Race and Uncertainty*

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ABSTRACT

There is a saying among African Americans that “things were better in the South, in the old days, or both.” This statement is often justified with “things were better then because you knew where you stood.” I am putting together economic and psychological models of this sentiment, emphasizing the idea that in a world with less uncertainty—even if there was more prejudice—individuals who are subject to discrimination may be able to optimize their behavior more effectively than in a world with less prejudice (though still some) and a lot more uncertainty. Thus an African American who knows that her boss is not prejudice against blacks might have good incentives to invest in her job, feeling that initial hard work will be rewarded in the long-run with the greater likelihood of promotions and increased future wages. And while an African American who knows that her boss is prejudice against blacks will have reduced incentive to invest in that job, she is still in a position to optimally allocate her time between her job and home (or between that job and other jobs) to maximize her overall welfare. Furthermore, since everyone knows that the boss is not going to promote her because of her race, her lack of effort or achievement is rationalized as a sensible strategy given the unlikely return on her investment. Hence knowing what she stands to gain (whether it’s good or bad; fair or unfair), she is able to make choices that lead to her best outcomes given the state of the world, and her actions and behaviors are easily understood as rational choices rather than dysfunctional characterological manifestations. But when things are less certain—when, for instance, she simply cannot tell whether her boss is prejudice against blacks—then optimizing her outcomes becomes more difficult. As a safe strategy, she might invest a little at work and a little at home (or at other jobs), but such compromised levels of investment may not be enough to justify promotions at work if her boss is not prejudice, and if her boss is prejudice then her behavior may support his discriminatory beliefs. Indeed, if most blacks play the safe strategy, then even the non-prejudice boss may come to question black ability. In this way, ambiguity may enforce the outcome gaps between blacks and whites. The psychological model operates at a more subconscious level but produces outcomes that can be just as strong. Together, these models show how the outcome gaps between blacks and whites may be endogenous and stable overtime, despite decreases in the level of societal prejudice and discrimination.

This thesis is the basis of a book that I am writing on some of the implications of moving from a world of overt racism to the world we have today. The attached paper represents two working chapters (here divided into parts) of that project. The aim of these chapters is to show that even the so-called experts have trouble identifying the presence or absence of race effects. Subsequent chapters focus on the ambiguity confronting the general population. Thank you. -rb
It’s practically cliché to observe that perception and reality diverge more often than not. But when they appear to go in exactly opposite directions—now that’s still worth noting. Such is the apparent paradox of the black middle class. Though they are most recent beneficiaries of the American Dream, they nonetheless “have come to doubt the reality of the dream” (Hochschild 1995, 87). Though they are “perhaps the greatest success story in American ethnic relations,” they “[m]ost extraordinary of all [deal out] the greatest expressions of rage, not only about the poor but about themselves” (Patterson 1997, 50-1).

Compared to poor blacks, one might expect them to hold more favorable views of the American legal system since “wealthier people have a legal advantage” (Black 1976, 12)—an advantage that Rousseau (1762) characterized as “inevitable, and without exception.” But just the opposite results.

Better-off blacks are more distrustful of the legal system (Brooks 2000), the police (Weitzer & Tuch 1999), the criminal justice system (Wortley et al. 1997; Hagan & Albonetti 1982), the courts generally and their specific handling of civil, criminal and juvenile cases (Brooks & Jeon-Slaughter 2001). In other domains too, including politics and the economy, advantaged African Americans express more frustration than their disadvantaged counterparts, who have seen their political and economic capital fall while the black middle class accrues unprecedented gains.¹ “By almost any objective socioeconomic measure a very

¹Heightened workplace discontent and distrust has been observed among middle-class Blacks (Collins 1997; Cose 1993); this group is also more likely to view the general economic conditions of Blacks as “much worse than whites” (Dawson 1994); more likely to agree that “American
substantial black middle-class stratum has developed in recent decades. But objective changes do not always produce corresponding changes in perception” (Thernstrom & Thernstrom 1997, 199). It seems, as Orlando Patterson (1997, 54) has pithily observed, that “[w]hat we have here is a serious mismatch [of] experience and perception.” Perhaps.

Then again, middle class blacks may perceive more discrimination because they experience more discrimination—a kind of progressive black tax, where they are subject to increasing relative inequality while at the same time achieving objectively better outcomes. An image of this tax is depicted in the figure below, which shows an expanding gap between the outcomes of blacks and whites as class status increases. This is related to, but not necessarily the same as, the so-called glass ceiling effect, which in its simplest conception represents a barrier to black achievement (i.e., c* in the figure) that generates larger black-white outcome gaps as whites progress unimpeded.² It’s easy to

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² More complicated conceptions of the glass ceiling effect have been advanced. See, for example, Cotter, David A., Joan M. Hermsen, Seth Ovadia and Reeve Venneman, The Glass Ceiling Effect, Social Forces, December 2001, 80(2):655-682. They suggest four criteria for a the existence of a glass ceiling effect: 1) unexplained racial differences in outcomes, such as earnings, authority, or position; 2) the unexplained differences should increase as status increases; 3) the rate of discrimination should increase, not merely the size of outcome differences; 4) it should increase over one’s career. The temporal component captured in the fourth criterion is interesting but not
lose sight of the glass ceiling against images of blacks prominently featured at the highest ranks of business and government. Yet for all their recent successes obviously required for most understandings of a glass ceiling effect. The third criterion is also unnecessary for a glass ceiling effect (even as Cotter et al. conceive it, which they acknowledge). As Ferree and Purkavastha (2000) have demonstrated, a glass ceiling effect can occur even when the rate of discrimination is the same at each promotion level (e.g., blacks face the same limited odds of getting promoted at each level). This results because those who overcome discrimination at lower levels should be more talented than their counterparts who did not suffer prior discrimination (a selection effect), so a constant discriminatory rate of promotion would lead to more discrimination (because of the selection effect) as these individuals climb up the promotion hierarchy. As revealed in the number of studies with competing conclusions, identifying a consensus about the glass ceiling effect is no simple matter. Much depends on how the phenomenon is characterized theoretically and how effectively other factors are controlled empirically. Analyses can control for both too little and too much when addressing differences in outcomes by race: “it is possible to control for too many job characteristics since some characteristics of past jobs may explain how discrimination happens, so controlling for them masks rather than detects discrimination.” Cotter et a. (2001, 657). Other analyses of the glass ceiling effect may be found in GOOD FOR BUSINESS: MAKING FULL USE OF THE NATION’S CAPITAL: A FACT FINDING REPORT OF THE FEDERAL GLASS CEILING COMMISSION (1995); David Charny and G. Mitu Gulati, Efficiency-Wages, Tournaments, and Discrimination: A Theory of Employment Discrimination Law for “High-Level” Jobs, 33 Harv. C.R.-C.L. Rev. 57-105 (1998); Baxter, Janeen, and Erik Olin Wright. 2000. "The Glass Ceiling Hypothesis: A Comparative Study of the United States, Sweden, and Australia." Gender and Society 14:275-94; Reskin, Barbara E., and Irene Padavic. 1994. Men and Women at Work. Pine Forge Press; Ferree, Myra Marx, and Bandana Purkayastha. 2000. “Equality and Cumulative Disadvantage: Response to Baxter and Wright.” Gender and Society 14:809-13.

3 See, for example, Thernstrom & Thernstrom, AMERICA IN BLACK AND WHITE (1997), observing that “highly successful blacks like [various identified prominent individuals]… have become part of the country’s economic and governing elite. Countless others, who don’t make the news, are all-American success stories.” at 536.
the black middle class appears “restless in the midst of abundance,” as Alexis de Tocqueville (1840) once observed of Americans broadly when characterizing the irony of ‘near’ equality: “When all the privileges of birth and fortune are abolished, when all professions are accessible to all, ... men easily attain a certain equality of condition, but they can never attain as much as they desire.”

Tocqueville envisaged mounting frustration due to increased competition and rising expectations in the context of open professional access, but he didn’t point out that access can also promote real inequality. Paradoxically, inequality may increase as the status hierarchy is leveled. This can be seen in Figure 1.

Assume, without loss of generality, that the earnings for whites of median status is $c^*$ and take $e_B$ to be the earnings for blacks of median status. An average black-white earnings gap of $[c^* - e_B]$ is thus observed. Now if only the black median status is increased from $s$ to $s$, then the average black-white earnings gap will fall

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4 By “near,” I mean to imply spatial proximity (as much as social, economic, and political nearing of equality) which importantly contributes heightened skepticism among the black middle class.


6 Tocqueville’s rested his claim on both growing competition and growing expectations. By opening “the door to universal competition” it became more difficult for them to achieve the promise of an “unbounded career,” and, at the same time, “the desire of equality always becomes more insatiable in proportion as equality is more complete.” Id. 138. The former might (pessimistically) suggest that middle class blacks are frustrated because they cannot compete as effectively against whites, when barriers and boosts are eliminated, as they may have expected. On the latter, Hochschild (1995, 102) advances a notably similar argument to explain the present discontent among successful blacks: “once the barriers of racial discrimination are mostly dismantled—then one is tempted to anticipate more and more success, even if less and less is reasonable. ... they run the risk of becoming more dissatisfied as they become more successful.” See also deCarufel (1979), who suggests that improvements in one’s situation lead to rising expectations and more relative deprivation when bad outcomes are realized. A. deCarufel, Factors Affecting The Evaluation Of Improvement: The Role of Normative Standards and Allocator Resources, 37 J. PERSONALITY AND Soc. PSYCH. 847 (1979). Well-off blacks may simply expect more by way of class privilege. Given these high expectations, better-off blacks experience greater levels of personal disappointment when the legal, economic or political system fails to support their expectations.
(to $[c^* - e_B]$), but median status blacks will now suffer greater earnings inequality
(i.e., $[e_W - e_B] > [c^* - e_B]$).

