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Racial and Ethnic Ancestry of the Nation's Black Law Students: An Analysis of Data from the LSSSE Survey

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Racial and Ethnic Ancestry of the Nation's Black Law Students: An Analysis of Data from the LSSSE Survey

Kevin D. Brown* **and**
Kenneth G. Dau-Schmidt**

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DOI: https://doi.org/10.15779/Z38CN6Z10J

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INTRODUCTION

Affirmative action, which was last addressed by the U.S. Supreme Court in 2016,[1] continues to be one of the most controversial programs in American society. The Court will again address the doctrine's legal status next term in

1. *Fisher v. University of Texas*, 579 U.S. 365 (2016).

Students for Fair Admissions, Inc. v. President & Fellows of Harvard,[2] this time with three new appointees of former President Donald Trump on the Court. Against the background of this impending case, this article will examine the influence of an issue that has not received adequate scholarly attention for its impact on affirmative action, the changing racial and ethnic ancestry of Black people in the United States.

We reject the dominant American tradition of viewing all Black people in the United States alike. Instead, we recognize the growing racial and ethnic divisions within the Black Community by providing the first empirical data on the race and ethnicity of the nation's Black law students. In doing so, we break down the nation's Black law students into four different groups. Ascendant Blacks are those who are the sons and daughters of two American-born Black parents, as determined by the application of the one-drop rule at the time colleges and universities commenced affirmative action programs.[3] When affirmative action was created, this was the presumed group of Black people who would make up its beneficiaries. We will distinguish Ascendant Blacks from three overlapping successive racial and ethnic groups of Black law students:

- "Black Multiracials" – those who self-identify as two or more races, with one being Black;[4]
- "Black Hispanics" – those who self-identify as Black and Hispanic or Latino; and
- "Black Immigrants" – those with some Black ancestry who have at least one foreign born Black parent.

The primary distinction between Ascendant Blacks and these "Successive Blacks" is that the ancestries of Ascendant Blacks derive from both Black parents whose ancestors suffered through the time periods of slavery and/or segregation in the United States, while at most half of the ancestry of Successive Blacks is from that lineage. Thus, our core assumption is that by virtue of their ancestry, in general, Ascendant Blacks have been more negatively affected by the history

2. *See* Student for Fair Admissions, Inc. v. President & Fellows of Harvard College, 142 S. Ct. 895 (2022) (granting petition for writ of certiorari).

3. Others have referred to this racial/ethnic group of Blacks as "third-generation" or "legacy" Blacks. *See, e.g.*, Angela Onwuachi-Willig, *The Admission of Legacy Blacks*, 60 VAND. L. REV. 1141, 1149 n.27 (2007). She and the late Professor Derrick Bell of New York University School of Law, among others, use the terms "descendants" and "legacy Blacks" to denote these Blacks to make the connection between their ancestral lineage as descended from Blacks who were enslaved and segregated. *Id.* (citing Professor Bell for having coined this term).

4. The authors note that both the words "Hispanic" and "Latino" are used because these are the words used by the Department of Education regulations that detail how to collect and report racial and ethnic data. These words are also used as English language words; however, we note that the word "Latino" has its translation in the Spanish language and is masculine in gender, while the feminine gender translation is "Latina." English language nouns, however, are not gendered. Thus, for the English language, "Latino" refers to both males and females while Spanish language data collection should use the masculine ("Latino") and feminine ("Latina") nomenclature, such as "Latino/a."

of racial oppression in the United States than any of the groups of Successive Blacks and, thus, have more experience with the impact of that history.

We do not propose to address the normative question of whether the changing racial and ethnic ancestry of Black law students is a positive or negative development for purposes of understanding affirmative action.[5] Rather, we seek only to provide empirical information about the existence of this change and to assert that because of it, the landscape for thinking about how affirmative action applies to those with Black ancestry has changed.

For reasons that will become apparent later, it is difficult to access data that provides a breakdown of the race and ethnicity of Black law students. However, recent changes in the Law School Survey of Student Engagement (LSSSE) provided us with a unique opportunity to collect this information on the subset of the nation's law students that fill out this survey. LSSSE is a part of Indiana University's Center for Postsecondary Research (CPR). LSSSE centers its work on studying the law student experience. As part of its efforts, it distributes an annual survey to law schools throughout the nation which asks students to respond to questions about their law school experience. The survey also gathers information about a student's personal and family background, including their self-reported racial/ethnic identities. We draw our data about the different groups of Black people in the nation's law schools from the 2019 LSSSE survey, the last pre-pandemic one, which was completed by approximately 11 percent of the nation's law students. Moreover, we weight this data according to the gender, race and ethnicity data contained in the American Bar Association (ABA) data set on all law students to ensure that our results are as representative as possible of the nation's law students.

This article proceeds in three substantive parts. In Part I, we discuss the changing racial and ethnic ancestries of Black people in the United States since affirmative action began. In Part II, we discuss the LSSSE data set that we use along with our weighting procedure based on the ABA data. Also in Part II, we discuss the Public Use Microdata Sample (PUMS), a subset of the American Community Survey (ACS). We use the ACS PUMS to provide comparative national data to analyze the relative representation of each group of Blacks among law students. In Part III, we present the primary results of this study. It is the heart of the article and deserves further exposition.

In the first section of Part III, we present socioeconomic data on each of the examined groups to explain why we have separated them for analysis. Our primary assumptions are that Ascendant Blacks have more experience with the history of racial discrimination in the US and that this history has impacted them

5. For a thorough discussion of the implications of the changing racial and ethnic ancestry of Blacks at selective higher education, see KEVIN BROWN, BECAUSE OF OUR SUCCESS: THE CHANGING RACIAL AND ETHNIC ANCESTRY OF BLACKS ON AFFIRMATIVE ACTION, CAROLINA ACADEMIC PRESS (2014).

more. We point to differences in a number of socioeconomic factors that provide some support for these assumptions.

In the second section of Part III, we use the LSSSE and ACS PUMS data to examine the relative representation of Ascendant and each group of Successive Blacks among law students and compare that with the relative representation of non-Hispanic, non-immigrant, non-multiracial White people, who we will refer to as "Whites." We find that, save for Black Immigrants, Ascendant and Successive Blacks are underrepresented in law schools in comparison to their percentage in the population and that this underrepresentation is the most pronounced for Ascendant Blacks. Similarly, we examine the proportionate representation of Ascendant and Successive Blacks among students at top 50 law schools in the LSSSE survey and find that all of these groups are more underrepresented in top 50 law schools than in law schools in general and that once again this underrepresentation is greatest for Ascendant Blacks. We then discuss various "pipeline" issues that may contribute to this underrepresentation, including completion of a college degree, undergraduate grades and LSAT scores.

In the third section of Part III, we use the LSSSE and ACS PUMS data to examine each group's representation by gender. Given that for the past 30 years, over 60% of undergraduate degrees earned by Black people have gone to women,[6] we document the gross underrepresentation of men for all groups of Black people in law school when compared to their percentage in the general population. Indeed, we find that all of the underrepresentation suffered by Black people in law schools is suffered by Black men and Ascendant Black women. Again, we examine attendance in top 50 law schools and consider potential pipeline issues, this time with an eye toward differences associated with gender. We find that Black men suffer greater underrepresentation among top 50 law school students and suffer greater pipeline issues, except that Black men score higher on the LSAT.

Finally, in the fourth section of Part III, we examine the impact of class on Ascendant and Successive Blacks by examining the distribution of parental educational achievement for each group and estimating the payoff for each group in the percent of law students achieved for the parent's generation that attains a given level of educational accomplishment. Corresponding numbers are calculated for Whites for purposes of comparison. We find that both Ascendant and Successive Blacks suffer relative to Whites due to a comparative lack of parental educational achievement, and a lower payoff in percent of law students

6. *See infra* note 66 and related text. Kenneth G. Dau-Schmidt, *O Brother Where Art Thou?: The Struggles of African American Males in the Global Economy of the Information Age,* 8 IND. J.L. & SOC. EQUAL. 1, 8-9 (2020); Lorenda A. Naylor, Heather Wyatt-Nichol & Samuel L. Brown, *Underrepresentation of African American Males in U.S. Higher Education*, 21 J. PUB. AFFS. EDUC. 523 (2015); Floyd Weatherspoon, *The Status of African American Males in the Legal Profession - Roadblocks and Barriers*, 80 MISS. L.J. 259 (2010).

for parental educational achievement, but that Ascendant Blacks suffer the most. Interestingly, with respect to the payoff in law students for parental educational achievement, we find that both Black people and Whites with low parental educational achievement attend law school at approximately the same (very low) rate. However, among those who enjoy the advantage of high parental educational achievement, Whites enjoy a significantly higher payoff than Black people in terms of the percent of law students resulting from a percent of the parents' generation who achieve graduate degrees, although both Black people and Whites are much more likely to go to law school than the progeny of parents with low educational achievement. Apparently, at least with respect to attending law school, the advantages enjoyed by Whites accrue to the children of the higher educated to a significantly greater extent than they do to Black people.

I. CHANGING RACIAL AND ETHNIC ANCESTRIES OF BLACK PEOPLE IN THE UNITED STATES SINCE AFFIRMATIVE ACTION BEGAN

The first section of this part discusses the race and ethnicity of Black people up to the commencement of affirmative action in the 1960s. The second section will discuss the current racial and ethnic ancestry of Black people. One of the major catalysts contributing to the dissolution of the "all Black people are alike" concept was the final regulations published by the Office of Management and Budget (OMB) on October 30, 1997, which changed the way the Census Bureau gathered racial and ethnic data for the 2000 census and beyond ("1997 Regulations").[7] The third section will discuss the impact of these changes on the difficulty for the collection of data on the race and ethnicity of Black law students from data higher education institutions report to the Department of Education (DOE). Because of these difficulties, we relied on the LSSSE data to determine the race and ethnicity of the Black law students.

A. Historical Race and Ethnicity of Black People at the Commencement of Affirmative Action

When affirmative action began in the 1960s, the racial and ethnic makeup of the population, not only of the United States, but also of Black people, was vastly different than it is today. According to the 1960 census, Caucasians made up 88.6 percent of all Americans, with an additional 10.5 percent classified as Black.[8] The 1960 census categorized Hispanics/Latinos based on their race, not their ethnicity. Thus, African-Americans and Caucasians comprised 99.1 percent of the American population. Due to prior immigration reforms, during the 1960s,

7. *See* Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58,782 (Oct. 30, 1997).

8. *See* Campbell Gibson & Kay Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States*, 19 tbl.1 U.S. Census Bureau, Working Paper No. 56 (2002).

the percentage of foreign-born Americans plummeted to its lowest recorded levels in U.S. history.[9]

In addition to the dual-race nature of American society, America viewed all Black people alike, regardless of their varying racial or ethnic ancestries. With regard to determining a person's racial classification, the instructions for the 1960 census form stated: "A person of mixed White and Negro blood was to be returned as Negro, no matter how small the percentage of Negro blood."[10] Continuing a practice begun with the 1930 census, the one-drop rule was official census policy for determining who was Black. With the one-drop rule in place and the fact that 99.1 percent of Americans were classified as either Black or Caucasian, for the overwhelming majority of people their race was readily apparent when they were present. As a result of its visible nature, race was a socially ascribed trait, not a matter of personal identification. With regard to Black ethnicity, the 125,000 foreign-born Blacks in the United States in 1960 comprised only 0.7 percent of the Black population. Thus, foreign-born Blacks were largely invisible.[11] American society seldom distinguished the Black individual who was a descendant from slaves brought to this country as a part of the Trans-Atlantic Slave Trade from the Black people who arrived as voluntary immigrants from Africa or the Caribbean.

The above statistics indicate that, in initially developing their affirmative action admissions plans, selective higher education institutions quite reasonably assumed that the predominant beneficiaries of their plan would be those Blacks whose ancestors were victims of the history of racial discrimination in the United States. As noted above, in this article we will refer to them as "Ascendant Blacks".[12]

9. On the 1960 census, the percentage of foreign-born Americans dropped to 5.4% and in 1970 it was down to 4.7%. Both are the lowest percentages reported on the census since it started to keep track of foreign-born Americans in 1850. *See* Campbell J. Gibson & Kay Jung, *Historical Census Statistics on the Foreign-Born Population of the United States: 1850-2000*, 26 tbl.1 U.S. Census Bureau, Working Paper No. 81, (2006).

10. C. Matthew Snipp, *Racial Measurement in the American Census: Past Practices and Implications for the Future*, 29 ANN. REV. SOC. 563, 568 (2003).

11. *See* Campbell J. Gibson & Emily Lennon, *Historical Census Statistics on the Foreign-Born Population of the United States: 1850–1990*, [page no. tbl. 8 appears on] tbl.8 (U.S. Census Bureau, Working Paper No. 29, 1999), https://webarchive.loc.gov/all/20101007085453/ (excluding the 1960 population of Alaska and Hawaii).

12. The term "Ascendants" is also used by Blacks who left America to repatriate in the Republic of Ghana. This term was first mentioned to one of the authors in the summer of 2007 by Seestah Imaakus and Brother El Shabazz, the owners and operators of Hotel One Africa located in the city of Cape Coast, Ghana. One Africa is a facility located between Cape Coast Castle (the main British administrative castle during the Trans-Atlantic Slave Trade) and Elmina Castle (the first permanent European structure built in Africa) on the Ghanaian coast. Their lifelong mission is to assist Ascendant Blacks as they go through the experience of going through those castles.

B. Current Racial and Ethnic Ancestry of Black People

American society is now about 60 years removed from the initiation of affirmative action programs. Not only has the racial and ethnic ancestry of Americans changed substantially during that period; so has the racial and ethnic ancestry of Black people. According to a 2019 Pew Research Center publication, of the estimated 46,800,000 people with Black ancestry, 13% (up from 7% in 2000) viewed themselves as mixed-race.[13] Over that period, the percentage of those who were counted as non-Hispanic mixed-race Blacks was 8%, (double what it was in 2000) and 5% were Black Hispanics (as compared to 3% almost two decades earlier).[14]

As one might expect, the younger Black people are, the more likely they are multiracial. The Census Bureau uses the terminology of "Black Alone" for those whose only racial selection is "Black/African American" and the "Black in Combination" for those who select multiple racial categories with Black being one of them. Census Bureau figures from 2019 reveal that, among those ages twenty to twenty-nine, the percentage people who indicate they are Black in Combination was only 9.3% of all those people who said they were Black Alone or in Combination. This percentage increased to 12.6 percent for Blacks between the ages of fifteen and nineteen, 16.1 percent for those between ten and fourteen years, 16.8 percent between the ages five and nine years, and 17.7 percent for those under the age of five.[15]

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13. CHRISTINE TAMIR, PEW RES. CTR., THE GROWING DIVERSITY OF BLACK AMERICA 6–7 (2021),https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2021/03/RE_2021.03.25_Black-Americans_FINAL.pdf. The terms single-race Black and Black alone are used interchangeably in the Pew Research Center paper to refer to the same population. This population is made up of individuals who self-identify only as Black and do not identify as Hispanic or Latino.

14. *Id.* The term "Black Multiracial" is used to refer to people who self-identify as two or more races and do not identify as Hispanic or Latino. *Id.* at 4. The term "Black Hispanic" is used to refer to those who self-identify as Black and Hispanic or Latino, as well as those who self-identify as multiracial Black and Hispanic or Latino. *Id.* Thus, the count of Black Hispanics includes some Black Multiracials.

15. According to Census Bureau figures in 2019, of the 7,432,000 (3,501,000 + 3,931,000) individuals between the ages of 20 and 29 who were classified as Black alone or in combination and 6,742,000 (3,139,000 +3,603,000) were Black alone. Thus, the percentage of Black in combination to total Blacks was 9.2% (690 (7,432,000 - 6,742,000)/7,432,000). *The Black Alone Population in the United States: 2019*, U.S. CENSUS BUREAU, tbl.1 (2019), https://www.census.gov/data/tables/2019/demo/race/ppl-ba19.html [hereinafter *Black Alone Population 2019*]; *The Black Alone or in Combination Population in the United States: 2019*, U.S. CENSUS BUREAU, tbl.15 (2019), https://www.census.gov/data/tables/2019/demo/race/ppl-bc19.html [hereinafter *Black Alone or in Combination 2019*]. For ages 15 to 19, the corresponding figures were 12.6% (444,000 (3,523,000 - 3,079,000))/3,523,000); for ages 10 to 14, the corresponding figures were 16.1% (601,000 (3,727,000 - 3,126,000))/3,727,000); for ages 5 to 9, the corresponding figures were 16.8% (620,000 (3,691,000 - 3,071,000))/3,691,000); for under the age of 5, the corresponding figures were 17.7% (644,000 (3,642,000 - 2,998,000))/ 3,642,000). *Black Alone Population 2019*, *supra*, at tbl. 1; *Black Alone or in Combination 2019*, *supra*, at tbl. 15.

While the percentages of Black Multiracials and Black Hispanics among the Black population were increasing, so too were the percentages of foreign-born Blacks and their children. For example, the percentages of the Black population that was foreign-born increased from 1.1 in 1970, to 3.1 in 1980, to 4.9 in 1990, to 6.1 in 2000, and to 8.8 in 2010.[16] From census data for 2019, for Blacks Alone and in Combination, 11.8% were foreign-born and an additional 8.8% were the children of foreign-born Blacks.[17] Thus, first and second-generation Black immigrants made up 20.6 percent of the Black population. In recognition of this growing ethnic diversity among Black people, the 2020 census forms were the first to allow Blacks to write in their ethnic origins, "Black or African Am. – for example, African American, Jamaican, Haitian, Nigerian, Ethiopian, Somali etc."[18]

In addition to the substantial increases that have occurred with mixed race Black people and Black immigration, the vast increases in immigration of people of color from all over the world into the United States have significantly attenuated the ability to determine a person's race based on physical appearance. In 2020, non-Hispanic/Latino Whites (which include those from the Middle East and North Africa) made up only 57.8 percent of the population and single-race blacks made up another 12.1 percent.[19] Thus, those who were not simply Black or White have increased from less than 1 percent of the population in 1960 to more than 30 percent, which is a percentage that is almost two and half times the percentage of single-race Blacks in the country.

