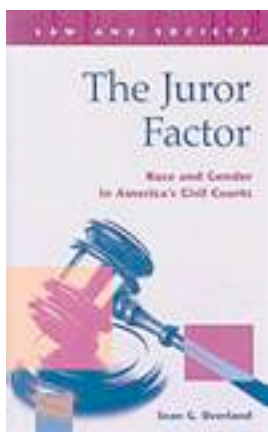


The Juror Factor: Race and Gender in America's Civil Courts

A Book Review

by Rita Handrich

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Sonia Sotomayor's nomination to the US Supreme Court in May 2009 unleashed a storm of controversy based on her remarks on her own judicial decision-making:

"I would hope that a wise Latina woman, with the richness of her experiences, would more often than not reach a better conclusion than a white male who hasn't lived that life" (<http://www.cnn.com/2009/POLITICS/05/28/sotomayor.latina.remark.reax/>).

While Rush Limbaugh chastised her for showing "reverse racism" and Newt Gingrich suggested she should withdraw her name from nomination for this "racist" statement, others considered her remarks (taken in context) to reflect a simple truth that judicial decision-making is strongly influenced by the life experiences of the individual judge (<http://www.psychologytoday.com/blog/science-small-talk/200906/judging-diversity-part-i>).

In its own way, Sean Overland's new book, *The Juror Factor: Race and Gender in America's Civil Courts* (published in 2009 by LFB Scholarly Publishing) explores a similar theme. This book examines the manner in which a juror's gender and race affect how they make individual decisions on various civil cases. The author cites the "color-blind ideal" and acknowledges that we are often uncomfortable voicing the perspective that "race matters" and yet insists we must consider that race (and gender) often do matter. Simply put, our mistakes have been in incorrectly measuring important demographics and assuming that criminal jury decision-making research also applies to civil jury decision-making.

The Juror Factor is unusual in that it efficiently reviews the voluminous past research concluding that demographic factors such as race and gender are inconsequential in juror verdict decisions—and then opines the exact opposite: demographics do sometimes matter. Overland goes on to tell us why race and gender matter in verdict decisions using data from pre-trial research conducted with jury-eligible citizens rather than college students. As most of us know, most research on jury decision-making is conducted with college students using one-page written case vignettes or other, often unrealistic trial simulations. By using more diverse mock juror samples in pretrial research data, Overland's conclusions are drawn from as close to a courtroom simulation as we can achieve with real attorneys presenting the case facts and real jury-eligible citizens deliberating to a verdict. Overland stresses a reality that those of us doing pre-trial research know very well: mock jurors take their tasks seriously and struggle with their decisions. The use of pretrial research/mock juror data lends credibility to the conclusions in *The Juror Factor*.

According to Overland, race and gender *do* impact verdict choices (especially in civil litigation) and he provides detailed information on how juror gender and race are related to verdicts in three different kinds of cases (car accident cases, prescription drug cases and accounting malpractice cases). For each of

these exemplar cases, he reviews the impact of juror race and gender as well as political attitudes, attitudes toward corporations, and attitudes toward litigation. These are not simple relationships like the dated (and incorrect) “women and ethnic minorities go for plaintiffs” but rather are complex relationships based upon a number of factors which take life experiences, attitudes and case facts into consideration.

There are lessons in this book for anyone interested in the jury system, decision-making, and the role of politics in crucial jury selection case law (an informative treatment of *Batson* among other decisions). Overall, it is a research-based exposition on how to explore ways in which jurors are predisposed toward a case based on mostly visible characteristics and straightforward questions to venire members. As such, *The Juror Factor: Race and Gender in America’s Civil Courts* represents a novel contribution to our litigation advocacy work.

Wishful thinking aside, Overland doesn’t claim (or provide) any “silver bullet” for detecting bias. As Albert Einstein memorably said: “A little information is a dangerous thing. So is a lot.” In this instance, the danger lies in our desire for quick and easy answers to complex and difficult decisions. Sean Overland gives readers new insights into factors and strategies, which always fall short of a magical predictive model. Overland provides a useful review of the literature and a persuasive explanation of how the existing research methodology and findings can be flawed. The value of pre-trial research lies in identifying the surprises, the unexpected, the potential landmines in the specific case. Use the ideas presented in *The Juror Factor* but do not wholly commit to preconceived notions as to their validity for your specific case—that sort of cognitive process results in blind spots. Employ his guidance. Do the work. Use the data. And form your best conclusions.

As someone who has followed the research on issues related to race, racism, bias and decision-making, I wondered if I would learn anything new from *The Juror Factor*. To my surprise, not only did I learn a lot, both new and worthwhile, but I also read this 150-page book in a single and raptly attentive session. I came away curious about whether I will find similar patterns in litigation types beyond those that Overland examines. The book is well-documented and referenced and while perhaps daunting in places for those without statistical training, it is a fairly straight-forward and intriguingly different read. We are so used to hearing “demographics don’t matter, attitudes matter” that it is refreshing to hear that “all of it matters”. Am I planning to use what I learned from this book in future litigation consulting? You bet I am.

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13,450+

13,450. That's the number of reads our May issue of *The Jury Expert* had as of Monday, July 20 (the day before we published this issue). Our online debut issue (in May 2008) had a few more than 500 reads. Over the past year we have grown a lot and we are grateful to the thousands of you who read our pages every issue. And even more grateful (dizzily so!) when you pass us on to your friends and colleagues.

We are also grateful to the academics and researchers who write for us and turn theory into practice and especially grateful to the members of the American Society of Trial Consultants (ASTC) without whom we would not exist. ASTC member trial consultants continue to inform, educate and surprise us with creative and practical articles focused on improving litigation advocacy. So thanks to all of you and to paraphrase a young Sally Fields--"you like us, really like us".

This issue is filled with lessons for uncertain times. We have articles on terror management theory and how to use it at trial, two articles on damages in times of recession (does it make a difference in awards and if so, how?), getting the most out of videos at trial, exploring the TODDI defense (this other dude did it!), how to prepare your witness for the environment change from office to actual courtroom, and negotiating in the new millennium. Plus our July favorite thing and a book review. It's hot outside! Stay inside, enjoy the air conditioning and read *The Jury Expert*!

--- *Rita R. Handrich, Ph.D.*



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