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## Race and Negotiation Performance

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# RACE AND NEGOTIATION PERFORMANCE\*

By Charles B. Craver\*\*

In major league baseball, nineteen percent of the players are black. As of 1992, 150 of the 200 agents registered with Major League Baseball Players Association had active clientele; black agents accounted for a mere three percent of this 150. In professional football, sixty-nine percent of the players are black, but black agents comprise only fourteen percent of the registered agents with active files. Worse yet, more than eighty percent of the NBA's players are black, but less than ten percent of them have black agents.<sup>1</sup>

## I. INTRODUCTION

Why are many prominent black athletes reluctant to retain black agents to represent them? One factor undoubtedly concerns the high profile success of white agents such as David Falk in basketball and Leigh Steinberg in football, and the ability of these super-agents to attract draft eligible black athletes.<sup>2</sup> Another may involve the fact that "many black players have internalized racial stereotypes about blacks and thus, discriminate against their own people."<sup>3</sup> The athletes may privately believe that white agents can negotiate better contracts than black agents.

Mr. Sammataro reasonably asks "whether there are in fact any meaningful differences in the manner in which white and black agents negotiate and, more importantly, whether these differences significantly affect the resulting contracts."<sup>4</sup> One wonders what other groups ask similar questions regarding the negotiating capabilities of white and black professionals. Do hiring partners at law firms and business entities consciously or subconsciously question the negotiating ability of black law or business school graduates who are seeking new employment? Do law firm partners or corporate managers raise similar concerns when they decide which individuals to make partners or upper level managers? Are the unvoiced suspicions of such crucial decision-makers supported by

empirical findings?<sup>5</sup>

This article will empirically compare the results achieved by black and white students on the exercises conducted in my Legal Negotiating course. It will initially explore the perceived differences between African-American and Caucasian behavior. Statistically established distinctions relevant to negotiation interactions will be examined, and unsupportable stereotypes will be discussed. Comparisons will be made concerning the manner in which African-Americans and Caucasians deal with the stress of highly competitive situations.

A statistical comparison will then be made between the results achieved by African-American and Caucasian students over the past 9 years on the negotiation exercises employed in my Legal Negotiating course. Despite the fact that some stereotypical beliefs might suggest that African-Americans would not be as effective as their Caucasian cohorts in such competitive encounters, my anecdotal experiences have not discerned any apparent differences regarding the results attained by African-American and Caucasian students. I have thus hypothesized that I would find no statistically significant differences between the settlements achieved by the African-American and Caucasian students in my Legal Negotiating course. This Null Hypothesis includes two basic components. First, that the average results obtained by African-American and Caucasian students would be approximately equal. Second, that there would be no evidence to suggest that Caucasian negotiators have employed a more competitive approach that might generate similar means, but more skewed results evidenced by higher standard deviations.

## II. REAL AND PERCEIVED RACIAL DIFFERENCES

Negotiations involving participants from diverse ethnic backgrounds frequently develop

differently than bargaining interactions involving persons from similar backgrounds. People tend to negotiate more cooperatively with opponents of the same race and culture than with adversaries of different races and cultures.<sup>6</sup> This is due to the fact that similarity induces trust and reduces the need for the interactors to maintain a particular “face” in each other’s eyes.

Different meanings may be ascribed to identical speech and behavior by members of different races because of their different acculturation experiences.<sup>7</sup> For example, if an African-American and a Caucasian were to encounter a rude server at a restaurant, they would be likely to view the situation differently depending upon the race of the server. If the server were Caucasian, the African-American customer might attribute the poor treatment to the server’s dislike of black patrons, while the Caucasian customer might simply consider that particular server rude. On the other hand, if the server were black, the white patron might decide that the server is hostile toward white customers, while the black customer might perceive no racial element. If a Caucasian hiring partner of a prestigious law firm were to ask white and black law student applicants about their LSAT scores and law school GPAs, the Caucasian students would probably provide the requested information without hesitancy, while the African-American students might wonder if the partner were only asking black students about such factors based upon that person’s biased belief that minority law students are less qualified than their non-minority cohorts.

