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Leonard M. Baynes

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IF IT'S NOT JUST BLACK AND WHITE ANYMORE, WHY DOES DARKNESS CAST A LONGER DISCRIMINATORY SHADOW THAN LIGHTNESS? AN INVESTIGATION AND ANALYSIS OF THE COLOR HIERARCHY

LEONARD M. BAYNES*

*One of my friends is a sportswriter, a liberal white guy—very active in social causes. He told me that he was unable to interview Celtic basketball player Robert Parrish in the locker room because Parrish was so dark that it was hard for him to approach Parrish!*¹

I. INTRODUCTION

Many scholars in the social theory and anthropological fields tell us that race is often merely a political construction.² Many sophisticated individuals have discredited the Social Darwinist view of race as a biological concept.³ Therefore, some have argued that race really no longer matters.⁴

* Copyright © 1997 Leonard M. Baynes. Professor of Law, Western New England College School of Law. B.S., 1979, New York University; J.D., 1982, Columbia University; M.B.A., 1983, Columbia University. I would like to acknowledge the help that my research assistants, B.J. Burke, Aleshia Days, and Silvia Perez, have given me on this project. I also want to thank my readers, Margarita Marin Dale, Chris Iijima, and Carlos Cuevas, for their insight. In addition, I want to thank outside readers Juan Roure, Tanya Kateri Hernandez, Kevin Johnson and my siblings—Ethel Richards, John Baynes, Keith Baynes, Pearl Baynes, and Carl Baynes—for their contributions and support throughout this project. I also want to thank the faculty, students, and staff at Western New England who completed the color survey. I especially want to thank my secretaries, Carmen Alexander, Nancy Hachigian, and Donna Haskins, who helped compile the data from the *Western New England College Survey of Attitudes and Beliefs About the Colors of Blacks and Latinos*. I am also grateful for the summer research grant received from Western New England College School of Law, which helped make this article possible.

1. Interview with Bruce Miller, Professor at Western New England College School of Law, in Springfield, Mass. (July 10, 1997). My colleague indicated that his white sportswriter friend was able to interview another black player, Cedric Maxwell, because he had a lighter complexion than Robert Parrish. The experience of Professor Miller's friend occurred some time in 1983-84.

2. See Michael Omi, *Racial Identity and the State: The Dilemmas of Classification*, 15 LAW & INEQ. J. 7, 9, 23 (1997).

3. See John Teimey et al., *The Search for Adam and Eve*, NEWSWEEK, Jan. 11, 1988, at 46. But see RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE: INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* 269-340 (1994); Arthur R. Jensen, *How Much Can We Boost IQ and Scholastic Achievement*, 39 HARV. ED. REV. 1 (1969) (indicating that the cause of low income and lower status is mainly nature, not nurture, and arguing that educational attempts should focus on teaching specific skills rather than boosting I.Q.).

4. See generally John O. Calmore, *Exploring Michael Omi's "Messy" World of Race: An Essay for "Naked People Longing to Swim Free,"* 15 LAW & INEQ. J. 25, 35 (1997) (describing race as an illusion); Omi, *supra* note 2, at 21-22 (indicating that some people view race as an illusion).

Many Critical Race Scholars have written extensively about abandoning the binary character of the Black⁵-White Paradigm.⁶ Generally, these articles indicate that discrimination is not the exclusive province of African Americans, and highlight the fact that all people of color experience discrimination in the United States.⁷ In addition, they note that discrimination can be based on things besides race, such as accent, language, gender, sexual orientation, income level and immigration status. Each member of a group bearing these indicia of social status faces discrimination in the United States.⁸ If we were to superimpose each of these other indicia of social disadvantage on all people of color (whether they be African American, Asian American or Latino), however, the darker the person in each of these individual categories, the more likely he or she will experience discrimination by Whites. For example, many Critical Race Feminists have written that, because of their darker skin, they face different issues than White women.⁹

This article explores the complicated issues of colorism. Most people of color are of different shades and hues. Both Blacks and Latinos can be very light or very dark in appearance. This article explores the question whether darker-complected people of color face more discrimination than those who have lighter complexions. The article defines racism by a Dark-Light Paradigm replacing the older Black-White Paradigm. The Dark-Light Paradigm is still binary, but it is more expansive than the older Black-White Paradigm because it transcends race and ethnicity to include all those members of American society who have very dark skin in the dark category. The dark category would include many Black Americans and some dark-skinned Latinos.

Historically there has been more racial discrimination against darker-skinned persons.¹⁰ This disparity in discrimination persists. Even

5. This article uses the terms "African American" and "Black" interchangeably to describe people of African descent.

6. See Robert S. Chang, *Towards an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 1 *ASIAN L.J.* 1, 27 (1994); Deborah Ramirez, *Multicultural Empowerment: It's Not Just Black and White Anymore*, 47 *STAN. L. REV.* 957, 962-63 (1995); Frank H. Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 *B.C. THIRD WORLD L.J.* 225, 251-52 (1995). Several articles in the popular press have also noted that race relations are now more than just a Black-White issue. See Stanley Crouch, *Race Is Over*, *N.Y. TIMES*, Sept. 29, 1996, sec. 6 (Magazine), at 170-71; Tom Morganthau, *What Color Is Black?*, *NEWSWEEK*, Feb. 13, 1995, at 63.

7. See Ramirez, *supra* note 6.

8. See Trina Grillo & Stephanie M. Wildman, *Obscuring the Importance of Race: The Implications of Making Comparisons Between Racism and Sexism (Or Other-isms)*, 1991 *DUKE L.J.* 397, 399-400; Trina Grillo, *Anti-Essentialism and Intersectionality: Tools to Dismantle The Master's House*, 10 *BERKELEY WOMEN'S L.J.* 16, 17 (1995).

9. See, e.g., Kimberle Crenshaw, *Mapping The Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241 (1991); Grillo & Wildman, *supra* note 8; Grillo, *supra* note 8; Hope Lewis, *Between Irua and "Female Genital Mutilation": Feminist Human Rights Discourse and the Cultural Divide*, 8 *HARV. HUM. RTS. J.* 1, 38-46 (1995).

10. See *infra* Part IV.

now, surveys indicate that darker-skinned Blacks and Latinos earn less income and hold less prestigious employment positions than their lighter-skinned counterparts.¹¹ Whites, Blacks, Latinos, and Asian Pacific Americans share the perception that Whites discriminate more against the darker-skinned people of color (whether they are Black or Latino) than their lighter-skinned counterparts.¹² Perception often has a great deal to do with reality.¹³ The income disparity between Blacks and Whites (or Latinos and Whites) parallels the income disparity between darker-skinned Blacks and lighter-complected Blacks.¹⁴ The same is true for Latinos.¹⁵ On average, lighter-complected Blacks and Latinos earn more.¹⁶ These income figures suggest that Whites are discriminating more against darker-skinned people.

In the United States, a color hierarchy exists between and among people of color, which spans different racial and ethnic groups.¹⁷ The premise is very simple and very clear: Lighter is better and darker is worse. Even if we all agree that race itself no longer matters, color will still be a problem because darkness casts a longer discriminatory shadow than lightness. A dark-skinned person of color¹⁸ is likely to encounter more discrimination than his/her light-skinned counterpart.¹⁹ In fact, one survey of African Americans showed that darker-skinned African Americans are twice as likely to report that they have been victims of

11. See *infra* Part V.

12. See Leonard M. Baynes, Western New England College Survey of Attitudes and Beliefs About the Colors of Blacks and Latinos (1997) (unpublished survey on file with author) [hereinafter Baynes, Color Survey].

13. See *id.*

14. See *infra* Part V.C.

15. See Edward Telles & Edward Murguia, *Phenotypic Discrimination and Income Differences among Mexican Americans*, 71 Soc. Sci. Q. 4 (1990); *infra* Part V.D.

16. See *infra* Part V.C-D.

17. I agree that there is a certain solidarity between and among people of color. We all face discrimination, but it may manifest itself in different ways based on the stereotype. For example, the American culture, through the media, teaches us that Blacks are lazy, stupid and criminal; that Asian and Pacific Americans are hardworking foreigners who want to take our jobs; and that Latinos are lazy, stupid foreigners who do not want to learn to speak English and who immigrate to the United States for welfare handouts.

18. It is my opinion that this applies to Blacks and Latinos. The question of whether this premise holds true for dark-skinned Native Americans or Asian Pacific Americans is beyond the scope of this article; although I believe, that the farther an individual is from White standards of appearance, the more discrimination one is likely to encounter. In the *Western New England Color Survey*, one Indian woman responded in the comment section:

My ethnic origin is Indian (from India). I have a light-to-medium skin tone. Because I am considered to be quite fair, I have experienced favorable treatment among the Indian population. I am considered more attractive than darker-skinned females. In fact, my skin makes me more marriageable than darker-skinned Indian females. Generally, people in the Indian community are very conscious of skin tone. Skin tone for women is an important indicator of status.

See Baynes, Color Survey, *supra* note 12.

19. See *infra* Part V.C.

discrimination than those with lighter-skinned complexions.²⁰ Like darker-skinned Blacks, darker, more Indian-looking Mexican Americans also reported a significantly greater amount of discrimination than the lighter, more European-looking Mexican Americans.²¹ The ABC news program *Nightline* ran a program highlighting a study demonstrating that lighter-skinned individuals were ascribed more "positive qualities and attributes" than their darker counterparts (which, in fact, were darkened photographs of the same person).²²

This new Dark-Light Paradigm has several advantages over its predecessor, the Black-White paradigm. First, it is more expansive because it allows us to consider discrimination beyond that of African Americans. Second, it maintains a framework with which we are familiar in discussing discrimination, i.e., a paradigm based on a color continuum. This continuum is the way that Whites consider discrimination.²³ Third, it helps us explain why Asian Americans are viewed as the "model minority" since many Asian Americans from Northeast Asia are lighter in complexion than African Americans. Fourth, it allows us to consider, for affirmative action purposes, the employment of dark-skinned individuals who do not fit neatly into any particular racial category.²⁴ Fifth, it helps us to explain the phenomenon of passing whereby many light-skinned African Americans conceal their racial identity as Blacks, to work with, socialize with, and marry Whites.²⁵ Many Latinos also try to conceal their ethnic and or racial identity.²⁶ There is a comedy

20. See Verna M. Keith & Cedric Herring, *Skin Tone and Stratification in the Black Community*, 97 AM. J. SOC. 760, 775 (1991).

21. See Carlos H. Arce et al., *Phenotype and Life Chances Among Chicanos*, 9 HISPANIC J. BEHAV. SCI. 19, 29 (1987); Edward E. Telles & Edward Murguia, *Phenotypic Discrimination and Income Differences Among Mexican Americans*, 71 SOC. SCI. Q. 682 (1990).

22. *Nightline* (ABC television broadcast, Feb. 28, 1997).

23. Several years ago, I served on the Academic Standards Students Petitions Committee, which reviews the dismissal of students who were academically dismissed from the school. I advocated on behalf of a light-skinned Latino student. During the course of the discussion, it became clear to me that my white colleagues considered the student to be white and would only consider his ethnic status if he had been economically deprived or disadvantaged in some way.

24. See, e.g., Leonard M. Baynes, *Who Is Black Enough for You? An Analysis of Northwestern University Law School's Struggle Over Minority Faculty Hiring*, 2 MICH. J. RACE & L. 205, 209-12 (1997) [hereinafter Baynes, *Minority Faculty Hiring*] (discussing the faculty struggle over the hiring of Professor Maria O'Brien Hylton because of her mixed race and the student protest based on her Black Latina heritage and lack of identification with one particular race); Leonard M. Baynes, *Who Is Black Enough for You? The Stories of One Black Man and His Family's Pursuit of the American Dream*, 11 GEO. IMMIGR. L.J. 97, 113-24 (1996) [hereinafter Baynes, *One Black Man*] (discussing immigration of the author's ancestors from St. Vincent and Barbados to the United States and the discrimination that they faced from African Americans and Whites in the United States).

25. See JOEL WILLIAMSON, *NEW PEOPLE: MISCEGENATION AND MULATTOES IN THE UNITED STATES* 100 (1980); Renee Graham, *How Black Is Black?*, BOSTON GLOBE, Jan. 19, 1993, at 51.

26. "In addition, in other attempts to assimilate as [W]hite, some Latinos have Anglicized their Spanish surnames, declined to teach Spanish to their children, and married Anglos." Kevin

troupe in California called *Latinos Anonymous* that attempts to make fun of those Latinos who wear blue-colored contact lenses, change their names, and pretend that they are White.²⁷

In Part II, this article examines the motivation for my interest in this project. In Part III, the article explores African American and Latino colorism, i.e., the internal workings of the color hierarchy in both of those communities. In Part IV, the article discusses and analyzes the biblical and historical references to dark skin. Part V of this article reviews and evaluates surveys that demonstrate that, on average, darker-skinned Blacks and Latinos have lower incomes, less education, and less prestigious jobs than lighter-skinned Blacks and Latinos. In Part VI, the article considers and analyzes the results of the *Western New England College Color Survey*²⁸ of attitudes toward skin color variations in the Black and Latino communities. This survey was completed by faculty, students, administrators, and staff at Western New England College. And finally, in Part VII, the article concludes that even if we move beyond the Black-White paradigm, we still have a Dark-Light paradigm with which we must contend.

II. THE ORIGINS OF THIS PROJECT

A. *Are Tyra Banks and Vanessa Williams Biracial?*

About two years ago I was chatting with a white woman friend at my health club. We were discussing a recent advertisement which showed model-actress Tyra Banks. My friend turned to me and said that she wished that she were a "mulatta"²⁹ like Tyra Banks. I said that I did not think that Tyra Banks was biracial, but she, like many Black Americans, had white ancestors. Another white woman friend came over and said that she thought that actress Terry Hatcher was very attractive because of her "dark" good looks. I asked her what she meant by "dark." She could not answer my question. So I asked her whether she thought that former Miss America/singer/actress Vanessa Williams was lighter or

Johnson, *Some Thoughts on the Future of Latino Legal Scholarship*, 2 HARV. LATINO L. REV. (1997) (forthcoming); cf. Ramirez, *supra* note 6, at 964.

27. See Robert Chang, *The Nativist's Dream of Return*, 9 LA RAZA L.J. 55, 58 (1996).

28. See Baynes, *Color Survey*, *supra* note 12.

29. The words "mulatto" or "mulatta" historically referred to biracial people who were a mix of black and white. See Paul Knepper, *Race, Racism and Crime Statistics*, 24 S.U. L. REV. 71, 90 (1996). It is a Spanish term, which is derived from the word "mule." THE AMERICAN HERITAGE DICTIONARY 820 (2d ed. 1985). I think that in modern times, the image of the mule has evoked a very negative connotation. After all, a mule is the offspring of a horse and a donkey. *Id.* A horse connotes the attributes of beauty, grace, and speed. On the other hand, a donkey suggests ugliness, obstinacy, and slowness. It is not too hard to guess which racial stereotypes are being used to describe the interracial parents of the mulatto. In addition, mules can not produce offspring. *Id.* So it is again not surprising to me that biracial individuals would be historically referenced as a mule since there was a desire among Whites to prohibit race mixing and decrease the size of the mulatto population. See WILLIAMSON, *supra* note 25, at 7-11. In this article I use the term "mulatto" only when it is historically or culturally relevant.

darker than Terry Hatcher. My two friends said it was hard to tell since Vanessa Williams was biracial.³⁰ I said that I did not believe that she was biracial. We then asked maybe four or five white club members whether they thought Vanessa Williams was biracial. They all said "yes." I was very surprised. It suggested to me that these white people felt a great deal of comfort with Vanessa Williams; so much so, they are almost willing partially to accept her into the White race. It made me wonder about the issue of color and how it overlays the issue of race.

B. *My Family Experiences with Color*

I write about my family experiences because they shape who I am and I believe they are probably not that dissimilar to the experiences of other Blacks. The bottom line is that, for many Blacks, not only are we concerned about discrimination by Whites because of the color of our skin, sometimes we are also concerned about the discrimination we face by other Blacks.

As I have discussed in earlier essays, my parents immigrated from St. Vincent and the Grenadines to the United States many years ago.³¹ Like most Blacks in the Western Hemisphere, both my mother and my father were from mixed race backgrounds.³² My mother's family is mostly lighter in appearance. My father's family, on the other hand, ranges in color from light brown skin to dark skin. My father was a dark man and my mother was a light woman. As a consequence, my siblings range in color from light to dark. My skin color reminds me of the color of caramel candy. It is medium in tone. In the Caribbean it is called "brown skin," i.e., any color that is tawny, tan or brown.

30. Vanessa Williams has said that both of her parents were Black. See Itabari Njeri, *Colorism in American Society, Are Light-skinned Blacks Better Off?*, L.A. TIMES, Apr. 24, 1988, at 1. When Ms. Williams won the pageant, the runner-up was also a black woman Suzette Charles. *Id.* Ms. Williams said that ironically, some Blacks thought that Ms. Charles was blacker than Ms. Williams and even thought that Ms. Williams was biracial when, in fact, it was Ms. Charles who was biracial. *Id.*

31. See Baynes, *Minority Faculty Hiring*, *supra* note 24, at 216 n.58; Baynes, *One Black Man*, *supra* note 24, at 113.

32. On average, people of African ancestry in the United States are approximately 20% white. See WILLIAMSON, *supra* note 25, at 192; see also Interview with Judy Scales-Trent, TONY BROWN'S JOURNAL (1995); Johni Cerny, *Black Ancestral Research*, in THE SOURCE: A GUIDEBOOK OF AMERICAN GENEALOGY 579, 579 (Arlene Eakle & Johni Cerny, 1984) (estimating that 75% of African Americans have at least one white ancestor and 15% have predominately white ancestry). Because many black women were sexually exploited and raped during slavery, most people of African ancestry in the Western Hemisphere have some white ancestry. It is also estimated that 27.3% of the Black population has Native American ancestry. See WILLIAMSON, *supra* note 25, at 125.

