

## **LSAC GRANTS REPORT SERIES**

- **A Study of the Relationship Between Bar Admissions Data and Subsequent Lawyer Discipline**

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## Executive Summary

Every U.S. jurisdiction requires individuals who seek admission to the bar to demonstrate that they possess good moral character. Applicants are required to provide evidence of their personal history and recent behavior based on the assumption that this information predicts whether they will become problem lawyers. This project explores whether the information that is elicited from bar applicants during the admissions process can help predict which applicants will later be subject to lawyer discipline.

The research reported here uses information from the admissions files of lawyers admitted to the Connecticut bar from 1989 to 1992 to compare those who were disciplined with those who were not disciplined. It analyzes information reported during the bar admissions process that may predict later lawyer misconduct including, *inter alia*, prior criminal history, problem credit history, prior employment history, academic misconduct, substance abuse, and psychological history. The study reveals that many of the responses on the admissions application are statistically associated with an elevated risk of future discipline. In logistic regression analysis, statistically significant variables include gender, law school grades, law school prestige, delinquent credit accounts, number of traffic violations, amount of student loan debt, having been a party to civil litigation (excluding divorce), and having been diagnosed with or treated for a psychological disorder.

A second finding is that the relationship between an applicant's characteristics at the time of bar admission and subsequent discipline risk differs depending on the nature of the discipline. Some of our explanatory variables are associated with an increased risk that an applicant will receive serious discipline; a somewhat different set of factors predicts which applicants will go on to receive less severe discipline. This suggests that the disciplined group is heterogeneous, and consists of at least two different subsets of lawyers who misbehave in different ways, and possibly for different reasons.

Although some of the variables on the bar application are associated with a statistically higher likelihood of subsequent discipline, our third—and possibly most important—finding is that these variables nevertheless make very poor predictors of subsequent misconduct. The explanation for this seeming paradox is that the overall baseline likelihood of discipline is so low (only about 2.5% of the 6,159 lawyers in our cohort). Thus, even if some variable (e.g., having defaulted on a student loan) doubles the likelihood of subsequent disciplinary action—a very strong effect—the probability of subsequent discipline for someone with a student loan default is still only 5%. It seems highly unlikely that any regulator would be comfortable denying admission to an applicant who had only a 5% chance of subsequent discipline. Put differently, even knowing that an applicant has a substantially elevated risk of future discipline is probably not sufficient to justify some kind of corrective or preventative action, given the low baseline risk.

## Introduction

Lawyers occupy positions of power and trust in society. When they engage in misconduct, their actions not only hurt vulnerable clients and third parties, but may also undermine public confidence in the legal profession as a whole. In an effort to reduce the likelihood that such harm will occur, every state bar scrutinizes applicants' "moral character and fitness" to practice law.<sup>1</sup> The good character requirement is ostensibly designed to protect both the public and the administration of justice by insuring that only individuals who possess the requisite character and fitness are admitted to the bar.<sup>2</sup> The character inquiry also serves to bolster the legal profession's reputation with the public and to maintain its status and prerogatives as a profession.<sup>3</sup>

In order to demonstrate good character, bar applicants are required to provide detailed information about their backgrounds, including any prior unlawful conduct, academic misconduct, neglect of financial responsibilities, and psychological history. The assumption underlying the inquiry is that "from [such] evidence ... of past misconduct, bar examiners will be able to predict future behavior accurately enough to justify denying some applicants the chance to practice law."<sup>4</sup> The costs of gathering and reviewing these data, however, are not trivial: The process imposes significant time and monetary costs on both applicants and bar authorities and impinges on applicants' privacy. Thus, it is important to understand which—if any—of the data being collected are actually useful in predicting future misconduct.<sup>5</sup>

To date, there have been no studies that validate the accuracy of predictions based on the information collected from bar applicants. This project examines whether the information revealed during the bar application process can be used to predict the likelihood that an applicant will be disciplined later in his or her legal career. We find that answers to some questions on the bar application can suggest which lawyers have an elevated risk of being subsequently disciplined by the bar. However, even an applicant with double the average discipline risk has only a 5% probability of being disciplined, so the admissions data are ultimately not helpful for predicting who will be disciplined. These findings are presented with the caveat that other factors that may influence

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<sup>1</sup> National Conference of Bar Examiners & ABA Section of Legal Education and Admissions to the Bar, *Comprehensive Guide to Bar Admission Requirements 2012*, at vii (Erica Moeser & Claire Huisman eds., 2012) [hereinafter "*Comprehensive Guide*"].

<sup>2</sup> See *id.* Some have suggested that the rationale for such regulations is not primarily protection of the public, but the restriction of supply so as to drive up prices. Richard Posner, for example, has characterized the legal profession as "an intricately and ingeniously reticulated, though imperfect, cartel. Governmental regulations designed to secure the cartel against competition and new entry from without . . . [have] held the cartel together against the dangers that beset and ordinarily would destroy a cartel of many members." Richard A. Posner, *The Material Basis of Jurisprudence*, 69 IND. L. J. 1, 1 (1993).

<sup>3</sup> See Deborah L. Rhode, *Moral Character as a Professional Credential*, 94 YALE L. J. 491, 509–11 (1985); Alice Woolley, *Tending the Bar: The "Good Character" Requirement for Law Society Admission*, 30 DALHOUSIE L. J. 27, 60 (2007).

<sup>4</sup> Jennifer C. Clarke, *Conditional Admission of Applicants to the Bar: Protecting Public and Private Interests*, BAR EXAMINER, May 1995, at 53, 59.

<sup>5</sup> We stress that our analysis throughout should be understood as predictive, rather than causal. Our data and methods do not allow us to say much if anything about *why* some of our independent variables are associated with a higher risk of discipline.

disciplinary outcomes—including practice specialty, firm size, race of lawyer, and socioeconomic status—were not available for this analysis.<sup>6</sup>

## The Character and Fitness Inquiry

### Process and Problems

The official character and fitness inquiry typically begins at the end of law school, when applicants apply for admission to a state bar.<sup>7</sup> It is usually conducted by a bar examining authority (or a “character and fitness” committee) that operates under the supervision of the state court. Applicants complete a lengthy application that reveals detailed information about past conduct, and they may also be required to produce substantiating documentation including driving records, credit histories, and character references. Law schools also contribute information about their graduates’ conduct and academic performance. Each application file is then reviewed by the bar examining authority for completeness and for any information that might reflect adversely on the applicant’s character. A character and fitness hearing may be triggered by, *inter alia*, prior unlawful conduct, academic misconduct, neglect of financial responsibilities, substance dependency, and evidence of psychological problems.<sup>8</sup>

The criteria for demonstrating good character in the bar application process are, however, remarkably unclear. Good character is not directly defined by the National Conference of Bar Examiners, although it is manifested by a record of conduct “that justifies the trust” of clients, the courts, and others.<sup>9</sup> A record revealing a notable deficiency in “honesty, trustworthiness, diligence, or reliability” may constitute a basis for denial of admission.<sup>10</sup> In order to make the character determination, bar examining authorities look at past misconduct, evidence of rehabilitation, and current conduct to assess the individual’s character.

The moral character inquiry ostensibly seeks to determine “whether the present character and fitness of an applicant qualifies the applicant for admission.”<sup>11</sup> In most states, past unlawful conduct merely creates a rebuttable presumption that an applicant

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<sup>6</sup> We also have no idea how many individuals who would otherwise become disciplined lawyers do not pursue legal careers because they know they will be kept out by the character and fitness requirements. Nor do we know the size of type II errors—refusals to admit people who would have been satisfactory lawyers. All of this means that our assessment is necessarily limited.

<sup>7</sup> In a few jurisdictions, the official character and fitness inquiry by bar examiners begins as early as the first year of law school. See, e.g., Texas Board of Law Examiners, Rules Governing Admission to the Bar of Texas, Rule VI (a)–(b), available at <http://www.ble.state.tx.us/Rules/NewRules/rulevi.htm>. Law schools also inquire about an applicant’s character in their applications. See John Dzienkowski, *Character and Fitness Inquiries in Law School Admissions*, 45 S. TEX. L. REV. 921 (2004). In some cases, serious misconduct may serve as a basis for denial of admission to law school.

<sup>8</sup> *Comprehensive Guide*, *supra* note 2, at viii

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Comprehensive Guide*, *supra* note 2, at viii–ix; see also Clarke, *supra* note 5, at 58.

lacks the requisite character to practice law.<sup>12</sup> Bar examining authorities look at a variety of factors when considering any past misconduct including, *inter alia*, the seriousness and recency of the misconduct, the cumulative effect of the conduct, and evidence of rehabilitation.<sup>13</sup> Applicants who fail to express remorse or take responsibility for their misconduct face great difficulty with admission.<sup>14</sup> The applicant's candor in the application process is also considered important evidence of rehabilitation.

There is no shortage of critiques of the character and fitness requirement—either substantively or as applied in practice. The primary substantive critique argues that there is virtually no empirical evidence that the prior acts considered during the character and fitness inquiry (e.g., unlawful conduct, academic misconduct) actually predict which lawyers will later misbehave in practice.<sup>15</sup> The “as applied” critique centers on the arbitrary and inconsistent nature of character determinations.<sup>16</sup> The U.S. Supreme Court has stated that the inquiry should be whether “a reasonable man could fairly find that there are substantial doubts about [the applicant's] ‘honesty, fairness and respect for the rights of others and for the laws of the state and nation.’”<sup>17</sup> The problem, however, is that “reasonable men can readily disagree about what conduct would raise substantial doubts.”<sup>18</sup>

As a practical matter, very few applicants are actually denied admission to the bar on character and fitness grounds. Deborah Rhode's study in the early 1980s found that only 0.2% of all applicants were denied admission on this basis.<sup>19</sup> More recently, denial rates appear to range from 0.15% to 0.48%.<sup>20</sup> But the low denial rate may not mean that the character inquiry is without value. Perhaps the small number of applicants who are denied admission to the bar based on the character inquiry would have engaged in misconduct if allowed to practice law. The character inquiry may also deter an additional

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<sup>12</sup> Keith Swisher, *The Troubling Rise of the Legal Profession's Good Moral Character*, 82 ST. JOHN'S L. REV. 1037, 1045 (2008). In some states, certain misconduct, such as a serious felony, is automatically disqualifying, at least for a period of time. *Comprehensive Guide*, *supra* note 2, at 4–5.

<sup>13</sup> *Comprehensive Guide*, *supra* note 2, at ix.

<sup>14</sup> Aaron M. Clemens, *Facing the Klieg Lights: Understanding the “Good Moral Character” Examination for Bar Applicants*, 40 AKRON L. REV. 245, 289 (2007); Sonya Hoener, *Due Process Implications of the Rehabilitation Requirement in Character and Fitness Determinations in Bar Admissions*, 29 WHITTIER L. REV. 829, 842–46 (2008); Rhode, *supra* note 4, at 545.

<sup>15</sup> See, e.g., Rhode, *supra* note 4, at 496, 546; Roger Roots, *When Lawyers Were Serial Killers: Nineteenth Century Visions of Good Moral Character*, 22 N. ILL. U. L. REV. 19, 35 (2001); Alice Woolley & Jocelyn Stacey, *The Psychology of Good Character: the past, the present and future of good character regulation in Canada*, in REAFFIRMING LEGAL ETHICS: TAKING STOCK AND NEW IDEAS 165, 171–74 (Kieran Tranter et al. eds., 2010).

<sup>16</sup> See, e.g., Swisher, *supra* note 12, at 1064–65; Woolley, *supra* note 4, at 54, 69.

<sup>17</sup> *Konigsberg v. State Bar of California*, 353 U.S. 252, 264 (1957).

<sup>18</sup> Rhode, *supra* note 4, at 530.

<sup>19</sup> *Id.* at 516.

<sup>20</sup> Denial rates based on character and fitness grounds are not easy to obtain. R. David Stamm, former executive director of the Connecticut Bar Examining Committee, estimated that denial rates in Connecticut were consistently 1–2 people (0.14%) per year. Denial rates in Missouri during 2002–2008 ranged from 0.18% to 0.477%. Missouri Board of Law Examiners, *Frequently Asked Questions* (FAQs) (2011), <https://www.mble.org/faq#360>. Applicants may also drop out during the hearing process, although in Connecticut, only three did so from 1989 to 1992, and each of them was admitted to practice elsewhere. The number precluded from ever practicing law on character and fitness grounds is probably lower than suggested by the percentages above, because some applicants who are denied bar admission are given leave to reapply.



number of individuals who are chronically bad actors from ever seeking bar admission. The good character requirement might also have symbolic importance. It may signal to the public that lawyers can be trusted. For the legal profession, the good character requirement may express shared assumptions and values about what it means to be a member of the bar.<sup>21</sup>

The character inquiry is not, however, without significant costs. The character review process undertaken by bar examiners is labor intensive and expensive (requiring review of application materials for completeness and content, follow-up inquiries, interviews, etc.). The effort to amass the required information—often spanning a 10-year time period—is time consuming for applicants. Applicants who are required to participate in hearings find the process exceedingly stressful and, if they hire counsel, expensive. The process can cause embarrassment, interfere with work opportunities, and delay employment.<sup>22</sup>

The inquiry is also costly in less obvious ways. For example, the questions about a bar applicant's psychological history may deter law students from seeking psychological help.<sup>23</sup> Questions about credit history may disadvantage applicants from lower socioeconomic backgrounds. The focus on past criminal conduct may perpetuate racial and class biases, as people of color and the poor are subjected to disparate treatment in the criminal justice system.<sup>24</sup> Indeed, the very existence of the character and fitness inquiry may deter some people from applying to law school who might have made good lawyers had they done so.<sup>25</sup>

There have been no systematic inquiries into whether the character inquiry is useful for weeding out those individuals who will be problematic lawyers. Such inquiries are not easy. Researchers cannot determine whether those who were denied entry to the bar or deterred by the character and fitness inquiry would have become problematic lawyers. We can, however, determine whether any of the information that bar examiners gather when considering whether to admit an applicant can predict whether the applicant is likely to be a problem lawyer once admitted to the bar.

This study looks at the admissions records of 1,343 lawyers admitted to the Connecticut bar from 1989 to 1992 and their subsequent discipline history (if any) in an effort to determine whether any information in the admissions files (e.g., demographic information, prior unlawful conduct, academic misconduct, traffic violations, financial difficulties)—can predict which applicants will later be disciplined. Of course, this study can only analyze the information appearing in admissions files. While supporting documents from law schools, credit agencies, motor vehicle departments, and so forth are included in the application file to verify portions of the applicant's self-report, some

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<sup>21</sup> Rhode, *supra* note 4, at 509.

<sup>22</sup> See, e.g., Jon Bauer, *The Character of the Questions and the Fitness of the Process: Mental Health, Bar Admissions and the Americans with Disabilities Act*, 49 UCLA L. REV. 93, 114–15, 125 (2001).

<sup>23</sup> See *id.* at 124–125, 150–52; Phyllis Coleman & Ronald A. Shellow, *Ask About Conduct, Not Mental Illness: A Proposal for Bar Examiners and Medical Boards to Comply with the ADA and the Constitution*, 20 J. LEGIS. 147, 147 (1994).

<sup>24</sup> Susan Saab Fortney, *Law School Admissions and Ethics—Rethinking Character and Fitness Inquiries*, 45 S. TEX. L. REV. 983, 991–92 (2004); Swisher, *supra* note 12, at 1064.

<sup>25</sup> Dzienkowski, *supra* note 7, at 933; Rhode, *supra* note 4, at 520.

applicants may have willfully failed to disclose other important information.<sup>26</sup> In addition, discipline is an imperfect proxy for the presence of problematic conduct for a variety of reasons, as much lawyer misconduct is never detected, reported, or sanctioned through formal channels.<sup>27</sup> Moreover, bar discipline is jointly determined by the lawyer's misconduct and the behavior of a second actor (disciplinary authorities or the courts), which means that discipline stems from both the misconduct itself and from the disciplinary authorities' reaction to that misconduct. However, bar discipline identifies much of the most serious misconduct, including lawyers who steal from clients and those who are convicted of serious crimes. The imposition of discipline is thus at least a crude measure of whether a lawyer has departed from the standards of professional conduct expected of members of the bar.

## Deviant Lawyers and Other Deviant Professionals

As noted, the character inquiry has been criticized based on the absence of evidence that it succeeds in weeding out those individuals who are likely to do harm if they become lawyers.<sup>28</sup> Commentators have also argued that the character and fitness inquiry cannot reasonably be expected to prevent admission of potentially problem lawyers because the inquiry comes too early to predict which applicants will subsequently misbehave.<sup>29</sup> Lawyers' behavior in practice is significantly affected by factors not known with certainty until after bar admission, including office size, firm culture, practice specialty, and client demands.<sup>30</sup> Most lawyer discipline is imposed on middle-aged males who practice in solo or small law firms.<sup>31</sup> These lawyers tend to work in "personal plight" areas such as criminal law, family law, and personal injury, where disputes are emotionally charged and clients are often vulnerable.<sup>32</sup> Moreover, much of

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<sup>26</sup> For example, mental health history is difficult to ascertain without self-disclosure. In addition, in Connecticut, criminal records were not routinely searched by the Connecticut Bar Examining Committee (CBEC) from 1989 to 1992, so criminal convictions that were not revealed by applicants may not have come to the attention of the CBEC. Each applicant did, however, sign a consent for the CBEC to obtain a variety of records concerning the applicant, including records of arrests or convictions. Thus, it is likely that most applicants self-disclosed convictions on the theory that it was preferable to do so rather than to face additional difficulties in the application process due to lack of candor.

<sup>27</sup> David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799, 824, 830 (1992); see also Leslie C. Levin, *The Ethical World of Solo and Small Law Firm Practitioners*, 41 HOUS. L. REV. 309, 314–15 (2004).

<sup>28</sup> See, e.g., Rhode, *supra* note 4, at 529–32, 555–62; Swisher, *supra* note 12, at 1064.

<sup>29</sup> Rhode, *supra* note 4, at 515.