Kaufman (1982, 604-5) described precisely this mechanism when he
conjectured that “the elimination of unequal employment opportunities” should
move black men into sectors with more income inequality and “result in a net
gain in earnings for black males, even though they would be subject to greater
wage discrimination within labor market divisions.” Kaufman found empirical
support for his conjecture in the 1970 census; and in the 1990 census Grodsky
and Pager (2001) observed a similar pattern of increasing earnings inequality
associated with higher professional status. “Even as black men enjoy higher
earnings in an absolute sense as they move up in the occupational hierarchy, in a
relative sense they find themselves even further behind their white co-workers”
(Grodsky and Pager 2000, P). They reported the table below, showing the
occupations with the largest black-white mean earnings gaps. The figures in the
columns are the ten smallest and the ten largest black-white mean earnings ratios
from the 1990 census. Thus, black workers in the occupational category
‘securities & financial services’ earn 72 cents for each dollar that white workers in
that category earn, and black lawyers, physicians and actuaries earn 79 cents, 80

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7 Kaufman’s “results suggest that equalizing black-white employment opportunities would lead to an overall reduction of 22% of the total black-white earnings gap. But this reflects a 37% decrease due to the elimination of allocation effects [i.e., black being placed in better jobs], while the impact of the evaluation component is to increase black-white earnings differences by 15% [i.e., more discrimination in these better jobs].” Kaufman at 603. This pattern is consistent with earlier findings by Wright (1978) and Albonetti and Hagan (1982) showing that the black managerial and professional classes report more employment discrimination.
cents, and 81 cents, respectively, for each dollar earned by their white counterparts. At the other end of the occupational prestige scale black bus drivers, hotel clerks and cooks earn $1.07, $1.06, and $1.02, respectively, for every dollar earned by white in those professions. The pattern survives statistical controls with a number of basic demographic variables, including education, experience and marital status. And the more recent 2000 census similarly reveals that for each dollar earned by their white counterparts, black lawyers, architects, physicians & surgeons, and writers & authors earn 72 cents, 74 cents, 81 cents, and 87 cents (resp.), while black gaming cage workers, bus drivers, licensed nurses, and maids & housekeepers earn $1.30, $1.23, $1.19, and $1.13,

<table>
<thead>
<tr>
<th>Occupations with the lowest relative mean earnings for blacks</th>
<th>e_w</th>
<th>Occupations with the highest relative mean earnings for blacks</th>
<th>e_w</th>
</tr>
</thead>
<tbody>
<tr>
<td>Securities &amp; Financial Services</td>
<td>.72</td>
<td>Clergy</td>
<td>1.13</td>
</tr>
<tr>
<td>Podiatrists</td>
<td>.77</td>
<td>Childcare Workers, private homes</td>
<td>1.11</td>
</tr>
<tr>
<td>Insurance Sales Occupations</td>
<td>.78</td>
<td>Family Childcare Providers</td>
<td>1.10</td>
</tr>
<tr>
<td>Longshore Equipment Operators</td>
<td>.79</td>
<td>Bus Drivers</td>
<td>1.07</td>
</tr>
<tr>
<td>Lawyers</td>
<td>.79</td>
<td>Hotel Clerks</td>
<td>1.06</td>
</tr>
<tr>
<td>Dentists</td>
<td>.80</td>
<td>Teachers, preschool &amp; kindergarten</td>
<td>1.03</td>
</tr>
<tr>
<td>Managers &amp; Administrators (n.e.c.)</td>
<td>.80</td>
<td>Misc. Woodwork &amp; Machine Ops.</td>
<td>1.03</td>
</tr>
<tr>
<td>Physicians</td>
<td>.80</td>
<td>Taxicab Drivers &amp; Chauffeurs</td>
<td>1.03</td>
</tr>
<tr>
<td>Actuaries</td>
<td>.81</td>
<td>Religious Workers (n.e.c.)</td>
<td>1.03</td>
</tr>
<tr>
<td>Stevedores</td>
<td>.81</td>
<td>Cooks, private households</td>
<td>1.02</td>
</tr>
<tr>
<td>Managers, properties &amp; real estate</td>
<td>.81</td>
<td>Upholsterers</td>
<td>1.02</td>
</tr>
</tbody>
</table>

*Source: Grodsky and Pager 2001, Table 4 (1990 Census median earnings by occupational category and race).*
respectively. Earnings disparities cannot by themselves demonstrate discrimination or even the existence of true inequality (as discussed subsequently), but they do offer a useful perspective on the position of the black middle class.

Bankruptcy provides another window through which to view the relative disadvantage of the black middle class. It may seem odd to look for materially advantaged blacks in bankruptcy courts, where most people might expect to find poorly educated and chronically unemployed individuals with dismal financial histories and even worse prospects. Estimates, in fact, do suggest that a majority of filers fall below or near the poverty line when entering bankruptcy.  

The Appendix shows the 50 occupations with the largest black-white mean earnings gaps from the 2000 Census. [Send table to Devah and Eric: my 2000 numbers more pessimistic.]


To be sure, the incomes of the families filing for bankruptcy were low. In 1981, about a quarter of the families were below the poverty line, and half were sandwiched between poverty and median incomes. By 2001, those numbers had dropped even further, with about half below the poverty line, and another forty percent sandwiched between poverty and median income in the U.S. Teresa Sullivan, Elizabeth Warren, Jay Lawrence Westbrook, Bankruptcy Stigma: Twenty Years of Evidence About How America Is Changing (forthcoming) (on file with author).
But one’s class position is only partially determined by income. While two-thirds of households in bankruptcy report experiencing some income disruption forcing them into or near poverty, many of these families were stably middle class and remained so even after filing. “A laid-off computer programmer or a teacher who loses a job to district-wide cutbacks may be thrown into financial chaos, but she is not tossed out of the middle class the day the pink slip arrives. She remains solidly middle class, even as her income plummets and even if she ends up in bankruptcy” Warren (2003). It is more often advantaged individuals, those with prior access to credit and assets worth protecting, who end up in the bankruptcy courts—not the truly disadvantaged.

This can be seen by moving away from income to other proxies of class status, such as education, occupation and homeownership. By these criteria, the bankrupt population appears to possess all of the indicia of middle class status. The vast majority attended college, had prestigious occupations, or purchased homes—this is true for both whites and blacks. Relying on these criteria Warren (2004) found blacks and whites in bankruptcy proceedings to be

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11 Elizabeth Warren, Financial Collapse and Class Status: Who Goes Bankruptcy, 41 Osgoode Hall Law Journal 115 (2003) (91.8 percent of those filing had at least one of the identified criteria).
12 More than 90 percent of those who filed for bankruptcy either attended college, had a job in the upper 80 percent of all occupations in the U.S., or had bought a home. (Id. at 144.) Two-thirds of the families met two or more criteria, and almost 30 percent met all three. (Id.)
statistically indistinguishable. Not only were they practically identical according to these measures, they also had comparable debt-to-income ratios (including mortgage debts), and gave similar reasons for filing: job interruption, medical difficulties, and family breakups. But that’s where the similarities end. When bankruptcy-filings are adjusted to account for differences in the number of blacks and whites in the general population, blacks end up

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13 That is, about 91 to 92 percent of bankrupt white families, Hispanic families and African American families were solidly middle class. The criteria used for the three racial subgroups were the same as for the undifferentiated bankruptcy sample: any attendance at college, any current or past purchase of a home, any an occupational prestige score in the upper 80 percent of all such score. The aggregated report on occupation is based on occupational prestige scores for the whole population; the racially segregated reports are based on occupational prestige scores for each race.

14 The African-American debt-to-income ratio (including all mortgage debt) was 3.1, compared to 3.3 for whites. Though these figures are statistically different at the p > .01 level, the difference in magnitude is not so great. These households filing for bankruptcy faced debts three time that of their incomes. Warren observes that “[w]hile the majority of these families were solidly middle class, the economic difficulties they faced were truly staggering. In 2001, the median family owead credit cards and other non-mortgage debts that equaled 15.6 months of their total income (2001 Consumer Bankruptcy Project). In other words, in addition to paying for rent or mortgage, utilities, food, health insurance, gas, car insurance, clothing, medical care, life insurance, furniture, and hundreds of other expenses, these families would have to find a way to set aside more than a year’s worth of income to pay off past debts. And if they couldn’t manage to pay off the debts, the interest rates alone were running at about a third of every paycheck.”

15 The leading trigger that brought both blacks and whites to bankruptcy was job loss; On the other hand, whites were more likely to cite medical problems, though 20 percent of both groups pointed to family breakups as the cause for filing. “These three reasons—job difficulties, medical problems and divorce—played a role in nine out of ten filings. The remaining bankruptcies were triggered by a mixture of reasons. Some people were called up to overseas military duty, someone who was hurt trying to foil a robbery, and some said they just spent more than they earned.” (Warren 2004). “Families citing a job problem or failure of a small business as a reason for filing, identifying a loss of income for two weeks or longer because of a job problem, or listing themselves as unemployed and looking for work constituted 68.3 percent of all filings. 2001 Consumer Bankruptcy Project. Families citing medical problems as a reason for filing, listing unpaid medical debts in excess of $1000, or identifying a loss of income for two weeks or longer because of medical problems account for 51.0 percent of all filings. 2001 Consumer Bankruptcy Project. Families citing divorce or family break up as a reason for their bankruptcy filing comprised 17.9 percent of all filings. The number rises to 23.7 percent if death of a family member is included. 2001 Consumer Bankruptcy Project."

