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ABSTRACT

This study sought to understand the institutional behavior processes that occur when institutions are faced with anti-affirmative action litigation. A dual case study, conducted at the University of Maryland and at the University of Michigan, was designed to develop concepts linking litigation and institutional response. Using a grounded theory approach, three conceptual schemes entrenchment, battle, and retreat emerged. The first set of responses occurred in the period prior to litigation or during a period of threatened litigation; the second while litigation was pending; and the third set occurred post-litigation. In all three conflict models, aspects of retreat response and aftermath were essentially underdeveloped. The findings indicate that both institutions engaged in various activities to maintain their affirmative action stance legally, socially, and politically. There was also evidence of the institutions engaging in strategies that incorporated polar responses in order to meet diverse objectives. Following the introduction to the problem there is a summary of the literature. The methods section provides an overview of the sampling, data collection, and data analysis procedures. Findings are amplified by extensive quotes and detailed descriptions of the three institutional responses. The paper concludes with sections on theoretical interpretations, recommendations for future research, and implications for practice. (Contains 29 references.) (CH)

"Facing the Battle": A Study of Michigan's and Maryland's Institutional Responses to Affirmative Action Litigation

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Association for the Study of Higher Education
Symposium Paper
November 7, 1998

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Denise O'Neil Green
ERIC Abstract
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<u>Symposium Paper Presentation</u>
"Facing the Battle": A Study of Michigan's and
Maryland's Institutional Responses to Affirmative Action Litigation

Abstract

Given the country's anti-affirmative action climate and the steady stream of lawsuits that continue to challenge higher education institutions and the constitutionality of their affirmative action policies, it is crucial that executive officers and middle management understand the phases of institutional response in order to strategically steer the institution in a direction that best achieves diversity, affirmative action, and institutional change. While the conflict literature clearly provides some concepts that help one to identify and understand various responses to different types of scenarios, it simply does not go far enough to conceptualize institutional behavior to understand the process that institutions undergo when faced with anti-affirmative action litigation. Hence, a dual case study design of the University of Maryland and the University of Michigan was conducted to further develop concepts that linked litigation and institutional response. Case study materials were gathered through interviews of various institutional actors and the collection of documents.

As a result of using a grounded theory approach for the analysis, three conceptual schemes for interpreting institutional responses emerged. One set of responses occurred in the absence of litigation - a period prior to or of threatened litigation. Another set of responses occurred while litigation was pending. A third set of responses occurred after litigation was decided - a post litigation period. Each set of actions/interactions is central to the major organizing concepts of "entrenchment," "battle," and "retreat." My findings indicated that both institutions engaged in various activities to maintain their affirmative action stance legally, socially, and politically. Furthermore, the findings also provided an extension of the conflict literature in the context of escalated conflicts within higher education.

First, the paper begins with an introduction of the problem. Second, a summary of pertinent conflict literature is provided. In the method section, an overview of the sampling, data collection, and data analysis procedures is given. The findings section provides extensive quotes and rich, detailed descriptions of the three institutional responses: "entrenchment," "battle," and "retreat." Lastly, theoretical interpretations, recommendations for future research, and implications for practice follow.

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INTRODUCTION

As the affirmative action debate continues to loom over political and judicial domains, issues of diversity and access to higher education have once again come to the forefront, placing selective public universities in the center of the conflict. More specifically, institutions that have exercised affirmative action aggressively, such as the University of California-Berkeley, the University of Michigan and the University of Maryland, have faced unrelenting challenges to their affirmative action policies and programs. Opponents have argued that these institutions have granted preferences to applicants of underrepresented racial/ethnic minority groups over majority students, thereby violating the equal protection clause of the Fourteenth Amendment of the Constitution. In order to discontinue affirmative action admission practices, opponents have taken their anti-affirmative action message to the media, popular press, state legislatures, and the courts.

Litigation in the lower courts has been especially effective in forcing institutions to discontinue their affirmative action programs. Both *Podberesky* in 1994 and *Hopwood* in 1996 are successful examples of this strategy. Two additional lawsuits, filed by the Center for Individual Rights against the University of Michigan, continue to advance the attacks against affirmative action policies and practices at selective public institutions. Given the current anti-affirmative action sentiment within the country, how have institutions that have faced or are facing litigation responded to the legal challenges against racial/ethnic preferences? How have these institutions responded internally and externally? What process does an institution undergo when its affirmative action policies and practices are legally challenged? The purpose of this study was to generate a theoretical framework to understand how selective, public institutions have responded to anti-affirmative action litigation.

Perspective: Why Is A Theory Needed?

Although issues related to affirmative action could be interpreted strictly from a legal perspective, researchers and scholars have approached the issue of affirmative action in higher education from a variety of angles. Scholars, such as Wightman (1997), Gutmann (1987), and

Synnott (1979), have submitted arguments either for or against the use of affirmative action policies in higher education, more specifically, in admissions. Moses (1994), Astin (1993), and others have discussed the links between affirmative action as a means of achieving student diversity and institutional excellence. Researchers, including Adelman (1997), Garcia (1997), and Hurtado and Navia (1997), have prescribed strategies to guide institutions through this era of affirmative action controversy, so that institutions can improve access and persistence for their populations of minority students. Legal scholars, including Malamud (1997) and Lewis, Lewis, and Ponterotto (1990), have provided analysis to clearly articulate affirmative action's legal implications within the context of higher education. Clearly, a great deal of the scholarship has focused on affirmative action within the context of higher education. However, little has been done to systematically conceptualize how higher education institutions have functioned within the context of affirmative action backlash, especially in the form of litigation. Given the country's anti-affirmative action climate and the steady stream of lawsuits that continue to challenge higher education institutions and the constitutionality of their affirmative action policies, it is crucial that executive officers and middle management understand the phases of institutional response in order to steer the institution strategically in a direction that best achieves diversity, affirmative action, and institutional change. Hence, while the literature noted above addresses competing notions of equal opportunity, diversity, excellence, access, merit, racial preferences, and affirmative action principles, it has failed to provide a framework that a single institution might use to determine an appropriate response to pre-, pending, or post anti-affirmative action litigation.

Conflict Literature and Institutional Response

Given the conflict swirling around affirmative action, I turned to the conflict management literature for relevant definitions of "conflict" and conflict models. Donohue and Kolt (1992) defined conflict as a "situation in which interdependent people express (manifest or latent) differences in satisfying their individual needs and interests, and they experience interference from each other in accomplishing these goals." Both Thomas (1976) and Tucker (1993) defined conflict in terms of a process whereby one party attempts to hinder or prevent the other party from fulfilling

its needs or accomplishing its objectives. "In essence, conflict is a struggle for control of another person's behavior" (Tucker, 1993, p. 398). Given these definitions of conflict, the phenomenon of anti-affirmative action litigation proves to be a manifest conflict situation. Both parties have taken positions based on their interests, while at least one party --the plaintiffs-- struggle to change or influence the other party's policies or actions.

Different concepts developed in the conflict literature provide useful frameworks that aid in addressing the questions at hand. In particular, Donohue and Kolt's (1992) seven levels of conflict, Blake and Mouton's (1970) conflict management grid, and Filley's six-element model of conflict (Holton, 1995, p. 82), all bring to light different aspects of the conflict process.

Donohue and Kolt's (1992) seven levels of conflict and tension are: no conflict, latent conflict, problems to solve, dispute, help, fight/flight, and intractable. Given the characteristics that Donohue and Kolt ascribe to these seven levels, fight/flight and intractable best characterize the two levels of conflict and tension institutions face when engaged in anti-affirmative action litigation. At the fight/flight level of conflict, parties' "emotions intensify because, by the time the conflict has reached this level, personal needs, important values, or major principles have become the exclusive focus of the conflict" (Donohue and Kolt, 1992, p. 16). Although intensified emotions may not be exhibited by a public institution engaged in fight/flight conflict, the institution's values and principles are expected to play a central role in sustaining or terminating the conflict. In addition to being highly emotional, battle is declared; strategies for winning are developed; and the assistance of others are requested (Holton, 1995, p. 88). Certainly, for those institutions that have decided to fight litigation filed against them, the fight/flight level of conflict provides a somewhat accurate description. Institutions do engage in strategizing as well as enlisting the assistance of others.