<sup>30</sup> See JEROME CARLIN, *LAWYER'S ETHICS: A SURVEY OF THE NEW YORK CITY BAR* (1966); LYNN MATHER ET AL., *DIVORCE LAWYERS AT WORK: VARIETIES OF PROFESSIONALISM IN PRACTICE* (2001); Robert Nelson, *Ideology, Practice and Professional Autonomy: Social Values and Client Relationships in the Large Law Firm*, 37 STANFORD L. REV. 503 (1985); Mark C. Suchman, *Working Without a Net: The Sociology of Legal Ethics in Corporate Litigation*, 67 FORDHAM L. REV. 837 (1998). Of course, a lawyer's practice context may be predicted on the basis of data known at the time of application (GPA, rank of law school), so the importance of practice area does not necessarily vitiate prediction based on bar admissions data.

<sup>31</sup> RICHARD L. ABEL, *LAWYERS IN THE DOCK: LEARNING FROM NEW YORK DISCIPLINARY PROCEEDINGS* 54–55, 496 (2008); Patricia W. Hatamyar & Kenneth M. Simmons, *Are Women More Ethical Lawyers? An Empirical Study*, 31 FLA. ST. U. L. REV. 785, 832–34 (2004); Leslie C. Levin, *The Emperor's Clothes and Other Tales About the Standards for Imposing Lawyer Discipline Sanctions*, 48 AM. U. L. REV. 1, 51 n. 230 (1998).

<sup>32</sup> See, e.g., Levin, *supra* note 27, at 314.

the discipline imposed on these lawyers is for neglect of client matters or failure to communicate with clients.<sup>33</sup> This behavior often results from insufficient office support or from taking on too many matters.<sup>34</sup> Neglect also occurs as a result of psychological problems or substance abuse. Indeed, disciplined lawyers often report some depression related to work or life circumstances, alcohol abuse, or family or financial crises.<sup>35</sup> Again, these problems typically arise several years after the character and fitness inquiry occurs.<sup>36</sup>

Only one previous study has sought to explore whether there is, in fact, a relationship between applicants who disclose problematic histories during the bar admissions process and the subsequent imposition of discipline. Carl Baer and Margaret Corneille reviewed 52 disciplined attorneys' bar admissions files and discipline records and compared them to the general population of all Minnesota bar applicants. They found that disciplined lawyers were more likely to reveal evidence of certain types of conduct in their admissions files (e.g., arrests, possible substance abuse, involuntary employment terminations, financial problems) than were other bar applicants.<sup>37</sup> They also found that lawyers who were disciplined were also more likely than other lawyers to have failed the Minnesota bar examination at least once before they passed it. But as Corneille later noted, "the study was not conducted scientifically and involved a very small sample."<sup>38</sup>

Research in other fields may also be relevant to the question of whether there is a relationship between prior misconduct by bar applicants and later misconduct. For example, pre-employment psychological testing has been administered to police officers for more than 85 years.<sup>39</sup> Certain personality measures on the California Psychological Inventory predict unprofessional behavior by law enforcement personnel<sup>40</sup>; similar measures also correlate with subsequent unprofessional behavior by medical

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<sup>33</sup> See, e.g., ABEL, *supra* note 31, at 57–58; Lynn Mather & Craig A. McEwen, *Client Grievances and Lawyer Conduct: The Challenges of Divorce Practice*, LAWYERS IN PRACTICE: ETHICAL DECISION MAKING IN CONTEXT 68–69 (Leslie C. Levin & Lynn Mather eds., 2012).

<sup>34</sup> Levin, *supra* note 27, at 340–45.

<sup>35</sup> ABEL, *supra* note 31, at 90–91, 265–67; Rick B. Allan, *Alcoholism, Drug Abuse and Lawyers: Are We Ready to Address the Denial?* 31 CREIGHTON L. REV. 265, 268–69 (1997); Carol M. Langford, *The Changing Structure of American Law Firms: Depression, Substance Abuse and Intellectual Property Lawyers*, 53 U. KAN. L. REV. 875, 876–77 (2005).

<sup>36</sup> G. Andrew H. Benjamin, et al., *The Prevalence of Depression, Alcohol Abuse, and Cocaine Abuse Among United States Lawyers*, 13 INT'L J. L. & PSYCHIATRY 233, 241 (1990). It is important to note, however, that even if the proximate causes of misbehavior are not known until after the bar application process, it may still be possible to predict subsequent discipline based on bar application data. For example, if low grades increase the likelihood of being a solo practitioner, this may predictably lead to overwork, lack of administrative resources and supervision, and depression, which can cause neglect of client matters, even though the depression itself did not exist at the time of admission.

<sup>37</sup> Carl Baer & Peg Corneille, *Character and Fitness Inquiry: from Bar Admission to Professional Discipline*, BAR EXAMINER, Nov. 1992, at 5, 6–7.

<sup>38</sup> Margaret Fuller Corneille, *Bar Admissions: New Opportunities to Enhance Professionalism*, 52 S. C. L. REV. 609, 619 (2001).

<sup>39</sup> Martin Sellbom et al., *Identifying MMPI-2 Predictors of Police Officer Integrity and Misconduct*, 34 CRIMINAL JUSTICE & BEHAVIOR 985, 986 (2007).

<sup>40</sup> Charles D. Sarchione et al., *Prediction of Dysfunctional Job Behaviors Among Law Enforcement Officers*, J. APPLIED PSYCH., Dec. 1998, at 904, 909.

students.<sup>41</sup> Discrepancies, inconsistencies, or omissions by individuals when supplying life history information (e.g., criminal activity, drug use) prior to being hired significantly differentiated between disciplined and never disciplined law enforcement personnel.<sup>42</sup>

Using a different approach, Papadakis et al. looked at the medical school records of 235 graduates disciplined by state medical boards and compared those records to a control group.<sup>43</sup> They found that disciplinary action by a medical board was strongly associated with prior unprofessional behavior reported in supervisors' narratives during medical school and somewhat less strongly associated with low Medical College Admission Test® (MCAT®) scores and poor grades during the first 2 years of medical school. A different retrospective study of internal medicine residents found that residents with either low professionalism ratings on their resident's evaluation summary or a low score on the internal medicine certification examination had nearly twice the chance of being subsequently disciplined by a state licensing board as their colleagues.<sup>44</sup> Disciplined physicians who were board certified in internal medicine had also had more unsuccessful attempts at passing the internal medicine certification examination than did those in the control group.<sup>45</sup>

No studies have sought to determine whether low Law School Admission Test (LSAT) scores, low grades, or problems with bar passage predict subsequent lawyer discipline. But LSAT scores and law school grades are the strongest predictors of first-time bar passage,<sup>46</sup> and there is some evidence that lawyers who must take the bar examination more than once in order to pass are more likely to subsequently be subject to discipline.<sup>47</sup> It is conceivable that lawyers who performed poorly on these academic measures have more difficulty understanding the substantive law and/or possess weaker critical thinking skills, which may hinder their ability to competently practice law. But it is also possible that lawyers who perform less well on the LSAT, in law school, or on the bar exam are more likely to work in solo or small firm practice settings in which discipline is more likely to be imposed.

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<sup>41</sup> Carol S. Hodgson, *The Relationship Between Measures of Unprofessional Behavior during Medical School and Indices on the California Psychological Inventory*, ACAD. MED., Oct. 2007, at 54, 56.

<sup>42</sup> Michael J. Cuttler & Paul M. Muchinsky, *Prediction of Law Enforcement Training Performance and Dysfunctional Job Performance with General Mental Ability, Personality, and Life History Variables*, 33 CRIM. JUST. & BEHAV. 3, 18 (2006); Sarchione et al., *supra* note 40, at 906, 909.

<sup>43</sup> Maxine A. Papadakis et al., *Disciplinary Action by Medical Boards and Prior Behavior in Medical School*, NEW ENG. J. MED., Dec. 2005, at 2673.

<sup>44</sup> Maxine A. Papadakis et al., *Performance during Internal Medicine Residency Training and Subsequent Disciplinary Action by State Licensing Boards*, ANNALS INTERNAL MED., June 2008, at 869, 873–74.

<sup>45</sup> *Id.* at 872.

<sup>46</sup> Linda F. Wightman, *LSAC National Longitudinal Bar Passage Study (NLBPS)*, LSAC RESEARCH REPORT SERIES 37, 38 (1998).

<sup>47</sup> See Baer & Corneille, *supra* note 37, at 7.

## Data

### General

The study population consisted of all lawyers admitted to the Connecticut bar from 1989 to 1992 ( $N = 6,159$ ).<sup>48</sup> We chose those years as they were the first 4 years in which the Connecticut Bar Examining Committee (CBEC) obtained credit reports and certified driving records for each applicant as part of the character inquiry, which provided a cross-check on some of the information supplied by the applicants. As discipline is imposed infrequently,<sup>49</sup> we looked at lawyers admitted to the Connecticut bar during this 4-year period to ensure that we had a sufficient incidence of the dependent variable. We identified all Connecticut lawyers in that population who had ever been publicly disciplined (e.g., disbarred, suspended, publicly reprimanded) in any U.S. jurisdiction ( $N = 152$ ) by searching through Connecticut lawyer discipline records, as well as discipline records in other jurisdictions. We then excluded people who had died within 5 years of admission to the Connecticut bar, had gone inactive in all jurisdictions within 5 years of admission, or whose last known address was abroad.<sup>50</sup> We randomly selected 1,267 lawyers admitted to the Connecticut bar from 1989 to 1992 who had never been disciplined. We subsequently excluded an additional 68 lawyers whose admissions files could not be located by the CBEC after repeated efforts to do so.<sup>51</sup> The final sample for the regression analysis totaled 1,343 lawyers.

Application data were coded directly from the CBEC's admissions files. Those files contained the completed Connecticut bar application, recommendation forms, employer affidavits, the Dean's certificate, state motor vehicle reports, credit histories, and other correspondence. Discipline data were coded directly from the discipline files maintained by Connecticut's Office of Chief Disciplinary Counsel and the Statewide Grievance Commission. The discipline files typically contained the initial grievance complaint, the finding of probable cause that misconduct had occurred, submissions made to the hearing panel, hearing transcripts, and the final decision imposing sanctions, although some of this information was missing from some files. In some cases, discipline information was also obtained from Connecticut court files and from discipline decisions and records maintained by other states that imposed discipline on the Connecticut lawyers in the study. We were unable to collect longitudinal (time series) data, as no records are available, and soliciting the information from lawyers in our sample would

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<sup>48</sup> In 1991, Connecticut ranked 16<sup>th</sup> in the United States by lawyer population. Barbara A. Curran & Clara N. Carson, American Bar Foundation, *THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN THE 1990S*, at 44 (1994).

<sup>49</sup> Nationwide, 1,760 lawyers received private discipline sanctions and 5009 lawyers received public sanctions in 2009 out of a total of more than 1 million lawyers. ABA *SURVEY ON LAWYER DISCIPLINE SYSTEMS 2009* [hereinafter "SOLD 2009"], Chart II (2010). Some of those lawyers may have received both public and private sanctions. Among all lawyers admitted to the Connecticut bar from 1989 to 1992, approximately 2.5% had incurred lawyer discipline sanctions by the end of 2009. It is not known what percentage of lawyers receive discipline sanctions during their careers.

<sup>50</sup> We excluded lawyers whose last known addresses were outside the United States because we could not confirm that they had not been disciplined in foreign jurisdictions.

<sup>51</sup> Seven of those lawyers whose admissions files could not be located had been disciplined. We coded their discipline files but were not able to include them in the regression analysis.

have been costly and difficult. Therefore, our findings are not able to account for some factors that may affect the likelihood of discipline, including life course events and career trajectories.

## Application Data

TABLE 1  
Frequencies of selected variables for total sample

	Total Sample			
	Percentage	Mean	N	Total N
Male	60.00%		810	1,350
<i>Application Data</i>				
<u>Prior Encounters with the Bar</u>				
Prior Application	7.53%		101	1,342
Prior Discipline	0.37%		5	1,342
<u>Academic History</u>				
Rank of Law School				
1–10	11.71%		157	1,341
11–25	5.15%		69	1,341
Remainder of First Quartile	9.99%		134	1,341
Second Quartile	34.00%		456	1,341
Third Quartile	15.51%		208	1,341
Fourth Quartile	23.64%		317	1,341
LSAT (Percentile)		65.87	1,209	1,209
<u>Credit History</u>				
Non-Student Loan Debt		22.74	1,326	1,326
Student Loan Debt		13.16	1,328	1,328
Delinquent Accounts	8.96%		119	1,328
Bankruptcies	0.30%		4	1,338
<u>Civil, Criminal &amp; Traffic Measures</u>				
Criminal Conviction	2.46%		33	1,340
Ever Have Traffic Violation	53.45%		712	1,332
Number of Traffic Violations		1.01	1,273	1,273
Driver's License Suspensions	6.21%		83	1,337
Litigation Alleging Fraud	0.67%		9	1,340
Civil Litigation	14.58%		195	1,337
<u>Health</u>				
Substance Abuse	0.97%		13	1,343
Psychological Disorder	2.16%		29	1,343

Total N=1,350, Application Data N= 1,343.

Our independent variables come from the information included in the CBEC's admissions files and represent the information available to the CBEC at the time it decided whether or not to admit an applicant (see Appendix Table A-1 for the list of variables and descriptive statistics). Some demographic information was not requested in the application, such as the applicant's race and gender. We were able to determine that the gender composition of the sample was 60% male and 40% female.<sup>52</sup>

In order to determine the "Rank of Law School Attended," we used data from the 1993 *U.S. News and World Report* Rankings.<sup>53</sup> *U.S. News* first published a ranking of the top 10 law schools in 1987, and the top 25 law schools in 1990, but it did not publish a ranking of the top 50 law schools with a tiered ranking of the remaining schools until 1994.<sup>54</sup> The 1993 report, which we used as a proxy for law school prestige, ranked the law schools individually from 1 to 25, and then by quartiles for the remaining law schools. We coded law school rank as a series of dummy variables, separating schools into the top 10, 11–25, the remainder of the first quartile, the second quartile, third quartile, and fourth quartile. In our sample, 16.86% attended the top 25 schools, 9.99% attended schools in the remainder of the first quartile, 34% attended law schools in the second quartile, 15.51% attended schools in the third quartile, and 23.64% attended the lowest ranked schools.<sup>55</sup>

Lawyers in our sample took several different versions of the LSAT, and some did not take it at all.<sup>56</sup> The Law School Admission Council (LSAC) recommends that LSAT scores across different iterations of the test be compared using percentile score distributions, as "[s]cores cannot be converted from one scale to another in a fashion that would permit confidence that the converted score has the same meaning as scores

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<sup>52</sup> As a measure of gender, we looked at the names of each lawyer and recorded Male or Female for those with obviously gendered names. For the remaining lawyers, we consulted voter registration and other records that clarified the gender for all but one lawyer.

<sup>53</sup> *America's Best Graduate Schools: Law*, U.S. NEWS & WORLD REPORT, March 22, 1993, at 51.

<sup>54</sup> William D. Henderson & Andrew P. Morriss, *Student Quality as Measured by LSAT Scores: Migration Patterns in the U.S. News Rankings Era*, 81 IND. L. J. 163, 167 (2006). The top 50 schools were not ordinarily ranked until 1994. *Id.*

<sup>55</sup> Connecticut has three law schools: Yale, the University of Connecticut, and Bridgeport (now Quinnipiac). At the time the admissions data were compiled, these schools were located in Tiers I, III, and V. As the table below makes clear, none of these schools' graduates made up a majority of the applicants for admission in any of the tiers, so we can be reasonably confident that the "Law School Rank" variable actually measures the broad effect of law school ranking, not merely the narrow effect of having gone to a particular law school.

Distribution of Applicants by Tier and Law School, for Connecticut Law Schools

Yale graduates as share of Tier I applicants	16.56%
UConn graduates as share of Tier III applicants	34.65%
Bridgeport graduates as share of Tier V applicants	44.16%

<sup>56</sup> The LSAT was first administered in 1948–1949 and was not widely adopted until the 1960s. Some of the lawyers in the sample who were admitted to the Connecticut bar during the period from 1989 to 1992 had previously been admitted in other jurisdictions, which is why some of the applicants did not take the LSAT. There were 134 applicants who did not report their LSAT score; some of them did not take the test and others simply omitted this information. In addition, some of the applicants may have taken the LSAT before June 1982, when it had a different scoring system from later iterations of the test.

originating on the scale to which the conversion is made.”<sup>57</sup> We used percentile data from LSAC to estimate a percentile score for each applicant who took the LSAT.<sup>58</sup>

## Discipline Data

Our dependent variable in the analysis is whether or not a lawyer was disciplined between the time of bar admission in Connecticut and 2010. In some ways, the imposition of disciplinary sanctions is not an ideal dependent variable, because it potentially confounds the behavior of at least three separate actors: a lawyer (whose initial behavior generates a complaint); a complainant (who has to decide whether or not to file a grievance); and the bar’s disciplinary authorities (who have to decide whether to impose sanctions). Nevertheless, we believe that the best way to capture lawyer misbehavior is by looking at the imposition of sanctions. Other methods of measuring lawyer misconduct, for instance looking at grievances filed or probable cause determinations, are more problematic. Grievances often do not reflect any misconduct by a lawyer—it is not uncommon to find grievances filed against lawyers by disgruntled clients who are unhappy with the results or the bill, or occasionally by opposing lawyers who are trying to gain a litigation advantage. Probable cause determinations by the disciplinary authorities are also poor measures of lawyer misconduct because the standard for finding probable cause is low, and the findings were often made simply because a lawyer failed to respond to the grievance. Moreover, it was not possible to obtain information about grievances or probable cause determinations in jurisdictions outside of Connecticut.

The use of discipline sanctions as the dependent variable is also problematic due to jurisdictional variations. Every state and the District of Columbia has a lawyer discipline system that can impose discipline on lawyers admitted to their bars, and most of the lawyers in the sample were admitted to the bar of at least one jurisdiction in addition to Connecticut. All jurisdictions impose public discipline in the form of disbarments and suspensions, and some form of public reprimand for less serious misconduct; many also impose conditions such as probation or some continuing legal education (e.g., an ethics or law office management course).<sup>59</sup> Private discipline can be imposed for “minor” misconduct in most jurisdictions, although Connecticut and a handful of other jurisdictions do not impose private sanctions.<sup>60</sup> Thus, disciplinary sanctions do not have equivalent meanings in each jurisdiction, and are imposed by decision makers working within different systems who apply somewhat different standards.

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<sup>57</sup> Law Services, *The Law School Admission Test: Sources, Contents, Uses*, at 21 (1991).

