to describe the specifics of each admissions program and the methodology of how race was used as a component of diversity. It also relied upon the testimony of individual University employees and various experts in reaching its conclusions. See *Gratz*, 123 S. Ct. at 2418-20, 2421-22, 2424-25, 2428-30; *Grutter*, 123 S. Ct. at 2331-32, 2333-35, 2339-40, 2342-46. Additionally the Court noted that race-conscious admissions programs should be limited in time and should be used only so long as a specific problem is identified and continues. *Grutter* at 2346-47.

It is in the context of these decisions that the University's diversity policy should be considered. The materials provided are limited in scope and detail. It appears that on March 18, 2004, the

University Council approved a statement regarding the value of diversity in an educational setting and providing a broad definition including cultural, racial, ethnic and experiential factors which contribute to diversity. As noted above, the Council advocated the use of four factors (race/ethnicity, geography, linguistic and experiential) as indicia or elements of diversity, although it also indicated that other factors could contribute to diversity as well. In addressing the use of race as a "diversity" criterion, the Council statement indicates that race-neutral alternatives have failed to achieve a "critical mass" of racially and ethnically diverse students at the University.

Subsequently on August 13, 2004, the Faculty Admissions Committee approved the use of these criteria, including racial and ethnic diversity, in the University's admissions process. However, these diversity criteria would only be applied after an academic review of an individual applicant's files. A certain group of applicants would be deemed academically superior and offered admission to the University solely on the basis of their academic achievements. Other applicants would be deemed academically noncompetitive and therefore would be denied admission solely on those criteria. The remaining applicants would be deemed to be academically qualified and their files would be individually reviewed. It is at this stage that the four diversity criteria, as well as other unspecified diversity criteria, would be applied.

Should the use of race as a factor in the admissions process be challenged in the future, it will be incumbent on the University to explain the necessity for the use of that criteria in the admissions process in order to have it survive the "strict scrutiny/narrow tailoring" analysis mandated by the Constitution. It is clear from the Michigan cases that this would be a fact-intensive inquiry. The University should be prepared to expand upon why it has determined that it currently lacks the type of general diversity necessary for academic goals that are a part of its educational mission and how alternative race-neutral methods have failed to achieve these goals. It would also be necessary for the University to factually demonstrate what its interpretation of a "critical mass" of minority students is and why that too is necessary to fulfill its academic responsibilities. Finally, the University should expect a searching inquiry into the results of the application of this admissions process and the use of these diversity factors.

I do not know at this time what the University's response would be to these issues so it is difficult to more fully evaluate the application of the "diversity" policy to a limited number of undergraduate admissions. It is clear that the proposed policy does attempt to follow the general principles derived from the *Gratz* and *Grutter* cases, but should there be any litigation involving the application of the policy, it would be necessary to evaluate not only the wording of the policy itself but also the factual justifications underlying its development and operation. The University may also wish to address the issue of the duration of this policy and if and when its application will be re-examined to determine its continued necessity.

\*  
\*  
What Mich has done with duration?

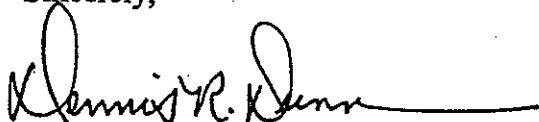
or simply to specify

\* distinguish  
a. do we need to specify this more fully in the statement  
b. just be sure we are prepared to do so down the road (are we?)

Betsey E. Neely, Esq.  
October 22, 2004  
Page 5

I hope this review of the legal issues presented by the University's diversity policy, as requested by the University, is of assistance to you and Mr. Shewmaker. Please let me know if there is any further assistance we can provide.

Sincerely,

  
DENNIS R. DUNN  
Deputy Attorney General

DRD/me

CC: Stephen M. Shewmaker, Esq.

## Appendix E

UGA Proposal Regarding Critical Mass (proposed supplement to Diversity Statement)

Drafted by Freshman Task Force, Faculty Admissions Committee, University Council


To: "McDuff, Nancy G." <nmcduff@uga.edu>, "Webb, Karen" <kawebb@uga.edu>, Charles Keith <chkeith@cb.uga.edu>, Christina Page <cpage03@uga.edu>, Del Dunn <ddunn@uga.edu>, Karen Bauer <kwbauer@uga.edu>, Mary Atwater <matwater@coe.uga.edu>, Meg Amstutz <mamstutz@uga.edu>, Scott Weinberg <weinberg@uga.edu>, Sherrie Nist <snist@arches.uga.edu>, Steve Baginski <baginski@terry.uga.edu>

From: "David D. Roberts" <drobotts@uga.edu>

Subject: Freshman task force (Revised draft on critical mass)

Cc: Harriet Wetzberger <hwetzel@uga.edu>,

Bcc:

Attachments:  Proposal Re Critical Mass (ddr)

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Dear colleagues,

Here, as an attachment, is a revision of the document concerning "critical mass" that Nancy McDuff offered us in November. It is intended to reflect our recent discussions and agreements within the freshman task force. Nancy and Scott Weinberg helped me tweak it a bit, and Steve Baginski offered some very helpful advice on how to justify the 51 percent threshold.

At our last task force meeting, we agreed that I'd circulate such a revision, and that we could decide from there whether we need to discuss it at another meeting or whether we are ready to forward it to the full admissions committee. Obviously, Nancy, Scott, and I feel that it's ready to go, but we want to be sure everyone is on board and that we have made everything as clear as possible. In sending it to the full committee, I would of course include the original statement on diversity approved in 2004 and a brief explanation of the need for the present supplementary document.

So please have a look and let me know as soon as you can whether you think we should:

- a) proceed to the full admissions committee
  - b) make relatively minor adjustments that might be done without a full task force meeting
- or
- c) meet again as a task force to discuss this revised draft.

With thanks and best wishes for the new semester.