Intractable conflict is essentially the level at which "parties involved see themselves as 'doing the right thing.' Their cause is to bring justice to the situation, not just to defeat the enemy. Each side, of course, sees his or hers as the 'just' one" (Holton, 1995, p. 88). At this level of conflict, parties engage in responses that include negative speech, speaking to the press, and other
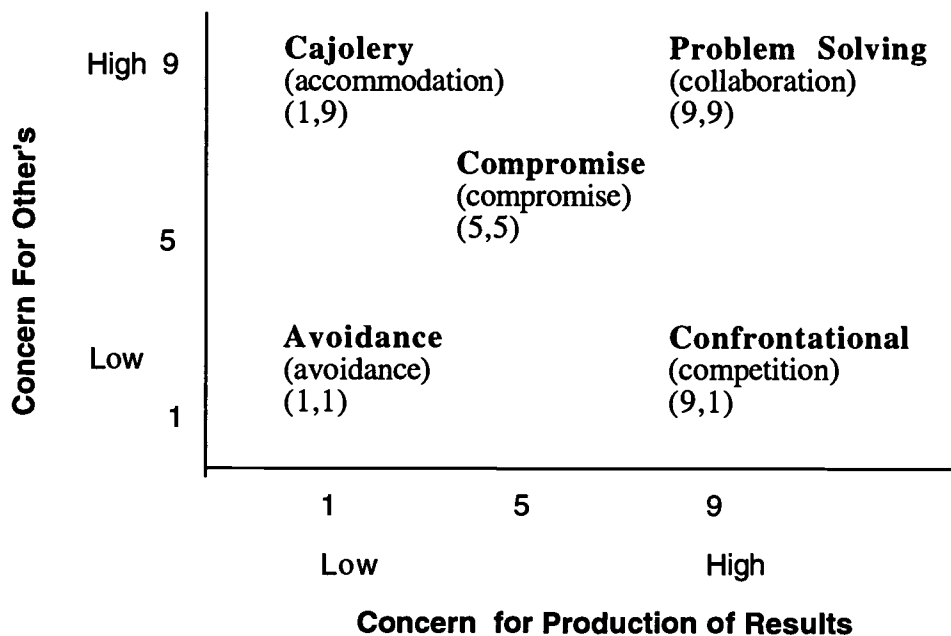
activities that make their cause public (Donohue and Kolt, 1992; Holton, 1995). Although the nature of anti-affirmative action litigation forces the conflict to become public, and undoubtedly, the institution, as well as the other party, believes it is "right," there is no research to assist one in determining if institutions involved in this type of litigation prefers to engage the public, such that the institution initiates persistent communication with the media. In this study, I hope to provide some evidence to address this aspect of the intractable phase of conflict.

Blake and Mouton (1970) developed a 2 by 2 conflict management grid that outlines five primary strategies for managing conflict: avoidance, confrontation, compromise, cajolery, and problem-solving (see Figure 1 below). An **avoidance** response to conflict occurs when parties remain neutral to conflict or withdraw from situations that would provoke conflict (Blake and Mouton, 1970, p. 419). A **confrontational** response is exhibited when parties wish to fight it out and/or have a third-party arbitrate (Blake and Mouton, 1970, p. 418). "Winning for one's own position predominates over seeking a valid solution" (Blake and Mouton, 1970, p. 419) **Compromise** is defined as a response to conflict when parties bargain for what they can get but also compromise convictions (Blake and Mouton, 1970, p. 420). Essentially, **cajolery** is a smoothing over of the offending issue such that harmony and accord can exist (Blake and Mouton, 1970, p. 419). When a party responds with cajolery, often previously held positions are recanted. **Problem-solving** is the optimal response. "It permits men to disagree, to work out their disagreements in the light of facts, and ultimately to understand one another" (Blake and Mouton, 1970, p. 420). According to Blake and Mouton (1970),

> whenever a man meets a situation of conflict, he has at least two basic considerations in mind. One of these is the people with whom he is in disagreement. Another is production of results, or getting a resolution to the disagreement. It is the amount and kind of emphasis he places on various combinations of each of these elements that determine his thinking in dealing with conflict (p. 417).

After the development of Blake and Mouton's grid, subsequent conflict research provided slightly different "names and conceptualizations" (Thomas, 1976, p. 900) that stemmed "most directly from the work of Blake and his colleagues" (Thomas, 1976, p. 900). The revised conflict responses are enclosed in parentheses in Figure 1 (Holton, 1995; Thomas 1976). Of the five

Figure 1. Blake and Mouton's 2x2 Grid with revised conflict strategies.

```
           High 9 │  Cajolery              Problem Solving
                  │  (accommodation)       (collaboration)
     s            │  (1,9)                 (9,9)
     ʼ            │
  r  e            │          Compromise
  o  h            │          (compromise)
  f  t            │          (5,5)
     O
  n        5      │
  r                │
  e            │
  c  Low         │  Avoidance             Confrontational
  n                │  (avoidance)           (competition)
  o                │  (1,1)                 (9,1)
  C        1      │
                  └──────────────────────────────────────────
                     1            5            9

                     Low                      High

                     Concern for Production of Results
```

responses identified, the confrontational or competitive response seems the most accurate

characterization of institutions that fight anti-affirmative action litigation. Similar to Donohue and

Kolt's (1992) conflict phases, Blake and Mouton's grid places the conflict under investigation

within a combative mode.

Filley's (1975) six-element model of conflict outlines a process that consists of: "(1)

antecedent conditions, (2) perceived conflict or (3) felt conflict, (4) manifest behavior, (5) conflict

resolution or suppression, and (6) resolution aftermath" (Holton, 1995, p. 80). **Antecedent**

conditions are the contexts within which a conflict emerges. Levinger and Rubin (1994)

identified three types of causal antecedents: physical context, social context, and issue context

(Holton, 1995, p. 81). Filley "defined **perceived conflict** as a logically and impersonally

recognized set of conditions that are conflictive to the parties; on a parallel track is **felt conflict**,

personalized conflict relationship, expressed in feelings of threat, hostility, fear, and mistrust"

(Holton, 1995, p. 81). **Manifest behavior** is simply the action exhibited in response to the

conflict. As discussed earlier, Blake and Mouton (1970) provided five distinct responses to

conflict. The next element is **conflict resolution** or suppression. At this point in the process, the appropriate resolution is sought or the conflict is suppressed (Holton, 1995, p. 81) The appropriate resolution or manner of suppression is facilitated by three factors: (1) the parties involved, (2) the nature of the conflict, and (3) the context of the conflict (Holton, 1995, p. 81). Lastly, the **resolution aftermath** generates both positive and negative consequences as a result of enforcing the conflict resolution. It is expected that all six elements of Filley's model are applicable to most conflict cycles; however, it fails to clarify if "manifest behavior" is simply one response, a response process, or both. Since anti-affirmative action litigation usually requires a significant amount of time, manifest behavior could possibly take on many different actions with a variety of forms and dimensions. Hence, Filley's model provides a useful guide, but it does not directly address the question at hand.

The conflict literature clearly provides some concepts that help one to identify and understand various responses to different types of conflicts. In particular, Donohue and Kolt's (1992) seven levels of conflict and Blake and Mouton's (1970) conflict management grid both detail responses to conflicts that require third-party arbitration. They propose that responses of "fighting it out," "declaring battle," "strategizing how to win," and "enlisting the aid of others" are clearly linked with conflicts that need third-party arbitration. These responses are of particular interests since "litigious responses to campus conflict represent the most adversarial approach . . . of intervention modes" (Warters, 1995, p. 74).

