An All White Enterprise: How the Normalcy of White Privilege is Maintained in US Supreme Court Race-Conscious Admissions Oral Arguments

LaWanda W. Ward

Abstract

A conservative agenda is being advanced that has taken control of defining equality and race discrimination. Over 60 years after Brown v. Board of Education (1954), there continues to be legal challenges within higher education centered on race; however, White plaintiffs have commandeered civil rights discourse to allege reverse discrimination. In order to shift the discourse of equity in higher education to empowering People of Color, it is important to critically question societal constructs that have stymied racialized progress such as White privilege. This writing advocates for the re-centering of race focused strategies that result in equal access for the goal of moving towards productive efforts of equity in higher education for People of Color. Through a Critical Race Theory lens and a Critical Discourse Analysis methodology, the normalcy of White privilege is analyzed for ways in which it is (re) produced by the justices and all attorneys in the U.S. Supreme Court oral arguments for higher education race-conscious admissions cases.

Keywords*: white privilege; race-conscious admissions; Critical Race Theory; Critical Discourse Analysis*

Higher education race-conscious admissions policies are under attack in the courts and the legislature. Racism prior to the Civil Rights Movement was easily recognized because it was not only socially accepted but had the endorsement of law, specifically the U.S. Supreme Court's decision in *Plessy v. Ferguson* (1896), that *separate but equal* was constitutional. This law allowed Whites to deny Blacks and other People of Color access to public resources such as education. After federal laws were enacted to prohibit racist practices and behavior, opposition changed its appearance and discourse (Augoustinos, Tuffin, & Every, 2005). For example, when individuals are accused of being racist for voicing opposition to affirmative action, they deny the label and assert their position as advocacy for "fair, just, and egalitarian" (Augoustinos, et. al, p. 318) policies to bring about societal equity.

"College access discourses are laced with racially coded language determining who can attend college and what college they will attend" (Patton, 2016, p. 12). Because "the evidence of deep-seated racism is stronger than one might suppose, and that a focus on racism could have important implications for legal doctrine" (Aleinikoff, 1992b, p. 973), an exploration of legal discourse is warranted. To date the Supreme Court has only ruled on race as a consideration factor

for the admissions processes of *selective* institutions. However, these cases and their artifacts, for this writing, oral arguments, are important because all public institutions of higher education are seeking to be in compliance with the Court's decisions to avoid litigation. Additionally, the more attention brought to the flawed logic of viewing *reverse discrimination* as a legitimate legal argument, the sooner a discourse revealing the White hegemonic structures and practices in higher education acess can move to the center.

An inextricable link exists between race, law, and higher education. "From the judicial enforcement of the nineteenth-century fugitive slave laws through most recent race-conscious affirmative action cases, judges have tried desperately to explain the law's response to racial oppression" (Ross, 1996, p. 21). My objective is to demonstrate how advocacy for the maintenance of a system of White privilege is achieved by all participants, including attorneys representing the universities, through selected excerpts from Supreme Court oral arguments regarding race-conscious admissions in higher education.

The dominant use of politically correct terminology coupled with the reliance on established legal precedent utilizing the U.S. Constitution has created a "racial grammar" in the race-conscious admissions narrative that "is a distillate of racial ideology, and hence, White supremacy" (Bonilla-Silvia, 2012, p. 174). The ways in which the use of race as a consideration factor in race-conscious admissions policies is framed as both an inhibitor and conduit of access to higher education is evidence of how racial discourse evolves to appear innocuous yet it maintains a racial order that reduces equity opportunities for People of Color.

A component of the appellate process mentioned but not often given much scholarly attention is the Supreme Court oral arguments for the race-conscious higher education admissions cases. Oral arguments are the first public opportunity to learn what each side in the race-conscious admissions debate is asking the Supreme Court to consider and rule on in its decision. Of great importance is the absence in the legal rhetoric of acknowledging the negative realities caused by the normalcy of White privilege that stymies advancement in all societal institutions. Hence, an interrogation of these legal artifacts is worthy of exploration. Through the use of Critical Race Theory (CRT) and Critical Discourse Analysis (CDA), I identified the presence of the normalcy of White privilege rhetoric as a recurring racialized theme in select excerpts from Supreme Court oral arguments about the use of race as a factor in race-conscious admission processes. Rhetoric prohibits the Supreme Court, universities, and society from addressing the continued influence of race and racism in the plight for equity in access to higher education.

The Normalcy of White Privilege

The normalcy of White privilege is a by-product of colorblindness. Its impact on the race-conscious admissions in higher education cases is realized through the belief of Whites that they have a legal property right to higher education access of which only Students of Color have deprived them of unfairly (Harris, 1993). The sense of entitlement for admission to higher education institutions, especially selective ones, has led to lawsuits and financial support by those who oppose race as a consideration in the admissions process.

The normalcy of White privilege fuels the view of Whites to rightfully be in possession of many of the opportunities and resources in American society which stems from the historical establishment of Whiteness as a valuable commodity. "Whites have come to expect and rely on these benefits [set of assumptions, privileges, and benefits that accompany the status of being White],

and over time these expectations have been affirmed, legitimated, and protected by the law" (Harris, 1993, p. 1713). Harris connected race, property, and law to reflect the historical creation and modern-day maintenance of Whiteness as a subordinating power in society.

Whiteness is the norm in America, but goes unnoticed and unacknowledged because of its normalness (Lipsitz, 2014). Combined with privilege, it is a powerful and oppressive system in our society. "White domination is never settled once and for all; it is constantly reestablished and reconstructed by Whites from all walks of life" (Leonardo & Harris, 2013, p. 143). The White supremacist groups are joined by people who do not self-identify as racists including diversity champions and social justice advocates in the maintenance of White domination and beneficiaries of White privilege (Leonardo & Harris). Therefore, individuals who do not *name* racist acts, statements, and policies share the same deficit as anti-social justice proponents because as long as White privilege is unnamed, it will continue to dominate society's institutions.

Leonardo and Harris (2013) asserted "Whites have been able to develop discourses of anti-racism in the face of their unearned advantages" (p. 140). Additionally, feeling confident in one's entitlement due to White privilege, some Whites view themselves as being successful due to their individual efforts and refuse to acknowledge White privilege assistance. DiAngelo (2011) asserted that racial arrogance can develop from this viewpoint, causing Whites to confidently argue about the deficient status of People of Color being attributed to non-race factors as well as dismiss any factual information about White privilege's negative impact on People of Color.