Unlike in America's historical past, more and more of those with Black ancestry are increasingly running into what is becoming a familiar question with regard to their ancestry: "What are you?" Thus, more and more Black people are exercising a degree of personal choice regarding their racial identification. These developments are helping to lead to the disintegration of the unified concept that

16. For 1970, 1980, and 1990 figures, *see id.* For figures from 2000, *see* JESSE D. MCKINNON & CLAUDETTE E. BENNETT, U.S. CENSUS BUREAU, WE THE PEOPLE: BLACKS IN THE UNITED STATES 7 (2005), https://www.census.gov/prod/2005pubs/censr-25.pdf. For 2010 figures, *see The Black Alone or in Combination Population in the United States: 2010*, U.S. CENSUS BUREAU, tbl. 4 (2010), https://www.census.gov/data/tables/2010/demo/race/ppl-bc10.html; *see also*, MONICA ANDERSON, PEW RES. CTR., A RISING SHARE OF THE U.S. BLACK POPULATION IS FOREIGN BORN (2015), https://www.pewresearch.org/social-trends/wp-content/uploads/sites/3/2015/04/2015-04-09_black-immigrants_FINAL1.pdf.

17. *Black Alone or in Combination 2019*, *supra* note 17, at tbl. 26; *see also What Does it Mean to Be a Black Immigrant in the United States?*, THE IMMIGRANT LEARNING CTR. (June 19, 2020), https://www.ilctr.org/what-does-it-mean-to-be-black-immigrant-united-states/.

18. U.S. CENSUS BUREAU, UNITED STATES CENSUS 2020 2 (2020), https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/questionnaires-and-instructions/questionnaires/2020-informational-questionnaire.pdf.

19. *See* Eric Jensen, Nicholas Jones, Megan Rabe, Beverly Pratt, Lauren Medina, Kimberly Orozco And Lindsay Spell, The Chance That Two People Chosen at Random Are of Different Race or Ethnicity Groups Has Increased Since 2010 (Aug. 12, 2021), available at https://www.census.gov/library/stories/2021/08/2020-united-states-population-more-racially-ethnically-diverse-than-2010.html

"all Black people are alike"[20] and increasingly distinguishing Ascendant Blacks from Successive Blacks.

C. Impact of Change in Census Definitions on the Ability to Collect Data on Race and Ethnicity of Black Law Students

One of the major catalysts contributing to the dissolution of the "all Black people are alike" concept was the implementation of the 1997 Regulations. However, these regulations have also complicated the process of trying to gather accurate figures on the race and ethnicity of those with Black ancestry. Rejecting the historical procedure of confining respondents to one racial designation, since 2000 the Census Bureau has provided individuals with census forms that allow the respondent to indicate all racial and ethnic categories with which they identify.[21] The 1997 Regulations also made self-identification the preferred method for determining racial and ethnic identity and included a provision that required other federal programs to adopt corresponding regulations.

In the Fall of 2010, the DOE adopted regulations that revised the way educational institutions collect and report racial and ethnic data. Since then, the DOE has required schools to collect racial and ethnic data by providing individuals with forms that first allow them to indicate whether they are "Hispanic/Latino" and then allow them to designate all of the five racial groups that apply to them, including "Black or African American."[22] Anyone indicating that they are Hispanic/Latino are reported to the DOE as Hispanic/Latino, regardless of the racial categories they select. However, the DOE does not require educational institutions to provide the separate races for those reported as Hispanics/Latinos.[23] The DOE requires that non-Hispanic/Latino individuals who check multiple racial boxes be reported in a "Two or More Races" category. As with Hispanic/Latino totals, educational institutions are not required to report the separate races of those in the Two or More Races category. The DOE does not collect comprehensive data on whether the students or either of the student's parents are immigrants.

As a result of the above procedures, in the tallies of racial and ethnic data that educational institutions report to the DOE, it is impossible to tell the racial makeup of Hispanics/Latinos, the specific racial makeup of those reported in the

20. For a book that discusses the dissolution of the notion of all Blacks are alike, *see* EUGENE ROBINSON, DISINTEGRATION: THE SPLINTERING OF BLACK AMERICA (2011).

21. *See* Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, 62 Fed. Reg. 58,782, 786(Oct. 30, 1997).

22. Final Guidance on Maintaining, Collecting and Reporting Racial and Ethnic Data to the Department of Education, 72 Fed. Reg. 59,266 (Oct. 19, 2007) (the "Final Guidance"). The five racial groups are: (1) American Indian or Alaska Native, (2) Asian American, (3) Black or African American, (4) Native Hawaiian or Other Pacific Islander, and (5) White.

23. *Id*. at 59,266–67.

Two or More Races category, or the immigrant status of students.[24] Since the racial and ethnic data that law schools report to the ABA is the same as reported to the DOE, the ABA data also suffers from these limitations. As a result, until recently, it has been difficult to generate information on the race, ethnicity and immigrant status of the nation's Black law students. But recent changes in the Law School Survey of Student Engagement (LSSSE) provide the opportunity to collect this information on the subset of the nation's law students that fill out this survey.

Despite the difficulties in determining the changing racial and ethnic ancestries of Black people, one place where researchers have studied these changes is in the ancestry of Black people who are attending selective higher education programs. Like this study, these studies have found that Ascendant Blacks were underrepresented among Black students attending selective higher education programs.[25] The more selective the program, generally, the greater their underrepresentation.[26] One study used data from the Law School Admissions Council to disaggregate the performance of those with some Black ancestry on the LSAT.[27] However, no prior study has attempted to break down the race and ethnicity of the nation's Black law students, until now.

II. THE DATA SETS

This section will discuss the data sets that we used to perform our analysis of various groups of Black students. The first section of this part will discuss the 2019 LSSSE data set. The LSSSE Survey has complete race and ethnicity data and the 2019 Survey was modified to allow us to collect data on immigration status so that we could divide the Black respondents according to their various Ascendant and Successive groups. By weighting this data according to race, ethnicity and gender parameters provided by the ABA survey of American law students, we are able to generate a detailed sample that is reasonably representative of law students nationwide in ABA accredited law schools. In the second section we discuss the PUMS data set. PUMS is a subset of the ACS and is a representative sample of the U.S. population based on surveys of the inhabitants of 3.5 million randomly selected addresses across the United States. We use various years and age groups in the ACS PUMS to provide a nationwide sample of potential Black law students, and their parents, that can be divided into

24. Nevertheless, this process of collecting racial data makes it possible for each educational institution to determine which of its students has indicated some Black ancestry and separate those that self-identify as multiracial from those that self-identify as single-race Blacks. Because of this change, it has been increasingly easier to gather data on the race of Black students.

25. For a complete discussion of this issue, *see* KEVIN BROWN, BECAUSE OF OUR SUCCESS: THE CHANGING RACIAL AND ETHNIC ANCESTRY OF BLACKS ON AFFIRMATIVE ACTION (2014).

26. *Id.*

27. Kevin Brown, *LSAC Data Reveals That Black/White Multiracials Outscore All Blacks on LSAT by Wide Margins*, 39 N.Y.U. REV. L. & SOC. CHANGE 381 (2015).

their respective Ascendant and Successive groups. By comparing the results from the 2019 LSSSE survey and the ACS PUMS, we can estimate the relative representation status of each group of Black law students and compare various socioeconomic statistics for the examined groups.

A. The 2019 LSSSE Data

LSSSE is a part of Indiana University's Center for Postsecondary Research (CPR). The CPR is devoted to measuring and studying the student experience in postsecondary education. Since 2004, LSSSE has centered its services on the study of the law student experience. As part of that process, LSSSE distributes an annual survey to law schools throughout the nation. "The LSSSE Survey is designed to measure the effects of legal education on law students. . . . The survey provides a comprehensive view of the experiences of students in the classroom and in their broader lives."[28] In addition to asking students to respond to questions about the law school experience, the Survey also gathers information about a student's personal and family background, including their self-reported racial/ethnic identities. At the authors' request, the CPR included in its 2019 LSSSE survey questions on the nativity of the respondent and the respondent's parents so that we could distinguish who is foreign born or has at least one parent who is foreign born and thus is a first- or second-generation immigrant.

The format that LSSSE uses to collect racial and ethnic data is slightly different from that used by the Census Bureau's ACS and the DOE. For the latter two, the ethnicity and race questions are separate. Thus, respondents are first asked "Are you Hispanic/Latino?" Then they are allowed to select all of the racial categories that apply to them. LSSSE, however, combines these two questions into one question asking respondents:

What is your racial or ethnic identification? (Select all that apply.)

American Indian or Alaska Native
Asian American
Black or African American
Hispanic or Latino
Native Hawaiian or Other Pacific Islander
White
Other, please specify: _____
I prefer not to respond

Another difference between the ACS/DOE and LSSSE formats is that DOE regulations do not allow the use of an "Other" racial category.[29] In addition, the

28. *See The LSSSE Survey Tool*, LSSSE, https://lssse.indiana.edu/about-lssse-surveys/#:~:text=The%20LSSSE%20Survey%20is%20designed,students%20will%20gain%20from%20it (last visited Mar. 19, 2022).

29. Although 1997 Revisions did not allow for the use of a "Some Other Race" category, the Census Bureau obtained an exemption to permit its use for the 2000 (and later 2010) census primarily because it believed that many Hispanics/Latinos would mark it. Reynolds Farley,

2019 LSSSE survey included three questions on the nativity of the respondent and his or her parents, providing a drop menu with 258 different country options, including the United States, so that the respondent could specify where he and each of the respondent's parents were born.[30]

To categorize the 2019 LSSSE data, we begin by determining the respondent's racial and immigrant status and then combine that with the other racial and ethnicity information to define our categories for analysis. For respondents who indicate "Black or African American" and at least one other racial category, we consider them "Black Multiracials."[31] For respondents who indicate "Black or African American" and that at least one of their parents was born outside of the United States, we consider them "Black Immigrants."[32] For respondents who indicate "Black or African American" and "Hispanic or Latino", we consider them "Black Hispanics."[33] Finally, for respondents who indicate "Black or African American" and their other responses do not indicate that they are multiracial, immigrant or Hispanic, we consider them "Ascendant Blacks." In analyzing ACS data using PUMS to provide a larger context for our analysis, we use these same definitions to distinguish Black groups by race and ethnicity in the national sample.[34]

Identifying with Multiple Races: A Social Movement that Succeeded But Failed?, in The Changing Terrain of Race and Ethnicity 134 (Maria Krysan & Amanda E. Lewis, eds., 2004).

30. The three questions pose quite simply: (1) In what country were you born?; (2) In what country was your mother born?; and (3) In what country was your father born?

31. This definition probably results in a small undercount of Black Multiracials since there are respondents who only indicate that they are "Hispanic or Latino" without making a separate indication of their race. Although most of these respondents are probably White Hispanics or Latinos, undoubtedly a few of them have Black and other racial ancestries.

32. This definition probably results in a small overcount of Black Immigrants since some of the parents born abroad may be Black Ascendants who were born abroad while their parents worked abroad. However, there is no way to solve this overcount given the limitations of the LSSSE and US census data.

33. This definition probably results in a small undercount of Black Hispanics since there are respondents who only indicate that they are "Hispanic or Latino" without making a separate indication of their race. Although most of these respondents are probably White Hispanics or Latinos, undoubtedly a few of them have some Black ancestry.

34. The issue with Black Multiracials and Black Immigrants is very complex. When selective higher education institutions instituted affirmative action programs, society determined a person's racial identity. As a result, that identity was stable over a person's lifetime. But as American society has increasingly embraced self-identification with regard to racial identity, the normal presumptions about racial identity may no longer fit the reality of many multiracials, including Black Multiracials. Research conducted on the identity formation of multiracial individuals has pointed out that they have the capacity to view their racial identity in a variety of ways. They could adopt a singular identity (either exclusively Black, exclusively Hispanic, or exclusively White), a border identity (exclusively biracial), a protean identity (sometimes Black, sometimes White, or sometimes biracial), or a transcendent identity (no racial identity). Kerry Ann Rockquemore & David L. Brunsma, *Socially Embedded Identities: Theories, Typologies, and Processes of Racial Identity Formation Among Black/White Biracials*, 43 SOC. Q. 335, 336 (2002). Their racial identity may also change at different times of their lives. The flexibility multiracial people may have regarding their racial identity means that they need not embrace a single racial/ethnic identity and could adopt different identities based on different contexts. *Id.* at 338–40; Nancy Leong, *Multiracial Identity and Affirmative Action*, 12 UCLA ASIAN PAC. AM. L.J. 1, 10

It should be noted that there is considerable overlap among the Successive Black groups defined in this study. A Black respondent may be both Hispanic and an immigrant, Hispanic and multiracial, immigrant and multiracial, or perhaps even Hispanic, immigrant and multiracial. However, by definition, the Ascendant Black group we examine in this study and the White group we use as a yardstick do not overlap with the Successive Black groups. The frequencies and means presented for each of the Successive Black groups are calculated over a sample including *all* members of that group, including respondents who may also be members of other groups. We adopted these overlapping definitions because they match how the public talks about these groups and how social scientists study these groups. In addition, those with both Black and Hispanic ancestries have two different ancestries that qualify for positive considerations in the admissions process. Thus, it is important to have a separate count for Black Hispanics. When people discuss "Black Hispanics" they generally are referring to all people of both Black and Hispanic ancestry and not just non-immigrants and monoracials with those characteristics.

Using these overlapping definitions gives a more useful meaning to the frequencies and means we compute. However, using overlapping definitions also means that our "totals" can add to more than 100%, because some people are counted twice, and any tests of statistical significance are complicated. In testing the statistical significance in the difference in means between groups, we perform two-tailed, equal variance T-tests for continuous variables and Chi-Squared tests for binomial variables. When the two groups that are being compared overlap, we use only the non-overlapping portions of the sample to perform the test. In performing analysis of variance (ANOVA) among the groups, we use the full sample in analyzing variance among Ascendent Blacks, Whites and any one of the successive groups, but only the non-overlapping portions of the sample in analyzing variance comparisons that include more than one successive group.

The 2019 LSSSE data are a reasonable sample of the entire population of American law students, at least with respect to race and ethnicity. A comparison with the available ABA data shows both its virtues and its limitations. Each fall, the ABA collects racial, ethnicity, and gender data on all first-year law students enrolled in approved JD law programs. As the DOE regulations require, the ABA survey merely asks the law schools to specify the race, ethnicity, and gender of their students without separately reporting the race of Hispanics or the race of those in the Two or More Races category. The ABA reporting system uses the same hierarchical assignment of ethnicity and race into one variable used by the

(2007); *see also* David Kaufman, *Biracial Experiences in the United States*, 5 INTERRACE 15, 19 (1994) (quoting a multiracial college student as saying that ethnic identity and cultural awareness are very important, but that a single ethnic identity is not necessary: "Who are you if you are not the sum total of your physical, mental and environmental beings?"). Thus, when applying to law school, some mixed students with Black ancestry may feel that they have a strategic advantage if they decide to only report their Black ancestry when they apply believing that this may increase their chances of admissions.

DOE in which anyone who indicates they are Hispanic/Latino is designated Hispanic/Latino (regardless of racial ancestry), any non-Hispanic/Latino who specifies more than one racial ancestry is placed in the Two or More Races category, and anyone who specifies that they are of Black ancestry (and not Hispanic or Two or More Races) is designated as Black/African American.[35]

By combining the data on the first-year students for the falls of 2016, 2017, and 2018, we determined that there were approximately 116,632 students enrolled in JD programs in the spring of 2019, when our LSSSE survey was conducted. Of these students, there were 113,010 for whom race and ethnic identity is known and who identified as either male or female.[36] Examining these 113,010 students according to the ABA hierarchical categories, we find that 13.04% identified as Hispanic, 3.89% identified as multiracial, 8.59% identified as Black, and 48.01% identified as male.[37]

In the spring of 2019, LSSSE received survey responses from 12,881 JD students at 68 participating law schools.[38] Of the 12,881 LSSSE respondents, 11,968 gave sufficient answers for us to identify their race, ethnicity, and gender. Applying the ABA's hierarchical assignment process, of those 11,968 respondents we found that 11% indicated that they were Hispanic, 3.24% indicated multiracial ancestry, 7.59% indicated only Black racial ancestry, and 44.26% indicated that they are male.[39] Thus, the LSSSE sample constitutes about 11% of the students enrolled in JD programs at ABA-approved law schools in the spring of 2019 and has a modest under-sample of the groups in which we are most interested and a significant under-sample of men.[40] Because the ABA does not collect data on immigrant status, we cannot verify how representative the LSSSE data are with respect to that variable. The various law schools that participate in the LSSSE survey closely resemble ABA-approved law schools in terms of enrollment size and public or private affiliation.[41]

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35. AMERICAN BAR ASSOCIATION, *PART I: GENERAL INFORMATION INSTRUCTIONS AND QUESTIONS*, 5–6 (2020), https://www.americanbar.org/groups/legal_education/resources/questionnaire/.

36. There are an additional 5,383 JD students for which race and ethnicity data are unknown and an additional 3,536 JD students who are "non-resident aliens."

37. *See* Table A1 in the Appendix. We calculated this total and percentages by combining the ABA data on the 1L classes of 2017, 2018 and 2019. American Bar Association, *Various Statistics on ABA Approved Law Schools*, https://www.americanbar.org/groups/legal_education/resources/statistics/ (last visited Aug. 5, 2021).

38. LSSSE, 2019 Annual Survey Results: The Cost of Women's Success (2020) https://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-AnnualSurvey-Gender-Fi.

39. *See* Table A1 in the Appendix.

40. The under-sample with respect to men constitutes about 17.2% of their total. The 17.2% figure is determined by computing how many more male respondents we would need in the LSSSE sample so that the percent of males in the sample equaled the percent in the ABA data (47.6%). The answer (873) is then divided by the total number of males actually in the sample (5074) to compute this percent (17.2%).

41. Find a list of the law school and attach as an addendum

Any under-sample would pose a problem for computing the frequencies of various racial, ethnic, or gender groups among law students and comparing that with analogous frequencies in the general population. Under samples of males are common in social science research because men seem less inclined to fill out and return forms they see as unnecessary.[42] The traditional solution for this problem is to compute and apply a matrix of what are known as "non-response" or "post-stratification" weights to increase the N for male (or other under-sampled groups) responses to slightly more than one, and decrease the N for female (or other over-sampled groups) responses to slightly less than one, to make the sample more representative of the general population without changing the total N for the sample.[43] We compute such a matrix of weights for seven ABA racial and ethnic groups separated according to gender (fourteen total groups represented in the matrix) by dividing the percentage of each group in the ABA sample by the percentage of each group in the LSSSE sample.[44] This matrix of "ABA Weights" is included in the Appendix as Table A1. These weights are used in computing the frequencies of each group in the LSSSE data and in other analyses where gender may be a factor. For example, the weights are not used to compute the average number of years of parents' education by group because men and women are equally likely to be born into families with more or less educated parents, and so the group average should not be biased by an under-sampling of males. However, predictably the men do better on the LSAT and the women have better undergraduate grades so that when we compute averages of these variables for each group we use the ABA Weights to correct for the male

42. Gary Solon, Steven J. Haider and Jeffrey M. Wooldridge, *What Are We Weighting For?,* 50 J. HUM. RES. 301 (2015); Graham Kalton and Ismael Flores-Cervantes, *Weighting Methods*, 19 J. OFF. STAT. 81 (2003).