There was also a strata of definitions to describe the mixtures. For instance, a "mulatto" was a person who was half black and white. *Id.* at xii. A "quadroon" was a person who was one-quarter black. *Id.* An "octoroon" was a person who was one-eighth black. *Id.* A "griffe" was a person who was three-quarters black, and a "sacrata" was a person who was seven-eighths black. *Id.*

I do not really remember color to be an important factor in my immediate family or that my parents loved us children any differently based on our various skin colors. There are certainly some incidents that I heard about (or that I remember) that would make me believe that my parents were aware of the color differences. I relay these incidents hesitantly however, because my parents are both deceased and cannot fully explain them.

I have six siblings. My brother Carl is the sixth child and the darkest member of our immediate family. As I understand it, everyone but Carl was born light and as we grew up, we “browned up” to our mature complexion.³³ Carl was the only one who was born dark-skinned and reportedly his skin had a very grey-looking cast. Upon seeing Carl, it has been reported that my mother asked the nurse whether she was sure that Carl was her child. On its face this sounds like a rejection of my brother. But, another possible explanation for my mother’s question may have been that she bore five children before Carl, and, at least in terms of complexion, none of them quite looked like him at birth. Presumably my mother was under anesthesia so she did not see Carl when he was first born. My mother may have been thinking that white people often misidentify black people. My mother might have wondered whether the white nurse was making the typical white person misidentification.³⁴ I do not know what my mother’s real feelings were; but she loved all her children. She also told me that she felt that discrimination based on the darkness or lightness of a person’s color was wrong.

When Carl was a teenager, he wore a shirt with cutoff sleeves to the dinner table. My father was furious, thought it was disrespectful, and told Carl that it was important for black men, especially *someone as dark as Carl*, to dress in an appropriate manner for dinner. My father believed that manner of dress was very important for black men—otherwise white people were not likely to respect black men and were likely to consider black men disadvantaged. A similar thing happened to me when I visited my father in St. Vincent. He told me that I should dress like “someone” when I travel. Unlike his discussion with Carl, my father did not comment on my skin color. My father’s admonitions are not that different than other black men’s stories about the importance of attire to combat

33. I believe that not all black babies go through this transformation. Some are indeed born close to their mature complexion. White readers need to think of it as analogous to babies who are born with blond hair. The hair of some of those children becomes very dark as they mature while some stay blond. Meanwhile, other white babies are born with hair closer in color to their darker, more mature color.

34. On the other hand, my mother may have been expressing a deep-seeded psychological desire for a lighter baby than Carl. My mother was a product of her time and probably realized that lighter skin had certain advantages in society.

one's darkness. Harvard Law Professor Charles Ogletree calls his suit a "uniform" which allows him to enter the White world more freely.³⁵

When I travel to the Caribbean, I usually spend a lot of time in the sun.³⁶ One time I came back many shades darker than my untanned complexion (tanning from medium brown to dark brown in color.) My mother's initial reaction was disdain. She asked me, how could I do that to my skin? It was immediate disapproval. It had nothing to do with the fear of skin cancer because it was before that was an issue. It felt like she was asking me whether I was crazy for giving up the privilege of being lighter. I assured her that she should not worry because it would fade.³⁷

C. Other People's Reactions to Me and My Family's Color

1. Black People

When my mother was in the hospital several years ago, my brother Carl and I visited my mother at the same time. A black orderly saw us together, looked at my mother, and asked Carl and me whether we were related. The orderly said that, if we were related, we must have different fathers. I was shocked and very angry. Despite the differences in skin color, Carl and I look very much alike.³⁸

Several years ago, my cousin Cheryl's husband and I worked for the same company. Cheryl is very light-skinned.³⁹ Some of my black colleagues expressed surprise when they discovered that Cheryl is my cousin. One black person stared at me very hard and said that Cheryl and

35. Carol Stocker & Barbara Carton, *Guilty . . . of being black*, BOSTON GLOBE, May 7, 1992 at 85.

36. When I was younger I dated a very dark-skinned woman. Her complexion had shimmering black color. My mother did not say anything. One younger female family member asked me: How could I date someone so dark? Why would I do that? I was very surprised by the comment especially from someone so young. See *infra* note 75 and accompanying text (indicating that most black men marry wives at least the same shade or lighter than themselves).

37. When I have come back from vacations several shades darker, the reaction of the Blacks that I encounter, including students and colleagues, often has been one of astonishment. One year, after I returned from the West Indies, one black student saw me, and his jaw literally dropped. He asked me, "What happened to you?" Then he tried to cover it up and said, "Maybe nothing happened, but I don't remember you being so dark!" Other black students and colleagues have not been so open, but I believe I know the subtext of what they are saying to me. Basically, it is the same thing that my mother probably would have said: "Why are you so cavalierly giving up your privilege of being lighter?"

38. Many people have commented that Carl and I even sound alike. In fact sometimes his wife, Shelia, cannot tell the difference in our voices until several words have emanated from our mouths.

39. In contrast, my sister Ethel is light-skinned like my mother. Ethel is the lightest member of my immediate family. She is probably just a few shades darker than my mother. I believe that her lighter coloring is one of the few physical characteristics that she has in common with my mother—otherwise I think she looks more like my father's family. However, I cannot tell you how many people say that she looks the most like my mother.

I looked nothing alike. Another person asked, "Why is Cheryl so light? Who is so light in your family?"

These incidents involve a person looking only at color to determine whether there is a resemblance between my family members and me. So often, it seems that some members of the Black community are really color struck and do not look beyond color.

2. White People

When I was in elementary school, one of my white classmates used to call me "Suntan." At the time, it did not bother me because there were a lot worse things that one could be called in an almost all-White Catholic school in Queens, New York. I remember one time my brother Keith picked me up from school and he heard the boy call me "Suntan." My brother was offended. Keith apparently thought that the boy was trying to say that I was not Black, and that by not defending myself, I was also denying my Blackness. Upon reflection, I do not think that was the other boy's or my motivation. The other boy probably felt that he was being descriptive of my complexion.

In the past, many white people have asked me why I, or many other Blacks, want to be called "Black" since our skin is not really black. I tried to answer their question by pointing out that their skin is not really white but they are still called "Whites." They usually get the point.

On other occasions when Whites come back from vacation with a suntan, they usually jokingly tell me that they are almost my color. Some of them really are! My sister Pearl told me that some olive-skinned white colleagues of hers, after tanning, have told her that they wished that they only darkened to Pearl's complexion, i.e., they wished that their skin did not get so dark in the sun. Maybe they realize with their darkened skin that they may be mistaken for a black person.

Several years ago, Professor Judy Scales-Trent gave a Clason lecture to the Western New England law faculty on the intersection of race and gender.⁴⁰ In her presentation, she talked about the blue-vein society and the paper bag test, which were used by light-skinned Blacks to exclude dark-skinned Blacks from churches, social, and civic organizations.⁴¹ Several of my colleagues looked at me to ascertain whether I would meet the qualifications. I was very embarrassed.

These incidents point out how the color and the relative lightness and darkness of one's skin may play a role in one's life in the African American community and the broader community.

40. Judy Scales-Trent, Clason Lecture at the Western New England College, School of Law (Nov. 21, 1991).

41. See *infra* note 46 and accompanying text.

III. AFRICAN AMERICAN AND LATINO COLORISM

For many Blacks, discussion of this Black-on-Black discrimination is still taboo.⁴² I would imagine the same is true for Latinos. Internal discrimination is understood, but rarely discussed or investigated. I have been told that, by raising this issue, I am "running through a mine field carrying a live bomb."⁴³ Others have asked me, "Why are you doing this? Your conclusions will invariably divide the community and that means someone will lose!" I have also been told that: "You can't win with this project!" I have been told by others, "You're not dark! Why are you writing this?" So, in writing this article, I realize that I have to tread carefully. I see this as the first of a series of articles dealing with this issue of color. This article will discuss and analyze the issues. The next series of articles will explore different legal analysis to deal with the issues herein.

A. African American Colorism

African American society has its own discrimination, often light against dark, which sadly was modeled on the White against Black paradigm.⁴⁴ It was not uncommon for very light-skinned Blacks (sometimes

42. See Graham, *supra* note 25.

43. At a recent American Association of Law Schools Property Law Conference, I went to dinner with several black people, some of whom were property law professors like me, some of whom were friends of one of my dinner companions. The participants ranged in color from very light to dark. After discussing this topic, I was told that I really liked to live life dangerously.

44. This intra-race discrimination based on color is illegal under Title VII. In *Walker v. IRS*, the court acknowledged the existence of intra-racial discrimination within the African American community based on skin color. *Walker v. IRS*, 713 F. Supp. 403, 407-08 (N.D. Ga. 1989). The *Walker* court held that an intra-racial discrimination claim brought by a light-skinned African American employee against her dark-skinned African American supervisor was actionable under Title VII of the Civil Rights Act of 1964. *Id.* at 406. "[T]he purpose of Title VII is 'to assure equality of employment opportunities by eliminating those practices and devices that discriminate on the basis of race, color, religion, sex, or national origin.'" *Id.*

Tracy Walker, a light-skinned federal employee at an Atlanta branch of the IRS, brought an employment discrimination suit against Ruby Lewis, her dark-skinned supervisor. *Id.* at 404. The *Walker* court first noted that the historical predecessor to Title VII was the Civil Rights Act of 1866 and 42 U.S.C. § 1981. *Id.* at 405. The *Walker* court explained: "The stated purpose of § 1981 is the protection of citizens of the United States in their enjoyment of certain rights without discrimination on account of race, color, or previous condition of servitude." *Id.* The court also noted that "[i]n fact, in a suit such as this one, the legal elements and facts necessary to support a claim for relief under Title VII are identical to the facts which support a claim under § 1981." *Id.* at 405. The *Walker* court observed that, in *McDonald v. Santa Fe*, the United States Supreme Court made "repeated reference" to the fact that section 1981 was to apply to citizens of "every race and color." *Id.* at 405 (emphasis added) (citing *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273 (1976)).

The *Walker* court also examined the Supreme Court opinion in *Saint Francis College v. Al-Khazraji* and found that it interpreted section 1981, "at a minimum [as reaching] discrimination against an individual because he or she is genetically part of an ethnically and physiognomically distinctive sub-grouping of homosapiens." *Id.* at 406 (emphasis added) (citing *Saint Francis College v. Al-Khazraji*, 481 U.S. 604 (1987)); See also *Franceschi v. Hyatt Corp.*, 782 F. Supp. 712, 721 (D.P.R. 1992). The *Franceschi* court stated that:

Saint Francis stands for the proposition that a person's physical appearance as a caucasian is not determinative in discrimination cases. It is the perception, by the

nicknamed the “blue vein society” because you could see their veins through their skin) to exclude dark-skinned Blacks from their clubs and activities based on skin color.⁴⁵ Other organizations would discriminate based on whether a person’s skin color was lighter than a brown paper bag.⁴⁶ Many of these organizations have changed and now include African Americans of a wide rainbow of colors.⁴⁷ Those who have written in this area usually focus on the dysfunction in the Black community over

discriminator, of the discriminatee’s race that is important for purposes of § 1981. Thus, *Saint Francis* obviates the need to determine the race or ethnicity of the discriminatee and focuses instead on the perception of that person by the discriminator.

Id. at 721 n.14.

In *Saint Francis*, the Supreme Court allowed a racial discrimination claim under section 1981 by one Caucasian of Arab ancestry against someone of the same “race,” another Caucasian. *Saint Francis*, 481 U.S. at 607. The *Saint Francis* Court acknowledged that when Congress passed what is now section 1981, the protections were not limited only to groups who were considered racially distinct from the defendant. *Id.* This meant that although the Arab plaintiff was considered by current racial classifications as Caucasian, he could still maintain his section 1981 claim. *Id.*

Given this precedent, the *Walker* court observed that the relevant case law and statutes refer to race and color as separate and distinct from each other. Therefore “‘race’ is to mean ‘race’ and ‘color’ is to mean ‘color.’” *Walker*, 713 F. Supp. at 406 (“To hold otherwise would mean that Congress and the Supreme Court have either mistakenly or purposefully overlooked an obvious redundancy.”). The court further found that although *color* may be a rare claim, in certain contexts, *color* may be the most sensible claim to present. *Id.* at 406 (emphasis added); *See also* Felix v. Marquez, 1980 WL 242, at *1 (D.D.C. Sept. 11, 1980) (stating that “[c]olor may be a rare claim, because color is usually mixed with or subordinated to claims of race discrimination, but considering the mixture of races and ancestral national origins in Puerto Rico, color may be the most practical claim to present”).

The *Walker* court did acknowledge the genuine and substantial difficulty that some courts have identified: the judiciary being placed in the “unsavory business of measuring skin color and determining whether the skin pigmentation of the parties is sufficiently different to form the basis of a lawsuit.” *Id.* at 408. *See* Sere v. University of Ill., 628 F. Supp. 1543 (N.D. Ill. 1986). The *Walker* court held, however, that no matter how difficult a determination, discrimination based on color remains an issue of fact for the jury to decide. *Walker*, 713 F. Supp. at 408; *see Franceschi*, 782 F. Supp. at 712.

But that is precisely the import of the decision: the recognition that physiognomic characteristics are no longer considered the indispensable magic recipient for a cause of action under the statute. Rather, it is the subjection of a person to intentional discrimination—because of the belief that he or she belongs to a given race—that renders such behavior actionable.

Id. at 724.

45. The *Walker* court taught us that intra-racial discrimination based on color by African Americans against each other is actionable. *Walker*, 713 F. Supp. at 408. But, like the White-against-Black form of discrimination, many victims of Black-against-Black discrimination are not likely to bring suit and are unlikely to have a remedy. Since many African Americans are economically powerless, they are not often in positions to discriminate. So much of the Black-against-Black discrimination is still in the social arena. Therefore, even though the *Walker* court acknowledged this unique form of discrimination, it does not give many of its victims a viable remedy.

46. My sister Pearl told me that growing up as a teenager in Queens in the 1960s, she went to a party sponsored by the local chapter of Jack and Jill. Jack and Jill was a club for mostly middle class young black kids. She was horrified that she had to pass the paper bag test, which entailed putting a brown paper bag next to her skin to see whether she was lighter. You see, light skin gained an individual entry into the club. Even though she was admitted, she felt that the club members were only interested in being friends with, and dating, people who were much lighter than she was.

47. One of my nephews who is dark-skinned is currently a member of Jack and Jill in New Jersey.

color. It seems as though they are saying: Look, they even discriminate against themselves.

Much of this intra-race discrimination stems from internalized White discrimination, and the fact that who was Black was defined by the law of hypodescent.⁴⁸ In the vernacular, it is known as the "one drop" rule. It did not matter how white you looked; if you had any black ancestry, you were Black.⁴⁹ As a result, only the white race remained pure, everyone else was contaminated by black ancestry.⁵⁰ It is a very racist rule and undermines our ability to be colorblind today.⁵¹

African American society reproduced the same type of discrimination that White society spawned, i.e., light over dark. Some of the discrimination is also based on the maximization of advantage by some light-skinned Blacks. They might have felt that they did not want to share the little that they had with anyone else, including the darker-skinned peers. There also may be some resentment by the darker-skinned Blacks over the lighter-skinned Blacks. The lighter-skinned Blacks were descended from the slavemaster. As a result, they may have some historic advantages. They worked in the master's house as opposed to the field. The house slave presumably had a more cushiony job than the field hand.⁵² By being in the house, the house slave was more likely to learn the master's ways. In addition, by being the master's offspring, the house slave was more likely to be educated and might even be emancipated by the master.

In fact, "historical evidence indicates that [W]hites placed greater economic value on slaves of mixed parentage and used skin tone or degree of visible white ancestry" as a means to determine the kind of treatment the slave would receive.⁵³ Biracial slaves "brought the highest prices on the slave market, and the white aristocracy preferred light-skinned Blacks for personal service. . . . White males were more likely to select light-skinned female slaves over darker ones for sexual unions."⁵⁴ Whites believed that "[B]lacks with white ancestry were intellectually superior to those of pure African ancestry."⁵⁵

48. See Neil Gotanda, *A Critique of "Our Constitution is Color Blind,"* 44 STAN. L. REV. 1, 24 (1991). But see Christine B. Hickman, *The Devil and the One Drop Rule: Racial Categories, African Americans, and the U. S. Census*, 95 MICH. L. REV. 1161, 1196-97 (1997) (articulating the view that the one drop rule may facilitate a certain amount of cohesion in the African American community).

49. Gotanda, *supra* note 48, at 24.

50. *Id.* at 26.

51. *Id.* at 26-27.

52. *Id.*

53. Keith & Herring, *supra* note 20, at 761-62.

54. *Id.* at 762.

55. *Id.* My mother once told me a story about her grandmother—Granny—who was biracial. When my mother's family was in the United States, one of my mother's aunts—Auntie—became sick. Auntie was treated by a white physician in New York City. Granny wrote a highly critical note

The lighter-skinned Blacks “were conscious of the distinctions between themselves and darker slaves” and may have indeed believed that their lighter skin (and white ancestry) made them superior.⁵⁶ Others may not have bought into this White ideology, but must have realized that they had certain advantages over the darker-skinned Blacks.