Individuals from different ethnic backgrounds bring certain stereotypical baggage into their new interactions.<sup>8</sup> It is amazing how many common characteristics – positive, negative, and neutral -- are attributed by many persons to all individuals of a particular race. Professor Andrea Rich’s study of the perceptions of UCLA undergraduate students in the early 1970s graphically demonstrated how closely Caucasians and Chicanos stereotyped African-Americans, Caucasians and

African-Americans stereotyped Chicanos, and African-Americans and Chicanos stereotyped Caucasians.<sup>9</sup> When people who harbor such stereotypical beliefs initially encounter individuals from other races, they tend to attribute their stereotypical preconceptions to those persons, and this phenomenon may influence the preliminary portion of their interaction.

Students I have taught at various law schools over the past twenty-five years have often allowed their stereotypical beliefs to influence their bargaining encounters. Many of my students – regardless of their ethnicity – think that Caucasian males are the most Machiavellian and competitive negotiators. They expect them to employ adversarial and manipulative tactics to obtain optimal results for themselves. On the other hand, numerous students expect African-American, Asian-American, and Latino-American negotiators to be more accommodating and less competitive. When opponents fail to behave in the anticipated manner, the bargaining process may be adversely affected.

Even members of one race may stereotype other members of the same race. Several years ago, four African-American students in my class were randomly selected to work together on a negotiation exercise. They seemed so pleased to have the opportunity to conduct an exercise entirely with other African-American colleagues. When they had their initial meeting, both sides announced their opening offers. They discussed their respective positions for a while, but neither side changed its stated position. Even though the two teams met for several hours over two more days, neither side modified its first offer. When we discussed their resulting nonsettlement in class, I asked each pair why they had been unwilling to move toward the opposing side. It turned out that neither side had been willing to move, because each team has expected their “less competitive” African-American adversaries to make the first concession!

Despite the unreliability of many stereotypical beliefs and the absence of more recent surveys,

several empirical studies have found a few relevant differences between African-American and Caucasian interactants. African-Americans tend to be high in terms of Interpersonal Orientation (IO).<sup>10</sup> High IO individuals are more sensitive and responsive to the interpersonal aspects of their relationships with others.<sup>11</sup> This tendency should make African-American more effective negotiators. Since bargaining outcomes are directly affected by the interpersonal skills of the participants, high IO individuals should be able to achieve better results than their low IO cohorts.

During verbal encounters, African-Americans tend to speak more forcefully and with greater verbal aggressiveness than Caucasians.<sup>12</sup> In competitive settings, this trait might enhance the bargaining effectiveness of individuals with these traits, while in cooperative situations it might undermine their ability to achieve mutual accords. When they interact with others, African-Americans tend to make less eye contact while listening to others than do Caucasians, which may be perceived by speakers as an indication of indifference to what is being said or disrespect toward the speaker.<sup>13</sup> Such behavior might undermine the ability of the persons with minimal eye contact to establish the kind of rapport that can advance bargaining discussions.

Most negotiators tend to employ a cooperative/problem-solving or a competitive/adversarial style when they bargain with others.<sup>14</sup> Cooperative/problem-solvers tend to be open with their information, prefer to use objective criteria to guide their discussions, and endeavor to maximize the joint return achieved by interactants, while competitive/adversarial tend to be less open with information, focus more on stated positions than objective factors, are manipulative, and attempt to maximize their own side's return. Caucasian negotiators usually employ relatively consistent bargaining styles, while African-Americans tend to adopt styles that are reflective of the race of their opponents. They tend to perform more effectively when they compete with Caucasians and when

they cooperate with other African-Americans.<sup>15</sup>

African-Americans who have experienced discriminatory treatment by Caucasian teachers and classmates may be initially distrustful of White negotiating opponents. They may fear that Caucasian students think they have the right to get more advantageous bargaining terms than their black cohorts. Such beliefs may cause black negotiators to behave more cautiously and less trustingly, making it more difficult for the bargainers to achieve mutually efficient agreements. This would undermine the ability of both sides to obtain optimal results.

### III. LEGAL NEGOTIATING COURSE METHODOLOGY

The initial Legal Negotiating class is devoted to an explanation of the course format and the evaluation process. I tell the students that they will explore the negotiation process and the factors that influence bargaining encounters. They will engage in a series of negotiation exercises. Although the first two or three simulations will be for practice purposes and will not affect course grades, the next five exercises will be used to determine two-thirds of class grades.<sup>16</sup> Each negotiation exercise is structured in a “duplicate bridge” format. Every participant receives identical General Information describing the relevant factual circumstances and the specific issues that must be resolved through the negotiation process. All of the individuals on the same side of an exercise receive the same Confidential Information apprising them of special information possessed by their client, explaining their client’s bargaining objectives, and the manner in which they will be evaluated if they achieve agreements or fail to generate accords. They are usually assigned one or two zero-sum problems that only concern the amount of money one side will pay to the other, because many litigation and non-litigation interactions are limited to these types of “distributive” situations that involve head-to-head

competition.<sup>17</sup> They are also assigned several non-zero-sum exercises that permit cooperative negotiating parties to simultaneously increase their respective satisfaction levels through efficient “integrative” bargaining that is designed to maximize the joint return achieved by the participants.