43. *Id.*

44. *See* Table A1 in the Appendix. In computing the matrix for the ABA we exclude the data on non-resident aliens from the ABA data and the data on "foreign students" from the LSSSE data. We combine the data on "American Indian or Alaska Native" and "Native Hawaiian or Other Pacific Islander" into one category we call "First Nations" so that our seven ABA categories according to the ABA assignment hierarchy are Hispanic, Multiracial, African American, First Nations, Asian, White and "Unknown." What to do with the "Unknown" observations in the ABA data (4.74%) and the "Other" and "Prefer not to Respond" observations in in the ACS PUMS data (6.11%) and LSSSE data (5.90%) is a little bit of a problem because omitting them means that we are using a smaller denominator than other studies, and including them means that we are comparing the proportion of racial and ethnic groups across the three samples using a slightly larger or smaller proportion of the sample in each group. To solve this problem, we fix the percent of Unknown in the ABA sample to 6.11% (by adding observations to this group, in appropriate proportion by gender) so that when the ABA weights are computed for the LSSSE data this will ensure that all three samples have 6.11% Unknown or Other and we compare the observations for which we have meaningful race and ethnicity data on a proportionate basis. The two gender categories are of course those who identify as "Male" and those who identify as "Female." The ACS PUMS data have only these two categories, and so to make the ABA and LSSSE data comparable we omitted the "Other Gender" respondents in the ABA data (0.08%) and the "Another Gender" or "Prefer not to Say" respondents in the LSSSE data (0.4% and 1.9% respectively). The resulting matrix of weights is presented at the end of the Appendix in Table Wt. The weights used in this paper vary from 0.822215 for White females to 1.420502 for Multiracial males.

under-sample. If the weights are used in producing a table, chart, or figure, that fact is indicated at the bottom table, chart, or figure.[45]

It should be noted that there are limitations in analyzing a data set that contains only success – i.e., only those who get into law school. A superior study of the phenomenon of law school admission would require a large random sample of both successful and unsuccessful candidates for law school admission complete with lots of accurate demographic and socioeconomic data on each respondent. Without both successful and unsuccessful candidates in the sample, it is impossible to perform a multivariate analysis of the relative importance of various factors in determining law school admission and conclude whether one group of applicants or another is advantaged or disadvantaged. However, we can compare our sample of successes with data from the general population and estimate over- or underrepresentation of various groups among law students. Through comparison we also can make tentative inferences about the importance of various factors in successful law school admission. For example, if we find that the successes in our sample tend to have parents with much higher educational achievement than the general population, we can infer that families of high educational achievers have an advantage in producing progeny who are successfully admitted to law school and that racial or ethnic groups who have suffered past discrimination and have not yet enjoyed the same success in educational achievement will be at a disadvantage in producing successful law school applicants. The strength of these statistical inferences can sometimes even be tested using statistical devices such as analysis of variance (ANOVA). Given this qualification, the quality and comparability of our national sample is of the utmost importance.

B. The ACS PUMS Data

The ACS is an annual project of the US Census Bureau to provide current demographic, social, economic, and housing estimates on the US population.

45. Because the ABA data on race and ethnicity are collected in a different manner than vethat used in the LSSSE or ACS PUMS data, it may introduce a slight underweighting of Black Hispanic Multiracials and a slight overweighting of Black Hispanics, but we estimate this problem to be much less than the problems of the underrepresentation of Blacks and men that the ABA weights remedy. *See supra* fn 25 and accompanying text. This possible bias in the ABA data weights occurs because the ABA follows the Department of Education reporting procedures on race and ethnicity and does not give the choice of "other" for race that is given in the LSSSE and ACS PUMS questionnaires. The bias might arise if respondents who would answer Black, Hispanic and Other on the LSSSE and ACS PUMS surveys chose to answer just Black and Hispanic on the ABA survey (rather than Black, Hispanic and Multiracial or Black, Hispanic and White) thus decreasing the reported Black Hispanic Multiracials in favor of Black Hispanics. Black Hispanic Multiracials are only 2.94% of the Black law student population and we judge that this problem will rarely occur as people who would have chosen "other" in addition to Black are more likely to replace that choice with Multiracial or White rather than just choose Black. On the other hand, the ABA weights remedy a 7.8% under-sampling of men and a 9.6% under-sampling of Blacks in the LSSSE data, in comparison with the ABA national data.

Each year, the survey randomly samples around 3.5 million addresses across the nation and collects data from the inhabitants of those addresses on more than 40 topics, including educational attainment, language spoken at home, ability to speak English, the foreign-born, marital status, and migration.[46] PUMS is a subset of the ACS responses that provides a representative sample of the US population which is available on-line for the public to access to conduct statistical analyses of the American people. Each record in the sample represents a single person or– in the case of housing– a single housing unit. Person records are organized into households, making it possible to study people within the contexts of their families and other household members. The PUMS dataset includes variables for nearly every question on the ACS, as well as variables that are derived from the survey responses (for example, poverty status); 204 variables regarding person records and 155 variables regarding housing units. PUMS files for an individual year, such as the 2018 records we use, contain data on approximately one percent of the United States population.[47]

In our analysis we use data from the ACS PUMS for selected years and age groups to provide information on the population of potential Black law students, and their parents, in the US population. The ACS PUMS data set is useful because the survey collects and reports race and ethnicity in a fashion similar to that used in the LSSSE survey, so that we can use the same definitions for racial and ethnic subgroups. In addition, the ACS PUMS reports the nativity of respondents, and for children under 18 years of age it reports the nativity of their mother and father so that we can produce reliable national estimates of racial and ethnic subgroups including immigrant status. Thus, using the ACS PUMS data on race, ethnicity, gender and immigrant status we can produce groupings that provide reasonable approximations of the demographic backgrounds of the potential Black law students in the United States that match our own definitions for the LSSSE data.[48] To examine the proportion of Ascendant Blacks and Successive Blacks in the general population of potential law students in the United States, we use the 2018 ACS PUMS data for ages 22-29. The 2018 survey data are used (rather than the 2019 data) because that was the most current set of data available to the public at the time this analysis was performed. The age group 22-29 was chosen based on the mode age of Black law students in the LSSSE sample (24) and the dispersion (SD = 7.2) and skewness (1.7) of this variable to include the age of about 70% of the LSSSE sample. Because there are no data on the nativity of their parents for the age group 22-29, we examine the same age group in the ACS PUMS 2006 data set when they were 10-17 years of age and the nativity of respondents in the 2018 ACS PUMS data set, to

46. Data.world, *American Community Survey Linked Open Data*, DATA.WORLD (Mar. 9, 2017), https://docs.data.world/uscensus/#american-community-survey-linked-open-data.

47. *Id.*

48. In producing ACS PUMS estimates to compare to our work with the LSSSE data we exclude data for which race and ethnicity is unknown or "other" (2,206,176), or for which gender is unknown. There is no category for "other" gender in the ACS PUMS data.

produce an estimate of the proportion of the sample that is a first- or second-generation immigrant.[49] To provide data on the families of potential law students, we examine the family data for the 15-17 age group in the 2018 ACS PUMS data set. Although this age group is not the same age group from which the LSSSE sample has been drawn, it is the closest age group for which we have family data and can construct similar Black subgroups. Thus, it should provide a reasonable approximation for our purposes. Similarly, to provide background demographics on the generation of the parents of the potential law students, we use the 2018 ACS PUMS data set ages 42-49 which includes information on the nativity of the respondent to determine first-generation immigrant status. Although this sample will not bear a perfect correspondence to a national sample of the parents of potential law students, it provides a reasonable approximation and interesting information on how the parents of law students vary from the general population for their generation.[50]

Comparing small percentages across different samples is somewhat perilous. If the different data sets use different collection or reporting methods or have missing data problems that result in systematic biases across the examined groups, this can cause biases in the resulting ratios that overstate or understate the participation of one or more groups in law school. The best way to avoid such problems would be to use one instrument and method to collect and report both the national and law school samples, and preferably to also sample students who tried to get into law school and failed. However, given our available research resources we have addressed these issues the best we can. First, we assign weights to the LSSSE data based on the ABA national data to minimize any possible bias with respect to race, ethnicity, or gender. The ABA data do not have information on immigration, so our sample is not corrected in that regard. Second, in weighting the data, we constrain the "other" and "PNR" responses in the LSSSE data to be the same percentage as "other" responses in the ACS PUMS data so that we are comparing the responses for which we have

49. The 2018 ACS PUMS, ages 22–29, data set has information on the respondent's personal nativity, but not his or her parent's nativity. Thus, we can identify first-generation immigrants, but not second-generation immigrants using this data. To provide an estimate on how information on parent's ancestry would impact the size of each of our groups, we go back and examine the same generation in 2006 when they were 10–17 years old and the ACS recorded their parental ancestry. Using the 2006 ACS PUMS ages 10–17 data, we compute the percent of the total sample that each group constitutes using first the respondent's nativity to determine first-generation immigrant status, then the parent's nativity to determine second-generation status, and note the change in percent of the total for each group that knowing the nativity of the parents adds. The adjustment made for each group based on this calculation is recorded in Table ADJ in the Appendix.

50. To test the statistical significance of the differences in group means observed in the ACS PUMS data, we use T-tests and Chi-Square tests in a procedure like that outlined above for the LSSSE data. One advantage of using ACS PUMS data is that the sample size is so large that *all* the observed differences among the groups in the ACS PUMS data are statistically significant at the 0.01 level (or much higher). However, we cannot reject the null hypothesis that the parents of Black Multiracials have the same chance of achieving a professional degree as the parents of Whites.

adequate race, ethnicity, immigration, and gender data on the same proportionate bases.

III. RESULTS

In this section, we present the results of our study. First, we discuss socioeconomic data on the various groups that we are examining to motivate why they must be examined separately. In the second subsection, we introduce comparative data on the representation of the various groups of Black people among the nation's law students, both at all law schools and then the top 50 law schools. We also examine differences in various pipeline issues among the examined groups, including achievement of a college degree, undergraduate GPAs, and LSAT scores. In the third subsection, we present similar comparative data, but this time broken down by gender. Again, we examine representation among all law students and law students at top 50 law schools and various pipeline issues, but this time with an eye toward the impact of gender. In the final subsection, we examine differences in the impact of class on the examined groups. The indicator of class we use is the parents' educational achievement. Accordingly, we examine both differences in parents' educational achievement among the examined groups and differences in the yield in law students from parents' educational achievement among the groups.

A. Socioeconomic Factors of Material Well-Being of the Various Groups of Black People

In order to raise issues about the changing racial and ethnic ancestry of Black people on affirmative action, we need a vision in place about the justifications for affirmative action articulated by the Supreme Court. Justice O'Connor's opinion in *Grutter v Bollinger*[51] upheld the affirmative action policies of the University of Michigan Law School. The Law School noted that its policy of using racial classifications reaffirmed its:

> longstanding commitment to "one particular type of diversity," that is, "racial and ethnic diversity with special reference to the inclusion of students from groups which have been historically discriminated against, like African-Americans, Hispanics and Native Americans, who without this commitment might not be represented in our student body in meaningful numbers."[52]

And as O'Connor stated, "By virtue of our Nation's struggle with racial inequality, such students are both likely to have experiences of particular importance to the Law School's mission, and less likely to be admitted in

51. Grutter v. Bollinger, 539 U.S. 306 (2003).

52. *Id.* at 316 (quoting Joint Appendix at 111, Grutter v. Bollinger, 539 U.S. 306 (2003) (No. 02-241), 2003 WL 21523737, at *120).

meaningful numbers on criteria that ignore those experiences."[53] The history of discrimination that justifies the use of racial classifications in admissions is that which took place in the United States, not the treatment of Black people in the Caribbean, Africa, or the rest of the world. This seems obvious. After all, no one seriously contends that selective higher education programs could justify affirmative action in the United States to target the effects of oppression in other parts of the world, including, for example, the exploitation of Koreans in Japan, the negative effects of untouchability on Dalits in India, French colonialism in the Caribbean, or British imperialism in Africa or the New World.

Our assumption is that by virtue of their ancestry, in general, Ascendant Blacks have more strongly experienced the negative impact of the history of racial oppression in the United States than any of the groups of Successive Blacks. A review of the socioeconomic markers of economic well-being listed in Table 1 confirms this assumption. Ascendant Blacks have lower average family income, a higher poverty rate, and are far less likely to come from families with parents that have college degrees than any of the groups of Successive Blacks.

Table 1: Potential Law Students, Differences in Class, by Group (2018 ACS PUMS)

	Ascendant Blacks	Black Hispanics	Black Immigrants	Black Multiracials	Whites	Total Population
Potential Law Students, 2018 ACS PUMS, Ages 15-17						
Ave Family Income	$63,285	$73,599	$87,382	$85,395	$130,653	$109,302
Poverty Rate	25.9%	22.2%	16.6%	17.3%	7.5%	13.5%
N (in thousands)	1,196	116	312	270	5,636	11,428
Parents' Generation, 2018 ACS PUMS, Ages 42-49						
% College Degree	24.2%	28.8%	33.9%	35.2%	40.1%	36.6%
Ave Est Yrs Educ*	13.7	13.7	14.0	14.3	14.5	14.1
N (in thousands)	3,447	162	686	270	18,066	32,429

* In estimating the years of education, no high school = 10, high school or GED = 12, some college or associate degree = 14, four-year college degree = 16, master's degree = 18, professional degree or PhD = 20. 2018 ACS PUMS

B. The Representation of Ascendant and Successive Blacks Among Law Students

1. Representation Among all Law Students in the LSSSE Survey

Table 2 presents the respondents to the 2019 LSSSE law student survey and 2018 ACS PUMS general population survey broken down into their respective primary, shared, and unshared Ascendant and Successive Black subgroups as a percent of the Black respondents and as a percent of the entire sample. Of the 11,968 weighted observations in the 2019 LSSSE law student survey for whom

53. *Id.* at 338.

we can identify racial, ethnic, and immigrant status, and who indicated they are either male or female, 1,256 respondents have some Black ancestry. Similarly, of the 36,112,116 respondents to the 2018 ACS PUMS survey who were 22-29 years old and for whom we can identify racial, ethnic, and immigrant status, and who indicate they are either male or female, 5,858,406 indicate that they have some Black ancestry. As shown in Table 2, Ascendant Blacks constitute 60.45% of all Black law students, while Black Hispanics constitute 6.76%, Black Immigrants constitute 27.49%, and Black Multiracials constitute 13.64%. These percentages are presented graphically in Figure 1 with areas that are approximately proportional in area to the numerical percentages. In contrast, as shown in Table 2, in the national sample, Ascendant Blacks constituted 72.17% of all Blacks between the ages 22-29, while Black Hispanics made up 5.02%, Black Immigrants accounted for 17.14%, and Black Multiracials comprised 10.04%. These national percentages are included numerically in Figure 1. This comparison of law student and potential law students ages 22-29 in the national data shows that, as a percent of Black law students, Ascendant Blacks are 16.2% underrepresented while Successive Blacks are 42.1% overrepresented, and this difference is significant at the 0.01 level.[54]

Table 2: A Comparison of Law Students with the National Population, by Group

	Law Students Black Law Students, By Group (2019 LSSSE, Using ABA Wts)		National Population Blacks, Ages 22-29, By Group (2018 ACS PUMS, Ages 22-29)	
Primary Sub-Groups	As a Percent of All Black Law Students (N = 1,256)	As a Percent of All Law Students (N = 11,968)	As a Percent of All Blacks (N = 5,858,406)	As a Percent of Total Population (N = 36,112,116)
Ascendant Blacks (AB)	60.45%	6.34%	72.17%	11.71%
Black Hispanics (BH)	6.76%	0.71%	5.02%	0.81%
Black Immigrants (BI)	27.49%	2.89%	17.14%	2.78%
Black Multiracials (BM)	13.64%	1.43%	10.04%	1.63%
Total	108.34%[t]	11.37%	104.37%[t]	16.93%
Shared Groups				
Black Hisp Imm (BHI)	2.36%	0.25%	0.90%	0.15%
Black Imm MR (BIM)	1.32%	0.14%	0.85%	0.14%
Black Hisp MR (BHM)	2.94%	0.31%	1.38%	0.22%
Blk Hi Im Mult (BHIM)	0.85%	0.09%	0.62%	0.10%
Blk Hi Im MR (BHIM)[@]	0.85%	0.09%	0.62%	0.10%

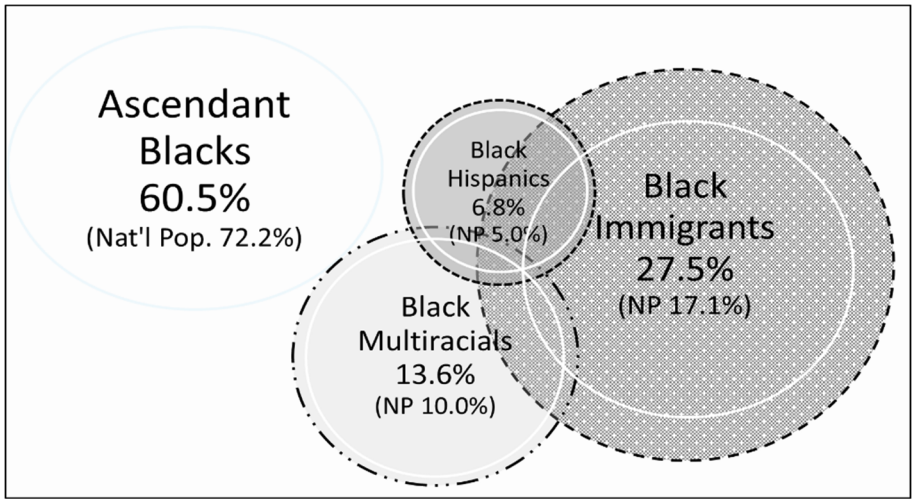
54. The percentages under and over-represented are computed as follows: (60.45% - 72.17%)/72.17% = -16. 24%. (39.55% - 27.83%)/27.83% = 42.11%. Performing a Chi-Square goodness of fit test comparing the number of law students in each group with the number one would expect if representation was proportional with the national Black population yields a Chi-Square value of 106.9 with a p value of less than 0.0001.