Some of the tensions between the two groups stem from this historic advantage and the desire by some of the lighter ones to preserve this advantage. Biracial Blacks were “over represented in the free Black population and under represented among slaves.”⁵⁷ By 1850, biracial Blacks “made up 10-15% of the total Black population, 37% of all free Blacks and 8% of slaves.”⁵⁸ The majority of prominent Blacks were at one time biracial;⁵⁹ they often married biracial spouses, and as a result passed their light complected advantage on to their light children. “Research conducted before and during the Civil Rights Movement suggested a continuing relationship between variations in skin tone and life chances . . . of [African] Americans. [Light]-skinned Blacks had higher levels of attainment than darker Blacks on virtually every dimension of stratification.”⁶⁰ In the twentieth century, more darker-skinned Blacks moved into the upper rungs of Black society. This can be attributed to the increased education as well as the intermarriage of some darker-skinned Blacks into old-line biracial families.⁶¹ It also resulted from increased expansion of the black middle class during the 1960s.⁶² In addition, there was the development of social pride in being Black, i.e., “Black is Beautiful!” and the distinctive contributions of black music, literature, and history to the American society. But studies show that light skin still has certain advantages.

These days, the discrimination in the African American community is often dual-sided: light versus dark, and dark versus light. In the film “School Daze,” which takes place on an all-Black college campus, Spike Lee underscores this duality and divides the students into two groups: the wannabes (more often light-skinned, and middle class) who are members of fraternities and sororities; and the jigaboos (more often dark-skinned, and from lower economic background) who were often members of

to the physician disparaging his care of Auntie. The white physician, in a huff actually, came to my mother’s house and said to Granny: “I should have expected that a mulatta women would write me such a letter!”

His comments suggest a grudging respect for my great-grandmother. His comments seem also to suggest that she stood up for herself and could write a well-thought out letter only because she was half-white.

56. *Id.*

57. *Id.* at 763.

58. *Id.* In Louisiana, biracial Blacks constituted 80% of the free population. *Id.*

59. See generally WILLIAMSON, *supra* note 25 (citing numerous biracial blacks including: Frederick Douglass, Booker T. Washington, Walter White, Langston Hughes, W.E.B. DuBois).

60. Keith & Herring, *supra* note 20, at 761.

61. *Id.* at 764.

62. *Id.*

Black militant groups.⁶³ In the film, it was evident that the two groups despised and intimidated each other.⁶⁴

I, in fact, did not realize the magnitude of the anti-light sentiment in the American Black community until I was involved in interviewing an African American candidate for a position at the law school. One of the candidates was very light-skinned. Some of the students of color viscerally opposed the black candidate solely on the basis of the candidate's very light skin. Although the candidate had other issues that concerned the students,⁶⁵ the students did not focus on those other issues as much as the candidate's lightness. On some levels, I understood the students' concern. Ideally, a black faculty member's appearance should leave no questions as to his/her racial identity. However, Blacks are not monolithic in appearance. We run the color spectrum from white⁶⁶ to black. And if we use such rigid and narrow guidelines based solely on appearance, we may lose a lot of good people.⁶⁷ Hiring only dark-skinned African Americans does not ensure that you will employ someone who represents the mainstream Black perspective.⁶⁸

63. SCHOOL DAZE (Forty Acres and a Mule Filmworks 1988).

64. *Id.* I have at least one very light-skinned relative who was discriminated against in a job interview by a dark-skinned African American. The interviewer saw that my relative was active in Jack and Jill and assumed that she was one of the people who prevented her from joining in the past. She told my relative: "Now I am going to discriminate against you!"

65. The candidate expressed concern about the burdens of mentoring students. This expression of concern worried the students that the candidate would not be available to them. The candidate was mostly concerned about, and wanted to avoid, the extra burdens that academic institutions put on faculty of color before they get tenure. In addition, the candidate was from a very middle class background, so the students worried that the candidate may not be able to relate to them.

66. "John Blassingame noted that in Louisiana in the late nineteenth century, . . . racial intermixing had proceeded so far that it was simply impossible to tell on sight whether some people were white or black." WILLIAMSON, *supra* note 25, at 98 (citing JOHN BLASSINGAME, BLACK NEW ORLEANS 201 (1973)). In 1932, Caroline Bond Day did a study of more than 2,500 individuals belonging to families of mixed blood. CAROLINE BOND DAY, SOME NEGRO-WHITE FAMILIES 9-11 (1932). She found that Blacks who were more than half-Black were clearly so. *Id.* at 9. She said that it was impossible to approximate fractions on sight. *Id.* She divided biracial Blacks into two categories: (1) recessive—those that displayed an array of purely African characteristics that made them appear more African than they were; and (2) dominant—those who were more white in appearance. *Id.* at 10. She found that those who were one-fourth black tended not to have any more than one dominant African feature, i.e., tightly-curved hair, dark skin, or broad facial features. *Id.* She found that those who were one-eighth black were very white in color. *Id.*

67. *Cf.* Baynes, *Minority Faculty Hiring*, *supra* note 24, at 221-23.

68. For instance, although the Honorable Clarence Thomas, Associate Justice of the United States Supreme Court, is very dark-skinned, many African Americans would consider him "white" because of ideological and political perspectives. *See* Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363, 370 (1992) Bell states that:

The addition of Judge Clarence Thomas to the [Supreme Court], as the replacement for Justice Thurgood Marshall, is likely to add deep insult to the continuing injury inflicted on civil rights advocates. The cut is particularly unkind because the choice of a [B]lack like Clarence Thomas replicates the slave masters' practice of elevating to overseer and other positions of quasi-power those slaves willing to mimic the masters' views, carry out orders, and by their presence provide a perverse legitimacy to the oppression they aided and approved.

Today, there seems to be a preference for brown skin rather than skin tone that is either too light or too dark.⁶⁹ Many believe that the entire Black population in the United States has become lighter over the generations.⁷⁰ In 1927, Gustavas Steward asserted that the groups of Blacks had become noticeably lighter in the preceding twenty-five years.⁷¹ He thought that brown was the prevailing hue.⁷² Historian Laurence Glasco studied photographs of students graduating from Howard University during the years 1912 to 1972 to determine the degree which the skin colors of Blacks changed.⁷³ He noted a drop in both the very light and very dark students, and an increase in the students with brown skin. This lightening of Blacks has probably resulted from marriages between biracial Blacks and darker-skinned Blacks after the Civil War.⁷⁴ Studies have shown that black men, “especially those who were successful, generally married women lighter than themselves. Melville J. Herskovits in samplings derived from Howard University students and Harlem citizens found . . . 56.5[%] of the women were reported as lighter than their hus-

Id.; see A. Leon Higginbotham, Jr., *Justice Clarence Thomas In Retrospect*, 45 HASTINGS L.J. 1405, 1427-28 (1994) (“[T]he very fact that [Justice Thomas] so consistently votes against the best interests of African-Americans reveals a great deal about his sense of racial identity and his lack of racial self-esteem. Those votes suggest that there are many aspects of racial self-hatred that sometimes trigger the perverse conclusions he reaches.”); A. Leon Higginbotham, Jr., *An Open Letter To Clarence Thomas*, 140 U. PA. L. REV. 1005, 1014 (1991). Higginbotham expresses concern that Justice Thomas’s criticisms of civil rights organizations:

may have been nothing more than [his] expression of allegiance to the conservatives who made [him] Chairman of the EEOC, and who have now elevated [him] to the Supreme Court. But [his] comments troubled me then and trouble me still because they convey a stunted knowledge of history and an unformed judicial philosophy.

Id.; see Catharine Pierce Wells, *Clarence Thomas: The Invisible Man*, 67 S. CAL. L. REV. 117 (1993) (seeing Thomas as a “man who has suffered many forms of racial abuse and who has tried to avoid the pain of this abuse by ‘living in his head’”); see also JANE MAYER & JILL ABRAMSON, *STRANGE JUSTICE: THE SELLING OF CLARENCE THOMAS* 175 (1994) (indicating that thirty percent of African Americans “branded” Clarence Thomas an “Uncle Tom”); Jack E. White, *Dividing Line*, TIME, June 26, 1995, at 36 (calling Clarence Thomas “Uncle Tom Justice”).

69. WILLIAMSON, *supra* note 25, at 191.

70. *Id.* at 118.

71. *Id.* (citing Gustavas Steward, *The Black Girl Passes*, 6 SOC. FORCES 99, 99-103 (1927)).

72. Steward, *supra* note 71, at 99.

73. WILLIAMSON, *supra* note 25, at 190 (citing Laurence Glasco, *The Mulatto: A Neglected Dimension of Afro-American Social Structure*, paper given at the Convention of the Organization of American Historians, 23-26, 38 (Apr. 17-20, 1974)).

[B]etween 1923 and 1931 the percentage of [very] light men dropped from 14 percent to 4 percent and among women the percentage fell from 39 percent to 18 percent. [Very] dark students dropped by similar percentages. The males fell from 60 percent in 1923 to 38 percent in 1931, while among women the corresponding decline was even more drastic from 29 percent to only 8 percent. The proportion of brown men increased from 26 percent to 58 percent, and brown women rose from 32 percent to 74 percent. A generation later, between 1947 and 1953, light women declined from 17 percent to 3 percent.

Id. As of the 1970s, light women and men did not constitute more than 2%, the very dark students fluctuated widely but never rose higher than 38% of the class for men and 29% for women of the Howard University classes. According to the author, the Howard University students were predominately brown in complexion. *Id.*

74. WILLIAMSON, *supra* note 25, at 118.

bands, while about 14[%] were the same and about 29.5[%] were darker.”⁷⁵

Consequently, a brown skin color is believed to be the “somatic norm image” for Black Americans.⁷⁶ “Somatic norm image” means a “complex of physical (somatic) characteristics which are accepted by the group as its norm and ideal.” “Norm” refers to the use of the image as a measure of “aesthetic appreciation”; “ideal” refers to the fact that no one embodies that image perfectly.⁷⁷

B. *Latino Colorism*⁷⁸

Latinos in the United States are diverse group ranging in color (like Blacks) from white to black in complexion⁷⁹ and originating from four primary cultures.⁸⁰ The Latino conception of who is White differs⁸¹ from

75. *Id.* (citing MELVILLE J. HERSKOVITS, *AMERICAN NEGRO* 62-66 (1968)).

76. HANS HOETINK, *THE TWO VARIANTS IN CARIBBEAN RACE RELATIONS* 120 (Eva M. Hooykaas trans., 1967).

77. *Id.* This preference for a brown-skin complexion is evidenced by the fact that 100% of the Blacks surveyed in the *Color Survey* rated O.J. Simpson’s coloration as medium on a scale of very light to very dark. *See infra* note 228 and accompanying discussion.

78. Although my family roots are in the Caribbean, St. Vincent and the Grenadines are a former British colony and an anglophone country. There was much migration among the Caribbean countries; for instance, my paternal grandfather Joseph Wellington Baynes cut sugar cane in Cuba and my maternal great grandfather Charles Bell went to Panama to work on the Panama Canal. I also have distant cousins on my father’s side who live in Venezuela. However, I was not raised in a Spanish-speaking household, which makes a big difference in my cultural perspective. Therefore, my observations are not informed by being a part of the Latino culture.

79. The census does not compile information on the racial breakdown of the Latino population. United States Bureau of the Census, *CENTURY OF POPULATION* (1909). Experts agree that most Latinos are of mixed racial heritage. WILLIAMSON, *supra* note 25 (citing Gary A. Greenfield & Don B. Kates, Jr., *Mexican Americans, Racial Discrimination and the Civil Rights Act of 1866*, 63 CAL. L. REV. 662, 683, 700 n.197 (1975)).

80. Berta Esperanza Hernández Truyol, *Building Bridges—Latinas and Latinos At The Crossroads: Realities, Rhetoric And Replacement*, 25 COLUM. HUM. RTS. L. REV. 369, 385-86 (1994). Latinos currently comprise 22 million people, constituting 9% of the total United States population. The places of origin that they primarily emanate from are: (1) Mexico, 12.6 million persons, constituting 62.6% of all Latinos; (2) Puerto Rico, numbering 2.5 million, or 13% of all Latinos; (3) Central America or South America, also totalling 2.5 million, or 13% of Latinos; and (4) Cuba, 1.1 million, or 5.3% of Latinos. *Id.* The balance, 7.8% of the U.S. Latinos, either have their origins in Spain or do not identify from which place of origin they came. *Id.* at 386-87. Recently, many people from the Dominican Republic have emigrated to the United States; it is estimated that there are now 625,000 Dominican Americans in the United States. Interview with Embassy of the Dominican Republic, in Washington, D.C. (Oct. 21, 1997). Many live in the New York City area. *Id.*

81. These different standards of self-identification sometimes lead to a schism between the African American and Latino communities. In her article *Building Bridges*, Professor Hernández Truyol discusses the case in south Florida in which a Colombian American police officer was charged with killing two African American motorcyclists. *Id.* at 420-22. The shooting led to extensive rioting. The police officer was tried and convicted the first time in Dade County. *Id.* at 421. The Florida Court of Appeals ordered a new trial because the police officer’s motion for a change in venue was denied by the trial court. *Id.* The appellate court found that there was uncontroverted evidence that “the case could not then be fairly tried in Dade County.” *Id.* The court found that the community and the jury were “justifiably concerned with the dangers which would

U.S. historical and cultural notions, wherein if you had one drop of black "blood," you were considered Black.⁸²

It is estimated that only 3% of Latinos designated themselves as Black; 95% designated themselves as White.⁸³ This racial self-identification as "White" corresponds with the disappearance of Blacks and people of mixed race ancestry in the Puerto Rican census between 1899⁸⁴ and 1950.⁸⁵ Professor Hernández Truyol notes that these figures are "interesting given that 'as a matter of fact most Latinos are racially mixed, including combinations of European [W]hite, African Black, and American Indian.' Thus it is very unlikely that the [Latino community] is 95% or 97% 'white' by [U.S.] standards."⁸⁶ The situation in Puerto Rico coincided with Mexican protests that ensued over the 1930 U.S. census, which "presumed Mexicans to be non[-]white unless 'definitely white.'"⁸⁷ As a result, in the 1950 census, Mexican Americans were classified as white.⁸⁸ In addition, the Office of Management and Budget Statistical Directive No. 15 classified Mexican Americans as white.⁸⁹ In fact,

follow an acquittal but which would be obviated if . . . the defendant was convicted." *Id.* "The fear that a response to a 'not guilty' verdict would result in an eruption of violence is an 'impermissible factor' and thus it was error to deny the request for a change of venue. Such failure to grant change of venue thus mandated reversal and a new trial." *Id.* Professor Hernández Truyol noticed that "the available newspaper accounts of the trial generally described the police officer by name" and his job. *Id.* Only a few reports mentioned that he was Colombian American. *Id.* at 422. "At least one press report described [the police officer] as white; none described him as Latino." *Id.* Professor Hernández Truyol described the media's message as clear: the police officer was a "good guy," a "white knight", a "protector of the people." *Id.* On the other hand, the media portrayal of the motorcyclists was filled with negative stereotypes and "bad guys." *Id.* "The implicit message was that the black motorcyclists 'were up to no good'." *Id.* Another possibility is that the Colombian American looked "European" and therefore, "White." He may in the eyes of the media or public not have looked obviously "Latino."

82. *Id.* at 384 n.54.

83. *Id.* (citing GERARDO MARIN & BARBARA VAN OSS MARIN, RESEARCH WITH HISPANIC POPULATIONS 2 (1991)).

84. Puerto Rico, Cuba and the Philippines became U.S. possessions after the U.S. victory in the Spanish-American War. In 1902, Cuba became independent. The Treaty of Paris ratified Puerto Rico's annexation, provided that Congress would define the political and civil rights of the people of the island. In that year Congress made the Puerto Rican people U.S. citizens through the Second Organic Act of 1917, known as the Jones Act. In 1952, Puerto Rico achieved commonwealth status.

85. See JOSE A. CABRANES, CITIZENSHIP AND THE AMERICAN EMPIRE 97 n.475 (1979). This process of racial self-identification (as "White") is called *blanqueamiento*, or whitening. EDUARDO SEDA BONILLA, REQUÍEM POR UNA CULTURA 52 (1970).

86. Hernández Truyol, *supra* note 80, at 384 n.54 (quoting MARIN & MARIN, *supra* note 83, at 2 n.76); see Juan F. Perea, *Los Olvidados: On The Making of Invisible People*, 70 N.Y.U. L. REV. 965 (1995).

87. Greenfield & Kates, *supra* note 79, at 683, 699 n.197.

88. George A. Martínez, *Mexican Americans and Whiteness*, in CRITICAL WHITE STUDIES: LOOKING BEHIND THE MIRROR (Richard Delgado & Jean Stefanic eds., 1997) (citing LEO GREBLER ET AL., THE MEXICAN-AMERICAN PEOPLE 601-02 (1970)).

89. Transfer of Responsibility for Certain Statistical Standards from OMB to Commerce, 43 Fed. Reg. 19,260, 19,269 (Department of Commerce 1978) (reissuing Office of Management & Budget's standards as the operating standards of the Department of Commerce). One would have expected this white designation to have afforded a certain status on Mexican Americans, but they

many Mexican Americans sought white designation because of the rampant discrimination that they faced if they were identified as Indian.⁹⁰ When the United States conquered the Southwest, the government passed laws segregating and severely discriminating against Native Americans.⁹¹ As a result, many Mexican Americans sought and were accorded the illusory status of "honorary White."