David

University of Georgia  
Admissions Committee, Freshman Task Force  
Proposal Regarding Critical Mass of Diverse Students  
January 12, 2006

While all areas of diversity (racial and ethnic, linguistic, geographic and experiential) are important to the educational environment at the University of Georgia, we focus here on diversity in race, ethnicity, or heritage because the Supreme Court rulings of 2003 concerning the University of Michigan focused on specific decisions that must be made if race and/or ethnicity are to be used in admissions selection. In light of our overall concern with diversity, as outlined in our statement "Diversity at the University of Georgia" (approved by University Council March 18, 2004), we must determine, first, what constitutes a "critical mass" of students of color and, second, how to assess our progress towards achieving this critical mass. (Information regarding critical mass is attached to this proposal as an addendum on pages 4-6.) Such determinations have proven difficult for colleges and universities throughout the country, and no institution has developed a model that we can simply apply here at the University of Georgia. In what follows, we propose a definition of critical mass and a mechanism for assessment that we believe appropriate to our particular situation. But in doing so, we have drawn on the professional literature on educational diversity as well as the considerable discussion, fostered especially by the College Board, of what is and is not permissible in light of the 2003 Supreme Court rulings.

In considering the numbers of students in certain groupings below, we necessarily use the categories indicated for voluntary self-selection by applicants on our standard application form; the only data we have comes from the selections made on these forms. These categories are mandated by the Board of Regents and are used system-wide, but some of them do not correspond to those on our 2004 diversity statement; nor do they conform to currently preferred usage. We are looking into the scope for getting them changed, but for now we can only use the categories indicated on the current application form.

For the sake of clarity, however, we specify here how these categories correspond with those we propose, which we believe better reflect what the faculty had in mind in including "racial and ethnic diversity" among the university's criteria of diversity in the first place. In some cases, what we propose would require not only changes on the application form but also some slight modification in our 2004 diversity statement. We believe that the aim of the University System of Georgia, in indicating racial categories for voluntary self-selection on the application form, has been to give applicants the maximum range of inclusive choices, and our amendments reflect that belief. So in using "White or European American," for example, we do not intend to suggest that only those of European descent, as opposed, for example, to those of Moroccan or Lebanese descent, can be "White."

It should also be clear that all these categories, if they are to be helpful in our assessment of racial and ethnic diversity, are applicable only for American students. International

students contribute to geographical diversity. Thus our categories should carry no implication that, for example, a foreign student from an Asian country makes the same contribution to diversity as a student of Asian American background. In dealing with the current data, which in some cases reflect categories that make no such distinction, we will be able to subtract the number of international students (those with student visas) from the aggregate figures for the various groups at issue.

The following are the categories under discussion:

*Current application form:*

*Our proposed alternative (if applicable):*

Ethnicity

Race, ethnicity, or heritage

- |  |   |
|--|---|
| • American Indian or Native American (no change) |   |
| • Asian or Pacific Islander                      | Asian American or Pacific Islander heritage |
| • Black or African American                      | (no change)                                 |
| • Hispanic                                       | Latino                                      |
| • Multi-racial                                   | Bi-racial or multi-racial                   |
| • White  | White or European American                  |

Based on the same criteria, we recommend that the wording in our 2004 statement on diversity be amended as follows:

"African American" should read "Black or African American"

"Latino" should read "Latino"

"Asian American" should read "Asian American or Pacific Islander heritage"

"Native American" should read "American Indian or Native American"

"Bi-racial or multi-racial" should be added as a category

In developing our proposed definition of critical mass and our proposed mechanism for assessment, we proceeded on the basis of the following premises:

- A racially and ethnically diverse classroom is valued by the faculty at UGA because this allows opinions and discussion to vary.
- A classroom setting is not diverse when the students are racially and ethnically homogeneous.
- The majority population at UGA is "White or European American," so diversity requires that students of color make up some subset of some proportion of the classes available to our students.
- If the class includes only one student from another racial or ethnic group, the range of opinions expressed in discussion are likely to be limited. Research suggests that such a student, known in the professional literature on educational diversity as a "solo minority," will be viewed by the other students as responding for an entire race—and, indeed, may feel under obligation to do so. Thus, any class requires more than one student from any one group in order that the other students can understand the classroom contributions of students of color as expressions of individuals and not of groups. (Information regarding "solo minorities" is included in the addendum on "critical mass" below.)
- The UGA faculty believes that the threshold of a diverse learning environment is reached in a class that includes at least two members of at least two different groups of students of color.

- The key to assessment is thus to determine the extent to which we presently have that situation in some sub-set of classes. By drawing that subset from courses typically taken by students during the freshman year, we believe we have the most appropriate subset for assessing the diversity at issue.

With these principles in mind, the Freshman Task Force asked the Office of Admissions to work with the Office of Institutional Research to assess the present situation at UGA, based on enrollments in Fall 2004 classes, the most recent data available.

- The first hurdle was to identify a set of core courses typically taken by students at the freshman level during the fall. Working with the advisors in the Franklin College of Arts and Sciences, admissions officials considered typical freshmen fall-semester enrollments and, on that basis, identified a set of 23 courses that are central to the freshman experience. These courses range from small to very large enrollments. Some of the courses have lab or discussion breakout sessions. Each section was considered a class; only those sections labeled Independent Study or Study Abroad were eliminated.
- Since students self select their majors and upper level classes, it is reasonable to expect that the general distribution found in the lower level core classes will generally be found in the upper level classes, but not necessarily equally by major area.
- Next, the number of times that a section has none, or only one, of any racial category was recorded. Again, the categories examined necessarily reflected those on the application form. These were:
  - a) American Indian or Native American
  - b) Asian or Pacific Islander
  - c) Black or African American
  - d) Hispanic
  - e) Multi-racial
  - f) White

The results of the review were as follows:

- Overall, there were 705 sections of the 23 identified courses reviewed. These ranged in class size from a small English section of four to a large Political Science section of 400. There were hundreds of sections of 20-30 students, especially in the labs and in English and Freshmen Seminar classes.
- None of the large classes (100 or more students) had an instance of homogeneous White or European-American enrollments. That occurred most often in the classes with 11 to 30 students.
- The 705 sections included 26,211 student enrollments (not individual cases, as a student may be enrolled in more than one of the classes/sections).
- These enrollments included:
  - 50 persons self identified as American Indian or Native American
  - 1326 as Asian or Pacific Islander
  - 1359 as Black or African American
  - 435 as Hispanic
  - 714 as Multiracial.



- 21,528 as White
- This group also included 799 enrollments of unknown ethnicity.
- 

Of the 705 sections, 186, or 26 percent, included at least two students from at least two different groupings of persons of color.

