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## Does This Recession Make Me Look Black?

by Christopher D. Rodeheffer, Sarah E. Hill, and Charles G. Lord

**Don't miss our trial consultant responses at the end of this article: [Roy Aranda](#), [Gabrielle Smith](#), [Stanley L. Brodsky](#), and [George Kitahara Kich](#), and a [response to the consultants from the authors](#).**

### The Effect of Resource Scarcity on the Categorization of Biracial Faces

**W**HETHER AT THE SUPERMARKET or jogging through the park, we effortlessly categorize those we come in contact with as either belonging to “us” or “them.” Unfortunately, race is usually a determining factor in how we make these decisions. People readily associate same race individuals with “us” (i.e., the in-group) and other race individuals with “them” (i.e., the out-group; Hewstone, Hantzi, & Johnston, 1991). In today’s diverse world, however, not all individuals fit neatly into one racial category. According to the 2010 U.S. Census, there are over 9 million Americans with a multi-racial heritage, a number that is expected to more than double by 2050 to 21.5 million (Humes, Jones, & Ramirez, 2011). If, while jogging through the park, you pass someone with a mixed-racial heritage, how will you perceive them? Here, we discuss two studies that suggest your decision might

be biased by the current state of the economy (Rodeheffer, Hill, & Lord, 2012). We predicted that when resources are scarce, and there is less to go around, people may be more restrictive when granting in-group or “us” status to biracial others.

Whether we view another person as belonging to “us” or “them” has substantial consequences for how we might treat them. People are biased toward members of their in-group, which usually occurs at the expense of those who are categorized as belonging to the out-group (Kurzban & Neuberg, 2005). Research shows, for example, that simply dividing people into arbitrary groups can lead to in-group favoritism or bias. In one study, people were divided into groups based ostensibly on their performance on an essentially meaningless dot counting task. People subsequently allotted more money to those in their assigned group than to those in the other group (Billig & Tajfel, 1973). Further, dividing people into categories in this way creates an “out-group homogeneity effect,” which is the tendency to ascribe greater diversity to one’s in-group and

homogeneity to out-groups. In other words, people tend to perceive out-groups as being less diverse or “all alike” than their own groups. Given that we think more positively about people who are similar to us and more negatively about those who are dissimilar, these distorted perceptions foster a universal tendency for in-group bias or favoritism (Byrne & Wong, 1962; Rokeach & Mezei, 1966).

One explanation offered for such biases, is that they arise from resource competition between groups (e.g., Kurzban & Neuberg, 2005; Schaller, Park, & Faulkner, 2003; Sherif, 1966). From this perspective, heightened out-group antagonism is predicted to occur during periods of scarcity, leading to detrimental intergroup conflict (Jackson, 1993; Sherif, 1966). Accordingly, resource scarcity—such as that experienced during recessions—may favor the emergence of in-group / out-group distinctions and, in turn, cloud our judgments of others. The costs of such intergroup conflict can be great, ranging from the loss of extant resources to physical harm or even death (Kurzban & Neuberg, 2005). Over the course of our evolutionary past, to help manage these costs, we might expect natural selection to have instilled in our ancestors heightened vigilance about whom they associate with under conditions of diminished resource access. This heightened vigilance may lead people to be increasingly leery of those whose in-group status is ambiguous (e.g., mixed-race individuals), making it less likely to view such ambiguous individuals as fellow in-group members.

The idea that scarcity might lead people to categorize biracial others with the out-group race is consistent with existing research. Miller, Maner, & Becker (2010) conducted a series of studies demonstrating that when biracial targets were perceived as threatening, they were more likely to be categorized as belonging to the out-group race. When viewing angry biracial faces, for example, White people were more likely to categorize those faces as Black (Miller et al., 2010). We propose that restricted resource access may evoke similar threat perceptions, biasing perceptions of biracial targets. When resource access is restricted via recession or other conditions of scarcity, and the threat of intergroup conflict increases, people may more readily associate biracial others with the out-group.

## Study 1

The goal of Study 1 was to test how cues to resource scarcity via economic recession, compared to cues of economic prosperity, would influence peoples’ willingness to include biracial others in their racial in-group. We predicted that when led to believe the current U.S. economy was failing, participants would be more likely to include biracial others in the racial out-group compared to those led to believe the economy was prospering.

## Method

### Participants

Participants were 71 White undergraduate psychology students (18 male, 53 female) participating to fulfill a research participation requirement for a psychology course.

