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The Jury EXPERT

The Art and Science of Litigation Advocacy

A BiMonthly E-Journal

Volume 22, Issue 4 July 2010

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What We Do (and Don't) Know about Race and Jurors¹

by Samuel R. Sommers

Samuel R. Sommers, Ph.D. is Associate Professor of Psychology at Tufts University in Medford, Massachusetts. His research examines the influence of race on perception, judgment, and social interaction, with a particular focus on jury decision-making and jury selection. He has testified as an expert witness on matters of racial bias and eyewitness memory in several criminal trials and conducts diversity workshops for legal professionals and other organizations. For more details regarding his research, consulting, and blogging activities, see [his webpage](#).

Ten years ago, my colleague, Phoebe Ellsworth, and I published two articles describing the influence of a criminal defendant's race on jurors' decision-making (Sommers & Ellsworth, 2000; 2001). These papers were based on experimental simulations in which we asked mock jurors to read and evaluate trial summaries. In one version of each summary, the defendant was depicted as a White man. In the other, using the exact same set of case facts, the defendant was a Black man.

¹Adapted from Sommers, S.R. and Ellsworth, P.C. (2009). "Race salience" in juror decision-making: Misconceptions, clarifications, and unanswered questions. *Behavioral Sciences and the Law*, 27, 599-609.

Our goals in these studies were to provide empirical insight into the controversial issue of race and jury decision-making, as well as to try to make sense of inconsistent findings in previous research (for detailed reviews, see Mitchell, Haw, Pfeifer, & Meissner, 2005; Sommers, 2007). The basic finding of our studies was that the influence of a defendant's race on White jurors depends on whether or not the issues in a trial are racially-charged. We called this variable "race salience."

Since 2000, both of these articles have accumulated dozens of citations from fellow researchers. Several times a year, Phoebe and I are contacted by colleagues with requests for assistance in their efforts to generalize or extend our original results. Each of us has described this work in various colloquia and conferences. In addition, in hearings for two separate trials in 2008, I was asked to consider the application of these published findings to a capital case under review.

On the basis of these experiences, we have come to realize that the concept of "race salience" remains ambiguous and in need of clearer definition, and that several misconceptions regarding our published findings have emerged. In the present article, I seek to clarify the idea of "race salience" by reviewing published research, considering the ways in which the term has been interpreted, addressing common misconceptions, and identifying questions that remain in need of empirical investigation in this area of race and juror decision-making.

The Original "Race Salience" Effects

The design of our first study in 2000 was straightforward: White and Black mock jurors read several brief summaries of trials involving interracial crimes in which the defendant was either White or Black. Because the prevalent assumption among researchers and others had been that juror racial bias would be greatest in cases involving blatantly race-relevant issues (e.g., Fukurai, Butler, & Krooth, 1993; King, 1993), each of our summaries described a racially-charged incident. For example, one involved a mugging in which the victim was told that he should go back to his own neighborhood; another was a church arson motivated by racial animus. Our data indicated that Black mock jurors were less likely to convict a Black versus White defendant. Contrary to expectation, however, White mock jurors' judgments did not vary by defendant race.

These were not the first mock juror data to indicate that the influence of a defendant's race can be greater on Black than White jurors. A few years earlier, Skolnick and Shaw (1997) reported such findings using a trial summary based on the O.J. Simpson case. And in a publication by the Center for Equal Opportunity, archival analyses of actual case outcomes were used to advance the thesis that contemporary juror racial bias is characteristic of Black, but not White jurors (Reynolds, 1996; for more detailed criticism of this thesis, see Sommers & Ellsworth, 2001).

In spite of these previous conclusions, we remained unconvinced that the influence of race on White mock jurors had suddenly become a matter of history. After all, a number of well-designed analyses have demonstrated robust effects of victim and defendant race in real cases (e.g., Baldus, Woodworth, Zuckerman, Weiner, & Broffitt, 2001; Bowers, Steiner & Sandys, 2001; Daudistel, Hosch, Holmes, & Graves, 1999). In addition, many prosecutors and defense attorneys remain convinced that White jurors favor the prosecution in cases involving Black defendants, and continue to select juries based on this conviction despite Supreme Court prohibitions against such a practice (see *Batson v. Kentucky*, 1986; Sommers & Norton, 2008).