In the judgment of the faculty, this figure is too low to indicate the critical mass of students of color essential for educational diversity at UGA. We believe we will have the requisite critical mass when, from within this subset, students have courses with at least two students from at least two different groupings of persons of color 51 percent of the time. We have chosen 51 percent so that students will learn in diverse classroom environments more often than not. The 51 percent threshold is conservative relative to thresholds to ensure "certain" or even "probable" diverse environments. We also note that the "more often than not" criterion is consistent with standards—in financial accounting, for example—that seek to specify when an event with two possible outcomes has yielded one as opposed to the other. Conversely, we will not have achieved the requisite diversity of race, ethnicity, or heritage until we have reached that figure of 51 percent.

By testing annually for the percentage of courses meeting this criterion in the same (or a similar) subset, we can assess our progress toward achieving the critical mass necessary to fulfill our educational mission at the University of Georgia. At the same time, we will continue to assess our progress by using the National Survey of Student Engagement to monitor changes in student perceptions of the diversity in the learning environment at UGA. And the faculty admissions committee, as representative of the faculty, will make its own regular assessments based on the classroom experience of its teaching members.

**Addendum: Critical Mass** (*From the work of the Freshman Task Force in 2003-04*)

A "critical mass" of any group of students means that there will be "meaningful numbers" or "meaningful representation" in the educational environment. As an example, a "critical mass" of students from underrepresented groups can "mean a number [of these students] that encourages [them to] participate in the classroom and not feel isolated."<sup>1</sup> A sufficient "critical mass" is also necessary so that students from underrepresented groups "do not feel ... like spokespersons."<sup>2</sup> Achieving a "critical mass" thus ensures that a typical academic class will have a sufficient number from any group of students that they are seen as participating as individuals, rather than as representatives of a particular group.

A useful concept in the discussion of critical mass is the idea from social psychology of a "solo minority." As Gudeman points out "a solo is more likely to be objectified and treated as a representative of a category than as a unique person."<sup>3</sup> In that context, we

<sup>1</sup> *Grutter v Bollinger et al.* 539 U.S. 02-241 (2003) pp 5-6, quoting University of Michigan Officials.

<sup>2</sup> *Ibid.*

<sup>3</sup> Gudeman, RH (2000) *College Missions, Faculty Teaching, and Student Outcomes in a Context of Low*

may be seen as achieving a critical mass of any given underrepresented student group when we cease to have solo representatives of that group in our classroom. Central to the concept of critical mass is the link of this concept to the educational value of diversity.

Court cases have dealt with critical mass in the context of race and ethnicity. In such a context, a "critical mass" of students contributes to the value of education on a campus because when "critical mass" is present in the classroom "racial stereotypes lose their force because nonminority students learn there is no 'minority viewpoint' but rather a variety of viewpoints among minority students."<sup>4</sup> This "enables [students] to better understand persons of different races."<sup>5</sup> Diversity enriches classroom discussion and leads to a deeper understanding of a variety of viewpoints presented in that discussion, as reported both by students<sup>6</sup> and by faculty.<sup>7</sup> A "critical mass" of students from underrepresented groups is thus essential to produce the educational benefits of a diverse student body.<sup>8</sup>

Critical mass is difficult to quantify, in part because it is a qualitative rather than a quantitative concept. Further, the *Grutter* decision indicates that attention to admitting a "critical mass" of underrepresented students does not "transform" this goal "into a quota."<sup>9</sup> Basically, the goal of "critical mass" is to avoid "solos" as defined above. It also avoids racial quotas by giving "substantial weight to diversity factors besides race."<sup>10</sup> The University's proposed policy defining diversity in admissions decisions meets this requirement.

<sup>1</sup> *Grutter v Bollinger et al.* 539 U.S. 02-241 (2003) pp 5-6, quoting University of Michigan Officials.

<sup>1</sup> *Ibid.*

<sup>1</sup> Gudeman, RH (2000) College Missions, Faculty Teaching, and Student Outcomes in a Context of Low Diversity. In *Does Diversity Make a Difference?* American Council on Education. p 51.

<sup>1</sup> *Grutter v Bollinger et al.* 539 U.S. 02-241 (2003) p 7.

<sup>1</sup> *Op. cit.*, p 18.

<sup>1</sup> Gurin, P, Dey, EL, Hurtado, S, and Gurin, G (2002). *Harvard Educational Review* 72, Number 3. p 14 and Table 3.

<sup>1</sup> Maryuma, G. and Moreno, JF (2000). "University faculty views about the value of diversity on campus and in the classroom" in: *Does Diversity make a Difference?*, American Council on Education. p14.

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Diversity. In *Does Diversity Make a Difference?* American Council on Education. p 51.

<sup>4</sup> *Grutter v Bollinger et al.* 539 U.S. 02-241 (2003) p 7.

<sup>5</sup> *Op. cit.*, p 18.

<sup>6</sup> Gurin, P, Dey, EL, Hurtado, S, and Gurin, G (2002). *Harvard Educational Review* 72, Number 3. p 14 and Table 3.

<sup>7</sup> Maryuma, G. and Moreno, JF (2000). "University faculty views about the value of diversity on campus and in the classroom" in: *Does Diversity make a Difference?*, American Council on Education. p14.

<sup>8</sup> See *Grutter v Bollinger et al.* 539 U.S. 02-241 (2003) p 21.

<sup>9</sup> *Op. cit.*, p 23.

<sup>10</sup> *Op. cit.*, p26.

<sup>1</sup> See *Grutter v Bollinger et al.* 539 U.S. 02-241 (2003) p 21.

<sup>1</sup> *Op. cit.*, p 23.

<sup>1</sup> *Op. cit.*, p26.

*Critical Mass from the Website of the University of Michigan*

<http://www.umich.edu/~urel/admissions/legal/expert/camarill.html>

First, critical mass (from our web site <http://www.umich.edu/~urel/admissions/> - search on critical mass)

- The University does seek to enroll a "critical mass" of students from underrepresented minority groups in order to achieve the educational benefits of diversity. More than token numbers of minority students are needed in order to ensure that students will have significant opportunities to interact with one another. It is from these interactions that the educational benefits result. A critical mass of students of a particular race allows all students to see differences within racial groups, and commonalities across racial lines. Critical mass is an educational concept—not a fixed number or target.
- The concept of a critical mass is consistent with the Supreme Court's guidance in the 1978 Bakke decision. As Justice Powell noted in that case, "some attention must be paid to the numbers" to achieve the educational benefits of diversity. By having the educational goal of "critical mass" in mind, our programs also satisfy the legal requirement that a program be "narrowly tailored" to meet the compelling interest in a diverse student body.