Racial arrogance fuels conservatives to seek out ideal litigants for reverse discrimination lawsuits. In *Bakke*, neither the university, justices, nor Bakke raised as issues the fact that five seats were set aside for wealthy donors' children and the university negatively viewed Bakke's age as an impediment to his admission (Lipsitz, 2014). The dominant focus and narrative were centered on the 16 Students of Color who were deemed unworthy of admission. Additionally, Harris (1993) contended Bakke had an expectation that he would be admitted and the Supreme Court's rationale that set-aside programs such as the one at UC-Davis did not meet constitutional muster confirmed his perspective that "the property interest in Whiteness was given another form and further hegemony" (p. 1770).

Opponents of race-conscious admissions programs have strategically worked to orchestrate lawsuits that would reach the Supreme Court with the goal of it finding such programs unconstitutional. Barbara Grutter, Jennifer Gratz, and Abigail Fisher, all White women with palatable narratives for both conservative and liberal Whites, set the perfect stage for arguing violation of their equal protection rights under the 14th Amendment. In the context of higher education, Whites view themselves as having a right to obtain a degree and therefore entitled to a seat in undergraduate, graduate and professional schools. This sense of entitlement has been reinforced in higher education since its inception and has resulted in lawsuits filed against selective universities supporting the inclusion of People of Color but overlooking provisions for legacies, athletes, or other Whites with lower scores.

The Normalcy of Whiteness in Higher Education

Whiteness being normal aligns with the rhetoric of innocence, which is a concept discussed by Ross (1996) as a legal tool used by White lawyers and judges. White plaintiffs are considered and presented as innocent victims who have not contributed to the denial of admission to People of Color in higher education, therefore they should not be deprived of attending their selected

institution (Ross, 1996). He asserted the avoidance of Whites benefitting from People of Color's oppression is a key component in the rhetoric of innocence because it "obscures this question: 'What White person is *innocent*, if innocence is defined as the absence of advantage at the expense of others?" (p. 46, emphasis in original). The realities of racism are repressed and overshadowed by the rhetoric of innocence, therefore, People of Color are easy targets because their marginalized place in society has been politically, socially, and legally framed as unworthy of being admitted to a university over a White person.

A major concern to social justice advocates is that the culminating effect of the five Supreme Court decisions involving race-conscious admissions will negatively impact all races by validating White privilege and deflating the aspirations of those who strive to ensure racism is not ruling the day. Education is one of the most prevalent societal institutions from which the citizenry learns democratic principles of equality, justice, and fairness. If it becomes a reflection of stereotypical notions of society about racial groups and mythical beliefs of equity, reform will be even more challenging to achieve.

Legal Discourse

The formalism, an emphasis on "cases and doctrine over policy, critique, and interdisciplinary approaches" (Delgado, 1997, p. 1109), of law contributes to the continued marginalization of People of Color with the effect of "reducing human factors and fact patterns into pre-existing forms called precedent. It minimizes the role of judgment, experience, politics" (p. 1125), racist structures, and systems. The formality of law with rigid tests and approaches such as strict scrutiny, are "a deflection. It [formalism] points you neatly away from the things that matter" (p. 1130) in the context of race-conscious admissions cases, attorneys defending the higher education institutions are confined by legal doctrines that "make it appear as though law is fair, neutral,—a science with only one right answer" (pp. 1133-34). Additionally, language is a powerful tool especially when it is intentionally arranged by attorneys in their oral arguments to persuade nine Supreme Court justices that their client should prevail. Narratives are woven into eloquent arguments that resonate with or invite push back from the justices. As the sophistication of legal rhetoric about race and equality has evolved, so has the judiciary's acceptance of arguments in which "the central theme of White innocence and the use of abstraction to obscure reality run through the tapestry of our legal and social rhetoric of race" (Ross, 1996, p. 24).

Supreme Court oral arguments are an important part of the appellate process for several reasons. One, they allow the public to observe societal issues being advocated prior to the Court's decision-making process. Additionally, transparency and visibility of the federal government's judicial branch carrying out its expected role is a reflection of a democratic society (Martineau, 1987). "For the judicial system, accountability is crucial, since it depends on public confidence and acceptance of the result in its processes" (p. 11). Two, several years expire before a case reaches the Supreme Court and typically the person who filed the case no longer has a personal investment in the Court's ruling, but its decision affects others and establishes a rule of law that guides future decisions. "Oral argument helps judges avoid becoming too isolated, and serves to remind them that they are not the only participants in the judicial process, and that their decisions directly affect individual lives" (p. 13). The impact of a decision regarding whether race can continue to be used as a factor in admissions policies in higher education not only influences colleges

and universities, but also how corporations and other public entities will create racial diversity policies.

Third, supporters of oral arguments argue they "can assist judges in understanding the issues, facts, and arguments of the parties, thereby helping judges decide cases appropriately" (p. 13). Specifically, in the race-conscious admissions cases, counsel for both sides have the opportunity to communicate the importance of their client's position with the goal of providing clarity or sharing omitted content that may not have been expressed in the submitted briefs.

Supreme Court Justice John M. Harlan wrote: "oral argument is exciting and will return rich dividends if it is done well…there is no substitute in getting at the real heart of an issue and in finding out where the truth lies" (Harlan, 1955, p. 6). This observation by Justice Harlan is questionable and requires exploration in lieu of the framing, ahistorical, and acontextual rhetoric espoused during oral arguments concerning higher education race-conscious admissions practices.

Currently conservatives and anti-affirmative action groups have an arsenal of language at their disposal that not only resonates with society but with the courts, especially the Supreme Court. Post-racial societal rhetoric is communicated in a format that allows the maintenance of racism without using inflammatory language or espousing prejudicial statements. Specifically, in the advocacy and opposition to racial equity in higher education, strategic framing in oral arguments is utilized by those advocating for both sides of the matter.

Within the race-conscious admissions debate, arguments given on both sides are prime examples of the flaws within the law. "Conservatives argue that affirmative action violates the principle of equal treatment and is unfair to innocent Whites" while "Liberals reply that it is a reasonable response to past injustice and necessary to assure future broad democratic participation" (Delgado, 1991, p. 937). Both sides use the same constitutional provisions to assert their cause. "Our constitutional legal culture tends to play down the depth and breadth of racism in American polity. Continuing inequality is rarely attributed to continuing discrimination" (Aleinikoff, 1992a, p. 350).