However, these general concepts associated with fight/flight (conflict level six) or confrontation (grid point 9,1) do not completely address the type of responses institutions must provide when faced with anti-affirmative action litigation. Certainly, the actions exhibited in the courtroom are pre-determined by the law and courtroom etiquette; however, institutional responses exhibited outside of the courtroom are needed as well. Filley's six-element model of conflict places conflict responses in element four, manifest behavior. But the literature simply does not go far enough to conceptualize manifest behavior to the extent needed to understand the process that institutions undergo when faced with anti-affirmative action litigation. Hence, this study will

further develop concepts that link litigation and institutional responses in order to provide a more complete picture of the complexity associated with this phenomenon.

Research Questions

The one question which guided this research was: what theory explains how institutions respond to legal attacks on their affirmative action policies?" Several subquestions were of interest as well: What were the arguments in support of affirmative action policies and diversity? If change was needed, what factors did institutions take into consideration? Did the institutions presume that particular groups of students more salient to this issue than others? How did institutions address the country's recent affirmative action or diversity concerns? Were policies being reexamined or altered? What outcomes transpired as a result of changing policy or maintaining the status quo?

Additional subquestions were asked in order to provide guidance for analysis and coding. What central phenomena emerged? What were the causes of this phenomena? What were the important processes? What were the intervening factors? What strategies did institutions utilize? What were the consequences of those strategies?

METHOD

Study Design

A dual case study design was used in order to address these questions. The two sites were the University of Maryland-College Park (UMD) and the University of Michigan-Ann Arbor (UM). Both sites were important to this study for three reasons. First, both institutions aggressively implemented affirmative action policies to increase racial diversity among their respective student bodies. Second, their respective policies were challenged by litigation. Third, both institutions decided to fight the litigation.

Site 1: University of Maryland-College Park

On October 27, 1994, the Fourth Circuit Court of Appeals ruled that the University of Maryland's race exclusive scholarship was in violation of the US constitution (Lederman, 1996, p. A25). The plaintiff, Daniel Podberesky, in 1990 sued the University of Maryland for denying him

the opportunity to apply for the prestigious Benjamin Banneker Scholarship, a race based scholarship designated for high achieving black students. Because Podberesky, a Hispanic, was not allowed to apply, he raised the issues of fairness and equal opportunity. The plaintiff ultimately sued the university on the grounds that "he was denied an equal opportunity to compete for a Banneker scholarship, solely because of his race" (Podberesky v. Kirwan, 1991).

The history of the Benjamin Banneker Scholarship Program (BBSP) complicated the issue of fairness even further. The scholarship was originally developed in 1979 to comply with federal desegregation orders (Shapiro, 1995, p 38). Prior to the implementation of the BBSP, UMD had denied African Americans admissions and had "actively resisted integration" (Kirwan, 1995). Hence, the race specific scholarship was designed to correct past discrimination that the institution had exercised against African Americans, including the late Supreme Court Justice Thurgood Marshall, who was denied admission to UMD because of his race (Kirwan, 1995).

In addition to correcting past discrimination, the BBSP was also used as a recruitment tool to attract high-ability African American students to the UMD campus. According to an internal study conducted at UMD, the BBSP effectively attracted African American students to UMD. The study also showed that the BBSP had increased the enrollment, retention, and graduation rates among African American students (Copeland, 1994). The BBSP was also critical to elevating the status of African American students and to improving race relations on the UMD campus (Copeland, 1994). In spite of this success, the internal report also noted that "among the predominant ethnic and racial groups in Maryland, only blacks remain underrepresented in the College Park campus in comparison with their presence in the total population" (Copeland, 1994).

But, in spite of all the evidence UMD provided to the courts, the constitutionality of the race-specific scholarship was not upheld. Excerpts from the ruling specified that past racial discrimination imposed by the University of Maryland and a current campus climate filled with racial tensions were not sufficient justifications "for supporting [a] race-conscious remedy" (Podberesky v. Kirwan, 1994, p 155).

In light of UMD's legal conflict, much can be learned about institutional response and the conflict process. What has UMD done for the past four years since the 1994 ruling? Has it maintained its diversity goals, and if so, how? How did UMD respond to the resolution that emerged out of its legal conflict? While litigation was pending, how did UMD respond to its legal challenge? What has occurred in the aftermath of this conflict and resolution? Because UMD has theoretically completed the conflict process, these specific questions directed my inquiry of the UMD case.

Site 2: University of Michigan-Ann Arbor

Contrary to UMD, where there was a federal desegregation order with which to comply, the University of Michigan voluntarily instituted affirmative action policies in both undergraduate and law school admissions to increase the diversity of their respective student bodies. The voluntary nature of these policies is consistent with UM's long standing commitment to diversity and educational excellence. Nevertheless, the conditions that yielded the implementation of these voluntary affirmative action policies did not come about without conflict. Black Action Movements (BAM) I, II, and III challenged the institution's waning commitment to students of color. In 1987, after BAM III had convened many meetings with hundreds of people throughout the University of Michigan community, the university initiated the Michigan Mandate, a "strategic plan for linking academic excellence and social diversity" (Office of the President, 1993, p. 2). "Since the Mandate was launched, the University of Michigan has experienced a steady increase in enrollment of students of color, undergraduates and graduates" (Office of the President, 1995, p. 6). Similar to UMD's BBSP and other initiatives, implementation of the Michigan Mandate led to increases in enrollment, retention, and graduation rates of minority students and diversity of the student body.

However, in October of 1997, two plaintiffs, Patrick Hamacher and Jennifer Gratz, legally challenged the University of Michigan, claiming that because they were white, they were treated less favorably in the admissions process (Kosseff, 1997). The same claims were made by another plaintiff Barbara Grutter, who filed a lawsuit against the law school (Kamins and Kosseff, 1997).

Once again, the challenge is based on race. Both lawsuits claimed that race served as a weighting factor in admissions decisions in order to grant racial preferences to minority students. Hence, the conflict centers around the constitutionality of using race as a factor in admissions, whether at the undergraduate or graduate level. Unlike UMD, whose litigation had come to a close in October of 1994, the University of Michigan is at the beginning stages of its two anti-affirmative action challenges.

Questions that guided the inquiry for UM were the following: How did UM respond to threats of litigation? With litigation pending, how has the institution responded thus far? Has UM considered withdrawing from the conflict? If UM loses, what outcomes are expected? Because UM is primarily at the beginning of the process, the guiding questions for this case focus on the initial phases and speculation of the latter phases.

Sampling of Administrators and Data Collection Procedures

Given the pilot nature of this study, I interviewed 10 administrators, four at the University of Maryland (all post litigation) and six at the University of Michigan (three pre-litigation and three pending litigation). Because the University of Maryland's lawsuit challenged an undergraduate race-based scholarship for African Americans and the University of Michigan's lawsuits have challenged the use of race as a factor in admissions policies at both the undergraduate and professional school levels, administrators who were interviewed did not hold comparable positions in both universities. Rather, informants who held administrative positions that were closely linked to their institution's affirmative action challenges were interviewed. The sampling method that guided my selection was theoretical sampling. Administrators were selected based on their affiliation with the affirmative action policy being challenged. As a result, they were able to provide substantive information critical to the development of categories which lead to theory formation.

All individuals selected were contacted by telephone, in-person, or through their assistants. Within a few days to several weeks of the initial contact, I was notified of the individual's willingness to participate. Unfortunately, due to a gag order that has been placed on a number of

administrators at the University of Michigan, a number of potential informants had to decline participation in this study. Interview appointments with those who agreed to be interviewed. The interviews lasted an average of 40 minutes.

Collection of data consisted of the following steps. All interviews were conducted in an unstructured, open-ended manner, with the use of an interview protocol for note-taking Interviews for the University of Michigan site were conducted face-to-face, while interviews for the University of Maryland site were conducted by telephone. All interviews were audio-taped, transcribed, and prepared for data analysis. Primary and secondary documents in the form of internal reports, memos, electronic messages, web pages, and newspaper articles were also collected. Documents were used to fill in gaps in the information where needed (see Table 1). If secondary sources were needed, it was indicated in the findings.