Some scholars have stated that the Latin world used a system of mulatto "co-optation," which caused darker-skinned Blacks and Native Americans to stay on the bottom of society.⁹² This system of mulatto co-optation was learned from the Arabs who introduced black Slavery to the Iberian peninsula.⁹³ Arab harems were comprised of African concubines, and domestic service was performed by an inordinate number of Blacks.⁹⁴ Like race mixing in United States slavery times, race mixing was rampant in the Arab world, and was usually a one-way affair between Arab males and black women.⁹⁵ "These 'mulattoes' were accepted into Arab society provided they became fully Arabicized and . . . Islamicized."⁹⁶ "*Mulattoization*" was a process that led from slavery to freedom.⁹⁷ "Religious conversion, the adoption of Arab ways, language and prejudices were the corollaries of mulattoization . . . [B]lacks became integrated into Arab society" as Arabs—not as Blacks.⁹⁸ "'Mulattoes' . . . gained full . . . acceptance in Arab societies . . . as '[W]hites.'"⁹⁹

It is argued that the olive-skinned Arabs, who are products of ancient Black-White mixtures,¹⁰⁰

were . . . in no position to draw a strict color line against the 'mulatto' without endangering the stability of their own class/color [caste] system. The 'mulatto' was too close in appearance (features) to the 'pure white' Arab population for him not to be included as a bona fide

experienced many of the same discriminations that African Americans confronted, such as exclusion from public facilities, neighborhoods, and employment opportunities. Martinez, *supra* note 88.

90. See Martha Menchaca, *Chicano Indianism: A Historical Account of Racial Repression in the United States*, 20 AMER. ETHNOLOGIST 583 (1993).

91. *Id.* Since many Mexican Americans are Mestizos, i.e., of Spanish White and Indian mixtures, these laws had a devastating effect on these populations. *Id.*

92. Carlos Moore, *Afro-Cubans and the Communist Revolution*, in AFRICAN PRESENCE IN THE AMERICAS 206-07 (Carlos Moore et al. eds., 1995); see Abdias Do Nascimento, *The African Experience in Brazil*, in AFRICAN PRESENCE IN THE AMERICAS 101-05 (Carlos Moore et al. eds., 1995).

93. Moore, *supra* note 92, at 207.

94. *Id.* at 206.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 207.

99. *Id.*

100. *Id.*

member of the dominant race. A system of mulatto 'co-optation' into the dominant group¹⁰¹

became the norm for Black-White relations in Latin America.¹⁰² And for the same reason, mulattoes became "White" Latinos. The race mixing in Latin America was required since the conquest of Latin America involved mostly military men.¹⁰³ The unions of white men and native or black women came about because of circumstances—the absence of white women.¹⁰⁴ These circumstances also directed the black men toward native women.¹⁰⁵

Belief in Black inferiority is ingrained in both the White and mulatto Latino society.¹⁰⁶ And this belief in inferiority has contributed to Blacks and native peoples being at the lowest caste in many Latin American countries. Some have suggested that calling the region "Latin America" demonstrates the racial oppression in the region.¹⁰⁷ Use of the term "Latin America" illustrates how the European conquerors forced their cultural and ethnic identity onto the native people as well as onto the Blacks who came from Africa. Meanwhile, the whitening of the mulattoes of Latin America is used as proof positive of Latin anti-racism.¹⁰⁸

In Mexico, a great deal of mixing occurred between the Spaniards and Native American populations and some African Blacks.¹⁰⁹ "The term 'Mestizo' meant half-Spanish and half-Indian."¹¹⁰ It eventually "came to refer to the entire mixed population regardless the degree of mixture."¹¹¹

101. *Id.*

102. *Id.*

103. Jose Carlos Luciano Huapaya, *The African Presence in Peru*, in *AFRICAN PRESENCE IN THE AMERICAS*, *supra* note 92, at 125.

104. *Id.*

105. *Id.*

106. Moore, *supra* note 92, at 210; see Bassette Cayasso, *Afro-Nicaraguans Before and After the Sandinista Revolution*, in *AFRICAN PRESENCE IN THE AMERICAS*, *supra* note 92, at 193 (reporting that a Sandinista leader called the Black Creoles "stupid, ignorant, illiterate monkeys who only lacked tails so that they can be hunted down and shot like animals"); Quince Duncan, *The Race Question in Costa Rica*, in *AFRICAN PRESENCE IN THE AMERICAS*, *supra* note 92, at 136-37 ("A good Costa Rican should defend the purity of 'our' white race.") (quoting anti-Black articles appearing in the press); see also F. JAMES DAVIS, *WHO IS BLACK?* 88-104 (1991).

107. Nascimento, in *AFRICAN PRESENCE IN THE AMERICAS*, *supra* note 92, at 98.

108. At the Second World Festival and African Arts and Culture, held in Lagos, one member of the Brazilian military dictatorship's delegation stated:

the predominance of the white portion [in the population] is evident, since in Brazil, even though those of mixed race who have a small or large amount of Black or Indian blood, but without one of these group's physical traits, are considered [W]hite. Which demonstrates the absence of any discrimination of racial nature, in terms of the person's ethnic origin.

Id. at 103 (quoting MANUEL DIEGUES JUNIOR, *A AFRICA NA VIDA E NA CULTURA DO BRASIL*) (published by the official Brazilian delegation to Festac 77 and distributed in book form at the Festac Colloquium).

109. DAVIS, *supra* note 106, at 88.

110. *Id.*

111. *Id.*

Colonial Mexico under the Spaniards had a fixed caste system with a detailed ranking of racial categories.¹¹²

During . . . Spanish rule, the Mestizos occupied a middle status position while the Indians were on the bottom of the ethnic status ladder. . . . The lighter Mestizos were given preference by the Spanish, and there developed a structure of status . . . based on skin color and the degree of Spanish ancestry. . . . The 'Mestizos took pride in their Hispanic ancestry and tried to deny their Indian backgrounds.'¹¹³

The Mestizos now govern Mexico, and the pure Indian people have remained on the bottom of society.¹¹⁴

Bolivia was very similar to Mexico. During the Spanish colonial rule, a caste of twenty-three racial categories was established.¹¹⁵ The Catholic Church generally kept three separate sacramental registries based on race—for Whites, mixed race, and Indians.¹¹⁶ During the Spanish Conquest, there were few white women, and this resulted in unprecedented race mixing between Whites and the Native American population.¹¹⁷ Like in Mexico, European Whites in Bolivia were at the top of the hierarchy, Mestizos were in the middle, and Indians were at the bottom.¹¹⁸

Today, Bolivia has a small White population, primarily of Spanish descent, a large Mestizo population (also known as *Cholos*), and a very large Indian population.¹¹⁹ The Mestizos have generally achieved higher status than the Indian population in Bolivia.¹²⁰ The Bolivian White population is generally more European in appearance, but only a few can

112. *Id.* at 89.

113. *Id.*

114. *Id.*

115. CARMEN BERNAND, *LOS INCAS, PUEBLO DEL SOL* 159-61 (1991) (citing MAGNUS MORNER, *LE METISSAGE DANS L'HISTOIRE DE L'AMERIQUE LATINE* (1971)).

116. *Id.* at 161.

117. *Id.* at 159.

118. *Id.* This conclusion can be reached by recognizing the nomenclature was hierarchical in nature—from "most preferred White" to "least preferred" Black. *Id.*; see also CHARLES ARNADE, *BOLIVIAN HISTORY* 34 (1984) (stating that the native Indians "have been the lower classes for centuries" and "have been the victims of harsh exploitation").

119. The population of Bolivia is approximately 55% Indian, 28-30% Mestizo, and 10%-15% White, mainly of Spanish descent. FUNK AND WAGNALLS *ENCYCLOPEDIA* (Infopedia Future Vision Multimedia 1995). The Indians generally follow the ways of life of his or her ancestors, dressing in traditional handmade garb and often speaking the native Indian language such as Quechua or Aymara. ARNADE, *supra* note 118, at 40. The Indian usually has a dark complexion. Like the Indian, the Mestizo often has a dark complexion and noticeable Indian features, but speaks Spanish and wears Western clothing, distinguishing him or her from the Indian. *Id.*

120. The Mestizo or *Cholo* is part of the rapidly growing middle class. ARNADE, *supra* note 118, at 40. He or she is often the skilled laborer, the government worker, the union worker, and as in Mexico, is in apparent control of the economy. *Id.*

claim a pure Spanish genealogy.¹²¹ The white European aristocracy has lost some of its monopoly over land and resources, but continues to maintain its privileged social position.¹²²

In most Latin American societies, unmixed Africans are considered Blacks and are accorded less favorable treatment than mixed people.¹²³ In some Latin American countries, light mixed race people and Mestizos are considered White and will be referred to euphemistically as “brunette” or “little mulatto.”¹²⁴ In Puerto Rico, unmixed Africans and the darkest biracial persons are at the bottom of society.¹²⁵ Black skin color is not preferred.¹²⁶ “The terms for racial identities indicate gradations of color and have varied meanings [such as] *blanco* (white), *negro* (African black),¹²⁷ *mulata* (mulatto), *trigueño* (wheat-colored, olive-skinned), and *moreno* (brunette, attractively dark).”¹²⁸ *Grifa* is someone with light skin but tightly-curved hair, and *jaba* is someone with light skin but African facial features.¹²⁹ These categories vary from place to place and are very fluid. It seems most people prefer to be designated as a *trigueño*, and no one wants to be a *negro*. It seems at least in some places that *trigueño* is a fairly broad category covering many people whose skin coloration ranges from light olive to medium brown.¹³⁰ The problem, however, exists that when some of these *trigueños* who are darker in complexion move to the United States, they are more easily racialized as non-white. Becoming black must be a real shock for their identity when they were

121. *Id.* The Whites primarily descended from the colonial Spaniards and from the *Criollos* (the children of Spaniards born in Bolivia) who comprised the landed gentry and the rich merchant class during the Wars of Independence from Spain. *Id.*

122. *Id.* at 41.

123. DAVIS, *supra* note 106, at 100 (asserting that “unmixed Blacks differ racially more from Latin American whites than either Indians” or mixed race people).

124. *Id.* “The Spanish term *morena* connotes a type of dark good looks and may reference either a dark Iberian or a mixed race individual. *Morena* means Moorish and is sometimes defined as the darkest a person can be and still be considered white.” *Id.* In some countries, it is a polite way to say that someone is black. *Id.*

125. *Id.* at 103.

126. *Id.*

127. *Id.* In some countries, *Negra* is considered pejorative, and those of African ancestry are called *Moreno*. *Moreno* may also be used to refer to someone who is white but has dark hair or is a brunette. *Id.* at 100, 104.

128. *Id.* at 103 (“*Trigueño* connotes a status almost equal to that of *blanco*, and even some unmixed Whites (as well as Blacks) prefer to be identified by this favorable term.”).

129. *Id.* at 104. I have been told by Latino friends that these categories may go beyond just color of skin and represent a package of traits from eye color, hair color, hair texture, and facial features.

130. In fact, I have asked many of my Latino friends to describe who fits into the different categories. Those from Cuba and Puerto Rico seem to have very broad definition of who is *trigueno*. Those Latinos from South America have a much more restricted category that covers only those who are really olive-complected.

raised to think of themselves as white, even though some of them must know that Grandma or Grandpa was black.¹³¹

About 10% of the Puerto Ricans who relocated to the mainland are of unmixed African ancestry, and half or more have some African ancestry.¹³² So 60% of these migrants will be perceived in the United States as being black, "while in Puerto Rico most were known as whites or by [some other] designation other than [b]lack."¹³³ In fact, during World War II Puerto Ricans were treated similarly to African Americans. All "Puerto Ricans in the U.S. Army were in segregated camps, even in Puerto Rico, and the United States Navy refused to accept any Puerto Ricans."¹³⁴

What happens to Latinos' perspectives on color once they come to the United States is not clear. It was expected that lighter Latinos would become white and darker ones would become black.¹³⁵ Instead, Latinos are working on forging a common Latino identity.¹³⁶ It remains to be seen what they will do about the issue of color in their ranks, which was imported from their home countries.¹³⁷

The purpose of this article is not merely to discuss Black and Latino colorism or intra-race discrimination. I raise it only to demonstrate the complexity of the issues that Blacks and Latinos face every day. The research to date is more likely to be found in the area of this internal discrimination. This article focuses more on how White society deals with the issue of color in choosing between and among people of color of different races and ethnicities for jobs, friendships, or other interactions. The thesis of this article is the following: The closer one is to White standards of attractiveness, the better the treatment one is likely to receive. This truth crosses racial and ethnic lines. This differential in treatment for lighter-skinned persons might have to do with the fact that

131. One friend told me that the term *triguero* was used in Puerto Rico as a polite way to convey the message that someone was of color and had African or Indian ancestors. Behind the person's back, however, people would be more critical of that person's non-whiteness.

132. DAVIS, *supra* note 106, at 104.

133. *Id.*

134. *Id.*

135. It is a real testament to Latinos that they have remained together as an ethnic group even though there must be strong forces for the whiter ones to become white and the darker ones to become other in the United States.

136. See Angel Oquendo, *Comments by Angel Oquendo*, 9 LA RAZA L.J. 43 (1996); Deborah Ramirez, *Forging a Latino Identity*, 9 LA RAZA L.J. 61 (1996).

137. Some of the internal Latino dynamics revolve around ethnic rivalries between and among Cubans, Puerto Ricans, Mexicans, and Central Americans. Even though this rivalry is phrased in terms of ethnic rivalries, some of the subtext involves issues of color. Many of the Cubans, who came over in the early 1960s are whiter in appearance than the Puerto Ricans, Mexicans, and Central Americans who tend to be darker—more African or Indian in appearance. In fact, many of the 1960s Cuban Americans left their island to predominately African and mixed race people.

Whites may feel closer to light-skinned people than darker-skinned people.¹³⁸

IV. HISTORY OF WHITE DISCRIMINATION OF BLACKS AND LATINOS BASED ON THE LIGHTNESS/DARKNESS OF SKIN

A. *Biblical References to the Curse of Blackness*

Some say that the Bible condones enslavement and indicates the types of people who could be subjected to it. According to Scripture, all people are descended from the sons of Nôah—Shem, Japheth and Ham.¹³⁹ Ham's son Canaan was condemned to enslavement.¹⁴⁰ Genesis states:

Noah . . . planted a vineyard; and he drank of the wine, and became drunk; and lay uncovered his tent. And Ham, the father of Canaan, saw the nakedness of his father, and told his two brothers outside. Then Shem and Japheth took a garment, laid it upon both their shoulders, and walked backward, and covered the nakedness of their father; their faces were turned away, and they did not see their father's nakedness. When Noah awoke from his wine and knew what his youngest son had done to him, he said, 'cursed be Canaan; a slave of slaves shall be to his brothers.'¹⁴¹

This scriptural passage was used to justify the enslavement of people.¹⁴² *Genesis* indicated that only Ham had descendants who were Black, and his sons populated Ethiopia, Libya, and Egypt.¹⁴³ Even though there is no direct reference to color, race, or ethnicity in the bible and some of

138. This article will not discuss the level of scrutiny or the type of legal review that a court should undertake in evaluating the claims for this type of discrimination. I believe that this type of analysis turns our current thinking concerning the review of discrimination claims on its head. It will also not discuss the affect that this color strata has on the creation of a multiracial category for the United States census. See Tanya Kateri Hernandez, *Multiracial Discourse: Racial Classifications In An Era of Color-Blind Jurisprudence*, 56 MD. L. REV. (forthcoming 1997).

139. *Genesis* 9:18-19.

140. *Id.* at 9:24-27.

141. *Id.* at 9:20-25. There is also an "inappropriate" sexual component in this biblical passage, which is not disclosed to the reader. More importantly, the issue of the color or race does not appear in this version of the scripture. However, in the Babylonian Talmud interpretation, the racial and ethnic identity of Ham shifts to African. James H. Sweet, *The Iberian Roots of American Racist Thought*, 54 WM. & MARY Q. 143, 148 (1997). In that version, Noah says to Ham: "You prevented me from doing that which is done in the dark [i.e., coitus]; accordingly, your seed will be ugly and black." *Id.* The eighth century version of the Tanhuma gives the story the following version:

[A]s for Ham, because he saw with his eyes the nakedness of his father, his eyes became red: and because he spoke with his mouth, his lips became crooked and because he turned his face the hair of his head and his beard became singed and because he did not cover his [father's] nakedness, he went naked and his prepuce became stretched, [all this] because all of God's retributions are commensurate to a transgression.

Id. Some commentators believe that the passage contains certain negative stereotypes associated with Africans. See *id.*

142. Robin Blackburn, *The Old World Background to European Colonial Slavery*, 54 WM. & MARY Q. 65, 92 (1997) (citing AUGUSTINE, *THE CITY OF GOD* 87 (Henry Bettenson trans., London, 1984)).

143. *Genesis*, *supra* note 139.

Ham's sons were in fact White, it became just a matter of time for this biblical reference to justify the enslavement of Blacks.¹⁴⁴ This biblical passage was thus interpreted as the curse of Noah and the punishment for Ham and his descendants and was described as follows: "Ham was punished by being given black skin. When the world came to be divided up, Japheth received Europe, Shem got Asia, and Ham was awarded Africa."¹⁴⁵

B. *Historical References to Darkness Being Ugly and Justifying Discrimination*

1. Blacks

In the sixteenth century, Europeans believed that Whiteness was beautiful by degrading Blackness as being ugly.¹⁴⁶ White Europeans attributed moral significance to skin color.¹⁴⁷ For the Europeans of this era, "[w]hite and black connoted purity and filthiness, virginity and sin, virtue and baseness."¹⁴⁸ The European colonists saw the black skin and the racial features of the slaves in a similar manner to the white Europeans, i.e., the slaves were lustful, savage, and dark of character.¹⁴⁹ Thomas Jefferson, one of our founding fathers, saw the United States as "White."¹⁵⁰ He justified the expulsion of Blacks from the United States based on their ugliness.¹⁵¹ In his *Notes on Virginia*, Jefferson writes:

It will probably be asked, Why not retain and incorporate the blacks into the State, and thus save the expense of supplying by importation of white settlers, the vacancies they will leave? . . . To these objections, which are political, may be added others, which are physical and moral. *The first difference is that of color* Is it not the foundation of a greater or less share of beauty in the two races? Are not the fine mixtures of red and white, the expressions of every passion by greater or less suffusions of color in the one, preferable to that *eternal monotony, which reigns in the countenances, that immovable veil of black which covers the emotions of the other race?* Add to these, flowing hair, a more elegant symmetry of form, their own judgment in favor of whites, declared by their preference them, as uniformly as is the preference of the Oran-utan for the black woman

144. Sweet, *supra* note 141, at 148-49.

145. Benjamin Braude, *The Sons of Noah and the Construction of Ethnic and Geographical Identities in the Medieval and Early Modern Periods*, 54 WM. & MARY Q. 103 (1997) (quoting James Fenton, *A Short History of Anti-Hamitism*, N.Y. REV. OF BOOKS, Feb. 15, 1996, at 7).