So what might account for the disparity between such real-world evidence that White jurors are influenced by the race of a defendant and mock juror experiments indicating



no such effects? To answer this question, we turned to the social psychological literature on race and social judgment. In doing so, we uncovered a likely explanation, namely one revolving around White mock jurors' concerns about appearing prejudiced.

Psychological theories of contemporary racial bias suggest that although Whites today still harbor negative sentiment and associations regarding particular groups, they are often loath to appear prejudiced (Dovidio & Gaertner, 2004; Gaertner & Dovidio, 1986). Gaertner and Dovidio (1986) described this new, more ambivalent type of racial attitude as "aversive racism," and proposed that the underlying negative sentiment harbored by Whites tends to emerge in certain situations but not in others. Specifically, their theory suggests that many contemporary Whites refrain from expressing bias or making biased judgments when they are in situations that "threaten to make the negative portion of their attitude salient" (p. 62). In other words, remind White people that they harbor racial bias (or that they're motivated to be fair-minded people who don't act on such bias), and they often become fairer in how they see the world.

We set out to assess this prediction in a legal context by creating trial conditions that would make Whites' race-related motivations more or less salient. In Study 2 of our 2000 paper, we modified a domestic assault case we had used previously to create two versions: in one the defendant used racially-charged language; in the other there was no reference to race by the defendant during the incident. In both versions participants learned the race of the defendant and victim, and all other information about the alleged assault was held constant. In short, the only difference between versions was that one altercation was situated in a racially-charged context and the other was not.

Our findings revealed that in the racially-charged version of the case, White mock jurors' judgments were similar to the responses we observed in Study 1: there was no significant impact of defendant race. However, when the incident was not a racially-charged altercation, White mock jurors were influenced by defendant race (as were Black jurors). More precisely, White mock jurors were now significantly more likely to convict the defendant when he was Black as opposed to White. Whether or not a trial described a racially-charged incident proved a useful consideration not only for explaining our own results for White mock jurors across studies (Sommers & Ellsworth, 2000), but also for reconciling previous findings (see Sommers & Ellsworth, 2001). That our data also converged with theoretical predictions from social psychology regarding contemporary racial bias lent them that much more credibility.

In writing up these results, one major challenge was to decide how to describe our critical variable. After much discussion--on our own and with anonymous reviewers--we decided on "race salience." The term fit with the aversive racism model, which offered predictions regarding "making salient" the potential racism of jurors' attitudes. It was broad enough to include the design we had used--namely, whether or not the incident in question was racially-charged--while also permitting us to speculate about additional ways in which mock jurors' anxieties about racial bias might be activated. Indeed, in the Discussion of our first article we suggested the following possibilities for empirical evaluation: "...racial issues may become salient in any number of ways, including, for example, pre-trial publicity, voir dire questioning of potential jurors, opening and closing arguments, the nature of police testimony, attorneys' demeanors, and sometimes the nature of the crime itself" (Sommers & Ellsworth, 2000, p. 1371).

Subsequent Examinations of "Race Salience"

In the years since our studies appeared in press, other researchers have continued to examine the idea we referred to as "race salience," in almost every instance by using the very same manipulation: whether or not the crime in question was racially-charged. For example, we replicated our results using a different sample population and a trial summary involving a fight between Black and White members of a diverse basketball

team (Sommers & Ellsworth, 2001). In this study, White mock jurors were not significantly influenced by a defendant's race when the alleged assault came during the course of an altercation in which racially inflammatory language was used, but in a non-racially-charged version of the same trial, White jurors were more likely to convict a Black defendant than a White defendant.

Other researchers have reported consistent findings. Thomas and Balmer (2007) reported on an extensive, four-year project in England and Wales that involved juror interviews as well as a mock jury simulation. Among mock juries, they observed no evidence of bias based on defendant race when the trial video depicted an assault as racially-motivated, but defendant race did have a significant impact on White jurors when the assault was not racially-motivated. Cohn, Bucolo, Pride, and Sommers (2009) showed White American college mock jurors a video summary of trial in which a Black defendant was accused of attempted vehicular homicide after a dispute in a parking lot. In both versions of the video, the defendant claimed self-defense and said he was trying to get away from an unruly and threatening mob, but in only one version did he indicate that the crowd's animosity towards him was racially-motivated. Mock jurors were less likely to convict the defendant in the racially-charged scenario, and only in the race-neutral condition did participants' scores on a written measure of old-fashioned racism predict their verdicts.



