

INTEREST CONVERGENCE AND THE UNITARY STATUS PLAN IN TUSD

by

Christopher Loya

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As members of the Dissertation Committee, we certify that we have read the dissertation prepared by: Christopher Loya
titled: Interest Convergence and the Unitary Status Plan

and recommend that it be accepted as fulfilling the dissertation requirement for the Degree of Doctor of Philosophy.

Mary Carol Combs

Date: Oct 30, 2020

Mary Carol Combs

Richard A Orozco

Date: Nov 1, 2020

Richard A Orozco

Julio Cammarota

Date: Nov 9, 2020

Julio Cammarota

Final approval and acceptance of this dissertation is contingent upon the candidate's submission of the final copies of the dissertation to the Graduate College.



I hereby certify that I have read this dissertation prepared under my direction and recommend that it be accepted as fulfilling the dissertation requirement.

Mary Carol Combs

Date: Oct 30, 2020

Mary Carol Combs

Dissertation Committee Chair

Department of Teaching, Learning and Sociocultural Studies



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DEDICATION

Dedicated to Nate and Mariah Loya who I am blessed to be a father to. This is about my passion for learning and always wanting to be better for you. Nate, I am proud of the sweet, dedicated young man you have become. In fact, I cannot imagine a better person than the person you have become. Mariah, you have more drive than I ever had, and I know you will have so much success. You are both my inspiration.

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Abstract

This critical race qualitative study examines the perspectives surrounding the Unitary Status Plan and the desegregation court case in Tucson Unified School District #1. Critical Race Theory in education has been critical in the effort to examine and expose racist practices in schools.

This study is informed by the theoretical lens of Interest Convergence. Interest Convergence would facilitate racial equality only when the interests of a minority group converged with those of whites (Bell, 1980). In other words, social policies and laws that benefit minority populations will only occur when they also benefit the majority population.

This study is also informed by the examination of racist language and practices with the *colorblindness* frame. *Colorblindness* can be regarded as another form of strategic racism in our society (Cammarota, 2014; Bonilla-Silva, E., 2014; Haney Lopez, 2014). The use of coded language to hide discrimination and discriminatory practices plays a pivotal role in this study.

This study triangulates data through interviews and document analysis and a case study framework to inform the researcher about views regarding the Unitary Status Plan. Participants were from different perspectives of the original desegregation case.

The data demonstrated the largest concern among participants was school discipline. *Cultural racism* seemed to be a significant reason that school discipline disparities have not improved. Although progress has been made to decrease these disparities, African American students still double the number of suspensions of that of Anglo students. Data also indicates there was some instances of Interest Convergence in regard to magnet schools.

Chapter 1: Introduction

The purpose of this study is to explore the presence and function of *interest convergence* (Bell, 1980) in the Tucson Unified School District (TUSD) Unitary Status Plan (USP), and to understand the impact of the plan on district educational policy and practice. In 2018, U.S. District Court granted partial unitary status to Tucson Unified School District #1 from the 40-year old *Fisher & Mendoza v. TUSD* (1978) desegregation case.

Drawing from the literature on school desegregation and critical race theory, this case study will apply a *counterstorytelling* methodology and interview data to analyze court orders, district responses, local media regarding the Fisher-Mendoza case and the USP. Orfield and Eaton (1996) postulate that Unitary Status plans are being defined by recent Supreme Court cases and have led to the erosion of judicial support for school desegregation.

Historical Perspective

In 1909, segregation began in Tucson, Arizona by way of territorial legislation (Brousseau, 2019). African Americans were segregated eventually into a separate school, Dunbar School. It remained this way until 1951, three years before the *Brown v. Board of Education* (1954) decision, when African American students were integrated in TUSD, the first district to do so in Arizona.

In 1974, a class action lawsuit was filed alleging segregation in Tucson Unified School District between white students and African American students. Another was filed on behalf of Mexican American students. The cases were consolidated in 1975 and went to trial in 1977.

On June 5, 1978, the district court found that *de jure* discriminatory segregation existed in TUSD. The court found that TUSD had failed to remedy vestiges of segregation and discrimination for African American students. Nine schools were ordered to be desegregated immediately. Plaintiffs' lawyers then called on 11 more schools to be included. Lopez (2016) reminds us that the court felt in regards to Mexican-American students that TUSD did not have a "...continuing system-wide practice of intentional discrimination occur" (Mendoza v. Tucson School Dist, 1980). Regardless of that fact, the Mexican American plaintiffs felt that their children attended inferior schools. The plaintiff's grievances charged that newer design schools were built in primarily Anglo areas, schools were built where the zoning lines segregated students, physical plants at minority high schools were deemed inferior, some schools had no hot lunches, students were assigned to remedial classes and there were relatively few Mexican-American staff, administrators and teachers (Brousseau, 2019). As a result, changes to the distribution of students, implementation of magnet schools and cultural sensitivity training for teachers were all implemented in the following school years.

In 2004, the District Court issued a *sua sponte*¹ order, compelling the school district to file for Unitary Status (Lopez, 2016). Unitary Status was soon thereafter granted by the U. S. District Court. The plaintiffs, named Fisher-Mendoza, appealed, and after rejecting TUSD's report claiming compliance, the Ninth Circuit Court reversed the decision. As a result, in 2012, the District Court appointed William J. Hawley as the Special Master for the case, who would oversee a Unitary Status Plan (USP). The initial granting of unitary status to TUSD showed that

¹A *sua sponte* order is an act from an authority without formal prompting from another party.

magnet schools from the original desegregation plan were integrated (p. 8). By the time the schools would be reviewed again, the schools were found to be racially concentrated (one ethnic group exceeds 70% of enrollment). This came after a decision by Judge Bury to eliminate Board Policy 5090, which did not allow students to transfer unless it improved the ethnic balance. According to former Harvard professor Susan Eaton, Judge Bury incorrectly used Supreme Court decisions that did not apply to desegregation cases (Eaton, 2007). Eliminating 5090 contributed to the racial imbalance in the district. Since then, these racially concentrated magnet schools in TUSD have been under threat of closure and loss of funds. Most recently, TUSD was granted Partial Unitary Status on September 6, 2018 (“Desegregation and the Unitary Status”, 2019). At present, TUSD is seeking release from federal oversight by September 2019, as they finalize steps to comply with court requests.

Using *Critical Race Theory*, *Interest Convergence* and *Colorblindness* as my theoretical framework, I plan to analyze the motivations of parties of the Unitary Status Plan. TUSD’s demographics are rapidly changing, creating a more complicated situation for the district. In this dissertation, I will be exploring the following research questions:

1. What are the roles and motivations of the district and plaintiffs concerning unitary status or post-unitary status?
2. Which court orders and recommendations surrounding the USP are examples of interest convergence?
3. Does interest convergence play a role throughout the maintenance, elimination or growth of magnet schools?

THEORETICAL FRAMEWORKS

Desegregation is considered as a way of achieving equity between minority and majority groups. Orfield, Frankenberg, Ee & Kuscera (2014) cite the benefits of integrated schools:

1. Heightened academic achievement for minority students.
2. Black students are more likely to graduate high school and attend college.
3. As adults, black students earn more money if they attended integrated schools.
4. Students from integrated educational settings had better health in adulthood.
5. Students from integrated schools also sought out integrated colleges, workplaces and neighborhoods later in life.

Segregated minority students who attend segregated high schools usually reside in areas of high poverty, have high discipline rates, low test scores, and are less likely to have college success. Finally, dropout rates are significantly higher (p. 38-39).

The combined framework from critical race theory and interest convergence will allow me to integrate multiple strategies to examine the structures in place in a Unitary Status Plan in Tucson Unified School District, which will end federal oversight. A post desegregation status has been criticized as allowing some districts to desegregate (Frankenberg, 1996).

Critical Race Theory

Critical Race Theory (CRT) has its roots in Critical Legal Studies in the 1970's. Bell (1980) examined the *Brown v Board of Education* decision (1954) with the critical lens. He

argued that the convergence of the majority and minority interests allowed the passage of civil rights legislation. Bell suggests that the divergence of interests will make integration less possible. Critical Legal Studies (CLS) was a response to a continuation of practices that with the legitimacy of the law masked and maintained social injustices. Drawing from CLS, subsequent scholars proposed CRT to help examine the stalling of civil rights in the United States. Matsuda (1991) has provided a useful definition of CRT, stating that it is “an attempt to understand the oppressive aspects of society in order to generate societal and individual transformation” (p. 1331).

An appropriate metaphor for the use of CRT is the fish tank. Using CRT does not simply view the fish, but rather the entire fish tank (Morrison, 1992). Taylor (2002) explains two additional tenets of CRT. The first is that the idea of racism is normal. That is, it is embedded throughout our political, legal and educational structures. Racism and White supremacy have shaped our modern world, but these phenomena are rarely mentioned in our history books. The second tenet is interest convergence. First theorized by legal scholar Derrick Bell, interest convergence argues that racial inequality is only disrupted when it has converged with the interest of the majority group. In other words, if the dismantling of racist structures also benefits the majority group, then racial equality projects will be “allowed” to occur.

Ladson-Billings and Tate (1995) analyze school inequity through the lens of critical race theory, identifying three central propositions:

1. Race continues to be a determining factor for inequity.

2. U.S. Society is based on property rights.
3. The intersection between race and property is how we introduce and look at social inequity.

Using the third proposition, the intersectionality between race and property, along with the underlying validities that come with it, the authors also demonstrate how it functions in schools (p. 59):

1. Rights of disposition: it is considered a valuable thing to be white or engage in white cultural practices. In an educational setting, for example, a student can be rewarded for conforming to the white cultural norm.
2. Rights of use and enjoyment of white privilege: enjoying social, economic and cultural privileges are the norm.
3. Reputation and status property: whiteness is a property, and speaking English (without an accent) are considered valuable.
4. The absolute right to exclude: segregation is an integral and normal part of society.

Ladson-Billings (2002, p. 18-21) continues expanding CRT and education by demonstrating how inequity is sustained. She has five examples of how the relationship can exist and how CRT helps uncover truths:

1. Curriculum: perspectives of history are distorted. Cultures are silenced and stereotypes are perpetuated in our schools.

2. Instruction: the use of deficit teaching models for students of color. Students are often blamed for not achieving with “traditional” teaching methods.
3. Assessment: often, assessments are used to justify white supremacy. Culturally and linguistically biased assessments often “demonstrate” that whites are smarter.
4. School Funding: there are wide disparities in funding throughout the country that is systemic and structural.
5. Desegregation: true desegregation that is correlated with relieving inequity only occurs when it benefits the majority.

Critical Theory has natural branches and outgrowth in other fields. For example, Latino Critical Theory (LatCrit) is another way to find a framework that addresses Latino issues.

Latino Critical Race Theory (LatCrit)

Latino Critical Race Theory uses the CRT lens, but includes language, immigration, ethnicity, culture, identity, phenotype and sexuality (Solórzano & Bernal, 2001). Solórzano and Bernal (2001, p.312-315) define five themes to guide their research:

1. Centrality of race and intersectionality with other forms of subordination.
2. The challenge to the dominant ideology.
3. The commitment to social justice.

4. The centrality of experiential knowledge.
5. The interdisciplinary perspective.

All of these can be used to examine how school structures formulate and maintain inequity.

Solórzano and Bernal (2001) also discuss the four oppositional forms of student behaviors that can be used to describe resistance to oppressive conditions:

1. Reactionary behaviors: students engage in disruptive behaviors, but they are not looking to make changes in their particular situation.
2. Self-defeating resistance: students see the oppression, but do not find ways to better conditions, and may in fact contribute by keeping oppression intact.
3. Conformist resistance: a student sees the oppression, but looks for more neoliberal or traditional approaches, while seemingly logical, will not fix the problem.
4. Transformational resistance: - students are aware of the oppression and look for ways to make viable changes. They seek out social justice and change.

Latino Critical Theory has the potential for “illuminating our thinking on school inequity” (p. 33, Ladson-Billings, 2002). Using LatCrit as a framework is exposing racism, finding radical solutions to address it, and exposing discourse, policy and behaviors in schools that are concealed as “fair practices.”

Colorblindness

Colorblindness can be regarded as another form of strategic racism in our society (Cammarota, 2014; Bonilla-Silva, E., 2014; Haney Lopez, 2014). It can serve as an additional lens for *Latino Critical Theory*, the basis for a better awareness of schooling situations for Latino students. Ian Haney Lopez (2014) has documented the effect of what he calls "Dog Whistle Politics" on U.S. policy and society. Dog whistle politics is discourse that takes the form of coded racial appeals. These racial appeals never mention race, threaten the status quo and or connect to a particular targeted group. Often, the appeals maintain that everyone is already on equal ground and is committed to racial inequality. Nonetheless, they function to maintain discrimination whenever possible.

Eduardo Bonilla-Silva (2002, p. 42) describes the major themes of colorblind racism:

1. The extension of the principles of liberalism to racial matters in an abstract manner.
2. Cultural rather than biological explanation of minorities' inferior standing and performance in labor and educational markets.
3. Naturalization of racial phenomena such as residential and school segregation.
4. The claim that discrimination has all but disappeared.

The use of multiple strategies, verbal and written, exist to avoid the appearance of racism at all costs. Eduardo Bonilla-Silva (2002, p. 46-54) describes the different ways the dialogue can manifest itself:

1. Semantically avoiding using directly discriminatory language.
2. Denying knowledge that any kind of discrimination exists.
3. “Yes and no” strategy by both accepting and denying discrimination either exists or that anti-discrimination practices are needed. An example statement is, “I believe that minorities should have more opportunities but also think affirmative action is reverse racism.”
4. Race doesn’t have anything to do with opportunities.
5. Paranoid projection on the oppressed groups as the racists.
6. “Little bit” against anti-discriminatory practices. Using diminutives to not fully support non-racist practices. This involves people negotiating their views to not fully invest in supporting policy that is non-racist.

Bonilla-Silva (2012) expands his description of how colorblind racism works in his book *Racism Without Racists*. Using data from interviews with college students and Detroit Area Study respondents, Bonilla-Silva identifies what he calls “frames.” These frames are the paths for how information is interpreted for the dominant ideology. People speak through these frames to both hide and expand ideas of subordination. The frames are as follows:

1. *Abstract liberalism* uses liberal ideas, for instance, that everyone deserves equal opportunity but then opposes ways of fixing racial inequality. This frame is enacted by opposing preferential treatment ostensibly provided to a group, no matter the state of inequality.
2. *Naturalization* is a frame to justify segregation by saying conditions are normal and natural. “It’s the way things are” is a typical response.
3. *Cultural racism* is a manner of explaining why inequalities exist by blaming the victims. Race isn’t mentioned, but cultural views are used.
4. *Minimization of racism* suggests that there is very little racism and is a relic of the past.

As a researcher, it is important for me to keep this type of rhetoric and framing in mind. In particular, the practice of *cultural racism* was apparent in this study. Historically, racism and racist practices served as a central strategy to maintain Jim Crow and slavery. In the early years of the country, it was used to enact the presumption of the biological inferiority of people of color. Currently, biological views of racial inferiority have been replaced by views of cultural inferiority. Recently, senior political advisor Jared Kushner said the following about black people, “President Trump’s policies are the policies that can help people break out of the problems that they’re complaining about, but he can’t want them to be successful more than they want to be successful” (AP, 2020). Blaming African Americans for their economic plight, Kushner demonstrates cultural racism. Bonilla-Silva (2020) has recently described how cultural racism plays a part during pandemic times. In this instance, minority populations have been more vulnerable to COVID-19 because of pre-existing conditions and health issues. Bonilla-Silva

demonstrates that the media portrays minorities as unable to remain healthy and take care of their health issues because they are lazy. The reality is there is a lack of health care for many poor populations. Instead of addressing the root of the problem, people of color are blamed for their vulnerability to the virus. He also describes the media's portrayal of minorities as essential workers during the pandemic, normalizing their place as having menial jobs. Commercials by Walmart, Amazon and Budweiser depicted many people of color as expendable (p.3). Cultural racism is similarly practiced by educators in the way they describe and treat their students. Students and their families are blamed for not caring about school. Often, they are seen as having deficits

Another disconcerting piece of this type of rhetoric is that there are implications for policy. Haney Lopez (2005) documents the use of colorblind strategy in the legal court case *Hernandez v. Texas* (1951). Three years before *Brown v Board of Education* (1954), plaintiffs challenged Jim Crow laws in Texas. In 1951, Pete Hernandez was convicted by an all-white jury for murder and sentenced to life in prison. Legal arguments centered not only on jury composition, but also the discrimination Mexican Americans faced in Texas. Lawyers for Hernandez argued that even though Mexican Americans were white, they were still being segregated and discriminated against. Lawyers for Texas also argued that because Mexican Americans were white, Hernandez therefore had a jury of his own peers. Both legal teams sought to avoid racializing Mexican Americans, but Justice Warren (trying to avoid race with his decision as well), decided what Haney Lopez calls "the single most insightful Supreme Court opinion on race ever handed down."(p. 67). Justice Warren stated that race is "a question of

community norms and practices-that is, a social construction.” The author extracts three legal fundamental ideas (p. 67):

1. Race is constructed by ideas in the community. Community norms, such as the routine distinguishing between groups of people, help define race.
2. Race is then reinforced by practices in the community. These practices are exacerbated in our school systems.
3. These racial ideas are functional. Systems of privilege are justified.

Lopez Haney argues that neither *Hernandez* nor *Brown* recognized race as the core issue. *Hernandez* acknowledged that the subordination of race played a part. *Brown* addressed oppression, but it did not specifically address school segregation and left itself open to interpretation. Within that framework, the court uses the colorblind ideology either refuses to acknowledge race. At the same time, the court also maintains inequality and refuses to acknowledge any kind of discrimination.

Using Latino Critical Pedagogy, the theoretical lens of colorblindness will help me gain a better understanding of policy in today’s schools. It is apparent that policy is dictated by those in power and motivated by their benefit. David Gillborn (2007) states with the CRT lens that “educational policy is an act of white supremacy” (p. 498).

Interest Convergence

As noted earlier, Derrick Bell maintained that *interest convergence* would facilitate racial equality only when the interests of a minority group converged with those of whites (Bell, 1980). In other words, social policies and laws that benefit minority populations will only occur when they also benefit the majority population. Bell used the framework of *interest convergence* to analyze the unanimous decision in *Brown v. Board of Education*, explaining that negative international press about discrimination against Black soldiers influenced the Supreme Court's decision after World War II. Thus, the Justices wanted to show the international community that they were advocates of freedom and wanted to communicate to Black soldiers that their war efforts meant equality and that a transition from a plantation society to industrialization in the South was important to the economy (p. 524-525). Bell maintains that even if these goals were not the sole impetus to decide *Brown*, they revealed more about the country's self-interest than an actual interest to desegregate school.