16 “The data were race adjusted based on the states from which the data were drawn. Two of the states, California and Texas, had larger Hispanic populations than the country generally, and
being more than three times as likely to file as whites. The disproportionate black bankruptcy filing rate gives numerical content to the often mentioned fluidity of the black middle class (Patillo 1999; 2005);\textsuperscript{17} it exposes “a deeply vulnerable middle class in which African Americans who have gone to school and worked like whites are nonetheless more than three times more likely to find themselves in bankruptcy” Warren (2003). If we focus on homeowners—those individuals who have achieve the principal symbol of the American Dream—the black-white bankruptcy filing gap is amplified. The rate of filing is roughly 31.7 per thousand among black homeowners, compared to just 6.1 per thousand among their white counterparts. The black-white bankruptcy ratio doubles, going from 3 to more than 6, among those who possess what’s often thought to be the key to middle class stability—a home.

Homeownership is indeed associated with the kind of stability that buffers families from the risks of financial reversals; and bankruptcy filings tend to be negatively correlated with homeownership in the general population. But while whites who rent are 3 times as likely to file for bankruptcy as those who own homes, black homeowners are actually more vulnerable to bankruptcy that black renters. As Figure 2 shows, the black-white bankruptcy ratio is less than 2 among renters, but more than 6 homeowners. So when class is measured in

\textsuperscript{17} Bankruptcy filings underscore a more general pattern of middle class instability during the past few decades. [A sentence or two about income volatility with cites to Moffit & Gottschalk, and Jacob Hacker.] Class instability is even more acute for advantaged blacks. Income volatility may be greatest among the black middle class (describe PSID and parameters).
terms of homeownership status, advantaged blacks again find themselves trailing their counterparts.

Figure 2: Filings per Thousand Homeowner/Non Homeowner by Race, 2001 (Source: 2001 Consumer Bankruptcy Project)

Though job disruption, medical hardship and family break-ups are the principal named causes of bankruptcy, the more fundamental issue, of course, is an absence of sufficient wealth to carry individuals through periods of financial adversity. Hence, unsurprisingly, we can get a grip on the black-white bankruptcy filings gap by considering the racial wealth gap. The American wealth distribution, both within and across race, is skewed far to the right. The richest 10 percent of Americans hold most of the country’s wealth. The black middle class unmistakably participates in this wealth advantage, possessing significantly more assets than they did a generation ago and currently far surpassing working class and poor blacks. Across race, the picture is even more
stark. The black-white wealth gap is far greater than the income gap. Whereas blacks on average earn somewhere between 60 and 80 cents for every dollar earned by whites, estimates of black wealth for each dollar of white wealth run as low as 10 cents.

Looking at racial differences within class, a now familiar pattern emerges. Advantaged blacks appear to be doing worse than working class blacks in maintaining comparable levels of wealth with whites. Using household wealth from the Panel Study of Income Dynamics (PSID), Table 2 shows that for every dollar of wealth held by their white counterparts in 1984, black white-collar workers had 19 cents of wealth in contrast to 44 cents among blue-collar workers.

**Table 2: Black-white Wealth Ratios for White Collar and Blue Collar Workers**

<table>
<thead>
<tr>
<th>Year</th>
<th>White collar black-white ratio</th>
<th>Blue collar black-white ratio</th>
</tr>
</thead>
<tbody>
<tr>
<td>1984</td>
<td>0.19</td>
<td>0.44</td>
</tr>
<tr>
<td>1989</td>
<td>0.31</td>
<td>0.30</td>
</tr>
<tr>
<td>1994</td>
<td>0.25</td>
<td>0.30</td>
</tr>
<tr>
<td>1999</td>
<td>0.27</td>
<td>0.31</td>
</tr>
<tr>
<td>2001</td>
<td>0.23</td>
<td>0.31</td>
</tr>
<tr>
<td>Average</td>
<td>0.25</td>
<td>0.33</td>
</tr>
</tbody>
</table>

Source: PSID. White collar occupation includes “professional, technical,” “managers and administrators, except farm,” and “sales workers.”; Blue collar occupations include “clerical,” “craftsmen,” “operatives, except transport,” “transport equipment operatives,” “laborers except farm,” “farmers and farmer managers,” “farm laborers and farm foremen,” “service workers, except private household,” “private householders. The numbers of missing observations are 5, 9, 18, 15, and 25 in years 1984, 1989, 1994, 1999 and 2001, respectively.
While 1984 is an outlyer year, the mean, median and modal wealth ratio for the reported years reveal that black white-collar workers are trailing their blue-collar counterparts in terms of staying on par with white wealth.

Going beyond the broad white-collar and blue-collar categories—by controlling for income and other demographics (including age, education, number of children, marital status and region of residence)—researchers have been able to account for widely varying proportions of the black-white wealth-gap, from as low a 5 percent of the difference to 120 percent. This variation is largely due to the variety of econometric models employed, but some consistent patterns are observed across studies. Most studies find income to be the most

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18 “The 1984 survey reported too many families who did not answer some critical wealth questions for us to use the 1984 survey with confidence” [Shapiro (2004) note 13 at 215].
19 “[M]iddle-class blacks fare far better than working-class families and better than they did in the past, but if they compare themselves to their white professional equals, their wealth disadvantage grows” (Shapiro 1991).
20 “Most estimates, however, fall between 60 and 90 percent. When coefficients estimated from a sample of blacks are used to predict white wealth, estimates range between 12 and 84 percent, with most falling between 20 and 35 percent.” John Karl Scholz and Kara Levine, U.S. Black-White Wealth Inequality: A Survey (June 9, 2003) Mimeo, at 10.
21 “Empirical specifications vary significantly across studies, which makes it difficult to understand how demographic variables influence wealth accumulation. Interpretation of coefficients is also complicated.” Scholz & Levine (2003, 13). Some researchers (Smith, 1995; Oliver and Shapiro, 1995; Hurst, Luoh and Stafford, 1998; and Conley, 1999) use a basic regression model with race indicators as one of many control variables, other (Altonji and Doraszelski 2001, 2002) use regression decomposition approach, running race-specific regressions (e.g., on whites only) to predict black wealth or vice versa (In theory, the choice should not matter, but regrettable for these models, it often does). “Gittleman and Wolff (2000) look at wealth accumulation over a 10-year period. Their strategy is to calculate, for a variety of factors, what average black wealth would have been if the characteristics or behavior of black households had been identical to that of white households over the previous 10-year period. They use this counterfactual estimate of wealth held by blacks to calculate by how much the wealth gap would have closed had their experiences been the same as white households.” Scholz & Levine (2003, 10). Finally, others (e.g., Barsky, Bound, Charles, and Lupton 2001) use nonparametric approaches to avoid the linearity constraint placed on income and wealth. Barsky et al. (2001), for instance, use a nonparametric approach and found that income alone accounts for 64 percent of the wealth gap between blacks and whites. “For comparison, they also apply the regression decomposition technique to their data, first using only income to estimate wealth, then adding an
significant predictor of the wealth gap, ranging from 12% to 72% (Scholz & Levine (2003, 13). Given that earnings predicts wealth and that the racial earnings gap is larger among the professional class, an increasing wealth gap ought not be entirely surprising.22

A second factor that researchers agree is essential for understanding the black-white wealth gap is the effect of family transfers, including inheritances and gifts.23 Regression estimates and simulations suggest that family transfers account for 7% to 24% of the black-white wealth gap (though some studies suggest even less). Here again, we would expect the effect of inheritances and gifts to have a large effect among advantaged households. Less well-off families, black or white, simply cannot pass on such benefits to their children.24 If transfers play a significant role in creating for the wealth gap it will necessarily be stronger among the advantaged. Altonji and Villanueva (2004) find that

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income-squared term to better capture the nonlinear relationship between wealth. When income is the only explanatory variable, they find that it accounts for 97.5 percent of the black-white wealth gap; adding a quadratic income term yields an estimate of 72.1 percent. These results are consistent with the authors’ discussion: if we take their estimate of 64 percent to be correct, both regression decomposition estimates overstate this amount, but the quadratic estimate is closer to the “true” value. Note that these latter two estimates are also consistent with the range of regression decomposition estimates found in the literature.” Scholz & Levine (2003, 10)

22"There is a consensus that labor income accounts for the majority of the racial wealth gap, which suggests that wealth inequality in the population is likely to be strongly related to inequality in labor income.” (Scholz & Levine 2003, 36). Yet some studies do find that earnings play a larger role in wealth accumulation in the lower half of the wealth (Barsky et al., 2001; Scholz & Levine 2003, 12-13).


24 “The evidence about the effect of inheritances on the median wealth gap is scant, although we suspect that inheritances have little or no effect on the wealth of the median household, instead playing a larger role at the upper end of the wealth distribution.” (Scholz & Levine 2003, 15 nt. 24). “Fewer than half of all households in the SCF pooled sample report having received an inheritance. Therefore, the median inheritance amount for both whites and blacks is zero.”
higher-income parents spend more on their adult children at the margin, and whites spend more than blacks. For every extra dollar of resources, white parents spend about 3 cents on their adult children (roughly one-fifth the amount they spend on non-adult children), whereas blacks spend about 2 cents at the margin. Yet even if there is a racial difference in the marginal propensity to spend on adult children, contributions of these magnitudes cannot significantly account for the wealth gap.25

Cultural differences are often argued to be the source of the racial wealth gap. Such arguments depart from largely unsupported assertions regarding behavioral patterns among blacks that undermine their abilities to save and invest. If these differences exist, they may not be observable at lower income levels since individuals living paycheck to paycheck have limited opportunities to save. It might be argued, however, that as individual resources increase beyond that which is required to satisfy basic needs, underlying cultural differences should manifest themselves into an ever widening wealth gap between better-off blacks and whites. While possible, this argument is not supported by any significant evidence of race-contingent savings behavior or investment preferences;26 and it seems strained next to a variety of simpler

25 From the child’s perspective, Altonji and Villanueva (2004, 21) observe that “the impact of an extra dollar of parental resources on own resources through gifts and bequests is small.”
26 The savings rate among blacks generally is lower than that of whites, but this difference largely goes away when income is taken into account. In one study that specifically attempted to isolate black-white differences in savings rates, it was observed that in one formulation the wealth gap would fall by only 1% if black households saved at the same rates as whites (Gittleman & Wolff 2000). There are some speculative findings suggesting that black households report more risk-
explanations for any small observed differences in savings and investment that remain after income is controlled.\textsuperscript{27}

Differences in life and health expectancies can also be offered to account for the black-white wealth gap, but the mechanisms are not obvious. It's not theoretically clear whether poor life and health outcomes cause limited wealth or the other way around. People with less wealth (and less income and lower occupational prestige) have more restricted access to good healthcare and face less optimistic life chances. A shorter life expectancy, on the other hand, may reduce one's need to save, or maybe the expectation of bad health makes one save more in anticipation of future medical care. Empirically research on health related outcomes by race within class is limited, but the available evidence suggests that the health gap expands with class.