<sup>58</sup> According to LSAC, 80% of law students take the LSAT in the year prior to their admission to law school, and 15–20% take the exam in the same year that they enter law school. We used these weights in computing an applicant’s rank in the LSAT score distribution.

<sup>59</sup> Levin, *supra* note 31, at 20–24. In many states, including Connecticut, the conditions constitute—or are considered part of—public discipline.

<sup>60</sup> As of 2009, there were 11 other jurisdictions that did not impose private discipline sanctions, including the District of Columbia, Florida, Illinois, Maryland, and New Jersey. SOLD 2009, *supra* note 49, at Chart II. Nevertheless, most of them imposed private discipline for at least some period from 1989 to 2009.



Unfortunately, information about private discipline is often impossible to obtain.<sup>61</sup> This is not a problem in Connecticut, our primary jurisdiction of interest, where private discipline is not imposed. But about 75% of the Connecticut lawyers in the study were also admitted in another jurisdiction. We searched publicly available lawyer discipline databases and directly contacted out-of-state disciplinary authorities in order to identify each lawyer admitted in Connecticut from 1989 to 1992 who was disciplined in any U.S. jurisdiction. In some cases, disciplinary authorities informed us if any of the lawyers in our sample who were also admitted in their jurisdictions had been privately disciplined there. Occasionally, we also found descriptions of private discipline imposed on a lawyer in public documents that recounted prior discipline history. In many cases, however, we were unable to determine whether a lawyer in our sample who was admitted in another jurisdiction had been privately disciplined by that jurisdiction.<sup>62</sup>

## Analysis

### Description of Disciplined Lawyers

Lawyers may be professionally disciplined for misconduct in connection with their duties and obligations as a lawyer. They may also be disciplined for criminal or other behavior that is not specifically related to their work, but is deemed unacceptable for someone in a position of civic trust. Twenty-eight lawyers received sanctions because they were convicted of crimes,<sup>63</sup> including conspiracy to commit murder, drug trafficking, and grand larceny, and lesser crimes such as driving under the influence, though some of these lawyers also received sanctions for independent incidents of misconduct.

Characterizing the offenses for which lawyers were disciplined turns out to be difficult. The disciplinary decisions provide information on the particular professional rule or rules a lawyer was found to have violated. For each discipline sanction, coders recorded the rules that were listed by the disciplinary committee or the court as having been violated. While rule violations provide a standardized way to characterize misconduct (Table 2), the measure is not unproblematic. A single rule is often broad enough to encompass both minor violations and substantially more serious problems. For instance, a violation of Rule 1.4, “Communication,” may be found when a lawyer neglects to adequately advise a client of developments in a case; but the rule also

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<sup>61</sup> Leslie C. Levin, *The Case for Less Secrecy in Lawyer Discipline*, 20 GEO. J. LEGAL ETHICS 1, 3, 20 (2007). In addition, some states also have diversion programs, which permit lawyers who commit minor misconduct to avoid the imposition of discipline by complying with certain requirements, such as attending a law office management course. *Id.* at 3–5. This information is also private, and only a few jurisdictions would confirm that the Connecticut lawyers also admitted to the bar in their states had not been subject to diversion.

<sup>62</sup> We discuss the possible consequences of this problem in the Appendix. While missing data are always a legitimate theoretical concern, there are reasons to believe the problem is unlikely to be severe in our sample.

<sup>63</sup> One of these lawyers resigned and waived the right to reapply before the conviction occurred. Another lawyer included in this category was found not guilty by reason of a mental defect, but due to the severity of his misconduct, he was committed to a psychiatric facility and was placed on interim suspension.

applies to a lawyer who never returns phone calls and eventually abandons his or her practice with no forwarding address. Moreover, the same conduct sometimes violates more than one rule.

Table 2 presents a crude taxonomy of the distribution of rule violations.<sup>64</sup> The table excludes criminal convictions and violations of Rule 8.4, which are often appended to findings of other rule violations.<sup>65</sup> The most common disciplinary rules violated were Rule 1.4 (Communication) and Rule 1.3 (Diligence), which is similar to reports in other jurisdictions. Together, these violations accounted for nearly 38% of the total violations cited by the disciplinary committee and the courts. The next most common violations involved Rule 1.15 (Safekeeping of Client Property), which includes, *inter alia*, the theft of client funds, the failure to properly maintain client trust accounts, and the failure to promptly turn over client funds to the client. Some of the other rule violations that occurred with some frequency appear below.

TABLE 2  
*Rules violated by disciplined lawyers*

Type of Violation For Which Sanctions Were Imposed <sup>a</sup>	Number of Times Cited <sup>b</sup>	% of Total
Communication (Rule 1.4)	87	20.00%
Diligence (Rule 1.3)	78	17.93%
Safekeeping of Client Property (Rule 1.15)	49	11.26%
False Statement or Failure to Respond in Disciplinary Matter (Rule 8.1) <sup>c</sup>	36	8.28%
Conflicts of Interest (Rules 1.7, 1.8, 1.9)	29	6.67%
Fees (Rule 1.5)	29	6.67%
Competence (Rule 1.1)	18	4.14%
Candor to the Tribunal (Rule 3.3)	12	2.76%
Terminating the Representation (Rule 1.16)	14	3.22%
Other	83	19.08%
Total	435	100.00%

<sup>a</sup> The rule numbers correspond to the Connecticut Rules of Professional Conduct, which are largely based on the Model Rules of Professional Conduct. Where rule violations were found under another state's rules of professional conduct, a determination was made as to which Connecticut rule would have been violated in order to calculate the numbers in Table 2.

<sup>b</sup> This reflects the rules of professional conduct that were found to have been violated when the disciplinary committee or court imposed a sanction. The numbers in Table 2 do not add up to the number of disciplined lawyers, because a single complaint may result in a finding that several rules were violated, and the lawyers were sometimes sanctioned on more than one occasion.

<sup>c</sup> This includes some instances where failure to respond to a disciplinary complaint was found under Connecticut Practice Book 2-32 rather than under Rule 8.1.

<sup>64</sup> In some cases, lawyers received a single sanction for multiple unrelated grievances and so the same rule may have been violated, for example, in two separate matters. We count those instances as two violations of the same rule.

<sup>65</sup> Rule 8.4, titled "Misconduct," states, *inter alia*, that it is professional misconduct to violate or attempt to violate the disciplinary rules, to commit a criminal act that adversely reflects on the lawyer's fitness, to engage in conduct involving fraud or dishonesty, or to engage in conduct that is prejudicial to the administration of justice. By its terms, a Rule 8.4 violation can be found in any case in which a rule violation or an attempted violation occurs.

We think a more fruitful way to characterize the types of lawyers who were disciplined is to look at the severity of the sanction imposed. We broke the disciplined lawyers into two categories—*severely disciplined* and *less severely disciplined*—defined as follows:

**Severely disciplined lawyers:** These lawyers, at some point after admission to the Connecticut bar, were suspended for 2 or more years, were disbarred, or resigned and waived the right to reapply (in response to charges of serious misconduct). This group also includes (a) lawyers whose misconduct resulted in interim suspensions of indeterminate length due to serious misconduct that probably would have resulted in severe discipline and (b) lawyers who were placed on inactive/disability status after engaging in serious misconduct that otherwise probably would have resulted in severe discipline.<sup>66</sup>

**Less severely disciplined lawyers:** These lawyers received lesser forms of discipline, including shorter suspensions, reprimands, and conditions such as probation.

Table 3 breaks down the disciplined lawyers by severity of discipline imposed. As we argue below, the two types of sanctions appear to track distinct types of misbehavior, and are in turn predicted by different variables.

TABLE 3  
*Number and percentage of disciplined lawyers, by severity*

	Number	% of Total
Less Severely Disciplined	94	61.84%
Severely Disciplined	58	38.16%
Total	152	100

This table is reproduced from the article "The Questionable Character of the Bar's Character and Fitness Inquiry" by Leslie C. Levin, Christine Zozula, and Peter Siegelman forthcoming in Volume 39 of *Law & Social Inquiry* © American Bar Foundation.

<sup>66</sup> There were 58 severely disciplined lawyers, and we had bar application data for 56 of them.

For those who were disciplined, the average length of time between admission and the filing of a grievance leading to a sanction was 10.74 years. At the time the grievance complaint was filed, most of the lawyers were working in solo or small (2–3 lawyer) law firms.<sup>67</sup> Most of the lawyers (72.37%) were disciplined only once, and the majority of those lawyers (56.88%) received no greater sanction than a public reprimand. However, approximately one third of the lawyers (35.45%) who were disciplined only once were severely disciplined. Almost 28% of the disciplined lawyers were disciplined more than once, and many of them could be considered recidivists.<sup>68</sup>

In some cases, psychological issues or substance abuse seemingly contributed to the lawyer's misconduct. We recorded when the discipline files reflected that a lawyer claimed that these issues were part of the explanation for the misconduct, or were referred to as part of an apology or a mitigating circumstance. In other cases, there were brief references to these issues in the discipline files, but they were not as directly connected to the misconduct. In total, 36 (23.68%) of the disciplined lawyers may have experienced psychological issues which may have directly or indirectly contributed to their misconduct.<sup>69</sup> Of these 36 lawyers, 23 explicitly cited psychological issues as a contributing or mitigating circumstance, and the remaining 13 lawyers had files containing information that made reference to psychological issues. Twelve (7.89%) of the disciplined lawyers may have had substance abuse issues that contributed to their misconduct, although only seven lawyers cited substance abuse as specifically connected to their misconduct. Seven lawyers evidenced both substance abuse and psychological issues.

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<sup>67</sup> It was not always possible to determine whether lawyers were working in solo firms or whether they had one or two other lawyers working with them. In order to make that determination, we relied on transcripts and other materials in the disciplinary files. Where the lawyer made explicit reference to being a solo practitioner or to having a partner or an associate, we accepted those representations. In some cases witnesses testified who shed light on this question. We also relied on the lawyer's letterhead, when available, indicating the number of lawyers in the practice; but the letterhead was sometimes ambiguous and may not have always reflected the lawyer's most current office affiliations.

<sup>68</sup> In a few cases, lawyers who received multiple sanctions did not receive the first sanction before the second complaint was filed and might not properly be termed recidivists. It should also be noted that in some cases, lawyers received multiple complaints but only a single sanction, and while they were not recidivists, they were repeat offenders.

<sup>69</sup> Coders noted when substance abuse, psychological issues, or health issues were explicitly discussed in the discipline files as contributing to misconduct. However, there were some instances where these issues were not explicitly discussed in relation to the misconduct, but there was a strong reason to suspect that they were present. We coded when there was reason to suspect that substance abuse or psychological problems may have been an issue separately from coding when these issues were explicitly discussed. Reasons for suspicion of substance abuse included information from outside sources, details of the offense type (drug arrests), and known abuse within a few years of the misconduct.

## Differences Between the Disciplined and Never Disciplined Groups

Table 4 presents a broad overview of the differences between the disciplined and never disciplined lawyers (for the analysis of all variables, please refer to Appendix Table A-3). Three conclusions are apparent.

First, at the time of application, there are some sharp contrasts along many variables between the group of lawyers who were subsequently subject to discipline and those who were not. Second, these differences are largely in line with intuitions about factors that would predict future misbehavior.

For example, as Table 4 indicates, while 16.6% of the disciplined lawyers were female, 42.7% of those in the never disciplined lawyer sample were women. The overrepresentation of men among the disciplined lawyers is consistent with studies of lawyer misconduct in other jurisdictions.<sup>70</sup> Similarly, lawyers who were subsequently disciplined were more than twice as likely to report having had a pre-application psychological problem as those who were not (4.1% vs. 1.9%). They were also more than twice as likely to report having had a pre-application criminal conviction (5.6% vs. 2.1%), having had their driver's license suspended (13.1% vs. 5.4%), having had delinquent credit accounts (23.8% vs. 7.2%), and having attended a law school ranked in the lowest quartile (44.4% vs. 21.1%). What is striking about Table 4 is thus not just the size of these contrasts, but their consistent overall pattern: At the time of application to the bar, subsequently disciplined lawyers were manifestly "worse" on a variety of measures of socially disfavored variables.

Third, Table 4 makes it clear that while the predictor variables differ strongly across the two groups, their absolute levels are mostly quite low. For example, even though disciplined lawyers are more than twice as likely as never disciplined lawyers to have had their driver's licenses suspended, the overall prevalence of license suspensions (6.21%) is still very small in absolute terms. The implication is that the data do not provide a very powerful basis for predicting the likelihood of future discipline, as we explain in more detail in the Discussion section below.

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<sup>70</sup> See, e.g., Francesca Bartlett, *Professional Discipline Against Female Lawyers in Queensland: A Gendered Analysis*, 17 GRIFFITH L. REV. 301, 316–17 (2008); Hatamyar & Simmons, *supra* note 31, at 786, 800; Debra Moss Curtis & Billy Jo Kaufmann, *A Public View of Attorney Discipline in Florida: Statistics, Commentary, and Analysis of Disciplinary Actions Against Licensed Attorneys in the State of Florida from 1988–2002*, 28 NOVA L. REV. 669 (2003–04).

TABLE 4

*Weighted t-tests (selected variables): Never disciplined and ever disciplined*

	Never Disciplined	Ever Disciplined	Never Disciplined– Ever Disciplined	<i>N</i>
Female	0.427	0.166	0.262***	1,343
Prior Application	0.067	0.145	–0.078*	1,342
<u>Rank of Law School</u>				
1–10	0.118	0.111	0.007	1,341
11–25	0.057	0.007	0.050***	1,341
Remainder of First Quartile	0.104	0.063	0.042†	1,341
Second Quartile	0.353	0.229	0.124**	1,341
Third Quartile	0.156	0.146	0.010	1,341
Fourth Quartile	0.211	0.444	–0.233***	1,341
Discipline, Academic Deficiency	0.068	0.104	–0.036	1,339
Discipline, Other	0.008	0.007	0.001	1,339
Defaulted on a Student Loan	0.024	0.069	–0.045*	1,343
Judgment Against by Creditor	0.013	0.035	–0.021	1,342
Delinquent Accounts	0.072	0.238	–0.166***	1,342
Bankruptcies	0.003	0.000	0.003*	1,338
Non-Student Loan Debt	21.618	32.058	–10.440	1,329
Student Loan Debt	12.547	18.189	–5.642***	1,328
Criminal Conviction	0.021	0.056	–0.035†	1,340
Number of Traffic Violations	0.946	1.604	–0.659***	1,273
Driver's License Suspensions	0.054	0.131	–0.077**	1,337
Civil Litigation	0.133	0.252	–0.119**	1,337
Litigation Alleging Fraud	0.007	0.007	0.000	1,340
Substance Abuse	0.009	0.014	–0.005	1,343
Psychological Disorder	0.019	0.041	–0.022	1,343

† $p < .10$ , \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

Missing cases excluded.

All variables are expressed in percentages of total for each group, with the exception of Student Loan Debt and Non-Student Loan Debt (in \$1,000s) and Number of Traffic Violations (mean).

Of course, not every variable in Table 4 is associated with the disciplined group. For instance, none of the disciplined lawyers reported bankruptcy on their applications, as compared to four of the never disciplined lawyers. Also, the rates of probation, suspension, or expulsion (for academic deficiency or nonacademic reasons), mental health issues, and substance abuse do not significantly vary between the disciplined and never disciplined groups.<sup>71</sup>

### **Differences Between Severely, Less Severely, and Never Disciplined Groups**

So far, we have treated discipline as a simple dichotomous variable. But not all lawyer discipline is the same: Some lawyers are removed from practice for serious misconduct, while others are merely reprimanded for minor offenses. It is possible that the apparent differences between the ever disciplined and the never disciplined lawyers in our sample are driven by the worst offenders. In the extreme, those who received only minor discipline might be indistinguishable from their never disciplined peers, with only the small subset of the worst offenders responsible for the differences in means between the two groups. Alternatively, perhaps very serious misconduct (leading to severe discipline) is largely attributable to factors that are uncorrelated with any of the observed variables, so that the differences between ever disciplined and never disciplined lawyers are largely accounted for by the behavior of the least-serious offenders.

In general, Tables 5–7 demonstrate a surprising result: The severely disciplined group looks somewhat more like the never disciplined group than like the lawyers who were less severely disciplined. (See Appendix Tables A-3 and A-4 for the *t*-tests of all variables.)

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<sup>71</sup> Six of the disciplined lawyers revealed an incidence of a psychological diagnosis or treatment on their bar applications. Two lawyers revealed an incidence or treatment of substance dependency or abuse. If we include applicants who reported convictions for driving under the influence (DUIs) in our measurement of substance abuse, there are an additional four lawyers in this category. Even counting these lawyers with DUIs, of the 145 lawyers for whom we have admissions data, only 6 (4.14%) disclosed information relating to substance abuse or treatment. This is substantially different from the Minnesota lawyers described by Corneille and Baer, who reported that 14 of 52 disciplined lawyers (26.9%) had bar applications that disclosed histories indicating possible alcohol or substance abuse. See Baer & Corneille, *supra* note 37, at 6. It is unclear what accounts for these differences.

TABLE 5

*Weighted t-tests (selected variables): Never disciplined and less severely disciplined*

	Never Disciplined	Less Severely Disciplined	Never Disciplined– Less Severely Disciplined	N
Female	0.427	0.191	0.236***	1,287
Prior Application	0.067	0.169	–0.102*	1,286
<u>Rank of Law School</u>				
1–10	0.118	0.034	0.084***	1,285
11–25	0.057	0.011	0.045**	1,285
Remainder of First Quartile	0.104	0.080	0.025	1,285
Second Quartile	0.353	0.239	0.114*	1,285
Third Quartile	0.156	0.080	0.077*	1,285
Fourth Quartile	0.211	0.557	–0.346***	1,285
Discipline, Academic Deficiency	0.068	0.136	–0.068†	1,283
Discipline, Other	0.008	0.000	0.008**	1,283
Defaulted on a Student Loan	0.024	0.080	–0.055†	1,285
Judgment Against by Creditor	0.013	0.046	–0.032	1,286
Delinquent Accounts	0.072	0.264	–0.192***	1,272
Bankruptcies	0.003	0.000	0.003*	1,282
Non-Student Loan Debt	21.618	27.554	–5.936	1,271
Student Loan Debt	12.547	18.646	–6.099**	1,273
Criminal Conviction	0.021	0.046	–0.025	1,284
Number of Traffic Violations	0.946	1.598	–0.652**	1,221
Driver's License Suspensions	0.054	0.101	–0.047	1,281
Civil Litigation	0.133	0.299	–0.166**	1,281
Litigation Alleging Fraud	0.007	0.011	–0.004	1,284
Substance Abuse	0.009	0.023	–0.013	1,287
Psychological Disorder	0.019	0.067	–0.048†	1,287

† $p < .10$ , \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

Missing cases excluded. All variables are expressed in percentages of total for each group, with the exception of Student Loan Debt and Non-Student Loan Debt (in \$1,000s) and Number of Traffic Violations (mean).