Interest Convergence Theory in Other Fields

The theory of interest Convergence has its roots in critical legal studies but has also been applied to other fields. Yamamoto and Obrey (2009) address the model of reparations for native Hawaiians for the Japanese American internment during World War II. They demonstrate that true reconciliation and reparation will come if it serves the interest of the government, in this case, bolstering the U.S. as a "moral Authority as a democracy" (p. 41) in the world view.

Terry (2013) examined how TUSD's ethnic studies programs were created, used as a tool and eventually dismantled. The researcher claims initially the programs were created to ease

minority unrest, to provide a palatable curriculum that was remedial and compliant with the Mendoza-Fisher desegregation order. This allowed a program to flourish that produced high graduation rates with Mexican American students. When needed, the district used the ethnic studies program to provide evidence to the court to attempt to achieve unitary status. When legal pressures lessened, interest diminished, the willingness to keep and defend the program also diminished, resulting in its elimination. The convergence and divergence of interests elucidate how these types of programs succeed or fail.

President Obama's election victories were examined under the lens of Interest Convergence (Metzler, 2010). Obama's unwillingness to confront racial issues in public gave the American public a chance to avoid racial issues. Not acknowledging racial issues practically causes them not to exist.

DeLorme and Singer (2010) delineate why Jackie Robinson joining the ranks of Major League Baseball as the first African American player is an example of interest convergence. The authors believe that Branch Rickey, the Dodgers' owner, never mentioned racial equality when discussing his decision to bring Jackie onto his team. His interest came with making the Dodgers a better team and Jackie was going to bring that. In fact, Mr. Rickey worked in management for 25 years and never thought of integration during that time. Rickey explained,

“I did not employ a Negro because he was a Negro, nor did I have in mind at all doing something for the Negro race, or even bringing up that issue. I simply wanted to win the pennant for the Brooklyn Dodgers...” (p. 380).

Considering that one of the goals of dual language programs is to “develop an appreciation for and an understanding of diverse cultures” (Center for Applied Linguistics, 2019), it is not surprising that researchers have begun to examine the programs with more critical frameworks. Dual language programs are often considered “enrichment programs.” All too often, enrichment language programs are not intended for the minority population. Ruiz (2003) stated that the role of languages other than English in our country is contradictory. Dubbing this contradiction the “paradox of bilingualism,” Ruiz writes, “Other languages are to be pursued by those who don’t have them, but they are to be abandoned by those who do” (p. 645).

Using *interest convergence*, researchers have examined power differentials, hegemony, integration and policy decisions in regards to dual language programs. For example, de Jong and Howard (2009) lay out all the linguistic benefits of dual language programs, but also note that special attention must be given to issues of integration. Differences between majority and minority students’ learning styles, language proficiency and programmatic decision-making must be acknowledged to provide effective learning opportunities.

Using the principle of *interest convergence* and *colorblind racism*, Palmer (2010) looked at enrollment patterns, admissions policies and attitudes of school staff at a school with a dual language strand. In this study, fewer African American students were admitted into the program, which caused concern from faculty. Some felt that the students in regular classrooms were not as well-behaved as the students in the dual language classrooms and that placement of African American students in these classrooms contributed to the poor behavior. Power structures

between the dual language and the regular education classrooms caused resentment from teachers and staff. Palmer felt that issues of race and its impact must be examined (p. 110).

Inequitable enrollment patterns in dual language programs have also been addressed by researchers (Freire, Valdez & Delavan, 2017). A study of dual language programs in Utah focused on majority, English speaking students being the main beneficiaries of additive language programs (p. 286). Using *LatCrit* and *interest convergence* frameworks, the researchers found that Spanish seemed to have a lower status compared with other languages with its description of the program and pictures on pamphlets (p. 283-284). There was also a reduction of Spanish throughout the dual language promotional materials. That is, Spanish was not touted as a regional language or a heritage language in dual language programs (p. 285). Among other outcomes, Latinos are marginalized by *interest convergence* and the economics that drive language education. It is in the economic interest of the majority to become bilingual, rather than students from minority, bilingual families.

Enrollment continues to be a research focus in a second study in Utah (Valdez, Freire & Delavan, 2016). These researchers found that not only are students of privilege participating in large numbers in these programs, but are also on track to attend college. They felt that there was a metaphorical gentrification of dual language programs.

Using *interest convergence*, Burns (2017) examines parent involvement in a dual language setting. She observed how *whiteness* (as capital) operates within integration, suggesting that white parents undermine the schools' social justice goals within the school and dual

language program. Parental involvement of language minority parents is undermined as their capital is not valued as the majority.

Also using *interest convergence* as well as *hegemony* as frameworks, Kelly (2018) analyzed two legislative bills that proposed to expand dual language programs in California and Arizona. The researcher found that although that bilingualism was emphasized for economic and national security benefits, it still excluded English learners and did not meet their needs.

Interest Convergence as a framework would help gain insight into the Tucson Unified School District's "need" to achieve unitary status. Examining documents such as the court orders, special master reports and recommendations, action plans and appeals with a CRT lens would facilitate an understanding of whose interests are being served.

METHODS/ DESIGNS

Research Context

Tucson Unified School District #1 is the largest school district in Southern Arizona. With over 45,000 students, just over 20% of the students are Anglo. At the time of the *Fisher & Mendoza v. TUSD* (1978) court case, demographics were considerably different. Just in the last twenty years, 1999-2019, the Anglo population has dropped from 42.5% to 20.1% (TUSD website, 2019). There are multiple reasons behind the demographic shift, including charter schools, open enrollment in surrounding districts and changes in housing demographics. This

complication of changing demographics is necessary to take into consideration when examining a desegregation case from 1978.

Positionality of researcher

It is necessary to address my unique positionality in three different ways. I am a native *Tucsonense*, former bilingual educator and current elementary school principal on the east side of Tucson. I attended TUSD's Carrillo Elementary school for a few years, until my mother enrolled me and my siblings in parochial school because "*mis hijos no van a trabajar en el Banco Nacional de Mexico.*" She felt that we were not learning English quickly enough. The truth was that my mother disapproved of the junior high my sister had to attend. She stressed getting an education and making something of ourselves. At 18 years old, looking for an additional job, I applied and accepted a position at another TUSD school, C. E. Rose Elementary School, as a teacher's assistant. Thirty years later, I am still an employee within the district. Living in Tucson all of my life, I have been able to see the city's boundaries spread and the students with them. Following similar patterns around the country (Frankenberg, 2013; Orfield & Frankenberg, 2013), students are fleeing the inner city for ostensibly "better" districts. My experience as a long-time educator and hometown person helps give me a unique perspective of how changes happen over time. As a bilingual teacher and principal for several years at Davis Bilingual Magnet School, I gained a unique perspective of what makes a dual language program are successful. I also gained a deeper understanding of the legal, demographic, instructional and

ideological challenges to this educational model. This understanding has helped me be critical of the motivations in a district such as ours.

Participants

In addition to the documents available, a study such as this one would require a variety of participants involved with the *Fisher & Mendoza v. TUSD* (1978) court case. Superintendents (past and present), lawyers and educators would be included. If possible, plaintiffs and representatives of the plaintiffs would also be a part of this study. The perceptions of these participants would be valuable to a study concerning *interest convergence*. Their value to the study is described in the following section.

Methodology

The methodology that will be used to obtain the data to answer the research questions includes interviews and document analysis. Using a tape recorder will allow me to preserve the interview, allow coding later and also allow for smooth uninterrupted interviews. Subjects are encouraged to speak their mind. I will also reassure that subjects feel secure that their responses are confidential. Interviews will be 30-60 minutes long. It's important to continue with probing questions that would most accurately reflect honest answers.

For critical race theorists, the historical development and "context must be understood in searching for deeper meanings that underlie contemporary social problems" (Pizarro, 1998, p.

62). Using CRT to go beyond the surface meaning and have race as the center of research is important to the data-gathering process.

Subjects will be presented with questions regarding the Unitary Status Plan, specifically court orders, district responses (to court orders), effect on students, impediments to progress, beneficiaries of policy and who is the oppressed in this situation. The subject population can be divided into five separate groups that will provide relevant information to the study: district administrators (past and present), district legal team, plaintiff legal team, plaintiffs, and educators.

Since 1979, there have been twelve district superintendents for TUSD. Each have dealt with different aspects of the desegregation court order and USP. Their input on trying to manage the largest school district in Tucson while under federal oversight would be crucial to understanding policy and implementation. Various associated assistant superintendents and administrators would have valuable data for this study.

District legal team members have played a role in constructing remedies and responding to court orders. They have the necessary experience and first-hand knowledge of the “how”. They have also argued on behalf of the district that would detail motivations and complications.

The plaintiffs and their legal team have played a role in compliance and remedies. Their specific viewpoints in making sure TUSD is providing equitable access are vital to a study that examines specific interests.

It is important to document the effect of some of the policies handed down from the desegregation order and the USP to the schools. School principals who are uniquely situated to

be directed by court orders and implement policy. This includes magnet principals, who are under scrutiny to follow court directives.

TUSD provides documentation related to the desegregation case on their website (<http://deseg.tusd1.org/Integration-Diversity-and-Racial-Equity>, retrieved October 8, 2019). There are numerous tabs leading to numerous related pages. These pages include information about the history of the desegregation case, the strength of diversity, district commitments to diversity and a page dedicated to incentive transportation for students. The tab that is essential to this study is the “USP PLAN” tab. This particular web page places documents in distinct categories. Action Plans, Annual Reports, Completion Plans, Court Orders and R-R’s, Special Master Annual Reports, Status Reports and USP Budget reports are the specific categories used. An analysis of these court documents would be essential to a study such as this one.

In order to answer the question of IC and the USP within these documents, the analysis can take place through Critical Content Analysis. This framework of analysis prioritizes the CRT lens while the analysis is occurring. The CRT stance is explicit through this analysis and public for readers. Although it may seem this is subjective and may influence analysis, Freire (1993) states that all research is political and connected to the subjective stance of researcher. Succinctly stated, “A critical stance questions the concept of “truth” and how it is presented, by whom, and for what purposes, along with whose values, texts, and ideologies are privileged or considered normative. A critical stance thus focuses on voice and who gets to speak or be seen, whose story

is told, and in what ways” (Johnson, Mathis & Short, 2019). This is especially relevant when analyzing court documents that may often disguise motivations.

Data Analysis

Interest Convergence (IC) is described as a theoretical and research tool in two different forms (Alemán & Alemán, 2010):

1. IC as an explanatory tool- in this form it used to describe how civil rights gains have occurred in education.
2. IC as a strategic tool- IC is used as a tactic to sway the majority opinion.

It would be essential to take both of these perspectives into examining the USP; this is a court case that is evolving considerably with competing interests.

CRT suggests that if gains are to be made to correct racial inequities, the loss of something important to the majority could be great. The depreciation of *Whiteness* (Ladson Billings & Tate, 1995) through power, privilege, social status, linguistic status combined with the ability to reproduce this status to their children is a function of IC. The beneficiaries of the results of this study are most likely fall into what can be described as a “loss-gain binary system” (Milner, 2008). They are either “entitled” through *Whiteness* or through the compromise of IC.

LatCrit relies on non-traditional forms of data collection. Recent studies have utilized *microaggressions* (Kohli, R. & Solórzano, D., 2012; Pérez Huber, L., & Solórzano, D. 2014; Pérez Huber, L. & Solórzano, D. 2018). *Testimonios* are a tool utilized (Alfaro, 2018; Delgado-

Bernal, 2018; Gomez, 2018). *Counterstorytelling* or *counternarratives* are described and used by researchers (Solórzano & Bernal, 2001; Cammarota, 2014). These three conceptualizations are essential to the collection and analysis of data for examining IC in the USP.

Counterstorytelling may be the essential tool because of the nature of the subject matter. The narratives of disenfranchised people reveal and interrogate dominant stories of privilege, majoritarian stories that are considered normative (Yosso, 2006). The *counterstories* of CRT told lead to a composite of situations that are well-documented and researched and lead to truths (Alemán & Alemán, 2010). They also cast doubt on the myths that are held by those in power.

Solórzano and Yosso (2002) use the *counterstory* as “a tool for exposing, analyzing, and challenging the majoritarian stories of racial privilege” (p. 32). It does not only have to contradict the majority story, as that reinforces the dominant discourse. The researchers describe three different types of *counterstories*:

1. Personal narratives demonstrate autobiographical stories contrasted with legal case study in the larger societal context.
2. Other persons’ narratives can reveal experiences and responses to racism in a sociohistorical context.
3. Composite stories can draw from various sources of data that place a character in the context to help describe and understand the racism.

Through interviews, I should be able to draw an understanding of who stands to benefit from the USP or a post-unitary status by creating *counterstories*. The stories are grounded in real-life experiences from the interviewees.

Counterstories have valid destructive and creative functions (Delgado & Stefancic, 2012). They tear down and destroy majoritarian stories of the mainstream society. At the same time, they create a new discourse and understanding that cures the silence of the oppressed.

Conclusions/Implications/Issues

Examining Unitary Status Plan, the segregation and the desegregation of students is an essential contribution to the recent body of research. It is significant to know whose interests are being served. Orfield and Eaton (1996) demonstrate the prevalence of resegregation in the United States. The researchers cite court cases that facilitated resegregation of districts across the country. Orfield and Franckenberg (2013) delineate the ways students and their families are taking desegregation into their own hands. Magnet schools, charter schools and school choice plans are ways our schools are becoming less racially diverse. This research coincides with what is happening in Tucson. Latinos continue to be the largest growing group of students in the United States (Orfield and Frankenberg, 2008). They are also the second largest segregated group in the United States at 78.3 in predominantly minority schools (p. 9). TUSD is undergoing a similar population shift. The confusing nature of a school under a desegregation order with a “majority-minority” is relevant to this paper.

The interests of the district and the administration come into play during the creation of the USP. Often, it is heard how administrators' and superintendents' decisions are impeded without the court's consent and how beneficial it would be to be relieved of court supervision.

Chapter 2: Relevant Research

Whiteness and the Absolute Right to Exclude

“America became white-the people who, as they claim, “settled” the country because of the necessity of denying the black presence, and justifying the Black subjugation” (Baldwin, 1984).

James Baldwin describes the concept of whiteness and why the term arose. Baldwin explains that Europeans chose to be white and by accepting this concept, there can be no equality among men. The concept of whiteness comes with its functions of property (Harris, 1993). The value placed on whiteness is apparent in many fields. Ladson-Billings and Tate (1995) overlap functions of property with educational inequality. For the purposes of this chapter, I am examining the *absolute right to exclude* (segregation is an integral and normal part of society) not only for African Americans, but most people of color are segregated in our school system.

Vaught and Castagno (2008) use Cheryl Harris’ important article *Whiteness as Property* (1993) to examine schoolteachers’ views on white privilege in high schools. Harris argued that most teachers are unable to acknowledge the existence of racism, privilege and power relations in schools. The initiation of trainings created some awareness but was not accompanied by any structural changes needed to create equity. Furthermore, teachers were hostile and defensive (p.109). Teachers were able to deny the individual experience of students of color by asserting their own privilege within the *Whiteness* framework. In a powerful statement, Vaught and Castagno state in their conclusion:

[A]wareness did not lead to empathy amongst teachers, but resulted instead in a reinvention of meaning that reified existing, culturally constructed racist frameworks. (p. 110).

It is important to keep this study and its results in mind. Teacher professional development sessions that expose racist practices as individual behavior will fail if the structural nature of racism is not also interrogated.

Convergence-divergence-reclamation (CDR) is an accompanying view of interest convergence and whiteness as property (Thompson-Dorsey & Chambers, 2014). Thompson-Dorsey and Chambers' interpretation, examining affirmative action policies through the lens of CDR, describes a cycle. The cycle includes a convergence of mutual interests followed by a divergence of interests and leading to a reclamation of white privilege. It is my contention that reclamation has occurred immediately after any period of civil rights progress. The creation of systems of segregation through legal means is evident throughout the history of the U.S. In the following section, I describe the historical perspective of the *right to exclude* in school systems. In the subsequent section, I examine desegregation and school choice policies in Arizona. The third section examines Tucson Unified School District #1 and its desegregation history and policies. Last, I would like to mention other relevant or similar studies.

History of Desegregation Policy

Plessy v Ferguson (1896)

Homer Adolph Plessy was born on October 13, 1862, in New Orleans, Louisiana. Despite having mostly European ancestry and being able to “pass” as white, his legal status designated that he was a free person of color (Hillstrom, 2013). Since one of his great-grandmothers was black, he was classified as black. Plessy was a shoemaker and was involved in reforming schools in his area. He was a family man who became an adult at a time when African Americans had many of the same rights as whites.

The end of Reconstruction allowed white supremacy to return with laws that oppressed blacks. In 1890, the Separate Car Act was signed into law. This law demanded that trains include a separate “white car” and a “colored car,” segregating black and whites. On June 7, 1892, Plessy challenged this law by allowing himself to be arrested at the urging of a civil rights organization. Plessy bought the ticket, boarded an all-white train car and informed the conductor that he was black. He was arrested and the legal challenge began (Fredrickson, 2011; Hillstrom, 2013). On November 18, Judge John Howard Ferguson ruled against Plessy. In April 1896, The Supreme Court heard the Plessy v Ferguson case. The court’s opinion dismissed the idea that the 13th and 14th amendment applied to Plessy’s situation. The 7-1 decision was determined on the single issue of the separation of black and white people in train cars. The ruling against Plessy stated that equality was guaranteed, but other types discrimination were not.

The objective of the [Fourteenth] Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either (*Plessy v. Ferguson*, 1896).

Plessy v. Ferguson gave segregationists the opportunity to isolate African Americans throughout the South. The state of Louisiana took action immediately and adopted a new constitution (Davis, 2012). More than 120,000 people of color were eliminated from the voting ranks. Subsequently, streetcars were segregated in 1902 and water fountains in public spaces were segregated in 1908 (p.171). Segregation spread throughout the South and the Plessy decision legitimized racial segregation and white supremacy. The decision also legalized segregating African American students in substandard schools and the phrase, “separate but equal” was coined.

Mendez, et al v. Westminster School District of Orange County, et al, 64 F.Supp. 544 (S.D. Cal. 1946)

In 1943, in Westminster, California, Soledad Vidaurri went to the local elementary school to enroll her daughters, niece, and two nephews. Her daughters were accepted because they had a French sounding last name and were fair skinned (Strum, 2014). Her niece and nephews were told to enroll in the “Mexican school” because of their surname and the color of their skin. Outraged, the parents of these students, Gonzalo and Felicita Mendez, refused to send

their kids to this inferior school. Two years later, they would lead a group of parents into court to challenge this practice (*Mendez v. Westminster*, 1946). Federal court decided in favor of these parents. Although the court sidestepped the issue of discrimination when commenting on their decision (Moll, 2009), this court case would be the first successful challenge to Plessy.