Although these articles (Cohn et al., 2009; Sommers & Ellsworth, 2001; Thomas & Balmer, 2007) referred to the critical variable as "race salience," in all of them, the actual manipulation was whether or not the alleged incident was racially-charged. That is, none of these studies examined any of the other possible forms of race salience we outlined in our 2000 article, but rather replicated our original study. The only exception to this tendency was a mock jury experiment that examined the impact of race-relevant voir dire questions on participants' subsequent trial judgments (Sommers, 2006). The race-relevant voir dire included items such as "This trial involves an African-American defendant and White victims; how might this affect you?" and "In your opinion, how does the race of a suspect affect the treatment s/he receives from police?" The race-neutral version included no questions related to race. Results indicated that before deliberating, both White and Black mock jurors who were given the race-relevant voir dire were less likely to believe

that the Black defendant was guilty than were mock jurors given the race-neutral voir dire.

In short, whereas subsequently published studies have continued to use the term "race salient," with one exception they have assessed this concept in only one way: by comparing mock jurors' judgments in cases involving racially-charged versus race-neutral incidents. To be even more precise, these studies have compared 1) White mock jurors' judgments of interracial criminal incidents in which the defendant has allegedly acted on racial motivations or in response to the racial motivations of others with 2) White mock jurors' judgments of interracial trials that make no reference to race except in the presentation of defendant and victim demographics.

As such, a few years ago in a review of race and jury decision-making, I characterized the extant literature as follows: "Factors that have been found to increase the likelihood that a Black defendant receives harsher treatment from White jurors than a White defendant include the... absence of racially charged issues at trial" (Sommers, 2007, p. 174, emphasis added). Indeed, in the effort to further clarify what has actually been found in this line of inquiry, I have started referring to the conditions of the Sommers and Ellsworth (2000; 2001) studies as "racially-charged" and "race-neutral" in articles, academic presentations, and court

testimony. This is the actual manipulation examined in the Sommers and Ellsworth (2000; 2001) experiments and almost all subsequent investigations. With the benefit of hindsight, this would have been a more precise, less ambiguous description to use in our original papers, especially given that other investigations of the original "race salience" idea remain possible but as of yet unimplemented.

Misconceptions about "Race Salience"

Conversations with colleagues, students, jurists, and other legal professionals have revealed that many are unaware that the scope of the published conclusions on this matter remains so narrow. Some people seem to believe that several varieties of "race salience" have been investigated, and others have interpreted the idea in ways inconsistent with our original intent. For example, two years ago I served as an expert witness in a pre-trial hearing in a capital murder trial. During this testimony, the judge asked whether research on "race salience" indicated that a jury would be less likely to convict a defendant who shot a police officer while yelling racial epithets than one who committed the same acts without evidence of racial animus. I explained that this was not what the research indicated and, moreover, that the impact of "race-salience" on jury decision-making had not achieved the same high level of convergent validity--across case type, variable definition, and research methodology--as the questions more directly under review at the hearing: the relationship between defendant/victim race and sentencing outcomes in capital trials. More generally, four common misconceptions regarding "race salience" seem to have emerged, each meriting clarification.

Misconception #1: "Race salient" means simply informing mock jurors of the defendant's race. On more than one occasion, a researcher hoping to extend previous findings has, in informal conversation, alluded to plans to examine "race salience" by only identifying the defendant's race to mock jurors in one condition. This is not consistent with the "race salience" idea described by Sommers and Ellsworth (2000; 2001). There were no "race-blind" conditions in these studies: all mock jurors knew the race of the defendant and the victim in all conditions (and knew that they were of different races). Moreover, such a design would be of dubious applicability to real trials, in which the defendant's race is readily apparent.

Similarly, some researchers have proposed to vary race-salience by including written information about a defendant's race in all conditions, but only including a photograph in certain conditions, thereby rendering minority status more obvious. This would literally be a manipulation of the salience of race in the study, but it is not what we meant by the phrase. Again, in retrospect, we might have been wiser to have chosen a different term, but from the very first mention of "race salience" in the abstract of Sommers and Ellsworth (2000, p. 1367), we have used this term to refer to salient "racial issues" at trial, not the salience of race as a general construct.