### Procedure

To inspire thoughts that the current U.S. economy was either faltering or prospering, we showed participants a brief slideshow depicting either economic collapse or prosperity. To convince participants in both conditions that the slideshows accurately portrayed the current state of the U.S. economy, we told them that they were picture and caption versions of an article recently published on [nytimes.com](http://nytimes.com). Both slideshows consisted of seven slides, all of which had the title of the alleged article at the top, a relevant picture, and then a caption describing the picture.

The recession slideshow, for example, was entitled, “*The New Economics of the 21st Century: A Harsh and Unpredictable World.*” One slide had a picture of an unemployment line, with a caption that read: “The white-collar unemployment line—a sign of the new economy. Even college-educated individuals have a hard time finding secure work, leading to constant anxiety about the future.”

The prosperous economy slideshow was entitled, “*Modern Times of Economic Prosperity: More than Enough to Go Around.*” One slide, for example, had a picture of a thriving office with a caption that read, “One among many, a thriving office attempts to maintain control over the demand for their services. Jobs are being created faster than they can be filled.”

Participants viewed their assigned slideshow. Then they were shown 20 biracial faces (10 male, 10 female) and for each one asked, “*If you had to choose, would it be more accurate to describe this biracial individual as Black or White?*” The target faces were created by averaging one White and one Black face using the face-averaging program at [www.face-averaging.com](http://www.face-averaging.com), which is made available by the Face Research Lab at the University of Glasgow Institute of Neuroscience and Psychology. All faces used were forward facing, neutral expression profiles and were taken from [the Center for Vital Longevity Face Database](http://www.cmu.edu/~feris/face_database/) (Minear & Park, 2004). After completing the categorization task, participants were thanked and fully debriefed.

### Results and Discussion

To test our hypothesis that people in the recession condition, relative to those in the economic prosperity condition, would categorize more biracial target faces as Black, we entered the number of faces categorized as Black into an independent-

samples  $t$ -test as the dependent variable with condition (recession, prosperity) as the independent variable. The results show that those exposed to recessionary cues categorized more faces as Black ( $M = 9.35$ ,  $SD = 2.80$ ) than did those in the abundance condition ( $M = 7.82$ ,  $SD = 3.15$ ),  $t(69) = 2.16$ ,  $p = .034$ ,  $d = 0.51$ . Thus, this finding supports our hypothesis that recessionary cues may lead Whites to have a more restrictive racial in-group, categorizing more biracial targets as black.

## Study 2

In Study 2 we sought to determine the directionality of this effect. Does scarcity increase the number of faces people categorize as Black? Does abundance decrease the number of faces people categorize as Black, or both? To this end, a neutral condition was included, serving as a baseline comparison for both the scarcity and abundance conditions. We predicted that those in the scarcity condition would categorize more biracial targets as Black compared to both the abundance and neutral conditions.

## Method

### Participants

Participants were 81 White undergraduate college students (32 male, 49 female) participating to fulfill a course research requirement.

### Procedure

Participants were randomly assigned to one of three conditions: resource scarcity, resource abundance, or a neutral control.

In the scarcity condition, participants completed analogy problems containing words descriptive of resource scarcity (e.g., sweat:summer :: debt:\_\_\_).

In the abundance condition, participants completed analogy problems containing words descriptive of resource abundance (e.g., payday:money :: harvest:\_\_\_).

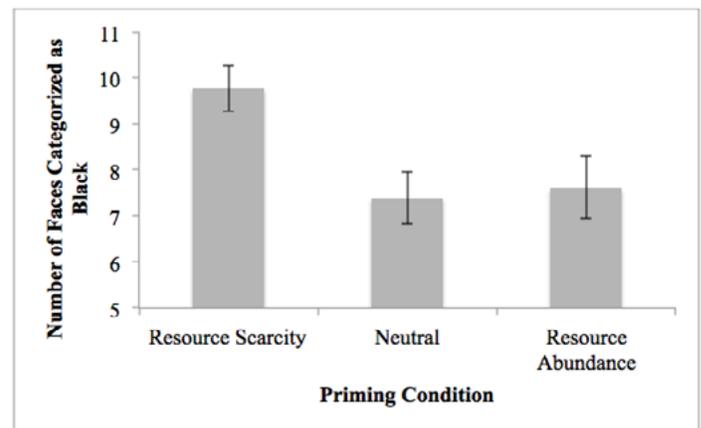
Participants in the neutral condition completed analogy problems that contained words unrelated to scarcity or abundance (e.g., diamond:baseball :: court :\_\_\_).

Next, after completing their respective problems, participants in all conditions completed the same facial categorization task used in Study 1, categorizing 20 biracial faces by responding to the item, "If you had to choose, would it be more accurate to describe this biracial individual as Black or White?"

