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Affirmative Action and the Media: A Mixed Methods Analysis of News Coverage of U.S. Supreme Court Cases

IHELG Monograph

10-10

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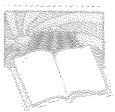

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Affirmative Action and the Media:
A Mixed Methods Analysis of News Coverage of U.S. Supreme Court Cases[1]

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In the U.S. Supreme Court case *Regents of University of California v. Bakke* (1978), Justice Powell put forth the opinion that promoting educational diversity is a compelling governmental interest. By no means did that settle the question. Debate raged regarding whether a majority of the Supreme Court in *Bakke* agreed with Justice Powell's opinion (e.g., Daniel, 1999; Liu, 1998; Moses, 2001; Philip, 2001; Schuck, 2002). Beginning in 1995, a series of cases in the lower courts and ballot initiatives challenged the diversity rationale and the use of race-conscious admission policies in higher education (see Appendix A for a list of the cases and successful ballot initiatives). It was not until 2003 that the U.S. Supreme Court unequivocally ruled that colleges and universities could consider an applicant's race and ethnicity, along with other factors, to ensure a diverse student body (*Grutter v. Bollinger*, 2003).

According to the Court, affirmative action programs that promote diversity on college and university campuses are constitutional as long as individual review is a component of the admissions process (*Grutter v. Bollinger; Gratz v. Bollinger*, 2003, also

[1] This working paper was presented at the Association for the Study of Higher Education (ASHE) annual meeting in Indianapolis, Indiana on November 18, 2010.

referred to as the Michigan cases).[2] In the most recent education affirmative action case to reach the U.S. Supreme Court, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1* (2007) (referred to as the *PICS* case), a unanimous Court upheld the diversity rational as applied to colleges and universities.

Yet, colleges and universities across the U.S. have been dropping race-conscious policies (Ancheta, 2007; Miksch, 2007; NAACP, 2005; U.S. Department of Education, 2003, 2004). In an earlier study (Miksch, 2007) we were able to document 71 race-conscious programs at 53 separate institutions that changed policies during a ten-year period (1995—2005). Fifty-five percent of institutions stated that they changed their programs because of the perception that the Office for Civil Rights (OCR) would investigate programs that were race-conscious. Thirty-four percent of the institutions provided "pressure from advocacy groups" as a reason for halting race-conscious policies. In addition to the threat of an OCR investigation and pressure from advocacy groups, staff reported the fear of publicity—based on reading articles in *The Chronicle of Higher Education*—as a reason they stopped using race-conscious policies to achieve a diverse student body. In follow up interviews, informants cited news coverage in *The Chronicle of Higher Education* as a primary source of their anxieties (Miksch, 2007).

What is it about news coverage in *The Chronicle* that has led to these apparent overreactions? Is *The Chronicle of Higher Education* misrepresenting the law and its

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[2] In *Grutter v. Bollinger* (2003) the U.S. Supreme Court upheld the University of Michigan Law Schools race conscious admission policy because it met the Court's two part test. The Law School had a "compelling interest" for considering race (diversity) and it did so in a "narrowly tailored" way (race as one factor of diversity considered in an individualized review process. *Gratz v. Bollinger* (2003) was a challenge to the University of Michigan's undergraduate admission process. The Court affirmed that diversity was a compelling interest, but struck down the undergraduate admission policy because the Court found it was not "narrowly tailored." The Court ruled that the point system used by the University of Michigan did not provide the level of individual review required when race is a consideration in a public university admission process. For more detailed discussion of the cases, Ancheta (2007) provides an overview.

implications for admissions policies and programs or are the administrators simply reading the news with an overly anxious eye? In 2010 we conducted a computer-assisted content analysis of news coverage in *The Chronicle of Higher Education.* That research suggested that the coverage was not misrepresenting the law but rather that the coverage was not providing much legal information at all (Miksch & Pedelty, 2010). Instead, the news stories focused on the pro and con arguments and framed affirmative action as a highly debatable and uncertain area of law both before and after the U.S. Supreme Court rulings in the Michigan affirmative action cases.

In this current study, we will build on our computer-assisted quantitative analysis (Miksch & Pedelty, 2010) by conducting a qualitative content analysis to further explore the specific framing of the press coverage. We are interested in the dominant news frames—story lines—that construct the issue of race-conscious programs in higher education. Based on our initial findings, recommendations will be made regarding how coverage might be improved, particularly with an eye toward greater accuracy, depth, and context. Implications for newsreaders, particularly policy makers, researchers, and program administrators, faculty, and staff, will also be discussed.

CONCEPTUAL FRAMEWORK—THE POLITICS OF FEAR

Our prior research (Miksch 2007, 2008) with program leaders indicates that many administrators are operating under what David Altheide (2006) refers to as "the politics of fear." Altheide defines the politics of fear as "decision makers' promotion and use of audience beliefs and assumptions about danger, risk, and fear in order to achieve certain goals" (p. 1). Noting that "power is the ability to define a situation for self and others" (p. 207), Altheide argues, "powerful people assert their will in the modern world through the

politics of fear by being part of the communication process that defines social issues and social problems" (p. 207). Corey Robin (2004) also underscores how elites, legal, media, and educational institutions reinforce political fears.