Total Overlap	8.32%	0.87%	4.37%	0.71%
Total (Net Shared Grps)	100.02%	10.50%	100.00%	16.22%
Primary Sub-Groups (W/O Shared Groups)				
Ascendant Blacks (AB)	60.45%	6.34%	72.17%	11.71%
Black Hisp - Im - MR	2.23%	0.23%	2.12%	0.34%
Black Imm - Hi - MR	21.34%	2.24%	14.77%	2.40%
Black Mult – Hi - Im	8.53%	0.89%	7.19%	1.17%
Total	92.54%#	9.71%	96.25%#	15.61%

t These cells exceed 100% by the amount of the shared groups which are double counted.
@ The subset BHIM counts in all three groups: Hi, IM and MR. It overlaps twice and must be netted out twice to = 100%.
# These columns will not add to 100% unless the shared groups are added.

In the 2019 LSSSE Data, ABA weights, White Non-Hisp, Non-Imm are 55.99% of the sample, of which 51.40% are Male.
In the 2018 ACS PUMS Data, Ages 22-29, White Non-Hisp, Non-Imm are 49.58% of the sample, of which 51.16% are Male.
Data Sources: 2019 LSSSE Survey, Using ABA Weights; Estimates from ACS PUMS 2018, Ages 22-29; Data from the ACS PUMS 2006, Ages 10-17 sample is used to estimate the proportion of second-generation immigrants. The percentages for the ACS PUMS data are expressed in terms of the total population including "others" for which there is incomplete race and ethnicity data (6.1% of total). The percentages for the LSSSE data are expressed in terms of the total population including "others" and "prefer not to respond" for which there is incomplete race and ethnicity data (5.9% of total), but in the weighting process, these observations are weighted to be the same percent as the "others" in the ACS PUMS data.
Note: Because this table is constructed from a weighted sample, categories often include "fractional" observations.

Figure 1: Black Groups as a Percent of All Respondents with Black Ancestry Among Law Students (2019 LSSSE) and the General Population (2018 ACS PUMS, Ages 22-29)



It should be noted that there is substantial overlap among the Successive Black groups, both in the LSSSE sample and the national ACS PUMS sample. In the LSSSE data, we see that 56.1% of the Black Hispanic law students are also multiracial,[55] 47.5% of the Black Hispanic law students are also immigrants, and

55. On the 2010 census, nearly 90% of Hispanics indicated that they were White (53%) or Some Other Race (36.7%). Of the remaining 10%, a quarter selected Black. Thus, multiracial Hispanics only constituted 6% of the Hispanic population. Black Hispanics who are multiracial are, therefore, overwhelmingly likely to have White or Some Other Race as their additional racial

15.9% of Black Multiracial law students are also immigrants. These overlapping groups include 10.676 (weighted) law students (0.85% of all Black law students) who are Hispanic, Multiracial, *and* immigrant. In the ACS PUMS data, we see that 39.8% of the Black Hispanics ages 22-29 are also multiracial, 30.3% of the Black Hispanics ages 22-29 are also immigrants, and 14.6% of Black Multiracials ages 22-29 are also immigrants. In the larger national sample, there are 36,322 individuals who are members of all three successive groups and who constitute 0.62% of all Blacks 22-29 years old. All these overlapping groups enjoy greater representation among law students than Ascendant Blacks, but we resist attaching significance to this finding with respect to any particular group due to their small numbers.

Comparing the representation of Ascendant and Successive Black groups as a percent of all law students and the general population ages 22-29 yields similar results. In Table 2, we see that Ascendant Blacks constitute 6.34% of all law students, while Black Hispanics constitute 0.71%, Black Immigrants constitute 2.89%, and Black Multiracials constitute 1.43%. Also in Table 2, we see that Ascendant Blacks constitute 11.71% of all Americans, 22-29 years old, while Black Hispanics constitute 0.81%, Black Immigrants constitute 2.78%, and Black Multiracials constitute 1.63%. These percentages are presented graphically in Chart 1. These percentages show that, in comparison with the national population, all groups of Black people, except Black Immigrants, are underrepresented among American law students, but the extent of underrepresentation is much more severe for Ascendant Blacks. This underrepresentation is shown more concisely in Chart 2 which presents the ratio of representation among law students for each group, computed by dividing the group's percent of law students by their percent of the entire population ages 22-29. A ratio of 1 shows proportionate representation while a ratio of more than 1 shows overrepresentation and a ratio of less than 1 shows underrepresentation. Note that the ratio for Ascendant Blacks is 0.54, which means that Ascendant Blacks are represented among law students in about half the number one would expect if their percentages were proportionate to their percentages in the general population, while the ratio for all of the other Black groups is 0.88 or above. The White ratio of 1.13 is included in Chart 2 for the purposes of comparison. This number means that Whites are approximately 13% more prevalent among law students than they are among the general population. Since these percentages are just monotonic transformations of the percentages with respect to all Black respondents, it is not surprising that this difference is also significant at the 0.01 level.[56]

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identity. *See* Karen R. Humes, Nicholas A. Jones, & Roberto R. Ramirez, *2010 Census Briefs: Overview of Race and Hispanic Origin: 2010*, 26 tbl. 2, United States Census Bureau (2011), http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf.

56. Performing a Chi-Square goodness of fit test, comparing the number of law students in each group with the number one would expect if representation was proportional with the national population, yields a Chi-Square value of 400.9 with a p value of less than 0.0001.

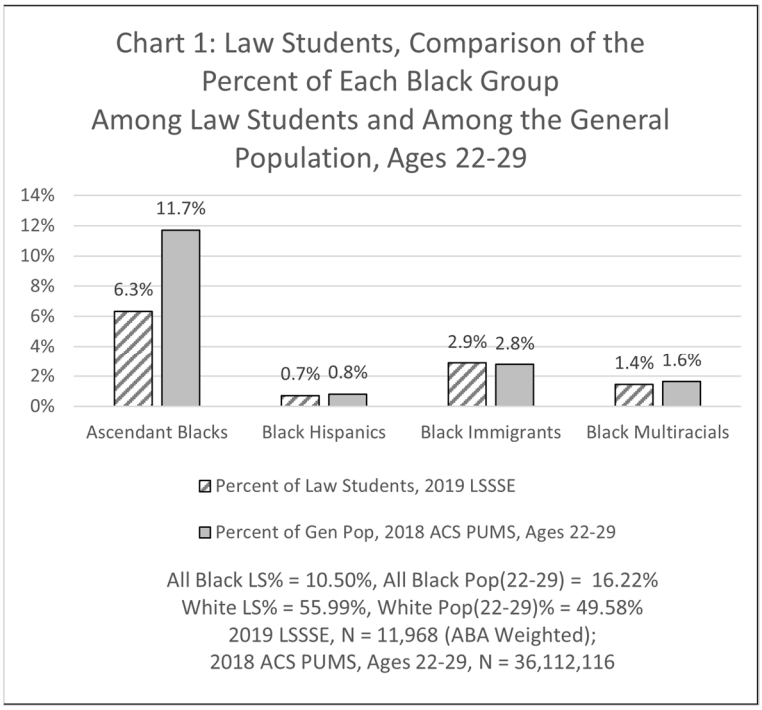


Chart 1: Law Students, Comparison of the Percent of Each Black Group Among Law Students and Among the General Population, Ages 22-29
14%
12%
10%
8%
6%
4%
2%
0%
6.3%
11.7%
0.7%
0.8%
2.9%
2.8%
1.4%
1.6%
Ascendant Blacks
Black Hispanics
Black Immigrants
Black Multiracials
Percent of Law Students, 2019 LSSSE
Percent of Gen Pop, 2018 ACS PUMS, Ages 22-29
All Black LS% = 10.50%, All Black Pop(22-29) = 16.22%
White LS% = 55.99%, White Pop(22-29)% = 49.58%
2019 LSSSE, N = 11,968 (ABA Weighted);
2018 ACS PUMS, Ages 22-29, N = 36,112,116

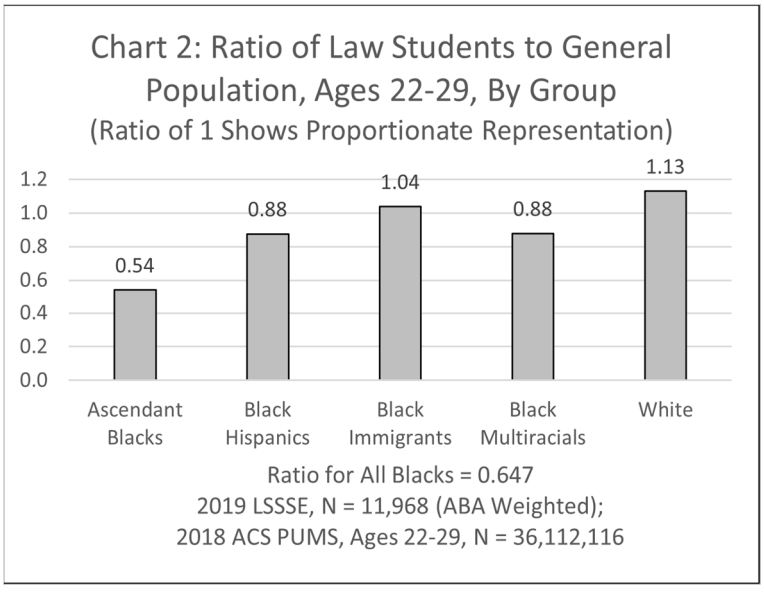


Chart 2: Ratio of Law Students to General Population, Ages 22-29, By Group
(Ratio of 1 Shows Proportionate Representation)
1.2
1.0
0.8
0.6
0.4
0.2
0.0
0.54
0.88
1.04
0.88
1.13
Ascendant Blacks
Black Hispanics
Black Immigrants
Black Multiracials
White
Ratio for All Blacks = 0.647
2019 LSSSE, N = 11,968 (ABA Weighted);
2018 ACS PUMS, Ages 22-29, N = 36,112,116

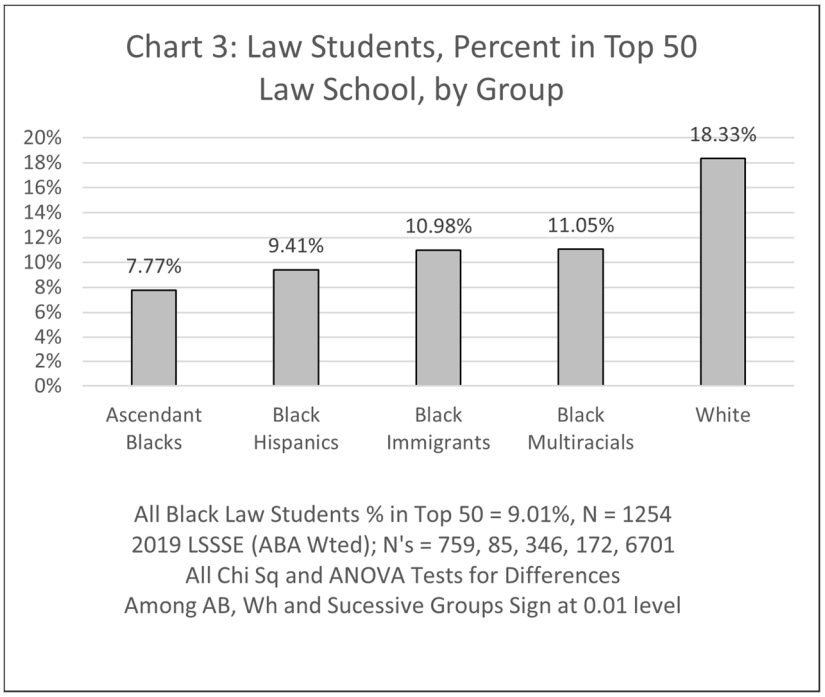
2. *Representation Among Law Students at Top 50 Law Schools Included in the LSSSE Survey*

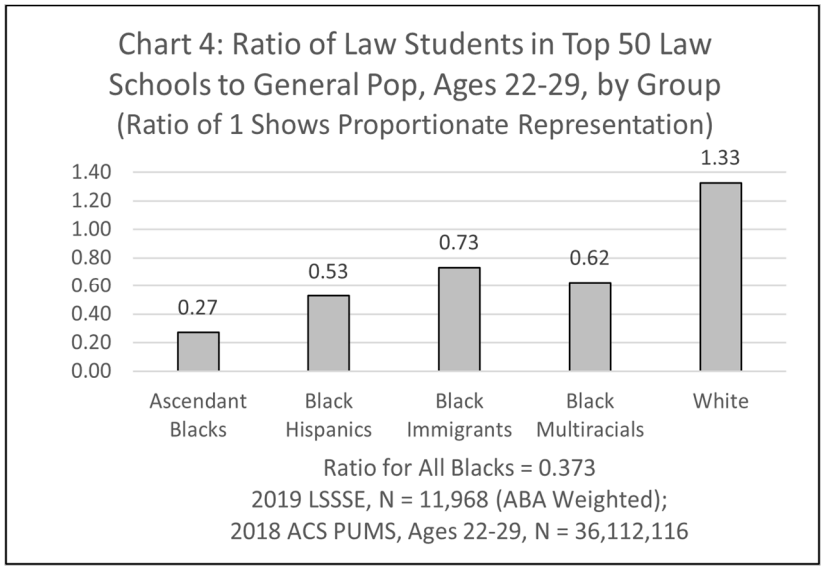
The underrepresentation of Black people may be better or worse among more elite law schools. To check on this possibility we asked the LSSSE administrators to create a dummy variable for whether the respondent attended a law school ranked among the top 50 law schools in the 2019 US News and World Report rankings.[57] Using this variable we computed first the percent of each examined group of law students who attended a top 50 law school in the 2019 LSSSE data and then the ratio of representation among top 50 law school attendees for each group, by dividing this percent by the group's percent in the overall population, as reflected in the 2018 ACS PUMS, ages 22-29, data. As shown in Chart 3, Ascendant Blacks report the lowest percent of law students attending top 50 law schools of all of the examined groups. Only 7.77% of Ascendant Black law students attend top 50 law schools while 9.41% of Black Hispanic law students attend top 50 law schools, approximately 11% of Black Immigrant and Black Multiracial law students attend top 50 law schools and 18.33% of White, non-Hispanic, non-immigrant, law students attend top 50 law schools.

In terms of underrepresentation, this lower percentage of students attending top 50 law schools combines with lower overall representation among law students to yield even lower proportionate representation of Ascendant Blacks among top 50 law school students as a percent of the total population. As shown in Chart 4, for Ascendant Blacks the ratio of representation among students at top 50 law schools is 0.27, just half their ratio of representation among all law students (0.54). Each of the groups of Successive Blacks also shows a decline in their proportionate representation among top 50 law school students in comparison with their representation among all law students with a ratio of representation among students at top 50 law schools of 0.53 for Black Hispanics, 0.73 for Black Immigrants, and 0.62 for Black Multiracials. For purposes of comparison, Whites show greater representation among top 50 law school students with a ratio of representation among students at top 50 law schools of 1.33. Not surprisingly, the variation of Black people from proportionate representation at top law schools is significant at the 0.01 level.[58]

57. Initially, we asked for a dummy variable designating attendance at a top 25 law school, but the LSSSE administrators (quite reasonably) preferred a variable designating top 50 status as an additional check on preserving anonymity.

58. Performing a Chi-Square goodness of fit test, comparing the number of law students in each group at top 50 law schools with the number one would expect if representation was proportional with the national population, yields a Chi-Square value of 245.8 with a p value of less than 0.0001.





3. Differences in College Graduation Rates, Undergraduate GPA and LSAT Scores Among Ascendant and Successive Blacks.

In addition, one of our core assumptions is that Ascendant Blacks both have more experience of the history of racial discrimination in the United States and have been more negatively impacted by that history than Successive Black

groups. It is well established that historic racism, various cultural differences and bias built into traditional academic qualifications cause Black people to perform more poorly than Whites in grades and standardized tests like the LSAT.[59] Because of these realities, we hesitate to suggest or imply that better performance in terms of undergraduate GPA (UGPA) or LSAT scores by Successive Black groups or Whites should provide them with an advantage in the admissions process. To do so works to undercut the very rationale for considerations of race and ethnicity in the admissions process.

Despite our misgivings about the use of UGPA and LSAT scores, no one knowledgeable about law school admissions can deny that these factors are very important in determining who is admitted to law school. Moreover, a college degree is a requirement for consideration for admission to almost any ABA accredited law school. Thus, differences in graduation rates among the examined groups will also affect their relative success in admission to law school. It is with these understandings that we compared the college graduation rates, UGPA, and LSAT scores of the members of the various Black groups to see what was revealed.

a. The College Graduation Rates of Ascendant Blacks Contrasted with those of Successive Black Groups

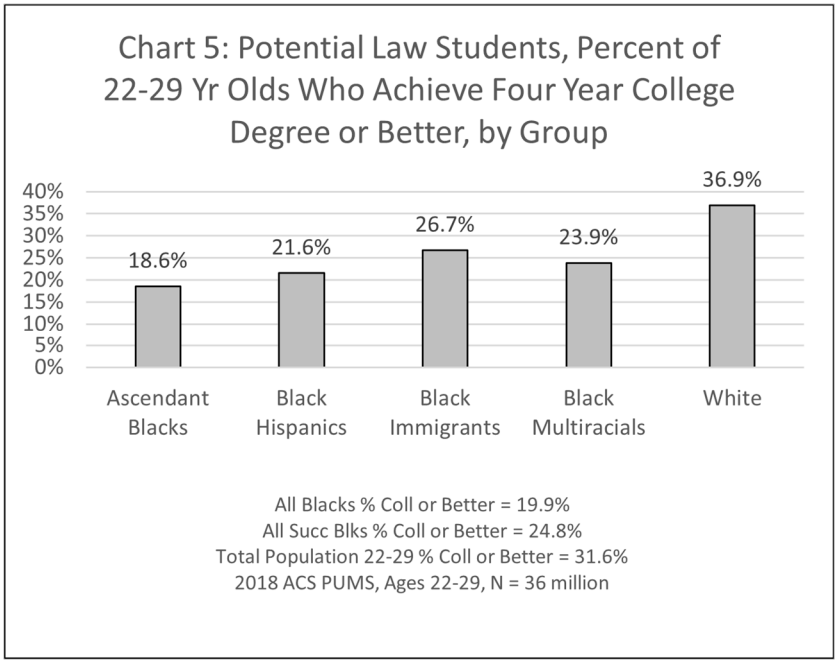
Among potential law students, Ascendant Blacks have the lowest college graduation rate. As shown in Chart 5, among 22- to 29-year-olds surveyed in the 2018 ACS PUMS, 18.6% of Ascendant Blacks had an undergraduate degree, while the graduation rates among the successive groups were: Black Hispanics (21.6%); Black Immigrants (26.7%), and Black Multiracials (36.9%). For purposes of comparison the college graduation rate among White 22- to 29-year-olds in the 2018 ACS PUMS was 36.9%.