The court found that the Law School's pursuit of a "critical mass" of students from underrepresented groups provides a class with meaningful numbers of minority students "to ensure that all students, minority and majority alike will be able to enjoy the educational benefits of an academically diverse student body." The court noted that the admissions program is flexible, with no fixed goal or target. It does not use separate tracks for minority and non-minority applicants, and it does not function as a quota system. Furthermore, it sets "appropriate limits" on the competitive consideration of race and ethnicity. The court also found that the Law School had adequately considered race-neutral alternatives, and had ample reason to decide that some consideration of race is necessary to achieve its goal of a diverse student body in all of its facets.

<http://www.umich.edu/~urel/admissions/legal/expert/foner.html> (especially summary at the end)

Appendix F

State of the University Address 2006

Speech delivered by President Michael Adams, January 12

# State of the University Address 2006

The Chapel · January 12, 2006

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Thank you, Professor Felson, for that introduction.

Good afternoon. Thank you for being here.

By university statute, the president is required to make an annual report to the faculty on the state of the university. It is my privilege to present that report for the ninth time, and my pleasure to report that the state of the university is strong, albeit with a set of particular challenges for the coming years.

In my office, we deal on a daily basis with a multitude of issues which reflect the complexity of this university, from admissions to the budget to good or bad service at a university office to football tickets to parents pleased or upset with a faculty member to research opportunities or concerns, and the list goes on and on. It is a mountain of paperwork with which, thankfully, I have an excellent administrative team to assist me.

One of the challenges of this job is to keep the focus on what is truly important amid the tide of lesser concerns, and that is my topic today.

I would like, as is the tradition, to begin with a review of some of the successes of the previous year. Then I would like to discuss four major policy issues confronting the University of Georgia.

2005 was another very good year for the University of Georgia. First, I want to express once more my gratitude for the way you responded to the aftermath of Hurricane Katrina. Even though this campus is hundreds of miles from the northern shore of the Gulf of Mexico, it did not escape the impact of Katrina, which flooded much of the city of New Orleans, obliterated stretches of the Mississippi coast and pounded southwest Alabama.

Immediately after the hurricane made landfall the morning of August 29 and the scope of the damage became apparent, my office began to receive calls. "How can we help?" people asked. "What can the university do?" What the university can, and did, do was to respond from a heart of service to the needs of those in the storm's wake and to those who showed up on our doorstep. Individually and collectively, the University of Georgia opened its arms, its classrooms, its wallets and its facilities, and demonstrated its spirit to people whose lives had literally been turned upside down. I was especially pleased to learn recently that many of the students who volunteered to work at the Northeast Georgia Food Bank during the crisis have continued that work, embarking on what will be a lifetime of service to their communities.

Not only physically, but attitudinally, UGA responded. Many will never forget your generosity and your caring.

America also learned what many of us already knew – that universities are uniquely qualified to respond to disasters of this scale. We have the resources, the expertise, the facilities and the staff to do what we did at Rock Eagle and what LSU did in Baton Rouge when thousands of people sought refuge there. I visited that campus a week or so after the hurricane, and while I was heartbroken at what I saw, I was also very proud to see the land-grant tradition at work. The scene harked back to the Morrill Act and the creation of the land-grant universities, which were to be owned by the public, to be responsible to the public and to serve the public. That tradition is alive and well on the LSU campus, on this campus and on others.

There were many other highlights during the year. The freshman class which enrolled in the fall was the best qualified in UGA history, with an average SAT score of 1241 and a 3.74 GPA. This year's undergraduate class is also the most diverse ever, with a 20 percent minority component; that number was 15 percent only last year.

The number of African-American students who enrolled at UGA rose significantly, with some 350 students, or 7.7 percent, identifying themselves as African-American, up from 202, or 4.5 percent, last year. We also saw increases in Hispanic, Asian and Native American students.

These successes were shared by many of UGA's graduate and professional programs. Both the School of Law and the Pharmacy School recorded yet again increases in the enrollment of students from underrepresented populations. Nearly a quarter of the first-year classes in each of those academic units are from minority groups.

These successes, at both the undergraduate and graduate level, provide the kind of foundation and momentum with which we can continue toward our goals. As the flagship institution of the University System of Georgia, it is important that UGA's student body reflect as much as possible the diversity of this state's college-prepared student population.

This is an increasingly popular destination for more and more of Georgia's best students. In the early action process for Fall 2006 admission, approximately 8,500 applications were received by the October 15 deadline – a 60 percent increase over the previous year.

UGA was ranked 19<sup>th</sup> among public universities by *U.S. News & World Report*, our sixth consecutive year in the top 20. While it is risky to put too much stock in any one such ranking, it is significant that this university is consistently ranked among the very best public universities in this country. We owe that ranking to the very hard work of the students, faculty and staff.

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Since fiscal year 2000, research funding has increased 56.3 percent, from \$101.9 million to \$159.4 million. This growth reflects a focus on meeting the needs of those carrying out the research mission of this university as well as the increasing quality of the faculty and the proposals they are submitting.

On August 1, 2005 a long and storied UGA research career came to a close with the retirement of Gordhan Patel as Vice President for Research. Gordhan served this university for almost 38 years, having come here in 1967 as an assistant professor of zoology and rising through the ranks, ultimately serving as Dean of the Graduate School before becoming the research vice president. Gordhan, will you please stand so that we may thank you for all that you have done for the University of Georgia?

Since I last reported to you, there have been several significant administrative and academic appointments that warrant recognition today. We have named three vice presidents: David Lee, formerly of the University of North Carolina at Chapel Hill, is our new Vice President for Research. Rodney Bennett, who has served us well as dean of students, became Vice President for Student Affairs last summer. And Tom Jackson, who has headed UGA's public affairs office for 18 years, was named Vice President for Public Affairs just this week. Would the three of you stand so that we may recognize you?

We also filled three deanships. We learned that the best person to lead the School of Social Work was right here on campus. Maurice Daniels, a noted scholar of the civil rights movement has been a teacher, researcher and administrator in the School of Social Work for 26 years. Maurice is unable to be with us today, but please join me in recognizing him.

Sheila Allen was named dean of the College of Veterinary Medicine, after more than 20 years on the faculty and in administration there. It is always affirming when we find that the best available person for a job is one of our own. Scott Angle, the new dean of the College of Agricultural and Environmental Sciences, has joined us from the University of Maryland. Sheila and Scott, will you please stand so that we may welcome you to your new positions?