Political and media theorists have applied the "politics of fear" concept to media coverage of crime and terrorism (Altheide, 2002; Barber, 2004; Furedi, 2007). Works such as David Altheide's *Creating Fear: News and the Construction of Crisis* (2002) highlight how media coverage can lead to policies based on panic, rather than empirical evidence. Gonzales and Delgado (2006) argue that stoking fears of immigrants and racial minorities has served as an effective political tactic for neoconservatives, in addition to homophobia, anti-feminist rhetoric, and constant allusion to terrorism. It is important, however, to note that the practice of using fear to gain political ends is not restricted to a particular political party or ideology. According to Furedi (2007) the practice "has become institutionalized in public life" (p. 1).

This framework applies well to attacks on race-conscious affirmative action. Despite *Grutter* (2003), administrators appear to be allowing fear to dictate how they do, or do not, promote access. Many are halting affirmative action programs due to misperceptions of the law and fear concerning the potential consequences of maintaining and strengthening them. The *Grutter v. Bollinger* (2003) decision unequivocally upheld the *Bakke* decision. Legal scholars, even those who disagree with *Bakke*'s diversity rational, concede that the *Grutter* decision ended all legal debate that diversity is a compelling interest *(e.g.,* Mawdsley & Russo, 2003*).* Most recently, all nine U.S. Supreme Court Justices reaffirmed the diversity rational in higher education contexts *(Parents Involved in Community Schools v. Seattle School Dist. No. 1, PICS* case, 2007).

Yet, institutions of higher education are rapidly undoing the policies and programs made possible by *Bakke* and *Grutter.* As cited above, interviews with program leaders indicates that the politics of fear, and not the law, is the operative principle. Many administrative informants in our previous research cited the news coverage of *The Chronicle of Higher Education* as a source of information and a major reason for their relative timidity in the face of actual and potential pressure from anti-affirmative action advocates. In fact, many institutions reported that they stopped using affirmative action policies because of a "hostile legal climate" and fear of negative publicity after reading reports in *The Chronicle* (Miksch, 2007). That finding is supported by David Schimmel and Linda Nolan's (2005) nationwide survey of 250 deans and administrators. A substantial number of respondents (44 percent) noted that they use *The Chronicle of Higher Education* "often" or "always" as a legal resource. Therefore, it is important to determine how affirmative action is covered in *The Chronicle.*

METHOD

Having completed a rigorous quantitative content analysis of *The Chronicle of Higher Education*'s news coverage from 1998 until 2009 (Miksch & Pedelty, 2010),[3] our current study is designed to conduct a qualitative analysis of a sample of stories. Among other findings, the quantitative analysis indicated that (1) the news agenda revolved mainly around the 2003 *Gratz* and *Grutter* Supreme Court cases, yet (2) rather than legal information and the outcome of the cases, the coverage remained primarily focused on

[3] Quantitative content analysis facilitates rigorous and objective study of the manifest (i.e., explicit) content of texts (Krippendorff, 2004; Neuendorf, 2002). Computer-assisted content analysis allows for more systematic examination of large text samples (Pennebaker, Francis, & Booth, 2007). Linguistic Inquiry and Word Count (LIWC) software (Pennebaker, Francis, & Booth, 2001) was used in this earlier study to produce a more detailed set of measures concerning potential bias in choice and representation of sources, rhetorical tendencies, ideological framing, and contextual information.

the polemic controversies surrounding affirmative action, even well after the those decisions were handed down setting forth the legality of affirmative action in admissions with appropriate individualized review. There were also indications that the anti-affirmative action rhetoric was more successfully consistent and focused. The term "preferences," associated almost exclusively with the anti-affirmative action argument, was very prominent in the coverage before, during, and years after the court cases, whereas no single term or terms was so consistently or, from a news agenda-setting perspective, as successfully used by the pro-affirmative action camp.

Having determined the relative prevalence and numerical success of each side's rhetoric over time, it is now important to understand the rhetorical presentation and coverage of those rhetorics at a finer grained scale of analysis. Therefore, we are using framing analysis (Entman 1993, 2007, D'Angelo 2002) to determine how journalists present (i.e., quote) and reframe (i.e., contextualize) each side's rhetoric and their shared debate. As Entman (1993) notes, "the major task of determining textual meaning should be to identify and describe frames" rather than "treating all negative or positive terms or utterances as equally salient and influential" (57). He argues that simply counting messages judged as positive or negative "neglect[s] to measure the salience of elements in the text, and fail[s] to gauge the relationships of the most salient clusters of messages-the frames-to the audience's schemata" (57).

Per the term "news story," journalism is a narrative genre. Therefore, one of the most effective ways to understand the ideological, political, and policy framing of the news is to examine its narrative structure, including main characters (e.g., sources), plot lines, plot devices (e.g., conflicts and questions), settings, and other features that

comprise any story and allow it to communicate information to an audience. Therefore, our framing research will feature narrative analysis (Giles, 2008). We examined a sample of news stories from *The Chronicle* drawn from throughout the eleven-year range covered in the quantitative study. We also conducted a concentrated study of the coverage of the Supreme Court cases in 2003, and the years following the Michigan decisions, by reading and applying narrative analysis to all of the published news stories.