Hernandez v. Texas, 347 U.S. 475 (1954)

An all-white jury in Jackson County, Texas, convicted Pete Hernandez of murder in 1951. In an attempt to dismantle Jim Crow practices, the defense lawyers challenged that Hernandez was not judged by a jury of his peers. The lawyers' arguments are part of what make this court case fascinating. Both sides of the case argued that Mexican-Americans were white. Hernandez's lawyers did not argue that segregation was legally wrong, but that essentially Mexican Americans were like other immigrant groups and since white, should be free of legal discrimination (Haney-Lopez, 2005). Lawyers for Texas argued that since Hernandez was white, he was legally convicted by a jury of his peers to preserve segregation. The Supreme Court decided in favor of Pete Hernandez and the case was described as, "one of the most insightful court cases on race ever handed down." (p. 67). *Hernandez v. Texas* is relevant for several reasons (Haney-Lopez, 2005). By examining community norms, the court showed that race is identified by ideas and beliefs held by the community. Second, racial ideas are enforced by community practices, such as segregation in schools, occupations, and everyday life. Third, race is functional because of the privileges it confers on the dominant group.

Although *Hernandez v. Texas* is considered a breakthrough in race related court cases, its lasting effect has been considered minimal. Interest Convergence, the concept that states that racial equality would be achieved only when the interests of a minority group converged with those of whites played a role in the court decision. Delgado (2006) proved that the dominant group in government had an interest in attempting to show its support of minority groups. This interest is based on evidence that showed that fear of the growth of communism in Latin American countries as well as in the United States persuaded government officials to seek the loyalty of Latinos (Delgado, 2006).

Brown v. Board of Education of Topeka, 347 U.S. 483 (1954)

The court case began in 1954, when Oliver Brown, an African American father tried to register his daughter in the nearest public school in Topeka, Kansas. The school refused enrollment and forced his daughter to ride a bus to a segregated black elementary school farther away. This court case challenged *Plessy v. Ferguson* and its notion of “separate but equal.” Considered a landmark decision, the Supreme Court overturned *Plessy*, on the grounds that it violated the Equal Protection Clause of the Fourteenth Amendment. However, the court’s decision did not detail any method of desegregating schools in the United States. Removing federally sanctioned segregation was inherently much more difficult than initially thought. It wasn’t until *Brown v. Board of Education II* 349 U.S. 294 in 1955 that the court defined how and when desegregation would be achieved. The term, with “all deliberate speed” was used to

describe how quickly plans should occur by the courts, but desegregation was delayed in many places in South.

Green v. County School Board of New Kent County, 391 U.S. 430 (1968)

“Freedom of choice” plans were implemented in many districts. These plans gave African Americans the option of traveling to white schools. The burden of attending a white school was placed on the African American student to transfer to potentially hostile schools. The Green case challenged these systems that perpetuated segregation and defined how to end the dual system (Orfield & Eaton, 1996). The court ruled that dual systems must be eliminated “root and branch” and included the areas that would be come to be known as the “Green Factors” as a guide to eliminate segregation. These factors are facilities, staff, faculty, extracurricular activities and, transportation. These factors are used as a standard for school systems trying to achieve “unitary status” or fully integrated schools. “A unitary district is assumed to be one that has repaired the damaged caused by generations of segregation and overt discrimination” (Orfield, 1996, p.68).

Swan v. Charlotte-Mecklenberg Board of Education, 402 U.S. 1 (1971).

With this case, the court struck down inadequate plans for desegregation including “racially neutral” student assignment plans. These plans relied on existing residential patterns that continued to result in segregation with African American students still shouldering the

burden to transfer to all-white schools (Orfield, 1996a). The court's decision required full and immediate desegregation in many areas in the South.

Keyes v. Denver School District No. 1, 413 U.S. 189 (1973).

Residents from an integrated Denver neighborhood were fearful that boundary changes in their school district would re-segregate their schools. With this lawsuit, the court decided that Denver was effectively segregating schools and even affecting racial configurations of neighborhoods throughout the city. The court used school sites and attendance boundaries as evidence of segregation (Orfield, 1996a). Recognizing the interaction between housing and school segregation, the Supreme Court ordered a citywide desegregation plan.

Deconstructing Desegregation

An ongoing period of reclamation (of white privilege) started in 1974 and legal cases supported a re-segregation of schools.

Milliken v. Bradley, 418 U.S. 717 (1974).

A year after the Keyes cases, the Supreme Court ruled almost contrary to their own decision. The court effectively blocked efforts for inter-district and city-suburban desegregation remedies to integrate schools. Plaintiffs had to prove that the state contributed to the segregation taking place. Racially isolated city schools were not required to prove the state's contribution to segregation unless plaintiffs could prove liability on the part of the suburbs. Providing this proof was extremely difficult in large cities such as Detroit, which had a soaring Latino population and

a mostly black population. This decision undermined neighborhood integration (Orfield, 1996b). Since suburban neighborhoods were protected, segregation was intensified, and ghettos expanded. Consequently, urban school systems were built around segregated housing.

Milliken v Bradley II, 433 U.S. 267 (1977)

Since suburban flight could not be considered the cause of continued segregation, plaintiffs looked to the court again for relief. In an effort to make sure inner-city students received a quality education, plaintiffs reasoned that students were victims of flight and segregation. Plaintiffs were able to prove that they were receiving a substandard education and were in need of remediation. The court found that racially isolated schools could receive monies for compensatory services for students (Eaton, Feldman & Kirby, 1996). This court case paved the way for other racially isolated schools across the country to provide remedies for segregation. Although many school districts have taken advantage of the funding, there is consensus that this kind of remediation is not a long-term solution (Eaton, Feldman & Kirby, 1996; Katz, 2010).

Riddick v School Board of the City of Norfolk, Virginia, 784 F.2d 521 (4th Cir., 1986)

In 1970, the circuit court declared the school district in Norfolk continued to maintain a dual system. Five years later, after an extensive busing plan was put in place, the district was declared unitary. Five years after that declaration, enrollment declined dramatically, especially for Anglo students. Faced with declining enrollment, the school board proposed eliminating

busing of elementary students. Parents objected and sought relief from the court. The court decided that there needed to be an examination of precisely when there should be federal involvement. The court stated, “the school boards and not the federal courts will run the school” (Ducey, 1987). By relinquishing the district of judicial oversight, busing ended in Norfolk. The court tried to end white flight by resegregating schools. Schools in Norfolk continued to be segregated as white flight continued (Eaton & Maldrum, 1996). This decision also paved the way for school systems to do away with desegregation plans once the school systems were declared unitary.

Three additional court cases demonstrate an ongoing and clear legal path for the dismantling of desegregation practices in the United States:

Board of Education of Oklahoma v Dowell, 498 U.S. 237 (1991) - The court ruled that unitary status releases obligation from desegregation plans. Subsequently, the school board voted to return to neighborhood schools, once again segregating schools.

Freeman v Pitts, 503 U.S. 467 (1992) - The court ruled that a school district could be released even if all “green factors” have not been achieved.

Missouri v Jenkins, 115 S. Ct. 2038 (1995) – The court ruled that Milliken II remedies should be limited in time and extent and need not show any actual corrections.

Ongoing Desegregation Today - School Choice

The wave of privatization and school choice reform has swept the nation with Arizona in the forefront. Current U.S. Secretary of Education Betsy DeVos speaks of the range of choices

available to students, including vouchers, charter schools, and the “antiquated” form of education in the U. S. today (Sullivan, 2017). The concept of school choice came about in the South after *Brown v. Board of Education* (1954). Claimed by conservatives as a way for poor people to be able to choose their schools and adopted by liberals as an access point to a quality education, school choice represented a solution to appealed to everyone. Ironically, research has shown that most school choice policies hurt minority students and compound inequality (Orfield, 2013).

Orfield (2013) wrote a succinct summary about how school choice models are hurting minority kids in his chapter, *Choice and Civil Rights: Forgetting History, Facing Consequences*. More often choice models further inequality by re-segregating schools. The following section will describe the roots of school choice options and how they have evolved today.

Vouchers

Prince Edward County School System in Virginia closed all of its schools to avoid integration in 1959. In response to the inevitable desegregation in the district, lawmakers initiated private school vouchers. These vouchers diverted public school money to private schools. Private schools opened up throughout the area in which white students attended. Black students went without schools for five years because they could not afford to attend these schools. These vouchers kept segregation intact.

Magnet Schools

In an attempt to remedy cities whose urban areas were already segregated; magnet schools were built. Magnet schools have a particular specialized, unique focus and use recruitment strategies to increase integration. Most schools have a quota for specific ethnic

groups. These schools receive federal aid which facilitated a rapid increase in the 1970's (Orfield, 2013).

There are many benefits to magnet schools. Struggling schools have been able to reform themselves, better options are available for minority students, and there is a chance for integration (Evans, 2002). There are also some drawbacks to magnet schools. They often create unequal schools and unequal funding. Further, when districts dropped desegregation plans, diversity plans changed. Magnet schools no longer had diversity goals and these schools became havens for the most informed parents, who deployed their social capital when enrolling their children (Orfield, 2013). Thus, magnet schools were created without desegregation plans, segregating students further.

Choice Transfer Policies

Controlled choice in schools allowed transfers within districts. Students are able to transfer from school to school as long as the transfer benefited the racial makeup in the receiving and departing schools. But as is often the case, desegregation plans are dropped, and transfer rules change. With these changes, schools become more segregated.

Some form of these policies persist in the United States today. Charter schools are seen as the next school choice policy. Vouchers are still available in many states. Schools are more segregated than at any point in history (Frankenberg, Ee, Ayscue & Orfield, 2019)

Segregation in Arizona

The United States Congress created the Territory of Arizona in 1863 using portions from the Gadsden Purchase (1853) document and land from the Treaty of Guadalupe Hidalgo (1848). Mexican Americans retained their property rights and received American citizenship. Although they were granted citizenship and were the second largest population group in Arizona, most Mexican Americans were subject to de facto segregation (Powers, 2008). Gonzalez de Bustamante (2012) documents exclusionary and discriminatory practices against Mexican Americans during centuries of settlement of Arizona. There were numerous Jim Crow laws passed during the infancy of statehood including prohibition of intermarriage between white and “tabooed groups.” Educational segregation and job opportunities were restricted. For the duration of the early part of the twentieth century, there was a large influx of Mexican immigrants coming into the area (Powers, 2008).

In the early twentieth century, there were numerous legal challenges to segregation and discrimination. As mentioned in the previous chapter, Mexican Americans who challenged discrimination were often declared white by the courts (Haney-Lopez, 2006), even if they were never fully treated or accepted as white. At the same time, lawyers for Mexican Americans used their “white” status to claim that their clients experienced discrimination. Consequently, Mexican Americans in the Southwest occupied an ambiguous place in the racial strata. During this time, all legal challenges were unsuccessful.

Segregation was widespread in the Phoenix area. In Tempe, Anglo and Mexican American students attended the Eighth Street School together. In 1912, the Tenth Street School

was built, and all of the Anglo students went there while the Mexican American students remained at the Eighth Street School. In 1927, in the town of Gilbert, a separate school was built for Mexican American students on the grounds of the elementary school. In the Gilbert Mexican School, students might be held back in first grade for up to three years depending on their English language skills (Powers, 2008). In 1928, Scottsdale built a school, but kept a separate school for Mexican American students in the primary grades. Speaking Spanish was not allowed and students caught speaking their language were either spanked or had their mouth washed out with soap (p. 471).

Romo v. Laird (1925) was one of the first court cases that showed a small measure of success against segregation. Adolfo Romo filed a lawsuit challenging his children's exclusion from the Tenth Street School in Tempe. In a limited ruling, Romo's children were allowed to attend the all-Anglo school, but segregation of African American students was affirmed (Powers, 2008). Additionally, not many more Mexican American students transferred from the Eighth Street School and it remained a "Mexican" school.

Gonzalez v. Sheely (1951) was another court case that challenged segregation in the Tolleson School District. As was the case throughout the Southwest, the district claimed that the Mexican American students did not speak English well enough to attend classes with the other students (Powers, 2008). Students were never given a proficiency test and were often considered "deficient" (p. 473). During the court hearing, the district's superintendent, Kenneth Dyer, testified to the deficiencies in intelligence of Mexican American students as justification for segregation (Powers & Patton, 2008). The plaintiffs described the dramatically unequal facilities

for the “Mexican School.” Judge Dave Ling of the United States District Court of Arizona announced his opinion in the case and decided that segregation constituted a “denial of equal protection of the laws guaranteed...as citizens of the United States” (p. 128). It was the first victory for Mexican American elementary students in Arizona.

1-C in Arizona

It should be mentioned that during the twentieth century Mexican American students experienced isolation within schools in both the Phoenix area and Southern Arizona. In the Gilbert Mexican School, students attended first grade for up to three years contingent on their language skills (Powers, 2008). This policy was titled 1C, 1B and 1A and students could remain in the first grade for three years. Sheridan (1986) documents the 1C program in Tucson, Arizona. Sheridan refers to the program as “infamous” (p. 223) because of the deficit model used for Mexican American Spanish-speaking students. In these classes, “visible speech drill” was used to improve pronunciation, correct “wrong habits”, and intensify phonics instruction (TUSD website, 2019). Sheridan also documents that many students dropped out of school relatively early and many Mexican American students in the early to mid-twentieth century only received a grade school education (p. 224). These programs were remembered with hostility because of their strict policy preventing Spanish (Brousseau, 2019).

The rationale for segregating students often comes back to language. Gandara (2010) spoke of the *triple segregation* Latino students experience in the United States. First, she noted that Latino students are segregated more than any other group besides Anglos and are also the

fastest growing. Second, she described the socioeconomic segregation, with most of these communities living in high poverty. Third, she describes the lack of exposure to English that creates linguistic segregation.

History of Segregation in Tucson

Segregation was the order of the day in the early twentieth century across the United States. Tucson was no exception. As Arizona was still a territory, most cities attempted to adopt policies that were parallel to southern states (Lightbourne, 2004). In 1909, the Arizona legislature passed a law requiring that Arizona school children be segregated by race for the first eight years of school (dunbartucson.org, 2020). Later, the wording was changed from “permissible” to “mandated.” By 1913, Tucson School District practiced segregation by creating a “colored school” for African American students. Five years later, after protests about inadequate schooling from the families of these students, Dunbar School opened on Second Street. Dunbar School is described as a caring and supportive place for African American students in Tucson (Lightbourne, 2004). Considering their savvy principal, Morgan Maxwell, families believed their students received a quality education (p.189).

In 1951, Tucson schools agreed to dismantle the segregated school system. Dunbar School was integrated in 1952 and re-named John Spring. Similar to many schools of the time, feeder patterns preserved segregation for most students of color (Lightbourne, 2004).

Fisher-Mendoza v TUSD (1978)

Brousseau (1993) notes that ten days after Thomas Lee became superintendent of Tucson Public Schools in 1968, the Office for Civil Rights of the Department of Health, Education and Welfare accused the district of “illegal racial imbalance.” Although Brousseau notes that neighborhood segregation contributed to school segregation, minority populations attended the oldest schools while Anglo students attended newer schools. The district responded by establishing a voluntary ethnic transfer policy, approving a resolution asking the City of Tucson to stop constructing low income housing in minority population areas and closing schools that were under-enrolled with high minority populations (Brousseau, 1993). In 1973, the Department of Health, Education and Welfare (HEW) demanded that Tucson desegregate its schools to achieve racial guidelines. They identified 28 schools that were racially identifiable (schools that exceeded fifty percent enrollment of minorities (Brousseau, 1993). Superintendent Lee fought the lawsuit, contending that the segregation was due to housing patterns.

In May 1974, the National Association for the Advancement of Colored People (NAACP) filed a lawsuit on behalf of the African American students in the Tucson Unified School District. Plaintiffs claimed the district was segregating and discriminating against black students. Later in the year, the Mexican American Legal Defense & Educational Fund (MALDEF) also filed suit, charging the district with segregation and other acts of discrimination. In 1975, the two cases were consolidated into one and the case was tried in January 1977. In 1978, the district court ruled that the district had previously acted with “segregative intent.” Parties then agreed upon a desegregation plan. Lopez (2016) notes that the District Court ordered

the desegregation of nine schools; three of these schools served only minority students and were subsequently closed. Magnet schools were established, as was federal oversight of the plan and district. Lopez also notes that integration was partly due to magnet schools as well as TUSD Board Policy 5090, which prevented students from transferring to other schools within the district unless it improved the ethnic balance put into place in 1969 (p. 6).

In January 2005, the District filed a petition for Unitary Status. (TUSD-1, 2019). On April 24, 2008, a federal district court issued an order terminating court oversight as long as the Post-Unitary Status Plan was acceptable. In 2009, the court accepted the Plan, which required more culturally responsive approaches in high schools. In 2011, the plaintiffs for African Americans (represented as Fisher) and Mexican Americans (represented as Mendoza) **appealed** the Post Unitary plan, and the District Court's decision was reversed. The plaintiffs asked for compliance, not just promises. In 2012, the District Court appointed Dr. William Hawley as "Special Master," who was charged with addressing outstanding *Green* factors and developing a revised Unitary Status Plan (USP).

Soon thereafter, Mexican American Studies (MAS) courses were declared to be out of compliance with law because the passing of HB 2281, which prohibited the teaching of Mexican-American studies in public schools. TUSD's Governing Board voted to suspend the District's MAS courses, even though the district had requested numerous times that this decision be overturned by the District Court, since Dr. Hawley was working on a plan at the same time (TUSD, 2019). After multiple motions and objections by the state and district, the issue remains unresolved.

The latest USP was submitted on November 6, 2014. It is divided into the following categories:

- *Student Assignment*
- *Transportation*
- *Administrators and Certificated Staff*
- *Quality of Education*
- *Discipline*
- *Family and Community Engagement*
- *Extracurricular Activities*
- *Facilities and Technology*
- *Accountability and Transparency*
- *Final Termination*

The section titled *Final Termination* delineates a deadline for the court to maintain oversight of USP and TUSD. The court will maintain jurisdiction until TUSD, “complies in good faith with all of its obligations under this Order and all Orders of the Court entered in this matter; and has eliminated the vestiges of its past segregation to the extent practicable” (USP, p. 61).