Misconception #2: White juror bias cannot occur when racial issues are salient at trial. An unfortunate and inaccurate conclusion that some attorneys have drawn from the research is that juror racial bias cannot occur in trials with salient racial issues. In recent years, in two separate cases involving Black defendants, I testified as an expert and was cross-examined by a district attorney whose primary argument was that much of the publicity surrounding the case in question was racially-charged, ergo White juror bias could not have occurred. Of course, published data do not suggest that racial bias only exists when there are no salient racial issues at trial, nor would any responsible scientist offer such a conclusion in press or in court.

Like all behavioral research, the investigation of race and jury decision-making generates probability-based conclusions. That White mock jurors in the Sommers and Ellsworth (2000; 2001) studies did not differentiate between a White and Black defendant when the trial in question was racially-charged does not mean that racial bias never occurs in such trials. Put differently, the conclusion that White jurors are more likely to exhibit racial bias absent salient racial issues at trial no more rules out the possibility of juror bias in

racially-charged cases than the link between smoking and lung cancer rules out the possibility that a non-smoker will develop the disease. Furthermore, in a real trial with an actual defendant sitting in front of them, some jurors may find themselves influenced by stereotypical associations that are not conjured up by written or video trial summaries, suggesting that many mock juror studies may very well underestimate the actual impact of race on jurors. In any case, even if, as experimental research suggests, racial bias is most likely to emerge absent salient racial issues at trial, psychological theory does not suggest that it magically disappears in racially-charged cases.

Misconception #3: Salient racial issues at trial always lead to White juror leniency. It is easy to see how someone could arrive at the conclusion that race salience always translates into leniency towards a Black defendant. In some studies, White mock jurors' conviction rates for a Black defendant have dropped significantly when comparing a race-neutral to racially-charged trial condition (e.g., Cohn et al., 2009; Sommers & Ellsworth, 2001). But it is important to note that in other studies, Whites were no more lenient towards Black defendants in a racially-charged case than in the race-neutral case.

Juror racial bias, however, was affected by this manipulation across studies: In the racially-charged cases White jurors perceived Black and White defendants as equally guilty, but in the race-neutral cases they perceived the Black defendant as guiltier than the White defendant (e.g., Sommers & Ellsworth, 2000, Study 2). In other words, the major conclusion of our previous investigations is that White juror racial bias is less likely to occur when racial issues are salient at trial, not that White jurors are always more lenient towards Black defendants in such circumstances. Juror bias, by definition, requires a comparison point, which is typically the conviction rate for a White defendant in the identical case scenario. Juror leniency and lack of juror racial bias are not the same outcome, however, and our findings focus on the latter, not the former. Therefore, it would not be an accurate reading of the literature to suggest--as did the judge in my capital murder trial example above-- that a Black defendant would be treated more leniently by White mock jurors if it were revealed that he, in the course of allegedly committing a murder, made inflammatory statements indicative of racial animus. Not only does such a prediction carry little intuitive appeal, but it is also inconsistent with previous research.

Indeed, in judging such a racially-charged incident, White mock jurors may very well be appalled by the alleged behavior no matter the defendant's race. However, racial bias--once again defined as different judgments of a White versus Black defendant given identical case facts--should be more likely to occur for a similar murder in which the incident in question is not inherently racially-charged (e.g., a garden-variety murder with no racial motivation). Sometimes salient racial issues at trial simultaneously render a defendant more sympathetic (e.g., Cohn et al., 2009), thereby leading to increased leniency towards a Black defendant as well as a reduction in racial bias. But in other instances the aspects of a case that make race salient also cast a negative light on the defendant (e.g., Sommers & Ellsworth, 2000), leading to a reduction in bias without a corresponding increase in leniency.

Misconception #4: All race-salience manipulations have equal impact. As alluded to above, the method of creating "race salience" is critical in determining the nature of its impact. Whereas introducing evidence that an altercation resulted from racial conflict may serve to make salient mock jurors' concerns about racial bias, doing so may also render the defendant less sympathetic and more likely to be convicted regardless of race, such as when the defendant himself has allegedly made disparaging racial remarks during an altercation. Furthermore, given that most experiments have defined "race-salience" in the same way, we know too little to draw conclusions about the relative impact of factors such as race-relevant pre-trial publicity, voir dire questioning, or attorney arguments.