In Chart 6 we present the ratio of representation among college graduates for each group which is defined as the ratio of the group's percentage among college graduates to their percent of the entire population. As before, a ratio of representation of 1 indicates proportionate representation for the group among college graduates while a ratio of more than 1 indicates more than proportionate representation and a ratio of less than 1 indicates underrepresentation. Once again Ascendant Blacks are the most underrepresented among college graduates of all of the Black groups with their ratio of 0.59, indicating that they graduate from college at only about 59% of the rate they would if they were proportionately represented. For purposes of comparison, the ratio of

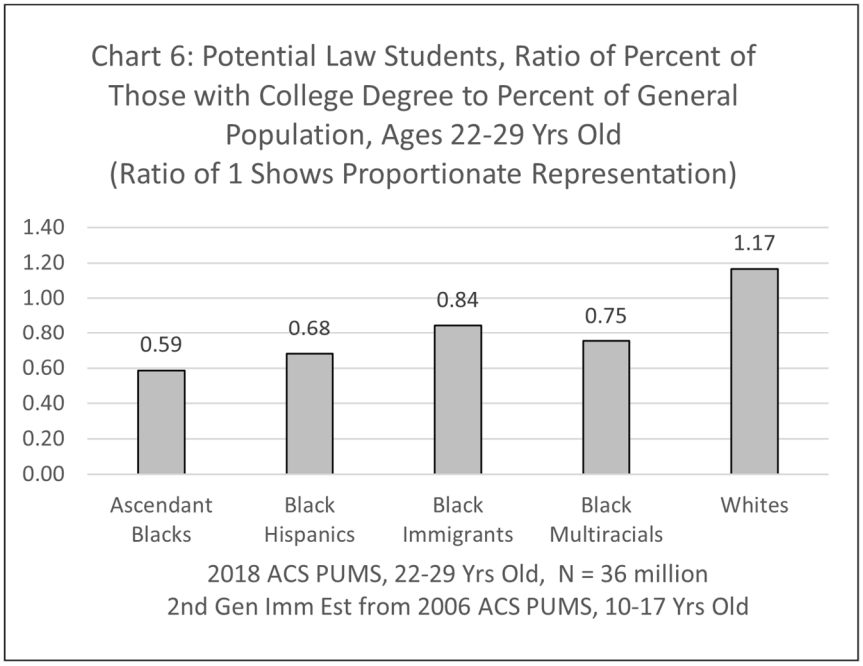
59. David M. Quinn, *Experimental Evidence on Teachers' Racial Bias in Student Evaluation: The Role of Grading Scales*, 42 EDUC. EVAL & POL'Y ANALYSIS 375 (2020); Christopher Williams, *Note, Gatekeeping the Profession*, 26 CARDOZO J. EQUAL RTS. & SOC. JUST. 171 (2020); Patrick B. McGrady and John R. Reynolds, *Racial Mismatch in the Classroom: Beyond Black-White Differences*, 86 SOCIO. OF EDUC. 3 (2013); C. JENCKS AND M. PHILLIPS, THE BLACK-WHITE TEST SCORE GAP (1998).

proportionate representation among college graduates for Whites in the 2018 ACS PUMS is 1.17, indicating that they are approximately 17% overrepresented.

Although this underrepresentation among college graduates is a huge pipeline problem in attending law school for Black people and, in particular, Ascendant Blacks,[60] it is not the only problem. A quick comparison of the ratios of proportionate representation among law school students shows that problems in access to education for Black people continues even after they achieve an undergraduate degree. For all of the Ascendant and Successive Black groups the ratios of proportionate representation among law school students shown in Charts 2 (all law students) and 4 (law students at top 50 law schools) are lower than their ratios of proportionate representation among college graduates shown in Chart 6, sometimes much lower. This fact suggests that there is an additional drop in proportionate representation among Blacks as they move from college graduation to law school and especially to top 50 law schools.



60. Linda M. Creighton, *Factors Affecting the Graduation Rates of University Students from Underrepresented Populations*, 11 INT'L ELEC J. LEADERSHIP LEARNING (2007).



b. Undergraduate Grade Point Averages of Ascendant Black Law Students Contrasted with those of Successive Black Law Students

Unlike the college graduation rate, we do not have UGPA data for all potential law students. However, among the law students in the 2019 LSSSE data Ascendant Blacks report the lowest UGPA of all groups of Black people. The UGPA data in the 2019 LSSSE data are reported as categorical data which are represented in Chart 7. As shown in Chart 7, 19.5% of Ascendant Black law students report UGPAs in the 3.50 to 4.00 range, while the corresponding percentages for the successive groups are: Black Hispanics (30.2%); Black Immigrants (27.7%) and Black Multiracials (28.1%). Adding the percentages for the ranges 3.00 to 3.49 and 3.50 to 4.00, we see that 56.4% of Ascendant Blacks had UGPAs over 3.0, while the figures from Black Hispanics, Black Immigrants, and Black Multiracials were 67.4%, 64.1%, and 64.9%, respectively. For purposes of comparison, the percent of White law students reporting a UGPA 3.00 is 81.4%. In an attempt to reduce this categorical data to a single measure, we calculated an "estimated" UGPA for each respondent by assigning them the midpoint of their reported range,[61] and calculated an average estimated UGPA for each group. As shown in Table 3, for all law students the average estimated UGPA for Ascendant Blacks was 3.06 compared to 3.20 for Black Hispanics, 3.15 for Black Immigrants and 3.17 for Black Multiracials; these differences are

61. The assigned "midpoints" were as follows: 0.00 to 2.49 (2.25); 2.50 to 2.99 (2.75); 3.00 to 3.49 (3.25); and 3.50 to 4.00 (3.75).

significant at the 0.01 level. For law students at top 50 law schools the UGPA for Ascendant Blacks (3.40) is basically the same as the UGPA for Black Hispanics (3.50), Black Immigrants (3.40) and Black Multiracials (3.36); there are no significant differences among these groups. Although nothing definitive can be said without random data including those denied admission to law school, on their face these numbers indicate that, to the extent that law schools weigh UGPA in making admissions decisions, UGPA poses a barrier to the admission of Black people and particularly Ascendant Blacks.

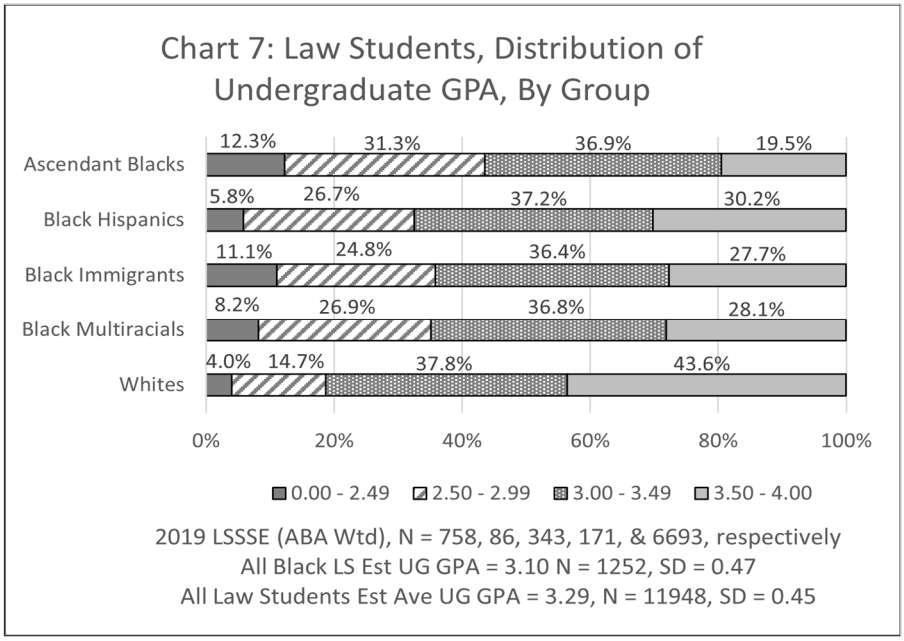


Table 3: Law Students, Average Estimated Undergraduate GPA, by Group							
	Ascendant Blacks	Black Hispanics	Black Immigrants	Black Multiracials	White	All Blacks	All Observations
All Law Students							
Ave Est GPA	3.06	3.20	3.15	3.17	3.35	3.10	3.29
SD	0.482	0.464	0.495	0.471	0.429	0.485	0.458
N	758	86	343	171	6693	1252	11948
Pairwise T-test: AB < BH, BI, BMR < Wh signif at 0.01 level; ANOVA: All < Wh signif at 0.01 level							
Law Students at Top 50 Law Schools							
Ave Est GPA	3.40	3.50	3.40	3.36	3.56	3.43	3.51
SD	0.36	0.38	0.51	0.46	0.32	0.39	0.363
N	59	8	37	19	1226	113	1865
Pairwise T-test: All < Wh signif at 0.01 level; ANOVA: All < Wh signif at 0.01 level							

c. LSAT Scores of Ascendant Black Law Students Contrasted with those of Successive Black Law Students

As with UGPA, we do not have LSAT scores for all potential law students. However, among the law students in the 2019 LSSSE data, Ascendant Blacks tend to report the lowest LSAT scores of all groups of Black people. Like the UGPA data, the LSAT data in the 2019 LSSSE data are reported as categorical data, which are represented in Chart 8. As shown in Chart 8, 0.9% of Ascendant Black law students report LSATs above 160, while the corresponding percentages for the successive groups are: Black Hispanics (2.4%); Black Immigrants (1.7%) and Black Multiracials (3.5%). Adding the percentage for all law students with LSATs over 155, we see that 7.5% of Ascendant Blacks attained this score, and the figures from Black Hispanics, Black Immigrants and Black Multiracials were 16.7%, 10.9% and 20.4%, respectively. For purposes of comparison the percent of White law students reporting a LSAT in excess of 155 was 44.6%.

In an attempt to reduce this categorical data to a single measure, we calculated an "estimated" LSAT for each respondent group by assigning them the midpoint of their reported range,[62] and calculated an average estimated LSAT score for each group. As shown in Table 4, for all law students the average estimated LSAT score for Ascendant Blacks was 147.6 compared to 150.6 for Black Hispanics, 149.2 for Black Immigrants and 150.8 for Black Multiracials. Among law students at top 50 law schools, there is again no pattern that Ascendant Blacks have a lower LSAT score than other Black Groups. Again, although nothing definitive can be said without random data including those denied admission to law school, on their face these numbers indicate that, to the extent that law schools weigh LSAT in making admissions decisions, LSAT scores pose a barrier to the admission of Black people and particularly Ascendant Blacks.

62. The assigned "midpoints" were as follows: ≤150 (148); 151 to 155 (153); 156 to 160 (158); > 160 (163).

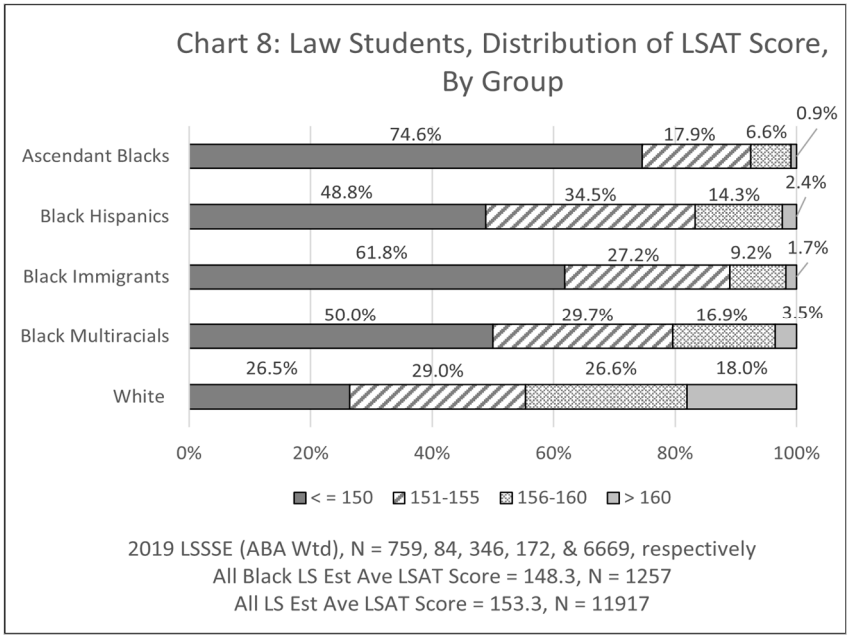


Table 4: Law Students, Average Estimated LSAT, by Group							
	Ascendant Blacks	Black Hispanics	Black Immigrants	Black Multiracials	White	All Blacks	All Observations
All Law Students							
Ave Est LSAT	147.6	150.6	149.2	150.8	154.7	148.3	153.3
SD	4.86	5.23	5.02	5.53	6.22	5.05	6.44
N	759	84	346	172	6669	1257	11917
Pairwise T-test: AB < BH, BI, BMR < Wh signif at 0.01 level; ANOVA: All < Wh signif at 0.01 level							
Law Students at Top 50 Law Schools							
Ave Est LSAT	152	151.8	152.7	154.6	160.5	152.5	159.4
SD	4.9	3.8	3.8	3.9	5.1	4.5	5.57
N	60	8	38	19	1210	115	1847
Pairwise T-test: All < Wh signif at 0.01 level; ANOVA: All < Wh signif at 0.01 level							

C. Differences in Law School Attendance Based on Gender

1. The Representation of Black Men and Women Among Law Students in the LSSSE Survey

Just examining the groups based on race, ethnicity and immigrant status ignores an important, and little discussed, facet of the underrepresentation of Black people in higher education—gender. To compare the underrepresentation of Black men and women, we separated each group by gender and once again computed the percentage the members of each group constitute of the total law

student population (2019 LSSSE, ABA weighted) and of the total population (2018 ACS PUMS, Ages 22-29). The percentages of each of the groups of law students that are male is shown in Chart 9, while a more detailed comparison of these percentages—divided according to race, ethnicity, immigrant status, and gender—is presented in Charts A1M and A2F in the appendix. Nevertheless, Chart 9 shows that, in each of the groups of Black people, males account for only slightly over a third of law school students, while among Whites they account for 51.4%. Black Multiracial males suffer the lowest percentage in this regard at 34.92%, but the differences among the groups of Black people are not statistically significant.[63] Not surprisingly, however, these differences between the Black groups and the Whites in terms of percent males are statistically significant.[64]

In Chart 10 we present the ratios of representation in law school for each group separated by gender. These ratios are analogous to the ratios presented in Chart 2, except that now the ratios are calculated separately by gender for each group. Once again, a ratio of representation in law school of 1 shows proportionate representation for the group while a ratio greater than 1 shows more than proportionate representation and a ratio less than 1 shows underrepresentation. A comparison of these ratios shows that *all* the underrepresentation of Black people among law students is suffered by men and Ascendant Black women. In each group of Black people, the men show substantial underrepresentation in comparison with the women in their group, and Ascendant Black men are the most underrepresented with a ratio of 0.40.[65] This means that law schools would have to enroll almost two and a half times as many Ascendant Black males as are currently enrolled in order for Ascendant Black males to achieve parity in law schools with their representation in the general population. In each of the groups of Successive Blacks, women have achieved representation among law students in excess of their representation in the general population, and even in excess of that achieved by White men.

63. Performing a pairwise T-test on the difference in the mean for the dummy variable "male" among the groups we find that none of the successive groups are significantly different than Ascendant Blacks, but all Black groups are significantly less than Whites.

64. *Id.*

65. Although not represented in our data, research on undergraduate enrollment suggests that male underrepresentation in tertiary education is suffered most by heterosexual men. Joel Mittleman, *Intersecting the Academic Gender Gap: The Education of Lesbian, Gay and Bisexual America*, AM. SOC. REV. (forthcoming 2022)(suggesting that homosexual men graduate from college at a rate 40% higher than heterosexual men).