Class members negotiate on a one-against-one or a two-against-two basis. On some occasions, students are assigned partners to assist them with complex issues and to demonstrate the difficulties negotiators may encounter with respect to individuals on their own side. The students learn that in practice opposing counsel often achieve tentative accords with minimal difficulty, and thereafter encounter problems when they try to convince their respective clients to accept the reasonable terms negotiated. For each exercise, participants are randomly assigned different opponents and, when relevant, different partners. This is done to maximize the number of individuals with whom they will interact throughout the term<sup>18</sup> and to prevent one student from having an excessive impact on the course grade of another student.

I evaluate the performances of class members on a curve, based on each side’s results measured against the scoring information contained in that side’s Confidential Information. The students are then ranked from high to low and are assigned “placement” points for grading purposes. For example, if ten groups of students negotiate on a two-against-two basis, the most successful team on Side A receives ten placement points, the second highest receives nine placement points, and so forth. A similar ranking process is carried out with respect to the individuals on Side B. If twenty pairs of students interact on a one-against-one basis, the highest student on Side still receives ten placement points, but the second highest student receives 9.5 placement points, the third highest participant receives 9.0 placement points, and so forth. This half-step scale is used to provide the two-against-two and the one-against-one exercises with equal weight.

Each class member is also required to prepare a ten- to fifteen-page paper exploring the negotiation process. The writers are instructed to analyze their bargaining interactions based on the concepts covered throughout the term. Some papers focus on the different negotiation stages, the efficacy of diverse bargaining techniques, the impact of race, gender,<sup>19</sup> or similar factors on bargaining encounters, the use of deceptive tactics,<sup>20</sup> the importance of verbal and nonverbal communication, and other similar topics. Students may elect to take the class on a credit/no-credit basis, and they are informed that they will automatically receive a “credit” if they participate in the assigned exercises and submit acceptable papers.

During the first half of the semester, we explore theoretical and practical concepts pertaining to the negotiation process. Students are assigned chapters from *Effective Legal Negotiation and Settlement*<sup>21</sup> and are encouraged to read *Getting to Yes*.<sup>22</sup> The class considers the psychological factors that influence negotiation interactions, along with the impact of verbal and nonverbal communication. Students evaluate the effectiveness of cooperative/problem-solving and competitive/adversarial bargaining styles, and I encourage them to contemplate the use of a hybrid competitive/problem-solving approach that is designed to generate beneficial client results while simultaneously maximizing the joint returns obtained by both sides. The manner in which the personal needs of clients and attorneys and the different types of legal problems and relationships may affect bargaining encounters is discussed. The class then examines the various stages of the negotiation process (Preparation Stage, Preliminary Stage, Information Stage, Distributive Stage, Closing Stage, and Cooperative Stage<sup>23</sup>), to apprise students of the primary objectives associated with each. The strengths and weaknesses of the various techniques negotiators are likely to encounter are assessed. Specific negotiating issues pertaining to such topics as the commencement of litigation

settlement talks, dealing with government agencies, telephone negotiations, and the use of neutral intervenors to facilitate inter-party discussions are next examined. The class explores the impact of cultural and ethnic differences and gender role expectations on bargaining interactions.

The class considers the use of “attitudinal bargaining” to modify the unacceptable behavior of some opponents. Students are reminded how much excessively competitive classmates want to achieve extraordinary results and of the fact that if the less competitive participants are willing to accept the possible consequences of nonsettlements, those students can usually alter the offensive conduct of their competitive adversaries. Once overtly competitive individuals realize they may be forced to forego agreements if they continue to behave inappropriately, they generally conform to expected class norms.

#### IV. STATISTICAL FINDINGS

When an observer attempts to determine whether there may be a relationship between different factors, it is appropriate to establish Null and Alternative Hypotheses. The Null Hypothesis assumes the absence of any correlation, while the Alternative Hypothesis assumes that some relationship in fact exists. The relevant data are then analyzed to determine whether there appears to be a correlation between the factors being compared.