Lopez (2016) notes that when the desegregation order was mandated in 1979, white students were the majority in TUSD. Since then, Judge David Bury eliminated TUSD Board Policy 5090. Eaton (2007) argued that Bury had misinterpreted the *Parents Involved v. Seattle School District* case. The original *McFarland v. Jefferson County* case overturned two voluntary desegregation plans in Louisville, Kentucky and Seattle to avoid de facto segregation. Judge

Bury cited this case even though it was based on the fact that vestiges of prior segregation had been eliminated. In Tucson, there are vast inequities and the transfer policy was eliminated. Students would now be able to travel between district schools.

School Choice Policies

This section describes policy choices and circumstances that lead to further segregation and are applicable to the situation in Tucson. In his chapter titled, *Choice and Civil Rights: Forgetting History Facing Consequences*, Orfield (2013) makes the following statement, “Choice is only meaningful as an educational reform strategy when better options are available and when the parents who need them know about them and are supported in making their decisions” (p. 8). This statement is meaningful because it describes the benefits and drawbacks of choice policies. As noted earlier, Prince Edward County in Virginia closed its entire school system in 1959 to avoid desegregation of their schools. White students left the district and received private school vouchers, leaving African American students entirely without schools. Vouchers signaled the beginning of school choice policies. Vouchers are still available in some states and Arizona has tax credit scholarships for private schools that provide more funding (Orfield, 2013).

Charter Schools

There are 544 charter schools in Arizona and unlike other states with charter schools, there is no cap on the number that can be created (Harris, 2019). Charters receive 123.5% of

funding per student compared to what public schools receive. There is a State Board and a staff of twelve in charge of charter school compliance. Not only have some charter school founders paid themselves millions of dollars, there is very little oversight (Harris, 2019-2).

The data show that students in Arizona are leaving integrated public schools to attend less integrated charter schools (Garcia, 2008). Although there is no evidence of charter schools “skimming” the high achieving students, many public school educators are vocal about this happening (p. 608). There are 104 charter schools in Pima County (ADE website, 2020). TUSD is losing approximately 1000 students every year to charters and other districts.

White Flight

The elimination of Board Policy 5090 in 2007 by Judge Bury turned TUSD into an open enrollment district. Students could now attend schools throughout the district. Many would suggest this policy change exacerbated the white flight in TUSD. The following data are extracted from the Arizona Department of Education website (<https://azreportcards.azed.gov>, 2020). At the time of the original desegregation order in 1979, TUSD was 65% Anglo. Currently, the district is 20% Anglo. Two public school districts that are attracting Anglo students are Vail Unified School District at 54.3% and Tanque Verde School District at 72.81% (ADE Website, 2020). Leman Academy of Excellence, a charter school with four locations in Tucson is 55.63% Anglo. Conversely, TUSD is 63.85% Hispanic and the Sunnyside district is 89.49% Hispanic. TUSD’s enrollment has decreased steadily since 2000, by nearly 1000 students a year.

Since *Brown v Board of Education*, the court has struggled to define what desegregation and unitary status should look like. Even with the statement “racial discrimination is eliminated root and branch,” courts seem unsure about how that change will be accomplished. *Green v. County School Board* helped identify aspects of discrimination as Green Factors, but did not address whether these aspects included vestiges of past discrimination (Moore, 2002). Consequently, each district has developed different criteria to determine if unitary status has been achieved.

Lopez (2016) refers to the desegregation case in TUSD as “strange” because of the demographic shift within the district. Charter schools, open enrollment to neighboring districts, and a growing Latino population have contributed to a changing ethnicity composition in TUSD (p. 14-18). She continues her assertions with the following statement, “...all districts within Pima county are also experiencing growth in their Latino populations—some doubling their proportion of Latino students over the past thirteen years. If the growth patterns continue, TUSD will become close to 100% Latino. How will desegregation be defined then?” (p. 18).

As stated before, there are studies using Interest Convergence (IC) as a framework. There are examples of IC influencing the post-segregation and the re-segregation of school districts and cities, St. Louis (Grooms, 2019), Seattle (Donnor, 2012) and Nashville (Woodward, 2012). There are related studies of Latino group experiences through IC in high schools (Stein, Wright, Gil, Miness & Ginanto, 2018).

Brown and Interest Convergence

Brown v. Board of Education (1954) has been regarded as a landmark case that would provide much needed change for students of color. The case provided a *legal compulsion* for school districts to comply with court mandated desegregation and improvement of school practices. Bell (2004) argued that *Brown* was not primarily aimed at improving education for African Americans, but rather at strengthening democratic government and appearing superior to its communist alternative. This goal was called “an embarrassing reality” when international newspapers carried stories about discrimination against African Americans. The timing of these stories was especially relevant before and during World War II, when Adolph Hitler’s regime implemented a racial superiority ideology. Dudziak (1995) showed that memos between U.S. government institutions supported the idea that the United States had an interest in improving the national image, quelling racial unrest and stimulating a struggling Southern economy. *Brown* helped the United States appear more equal in the eyes of the world. Orfield and Eaton (1996) show that school segregation continued well into the 1960s and in fact increased during the 1990s. As a result, *Brown* has been regarded as largely ineffective as a policy for change (Ball, 2006).

In Tucson, Arizona, *Fisher/ Mendoza v. TUSD* ordered compulsory desegregation policy in the Tucson Unified School District. The district had a vested interest in achieving unitary status. If achieved, federal supervision would not continue while TUSD could continue collecting federal desegregation dollars. The Unitary Status Plan provides clear direction to make this happen.

Chapter 3: Methodology

CRT Methodology

One premise of Critical Race Theory (CRT) is that racism is a pervasive part of American culture. The reason racism might feel so absent or normalized is because of how common it actually is in many aspects of people's lives (Delgado, 2000). In order to document educational inequities, people's experiential knowledge and shared history are given space for dialoguing (Bhattacharya, 2017). CRT studies is "a systematic inquiry about how racial inequities are created and sustained in the lives of ethnic minorities in the U.S." (Bhattacharya, p. 75).

As more scholars implemented CRT, storytelling became the primary form of building knowledge where a reality could be constructed. This reality reveals truths that differ from the dominant discourse. These truths also reveal ways of knowing that challenge that discourse.

Solorzano and Yosso (2002) establish five elements that form the methodology based on CRT in education.

- *Intersectionality of race and racism with other forms of subordination*-although race and racism are at the center of CRT, it is necessary to view them through their intersection with other forms of oppression. There are many facets of oppression in education and it cannot be viewed in isolation (race, gender, class, immigration status, surname, phenotype, accent and sexuality).

- *The challenge to the dominant ideology*-challenging colorblindness, race neutrality and equal opportunity as traditional claims because they conceal the power of the dominant group.
- *The commitment to social justice*-CRT is committed to eliminating racism, sexism and poverty and to the empowering of minority groups.
- *The centrality of experiential knowledge*- “recognizes that experiential knowledge of people of color is legitimate, appropriate and critical to understanding, analyzing, and teaching about racial subordination” (p. 26). Further, CRT acknowledges that storytelling, biographies, scenarios and other related works are essential and perceive these viewpoints as strengths. It especially exposes the deficit models that usually are used to explain experiences of people of color.
- *The transdisciplinary perspective*-CRT analyzing race and racism by placing them in both historical and current contexts, which is especially relevant here. CRT uses the methodology of ethnic studies, women’s studies, history, law and other fields to better understand the effects of racism.

Researchers working through CRT learn about reality by asking about it. CRT acknowledges that there is an interactive relationship between researcher and participant and their stories (Denzin and Lincoln, 2018). Although this research study focuses on the Unitary Status Plan (USP) in a southern Arizona school district, it also centers the experiences of plaintiffs, educators and others surrounding the original lawsuit. These CRT “counternarratives” to the prevailing story thus expand the scope of qualitative research.

Qualitative Research

The value of qualitative research uses a naturalistic approach to understanding phenomena. Denzin and Lincoln (2008) explain:

“Qualitative research is a situated activity that locates the observer in the world. It consists of a set of interpretive, material practices that make the world visible. These practices transform the world. They turn the world into a series of representations, including field notes, interviews, conversations, photographs, recordings, and memos to the self. ... [it] involves an interpretive, naturalistic approach to the world. This means that qualitative researchers study things in their natural settings, attempting to make sense of or to interpret phenomena in terms of meanings people bring them” (pp. 4-5).

Qualitative researchers seek illumination, explanation, and extrapolation of situations and contexts (Denzin & Lincoln, 2008). Quantitative inquiry uses experimental methods designed to measure variables to test hypothetical generalizations. It represents a fundamentally different paradigm. In the case of this study, qualitative methods are more appropriate because quantitative measures cannot adequately describe or interpret the situation. At the same time, CRT demands that researchers acknowledge the role that power relations play.

Using *Critical Race Theory*, *Interest Convergence* and *Colorblindness* as my theoretical framework, I plan to analyze the motivations of parties of the Unitary Status Plan. TUSD’s demographics are rapidly changing, creating a more complicated situation for the district. In this dissertation, I will be exploring the following research questions:

4. What are the roles and motivations of the district and plaintiffs concerning unitary status or post-unitary status?
5. Which court orders and recommendations surrounding the USP are examples of interest convergence?
6. Does interest convergence play a role throughout the maintenance, elimination or growth of magnet schools?

Participants

The selection of participants is consistent with most qualitative research. It is often labeled as *purposeful* (Patton, 2015). Purposeful sampling is based on the assumption that the researcher “wants to discover, understand, and gain insight and therefore must select from which the most can be learned” (Merriam & Tisdell, 2016, p. 96). The participants were identified for this study for their special experience with and knowledge of the Unitary Status Plan (USP) and the desegregation case. Using what is termed as a *criterion-based selection* (p. 97) I attempted to find subjects who represented not only a relationship to the USP, but also differing opinions and viewpoints. Also, I sought out participants who had varying levels of involvement.

There was also a type of *snowball* sampling (Patton, 2015). This involved locating some key participants who met the criteria and determining whether they could recommend other possible subjects. In this manner, the researcher can accumulate participants who have more information that is vital to the subject. Some participants were hesitant to speak on legalities of a desegregation case for fear of divulging sensitive information. A former superintendent and a

plaintiff representative declined the interview, citing conversations that could be considered privileged.

Participant (psuedonym)	Job Title	Interview run time(minutes)
Mary Franklin	Attorney for district	28:20
Angel Suarez	Attorney for district	30:55
Olivia Warren	Plaintiff Representative	66:36
Miguel Orta	District Superintendent	53:24
Joe Mejia	School Principal	35:41
Cecilia Santa Maria	Plaintiff Representative	36:31
Luis Casillas	Principal	37:24
Sean Rivera	Assistant Principal	41:06
Pedro Salas	Assistant Principal	29:58
Ryan Tolbert	District Desegregation Director	18:57
Kendra Mays	District Desegregation Monitor	11:35

Data Collection

Interviews

Phenomenological based interviews are necessary for a qualitative research study such as this one. In this methodology, there is a combination of life-history and questioning based on informed assumptions (Seidman, 2019). This approach uses open-ended questions to seek a stronger understanding of participants' reality. There are four themes that apply to the participants in this study delineated by Seidman (2019): *temporal and transitory nature of human experience, subjective understanding, lived experience, and the emphasis of meaning and meaning in context.*

The *temporal and transitory nature of human experience* (Seidman, p. 16) focuses on the experiences of the participants and the meaning they make from that experience since the human experience is transitory, meaning that experience changes as time progresses. Interviewers are asking interviewees to find the essence of their experiences and search for truth.

Subjective understanding is important for this study because we are striving to understand the interviewees' experience from our point of view (Seidman, p. 18). Considering that it is never possible to understand another person perfectly, we are trying to come as close as possible.

The *lived experience* of participants is important but also complicated. We are asking participants to reconstruct the details of their experience with the USP, and that is considered their "was". As researchers, we are trying to create the "is" by making the "was" come as close to the "is" as possible. Those lived experiences become a textual expression (Seidman, 2019).

Meaning making in context is the theme that demands that context is essential to understanding. Our interviews allow us to put the behavior in context and have a better understanding of the behavior (Seidman, 2019).

The process for analyzing and interpreting the interviews is labor intensive. I have transcribed the entire set of eleven interviews. The interviews varied in length, the shortest being eleven minutes and the longest sixty-six minutes. Avoiding all interpretation before the collection of data is necessary (Seidman, 2019). Next, reducing the text by tabbing and highlighting interesting passages brings out meaningful chunks without worrying about analysis. Finding relevant themes and creating profiles through CRT shapes *counterstorytelling*, described earlier in this dissertation. For example, I highlighted all of the examples of *colorblindness* for

some of the interviews. This provided me a clearer picture of some of the motivations of the participants.

Document Analysis

An important source of data for this research study is the document analysis. The documents that are available to me are a ready-made source of data. Documents concerning the USP are readily available on the website: <http://deseg.tusd1.org/Supporting-Documents>. These court orders, plans, and recommendations are public documents that often reflect the dealings and communications between the district and the plaintiffs. Since this research is built around CRT, I incorporated CRT methods as a way of analyzing these documents. For example, CRT provides clarity when participants use coded language to protect racist practices and attitudes.

Critical content analysis differs from content analysis by prioritizing a critical lens as a frame. Since the researcher will take an explicit political stance regarding race, inequity and power, the positioning may be subjective (Johnson, Mathis and Short, 2019). Freire (2000) points out that all research is political, and the world is socially constructed through perspectives. This critical stance focuses on the concept of “truth”. Specifically, whose truth, values, and ideologies are privileged and put forth as the norm (Johnson, Mathis and Short, 2019, p. 12). Further, it examines the purpose of the documents I reviewed. Court documents have a discernible agenda that can be analyzed with a critical lens. Often, when plaintiffs or defendants submit a document, they are trying to sway the judge to see a certain perspective. Critical content analysis looks at the surface motivations as well as the underlying motivations.

Case Study

Yin (2015) puts forth the following definition for a case study: “An empirical inquiry that closely examines a contemporary phenomenon (the case) within its *real-world context*” (p. 194). Merriam and Tisdell (2016) describe a case study as: “an empirical inquiry that investigates a contemporary phenomenon (the ‘case’) within its real-life context, especially when the boundaries between phenomenon and context may not be clearly evident” (p. 38). This case study would be in-depth inquiry and specific to the case. The *Fisher-Mendoza v TUSD* court case and the USP are a good match for a case study perspective especially since a case study is suited to situations in which it is impossible to separate the phenomenon's variables from their context. It is also called by Yin (2015) to be the “end product of field-oriented research” (p. 36). The “case” for this research is the Unitary Status Plan (USP). Interest Convergence and the USP are the focus point for the study. There are various school districts in Arizona that fit similar patterns of discipline disparities (Altavena, 2019). TUSD is unique in that any remediation or action taken to fix is *compulsory* through the USP and courts.

Gathering multiple sources of evidence is necessary for reliability and validity of a case study: court documents, interviews and archival records. It is important to be explicit about the gathering of evidence (Yin, 2015). Further, Yin (p.198) describes the seeking out of plausible rival explanations and aggressively addressing them by collecting data. In these situations, the main explanation is strengthened by comparing it to the rival explanations.

Concerns

During the course of this study, a global pandemic abruptly broke out. In-person interviews were impossible because of the spread of COVID-19, the virus that struck everywhere. Since isolation became the norm and people were told to stay home, I had some initial challenges contacting potential participants. As it became clear that “sheltering in place” was mandated for all district personnel and students, I had more success conducting interviews virtually or by phone.

My intent was to use the *counterstorytelling* in order to expose the motivations and practices that supported and extended racist practices within the district. Although many individual agreed to participate in this study, I found that it was difficult to secure participation from the original plaintiffs and plaintiffs’ representatives. I suspect that some people may have feared reprisal. Others may have resisted the surfacing of racist practices with which they were complicit. In several of the interviews I did conduct, I noted a strong power differential and/or vulnerability between stakeholders. For example, some mentioned fears about crossing legal boundaries. As a result, I had to rely on other methods of obtaining the data for this study. While I had hoped to prioritize the *counterstorytelling* method, I focused on the general narrative.

Chapter 4: Findings

On May 25, 2020, a 46-year-old African American male named George Floyd was killed in Minneapolis, Minnesota (Hill, 2020). Derek Chauvin, a white police officer, put his knee on Floyd's neck for 8 minutes and 46 seconds until Floyd died from asphyxiation. Officer Chauvin was subsequently charged with the homicide, and three other observing officers were charged with aiding and abetting second degree murder. The following day, videos and surveillance camera footage were made available to the public, sparking protests in all fifty states and hundreds of countries across the world. Police brutality and the imprisonment of minorities in the United States, a long-standing part of our country's history, were brought to the foreground.

It is unremarkable that during this time, the topic of *inequitable discipline practices* and a school district's inability to change those practices are relevant and a main discovery of this research. Schools have been viewed as a pipeline into the prison system and reflective of what is happening in the greater context of American society (Meiners, 2011).

Although most of the interviews I conducted took place before the May 25th murder, the parallels are inescapable. As an elementary school principal, I was not surprised by the discrepancy in numbers between the school suspensions of Anglo students and students of color. I was surprised by the ineffectiveness of the efforts to comply with USP (Unitary Status Plan) and the intentions behind compliance.

As a district employee, I was fortunate to have access to the participants in this study. The narratives presented suggest both comfortable and uncomfortable experiences with the USP. Study participants were from both sides of the lawsuit. They included plaintiffs and defendants

as well as the implementors of the plan, district personnel. All of the individuals have a role to play relative to the USP and their confidentiality is maintained. Pseudonyms were assigned to each participant. To maintain the authenticity of each participant's narrative, editing was kept to a minimum. I have placed the participants in a particular order to give sense to the narrative.

Luis Casillas-High School Principal

Luis has been an administrator of a Tucson high school for a total of 10 years, three as the assistant principal and seven as the principal. He regards the USP as one of the most difficult responsibilities of his tenure as a principal:

This has been probably the biggest challenge of my principalship. Imagine this, because I understand a lot of it has to do with my upbringing and a lot of it has to do with the way I was brought up to understand how discipline is supposed to work. Obviously, at the heart of discipline is you're supposed to teach people how they're supposed to behave. You're supposed to teach people what's the benefit of it, and you try to really focus on those things, and that's something you should be doing anyway.

Luis believes that there are challenges of balancing what he calls "permissive behavior" with what is being permitted to take place in school. He mentioned the demographic shift in the district that has caused a shift of standards and the types of supports needed for them.

Luis has seen the changes in discipline policy and practices that have occurred in the past several years. His understanding of the needs of the district within recent history of the USP helps provide context to this section. Luis understood that in 2009, TUSD was granted Unitary

Status and relieved from federal oversight. At this time, a post-Unitary status plan was developed and became the tool for “maintaining equity.” In 2010, the plaintiffs appealed and a year later, the 9th Circuit Court of Appeals agreed that unitary status should not have been granted and federal oversight resumed. At this time, Luis was suddenly faced with a system of oversight that included the monitoring of discipline practices:

So, what really happened to some of that is that it exposed that we, as a district, were not collecting information. It didn't mean that we were not doing the things to be more towards unitary status, but we couldn't even get through the ... is to have a systematic way to collect that data so that we could actually monitor it.