Compared to whites, black Americans have shorter life expectancies,\textsuperscript{28} they are more likely to suffer from chronic ailments,\textsuperscript{29} and receive inadequate

\textsuperscript{27} These accounts include greater volatility of income among blacks leading them to avoid locking up their capital in illiquid higher-return investments (Blau and Graham 1990), or that they generally receive less favorable returns on investments (Long & Caudill 1992; Charles & Hurst 2000), or that they are offered limited access to credit, due in part to current and historical discrimination by private institutions and government agencies (Brooks 2004 [Covenants & Conventions]; Brooks 2005 [Racial & Credit Profiles]).

\textsuperscript{28} At birth white men and women should expect to live for 75 and 80 years (resp.), compared to 68 and 75 years for black men and women, respectively. National Vital Statistics Reports Vol. 53, no. 5 (October 12, 2004) Table 8, Life Expectancy at Birth by Race and Sex.

\textsuperscript{29} Blacks have higher rates of diabetes, TB, HIV, [and list more].
medical treatment. Much of these differences grow out of the lower overall socio-economic conditions faced by blacks. But differences often persist even after controlling for SES and they appear to be concentrated “in the upper half of the income-wealth distribution.” For example, Kleinman and Kessel (1987) observe that the gap in low-weight births was largest among highly educated black and white women, and smallest among high school drop-outs. Wealth differences, to some extent, explains the high-education low-birth-weight correlation, highlighting the important caveat that differences within class can depend entirely on how class is defined (Wenzlow et al. 2004).

But a still greater concern goes to what to make of all these disparities. “Identifying a racial disparity and determining that an association between race and an outcome remains after accounting for plausible confounding factors is a relatively straightforward task. The real difficulty lies in going beyond the

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30 Institute of Medicine 2003, as cited by Blank et al. at 47 “African Americans and Hispanics compared with non-Hispanic whites are less likely to receive appropriate cancer diagnostic tests or treatments (Imperato et al., 1996; McMahon et al., 1999), and are more likely to receive less-than-desirable procedures, such as limb amputation for diabetics (Chin et al., 1998; for additional references, see Institute of Medicine, 2003).” Blank et al., 2004 at 48. [get original report]

31 “Researchers have found that income, wealth, and education can explain a large portion, if not all, of the mean racial disparities in health regardless of the measure of health, sample, or methodology employed.” See Audra T. Wenzlow, John Mullahy and Barbara L. Wolfe, “Understanding the Racial Disparities in Health: The Income-Wealth Paradox (Draft: June 24, 2004) at 1, who go on to cite Hayward Crimmins, Miles and Yang 2000; Smith and Kingston 1997; Williams and Collins 1995. See also [my cites]. For wealth see Bond, Huie, Kruger, Rogers. And Hummer (2003); Kingman and Smith (1997); Schoenbaum amd Waidman (1997).


33 The “education birth-weight” correlation has been replicated by Krieger, Rowley Herman, Avery, and Philips (1993) and X [more cites].
identification of an association to the cause” (Blank et al. 2004, 88). For example, consider again the earnings ratios from the 2000 Census. The occupational category most favorable to blacks is that of professional ‘athletes, coaches & umpires’, wherein the mean earnings of blacks is $1.53 for each dollar earned by whites. Similarly, when Kahn and Sherer (1988) looked at player compensation in the National Basketball Association (NBA), they found that blacks on average earned $10,620 more than whites. However, after controlling for experience, minutes played per game, shooting statistics and a number of other variables, white players were found to make about 20 percent more than black players of the same quality. This is quite a useful illustration of Simpson’s Paradox, which states that an observed relationship between two variables (e.g., race and salary) may flip when another variable (e.g., job performance) is taken into account (Holland 2003). And even with the performance controls showing a premium going to white players in the NBA, one still cannot assume employer racial discrimination. Kahn and Sherer’s study, in fact, suggests that relative to black players, comparable white players increase the fan based of an NBA team by 8,000 to 13,000 fans per season. Thus the higher salaries commanded by white

34 “A famous U.S. example is the claim by the UC Berkeley student newspaper that graduate student admissions at Berkeley were biased against women. The data showed exactly that. The Berkeley-wide acceptance rate of women graduate students was lower than that of men. However, when the departments to which the students were applying were examined, it was discovered that men and women applied to different departments and, interestingly, the graduate programs admitted students at different rates. Women tended to apply to the departments where the acceptance rates were lower. In fact at the department level, there was a slight tendency to admit women at a higher rate than men (Bickel, Hammel, & O’Connell, 1975). The third variable here was ‘department applied to,’ and a third variable, associated with the two of interest (gender and admission), can do amazing things to the original association.” (Holland 2003, 2).
NBA players may not be a function of management’s discriminatory preferences. But even that cannot be ruled out.

Researchers are often too quick to claim a causal effect of race when disparities are observed. On the other hand, as the next Part of the paper demonstrates, researchers can also too quickly deny a causal effect of race. If we are honest, we would have to admit that racial disparities typically leave us guessing; some more than others. What we have here is one big speculative mess. That uncertain, importantly, has implications for the observed disparities. These disparities are, I will argue, non-trivially endogenous. They are in large part a product of the race and uncertainty faced by Americans everyday. Before developing this argument, the next Part turns to a specific case study seeking to account for the source of racial disparities among lawyers and law students.

PART II: Does Affirmative Action Reduce the Number of Black Lawyers?*

The average black law student gets much lower grades than the average white law student.\(^{35}\) With the exception of traditionally black law schools, where blacks still make up 43.8% of the student body, the median black law school grade point average is at the 6.7th percentile of white law students. That means

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only 6.7% of whites have lower grades than 50% of blacks. One finds a similar result at the other end of the distribution—as only 7.5% of blacks have grades that are higher than the white median.

Given these grades, it should not be surprising that black students are less likely to graduate from law school and less likely to pass the bar. In fact, in the LSAC data,6 only 83.2% of whites graduated and passed the bar within five years of entering law school, while only 57.5% of blacks entering law schools became lawyers. Hence, we have yet another instance of the pervasive pattern of observed black-white disparities in health, occupational, and educational outcomes.37

However, beyond merely identifying this as another set of racial disparities, Richard Sander (2004) went further by claiming that affirmative action is the cause of the black-white gap in law school grades.38 His core argument, based on the “academic mismatch hypothesis,” is compelling in its simplicity: Because blacks tend to have systematically lower entering credentials than the median (white) student, black students learn less than they might have if they had attended schools at which they were better matched, and thus they should be

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6 Like Sander, we rely almost exclusively on the LSAC data of 27,478 law students collected in 1991 from 160 U.S. law schools. LINDA F. WIGHTMAN, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY (1998). Unless otherwise indicated, all empiricism in this Response is based on this data.


38 “[V]irtually all of the black-white gap . . . seems attributable to preferences: virtually none of it seems attributable to race or correlates of race (such as income).” Sander, supra note Error! Bookmark not defined., at 479.
expected to earn lower law school grades and to graduate and pass the bar at lower rates.

Sander claims that the mismatch effect caused by affirmative action is so significant that it actually reduces the overall number of black lawyers. While estimating that affirmative action causes 14.1% more blacks to enter law school, he concludes that the lower graduation and bar passage rates of mismatched black students on net reduce the number of black lawyers by 7.9% (relative to the number that would be produced in a system without affirmative action). Sander’s estimate of a 7.9% decline in black attorneys due to affirmative action was based on a simple calculation of how many more black lawyers there would be if black law students became lawyers at the same rate as white students in that index range. Sander’s idea was that in a world without affirmative action blacks would start going to lower-quality law schools and would consequently have a higher chance of becoming lawyers. But it is possible to look directly at how blacks do when they go to the school where most whites with the same entering credentials go.

A casual observer of Sander’s analysis might think that black and white students with the same index score (i.e., a combination of LSAT score and undergraduate GPA) would almost never attend law schools in the same tier: almost all whites within one of these narrow index ranges would go to law schools in one quality tier and blacks with the same credentials would almost

39 Id. at 473 tbl.8.2.
always go to law schools in a higher-ranked quality tier. But as shown in Figure 1, it turns out that there is a substantial overlap in the law school tiers attended by blacks and whites with the same entering credentials.