Analytical Framework

To explore the use of overt and covert racialized language in the Supreme Court's race-conscious admissions in higher education oral arguments, CRT will be employed as the theoretical framework. CRT is a legal based theory that emerged in the mid-1970s as a challenge to mainstream notions of race, racism, and racial power in American society. CRT probes the legal system and questions its established and accepted foundational doctrines such as equality theory, legal reasoning, and neutrality in constitutional law (Delgado & Stefancic, 2001).

Since CRT does not have a standardized set of tenets, several scholars have developed guiding principles for scholarly exploration. Delgado and Stefancic (2001) grounded CRT in three main principles. First, racism is the norm and not the exception to the rule. People of Color experience offensive language and actions influenced by stereotypes and presumptions, which are created and (re)produced through societal institutions such as family, education, the work place, and legal system. Second, the thesis of interest convergence or material determinism which occurs when the maintenance or elevation of Whites is not disturbed when People of Color are assisted in their plight for access to societal resources. Legal scholar and designated intellectual father of CRT, Derrick Bell is credited with coining the interest convergence thesis. He argued that instead of *Brown v. Board of Education* (1954) being a civil rights triumph, it occurred because Whites

with resources had an agenda more so than bringing equity to the Black community. The U.S. aimed to maintain its political status as a world leader and the showing of Blacks being beaten and mistreated in the international news was discussed as possibly jeopardizing the nation's position. Finally, the third principle of importance is the social construction thesis, which is "that race and races are products of social thought and relations. Not objective, inherent, or fixed, they correspond to no biological or genetic reality; rather, races are categories that society invents, manipulates, or retires when convenient" (Delgado & Stefancic, 2001, p. 7).

Because CRT has an activist component to its application, legal storytelling and narrative analysis are tools used to bring attention to marginalized voices. "The 'legal storytelling' movement urges Black and Brown writers to recount their experiences with racism and the legal system and to apply their own perspectives to assess law's master narratives" (Delgado & Stefancic, 2001, p. 9). The most compelling response to critics of storytelling is that competing narratives are at the center of how laws are made and reinforced (Hutchinson, 2004). The prevailing story becomes law. For example, beginning with Allan Bakke, race-conscious higher education admissions Supreme Court cases have highlighted narratives that focus on deprived White applicants who were denied acceptance to their school of choice because unqualified Students of Color were selected. Counterstories that critically examine the role of White privilege in higher education are needed to shed light on the continuing inequities that exist.

For this writing, I utilized narrative analysis to reveal the normalcy of White privilege as one racialized theme in Supreme Court oral arguments. "In legal discourse, preconceptions and myths…shape mindset-the bundle of received wisdoms, stock stories, and suppositions that allocate suspicion, place the burden of proof on one party or the other" (Hutchinson, 2004, p. 43). In race-conscious admissions oral arguments, the dominant narratives of victim and White privilege overshadow why the race-conscious programs were created and are being maintained, which is to address historical exclusion. *Truth* is a skeptical concept to critical race theorists especially in the legal context. When arguments are made that do not account for history, politics, social, or economic factors, *truth* is viewed as being socially constructed in a manner that is most detrimental to People of Color (Hutchinson, 2004).

Critical Race Theory in Higher Education

CRT has been used to critique issues in higher education ranging from affirmative action cases (Solórzano & Yosso, 2002; Yosso, Parker, Solórzano, & Lynn, 2004), and higher education as a system (Patton, 2015; Solórzano, & Yosso, 2002; Yosso et al., 2004). Race-conscious admissions policies are situated within the larger political and social context of access to higher education, therefore, CRT serves as a catalyst to demonstrate how racism and White supremacy are embedded and perpetuated through institutional policies. As a theoretical tool of inquiry for Supreme Court oral arguments, CRT is appropriate because scholars who utilize it are able to critique law's role within historical and contextual reasoning to advocate for racial justice. Additionally, CRT provides a legal lexicon that can demonstrate how law is malleable and utilized to maintain inequities in higher education. Beneficial to this writing, CRT provided a platform for the normalcy of White privilege to be interrogated for its role in legal discourse as well as engage in exploration of how the educational and legal communities reinforce racial inequality in higher education.

Methodology

Critical Discourse Analysis "is a problem-oriented and transdisciplinary set of theories and methods that have been widely used in educational research" (Rogers, 2011, p. 1). Specifically in higher education, CDA has been used by scholars on a variety of topics such as unmasking themes of heterosexual hegemony in an HBCU dress code policy (Patton, 2014) and revealing a discourse of neoliberalism in community college mission statements (Ayers, 2005). These writings shed a critical light on *normal* appearing higher education policies.

CDA does more than reveal "opaque as well as transparent structural relationships of dominance, discrimination, power, and control as manifested in language" (Wodak, 1995, p. 204). This transformative methodology advocates for progressive change that gives the voiceless a voice and a language of empowerment. According to McGregor (2003), "discourse analysis challenges us to move from seeing language as abstract to seeing our words as having meaning in a particular historical, social, and political condition" (p. 2). The Supreme Court oral arguments and the justices' questions in the higher education race-conscious cases were and remain reflective of society and the status of equality efforts in our nation.

The use of CDA provides higher education scholars a valuable methodological tool to explore higher education discourse about access since many inequities in higher education are less overt; therefore, they have to be uncovered in the ostensibly neutral language and policies implemented. Power takes various forms and can be exercised in several different ways. It is not always manifested in the form of abusive force, but in subtle and natural seeming occurrences. "The power of dominant groups may be integrated in laws, rules, norms, habits, and even a quite general consensus" (van Dijk, 2001, p. 355), which when all are combined create a White hegemonic enterprise.

While CRT provides tools for the identification of the normalcy of White privilege that are expressed in the oral argument discourse, pairing it with CDA, a critical communications-based methodology, allows for concentration on the use of language as a tool of power and persuasion. CDA is a complementary tool for CRT because, according to Fairclough (1989), CDA's main objective is to expose ideologies that are veiled in written and oral communication with the goal of resisting and rising above the dominance that is pervasive in our society.

Employing a line-by-line analysis to the five U.S. Supreme Court oral arguments transcripts, I approached the text by reviewing the way words and phrases were framed to convey arguments and questions. I also considered if textual silences, "the omission of some piece of information that is pertinent to the topic at hand" (Huckin, 2002, p. 348) and code words, "nonracial rhetoric to disguise racial issues" (Omi & Winant, 1994, p. 118) were being utilized by many oral argument participants. With the undergirded notion of how "standard, liberal-coined civil rights law injures the chances of People of Color and solidifies racism" (Delgado, 1991, p. 945) as well as the understanding of how "American law has recognized a property interest in whiteness that, although unacknowledged, now forms the background against which legal disputes are framed, argued, and adjudicated" (Harris, 1993, pp. 1713-1714)), I embarked upon a critical analysis of Supreme Court oral argument excerpts from five race-conscious admissions cases.