Luis continued to elaborate how it affected his school:

I'm learning you guys didn't even have a systematic way to prove to me that you guys were doing it. So, screw you. We're going to pull that, and we're going to get a special master, and we're going to have some very high monitoring things, and you're going to have to just suck it up and take it. It took a step back as far as monitoring. What we did by closing ourselves with the lack of monitoring, they came back with some high monitoring systems with us with that special master assigned, and holy cow, that's been crazy. So, I think the courts and the special master, what that did is it allowed the process to overcompensate towards the plaintiffs a little bit, but deservedly so, in a sense, because we didn't have those systems because we weren't monitoring it on an even level across the district.

Luis believed that the changes excessively favored students who could take advantage of the

system. He thought that changes in the years followed seemed to go backwards. One particular change involved students needing a type of restorative intervention before they received any punishment. It became the “first fight free” rule. That is, students were aware that they could get into a fight once and not be suspended from school. Luis described that policy as a “flop.” Then this policy was amended into the “three-plus-one” concept. This policy required students who were caught fighting to complete a three day out of school suspension and a one day in-school suspension program. According to Luis, because not all schools had in-school suspension programs, every school now had to establish one. This policy was also abandoned, as it was considered exclusionary because students were not accessing curriculum. The subsequent change was to amend policy: “one day out with interventions and possibly two days out with monitoring and mentoring.” Luis believed that even though there were fewer suspensions, the situation had not really changed:

It’s doing what it’s supposed to do, but it’s artificial. The whole concept is to have people who are minorities not even fight to begin with. The whole concept, the idea, is not to have minorities drink and do drugs on campus to begin with. Just because you’re not suspending them doesn’t mean that’s not a problem. It’s artificial. Oh, yeah, the suspension time is down. Great, but there’s a lot more distractions to learning now. There’s a lot more drugs now on our campus, and guess who’s going to be having more access to those drugs now? The very students that we’re trying to stop from having that happen to. Who’s the ones that’s getting the most distractions from this stuff? The very students. So, it’s artificial. It’s an artificial might. It’s an artificial solution, from my

perspective.

Luis was frustrated by the constant reviews and changes in the district's discipline practices and data. According to him, the teachers were also frustrated:

It causes a major friction, man. Our guys are sick of it. Our guys are sick of it. They feel like they're being disrespected by the students. They feel like they're being disrespected by the system. They already feel like they're underpaid compared to what the previous generation of teachers were paid. They have more accountability.... But the students' behavior, they just feel that's the part that's crushing. That's the part that's burning a lot of these guys out.

He believed that even if teachers implemented Positive Behavioral Intervention Systems (PBIS), they still were not seeing results because of what he observed as the "permissiveness" of the policy.

At the same time, Luis had seen some discrimination come from the staff at his school. Much of the discrimination was directed at the open enrollment, or "OE" students. The open enrollment policy allowed students to enroll in any high school in the city after Judge Bury abolished TUSD Board Policy 5080 (noted in chapter 2). In fact, the discipline referrals for these students were flagged on the referral forms by teachers who wrote "OE" at the top. Teachers expected students who were not from the geographic area to be "kicked out." Luis also had to provide direction because the students whom teachers characterized as "F" students were primarily of color. He reported that individual conversations he had held with these teachers "ruffled some feathers."

Luis mentioned that some of what he saw while teaching (ten years ago) could be considered “modern bigotry.” He described the discipline practices at a nearby high school when he was a teacher:

I was like one of three minority faculty members there when I first started. There was one other Hispanic, and she was a Spanish teacher, and then there was two African American teachers, one for math and one for English, and that was it. It was a strong faculty, don't get me wrong. They were skillful, and it was a Magnet school. So, this was before the open enrollment concept. They had that double standard. I couldn't figure out why are you guys having this double standard? Finding kids just to treat them like shit. You don't understand the impact of a kid who's walking around. You know that feeling when you're in another country.

Luis spoke of a pre-USP time when students of color were treated punitively and dismissively:

That's what you're doing to kids when you welcome them into your campus. You're not welcoming them when you're holding them to a different standard, and they can get kicked out like crazy. Back then, it was a three-strike rule. If they get three letters, you're out. I was like, “Damn, that's harsh.” So, these kids never ever go through the four years feeling like they're fully a part of your school when you do that shit.

Luis acknowledged the benefits of USP policies but stated they did not adequately protect the students who were not committing infractions. He considered this to be “permissiveness” with the USP, even an unbalanced and ineffective approach with no real commitment to equity.

Luis' story of a high school with changing demographics and changing discipline

practices is confirmed with documentation. Plaintiffs' claims about the districts' inadequacy of monitoring and working with students were validated by the judge. The latest code of conduct for students required there to be tracking of data, some type of intervention, a call to a desegregation coordinator (to monitor uniformity across schools), and counseling. The story Luis told also helps contextualize the topics in the rest of this chapter.

Cecilia Santa Maria-Plaintiff Representative

Cecilia is a now-retired educator who represented the plaintiffs for the last 15 years. She had little faith in the school district's ability to comply with the desegregation order. She believed that often administrators in the district had their own motivations and are were not working in the best interests of students of color. Cecilia is very clear that if the court were to remove federal oversight from the district and USP, the district would certainly return to the ways of the past of discrimination and unequal education.

Cecilia believed that the district had failed in many areas of implementation of the desegregation order:

As you can see, the court has, more often than not, agreed with the plaintiffs because the district has failed to take the evidence to the court to show that, in fact, it has implemented its mandates to the level required, and I'm talking about legal.

She had seen variations in commitment from the superintendent level:

What has happened with each new superintendent is they come in gun-ho. They meet with the plaintiffs. They've met with me. They pour their hearts out. They say they're

going to implement the USP, or they're going to implement the decree, and they even confess the sense of the district from the past, and then they're here six months to a year, and everything turns around. Then, all of a sudden, we're the enemy. We're great friends at the beginning.

Cecilia firmly believed that if federal oversight were lifted, the USP would be virtually ignored:

Frankly, I don't think the current administration is interested in keeping a whole lot of what's in the USP, and I've heard it said, and I've heard it quoted to me directly... He wants to take the money from here in the deseg order, and as soon as it's lifted, put it over here. I don't think they understand that it's not going to be quite that easy to shuffle money around without some kind of oversight... like I said, at the beginning, it was wonderful, and then it turned sour, their agendas have turned into get the damn plaintiffs out of the way. It's kind of sad because at least on behalf of the plaintiffs, we want the district to get Unitary Status. We wanted to be in full compliance.

Cecilia described the district's lack of commitment to communicating the USP to its constituents and community:

I think that because TUSD has done such a lousy job of explaining its court order to its parents, to its teachers, to its administrators, there's never really been buy-in. If it had done that, then it could've gone a couple of steps further and explained it and educated people in the greater community about what desegregation is all about. There are teachers in TUSD that have taught there for 30 years, and they've never read the (Unitary Status Plan).

Of the desegregation issues within the USP, Cecilia described discipline as a tremendous problem for the district:

Discipline has been a nightmare, and the plaintiffs are always blamed. For whatever is going wrong with discipline, it's our fault.

Cecilia's history with the desegregation order speaks to the practices that she had fought hard against. She described instances where the district was defiant with court orders, indicating that this defiance continued today:

Well, do you remember, it made headlines, the (Hinkleman Elementary) kids that would get on a bus and go to Greer Elementary? When they got to Greer, all the black kids went into one classroom.

Cecilia was more positive about the intentions of the USP, stating that if implemented correctly, it could provide an adequate education for African American and Latino students. To her, it was apparent that there was a severe lack of trust the plaintiffs had with the district and its administrators. Her own personal view of discrimination in general and the unwillingness of the district to comply with court orders in particular would require continued federal oversight.

Olivia Warren-Plaintiff Representative

Olivia had been a court appointed representative of the Fisher plaintiffs since 2007. She spoke more of the distrust with the district and its administrators:

...but the ultimate goal for all of them has been to get the district from under the court ordered supervision and to be able to use the deseg money in any way they chose.

She felt there were many instances in which the district did not comply and was unwilling to move towards policies that would allow unitary status:

Well, it is adversarial because the district operates in bad faith. So, our role is to monitor this and bring to their attention areas where they're not implementing the USP correctly, and they don't like that. So, it is adversarial.

Olivia was clear about the reasons that discipline is a major issue in the district:

Most people do not believe they are racist because they're not conscious of how they react to kids who are different from they are. They expect African American kids are supposed to act the same way Anglo kids act. They'd look at them as different if they don't act that way. They have been asking for probably five years now for the district to do a comprehensive training in equity and cultural awareness for everyone in the district.

African American students are documented as being involved in discipline incidents twice as often as white students. During the 2013-2014 school year, for example, African American high school student incidents accounted for 24.89% of all disciplinary incidents in the district while White students accounted for 12.41% of the incidents. Although practices have changed and evolved since then, the 2018-2019 school year saw a reduction in suspensions, but the disparity remained (African Americans-12.25%; White-6.40%). African American students are consistently involved in discipline twice as often as white students (TUSD website, 2020). Hispanic students also have more disciplinary incidents than white students, but less than a percentage point.

Table 4.1 Discipline Incidents Percentage of Population

Ethnicity	13-14	14-15	15-16	16-17	17-18	18-19	19-20
White/Anglo	12.41%	10.08%	7.32%	7.21%	6.16%	6.40%	6.78%
African American	24.89%	21.25%	13.37%	12.46%	10.83%	12.25%	12.03%
Hispanic	15.09%	9.72%	7.44%	6.59%	5.57%	7.19%	7.15%

Olivia believed these disparities existed for some singular reasons unaddressed in the district:

Well, basically, we thought the base of the plan was going to be the training of people so they recognize their bias. The second part of the plan was they have this program where they said they can put schools on improvement plans whose numbers for disproportionate discipline are too high, and they will put them on a plan, but then they just put them on a plan. The administrators, as far as we can tell, received no consequence because they stayed at the schools, and they're ultimately responsible for disproportionate discipline in their school.

She has seen some of the failed attempts in which the district has tried to remediate the disparity:

Probably three years ago when they went through this whole phase of no one was to be suspended. That was the way they were going to eliminate the disproportionate suspension, by not suspending anyone, and that's no way to run a school district, but that was their plan for a while. They brought in a man to help rewrite the whole code of conduct that was going to be very focused on restoring the stuff that they put in place

now and all that stuff with the goal of just eliminating suspension as much as possible.

Olivia was also clear about what the plaintiffs expected from the district:

Fishers (plaintiffs) have never been against disciplining kids. *We just want it to be equitable.* If two kids get in a fight, and one of them is black, and one of them is white, we want them to get the same punishment. That's all.

Miguel Orta-District Administrator

Miguel was district superintendent for four years and was involved with the Unitary Status Plan for five years, starting as an assistant superintendent of curriculum. He confirmed that the same adversarial relationship existed before he was superintendent:

The first thing that I noticed was that there was a very, very hostile antagonistic relationship between the district itself and the plaintiffs that were suing us. I don't want to say hostile, but a resistant relationship with the special master.

He reiterated the same antagonistic relationship with the plaintiffs and their representatives:

The dynamic and the case is that they're plaintiff's representative, so their job is to oppose because fundamentally, their belief system is that without their involvement in this case, children will lose because the district, by its nature, is discriminatory.

At the same time, Miguel had an empathic understanding of their motivations:

So, in a very honest and sincere way, they believe that they are changing the lives of kids, and they believe that the lawsuit should continue because the district will inevitably fall back to its evil way. Their job is to always object, paint the picture that the district isn't

doing what it needs to be doing.

He also noticed different departments working in “silos” on different parts of the USP. There were departments working separately to fulfill compliance:

So, that was my immediate impression, that we just were not very organized and we were not very deliberate. We weren't very intentional about our implementation efforts, and these antagonistic relationships with the plaintiff representatives were not helping, and a sort of resistant relationship to the Special Master was not helping.

Miguel detailed this relationship between previous superintendents and the courts:

But (J.B.) was very public and very honest about his attitude about this case. He said on more than one occasion to me, ‘I should not have to deal with a shadow superintendent. I should not have to share the superintendency with no (Special Master). There are things that I need to do for this district, and I'm going to do them. I resent having to go through these people who know nothing about education and are making decisions based off of race. We're going to do what we need to do to run this district. I'm the superintendent. I was hired by this board, and that's what we're going to do.’

Miguel contended that his job was to form an interdepartmental implementation team to set goals and focus on the need to comply with court orders.

Miguel believes that achieving partial unitary status was a victory for everyone. He attributed this success to collaboration within the district and their focus on compliance.

Miguel found some deliberate discrimination within the district that he believed needed to be addressed regarding discipline. He described what was happening when he first became

superintendent:

That was just three years ago when we moved in, and we restructured how we do fights and drugs. We were seeing that largely black and brown students were getting sent away for 15, 20-day suspensions for having a joint or for coming in high, and that was a perfect example of this color blinded approach to there's nothing wrong. You have these huge disproportionalities of black and brown kids experimenting with marijuana, or cigarettes, or alcohol, coming in under the influence. Not distributing, not selling. Making a poor choice, probably for a myriad of factors that we already know about, and we're going to criminalize you and we're going to put you out for 20 days. That was big. We also had fights, and largely black and brown students, males, involved in fights, what you and I would consider mutual combat. Two dudes looking at each other, throwing their hands up, and both of them are rushing each other and fighting. Both of them being sent out for long term suspensions, semester long. For what? It wasn't even an assault. Again, large disproportionalities. That was something we discovered really, really quick, as late as 2017 that we were still doing that.

Miguel asserted that the current policies were now helping to reverse the trend, but with much resistance from site administrators. He contended that many site administrators were insensitive and lacked cultural responsiveness:

...it's that old mentality, that insensitivity...is that these are the bad kids. These are the troublemakers. They need consequences.

Although Miguel concluded that much progress had been made and the district was

moving away from the adversarial relationship, there was continued documentation that the adversarial relationship prevailed. In a document filed March 18, 2020, attorneys for the Fisher plaintiffs submitted a motion to impose sanctions on Superintendent Miguel. Miguel had been accused of “unethical misconduct through improper and surreptitious contact and subsequent interference with Fisher class members in an attempt to both entice, through readily apparent conspiratorial subterfuge, and purposely undermine the integrity of the present class action by inviting said class members to a clandestine meeting at the Viscount Hotel for an extravagant dinner...” (TUSD website, 2020). Although the motions were denied, there is an obvious tension and distrust about the intentions of the district and superintendent.

Sean Rivera-High School Assistant Principal

Sean is an assistant principal in a predominantly Latino high school on the South side of the city. Sean had also coached sports at the high school in previous years. I wanted to interview Sean to gather his perspective on what types of inequities exist. Also, I was hoping to gain his perspective on the USP and the discipline changes accepted in the high school. He dealt with discipline matters as a significant part of his duties at this South side high school.

Sean emphasized that race was not much of an issue when it came to discipline.

Well, what I will say that my experience, to be totally honest, I wouldn't even look it as a race issue as much as an age difference, and the differences in discipline or the issues.

He continued to expand this viewpoint:

Three years ago at Rodriguez MS, we had to, if we were going to suspend a black student, we had to get the okay to do it, because there were too many black students being suspended. However, the interesting thing was that it wasn't looked at as (a race issue), and that's always been my thing, is that I never, well let's see I've gotten this many, if you did-as corny as it sounds-if you did the crime you're gonna do the time.

Whichever color you are, whether you're purple orange or black, it didn't matter.

I questioned him further about the disparity between suspensions of students of color and white students:

I wish that were the case too, if you have a school and the population is 90% Hispanic, it only makes sense that those are the kids that are going to get suspended because that's what you have. And if you take one black child of that population, of course the percentages are going to be high. If you have five black kids at your school, and one always gets into trouble, you are going to have 20% of your black population, of course it's going to look high. Because even 10% of the Hispanic students who are getting in trouble, it's going to be more students, but less, percentage wise. So, it's deceiving. You have to be realistic and look at the numbers.

Sean seemed to question the students' commitment to their education through an example:

The interesting thing is when I was doing my internship to be a principal, at Rodriguez MS, and I am not knocking the administration but, the trash on the floors in the patio was incredible. I'd pick it up and ask kids to pick up their stuff. It's almost ingrained that [this] was not an important value to teach your kids to be respectable and pick up your

stuff. They would leave it. Then over at Community High School, we have not nearly as close, but there's those kids that leave a mess, you pick up the trash, this looks terrible. Fast forward to when I was doing my internship, I did a couple days at Ocotillo High School-zero trash. The kids would not leave trash, they throw everything away. And I thought, I asked what do you guys do differently? Nothing. We just tell them, make sure you throw your trash. So if you want to ask me what the difference is, Chris, and I believe this very, very strongly. It's how and what you teach your children, irregardless of what race, but it just seems like, from what I've observed...and I don't know what it is, some people just don't teach their kids how to be respectable people in the community. They question authority, they tell you "I ain't gotta do that." I'm asking you, show a little bit of pride in your school, pick up after yourself, where some kids are more reasonable than others, and I believe that those things are taught, they start at home.

Sean gave another example about one student in particular:

So I'll share a quick story, we had a kid at Community HS this last year. He was there the last couple of years, and part of this year. At some point, we were able to convince mom that the school was not the best setting for him because he had anger. I mean, if he was just not in the mood, and you spoke to him wrong, he had oppositional defiance disorder which is if you tell a kid something and they don't take it as something they want to do they're defiant and how dare you tell me what to do? If you ask me it's a bunch of hogwash. It's just an excuse to let him...It's an excitement for them, but for the most part if we don't follow rules, we have chaos, right? And so, this kid would get into

some teachers' faces. And many times I would get him into my office and I would say, "look, I'm not disrespectful to you, but I don't understand why you're disrespectful to me." Well, it's because, 'I get upset.' I get it. I get upset too, but I'm not in your face. I'm upset right now and how you're talking. Within these walls, you're protected and you know that, I said if you do that to someone out there they can hurt you and you can't just go off on people because it could cost you your life. I don't care, this is who I am. And I said, no, you have to adjust and you will adjust, or you won't make it out there. Cause you can't talk to people and someone is telling you need to get in class and then you're "f" this and "f" you to your face. Where is everyone else? In class.