## Results and Discussion

We entered the number of faces participants categorized as Black into a one-way analysis of variance, with condition (scarcity, abundance, neutral) as the independent variable. The analysis

yielded a significant effect of condition,  $F(2, 78) = 5.11$ ,  $p = .008$ ,  $\eta^2 = .12$ . Probing this effect (Tukey's HSD,  $p < .05$ ) revealed that participants in the scarcity condition categorized more biracial faces as Black ( $M = 9.78$ ,  $SD = 2.60$ ) compared to those in the neutral ( $M = 7.39$ ,  $SD = 3.02$ ) and abundance conditions ( $M = 7.62$ ,  $SD = 3.43$ ). The results also revealed that the abundance and neutral conditions did not differ from each other. This finding is consistent with the results of Study 1 and our hypothesis that during times of restricted resource access, people may limit the inclusiveness of their in-group, leading them to categorize more biracial targets as belonging to the out-group.



*Figure 1. Mean number of faces categorized as Black as a function of priming condition (Study 2). Error bars reflect standard error of the mean.*

## General Discussion

Humans develop complex social relationships and work cooperatively toward common goals (Richerson & Boyd, 1998). Such ultra-sociality has many benefits (e.g., shared resources), but also has its costs (e.g., crime). We would expect, then, for humans to have cognitive mechanisms in place to help manage the costs and benefits of group life and sociality—we would expect humans to be discriminately social (Kurzban & Leary, 2001; Kurzban & Neuberg, 2005). To this end, people make snap judgments about who belongs and who does not.

In two studies we found that cues to recession and resource scarcity may influence how people make these snap judgments when evaluating whether biracial individuals belong to their racial in-group or out-group. Recessionary and scarcity cues increased people's tendency to categorize biracial targets as belonging to the out-group. This increased tendency may carry substantial consequences for biracial individuals, potentially subjecting them to both subtle and blatant forms of discrimination (Fiske, 1998). Recall the "out-group homogeneity effect," or the tendency to think out-groups are "all alike." This bias is reflected in our simple perceptions and memory for other-race faces. Research in social psychology, for example, shows that people have poor facial recognition

memory for other-race individuals relative to same-race individuals. In other words, people tend to think members of other racial groups all look the same (Devine & Malpass, 1985).

Memory for biracial faces varies depending on whether people categorize them as belonging to the in-group or out-group. Simply considering a biracial face as belonging to the in-group, rather than an out-group, significantly improves recognition (Pauker et al., 2009). These findings suggest that biracial individuals, depending on how they are categorized by others, stand to either gain or lose the benefits afforded to in-group members, such as shared resources, various forms of social support, and more favorable interpersonal evaluations. If recessions decrease the extent to which people think biracial individuals belong (presumably by both White and Black people), we might expect obtaining such benefits to be considerably more difficult for biracial individuals.

Although this research was not conducted with the courtroom in mind, it might be relevant to litigation. In general, our findings suggest that during times of economic hardship, biracial individuals in the courtroom—whether a defendant, defense attorney, prosecutor, plaintiff attorney, or witness—may face greater adversity. Research has established, for example, that race plays an important role in the sentencing of capital punishment: Black defendants are more likely to be sentenced to death compared to White defendants (Baldus, Woodworth, Zuckerman, Weiner, & Broffitt, 1998). Furthermore, as the stereotypicality of Black defendants (primarily characterized by darker skin pigmentation) increases, the likelihood of a

death sentence becomes even greater (Eberhardt, Davies, Purdie-Vaughns, & Johnson, 2006). Presumably, this occurs because people more readily assign out-group status to those individuals who more closely fit the stereotypical profile of what is considered to be the out-group.

We might expect, then, during tough economic times or other conditions of resource scarcity that prompt people to view biracial people as belonging to the out-group, biracial people may receive harsher sentences when convicted, have a harder time making their case as an attorney, or greater difficulty seeming credible as a witness, just as Blacks in the deep South historically suffered from increased lynching at times when cotton prices were low (Beck & Tolnay, 1990).

## Conclusion

Overall, our findings support our hypothesis that times of recession or scarcity prompt people to have a more restrictive in-group, and as a consequence, people become less likely to see biracial individuals as in-group members. These findings are consistent with research on in-group biases (e.g., Brewer, 1979; Halevy, Bornstein, & Sagiv, 2008; Mullen, Dovidio, Johnson, Copper, 1992; Tajfel, 1982), out-group prejudice (e.g., Ackerman et al., 2006; Cottrell & Neuberg, 2005; Navarrete & Fessler, 2006; Navarrete et al., 2009), and intergroup conflict (Jackson, 1993; Sheriff, 1966). As our world continues to become increasingly diverse and densely populated, achieving a better understanding of the processes and consequences of intergroup relations is paramount.