### *Academic Record/Professional Qualifications*

The severely disciplined lawyers were academically somewhat stronger than the less severely disciplined lawyers. For example, the severely disciplined lawyers had the highest enrollment in top 25 law schools; overall, they attended less prestigious law schools than the never disciplined group, but more prestigious law schools than the less severely disciplined group (see Tables 6 and 7). The severely disciplined lawyers experienced less discipline in college or law school for academic deficiency than both the never disciplined lawyers and the less severely disciplined lawyers (Tables 6 and 7). Finally, approximately 6.7% of the never disciplined group failed the Connecticut bar examination on at least one occasion prior to admission, as compared to a nonsignificant difference of 10.7% of the severely disciplined group (see Table 6), and 16.9% of the less severely disciplined group ( $p < .05$ , Table 5).

### *Nonacademic Measures*

On balance, the disciplined lawyers had somewhat more problematic credit histories than the never disciplined lawyers, with the less severely disciplined lawyers often demonstrating more credit problems than the severely disciplined lawyers (see Tables 5 and 7). None of the disciplined lawyers declared bankruptcy, but about 8% of the less severely disciplined lawyers had defaulted on a student loan as compared to 2.4% of the never disciplined lawyers ( $p < .10$ ) and 5.4% of the severely disciplined group (not significant). A little over 26% of the less severely disciplined lawyers had delinquent accounts as compared to slightly under 20% of the severely disciplined lawyers and about 7% of the never disciplined lawyers ( $p < .001$ ). However, the severely disciplined group had more non-student loan debt than both the never disciplined group and the less severely disciplined group. The severely disciplined group also had almost \$5,000 (40%) more student loan debt than the never disciplined group ( $p < .01$ ), but the less severely disciplined group had about \$1,000 more student loan debt than the severely disciplined group (though the difference was not significant).

TABLE 6

*Weighted t-tests (selected variables): Never disciplined and severely disciplined*

	Never Disciplined	Severely Disciplined	Never Disciplined– Severely Disciplined	N
Female	0.427	0.125	0.302***	1,254
Prior Application	0.067	0.107	–0.040	1,253
<u>Rank of Law School</u>				
1–10	0.118	0.232	–0.114*	1,253
11–25	0.057	0.000	0.057***	1,253
Remainder of First Quartile	0.104	0.036	0.069**	1,253
Second Quartile	0.353	0.214	0.139*	1,253
Third Quartile	0.156	0.250	–0.094	1,253
Fourth Quartile	0.211	0.268	–0.057	1,253
Discipline, Academic Deficiency	0.068	0.054	0.014	1,251
Discipline, Other	0.008	0.018	–0.010	1,251
Defaulted on a Student Loan	0.024	0.054	–0.029	1,253
Judgment Against by Creditor	0.013	0.018	–0.005	1,254
Delinquent Accounts	0.072	0.196	–0.124*	1,241
Bankruptcies	0.003	0.000	0.003*	1,250
Non-Student Loan Debt	21.618	39.265	–17.647	1,238
Student Loan Debt	12.547	17.448	–4.901*	1,239
Criminal Conviction	0.021	0.071	–0.050	1,252
Number of Traffic Violations	0.946	1.615	–0.669*	1,191
Driver's License Suspensions	0.054	0.179	–0.125*	1,248
Civil Litigation	0.133	0.179	–0.046	1,250
Litigation Alleging Fraud	0.007	0.000	0.007**	1,253
Substance Abuse	0.009	0.000	0.009**	1,254
Psychological Disorder	0.019	0.000	0.019***	1,254

† $p < .10$ , \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

Missing cases excluded. All variables are expressed in percentages of total for each group, with the exception of Student Loan Debt and Non-Student Loan Debt (in \$1,000s) and Number of Traffic Violations (mean).

TABLE 7

*Weighted t-tests (selected variables): Severely disciplined and less severely disciplined*

	Severely Disciplined	Less Severely Disciplined	Severely Disciplined–Less Severely Disciplined	N
Female	0.125	0.191	–0.066	145
Prior Application	0.107	0.169	–0.062	145
<u>Rank of Law School</u>				
1–10	0.232	0.034	0.198**	144
11–25	0.000	0.011	–0.011	144
Remainder of First Quartile	0.036	0.080	–0.044	144
Second Quartile	0.214	0.239	–0.025	144
Third Quartile	0.250	0.080	0.171*	144
Fourth Quartile	0.268	0.557	–0.289***	144
Discipline, Academic Deficiency	0.054	0.136	–0.082†	144
Discipline, Other	0.018	0.000	0.018	144
Defaulted on a Student Loan	0.054	0.080	–0.026	144
Judgment Against by Creditor	0.018	0.045	–0.027	144
Delinquent Accounts	0.196	0.264	–0.068	143
Bankruptcies	0.000	0.000	0.000	144
Non-Student Loan Debt	39.265	27.553	11.712	143
Student Loan Debt	17.448	18.646	–1.198	144
Criminal Conviction	0.071	0.046	0.026	144
Number of Traffic Violations	1.615	1.598	0.017	134
Driver's License Suspensions	0.179	0.101	0.078	145
Civil Litigation	0.179	0.299	–0.120†	143
Litigation Alleging Fraud	0.000	0.011	–0.011	143
Substance Abuse	0.000	0.023	–0.023	145
Psychological Disorder	0.000	0.067	–0.067*	145

† $p < .10$ , \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

Missing cases excluded.

All variables are expressed in percentages of total for each group, with the exception of Student Loan Debt and Non-Student Loan Debt (in \$1,000s) and Number of Traffic Violations (mean).

There were only small differences between the severely disciplined and less severely disciplined groups on measures of criminal convictions, traffic violations, license suspensions, and civil litigation (see Table 7), and both disciplined groups reported more problems than the never disciplined group (see Tables 5 and 6). The differences between the severely disciplined and less severely disciplined were only statistically significant for civil litigation (excluding divorce).<sup>72</sup>

<sup>72</sup> We excluded divorce from the civil litigation measure because we believed it was substantively different from the other instances of civil litigation, which primarily consist of small claims and personal injury suits.

Perhaps surprisingly, there were no reported instances of mental health or substance abuse problems among those applicants who would go on to receive severe discipline. Instead, it was the less severely disciplined group that was significantly more likely to reveal a higher rate of mental health issues (6.7% vs. 0%,  $p < .05$ , Table 7). Thus, although we later conclude that mental health problems are associated with a higher discipline risk, we note at the outset that this risk is entirely driven by those who received less severe discipline.

In sum, the variable-by-variable comparisons in Tables 4–7 demonstrate that there are some statistically and quantitatively significant differences between the never disciplined and disciplined groups across specific variables. The comparisons do not tell us, however, how significant these differences are for predicting the likelihood of discipline, and of course they only consider each variable individually, without controlling for the effects of other possibly relevant covariates. For that, we turn to regression analysis.

## Logistic Regression Analysis

We use logistic regression analysis to assess the effects of the independent or explanatory variables (measured at the time a lawyer is admitted to the bar) on the probability that he or she will subsequently be disciplined, controlling for all other independent variables included in the regression. Logistic regression is widely used when the dependent variable (here, whether or not a lawyer was disciplined) can take on only one of two possible values (yes/no or 1/0). The regression provides efficient (minimum variance) and unbiased estimates of the effect of each independent variable on the dependent variable, controlling for the presence of all other independent variables that are included in the regression.

Table 8 presents our basic model predicting the probability of discipline. The coefficients in this logistic regression are marginal effects that capture the change in the probability of discipline from a one-unit change in the independent variable of interest.<sup>73</sup> The regression is weighted to reflect the fact that we have application data for all but seven of the disciplined lawyers admitted from 1989 to 1992, and a random sample of roughly 20% of the never disciplined lawyers. A useful starting point is the observation that the baseline probability of discipline (with no controls) is roughly 150/6,200, or 2.4%.

Since theory provides relatively little guidance for specification, we start with Model 1, which includes all of the available explanatory variables. The results are largely in line with expectations. With a few exceptions, coefficients have the appropriate signs; and those with “incorrect” signs are almost statistically insignificant. Importantly, however, even the statistically significant coefficients are all small in magnitude, a point to which we return below.

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<sup>73</sup> Since the regression is nonlinear, the coefficients are not constant: Coefficients on continuous variables are evaluated at their sample average value, while coefficients for dummy variables measure the effect of moving from  $X = 0$  to  $X = 1$ . By way of comparison, an ordinary least-squares regression (linear probability model) produced largely similar results, with an  $R^2$  coefficient of only 0.037.

### *Model 1: Baseline Specification*

We begin by examining demographic characteristics (age, gender, and cohort) to see if these measures that are not part of the character and fitness inquiry can account for trends in lawyer discipline. Consistent with the social deviance and criminology literature,<sup>74</sup> gender has a statistically significant effect on the probability of being disciplined: Being male raises the probability of discipline by approximately 2.5 percentage points. Put another way, women have a 1% chance of being disciplined, while men have about a 3.5% chance, other things equal. And it is quantitatively significant as well: Men have a 350% greater likelihood of being disciplined than women do. The effect is statistically significant ( $p < .01$ ). On the other hand, at 3.5%, the probability of discipline is still very low in absolute terms. Other background controls—in particular, the year of application/cohort variables—are mostly very small in magnitude and insignificant.<sup>75</sup> Thus, there are no obvious time-related trends in the likelihood of discipline, and no cohort of applicants significantly or substantively differs in the likelihood of discipline from the others.

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<sup>74</sup> See, e.g., RITA J. SIMON & HEATHER AHN-REDDING, *THE CRIMES WOMEN COMMIT: THE PUNISHMENTS THEY RECEIVE* 53–54 (3rd ed. 2005) (reporting that in 2001, 22.5% of those arrested for crimes were women). See also Stephanie S. Covington & Barbara E. Bloom, *Gendered Justice: Women in the Criminal Justice System* in *GENDERED JUSTICE: ADDRESSING FEMALE OFFENDERS* (Barbara E. Bloom ed. 2003) (noting that “the rate of incarceration for women continues to be far lower than the rate for men”). But see Malcolm M. Feeley & Hadar Aviram, *Where Have All the Women Gone? The Decline of Women in the Criminal Justice Process* (2008), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1130587](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1130587) (suggesting that women constituted a significant fraction—in some places, close to 50%—of all criminal defendants in 18<sup>th</sup> and 19<sup>th</sup> century Europe).

<sup>75</sup> The one exception is the dummy variable for whether an applicant had ever been disciplined elsewhere before applying to the Connecticut bar. Depending on the specification, the coefficient on this variable bounces around from highly positive (2.07) and statistically insignificant to highly negative (–3.37) and statistically insignificant.

TABLE 8  
*Logistic regression predicting discipline—Model 1 through Model 5*

	Model 1	Model 2	Model 3	Model 4	Model 5
Age	0.0001 (0.0004)	0.0000 (0.0004)	0.0002 (0.0003)	0.0004 (0.0003)	0.0002 (0.0004)
Female	-0.0246*** (0.0042)	-0.0234*** (0.0043)	-0.0240*** (0.0042)	-0.0252*** (0.0042)	-0.0236*** (0.0041)
1989	-0.0030 (0.0065)	-0.0068 (0.0061)	-0.0078 (0.0059)	-0.0018 (0.0064)	-0.0035 (0.0065)
1990	-0.0029 (0.0064)	-0.0058 (0.0058)	-0.0052 (0.0058)	-0.0011 (0.0064)	-0.0026 (0.0064)
1991	-0.0029 (0.0063)	-0.0031 (0.0061)	-0.0035 (0.006)	-0.0023 (0.0061)	-0.0012 (0.0064)
Prior Application	0.0101 (0.0082)	0.0098 (0.0081)	0.0115 (0.0079)	0.0163** (0.0074)	0.0110 (0.0082)
Prior Discipline	2.0670 (7.214)	0.0347 (0.0221)	0.0394** (0.0198)	-3.6690 (7.7180)	1.5540 (8.0580)
Waived In	-0.0029 (0.0122)	-0.0029 (0.0109)	-0.0102 (0.0079)	-0.0093 (0.0089)	-0.0041 (0.0119)
<u>Rank of Law School</u>					
1–10	-0.0170* (0.0097)	-0.0148 (0.0093)			-0.0170* (0.0097)
11–25	-0.0650*** (0.0235)	-0.0658*** (0.0235)			-0.0648*** (0.0235)
Remainder of First Quartile	-0.0250** (0.0101)	-0.0246** (0.0098)			-0.0240** (0.0100)
Second Quartile	-0.0214*** (0.0068)	-0.0222*** (0.0067)			-0.0207*** (0.0068)
Third Quartile	-0.0167** (0.0074)	-0.0171** (0.0073)			-0.0157** (0.0073)
Class Rank	-0.0134 (0.014)	-0.0198 (0.0137)	-0.0133 (0.0135)		-0.0140 (0.0137)
Average Grade	-0.0051** (0.0021)	-0.0058*** (0.0021)	-0.0066*** (0.002)		-0.0050*** (0.0021)
LSAT (Percentile)	0.0121 (0.0165)	0.0123 (0.0162)	-0.0088 (0.0137)		0.0148 (0.0163)
Discipline, Academic Deficiency	-0.0099 (0.0089)	-0.0081 (0.0084)	-0.0065 (0.0085)		-0.0086 (0.0086)

TABLE 8

*Logistic regression predicting discipline—Model 1 through Model 5 (Continued)*

	Model 1	Model 2	Model 3	Model 4	Model 5
Discipline, Other	0.0020 (0.0200)	0.0073 (0.0246)	0.0045 (0.0252)	-0.0040 (0.0201)	0.0022 (0.0196)
Negative Feedback, Dean's Certificate	-0.0309 (0.0239)	-0.0254 (0.0216)	-0.0243 (0.0225)		-0.0262 (0.0212)
Negative Feedback, Letters	-0.0062 (0.0111)	-0.0038 (0.0107)	0.0002 (0.0099)		-0.0051 (0.0111)
Work Discipline	0.0060 (0.0067)	0.0086 (0.0063)	0.0087 (0.0064)	0.0042 (0.0069)	0.0075 (0.0066)
Armed Services	0.0014 (0.0088)	0.0019 (0.0086)	0.0026 (0.0092)	0.0002 (0.0090)	0.0002 (0.0086)
Default on Student Loan	0.0087 (0.0123)			0.0063 (0.0111)	0.0071 (0.0120)
Judgment Against by Creditor	-0.0010 (0.0144)			0.0002 (0.0150)	-0.0016 (0.0148)
Delinquent Accounts	0.0232*** (0.0070)			0.0264*** (0.0069)	0.0228*** (0.0069)
Bankruptcies	-2.0300 (7.2130)			3.7100 (7.7180)	-1.5180 (8.0570)
Non-Student Loan Debt	0.0000 (0.0000)			0.0000 (0.0000)	0.0000 (0.0000)
Student Loan Debt	0.0004*** (0.0001)			0.0004*** (0.0001)	0.0004*** (0.0001)
Criminal Convictions	0.0124 (0.0135)	0.0161 (0.0143)		0.0087 (0.0120)	0.0098 (0.0128)
Traffic Violations, Number	0.0027* (0.0015)	0.0027* (0.0015)	0.0034** (0.0015)	0.0030** (0.0015)	0.0027* (0.0015)
Driver's License Suspensions	0.0025 (0.0085)	0.0083 (0.0082)	0.0058 (0.008)	0.0032 (0.0080)	0.0029 (0.0084)
Civil Litigation	0.0138** (0.0060)	0.0133** (0.0058)	0.0142** (0.0057)	0.0138** (0.0059)	0.0146** (0.0060)
Litigation Alleging Fraud	-0.0068 (0.0367)	-0.0032 (0.0274)	-0.0075 (0.0264)	-0.0141 (0.0388)	-0.0066 (0.0348)
Substance Abuse	-0.0079 (0.0237)	-0.0145 (0.0246)	-0.0081 (0.0219)	-0.0162 (0.0244)	
Psychological Disorder	0.0354*** (0.0131)	0.0304** (0.0129)	0.0269** (0.0135)	0.0216 (0.0152)	
N	1,343	1,343	1,343	1,343	1,343

\* $p < .10$ , \*\* $p < .05$ , \*\*\* $p < .01$ .

Marginal effects specification. Missing mean substitution. All variables held at mean. Standard errors in parentheses.

Among the academic history variables, higher law school rank is associated with a reduction in the probability of discipline. Relative to someone graduating in the bottom tier of schools (fourth quartile), graduating from any higher tier reduces the probability of discipline by about 2 percentage points (except that graduating from a school ranked 11–25 reduces the probability of discipline by 6 percentage points), all with some level of statistical significance. The coefficients increase as the rank of school improves, except for the highest category: Someone graduating from a top-10 school has about a 1.7 percentage point lower chance of being disciplined than someone in the lowest tier. Higher law school grades and law school class rank are both negatively associated with discipline risk, but the effect is only statistically significant for grades ( $p < .05$ ).<sup>76</sup> Controlling for law school rank and law school grades, LSAT score has essentially no effect on the likelihood of discipline, with a coefficient that is both extremely small and statistically insignificant. Somewhat surprisingly, none of the academic deficiency variables are associated with a greater risk of subsequent discipline: In fact, all have the wrong sign (negative), but all are statistically insignificant, and except for the variable measuring negative feedback on the Dean's certificate, all are small in magnitude.