For example, it may be tempting to conclude that eliminating juror racial bias is as easy as allowing a defense attorney to raise race-related issues during opening and closing arguments. Such a proposition has little to no empirical support, however. As detailed above, there is no reason to believe that salient racial issues at trial preclude the possibility of juror racial bias, and no published studies have directly tested hypotheses such as this one. Cohn et al. (2009) referred to one unpublished study in which a defense attorney's arguments regarding institutional racism led White mock jurors to demonstrate leniency towards a Black defendant (Bucolo, 2007). Depending on the precise nature of such arguments, though, the intentional effort to infuse racial issues into a trial may also be met with resistance or even resentment by White jurors (see Sommers, 2006; Sommers & Norton, 2006). In an aborted study that we never published, we had the defense attorney in a trial summary offer closing arguments that included sweeping allegations of police racism. There was little in the actual facts of the case to support these allegations, and they were completely ineffective in reducing racial bias in White mock jurors. In sum, it is premature to offer conclusions regarding the relative impact of different types of "race salience" when almost all published studies have examined a single instantiation of the concept.

Whither "Race Salience"?

Many unanswered questions regarding these issues await additional empirical investigation. First, although researchers continue to write in general terms about "race salience," in almost every published investigation this variable has been assessed in the same way. If researchers and legal practitioners hope to draw conclusions regarding the effectiveness of courtroom procedures for combating juror racial bias, each procedure must be examined empirically. For example, does race-relevant voir dire render juror racial bias less likely? Only one published experiment addresses this question (Sommers, 2006). This study showed that mock jurors' pre-deliberation judgments became more lenient with race-relevant voir dire, but neither the content of the deliberation nor the jury verdicts were affected; in addition, this study only examined mock jurors' judgments in a case with a Black defendant, making it difficult to draw conclusions regarding effects on juror racial bias. Other hypothesized means of varying "race salience" have not been studied at all.



It is also important to note that so far investigations of race salience have been exclusively mock juror/jury experiments. The applicability of such experiments to what goes on in actual courtrooms is an issue with which psycholegal researchers continually wrestle (e.g., Bornstein, 1999; Kerr & Bray, 1995). Would archival analysis of real case outcomes indicate less influence of a defendant's race in racially-charged trials? Such an analysis would pose numerous challenges, requiring researchers to quantify the degree to which the crime was racially-charged, factor into consideration the racial composition of the jury, and, of course, control for a wide range of potentially confounding variables. But whether through such an analysis or another methodology, the burden remains on researchers to demonstrate that the effects of race salience are not limited to mock juror simulation studies, thus providing the type of convergent validity that renders empirical findings more conclusive and persuasive.

Conclusion

The Sommers and Ellsworth (2000; 2001) articles help reconcile some of the inconsistencies found in the experimental literature on race and jury decision-making, and refute the belief that contemporary juror racial bias is the exclusive province of Black jurors (e.g., Reynolds, 1996; Skolnick & Shaw, 1997). However,

the implications of this research have often been misunderstood or overextended, a fact for which we bear much responsibility. My present objective has been to clarify the nature of our previous findings and to address common misconceptions about what was meant by the term "race salience." Briefly stated, what we know now about this variable is little more than what we knew upon first introducing it almost a decade ago: White mock jurors are more likely to be biased by a defendant's race in cases in which race remains a silent background issue at trial than in cases in which the nature of the trial emphasizes race as an important issue.

Actually, the most accurate description of our findings from 2000 and 2001 does not even require the phrase "race salience," an ambiguous term which we occasionally regret. Rather, our studies indicated that racial bias among White mock jurors was less likely to emerge in trials for racially-charged incidents. A more general examination of "race salience" has not yet been conducted, requiring as it would different means of inducing race salience, converging methodologies, and investigations of underlying process--none of which currently exist in the published literature. These are some of the questions towards which we would steer investigators interested in continuing this line of inquiry.

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We asked three experienced trial consultants to offer their reactions to this article. On the following pages, George Kich, Theresa Zagnoli and Sean Overland offer their thoughts.

George Kich responds to Sam Sommers

George Kitahara Kich, Ph.D. is a trial consultant and partner at Bonora D'Andrea LLC in San Francisco, California. He consults on civil and white collar criminal cases nationwide.