Table 1.   Data Type and Information Sources

Data Type	Information Source
Audio-taped Interviews	Pre-litigation UM- (3) (Senior and Mid level Administrators) Pending litigation UM - (3) (Senior and Mid level Administrators) Post litigation UMD- (4) (Senior, Mid, and Entry level Administrators)
Primary and Secondary Documents	newspaper & magazine articles, electronic mail and messages, university internal reports and web pages
Selective, Public Institutions	The University of Michigan-Ann Arbor The University of Maryland-College Park

At the outset of my first University of Michigan interview, it was clear that discussing affirmative action was a sensitive topic, with some chilling effects. In other words, at times interviewees did not feel comfortable sharing certain types of information and stated that to be the case. Since the Michigan interviews took place a few months prior to the first lawsuit being filed, as well as during current litigation, Michigan informants were understandably hesitant to share certain information. Hesitancy was not noticeable among University of Maryland informants.

Data Analysis

Because the objective of the study was to generate a theory, the grounded theory approach was used. The grounded theory approach was developed to enable a researcher to collect field

data, analyze data, and relate the data into an action/interactive paradigm that explained how a particular phenomenon was handled or approached.

Grounded theory methodology was originally developed by Barney Glaser and Anselm Strauss in the 1960s. The methodological approach used for this study is from Anselm Strauss and Juliet Corbin's (1990) Basics of Qualitative Research: Grounded Theory Procedures and Techniques. Strauss and Corbin defined the grounded theory approach as a

> qualitative research method that uses a systematic set of procedures to develop an inductively derived grounded theory about a phenomenon. The research findings constitute a theoretical formulation of the reality under investigation, rather than consisting of a set of numbers, or a group of loosely related themes. Through this methodology, the concepts and relationships among them are not only generated but they are provisionally tested (Strauss and Corbin, 1990, p. 24).

The analysis consisted of a three-step coding approach: open coding, axial coding, and selective coding . After the interviews were transcribed, open coding was conducted. Open coding is the initial step in the analysis that consisted of "naming and categorizing phenomenon through close examination of data" (Strauss and Corbin, 1990, p. 62). According to Strauss and Corbin (1990), "open coding is the process of breaking down, examining, comparing, conceptualizing, and categorizing data" (p. 61). During this first phase of coding, I reviewed the interview data for "discrete happenings, events, or other instances of phenomena" (p. 61) and categorized them under conceptual labels. If conceptual labels seemed to possess similarities, they were grouped into a category and conceptually identified under a label that captured their shared characteristic(s). A total of 25 categories were generated, but only 16 were used in this study. Categories were used for this study based on the category's relationship to the conflict phenomenon and/or how often the concept was broached by one or more informants.

Axial coding was the second stage of coding that required putting the data back together into new ways by making connections between categories (Strauss and Corbin, 1990). Reconfiguring the data into new ways required "utilizing a coding paradigm involving conditions, context, action/interactional strategies and consequences" (Strauss and Corbin, 1990, p. 96). The paradigm model facilitated making connections between a central category or phenomenon and its

subcategories (Strauss and Corbin, 1990). After the data was reconfigured according to the paradigm model, a substantive model of institutional responses to anti-affirmative action litigation began to emerge (see Figure 2).

The third and final stage of coding yielded the "descriptive narrative about the central phenomenon of the study" (Strauss and Corbin, 1990, p. 116). This procedure was selective coding. Strauss and Corbin (1990) defined selective coding as the "process of selecting a core category, systematically relating it to other categories, validating those relationships, and filling in categories that need further refinement and development" (p. 116). Selecting a core category and relating it to other categories was done. Filling in or saturating the categories that needed further development was also done.

During the entire process, brief notes, tables, and figures were written and edited to facilitate data reduction and movement from open coding to selective coding stages. Notes were also written to assist with developing a substantive model of conflict.

FINDINGS

Institutional Responses: Actions of Defensive Maneuvers
Three conceptual schemes for interpreting institutional responses to anti-affirmative action litigation emerged from the study. One set of responses occurred in the absence of litigation - a period prior to litigation or a period of threatened litigation. Another set of responses occurred while litigation was pending. The third set of responses occurred after litigation was decided - a post litigation period. Each set of actions/interactions is central to a major organizing concept. For pre-litigation responses the concept is **entrenchment**. For pending litigation responses, the concept is **battle**, and for post-litigation responses, the concept is that of **retreat**.

Defensive Maneuver 1: Entrenchment -University of Michigan

Entrenchment is defined as a set of actions or responses implemented to fortify or defend the institution's affirmative action policies and programs before litigation is initiated. Among the pre-litigation activities reported by UM informants, most actions that were taken were related to (1) reviewing affirmative action policies and/or procedures, (2) justifying the use of affirmative action policies, and (3) affirming commitments to diversity. These actions were seen to constitute seven categories of entrenchment responses: (1) affirmation I, (2) affirmation II, (3) justification I, (4) justification II, (5) policy review I, (6) policy review II, and communications (see Table 2).

Table 2.   Dimensions of "Entrenchment" Categories

Category	Type of Activity	Primary Participants	Activity's Orientation to Institution	Example of Action/strategy
Affirmation I	collective	faculty	internal	Faculty renews commitment to diversity
Affirmation II	collective	association members	external	Association of American Universities' statement on the importance of Diversity in University Admissions
Justification I	legal formulation	central administration	internal	Strategize to formulate legal rationale for needing affirmative action
Justification II	intellectual formulation	central administration	internal	Strategize to formulate intellectual rationale for needing affirmative action
Policy Review I	general examination	administration	internal	Determine if policies are appropriate
Policy Review II	legal examination	general council admissions officers deans, provost outside consultants	internal	Identify areas in policy vulnerable to attacks; determine if admissions policies were in line with *Bakke*
Communications	collective	national panels consortium national higher education associations	external	Talking to people in national organizations

Affirmation I were actions taken by groups within the institution in order to communicate to the university community its commitment to diversity. In the UM law school, faculty engaged in such activities. Administrator #2-UM stated that the "faculty have sort of renewed their commitment to this whole diversity thing and to making sure this is a diverse environment." Affirmation II were actions executed by groups external to the institution, of which the institution was a member. Administrator #3-UM indicated that Michigan was involved in such an action: "There was a big, strong statement that came out in favor to support affirmative action." The

informant was speaking of the Association of American Universities' public statement on diversity, an organization "the president belongs to" (Administrator #3-UM). Essentially these internal and external affirmations demonstrated a commitment to diversity and a unified front in defense of affirmative action policies.

Justification I and Justification II were activities that consisted of formulating both legal and intellectual arguments to defend the use of affirmative action policies. Administrator #3-UM described them as "on-going. I mean we're developing strategies I think to deal with this from a legal . . . as well as from an intellectual point of view to justify the need for affirmative action in order for affirmative action to help us reach our diversity goals." Administrator #2-UM made reference to there being a need to formulate legal arguments, but was not sure if such activities were taking place: "Certainly this institution, . . . , is one that's got to look at that opinion [Hopwood] closely. . . and sort of see if there's anything we could be doing or should be doing to insulate ourselves on the legal side. Now whether or not that's been done, I . . . wouldn't be at liberty to say even if I knew at this point."

Policy Review I and II activities played a vital role in ensuring policies were consistent with institutional objectives and the *Bakke 1978* US Supreme Court ruling. Administrator #3-UM primarily focused on describing activities related to legal policy reviews. Internal audits were done on admissions policies to identify areas vulnerable to legal attacks in order to prepare for such attacks. "I'm having meetings with general counsel , with admissions officers, and with other administrators in terms of how our admissions policies are structured and to what [extent] then are they vulnerable to attacks from these external forces" (Administrator #3-UM) Outside consultants were also secured to review the policies, along with all units being required to review admissions protocol and report back to executive offices or legal counsel as to their compliance with *Bakke*. "We have had consultants in to take a look at our various policies. We have [had] several . . . sort of ad hoc committees that look at it. Admissions folks, and various schools and college are looking at their policies. I mean this is all public record to. The provost . . . a year ago asked all of the deans to take a look at [their] admissions [policies] and report back to him if they were in

line with *Bakke*" (Administrator #3-UM). Administrators with authority over programs vulnerable

to such attacks were also convened to report on policies and to determine ways to insulate policies

from attacks.

