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''Race Salience'' in Juror Decision-Making: Misconceptions, Clarifications, and Unanswered Questions

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In two frequently cited articles, Sommers and Ellsworth (2000, 2001) concluded that the influence of a defendant's race on White mock jurors is more pronounced in interracial trials in which race remains a silent background issue than in trials involving racially charged incidents. Referring to this variable more generally as ''race salience,'' we predicted that any aspect of a trial that leads White mock jurors to be concerned about racial bias should render the race of a defendant less influential. Though subsequent researchers have further explored this idea of ''race salience,'' they have manipulated it in the same way as in these original studies. As such, the scope of the extant literature on ''race salience'' and juror bias is narrower than many realize. The present article seeks to clarify this and other misconceptions regarding ''race salience'' and jury decision-making, identifying in the process avenues for future research on the biasing influence of defendant race. Copyright © 2009 John Wiley & Sons, Ltd.

At the beginning of this decade we published two articles describing several experimental studies of the influence of a criminal defendant's race on mock jurors (Sommers & Ellsworth, 2000, 2001). Our goal was to provide empirical insight into controversies surrounding the contemporary legal system—such as the debates regarding race and jury decision-making in the wake of the O. J. Simpson trial—and to try to make sense of the inconsistent findings in previous research (see Mitchell, Haw, Pfeifer, & Meissner, 2005; Sommers, 2007). The results of our studies indicated that the influence of a defendant's race on White mock jurors depends on whether or not the issues in a trial are racially charged. We called this variable ''race salience.''

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Since 2000, these articles have accumulated dozens of citations. Several times a year we are contacted by fellow researchers with requests for information or materials to assist in their efforts to replicate, generalize, or extend our original results. Each of us has described this work in various colloquia and conferences. In addition, in hearings for three separate trials in 2008, the first author was asked to consider the application of these published findings to the case under review. On the basis of these experiences, we have come to realize that the concept of ''race salience'' remains an ambiguous one in need of clearer definition, and that several misconceptions regarding our published findings have emerged. In the present article, we 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.

THE ORIGINAL ''RACE SALIENCE'' EFFECTS

The design of Study 1 of Sommers and Ellsworth (2000) was straightforward: White and Black mock jurors read five brief written summaries of trials involving interracial crimes in which the defendant was either White or Black. Because the prevalent assumption was that juror racial bias would be greatest in cases involving blatantly race-relevant issues (see, e.g., Fukurai, Butler, & Krooth, 1993; King, 1993), each of the trial summaries described a racially charged incident: (1) a heated locker room dispute involving racial language; (2) a mugging in which the victim was told that he should go back to his own neighborhood; (3) the armed intrusion into a law school admissions office of a rejected applicant frustrated by the racial composition of the admitted class; (4) a domestic assault involving racial language; (5) a church arson motivated by racial animus. We found that Black mock jurors were less likely to vote to convict the Black defendant than the White defendant in these cases, but White mock jurors' judgments did not vary significantly by defendant race.

These were not the first data to indicate that the influence of a defendant's race was greater on Black than White mock jurors. 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 were used to support the thesis that contemporary juror racial bias is characteristic of Black, but not White, jurors (Reynolds, 1996). However, a number of well designed archival analyses have demonstrated robust effects of victim and defendant race on White jurors (e.g. Baldus, Woodworth, Zuckerman, Weiner, & Broffitt, 2001; Bowers, Steiner, & Sandys, 2001; Daudistel, Hosch, Holmes, & Graves, 1999). In addition, most prosecutors and defense attorneys are convinced that White jurors favor the prosecution in cases with Black defendants, and continue to select juries based on this conviction despite Supreme Court prohibitions against the practice (*Batson v. Kentucky*, 1986; Sommers & Norton, 2008). What could account for the disparity between archival/anecdotal evidence that White jurors are sometimes influenced by the race of a defendant and mock juror data indicating no such effects? Our review of the social psychological literature on race and social judgment suggested a likely candidate, namely White mock jurors' concerns about avoiding prejudice (or at least, the appearance thereof).

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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), and in many instances genuinely desire to avoid bias (Moskowitz, Salomon, & Taylor, 2000; Plant & Devine, 1998). Gaertner and Dovidio (1986) described this new, more ambivalent type of racial attitude as ''aversive racism,'' and proposed that the underlying negative sentiments harbored by Whites are often expressed unless they are faced with situations that ''threaten to make the negative portion of their attitude salient'' (p. 62). Based on this prediction, in Study 2 of Sommers and Ellsworth (2000) we sought to create conditions that would make Whites' race-related motivations more or less salient.

We modified the domestic assault case from Study 1 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. In the racially charged version, White mock jurors' judgments were similar to the responses observed in Study 1: there was no significant impact of defendant race. However, when the incident itself was *not* a racially charged altercation, White mock jurors were influenced by defendant race (as were Black jurors). More precisely, White mock jurors were 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 lent them still more credibility. In writing up these results, one challenge was to decide how to describe our manipulation. After much discussion—on our own and with anonymous reviewers—we decided on ''race salience.'' The term fit nicely with the aversive racism model, which offered predictions regarding ''making salient'' the potential racism of jurors' attitudes. It was broad enough to include the specific manipulation 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 section of our 2000 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 these studies appeared in press, various researchers have continued to examine the idea we referred to as ''race salience,'' in almost every instance by