Analysis and Discussion

Bakke v. University of California (1978)

In *Bakke* the normalcy of White privilege through the rhetoric of innocence was introduced in the below exchange involving White male UC Davis medical school's attorney Archibald Cox and White males, Justices Stewart and Powell. "The invocation of the 'innocent White victim' of affirmative action" (Ross, 1990, p. 298) was the underlying message conveyed within the questions about Whites being denied access to all 100 seats. A presumption of innocence surfaced, but "not the product of any actual and particular inquiry. It is presumed that the White victim is not guilty of a racist act that has denied the minority applicant" (pp. 300-301) an opportunity to attend medical school.

> **Unknown speaker:**[1] It did put a limit on the number of White people, isn't' it?
>
> **Attorney Cox**: I think that it limited the number of non-minority and therefore essentially White, yes, but there [are] two things to be said about that. One is that this was not pointing the finger at a group which had been marked as inferior in any sense and it was undifferentiated that operated against a wide variety of people...
>
> **Unknown speaker:**[2] But it did put a limit on their number?
>
> **Attorney Cox**: It -- In each class? I'm sorry. It did put a limit on the number of not minority people in each class. It did put a limit…?
> **Justice Powell**: Do you agree then that there was a quota of 84?
>
> **Attorney Cox**: Well, I would deny that it was the quota. We agree that there were 16 places set aside for qualified disadvantaged minority student…
>
> **Justice Powell**: Now, the question is not whether the 16 is a quota. The question is whether the 84 is a quota? What is the answer to that?
>
> **Attorney Cox**: I would say–I would say that neither is properly defined as a quota.
>
> **Justice Powell**: And then why not?
>
> **Attorney Cox**: Because in the first place–because of my understanding in the meaning of quota and I think the decisive things are the facts. And the operative facts are this is not something imposed from outside as the quotas are in the employment or the targets are unemployment sometime today. It was not a limit on the number of minority students. Other minority students were in fact accepted for the regular admissions program. It was not a guarantee of a minimum number of minority student because all of them had to pay

1. Author Bernard Schwartz (1988) credited Justice Stewart with this question. The Supreme Court transcript designates the speaker as unknown.
2. This is Justice Stewart speaking again. The Supreme Court transcript designates the speaker as unknown.

him the testimony is that all of them were fully qualified, alright. It did say that if there are 16 qualified minority students and all were also disadvantaged. Then 16 places shall be falled by them and only 84 places will be available to others. (OA, pp. 1-2)

From a CRT perspective, attention is focused on how instead of Attorney Cox countering the justices' questions with contextual and historical information in alignment with what he was already arguing, the lack of Student of Color in medical school, he acquiesced to the rhetoric of *quota of 84*, which resulted in him contributing to the normalcy of White privilege. By avoiding "the argument that White people have benefited from the oppression of People of Color, that White people have been advantaged by this oppression in a myriad of obvious and less obvious ways" (Ross, 1990, p. 301) and that Students of Color have been absent or extremely minimal in number in admission to the UC-Davis medical school, attorney Cox cosigned on the framing of the issue to ignore the role of racial exclusionary practices embedded in the medical school's history.

The discussion of a *quota of 84* is a crucial example of the normalcy of White privilege. The narrative centered on an oxymoronic exchange about Whites being limited to accessing the largest number of seats instead of all 100. "Within this rhetoric, affirmative action plans have two important effects: they hurt innocent White people and they advantage undeserving Blacks [and other People of Color]" (Ball, 2000, p. 46). Victimization and fear align within the rhetoric of innocence yielding the false portrayal of a dominant presence of People of Color on college campuses, in this context, medical schools. The normalcy of Whiteness was also threatened at the implication that an institution of higher education that was predominantly White could potentially extend equal or substantial access to People of Color. Quota took on a different meaning.

After UC Davis's attorney gave his argument, the White male attorney, Reynold Colvin, for Allan Bakke who is also a White male, came before the Court. His opening arguments were interrupted by Justice Stewart when he asserted Bakke's *right* narrative. Even in attorney Colvin's attempt to clarify his position, the normalcy of White privilege continued to be reinforced by his assertion that Bakke's race was the reason for his denial.

Attorney Colvin: …He stated that he was excluded from that school because that school had adopted a racial quota which deprived him of the opportunity for admission into the school and that's where the case started…. He stated three grounds upon which he felt that he had been deprived of the right to admission to that school…

Justice Stewart: You spoke Mr. Colvin, of the right to admission, you don't seriously submit that he had a right to be—

Attorney Colvin: Allan Bakke's position is that he has a right and that right is not to be discriminated against by reason of his race and that's what brings Allan Bakke to this Court. (OA, p.8)

Probing the framing of the *right* argument reveals that arguing the issue as being solely about Bakke created a self -centered approach to alleging racial discrimination grounded in individualism which set the standard for future race-conscious cases involving individuals and not groups of people. "Individualism erases history and hides the ways in which the wealth has been distributed and accumulated over generations to benefit whites today. It allows whites to view

themselves as unique and original, outside of socialization" (DiAngelo, 2011, p. 59) therefore deserving admission to their selected institutions of higher education.

In an interview years later about the *Bakke* case, attorney Colvin reflected on his experience during that time. He stated the 14th Amendment's Equal Protection Clause does not mention *race* nor specific groups for coverage. This type of logic led to his legal strategy to legitimize the use of a constitutional amendment that was originally created to provide People of Color a legal tool for equality to be used to the advantage of Whites. It also supports the "claim that the Equal Protection Clause demands that persons be judged as individuals, not of the basis of irrelevant group identifications" (Aleinikoff, 1992, p. 974). Framing People of Color and Whites in the same societal position supports ignoring how structural racism continues to prevail.

***Grutter v. Bollinger* (2003)**

Barbara Grutter sued the University of Michigan Law School and was represented by a White male, Kirk Kolbo. In his opening statements before the Court, attorney Kolbo introduced the normalcy of White privilege by arguing that Grutter had a personal *right* protected by the Constitution not to be discriminated against based on her race. As identified in *Bakke's* argument, the underlying message was that Grutter and other White applicants had ownership of seats that were erroneously taken from them by unqualified applicants of Color.