Data Sources

We reviewed news coverage of race-conscious policies in *The Chronicle of Higher Education* from 1998 until 2009.[4] We selected the period between 1998 (a term after the U.S. Supreme Court refused to hear the *Hopwood v. Texas* (2006) case that reignited the diversity debate) through 2009 (four years after the Supreme Court opinion in *Grutter* upheld the diversity rationale and two years after the *PICS* case). Our goal was to obtain a longitudinal view of news coverage of affirmative action cases.

Using Lexis-Nexis, all *Chronicle of Higher Education* news reports containing "affirmative action" and "race" in the headline and/or lead paragraph were acquired. That search resulted in 408 articles written by *Chronicle* reporters published from 1998-2009, inclusive, after non-news documents were removed.

FINDINGS AND DISCUSSION

In our quantitative study (Miksch & Pedelty, 2010) we found that the U.S. Supreme Court decisions in the Michigan affirmative action cases set the media agenda.

[4] Ideally, we would have liked to analyze news reports beginning with the year 1996. In 1996, voters passed Proposition 209 in California, banning affirmative action. Also in that year, the Fifth Circuit Court of Appeals refused to accept diversity as a "compelling interest" and struck down race-conscious admission policies at the University of Texas (Hopwood v. Texas). Unfortunately, we were unable to obtain sets of news articles prior to 1998.

The U.S. Supreme Court decided both Michigan affirmative action cases in 2003 and Figure 1 illustrates the agenda-setting importance of those cases.

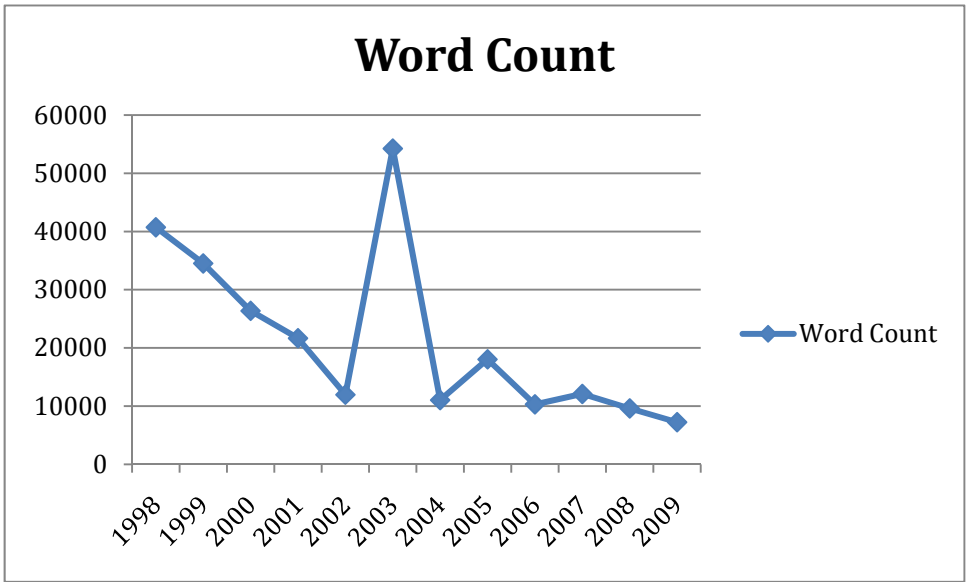

Figure 1. Total number of words in affirmative action news stories

News Coverage in The Chronicle

Despite the agenda-setting influence of the Michigan cases, legal discourse does not seem to be represented strongly in *The Chronicle's* news content. Utilizing LIWC software, we created a dictionary titled "legal tests" containing legal terminology from the *Grutter* and *Gratz* opinions, including "strict scrutiny," "compelling interest," and "narrowly tailored." Figure 2 illustrates how rarely legal language was used in *Chronicle* stories covering affirmative action. Perhaps most interesting, the use of legal terminology did not increase in 2003, the year the Michigan cases were decided.