We celebrated the 10<sup>th</sup> anniversary of the Performing Arts Center on East Campus, one of our most high profile venues. A truly great university must have a vibrant arts program, and the Performing Arts Center is an important part of the arts at the University of Georgia.

For the first time in several years, there was better news on the state budget. While we must continue to be aggressive in seeking additional sources of revenue, such

as research and private funding, state support remains the core of this university's budget.

The state budget for the current fiscal year included the first year-to-year increase for UGA since 2002. It fully funded the University System formula, providing \$103 million in enrollment-based increases that are providing some relief from three years of budget reductions. We also received funding for a new dining hall at Rock Eagle. We owe a debt of gratitude to the Governor and the Legislative leadership for their support of the University of Georgia.

I want to thank the Governor for the salary proposal that he made in yesterday's State of the State address, and for his continued support of higher education in Georgia. He and I share a belief that a strong and growing higher education system which provides opportunity to every Georgian who desires it is critical to the future of this state.

Not only is the Governor committing 72 percent of the state's revenue growth to education, but his proposal for a four percent salary pool, the best in several year, is sorely needed. I am also greatly encouraged by his statement Tuesday that his top three priorities are education, education and education.

During the summer, the Office of the Vice President for Public Service and Outreach hosted the third conference on issues related to the Latino population living and working in the Southeast. Entitled "Finding Solutions: Latinos and the Socioeconomic Development of the Southeast," the conference brought together business leaders, educators, public service professionals, community leaders and others with a stake in this growing demographic trend. It is our call as a land grant university to apply the vast resources of this institution to the issues that affect the people of this state and, increasingly, this nation and the world. In helping address the impact of Georgia's booming Latino population and in many other ways, we are doing just that. As you may know, UGA will partner with the University of Texas in a \$12.3 million grant from the Hispanic Scholarship Fund in the coming years; I will speak more to that project later. Much of our success in this area has its roots in the \$3.5 million grant we received from the Goizueta Foundation in 2002.

Along the lines of our responsibility to address issues of societal concern, I am pleased that UGA will be providing expertise to the Partnership for a Prosperous Athens, which Mayor Heidi Davison announced earlier this year. This, too, is exactly the kind of project that a land grant university ought to be involved in, and I look forward to that group's progress on addressing this critical issue.

# State of the University Address 2006

The Chapel · January 12, 2006

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Five University of Georgia researchers, all faculty members of the Franklin College of Arts and Sciences, have been named Fellows of the American Association for the Advancement of Science (AAAS). The five UGA faculty members are Michael Arnold, Jeffrey Bennetzen, Robert Ivarie and Richard Meagher, all with UGA's department of genetics, and Susan R. Wessler in the department of plant biology. This is a signal achievement which speaks to the quality of the UGA faculty and I commend these individuals.

UGA's Food Services department was ranked in the top one percent of 245 universities in a study conducted by Educational Benchmarking Incorporated. That unit has won 59 national awards since 1986.

In the area of facilities, there were several significant accomplishments. We continued our work to preserve and restore the historic structures on North Campus. Phi Kappa Hall was rededicated and the renovation of Old College, UGA's first building, was begun. On South Campus, the Coverdell Center for Biomedical and Health Sciences was substantially completed and the first occupants are scheduled to move into the building in the very near future. We will dedicate that facility on April 7, with former President George H. W. Bush participating in that ceremony.

This innovative facility will house the Biomedical and Health Sciences Institute, the College of Public Health and interdisciplinary teams of laboratory scientists pursuing research of direct relevance to human health and well being. The Coverdell Center is sure to have a dramatic impact on UGA's research in the life science arena.

On April 14, we kicked off the public phase of the \$500 million Archway to Excellence campaign at the Georgia World Congress Center in Atlanta. It was a night to celebrate our students, with more than 300 of them on the program as emcee, speakers, dancers and musicians. We were able to announce that night that UGA's supporters had contributed and pledged almost \$300 million to the campaign; today that total stands at more than \$374 million. The six themes of the Archway to Excellence campaign, which were developed out of our strategic plan, are:

- Attracting and Supporting the Best Students
- Recruiting and Retaining Top Faculty
- Strengthening Programs to Serve the State and Beyond
- Advancing the Quest for Knowledge and Achieving Pre-eminence

- Enriching the Campus and Building the New Learning Environment, and
- Ensuring Annual and Long-Term Unrestricted Support

The realities of modern-day public university budgeting are clear: Private money is what separates great universities from the merely good ones. Becoming the kind of university that I know UGA can be and that all of us want it to be will require significant increases in the level of private support.

During the fiscal year which ended June 30, 2005 we set another record for annual fundraising with \$96.9 million in gifts and pledges from more than 51,000 donors. There is great depth and breadth of support for the University of Georgia in this state, across the nation and even around the world, and each of us should be very grateful.

The Arch Foundation for the University of Georgia was incorporated in May and held its first meeting in the Student Learning Center in June. Now the primary fundraising organization for UGA, the Arch Foundation is led by a board that is committed fully to the task of raising, managing and disbursing funds in support of our missions to teach, to conduct research and to serve the public.

The student-athletes and coaches who represent the University of Georgia in athletic competition had a very successful year. The women's swimming and diving team won its fourth national championship, and swimmer Samantha Arsenault was named last weekend at the NCAA convention as one of the nation's Top VIII student-athletes. The gymnastics team won its sixth national title and the men's golf team won its second national championship. The women's basketball team made it to the Sweet 16 round of the NCAA championship. The football team won the 2005 SEC East title and beat LSU in the SEC Championship Game. Unfortunately, the team's comeback effort in the Sugar Bowl against West Virginia fell short, but the Bulldogs finished the season 10-3 and ranked in the top 10 for the fourth consecutive season. Only one other team in the nation has finished in the top 10 each of the past four seasons - USC. The athletic department overall was seventh in the United States Sports Academy Directors' Cup competition.

While I had hoped to have a proposal ready today for the future of the Navy School property, there is still some work to be done over the next several weeks before we are ready to come forward. The closing of the Navy School is an unfortunate event for Athens, but I believe that the impact of that closing can best be minimized by using that property in the future in the manner in which it has been

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used for decades – education. Such a use would be consistent with the history of the Navy School and UGA and with the character of the community.

Education is at the forefront of all that we do, and ours is an institution that is moving in the right direction. But continued progress toward our goals will not be without challenges.