Sean stated that students and families were not taking responsibility for their actions. When questioned about the code of conduct, he indicated there was too much permissiveness:

I think that the big thing the lawsuit is trying to prevent, and we want everyone to have the same opportunities. The argument became exclusionary practices, if we take [students] out of the classroom, they're not getting the same opportunities as the other kids. And I get it, but...these kids, some of these kids, it doesn't affect them, the consequences don't faze them. I'll stand on this until the day I die, maybe some of these parents hold consequences, and some of them don't. The ones that know there are no consequences, they'll push the envelope as far as they can get it. And everyone tiptoes around, "oh, you don't want to piss off parents, you don't want to upset parents," but in all honesty the biggest part is that I've always felt that it was a partnership. It's the

school, it's the parents and it's the student. And I always felt that the school goes above and beyond, and a lot of the parents are missing in that triangular connection.

Sean's own personal experiences with his daughter at a local private school contrasted to what was happening at his high school:

...and my oldest daughter went to Kino High School and I remember going to parent-teacher conferences and it was standing room only. And the expectations that those parents have on their kids and you're going to this college and you're going to do this and that. Shoot, when it's ours we have our teachers call at least 10 parents to invite them to open house...crickets... there's a big difference. And that's my struggle, what is it? Why isn't that we can't? Maybe education...

Sean also felt that many students of color had priorities that did not fit the educational model:

Because I think we are just brought up differently. I mean, think about it, just as silly as this sounds. My buddy he lives out in Kino Canyon area, but he has a barber shop on the south side right across from Community High School. And his wife said, you know this doesn't make any sense. Why don't you get a barber shop closer to home? And this is on point bro, for whatever reason people on the North side and East side and whatever you can put a label on them, they are good with getting a haircut once a month. But if you go to the Southside a lot of Hispanics want to look good all of the time and they get a haircut every week.

I questioned Sean further about these claims. He reiterated that families have quite a lot to do with achievement and success:

No, we offer advanced learning placements, and dual enrollment [with the community college] and it is a struggle. There are those kids who have the support system and they get through it, and you have those kids that as soon as the going gets rough, they want to bail out because they don't want to do the work. I've said this a lot to my athletes when I was coaching, I am going to take these AP classes. I say okay but it's more work and more intense work and you're going to have to stay on top of it because if you're going to be in sports and you're going to have to practice and keep your grades up. So it's going to be hard when you let it slide and it's going to get ahead of you and [if] you're trying to practice you're going to put yourself in a hole. Right now, if you're going to do this, you're going to bust your butt. And I really believe that the opportunities are definitely there, one of my biggest frustrations as a coach, from my perspective, it wasn't the easiest place to coach. You know, we could have an amazing practice where I have everyone there, we worked on this, we're in good shape, we will work on it tomorrow, and tomorrow comes, only half the people show up and I think, what the heck? Once a kid asks me how come Kino is so good, they win the state championship in football and they're tough every year. Why is that? Why can't we do that? Why do you think? Because they're rich, huh? No, but let me tell you why I think they are good. Let's just say Saturday morning, their coach says or Friday we're all meeting here on Saturday to review film. How many do you think will show up? Probably all of them, and their

parents, in hearing that we need to make sure you get there at 7:30. Let's say coach said to you for football, alright guys I need everyone there at 8:00 Saturday morning, does everyone show up? He says, no. I said why not, they don't want to get up that early. He wants to teach the same mentality and that is the golden question. How do you change that? I know they're trying like crazy, but there are other factors that pull against it, you even have peers that say why are you even doing that for? Then you also have some parents who work hard and say to their kid, *descanse* (rest) instead of going to practice. "I think it's just a cycle. I think the number of Hispanics and blacks that get suspended is always going to be more. Why? Because I think we're just brought up differently.

Pedro Salas-High School Assistant Principal

Pedro has over 18 years as an assistant principal in various high schools. He was able to confirm some of the issues present in our schools with a unique perspective. He does not want to be a principal and enjoys his position.

Pedro was asked about the discipline in schools and made immediate connections to the outside world:

I think it's the same things that you're seeing in the news. I think that it's the same thing that you are seeing, those social inequities are still present. They're present in our society, and as much as we try to separate the social issues from school in the way that we say that we treat our students the same way that we have, that we don't see color, that we see

the people. I think that when you bring the social problems going on in the world, our students, they bring that out to the school.

He relayed some frustration with some of his colleagues and their pervasive *colorblind* attitudes:

Some of the attitude that we have that is just the relationships that we have with our students when some people say, “Well, I treat all the students the same because I don’t see color.” I go, “Well, you’re wrong because you do need to see the color. You do need to see the students that you are [teaching], and how they are different, and the needs that they have.

Pedro further communicated some of his experiences with other school administrators:

...and some of the administrators, it was more than one, that they come with this attitude when they first become administrators, that the first thing that they ask is, “How do I suspend kids, and what paperwork do I need to do?” That’s the attitude that they had. That’s the wrong approach... Wait, yeah, we are going to get there because it’s going to happen,’ I go, ‘but what are we doing for the kid? When you have that attitude that you’re thinking of our students,’ I go, ‘they already have a disadvantage.’ “They don’t have a chance.

Pedro communicated his view of how the code of conduct worked a couple of years ago and how it functioned today:

Well, like I said, if you look at the student guidance for rights and responsibilities from a couple of years ago, before that code of conduct came about, it was before when students were in possession of drugs, or they’ve had violence with fights, or with assaults, before,

you would suspend that kid out of school. You would suspend that kid for nine days out of school with a long-term hearing and with a longer suspension. That's how it was with possession and usage of drugs. Now, if you're in possession of marijuana or any other drugs, you get a one-day suspension, and that's if you agree to go to a drug prevention workshop at the district's office. I understand us trying to educate our students on the dangers of drugs, but I think that it also takes away from the consistency. You're right, about three years ago, that's when the students, you will have drugs in school, like a big bag of marijuana, and the student will tell you, "You know that you cannot do anything to me." The student will know, like I said, but it wasn't that the student was thinking that we were going to recommend him to go to a workshop or to learn about the dangers of drugs. It was more of, 'Nah, nah, nah, nah, nah, nah, you cannot do anything to me.'

Pedro even suggested that he had to overcome racism personally with some of his supervisors (principals):

I've had people telling me because of my accent, that I was going to favor the Mexican kids." ... To me, whenever I go somewhere with our staff, and I go, 'Hola,' or, 'Buenos días,' and things like that. And some of the teachers feel like, 'You're not in Mexico.' I go, 'I know, but look at your students.' I go, 'Look at the students that are in your classes.'

And that's what I'm saying. To me, that kid that keeps saying that you're going to be seeing me again because I'm not going to change, I'm like, that kid has no business in school. Whereas the other kid, even if I catch for the third time, and he goes, "Mr. I

know. I need help, but I need more than that,” and we find other resources for them. I’ll keep working with that kid. To me, that’s what I’m saying that it’s treating the person individually, working with the person. Like I said, we’re trying to do what is best, but what is best for the whole community, but when the district keeps saying that you need to help this kid in your class, and you’re having so many issues with that kid, that it’s evident that that kid is not there to go to school.

Pedro has done his fair share of advocating for students:

Well, now, my attitude changed through the years, where I saw that I’m there for student learning, and that my job is to adapt to my students, to their learning styles, not for them to adapt to my teaching styles. So, I think it’s that shift that we need to make, that we need to see the student as a whole where we address their needs and not address our personal needs, and that’s the way that I see discipline too. I think that we need to establish relationships where we are going to meet the student as a person and not just as an ID that is in our campus that is just going to be one of the bunch. I think that relationship, that’s what it starts with.

Pedro advocated for cultural awareness of students:

Like I said, with that administrator that I told you when she asked me, she goes, “How do I suspend kids?” I told her, I go, “That’s the wrong approach.” At that time, we had 47 languages spoken at our school, and I asked her, “Can you tell the difference between a Somali and a Somali Bantu student?” She goes, “I don’t even know what a Somali looks like.” I go, “Exactly.” I go, “But those are the kids that are going to be in your office.”

Then I said, “They can tell the difference when they look at each other.” I said, “I can’t, but it goes 3,000, 4,000 years back,” I said, “and there’s a lot of cultural differences between them.” I said, “You need to know who the kids are,” and I still feel the same way. I feel that we need to see the person as a whole, and not just as one of the bunch.

I asked Pedro to tell me about district training:

Like I said, to me, it’s not a bad thing to talk about racism because you’re bringing it out in the open, and you’re trying to meet where the other person is coming from. A lot of our teachers, like I said, I went, and I say that about 85% of our staff is white, but that doesn’t reflect our population. So, I don’t have an issue talking about race, and some people think that they don’t want to talk about it because they don’t want to be labeled racist. I go, “You need to talk about it so you can learn.” I said, “To me, I don’t see it as a bad thing. Somebody else may disagree.

I asked Pedro to share his opinion on getting out from under federal desegregation oversight:

I don’t think we’re going to get there. I know that’s what Dr. O. keeps saying, that it’s going to happen this year, that it’s going to happen this year, but like I said, not until where we see results, where it’s more equitable with our graduation rate, with our test scores, with our students attending university.

Pedro has a clear picture that discrimination existed in the district. When I asked him if there would ever be a system of restorative practices available only to students of color, he was quick to say, “never”. Although these practices were meant to help reduce and equalize suspensions, there were still twice as many students of color on the receiving end of discipline. When the

latest code of conduct was in development, parents were asked for feedback. Pedro reported the parents that were asked to participate were not the parents of students who needed advocacy, but the “agreeable and supportive” parents. He also mentioned that the students who took advantage of the drug workshops (part of the restorative justice program) were white. He also mentioned that white parents with more social capital and involvement in their child’s education “take advantage of what is offered” and ask, “what are you going to do for my son?” White students’ discipline incidents reduced significantly in the past five years (TUSD website, 2020).

District Compliance Coordinator-Kendra Mays

Kendra has a unique perspective as an employee within the district. Her title is Compliance Coordinator in the district. Currently, school administrators communicate with her when they are intending to impose discipline for a student:

My primary responsibility is to monitor student discipline, especially the exclusionary, to make sure that it’s fair and equitable.

Kendra had a specific view about why the district had so many issues with discipline. She offered three main reasons:

Reason number one is not everybody embraces the idea of having fair and equitable discipline for students. Another issue is that it’s been periods that administrators don’t investigate properly, especially when it concerns violations, including minority students...the approach is usually, honestly, guilty until proven innocent.

Training (of administrators) is almost a constant issue. I've always offered. I do trainings as much as I can, but I always offer to do one-one-one trainings with those new administrators. Many are resistant. Many who come from outside of the district try to carry on old practices from previous districts and are resistant to embracing our attempt at fair and equitable discipline. It's the belief that kids should be seen and not heard, and they're not afforded that ability or that right to defend themselves, or basically throw due process out of the window.

Kendra identified some of the discrimination that district personnel still practice. She pondered the effectiveness of restorative practices:

Restorative has, in my mind -- because I remember these kind of practices back when I was in elementary school myself. It was under a different name, but the process was similar, if not the same. Always, in elementary school, I can recall experiencing and being a part of you'd sit at the rug for circle time, and you talk, and everyone would have a voice, an equal voice, and people would talk about concerns with everyone having an opportunity to speak and hear, and it was always a safe place for the speaker. That was a common practice in my own elementary experience, and then when I started working for the district, seeing those practices in classrooms. It may not have been called restorative practices or restorative justice. It was more like classroom meetings that went part of the day every day. It's not a couple times a week. So, it's an old practice under a new name. It's just that it's not mandated, it's not embraced by a lot of people. Those people who don't embrace that, those are the ones that say, "You do the crime, you do the time." It's

a generational problem, but the issue is that a lot of teachers and administrators aren't mandated to change.

She elaborated about students' rights:

There's always been this 'us against them mentality' and the unfortunate piece about it is that that was the mindset many years ago that these people are afraid to evolve. They see that these practices don't work, but they're just so engrained and so habitual, they're not looking for change. They don't want to see change. They want to go back into the '50s, '60s, '70s mindset where the teacher and administrator was always right, and the kids didn't have a voice. They're holding facts to that, and that's not the reality and it's not right.

Kendra also criticized the accountability system for administrators who may have conducted inappropriate and discriminatory behaviors:

If conversations were had, if disciplinary actions have taken place, it's a very well-kept secret. Honestly, I don't believe anything happens, unless it goes almost viral, if you will. The only administrator, not even administrator, the only teacher I'm aware of this past school year who was held accountable for any kind of behavior was when at, I can't remember what school it is, when the teacher used the N-word in the classroom.

She also felt that the hiring system for administrators was inadequate:

Even if somebody gets through the interview process, and then they start showing their true colors later, actions can still be done. Letters of direction, letters of reprimand,

training. There's so many things that can be done, but TUSD chooses not to have them. There's no accountability, or let me say, very limited accountability.

Ryan Tolbert -Director of Desegregation

Ryan's position in the district was created by the Special Master, solely for the purpose of overseeing discipline and reporting to the superintendent. His responsibilities include collecting data for the courts, training for administrators and other district personnel, overseeing Restorative Practices, PBIS (Positive behavioral intervention supports), and the Code of Conduct.

Ryan's position affords him the opportunity to view some of the issues and barriers to compliance with discipline. He stressed that the district has made some important gains but disproportionality still exists and is difficult to overcome. He describes the growth as having "plateaued." He discussed his reasons why he thinks the discrepancy between white and students of color exists:

Number one, we've changed the student code of conduct. That was a dramatic change.

Number two, we've had high turnover in our administrators. In the 18 months I've been there, I've seen an incredible turnover in administrators. In the time I've been away from the district, it looks like it's been almost 100% turnover in administration. I think every time that happens, we're starting from square one again. We're trying to educate that new administrator, we're trying to make sure we maintain a robust Positive Behavioral Intervention Program (PBIS), and we're trying to get restorative justice implemented

with fidelity. So, I think that turnover has been an issue as well. I don't think kids are worse than they are 40 years ago. I don't think they're better than they were 40 years ago. I think we're still getting the same kids, but we've changed the ground rules, and I think this turnover in administrators has been really a factor in getting control of discipline.

Ryan also feels there is an issue with interpretation of the code of conduct across the district:

I think there's a difference in [how] the student code of conduct is interpreted amongst our regional (assistant superintendents). One regional may say, "I think this should be interpreted this way," and we get a different interpretation with another. Now, in their defense, they are trying to get of the common mindset. Last thing is I think we can get a handle on this if people would just call Kendra. We're not telling you what to do. We're just making suggestions. This is what we suggest you do with discipline. We've never had issues with that, any type of discipline that administrators called us with.

He identified additional problems with school administrator decisions about disciplinary practices:

Where we've really had issues is when they've gone off and done their own thing, and then things catch up with them. I think because of that, numbers are all over the place.

Angel Suarez-District Legal Counsel

Angel is legal counsel for the district. In 2010, when Angel started, the district had just been granted Unitary Status (later rescinded by appeal). He had worked with the Unitary Status

Plan and with various superintendents during those years to implement the USP. He aptly described his view of the court case and USP:

TUSD is unique in that TUSD has access to approximately \$55 million to go towards this case, and we use maybe 1/2 to 2/3 of it on actual desegregation, which people think of as moving [inaudible 0:03:52] around and getting integrated schools, but the other 1/2 to 1/3 is used on things that we all think are important for kids, like culturally relevant pedagogy, restorative practices, PBIS, The New Teacher Induction Program. So, from the beginning of the case, there are three phases in the world of deseg. The first phase was in the 1955 Brown case where people were just talking about getting black kids in the same school as white kids. Great, that's one step. By the 70s, like what happened with our case, parents started suing and saying, "Okay, you're saying it's not separate but equal, but the vestiges of the unequal system still exists. We have dilapidated facilities, bad textbooks, lower quality teachers, so we really need to eliminate the vestiges. Basically, resources, human and capital, that go with education, and make sure those are all equal." By the 90s, so that the next generation of parents were saying, "Even if we have the same resources as the white schools, we're not getting the same outcomes. There's still an achievement gap. There's still a discipline gap." What the Supreme Court did in two real seminal cases, *Dowell* and *Freeman*², was say, "It's not the school district's responsibility to

² *Board of Education of Oklahoma City v. Dowell*, 498 U.S. 237 (1991)
Freeman v Pitts, 503 U.S. 467 (1992)

guarantee equal outcomes because outcomes are determined by factors that are outside the control of the district like socioeconomics.

Angel had an optimistic outlook regarding the motivations of the parties in the district's consent decree:

It goes too far in that you could've just stuck to us doing a few things, but instead, you have us doing 50 things. The other perspective of that from black parents, brown parents, would say, "Amen. Thank God. Thank you, TUSD, for going a little bit further than you were required to." Particularly with the perspective that you have \$55 million, a lot of school districts don't have a \$55 million pot to implement their consent decree. A lot of them have to go to the state for that money. So, in a lot of senses, you could say the district could've had a smaller USP with fewer requirements, but then it would've been really hard to justify \$55 million, and we could've been talking about cutting that money in half, which would've cut resources to our kids. So, it's a double edge sword, and I've heard both sides of it for 10 years. I think both sides are right and both sides are wrong. So, me being one of the people that's been involved in this probably more intimately than anybody else on this earth from the beginning, I stand in a place that says the USP isn't good, and it's not bad. It puts a lot of challenges for a district, but at the same time, it comes with \$55 million, and that comes with the same kind of strings.

He also provided a clear picture of what motivates both plaintiffs and district administration:

If I'm the plaintiff attorney for brown parents or black parents, my perspective is look at all the positive change that has occurred in the district over the last eight years. That

change would not have happened if we hadn't been pushing and advocating the whole time. So, there's no benefit to my class for me to agree, and go home, and say, "Look, the district has done all these great things." The best thing for me to do is to keep pushing and keep advocating. Even if the district has done 100 great things in one area, I'm going to really harp on the five things they haven't done great because I see that as my job as the plaintiff's attorney. I got to keep pushing. On the district side, it's, "Hey, we need our school district back. We need local control back. We don't need to be going to lawyers in L.A. and a special master in D.C. in order to get permission to open a new school. That's ridiculous.

Angel believed that most of the resources were directed towards students of color, but it may not always be equitable:

I think there's some of that stuff, but I think the vast majority of the resources, of the flow from the USP are really directed towards brown and black kids. The problem is that there are a lot of things that are directed toward improving the whole district like PBIS and Restorative Practices. One step that keeps coming up over and over again is that the suspension rate for black students is now about the same as the suspension rate for white students was six years ago. So, it sounds like a great thing, but the suspension rate for white students has gone down faster than suspension rates for black students. So, the gap has gotten bigger. All of this money towards Restorative Practices and PBIS has been great to reduce the number of suspensions. It works for white kids too, surprise, but it works even better for white kids.