> **Attorney Kolbo**: …Barbara Grutter applied for admission to the University of Michigan Law School with a personal right guaranteed by the Constitution that she would not have her race counted against her. That race—that the application would be considered for free from the taint of racial discrimination. The law school intentionally disregarded that right by discriminating against her on the basis of race as it does each year in the case of thousands of individuals who apply for admission... (OA, p. 3)

Justice Breyer challenged the normalcy of White privilege by specifically questioning why a White person who was not admitted did not endure harm by the athletes and alumni children who were admitted through preferential processes. Attorney Kolbo used a few legal tactics by pointing out that the Equal Protection Clause has not been ruled to apply to alumni benefits. Equipped with the ability to use the Equal Protection Clause by decoupling it from an inconsistent history of being interpreted by the Court to marginalize People of Color, attorney Kolbo avoided addressing the power of alumni networks.

> **Justice Breyer**: The reason that the injury is more severe to the white person who doesn't get in when that white person doesn't get in because she's not an athlete or he's not a–he's not a alumnus or he's not any of the other things that fits within these other criteria? What is the difference there is?
>
> **Attorney Kolbo**: The difference is the Equal Protection Clause, Your Honor. It does not apply to alumni preferences in scholarships. It applies to race.

The normalcy of White privilege was defended under the guise of the rhetoric of innocence and minimization of the powerful systemic relevance of alumni networks. Alumni connections were

not probed for their decades of White hegemony resulting in few People of Color having the same types of access to coveted resources. Many members of society assume that because there have been improvements in students of color gaining access to higher education, a certain level of equality has been reached and now outlandish numbers of privileged people of color are experiencing preferential treatment. Even when people of color have financial wealth, they are not shielded from negative stereotypes and marginalization.

> Views of affirmative action as a policy of *preferential treatment* usually contain several presuppositions about the admission or hiring practices that are said to bestow preferences. The language of affirmative action as preferential treatment implies the following: (a) that there are clear criteria of merit that can accurately gauge the "quanta" of the *current* capabilities of the individual applicants,...(b) that a rich enough set of such criteria are applied to candidates, each in appropriate measure, so that the several dimensions of the individuals' personal capacities to contribute significantly to the institution or profession are all given the weights they deserve; (c) that all these criteria are applied fairly and impartially in the various stages of the selection process; (d) that the beneficiaries of affirmative action are not the "best qualified" on the basis of these accurate criteria impartially applied, but rather are selected over "better qualified" candidates either as compensation or in the pursuit of desired social goals; (e) that the beneficiaries of affirmative action are the only significant group of people who are not admitted into the institution or profession purely on the basis of the aforementioned criteria, and that everyone else is admitted purely on their rank order of merit. (Harris & Narayan, 1994, p. 18)

Also supporting Grutter's position was the federal government, hence, Solicitor General Ted Olson, a White male in the George W. Bush Administration, framed the admissions program in two ways that reflected a mischaracterization of the law school's use of race. The word *preferred* conveyed the message of unqualified and underserving People of Color being awarded unearned admission over qualified and deserving White applicants.

> **Solicitor General Olson**: …this program at the University of Michigan Law School fails every one of the Court's tests. First, it's a thinly disguised quota which sets aside a significant portion of each year's entering class for preferred ethnic groups.
>
> **Justice Souter**: But they have a reason for it. The reason for it is they want to produce a diverse class and the reason they want to do that, using it as a plus, they say, is to do the things I said before. They think it breaks down stereotypes within the class. They think it's educationally beneficial. They think it supplies a legal profession that will be diverse and they think a legal profession like business and the military that is diverse is good for America from a civics point of view, et cetera, breaks the cycle. Those are the arguments which you well know. (OA, pp. 22- 23)

Justice Souter countered Solicitor General Olson's argument. A CRT perspective yields that while the list included various perspectives being brought into law classes and diversifying the legal profession, absent from it was any account about the relevance of historical exclusion of People of Color from law schools as well as the experiences of those who are currently students.

The continued decoupling of systemic racism and access to higher education stymies the dismantling of dominant ideologies of Whiteness and its privileges.

The only female and White attorney participating in the oral argument was Maureen Mahoney. She served as one of two attorneys representing the University of Michigan's Law School. At one juncture, Justice Scalia interrupted attorney Mahoney's argument exposing the realities of the normalcy of White privilege in that there were White students admitted to the law school with lower grades and LSAT scores when compared to students of color.

> **Attorney Mahoney**: And what the evidence shows in this case is that it is common for white applicants to be admitted with lower grades and test scores than even minorities who are rejected because–
>
> **Justice Scalia**: Does the Constitution prohibit discrimination against–against oboe players as opposed to flute players? (OA, p. 49)

Through a CRT lens the recognition of Justice Scalia's deflection of the discourse to a non-race related scenario allowed the normalcy of White privilege to remain intact. Justice Scalia demonstrated a commitment to maintaining White supremacy as evidenced by his use of an incongruent comparison of musicians to People of Color. Putting musicians and People of Color in the same category equates a decoupling from historical and contextual relevance of experiences. "In the arguments of the conservative discourses that are now circulating, the barriers to social equality and equal opportunity have been removed. Whites, hence, have no privilege" (Apple, 1998, ix). Justice Scalia's tactic resulted in the maintenance of *reverse discrimination* claims as legitimate as opposed to exposing them for their lack of legitimacy.

Gratz v. Bollinger **(2003)**

Solicitor General Olson also argued in *Gratz*. In the following passage the normalcy of White privilege was communicated in his argument by questioning whether all applicants regardless of race add value. However, not acknowledging that Whites are the dominant students on campuses and in classrooms does not accurately communicate environment dynamics. A CRT lens revealed a perspective of how attorney Kolbo framed an argument that White applicants' skin color precluded them from admission but served as an advancement for Students of Color being accepted. This assertion is flawed and fed into the normalcy of White privilege because the reduction of race to pigmentation allows people to argue that categorizing by perceived phenotype is discriminatory. Race is presented as lacking power. The historical but silenced racial stratification saturated with privileges for Whites, is absent and unacknowledged.

Historically, because "whiteness as property was the critical core of a system that affirmed the hierarchical relations between white and Black" (Harris, 1993, p. 1745) and has been reinforced by the legal system, the continued perspective of societal privilege and resources belonging to Whites permeates legal discourse without seeming unjust and most of all natural.

> **Solicitor General Olson**: What we're saying is that if you assume that because you are white or you are red or you are brown or you are black, you must have certain experiences and you must have certain viewpoints.