146. John M. Kang, *Deconstructing The Ideology of White Aesthetics*, 2 MICH. J. RACE & L. 283, 299-300 (1997) (citing WINTHROP D. JORDAN, *WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO 1550-1812* (1968)).

147. Kang, *supra* note 146, at 299-300.

148. JORDAN, *supra* note 146, at 7.

149. Kang, *supra* note 146, at 299.

150. *Id.* at 301.

151. *Id.*

over those of his own species. The circumstance of superior beauty, is thought worthy attention in the propagation of our horses, dogs, and other domestic animals; why not in that of man?¹⁵²

Jefferson uses the darkness of color alone to justify the exclusion of Blacks from the United States.¹⁵³ He also makes moral judgments based on the darkness of Blacks' skins.¹⁵⁴ He states that black women are so ugly that only apes would want to have relations with them.¹⁵⁵ Of course, Jefferson was being hypocritical since his slave Sally Hemmings's dark skin apparently did not prevent him from consorting with her.¹⁵⁶ Moreover Jefferson believed that, because black women are so ugly, that black men only want white women.¹⁵⁷

Benjamin Franklin also shared Thomas Jefferson's views that black was ugly. He wrote:

*the number of purely white People in the world was proportionately small. All Africa was black or tawny, Asia chiefly tawny, and America (exclusive of newcomers) wholly so The English were the principle body of white People, and while we are . . . scouring our Planet, by clearing America of Woods, and so making this Side of our Globe reflect a brighter Light to the Eyes of Inhabitants in Mars or Venus, why should we in the Sight of Superior Beings, darken its People? Why increase the Sons of Africa, by Planting them in America, where we have so fair an opportunity, by excluding all blacks and Tawnys, of increasing the lovely white and red?*¹⁵⁸

2. Latinos

In his essay, *Los Olvidados: On The Making of Invisible People*, Professor Juan Perea notes that early historians and commentators ob-

152. THOMAS JEFFERSON, *Notes on Virginia*, in THE LIFE AND SELECTED WRITINGS OF THOMAS JEFFERSON 187, 256 (Adrienne Koch & William Peden eds., 1944) (emphasis added).

153. *Id.*

154. *Id.*

155. *Id.*

156. See ANNETTE GORDON-REED, THOMAS JEFFERSON AND SALLY HEMMINGS: AN AMERICAN CONTROVERSY (1997). But see WILLIAMSON, *supra* note 25, at 43-48.

157. Jefferson wrote about his impression of Blacks:

In reason [Blacks are] much inferior, as I think one could scarcely be found capable of tracing and comprehending the investigations of Euclid; and that in imagination they are dull, tasteless, and anomalous . . . Never yet could I find that a black had uttered a thought above the level of plain narration; never saw even an elementary trait of painting or sculpture.

JEFFERSON, *supra* note 152, at 187, 256. He believed that Blacks were intellectually inferior to Whites. RONALD T. TAKAKI, IRON CAGES: RACE AND CULTURE IN NINETEENTH CENTURY AMERICA 48 (1979). Jefferson attributed the supposed failings of Blacks to biology rather than the detrimental effects of slavery. *Id.* These supposed failings were consistent with Jefferson's view that Blacks were ugly. RONALD T. TAKAKI, A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA 71-72 (1993).

158. Benjamin Franklin, *Observations Concerning the Increase of Mankind, People of Countries, Etc.*, in 3 THE WRITINGS OF BENJAMIN FRANKLIN 63, 73 (Albert H. Smyth ed., 1905) (1751) (emphasis added).

served the darkness of Mexican Americans' skin and their mixed race background.¹⁵⁹ David Weber wrote that "American visitors to the Mexican frontier were nearly unanimous in commenting on the dark skin of Mexican Mestizos who, it was generally agreed, had inherited the worst qualities of Spaniards and Indians to produce a 'race' still more despicable than that of either parent."¹⁶⁰ Professor Perea also quotes Rufus B. Sage, a newspaperman and Rocky Mountain trapper who described residents of New Mexico in 1846 in the following way: "There are no people on the continent of America, whether civilized or uncivilized, with one or two exceptions, more miserable in condition or despicable in morals than the *mongrel* race inhabiting New Mexico."¹⁶¹ Finally, Professor Perea cites the views of historian Walter Prescott Webb writing in 1935, who stated:

The Mexican nation arises from the *heterogeneous mixture* of races that compose it. The Indian blood—but not Plains Indian blood—predominates, but in it is a mixture of European, largely Latin. The result is a conglomerate with all gradations from pure Spanish to pure Indian. There are corresponding social gradations with *grandees* at the top and *peons* at the bottom. The language is Spanish, or Mexican, the religion Catholic, the temperament volatile and mercurial.¹⁶²

Historically, Whites have used the darkness of color of Blacks and Latinos to justify discrimination against them.¹⁶³ In fact, in some places a separate category existed for the mixed race descendants of slaves and Whites.¹⁶⁴ These mixed race people received somewhat better treatment than the slaves—although they clearly were looked down upon.¹⁶⁵ Whites seem to have developed an appreciation for the mixed race look, e.g., a light-skinned Latino or African American. Many Whites tan their skins to achieve a darker color. More importantly, several years ago, *Time Magazine* did a study on what a composite American looked like, and it was a person with tan skin and slightly curly hair like some Latinos and

159. Perea, *supra* note 86, 975-76. Even though most of the following comments refer mostly to Mexican Americans, these same characteristics would probably be attributed to many Latinos because Latinos share a mostly mixed race heritage.

160. *Id.* at 976 (quoting FOREIGNERS IN THEIR NATIVE LAND: HISTORICAL ROOTS OF THE MEXICAN AMERICANS 33 (David J. Weber ed., 1973)).

161. Perea, *supra* note 86, at 976 (quoting RUFUS B. SAGE, HIS LETTERS AND PAPERS 1836-1847, (LeRoy R. Hafen & Ann W. Hafen eds., 1956), excerpted in FOREIGNERS IN THEIR NATIVE LAND, *supra* note 160, at 7, 74) (emphasis added). I bet there are no doubts who Mr. Sage thought was more miserable.

162. Perea, *supra* note 86, at 976-77 (quoting WALTER P. WEBB, THE TEXAS RANGERS: A CENTURY OF FRONTIER DEFENSE 13-14 (2d ed. 1965), excerpted in FOREIGNERS IN THEIR NATIVE LAND, *supra* note 160, at 77) (emphasis added).

163. See *supra* Part IV.B.1.

164. See *supra* Part IV.B.1.

165. See James W. Gordon, *Did The First Justice Harlan Have a Black Brother?*, 15 W. NEW ENG. L. REV. 159 (1993).

Blacks.¹⁶⁶ This newer preference may very well cause white Americans to give a preference to light-skinned Blacks and Latinos. This differential in treatment for lighter-skinned Blacks and Latinos might have to do with the fact that Whites may feel closer to them.

In essence, the closer one is to White standards of attractiveness, the better the treatment that one is likely to receive. This truth crosses racial and ethnic lines. As Professor Paulette M. Caldwell writes:

Judgments about aesthetics do not exist apart from judgments about the social, political, and economic order of a society. They are an essential part of that order. Aesthetic values determine who and what is valued, beautiful, and entitled to control. Thus established, the structure of society at other levels also is justified.¹⁶⁷

Society puts people into different color categories in order to place individuals into different racial and ethnic groups. As seen in the next sections, this information is then processed to make judgments about individuals.

V. DOES THIS PREFERENCE FOR LIGHT AND ABHORRENCE OF DARK EXIST TODAY?

A. *Light-skinned Blacks and Latinos Face Discrimination*

The question considered in this article is whether this difference in treatment still exists today and whether it spans across racial lines so that darker-skinned Blacks and Latinos suffer more discrimination than lighter-skinned blacks and Latinos. This analysis is not meant to suggest that light-skinned Blacks or Latinos do not face discrimination. In fact, two recent books explore the issues that very light-skinned African Americans undergo in life. Professor Judy Scales-Trent of State University of New York at Buffalo is the author of the book entitled *Notes of A White Black Woman: Race, Color, Community*,¹⁶⁸ and Dean Gregory Howard Williams, dean of the Ohio State University College of Law, is the author of the book entitled *Life On The Color Line: The True Story of a White Boy Who Discovered that He Was Black*.¹⁶⁹ Both books are exceptional personal narratives, which allow the reader to examine first-hand, incidents and introspection surrounding color-based discrimination in the United States.¹⁷⁰ Both authors describe many experiences of dis-

166. *The New Face of America*, TIME, Sept. 1, 1993 (displaying composite photo on the magazine's cover of a person that looks like either a light-skinned Latina or African-American).

167. Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365, 393 (1991).

168. JUDY SCALES-TRENT, *NOTES OF A WHITE BLACK WOMAN: RACE, COLOR, COMMUNITY* (1995).

169. HOWARD WILLIAMS, *LIFE ON THE COLOR LINE: THE TRUE STORY OF A WHITE BOY WHO DISCOVERED HE WAS BLACK* (1995).

170. See SCALES-TRENT, *supra* note 168; WILLIAMS, *supra* note 169.

crimination that they have encountered within the African American community and by Whites.¹⁷¹

Many African Americans are dark enough for racial recognition never to be at issue. Many who are very easily recognized as Black often wonder what it would be like to be light. Both Scales-Trent and Williams answer that question. They both highlight those unique issues that they encounter as light-skinned African Americans who are so light that they can not easily be racialized. Both authors contribute to the color analysis by challenging our historical conceptions of race, identity, and racial solidarity. Ultimately, they help us to better understand and address how they have encountered discrimination by both sides. It is also very important to point out that both of these people could have passed as White if they wanted to, but chose to stay Black and involved in the African American community.

For Latinos, the basis for their treatment as outsiders is not limited to their color or race. Differential treatment can be based against them on their "surname, language (including accent), national origin, sex, alienage, race and color."¹⁷² Latinos face these issues irrespective of their color. However, those of us who are darker face our own unique challenges.

B. *Self-Evident Truths*

At a recent Northeastern People of Color Conference, I chatted about this color project with two other black law professors. They discussed whether they thought that I was light-skinned. They are both darker in complexion than I am. We agreed that I was really more in the middle of the black color spectrum—perhaps a shade too dark to be considered light-skinned. Part of this scrutiny was to determine subconsciously whether I had standing to raise this issue. But all this, like many things in life, is relative to who is doing the judging, what his or her experience is, and from what part of the country the judge originates. I have been told in some parts of the country: "Oh you are so light-skinned." In other places, I am considered dark.

But there was something that one of my colleagues told me that I really had not considered or noticed before. He said that when he worked at the NAACP Legal Defense Fund, all the attorneys were light-skinned. I had also worked there one summer while I was in law school, and my initial reaction was: "No!" But, upon reflection, I realized that many of the attorneys were light to medium brown in complexion. A light bulb went off in my head. I also realized that in many of the legal jobs that I

171. See SCALES-TRENT, *supra* note 168; WILLIAMS, *supra* note 169.

172. Hernández Truyol, *supra* note 80, at 376.

have held, there have been few African Americans, and I have been one of the darker people employed. And I'm not that dark!

Once you look for it, you see the preference for lighter-skinned Blacks everywhere. A friend and I went to see *Steel Pier*, a Broadway Musical. She was going to stay over in New York City and see several plays later that day and the next day. I waited in line with her while she bought discount tickets for several plays. I noticed a big billboard advertisement of actress Whoopi Goldberg appearing in *A Funny Thing Happened On The Way To The Forum*. The advertisement was in the form of a caricature, but it looked very much like Ms. Goldberg—except her skin color was yellow. I turned to my friend, and I asked her: “What is wrong with that advertisement?” She shrieked and said: “That is what you have been talking about. Her color is all wrong!”

Ms. Goldberg's new color reminded me of a story that I read about actress Angela Bassett playing singer/actress Tina Turner in the movie *What's Love Got To Do With It?* Tina Turner has a much lighter complexion than Angela Bassett. The article's premise was that the print advertisement campaign did not show Ms. Bassett's face for this very reason.¹⁷³ As you may remember, the campaign used merely a half-drawn, uncolored outline of the real Ms. Turner's face. The writer believed that the public would be more receptive to seeing the movie if the public did not have to look at a dark-skinned Angela Bassett in the advertisements.¹⁷⁴ This may be the same reason why the advertising agency used a “high yellow” caricature of Ms. Goldberg to publicize her recent Broadway endeavors.

C. *Light-Skinned Blacks Have Higher Incomes and More Professional Positions Than Darker-Skinned Blacks*

Professors Hughes and Hertel, using data from the 1980 National Survey of Black Americans conducted by the Institute for Social Research at the University of Michigan, and 1983 census data, found that Blacks with lighter skin¹⁷⁵ have higher socioeconomic status, have spouses higher in socioeconomic status, and have lower Black consciousness than those with dark skin.¹⁷⁶ Dark-skinned Blacks earned only

173. The film producers of *What's Love Got To Do With It?* were worried about Angela Bassett's skin color. Anderson Jones, *A Lighter Shade of Sale*, ENT. WKLY., Aug. 6, 1993, at 40.

174. *Id.*

175. There of course exists a question of who is light and who is dark. When I have asked friends and family to rate each other's complexions I often get a very broad range of different answers. A lot really depends on who is doing the judging and who they are judging. As result, I asked the respondents to the *Color Survey* to rate and rank the colors of several famous individuals to see if we could come up with a consensus. Baynes, *Color Survey*, *supra* note 12.

176. Michael Hughes & Bradley R. Hertel, *The Significance of Color Remains: A Study of Life Chances, Mate Selection, and Ethnic Consciousness Among Black Americans*, 68 SOC. FORCES 1105 (1990).

seventy cents for every dollar a light-skinned Black earned.¹⁷⁷ Of professional and managerial occupations—those with high status—light-skinned Blacks held 27% of them as compared to 15% of dark-skinned Blacks who were employed in those positions.¹⁷⁸ Professors Hughes and Hertel believe that “skin color . . . operates as a diffuse status characteristic.”¹⁷⁹ They said that they “focused on [W]hites because they are the ones who are generally responsible for making upper-level management and personnel decisions. They are more likely to decide whether people get through educational institutions.”¹⁸⁰ And when Whites see a darker-complexioned Black person, Hughes and Hertel state that the white person thinks he or she is seeing someone “less competent”—someone less like them than a light-complexioned Black person.¹⁸¹ This view of the White perspective is subject to disagreement.¹⁸²

Professors Verna M. Keith and Cedric Herring, also using the 1980 census data found that skin complexion of Blacks was “a more consequential predictor of occupation and income than such background characteristics as parents’ socioeconomic status.”¹⁸³ They believe that “the continuing disadvantage that [B]lacks face is due to persisting discrimination against them in the contemporary United States.”¹⁸⁴ Professors Keith and Herring’s research shows that educational attainment increases as skin color becomes lighter.¹⁸⁵ Very light-skinned Blacks on average have “more than two additional years of education than dark-skinned Blacks.”¹⁸⁶

Very light-skinned Blacks “are substantially more likely to be employed as professional and technical workers than those with darker complexions.”¹⁸⁷ In contrast, those Blacks with darker skin “are more likely than all others to be laborers.”¹⁸⁸ “Both personal and family income

177. *Id.* These surveys compared the earnings of similarly situated Blacks, i.e., those with about twelve years of education. *Id.* In addition, an all-Black, male and female professional interviewing staff, trained and supervised by the Survey Research Center, Institute for Social research at the University of Michigan conducted the study. *Id.*

178. Njeri, *supra* note 30, at 1.

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.* Dr. Alvin Poussaint does not believe that lighter-skinned Blacks are given better treatment by Whites. *Id.* Dr. Poussaint said that the students at Harvard Medical School run the color spectrum of light-to-dark. *Id.* He believed that if the students were too light, that might be a problem. He believed that Whites wanted Blacks who looked Black enough. *Id.* Dr. Poussaint did believe that light skin was an advantage for females because the beauty standards are White. *Id.*

183. Keith & Herring, *supra* note 20, at 760.

184. *Id.*

185. *Id.*

186. *Id.* at 767.

187. *Id.* at 768.