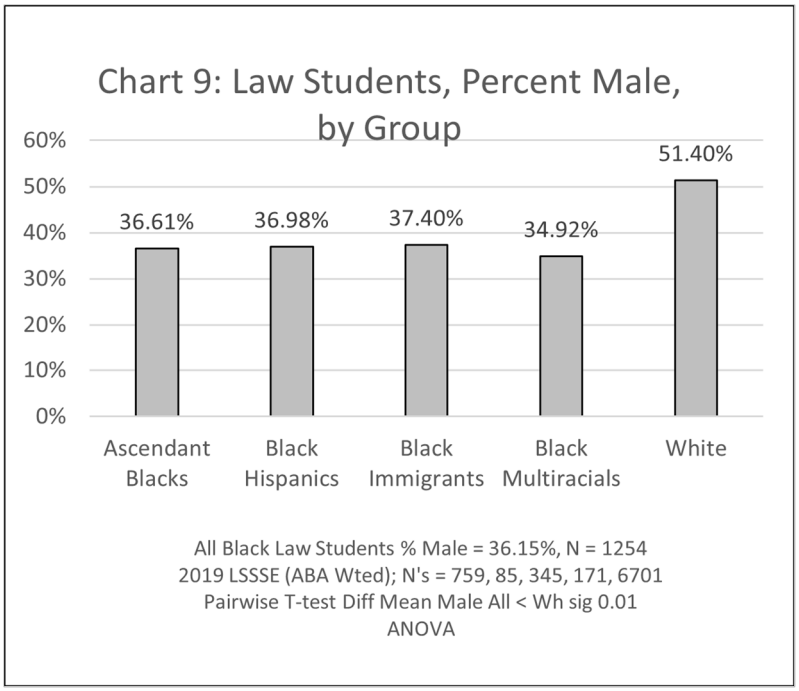


Chart 9: Law Students, Percent Male, by Group
60%
50%
40%
30%
20%
10%
0%
36.61%
36.98%
37.40%
34.92%
51.40%
Ascendant Blacks
Black Hispanics
Black Immigrants
Black Multiracials
White
All Black Law Students % Male = 36.15%, N = 1254
2019 LSSSE (ABA Wted); N's = 759, 85, 345, 171, 6701
Pairwise T-test Diff Mean Male All < Wh sig 0.01
ANOVA

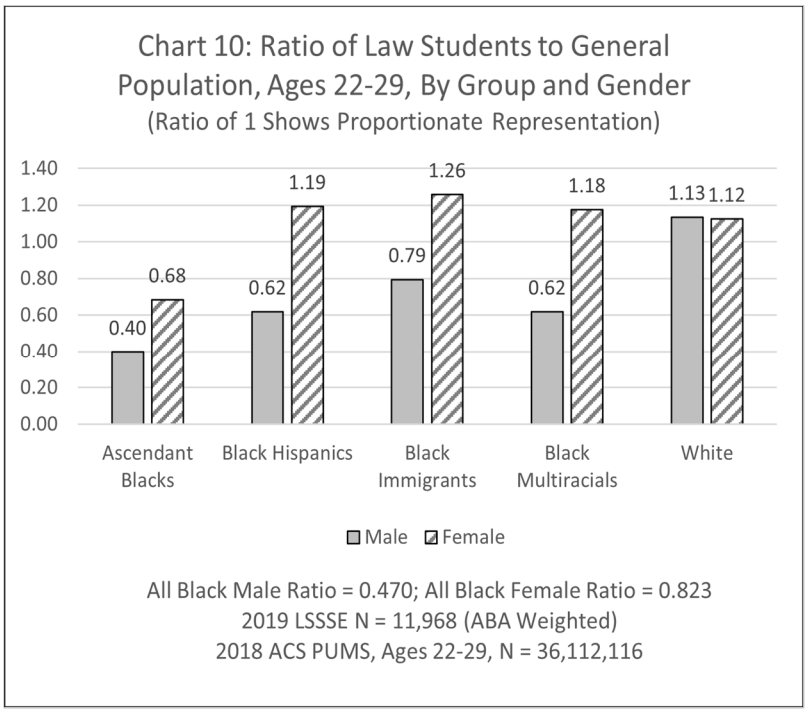
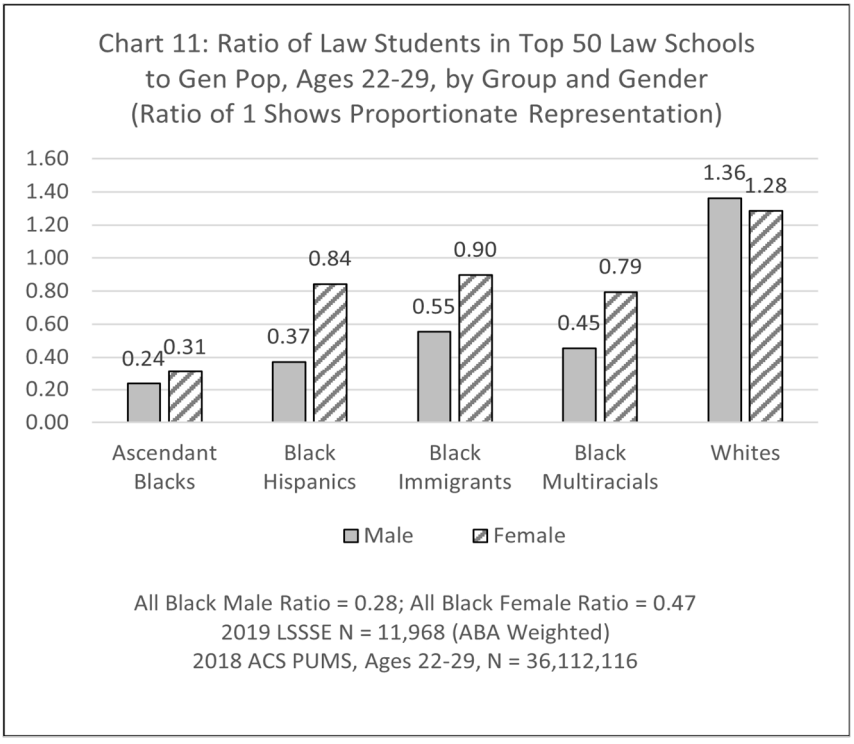


Chart 10: Ratio of Law Students to General Population, Ages 22-29, By Group and Gender
(Ratio of 1 Shows Proportionate Representation)
1.40
1.20
1.00
0.80
0.60
0.40
0.20
0.00
0.40
0.68
0.62
1.19
0.79
1.26
0.62
1.18
1.13
1.12
Ascendant Blacks
Black Hispanics
Black Immigrants
Black Multiracials
White
Male
Female
All Black Male Ratio = 0.470; All Black Female Ratio = 0.823
2019 LSSSE N = 11,968 (ABA Weighted)
2018 ACS PUMS, Ages 22-29, N = 36,112,116

2. *The Representation of Black Men and Women Among Law Students Attending Top 50 Law Schools in the LSSSE Survey*

We also check to see whether Black men suffer any additional disadvantages in attending the top 50 law schools. We do this by separating the subsample of students attending top 50 schools according to racial and ethnic group and gender, computing the percent that each of these groups constitutes of the subsample of top 50 law school attendees, and then computing the ratio of representation among top 50 law school students for each group. These ratios of representation among law students at Top 50 law schools are shown in Chart 11. A comparison of Chart 11 with Chart 10, which shows the ratios of representation among all law students for each of the groups, shows that all groups of Black people are more underrepresented in the top 50 law schools than among law students as a whole. For Black women from the groups of Successive Blacks, all of which were overrepresented among law students as a whole, all are underrepresented among the top 50 law school students. Comparing Black women and Black men, the most significant observation is that Ascendant Black men approach more parity with Ascendant Black women in attendance at top 50 law schools than the men in any of the Successive Black groups.



3. Differences in College Graduation Rates, Undergraduate GPA and LSAT Scores Among Ascendant and Successive Black Groups by Gender

Once again, despite our misgivings about the usefulness of UGPA and LSAT in evaluating Black students for law school, in examining the differences in male and female representation in law schools it is useful to review the available data on these measures, as well as college graduation rates. As will be seen, the failure of the educational system to promote and encourage Black men seems to loom large in distinguishing the success of Black men and women in law school.

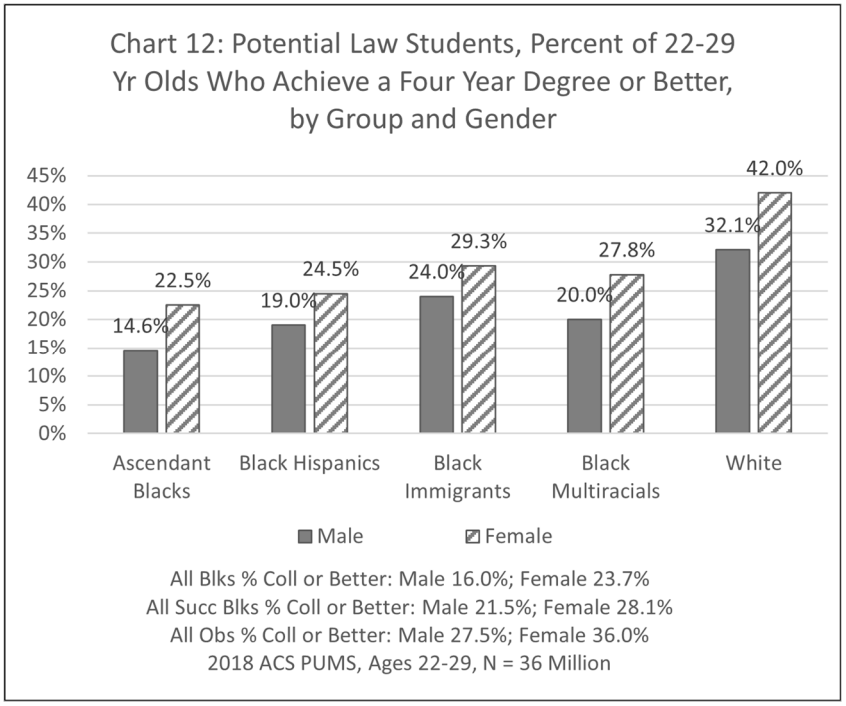
a. The College Graduation Rates of Ascendant and Successive Black Men Contrasted with those of Ascendant and Successive Black Women

Among potential law students, Black men have significantly lower college graduation rates than Black women. As shown in Chart 12, all of the examined groups, including Whites, show significantly lower college graduation rates for men than for women among the 22-29 year olds responding to the 2018 ACS PUMS. For Ascendant Blacks, 22.5% of women ages 22-29 had achieved a college degree while just 14.6% of men ages 22-29 had done so. Looking at the Successive Black groups combined, 21.5% of men ages 22-29 had achieved a college degree while 28.1% of women ages 22-29 had achieved a college degree. Even among the Whites ages 22-29, women held a 42.0% to 32.1% advantage over men in attaining a college degree. In Chart 13 we present the ratio of representation among college groups for each group separated by race, ethnicity and gender. As before, this ratio indicates proportionate representation of each group among college graduates, with a ratio of 1 indicating proportionate representation, a ratio of more than 1 indicating more than proportionate representation and a ratio of less than 1 indicating underrepresentation. These ratios show Black men suffer substantially lower representation among college graduates than Black women, with Ascendant Black men suffering the lowest representation with a ratio of representation of 0.40. White men also have a lower ratio of representation among college graduates than White women, suggesting a systematic bias in our educational system against males, but their disadvantage is not as pronounced as that suffered by Black men.[66]

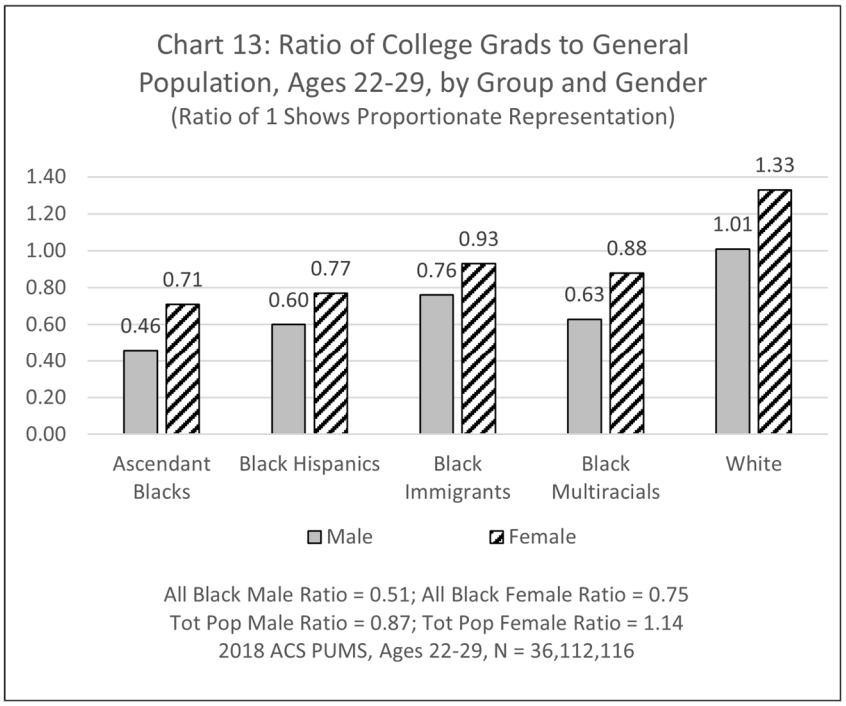
Comparing the ratios of representation among college graduates in Chart 13 with the ratios of representation among law students in Chart 10, we see a

66. Kenneth G. Dau-Schmidt, *O Brother Where Art Thou?: The Struggles of African American Males in the Global Economy of the Information Age,* 8 IND. J.L. & SOC. EQUAL. 1, 8-9 (2020); Lorenda A. Naylor, Heather Wyatt-Nichol & Samuel L. Brown, *Underrepresentation of African American Males in U.S. Higher Education*, 21 J. PUB. AFFS. EDUC. 523 (2015); Floyd Weatherspoon, *The Status of African American Males in the Legal Profession - Roadblocks and Barriers*, 80 MISS. L.J. 259 (2010). *See also*, Palmer ET AL., *A Nation at Risk - Increasing College Participation and Persistence Among African American Males to Stimulate U.S. Global Competitiveness*, 1 J. AFRICAN AM. MALES IN EDUC. 105 (2010).

strong association. However, some groups are drawn to, or drift away from, law school. The representation ratios for college and law school are very similar for Black men and Ascendant Black women. These groups show little movement towards or away from law school after college. However, Successive Black women and White men enjoy more representation in law school than in college, and White women show less representation in law school than in college. For example, Black Hispanic women go from a representation ratio of 0.77 among college graduates to 1.17 among law students, and White men go from a representation ratio of 1.01 among college graduates to 1.13 among law students. The gravitation of White men, but not White women, to law school is well known and traditionally attributed to a greater male preference for earning income.[67] Whether or not this is true, the male bias for law school exhibited in the White numbers makes the gravitation of Successive Black women, but not men, to the law, all the more interesting. However, given the association between Black male representation among college graduates and their representation among law students, the gross underrepresentation of Black men among college graduates goes a long way toward explaining their underrepresentation relative to Black women among law school students.



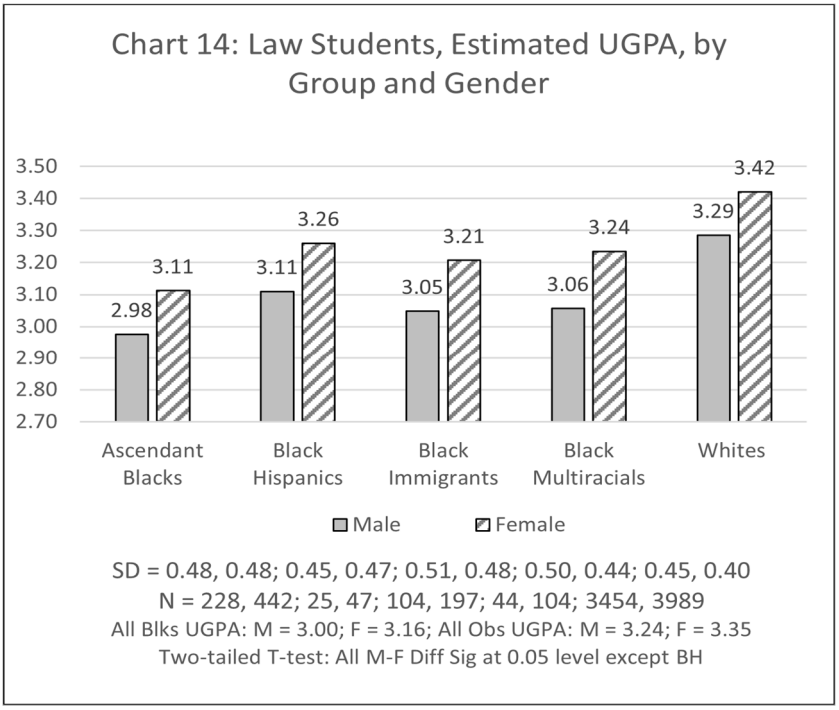
67. Kenneth G. Dau-Schmidt & Kaushik Mukhopadhaya, *Men and Women of the Bar: A Second Look at the Impact of Gender on Legal Careers*, J. Legal. Prof. (forthcoming 2021).



b. The UGPAs and LSAT Scores of Ascendant and Successive Black Male Law Students Contrasted with those of Ascendant and Successive Black Female Law Students

Among the law students who participated in the 2019 LSSSE survey, the data recorded on UGPA and LSAT in the LSSSE data are categorical, but we reduce them to an average estimated UGPA and average estimated LSAT score for each group by assigning the mid-point of the reported category to each observation and computing group means. These results are reported in Charts 14 and 15 below. As shown in Chart 14, the women in all examined groups report higher average UGPAs than their male counterparts. The gap between the average estimated UGPA for males and females is smallest for Ascendant Blacks (0.13) and largest for Black Multiracials (0.18). We performed a two-tailed T-test of the statistical significance of the difference between the male and female mean for each group and found that all of these differences are statistically significant at the 0.05 level, except that for Black Hispanics. However, in Chart 15 we see that the men in all examined groups report higher average estimated LSAT scores than their female counterparts. The gap between the average estimated LSAT score for males and females is smallest for Black Immigrants (0.8) and largest for Black Multiracials (2.0). Again, we performed a two-tailed

T-test of the statistical significance of the difference between the male and female means for each group and found that all of these differences are statistically significant at the 0.05 level except for Black Hispanics and Black Immigrants. As shown in Table 5, this pattern that the women do better on UGPA and the men do better on LSAT also holds in an analysis of those students who attend top 50 law schools. Although we only have data on accepted law students, this pattern of women receiving higher grades even though men outperform them on standardized tests is commonly found in studies[68] and probably accurately reflects the relative performances of these groups in our data.



68. Perihan O. Saygin, *Gender Bias in Standardized Tests: Evidence from a Centralized College Admissions System*, 59 EMPIRICAL ECON. 1037 (2020).

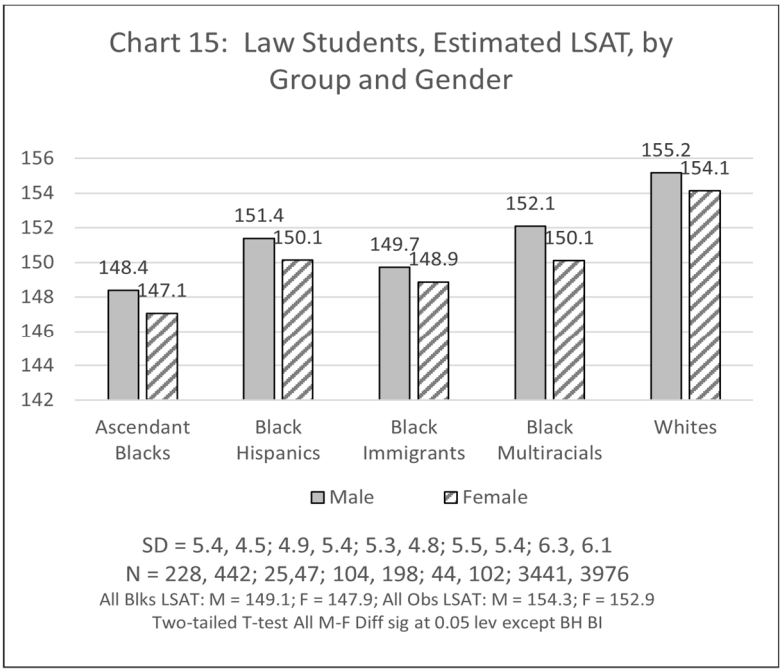


Table 5: Students at Top 50 Law Schools, Comparison of Male and Female UGPA and LSAT Scores, by Group

	Ascend Black Males	Ascend Black Females	Success Black Males	Success Black Females	White Males	White Females	All Black Males	All Black Females	Total Males	Total Females
Mean UGPA	3.25*	3.51*	3.21*	3.53*	3.49*	3.61*	3.23*	3.52*	3.45*	3.57*
SD	0.352	0.338	0.535	0.369	0.353	0.270	0.431	0.353	0.389	0.324
N	26	33	18	38	646	581	43	72	950	919
Mean LSAT	152.5	151.5	155.1*	152.0*	161.0*	159.7*	153.6*	151.8*	160.3*	158.5*
SD	5.198	4.755	3.703	3.788	4.922	5.138	4.771	4.235	5.391	5.590
N	26	34	18	38	635	574	43	71	937	910

*Two-tailed T-test of male and female mean for group statistically significant at 0.05 level.