The Gift of Privilege

Professor Sommers evaluates and critiques the usability of research on race salience (whether or not racially-charged factors play a role in juror verdicts) in his short and carefully written article. His paper examines the difficulties of taking interesting and apparently straight-forward research and applying it to the day-to-day realities of criminal trials. He critiques four misconceptions about "race salience" research using examples of erroneous conclusions by judges, attorneys and experts, indicating again that highly-controlled and limited research results, especially about race, must be thoughtfully applied, if at all. Because "social desirability", modern racism, implicit biases and unconscious attitudes all play major roles in people's behaviors and statements about race, it is one of the most difficult areas to accurately assess. Fortunately, he makes several suggestions about the range of "racially-charged" factors that should be studied with jurors that would aid applicability.

A fascinating example of Professor Sommers' expert approach is in this article that describes his own [courtroom consultation](#). We also have a recent example locally in the BART shooting case where there have been mixed evaluations of how race and the jury may affect the verdict: "[Lack of blacks on jury won't aid Mehserle defense, experts say](#)".



When it comes to criminal trials, I have wondered if anyone could honestly say they presume that justice is in fact racially "color-blind." Perhaps the only time "color blind" justice happens is when everyone involved is White, so the antagonisms, stereotypes and prejudices associated with race differentness just do not apply. I ran across an interesting quote from a review of a collection of [essays about race and the jury](#): that "... so-called 'color-blind' justice presupposes the logic and experiences of whites--not blacks...." I thought again about the importance of an often invisible factor in many people's experience: the relative amount of one's social and cultural privilege. I wondered how much these ideas might explain some of what Professor Sommers was trying so carefully to dissect in his current paper. Perhaps the social and cultural privileges that

come with whiteness affect White jurors so that they do not, for instance, have a race-oriented need to protect a White defendant, or to question the Prosecution's story about charges against a defendant who is White. There are no personal experiences, historical reference points or media showing race being an antagonistic or charged variable when everyone is White. However, when a "racially-charged" circumstance comes up, as in a courtroom, they are suddenly on notice, and might then appear to be fairer, as Professor Sommers notes. Jean Moule, an associate professor at Oregon State University, shows [one way where race salience research can be brought right into one's personal life](#), where I believe we all need to start. I appreciate Professor Sommers for his continuing work in trying to parse this very interesting and necessary personal and interpersonal dynamic.

Theresa Zagnoli responds to Sam Sommers

Theresa Zagnoli is a founding partner of Zagnoli McEvoy Foley LLC. She has more than 25 years of experience in trial and communication consulting.

Hats off to Sam Sommers. “What We Do (and Don’t) Know about Race and Jurors” published in The Jury Expert is a solid effort at explaining how his (and others’) research gets misquoted, misused and misinterpreted. Not only did Sam state clearly the boundaries of the research, but he also took some of the blame. That act itself was refreshing enough to make me read on.

I will use the article the next time my client wants to hide the race of a party in a mock trial. I will use this article when a lawyer wants to bring out race issues after the case has already been presented in the form of “additional” information. And, I will use this article in each incident that an attorney believes that seating a jury is as simple as white + white = win or black + black = win or white + black = win. Or, whatever dummed down, misinterpreted, and over-expanded use of this research they can come up with.

I would like to see more research on the *voir dire* issue. As a practitioner, it serves no purpose to know that race-relevant *voir dire* affects pre-deliberation judgments but not verdict. As a researcher, however, it makes the wheels go round.

Dr. Sommers provides us all with some interesting ideas to test in our own research. With an abundance of variables that we cannot control, our findings may not help the bigger question of white jurors’ reactions to black defendants. But, if we pay attention to the idea that there is a relationship between racially charged fact patterns and outcome, and design our studies with such questions in mind, it might provide us with case studies and anecdotal results worth pondering.



"What We Do (and Don't) Know about Race and Jurors": Sean Overland Responds to Samuel Sommers

Sean Overland, PhD is a trial strategy and jury consultant based in Seattle. His company, the Overland Consulting Group, specializes in assisting clients facing complex civil litigation.

I should preface my response to Sommer's new article by admitting that I'm a bit of a Sommers fan. I promised myself that I wouldn't gush too much, but I think his work and his collaborations with Ellsworth are the kind of scholarship one reads and thinks, "Yep, they're on to something here." Their methods are simple and elegant, their results are robust, and their work has important real-world implications. And I'm clearly not alone in my esteem, because their articles are widely cited and, more importantly, have begun to affect the real-world practice of law. But unfortunately, some readers have misunderstood the nature and scope of their findings, so Sommers' new article clarifies their earlier work, explains what it does and does not mean for legal professionals, and seeks to guide future research to better understand how jurors make decisions in racially-charged cases.