Discipline was an issue that emerged as a major issue in this desegregation case. It is distinct from the other issues for various reasons. Most participants in this study relayed that they had been unable to address the discipline disparity and there that there was no clear resolution in the case. Many of the individuals I interviewed stated that there was reluctance to implement the ideals of Restorative Justice and PBIS for these students (possible positive outcomes for students of color). Unfortunately, there are also some glaring instances of colorblind attitudes within the school administrator ranks.

Chapter 5-Analysis

The *green factors* originate from *Green v. County School Board of New Kent County* (1968). In that desegregation case, the court ruled that dual systems must be eliminated “root and branch” and included the areas that would come to be known as the “*green factors*” as a guide to eliminate segregation. These *green factors* are facilities, staff, faculty, extracurricular activities and, transportation. These aspects are used as a standard for school systems trying to achieve “unitary status” or fully integrated schools. “A unitary district is assumed to be one that has repaired the damaged caused by generations of segregation and overt discrimination” (Orfield, 1996, p.68).

Fisher-Mendoza v TUSD (1978) court case has entered its 42nd year of presence in the overseeing of the Tucson Unified School District’s (TUSD) practices. Initially, my investigation was focused on a few sections (or *green factors*) of the Unitary Status Plan (USP) in TUSD. The USP is a blueprint of how an equitable education is achieved for African American and Latino students. It is divided into nine interrelated sections. The USP document cites *Freeman v Pitts (1992)*, a case which denotes that **most** of the *Green factors* must be resolved before a school district is released from federal supervision. The court must be convinced that TUSD has eliminated “the vestiges of past discrimination...to the extent practicable” (USP document, 2020). The USP is divided into nine sections (*green factors* for TUSD) to help decide if TUSD achieve a unitary system of education:

1. Student Assignment

2. Transportation
3. Administrators and Certificated Staff
4. Quality of Education
5. Discipline
6. Family and Community Engagement
7. Extracurricular Activities
8. Facilities and Technology
9. Accountability and Transparency

These factors are to be addressed by the school district in the following ways (USP, 2020):

- Fully comply with court's desegregation decrees for a reasonable amount of time
- Eliminate the vestiges of the *priori de jure* segregation to the extent practicable
- Demonstrate a good-faith commitment to the whole of the court's decrees

When these elements are achieved and the court is satisfied, federal oversight can end, but a record of compliance should be taken into consideration (USP, 2020). In this study, I wanted to examine the role of *Interest Convergence* and how it connects with the desegregation lawsuit Fisher/Mendoza TUSD (1978) and the USP. With respect to the former, critical race theory

scholar Derrick Bell maintained that racial equality would only occur if the interests of whites also occur (Bell, 1980). In other words, social policies and laws that benefit minority populations will only come about when they also benefit the majority population.

Over the course of this study, many themes emerged from interviews with research subjects involved in the construction and implementation of the Unitary Status Plan in TUSD. During this time, a global pandemic broke out that continues to change our reality. The social and political context in which education was provided in the district was changed. In May 2020, national protests occurred over social justice issues after the police killing of George Floyd, an African American male. It is hardly a coincidence that discipline emerged as a substantial problem in TUSD. This chapter describes the challenges and conditions that impede the realization of the *Green* factors, and how interest convergence is both demonstrated and not demonstrated in the school district's discipline practices. First, I will describe the dilemma of the disproportionality of school discipline for African American and Latino students and identify some of the research related to the problem. This disproportionality has emerged as something constant, unsolvable, and problematic. Next, I will delineate the lack of progress in resolving the disparate disciplinary treatment experienced by students of color in the district, and a *willful colorblindness* from school administrators and personnel, arguably even from those seeking to achieve a more equitable system. Then, I will establish whether interest convergence plays a role in the implementation of school discipline policy and in the context of restorative justice. Lastly, I will introduce some of the theories of Brazilian educator and scholar Paulo Freire as a way to analyze my data, and briefly address some recommendations for practice.

In 2008, Unitary Status was granted to TUSD and federal oversight of court desegregation mandates were relinquished. In 2011, the plaintiffs in the Fisher v. Mendoza case appealed and Unitary Status was revoked and the judge ordered to “maintain jurisdiction until it is satisfied that the School District has met its burden by demonstrating – not merely promising – its good-faith compliance ... with the Settlement Agreement over a reasonable period of time” (USP, 2020). In 2012, a Special Master was appointed to oversee the USP, its implementation, and specifically address the *Green Factors* delineated in the USP. The district was ordered to provide a thorough data collection and analysis process that was to be submitted to the courts. Abruptly, TUSD had to prove that its discipline policies did not discriminate against students of color.

In chapter 4, Luis, a high school principal, described the sudden changes to the rights and responsibilities or code of conduct policies that attempted to rectify the disparities between students of color and white students:

It’s been a huge challenge on that. At the same time, what we’re balancing is that with permissive behavior or what we’re permitting to take place. So, it’s been hard because you’re trying to manage that while still making sure that you don’t tolerate fights and you don’t tolerate drugs in your campus.

The percentage of African American students’ percentage of discipline instances continues to double that of white students which is consistent with national data.

School Discipline

“What are you going to do when these little criminals spit on your face or cuss at you?” These words were spoken by a middle school assistant principal to a large group of administrators during a July 24, 2020 zoom meeting. He was referring to the requirement that students wear masks (because of pandemic) and how enforcing this requirement related to discipline policies. He continued to rant, “The inmates are running the asylum.” His mentality is consistent with the themes that have emerged from this study.

In 2011-2012, 3.5 million public school students in the United States were suspended from school and 130,000 students were expelled (Civil Rights Data Collection, 2020). Black students were three times more likely to be suspended and expelled than their white counterparts (Mediratta & Rausch, 2016). There is substantial research and documentation regarding the disproportionalities regarding school discipline (Khalifa & Briscoe, 2015; Noguera, 2003; Rumberger & Losen, 2016). In TUSD, the percentage of suspended African American students has doubled that of white students. Even when there was a drastic drop in the number of suspensions, the disparity remained (TUSD website, 2020),

Mediratta and Rausch (2016) explain the *myths* of why black students are suspended disproportionately:

1. Student behavior is growing worse.
2. Exclusionary discipline is necessary to maintain safety and order.

3. Poverty, not race, is the main reason for disparities in discipline.
4. Disparities are caused primarily by conditions in under-resourced schools.
National data have shown that, even in districts with challenging conditions, some schools make choices to reduce the use of exclusionary discipline (Losen, 2015).
5. Discipline disparities result from the cultural norms that students bring to school.
The cultural explanation myth has been explored and debunked in recent years (Noguera, 2003).
6. Interpersonal bias on the part of educators towards students. Although educators play a part, it isn't the sole driver of disparities.

Skiba, Arredondo, Gray and Rausch (2016) wrote a comprehensive chapter describing what causes the discipline disparity. The authors immediately removed factors that were cultural, associated with economic inequality, or misbehaviors in school as indicators of the disparity (p. 24). They assert that school practices contribute significantly. The researchers, "...found that while the type of infraction, student characteristics such as principal perspective on discipline were stronger predictors of racial discipline disparities than type of behavior or student characteristics, suggesting that efforts to reduce disciplinary disparity may be more effective if focused on altering school factors" (p. 25). Disparities were found to begin at the classroom where African American students are more likely to receive discipline referrals (p. 25). At the administrative office level, African American and Latino students were more likely to receive

suspensions and more serious consequences (p. 25). The authors relay that the role of implicit bias and stereotypes play a role in discipline disparities. Teachers and administrators presented vast differences in the way they viewed and treated African American students and their behavior compared to white students (p. 26).

There are short- and long-term consequences of discipline disparities. It isn't surprising to find that removing students from school because of alleged infractions correlates with negative academic outcomes (Skiba, Arredondo, Gray & Rausch, 2016). Students who received out-of-school suspensions were more likely to fail their academic classes. They were also 20% more likely to drop out of school (p. 26). A risk factor for future contact with the justice system was found to be significant for males suspended for ten days or more. Suspension and expulsion tripled a student's likelihood of contact with the juvenile justice system (Shollenberger, 2015).

There is substantial research on the school-to-prison pipeline. This phrase describes the phenomenon where students who are repeatedly suspended or expelled have an increased likelihood of dropping out of school and ending up in the justice system (Wadhwa, 2015). Another Texas-based analysis demonstrated the enormous economic impact that discipline has on students in that state (Rumberger & Losen, 2016). The authors conclude,

This study found that there are substantial economic costs to suspending students, as students who receive suspensions are more likely to drop out of high school. At the national level, suspensions increased the number of dropouts by more than 67,000, which cost taxpayers more than \$11 billion. Cutting the suspension rate in half would save taxpayers \$5.5 billion. In

California, suspensions increased the number of dropouts by more than 10,000, which cost taxpayers more than \$1.88 billion. In Florida, suspensions likely increased the number of dropouts by 3,400, costing taxpayers more than \$500 million. This particular study demonstrates emphatically that suspensions impose large fiscal costs and that reducing suspension rates would reap substantial savings for taxpayers (p. 22).

Zero tolerance policies have played a role in school discipline since the 1970's. Zero tolerance is defined by the U.S. Department of Education as a policy that "mandates predetermined consequences or punishments for specific offenses" (Wadhwa, 2015). These policies have been linked to nationwide drug policies, gun policies, and to many minor incidents (p. 5). There are numerous examples of students suspended for incidents that appear negligible. Recently, in an Apache Junction High School in Arizona, a student was suspended, cuffed, and arrested for refusing to take off a bandana (Sole, 2020). Similarly, a Latino student from Phoenix, who was defending himself and had never been in trouble received a ten-day suspension and missed a crucial music performance (Altavena, 2019). A thirteen-year-old Mesa student was suspended for an entire half of a school year for using a vape pen (Altavena, 2019).

In another study on disciplinary practices, researchers spent time in four Texas school districts examining discipline practices in high schools (Khalifa & Briscoe, 2015). These school districts, not under desegregation orders, resisted handing over discipline data to the researchers. Although the districts initially agreed to be a part of the study, resistance was given and supported by upper administration. Subsequently, the districts continued to resist participation in

the study and used resistant discourse to protect racist disciplinary practices. The administrators from these districts used the following strategies to maintain racist practices (p. 21):

- Purposeful ambiguity to show how discipline data was calculated.
- Defensive technical strategy by comparing their data to other districts.
- Ambiguously giving non-specific strategies regarding how disparity is addressed.
- Stating that there are many other social issues being addressed and there is no time for this issue.

These *colorblind* strategies are evident in this study and similar to some attitudes in the Tucson Unified School District where I conducted my research. In the Texas study, the authors use the term “willful blindness” to describe the resistance.

Implicit bias is “deep-seated attitudes that operate outside conscious awareness—that may even be in direct conflict with a person’s stated beliefs and values” (Carter, Skiba, Arredondo & Pollock, 2016). For example, researchers refer to slavery and conquest as the origin of perceived biological differences (p. 209). Many of these stereotypes remain today, specifically, the “dangerous black male” trope (p. 210). The authors describe the perception that these males needed to be controlled and a common depiction of black men as rapists or violent criminals. These stereotypes and implicit biases exist today and are known to play a part in school discipline disparities.

Colorblindness

Colorblindness is a form of strategic racism that became readily apparent in my investigation. Sean Rivera, an assistant principal, surprised me when he clearly articulated some obvious *colorblindness* frames although in his interview he was careful to avoid overtly discriminatory language. His dialogue matched the ways Bonilla-Silva (2002) describes the manifestation of racism even while avoiding its appearance. Sean avoided using racist language and suggested that race had nothing to do with opportunity. For example, he commented about students and their work ethic,

[W]e offer advanced learning placements, and dual enrollment and it is a struggle. There are those kids who have the support system and they get through it, and you have those kids that as soon as the going gets rough, they want to bail out because they don't want to do the work."

Sean demonstrated the use of colorblindness in all of Bonilla-Silva's *frames* of racism.

Minimization of racism

Sean minimized the idea that race or racism played any part in school discipline. He stated:

To be totally honest, I wouldn't even look it as a race issue as much as an age difference, and the differences in discipline or the issues." Like other administrators I interviewed, he argued there was no disparity in discipline practices with black students in the district

because there were so few of them compared to Latinx, Native, or White students in the district: “If you have five black kids at your school, and one always gets into trouble, you are going to have 20% of your black population, of course it’s going to look high.

Because even 10% of the Hispanic students who are getting in trouble, it’s going to be more students, but less, percentage wise. So, it’s deceiving. You have to be realistic and look at the numbers.”

Other administrators expressed a similar sentiment, citing that African Americans make up only 3.6% of the total student population.

Naturalization

The frame of *naturalization* also was apparent in my interview with Sean, who ascribed the sole responsibility for discipline incidents to the student:

[T]he interesting thing was that it wasn’t looked at as a race thing. And that’s always been my thing, is that I never, well, let’s see, I’ve gotten this many, if you did-as corny as it sounds-if you did the crime you’re gonna do the time, whether you’re purple orange or black, it didn’t matter.

Abstract Liberalism

Sean’s *abstract liberalism*, which hides his beliefs through discourse were apparent when he discussed what exclusionary practices meant:

I think that the big thing the lawsuit is trying to prevent, and we want everyone to have the same opportunities. The argument became exclusionary practices, if we take [students] out of the classroom, they're not getting the same opportunities as the other kids. And I get it. But some of these kids, it doesn't affect them, the consequences don't faze them. And ... I'll stand on this until the day I die, maybe some of these parents hold consequences, and some of them don't, and so the ones that know there are no consequences, they'll push the envelope as far as they can get it. And everyone tiptoes around ... [saying] "oh, you don't want to piss off parents, you don't want to upset parents..."

Sean indicated that he comprehended potential problems with discipline practices at his school, but nonetheless shifted the responsibility for questionable behavior onto families and the students.

Cultural Racism

Sean is a Latino male assistant principal who had some surprising views about the students and their families who shared his ethnicity. He was unable to see the school's role in the promotion of equitable education and often shifted that responsibility to the parents and students. He questioned the families and their commitment to education by using non-discriminatory language and stories. He told a story about students and litter and made the point that parents from a more affluent school

teach their children...to be respectable people in the community.” Sean also felt that students from the minority populated schools “questioned authority” and did not “show pride” and were “not reasonable”. He ended this account about appropriate behavior by declaring, “I believe that those things are taught, they start at home.

When discussing the discipline of students he continued to blame them and their families, In honesty, the biggest part is that I’ve always felt that it was a partnership, It’s the school, it’s the parents and it’s the student. And I always felt that the school goes above and beyond, and a lot of the parents are missing in that triangular connection.” He faulted the families and the culture of the families, questioning their values: “And the expectations that those parents (at affluent private school Kino) have on their kids and you’re going to this college and you’re going to do this and that. Shoot, when it’s ours we have our teachers call at least 10 parents to invite them to open house...crickets... there’s a big difference.

According to Sean, the students’ work ethic was also implicated:

...We offer advanced learning placements, and dual enrollment and it is a struggle. There are those kids who have the support system and they get through it, and you have those kids that as soon as the going gets rough, they want to bail out because they don’t want to do the work.

Colorblindness about students and their families at Sean's school affected the disciplinary decisions made there. This matches some of the research about administrators and their bias (Skiba, Arredondo, Gray and Rausch, 2016). I interviewed other administrators, district personnel and plaintiffs who confirmed that many administrators showed bias towards their students. One administrator commented, "The first thing one administrator wanted to know when they [arrived in the district] was 'how do I suspend students'?" The common sentiment was focused on punishment, rather than how to help students they did not yet know. Luis Casillas, a high school principal, relayed he was also struggling with what he called the "permissiveness" of students' behaviors. His personal beliefs and the principles with which he was raised were not congruent. He believed he was in the middle of a process of becoming more aware of himself and his beliefs, but still had difficulty reconciling this awareness with the disciplinary practices he was familiar with.

District compliance liaison Kendra Mays confirmed much of the implicit bias and *colorblind* attitudes that were prevalent in the administrative ranks. She clearly stated, "...not everybody embraces the idea of having fair and equitable discipline for students." Kendra asserted that many students were unfairly treated and that they were, "...guilty until proven innocent." She was convinced that discrimination exists in the district and contended that a commitment to restorative practices was insubstantial. Kendra believed that there was not enough oversight of the individuals who disciplined students unfairly. Her position in the district gives her the opportunity to work with most administrators. She believes that there are issues with hiring and new administrators, "...somebody gets through the interview process, and then

they start showing their true colors later...” She states that there are principals that come from other districts where discipline disparities are not monitored and there is not a good understanding of the district’s process, goals and the desegregation order. Corroborating the idea that there are concerns with new principal hires was Ryan Tolbert, desegregation director. He contends,

In the time I’ve been away from the district, it looks like it’s been almost 100% turnover in administration. I think every time that happens, we’re starting from square one again. We’re trying to educate that new administrator, we’re trying to make sure we maintain a robust PBIS program, and we’re trying to get restorative justice implemented with fidelity.

In many parts of Arizona, there are similar types of disparities (Nunez-Eddy & Brobert, 2020). Administrators who move to other districts do not always realize that there is a high level of monitoring and accountability in the district. Often, there is a level of frustration and a lack of understanding of what is expected.

Levels of Resistance

I contend that there are levels of resistance that begin at the classroom level. The first level of resistance is delineated in research indicating that students of color are referred more often to the principal’s office (Monroe, 2005). Teachers’ views of the decisions they make concerning the behavior of African American students in the classroom rests on two tiers (p. 46):

- A strong emphasis on controlling student behaviors.
- Discipline is extreme or severe.

Additionally, Monroe states there is little effort committed to using nonpunitive techniques by the teachers.

The second level of resistance comes from the school administrator rank, which I demonstrate in this study. There is tremendous concern from other participants that the district school administrators did not support reducing discipline disparity. This study supports the idea that there is a *willful blindness* (Khalifa & Briscoe, 2015) by school administrators to remedy the disparity in school suspensions. *Willful blindness* is defined as a manner in which school administrators avoid issues of racism by using discourse, the bureaucratic systems, and particular leadership practices to maintain racist practices in schools (Khalifa & Briscoe, 2015). *Willful colorblindness* is a blend of Khalifa and Briscoe's concepts and Bonilla-Silva's frames (2002). The blend occurs when there is coded language that is purposefully racist when discussing students. In this study, I encountered administrators who seemed unwilling to confront their implicit bias and *colorblindness*. The *willfulness* comes from an unwillingness by administrators to confront their bias or "lose control" of their environment.