An additional thousand dollars of student loan debt is associated with a higher likelihood of discipline. Each additional thousand dollars of student loan debt raises the probability of discipline by 0.04%, and this result is highly significant ( $p < .01$ ). In the case of non-student loan debt, there is no effect. We believe this is due to a few outliers with very large amounts of non-student loan debt. Having delinquent credit accounts increases the likelihood of discipline by about 2.3%, and the effect is statistically significant ( $p < .01$ ). Having had a previous bankruptcy dramatically lowers the risk of future discipline, which is to be expected given that all those in our sample who experienced a bankruptcy were in the never disciplined group. However, this effect is not statistically significant.<sup>77</sup>

Prior involvement with the criminal/civil justice system raises the chances that an applicant will be disciplined after admission, but for most variables the effects are small, and most are not well measured. Having a prior criminal conviction is associated with a roughly 1.2 percentage point greater chance of discipline. This is only half as large as the increment from being male, and is not statistically significant. Having been a party to a civil suit (as either plaintiff or defendant) raises the discipline probability by almost the same amount as a criminal conviction, and this effect is statistically significant ( $p < .05$ ). Being a defendant in a suit alleging fraud actually lowers one's discipline risk, but the effect is statistically insignificant. Traffic violations are associated with a higher discipline risk, with each additional violation adding about 0.3 percentage points to the likelihood

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<sup>76</sup> In alternative specifications (not reported) we used only one of LSAT score, law school GPA, and class rank to check for multicollinearity. When GPA and LSAT score are dropped, class rank becomes a statistically significant negative predictor of discipline risk ( $p < .05$ ). LSAT score is never significant, even when the other measures are excluded.

<sup>77</sup> The estimated coefficient of 2.03 is the largest coefficient in the model. Having a bankruptcy lowers one's risk of being disciplined by 20.3%. Readers may note that the likelihood of discipline for those who experience bankruptcy, holding all other variables at their means, is less than 0%. While this might not seem to make sense (how could one have a less than 0% chance of something?), this is a function of the logistic model. The coefficients in the marginal effects specification measure the slope of the logistic function *at a particular point* (the average value of the independent variable). At that point, the slope may lie outside the bounds of one and zero.



of discipline. While quantitatively small, this effect is statistically significant ( $p < .10$ ), presumably because traffic violations are so numerous.

Finally, drug or alcohol problems are not associated with a higher discipline risk, but it appears that a prior diagnosis of, or treatment for, mental health problems is associated with a higher risk of discipline. The effect is large—about 3.5 percentage points—and statistically significant ( $p < .01$ ). But of course it remains true that someone with a record of mental health problems is still overwhelmingly unlikely to be disciplined: The baseline probability of discipline for someone with no reported mental health problems is only about 2.5%, so having such problems only raises the probability of discipline to about 6%.

### *Robustness*

Models 2–5 (see Table 8) and Models 6–7 (Table 9) report results from alternative specifications in which we drop groups of (arguably related) variables to test the robustness of our findings: For example, Model 2 drops the financial variables while including all of the others. This exercise demonstrates that the coefficient estimates and standard errors are fairly stable. Dropping financial or “class” variables (Models 2 and 3, respectively)<sup>78</sup> dramatically reduces the size of the coefficient measuring the estimated effect of prior discipline, and dramatically raises the effect of probation, suspension, or expulsion for nonacademic reasons (e.g., housing code violations) and of a driver’s license suspension. But none of these effects is statistically significant in any of our specifications, so the changes seem largely inconsequential. A similar pattern can be found in comparing the Model 1 coefficients with those of Models 4 and 5.

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<sup>78</sup> Social class is a notoriously tricky concept, but as a crude set of proxies we include variables measuring tier of law school, criminal justice system exposure, and financial history (debt amounts, bankruptcy, etc.).

TABLE 9  
Logistic regression predicting discipline—Models 1, 6, and 7

	Model 1	Model 6	Model 7		Model 1	Model 6	Model 7
Age	0.0001 (0.0004)	0.0001 (0.0004)	0.0002 (0.0004)	Armed Services	0.0014 (0.0088)	0.0015 (0.0089)	-0.0009 (0.0090)
Female	-0.0246*** (0.0042)	-0.0065 (0.0151)	-0.0247*** (0.0042)	Default on Student Loan	0.0087 (0.0123)	0.0096 (0.0122)	0.0105 (0.0115)
1989	-0.0030 (0.0065)	-0.0031 (0.0065)	-0.0029 (0.0064)	Judgment Against by Creditor	-0.0010 (0.0144)	0.0004 (0.0141)	-0.0022 (0.0144)
1990	-0.0029 (0.0064)	-0.0031 (0.0064)	-0.0020 (0.0065)	Delinquent Accounts	0.0232*** (0.0070)	0.0228*** (0.0070)	0.0230*** (0.0069)
1991	-0.0029 (0.0063)	-0.0032 (0.0063)	-0.0012 (0.0066)	Bankruptcies	-2.0300 (7.2130)	-2.0080 (6.9300)	-1.0640 (6.8600)
Prior Application	0.0101 (0.0082)	0.0107 (0.0082)	0.0120 (0.0081)	Non-Student Loan Debt	0.0000 (0.0000)	0.0000 (0.0000)	0.0000 (0.0000)
Prior Discipline	2.0670 (7.2140)	2.0440 (6.9310)	1.0990 (6.8610)	Student Loan Debt	0.0004*** (0.0001)	0.0004*** (0.0001)	0.0004*** (0.0001)
Waived In	-0.0029 (0.0122)	-0.0026 (0.0127)	-0.0046 (0.0112)	Criminal Convictions	0.0124 (0.0135)	0.0117 (0.0131)	0.0119 (0.0125)
<u>Rank of Law School</u>							
1–10	-0.0170* (0.0097)	-0.0176* (0.0099)		Traffic Violations, Number	0.0027* (0.0015)	0.0028* (0.0016)	0.0042** (0.0018)
11–25	-0.0650*** (0.0235)	-0.0648*** (0.0234)		Driver's License Suspensions	0.0025 (0.0085)	0.0024 (0.0085)	0.0026 (0.0085)
<i>Remainder of First Quartile</i>	-0.0250** (0.0101)	-0.0254** (0.0101)		Civil Litigation	0.0138** (0.0060)	0.0132** (0.0061)	0.0142** (0.0059)
<i>Second Quartile</i>	-0.0214*** (0.0068)	-0.0218*** (0.0068)		Litigation Alleging Fraud	-0.0068 (0.0367)	-0.0075 (0.0390)	-0.0059 (0.0350)
<i>Third Quartile</i>	-0.0167** (0.0074)	-0.0171** (0.0074)		Substance Abuse	-0.0079 (0.0237)	-0.0046 (0.0233)	-0.0014 (0.0225)
Class Rank	-0.0134 (0.014)	-0.0139 (0.0141)	-0.0134 (0.0139)	Psychological Disorder	0.0354*** (0.0131)	0.0395*** (0.0136)	0.0359*** (0.0134)

TABLE 9

*Logistic regression predicting discipline—Models 1, 6, and 7 (Continued)*

	Model 1	Model 6	Model 7		Model 1	Model 6	Model 7
Average Grade	-0.0051** (0.0021)	-0.0051** (0.0021)	-0.0045** (0.0020)	Female*Student Loan Debt		0.0002 (0.0003)	
LSAT (Percentile)	0.0121 (0.0165)	0.0201 (0.0179)	-0.0058 (0.0183)	Female* LSAT		-0.0486* (0.0279)	
Discipline, Academic Deficiency	-0.0099 (0.0089)	-0.0105 (0.0091)	-0.0103 (0.0091)	Female*Traffic Violations		0.0020 (0.0040)	
Discipline, Other	0.0020 (0.0200)	0.0016 (0.0199)	0.0013 (0.0207)	Fourth Quartile			0.0036 (0.0205)
Negative Feedback, Dean's Certificate	-0.0309 (0.0239)	-0.0332 (0.0255)	-0.0344 (0.0262)	Fourth Quartile*Student Loan Debt			-0.0001 (0.0003)
Negative Feedback, Letters	-0.0062 (0.0111)	-0.0070 (0.0111)	-0.0058 (0.0110)	Fourth Quartile*LSAT			0.0389 (0.0297)
Work Discipline	0.0060 (0.0067)	0.0058 (0.0067)	-0.0062 (0.0068)	Fourth Quartile*Traffic Violations			-0.0029 (0.0026)
				<i>N</i>	1,343	1,343	1,343

\* $p < .10$ , \*\* $p < .05$ , \*\*\* $p < .01$ .

Marginal effects specification. Missing mean substitution. All variables held at mean. Standard errors in parentheses.

## *Interaction Effects*

Models 6 and 7 (see Table 9) present interaction effects, examining whether the relationship between predictor variables and the imposition of discipline varies by gender and by tier of law school attended.<sup>79</sup> The evidence for such differential effects is very weak. By interacting gender with debt, LSAT score, and traffic violations, we allow each of these variables to have different effects for men and for women. Only one of these coefficients is statistically significant at the 10% level (female\*LSAT), however, and most are very small in magnitude. Model 6 suggests that although gender does have a direct effect on the probability of discipline, it also has an indirect effect mediated by LSAT score. As women's LSAT scores increase, they have a decreased likelihood of discipline as compared to when men's LSAT scores increase.<sup>80</sup> There are no significant interaction effects when we look at those who graduated from the lowest ranking law schools. Having attended a bottom tier law school does raise the probability of discipline slightly (by about 0.3 percentage points), but the effect is statistically insignificant, and there are no significant interaction effects with debt, LSAT score, or number of traffic violations.

## *Predictions and Goodness of Fit*

There is no standard goodness-of-fit measure in a logistic regression equivalent to the  $R^2$  coefficient in an ordinary least-squares context.<sup>81</sup> Table 10 shows the "hits" and "misses" associated with a simple prediction rule derived from the baseline specification in Model 1 of Table 8. For each observation, we obtain a predicted probability of discipline by feeding the values of all the explanatory variables for that observation into the estimated regression equation. Any observation for which the model estimates a probability of discipline greater than 50% is treated as a prediction of discipline; those observations for which the predicted probability of discipline is less than 50% are treated as predictions of no discipline.<sup>82</sup> We are then in a position to ask how accurately the model predicts who will be disciplined and who will not be disciplined. It is important to note that the model is actually making these two separate predictions; it could accurately predict either, both, or neither. "Hits" are defined as correct predictions (either of discipline or no discipline), and "misses" are defined as incorrect predictions. Table 10 provides subtotals by row (row %), indicating how many of those with a given actual outcome were (correctly) predicted to have that outcome and how many were

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<sup>79</sup> Here, we use a dummy variable that is 1 for those who attended a school in the fourth quartile and 0 for everyone else.

<sup>80</sup> A test of the null hypothesis that all of the interaction terms are zero cannot reject this hypothesis for either the gender interactions ( $\chi^2(2) = 3.40, p = .33$ ) or the interactions capturing the effects of graduating from a bottom tier law school ( $\chi^2(2) = 3.37, p = .34$ ).

<sup>81</sup> WILLIAM H. GREENE, *ECONOMETRIC ANALYSIS* 682 (1990). As noted above, the linear probability model (OLS) version of the main specification in Table 8 has an  $R^2$  of only 3.7%, which is very low.

<sup>82</sup> The fundamental question is how to turn a continuous probability measure (probabilities ranging from 0 to 1) into a discrete (yes/no) prediction about whether something will occur. The chances of being wrong are minimized if one makes predictions according to the rule that something with an estimated probability of occurrence greater than 50% is predicted to occur, while something with an estimated probability of occurrence less than 50% is predicted *not* to occur.

(incorrectly) predicted not to have that outcome. It also provides subtotals by column (column %), indicating how many of those with a given predicted outcome actually had that outcome.<sup>83</sup>

Since such a small fraction of applicants are subsequently disciplined, a naive model would simply predict no discipline for anyone. That model would correctly predict 100% of the 1,198 nondisciplined lawyers (row 1) but would of course fail to predict any of the 145 actual instances of discipline in row 2. The naive model, however, makes for an obvious baseline against which to compare the predictive accuracy (goodness of fit) of our specification. As it turns out, our results do not provide much of an improvement over that baseline. As does the naive model, our Model 1 correctly predicts 100% of the 1,198 nondisciplined lawyers. But we correctly predict only 1 of the 145 (0.69%) disciplined lawyers.<sup>84</sup> In other words, when we use all the available information in a statistically rigorous fashion, the payoff is only one correct prediction of who will be disciplined (and no more correct predictions of who will not be disciplined) than would be achieved through the naive model that predicts no discipline for anyone.<sup>85</sup>

TABLE 10  
"Hits" and "misses" for in-sample predictions of discipline based on Model 1 of Table 8

		Predicted		
		Not Disciplined	Disciplined	Total
Actual	Not Disciplined	1,198	0	1,198
	Row %	100.00%	0.00%	100.00%
	Column %	89.27%	0.00%	89.20%
	Disciplined	144	1	145
	Row %	99.31%	0.69%	100.00%
	Column %	10.73%	100.00%	10.80%
	Total	1,342	1	1,343
	Row %	99.93%	0.07%	100.00%
	Column %	100%	100%	100%

<sup>83</sup> That is, for the first row, reading across: Of the 1,198 total observations in our sample who did not receive discipline, the model correctly predicted 1,198 (100%) of them. For the first column, reading down (in *italics*): Of the 1,342 total observations that our model predicted would not receive discipline, 1,198 (89.27%) did not in fact receive discipline, while 144 (10.73%) did.

<sup>84</sup> There was one additional observation with a predicted probability of 49.5%, just under the cutoff.

<sup>85</sup> One could also frame these issues in a different way: Of the 1,342 predictions of no discipline made by our model, 89.3% (1,198) are correct. But there are 144 instances of discipline that we miss (false negatives). The model's singular prediction of discipline is also correct, so there are no false positives. Of course, this accuracy comes at a cost of failing to predict almost all of those who will receive discipline, and again represents virtually no improvement over the naive baseline model.

A final caution is in order. The model was estimated using a sample of roughly one fifth of the nondisciplined lawyers and (almost) the entire population of disciplined lawyers.<sup>86</sup> This means that even if the model were applied to the entire population of admitted lawyers, there would no more truly disciplined lawyers left to predict. It is possible that fitting the model to the entire population might (incorrectly) predict discipline for some of the never disciplined lawyers who were not in our sample; but a larger sample of the never disciplined lawyers cannot possibly increase the number of correct predictions of discipline.

## Multinomial Regression Analysis

The previous regression models seek to predict the overall likelihood of discipline. In this section, we present analyses that distinguish between severely disciplined and less severely disciplined lawyers. We seek to answer two questions: (a) What factors explain each type of discipline, and (b) are these factors the same across the two discipline types? We use multinomial logistic regression, in which the dependent variable can take on one of three possible outcomes: No Discipline ( $Y = 0$ ), Less Severe Discipline ( $Y = 1$ ), and Severe Discipline ( $Y = 2$ ).<sup>87</sup> The coefficients estimated from this regression give the probability of moving from the baseline condition (no discipline) to either of the other two states, so there are thus two coefficients for each explanatory variable.<sup>88</sup> The coefficients are estimated jointly via maximum likelihood methods. We then test for whether the estimated coefficients predicting less severe discipline are the same as those predicting severe discipline, which is equivalent to asking whether we are justified in using a single logistic equation to explain both types simultaneously, or whether we need a separate equation for each discipline type.<sup>89</sup>

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<sup>86</sup> Recall that we dropped seven disciplined lawyers with missing application files, so we do not have the complete population of those who were disciplined.

<sup>87</sup> We recognize that the model sacrifices some statistical power by ignoring the fact that the choices are ordered: less severe discipline is obviously “less severe” than “severe” discipline, but the (unordered) multinomial model does not make use of this information. We were unable to discover an econometric test for pooling in an ordered multinomial model, however, so we use the unordered version instead.

<sup>88</sup> In other words, given variables indexed by  $i = 1, \dots, k$ , and disciplinary status indexed by 1 or 2,  $\beta_{i,1}$  represents the effect of a one unit change in explanatory variable  $i$  (say, amount of debt) on the probability of receiving discipline of type 1 (say, less severe).  $\beta_{i,2}$  represents the effect of an additional \$1,000 of debt on the probability of receiving severe discipline, so there are a total of  $2k$  coefficients to be estimated.

<sup>89</sup> Jan S. Cramer & Geert Ridder, *Pooling States in the Multinomial Logit Model*, 47 J. ECONOMETRICS 267 (1991).

TABLE 11  
Multinomial logistic regression predicting discipline

	Less Severely Disciplined	Severely Disciplined		Less Severely Disciplined	Severely Disciplined
Age	0.0002 (0.0003)	-0.0001 (0.0003)	Negative Feedback, Dean's Certificate	0.2120*** (0.0710)	-8.4440*** (1.2730)
Female	-0.0127*** (-0.0031)	-0.0105*** (0.0024)	Negative Feedback, Letters	-0.0020 (0.0076)	-0.0055 (0.0077)
1989	-0.0017 (0.0046)	-0.0009 (0.0038)	Work Discipline	0.0031 (0.0047)	0.0026 (0.0042)
1990	-0.0022 (0.0045)	-0.0009 (0.0038)	Armed Services	0.0033 (0.0068)	-0.0016 (0.0046)
1991	-0.0050 (0.0042)	0.0027 (0.0039)	Default on Student Loan	0.0094 (0.0084)	-0.0048 (0.0079)
Prior Application	0.0056 (0.0058)	0.0029 (0.0050)	Judgment Against by Creditor	0.0020 (0.0096)	-0.0068 (0.0109)
Prior Discipline	1.1100 (4.0890)	-28.1800*** (5.0300)	Delinquent Accounts	0.0137*** (0.0050)	0.0072* (0.0037)
Waived In	-0.0033 (0.0088)	-0.0002 (0.0070)	Bankruptcies	0.8420 (4.0630)	-42.6100*** (7.8270)
<u>Rank of Law School</u>					
1-10	-0.0317*** (0.0098)	0.0083 (0.0053)	Non-Student Loan Debt	0.0000 (0.0000)	0.0000* (0.0000)
11-25	0.0266 (0.0221)	-2.2820*** (0.3760)	Student Loan Debt	0.0003*** (0.0001)	0.0001 (0.0001)
Remainder of First Quartile	-0.0163** (0.0067)	-0.0084 (0.0073)	Criminal Convictions	-0.0006 (0.0103)	0.0132** (0.0066)
Second Quartile	-0.0159*** (0.0051)	-0.0027 (0.0040)	Litigation Alleging Fraud	0.4200*** (0.1290)	-15.0200*** (2.5720)
Third Quartile	-0.0233*** (0.0064)	0.0062 (0.0041)	Traffic Violations, Number	0.0019* (0.0010)	0.0006 (0.0009)
Class Rank	-0.0091 (0.0103)	0.0002 (0.0081)	Driver's License Suspensions	-0.0042 (0.0059)	0.0083 (0.0051)

TABLE 11

*Multinomial logistic regression predicting discipline (Continued)*

	Less Severely Disciplined	Severely Disciplined		Less Severely Disciplined	Severely Disciplined
Average Grade	-0.0041*** (0.0016)	-0.0012 (0.0012)	Civil Litigation	0.0101** (0.0043)	0.0026 (0.0037)
LSAT (Percentile)	0.0175 (0.0123)	-0.0052 (0.0097)	Substance Abuse	0.0066 (0.0159)	-0.2020*** (0.0286)
Discipline, Academic Deficiency	-0.0030 (0.0063)	-0.0084 (0.0063)	Psychological Disorder	0.1560*** (0.0454)	-4.7780*** (0.9060)
Discipline, Other	-0.0531*** (0.0182)	0.0075 (0.0075)			
			<i>N</i>	1,343	1,343

\* $p < .10$ , \*\* $p < .05$ , \*\*\* $p < .01$ .