188. *Id.*

increase significantly with lighter skin complexion."¹⁸⁹ In terms of family income, very light-skinned Blacks had incomes 50% greater than those for very dark-skinned Blacks.¹⁹⁰ As for personal income, light-skinned Blacks, on average, make 65% more than dark-skinned Blacks.¹⁹¹

D. Light-Skinned Latinos Have Higher Incomes and More Professional Positions Than Darker-Skinned Latinos

Mr. Arce and Professors Murguia and Frisbie have written that Mexican Americans with a more "European . . . appearance have more enhanced life chances as measured by higher socioeconomic status than Mexican Americans with indigenous Native American" features.¹⁹²

"The greatest number of years of formal education was reported for fathers and mothers of respondents in the [l]ight/European category while the lowest socioeconomic levels are found in the [d]ark/Indian group."¹⁹³ A similar relationship between color and features relates to the fathers' occupation—those who were light/European held more prestigious jobs than those who were dark/Indian.¹⁹⁴ For the respondents of the survey, although they had achieved higher socioeconomic status than their fathers, "it remained the case in the later generation that the lighter the skin color and the more the European the features, the higher the socioeconomic status."¹⁹⁵ Mexican Americans who were lighter/more European had attained 9.5 mean years of education while darker/more Indian Mexican Americans had completed only 7.8 years on the average.¹⁹⁶ Investigations of levels of income revealed the same pattern with light/European earning \$12,721 while the dark/Indian group earned only \$10,480.¹⁹⁷

Darker-skinned Latinos are also likely to encounter discrimination based in the sale and rental of homes.¹⁹⁸ In fact, like African Americans and unlike other Latinos, Puerto Ricans live in highly segregated areas, and have developed underclass communities.¹⁹⁹ This difference between Puerto Ricans and other Latinos is perceived to be because of their more pronounced African ancestry.²⁰⁰ In addition, darker-skinned Latinos are

189. *Id.* at 768-69.

190. *Id.*

191. Arce et al., *supra* note 21, at 19.

192. *Id.*

193. *Id.* This situation is very complex because in Latin America European Whites have traditionally received more education than non-whites so it is only natural that this may enhance their life chances in the U.S. as compared to non-white Latinos.

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID, SEGREGATION AND THE MAKING OF THE UNDERCLASS* 11, 96-105 (1993).

199. *Id.*

200. *Id.*

more likely to be questioned by Border Patrol officers in and about the border.²⁰¹ Another study conducted by Professors Telles and Murguia found that Mexican American males of a medium complexion reported slightly lower incomes than light-complected males; however, the gap between dark- and medium-complected males was most striking.²⁰² The mean income for light-complected individuals was \$13,008, for medium-complected individuals it was \$12,804, but for dark-complected males it was \$11,287.²⁰³ The researchers speculated that the income differential between the light- and medium-complected Mexican Americans was not great because a number of medium-complected individuals in the sample earned a good salary as union members in the construction industry.²⁰⁴ Although these medium-complected individuals may earn salaries almost comparable to their lighter-complected brethren, the lighter-complected Mexican Americans in the survey held jobs with greater occupational prestige.²⁰⁵

VI. WESTERN NEW ENGLAND COLLEGE SURVEY

A. *Genesis of the Color Survey*

There are many theories of why light-skinned Blacks and Latinos have higher incomes and professional success in the United States. One theory is that they have historic advantages because the Whites preferred their mixed race children and were likely to free their partially African descendants earlier than those who were not of mixed race ancestry.²⁰⁶ As a result, those of mixed race ancestry had an early historical advantage over their darker-skin counterparts. This may be true for some light-skinned Blacks and Latinos but not for all. In my own family, on my mother's side, one white male ancestor did show some favoritism to his mixed race offspring.²⁰⁷ On my father's side, the opposite happened: my grandmother was abandoned by her white father because she was too dark.²⁰⁸ My family history is probably not that different than others who are of mixed race ancestry.

The second theory, which I wanted to test in the survey is whether Whites notice the differences in color in Blacks and Latinos, and whether

201. Johnson, *supra* note 26 (citing *Gonzales-Rivera v. INS*, 22 F.3d 1441 (9th Cir. 1994) (finding that the Border patrol stopped undocumented Mexican American because of "Hispanic appearance")).

202. Edward E. Telles & Edward Murguia, *Phenotypic Discrimination and Income Differences Among Mexican Americans*, 71 SOC. SCI. Q. 682 (1990).

203. *Id.*

204. *Id.*

205. *Id.*

206. See KATHY RUSSELL ET AL., *THE COLOR COMPLEX: THE POLITICS OF SKIN COLOR AMONG AFRICAN AMERICANS* chs. 1-3 (1992).

207. Baynes, *One Black Man*, *supra* note 24, at 115-18.

208. *Id.* at 115.

they would acknowledge that they felt a different comfort level based on the variations in skin color of African Americans and Latinos.²⁰⁹ The survey was anonymous and was completed by 143 persons.²¹⁰ Seventy-five percent of the survey respondents were White; 7% were Black; 8% were Latino; 6% were Asian/Pacific American; and 3% listed themselves as other.²¹¹

B. *The Colors of Blacks*

1. Recognition and Acknowledgment

I asked the respondents whether they noticed the different skin colors of Blacks. Overwhelming majorities across all racial and ethnic groups surveyed noticed the difference in skin color tones of Blacks.²¹² The composite results of the respondents for the different racial/ethnic groups surveyed is as follows:

209. This survey is not random and may be biased toward the specific attitudes of the respondents who were drawn from an academic environment in Springfield, Massachusetts. Although the survey was anonymous, there is the possibility of contamination due to the fact that the respondents knew the data would be reviewed. From the scientific perspective, the survey results are purely anecdotal. Nevertheless, the results are significant because they help clarify the attitudes of white individuals on these issues, at this location, at this time.

Figures at times may either not add up to or exceed 100%, either because some respondents failed to answer particular questions, checked more than one response, or from rounding out the numbers.

210. Baynes, Color Survey, *supra* note 12. The following groups responded to the survey: (1) students, (2) faculty, and (3) administrators and staff members. The students consisted of students in my two classes: Critical Race Theory and Property. I also asked other students who were not enrolled in my classes, but were registered as students of color to complete the survey. Finally, I asked one undergraduate social work class to complete the survey. The faculty consisted primarily of law faculty, but also included a few faculty members at the undergraduate college who are members of the campus-wide Diversity Committee. The administrators and staff members consisted of all salary levels of individuals primarily at the Law School but also included a few undergraduate administrators and staff members who are members of the campus-wide Diversity Committee. I also asked all other minority employees of the College to complete the survey. Because there are so few people of color on campus, I wanted to create a big enough pool to make the data more useful and to provide a greater level of anonymity. Forty two percent of the survey respondents were male and 58% were female. This gender disparity may have been due to the very large percentage of women in staff and administrative positions. It also may have occurred if male recipients were less inclined to complete the survey.

211. *Id.* Of those who listed "other" as their racial category, respondents described themselves as fitting in the following categories: French Canadian, Latino/Mediterranean, Pacific Islander/White, and a white woman married to an African American.

212. *Id.* I also asked the respondents whether they thought that Whites noticed the difference in skin color of Blacks.

	Whites	Blacks	Latinos	Asians	Other
Yes	84%	60%	83%	75%	50%
No	4%	30%	17%	0%	0%
Don't Know	12%	10%	0%	25%	50%

	Whites	Blacks	Asians	Latinos	Other
Yes	91%	100%	100%	92%	75%
No	9%	0%	0%	0%	25%

For Blacks, noticing the skin color of other Blacks is often used for the purpose of group identification—after all, we cannot rely on surnames like other ethnic groups. There are some Anglo-Saxon names that often are associated with Blacks, like “Washington,” “Jefferson,” or “Davis.” Blacks often took their former slavemaster’s name after emancipation. However, there is no guarantee that the holder of such a name is Black. The noticing of other Blacks’ skin color may also be for the purpose of establishing relative status and making assumptions based on that person’s status. Non-black respondents may notice skin color variations because of human curiosity. In noticing, they may marvel at or denigrate the variation in skin tone of Blacks. For example, one white student confirms my suspicion when he or she wrote in the comment section: “I think we all notice darker skin more than we do lighter because it is dark.”²¹³

I then asked the respondents to what they attributed the difference in Blacks’ skin colors. This was a multiple-choice question with the choices being: (1) White Ancestry; (2) Sun, (3) Place of Origin,²¹⁴ (4) Evolution, (5) Other, and (6) Don’t Know. The respondents answered in the following manner:

	White Ancestry	Sun	Place of Origin	Other	Evolution	Don’t Know
Whites	18%	1%	43%	10%	5%	23%
Blacks	70%	0%	10%	10%	0%	10%
Latinos	50%	0%	25%	0%	0%	25%
Asians	50%	0%	25%	12.5%	0%	12.5%
Other	25%	0%	50%	25%	0%	0%

Although almost everyone notices the differences in the skin coloring of Blacks, only the Black, Latino and Asian respondents know the

213. *Id.* In contrast, one student who did not identify if he or she was black or white wrote the following: “I really do not think of people in shades and degrees of blackness; a person is either Black or they are not.” I have wondered if this was written by a black person or a white person. Why did the student not disclose his or her racial identity? If it was written by a White, it seems to suggest that all Blacks are the same and the respondents treat them the same. The comment has the tonal quality suggesting that the student treats all Blacks in a bad manner. It also could be that the particular student was not particularly observant and may perceive black as neutral, neither good nor bad. If it was written by a black student, then he or she seems to be telling me that I am dealing with a taboo subject in mixed company.

214. Place of origin refers to the place that the black person came from, such as a part of Africa, the Caribbean or the United States.

reason for the large color range between and among Blacks, which is the presence of white ancestry.²¹⁵ This could be attributable to the fact that 90% of the Black respondents acknowledged that they were of mixed race heritage.²¹⁶ It could also be because a very large percentage of the Latinos also acknowledged that they were of mixed race origin.²¹⁷ The large percentage of Asians surveyed may have answered in this way because of their contact with my other articles and me. The Whites generally believed that the difference in skin color between and among Blacks is due to the place that they were originally from.

Place of origin is not necessarily a completely wrong answer since there are color variations between and among the different ethnic groups in Africa, but those differences are not likely to cause the range in color that exists in the United States. It is also true that some places may have more of a predominance of dark-skinned Blacks or light-skinned Blacks, but those differences are the result of the frequency of race mixing in those areas. The Whites may be projecting the reason for their own color variations on Blacks. It is common belief that Whites from Scandinavia are more often light—blue eyed and blond haired—and Whites from the Mediterranean are more swarthy in complexion, eye color, and hair color. Whites believe that the variation in their complexions is due to their place of origin—although clearly a large part of it had to be due to race mixing between Africans and Europeans.²¹⁸

Part of this lack of knowledge may be attributable to slavery being taught as a mere anachronism in schools. Unfortunately, one of the sad realities of slavery was that slave women were raped and sexually exploited by white men. The fact that the non-black respondents do not know that suggests almost a collective denial of this issue.

2. Testing Recognition and Acknowledgment

In the Black community, there is a significant minority who believe that Whites cannot tell the difference in color among African Americans.²¹⁹ I have also heard this same comment from several black friends and family members. So I asked the respondents to rate the colors

215. See WILLIAMSON, *supra* note 25, at 192; RUSSELL, *supra* note 206, at 9-23.

216. Baynes, *Color Survey*, *supra* note 12. The question asked was: "Do you know whether you are of mixed race ancestry?" The black respondents answered in the following manner:

Yes	90%
Don't Know	10%

Of those who indicated that they were of mixed race ancestry, most acknowledged that they were mixed with Whites, and a smaller number said that they were mixed with Native Americans.

217. Fifty percent of the Latinos acknowledged that they were of mixed race origin.

218. A very prominent example of this is the story of Mark Anthony and Cleopatra. Shakespeare even centers one of his plays around the interracial love story of Othello, the Moor, and his wife, Desdemona, a light skinned Florentine. WILLIAM SHAKESPEARE, *OTHELLO* (Oxford Univ. Press 1996).

219. See *supra* note 212.

of several famous black individuals on the following scale: (1) very light, (2) light, (3) medium, (4) dark, and (5) very dark. I picked a group of well-known individuals, i.e., Vanessa Williams, Colin Powell, O.J. Simpson, Dennis Rodman, Clarence Thomas, and Whoopi Goldberg, with a wide range of skin tones.²²⁰

a. *Vanessa Williams*²²¹ and *Colin Powell*²²²

A very large majority across racial and ethnic lines would place Ms. Williams in the very light or light skin color category. The respondents were asked the question, "Please describe the skin color, skin tone, skin shade of former Miss America Vanessa Williams." The respondents answered in the following manner:

	Vanessa Williams				
	very light	light	medium	dark	very dark
Whites	11%	41%	43%	4%	0%
Blacks	20%	60%	10%	10%	0%
Latinos	8%	33%	50%	0%	8%
Asians	0%	75%	13%	13%	0%
Other	25%	50%	25%	0%	0%

A very small percentage of Blacks would list her as medium or dark in complexion, but a much larger percentage of Whites and Asian Americans would categorize her as medium in tone. A majority of Latinos see Ms. Williams as medium in complexion. This divergence in results may be related to reference point. For example, if I were white then

220. One of my white colleagues was very surprised by the array of choices, i.e., very light to very dark. He said that before he read the survey, he did not think that there was such a broad range of categories.

221. Baynes, *Color Survey*, *supra* note 12. I also asked the respondents whether they thought that Ms. Williams was biracial—having one black and one white parent. I did this to see whether the responses of the Whites were consistent with my experience at the health club. *See supra* note 29 and accompanying text. The White responses to this question were as follows:

Yes 21%
No 17%
Don't Know 62%

The overwhelming White response was "I don't know"—although of those who ventured an opinion the majority thought like my friends at the health club.

222. *Id.* I also asked the respondents whether they thought that Colin Powell was biracial—having one black and one white parent. I was most curious about what the Whites thought and their responses were as follows:

Yes 10%
No 32%
Don't Know 58%

It is interesting that fewer are willing to say that General Powell is biracial when (I believe) that he has lighter skin than Ms. Williams. This could be attributable to Ms. Williams's green eyes and straightened auburn hair.

I consider myself light; someone like Ms. Williams with tawny skin would not be considered light in my eyes.

A majority of the Whites and Blacks see General Powell as very light or light in complexion. The actual percentages of how the respondents would describe the complexion of General Powell is as follows:

	Colin Powell				
	very light	light	medium	dark	very dark
Whites	3%	52%	40%	4%	2%
Blacks	20%	40%	40%	0%	0%
Latinos	17%	17%	58%	0%	8%
Asians	0%	25%	63%	12%	0%
Other	0%	50%	50%	0%	0%

A smaller minority in each group saw General Powell as medium-toned. The distribution of responses for Blacks and Whites was more of a match as to General Powell. Asian and Latino respondents were more likely to see General Powell as medium-toned than very light or light. Again this could be related to the positional reference of Asian Pacific American and Latinos, i.e., they might not likely see one as light who is closer to their complexion; they are more likely to see him as medium-toned.

b. *O.J. Simpson and Dennis Rodman*

Across all racial and ethnic groups, most respondents would describe Mr. Simpson's complexion as medium.²²³ The respondents described Mr. Simpson's complexion in the following manner:

223. *Id.* I also asked whether the respondents thought that Mr. Simpson had any white ancestors. The white respondents answered in the following manner:

Yes	15%
No	28%
Don't Know	57%

A majority of Whites answered that they did not know whether Mr. Simpson had any white ancestors. Of those willing to venture an opinion, a large majority answered no. This response is in contrast to those for Ms. Williams and General Powell probably because Mr. Simpson is darker and many Whites believe that one must be very light in order to have white ancestors.

	O.J. Simpson				
	very light	light	medium	dark	very dark
Whites	0%	7%	57%	36%	1%
Blacks	0%	0%	100%	0%	0%
Latinos	0%	0%	42%	58%	0%
Asians	0%	13%	75%	13%	0%
Other	0%	0%	100%	0%	0%

However, there is a divergence between Latinos and every other racial/ethnic group surveyed since Latinos were the only group by a majority that would describe Mr. Simpson's complexion as dark whereas a majority of all other groups surveyed found Mr. Simpson medium-complected. This difference is probably caused by different reference points. It seems that Latinos have a much lighter reference point for what they consider dark.²²⁴

Like Mr. Simpson, most respondents would place Mr. Rodman in the medium category.²²⁵ The composite survey results describing Mr. Rodman's complexion were as follows:

	Dennis Rodman				
	very light	light	medium	dark	very dark
Whites	1%	8%	57%	31%	0%
Blacks	0%	0%	90%	10%	0%
Latinos	0%	8%	50%	33%	8%
Asians	0%	13%	63%	25%	0%
Other	0%	0%	75%	25%	0%

224. See *infra* note 265 and accompanying text for discussion of Rosie Perez being categorized as medium by Latinos, but very light or light by Blacks.

225. *Id.* I also asked the white respondents whether they thought that Mr. Rodman had any white ancestors. They answered in the following manner:

Yes	11%
No	12%
Don't Know	77%

Again a majority of the white respondents answered that they did not know whether Mr. Rodman has white ancestors, but of those who were willing to venture an opinion they were evenly divided. The percentage of Whites who think that Mr. Rodman has white ancestors is larger than that pertaining to General Powell even though (I believe that) General Powell is much lighter than Mr. Rodman. This might be attributable to the fact that Mr. Rodman often sports a blond hair style. Interestingly, one of my white colleagues told me that he described Mr. Rodman as light because Mr. Rodman dyes his hair blond, so he must be light-skinned.

c. *Clarence Thomas*²²⁶ and *Whoopi Goldberg*²²⁷

Most of the respondents across racial and ethnic lines would describe Justice Thomas's complexion as dark. The composite responses of the descriptions of Justice Thomas's complexion were as follows:

Clarence Thomas					
	very light	light	medium	dark	very dark
Whites	0%	1%	19%	63%	17%
Blacks	0%	0%	0%	70%	30%
Latinos	0%	0%	17%	58%	25%
Asians	0%	0%	25%	38%	38%
Other	0%	0%	25%	75%	0%

Most respondents would also describe Ms. Goldberg's complexion as dark. The composite Survey descriptions of Ms. Goldberg's complexion are as follows:

Whoopi Goldberg					
	very light	light	medium	dark	very dark
Whites	0%	0%	10%	76%	14%
Blacks	0%	0%	0%	80%	20%
Latinos	0%	0%	8%	83%	8%
Asians	0%	0%	0%	63%	37%
Other	0%	0%	25%	75%	0%

226. Baynes, Color Survey, *supra* note 12. I also asked the white respondents whether they believed that Justice Thomas had any white ancestors. The composite White responses were as follows:

Yes	10%
No	26%
Don't Know	64%

Again, an overwhelming number of white respondents answered that they did not know. Of those willing to venture an opinion, a very large percentage believed that he does not have any white ancestors. They are probably basing this on Justice Thomas's very dark appearance.