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**We asked several trial consultants to respond to this paper. Roy Aranda, Gabrielle Smith, Stanley L. Brodsky, and George Kitahara Kich respond below.**

**Roy Aranda responds:**

[Roy Aranda, Psy.D., J.D.](#) is a forensic psychologist with offices in N.Y. and Long Island. He has been involved in several high profile cases including traveling to Cuba and Puerto Rico and testifies frequently in criminal and civil cases throughout New York State.

**R**ODEHEFFER, HILL, & LORD conducted two ingenious studies to assess the impact of current state of the economy and race perception.

Briefly, they tested the hypothesis that how people perceive individuals of mixed racial heritage may be influenced by scarcity of resources during trying economic times. Noting that people are biased towards members of their own group, “Us” (insiders who belong) v. “Them” (outsiders who do not belong), Rodeheffer, Hill, & Lord predicted a more restrictive categorization of biracial individuals along this “Us v. Them” dimension by White undergraduate psychology students who were led to believe that the economy was failing and were asked to describe 20 biracial faces as Black or White.

The results of their first study (N = 18 males; 53 females) supported the hypothesis: namely that recessionary cues may lead Whites to categorize more biracial targets as black. Directionality of the effect (scarcity v. abundance) was supported by a second study (N = 32 males; 49 females).

The authors cite a body of relevant research and discuss several implications:

- Losing benefits afforded to in-group members
- Loss of or less access to shared benefits
- Loss of or less access to social support

- Less favorable interpersonal evaluations
- Being subjected to subtle and blatant form of discrimination

Rodeheffer, Hill, & Lord speculate that their research might be relevant to the world of courtrooms and litigation. How? They propose some areas of concern during times of economic hardship when more restrictive in-group biases appear to be more prevalent:

- Biracial individuals in the courtroom may face greater adversity
- Biracial defendants may receive harsher sentences
- Biracial attorneys may have greater difficulty making their case
- Biracial witnesses may have greater difficulty seeming credible

We are, of course, dealing with a system in which various forms of “isms” and pretextuality already are prevalent.

Some recent “strong statements” were made by Neil Vidmar, criticizing lawmakers who had introduced a bill to repeal North Carolina’s Racial Justice Act<sup>[1]</sup>, and by Associate Justice of the Supreme Court Sonia Sotomayor.<sup>[2]</sup>

Vidmar writes that “*juries that reflect our state’s multi-racial population are key to the integrity of our criminal justice system.*” He notes that “*racially mixed juries tend to have more thorough deliberations.*”

And Justice Sotomayor was very critical of a question made by the prosecutor in *Calhoun v. United States*:

You’ve got African Americans, you’ve got Hispanics, you’ve got a bag full of money. Does that tell you—a light bulb doesn’t go off in your head and say, This is a drug deal?” Justice Sotomayor noted that such argumentation “*offends the defendant’s right to an impartial jury*” and admonished “*not to fan the flames of fear of prejudice nor summon the thirteenth juror; prejudice*” (quoting Judge Frank, dissenting opinion, *United States v.*

*Antonelli Fireworks Co.*, 155 F. 2d 631 (CA2 1946)).

Adding to these already existing biases noted supra, one can only wonder if further research will confirm the hypothesis about resource scarcity and racial perception, and how much more this will tap the “*deep and sorry vein of racial prejudice that has run through the history of criminal justice in our Nation*” as stated by Justice Sotomayor in *Calhoun v. United States*.

Food for thought:

- Further efforts to replicate these findings?
- Applied research; taking it out of the university setting.
- What about other biracial mixes? For instance, biracial Hispanics. Will these results generalize? There are many “models” to draw from: perceptions regarding undocumented individuals as “illegals”; anchor babies. The perception that already is prevalent that “illegals” are an out-group who takes away from “our” (“Us v. Them”) resources. These “illegals” face very real and harsh consequences including detention, imprisonment, tough penalties, removal (i.e. deportation), and other biases.
- Does scarcity of resources in fact have a statistically significant impact to the “*treatment*” biracials experience in the criminal justice system above and beyond racial biases already encountered?
- Is there a way to ferret out differential kinds of racial and biracial bias?
- It is not just the courtroom where biases are manifested. There is the court of public opinion, political push-pull reactions, knee-jerk reactions, and how statutes and regulations are interpreted and enforced.
- What role does resource scarcity and abundance play in people who wield authority and power? Would those

with greater abundance perceive others with less abundance as outsiders? And if threatened by loss of resources, would they perceive others who are becoming more abundant or pose a greater threat as being outsiders?