Figure 3 shows the proportion of white and black students with the same entering credentials (using Sander’s same twenty-point index ranges) that go to particular law school tiers relative to the tier attended by the median white student with that index score (hereafter the “white median tier”). One can see

This table was constructed by first identifying the median tier attended by white students in each twenty-point index range. We will refer to this tier as the “white median tier.” Then, for each index range, we calculated the number of whites and the number of blacks going to the white median tier, the number of whites and blacks going to one tier above the white median tier, etc. We then aggregated these numbers across tier to find what proportion of whites and blacks went to the white median tier, one tier above the white median tier, etc. There is substantial overlap between the white median tier and other measures of central tendency. The white median tier is the same as the white modal tier in 81.5% of the index ranges, and the white median tier is the same as the average white tier (rounded to an integer) 92.6% of the time. We retained the tier numbering found in Sander’s data set—with elite schools having a tier number of 6 and the least selective law schools (historically black schools) having a tier number of 1.
that there is a substantial overlap in the quality tiers of law schools attended by white and black law students. Forty-four percent of whites attend a school in the white median tier, but 26% of black students with the same entering credentials attend a school in this same tier. The figure shows that blacks are more likely than whites to attend quality tiers that are above the white median tier. But there still is substantial overlap: 31% of blacks attend a school one tier higher than the white median tier, but 19% of whites with the same entering credentials attend this tier. Thus, the white median tier construct can be employed to provide an alternative analysis of the likely impact of various forms of affirmative action on the number of black lawyers.

Sander uses regression analysis to try to establish a key proposition: the probability at matriculation that a student will become a lawyer is dominantly determined by the student’s entering credentials (LSAT and undergraduate grade point average) relative to other students at her school. This proposition derives from two regressions suggesting that (1) a student’s relative entering credentials determine the student’s law school grades; and (2) a student’s entering credentials and law school grades determine the probability that the student will pass the bar. But, importantly, Sander does not use these

41The substantial and overlapping spread of tiers attended by whites and blacks with the same credentials suggests either that law schools admit students on the basis of more than just the entering index or that there are other constraints on the part of the schools (e.g., legacy admissions) or students (e.g., financial, geographic, lack of information, motivation) which cause white and black students to attend the same school notwithstanding affirmative action.
42See id. at 428 tbl.5.2.
43See id. at 444 tbl.6.1.
regressions to estimate his bottom line figure that eliminating affirmative action would reduce the number of black lawyers by 7.9%.\textsuperscript{44} Instead, he merely groups existing blacks from the LSAC data set into twenty-six distinct ranges of entering credentials and then calculates how many black lawyers there would be if these black law students became lawyers at the same rate as whites with the same entering credentials. Thus, for example, there were 106 black students in the LSAC data that had entering credential indexes with values between 620 and 640.\textsuperscript{45} Sander assumes that in a world without affirmative action, 75.6% of these black students would become lawyers—because this is the same rate at which white law students with these entering credentials became lawyers.

Sander’s approach ignored the tier dispersions of whites within particular index ranges. Sander implicitly assumed that without affirmative action, black students would go to the same tier schools as whites with the same entering credentials. But Figure 1 shows that whites with similar credentials themselves go to a variety of different quality tiers. In a world without affirmative action, there is no reason to expect that blacks would attend the same distribution of schools as white students. Black students are less likely to benefit from legacy preferences and are more likely to be financially constrained. Accordingly, the impact of sending black students with particular index scores to the tier attended

\textsuperscript{44}This figure is not based on a statistical procedure: there are no standard errors of the estimate, no confidence intervals, and no measures of whether the 7.9% estimate is statistically different than 0%.

\textsuperscript{45}Sander uses an index that gives 40% weight to the undergraduate GPA and 60% weight to the LSAT, “with both UGPA and LSAT normalized to a thousand-point scale.” Sander, supra note \textit{Error! Bookmark not defined.}, at 393.
by white students with the same approximate scores provides a measure of the elimination of affirmative action. The counterfactual identification strategy is to use the calculated probability of becoming a lawyer for the actual blacks who attended the white median tier for each index range and attributed this probability to other blacks who would be forced by the elimination of affirmative action to attend schools in this white median tier.

When the impact of the elimination of affirmative action is calculated in this way—by sending blacks in a given index range to the white median tier for that index range—it turns out that instead of increasing the number of black attorneys by 7.9%, the elimination of affirmative action would decrease the number of black lawyers by 12.7%. Of course, in a world without affirmative action, blacks with a given index score would not all attend the white median tier—some would go above and some would go below this tier. Thus one might alternatively assume that without affirmative action blacks within a given index range would attend exactly the same distribution of schools as whites within that index range. Again using the black bar passage rate for blacks within a given index range at a given tier (rather than the rate for whites with the same index at the same tier), we find that elimination of affirmative action would result in a decrease of black lawyers by 9.4%.

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46 We follow Sander’s convention for these calculations by dropping the bottom 14% of students from the analysis.
How can it be that Sander estimated an increase in black lawyers, while these approaches predict a reduction? The key difference is that Sander ignores black-white bar passage disparities in his counterfactual world without affirmative action. He assumes that in a world without affirmative action, black students will immediately become lawyers at the same rate as white law students with the same entering credentials. This rate, by the logic of his own account, is simply too high: even whites would not pass the bar at the current white rate if affirmative action were eliminated. To see this, note that his academic mismatch hypothesis posits that relative black grades would increase in a race-blind system. This implies that relative white grades must fall, and since (by Sander’s Table 6.1) grades are the most significant predictor of bar passage, white bar passage rates should also fall. Therefore, even if blacks and whites were to pass the bar at the same rate in this race-blind system (and there is overwhelming evidence to suggest that they would not), there would be fewer black lawyers than Sander’s analysis suggests.

I am not suggesting that the black bar passage rate at these various tiers would not change with the elimination of affirmative action. We can be confident that it would change, but we cannot be too confident—nor can Sander—in assessing how it would change. He takes the most optimistic view possible. But this is all guesswork, and somewhat beside the point. What’s really at stake in his “Systemic Analysis” is the extent to which the mismatch effect undermines
black bar passage rates, if at all. Surprisingly, Sander’s original analysis did not
directly test this proposition.

**Analysis of Students Who Were Admitted to Their “First Choice”**

Though seemingly commonsensical, empirically identifying academic
mismatch is no simple matter. Consider, for example, a study of the Chicago
public school system’s (CPS) lottery program. Any student in the CPS may apply
to any number of schools within the system. When demand for admission to a
given school exceeds the supply of available slots, lotteries are commissioned. Julie Berry Cullen et al. use these lotteries to estimate the effect of winning a
lottery to high-achieving and lower-quality schools on standardized tests and
other traditional measures of academic performance. Though they were not
explicitly seeking to test the academic mismatch hypothesis, some of their
findings are consistent with its implications: “high-achieving school lottery
winners are systematically less likely to test in the top quartile on standardized
tests . . . .” On the other hand, they found “no significant differences between

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47See JUly Berry Cullen et al., the Effect of School Choice on Student Outcomes: Evidence
(“For a limited number of programs, typically the most selective, admission is based on criteria
such as test scores, and lotteries are not used.”).
48See id.
49id. at 18 n.18. Yet, even this result must be taken cautiously because in most of the school
lotteries, less than fifty percent of lottery winners ultimately enrolled. This level of
noncompliance among lottery winners suggests that the intent-to-treat (i.e., winning a lottery)
may not be an ideal proxy for the treatment (i.e., attending a more selective school).
lottery winners and losers at high-achieving schools on dropout rates . . . [,] absences, or course credits.”

In contrast to Cullen et al.’s randomized design, consider Sander’s “natural experiment” to identify mismatch. To examine the claim that the “treatment” of racial preferences hurts blacks, he seeks an experimental group that will receive the treatment and a control group that will not. (The extent to which index scores are inflated may be considered the dosage of the treatment.) It is important for the validity of his results that the experimental and control groups differ only in terms of receiving or not receiving the treatment. Arguing that there is not sufficient variation among blacks (since few actually sign up for the control group when given an opportunity to have the experimental treatment, i.e., admissions to a more elite law school), Sander uses a sample of “similar” blacks and whites and seeks to take “advantage of the fact that affirmative action policies place similar blacks and whites at very different institutions.” Thus, in his framework, affirmative action is a randomizing selection mechanism that places otherwise “similar” subjects in the control group or the experimental group. Unfortunately, selection into the groups is not random: only blacks are selected for the treatment. This nonrandomness is a problem for his experiment if race has anything to do with the outcome measures of interest.

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50 Id. at 18.

51 Sander, supra note Error! Bookmark not defined., at 453.

52 Id. (“[Affirmative action] policies create an opportunity for a natural experiment on the effects of academic mismatch . . . .”).
Sander responds to this by claiming that race has nothing to do with the outcomes of interest (i.e., law school grades, dropout and bar passage rates): “[T]he collectively poor performance of black students at elite schools does not seem to be due to their being ‘black’ (or any other individual characteristic, like weaker educational background, that might be correlated with race). The poor performance seems to be simply a function of disparate entering credentials . . .”53 But the data do not support this claim. Sander too acknowledges that “[a] number of careful studies, stretching back into the 1970s, have demonstrated that . . . [i]f anything, blacks tend to underperform in law school relative to their numbers, a trend that holds true for other graduate programs and undergraduate colleges.”54

Indeed, even his own 1995 National Survey data suggest an effect of race beyond incoming credentials. As others have observed, Sander implicitly treats those who didn’t report their race in his 1995 data set—about a quarter of the total sample—as whites. When the nonreported data are accounted for in a variety of ways, the coefficient for the black student indicator variable becomes significant and negative. This point, which Sander concedes,55 can be observed in Table 3. The first column of figures in Table 3 reports Sander’s original analysis, where the coefficient on “Black” is small and statistically insignificant. In the

53 Id. at 429.
54 Id. at 424 (footnotes omitted).
55 He observes that the “race” coefficients predicting first-year law school grades in his Table 5.2 are negative and statistically significant “if one does not include those not reporting race with white students.” Id. at 429 n.175.
second column of figures, those who did not report their race are dropped. In the next column, those who didn’t report their race are kept in the sample with an indicator variable identifying them. In the last column, the race for those students who did not report it is imputed.\textsuperscript{56} The last three models in Table 3 show that the “race of the student” is statistically significant in predicting grades. However, there is more to “race” than the race of the student; and since these models are accounting for just roughly 20% of the variation in grades, one must wonder if better race controls (including the racial composition of the school, the classroom and the faculty) would reveal an even bigger impact of race, as implied by the stereotype threat literature. None of the Table 3 responses to missing data is perfect, and some are more flawed than others.\textsuperscript{57} These alternatives are presented not to resolve the matter, but principally to show that the results of Sander’s Table 5.2 are sensitive to how these missing data are treated. And, in any event, Table 5.2 cannot demonstrate or falsify the academic mismatch hypothesis.