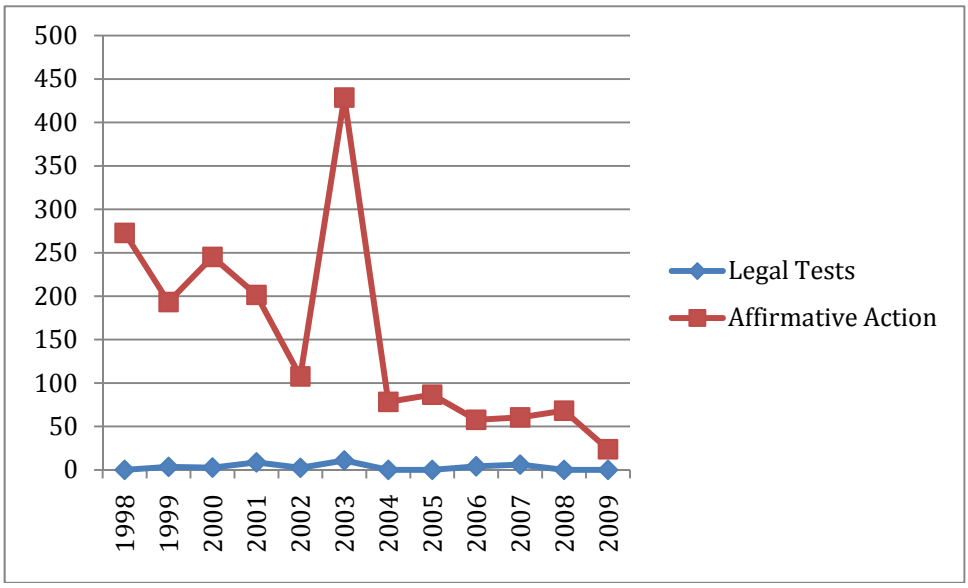

Figure 2. Legal Tests versus Affirmative Action

Our close reading of the articles confirms that news stories were more about the controversy surrounding affirmative action, rather than providing legal information or quotations from the Court's opinions. After the Supreme Court decided *Grutter* and *Gratz* in June, *The Chronicle* published a special report on July 4, 2003. Three of the stories quoted from the Court's opinions and provided some legal information (Hebel, 2003; Schmidt, 2003; Selingo, 2003). One of the stories suggested it will be "easier" to defend race conscious admission policies (Selingo, 2003) and another discussed whether scholarship and outreach programs may legally promote diversity (Hebel, 2003). The main story included the following legal analysis:

> The U.S. Supreme Court upheld the use of race-conscious admissions policies to promote campus diversity in two rulings involving the University of Michigan at Ann Arbor. But it also placed limits on colleges' use of affirmative action, requiring, for example, that they

> consider race-neutral alternatives, refrain from using formulaic admissions systems that automatically treat students differently based on their race, and give no more weight to applicants' race than necessary to achieve the institutions' educational goals.

The main story headline, however, read “Affirmative Action Survives, and So Does the Debate” (Schmidt, 2003). Thus, although the special report included legal language and information about the cases, affirmative action was framed as an on-going debate.

The stories in the months and years following the Court’s rulings provide even less legal information. In 2007, there was additional legal coverage surrounding the *PICS* case (overturning voluntary integration plans in Seattle and Kentucky public high schools), however, the amount of legal discourse was fairly thin:

> [the *PICS* case] did not significantly change the law governing colleges' use of race-conscious policies in admissions and other areas. It mainly just reaffirmed that colleges must seriously consider race-neutral alternatives, must not put too much weight on race or ethnicity, and must show that such policies have educational benefits.

The story provided legal information and highlighted the unanimous approval of the diversity rational in higher education, at the same time providing information on individual review and alternatives to race-conscious policies. It did not provide in depth quotes from the Michigan or *PICS* case, and focused on race-neutral alternatives rather than the benefits of diversity.

We next looked to see if there was evidence that either con or pro affirmative action rhetoric was represented more in *Chronicle* news stories. Custom dictionaries were created and tested using Linguistic Inquiry and Word Count (LIWC) software. In order to determine which terms are used primarily by one side or the other, letters to the editor, commentaries, the University of Michigan's briefs filed with the U.S. Supreme Court, the Center for Individual Rights (CIR) briefs filed with the U.S. Supreme Court, as well as amicus (friend of the court) legal briefs filed with the U.S. Supreme Court were analyzed. In these documents, authors and institutions clearly declare themselves for or against affirmative action. The documents were divided into pro and con. Dictionaries of terms were developed to test the comparative prevalence of rhetoric associated with proponents and challengers of affirmative action and tests run to see if there was evidence that either con or pro affirmative action rhetoric was represented more in *Chronicle* news stories.