Justice Stevens: The argument is that you need to have enough of them to demonstrate that the point of view does not always fit just one person.

Solicitor General Olson: –that's a self-contradictory rationale that they've come up with. They've said first of all you have these characteristics because you're black but we must admit enough of you into the class to prove to the other students that—that black isn't the reason you're–

Justice Breyer: No that is not—the argument is basically that, look, people who have grown up in American and are black, regardless of race, not, not regardless of race, regardless of socioeconomic background have probably, though not certainly, shared the experience of being subject to certain stereotypical reactions from people throughout their lives. And indeed many of the students in our class will have stereotypical reactions. And it's good for them as well as for everyone else to rid themselves of those reactions. And we want people in this school of all kinds who are black, because that will be helpful education. (OA, pp. 22-23)

Justice Stevens challenged Solicitor General Olson's claims about the admission of Black applicants. However, the exchange between them had the impact of *othering* People of Color because they both used language such as *them* and labeled people as colors which trivialized their humanity. Justice Breyer intervened with a realistic assessment of the racial inequity in society and countered the normalcy of White privilege exchange but his realism was diminished with an interest convergence narrative by privileging the benefits to Whites of being exposed to People of Color in educational settings. Interest convergence manifested in his narrative because "racially minoritized students often are treated like 'native informants' in the classroom, and the benefits of racial diversity at Predominantly White Institutions (PWIs) becomes unidirectional, with racially minoritized students carrying the burden of educating their white peers" (hooks as cited in Harris, Barone, & Davis, 2015, p. 26).

Fisher v. University of Texas (2013)

In his opening comments before the Court, attorney Bert Rein, a White male, invoked a White victim narrative by asserting that Abigail Fisher suffered an injury because of UT's admissions model. Attorney Rein's advocacy of a constitutional injury and denied right to equal treatment are similar to the arguments made by attorneys for Bakke, Gratz, and Grutter during their oral arguments before the Court. The embedded notions of Whiteness as a property right and White racial innocence discourse were countered by both Justices Sotomayor and Ginsburg. While attorney Rein did not state directly that Fisher deemed herself entitled to admission to UT, it was an understood message "that the consideration of race created an uneven playing field that lowered her chances of admission" (Boddie, 2015, p. 318).

Justice Ginsburg: The injury -if the injury is rejection by the University of Texas and the answer is, no matter what, this person would not have been accepted, then how is the injury caused by the affirmative action program?

> **Attorney Rein**: …the first injury that was before the Court was the use of a system which denied equal treatment. It was a Constitutional injury, and part of the damage claim was premised directly on the Constitutional issue…The–the denial of her right to equal treatment is a Constitutional injury in and of itself, and we had claimed certain damages on that. We–we started the case before it was clear whether she would or wouldn't be admitted.
>
> **Justice Sotomayor**: But she's graduated. Injunctive relief, she's not going to get. So what measure of damages will she get or will she be entitled to?
>
> **Justice Scalia**: Her claim is not necessarily that she would have been -- would have been admitted, but that she was denied a fair chance in the admission lottery. Just as when a person is denied participation in the contracting lottery, he has suffered an injury. (OA, pp. 3-8)

Justice Scalia came to attorney Rein's defense. Justice Scalia advanced the normalcy of White privilege by comparing Fisher's denial to UT with race-conscious hiring practices in business contracting that the Court ruled unconstitutional because White contractors argued minority set-asides unfairly discriminated against them. In reality, the minority set-aside programs were implemented because White male businesses historically dominated the industry. In the 1990s when the Supreme Court ruled several non-higher education affirmative action programs unconstitutional, "innocent whiteness operated as a background assumption, signaling a return to the full reputational value of whiteness that is able to stand in moral equivalency to blackness and other forms of colored other-ness" (Cho, 2009, p.1615).

> The use of the term "injury" in the oral argument contributes to the White racial innocence discourse and reinforces a post-racial ideology. In order for a case to reach the Court, there must be an injury claimed by the plaintiff. Justices and lawyers discuss this injury throughout the oral arguments. White racial innocence is first constructed by the foundational assumption that an injury exists. (Acholonu, 2013, p. 214)

In an exchange between Chief Justice Roberts and attorney Garre, Chief Justice Robert's questions are an updated iteration of the normativity of Whiteness reflected in *Bakke* with the *quota of 84* discourse. The dominance of White students in the higher education spaces in which few Students of Color are present was absent from the discourse. Due to the narrowness of the Court's approaches to evaluate race issues, historical societal inequities are no longer acceptable as rationales for extending opportunities for Students of Color. Therefore, attorney Garre was unable to give a persuasive response because quotas, set-asides, and numerical goals have been ruled unconstitutional. "The current Supreme Court's aversion to affirmative action is readily apparent. But the Court does not express its aversion directly. Rather, it speaks in terms of malleable doctrinal tests that divert attention from the Court's hostility" (Spann, 2012, p. 48).

> **Chief Justice Roberts**: What is that number? What is the critical mass of African Americans and Hispanics at the university that you are working toward?

Attorney Garre: Your Honor, we don't have one…

Chief Justice Roberts: So how are we supposed to tell whether this plan is narrowly tailored to that goal? (OA, pp. 39-40)

Chief Justice Roberts' last question presents the Court as not knowing how to make a decision about race as a consideration factor. The underlying belief in a post-racial society renders the use of race as unfamiliar and cumbersome. "In this line of questioning, the Court is also a victim as their judicial supervision is depicted as being disregarded by UT's endless use of race-conscious policies" (Acholonu, 2013, p. 211).

***Fisher v. University of Texas* (2016)**

Crafting Abigail Fisher's case as a deprivation of her *rightful* opportunity to earn a degree from UT stemmed from the perspective that race conscious admissions policies are a "denial of the promise of equal rights for all individuals, and that they in effect make the rights of people of color *more equal* than those of white people" (Ansell, 1997, p. 114). More poignantly, "the simple presence of race in a decision-making process that uses affirmative action confers an implied injury on all white candidates" (Boddie, 2015, p. 319).

Justice Ginsburg: Attorney Rein…What is the relief you're seeking? I take it not injunctive since Ms. Fisher has graduated.