- What impact might this “effect” have, if any, on jury consultants who play a significant role in the justice system?
- What impact might this “effect” have, if any, on news reporters who cover more sensationalistic trials?
- What repercussions, including financial consequences, may be seen in civil proceedings?
- And arbitration, mediation, plea bargaining, negotiations, settlements, etc.?
- Other legal contexts (Family Court; Immigration proceedings; bench trials; etc.)?

It strikes me that the role of resource scarcity v. abundance and biracial “Us v. Them” bias has broad and far-reaching implications. I commend Rodeheffer, Hill, & Lord for this most interesting research, quite on point given our socio-cultural-economic climate. <sup>10</sup>

#### References

<sup>[1]</sup> Neil Vidmar, Why Racially Mixed Juries and the Racial Justice Act Are Important, NewsObserver.com, March 16, 2013, available at: <http://www.newsobserver.com/2013/03/16/2752597/why-racially-mixed-juries-and.html>

<sup>[2]</sup> Calhoun v. United States, Statement of Sotomayor, J., 568 U.S. (2013)

### Gabrielle Smith and Stanley L. Brodsky respond:

[Gabrielle Smith, M.A.](#) is a social psychology graduate student at the University of Alabama. Her research includes race relations, racial identity and the effect of stigmatization on marginalized groups.

[Stanley L. Brodsky](#) is a Professor in the Department of Psychology at The University of Alabama. He is the author the [book Principles and Practices in Trial Consultation](#), as well as 13 other books.

### On the Categorization of Biracial Faces: Understanding Race-Based Perceptions and Judgments in the Courtroom

*Take this actual event. “She asked me ‘What are you?’ Can you believe she asked me that question? I told her how dare she ask me such a thing and expect a response and I walked away. As I was walking away I heard her whisper to her friend, ‘they are all so aggressive’. To her, my outburst confirmed my identity. I was officially Black.”*

This situation is not unusual for biracial people to encounter. Individuals who are racially ambiguous are often grilled about their racial composition, especially in locations that have minimal racial diversity. We are social animals who seek to classify others into distinct groups to simplify a complex social environment. When we encounter people who are not easily categorized (e.g. biracial people), there is often a struggle to classify them in order to reduce the cognitive load of the inability to stereotype (Bargh, 1999).

The Rodeheffer, Lord, and Hill study required participants to assign photos of biracial people as belonging to one of two racial groups: Black or White. The sparse available research on the perception of biracial others suggests that being biracial is a mutually exclusive racial category that differs from both Black and White categories. Thus, the research by Rodeheffer, et al. fails to address a critical element of the biracial identity:

the possibility that the individual is perceived as biracial instead of either Black or White. Biracial perception research suggests that biracial individuals do not simply experience half of the privilege that Whites have and half of the prejudice that Blacks face, but instead experience completely different types of privilege and prejudices. For example, biracial others are often perceived as less warm and more socially inept compared to both Black and White others (Jackman, Wagner & Johnson, 2001; Sanchez & Bonam, 2009).

We would have liked to see a direct survey of perceptions of how much the economic downturn is due to one racial group over the other. Such a survey would assess negative perceptions without assuming that the participants feel negatively about the Black community. Furthermore, placing a biracial face next to either a Black or White face causes them, by contrast, to be categorized with the other that is not present. Thus, this study would have benefited from priming individuals not only with thoughts of the recession, but also with the issue that the recession is the fault of either the in-group (i.e. Whites) or the out-group (i.e. Blacks). Asking participants to fit biracial faces into either the Black or White category after priming them with the economy is not enough.

Our concerns about categorizing biracial persons apply equally to attorneys, defendants, plaintiffs, and potential jurors. After all, compelling scholarly foundations lead us to believe that participants in the courtroom process are stereotyped by a variety of demographic variables. The justice system needs to be committed to central processing of evidence, so that race, gender, age, social class, and appearance do not influence the triers of fact. The subjective processing of peripheral information harmfully detracts from fairness in understanding of evidence and moving towards inferences based on probative information. The mere presence of a Black or biracial person on a predominately White jury can promote deeper processing of information regarding a Black or biracial defendant (Vidmar & Hans,

2007). Thus, it is important to create a racially representative environment in the courtroom in order to promote racial justice.