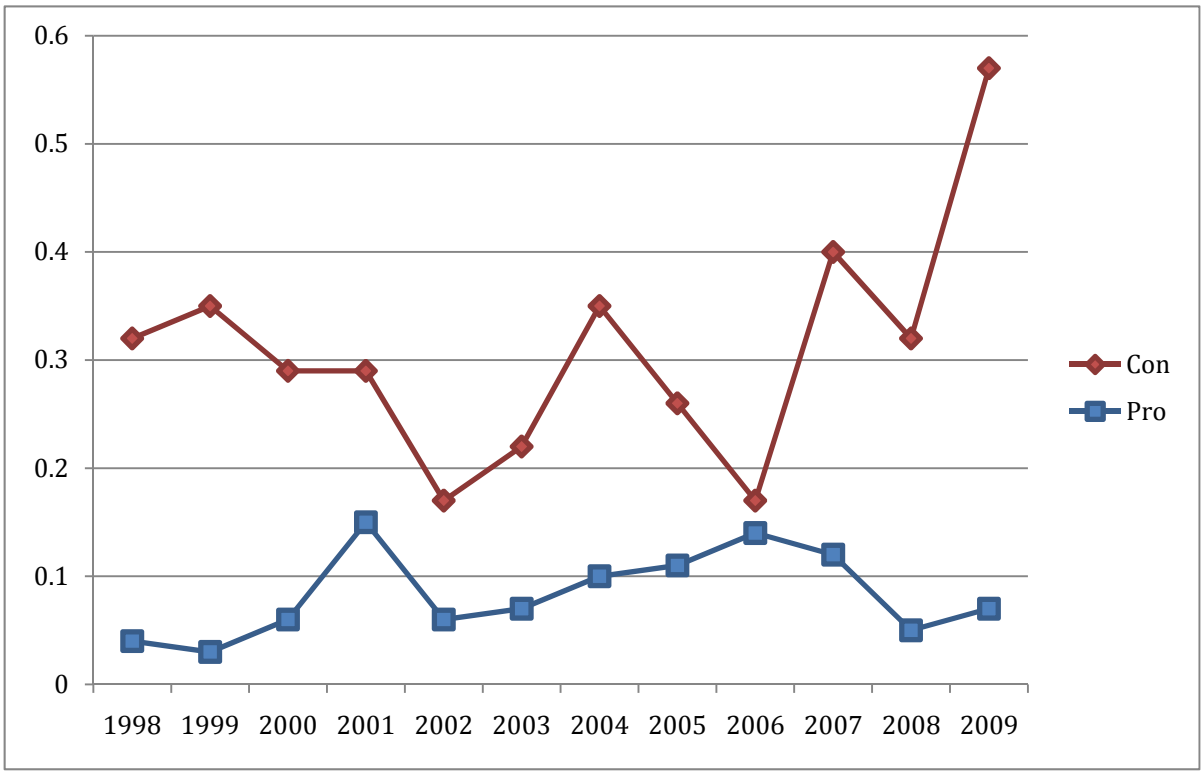

Figure 3. Percentage of Total Words, Pro versus Con Dictionary

According to our quantitative analysis, neither side has had significantly greater success in influencing the news agenda (2010). By the same token, the success of the pro side in the 2003 Michigan cases (*Grutter* and *Gratz*) do not appear to be reflected in *The Chronicle's* news coverage. As was found in the pro vs. con dictionary test, it is apparent after a close reading of a sample of the texts, that the key rhetorical argument for the con side—that affirmative action represents unjust racial "preferences"—continues fairly unabated. In other words, the Court's decisions did not seem to greatly influence *The Chronicle's* balancing of pro and con rhetoric. In fact, while the topic of affirmative action becomes much less important in *The Chronicle* after the Michigan cases were decided, in the coverage that does take place after 2003 the term "racial preferences" experiences increasing success in terms of its percentage presence. Once again, it is appears that *The Chronicle* is covering the controversy surrounding affirmative action in higher education, rather than providing the legal information administrators may be looking for.

We next turn to a discussion of frames used by *The Chronicle* to further explore the potential impact of the stories on administrators in higher education.

Framing Affirmative Action

Framing, according to Entman (1993) "essentially involves *selection* and *salience*. To frame is to *select some aspects of a perceived reality and make them more salient in a communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation, and/or treatment recommendation* for the item described" (52, emphasis in original). As Richardson and Lancendorfer (2004) point out "the term *affirmative action* is not a neutral label—it is a frame suggesting change for the

better" (75). Other frames, like *reverse discrimination* and *racial preferences*—are frames that suggest any considerations of race are unfair preferential treatment.

We build on prior research that provides a historical perspective on media framing of affirmative action. For example, Gamson and Modigliani (1987) analyzed media discourse on affirmative action during five time windows between 1969 and 1984. They identified two dominant frames: *remedial action* and *no preferential treatment*. The remedial action frame asserts that race-conscious policies are necessary to redress continuing effects of racial discrimination. In sharp contrast, the no preferential treatment frame opposes affirmative action, asserting that race-conscious policies are unjust regardless of the motive or mechanism. Gamson and Modigliani showed the remedial action frame dominated media discourse in 1969, but by 1984 the no preferential treatment frame was slightly more prominent.

Entman (1997) examined media discourse on affirmative action during the first half of 1995. He reported that the no preferential treatment frame (with an emphasis on reverse discrimination) dominated reports slanted against affirmative action. He also determined that media coverage ignored the fact that White women benefited from affirmative action policies—rather, the stories framed the issue as a debate between Blacks and Whites.

Clawson, Strine, and Waltenburg (2003) examined newspaper coverage of a 1995 U.S. Supreme Court ruling[5] regarding affirmative action and so called minority set-aside contracts. The authors compared the coverage in *The New York Times, Los Angeles Times,* and the *Washington Post* with coverage of the same case in the Black press. As opposed to the Black press, the majority of the stories in the "mainstream press" invoked

[5] Adarand Contractors, Inc. v. Pena, 515 U.S. 200 (1995).

the no preferential treatment frame and "presented affirmative action as a policy that provides unfair and undeserved advantages to minorities" (792). The authors also determined that many of the articles were framed as a *dramatic setback* to affirmative action and argue this frame evolved from the earlier *remedial action* frame that Gamson and Modigliani (1987) discuss.