With respect to general policy reviews, Administrator #1-UM indicated that general policy

reviews in and of themselves were useful in determining if standing policies were still appropriate.

> Well, I think five, almost six years ago now, we did a general review of our old
> admissions policy. . . . I think we anticipated that there were . . . issues . . . I think
> institutions . . . periodically need to back up and think about how they're making their
> admissions judgments and make sure that they're doing what they think is most
> appropriate (Administrator #1-UM).

The final category of communications was developed to capture networking activities

conducted outside of the institution in response to the current anti-affirmative action climate. The

central administration at the University of Michigan, for example, found it important to maintain

open communications with national higher education organizations while in the state of

entrenchment. Administrator #3-UM reported: "We're talking to people on national panels such as

the American Council on Education, the American Association of Colleges and Universities,

American Association of Higher Education, all of those kinds . . . including the CIC, which is the

big ten consortium."

Overall, the above categories illustrate that although an institution is not engaged in anti-

affirmative action litigation, the institution, in this case the University of Michigan, saw a need to

protect itself from potential litigation, and therefore, took precautionary measures to insulate the

affirmative action policies it supported and valued. However, when the institution moved from the

pre-litigation to the pending litigation phase, a different repertoire of strategic responses was

uncovered.

Defensive Maneuver 2: UM and UMD Go To Battle

Both the University of Michigan and the University of Maryland interviews provided data

that indicated their development of the battle response to anti-affirmative action litigation. While

litigation was pending, both institutions engaged in activities to defend their policies; however,

Michigan had developed additional strategies that went beyond the courtroom. The University of

Michigan informants, Administrators #4, #5, and #6, discussed a range of activities that Michigan

had engaged in since the onset of the first lawsuit. In direct contrast, the University of Maryland

informants, Administrators #1 through #4, expressed that, while litigation was pending, the

Table 3.   Dimensions of "Battle" Categories

Category	Focus of Activity	Type of Activity	Primary Participants or Sponsors	Activity's Orientation to Institution	Example of Action/strategy
Public Relations I	national	public appearances	president/provost	external	TV appearance Satellite conference
		written submissions	central administration	external	Op-ed pieces to national papers
Public Relations II	constituencies	speaking engagements	president/provost	internal, external	Meet with alumni, student groups, state legislators
Promotion I	academic dialogue	educational scholarly impassioned	committee	internal	Lectures by invite speakers, Dialogues in residence halls, Theme semester
		research coordination	committee	internal, external	Commissions papers Distribute research
Promotion II	open dialogue	supportive	central administration	internal	Expressions of support for freedom of speech
Defense	legal council	acquisition	central administration	internal, external	Secured lawyers
	presidential actions	public stance	presidential leadership	internal, external	Fighting
	fact finding	documentation	appointed committee researchers, consultants university community	internal, external	Document present effects of past discrimination

institution primarily engaged in defending its position in the court case. Among activities reported

by both Michigan and Maryland informants, actions most often reported were related to "going

public" with the institution's side of the story, promoting academic and open dialogue, and of

course, defending the institution's position in the lawsuit. These actions were seen to consist of

five battle stance categories: (1) public relations I, (2) public relations II, (3) promotion I,

(4) promotion II, and (5) defense (see Table 3).

Both public relations I and II categories were designated to characterize activities that dealt

with educating the public regarding the institution's position and engaging the country in

conversation. Public relations I were actions that had more of a national focus, such as making an

appearance on a national satellite conference or submitting opinion editorial pieces to newspapers

across the country. Although Michigan's leadership has attempted to share its position and engage the public in a national conversation, at times events did not go according to plan. Administrator #6-UM reported: "President Bollinger was on ABC news. . . . What we don't control is the edit team. It turns out that the editor cut in ways that was not as helpful. . . There have been op-ed pieces in newspapers around the country, our attempts to place op-ed pieces around the country." Unfortunately, while the institution attempts to educate and engage the nation in conversation, there are forces among the media and otherwise that may prevent or hinder such attempts.

Public relations II activities essentially focused on engaging in conversation with different constituent groups, including alumni, state legislators, and students. Administrator #6-UM reported that the president and provost have made themselves accessible to such groups:

> I think the university is actively considering how to engage the entire community. The president has . . . made himself available to members of the state legislature, to alumni groups across the state and around the nation to talk to them about the lawsuit where appropriate. . . . I think he and the provost both have agreed to talk to various student groups, and faculty groups, and alumni groups too.

By engaging in conversations with these different groups, the leadership is afforded opportunities to educate the public, articulating what they see as the important issues.

Similar to public relations I and II, promotion I and II encompassed elements of educating and engaging the public in conversation; however, the top executive officers (president and provost) were not directly involved in institutional actions of this nature. In this case, leadership was more supportive and less engaged. Promotion I were strategies developed by an appointed committee to promote the facilitation of academic dialogue. Academic dialogue, though inclusive of the learning and the educational process, promotes the exchange of ideas in a scholarly manner, void of unsubstantiated claims. In Administrator # 6-UM's description of the committee's role, promotion I was best described:

> Fortunately, we're an educational institution, so we then turn to what is a critical public policy issue into an opportunity for learning. And so, what the committee that I chair is designed to do, it sees itself doing, is then creating opportunities for us to engage that key issue in an environment that is both scholarly but passioned, impassioned in a way. That is, one could be impassioned about a topic and still do it where it's not just pure hearsay and conjecture, but where one comes armed with the best research methods, tools, and findings possible. And that's what we're trying to promote.

Strategies for promoting academic dialogue included four primary activities: (1) sponsoring guest lecturers for campus-wide programs; (2) conducting dialogue sessions within the residence halls, fraternities, sororities, staff lounges, and athletic campus sites; (3) coordinating a theme semester that involved courses, films, and speakers; and (4) coordinating research campus-wide in order to mobilize research efforts across campus. Administrator #6-UM described all of these strategies in detail.

Promotion II is also associated with dialogue; however the focus is open dialogue rather than academic. Because "it is the nature of a university to promote dialogue and free speech" (Administrator #5-UM), everyone within the university community should feel free to engage in conversations about diversity and affirmative action across campus, regardless of where they stand with respect to the university's position. To insure that free speech and/or open dialogue was not squelched, members of the administration expressed support for open dialogue across campus and identified open dialogue as a goal for the aforementioned committee. Expressions of support for open dialogue were reported by Administrator #5-UM:

> It's important that there be many voices and that people feel comfortable speaking out and that we respect each other's opinions. . . . people may disagree, but this is a university and there should be the opportunity for candor and open dialogue.

Both the president and provost expressed an interest in promoting open dialogue in connection with the appointed committee.

> Well, the provost and the president were interested in forming something that would promote dialogue and discussion on the campus. And so they asked . . . [a senior officer] to chair this group. . . . This will be independent. . . . So in other words, the provost and the president have asked [the senior officer] to do this but, it will be [a] fairly independent kind of effort. But the idea is to encourage dialogue and discussion (Administrator #5-UM).

Clearly, the central administration supports open dialogue but maintains a distance from any efforts to organize or sponsor dialogues and discussions.

The independent committee that was formed to facilitate dialogue also understands the importance of creating forums for open conversation and free exchange.

The other part of this committee's goal is to also create environments where the wide range of the use of perspectives can be heard. If only those folks who are pro university policies are heard, then the others who are out there in opposition will be quietly silent; but in such a way is not to really benefit the entire university. So we [on the committee] want to figure out ways. . . that enable all people to be heard, but in a thoughtful manner (Administrator #6-UM).