Marginal effects specification. Missing mean substitution. All variables held at mean. Standard errors in parentheses.



When we disaggregate by severity of discipline, the results in Table 11 reveal some interesting similarities and differences. Being female still has a large and statistically significant (negative) effect on the likelihood of both severe and less severe discipline, just as it did in the Table 8 logistic regressions that combined these two types of discipline. But some effects do differ once we disaggregate. Recall that having experienced prior discipline (as a lawyer in another state, before applying to the Connecticut bar) had an insignificant effect on the likelihood of discipline in the logistic models of Table 5. Prior discipline continues to have no effect on the probability of receiving less severe discipline in Table 11; however, it does decrease the likelihood of receiving severe discipline ( $p < .01$ ), as shown in column 2. In Table 8, we saw that attending a higher ranked law school was associated with a decreased likelihood of discipline, but once we disaggregate, law school rank retains its explanatory power only for less severe discipline—the prestige of the law school attended has no effect on the likelihood of receiving severe discipline.<sup>90</sup> Law school grades and having been subject to nonacademic discipline while in college or law school also predict the imposition of less severe discipline, but not severe discipline.

Perhaps the most significant finding in Table 11 is the difference that a reported pre-application psychological disorder makes for the likelihood of receiving the two types of discipline. Consistent with our earlier findings, having had a mental disorder significantly raises the probability that an applicant will receive less severe discipline. But it actually lowers the likelihood of receiving severe discipline by a large and significant amount. Surprisingly, the same pattern holds true for substance abuse and bankruptcy: Both significantly lower the risk of severe discipline and have no effect on less severe discipline.

We observe differential effects for several other variables as well: Criminal conviction and non-student loan debt (which is only very weakly significant) are associated with a greater risk of severe discipline, but do not change the probability of receiving less severe discipline. Student loan debt, the number of traffic violations, and being a party to civil litigation are positively correlated with less severe discipline, but not with severe discipline.

It is difficult to see a pattern or explanation for these differential effects. For example, why should student loan debt raise the likelihood of less severe discipline while having no effect on the risk of severe discipline? Given the uncertainty about the causal mechanisms involved, the most one can say is that the two kinds of discipline apparently respond quite differently to several of our independent variables. Even if we cannot explain the differential effects, however, we can formally test whether the results of Table 11 are consistent with using a single discipline measure (as in Table 5), or whether we need to use separate equations for each of the two discipline types (as in Table 11). To do so, we use a test for pooling in multinomial logit models.<sup>91</sup> The basic logic of this test is simple. If severe discipline and less severe discipline respond similarly to the independent variables, then there is little or nothing to be lost by

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<sup>90</sup> The exception is that graduating from a law school ranked 11–29 appears to decrease the probability of severe (but not less severe) discipline.

<sup>91</sup> The technique was devised by Cramer and Ridder, and the method is described in their article cited *supra* note 89. We are grateful to Emily Nix for expert assistance in finding and programming the appropriate test for pooling.

combining the two into a single dependent variable (“Discipline”). On the other hand, if the regression performs significantly less well as a single logistic regression than it does when we disaggregate by discipline type, then aggregation is rejected by the data. We find—using the standard Wald test—that pooling is strongly rejected.<sup>92</sup> This implies that, overall, the two types of discipline are sufficiently different in the way they respond to the dependent variables that we are not justified in combining them into a single measure.

## Discussion

The results presented above demonstrate that some factors known to the bar authorities at the time a bar candidate applies for admission are robustly associated with a greater chance that the applicant will go on to be disciplined. But three important qualifications are immediately in order.

First, variables such as gender are statistically significant and do have a “large” effect on the probability of discipline. Nevertheless, the baseline probability of discipline is so low that even something that doubles this probability—say, from 3% to 6%—does not provide much predictive leverage. Although a detailed decision-theoretic analysis<sup>93</sup> is beyond the scope of this report, policy makers would almost certainly not be advised to take significant action based on a predicted probability of future discipline as low as 6%. Thus, even though we can be confident that men are substantially more likely to be disciplined than women (controlling for other observable factors), this knowledge is not very useful as a guide to behavior. The same logic applies for all of the other statistically significant effects that we found.

Second, our model suggests that there are at least two distinct types of discipline (severe and less severe), and that they respond differently to many of the independent variables we considered. Variables such as reported substance abuse, having traffic violations, the amount of student loan debt, and having had a pre-application mental disorder have differential effects on the risk of receiving severe and less severe discipline.

Finally, the analysis presented so far has focused exclusively on prediction, without any attempt to elucidate the causal mechanisms linking the explanatory variables and the imposition of discipline. Given the limitations of the data we have, we believe our focus is justifiable—indeed, unavoidable. Despite the absence of direct evidence, however, we think it is worth hypothesizing about the possible causal mechanisms at play, both as a guide to further research and to advance future policy discussions.

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<sup>92</sup> The test statistic is  $\chi^2_{(68)}$  with a value of 4516.56, for a  $p$  value of .00.

<sup>93</sup> See, e.g., JOHN W. PRATT ET AL., INTRODUCTION TO STATISTICAL DECISION THEORY (1995).

## Some Possible Causal Explanations

Why do the explanatory variables predict either kind of discipline? Our best guess is a sociological story. Other studies have shown, for example, that the law school attended affects students' career options.<sup>94</sup> Law graduates who do well in law school and graduate from top tier schools are more likely to go to large firms; lawyers who graduate from lower tier schools are more likely to work in solo and small firm practice.<sup>95</sup> Solo and small firm lawyers are more likely to be disciplined, and lawyers in such settings are often disciplined for relatively low-level acts of omission (e.g., neglect of client matters, failure to return phone calls) that may be due to inadequate office support. More serious misconduct, such as theft of client funds or other crimes, also occurs in other practice settings.<sup>96</sup>

The results indicating that bar applicants with delinquent credit accounts or with higher student loan debt load are more likely to be subject to discipline may have a similar explanation. It may be that delinquent account holders have problems managing their paperwork or may not take their legal obligations seriously. If so, it is easy to imagine how such traits might lead to misbehavior and subsequent discipline. An alternative (perhaps complementary) explanation, however, is that bar applicants with delinquent credit accounts and higher debt may come from lower socioeconomic backgrounds. We know, for example, that graduates of elite law schools are more likely to come from higher socioeconomic backgrounds and to work in the largest firms.<sup>97</sup> These individuals may also need to incur less student loan debt in order to attend college and law school than other applicants. So those with a problematic credit history or greater student loan debt may come from less affluent backgrounds, and therefore may be more likely to attend local or lower-tier law schools. That, in turn, tends to funnel them toward working in solo practice or small firms, where discipline is more likely to be imposed.

The finding that male bar applicants were significantly more likely to be disciplined than female applicants replicates similar findings in the United States, Canada, and Australia, and is consistent with a large body of evidence outside of the legal profession.<sup>98</sup> This finding is interesting, because women are more likely to work in solo practice than men<sup>99</sup> and should thus be more susceptible to grievances and discipline. The reasons for the gender differences are unclear. It is possible that women are more

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<sup>94</sup> RICHARD L. ABEL, *AMERICAN LAWYERS* 219 (1989).

<sup>95</sup> See, e.g., *id.* at 217–18; JOHN P. HEINZ ET AL., *URBAN LAWYERS: THE NEW SOCIAL STRUCTURE OF THE BAR* 57–59 (2005); FRANCES KAHN ZEMANS & VICTOR G. ROSENBLUM, *THE MAKING OF A PUBLIC PROFESSION* 98–101 (1981); Ronit Dinovitzer et al., *After the JD II: Second Results from a National Survey of Legal Careers* 42 (2009).

<sup>96</sup> See, e.g., Lisa G. Lerman, *Blue Chip Bilking: Regulation of Billing and Expense Fraud by Lawyers*, 12 GEO. J. LEGAL ETHICS 205 (1999); Alison Leigh Cowan & William K. Rashbaum, *Lawyer's Arrest in Canada Has His Firm in Chaos*, N.Y. TIMES, Dec. 5, 2008 (describing arrest of Harvard Law graduate, who headed 250-lawyer U.S. firm, for fraudulent business transactions).

<sup>97</sup> See HEINZ ET AL., *supra* note 95, at 57–58, 65.

<sup>98</sup> See *supra* note 74 and accompanying text; see also Bruce Arnold, *A Life Course Dynamics Approach to Professional Deviance and Self-Regulation: The Case of Ontario Lawyers*, PhD thesis, University of Toronto (1998).

<sup>99</sup> CLARA N. CARSON, *LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN 2005*, at 10 (May 2012 draft).

conscientious than men,<sup>100</sup> which might mean that they are less likely to be subject to discipline. It may be that women are more risk-averse than men.<sup>101</sup> Female lawyers may have less contact with clients than their male counterparts, which may present fewer opportunities for them to be grieved by clients.<sup>102</sup> It is also possible that female lawyers are more conciliatory when clients become dissatisfied or distressed, making women less likely to be the subject of grievances. Alternatively, something may be happening during the discipline process that makes it less likely that women will be disciplined.<sup>103</sup> For instance, women may be more cooperative with disciplinary authorities than men and thus less likely to engage in some of the behaviors (e.g., verbal attacks on disciplinary authorities, refusals to admit wrongdoing) that result in sanctions that could have been avoided.<sup>104</sup>

One possibility for which we do not find support is that women were less likely to continue in the practice of law than were men. If men have more years of exposure to discipline risk than women, they will be more likely to experience discipline at some point, even if the annual discipline risk is the same for both genders. In fact, however, our data show that on average women practice only two fewer months than men.<sup>105</sup> This slight (and insignificant, *t*-tests not reported) difference is clearly much too small to explain the observed gender difference in likelihood of discipline.<sup>106</sup>

The finding that those who reported a mental health diagnosis or treatment on their bar applications were more likely to be disciplined must be interpreted with caution. There are good reasons to question the reliability of self-reported data for this variable. Only 29 lawyers reported any prior diagnosis and/or treatment of a psychological disorder, which is well below what would be expected in that population.<sup>107</sup> It is unlikely that those who experienced a mental health problem and failed to report it did so for reasons completely unrelated to the likelihood of future discipline. If this is true, the

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<sup>100</sup> David P. Schmitt, *Why can't a man be more like a woman? Sex differences in Big Five Personality traits across 55 cultures*, J. PERSONALITY & SOC. PSYCH., Jan. 2008, at 168.

<sup>101</sup> James P. Byrnes, et al., *Gender Differences in Risk-Taking: A Meta-Analysis*, PSYCH. BULL., May 1999, at 367.

<sup>102</sup> Bartlett, *supra* note 70, at 308.

<sup>103</sup> At least to date, however, research indicates that the proportional rate of complaints against women is roughly the same as the rate of discipline imposed on them, suggesting that women do not receive special treatment in the process. See, e.g., Bartlett, *supra* note 70, at 316.

<sup>104</sup> See, e.g., ABEL, *supra* note 31, at 357–61, 467–70.

<sup>105</sup> We cannot discount the possibility that some women were working part time, which would lower their exposure to discipline risk. Moreover, some women might have retained “active” status when not actually practicing, so the 2-month figure may underestimate the true difference in career length.

<sup>106</sup> While we measured duration of practice, we did not include it in the regression analysis, as duration of practice would likely be influenced by the presence of discipline. (An individual who experienced disbarment or a lengthy suspension would have their duration of practice markedly curtailed as a result.) We could not include an independent variable that so strongly correlated with the likelihood of discipline.

<sup>107</sup> It has been estimated that between 20% and 40% of law students suffer from clinical depression by the time they graduate from law school. Hollee Schwartz Temple, *Speaking Up: Helping law students break through the silence of depression*, ABA J., Feb. 2012, at 23. Even if we conservatively take the 20% figure, and further assume that only 25% of those who experience depression seek treatment, one would expect roughly 67 (= 20% \* 25% \* 1,343) applicants to have had a history of treatment for depression. Thus, it seems likely that the 29 reported cases understate the true incidence.

estimated effect of reporting a mental health diagnosis or treatment will be systematically biased (mismeasured).

For example, suppose “nonreporters” were the least truthful among all those who had a prior mental health diagnosis or treatment, and would thus be more likely to experience future discipline than those reporting a mental health diagnosis/treatment (“reporters”). In that case, the coefficient that measures the effect of reporting a mental health problem would understate the true effects of a mental health diagnosis/treatment on the likelihood of future discipline. On the other hand, perhaps the nonreporters were those who experienced the mildest forms of mental health problems, which might make them less likely than the reporters to be disciplined in the future. In that case, the true effect of experiencing a mental health diagnosis or treatment on future discipline would be smaller than actually measured in the regression. The key point is that depending on the reasons for underreporting, the measured coefficient could be either too large or too small, and both possibilities are plausible.

Of the 29 lawyers who reported a diagnosis or treatment for mental health problems, 6 were disciplined (all less severely), although none of them indicated on their bar applications that their psychological condition was serious (e.g., involving a hospitalization). Moreover, five of the six disciplined lawyers incurred only one disciplinary sanction, and it was a reprimand. None of these five claimed that their prior psychological problems contributed to the conduct that led to discipline, although two referred to other stressors in their lives during the discipline proceedings (e.g., family or personal illnesses). Five of the six disciplined lawyers who reported mental health diagnosis or treatment on their bar applications did not receive the grievance leading to discipline until more than 10 years after admission.

### **Additional Caveats**

A few final caveats are in order. This preliminary study is small and is limited to a single state that is positioned between two major metropolitan areas. As a consequence, a majority of the lawyers in the study were also admitted in other jurisdictions and many practiced outside of Connecticut. Thus, the group may not be representative of lawyers in other jurisdictions. Moreover, while we feel confident that we located all public discipline imposed on the lawyers admitted to the Connecticut bar from 1989 to 1992, it is possible that we failed to learn about out-of-state private

discipline imposed on one or more lawyers for minor misconduct.<sup>108</sup> In Appendix B, we suggest that this does not impose significant problems for interpreting our results.

In addition, we only tracked admitted lawyers for 17–20 years from the date of their admission. It is possible that if we had tracked these lawyers until the end of their careers, we would have obtained somewhat different results.

Finally, this study necessarily only relied on information that was reported to the bar examining committee when it made its decision, and as a result, the information may not fully reflect an applicant's true history. While some of this information could be cross-verified (e.g., through Dean's certificates, traffic records, and credit reports), it may be that lawyers who were disciplined were less likely to self-report certain problem history. For example, applicants with a history of hard-to-discover problems—such as substance dependency—may not have revealed this information on the bar application. Thus, the study only reflects the predictive value of the information that is disclosed to the bar examiners, and not the predictive value of applicants' true personal histories.

## Conclusion

The information collected during the character and fitness inquiry does not appear to be very useful in predicting subsequent lawyer misconduct. The reason is that the baseline likelihood of discipline among admitted lawyers is so low (only about 2.5% of the lawyers in our cohort). Thus, even something (such as being male) that doubles the likelihood of subsequent disciplinary action only raises the probability of discipline to 5%. It seems unlikely that any regulator would deny admission to an applicant who had only a 5% chance of subsequent discipline, especially when the discipline would likely be only a single reprimand. To meet even a modest “more likely than not” standard, one would need to identify a set of variables that together raise the risk of discipline by a factor of 20. The data and models we examined yielded only a very few examples of individuals who had a better than even chance of being disciplined. There are simply

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<sup>108</sup> As previously noted, many states impose private discipline. Of those that do, a few were willing to disclose to us whether any of the lawyers in our sample were ever privately disciplined there. We term the remaining states that impose private discipline *nondisclosing states*. Those states that either do not permit private discipline at all, or that told us about any private discipline they did impose, are termed *disclosing states*. When we ran regressions controlling for whether a lawyer ever practiced in a nondisclosing state, we found that lawyers in nondisclosing states had a 1.4% lower likelihood of discipline than those in disclosing states, controlling for all other variables ( $p < .01$ ). This observed lower rate of discipline might simply be an artifact of the incomplete disciplinary records in nondisclosing states. It might also be the case that lawyers who practice in nondisclosing states are actually less likely to be disciplined than those who practice only in a disclosing state. Almost half of the lawyers in our sample who practiced in a jurisdiction outside of Connecticut did so exclusively in New York, a nondisclosing state. When we added a control for New York, we found that the only lawyers who had a lower discipline risk were those who practiced there—practicing in the other nondisclosing states conferred no protective effect. This suggests that either (a) there is a missing discipline problem only for those lawyers who practiced in New York; or, we think more likely, (b) some demographic or sociological trait of lawyers who practice in New York and Connecticut puts them at a lower risk for discipline. For example, perhaps these lawyers are more likely to work for large firms in Manhattan and White Plains. Large firm lawyers might be protected against discipline via reduced direct interaction with clients and/or through the institutional and administrative support available in large firms.

not enough variables with enough predictive power to raise the probability of discipline for any individual from the baseline of 2.5% all the way to more than 50%.