Most recently, Richardson and Lancendorfer (2004) examined framing of the *Gratz* and *Grutter* decisions by analyzing newspaper editorials. Their study showed the emergence of an alternative way to frame affirmative action: the *diversity frame.*

The no preferential treatment frame

Similar to earlier framing analyses (Gamson & Modigliani, 1987; Clawson, Strine, & Waltenburg, 2003) our careful reading of the sample articles lead to the conclusion that the "no preferential treatment" or "preferences" frame dominates coverage in *The Chronicle*. This frame was particularly dominant in the news coverage of ballot initiatives. The initiatives were uniformly described as "bans on preferential treatment" and "bans on racial preferences." Although the stories noted that many higher education leaders opposed the initiatives, the issue was always framed as one of reversing discrimination caused by unfair "preferences."

Stories that discussed the Michigan affirmative action cases also used the no preferential treatment frame. However, the diversity frame was also present in these stories.

The diversity frame

According to Richardson and Lancendorfer, "the Diversity frame asserts that including a variety of people from different racial and ethnic groups makes organizations and society stronger" (83). This frame was present in *Chronicle* stories discussing the cases, however it was most prominent in coverage of research reports. For example, the diversity frame dominates coverage of Richard H. Sander's article in *Stanford Law Review* "arguing that ending racial preferences in law-school admissions would increase the number of black lawyers because it would help ensure that students attend law schools where they are more likely to succeed" (Mangan, 2004). Similarly, Marta Tienda's research was cited as "tending to disprove the 'mismatch hypothesis' put forward by critics of affirmative action" (Glenn, 2004). When academic research is reported, news stories tend to frame the discussion using a diversity frame. However, when court cases are discussed, the story is more likely to be framed using anti-preference rhetoric.

Whether the term "diversity" is part of pro affirmative action rhetoric is debatable and deserves further explication. As Brown-Nagin (2005) argued "*[Grutter]* gives every major constituency involved in the affirmative action debate a bit of what it wanted to hear. The dominant rhetorical tone of the opinion is moderate. Although the value of this rhetorical strategy is an open question, it has obvious appeal" (p. 1447). The Court's analysis, according to Powell (2008), shifts from an analysis of systemic racism, to a focus on diversity resulting in "rhetorical neutrality." "Rhetorical Neutrality refers to the

middle ground approach adopted by the Court in its race jurisprudence" (Powell, p. 831); an approach Powell argues leads to a lack of historical context. O'Neil (2004) also discusses the "middle of the road" nature of diversity as a rhetorical strategy. Richardson and Lancendorfer (2004) also note in their study of newspaper editorials regarding the Michigan cases that diversity may be a middle ground between remedial action and the no preferential treatment frame.

O'Neil (2004) notes there is a continuum of opinions regarding affirmative action, and that the University of Michigan successfully used the diversity rationale as a way to gain wide-spread support. O'Neil explains:

> In addition to rejecting the antiracial preferences position, Michigan also rejects the social justice explanation that places an emphasis on racial equality and remediation. Hence, according to Michigan, neither racial balancing nor correcting for past discrimination are the intended goals of a racially diverse student population; but diversity is simply a means through which selective institutions can move American society closer to "a truly integrated society" by educating "minority and nonminority" students in diverse environments for all to achieve their educational and social potential. (p. 381)

Using the diversity message, the University of Michigan was able to convince General Motors, the military, AERA, and other key stakeholders to file briefs in support of the University (O'Neil, 2004). In all, 83 briefs were filed in support of the University of Michigan, whereas only 19 were filed in support of the petitioners (Devins, 2003).

As Table 1 illustrates, both sides use the term "diversity." We also did a close reading of a sampling of *Chronicle* news stories in 2003-2009 in which "diversity"

appears. The use of the term "diversity" appears to be used in a neutral, vague, and/or contested manner in stories, except the few stories that report on recent research. Sources who oppose affirmative action, as well as those who support it, use the term.

TABLE 1
INCIDENCE OF THE TERM "DIVERSITY"

Source	*Number of Times Use Term "Diversity"*
Pro Letters and Commentaries	200
Con Letters and Commentaries	171
University of Michigan Briefs	208
Center for Individual Rights Briefs	173

Ultimately, based on the number of times the term "diversity" was used by both sides, our close reading of the news stories, and our review of the literature led us to the conclusion that "diversity" is not an indicator of pro or con rhetoric, but is rather, as Powell (2008) argues, rhetorically neutral.

In addition to the no preferential treatment frame and diversity frame, our close reading of the news coverage developed a third frame that we refer to as the *minefield frame.*

The minefield frame

As early as mid August, 2003, a headline in *The Chronicle* read "College Leaders Discuss Ways to Preserve Affirmative Action" and by mid October the headline read "Affirmative Action Remains a Minefield, Mostly Unmapped." The stories discuss the need to be cautious and the potential for lawsuits. One of the main "characters" in the stories is Roger Clegg, the Executive Director of the Center for Equal Opportunity.