According to the above statements, promotion of both open and academic dialogues seem to be central to the institution's values, as well as campus response, during the course of pending litigation. In conflicts that have reached the fight/flight stage, parties engage in silencing the opposing view points. In Michigan's case, although the institution is engaged in a fight over maintaining its affirmative policies, the mission of the institution dictates a response that invites dialogue and conversation, where many perspectives can be respectfully expressed.

The last battle response discussed among informants was that of "defending the lawsuit" (Administrator #4-UM) or defense. Since Michigan's lawsuits were pending, informants provided limited information regarding Michigan's defense. According to newspaper reports, the University of Michigan has secured the services of a Washington, DC firm. Furthermore, through public pronouncements and press releases, Michigan's leadership has made it clear that they plan to fight this lawsuit and will not back down. Michigan informants basically reiterated that the university was fighting the lawsuit, defending its policies, and standing for its core principles.

Because the court case was obviously over, University of Maryland informants were able to express more detailed information beyond "fighting the lawsuit." In particular, Administrator #4-UMD provided a considerable amount of information regarding the institution's approach to its defense. The defense entailed three major components: (1) acquisition of legal counsel, (2) presidential actions, and (3) the research or fact finding process.

According to Administrator #4-UMD the acquisition of legal counsel was dictated by state law:

You know we're a state agency obviously and while. . . [legal counsel is provided] inside to the university, . . . we're statutorily represented by the state attorney general's office. . . .The state attorney general's office . . . represents us in court. That's who actually handled. . . the litigation for us.

In contrast to Michigan, who secured the legal services of an outside law firm to represent the university in court, the University of Maryland had no need to secure legal services.

Presidential actions might seem to be an odd dimension of the defense category; however, each University of Maryland informant addressed this notion of presidential actions in some form. Presidential actions were significant because they seemed to have communicated to the university community the intensity of the president's fighting stance. Administrator #1-UMD described the president's actions in the following statement:

> Well, there wasn't much opposition within the institution. At least that I know of. Everyone was supportive. I think because the president was so supportive if the Banneker program and put so many resources into fighting the challenge and trying to preserve it as it was, that I think that kind of set a tone for other people in other departments.

Given the informant's description, it appears that presidential actions may have also contributed to setting the stage for a supportive campus environment.

The third and final dimension of the defense category was the initiation of the research or fact finding process. "In light of the appellate court decision [of 1992], the University decided to initiate its own inquiry to determine whether to continue the Benjamin Banneker Scholarship Program" (University of Maryland, 1993). The inquiry involved a multiplicity of strategies, including forming a committee to direct the inquiry, developing a factual record, and issuing a committee report. Administrator #4-UMD reported on such fact finding efforts:

> The 4th Circuit when we had to go back, we had to show evidence of . . . present effects of past discrimination. So, we had . . . a committee, and it was formed to create a record, and so we produced a report. . . . Well it [the report] was findings and conclusions on the legal argument that we were making. So, we had to have evidence of our argument of present effects of past discrimination. So what we did was we developed . . . a factual record to support our arguments of adverse reputation and hostile campus climate and underrepresentation of African Americans. We actually developed a factual record that we presented in court.

Because Maryland argued the Banneker program remedied present effects of past discrimination, the institution had to prove that such effects existed. The fact finding process, which included commissioned studies and internal reports, focus groups, affidavits, and hearings, was key to

Maryland's defense strategy. In spite of these efforts, however, Maryland was defeated and "had to dismantle" the Banneker scholarship (Administrator #4-UMD).

The battle stances between the two cases were reportedly very different and distinct. Maryland, being the first among the two cases to engage in battle, primarily focused on winning the court case. Maryland's actions were facilitated by the court proceedings. Michigan, on the other hand, found it necessary to engage the nation in a conversation on the pertinent issues surrounding the legal case. The historical context within which the two cases emerged may be critical to how these institutions and their leadership interpreted the type of responses needed. Since Maryland's case was more so a test case that happened at a time when affirmative action received less political, judicial, and public scrutiny, the courtroom was relatively the most important battle ground. But Michigan's case has come at a time when affirmative action is under attack at both federal and state levels, within the courts, and also among the public. With such a wide-spread attack on affirmative action in this country, it is no surprise that Michigan began its battle phase with attempts to engage a national audience and participate in dialogue.

Defensive Maneuver 3: University of Maryland's Retreat
When the lawsuit was decided in favor of Podberesky, the University of Maryland moved into the retreat phase --a time of post litigation, --otherwise the institution would have been found in violation of the court order. However, as I uncovered in this study, there are degrees of retreating from one's policies, ranging from a complete, to partial, to minute retreats. In the University of Maryland's case, retreat was something to overcome and not succumb to.

Among the post litigation actions reported by University of Maryland administrators, most actions taken were analogous to (1) complying with the court ruling, (2) implementing preventive measures to protect the institution against future litigation, and (3) maintaining the same diversity goals without violating the law. These actions consisted of three categories of retreat responses: (1) legal compliance, (2) diversity goal maintenance, and (3) preventive measures (see Table 4).

Table 4.   **Dimensions of "Retreat" Categories**

Category	Type of Activity	Primary Participants	Activity's Orientation to Institution	Example of Action/strategy
Legal Compliance	dismantling	legal council attorney general's office specific departments	internal	Eliminate race-specific program, create new criteria
Diversity Goal Maintenance I	signal diversity's importance voice expectations	presidential leadership	internal	President shares expectations with staff regarding diverse student body
Diversity Goal Maintenance II	recruitment	departments	external	Increase number of qualified minority applicants in pool
	application review process	staff, faculty	internal	All files are read
Preventive Measures	policy review	committee legal council	internal	Campus wide review of all scholarships
	annual discussions	specific departments	internal	Yearly discussions on *Podberesky*

Actions carried out in order to comply with the court order or final judgment were classified under the legal compliance category. In Maryland's case, legal compliance entailed dismantling the Banneker program from a race-specific scholarship to a scholarship program that was open to all students, regardless of race. Administrator #4-UMD reported to what extent race could be used within the newly established scholarship criteria:

> Well, I think what we've . . . , and again it goes back to the fact that the attorney general's office and Maryland believes that diversity still maybe a viable compelling state interest, . . .what we [have] develop[ed] . . . are new criteria for some of our programs, where of course race, we've eliminated race exclusive evaluation criteria, but race may be considered as one factor among numerous factors.

With "guidance from the state attorney general's office" (Administrator #4-UMD) Maryland had essentially move from a race-specific remedy to a new criteria that utilizes "race as one of many factors" (Administrator #4-UMD). However, shifting from one type of criteria to another was not quickly achieved. According to Administrator #1-UMD, several proposals had to be submitted before a suitable criteria was achieved.

> Well all I can say is that . . . when we were reconstituting the Banneker/Key program or deciding what to do now that we could no longer have the Banneker program, the legal office was involved in that pretty much at every step. And the first couple of proposals that were made . . . were rejected by the legal office because they said that they didn't think that [they] would withstand another court challenge (Administrator #1-UMD).

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Reports from both Administrators #1-UMD and #4-UMD indicated that Maryland's process of dismantling its race-based scholarships was not easy or clear-cut. Although administrators were given the charge of developing a new criteria, legal counsel and the attorney general's office had a hand in its development as well. Legal counsel could no longer sit back and not be involved in policy development within the institution. Hence, "the legal office was involved in . . . every step" (Administrator #1-UMD).

Diversity goal maintenance I and II were dimensions of retreat that encompassed responses by the president and departments, in order to maintain institutional diversity goals. Diversity goal maintenance I, which focused on how the president expressed support for diversity, was addressed in a variety of ways. Since the new ruling declared that the race-specific scholarship was unconstitutional, it was Maryland's choice to decide if the goal of a diverse student body was something to maintain or retreat from. According to informants' reports, with the assistance of the president, student diversity remained a prominent institutional goal.