\textsuperscript{56}For the imputation we first ran a multinomial model using only reporting students to estimate the probability of falling into one of five race categories. Since most of the relevant variables were missing for almost all nonreporting students, we relied on ZLSAT and ZUGPA as independent variables in the model. We predicted the probability of being in each race category for the nonreporters, and then ran OLS using the whole sample and the new race dummy values for the nonreporters.

\textsuperscript{57}Multiple imputation is generally considered the best response to dealing with missing data problems of this sort. Listwise deletion, mean substitution, and simple regression imputation (our approach in the last column of Table 3) are plausible though less ideal responses. Ad hoc data replacement, of the kind employed by Sander, may be the least scientifically appropriate way to handle missing data. See DONALD B. RUBIN, MULTIPLE IMPUTATION FOR NON-RESPONSE IN SURVEYS (1987); Paul D. Allison, Multiple Imputation for Missing Data: A Cautionary Tale, 28 SOC. METHODS & RES. 301 (2000); Joseph L. Schafer & John W. Graham, Missing Data: Our View of the State of the Art, 7 PSYCHOL. METHODS 147 (2002).
### TABLE 3: FACTORS ASSOCIATED WITH FIRST-SEMESTER LAW SCHOOL GPA, COMPARING SANDER’S MODEL WITH ALTERNATIVE MODELS (USING NATIONAL SURVEY OF LAW SCHOOL PERFORMANCE)

<table>
<thead>
<tr>
<th>Independent Variable</th>
<th>Sander’s Table 5.2</th>
<th>Model with Race Not Reported Imputed</th>
<th>Dummy Variable for Race Not Reported</th>
<th>Model Without Race Not Reported</th>
</tr>
</thead>
<tbody>
<tr>
<td>ZLSAT</td>
<td>0.383 (25.98)**</td>
<td>0.360 (22.39)**</td>
<td>0.364 (24.46)**</td>
<td>0.331 (18.84)**</td>
</tr>
<tr>
<td>ZUGPA</td>
<td>0.212 (14.92)**</td>
<td>0.198 (13.39)**</td>
<td>0.201 (14.17)**</td>
<td>0.200 (12.08)**</td>
</tr>
<tr>
<td>Asian</td>
<td>-0.007 (0.52)</td>
<td>-0.028 (1.99)*</td>
<td>-0.025 (1.75)</td>
<td>-0.030 (1.86)</td>
</tr>
<tr>
<td>Black</td>
<td>-0.007 (0.48)</td>
<td>-0.041 (2.57)*</td>
<td>-0.030 (2.00)*</td>
<td>-0.041 (2.35)*</td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.011 (0.79)</td>
<td>-0.035 (2.40)*</td>
<td>-0.029 (2.01)*</td>
<td>-0.038 (2.30)*</td>
</tr>
<tr>
<td>Other Race</td>
<td>-0.021 (1.49)</td>
<td>-0.041 (2.92)**</td>
<td>-0.040 (2.82)**</td>
<td>-0.047 (2.95)**</td>
</tr>
<tr>
<td>Race Not Reported</td>
<td></td>
<td>-0.103 (7.06)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>0.018 (1.29)</td>
<td>0.017 (1.20)</td>
<td>0.020 (1.45)</td>
<td>0.036 (2.28)*</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.008 (0.38)</td>
<td>0.028 (1.20)</td>
<td>0.065 (2.69)**</td>
<td>0.053 (2.07)*</td>
</tr>
<tr>
<td>Observations</td>
<td>4258</td>
<td>4258</td>
<td>4258</td>
<td>3232</td>
</tr>
<tr>
<td>R²</td>
<td>0.19</td>
<td>0.19</td>
<td>0.20</td>
<td>0.18</td>
</tr>
</tbody>
</table>

**Sources and Notes:** The figures here are calculated using the 1995 National Survey Data; standard coefficients are reported. The absolute value of t statistics are in parentheses. "*" indicates significance at the 5% level, and "**" indicates significance at the 1% level. These are OLS regressions. The dependent dummy variable is the standardized (z-score) law school GPA of each student. ZLSAT and ZUGPA are school-specific z-scores for a student’s LSAT and UGPA respectively. White is the excluded race dummy variable. Female is the excluded gender dummy. Two hundred and nineteen of the surveyed students reported being black. Forty-three of these respondents were from a historically black school. So only 176 out of 4258 observations were black students not attending a historically black school.

As Sander observes, the ideal way to test this hypothesis “would be an experiment comparing matched pairs of blacks admitted to multiple schools, with the ‘experimental’ black student attending the most elite school admitting them and the ‘control’ black student attending a significantly less elite school.”

Sander claims that this experiment is not feasible because “few blacks pass up

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58Sander, supra note Error! Bookmark not defined., at 453 (footnotes omitted).
the opportunity to go to more elite schools.” It is not surprising that law school applicants are hesitant to pass up the opportunity to go to their first-choice schools. Yet many do so for a variety of reasons, and this fact (which is captured in the broader LSAC data) can be exploited to provide a limited test of the mismatch hypothesis.

The intended empirical strategy here is similar in spirit to Stacey Berg Dale and Alan Krueger’s approach. Principally relying on the “College and Beyond” survey data—where respondents were asked which undergraduate colleges they seriously considered and to which schools they applied and were accepted—Dale and Krueger matched students who reported that they were accepted by similar-quality schools. Based on this matching, they were able to compare the earnings outcomes of those who chose to attend more selective colleges to those who attended less selective ones.

In a similar fashion, the LSAC survey data can allow one to identify students who reported that they were admitted to and subsequently enrolled at their first-choice law school, as well as those who reported that they were admitted to their first choice, but attended a lower-choice school for financial or other reasons.

59 Id.
61 Dale and Krueger found little advantage (in terms of earnings) for students who attended more selective schools, but students from “disadvantaged backgrounds” (e.g., those from lower-income families) did earn more by attending more selective colleges. Id. On the other hand, they observed some disadvantage (in terms of class rank) for students who attended more selective schools. Id. at 1512.
62 In one prompt on the LSAC survey, respondents were asked, “Is the law school that you are attending your” (i) “first or only choice,” (ii) “second choice,” or (iii) “third or lower choice?” A
Assuming that students on average rank more competitive schools higher among their choices, if mismatch exists, then one ought to observe that relative to those students who attended their first-choice schools, those who were admitted but attended their second- or lower-choice law school should perform better.

Follow-up prompt allowed us to select those who were admitted to their first choice but chose not to attend for financial or personal reasons. The prompt read as follows: "Why are you not attending the law school that was your first choice?" Respondents could answer (i) "I was not admitted," (ii) "I was admitted but it was too expensive given the financial aid made available to me," or (iii) "I was admitted but it was too distant from my family or personal responsibilities or attachments." Subsequent analysis may call for treating those who responded with (ii) differently from those who answered (iii). In most (though not all) cases one would, presumably, be aware of distance constraints at the time of application, which calls into question why they applied in the first place. There are certainly plausible reasons why one might apply to a law school even knowing that distance may be a prohibitive concern, so we do not make much of this concern here. For the quotes in this paragraph, see LAW SCH. ADMISSION COUNCIL, LSAC BAR PASSAGE STUDY ENTERING STUDENT QUESTIONNAIRE 8, reprinted at LINDA F. WIGHTMAN, USER'S GUIDE: LSAC NATIONAL LONGITUDINAL DATA FILE, at B1, B8 (1999).

We attempted to identify the factors that might influence an applicant's decision to forgo their first choice by running race-specific regressions using LSAT, UGPA, family income, status as male, law school tier, and the number of schools to which the student applied and was admitted. This analysis reveals that while almost all of these variables were insignificant for blacks, most were highly significant for whites. For example, white males and whites with more family income were significantly less likely to pass up their first choice. Compared to blacks, whites are also less likely to turn down their first choice when it is in a higher tier. These across-race differences, however, are not our biggest concern, since our mismatch test compares outcomes within race but across schools of differing selectivity (by assumption). We remain concerned about matriculation patterns within race, which could bias our results.

This is a strong, sobering assumption that ought to constrain too much exuberance for the results of our first-choice analysis. While it may appear an intuitive assumption, and there may be incidental support for it in other parts of the LSAC data, it is important to emphasize that the analysis rests on this belief about the data that we cannot observe or verify. We are grateful to Tim Clydesdale for pointing out to us that the way respondents view their first-choice school is subject to tremendous variation. The data indicate that some respondents seemingly interpreted "first choice" to be first choice on the universal set of law schools, while others apparently had in mind first choice among the schools to which they applied, and still others interpreted it as first choice among the schools to which they were admitted. For example, of those who applied to only one law school, 43 said their current law school was their second- or third-choice law school, and some who applied to only two law schools said their current law school was their third- or lower-choice school. Similarly, of those who were accepted at just one law school, 4297 indicated they were not at their first-choice law school, and among those accepted at just two law schools, 1655 said their current law school was their third- or lower-choice school. We go forward with this analysis nonetheless because it illustrates the type of design needed to assess academic mismatch and the generally poor quality of the extant data in this regard.
While this is not an implausible test, it is important to describe its limitations and how it differs, for instance, from the stronger design of Dale and Krueger’s study. Knowing the actual schools when attempting to match students who applied to and were admitted or rejected by similar colleges, Dale and Krueger were able to construct a metric of selectivity based on the school’s average SAT score, net tuition, and Barron’s selectivity rating. With this rich selectivity data, they were able to generate rough matches and exact matches of students. In contrast, we have no measure to directly control for law school selectivity in matching blacks who applied, were admitted to, and attended their most elite (presumably “first-choice”) law school option with those who were admitted, but did not attend their most elite choice. Nonetheless, because Sander does not explicitly test the academic mismatch hypothesis he advances, the “first choice” approach—with all its limitations—still appears to be among the strongest and most direct available evidence on mismatch in the law school setting. This point is made not as an indication of the quality of the analysis, but as a strong statement about the weaknesses of the data (for this question) on which Sander and I rely. I leave it to the responsible reader to make of it what she will.