Reporters often made references to the threat of a complaint being filed with the Office for Civil Rights (OCR) in the U.S. Department of Education. This emphasis on

OCR complaints and possible litigation in the stories reinforced the frame that affirmative action is a "minefield." Yet, during the six-year period after the Supreme Court rulings, there were only six complaints filed with the Office for Civil Rights, and only one full-blown investigation (at the University of Texas at Austin.) Yet, the news framed decisions to promote diversity as "risky" and each story quoted Roger Clegg from the Center for Equal Opportunity stating his organization "routinely" filed complaints. This emphasis on the threat of litigation may also encourage misreading of the legal landscape by administrators, given greater resonance due to a general climate of fear. In other words, the politics of fear may be working.

Likewise, based on our qualitative reading of a sample of news stories, it appears that basic assertions, quotations, legal opinions, and information supplied by anti-affirmative action groups were repeated relatively unaltered throughout the coverage, whereas pro affirmative action rhetoric is less coherently represented and less systematically repeated. Such consistency, repetition, and clarity in the representation of the anti-affirmative action position may encourage the "mistaken" readings of the law made by administrators, as alluded to above.

In addition to news stories, we have also begun an analysis of letters to the editor and opinion pieces published in *The Chronicle.* The Center for Individual Rights (CIR) and the Center for Equal Opportunity (CEO) often publish opinion pieces and letters-to-the editor denouncing "racial preferences," with Roger Clegg Director of CEO being the most prolific. There are a lesser number of opinion letters supporting affirmative action. After conducting a close reading of all of the Pro and Con letters to the editor over a 10-year period, we noted a distinction. Whereas the anti-affirmative action letter writers

were clear and used consistent rhetoric (i.e., talking points), the pro affirmative action letters were often highly nuanced and less clear as to the author's position. Roger Clegg's letters leave no doubt as to his position, with titles like: "Why I'm sick of the praise for diversity on campuses" (2000) and "Time has not favored racial preferences" (2005). Conversely, when we coded letters to the editor and opinion pieces as "pro" or "con" we often had a difficult time telling what the "pro" letters were actually advocating. This clarity, repetition, and rhetorical focus also appear to be reflected in *The Chronicle's* news coverage.

Although *The Chronicle* is read by individuals in academe, it is important to remember that there is a wide range in the readership, and that many of the administrators, faculty, and staff who read the paper do not have a background in higher education policy or law (Schimmel & Nolan, 2005). Our close reading of the letters and news stories suggests that the "preference camp" does a more effective job of using consistent rhetoric and getting its message across in *The Chronicle*.

However, we find no evidence that the coverage of race conscious affirmative action in *The Chronicle of Higher Education* is biased toward one side or the other. *The Chronicle* does not appear to be favoring supporters or opponents of affirmative action. Nor is *The Chronicle* providing legal information to readers. Rather, affirmative action is reported as a highly debatable controversy. For example, when the U.S. Supreme Court agreed to hear a challenge to K-12 race-conscious plans (*PICS,* 2007), *The Chronicle* ran an article that stated that the Michigan affirmative action cases were "unclear" and "the subject of much debate" (Selingo, 2006, p. A26). While fewer news stories about affirmative action were published after 2003, the stories continued to frame affirmative

action and the diversity rationale as a contentious issue, even though the Court unequivocally ruled that diversity is a compelling interest.

Another study appears to extend our findings to other news sources. Briscoe, Jones, and Deardorff (2004) looked at coverage in 32 U.S. papers within 48 hours of the Court's ruling in *Grutter* and *Gratz*. (Their study did not include *The Chronicle of Higher Education*.) All 32 papers covered the case, and of those 29 accurately stated that the legal issue was whether it was constitutional to consider an applicant's race in the admission process. However, most papers provided little detail about the cases or quotes from the actual opinion. In addition, the authors found many of the headlines to be misleading—designed to grab the reader's attention. Gandy, et al, (1997) note that "depending on the ways in which the problem of inequality is framed, press coverage may lead citizens toward, or away from, support of particular public policies" (p. 160).

If affirmative action is framed as confusing, unclear, or hotly debated, it is not surprising that the message administrators take away is one of extreme confusion. Our study suggests that although *Grutter* (2003) set the media agenda, framing affirmative action as a debate has important ramifications for practice, including halting programs based on fear of negative publicity.

IMPLICATIONS FOR PRACTICE

What should be clear is that newspapers, like *The Chronicle*, are useful as a "headline service." That is, the paper signals that there is a controversy, outlines two side's polemic positions, and perhaps provides some basic information signaling that there are legal issues at stake. However, *The Chronicle* is not a legal source, nor should it be used as such by administrators. Newspapers, like *The Chronicle*, report controversy. If

administrators and other policy makers, however, are using a newspaper as a basis for policy decisions then there are several implications for practice, including better legal education for administrators.

Legal and Education Policy Literacy

Schimmel and Nolan (2005) recommend every campus provide a "crash course" in legal literacy. This recommendation appears to be key. Although many legal scholars are shocked that administrators would rely on *The Chronicle* as a source of legal information, clearly we cannot expect administrators to read our law review articles "in their spare time," or the Court's opinions. It is appropriate, however, to expect administrators to be able to spot potential legal issues after a legal literacy workshop and to know when to confer with counsel.