The third level of resistance comes from the district administrative level. This study can identify the viewpoints of not only current administration, but also past leadership. The willful defiance and colorblindness are evident. Miguel Orta, a top administrator in the district, admitted

that there was an antagonistic relationship with the plaintiffs before his appointment. He felt that the position of *Special Master* was akin to a “shadow superintendent,” who shared administrative responsibilities with the federal court. The resistance comes from resentment that district staff might never escape from federal oversight, in part because of the attitudes of the plaintiffs. Miguel believed that the plaintiffs assumed that the district would return to pre-desegregation policies as soon as federal oversight was completed. The plaintiff representatives I interviewed, in fact, expressed those sentiments. Still, a serious lack of trust between the district and the plaintiffs was evident. The district in particular seemed unwilling to trust the plaintiffs. Consistent with research concerning the re-segregation of schools (Orfield and Frankenberg, 2013), fear about satisfying the terms of the Unitary Status Plan appeared justified (see chapter 2).

There is concern regarding suspension disparities throughout Arizona (Altavena, 2019). The compulsory nature of federal oversight does not diminish the level of resistance displayed by district staff. Interviews with plaintiffs indicated a willful non-compliance on the part of district officials. Olivia, the Mendoza plaintiff representative, conceded that while some compliance with the plan had been attempted, it was still inadequate. She believed that many of the district’s leaders were enthusiastic about the need to make changes and fulfill USP requirements. She complained, however, that this eagerness died out after six months to a year after starting position. Said Cecilia, “Then, all of a sudden, we’re the enemy.” She had seen resistance throughout the years and felt certain the district would return to its “old ways” if federal oversight was lifted.

District legal counsel Angel reported that there had been much progress toward compliance. He understood the perspectives of the plaintiffs and the district alike. The former needed to see how much progress had been made, and the latter needed to regain local control. Angel agreed there were financial challenges stemming from the \$55 million budget. He contended that such a substantial amount was accompanied by considerable oversight and obligations to the USP.

Interest Convergence

Derrick Bell (1980) suggested that the *Brown v. Board of Education (1954)* decision in favor of desegregation was based on white interests and not the plight of people of color. He explained that the United States needed to soften its stance on racism to politically appease third world countries during the cold war. Also, the courts were sympathetic to people's fears of a potential uprising by African Americans. He surmised that whites would tolerate and advance the interests of people of color only when they promote the self-interests of whites. Bell called it *interest convergence* to demonstrate that convergence of self-interests would result in progress for people of color.

Milner (2008) advances that there is a "loss-gain binary" within the theory of *interest convergence*. The suggestion is that people in power would lose something if people of color gain anything. Milner states, "the ability, will, and fortitude of Whites to negotiate and make difficult decisions in providing more equitable policies and practices might mean they lose something of great importance to them, including their power, privilege, esteem, social status,

linguistic status, and their ability to reproduce these benefits and interest to their children and future generations” (p. 334). He goes on to refer to property of Whiteness (Harris, 1993) and its possible depreciation if policy works for people of color. Using Ladson-Billings and Tate’s (1995) ideas that there is intellectual property in curriculum and resources in school, it sets up the binary that only particular students will have that property. The fear or threat of white people’s status drives this binary system that only allows some students to “develop, acquire, inherit and earn more elaborate forms of property and, consequently, transcend poverty and racial oppression, for instance” (Milner, 2008).

Considering what is needed to achieve equitable conditions, it seems almost impossible to find that convergence of interests. Milner believes that the theory of *disruptive movement* is to “ultimately locate spaces of negotiation” (p. 339) where interests intersect. Milner (2008) advances the 5 tenets of successful intersections of interests through *disruptive movement*:

1. Small group of people and a convergence of their interests should be brought together before brought to a larger organization.
2. There must be a recognition and reliance on the contextual nuances that can shape convergences.
3. Movements are proactive, reactive, and predictive. The movement can take many forms.
4. Movements must be for the collective, not the individual.

5. Movements must require long-term commitment and consider the past actions, present context, and future consequences (p. 341).

There have been possibilities for interests to converge in the district. Raza Studies was a program designed for all students that applied social justice ideology and to give them an opportunity to construct counter-narratives through self-documentation (Cammarota, 2014). The program was never intended only for one group of students; in fact, it was promoted as a program that successfully served all students. It was created as “a curricular experience that would counter the oppressively reproductive nature of traditional curriculum” (Romero, 2008), and its “primary intent is to construct a curriculum that is empowering, counter-hegemonic, and that fosters the development of a critical consciousness” (p. 212). Introducing a racism-conscious curriculum would create some cross-cultural understanding for students. White students were encouraged to participate, and success was evident. Students were scoring higher on standardized exams and many believed that they were better prepared for college (Romero, p. 260-277). In April 2010, Governor Brewer signed HB 2281 into law, eliminating ethnic studies programs. Tom Horne, leader of the attack on ethnic studies, was able to use colorblind ideology to dismantle the programs (Cammarota, 2014). Unfortunately, the refusal to acknowledge that ethnic studies are essential for all students uprooted and eliminated the program. The interest of maintaining the greater colorblindness ideology as legitimate was larger than the interests of the students.

Dual language programs have often been mentioned in the research as examples of *interest convergence* (Valdez, 1997; Cervantes-Soon, 2014; Burns, 2017; Palmer, 2010; Freire, Valdez & Delavan, 2017; Morales & Maravilla, 2019; Kelly, 2018). Although dual language programs have been promoted for their cross cultural and academic goals, there is much documentation about who benefits. There are sites for research within TUSD that can be examined for their specific *Interest Convergence* situations. As part of the USP (Unitary Status Plan), there are recommendations for opening more dual language programs across the district, including the most recent program placed at an east side school where Latinx students represent a minority at the school. Valdes (1997) was one of the first to express concern about dual language programs and power dynamics. Considering that dual language programs use minority students as teaching resources in the program, she questions who benefits from the “resources,” especially their linguistic resources, which aren’t valued in other spaces. Morales and Maravilla (2019) succinctly discuss the nature of power dynamics of dual language programs and map out the possibilities or *interest convergence* of Latino families and White families. Angel Suarez, legal counsel to the district, mentioned the possibility of white students benefitting from the dual language programs developed in the district. He also spoke of the advantages that some white students receive by taking advantage of busing for magnet school opportunities. Dual language policies within the Unitary Status Plan are possible sites for additional research.

Magnet Schools are a clear example of interest convergence. Students are provided transportation to integrate schools. Angel Suarez, the district’s legal advisor, commented that magnet school afforded white students the same opportunities as students of color:

So, I think there's a lot of things in the USP that white families can look to, even though on the surface, it seems it's only directed towards brown and black kids, there's a lot of white families benefiting from the USP. Free transportation to a Magnet school if you're a white family is just as beneficial as it is for a brown or black family.

The funding of magnet schools makes them more appealing for students of color as well as white students. Often, schools are struggling to attract white students to meet integration mandates. In some instances, not being able to stay integrated hurts the magnet status of schools. In turn, this also affects minority students. While some of the funding attached to desegregation efforts remains intact, not all of it does.

Interest Convergence and Discipline

On September 20th, 2009, journalist Doug MacEachern wrote an article for the Phoenix-based newspaper, the *Arizona Republic*. In this newspaper, he describes his experience at a conference hosted by TUSD's Mexican/American Raza Studies program named the Annual Institute for Transformative Education Summer Seminar. The seminar focused on the district's plan to implement restorative justice. MacEachern writes, "The board is calling for a two-tiered form of student discipline - one for Black and Hispanic students - one for everyone else. With the goal of creating a 'restorative school culture and climate' that conveys a 'sense of belonging to all students,' the board is insisting that its schools reduce suspensions and/or expulsions of minority students to the point that the data reflect 'no ethnic/racial disparities'" (p. 11). MacEachern continues to explain that students will receive discipline based on the color of their

skin. He also uses *colorblindness* rhetoric to describe a “race obsessed governing board ... program run by TUSD’s happy band of unrepentant political leftists”, and “racial bean-counting to preposterous extremes” (p. 11). MacEachern’s perspective is, at worst, demonstrative of another level of resistance for improving the disparity in discipline. The fear of losing the privilege, status, but mostly the reproduction of whiteness through schools is at stake. Keeping the advantage over students of color through unfair discipline practices is a part of the reproduction of whiteness. It did not matter to MacEachern that most people of color are not asking for an advantage or even a two-tier system, they only ask for an “equal chance.”

Such is the safeguarding of the value of whiteness that the superintendent at the time believed she needed to respond to in a guest editorial in the *Arizona Republic* (Celaia-Fagen, 2009). She advocated that the restorative practices and advocacy were directed at Latino and African American students because they are the named groups in the original Fisher-Mendoza lawsuit, but also that it should also include all students. She explained that other student groups would not be discriminated against, as MacEachern suggests. The safeguarding of whiteness would never allow a two-tier system of discipline, even if that was the true way to equity. The interests do not converge in this instance because white students and whiteness have nothing to gain. Any form of actually addressing disparities are simply done away with by using the “reverse racism” argument.

Examining the disparity in discipline practices through the lens of CRT and *interest convergence* it is necessary to talk about Restorative Justice. Restorative Justice, along with

PBIS (Positive Behavioral Intervention Supports), is part of the district's plan to address racial disparities (USP, 2020). Restorative Justice involves the following goals (Sharpe, 1998):

- Put key decisions into the hands of those most affected by crime.
- Make justice more healing and, ideally, more transformative.
- Reduce the likelihood of future offenses.

Achieving these goals also requires participation of victims as well as their satisfaction with the program, and offenders' understanding of how their actions have affected other people.

Offenders take responsibility, the outcomes repair harms and both offenders and victims get closure (Zehr, 2015). Restorative practices have been around since the 60's and 70's. There are many models, but three tend to dominate the implementation of restorative practices (Zehr, 2015): victim offender conferences, family group conferences and circle processes. Three things need to occur to resolve wrongdoing:

1. Wrong or injustice must be acknowledged.
2. Equity needs to be created and restored.
3. Future intentions need to be addressed.

Restorative Justice works alongside PBIS. PBIS is described in the USP (p. 44) as a set of strategies and structures to assist schools to establish a positive school culture by constructively teaching school rules and social-emotional skills; positively reinforcing appropriate student

behavior; using effective classroom management strategies to provide early intervention for misbehavior; and developing a continuum of graduated and appropriate consequences for more serious and continuous misbehavior.

The USP requires that each school designate a coordinator of restorative practices. Additionally, each school must follow the code of conduct and community involvement must be part of the process for development of the code.

Every member of the administrative and certified staff is trained in Restorative Justice practices. The USP assigns responsibilities to the district for professional development of these ideals:

“(a) defining, teaching, modeling, and consistently applying positive behavior approaches inside and outside the classroom; (b) acknowledging and reinforcing appropriate and positive student behavior; (c) providing constructive feedback to students when behavior concerns arise, and using such positive feedback and skill-building to address all low-level misbehaviors; (d) working with relevant school and District personnel to ensure that appropriate intervention techniques have been attempted before referring a student to the school site discipline administrator(s); (e) participating in trainings to build and sustain a positive school climate and to reduce and address racial and ethnic disparities in the administration of school discipline; (f) regularly entering, uploading, reading, and responding to data via Mojave; (g) utilizing data in collaboration with school site and District administrators to monitor student behavior; and (h) responding appropriately to data outcomes, particularly where data show disparities in the

administration of consequences on any prohibited basis including participating with supervisors in the development of corrective action plans” (p. 46).

There are two more functions stated in the Unitary Status Plan regarding discipline: monitoring and reporting. Data regarding discipline is collected, reviewed, and analyzed by every school by a discipline team. Annually, the district must submit a report with discipline statistics.

Most of the participants in this study believed that the district’s restorative practices training did not have a significant impact on administrators. Kendra Mays was quick to point out her contention that administrators don’t really believe in restorative justice. She notes that the concept has been around for years, but she has noticed that it is not practiced regularly. Kendra notes there is much resistance, even if the administrators’ own practices are not working.

My personal experience is that a quarterly one-hour training is not adequate to implement a program that is so important. Additionally, the training has had mixed results for various reasons. First, it is scheduled after school on a Wednesday, after a long day of teaching, which causes some resistance for practical reasons. Second, the training was non-specific and didn’t have an engaging purpose for teachers. Finally, it did not call on teachers to be responsible for their actions and change general practices.

Vaught and Castagno’s (2008) study of teacher attitudes and structural racism is relevant to our understanding about implementation of restorative justice. Although there are trainings,

conversations and commitment to this program, there is very little change to the ideological structure of racism in the district. My study also indicated that administrators' responses displayed a similar resistance and reinvention of a racist framework. Students are blamed for not taking advantage of advanced placement courses, their culture is blamed for their behaviors and most importantly, their perceived lack of action towards structural changes is strengthened as disparities continue.

Restorative justice is considered to be the response to the discipline disparity. Even as suspensions were significantly reduced, African American students' suspensions still doubled that of White students. Of the African American population in TUSD, 12.03% were suspended in 2018-19 school year compared to 6.78% of the population. There were 8,742 Latino students suspended in 18-19 school year compared to the 3,216 White students suspended.

Additionally, administrators were asked about some of the restorative practices implemented in schools. Subjects were asked to describe the students utilizing drug counseling or alternatives to suspension which are part of the restorative practices. All responded that White students or some of the privileged students (highly involved parents) were the students who were able to take advantage of the policies. Angel, legal counsel, admitted that white students were suspended less often and reduced discipline occurrences.

The implementation of restorative justice does demonstrate a form of interest convergence. There is a vested interest in reducing discipline disparities. Angel Suarez, district lawyer, is very explicit describing the uniqueness of TUSD:

TUSD is unique in that TUSD has access to approximately \$55 million to go towards this case, and we use maybe 1/2 to 2/3 of it on actual desegregation, which people think of as moving around and getting integrated schools, but the other 1/2 to 1/3 is used on things that we all think are important for kids like culturally relevant pedagogy, restorative practices, PBIS (Positive Behavioral Intervention Systems), the New Teacher Induction Program.

It became clear that the \$55 million associated with the Unitary Status Plan is an important part of the actual implementation. Suarez contends that the USP would most likely be smaller in scale if the amount of funding involved were less:

Any big chunk of money you get is going to come with a bunch of strings and challenges, and the USP is no different.

If the district were to achieve unitary status, it would nonetheless retain the \$55 million. Interest convergence thus exists when TUSD is granted unitary status. That is, the district implements practices such as restorative justice, PBIS and magnet schools that benefit students of color and at the same time, retains the funding without the yoke of federal oversight. Eliminating the disparity in discipline was not the priority with the practice of restorative justice. It only became a priority when the court made it compulsory. There is a convergence of interests if the court were to grant Unitary Status and relinquish federal control. The district would improve disparities, keep \$55 million and have full control of decision making in the district. The district has a financial and administrative interest in reducing discipline disparities.

Although there is some convergence of interests when White students' discipline infractions were significantly reduced, equity was still not achieved. An important part of managing some of the implicit bias and colorblindness is an integration of beliefs of teachers and administrators. Restorative justice is designed with the principle that a student's inherent sense of worth is restored, maintained, or nurtured. Using restorative justice as a form of managing student behavior is a premise that is not in the true spirit of the concept. Using restorative justice, in this manner, can be considered a misuse of power in the relationship between adult and teacher. Power relations play an important part in the discussion of successful restorative justice concepts. Equity must be a part of the framework in order to have sustainability (Vaandering, 2010).

Post-colorblindness

Zeus Leonardo and Ezekiel Dixon-Roman (2020) put forth the idea that that there is a *post-colorblindness* manifesting itself during current times. Whereas *colorblindness* uses covert language and attitudes where racism manifests itself, *post-colorblindness* occurs when “whiteness attempts to construct itself as just another racial experience (even victims of racism); that is, whiteness is not superior to minority groups but arguably a minority and marginalized group in its own right” (p. 1386). These new emboldened nativist views have been demonstrated through marches of white nationalist groups who use extreme and sometimes violent behaviors to communicate their white identity politics, their claims of being the minority, and their need for recognition.

I assert that post-colorblindness is invading all aspects of life, including the educational sphere and philosophy. Kendra, the district compliance liaison, is adamant that resistance is normal:

There's always been this us against them mentality and the unfortunate piece about it is that that was the mindset many years ago that these people are afraid to evolve. They see that these practices don't work, but they're just so engrained and so habitual, they're not looking for change. They don't want to see change. They want to go back into the '50s, '60s, '70s mindset where the teacher and administrator was always right, and the kids didn't have a voice. They're holding facts to that, and that's not the reality and it's not right.

I assert that there is even more resistance to addressing the discipline disparity and an ability to accommodate students by forming relationships with them during this time. The USP and its mandates are **compulsory**. There are many school districts across Arizona that have tried to address the disparity of discipline for students of color. There aren't many that have a desegregation lawsuit and USP looming over districts that force the hand of school personnel to adopt practices that help students of color. Even with the compulsory nature of these practices, there is resistance. Angel, legal counsel from the district, believed that the USP could be used as a *tool* to improve the district. Not one of the other participants expressed this sentiment. Mostly it is seen as an impediment to the daily administration of schools and a school district.

Unitary Status

Orfield and Eaton's (1996) book *Dismantling Desegregation: The quiet reversal of Brown v. Board of Education* demonstrates the failure of desegregation practices. Courts have enabled the return to racially segregated schools throughout the country. For example, *Board of Education of Oklahoma v. Dowell* (1991) released the school district from its mandated desegregation plan and subsequently, the school board voted to return to neighborhood schools, segregating the district once again. In addition, a federal court in *Freeman v. Pitts* (1992) set the precedent that not all of the Green factors had to be met in order for a school district to be released from federal supervision.

Orfield and Frankenberg (2013) explore policies and programs enacted to further segregate schools. Policy changes like charter schools, choice transfer policies and the distribution of public funds to private schools further widen the gaps in the delivery of equitable education for students of color. The authors demonstrate that once school districts are released from federal supervision, the trend is to return to segregated neighborhoods for students of color. Orfield (1997) discusses decisions made by school districts after achieving unitary status in the following in his chapter "Turning Back to Segregation":

With local authorities expressing innocence and the courts inclined to accept any professed educational justification regardless of consequences, minority plaintiffs face overwhelming legal obstacles when they try to prevent resegregation and other racial

inequalities. Many of the very same actions that were illegal prior to unitary status declaration becomes perfectly legal afterward.

With respect to the present study, it is probable that once a decision for unitary status is declared for TUSD, there would be a return to pre-desegregation policies. Considering the adversarial attitude towards the “shadow superintendent” that is federal supervision, it is likely that policy decisions will not reflect equity for all students.

Clearly, the environment in the United States is not inclined for change that benefits students of color. On October 14, 2020, Senator Lindsay Graham from South Carolina said during Supreme Court confirmation hearings for Amy Comey Barrett, “the good old days of segregation” (Fandos, 2020). This comment was preceded by other colorblind type of comments, followed by a swift denial of racism.

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