Attorney Rein: …Ms. Fisher has not been admitted, and that she has suffered the consequences of non-admission, which include she went to an alternative university… (OA, p. 35-37)

Claims before any court must specifically request a remedy. Abigail Fisher graduated from another institution with a degree and was employed. The fact that the Court allowed Fisher's case to come before it twice speaks volumes to the Court's disturbing unsettled perspective on race-conscious policies in higher education. Fisher demanded *relief* for the inconvenience of having to graduate from an institution that she did not choose.

Justice Scalia promoted a mismatch theory rhetoric asserted by two authors, a law professor and a journalist, who is also a lawyer. In a 2012 publication the authors alleged Students of Color are mismatched with institutions, which results in their low graduation rates and compensation (Kidder & Onwuachi-Willig, 2014).

Justice Scalia: There are—there are those who contend that it does not benefit African-Americans to—to get them into the University of Texas where they do not do well, as opposed to having them go to a less-advance school, a less—a slower-track school where they do well. One of—one of the briefs pointed out that—that most of the—most of the black scientists in this country don't come from schools like the University of Texas…They come from lesser schools where they do not feel that they're—that they're being pushed ahead in—in classes that are too—too fast for them.

An irony in Justice Scalia's mismatch theory rhetoric as well as a counter story is

> Had Fisher been admitted to the University of Texas at Austin, she too would have been a "mismatched" student. As the University proclaimed in its Supreme Court brief, Abigail Fisher (who had an Academic Index score of 3.1), "would not have been admitted to the Fall 2008 freshman class even if she had received a 'perfect' [Personal Achievement Index (PAI)] score of 6" (and her actual PAI was in fact, lower than that). In fact, Ms. Fisher was also denied admission to UT Austin's 2008 summer freshmen admissions program in which 168 African Americans and Latinos were denied admission with AI/PAI scores equal to *or higher* than Fisher's (versus only a handful of African Americans or Latinos offered summer admission with lower AIs/PAIs than Fisher). (p. 936)

Justice Scalia's mismatch rhetoric reflected how the privileging of Whiteness in higher education is masked by race neutral admissions policies as well as how "inequitable conditions are portrayed as natural or as the result of the actions of individual students of color, instead of implicating the racist structures and practices of these institutions" (Acholonu, 2013, p. 206).

> For many of these critics [of race conscious admissions programs], their concerns are not so much about merit and consistency but rather about whom they view (whether consciously or unconsciously) as belonging and not belonging at selective institutions, about whom they presume as properly having a claim to seats at certain schools. (Kidder & Onwuachi-Willig, 2014, p. 936)

Attorneys for the universities, the federal government and the Supreme Court justices contributed to the normalcy of White privilege. The attention and advocacy efforts that have been strategically designed to dismantle racial remedies and bring to fruition the notion of racial equity are non-existent. "It is now clear that impressive arguments can be marshalled under the fourteenth amendment and the civil rights statutes either to uphold or to invalidate minority admissions programs" (Bell, 1979, p. 18). Bell's observation from almost 40 years ago still rings true. In order to move higher education institutions as well as our society towards being more inclusive and social justice oriented, discourse to describe how equity is achieved especially when discussing access and admission for Students of Color must not be contingent upon legal maneuvers. "Utterly ignoring social questions about what race has power and advantages and which race denied entry for centuries into academia" (Bell, 1992, p. 369) must cease.

Conclusion

Candid declarations of inclusion and explaining how the legacies of most institutions of higher education require race-conscious admissions policies is warranted in order to combat the prevalence of the normalcy of White privilege. The selected excerpts from the race-conscious admissions oral arguments demonstrate how legal discourse continually recycles narratives that promote Students of Color deserving admission but not at the cost of Whites and if admitted, primarily for the purpose of sharing needed insight to prepare their White peers for a diverse workplace. Interest convergence rationales for admitting Students of Color do not move our society forward in addressing the deep-rooted racialized injustice that has yet to be fully rectified. Institutions of

higher education must make clear and unwavering commitments regarding their use of race-conscious admissions. They must also instruct attorneys representing their interests to do so in alignment with their decision for racial inclusion.

A major benefit to the race-conscious debate is the need for institutions to work towards becoming racially literate (Guinier, 2003). "A racially literate institution uses race as a diagnostic device, an analytical tool, and an instrument of process." As a diagnostic or evidentiary device, race helps identify the underlying problems affecting higher education (pp. 201-202). Racial literacy encompasses an awareness that structures and policies that have not been dismantled in higher education sustain the normalcy of White privilege and perpetuates and (re) produces inequality.

What is important to keep in the forefront of all discussions regarding the law and race-conscious higher education admissions policy disputes is "with the power to define what so-called facts are and how they are conceived, shaped, and communicated" is the ability to maintain status quo and further stifle the voices of marginalized citizens" (p. 351). Legal rhetoric is a persuasive vehicle in its own right so to unveil the underlying hegemony of racism and White privilege in (re) producing power and dominance intentional critique is necessary.

A glimpse of racial literate advocacy before the Supreme Court can be seen in one of attorney Garre's narrative in *Fisher* II in which he offered an analogy that emphasized the outlook of higher education if the Supreme Court ruled UT's use of race as unconstitutional.

> **Attorney Garre**: …And the Fifth Circuit found that without the consideration of race in the mix for those students, admissions would approach an all white enterprise…(*Fisher II* OA, p. 49).

While attorney Garre did not name the normalcy of White privilege as a key challenge to advancing higher education, stating what the absence of People of Color means- *an all-White enterprise* -is a step in the right direction for advocacy that exposes why equity continues to elude higher education.

References

Acholonu, I. (2013). The "gutting" of *Grutter*: White racial innocence and post-racialism in the *Abigail Fisher v. University of Texas Austin* oral arguments. *Journal of Curriculum Theorizing, 29*(2), 206-219.

AERA amicus brief in support of the University of Texas in *Fisher v. University of Texas* (2015), 1-37.

Aleinkoff, T. A. (1992a).The Constitution in context: The continuing significance of racism. *University of Colorado Law Review, 63* (2), 325-373.

Aleinkoff, T.A. (1992b). Re-reading Justice Harlan's dissent in *Plessy v. Ferguson*: Freedom, antiracism, and citizenship. *University of Illinois Law Review, 4*, 961-977.

Ansell, A.E. (1997). *New right, new racism: Race and reaction in the United States and Britain.* New York University Press.

Apple, M.W. (1998). Foreward. In Kincheloe, J.L., Steinberg, S.R., Rodriguez, N.M., & Chennault, R.E. (Eds.), *White reign: Deploying Whiteness in America* (ix-xiii). New York, NY: St. Martin's Griffin.