Statistical tests calculate the probability that any observed differences between compared factors are due to random considerations rather than some alternative explanation. The probability that any observed difference is due to chance is referred to as the “p-value.”<sup>24</sup> Social scientists traditionally reject the Null Hypothesis when the p-value pertaining to a discerned difference is less than 0.05, which indicates a probability of less than one in twenty that the observed difference is due

to chance rather than the assumed alternative explanation.<sup>25</sup> When, on the other hand, the probability is high that the observed difference is due to chance – a p-value above 0.05 – social scientists traditionally do not reject the Null Hypothesis.<sup>26</sup>

The logical implications of rejecting or failing to reject a Null Hypothesis are different. Refusing to reject the Null Hypothesis here means that the data provide no substantial evidence that there is any relationship between student race and their performance on Legal Negotiating course exercises.<sup>27</sup> When the p-value is greater than 0.05, social scientists conclude that there is no statistically significant difference between the factors being compared.<sup>28</sup>

In this study, rejecting the Null Hypothesis means that the data provide sufficient evidence that an alternative explanation accounts for any observed relationship between student race and their negotiation exercise performance. In this case, social scientists would conclude that there is a statistically significant correlation between the measured factors.<sup>29</sup> Although it is not certain that the Alternative Hypothesis actually accounts for the measured relationship, it is reasonable to assume the presence of the observed correlation in the absence of any other possible explanation.

This study evaluates the possible relationship between student race and negotiation exercise performance. The Null Hypothesis is that there is no correlation between student race and the results they achieve on Legal Negotiating course exercises. The Alternative Hypothesis is that there is a relationship between student race and the results they achieve on Legal Negotiating course exercises.

Although I have sixteen years of Legal Negotiation course data at George Washington University, I decided to focus on the data covering the past nine years. This decision is based upon the fact that the classes I taught from 1986 through the Spring of 1992 contained insufficient numbers of African-American students to permit meaningful statistical comparisons. For two years

(1988 & 1991), I had no African-American students in my class; for three years (1989, 1990 & Spring 1992), I had only one African-American student; and in 1986, I had two black students.

Beginning with the Fall of 1992, I began to have greater numbers of African-American students in my Legal Negotiation classes. Each class from the Spring of 1992 through the Fall of 2000 included at least three African-American students, with some classes containing five, six, and even seven black students. I thus decided to concentrate on these more recent years, to provide sufficient data samples to permit meaningful statistical comparisons.

Even if racial differences had no statistically significant impact on the results achieved by black and white students on my Legal Negotiation course exercises, a separate factor might induce some observers to anticipate lower average scores by African-American students. As a result of affirmative action admissions policies designed to enhance law student diversity, some African-American students are admitted to law schools with lower undergraduate GPAs and lower LSAT scores than their Caucasian cohorts. To the extent these factors are predictive of success in law school – measured by law school GPAs – one might expect African-American students to have slightly lower law school GPAs than Caucasian students. If this assumption were correct, it might suggest that lower GPA African-American students would perform less well on negotiation exercises than higher GPA Caucasian students.

A comparison of the mean GPAs achieved by African-American and Caucasian students in my Legal Negotiation course from the Fall of 1992 through the Fall of 2000 does indicate slightly lower GPA averages for African-American students than for Caucasian students. A Pearson Correlation Coefficient<sup>30</sup> was computed which resulted in a coefficient of -0.275 comparing the mean GPAs of black students with the mean GPAs of white students. The corresponding p-value of 0.0000

indicates that there is a statistically significant correlation between race and GPAs, with the average GPAs of African-American students being slightly lower than the average GPAs of Caucasian students.

Despite the slight differences in GPA means between black and white Legal Negotiation course students, I did not expect this factor to influence negotiation exercise score results. I had previously evaluated the correlation between student GPAs and negotiation exercise scores for George Washington University students and found no statistically significant correlation.<sup>31</sup> I also calculated a Pearson Correlation Coefficient comparing student GPAs with their respective negotiation exercise scores for the years 1992 through 2000. The coefficient of 0.007 is minuscule, and the corresponding p-value of 0.880 would strongly suggest the absence of any statistically significant relationship between student GPAs and their respective negotiation exercise scores. As a result, I would not expect the slightly lower GPA means for African-American students compared to their Caucasian cohorts to have any meaningful impact on the negotiation scores achieved by black and white Legal Negotiation class students over the past nine years. If any negotiation score differences were found, I would suspect that they would be attributable to the race of the participants rather than to mean GPA differences between black and white students.