> I think we've . . . had progressive leadership in Dr. Kirwan and his stand on affirmative action and the importance of it and the importance of recruiting students to this campus. Now certainly since the [state] supreme court has told us we can't have race based scholarships, we can't . . . do anything that would be against that, but Kirwan has certainly supported us and . . . has even expected that we find other ways that would not be against the supreme court ruling that . . . would be legal. Of doing what ever we have to do to make sure that we're still getting talented, bright students of color, especially black students. And so, he has not sort of thrown up his hands and said well oh that's it. I guess we can't do anything. He's be[en] extremely active . . . in that sense (Administrator #3-UMD).

In addition to being "extremely . . . vocal and up-front about the institution's commitment to diversity" (administrator #4-UMD), President Kirwan has given little to no indication of retreating from the position he held prior to the court ruling. He hasn't given in or "thrown up his hands" (administrator #3-UMD), but has directed the university to maintain diversity goals as much as possible, without violating the law. From Administrator #4-UMD's perspective neither the institution nor the president has retreated:

> I think we first articulated our goals in . . . probably the most public way through the Podberesky case. And we made it very clear that we thought that there's some very important educational goals that we can only reach by having a diverse student population. And . . . we've never retreated from that. I mean the methods . . . have been different

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because of the court rulings. But, . . . I mean . . . the position that the institution . . . has taken and the president [has taken] has never changed.

In essence, although the institution was dealt a big blow by the court ruling, by virtue of its leadership, administrators across campus did not view their institution in a state of retreat.

As indicated above, diversity goal maintenance II were responses implemented by specific departments across campus in order to maintain a diverse student body. Two responses in particular were discussed by Maryland informants: recruitment and the application review process for the new Bannker/Key scholarship. With respect to recruitment, Administrator #2-UMD gave a very detailed explanation of the new recruitment strategies Maryland had initiated in order to increase the number of competitive, minority student applicants.

> The way that we've tried to respond . . . is to just be very aggressive about our recruitment. . . . we've opened new markets. . . . We've kind of increased the amount and number of scholarship opportunities that we had. And we've . . . more widely. . . publicized the quality of our programs to the point that we have many more competitive students of color than we use to. And our applicant pool for scholarship[s have] . . . greatly expanded . . . from students' . . . greater knowledge of, you know, who we are and what we have to offer. . . . we've expanded our ah our presence in various areas of the country and we've . . . I think done a better job of publicizing what our strengths are, to the point that our own students, you know, students of color, . . . nonminorities, as well as students from across the nation, are more inclined to apply here than they use to (Administrator #2-UMD).

Apparently, recruitment took on a variety of different dimensions that included better marketing strategies and increased scholarship opportunities. As a result, diversity gains were realized but not without hard work. It has "taken a lot of back-breaking on the part of . . . admissions counselors" (Administrator #2-UMD) in order to achieve these results.

Reportedly, maintaining diversity goals through the Banneker/Key scholarship application process has been demanding as well. Three Maryland informants addressed different aspects of this time-consuming and labor-intensive process. Because the new criteria dictated "a whole person analysis" (Administrator #4-UMD), the process has required a "very time-intensive one-on-one . . .type of evaluation (Administrator #4-UMD). Essentially, the evaluation process eliminated the aspect of "automation" (Administrator #1-UMD).

> Getting rid of automation was part [of] this [new criteria] . . . unless you were gonna have an absolute cut off that was the same for everybody, we had to do everything by hand . . .

every file is personally looked at. . . . it has become much more labor intensive since we had to . . . make this change (Administrator #1-UMD).

So, you know, we have to just be more creative, and it takes a lot more work, a lot more hours, a lot more reading, but you know it's . . . part of our academic mission, and it's important to us. So, it's what we're gonna do to make sure that we have a representative campus (Administrator #3-UMD).

Overall, it is clear that maintaining diversity is not an easy task. It takes more time, energy, and money than what it took before the *Podberesky* ruling. Nevertheless, the continued effort and fighting spirit of the institution to achieve its diversity goals seem to justify the earlier claim that methods are different but the position has not changed. Thus, the institution has "never retreated" (Administrator #4-UMD).

The last "retreat' category of preventive measures entailed actions executed by the institution to protect itself from future anti-affirmative action litigation. Two types of preventive measures that were discussed most often by informants were policy reviews and annual discussions. Policy reviews were legal examinations of scholarship programs. Administrator #3-UMD best described what was done with existing scholarship programs after the *Podberesky* ruling was issued: "I believe that the president had . . . charged a committee to look at all scholarships on campus to make sure that they were in compliance." Administrator #1-UMD indicated that the policy review included more than scholarship programs:

After that happened [*Podberesky*], the University of Maryland reviewed all of its programs, whether they were scholarship or admissions or other . . . programs . . . and looked . . . to see how they were doing things and to see if we could withstand the challenge, such as the Banneker program had.

Although this category may sound familiar to the policy review category in the entrenchment period of response, there are two distinctions. First, the guiding premise of the policy review in the retreat phase is the new ruling rather than *Bakke*, which is characteristic of the entrenchment phase. Second, the retreat policy review is prompted by a lost battle rather than a threat of one. Hence, the institution is not attempting to prepare for battle but is protecting itself from future losses.

The second type of activity classified under preventive measures was annual discussions. Annual discussions were held at the start of each recruitment year to keep *Podberesky* in the forefront of the participants' minds.

> We talk about it [*Podberesky*] every time we sit around the table and look at the beginning of each recruitment season and look at our numbers from the previous year in terms of the percentage of students we have admitted, versus those students who accepted, our offer and then what our final numbers look like. So it is ever present on our mind (Administrator #3-UMD).

In summary, actions taken during the retreat phase were in response to the new ruling and the University of Maryland's continued commitment to maintaining a diverse student population. Furthermore, as a result of the campus' intense commitment to maintaining diversity and the president's leadership, the stance of retreating was not attributed to the institution or the president.

Although Michigan had not progressed enough to determine the nature of its post-litigation phase, most of the Michigan informants discussed and speculated about Michigan retreating or not retreating from the fight and its principles. In particular, Administrator #4-UM stated:

> It would be easy for the university just to roll over and say well, you know, you have a point there. We are, we're not necessarily doing the right thing and just sort of change the guidelines for admission to reflect what the lawsuits are claiming occurs. But they're [UM] not doing that. The university's not responding that way. They're gonna fight.

Administrator #6-UM linked retreating with walking away from one's principles and values:

> I think the other thing the university is doing is . . . the same. And there are certain core principles by which we stand, and we want to articulate to ourselves, to our own immediate community, to our alumni, and to the nation, that we stand by them because we believe they're correct. And so, that, in my mind, is also important. That if you believe that certain things are important to do, and that we are a national leader, that . . . although the political currents, the winds maybe moving in another direction, we should not retreat from that which we believe is correct, and which the law at this moment confirms is correct.

As reported by informants, it appears that retreating is not something the institution wishes to engage in, such that its principles, policies, and core values would be abandoned. Given these declarations of holding fast to core values, one could speculate that if Michigan found itself on the losing end of this battle, its retreat phase would look similar to Maryland's.