Let us look at four major issues that the University of Georgia must face in the coming years.

First is the issue of race. From my first day on this job to today, and probably tomorrow and well into the future, the issue of how to increase minority participation at the University of Georgia has been a pressing one. It has at its core the painful legacy of a segregated society which lingers today in a bimodal system of public education in Georgia, which too often poorly prepares minority students for the academic challenges of higher education. As the highest profile institution in the state, we find ourselves at the forefront of what is a national issue in selective higher education.

The freshman numbers this year were very good, but solving this problem is not a one-year process any more than slight dips in minority enrollment in previous years demonstrate a lack of commitment to the issue of increasing diversity. What this year's increase in minority enrollment does indicate is that our long-term focus on identifying, recruiting, admitting and enrolling minority students is working.

The *Atlanta Journal-Constitution* reported that “deans, professors, students and even alumni put in long hours on phones and in person reaching out to qualified African-American high schoolers, telling them what the University of Georgia has to offer. Recruiters targeted schools heavy with underrepresented populations and visited them frequently during the school year, shepherding them through the application process and then, once admitted, encouraging them to commit to UGA.” That is the kind of dedicated and devoted work that will get us to our goal, and I am grateful to everyone who has assisted in this effort and ask for your continued efforts as we move forward.

When I came to the University of Georgia in 1997, there was a formula-based admissions system which favored minorities, males and legacies. Because I thought such preferences were wrong, and particularly because I believed they would not stand a court test, we voluntarily dropped the gender and legacy preferences from the admissions formula beginning with the freshman class which enrolled in the fall of 2002.

We went as far as the 11<sup>th</sup> Circuit Court of Appeals in 2001 to try to maintain as much flexibility as possible on the question of how we would admit students to the university. At the time of that decision, the prevailing opinion was that there were other cases in the Supreme Court pipeline that were better suited to provide much-needed guidance on the use of race in admissions, the Michigan case chief among them.

We fought the good fight, but did not prevail.

In 2003, the Supreme Court ruled on the Michigan case in a manner which frankly raised as many questions as it answered and could open us, if followed, to further litigation.

Many individuals at UGA have been examining carefully the Michigan case and its implications for this campus. Faculty and administrators serving on the Freshman Task Force, a subcommittee of Faculty Admissions Committee of University Council, have spent months examining the broader issues framing the use of race in admissions. They have been considering the various dimensions of diversity – racial and ethnic, geographic, linguistic and experiential – as well as the body of research on the value of diversity on campus and in the classroom.

I am very grateful to this Task Force, because I believe its work to be of vital importance to our ongoing dialogue on these issues. It is critical that we measure the effectiveness of recruitment efforts and financial incentives in enhancing diversity, and it is also critical that we put in place appropriate assessment tools to track our progress. We must continue to communicate to people in Athens and across the state the benefits of a broadly diverse learning environment. This is a critical issue, and one that we must constantly monitor.

The use of race as a factor in admissions decisions differs, however, from targeted recruitment of students from underrepresented populations. For four years running we have used no racial, gender or legacy preferences in admissions, instead admitting students on the basis of demonstrated academic achievement and some additional file reading, while becoming much more aggressive about recruiting. Given the litigious nature of American society today – the value of a spot in the UGA freshman class is so great that people are willing to sue us to get in – I believe that, after thinking this through carefully and monitoring closely our collective efforts over the past four years, the best course for UGA in the immediate future is to keep the focus on recruiting and enhanced scholarships rather than on questionable legal remedies. In other words, I prefer to spend the available resources on potential students rather than lawyers.



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It is important that the positive news about the diversity of the freshman class this year be repeated next year, and the year after, and the year after and on into the future. The University of Georgia must never forget that it is the people's university. The student body should reflect the best that all of Georgia has to offer. The \$12.3 million grant from the Hispanic Scholarship Fund which we are sharing with the University of Texas at Austin will play a significant role in achieving that goal. The grant is designed to identify, implement and evaluate the best practices for recruiting, retaining and graduating Hispanic students. As the state with the third-fastest rate of growth in its Hispanic population during the 1990s, Georgia must be a leader in ensuring educational opportunities for these new Georgians.

We will also strengthen and enhance the identification and recruitment of other minority students. To help fund this initiative, we will apply one-half million dollars per year from bookstore revenues over at least the next four years to recruiting and enrolling students who are underrepresented within the UGA student body, with particular attention to first-generation college students from accredited Georgia high schools. We will deposit \$250,000 per year in an Arch Foundation endowed fund established for the same purpose, and we will apply an additional \$250,000 per year to financial support for current student needs. Such scholarships are an important component of the Archway to Excellence campaign.

In short, we will dedicate \$2 million in bookstore revenues over the next four years toward accomplishing the institutional goal of increasing the diversity of the UGA student body.

Second, despite all the progress at UGA over the past three to four years, one area where we have not made the progress we need to make is faculty and staff salaries. In preparing the FY 07 budget, I have already recommended to the vice presidents, to the Governor and to the legislative leadership that our top institutional and state priority has to be salaries. We need a substantial pool this legislative session to address faculty and staff salary deficiencies. I want to thank the members of the local legislative delegation for their assistance in this regard.

As I mentioned, the Governor yesterday expressed his support for such a salary pool, and I am hopeful that the members of the General Assembly will support his proposal. We must be able to recruit top faculty and staff from the best institutions in this country as well as retain those who are already on campus.

With the exception of filling vacancies necessary to keep the core teaching faculty at the FY 06 level, we will limit the number of new positions and put any available resources into the salary pool. The state of Georgia ranks fourth in the latest Southern Regional Education Board ranking of faculty salaries, behind only Delaware, Maryland and Virginia; essentially, Georgia has the highest salaries in the deep south. But we trail the national average, and salaries at UGA trail well behind those at flagships in Michigan, California, Wisconsin and New York. That is the level at which the University of Georgia competes for faculty today, and that is the level at which we must be competitive.

The third challenge, and one which impacts resources, is tuition. We need a major, realistic three- to four-year tuition policy at the System level which reflects the complex character of a comprehensive research university.

This will be one of the first issues I address with Chancellor Davis. Georgia is 16<sup>th</sup>, or lowest, among Southern Regional Education Board states in tuition and more than \$1,100 below the median of SREB flagship institutions. We cannot compete long-term at the highest levels with the lowest level of tuition. Being perennially on the "Best Values in Higher Education" lists is a short-term benefit with negative long-term consequences.