Race is arguably the single most powerful subjective influence in courtroom decisions. Racism in its various forms is deeply seated in many Americans in ways that are usually inaccessible to individuals. At the same time, racism is not a simple or unitary variable, much as race is not a simple or unitary trait. This article on categorization of biracial persons addresses only implications for defendants in criminal trials. The authors make the dangerous leap of suggesting that a small nudge in tough times that identifies defendants as black instead of white will harm them. What is wrong with the suggestion? Plenty.

1. The concept of being biracial needs to be examined. After all, one can argue that all Americans are racially mixed, in terms of early African origins. More important, this article buys into simplistic notions of racial identity.

2. We argue that tolerance for ambiguity in racial identity is one of the best pathways towards tolerance among people. Research on perceptions of biracial others suggests that there is a significant increase in bias toward biracial others once their racial identity is known (Sanchez & Bonam, 2009). Thus, it seems important to measure how identifying biracial others as either Black or White impacts judgment compared to designating them as biracial.

Instead of identifying race, the better task is to conduct studies in which we learn about the ways in which persons become comfortable in not knowing the "race" of biracial persons with whom they have contact.

3. Attorneys for the state in criminal cases typically assume that African-Americans will be poor prosecution jurors. To a lesser extent, attorneys for the defense in civil cases act the same way. Batson and subsequent similar appellate decisions have not addressed so-called degrees of Blackness. Research addressing skin tone

in the courtroom posits that African-American with light-skinned faces are shown more leniency than dark-skinned faces in both conviction rates and level of sentencing (Viglione, Hannon, & DeFina, 2011). This difference needs to be addressed beyond the either-or issue of Black and White. Because lighter skin tones usually belong to biracial individuals, there is a suggested difference between those who are biracial and those who are Black. However, since light skinned individuals still frequently receive heavier sentences than Whites, they are far from in-group members. Our position is that attorneys need to go beyond simplistic racial dimensions and instead take on the more difficult task of striking jurors based on substantive criteria related to the evidence and charges.

### Conclusions:

We welcome the efforts to think about biracial defendants. As we consider the understandings of biracial defendants and other parties in the courtroom, we urge targeted efforts to let go of stereotypes, to rise above biases, and to move towards race-fair perceptions and judgments. Such efforts do not occur automatically, but they are part of a commitment to justice beyond skin color. 16

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### George Kitahara Kich responds:

George Kitahara Kich, PhD, is an ASTC Board Member and a Litigation & Jury Consultant at George Kich Consulting where he provides focus group research, jury selection assistance and works in preparing witnesses. Along with more recent writing and presentations on jury dynamics, questionnaire development and persuasion, he has written book chapters and articles on race and gender (e.g., "In the margins of sex and race: Difference, marginality, and flexibility"; "Being different together in the university classroom: Multiracial identity as transgressive education") and, most recently, when the weather is good, he has been developing his stone carving techniques.

**L**ET ME START WITH positively acknowledging the essential contribution of this article: these researchers found that "*when resources are scarce . . . people may be more restrictive when granting in-group, or "us" status to biracial others.*" Additionally, they found that "*cues to recession and resource scarcity may influence how people make snap judgments.*..." Social and psychological research has indeed shown that biracial faces present an ambiguity problem for White people, for people with minimal interracial social contact, or for those who are directly or covertly racist. Also, resource scarcity is an important factor in the mindset of jurors, and has indeed been shown to result in both negative and positive responses between dissimilar peoples.

Our work in litigation research to humanize and personalize the claimants or respondents for whom we work continues to be at least one attempt to ameliorate such well-known perceptual processes, such as "out-

group homogeneity bias” discussed in this article, as well as counter-factuals, “us-them” biases generally and tort-reform or anti-corporate biases, to name a few. Humanizing and personalizing the criminal defendant for instance, or showing how the physically-injured plaintiff is also a member of your community, does help break down some of the power of these biases. Additionally, we know that jurors who have more strongly felt the negative effects of economic downturns do seem to have varying degrees of bias against plaintiffs’ money damages requests in personal injury, medical malpractice and employment cases. At the same time, we have found, for instance, that “a contract is a contract” people with medium or limited incomes can decide verdicts for multiple millions of dollars in a case where an executive was contractually promised stock options or salaries that none of the jurors or respondents could ever have had in their lifetimes. We also know that White jurors can tend to focus negatively on criminal defendants who are people of color; however, those biases are sometimes mediated by personal experience of victimization, having a mixed-race jury, specific education about the evidence in the case, and a general trust in the legal system. We know that simplistic research, where fundamental assumptions are not examined or accounted for, may not provide the best strategic outcomes for our clients.