One of the biggest misconceptions about Sommers' work centers on the meaning of "race salience." Confusion about the term is understandable, because circumstances that may seem "race salient" to most people are not necessarily what Sommers and Ellsworth are referring to. For example, a criminal trial involving a white victim and a black defendant is not necessarily "race salient" or even "racially-charged" as the terms are used by Sommers. Instead, "race salience" refers to jurors being made aware that racism could affect the jury's decision. Perhaps a more accurate term than "race salient" or "racially-charged" (but certainly a less catchy one) would therefore be "juror racism salient."

In their research, Sommers and Ellsworth found that priming white jurors to think about how racism might affect their decision against a black defendant was the key to altering white jurors' behavior. If white jurors were confronted with the possibility of appearing to violate our race-neutral norms, then white jurors tended to behave differently than they would if the trial was "white washed" and the potential effects of race were ignored. Specifically, when the influence of race was ignored and white jurors' implicit biases and secret mistrusts were allowed to remain under the surface, white jurors were more likely to convict a black defendant than a white defendant for the same crime. However, if jurors were made aware of the potential effects of racism, and the problems of unfair treatment and racial bias were brought to the forefront of jurors' attention, then white jurors' verdicts for the same crimes did not vary by defendant race.



Sommers' latest article is much more than an academic clarification, and has real importance for attorneys and trial consultants. In this article, Sommers re-emphasizes the boundaries of the "race salience" work to date and clarifies some of the practical misconceptions. The key take-away for legal practitioners from Sommers' work should be that making jurors aware of the possible influence of racism on the jury's decision will make white jurors, on average, no more likely to convict a black defendant than a white defendant. However, race salience does not make white jurors more lenient toward any given black defendant, nor does it mean that white jurors' biases disappear completely.

Perhaps the most important caveat for legal practitioners is that we still know relatively little about how best to make racism salient to a jury. Is asking jurors about their racial attitudes during voir dire sufficient? Or must the possibility of racism be re-raised throughout the trial to keep the issue fresh in jurors' minds? But could an attorney overemphasize race salience, thereby alienating white jurors? There is a great deal we still do not know about how, when and why "race salience" works, and Sommers concludes his article with a call for additional research to help us better understand this important phenomenon.

Citation for this article: [*The Jury Expert*](#), 2010, 22(4), 1-12.

Editor's Note

It's the dog days of summer here in the heart of Texas but this issue is sure to keep you glued to your computer screen! Once again, we have a variety of pieces that are thought-provoking and provocative but also carefully researched and written. To start us off, Sam Sommers reviews the research he's done over the past ten years and sets the record straight on what we know (and what we don't know) about race and jurors. All of our stock portfolios have taken hits and been on something of a stomach-wrenching course for the past while but Eric Rudich has been watching something odd: how Wall Street reacts to the litigation verdicts of publicly traded litigants. Read and learn. Daniel Denis has an eye toward numbers as well but his focus is on how to talk to jurors about probability so they "get it".

Doug Keene and I review the literature (the real literature) on the Millennials (also known as Generation Y) and discuss how you can use this knowledge to inform your litigation advocacy (and learn a bit about tattoos along the way). Alexis Robinson looks at the phenomenon of white guilt and how it plays into jury deliberations. Thaddeus Hoffmeister examines the impact of the Skilling verdict and what we need to consider as we move forward in a changed litigation arena. And finally, Desiree Griffin and Emily Patty take a look at the need for affect (aka emotion) in jury decision-making. Why even go outside? Make some coffee (or maybe a cool drink) and sit down to read the July issue of *The Jury Expert*! And, as always, please comment on our website so we know what you're thinking and what you're especially interested in and intrigued by.

[Rita R. Handrich, Ph.D., Editor](#)

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The Jury Expert [ISSN: 1943-2208] is published
bimonthly by the:

American Society of Trial Consultants
1941 Greenspring Drive
Timonium, MD 21093
Phone: (410) 560-7949
Fax: (410) 560-2563
<http://www.astcweb.org/>

The Jury Expert logo was designed in 2008 by:
Vince Plunkett of [Persuasium Consulting](#)

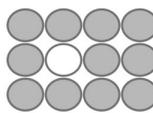
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