To determine whether there are statistically significant differences between the negotiation exercise scores achieved by African-American and Caucasian students, I employed two separate procedures. I first computed the mean scores for black and white students for each of the past nine years, and compared the mean differences using a t-test.<sup>32</sup> The results are set forth in the following Table.

TABLE

t-Test Comparison of Student Race and Negotiation Score Means

Year	N Wht.	N Blk.	Mean Wht. Neg. Score	Mean Blk. Neg. Score	Mean Neg. Score Diff.	Wht. Std. Dev.	Blk. Std. Dev.	P-Value <sup>33</sup>
1992	51	3	41.033	38.333	2.700	9.521	7.422	0.6325
1993	53	4	40.630	34.825	5.805	10.845	13.564	0.3137
1994	52	5	39.665	40.240	-0.575	11.833	11.358	0.9175
1995	44	4	28.941	36.200	-7.259	9.528	7.767	0.1470
1996	44	3	35.016	37.800	-2.784	10.137	9.987	0.6473
1997	34	5	26.797	28.160	-1.363	6.453	7.548	0.6679
1998	31	6	33.855	33.883	-0.028	7.987	8.452	0.9937
1999	41	6	31.661	32.200	-0.539	9.995	6.007	0.8987
2000	32	7	27.572	23.714	3.858	7.722	8.169	0.2432

The statistical data set forth in the Table provide strong support for the Null Hypothesis. There is not a single year for which the t-Test resulted in a mean difference based upon race at the 0.05 – or even the 0.10 – level of statistical significance. For three of the nine years<sup>34</sup> the mean negotiation scores for white students were slightly above the mean scores for black students, while for the other six years,<sup>35</sup> the mean negotiation scores for African-American students were slightly above the mean scores for Caucasian students.

In recognition of the fact that the total number of African-American students in some of the classes was relatively low, I also calculated a Pearson Correlation Coefficient for the aggregate data pertaining to all nine years. The correlation coefficient comparing race with mean negotiation exercise scores was a mere -0.0527, with a p-value of 0.2594. This p-value provides further statistical support for the Null Hypothesis.

The last factor to be evaluated concerns a comparison of the African-American and

Caucasian student standard deviations. For five years,<sup>36</sup> the standard deviations for white students were slightly above those for black students, while the reverse was true with respect to the other four years.<sup>37</sup> These data provide support for the second part of the Null Hypothesis – *i.e.*, no statistically significant difference between white and black student standard deviations.

## V. IMPLICATIONS

Individuals who commence negotiations with people of different races should appreciate the need to establish trusting and cooperative relationships before the serious substantive discussions begin. This approach should significantly enhance the likelihood of mutually beneficial transactions. The preliminary stage of their interaction may be used to generate a modicum of rapport.<sup>38</sup> Negotiators should try to minimize the counterproductive stereotypes they may consciously or subconsciously harbor toward persons of their opponent's ethnicity. If they anticipate difficult interactions as a result of such usually irrational preconceptions, they are likely to generate self-fulfilling prophecies. If they conversely expect their opponents to behave more cooperatively and less manipulatively because of the ethnicity of their adversaries, they may carelessly lower their guard and give those persons an inherent bargaining advantage. They must also try to understand any seemingly illogical reactions their opponents may initially exhibit toward them as a result of those individuals' stereotyping of them.

If the first contact negotiators have with opponents indicates that those persons are expecting highly competitive transactions, they should not hesitate to employ "attitudinal bargaining" to disabuse their opponents of this preconception.<sup>39</sup> They should create cooperative physical and psychological environments. Warm handshakes and open postures can initially diminish combative

atmospheres. Cooperative negotiators can sit adjacent to, instead of directly across from, opponents. In a few instances, it may be necessary to directly broach the subject of negative stereotyping, since this may be the most efficacious way to negate the influence of these feelings.<sup>40</sup>

People who participate in bargaining transactions should recognize that the specific circumstances and unique personal traits of the individual negotiators – rather than generalized beliefs regarding ethnic characteristics – determine the way in which each interaction evolves. Each opponent has to be evaluated and dealt with differently. Is that individual a cooperative or a competitive bargainer? Does the other side possess greater, equal, or less bargaining power concerning the issues to be addressed? What bargaining techniques are likely to influence that person? What negotiating techniques has that individual decided to employ, and what are the most effective ways to counter those tactics? As the instant transaction unfolds, strategic changes will have to be made to respond to unanticipated disclosures or to changed circumstances.