227. *Id.* I also asked the white respondents whether they thought that Ms. Goldberg had any white ancestors. The composite White responses were as follows:

Yes	6%
No	32%
Don't Know	62%

Again, an overwhelming majority answered that they did not know. Of those who were willing to venture an answer a very large majority believed that Ms. Goldberg did not have white ancestry. This may have to do with Ms. Goldberg's very natural appearance, i.e., dreadlocks. The white respondents may see her as darker or more African than she is because she wears her hair in a natural style.

d. *Analysis*

The data suggests that the majority of all surveyed—irrespective of race—notice and discern the relative lightness and darkness of a black person's skin color. The sampling seems to suggest a smaller deviation in the relative description of persons by Blacks than by other groups. The identification of O.J. Simpson's complexion is most illustrative. For example, 100% of all Blacks surveyed thought that O.J. Simpson was medium in complexion. This may be because his shade of brown is most desired, and now considered, by many Blacks, to be the somatic norm. It is not too dark, and it is not too light.²²⁸ The white respondents, on the other hand, by a large majority consider Mr. Simpson medium in complexion, but a fairly large minority of Whites think that his complexion is dark.

The much higher numbers describing Simpson as dark by Whites may be the result of the darkened *Time Magazine* cover that came out while Mr. Simpson was on trial. It also may have something to do with their belief in his guilt in the murders of his ex-wife Nicole Brown Simpson and her friend Ronald Goldman.²²⁹ As such, more Whites may see him as dark because they think that he is bad. They want to distance themselves from him, so they see him as dark. After all, darkness has historically been associated with evil.²³⁰ The white respondents may be making this subconscious coloration in their minds.

The converse may be true for Justice Thomas where Blacks and Latinos uniformly agree that he is dark or very dark; most Whites and Asian Pacific Americans generally agree, but a significant minority of Whites would describe him as medium or light in appearance. It suggests to me that some of the Whites and Asian Pacific Americans may feel more comfortable to Justice Thomas because of his conservative political opinions. They may also see him as lighter due to his status as a Supreme Court justice.

The same is true for Mr. Rodman. An overwhelming majority of Blacks describe him as medium-complected, whereas a much smaller majority of Whites would describe Mr. Rodman as dark. Part of it could be that the Whites are shading Mr. Rodman's complexion by his antics on and off the basketball court. Part of the reason that some see him as dark could also be due to the fact that Mr. Rodman is an athlete. He is very physical which is what black men are "supposed" to be.

In general, the results of the *Color Survey* seem to suggest that Blacks draw a hard line for who they consider as dark or medium and

228. See *supra* note 76 and accompanying text.

229. See Leonard M. Baynes, *A Time To Kill, The O.J. Simpson Trials, and Storytelling to Juries*, 17 *LOY. L.A. ENT. L.J.* 549, 560 n.60 (1997).

230. See *supra* Part IV.A.

seem to be uniformly consistent about it.²³¹ This is evidenced by 100% of the black respondents having the opinion that Mr. Simpson is medium in complexion.²³² The black respondents are much more consistent in terms of who they consider dark and much less consistent on who is light or medium.²³³ For those who are medium in complexion and lighter, it seems as though Blacks and Whites disagree as to who fits into which category.²³⁴ Whites may disagree because they are light, so anyone who is darker than them cannot be considered light or very light. Whites who are olive-complected may face certain dissonance in having a black person lighter than them in complexion. This disagreement by Blacks as to who is light or medium may arise because lightness remains a mark of status in the Black society and the respondents may be less likely to confer that status on others. On the other hand, it might be much easier for a majority of Blacks to confer lower status on some dark-skinned Blacks.

For Latinos, 50% thought Ms. Williams was medium complected and 41% thought she was light or very light-complected. This data is different from the other racial and ethnic groups surveyed. In addition, 58% of Latinos thought that Mr. Simpson was dark, and 42% thought that he was medium.²³⁵ This data is very different from the data of other groups. Other groups, by large majorities, thought that Mr. Simpson was medium in complexion.²³⁶ In other responses concerning the skin color of identified persons, Latinos followed the majority of the other ethnic and racial groups.²³⁷ This seems to suggest that the Latinos who were polled have a lighter color threshold than Blacks, and also explains why a majority of Latinos consider Ms. Williams medium-complected and Mr. Simpson as dark complected.²³⁸

3. Different Treatment Based On Different Skin Color

a. *White Treatment of Blacks Based on Skin Color*

I asked the respondents whether they had a different comfort level for Blacks based on skin shade. They answered the question in the following manner:

231. See *supra* Part VI.B.2.

232. See *supra* Part VI.B.2.b.

233. See *supra* Part VI.B.2.

234. See *supra* Part VI.B.2.

235. See *supra* Part VI.B.2.b.

236. See *supra* Part VI.B.2.b.

237. See *supra* Part VI.B.2.

238. See *supra* Part VI.B.2.b. This divergence compares nicely with the divergence that Blacks and Latinos have with Rosie Perez and Jimmy Smits. The Latinos saw Ms. Perez and Mr. Smits as medium in complexion and black respondents saw them as light or very light. See *infra* Part VI.C.2.a.

	Yes	No	No Difference	Don't Know
Whites	6%	27%	60%	8%
Blacks	0%	40%	60%	0%
Latinos	0%	42%	42%	17%
Asians	0%	50%	38%	13%
Other	0%	25%	50%	25%

Of the 6% of Whites who said that they had a different comfort level based on the color of a black person's skin, they all said that they felt more comfortable with lighter-skinned Blacks than darker skinned Blacks.²³⁹ I then asked the respondents whether they thought that Whites treat Blacks differently based on the black person's skin color.²⁴⁰ They responded to the survey in the following manner:

	Yes	No	No Difference	Don't Know
Whites	75%	1%	6%	18%
Blacks	90%	10%	0%	0%
Latinos	83%	17%	0%	0%
Asians	62%	0%	0%	38%
Other	75%	25%	0%	0%

I also asked the Survey respondents how they thought Whites treated dark-skinned Blacks compared to light-skinned Blacks. They responded as follows:²⁴¹

	Better	Worse	No Difference	Don't Know
Whites	0%	70%	11%	19%
Blacks	10%	80%	10%	0%
Latinos	0%	92%	8%	0%
Asians	0%	63%	0%	37%
Other	0%	50%	25%	25%

By very large majorities, each racial and ethnic group believes that Whites treat dark-skinned Blacks worse than light-skinned ones. The

239. See Baynes, *Color Survey*, *supra* note 12.

240. *Id.* A handful of Whites wrote in the comment section of the *Color Survey* that they thought that this question was biased because Whites are not monolithic in opinion, and I was asking them how other Whites think.

241. *Id.* I also asked the respondents the question in reverse, i.e., "How do you think Whites treat light-skinned Blacks in comparison to dark-skinned Blacks?" and the results were the mirror image. Across racial and ethnic lines, the respondents generally thought that light-skinned Blacks were treated better by Whites. The percentages, however, were a little lower, which suggests that respondents know that all Blacks are treated badly by Whites.

largest majorities are among Blacks and Latinos probably because their own personal racial, ethnic and cultural histories demonstrate the seeming White preference for light skin. The Whites and Asian Americans also believe that dark-skinned Blacks are treated worse, but by a smaller majority. For both of these groups, the second highest response was "Don't Know." This suggests that the differences in the size of the majorities for Blacks and Latinos versus Whites and Asian Americans have more to do with a lack of information by the latter two groups than by a difference in opinion.²⁴²

b. *Analysis*

The survey results of the white respondents dealing with noticing skin color, comfort level and how other Whites treat Blacks based on skin color contradict themselves. A very large percentage of Whites answered that they notice the different skin color variations among Blacks. The same Whites, by large majorities, also answered that they felt no less comfortable or no different between light-skinned Blacks and dark-skinned Blacks. Yet, an equally large percentage of the white respondents felt that Whites treated light-skinned Blacks better than dark-skinned Blacks. In essence, the white respondents are saying that although they do not discriminate, most Whites do. These seemingly con-

242. I also asked the survey respondents whether they thought that Blacks treat each other differently based on skin color. The survey results were as follows:

	Yes	No	No Difference	Don't Know
Whites	55%	5%	3%	37%
Blacks	90%	0%	0%	10%
Latinos	58%	0%	25%	17%
Asians	50%	13%	13%	25%
Other	100%	0%	0%	0%

Id. A majority across racial and ethnic groups believe that Blacks treat each other differently based on skin color. The size of the majorities vary between Blacks and the other category with the highest percentages and Whites, Latinos, and Asians. However, the differences in the size of the majorities may have to do with lack of knowledge since there was a very large minority answer of "Don't Know" among the non-black respondents.

I then asked the respondents how they felt about how Blacks treated dark-skinned Blacks compared to light-skinned Blacks.

	Better	Worse	No Difference	Don't Know
Whites	17%	21%	10%	52%
Blacks	10%	80%	0%	10%
Latinos	17%	33%	17%	33%
Asians	0%	12%	25%	63%
Other	0%	25%	0%	75%

Id.

A substantial majority of the Blacks surveyed thought that Blacks treated dark-skinned Blacks worse than light-skinned Blacks. The Latinos agreed but by a much lower percentage. The Whites, Asians and those who listed themselves as other generally did not know the answer to the question. These percentages illustrate a lack of knowledge of the Black culture or perhaps a hesitancy to make generalized statements about something that people feel that they do not know enough. For example, after completing the survey one of my students told me that she felt that she did not know enough. She stated, "What do I know as a white girl!"

tradictory responses suggest that, at least with respect to this question, the results may be slightly contaminated. Even though the survey was anonymous, the recipients still may have been concerned about portraying their own feelings and beliefs in the most favorable light.²⁴³

These results also may be attributed to psychological denial of discriminatory feelings by Whites. Professor Charles R. Lawrence III, in his article *The Id, The Ego, and Equal Protection: Reckoning With Unconscious Racism*,²⁴⁴ called such denial an example of unconscious racism.²⁴⁵ It is hard to grow up in our society and not believe certain negative stereotypes about Blacks. Yet, society also teaches Whites that it is socially unacceptable to hold racist thoughts. But, like many thoughts and feelings that are repressed, they often manifest themselves in certain ways. Professor Lawrence gave several examples in his work. For example, Nancy Reagan addressed a group of Republican operatives and said that she wished [Ronald Reagan] could be there to "see all these beautiful white people."²⁴⁶ When challenged by the media on this issue, Ronald Reagan's Illinois campaign manager defended Mrs. Reagan by stating that "she was talking to her husband about the white snow and that's how she got mixed up."²⁴⁷ In the case of the *Color Survey*, the white respondents may not be in touch with their own feelings toward Blacks. Their answer that they feel no less comfortable with Blacks based on the skin color variations may be an honest answer at this time.

Despite these seeming inconsistencies, there is a strong message in these findings. A large majority of Whites notice color variations in black people's skin color, and a very large majority of Whites believe (or are aware) that other Whites discriminate more against darker-skinned Blacks. These results are quite remarkable. It is the first time that a group of Whites seem to confirm that other Whites are discriminating in this manner. This data has a great deal of significance in terms of law and policy.

243. For instance, one question on the survey asked the respondents if they would feel any differently if they discovered that they were of mixed race. One of the white respondents was troubled that she might feel differently, and in the comment section worried about what I would think even though the *Color Survey* was anonymous. *Id.*

244. Charles R. Lawrence III, *The Id, The Ego, and Equal Protection: Reckoning With Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

245. *Id.* at 322.

246. *Id.* at 340.

247. *Id.* at 388 n.97.

C. *The Colors of Latinos*

1. Recognition and Acknowledgment

I asked the respondents whether they noticed the different skin colors of Latinos.²⁴⁸ The composite responses were as follows:

	Yes	No	Don't Know
Whites	62%	28%	10%
Blacks	90%	10%	0%
Latinos	100%	0%	0%
Asians	75%	12%	12%
Other	50%	50%	0% ²⁴⁹

A very strong majority among all racial and ethnic groups surveyed notice the difference in skin colors among Latinos.²⁵⁰ The majorities vary between highs of 100% for Latinos and 90% for Blacks, 75% for Asian-Pacific Americans and the much lower 62% for Whites.²⁵¹ A much higher percentage of Whites, 90%, answered that they noticed the different skin colors of Blacks.²⁵² This difference could be due to the novelty of the perceived broader range in skin color of Blacks as compared to Latinos.

A very strong minority of 28% of Whites said that they did not notice skin color variations between Latinos.²⁵³ This could be attributable to Whites assuming that all Latinos are olive-complected²⁵⁴ and imposing a Black identification on any Latino who is dark-skinned. In a *Chicago Sun-Times* story, Rey Colon stated, "I'm a dark Puerto Rican who can't pass for anything but [B]lack. Any time [sic] I felt racism, I felt it as a [b]lack person, not as a Hispanic."²⁵⁵ Especially for those Whites who are

248. See Baynes, *Color Survey*, *supra* note 12.

249. See *id.* I also asked the respondents whether they thought that whites noticed the different skin coloration of Latinos.

	Yes	No	Don't Know
Whites	55%	19%	26%
Blacks	60%	20%	20%
Latinos	83%	0%	17%
Asians	63%	25%	12%
Other	50%	50%	0%

Id.

250. *Id.*

251. *Id.*

252. See *supra* Part VI.B.1.

253. Baynes, *Color Survey*, *supra* note 12.

254. In Spanish, olive-complected person is called a *trigueño*. See *supra* note 128 and accompanying text.

255. Don Hayner, *Stranded Between 2 Cultures Series: The Great Divide (Standard)*, CHICAGO SUN-TIMES, Jan. 12, 1993, at 18; see also Alisa Valdes, *Past Empowers Black Latinos While Proud of Their African Roots, Many Face Prejudice from All Sides*, BOSTON GLOBE, Mar. 3, 1997, at B1 (discussing prejudice black Latinos must face).

olive-complected, it may cause them some dissonance to consider an olive-complected person of color to be any different from them. So they would certainly not notice a difference in skin color. There are also other ways to recognize Latinos by complexion. Whites may notice the Latinos' complexion less because they can mark them more than just by skin color. They might be able to tell whether someone is Latino by his or her accent, surname, or language. So unlike Blacks, noticing the Latinos' coloration is not the sole (nor necessarily the best) way to identify him or her. I then asked the respondents what they thought caused the difference in skin color. This was a fill-in-the-blank question with the choices being: (1) White Ancestry, (2) Sun, (3) Place of Origin,²⁵⁶ (4) Evolution, (5) Other, and (6) Don't Know. The survey results were as follows:

	White Ancestry	Sun	Place of Origin	Evolution	Other	Don't Know
Whites	11%	0%	39%	4%	7%	39%
Blacks	50%	0%	30%	0%	20%	0%
Latinos	50%	8%	33%	8%	0%	0%
Asians	25%	0%	38%	0%	25%	13%
Other	25%	25%	25%	0%	0%	25%

The color variation in Latinos is the result of mixing of different racial and ethnic groups, e.g., African Black, Native American and European White. In fact, I asked the Latinos what racial category they thought they fit into and 50% identified themselves as mixed race; 8% said that they were Black; 8% said that they were American Indian; 17% answered that they did not know; and 17% answered other.²⁵⁷

Racial mixing manifested itself in different ways depending on the number and types of people located in different places. For example, many Africans were brought to the Caribbeans which had many ports for slave trading.²⁵⁸ Slaves brought there were sold throughout North America, South America and the Caribbean.²⁵⁹ As a consequence, a large African presence exists in that area, and a considerable number of people are very African-looking in appearance.²⁶⁰ The same Latin American countries may have had fewer Africans but more Native people so that the complexion of the Latino who emigrated from there is likely to be influenced by that.²⁶¹ The ultimate answer to the question of what causes

256. By place of origin, I meant the place that the Latino came from, such as South America, Central America, Caribbean, and Spain. Baynes, *Color Survey*, *supra* note 12

257. *Id.*

258. See JOHN HOPE FRANKLIN, *FROM SLAVERY TO FREEDOM A HISTORY OF NEGRO AMERICAN* 115 (3d ed. 1967).

259. *Id.* at 69-70.

260. *Id.* at 357-60.

261. *Id.* at 358.

variations in skin color is the presence of white ancestry in people of color ancestry. The sub-answer is place of origin. In responding to the question, Whites were more likely to attribute place of origin to the variations in Latinos' skin color than the Blacks and Latinos.²⁶²

Being of varying racial mixtures may pose problems for Latinos in the United States since we still have a Black-White Paradigm. One Latina member of the Campus-Wide Diversity Committee wrote the following in the comment section of the *Color Survey*: "I am Puerto Rican and was once asked by a professor to choose whether I was Black or [W]hite I could not choose I have ancestors who were Taino Indians, Spanish and African so how could I choose-(I didn't)."²⁶³

2. Testing Recognition and Acknowledgment

I wanted to test the way the respondents actually noticed the differences between and among the color variations of Latinos so I asked the respondents to rate the skin colors of several famous Latino individuals on the following scale: (1) very light, (2) light, (3) medium, (4) dark, and (5) very dark. It was very hard to pick a range of individuals who were very well-known to everyone and yet have a significant variation in skin colors. This difficulty demonstrates the fact that Latinos are still often invisible in our society²⁶⁴ as Blacks were (and still are, although less so) several generations ago. The fact that there are so few dark Latinos who are household names evidences the more pernicious racial discrimination that they encounter over their lighter-skinned counterparts. I chose a group of well-known individuals; actress Rosie Perez, actor Jimmy Smits and soccer player Pele.

a. *Rosie Perez*

I asked the respondents to describe the complexion of actress Rosie Perez as either (A) very light, (B) light, (C) medium, (D) dark, (E) very dark. The composite answers were as follows:

262. The Whites did the same thing with Blacks by attributing place of origin as the primary reason for the skin color variations. See *supra* notes 215-18 and accompanying text. Again, this is because they determine their own ancestry in that manner.