D. Differences in Law School Attendance Based on Class

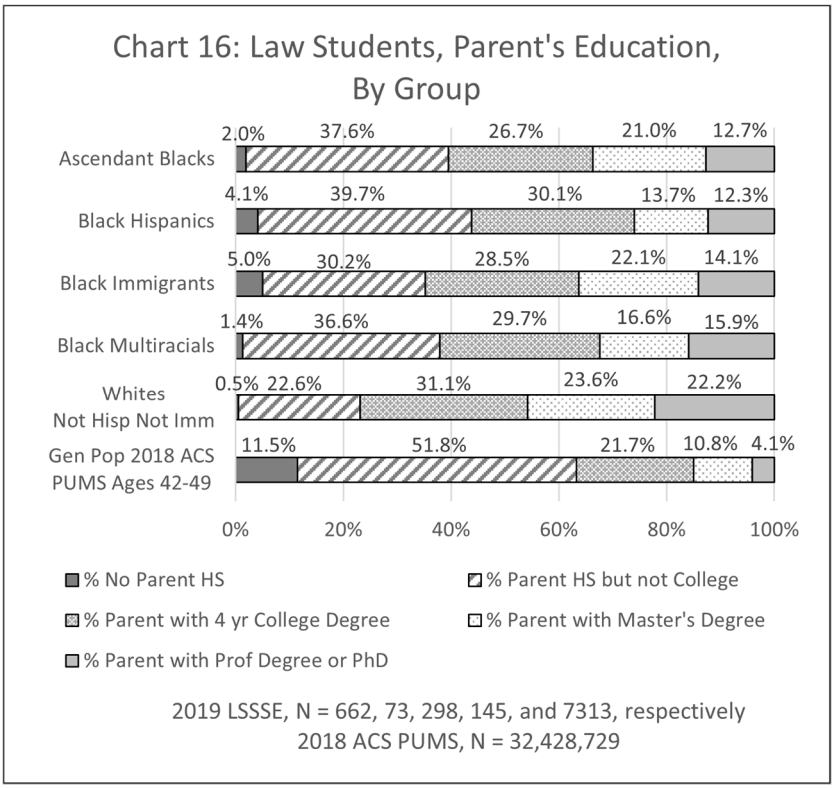
The only measure of class in the 2019 LSSSE data is the parents' highest level of educational achievement. Each respondent was asked to report the highest degree achieved by either of the respondent's parents, which we have abbreviated to these five options: No High School Degree, High School or GED, Four Year College Degree, Master's Degree, and Professional Degree or PhD.

Parents' level of education is commonly used in the empirical literature as an indicator of class.[69] Moreover, this variable is perhaps the most relevant indicator of class for our purposes: assessing the representation of various groups of people among law school attendees. Parental educational achievement is probably more strongly correlated with law school attendance than the alternative class indicator of family wealth, although parental educational achievement and family wealth are of course themselves strongly correlated.

The results of this categorical data are reported in Chart 16, separated according to the examined groups. The last line of Chart 16 reports the corresponding educational distribution for the complete population, ages 42-49 of the parents' generation. A quick review reveals both that class is very important in attendance of law school and that there are real socioeconomic differences among the various groups of Black law students. First, in comparing the distribution of parents' educational achievement for each group with the distribution for the general population, we see that the parents of the students in all of the examined groups are, on average, much more educated than the general population. Only 4.1% of the general population, ages 42-49, have attained a professional degree or PhD, yet for each group of Black law students at least 12.3% have at least one parent who has attained such a degree. Similarly, among the general population only 36.6% have attained a college degree, but among the groups of Black law students from 56.1% (Black Hispanics) to 64.7% (Black Immigrants) have a parent with a college degree. Second, comparing the distribution of parents' educational achievement for each group, we see that there are some real differences among the groups. Black Multiracial students report the highest percentage (15.9%) of a parent who has a professional degree or PhD, while Black Immigrants report having the highest percentage of a parent with a college degree (64.7%). Comparing this data with the data on educational achievement for the parents' generation, 2018 ACS PUMS, ages 42-49 (Table 1 and Chart A3 in the Appendix), we see that in general Blacks have lower levels of educational achievement than Whites, and Ascendant Blacks have the lowest. Interestingly, although the data from the general population, ages 42-49, show that Ascendant Blacks are the least educated in the parents' generation, among the parents of the law students in the LSSSE data, the parents of Black Hispanics are the least educated. However, both sets of data agree that Ascendant Blacks and Black Hispanics are the most similar in their level of parental educational achievement among the examined groups. Indeed, in Table 1 the parents' generation has the same average estimated years of education for the two groups.[70]

69. John P. Bumpus, Zimife Umeh &Angel L. Harris, *Social Class and Educational Attainment: Do Blacks Benefit Less from Increases in Parents' Social Class Status?*, 6 SOC OF RACE & ETHN. 223 (2020).

70. *See supra* p.121.



Examining the impact of parents' education on law school attendance is a two-step process. Black people may be disadvantaged in attending law school either because their parents did not achieve the same level of educational achievement as Whites, or because they receive a lower "payoff" for parental education in terms of the percent of total law students for a percent of parents with a given level of educational achievement. In other words, to achieve parity with White people, Black people need to achieve both a proportionate share of members in the parents' generation who have college and graduate degrees AND achieve the same payoff in the present generation in terms of a proportionate share of the children of these educated people who attend law school. The differences in the distributions of educational achievement for the parents' generation between Black people and Whites can be obtained from 2018 ACS PUMS, ages 42-49, and are reported in Chart A3 in the Appendix. The current payoff structure for each group in terms of percent of total law students per percent of total parents' generation population of a given educational achievement can be computed by dividing the group's yield in percent of total law students from parents of a given educational achievement, as represented in the 2019 LSSSE data, by the group's stock of people in the parent's generation

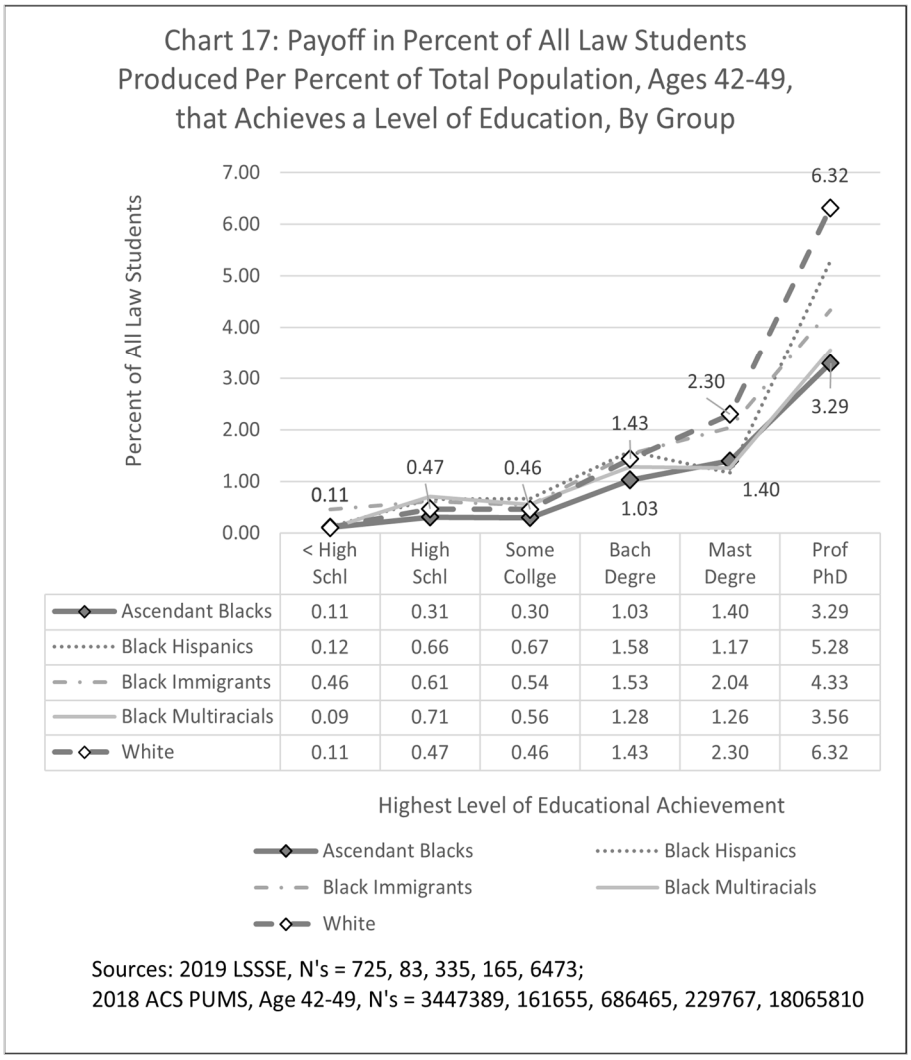
as a percent of the total with that level of educational achievement, as represented in the 2018 ACS PUMS, Ages 42-49 data. The payoff structure computed from our data is reported in Chart 17. As can be seen in Chart 17, Ascendant Blacks tend to have the lowest payoff structure for parental educational achievement, while Whites have the highest payoff structure and Successive Blacks tend to have an intermediate payoff structure that lies between those of Ascendant Blacks and Whites.

The estimated current payoff structure for parental educational achievement represented in Chart 17 yields some interesting results. The payoff in percent of total law students for a percent of the parents' generation that achieves a level of educational achievement is very similar, and very small, across all groups below the level of a four-year college degree. For all groups, including Whites but excluding Black immigrants, the payoff for having a percent of the total population without a high school degree varies from 0.09% to 0.12% of the total law school enrollment. Similarly, for all groups, including Whites, the payoff for having a percent of the total population that has a high school degree or some college ranges from 0.30% and 0.71% of the total law school enrollment, with the White payoff at about 0.47%. Achieving percentages of the parents' population with higher levels of educational achievement, such as a college degree or graduate degree, yields much higher payoffs in percentages of total law school enrollment and also shows much more difference in payoff between Blacks and Whites. For example, at the level of professional degree or PhD, the Ascendant Black payoff for a percent of the total population with such a degree is 3.29% of the total law school enrollment, but the White payoff is 6.32%—almost twice as high.[71]

On its face these payoffs suggest that first-generation or working-class Black and White students attend law school at approximately the same, very low, rate, but the real advantages in law school admissions of being White do not accrue until Whites achieve a higher level of education and socioeconomic class. As pointed out in Chart 16, 45.8% of White students in law schools have parents with at least a master's degree. But the more interesting point is that Black law students do not receive the same payoff for the high academic achievement of their parents. Of course, given our results in the previous section, one reason why White people with higher educational achievement enjoy a higher payoff in total law school admissions than Black people is that both their daughters and sons attend law school in roughly equal numbers, while for Black people it is primarily only their daughters who attend.[72]

71. A variety of scholars have previously found that Blacks benefit less from improvements in class than Whites. John P. Bumpus, Zimife Umeh and Angel L. Harris, supra note 71.

72. A quick check of the data confirms that, among law students whose parents' have achieved a graduate degree, only 39.8% of Blacks are male while 53.2% of Whites are male. However, given that the 39.8% figure is higher than the overall percent of Black law students who



We can provide a shirtsleeve estimate of the relative importance of historic and current discrimination for Ascendant Blacks, relative to Whites, by comparing the estimated impact of improving the distribution of parental educational achievement for Ascendant Blacks and the estimated impact of improving the payoff Ascendant Blacks receive for parental educational achievement in terms of total law school attendance. We do this by using the current distribution of educational achievement among the parents' generation for each group reported in Chart A3 in the Appendix, and the current payoff

are male (36.2%), it does seem that having a parent with a graduate degree does help Black sons combat their disadvantages in our educational system.

structure in terms of percent of total law students reported in Chart 17, to compute three numbers. These calculations are presented in Table A2 in the Appendix. First, we compute the improvement in Ascendant Black law school attendance if they had the same educational payoff structure but the White distribution of educational achievement in the parents' generation. We find that achieving just the White educational distribution would increase Ascendant Black law school enrollment by 2.09% of total law school enrollment. Second, we compute the improvement in Ascendant Black law school attendance if they had the same distribution of educational achievement in the parents' generation but the White payoff structure. We find that achieving just the White payoff for educational achievement in the parents' generation would increase Ascendant Black law school enrollment by 3.50% of total law school enrollment. Finally, we calculate the residual improvement in Ascendant Black law school attendance that results if they achieve both the White educational distribution and the White payoff structure. We find that this residual combined effect would increase Ascendant Black law school enrollment by 1.32% of total law school enrollment. Taking these changes together would move Ascendant Blacks from their current percent of total law school enrollment of 6.34% to 13.25 % with a ratio of representation among law students of 1.13, the same as Whites.[73] Expressing our calculated percentages as a percent of the total change (6.91%) we see that: improving the parents' educational distribution would provide 30.25% of the necessary change; improving the payoff structure would provide 50.65% of the change; and the combined effect would provide 19.10%. Similar analyses for the groups of Successive Blacks would result in intermediate solutions because, except for Black Hispanics, they have better educational distributions in the parents' generation than ascendant Blacks and they enjoy a better current payoff structure than Ascendant Blacks. In short, even in this shirtsleeve estimate of the impact of parents' educational achievement, we see that historic discrimination continues to be a problem for all Black Americans, but especially Ascendant Blacks.[74]

73. As shown in Table 2, Ascendant Blacks are 11.71% of the total population. By improving their percent of total law students to 13.25%, they would achieve a representation ratio among law students of 13.25%/11.71% = 1.13. As shown in Chart 2 this is the same representation ratio among law students as Whites.

74. Data collected by the National Association of Law Placement (NALP) shows that first-generation law students are also at a disadvantage in securing legal jobs and have a lower average initial income than students who have a parent who is a lawyer, and that this problem has implications with respect to race and ethnicity. NALP, Jobs & JDs, Employment and Salaries of New Graduates, Class of 2020 (2021). *See also*, NALP Reports Employment Outcomes for First-Generation College Students Fall Below Those of Their Peers, and Disparities in Outcomes by Race/Ethnicity Persist (2021), https://www.nalp.org/uploads/PressReleases/NALPPressRelease JobsandJDs_20October2021.pdf.

CONCLUSIONS

When selective colleges and universities first established affirmative action admissions programs in the 1960s, one of the most important assumptions upon which these programs were based was that the Black beneficiaries would overwhelmingly be those whose ancestors were victims of the history of racial discrimination in the United States. These beneficiaries would be the children of two American-born Black parents (as determined by the application of the one-drop rule). In Justice O'Connor's opinion for the Court in the 2003 decision of *Grutter v Bollinger*, she affirmed the use of the University of Michigan Law School's affirmative action program. The program was intended to ensure the inclusion of a critical mass of underrepresented minorities with a history of discrimination.

At a gathering of Black alumni in 2003, Harvard professors Lani Guiner and Henry Louis Gates noted that mixed-race Blacks and Black Immigrants together comprised two-thirds of Harvard's Black undergraduate population.[75] Following the "Harvard Revelation," a 2005 article written by Ronald Roach in Diverse Issues in Higher Education pointed to the findings of a study of the Black presence that entered twenty-eight selective colleges and universities in 1999.[76] The study revealed that 17% of Black freshmen were Black Multiracials and 41% were either Black Multiracials or Black Immigrants. Since that time the changing racial and ethnic ancestry of Black students at selective higher education institutions has increasingly been a topic of discussion. However, no one has attempted to do an empirical study to determine the race and ethnicity of Black students enrolled in the nation's law schools until now.

In this Article, we use data from the 2019 LSSSE survey to examine the frequency and demographic characteristics of various groups of Black people among American law students. Using the responses to LSSSE survey questions, some of which we supplied, we are able to separate the body of Black law students into Ascendant Blacks, who are born of two Black, non-Hispanic, non-immigrant parents, and three overlapping groups of Successive Blacks: Black Hispanics, Black Immigrants, and Black Multiracials. When necessary, we then weight this sample according to the results of the ABA survey of all law students with respect to the parameters of race, ethnicity and gender, to help ensure the nationally representative nature of our data set. Comparing these results with similarly separated results from the 2018 ACS PUMS, ages 22-29, national survey, we are able to examine the extent of proportionate representation of each of these groups among all law students and among law students at top 50 law schools and compare this with the representation of White students. We perform this proportionate representation analysis for the members of each group both as

75. Ronald Roach, *Drawing Upon the Diaspora*, DIVERSE ISSUES IN HIGHER EDUC. (Aug. 25, 2005), http:// diverseeducation.com/article/4558/.

76. *Id.*

a whole and separated according to gender. Although the LSSSE data does not supply information on those who unsuccessfully apply to law school, by combining our LSSSE results with data from various years and ages of the ACS PUMS national survey we are able to look for associations that may contribute to the underrepresentation among law students of any particular group or gender relative to the others.

We find both Ascendant and Successive Blacks, save for Black Immigrants, are underrepresented among American law students, but that this underrepresentation is worse for Ascendant Blacks. Ascendant Blacks are represented among law students at about 54% of their proportionate rate, while Black Hispanics and Black Multiracials are represented at 88% of their proportionate rate and Black Immigrants are slightly over-represented at about 104% of their proportionate rate. Although we have done our best to provide accurate estimates, our numbers with respect to Black Immigrants are perhaps the least precise because we have to estimate second-generation immigration in the relevant ACS PUMS data and we cannot weight our LSSSE data set for this parameter based on the national ABA data. Examining the representation of Blacks among students at top 50 law schools, we find that all groups of Blacks are underrepresented, but Ascendant Blacks fare the worst. Ascendant Blacks are represented at just 27% of their proportionate rate among students at top 50 law schools while the groups of Successive Blacks are represented at 53% to 73% of their proportionate rate, depending on the group.