When negotiators find themselves attributing certain characteristics to opponents, they must carefully determine whether those attributes are based on specific information pertaining to those particular opponents or to vague generalizations regarding people of their race. If persons only bargained with individuals of the same race, they would quickly realize how different we all are. Some opponents would behave cooperatively, while others would act in a competitive manner. Some would be congenial, while other would be less pleasant. Some would exhibit win-lose tendencies, while others would evidence win-win attitudes. Techniques that would be effective against some opponents would be ineffective against others.

If, as my data suggest, there is no statistically significant correlation between student race or student GPAs and their ability to achieve beneficial results on negotiation exercises, law firms may

wish to reconsider the degree of reliance they place on student class rank. Although African-American students in my Legal Negotiation class had slightly lower mean GPAs than their Caucasian counterparts, there was no difference in the average negotiation exercise results achieved by black and white students. Law firms that place substantial value on class rank cutoffs may thus disqualify African-American applicants with slightly lower GPAs who would be as likely to perform as well with respect to critical lawyering skills as Caucasian applicants with slightly higher GPAs. I believe that performance in skills courses, such as Legal Negotiation, Client Interviewing and Counseling, and Trial Advocacy, is more predictive of the ability of graduating students to execute fundamental lawyering tasks effectively than their grades in traditional examination courses. My data suggest that this is particularly true with respect to African-American students. It would thus behoove law firms that wish to treat all applicants fairly to look more closely at the grades achieved by African-American students in skills-oriented courses, even when their overall GPAs are slightly below those of Caucasian applicants.

Athletes and other performers who have to retain the services of professional negotiators should not underestimate the bargaining abilities of African-American agents. There is no reason to believe that black negotiators would be less capable in this regard than white agents. Some African-American athletes and performers may think that black agents could not negotiate as effectively with white owners and managers as white agents. Since the African-American students in my Legal Negotiation course achieved results comparable to those attained by Caucasian students in situations in which they were generally interacting with white students because of the reduced number of black classmates, there is no reason to believe that black agents could not deal effectively with white owners and managers. This is especially true today, given the increased number of African-American

general managers and coaches who not only conduct many of the salary negotiations with sports agents, but also have to interact regularly with their white team owners.

## VI. CONCLUSION

The nine years of Legal Negotiation course data evaluated by me indicate the absence of any statistically significant correlation between either student race or student GPAs and the results they achieve on negotiation exercises. These findings would suggest that whatever cultural and behavioral differences may exist between African-American and Caucasian students has no impact on their ability to achieve beneficial negotiation exercise results. Since my data also indicate that the mean GPAs of black students in my course were slightly below the mean GPAs of white students, law firms considering African-American students may wish to look more closely at the performance of those students in skills courses than in conventional law school courses. Individuals, such as athletes, retaining agents to negotiate for them should not discriminate unfairly against African-American attorneys because of unfounded stereotypical fears that they will not be as capable as Caucasian agents.

## ENDNOTES

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1. James G. Sammataro, *Business and Brotherhood, Can They Coincide? A Search Into Why Black Athletes Do Not Hire Black Agents*, 42 HOW. L.J. 535, 546-47 (1999).

2. *See id.* at 547.

3. *Id.* at 548. *See also* Kenneth L. Shropshire, *Sports Agents, Role Models and Race-Consciousness*, 6 MARQ. SPORTS L.J. 267, 269-71 (1996).

4. *Id.* at 554.

5. There have been few studies comparing the negotiating performance of white and black subjects. *See* Earl E. Davis & Harry C. Triandis, *An Experimental Study of Black-White Negotiations*, 1 J. APPLIED SOC. PSYCH. 240, 241 (1971).

6. *See* JAFFREY Z. RUBIN & BERT R. BROWN, THE SOCIAL PSYCHOLOGY OF BARGAINING AND NEGOTIATION 163 (1975).

7. *See* Martin N. Davidson & Leonard Greenhalgh, *The Role of Emotion in Negotiation: The Impact of Anger and Race*, 7 RESEARCH ON NEGOTIATION IN ORGANIZATIONS 3, 20-22 (1999).