Fourth and finally is the issue of curriculum breadth and reform. In last year's State of the University address, I focused on the need to increase academic rigor at UGA. In particular, based on the findings of the National Survey of Student Engagement, I asked whether the curriculum here had kept pace with the dramatic rise in student quality over the past decade or so. We have now completed a year's study of the curriculum through the good work of the Task Force on General Education and Student Learning, under the direction of Vice President for Instruction Del Dunn and Vice Provost for Academic Affairs Jere Morehead. The *Atlanta Journal-Constitution* called the report "a workable blueprint for transforming UGA from a good institution into a great one." CBS News also reported on UGA's focus on increased academic rigor.

The results of our second participation in the National Survey of Student Engagement show some good progress toward increasing the academic rigor on campus, but we must continue our efforts. Our students still feel less challenged by their classes than students at our peer and aspirational institutions, still write less and still study and prepare for their classes less.

The Task Force, whose report is available on the Provost's website, made a number of thoughtful recommendations, the following of which have already been implemented or will be implemented very soon:

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- 1) The Task Force joined the nationwide conversation on the use and abuse of alcohol by students. In February, the Cabinet approved a parental notification policy for certain alcohol violations. The task force recognized that the excessive indulgence in alcohol is detrimental to the health and safety of our students as well as to the academic environment at UGA. I want to thank the students for their efforts this year at more responsible alcohol use. We will be successful in this area only if the students take the lead.
- 2) We have petitioned the Board of Regents, in conjunction with a similar request from Georgia State University, for permission to create a pilot program for a plus/minus grading system. The task force believes that such a grading system will provide incentives for students to improve their class standing and to remain engaged in their course work through the end of the semester.
- 3) We have also decided to include an academic component in the construction of new residence facilities and the renovation of existing ones. Integrating learning with living is an important element of raising the academic profile of the institution.
- 4) The Office of Service Learning was established on July 1 as a collaborative effort between the offices of the Vice President for Instruction and the Vice President for Public Service and Outreach. The task force found that today's students want the opportunity to serve the community and that they become more engaged in learning when they are given the chance to relate what they learn in the classroom with real-life tasks in the community.
- 5) The General Education subcommittee of University Council is meeting regularly to act on the various recommendations pertaining to the core curriculum and learning goals.

We simply must broaden the curriculum at both the lower- and upper-division levels if UGA is going to be one of the top 10 or 12 public research universities in America. Two areas in particular hold the promise for large amounts of federal research dollars, and we must enhance our capacity to attract those dollars – engineering and public health.

There is no need to replicate any institution – and goodness knows, UGA has no desire to become Georgia Tech – but engineering is an area ripe for expansion. We had proposals approved last fall by the Board of Regents in five areas: bachelor's and master's degree programs in biochemical engineering and environmental engineering, and a bachelor's degree in computer systems engineering. This is a good foundation on which to begin to meet the demonstrated need for more engineers in Georgia and to engage our Faculty of Engineering more effectively.

In 2002, when we initially proposed those engineering degree programs to the Board of Regents, we offered the following supporting data:

- Georgia relies on in-migration from other states and countries to fill almost half of the engineering jobs in the state.
- Less than half of the qualified Georgia high school graduates with an expressed interest in engineering enroll at Georgia Tech.
- The Georgia Department of Labor projected a 46 percent increase in the number of engineering jobs in Georgia from 1996-2006.

Expanding the availability of engineering education in Georgia will also address an issue of much broader significance in America today. I am shocked at the numbers I have seen regarding the nation's, and therefore higher education's, inadequacies in science, technology, engineering and mathematics (or STEM) education. I agreed to be the principal investigator on an NSF grant – the Louis Stokes Alliance for Minority Participation – that would lead us to help five Georgia colleges – Bainbridge College, Fort Valley State University, Georgia Perimeter College, Savannah State University and Southern Polytechnic State University – improve their teaching and increase the number of minority graduates in those areas. This grant, which will be managed by the Office of Institutional Diversity, will be an important component of our ongoing efforts to enhance diversity at the University of Georgia.

As I have contemplated UGA's responsibility in this area, several things have focused my thinking.

Thomas Friedman's "The World is Flat" is among a number of books and articles I have read which highlight how far the U.S. trails the world in science and mathematics education. Some of the facts are staggering.

The Business-Higher Education Forum reports that "U.S. student achievement in science has been largely stagnant,

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with today's students achieving at about the same level as their parents." U.S. colleges awarded 17 percent of their bachelor's degrees in the sciences, among the lowest level of 20 countries included in a recent study. At UGA, the numbers are even lower: 14 percent of undergraduate students this year are majoring in the sciences.

Bill Gates noted in a recent speech that Microsoft cannot hire enough skilled workers: "The jobs are there and they are high-paying jobs, but we are not seeing the pipeline as is used to be. This creates a dilemma for us on how we get the work done." And according to the *Washington Post*, 25,000 technology jobs are unfilled in the Washington, DC area alone, costing the region more than \$1 billion a year in lost wages.

This is my concern: Ours is increasingly a culture which continues to tell our children that afternoon sports are more important than algebra homework and science projects. Too many of our best students are staying away from science, technology, engineering and math, and we are falling dangerously behind the rest of the world in these fields.

I believe that we can address this issue, and that American higher education must lead as it has done before. We built the largest agricultural force in the world in the 19<sup>th</sup> and early 20<sup>th</sup> century following the Morrill Act. We built the best peace- and war-time nuclear program in the world at the end of World War II. We responded to Sputnik in the 1950s and, answering the call of President Kennedy, put a man on the moon by the end of the 1960s.

Just as engineering will fill a critical need in this state, another curricular area which we must continue to address is expanding public health education. According to the advocacy group Healthy Americans, Georgia is above the national average in adults with asthma and diabetes, above the national average in new cases of cancer in men, above the national average in deaths caused by heart disease, above the national average in infant deaths, below the national average in the percentage of children who are fully immunized by age three, above the national average in the number of babies born with low birth weights – the litany goes on and on. Our own researchers have addressed the issues of childhood obesity, diabetes and Parkinson's.

We took a first step toward meeting these needs with the creation of the College of Public Health a year ago. The College already enrolls 245 students, with 160 undergraduates enrolled in the environmental health or health promotion degree programs, and 85 graduate students, 40 of whom are in the new masters of public health program. The 18 faculty in the College have made

good strides in securing grants, garnering \$2.4 million in the unit's first year of existence and ranking eighth out of UGA's 15 colleges and schools in external funding.