---

65 They matched students who applied to and were accepted and rejected by equivalent schools—that is, schools with average SAT scores falling in a given twenty-five-point range, or schools falling within the same selectivity categories used by Barron’s. Dale & Krueger, supra note 60, at 1508-09.

66 “[S]tudents who applied to and were accepted or rejected by exactly the same schools.” Id. at 1509.

67 Interestingly, the LSAC originally had in its database, for each law school applicant in 1991, the identities of all the schools to which her LSAT scores had been sent. The LSAC may have also possessed the names of all the applicants accepted by various schools. Yet even without this information, we would still be able to improve our “matching” using where LSAT scores were sent and the students’ reports of the number of schools that admitted them. Thus stronger matching than we currently use might have been accomplished.
Taking all the students who were admitted to their “first or only choice” and for whom there existed data on appropriate controls, we are left with 12,082 students in the sample. It is interesting to note that blacks were twice as likely as whites to turn down their first choice (20% of blacks and 10% of whites did not attend their first choice, conditional on being admitted). We then dropped those who were admitted to only one school, which left us with 7272 students who reported that they had a choice among law schools, where some attended their first choice (“first choicers”) and others attended their second or a lower choice (“second choicers”). Table 4 shows some basic descriptive statistics of these first and second choicers. While there are clear differences across race in terms of LSAT and UGPA, note that within race, the students who attended their first choice are quite similar to those who attended their second choice along these dimensions.

68That is, data on the respondent’s race, gender, LSAT, undergraduate GPA, law school tier, and number of schools to which he or she applied. We also cleaned up the data to remove students who seemed to not understand the survey questions.

69This additional step is essential because “first choice” is lumped with “only choice” in the survey. There are good reasons to suspect that students who go to their “only choice” have underlying characteristics that are meaningfully different from students who have multiple choices. Assuming that those students with only one choice are less competitive on hidden characteristics, including them with the first-choice attendees in our analysis would overestimate the relative effect of going to a second or lower choice. Our results are qualitatively similar when we merely drop those who only applied to one school. We report coefficients from the multiple admissions model, rather than multiple applications, because it is theoretically more consistent with our framework. This concern about “only choice” respondents is quite salient because in the 1990-1991 applicant pool that produced the BPS, approximately 23% of all ABA applicants applied to only one law school, an additional 13% applied to two law schools, and another 10% applied to three law schools. Linda F. Wightman, An Examination of Sex Differences in LSAT Scores from the Perspective of Social Consequences, 11 APPLIED MEASUREMENT EDUC. 255, 270 fig.3 (1998).
Table 4: Means of First-Choice and Second- or Lower-Choice Attendees (Conditional on Being Admitted to Two or More Law Schools, Including First Choice)

<table>
<thead>
<tr>
<th>Variable</th>
<th>Asian</th>
<th>Black</th>
<th>Hispanic</th>
<th>White</th>
<th>Other</th>
</tr>
</thead>
<tbody>
<tr>
<td>First-Choice Attendees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mean LSAT</td>
<td>36.95 (5.68)</td>
<td>30.52 (6.10)</td>
<td>34.57 (5.87)</td>
<td>38.62 (4.82)</td>
<td>34.93 (6.64)</td>
</tr>
<tr>
<td>Mean UGPA</td>
<td>3.26 (0.41)</td>
<td>2.96 (0.43)</td>
<td>3.18 (0.40)</td>
<td>3.36 (0.39)</td>
<td>3.27 (0.41)</td>
</tr>
<tr>
<td>Observations</td>
<td>190</td>
<td>470</td>
<td>327</td>
<td>4873</td>
<td>107</td>
</tr>
<tr>
<td>Percent of Total</td>
<td>76%</td>
<td>72%</td>
<td>79%</td>
<td>84%</td>
<td>71%</td>
</tr>
<tr>
<td>Second- or Lower-Choice Attendees</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mean LSAT</td>
<td>35.55 (5.14)</td>
<td>29.96 (5.62)</td>
<td>33.72 (5.71)</td>
<td>38.64 (4.60)</td>
<td>34.75 (5.75)</td>
</tr>
<tr>
<td>Mean UGPA</td>
<td>3.25 (0.49)</td>
<td>3.02 (0.41)</td>
<td>3.14 (0.39)</td>
<td>3.36 (0.39)</td>
<td>3.19 (0.47)</td>
</tr>
<tr>
<td>Observations</td>
<td>59</td>
<td>187</td>
<td>85</td>
<td>931</td>
<td>43</td>
</tr>
<tr>
<td>Percent of Total</td>
<td>24%</td>
<td>28%</td>
<td>21%</td>
<td>16%</td>
<td>29%</td>
</tr>
</tbody>
</table>

Sources and Notes: Figures here are calculated from 1991 LSAC-BPS data. Standard deviations appear in parentheses. This table analyzes students who reported that they were admitted to their “first or only choice” and also reported that they were admitted to more than one school. In this group, “first-choice attendees” reported that they attended their first-choice school, and “second- or lower-choice attendees” reported that they did not attend their first-choice school.

We next coded the variable “Second Choice” to 0 if the student reported that she attended her first-choice school and 1 otherwise, conditional on being admitted to her first choice. To test for academic mismatch, we regressed first-year law school grades on a variety of controls—including an indicator for the number of schools to which the students applied to limit selection bias—and “Second Choice.” The results of our regressions are reported in Table 5.\(^7\) The first column of figures represents the whole sample, and the next two columns

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\(^7\) We report results from our most basic regression. Inclusion of UGPA and LSAT in these regressions does not meaningfully alter the magnitude or statistical significance of our variable of interest (i.e., Second Choice).
represent the black and white subsamples, respectively.\footnote{We limit our discussion here to the black and white subsamples since those were the groups on which Sander focused in his analysis. We found substantially similar results when we included tier-specific LSAT and UGPA controls.} These figures provide some support for the mismatch hypothesis with regard to first-year law school grades. Specifically, the positive coefficient on the Second Choice variable suggests that those students who chose not to attend their first-choice schools were likely to earn higher first-year grades. The effect is bigger and more statistically significant for whites than for blacks, as shown in the second and third column of figures, but the effect is present for both groups.

The results of the first-year grade regressions should be interpreted with some care. It is likely that the returns from attending a second-choice (or, by assumption, a less selective) law school are not homogeneous. Some students may benefit slightly by forgoing their first-choice law school to attend a marginally less competitive one, while others might be hurt by making this choice. Our analysis cannot demonstrate whether the average student benefits by forgoing her first choice. As Dale and Krueger observe, “the students who choose to go to less selective schools may do so because they have higher returns from attending those schools . . . .”\footnote{Dale & Krueger, supra note 60, at 1494 (emphasis added).} The returns to the average student may not be greater from attending a less selective law school. Our results indicate only that for some students, attending their first-choice school (which we take to be a more selective school in general) may not be the grade-maximizing option. And frankly, we cannot even say why this is so. For example, relatively higher grades
received by a student who chooses to attend a lower-choice school for “personal attachment” or financial reasons may reflect a boost that the student experiences due to less financial stress in school or a boost from being surrounded by more family support rather than being surrounded by academically less competitive classmates. Furthermore, the grade-maximizing trade-off of those who optimally choose a less selective law school may not be the maximizing decision in terms of bar passage. It is a complicated interaction, and our design, while an improvement over Sander’s, is far from ideal.

Table 6 reports our regression results on the likelihood that the respondent passed a bar exam within five years of beginning law school. The figures apply to law students who were accepted by more than one school, including their first choice. We again add our “Second Choice” dummy to test whether failing to attend one’s first-choice school impacts the probability of becoming a lawyer (we also again add a control for number of schools applied to). The regression for all races and for each racial subsample suggests that attending a second- or lower-choice school does not statistically improve a student’s odds of passing the bar within five years of starting law school.

In our analysis of first-choice admits, we did observe an advantage for black second- or lower-choice attendees over their first-choice counterparts with

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73Recall, the set of second-choicers was constructed by taking those students who turned down an offer from their first-choice school because it was too expensive or because “it was too distant from [their] family or personal responsibilities or attachments.” See supra note 62.

74These findings are qualitatively unaffected by the inclusion of a number of other variables, including LSAT, undergraduate GPA, and law school GPA. See Web Appendix, supra note Error! Bookmark not defined.
regard to passing the bar within four years of starting law school. On the other hand, no statistically significant advantage was observed for second- or lower-choice black attendees in terms of graduation rates and final law school GPA. Thus three out of the five outcome measures we consider (i.e., final law school GPA, ultimate bar passage, and graduation rates) reveal no statistically significant disadvantage for blacks who chose to attend their first-choice law school compared to those who chose to attend a lower-choice—presumably less selective—law school. Two out of the five outcome measures (i.e., first-year law school GPA and first-attempt bar passage) did show a relative advantage for blacks who chose to attend their second- or lower-choice law school. While there are important limitations to this type of analysis, our take-home point is that while there is mixed support for a mismatch effect, there is no persuasive evidence that mismatch reduces the ultimate bar passage rates of blacks or whites.