Auguoustinos, M., Tuffin, K., & Every, D. (2005). New racism, meritocracy, and individualism: Constraining affirmative action in education. *Discourse & Society, 16*(3), 315-340.
Ayers, D.F. (2005). Neoliberal ideology in community college mission statements: A critical discourse theory. *The Review of Higher Education, 28*(4), 527-549.
Ball, H. (2000). *The Bakke case: Race, education & affirmative action*. Lawrence, KS: University Press of Kansas.
Bell, D. (1979). Bakke, minority admissions, and the usual price of racial remedies. *California Law Review, 67*(1), 3-19.
Bell, D. (1992b). Racial realism. *Connecticut Law Review 24*(2), 363-379.
Boddie, E.C. (2015). The sins of innocence in standing doctrine. Vanderbilt Law Review, 68(2), 297-380.
Bonilla-Silva, E. (2012). The invisible weight of whiteness: The racial grammar of everyday life in contemporary America. *Ethnic and Racial Studies, 35*(2), 173-194.
Brown v. Board of Education, 349 U.S. 294 (1954).
Bush, M.E.L. (2004). *Breaking the code of good intentions: Everyday forms of whiteness.* Lanham: Rowman & Littlefield Publishing Group.
Carbado, D.W. (2002). Race to the bottom. *UCLA Law Review, 49*(5), 1283-1312.
Cho, S. (2009). Post-racialism. *Iowa Law Review, 94*(5), 1589-1649.
Delgado, R. (1991). Norms and normal science: Towards a critique of normativity in legal thought. *University of Pennsylvania Law Review, 139* 4), 933-962.
Delgado, R. (1997). Rodrigo's thirteenth chronicle: Legal formalism and law's discontent. *Michigan Law Review, 95*(4), 1105-1149.
Delgado, R., & Stefancic. J. (2001). *Critical race theory: An introduction.* New York: New York University Press.
DiAngelo, R. (2011). White fragility. *International Journal of Critical Pedagogy, (3)*3, 54-70.
Fairclough, N. (1989). *Language and power.* New York, NY: Longman.
Goldstein Hode, M.,& Meisenbach, R.J. (2016). Reproducing Whiteness through diversity: A critical discourse analysis of the pro-affirmative action amicus briefs in the *Fisher* case. *Journal of Diversity in Higher Education, 10*(2), 162-180.
Guinier, L. (2003). Admissions rituals as political acts: Guardians at the gates of our democratic ideals. *Harvard Law Review, 117*(1), 113-225.
Harlan, J.M. (1955). What part does the oral argument play in the conduct of an appeal? *Cornell Law Quarterly, 41*(1), 6-7.
Harris, C.I. (1993). Whiteness as property. *Harvard Law Review, 106*(8), 1710-1791.
Harris, J.C., & Barone, R.P., & Davis, L.P. (2015). Who benefits? A critical race analysis of the (d) evolving language of inclusion in higher education. *The NEA Higher Education Journal,* 21-38.
Harris, C.L., & Narayan, U. (1994). Affirmative action and the myth of preferential treatment: A transformative critique of the terms of the affirmative action debate. *Harvard Black Letter Journal, 11*, 1-35.
Hudgins v. Wrights, 11 Va. (1 Hen.&M.) 134, (1806).
Huckin, T.N. (2002). Textual silence and the discourse of homelessness. *Discourse & Society, 13*(3), 347-372.
Hutchinson, D.L. (2004). Critical race histories: In and out. *American University Law Review, 53*(6), 1187-1215.

Kidder, W.C., & Onwuachi-Willig. (2014). Still hazy after all these years: The data and theory behind 'mismatch'. *Texas Law Review 92,* 895-941.

Kim, J.Y. (1999). Are Asians Black?: The Asian-American civil rights agenda and the contemporary significance of the Black/White paradigm. *Yale Law Review, 108,* 2385-2412.

Leonardo Z., & Harris A.P. (2013). Living with racism in education and society: Derrick Bell's ethical idealism and political pragmatism. *Race Ethnicity and Education, 16*(4), 470-488.

Lipsitz, G. (2014). The possessiveness investment of whiteness: racialized social democracy. In Gallagher, C. (Ed.). *Rethinking the Color Line: Readings in race and ethnicity* (139-147). New York, NY: McGraw-Hill Higher Education.

Lopez. I.H. (2006). *White by law* (2nd ed.). New York: New York University Press. 168.

Martineau, R.J. (1987). The value of appellate oral argument: A challenge to the conventional wisdom. *Iowa Law Review, 72*(1), 1-33.

McGregor, S.L. T. (2003). Critical discourse analysis—A primer. *Kappa Omicron Nu FORUM, 15*(1).

Parker, L. (1998). 'Race is race ain't: An exploration of the utility of critical race theory in qualitative research in education. *International Journal of Qualitative Studies in Education, 11* (1), 43-55.

Patton, L.D. (2014). Preserving respectability or blatant disrespect? A critical discourse analysis of the Morehouse appropriate attire policy and implications for intersectional approaches to examining campus policies. *International Journal of Qualitative Studies in Education 27*(6), 724-746.

Patton, L.D. (2016). Disrupting postsecondary prose: Toward a Critical Race Theory of higher education. *Urban Education,* 1-28.

People v. Hall, 4 Cal. 399, (1854).

Plessy v. Ferguson, 163 U.S. 537, (1896).

Rogers, R. (2011). *An introduction to critical discourse analysis is education*. London: Routledge.

Ross, T. (1990). Innocence and affirmative action. *Vanderbilt Law Review, 43*(2), 297-316.

Ross, T. (1996). *Just stories: How the law embodies racism and bias*. Boston, MA: Beacon Press.

Solórzano, D.G., & Yosso, T.J. (2002). A critical race counter-story of race, racism, and affirmative action. *Equality & Excellence in Education, 35*(2), 155-168.

van Dijk, T.A. (2001). Critical discourse analysis. In Tannen, D. & Hamilton, H. (Eds.), *The handbook of discourse analysis* (pp. 352-371). Oxford, UK: Blackwell.

Wodak, R. (1995). Critical linguistics and critical discourse analysis. In Verschueren, J., & Bloomaert, J. (Eds.) *Handbook of Pragmatics 1995* (pp. 204-210) Amerstdam: Benjamins.

Yosso, T.J., Parker, L., Solórzano, D.G., & Lynn, M. (2004). From Jim Crow to affirmative action and back again: A critical race discussion of racialized rationales and access to higher education. *Review of Research in Education, 28,* 1-25.