Many administrators have excellent working relationships with their college or university attorney. On some campuses, however, directors of programs had never been consulted before diversity programs were closed (Miksch, 2007, 2008). This leads to another important recommendation: institutions should hire campus counsel who can teach laypersons about the law (Schimmel & Nolan, 2005).

Working with the Media

Although it is sometimes difficult to find the time, working with journalists to make sure research findings are reported helps ensure that policy decisions are based on sound evidence. Working with a designated campus press officer is useful, as is listing oneself in a faculty expertise databases. Also, it is helpful to contact local reporters when relevant research findings are released. Journalists at national organs like *The Chronicle*

of Higher Education and *Inside Higher Education* also appreciate hearing directly about new research.

Letters to the Editor

As discussed above, the Center for Individual Rights (CIR) and the Center for Equal Opportunity (CEO) often publish opinion pieces and letters-to-the editor using consistent talking points denouncing "racial preferences." As demonstrated in the content analysis research, this clarity, repetition, and rhetorical focus are reflected in *The Chronicle's* news coverage. The key con term, "racial preferences" was by far more successful than any other tendentious rhetorical term, pro or con. Our close reading of the letters suggests that the "preference camp" does a more effective job of using consistent rhetoric and getting its message across in *The Chronicle*. Conversely, pro affirmative action letters are often so highly nuanced that the author's position becomes much less clear. In other words, be aware of genre and medium. A letter to the editor is not the same thing as a journal article. For those who support affirmative action, a review of "The Demise of Race-based Admissions Policies, " written by then CIR director Michael S. Greve (1999) and "Time has not Favored Racial Preferences" written by Roger Clegg (2005) then director of the CEO, should provide useful ideas of how to quickly and concisely state a message.

CONCLUSION

A number of questions were asked at the outset of the paper. Is *The Chronicle of Higher Education* misrepresenting the law and its implications for admissions policies and programs or are the administrators simply reading the news with an overly anxious eye? The answer may be "both." *The Chronicle* is not so much misrepresenting the law as

it is de-emphasizing legal analysis for sake of covering surrounding controversies. The administrator who is overly dependent on *The Chronicle* might overestimate the level of controversy relative to actual matters of legality, becoming subject to the politics of fear. This is somewhat similar to what George Gerbner and Larry Gross (1976) refer to as the "mean world syndrome," a condition wherein media-saturated individuals over-estimate the relative level of danger in the world. Administrator's using *The Chronicle* as a cipher for legal controversy and as a tool for legal interpretation might be overestimating that organ's utility relative to more authoritative sources for legal education.

Do journalists give too great of weight and attention to criticisms of race-conscious policies and programs by anti-affirmative action advocacy groups? This research indicates that may be the case. The adjudication of many issues surrounding the legality of affirmative action does not seem to have influenced the relative balance, tenor, rhetoric, or agenda of news coverage. Rather than gaining a sense of the legal contexts and climates from reading *The Chronicle*, one might instead mistake coverage of ongoing controversy for actual law, which is reported much less.

Using a combination of framing analyses in addition to quantitative content analysis allowed us to more fully investigate the question. The framing analysis we conducted provides some indication as to why administrators' reliance on *The Chronicle* might be inordinately influencing their decisions to curtail or abandon race-conscious programs and policies designed to increase diversity and redress inequality. For example, while the Court has outlined narrowly tailored methods through which it is legal to consider race as a factor in admissions (e.g., including individualized review of applications), somewhat settling the issue in legal terms, the controversy has continued

unabated in the press. Journalists seem to be much more focused on the controversy than actual law, policy, or practice. The paper underscores the need for greater legal and education literacy in higher education to combat the politics of fear.

APPENDIX A

TIME LINE OF IMPORTANT AFFIRMATIVE ACTION LEGAL DECISIONS

Year	*Legal Decision*
1978	*Regents of the University of California v. Bakke* (Justice Powell writes that diversity is a compelling interest in education)
1996	*Hopwood v. Texas* (5th Circuit rules diversity is not a compelling interest)
1996	Proposition 209 (voter initiative bans affirmative action in California)
1998	Washington Initiative 200 (voters ban affirmative action in Washington State)
2000	*Smith v. University of Washington Law School* (9th Circuit upholds affirmative action using the diversity rationale)
2000	*Gratz v. Bollinger* (Federal District Court upholds University of Michigan undergraduate admission policy and rules diversity is a compelling interest)
2001	*Grutter v. Bollinger (*Federal District Court overturns University of Michigan Law School's use of race in admissions)
2001	*Johnson v. Board of Regents of the University of Georgia* (11th Circuit rules diversity not a compelling interest)
2002	*Grutter v. Bollinger* (6th Circuit upholds use of race by University of Michigan Law School)
2003	*Grutter v. Bollinger; Gratz v. Bollinger* (U.S. Supreme Court rules that diversity is a compelling interest)
2006	Proposition 2 (Voter initiative bans affirmative action in Michigan)
2007	*Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, (PICS)* (U.S. Supreme Court reaffirms that diversity is a compelling interest in higher education)
2008	Nebraska Civil Rights Initiative, 424 (voter initiative bans affirmative action in Nebraska)

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