75We, again, acknowledge that the academic mismatch effect on grades is a reasonable proposition, particularly in an environment where there are a limited number of high marks because grading is based on a curve. In our Web Appendix, see supra note Error! Bookmark not defined., we also produce an analog to Figure 3 showing the impact on law school grades when students with the same index score attended a more selective school. Contrary to our finding of a reverse mismatch effect on the probability of becoming a lawyer, this school-specific analysis of the 1995 data suggests that there was a mismatch effect for both whites and blacks on law school grades. Additionally, Bowen and Bok’s analysis, WILLIAM G. BOWEN AND DEREK BOK, THE SHAPE OF THE RIVER: LONG-TERM CONSEQUENCES OF CONSIDERING RACE IN COLLEGE AND UNIVERSITY ADMISSIONS (1998), as well as Dale and Krueger’s, supra note 60, lends support to this proposition, with some important caveats relating to their black sample size. See David L. Chambers et al., The Real Impact of Ending Affirmative Action in American Law Schools: An Empirical Critique of Richard Sander’s Study, 57 STAN. L. REV. 1165 (2005).
TABLE 5: UNSTANDARDIZED OLS COEFFICIENTS PREDICTING FIRST-YEAR LAW SCHOOL GPA, USING FIRST-CHOICE AND SECOND-OR LOWER-CHOICE ATTENDEES (CONDITIONAL ON BEING ADMITTED TO TWO OR MORE LAW SCHOOLS, INCLUDING FIRST CHOICE)

<table>
<thead>
<tr>
<th>Variable</th>
<th>Whole Sample</th>
<th>Black Subsample</th>
<th>White Subsample</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian</td>
<td>-0.407</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(6.60)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>-1.136</td>
<td></td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>(28.89)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.661</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(4.05)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Race</td>
<td>-0.227</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2.34)*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>0.007</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.30)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-0.007</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.10)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-0.001</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(0.03)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tier</td>
<td>-0.026</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2.64)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-0.194</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(7.30)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0.014</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1.28)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Second Choice</td>
<td>0.259</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(8.75)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0.174</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(2.06)*</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0.267</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(7.94)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td># Schools Applied</td>
<td>-0.033</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(8.29)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-0.021</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1.49)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>-0.031</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(7.00)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Constant</td>
<td>0.345</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(7.64)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0.209</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(1.69)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>0.229</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(4.56)**</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Observations</td>
<td>7272</td>
<td>657</td>
<td>5804</td>
</tr>
<tr>
<td>R²</td>
<td>0.12</td>
<td>0.09</td>
<td>0.02</td>
</tr>
</tbody>
</table>

Sources and Notes: The figures are calculated from the 1991 LSAC-BPS data. The absolute value of t statistics appears in parentheses. "*" indicates significance at the 5% level; "**" indicates significance at the 1% level. These are OLS regressions run on observations for students who reported that they were admitted to their "first or only choice" and also reported that they were admitted to more than one school. White is the excluded race dummy variable. Female is the excluded gender dummy variable. "First-choice attendee" is the excluded school-choice dummy variable. "Second choice" equals 1 if the student reported that he or she did not attend her first-choice school.
## Table 6: Odds Ratio from Logistic Regressions Predicting Bar Passage Within Five Years of Beginning Law School, Using First-Choice and Second- or Lower-Choice Attendees (Conditional on Admission to Two or More Law Schools, Including First Choice)

<table>
<thead>
<tr>
<th>Variable</th>
<th>Whole Sample</th>
<th>Black Subsample</th>
<th>White Subsample</th>
</tr>
</thead>
<tbody>
<tr>
<td>Asian</td>
<td>-0.680 (2.35)*</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Black</td>
<td>-1.728 (12.23)**</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Hispanic</td>
<td>-0.681 (0.92)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Race</td>
<td>-0.398 (0.76)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>0.030 (0.24)</td>
<td>.351 (1.40)</td>
<td>-0.013 (0.08)</td>
</tr>
<tr>
<td>Tier</td>
<td>0.278 (5.58)**</td>
<td>0.128 (1.59)</td>
<td>0.450 (5.25)**</td>
</tr>
<tr>
<td>Second Choice</td>
<td>0.158 (1.02)</td>
<td>0.172 (0.64)</td>
<td>0.103 (0.46)</td>
</tr>
<tr>
<td># Schools Applied</td>
<td>-0.044 (2.08)*</td>
<td>0.047 (1.04)</td>
<td>-0.066 (2.35)*</td>
</tr>
<tr>
<td>Constant</td>
<td>2.491 (10.80)**</td>
<td>0.669 (1.77)</td>
<td>2.341 (7.01)**</td>
</tr>
<tr>
<td>Observations</td>
<td>6380</td>
<td>517</td>
<td>5160</td>
</tr>
<tr>
<td>Pseudo R²</td>
<td>0.07</td>
<td>0.01</td>
<td>0.02</td>
</tr>
</tbody>
</table>

Sources and Notes: The figures are calculated from the 1991 LSAC-BPS data. The absolute value of z statistics appears in parentheses. "*" indicates significance at the 5% level; "**" indicates significance at the 1% level. These are logistic regressions run on observations for students who reported that they were admitted to their "first or only choice" and also reported that they were admitted to more than one school. White is the excluded race dummy variable. Female is the excluded gender dummy variable. "First-choice attendee" is the excluded school-choice dummy variable. "Second choice" equals 1 if the student reported that he or she did not attend her first-choice school.

### Stereotype Threat and Lift

If not mismatch, then what explains black underperformance in law schools? One possibility is stereotype threat. Sander offers an incorrect characterization of the way in which stereotype threat might affect law school performance: “[t]he widespread perception that blacks perform badly on such tests has produced a
‘stereotype threat’ among blacks that further hinders performance.” Sander’s interpretation implies that black test takers’ initial poor performance on tests and their prior knowledge of blacks’ poor performance as a whole hinders their performance. But stereotype threat is activated by the more subtle and pervasive mechanism of contending with situations in which one knows one can be viewed through the lens of a negative stereotype. It has little to do with expectations of poor performance and everything to do with the contextual environment that black law students face. “Stereotype threat follows its targets onto campus, affecting behaviors of theirs that are as varied as participating in class, seeking help from faculty, contact with students in other groups, and so on.” Calling attention to context is important because Sander does little to account for the contextual effects of being a stigmatized group member in law school or the effects of racial diversity. The overperformance of black students at historically black schools seems particularly relevant here—but is largely ignored in Sander’s analysis.

Sander does not so much deny the existence of stereotype threat; rather, he dismisses it as intractable and hard to measure. “‘Stereotype threat’ does appear to exist, but it is hard to pin down how much of the black-white gap proponents believe it explains.” Evidence from the stereotype threat research suggests that it may explain a significant portion of the difference between white and black

76 Sander, supra note Error! Bookmark not defined., at 419.
78 Sander, supra note Error! Bookmark not defined., at 424.
performance on difficult tests. A related phenomenon, known as “stereotype lift,” has also been identified—suggesting that whites overperform relative to blacks in situations where there are negative stereotypes about blacks—i.e., where whites are on the “upside” of a negative stereotype. A review of studies employing modified SAT tests found, for instance, that “[s]tereotype lift produces a 50-point advantage for White men.” Together, stereotype threat and stereotype lift can potentially account for 150 points of the black-white SAT score differences. In other words, these phenomena may account for most of the black-white gap.

Finally, relying on his incorrect interpretation of the phenomenon, Sander suggests that stereotype threat is not relevant in legal writing classes because they allow for extended time to write memos and so forth, yet the relative black

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80 Walton and Cohen show this effect using a metaanalysis of forty-three studies based on “difficult tests,” including English literature exams, Math and Verbal GREs, and AP Calculus tests. Id. at 457-61. The mechanism through which stereotype lift operates is straightforward: “[b]y comparing themselves with a socially devalued group, people may experience an elevation in their self-efficacy or sense of personal worth, which may, in turn improve performance.” Id. at 456 (citations omitted). As Walton and Cohen observe, this “boost in feelings of efficacy” may be important to maintaining confidence and motivation, “[p]articularly for difficult tests.” Id.
81 Id. at 463 (noting that this is “a performance boost that, at the most selective colleges, could make the difference between rejection and acceptance”).
82 Stereotype threat is estimated to have roughly twice the magnitude of stereotype lift. Id. at 464.
83 The mean SAT gap is generally in the range of 160 to 200 points, depending on the year and schools included, see, e.g., Alon & Tienda, supra note Error! Bookmark not defined., at 38 tbl.3, though, of course, it might be higher at individual schools, in some cases approaching 300 points.
84 “[A]lmost all first-year students take legal writing classes, which are graded on the basis of lengthy memos prepared over many weeks, and which give students an opportunity to demonstrate skills entirely outside the range of typical law school exams.” Sander, supra note Error! Bookmark not defined., at 424.
underperformance is even greater in these classes. Of course, stereotype threat properly understood could certainly be operative in this environment as well. Furthermore, there is research demonstrating that the way in which critical feedback is given to minority students on written assignments affects their perception of the instructor and their motivation to improve writing assignments. One of the basic tenets of this research is the notion that receiving critical feedback is racially ambiguous, and particularly ambiguous on difficult writing assignments. This is not explicitly a form of stereotype threat, but it is yet another demonstration of how contending with negative stereotypes in school is consequential for minority performance.

While we are confident that affirmative action has not been demonstrated to be the dominant cause of black-white disparities in the chance of becoming a lawyer, we do not have a compelling theory as to what is causing the shortfall. But pursuing the possibility of “stereotype threat” and focusing on historically black schools—places where the miner’s canary is healthier—is an important place to start.

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85 Id. ("My analyses of first-semester grade data from several law schools shows a slightly larger black-white gap in legal writing classes than in overall first-semester grade averages.").