8. *See* Sammataro, *supra* note 1, at 555; Shropshire, *supra* note 3, at 277.

9. *See* ANDREA L. RICH, INTERRACIAL COMMUNICATION 51-62 (1974).

10. *See* RUBIN & BROWN, *supra* note 6, at 164.

11. *See id.* at 158.

12. *See* Davidson & Greenhalgh, *supra* note 7, at 22.

13. *See* ROBERT G. HARPER, ARTHUR N. WEINS & JOSEPH D. MATARAZZO, NONVERBAL COMMUNICATION: THE STATE OF THE ART 188 (1978).

14. See DONALD GIFFORD, *LEGAL NEGOTIATION: THEORY AND APPLICATIONS* 8-11 (1989); GERALD WILLIAMS, *LEGAL NEGOTIATION AND SETTLEMENT* 18-39 (1983).

15. See P.S. Fry & K.J. Coe, *Achievement Performance of Internally and Externally Oriented Black and White High School Students Under Conditions of Competition and Co-Operation Expectancies*, 50 BR. J. EDUC. PSYCH. 162, 166 (1980). See also RUBIN & BROWN, *supra* note 6, at 164.

16. Students are required to participate in all five graded exercises, unless they provide good cause for non-participation in particular exercises.

17. See generally Gerald B. Wetlaufer, *The Limits of Integrative Bargaining*, 85 GEO. L.J. 396 (1996).

18. During the practice exercises that do not affect course grades, students negotiate against the same opponents to apprise them of the way in which current bargaining behavior may influence future interactions with the same persons.

19. See Charles B. Craver & David W. Barnes, *Gender, Risk Taking, and Negotiation Performance*, 5 MICH. J. GENDER & LAW 299 (1999).

20. See Charles B. Craver, *Negotiation Ethics: How to Be Deceptive Without Being Dishonest/How to Be Assertive Without Being Offensive*, 38 S. TEX. L. REV. 713 (1997).

21. CHARLES B. CRAVER, *EFFECTIVE LEGAL NEGOTIATION AND SETTLEMENT* (3rd ed. 1997).

22. ROGER FISHER, WILLIAM URY & BRUCE PATTON, *GETTING TO YES: NEGOTIATING AN AGREEMENT WITHOUT GIVING IN* (2nd. Ed. 1991).

23. See CRAVER, *supra* note 23, at 55-180 (discussing the stages of the negotiation process).

24. See DAVID W. BARNES & JOHN M. CONLEY, *STATISTICAL EVIDENCE IN LITIGATION* § 1.13, at 33-34 (1986).

25. See *id.* at 33 n.3.

26. See *id.*

27. *See id.* at 32.

28. *See id.* at 33 n.3. *Statistical significance* refers to the probability that a particular statistic, such as the difference between two numbers, is due to chance rather than to an alternative explanation. *See id.* § 1.14, at 34-35. *Practical significance*, on the other hand, is not a technical term. If a numerical difference is practically significant, it is large enough to influence a rational decision-maker. How large a numerical difference must be to “make a difference” to a decision-maker is solely a matter of judgment for that person. *See id.*

29. *See id.* § 1.13, at 32.

30. *See* BARNES & CONLEY, *supra* note 24, § 7.1, at 338-43.

31. *See* Charles B. Craver, *The Impact of Student GPAs and a Pass/Fail Option on Clinical Negotiation Course Performance*, 15 OHIO ST. J. DISP. RES. 373 (2000).

32. *See* BARNES & CONLEY, *supra* note 24, at § 7.22, at 389-90.

33. Since I had no reason to believe, based upon my prior observations, to expect either group to have average negotiation exercise scores above or below the scores of the other, I used two-tailed, rather than one-tailed, probability values. *See id.* at 142-43.

34. 1992, 1993, and 2000.

35. 1994, 1995, 1996, 1997, 1998, and 1999. For three of these years – 1994, 1998, and 1999 – the mean differences were below 0.60.

36. 1992, 1994, 1995, 1996, and 1999.

37. 1993, 1997, 1998, and 2000.

38. *See* Davidson & Greenhalgh, *supra* note 7, at 19-21.

39. *See* CRAVER, *supra* note 21, at 83-85.

40. *See* Andrea Kupfer Schneider, *Effective Responses to Offensive Comments*, NEGOT. J. 107, 112-13 (April, 1994).