This preliminary study raises a number of questions for further research. First, and most obviously, there is the question of whether the study's findings can be replicated in other jurisdictions. It is also important to determine whether the results remain the same if the discipline histories of lawyers are traced for more than 20 years. In future research, it will be important to look at the career trajectory of applicants to determine the practice settings in which they have worked and to trace their discipline histories throughout their careers. In particular, it would be useful to know whether the effects we observed are maintained when one controls for practice setting, which we could not do. For example, it may be that graduating from a lower ranked law school has no effect on the likelihood of discipline for lawyers working in larger firms. Perhaps it is working for a small firm—with fewer resources and less monitoring—that elevates the risk of discipline for graduates of lower ranked schools. School rank is almost certainly correlated with firm size, so our measured effects of the latter may actually be picking up causal effects of the former.

A second set of questions focuses on the appropriate or optimal response of regulatory authorities to the information in candidates' admission files. As it now stands, admissions authorities must choose from an extremely limited menu of responses to an individual's application: They can deny admission altogether—something they almost never do—or they can simply admit the applicant. Some states also grant conditional admission, which permits monitoring of certain applicants for a relatively short time.<sup>109</sup> Future work should consider the possibility of other alternatives. Even if we cannot accurately distinguish lawyers who will subsequently experience discipline from those who will not, it might be appropriate for admissions authorities to impose some additional requirements on applicants with a statistically elevated risk of future discipline. For example, someone with an elevated discipline risk (say, a 10% chance of future discipline) might be required to maintain malpractice insurance as a condition of admission or might be required to take a course in law office management if he or she ever practices in a solo or small firm. Whether such intermediate steps are desirable or appropriate is beyond the scope of this report. But even though it is difficult to predict which applicants will later be sanctioned, there might be room to impose some prudential requirements on those applicants who pose a higher-than-average risk of future misbehavior.

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<sup>109</sup> More than 20 states have conditional admission programs that allow them to attach conditions to admission of candidates as a type of probationary admission. Stephanie Denzel, *Second-Class Licensure: The Use of Conditional Admission Programs for Bar Applicants with Mental Health and Substance Abuse Issues*, 43 CONN. L. REV. 891, 912 (2011). The maximum length of conditional admission in many states is 24 months. ABA Model Rule on Conditional Admission to Practice Rule 4 Commentary, available at [http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/colap/ABAModelRule\\_ConditionalAdmission\\_Feb2008.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/colap/ABAModelRule_ConditionalAdmission_Feb2008.authcheckdam.pdf).

## Appendix A: Supplemental Tables

TABLE A-1  
*Variable descriptions*

Variable Name	Description	Values	N	Mean	SD
Female	Gender	0=male; 1=female	1,350	0.400	0.490
1989	Admitted in 1989	0=no; 1=yes	345		
1990	Admitted in 1990	0=no; 1=yes	341		
1991	Admitted in 1991	0=no; 1=yes	344		
1992	Admitted in 1992	0=no; 1=yes	313		
Age	Age at time of application (years)	23–69	1,343	30.223	6.623
Duration	Duration of practice (years)	6–21	1,343	18.612	2.777
<i>Application Data</i>					
<u>Prior Encounters with the Bar</u>					
Prior Application	Prior application to the bar	0=no; 1=yes	1,342	0.075	0.264
Prior Discipline	Ever been reprimanded, suspended, disbarred or otherwise disciplined	0=no; 1=yes	1,342	0.004	0.061
Waived In	Waived into CT bar without bar examination	0=no; 1=yes	1,343	0.046	0.210
<u>Academic History</u>					
1–10	Attended law school ranked 1–10	317	1,341		
11–25	Attended law school ranked 11–25	208	1,341		
Remainder of First Quartile	Attended law school ranked in the remainder of the first quartile	456	1,341		
Second Quartile	Attended law school ranked in second quartile	134	1,341		
Third Quartile	Attended law school ranked in third quartile	69	1,341		
Fourth Quartile	Attended law school ranked in fourth quartile	157	1,341		
Average Grade	Average law school grade	11=A; 10=A-; 9=B+; 8=B; 7= B-; 6= C+; 5= C; 4= C-	1,195	7.361	1.334



TABLE A-1  
Variable descriptions (Continued)

Variable Name	Description	Values	N	Mean	SD
Class Rank	Final law school class rank (percentile)	0–.995	668	0.493	0.278
LSAT (Percentile)	LSAT score (percentiles)	.052–.998	1,209	0.659	0.220
Discipline, Academic Deficiency	Probation, suspension, expulsion from college or law school for academic deficiency	0=no; 1=yes	1,339	0.072	0.258
Discipline, Other	Probation, suspension, expulsion from college or law school for issues unrelated to academic deficiency	0=no; 1=yes	1,339	0.008	0.090
Negative Feedback, Dean's Certificate	Negative feedback on the Dean's certificate	0=no; 1=yes	1,325	0.014	0.119
Negative Feedback, Letters	Letters in application file note academic or personal problems, and/or provide negative feedback about the applicant	0=no; 1=yes	1,321	0.040	0.196
<u>Work and Military History</u>					
Work Discipline	Ever been discharged/terminated/asked to resign by an employer	0=no; 1=yes	1,336	0.110	0.313
Armed Services	Ever been a member of the armed forces of the U.S.	0=no; 1=yes	1,343	0.057	0.231
<u>Credit History</u>					
Default on Student Loan	Ever defaulted on a student loan	0=no; 1=yes	1,341	0.029	0.168
Judgment Against by Creditor	Ever had judgment entered against applicant in favor of a creditor	0=no; 1=yes	1,342	0.016	0.124
Student Loan Debt	Student loan debt amount, thousands of dollars	0–96.843	1,328	13.158	16.264
Non-Student Loan Debt	Non-student loan debt amount, thousands of dollars	0–1440.22	1,326	22.744	76.652
Delinquent Accounts	Delinquent credit accounts	0=no; 1=yes	1,328	0.090	0.286
Number of Delinquent Accounts	Number of delinquent credit accounts	0–12	1,325	0.169	0.722
Bankruptcies	Ever declare bankruptcy	0=no; 1=yes	1,338	0.003	0.055
<u>Civil, Criminal, and Traffic Proceedings</u>					
Criminal	Ever been convicted of a crime	0=no; 1=yes	1,340	0.025	0.155
Traffic Violations	Ever received a traffic citation or been convicted of a motor vehicle offense	0=no; 1=yes	1,332	0.535	0.499
Number of Traffic Violations	Number of traffic violations	0–13	1,273	1.015	1.450
Driver's License Suspensions	Driver's license suspensions	0=no; 1=yes	1,337	0.062	0.241
Litigation Alleging Fraud	Ever been a defendant in any civil proceeding in which allegations of fraud, misrepresentation or improper conduct were made against applicant	0=no; 1=yes	1,340	0.007	0.082
Civil Litigation	Ever been a party to any civil proceeding or has any civil proceeding been instituted on applicant's behalf (excluding divorce)	0=no; 1=yes	1,337	0.146	0.353
<u>Mental Health</u>					
Substance Abuse	Ever been addicted to or dependent upon/ever received treatment for use of drugs or alcohol	0=no; 1=yes	1,343	0.010	0.098
Psychological Disorder	Ever been hospitalized/diagnosed/received regular treatment for a psychological disorder	0=no; 1=yes	1,343	0.022	0.145

Application data N=1,343.

Total sample N=1,350.

TABLE A-2

Summary statistics of variables by ever disciplined/never disciplined

	Never Disciplined			Ever Disciplined			Total N
	%	Mean	N	%	Mean	N	
Male	57.26%		(686)	81.58%		(124)	1,350
Age at Time of Application		30.12	(1,198)		31.10	(145)	1,343
Duration		18.86	(1,198)		16.55	(145)	1,343
<i>Application Data</i>							
<u>Prior Encounters with the Bar</u>							
Prior Application	6.68%		(80)	14.48%		(21)	1,342
Prior Discipline	0.25%		(3)	1.38%		(2)	1,342
Waived In	4.59%		(55)	4.82%		(7)	1,343
<u>Academic History</u>							
Rank of Law School							
1–10	11.78%		(141)	11.11%		(16)	1,341
11–25	5.68%		(68)	0.69%		(1)	1,341
Remainder of First Quartile	10.44%		(125)	6.25%		(9)	1,341
Second Quartile	35.34%		(423)	22.92%		(33)	1,341
Third Quartile	15.62%		(187)	14.58%		(21)	1,341
Fourth Quartile	21.14%		(253)	44.44%		(64)	1,341
Average Grade		7.44	(1,070)		6.71	(125)	1,195
Class Rank		0.51	(598)		0.37	(70)	668
LSAT Score (percentiles)		0.67	(1,075)		0.60	(134)	1,209
Discipline, Academic Deficiency	6.78%		(81)	10.42%		(15)	1,339
Discipline, Other	0.84%		(10)	0.69%		(1)	1,339
Negative Feedback, Dean's Certificate	1.44%		(17)	1.38%		(2)	1,325
Negative Feedback, Letters	3.64%		(43)	7.09%		(10)	1,321
<u>Work and Military History</u>							
Work Discipline	10.39%		(124)	16.20%		(23)	1,336
Armed Services	5.34%		(64)	8.28%		(12)	1,343

TABLE A-2

*Summary statistics of variables by ever disciplined/never disciplined (Continued)*

		Never Disciplined			Ever Disciplined			Total <i>N</i>
		%	Mean	<i>N</i>	%	Mean	<i>N</i>	
<u>Credit History</u>								
	Non-Student Loan Debt		21.62	(1,186)		32.06	(143)	1,329
	Student Loan Debt		12.55	(1,184)		18.19	(144)	1,328
	Delinquent Accounts	7.17%		(85)	23.78%		(34)	1,328
	Number of Delinquent Accounts		0.13	(1,182)		0.52	(143)	1,325
	Default on Student Loan	2.42%		(29)	6.94%		(10)	1,341
	Judgment Against by Creditor	1.33%		(16)	3.47%		(5)	1,342
	Bankruptcies	0.34%		(4)	0%		(0)	1,338
<u>Civil, Criminal &amp; Traffic Measures</u>								
	Criminal Conviction	2.09%		(25)	5.56%		(8)	1,340
	Ever Have Traffic Violation	51.85%		(617)	66.90%		(95)	1,332
	Number of Traffic Violations		0.95	(1,139)		1.60	(134)	1,273
	Driver's License Suspensions	5.37%		(64)	13.10%		(19)	1,337
	Litigation Alleging Fraud	0.67%		(8)	0.70%		(1)	1,340
	Civil Litigation	13.32%		(159)	25.17%		(36)	1,337
<u>Health</u>								
	Substance Abuse	0.92%		(11)	1.38%		(2)	1,343
	Psychological Disorder	1.92%		(23)	4.14%		(6)	1,343

Total application data *N* = 1,343.Disciplined with application data *N* = 145.Never disciplined *N* = 1,198.

TABLE A-3

*Weighted t-tests, never disciplined, ever disciplined, severely disciplined*

Control Variables	Never Disciplined	Ever Disciplined	Never Disciplined–Ever Disciplined	N	Severely Disciplined	Never Disciplined–Severely Disciplined	N
Female	0.427	0.166	0.262***	1,343	0.125	0.302***	1,254
Age	30.117	31.097	-0.980†	1,343	30.250	-0.133	1,254
<i>Application Data</i>							
<u>Prior Encounters with the bar</u>							
Prior Application	0.067	0.145	-0.078*	1,342	0.107	-0.040	1,253
Prior Discipline	0.003	0.014	-0.011	1,342	0.000	0.003†	1,253
Waived In	0.046	0.048	-0.002	1,343	0.071	-0.026	1,254
<u>Academic History</u>							
<u>Rank of Law School</u>							
1-10	0.118	0.111	0.007	1,341	0.232	-0.114*	1,253
11-25	0.057	0.007	0.050***	1,341	0.000	0.057***	1,253
Remainder of First Quartile	0.104	0.063	0.042†	1,341	0.036	0.069**	1,253
Second Quartile	0.353	0.229	0.124**	1,341	0.214	0.139*	1,253
Third Quartile	0.156	0.146	0.010	1,341	0.250	-0.094	1,253
Fourth Quartile	0.211	0.444	-0.233***	1,341	0.268	-0.057	1,253
Average Grade	7.436	6.712	0.724***	1,195	6.930	0.506**	1,113
Class Rank	0.508	0.368	0.140***	668	0.416	0.092†	627
LSAT (Percentile)	0.665	0.605	0.060**	1,209	0.616	0.049	1,126
Discipline, Academic Deficiency	0.068	0.104	-0.036	1,339	0.054	0.014	1,251
Discipline, Other	0.008	0.007	0.001	1,339	0.018	-0.010	1,251
Negative Feedback, Dean's Certificate	0.014	0.014	0.001	1,325	0.000	0.014***	1,236
Negative Feedback, Letters	0.036	0.071	-0.034	1,321	0.037	-0.001	1,234
<u>Work and Military History</u>							
Work Discipline	0.104	0.162	-0.058†	1,336	0.127	-0.023	1,249
Armed Services	0.053	0.083	-0.029	1,343	0.071	-0.018	1,254

TABLE A-3

*Weighted t-tests, never disciplined, ever disciplined, severely disciplined (Continued)*

	Never Disciplined	Ever Disciplined	Never Disciplined– Ever Disciplined	<i>N</i>	Severely Disciplined	Never Disciplined– Severely Disciplined	<i>N</i>
<u>Credit History</u>							
Default on Student Loan	0.024	0.069	–0.045*	1,341	0.054	–0.029	1,253
Judgment Against by Creditor	0.013	0.035	–0.021	1,342	0.018	–0.005	1,254
Non-Student Loan Debt Amount	21.618	32.058	–10.440	1,326	39.265	–17.647	1,238
Student Loan Debt Amount	12.547	18.189	–5.642***	1,328	17.448	–4.901*	1,239
Delinquent Accounts	0.072	0.238	–0.166***	1,342	0.196	–0.124*	1,241
Bankruptcies	0.003	0.000	0.003*	1,338	0.000	0.003*	1,250
<u>Civil, Criminal and Traffic Proceedings</u>							
Criminal Convictions	0.021	0.056	–0.035†	1,340	0.071	–0.050	1,252
Traffic Violations, Number	0.946	1.604	–0.659***	1,273	1.615	–0.669*	1,191
Driver's License Suspensions	0.054	0.131	–0.077**	1,337	0.179	–0.125*	1,248
Litigation Alleging Fraud	0.007	0.007	0.000	1,340	0.000	0.007**	1,253
Civil Litigation	0.133	0.252	–0.119**	1,337	0.179	–0.046	1,250
<u>Mental Health</u>							
Substance Abuse	0.009	0.014	–0.005	1,343	0.000	0.009**	1,254
Psychological Disorder	0.019	0.041	–0.022	1,343	0.000	0.019***	1,254
	<i>N</i> = 1,198	<i>N</i> = 145			<i>N</i> = 56		

† $p < .10$ , \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

Missing cases dropped.

TABLE A-4  
*Weighted t-tests, never disciplined, less severely disciplined, severely disciplined*

Control Variables			Never Disciplined	Severely Disciplined	Less Severely Disciplined	Never Disciplined– Less Severely Disciplined	<i>N</i>	Severely Disciplined– Less Severely Disciplined	<i>N</i>
Female			0.427	0.125	0.191	0.236***	1,287	–0.066	145
Age			30.117	30.250	31.629	–1.512*	1,284	–1.379	145
<i>Application Data</i>									
<u>Prior Encounters with the bar</u>									
Prior Application			0.067	0.107	0.169	–0.102*	1,286	–0.062†	145
Prior Discipline			0.003	0.000	0.022	–0.020	1,286	–0.022	145
Waived In			0.046	0.071	0.034	0.012	1,287	0.038	145
<u>Academic History</u>									
<u>Rank of Law School</u>									
1–10			0.118	0.232	0.034	0.084***	1,285	0.198**	144
11–25			0.057	0.000	0.011	0.045**	1,285	–0.011	144
Remainder of First Quartile			0.104	0.036	0.080	0.025	1,285	–0.044*	144
Second Quartile			0.353	0.214	0.239	0.114*	1,285	–0.025	144
Third Quartile			0.156	0.250	0.080	0.077*	1,285	0.171	144
Fourth Quartile			0.211	0.268	0.557	–0.346***	1,285	–0.289*	144
Average Grade			7.436	6.930	6.598	–6.386***	1,152	0.333	125
Class Rank			0.508	0.416	0.333	7.103***	639	0.083	70
LSAT (Percentile)			0.665	0.616	0.598	–0.090*	1,158	0.018	134
Discipline, Academic Deficiency			0.068	0.054	0.136	–0.068†	1,283	–0.082†	144
Discipline, Other			0.008	0.018	0.000	0.008**	1,283	0.018	144
Negative Feedback, Dean's Certificate			0.014	0.000	0.022	–0.008	1,269	–0.022	145
Negative Feedback, Letters			0.036	0.037	0.092	–0.056†	1,267	–0.055	141
<u>Work and Military History</u>									
Work Discipline			0.104	0.127	0.184	–0.080†	1,281	–0.057	142
Armed Services			0.053	0.071	0.090	–0.036	1,287	–0.018	145

TABLE A-4

*Weighted t-tests, never disciplined, less severely disciplined, severely disciplined (Continued)*

	Never Disciplined	Severely Disciplined	Less Severely Disciplined	Never Disciplined– Less Severely Disciplined	<i>N</i>	Severely Disciplined– Less Severely Disciplined	<i>N</i>
<u>Credit History</u>							
Default on Student Loan	0.024	0.054	0.080	–0.055†	1,285	–0.026	144
Judgment Against by Creditor	0.013	0.018	0.046	–0.032	1,286	–0.028	144
Non-Student Loan Debt Amount	21.618	39.265	27.554	–5.936	1,271	11.711	144
Student Loan Debt Amount	12.547	17.448	18.646	–6.099**	1,273	–1.198	143
Delinquent Accounts	0.072	0.196	0.264	–0.192***	1,272	–0.068	143
Bankruptcies	0.003	0.000	0.000	0.003*	1,282	0.000	144
<u>Civil, Criminal and Traffic Proceedings</u>							
Criminal Convictions	0.021	0.071	0.046	–0.025	1,284	0.026	144
Traffic Violations, Number	0.946	1.615	1.598	–0.652**	1,221	0.017	134
Driver's License Suspensions	0.054	0.179	0.101	–0.047	1,281	0.078	145
Litigation Alleging Fraud	0.007	0.000	0.011	–0.004	1,284	–0.011	143
Civil Litigation	0.133	0.179	0.299	–0.166**	1,281	–0.120†	143
<u>Mental Health</u>							
Substance Abuse	0.009	0.000	0.023	–0.013	1,287	–0.023	145
Psychological Disorder	0.019	0.000	0.067	–0.048†	1,287	–0.067*	145
	<i>N</i> = 1,198	<i>N</i> = 56	<i>N</i> = 89				

† $p < .10$ , \* $p < .05$ , \*\* $p < .01$ , \*\*\* $p < .001$ .