Institutional Climate Aftermath

Consequences of these defensive maneuvers led to an institutional climate aftermath. Given the present conflict phase each institution had or has been engaged in, Maryland's aftermath was clearly a result of actual consequences of the lawsuit, while Michigan's state of aftermath was more speculative. In Michigan's case, the informants speculated about three aspects of institutional climate aftermath: recruitment, reputation, student body composition, and academic culture. Informants speculated that recruitment would become more critical to maintaining a diverse student body and that Michigan would find innovative ways to improve recruitment of students of color. However, informants also suspected that, like the situation in California, the makeup of the student body would change drastically, leaving the institution with a scarred reputation. Lastly, the academic culture would be compromised. Since many believed that diversity and excellence were linked, the lack of diversity would have a direct impact on scholarship, classroom dialogue, learning, and critical thinking. None of the Michigan informants addressed the aspect of resulting hard feelings or conditions that would lead to another cycle of litigation conflict.
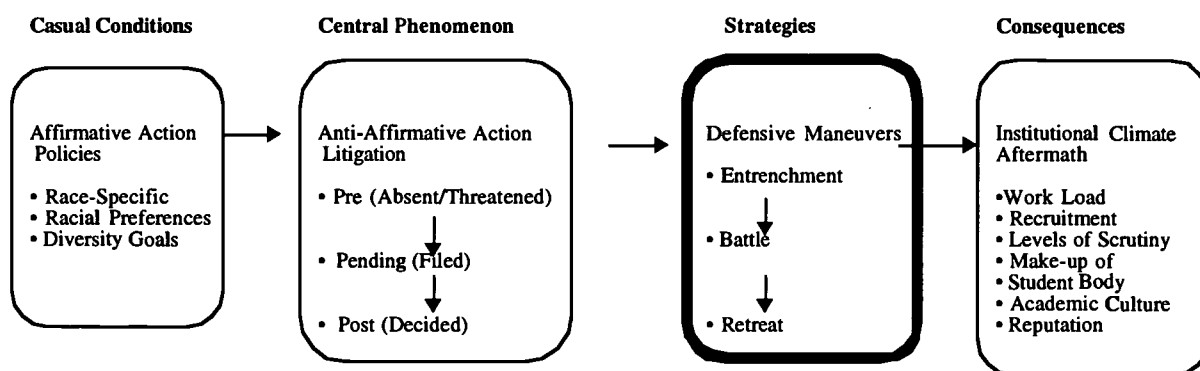
Maryland, in addition to increased work load and intensified commitments to diversity, informants addressed the mood of the campus with respect to the ruling. Even though the institution has accommodated the new ruling, those who work in admissions and closely with the new scholarship program recognized that their "hands have been slapped" (Administrator #2-UMD and #3-UMD). Actions are reviewed more often and are under more scrutiny. The ruling is ever present on people's minds as though it happened yesterday (Administrator #3-UMD). Nevertheless, the University of Maryland has improved its reputation among students of color and has become one of the most diverse campuses in the nation. Clearly, there were negative as well as positive consequences to the institution's legal battle and retreat.

Theoretical Interpretations

As indicated above, conflict is a process. According to Thomas (1976), "the process model focuses upon the sequence of events within a conflict episode, and is intended to be of use when intervening directly into the stream of events of an ongoing episode" (p. 889). As indicated earlier, a

general process model of conflict was developed by Filley (Holten, 1995). If one examines the

paradigm model generated from axial coding (see Figure 2), it identifies sequences of events within the

conflict cycle, in addition to components of a conflict model that Filley addressed in his six-element

model of conflict. Antecedents or causal conditions were identified, along with what Filley would

identify as perceived/felt conflict, manifest behavior, and resolution aftermath. However, unlike

Figure 2. A Substantive Model of Institutional Responses to Anti-Affirmative Action Litigation

Casual Conditions	Central Phenomenon	Strategies	Consequences
Affirmative Action Policies • Race-Specific • Racial Preferences • Diversity Goals	**Anti-Affirmative Action Litigation** • Pre (Absent/Threatened) ↓ • Pending (Filed) ↓ • Post (Decided)	**Defensive Maneuvers** • Entrenchment ↓ • Battle ↓ • Retreat	**Institutional Climate Aftermath** •Work Load • Recruitment • Levels of Scrutiny • Make-up of • Student Body • Academic Culture • Reputation

Filley's model, two additional processes or phases were identified within the perceived/felt conflict

and manifest behavior elements. Within the central phenomenon (perceived/felt conflict), anti-

affirmative action litigation progresses through stages, from pre-, to pending, to post-litigation

phases. Correspondingly, responses or defensive maneuvers progress from the entrenchment to

battle to retreat phases.

In Blake and Mouton's (1970) 2x2 grid (see Figure 1) of five conflict responses the

confrontational strategy seemed to be the most appropriate in describing the nature of the legal

conflict under investigation. However, according to interview data, in addition to fighting or being

competitive, the University of Michigan is also engaging in problem solving or collaborative

strategies (academic and open dialogue). On the 2x2 grid these two responses are polar to each

other. Since they are polar, one cannot be both confrontational and collaborative. As one moves

from one point towards the other, less of the other response is enlisted. However, the evidence in

this study indicates that institutions are able to engage in conflict strategies that incorporate polar

responses in order to meet diverse objectives and institutional missions.

Lastly, Donohue and Kolt (1992) conceptualized seven levels of conflict. In addition to fight/flight and intractable levels, level 3 -- problems to solve-- also seems to be an appropriate description of the type of behaviors an institution can demonstrate while engaged in "battle." Donohue and Kolt (1992) stated that parties can "vacillate between . . . phases" (p. 18); and, given the reported behavior of the University of Michigan, an institution can possibly vacillate and even engage in more than one conflict phase within the same time frame.

In the intractable phase, parties fight for justice and "the cause." During a sustained period of this conflict level, leadership emerges. "People look for strong leadership and rely more on their directives during periods of prolonged conflict" (p. 18). Within the context of the Maryland case, the president's leadership seemed to be central to the sustained conflict and battle stance of the institution. According to Maryland informants, the president took a very prominent role in pulling together and sustaining campus support. The Michigan leadership has been instrumental as well, although not in the sense of galvanizing campus support, but in getting the institution's side of the story told.

With respect to all three conflict models/frameworks, aspects of a retreat response and climate aftermath were essentially underdeveloped. Retreat could be considered the accommodative or appeasement response identified in Blake and Mouton's (1970) 2x2 grid (see Figure 1), but the retreat stance of Maryland did not reflect a total accommodation or appeasement response. That is, the institution did what was needed to meet the requirements of the law, but other measures were taken to circumvent the expected negative impact of the new ruling. Thus far, the literature does not provide a satisfactory explanation for this type of response. And finally, the literature's discussion on aftermath fails to fully describe the type of elements that would be important in the aftermath, after such a battle has taken place. This framework provides evidence to better understand which elements are important to institutions.

FURTHER RESEARCH AND IMPLICATIONS FOR PRACTIVE

Since the findings were derived from a limited data set, additional research must be done to fully develop this theoretical model. First, more interview data from the same and from different sites need to be collected. Because there is a need to "maximize on differences at the dimensional level" (Strauss and Corbin, 1990, p. 176), relational and variational sampling must be done. Interview data resulting from this level of sampling can provide opportunities to uncover major categories or phenomenon that were not raised in this pilot study. Following relational and variational sampling, more interview data from discriminate sampling will be needed to saturate the categories and sharpen categorical relationships in order to more accurately narrate the phenomenon of conflict.

The results of the research reported here suggest a number of strategies that an institution might adopt to appropriately respond to anti-affirmative action litigation, whether targeted at the institution or not. First, the institution needs to do an inventory of all affirmative action policies related to admissions and scholarships. Second, institutions should continue to monitor the changes in the law within their respective circuits and state. These conditions will dictate to a great deal the latitude that institutions have. Third, institutions should develop a plan to communicate to the immediate university community their goals and values with the president's full support. In the event an institution is sued, the campus will have already begun the process of educating constituencies about the issues and the institution's stance. Lastly, legal counsel and program administrators should maintain annual contact with each other to insure practical policies that are legally sound.

The present study should also prove useful to senior administrators, policy analysts, and middle management who also wish to anticipate and manage different aspects of the conflict process with respect to anti-affirmative action litigation. First, it has the potential to provide insightful information to senior administrators who wish to respond to opponents of affirmative action in a constructive manner that yields outcomes that enhance the institution's diversity goals. Second, the concepts uncovered help to focus attention on the salient aspects of

conflict management in relationship to anti-affirmative action litigation. Third, by understanding the action/interaction component of this process, individual institutions, groups of institutions, and higher education organizations and associations can devise strategies internal and external to institutions with strong diversity initiatives. Fourth, it can also assist in guiding public policy, institutional, and scholarly research. Lastly, and most importantly, this study provides a picture of the institutional response process embedded in this phenomenon of legal conflict.

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