Under the direction of interim Dean Phil Williams, the College of Public Health has made significant progress toward earning accreditation from the

Council on Education for Public Health. One site visit has already been completed, for which the College earned high marks. We anticipate accreditation in 2009.

Creating a College of Public Health has helped us retain graduate students who previously left UGA for schools offering degree programs in public health. The masters of public health and the proposed doctorate in public health will allow UGA to compete for the best graduate students in an area of significant need for this state.

The College has also had a significant impact on the research program here. With a focus in three areas that are new to the university – biostatistics, epidemiology and health policy – as well as existing strengths in the faculty, it offers interdisciplinary opportunities under an academic structure that did not exist even 18 months ago. Prior to the creation of the College of Public Health, faculty in units such as the Center for Tropical and Emerging Global Diseases, the Biomedical and Health Sciences Institute and the Cancer Center had to look to other institutions and agencies for collaborators. Today, the College helps facilitate such collaboration on campus.

Perhaps most importantly, the College in the coming years and decades will play an important role in improving the health of all Georgians by participating fully in our land-grant mission to serve the people. One faculty member holds a joint appointment with the Office of the Vice President for Public Service and Outreach, and the model for outreach that exists there and through the Cooperative Extension Service is one that the College of Public Health intends to employ. Georgia is the largest state in the nation with only one public medical school and, until last year, no public school of public health. As the state's flagship university, the University of Georgia is uniquely positioned to deliver services in a way that no other institution in the state can. With continued attention to additional opportunities for academic enhancement, I am confident that the College of Public Health will play a critical role in improving the health status of the citizens of Georgia, and especially those in rural areas, where the need is greatest.

Much of this progress is made possible through collaborative efforts, and we have a long history of working with the Medical College of Georgia to try to meet

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Georgia's need for public health professionals and to conduct research that will improve the health of all Georgians. Since 1974, MCG has operated the School of Nursing at Athens; UGA students take 60 hours of the pre-nursing curriculum here and then begin their junior year in the nursing program.

Additionally, UGA and MCG faculty are collaborating on research into the long-term effects of drugs prescribed for schizophrenia, pediatric echocardiography, cardiovascular health and more. The College of Pharmacy operates a program on the MCG campus, and the College of Family and Consumer Sciences offers a joint child life program with MCG. The UGA Research Foundation manages technology commercialization efforts for the Medical College of Georgia. The Biomedical and Health Sciences Institute works with MCG and our own Center for Undergraduate Research Opportunities to place students in the clinical research environment. The cancer program based in Augusta has an institute here. Our College of Public Health has an institute in Augusta.

A continued relationship with the Medical College of Georgia which takes advantage of the comprehensive nature of the research program and curriculum here and the clinical expertise there is critical if this state's public higher education system is to play a role in improving the health of Georgians.

The two curricular areas I mention here today, engineering and public health, enjoy the strong support of faculty, staff and students across campus. Dedicated people have worked tirelessly to build the foundation for advancements in both of these arenas, and as a leading research institution the University of Georgia has a responsibility to answer the call.

For more than two centuries, the people of the state of Georgia have looked to this institution with high expectations. They look to us for leadership. They look to us to have a positive impact on their lives. They look to us to make the future of this state brighter. By responding aggressively and successfully to these four issues - diversity on campus, a well-crafted tuition policy, improved salaries, a broadened curriculum - we will have lived up to, and even exceeded, those expectations.

We face significant challenges, but out of challenge rises opportunity. What will be important as we move forward, and what will be recorded in history in years to come, is how the University of Georgia responds to these challenges and how we make the most of these opportunities. As always, our greatest asset in responding to these challenges is people. I trust that we will address these and other unforeseen challenges head-on, transforming opportunity into accomplishment.

Thank you.

Appendix G

Institutional Review Board Approval

February 3, 2006

Protocol H06163



INSTITUTIONAL REVIEW BOARD

Mail: P.O. Box 3999  
Atlanta, Georgia 30302-3999

In Person: Alumni Hall  
30 Courtland St, Suite 217

Phone: 404/463-0674  
Fax: 404/654-5838

February 3, 2006

Principal Investigator: Baez, Benjamin

Student PI: Rodney Lyn

Protocol Department: Educational Policy Studies

Protocol Title: A critical analysis of the policy development process utilized at the University of Georgia in response to the United States Supreme Court decisions in Grutter v. Bollinger (2003) and Gratz v. Bollinger (2003).

Submission Type: Protocol H06163

Review Type: Expedited Review

Approval Date: February 3, 2006

Expiration Date: February 2, 2007

The Georgia State University Institutional Review Board (IRB) reviewed and approved the above referenced study and enclosed Informed Consent Document(s) in accordance with the Department of Health and Human Services. The approval period is listed above.

Federal regulations require researchers to follow specific procedures in a timely manner. For the protection of all concerned, the IRB calls your attention to the following obligations that you have as Principal Investigator of this study.

1. When the study is completed, a Study Closure Report must be submitted to the IRB.
2. For any research that is conducted beyond the one-year approval period, you must submit a Renewal Application 30 days prior to the approval period expiration. As a courtesy, an email reminder is sent to the Principal Investigator approximately two months prior to the expiration of the study. However, failure to receive an email

reminder does not negate your responsibility to submit a Renewal Application. In addition, failure to return the Renewal Application by its due date must result in an automatic termination of this study. Reinstatement can only be granted following resubmission of the study to the IRB.

3. Any adverse event or problem occurring as a result of participation in this study must be reported immediately to the IRB using the Adverse Event Form.
4. Principal investigators are responsible for ensuring that informed consent is obtained and that no human subject will be involved in the research prior to obtaining informed consent. Ensure that each person signing the written informed consent form (ICF) is given a copy of the ICF. The ICF used must be the one reviewed and approved by the IRB; the approval dates of the IRB review are stamped on each page of the ICF. Copy and use the stamped ICF for the coming year. Maintain a single copy of the approved ICF in your files for this study.

All of the above referenced forms are available online at <https://irbwise.gsu.edu>. Please do not hesitate to contact Susan Vogtner in the Office of Research Integrity (404-463-0674) if you have any questions or concerns.

Sincerely,



Ann C. Kruger, IRB Chair

**Federal Wide Assurance Number: 00000129**