Missing cases dropped.

TABLE A-5  
Logistic regression predicting discipline—Model 1

	Model 1		Model 1
Age	–0.0008 (0.0007)	Negative Feedback, Dean's Certificate	0.0203 (0.0422)
Female	–0.0132** (0.0065)	Negative Feedback, Letters	–0.0054 (0.0142)
1989	–0.0088 (0.0094)	Work Discipline	–0.0017 (0.0106)
1990	–0.0059 (0.0093)	Armed Services	0.0276 (0.0291)
1991	–0.0034 (0.0087)	Default on Student Loan	0.0039 (0.0186)
Prior Application	–0.0020 (0.0110)	Judgment Against by Creditor	0.0003 (0.0195)
Prior Discipline	(Omitted)	Delinquent Accounts	0.0301 (0.0241)
Waived In	–0.0028 (0.0220)	Bankruptcies	(Omitted)
<u>Rank of Law School</u>			
1–10	(Omitted)	Non-Student Loan Debt	0.0000 (0.0000)
11–25	(Omitted)	Student Loan Debt	0.0003 (–0.0002)
Remainder of First Quartile	–0.0201*** (0.0047)	Criminal Convictions	0.0511* (0.0464)
Second Quartile	–0.0194** (0.0094)	Traffic Violations, Number	0.0013 (–0.0025)
Third Quartile	–0.0082 (0.0081)	Driver's License Suspensions	0.0144 (0.0195)
Class Rank	–0.0341 (0.0240)	Civil Litigation	0.0175 (0.0159)
Average Grade	–0.0020 (0.0054)	Litigation Alleging Fraud	0.1200 (0.1890)
LSAT (Percentile)	0.0115 (0.0252)	Substance Abuse	0.0005 (0.0366)
Discipline, Academic Deficiency	–0.0067 (0.0100)	Psychological Disorder	0.0612 (0.0637)
		<i>N</i>	567

\* $p < .10$ , \*\* $p < .05$ , \*\*\* $p < .01$ .

Marginal effects specification. Missing cases dropped. Some variables omitted due to perfect prediction.



TABLE A-6

*Logistic regression predicting discipline—Models 1 through 5*

	Model 1	Model 2	Model 3	Model 4	Model 5
Age	0.0003 (0.0004)	0.0002 (0.0004)	0.0003 (0.0003)	0.0004 (0.0003)	0.0004 (0.0004)
Female	-0.0235*** (0.0043)	-0.0221*** (0.0043)	-0.0232*** (0.0043)	-0.0252*** (0.0042)	-0.0227*** (0.0042)
1989	-0.0012 (0.0068)	-0.0052 (0.0064)	-0.0064 (0.0061)	-0.0023 (0.0064)	-0.0015 (0.0068)
1990	-0.0013 (0.0067)	-0.0051 (0.0060)	-0.0050 (0.0059)	-0.0010 (0.0064)	-0.0013 (0.0066)
1991	-0.0031 (0.0064)	-0.0039 (0.0061)	-0.0048 (0.0059)	-0.0021 (0.0062)	-0.0013 (0.0065)
Prior Application	0.0042 (0.0085)	0.0034 (0.0084)	0.0066 (0.0079)	0.0164** (0.0074)	0.0051 (0.0085)
Prior Discipline	0.0404** (0.0206)	0.0391* (0.0212)	0.0435** (0.0186)	0.0401** (0.0192)	0.0395* (0.0207)
Waived In	-0.0008 (0.0122)	-0.0027 (0.0109)	-0.0103 (0.0080)	-0.0083 (0.0088)	-0.0021 (0.0118)
<u>Rank of Law School</u>					
1–10	-0.0147 (0.0096)	-0.0120 (0.0093)			-0.0148 (0.0096)
11–25	-0.0652*** (0.0240)	-0.0653*** (0.0241)			-0.0650*** (0.0240)
<i>Remainder of First Quartile</i>	-0.0256*** (0.0098)	-0.0254** (0.0099)			-0.0248** (0.0098)
<i>Second Quartile</i>	-0.0251*** (0.0071)	-0.0249*** (0.0070)			-0.0247*** (0.0071)
<i>Third Quartile</i>	-0.0205*** (0.0078)	-0.0200*** (0.0075)			-0.0203*** (0.0078)
Class Rank	-0.0737*** (0.0162)	-0.0782*** (0.0164)	-0.0685*** (0.0153)		-0.0731*** (0.0160)
Average Grade	-0.0014 (0.0021)	-0.0025 (0.0022)	-0.0038* (0.0021)		-0.0012 (0.0021)
LSAT (percentile)	0.0167 (0.0164)	0.0153 (0.0159)	-0.0044 (0.0136)		0.0184 (0.0161)
Discipline, Academic Deficiency	-0.0130 (0.009)	-0.0116 (0.0084)	-0.0103 (0.0084)		-0.0107 (0.0085)
Discipline, Other	0.002 (0.0188)	0.0068 (0.0234)	0.0074 (0.0242)	-0.0034 (0.0207)	0.0017 (0.0187)

TABLE A-6

*Logistic regression predicting discipline—Models 1 through 5 (Continued)*

	Model 1	Model 2	Model 3	Model 4	Model 5
Negative Feedback, Dean's Certificate	−0.0315 (0.0233)	−0.0269 (0.0209)	−0.0300 (0.0231)		−0.0254 (0.0201)
Negative Feedback, Letters	−0.0068 (0.0110)	−0.0058 (0.0109)	−0.0018 (0.0097)		−0.0064 (0.0111)
Student Loan Debt	0.0004*** (0.0001)			0.0004*** (0.0001)	0.0004*** (0.0001)
Criminal Convictions	0.009 (0.0142)	0.0121 (0.0153)		0.0077 (0.0120)	0.0076 (0.0130)
Traffic Violations, Number	0.003* (0.0016)	0.003** (0.0015)	0.0036** (0.0015)	0.0034** (0.0014)	0.0030* (0.0015)
Driver's License Suspensions	0.0038 (0.0086)	0.0075 (0.0086)	0.005 (0.0082)	0.0028 (0.0079)	0.0035 (0.0086)
Civil Litigation	0.0149** (0.0059)	0.0152*** (0.0058)	0.0162*** (0.0057)	0.0144** (0.0058)	0.0155*** (0.0059)
Litigation Alleging Fraud	0.0051 (0.0251)	−0.0014 (0.0258)	−0.0052 (0.0245)	0.0010 (0.0260)	0.0043 (0.0251)
Substance Abuse	−0.0017 (0.0237)	−0.0084 (0.0253)	−0.0021 (0.0214)	−0.0166 (0.0248)	
Psychological Disorder	0.0317** (0.0127)	0.0292** (0.0120)	0.0270** (0.0129)	0.0178 (0.0146)	
<i>N</i>	1,343	1,343	1,343	1,343	1,343

\* $p < .10$ , \*\* $p < .05$ , \*\*\* $p < .01$ .

Marginal effects specification. Missing mean substitution by Ever Disciplined/Never Disciplined. All variables held at mean. Some variables omitted due to perfect prediction.

TABLE A-7  
*Logistic regression predicting discipline—Models 6 and 7*

	Model 6	Model 7		Model 6	Model 7
Age	0.0003 (0.0004)	0.0003 (0.0004)	Armed Services	0.0015 (0.0088)	0.0006 (0.0091)
Female	-0.0054 (0.0152)	-0.0238*** (0.0043)	Default on Student Loan	0.0063 (0.0121)	0.0079 (0.0115)
1989	-0.0011 (0.0069)	-0.0011 (0.0068)	Judgment Against by Creditor	0.0016 (0.0144)	-0.0020 (0.0146)
1990	-0.0012 (0.0067)	-0.0003 (0.0068)	Delinquent Accounts	0.0213*** (0.0071)	0.0214*** (0.0070)
1991	-0.0032 (0.0064)	-0.0015 (0.0066)	Bankruptcies	(Omitted)	(Omitted)
Prior Application	0.0046 (0.0085)	0.0062 (0.0084)	Non-Student Loan Debt	0.0008 (0.0007)	0.0008 (0.0007)
Prior Discipline	0.0390* (0.0207)	0.0372 (0.0229)	Student Loan Debt	0.0003** (0.0001)	0.0004*** (0.0001)
Waived In	-0.0006 (0.0125)	-0.0017 (0.0118)	Criminal Convictions	0.0087 (0.0138)	0.0090 (0.0132)
<u>Rank of Law School</u>			Traffic Violations, Number	0.0031* (0.0016)	0.0041** (0.0018)
1–10	-0.0152 (0.0098)		Driver's License Suspensions	0.0041 (0.0086)	0.0040 (0.0084)
11–25	-0.0653*** (0.0240)		Civil Litigation	0.0143** (0.006)	0.0156*** (0.0058)
<i>Remainder of First Quartile</i>	-0.0261*** (0.0098)		Litigation Alleging Fraud	0.0059 (0.0255)	0.0067 (0.0243)
<i>Second Quartile</i>	-0.0255*** (0.0071)		Substance Abuse	0.0013 (0.0236)	0.0038 (0.0217)
<i>Third Quartile</i>	-0.0207*** (0.0078)		Psychological Disorder	0.0359*** (0.0131)	0.0311** (0.0131)
Class Rank	-0.0746*** (0.0162)	-0.0710*** (0.0158)			

TABLE A-7

*Logistic regression predicting discipline—Models 6 and 7 (Continued)*

	Model 6	Model 7		Model 6	Model 7
Average Grade	−0.0012 (0.0021)	−0.0011 (0.0021)	Female*Student Loan Debt	0.0003 (0.0003)	
LSAT (Percentile)	0.0248 (0.0177)	0.0036 (0.0189)	Female* LSAT	−0.0005* (0.0003)	
Discipline, Academic Deficiency	−0.0141 (0.0093)	−0.0131 (0.0091)	Female*Traffic Violations	0.0009 (0.0042)	
Discipline, Other	−0.0001 (0.0198)	0.0031 (0.0201)	Fourth Quartile		0.0080 (0.0218)
Negative Feedback, Dean's Certificate	−0.0331 (0.0254)	−0.0341 (0.0247)	Fourth Quartile*Student Loan Debt		0.0000 (0.0003)
Negative Feedback, Letters	−0.0074 (0.0111)	−0.0063 (0.0109)	Fourth Quartile*LSAT		0.0003 (0.0003)
Work Discipline	0.0063 (0.0067)	0.0061 (0.0068)	Fourth Quartile*Traffic Violations		−0.0025 (0.0026)
<i>N</i>	1,343	1,343	<i>N</i>	1,343	1,343

\* $p < .10$ , \*\* $p < .05$ , \*\*\* $p < .01$ .

Marginal effects specification. Missing mean substitution by ever disciplined/never disciplined. All variables held at mean. Some variables omitted due to perfect prediction.

## Appendix B: Missing Discipline Data

As noted in the report, about 75% of the Connecticut lawyers in our sample were also licensed to practice in one or more additional jurisdictions.<sup>110</sup> Some of these jurisdictions impose private discipline on lawyers for certain kinds of minor misconduct, and as the name suggests, a record of private discipline is not disclosed to the general public. While some state disciplinary authorities were willing to disclose to us whether lawyers in our sample had been subject to private sanctions in their state, many would not. It is therefore clear that we have understated the amount of discipline in our sample: Some lawyers were probably privately disciplined in states outside of Connecticut, but we do not now know how many or which ones. What consequences does this have? We discuss the theoretical issues first, and then try to provide some sense of the empirical magnitude involved.

### Theoretical Issues

The problem we confront is not the standard (and largely innocuous) one of classical measurement error in the dependent variable. The errors in our dependent variable are systematic, rather than random: They involve only mistakenly treating some disciplined lawyers as never disciplined, but not the reverse (mistakenly classifying some never disciplined lawyers as disciplined). The key question then becomes how discipline in the miscoded cases relates to the explanatory variables in those cases.

One obvious assumption to make is that the relationship between the imposition of discipline and the explanatory variables (e.g., age, gender) is the same for the miscoded cases as it is for the correctly coded instances of discipline. If so, this would imply that our regression coefficients are biased downward (toward zero): Being male, for example, has a bigger effect on the likelihood of discipline than we estimate, because not only does being male raise the likelihood of being correctly identified as disciplined, but it also raises the likelihood of being disciplined in ways that we do not account for due to the miscoding.<sup>111</sup> The assumption that the miscoded lawyers are just like those whose discipline status we correctly observe is not obviously correct, however. Lawyers who are licensed to practice in more than one jurisdiction are not necessarily the same as those who are licensed to practice only in Connecticut. For example, lawyers admitted to practice in multiple jurisdictions might be more likely to work at larger firms with offices in many locations.<sup>112</sup> Such lawyers typically graduate from higher ranked law schools, and are less likely to be disciplined for a variety of reasons, including stronger office support. To the extent that the miscoded lawyers

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<sup>110</sup> Although we had the office addresses of most of the lawyers in the sample, it is often impossible to determine whether a lawyer who is licensed to practice in any given state actually practices there.

<sup>111</sup> Suppose, for example, that we identified 100 lawyers as disciplined, but that there were an additional 25 lawyers who were privately disciplined but were misclassified as never disciplined. The regression coefficient for Male estimates the effect of being male on the probability of being included in the group of 100 disciplined lawyers. But by hypothesis, being male also increases the probability of being in the group of 25 misclassified lawyers, which the measured coefficient does not account for. The measured effect of being male is thus too small.

<sup>112</sup> In contrast, solo or small firm practitioners generally have local clients and may be deterred by the expense of maintaining additional offices and bar memberships in multiple jurisdictions.

come from the subpopulation that is less likely to be privately disciplined, the bias arising from missing discipline data is mitigated, and might even run in the opposite direction.

## Empirical Evidence

We estimate that there were roughly 840 lawyers who were potentially subject to private discipline outside of Connecticut that we did not learn about.<sup>113</sup> We reached that figure as follows: We began with a count of the number of lawyers who were admitted in any jurisdiction outside of Connecticut (roughly 1,000). Some states were willing to tell us which lawyers had been privately disciplined, and other states do not impose private discipline, so we subtracted from this number the lawyers who practiced only in Connecticut and one or more of those states. From this group, we then subtracted all the lawyers who were known to have been disciplined in any state (including Connecticut), because our concern was to identify those lawyers whose only discipline occurred in states that impose private discipline.<sup>114</sup> That gave a total of about 840 lawyers who were potentially subject to private discipline that we would not know about.

We now present a back-of-the-envelope estimate of the effects of the missing discipline data. We began by inquiring of every state that has private discipline whether any of the lawyers in our population had been privately disciplined in that state. (For some states, we only asked about our sample of 1,300, rather than the entire population of 6,000.) The states with private discipline fall into two subgroups: those that would not reveal whether any Connecticut lawyers on our list experienced private discipline (Group A) and those that did tell us whether anyone from our list of 6,000 had been subjected to private discipline (Group B). Our strategy is to use the rate of private discipline in Group B states to proxy for the rate in Group A states.<sup>115</sup>

We estimated (above) that there were roughly 840 lawyers in our sample practicing in Group A states and roughly 315 lawyers in Group B states. Group B states revealed 2 lawyers with private discipline, for a rate of 0.64%. Applying this rate to the 840 lawyers in Group A, we estimate that there were an additional 5.4 lawyers ( $=.0064 \times 840$ ) in Group A who were privately disciplined and about whom we did not know.

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<sup>113</sup> We do not include in this number those lawyers who were potentially subject to diversion. More than 20 jurisdictions have diversion programs that handle “minor” misconduct outside the discipline system. Diversion may include, *inter alia*, law office management assistance, lawyer assistance programs, monitoring, and legal education. Levin, *supra* note 61, at 4. Diversion will not be offered if the lawyer has previously received another recent opportunity for diversion. Diversion is not considered a lawyer discipline sanction and is treated as confidential. *Id.* at 19 n. 117.

<sup>114</sup> Since we treat discipline as a “Yes/No” or “0/1” variable, it doesn’t matter how many times or in how many locations a lawyer was disciplined. We treat multiple instances of discipline as equivalent to a single instance, so as long as we can detect at least one instance, it does not matter how many more there were. Put another way, our only concern is with lawyers whose sole discipline occurred outside of Connecticut and in a state that (a) imposes private discipline and (b) would not tell us whether lawyers in our sample were privately disciplined there.

<sup>115</sup> Of course this assumes that the rate of private discipline in Group A is the same as that in Group B. That is a reasonable assumption, but of course it need not necessarily be true. The Group A states might have different rules for imposing discipline, or the group of Connecticut lawyers practicing in Group A states might differ from those in Group B states.

This means that instead of roughly 150 known disciplined lawyers, there were probably actually 155 disciplined lawyers, so the overall rate of discipline in the population is not  $150/6000$  (2.5%), but  $155/6000$  (2.6%). What about in our sample? We have 150 disciplined lawyers, and roughly 1,300 nondisciplined lawyers, for an in-sample rate of  $(150/[150+1300]) = 10.3\%$ . We sampled 100% of the lawyers known to have experienced discipline, and randomly picked  $1,300/(6000-150)$  (22%) of the lawyers who were presumed not to have been disciplined. Because we picked our sample randomly, our sample of 1,300 should include 22% of the 5 lawyers in Group A who were probably actually privately disciplined (but about whom we did not know), as well as 22% of the truly never disciplined lawyers. Thus, we estimate that our sample of roughly 1,300 never disciplined lawyers (wrongly) contains  $(22\% \times 5 =) 1$  of the truly disciplined. To be conservative, we double this quantity to make it 2. Thus, the sample should contain two more disciplined and two fewer never disciplined lawyers than it appears to, implying that instead of a rate of  $150/(150+1300) = 10.3\%$ , the in-sample disciplined rate should be  $152/[152+1,298] = 10.4\%$ . Or put another way, the true discipline rate in our sample is understated by a modest  $10.4/10.3 = 0.9\%$ .

On this basis (and granting the “behavioral” assumption that the rate of private discipline is the same in Group A and Group B states), the problem of missing private discipline does not appear to be serious.