Let me also say, that reviewing this article stirred mixed reactions for me. As a multiracial man, I have been “primed” on the complexities and implications of race, race mixing and multiracial identity my whole life, as well as through my research in the area prior to becoming a litigation consultant. In addition, along with my trial consulting work, I have been researching and preparing for an [early April 2013 conference panel](#) at the University of Southern California, on national and trans-national mixed-race identity. I have been marveling at advancements in the diversity and quality of current research and social theory since the 1960s (when I started academically examining race and mixed race). I eagerly volunteered as a commentator

when I heard the title of this article being planned for TJE. Although I have many pages of notes, I will try and focus my comments here for *The Jury Expert* on this research design and its outcomes in order to inform attorneys and litigation consultants about how to best conduct useful research.

In terms of this article, I want to comment on just a few points:

- This article is addressed to and attempts to explain White people’s (actually, young White students’) responses to “ambiguous” faces. The researchers’ prediction that people privilege their own in-group members over out-groups is a well-known phenomenon. The sentence, “*If, while jogging through the park, you pass someone with a mixed-race heritage, how will you perceive them?*” seems to get to the heart of the relational dynamic about racial identification and issues of belongingness vs. otherness, et cetera. However, it presumes a perspective that is not multiracial, and focuses on the perceptual problem of the White person (as if the White person is a member of a homogenous group). If your expected jury will be White and the parties are not, then (1) a careful determination of these questions about ambiguity will be relevant, and (2) careful differentiation of the White group can provide valuable jury selection information about which White people are affected in this negative way.

- This article seems to view “resource scarcity” as an experience of a White majority threatened by non-White others, and not as a multiracial class or social demographic issue. How do people who are not White respond to White people involved in a court case when primed about resource scarcity? How important is resource scarcity as “the” biasing factor in race relations? If there is no scarcity experience, then will racism end? What exactly was shown in these scarcity slideshows? Incorporating a measure of what resource scarcity is, studying the general biasing effects this priming has on respondents, for instance in a focus group, by each side may provide useful information about

the value of that kind of priming as a strategy in court. It may also reveal the importance and the interplay of other factors.

- This article is actually addressing the power dynamics of “hypodescent”, sometimes also known as the “[one-drop rule](#)”. It seems to be saying that resource scarcity is a basis for these simple perceptual judgments, and not a more clear-cut racism that has been the result of a highly-socialized perceptual and implicit historical dynamic. Another view on quick categorization of ambiguous faces may be useful and bears some review as a contrast. In 2008, two researchers from Northwestern University published [Black %2B White: Hypodescent in Reflexive Categorization of Racially Ambiguous Faces](#) . In this research,

Participants studied ambiguous target faces accompanied by profiles that either did or did not identify the targets as having multiracial backgrounds (biological, cultural, or both biological and cultural). Participants then completed a speeded dual categorization task requiring Black/not Black and White/ not White judgments (Experiments 1 and 2) and deliberate categorization tasks requiring participants to describe the races (Experiment 2) of target faces. When a target was known to have mixed-race ancestry, participants were more likely to rapidly categorize the target as Black (and not White); however, the same cues also increased deliberate categorizations of the targets as ‘multiracial.’ These findings suggest that hypodescent still characterizes the automatic racial categorizations of many perceivers, *although more complex racial identities may be acknowledged upon more thoughtful reflection.*” (Emphasis is mine; the quote is from the above-mentioned article). Hypodescent beliefs, not resource scarcity, were seen as the operative factor in this 2008 publication.

• What were the perceptions, experiences or valuations about biracials that these White students had prior to priming? How did they identify themselves racially or ethnically? What effects did the priming have for those who had awareness of “*more complex racial identities*”? Prior to the research directive to categorize biracials as either White or Black, what were their implicit responses to biracial, Black or other racial categories? Were they asked prior to the conditioning or priming, how they might categorize such ambiguous faces without the priming?

This research helps perpetuate the limited, restrictive binaries about race, marginality and a colorism hierarchy that many of us have fought to expose. The useful kernel of insight about in- and out-group effects conditioned by factors such as economic scarcity, gets lost in choice of regressive sample selection, unexamined assumptions and homogeneity errors. Some sources of information that can help in understanding how research about positive or negative perceptions of ambiguity might be affected by additional factors:

[Wikipedia: Multiracial America](#)

[Five Myths About Multiracial People in The U.S.](#)

[Census Says There Are More Biracial People, but That Depends](#)

[Mixed Race in a World Not Yet Post-Racial](#)

And of direct relevance to the legal community:

[Judicial Erasure of Mixed-Race Discrimination](#)

At this point, as when I am teaching, I might say, please review the prior web resources, take notes and then, discuss freely.