Dividing the data according to gender, we document the gross underrepresentation of Black men, and especially Ascendant Black men, in American law schools. For each of the groups of Blacks, males account for only slightly over a third of all law students among their respective groups. Our numbers suggest that all of the underrepresentation of Blacks in the entire law school student population is suffered by Black men and Ascendant Black women. Ascendant Black men enjoy only 40% of their proportionate representation among all law students and 24% of their proportionate representation among students at top 50 law schools. Examining pipeline issues with an eye toward gender, however, allows us to see both that the achievement of a college degree is a major obstacle for Black men and that an educational system more welcoming and inclusive of Black men would go a long way toward improving their chances of attending law school relative to Black women. As found in the 2018 ACS PUMS data, only 14. 6 % of Ascendant Black men ages 22-29 have achieved a four-year college degree and are eligible to attend an ABA accredited law school. However, the challenges of Black men at the undergraduate level do not tell the full story of their underrepresentation in law schools relative to Black women. Successive Black women significantly increase their proportionate representation from college to law school, while the men do not. The failure of Black men with college degrees to also gravitate toward law school is notable since White men seem disproportionately drawn to the legal

profession. Differences in grades and LSAT scores contribute no clear association in analyzing why Black men attend law school in lower proportion than their sisters, since among the Black law students surveyed in the 2019 LSSSE women report higher undergraduate GPAs and men report higher LSAT scores. This result, that women enjoy higher grades while men perform better on standardized tests, is consistent with the results reported by the Whites surveyed in the 2019 LSSSE and in other studies.

Finally, parents' educational achievement and socioeconomic class play an important role in Black students' underrepresentation among American law students, particularly for Ascendant Blacks. For both Blacks and Whites, potential students who do not have a parent who graduated from college have only a fractional chance of attending law school in comparison to potential students whose parents received a college or graduate degree. This difference is on the order of one-twelfth the chance in comparison with a potential student with a parent with a professional degree or PhD. All groups of Black people, but particularly Ascendant Blacks, suffer disadvantages relative to Whites in the distribution of educational achievement in the parents' generation and the payoff in terms of percent of total law students generated from a given distribution of educational achievement. Ascendant Blacks have about half the percent of holders of professional degrees or PhDs among the ranks of their parents' generation (2.1%) as Whites (4.0%), and these professionals measured as a percent of the whole population with that achievement yield about half the percent of total law students for Ascendant Blacks (3.29%) as they do for Whites (6.32%). Undoubtedly some of the observed difference in payoff from parents' educational achievement between Blacks and Whites occurs because Black people's sons do not attend law school in the same proportion as their daughters, while this is not true for Whites. For Ascendant Blacks our shirtsleeve estimate suggests that about 30.25% of the difference in their representation in law schools relative to Whites is due to past discrimination in a poorer distribution of education among their parents, while 50.75% is due to ongoing discrimination in a poorer current payoff for that distribution and 19.14% is due to the combined effect of these two disadvantages.

APPENDIX

Table A1: Comparison of ABA and ACS PUMS Data, Using ABA Definitions of Race and Ethnicity (ABA First Year Classes 2016-18; 2018 ACS PUMS, 22-29 Years Old)

2016, 2017 & 2018 ABA Data, 1L's (All Law Students in ABA Law Schools) (N = 113010)

%ABA	African Amer	Hispanic	Multiracial	White	Asian	First Nation	Unknown	Total
Male	3.13%	5.55%	1.70%	31.42%	2.53%	0.33%	3.36%	48.01%
Female	5.46%	7.49%	2.19%	30.13%	3.59%	0.40%	2.74%	51.99%
Total	8.58%	13.04%	3.89%	61.54%	6.12%	0.73%	6.10%	100.00%

2018 ACS PUMS, 22-29 Years Old (National Sample) (N = 36112116)

%Pop	African Amer	Hispanic	Multiracial	White	Asian	First Nation	Other*	Total
Male	7.00%	10.90%	1.48%	27.77%	3.15%	0.48%	0.14%	50.92%
Female	7.10%	10.20%	1.44%	26.57%	3.16%	0.44%	0.16%	49.08%
Total	14.10%	21.11%	2.92%	54.34%	6.30%	0.93%	0.30%	100.00%

Ratio of %ABA to %ACS PUMS (Nat'l Pop), by Group (Drop "Unknown" and "Other")

%ABA/ %Pop	African Amer	Hispanic	Multiracial	White	Asian	First Nation	Unknown	Total
Male	0.47	0.54	1.22	1.20	0.85	0.72		0.93
Female	0.82	0.78	1.61	1.20	1.21	0.97		1.07
Total	0.65	0.66	1.41	1.20	1.03	0.83		1.00

2019 ABA Data, 1L's (ABA Law Schools) (N = 6987)

Ratio of %ABA to %ACS PUMS, Top 25 Law Schools, by Group (Drop "Unknown" and "Other")

%ABA/ %Pop	African Amer	Hispanic	Multiracial	White	Asian	First Nation	Unknown	Total
Male	0.47	0.54	1.22	1.20	0.85	0.72		0.93
Female	0.82	0.78	1.61	1.20	1.21	0.97		1.07
Total	0.65	0.66	1.41	1.20	1.03	0.83		1.00

* The ACS PUMS "other" category is very small using the ABA categories because most of the "others" in the ACS PUMS indicate they are Hispanic and are thus just in the "other" category because they do not feel they fit any of the given racial categories. Under the ABA hierarchical categorization process all of these "others" are "Hispanic" regardless of their race.
NOTE: The racial and ethnic categories of the ABA data do not strictly track the categories used in our analysis of the LSSSE data. Under the DOE hierarchical assignment of category system used in the ABA data, all Hispanics are designated "Hispanic", then all multiracials are designated "Multiracial", then remaining records are categorized according to their race and there is no designation made for immigrant status. Accordingly, in comparison with our categorization method, the ABA category "African American" includes Ascendant Blacks and some Black Immigrants, the ABA category "Hispanic" includes Black Hispanics and all other Hispanics, and the ABA category "Multiracial" includes Black Multiracials and all other multiracials.

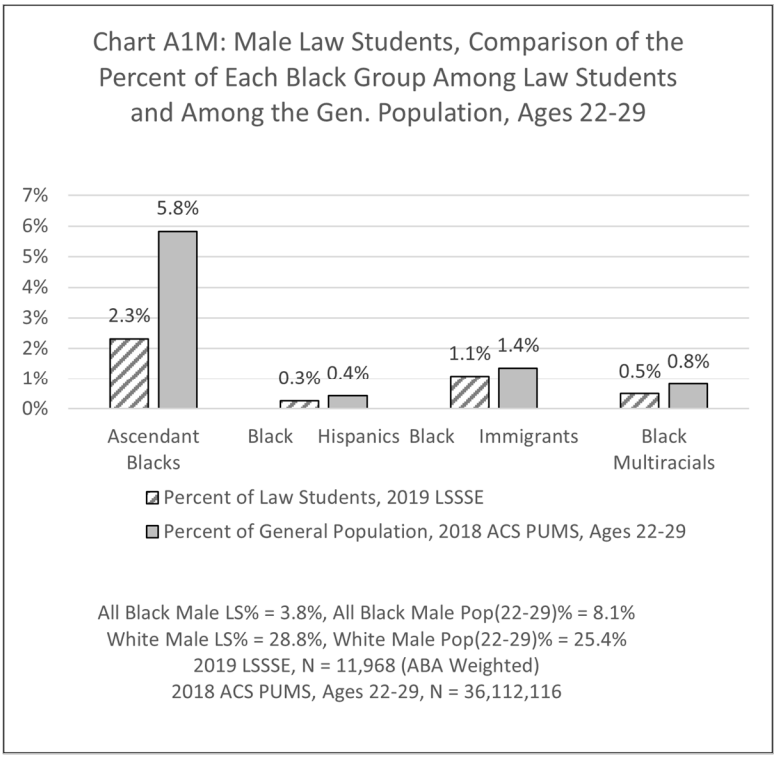


Chart A1M: Male Law Students, Comparison of the Percent of Each Black Group Among Law Students and Among the Gen. Population, Ages 22-29
7%
6%
5%
4%
3%
2%
1%
0%
2.3%
5.8%
0.3%
0.4%
1.1%
1.4%
0.5%
0.8%
Ascendant Blacks
Black Hispanics
Black Immigrants
Black Multiracials
Percent of Law Students, 2019 LSSSE
Percent of General Population, 2018 ACS PUMS, Ages 22-29
All Black Male LS% = 3.8%, All Black Male Pop(22-29)% = 8.1%
White Male LS% = 28.8%, White Male Pop(22-29)% = 25.4%
2019 LSSSE, N = 11,968 (ABA Weighted)
2018 ACS PUMS, Ages 22-29, N = 36,112,116

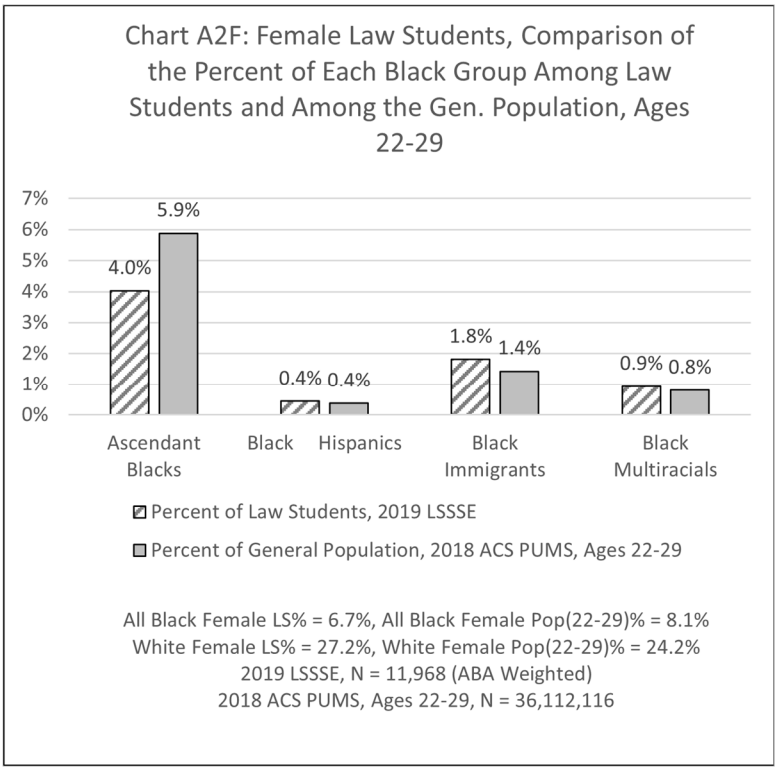


Chart A2F: Female Law Students, Comparison of the Percent of Each Black Group Among Law Students and Among the Gen. Population, Ages 22-29
7%
6%
5%
4%
3%
2%
1%
0%
4.0%
5.9%
0.4%
0.4%
1.8%
1.4%
0.9%
0.8%
Ascendant Blacks
Black Hispanics
Black Immigrants
Black Multiracials
Percent of Law Students, 2019 LSSSE
Percent of General Population, 2018 ACS PUMS, Ages 22-29
All Black Female LS% = 6.7%, All Black Female Pop(22-29)% = 8.1%
White Female LS% = 27.2%, White Female Pop(22-29)% = 24.2%
2019 LSSSE, N = 11,968 (ABA Weighted)
2018 ACS PUMS, Ages 22-29, N = 36,112,116

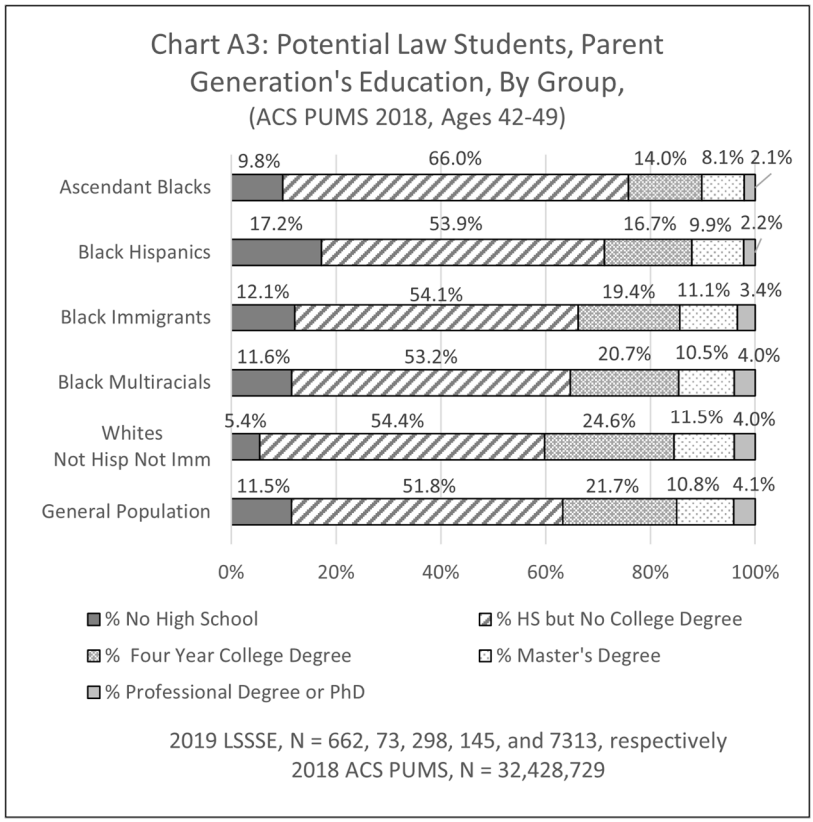


Table A2: Estimated Impact of Differences in Parent Educational Achievement on Law School Enrollment for Ascendant Blacks: Decomposing the Impacts of Class and Discrimination

Estimtd Years of Educ	Ascendant Black Payoff in % Law Students per % Gen Pop at Level of Educ Achieve %LS/%Gen Pop	White Educ Distrib Assigned to Group Pop	White Payoff in %LS/%GenPop	ΔLG if Group Had Same Payoff but Achieved White Educ Distrib (Pure Class Effect)	ΔLG if Group Had Same Educ Distrib but Achieved White Payoff (Pure Discr Effect)	ΔLG Due to Combined Effect of Achieving White Educ Distrib & Payoff (Mixed Effect)
	PG = LG/EG	EWG	PW	PG*(EWG-EG)	(PW-PG)*EG	(PW-PG)* (EWG-EG)
10	0.11351	0.00634	0.10950	-0.00058	-0.00005	0.00002
12	0.31094	0.02733	0.46898	-0.00297	0.00583	-0.00151
14	0.29767	0.03636	0.45905	-0.00117	0.00650	-0.00063
16	1.02781	0.02880	1.43398	0.01275	0.00666	0.00504
18	1.39672	0.01349	2.30124	0.00563	0.00855	0.00365
20	3.28875	0.00468	6.31526	0.00722	0.00752	0.00664
Total	6.43539	0.11700	11.08800	0.02087	0.03502	0.01321
Equal Rep = Group % of Pop* White Ratio = 0.117*1.13 =0.132; Necessary Change to Achieve Equal Rep =0.132-0.063 = 0.069			% of Necessary Change	30.25%	50.75%	19.14%
Sources: 2019 LSSSE, AB N = 725, Wh N = 6473; 2018 ACS PUMS, Age 42-49, AB N = 3447389, Wh N = 18065810						

Table ADJ: Adjustment of 2018 ACS PUMS, Ages 22-29, Data for Second Generation Immigrants Based on 2006 ACS PUMS, Ages 10-17, Data (Percent of Total Population Including "Other")				
Four Major Overlapping Groups	Black	Black Hisp	Black Imm	Black MR
% US Pop (22-29yrs old)	0.128358471	0.008142669	0.014390793	0.016286528
Adjust for Second Gen Immigrants	-0.011275289	0	0.013410959	0
Est % US Pop (22-29yrs old)	0.117083182	0.008142669	0.027801752	0.016286528
Non-overlapping Groups	Black (not H, I, or M)	BH (not I or M)	BI (not H or M)	BM (not I or H)
% US Pop (22-29yrs old)	0.128358471	0.00406185	0.012682862	0.012699367
Adjust for Second Gen Immigrants	-0.011275289	-0.000621789	0.011275289	-0.001036487
Est % US Pop (22-29yrs old)	0.117083182	0.003440061	0.023958152	0.01166288
Overlapping Groups	BHI	BIM	BHM	BHIM
% US Pop (22-29yrs old)	0.000838555	0.000344898	0.002717786	0.000524478
Adjust for Second Gen Immigrants	0.000621789	0.001036487	-0.000477393	0.000477393
Est % US Pop (22-29yrs old)	0.001460344	0.001381385	0.002240393	0.001001871

Table Wt: Computation of "ABA Weights"*								
2016, 2017 & 2018 ABA Data, 1Ls (All Law Students in ABA Law Schools) (N = 113010)								
%ABA	African Amer	Hispanic	Multiracial	White	Asian	First Nation	Unknown	Total
Male	3.13%	5.55%	1.70%	31.42%	2.53%	0.33%	3.36%	48.01%
Female	5.46%	7.49%	2.19%	30.13%	3.59%	0.40%	2.74%	51.99%
Total	8.58%	13.04%	3.89%	61.54%	6.12%	0.73%	6.10%	100.00%
2019 LSSSE Data (N = 11968)(Only Use Data with Full Race, Ethnicity and Gender Info)								
%LSSSE	African Amer	Hispanic	Multiracial	White	Asian	First Nation	PNR+Oth	Total
Male	2.57%	4.42%	1.23%	31.48%	1.50%	0.18%	2.89%	44.26%
Female	5.02%	6.58%	2.01%	37.03%	2.40%	0.24%	2.46%	55.74%
Total	7.59%	11.00%	3.24%	68.51%	3.90%	0.42%	5.35%	100.00%
ABA Weights								
Wt=%ABA/ %LSSSE	African Amer	Hispanic	Multiracial	White	Asian	First Nation	PNR+Oth	
Male	1.219049	1.255673	1.386222	0.998146	1.682463	1.864156	1.16069	
Female	1.086483	1.138372	1.085944	0.813495	1.497145	1.655885	1.117073	

* "Other" and "Pref Nt Resp" in Total in Both Samples Fix Other at 6.1% in ACS PUMS.

NOTE: The racial and ethnic categories of the ABA data do not strictly track the categories used in our analysis of the LSSSE data. Under the DOE hierarchical assignment of category system used in the ABA data, all Hispanics are designated "Hispanic," then all multiracials are designated "Multiracial," then remaining records are categorized according to their race and there is no designation made for immigrant status. Accordingly, in comparison with our categorization method, the ABA category "African American" includes Ascendant Blacks and some Black Immigrants, the ABA category "Hispanic" includes Black Hispanics and all other Hispanics, and the ABA category "Multiracial" includes Black Multiracials and all other multiracials.