263. Baynes, *Color Survey*, *supra* note 12.

264. See Deborah Ramirez, *Forging a Latino Identity*, 9 LA RAZA L.J. 61, 61-62 (1996).

	Rosie Perez					
	very light	light	medium	dark	very dark	don't know
Whites	4%	4%	21%	2%	0%	69%
Blacks	20%	60%	10%	0%	0%	10%
Latinos	8%	8%	75%	0%	0%	8%
Asians	0%	50%	25%	0%	0%	25%
Other	0%	75%	0%	0%	0%	25%

Most of the white respondents did not know Rosie Perez.²⁶⁵ Of those who knew Ms. Perez, most placed her in the light or medium categories.

b. *Jimmy Smits*²⁶⁶

I asked the respondents to describe the complexion of actor Jimmy Smits as either (A) very light, (B) light, (C) medium, (D) dark, or (E) very dark. The composite answers were as follows:

265. I also asked the respondents whether they thought Ms. Perez had white ancestors. The responses are as follows:

	Yes	No	Don't Know
Whites	17%	8%	75%
Blacks	60%	10%	30%
Latinos	25%	25%	50%
Asians	13%	13%	75%
Other	0%	0%	100%

Baynes, Color Survey, *supra* note 12. These results are very interesting. Most of the Whites do not know who Rosie Perez is—which is why there is such a large response of “Don’t Know.” A very large percentage of the Blacks see Ms. Perez’s very light skin and say that she must be part white. In contrast, most Latinos say that they do not know, and of those willing to give an opinion are equally divided. For the Latinos they see Ms. Perez’s African facial features, and they are hesitant in saying that she is mixed. In fact several of the Latinos who I spoke to on this issue placed Ms. Perez in the “mulatta” category. *Id.*

266. I also asked the respondents whether they thought that Mr. Smits had white ancestors. The responses were as follows:

	Yes	No	Don't Know
Whites	17%	14%	69%
Blacks	70%	10%	20%
Latinos	33%	25%	42%
Asians	13%	75%	13%
Other	0%	0%	100%

Id. Only the black respondents are more likely to say that Mr. Smits has white ancestry. In each of the other groups the most prevalent answer was “Don’t know.” The Latinos were more likely to have the opinion that Mr. Smits has white ancestors more than any other group than the Blacks. *Id.*

	Jimmy Smits					
	very light	light	medium	dark	very dark	don't know
Whites	8%	40%	32%	1%	0%	19%
Blacks	10%	60%	20%	0%	0%	10%
Latinos	8%	25%	58%	8%	0%	0%
Asians	0%	25%	50%	0%	0%	25%
Other	0%	25%	50%	0%	0%	25%

Most respondents found Mr. Smits as light- or medium-complected.

c. *Pele*²⁶⁷

I asked the respondents to describe the complexion of soccer player Pele as either (A) very light, (B) light, (C) medium, (D) dark, or (E) very dark. The composite answers were as follows:

	Pele					
	very light	light	medium	dark	very dark	don't know
Whites	0%	3%	15%	26%	10%	46%
Blacks	0%	0%	0%	50%	30%	20%
Latinos	0%	0%	0%	67%	33%	0%
Asians	0%	0%	12%	62%	12%	12%
Other	0%	0%	0%	50%	25%	25%

Nearly half of the white respondents did not know Pele. Most respondents of color placed Pele in the dark or very dark categories.

d. *Analysis*

Blacks, Latinos and to a lesser extent, Asians, were willing to draw a hard and fast line on the darkness of Pele. Of the white respondents who were willing to venture an opinion on Pele's complexion, their opinion was more diffuse.

267. I also asked the respondents whether they thought that Pele had white ancestors. The composite responses were as follows:

	Yes	No	Don't Know
Whites	6%	14%	81%
Blacks	10%	40%	50%
Latinos	8%	33%	58%
Asians	12%	38%	50%
Other	0%	0%	100%

Id. Most respondents answered that they did not know whether Pele has white ancestors. Blacks, Latinos, and Asians were more likely to say that he probably does not have any white ancestors. This opinion is probably based on the darkness of Pele's skin.

With Ms. Perez and Mr. Smits, there was significant deviation between Blacks and Latinos as to which category to place them. Most Latinos placed Ms. Perez and Mr. Smits in the medium-complected category whereas most Blacks placed them in the light or very light category. This deviation demonstrates the different standard for color norm that exists in the Black and Latino communities. This divergence contrasts nicely with the survey results for Mr. Simpson where all Blacks surveyed placed him in the medium category whereas Latinos were the only group with a majority which placed Mr. Simpson in the dark category, and the same divergence occurred with Ms. Williams where most Latinos see her as medium complected, but Blacks saw her as light or very light complected. Since medium is the halfway mark between very light and very dark, this divergence shows that Latino color hierarchy of color variations is skewed to a much lighter shade than the black color hierarchy.

This divergence may threaten significant intergroup relations and dynamics. Since African Americans are on average more black than Latinos, it may result in Latinos discriminating against African Americans as they do the *Negroes* in their societies. It also may result in the distancing of members of the two groups from each other. African Americans may look at a Latino and see another Black and feel rejected when they are told that the Latino considers him or herself a *Trigueño*. To the African American, it may feel like those relatives, who rejected us by passing themselves off as white.²⁶⁸

It also seems as though some Latinos are in denial about their possible slave heritage. Some of this denial may be because they do not want to admit that they had ancestors who were slaves. Upon reflection, who wants to discuss that issue if you can avoid it? However, many African Americans do not have that choice. They are what they are. And everyone knows that their ancestors were most likely slaves in the United States.

3. Different Treatments Based on Different Skin Color

a. *White Treatment of Latinos Based on Skin Color*

I asked the respondents whether they had a different comfort level for Latinos based on skin color.²⁶⁹ They answered the question in the following manner:

268. My mother's Aunt Icy passed for white when she entered the United States. Baynes, *One Black Man*, *supra* note 24, at 123.

269. As with the comfort level with Blacks, most Whites answered that they did not have a different comfort level or felt no differently against Latinos based on the color of their skin. As with the answers concerning Blacks, these responses raise the same issues of contamination and denial. See *supra* Part VI.B.3.a.

	Yes	No	No Difference	Don't Know
Whites	4%	39%	47%	10%
Blacks	10%	50%	40%	0%
Latinos	8%	50%	42%	0%
Asians	0%	63%	25%	12%
Other	0%	75%	25%	0%

I then asked the respondents whether they thought that Whites treat Latinos differently based on the Latinos' skin color. The composite responses were as follows:

	Yes	No	No Difference	Don't Know
Whites	41%	16%	0%	43%
Blacks	60%	10%	0%	30%
Latinos	100%	0%	0%	0%
Asians	62%	0%	0%	38%
Other	25%	50%	0%	25%

There is a strong divergence between the people of color—Asian Pacific Americans, Blacks and Latinos—who said by very strong majorities that Whites treat Latinos differently based on their skin color variations and whites who agreed by a much smaller percentage. Most Whites either did not respond to the question or answered that they did not know. Responses by Whites could be due to a lack of knowledge. The region from which I polled, the Greater Springfield area, is the thirty-fourth most segregated region of the country.²⁷⁰ For many Whites, Latinos and Blacks may be invisible.²⁷¹ One is more likely to see Blacks on television. Latinos are particularly invisible in Massachusetts even though they are the largest minority group.²⁷² The few times that Latinos are visible in the media, it is usually in an unfavorable light dealing with gang violence. Many of the Whites may legitimately not have seen enough Latinos to know whether other Whites deal with them differently based on their skin color. One white student wrote in the comment section to the *Color Survey*: “I have almost no exposure at all to Hispanics.”

There is also a divergence between Latinos, and Blacks and Asian Americans on this issue. All of the Latinos answered in the same way, and large majorities of Blacks and Asian Pacific Americans agreed. For the Blacks and the Asian Pacific Americans, the lesser majorities seem to do with a lack of knowledge. The “Don't Know” answer was the second

270. See Buffy Spencer et al., *Our Region 34th Worst in Nation*, SPRINGFIELD SUNDAY REPUBLICAN, Mar. 22, 1992, at B1.

271. See Ramirez, *supra* note 264, at 62.

272. Spencer et al., *supra* note 270.

most popular answer for Blacks and Latinos.²⁷³ Again, I think the results show that there is a lack of knowledge of the Latinos' experience in the States.

I also asked the Survey respondents how they thought Whites treated dark-skinned Latinos as compared to light-skinned Latinos. They responded as follows:²⁷⁴

	Better	Worse	No Difference	Don't Know
Whites	1%	43%	20%	36%
Blacks	0%	50%	10%	40%
Latinos	0%	92%	8%	0%
Asians	0%	75%	0%	25%
Other	0%	25%	50%	25%

The majority of each racial/ethnic group surveyed believed that Whites discriminate more against darker-skinned Latinos as compared to their lighter-skinned counterparts. The majority percentages are lower for Whites probably because they racialize the darker Latinos as Black. For example, I spoke to a white lawyer in Springfield who told me that one of my students was working for her. She could not remember his name. I asked her what he looked like, and she identified him as a mulatto. She did not realize that he was a Latino. The lower White percentage may be attributable to the lack of exposure to Latinos in the Greater Springfield area. It also may be attributable to discrimination against Latinos based on other characteristics. For example, in the comment section to the *Color Survey*, a faculty member who listed his racial category as other stated:

Whites treat . . . [Latinos] differently based on degree of assimilation—not so much on skin color [F]rederico [sic] Pena and Henry Cisneros talk in a familiar way, dress like the majority. People are basically afraid of strangers and the more familiar people sound, look and act the more likely they will be treated as part of the group.

A white member of the administrative staff wrote: “The treatment of Hispanics is more based on language (“Can’t speak English’ why don’t they learn English) rather than skin color.”²⁷⁵

273. Baynes, *Color Survey*, *supra* note 12.

274. *Id.* I also asked the respondents the question in reverse, i.e., “How do you think Whites treat light-skinned Latinos in comparison to dark-skinned Latinos?” and the results were the mirror image. Across racial and ethnic lines, the respondents generally thought that light-skinned Latinos were treated better by Whites. The percentages, however, were a little lower, which suggests that respondents know that all Latinos are treated badly by Whites. *Id.*

275. *Id.*

These comments seem to suggest that some Whites would treat Latinos differently based on their assimilation such as speaking English, and manner of dress and customs, more so than color. Maybe some of the white respondents would have checked off other indicia of Latinoness instead of skin color. But the white respondents' reluctance to suggest skin color variation as a means to discriminate against Latinos is too facile. Moreover, it does not correspond with the other survey data in which an overwhelming percentage of Whites noticed the color variations of Latinos. Why are they noticing the color variations unless they are going to process the information in some way? This is just an easy way for the majority of the white respondents to say that they are discriminating against the Latinos because the Latinos are not American enough. The survey respondents seem to be saying that they know nothing about Latinos; the Latinos are *Los Olvidados*.²⁷⁶ Frankly, if Latinos gave up their cultural heritage and language, I still do not think they would be accepted, especially those with dark skin.²⁷⁷ But the Latinos surveyed know the truth.²⁷⁸ One Latina who is a member of the adminis-

276. See generally Perea, *supra* note 86 (discussing the creation of Latino invisibility).

277. See Kevin R. Johnson, "Aliens" and the U.S. Immigration Laws: *The Social and Legal Construction of Nonpersons*, 28 U. MIAMI INTER-AM. L. REV. 263 (1997).

278. I also asked the survey respondents whether they thought that Latinos treated each other differently based on skin color. The survey results are as follows:

	Yes	No	No Difference	Don't Know
Whites	19%	14%	0%	68%
Blacks	60%	10%	0%	3%
Latinos	75%	25%	0%	0%
Asians	25%	12%	0%	63%
Other	25%	25%	0%	50%

Baynes, Color Survey, *supra* note 12. I asked the respondents how they felt Latinos treated dark-skinned Latinos compared to light-skinned Latinos.

	Better	Worse	No Difference	Don't Know
Whites	3%	12%	17%	68%
Blacks	0%	60%	10%	30%
Latinos	0%	75%	17%	8%
Asians	0%	12%	12%	75%
Other	0%	25%	25%	50%

Id.

Overwhelming percentages of white and Asian Pacific respondents know very little about Latinos even though Latinos are the largest minority group in Massachusetts. This is evidenced by their answering "Don't Know" or their failure to respond to the question. Some Whites, however, did know about the internal Latino preference for lighter skin. One white student wrote in the comment section of the survey: "When I was an exchange student at the University of Puerto Rico, the UPR administrator who did our orientation told us that lighter-skinned Puerto Ricans are of higher social status than darker-skinned and that we should try to associate with the lighter-skinned classmates." *Id.* The Black respondents, by recognizing the colorism in the Latino community, seem to know the Latino community better than either Whites or Asian Pacific Americans. This is probably attributable to the fact that Blacks and Latinos often live in close proximity to each other. For instance, one black student wrote in the comment section of the survey: "I currently work with a fair number of Latinos and generally their comments and attitudes are very color biased with regard to what is more acceptable within their race." *Id.* Seventy-five percent of Latinos found that Latinos discriminated against darker-skinned Latinos. In the comment section, several of them wrote very moving comments. For instance, one student who listed herself as Latino/Mediterranean said:

trative staff at the College wrote in the comment section of the *Color Survey*: “The lighter you are the easier it is to blend with the white people. This is not how I feel, but how it is. (not fair!)”²⁷⁹

VII. CONCLUSION

Many scholars tell us that race is merely a political construction, and it no longer matters.²⁸⁰ Many of the distinctions that members of the majority have made as to race have focused on the difference in color.²⁸¹ Our history has been that black is bad, and white is good.²⁸² Even if we abandon the Black-White Paradigm as some Critical Race scholars suggest,²⁸³ we need instead to critically examine the way race operates. We need to recognize that there are other stigmas that majority society uses to discriminate such as gender, sexual orientation, income status, and immigration status, just to name a few. But one critical aspect of discrimination that cannot be overlooked is the aesthetic of dark skin. This has been a prime reason for discriminating against Blacks and Latinos in United States history.²⁸⁴ The visual divergence from what is considered the norm has allowed members of the majority to discriminate against the minority. Darkness of skin has allowed members of the majority to tag those persons with a brand of inferiority. This belief in inferiority of those with dark skin has existed since biblical times. Discrimination based on darkness still exists today. We have a Dark-Light paradigm crossing racial boundaries. This paradigm is not that different than the Black-White one in that dark is still bad, and white is good. Studies show that among both Blacks and Latinos, those with darker skin tones, on average, earn less, have less education, and hold less prestigious positions.²⁸⁵ These income figures suggest that Whites are discriminating more against darker-skinned people.

The *Western New England College Color Survey* shows that color matters.²⁸⁶ The *Color Survey* results show that an overwhelming percentage of white respondents notice the variations of color of both Blacks

[La]tin@s, generally deny or don't want to be associated with any indigenous "blood." The term "Indio" in Venezuela, for ex., is intended to mean stupid or dense. My mother's father was from Spain-blond, blue eyed. My grandmother was indigenous and was bought by him at age 12. I don't know much about him since he died when my mom was a small child. My grandmother also died in her early 30s but somehow spiritually I have more of a connection to herIn fact I'm proud to have that connection to . . . her 'blood.'

Id.

279. *Id.*

280. See *supra* note 4 and accompanying text.

281. See Baynes, *Color Survey*, *supra* note 12.

282. See *supra* Part IV.

283. See Chang, *supra* note 6; Ramirez, *supra* note 6; Wu, *supra* note 6.

284. See discussion *supra* Part V.

285. See discussion *supra* Parts V.C-D.

286. See Baynes, *Color Survey*, *supra* note 12.

and Latinos.²⁸⁷ There was overwhelming White opinion that other Whites treat dark-skinned Blacks worse than light-skinned Blacks.²⁸⁸ A majority of White opinion also believed that other Whites treated dark-skinned Latinos worse than light-skinned Latinos.²⁸⁹ I do not believe that the lower percentages for Latinos mean that white respondents believe that other Whites are less likely to treat dark-skinned Latinos worse. I think that it has more to do with a subconscious belief that Whites are discriminating more against Latinos based on their degree of assimilation in the United States, i.e., language, accent and culture. It also has to do with the tendency of Whites to racialize the darker-skinned Latino as a Black or Native American.

In the United States, there is a color hierarchy between and among people of color that spans different racial and ethnic groups. The premise is very simple and very clear. It is that lighter is better and darker is worse. So that even if we all agree that race itself no longer matters, color will still be a problem because darkness casts a longer discriminatory shadow than lightness. A dark-skinned person of color, whether Black or Latino, is likely to encounter more discrimination than his or her light-skinned counterpart.

By abandoning the Black-White Paradigm, and replacing it with no paradigm and the belief that all discrimination is the same and on an equal basis, as a society, we will lose sight of those basic truths that having dark skin is not considered the norm. In addition, by abandoning this prior paradigm, it will place many Blacks and dark-skinned Latinos at the bottom of society's barrel. Therefore, we need to move beyond Black-White to Dark-Light which shifts the current paradigm and expands it to include more than African Americans.

287. *Id.*

288. *Id.*

289. *Id.*