## The authors reply:

**W**E APPRECIATE the consultants’ comments; however, we take issue with the numerous disagreements and comments on our research made by two of the reviews. Although we do not have the time or space to respond to every concern, below are responses to a few that we felt most compelled to dialog:

We feel that the original context of our research was either not clearly conveyed to the consultants, or was ignored. We were invited by the editors of *The Jury Expert* to write this piece based on an article (which we cite in the paper) we published as a short report in *Psychological Science*. A short report is limited to 1000 words and is meant to report brief experiments of broad interest and that can serve as a foundation for later, more nuanced research. Indeed, our paper was published with the intention that our results would serve as an impetus for future research—not that the results would reflect the final word on research related to race perceptions. With this in mind, we agree with the reviewers that there are several factors that we did not explore that may influence the relationship between scarcity and group categorization. However, there were several ways that the reviewers misrepresented our research that we believe should be addressed. We address these below.

In his review, Kich states, “*It seems to be saying that resource scarcity is a basis for these simple perceptual judgments, and not a more clear-cut racism that has been the result of a highly-socialized perceptual and implicit historical dynamic.*” This simply does not reflect our position. As evolutionary psychologists, we use the principles of evolutionary biology and natural selection to better understand human cognition and behavior. From this perspective (as we clearly state in our article), we view competition for resources over the course of our evolutionary past as one of the primary, ultimate causes for what he refers to as the “*highly-socialized perceptual and implicit historical*

*dynamic*” of group relations. In other words, over the course of evolutionary history, the group dynamics that we observe today served an amoral adaptive function (e.g., acquisition of resources, self-protection). Scarcity increases this natural competition between groups, which is why we believe that people are more exclusive when assigning group membership when prompted with scarcity cues. Of course, just because something is “natural” does not make it moral or excusable (for a review and rebuttal of the major unwarranted concerns of evolutionary psychology, please see Confer et al., 2010).

Kich also states, “*This article seems to view “resource scarcity” as an experience of a White majority threatened by non-White others, and not as a multiracial class or social demographic issue.*” This interpretation also does not reflect our position. Resource scarcity has been and always will be a problem faced by all humans (arguably even more so as time progresses with the depletion of our world’s natural resources), regardless of race or social demographic. Accordingly, we would predict that we would find analogous results in a Black population (i.e., with Black participants also being more likely to categorize biracial others as belonging to their racial out-group, perceiving them as White). As described in the discussion section of our original article, future research is needed to test this prediction. Rather than helping “*perpetuate the limited, restrictive binaries about race, marginality and a colorism hierarchy*” (as suggested by Kich), we are confident that the results of our research will provide the groundwork for important new discoveries that will help us better understand the psychological processes that guide person perception and, ultimately, help people overcome the type of simplistic racial categorization Kich warns against.

Similarly, Smith and Brodsky claim that, “*this article buys into simplistic notions of racial identity.*” We disagree with this statement. We do not buy into the simplistic notion of racial identity nor do we believe our research promotes such a view, but rather it seeks to better

understand the natural, unfortunate tendency of people (on average) to make simplistic (and often incorrect) inferences about group membership based on race or other easily visible characteristics (i.e., you don't look the same as me therefore you don't belong). Our research identifies an additional factor (i.e., scarcity) that increases the difficulty of combating such natural tendencies.

We question if Smith and Brodsky dismissed or perhaps did not understand the purpose of our article. Our research was designed to test whether resource scarcity leads people to be less inclusive about who belongs to one's in-group, not on the nuances of race perception. The fact that our paper did not address these nuances was not because we do not view them as important and relevant. They were simply not the focus of the reported research. Future research would certainly benefit from a deeper understanding of

such nuances. However, experimental research is necessarily narrowly focused at its early stages and, when published, serves as the foundation for more nuanced work.

Further, the claim made by Smith and Brodsky that we "*make a dangerous leap*" in suggesting that cues to scarcity might lead to harmful consequences in the courtroom for biracial defendants is unwarranted. A careful reader will notice that we acknowledge that our research was not conducted with the courtroom in mind, but that our findings may have implications for the courtroom. This statement was carefully crafted to suggest that the following discussion is purely speculative, something worth considering.

In conclusion, we stand by our method and results. We feel that the largely negative responses we received from the

consultants reflect misunderstandings of the original context, purpose, and focus of our research. We sought to better understand how resource availability influences group boundary formation. To do this, we capitalized on peoples' natural tendency to make quick judgments about group membership based on one's outward appearance. We strongly believe that our results are important and make a valuable contribution to literature on group relations. We look forward to future research, both of our own and that of others, which will help us better understand this important issue. ©

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