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using our 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 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 noted 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 (in press) 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, including racial epithets. White 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., in press; Sommers & Ellsworth, 2001; Thomas & Balmer, 2007) referred to the independent variable in question 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'' suggested by Sommers and Ellsworth (2000), but rather replicated our original study. The only exception to this tendency was a mock jury experiment by Sommers (2006) that examined the impact of race-relevant voir dire questions on participants' subsequent trial judgments. 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. No significant effects of this manipulation were observed for deliberation processes or post-deliberation verdict preference.[1]

In short, whereas subsequently published studies have continued to use the term ''race salience,'' with one exception they have operationalized this concept in only one way: by comparing mock jurors' judgments in cases involving racially charged

[1] The participants in this study deliberated in juries that were either all White or racially diverse, and the racial composition of the jury had several strong effects on deliberations that might have overwhelmed the effects of the voir dire questioning. For that matter, serving on a diverse jury might well have done more to activate White mock jurors' concerns about prejudice than the pre-trial voir dire questions did.

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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, Sommers' (2007) review of race and jury decision-making 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'' (p. 174, emphasis added). Indeed, in the effort to further clarify what has actually been found in this line of inquiry, we have begun 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 operationalizations of the original ''race salience'' idea remain possible but untested.

MISCONCEPTIONS ABOUT ''RACE SALIENCE''

Conversations with colleagues, students, jurists, and other legal professionals have revealed that some are unaware that the scope of the published conclusions on this matter remains narrow. Many people seem to believe that several varieties of ''race salience'' have been examined, and others have interpreted the idea in ways inconsistent with our original intent. For example, the first author recently served as an expert witness in a pre-trial hearing in a capital 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. The author 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, namely 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 Salience'' Simply Refers to Mock Jurors' Awareness of the Defendant's Race

On more than one occasion, a researcher hoping to extend previous findings has, in informal conversations with us, alluded to plans to manipulate ''race salience'' by only identifying the defendant's race to mock jurors in one condition. Such a manipulation is not consistent with the ''race salience'' idea described by Sommers and Ellsworth (2000, 2001). There were no ''race-blind'' conditions in these studies:

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all mock jurors knew the race of the defendant and the victim in all conditions, and manipulation checks were included to ensure that this information was processed and retained. There may be theoretical utility to including in some studies a condition wherein mock jurors are kept blind to the defendant's race—for example, as a baseline control group in the effort to determine whether juror racial bias is driven by derogation of outgroup defendants versus leniency towards ingroup defendants. Of course, such a condition would be of dubious generalizability to real trials or any real-world context in which the target's race is readily apparent. Moreover, mock jurors in such a study might still make assumptions about defendant race based on crime stereotypicality or population base rates. But most important, such a manipulation would not be a test of ''race salience'' in the way that this idea has been described previously.

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, 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. Again, a study in which a photo of the defendant is only included in some experimental conditions might be useful for addressing some theoretical questions, but it would offer little in the way of practical implication for a legal system in which the defendant is almost always physically present in the courtroom during trial. More important, the hypothesis tested by Sommers and Ellsworth (2000) focused on cases ''when racial norms are salient'' (p. 1371) for White mock jurors; the question of how the salience of race itself might impact juror decision-making is an interesting, yet different one.

Indeed, it remains unclear what effects the salience of a defendant's actual race might have. In the examination by Eberhardt, Davies, Purdie-Vaughns, and Johnson (2006) of capital murder trials in Philadelphia, analyses indicated that, in cases with White victims, the more prototypically Black a defendant's face seemed to research participants, the more likely he was to have been sentenced to death by the actual jury. In explaining why this pattern emerged in Black/White cases but not Black/Black cases, Eberhardt et al. suggested that ''the interracial character of cases involving a Black defendant and a White victim renders race especially salient. . .'' (p. 385). Here, the use of ''salient'' seems to assert that the very idea of race and racial difference is more noticeable in interracial versus intraracial crimes. Eberhardt et al. (2006) report an *increased* likelihood of racial bias in the condition they refer to as ''racially salient'' (p. 385), a different pattern than observed in the ''race-salient'' conditions of Sommers and Ellsworth (2000, 2001). We would not have predicted anything different. The Eberhardt et al. (2006) investigation differs in important ways from our studies in that it examines the outcomes of actual capital trials, compares judgments across victim race and not defendant race, and examines variations within defendants of the same race. This variability in how researchers interpret the concept of ''race salience'' again underscores the importance of clarifying what we do and do not know empirically about this idea. It therefore bears re-emphasizing that the most precise and unambiguous way to characterize the empirical findings of Sommers and Ellsworth (2000, 2001) is that these studies

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indicate that a defendant's race is less likely to influence White mock jurors in cases involving racially charged incidents than in other cases in which the principals simply happen to be of different races.

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 literature is that juror racial bias cannot occur in trials with salient racial issues. This year, in two separate cases involving Black defendants, the first author 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 a 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 likelihood of juror bias in racially charged cases than does the link between smoking and lung cancer preclude 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 *under*estimate the actual impact of race on jurors. In any case, even assuming that, as experimental research suggests, racial bias is most likely to emerge absent salient racial issues at trial, psychological theory does not suggest that it 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 with racially charged trial (e.g., Cohn et al., in press; 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 were more likely to see the Black defendant as guilty than the White defendant (see, 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

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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 the 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. Our findings (Sommers and Ellsworth, 2000, 2001) suggest that, in judging such a racially charged incident, White mock jurors may very well be appalled by the alleged behavior whatever 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 crime with no racial motivation). Sometimes salient racial issues at trial simultaneously render a defendant more sympathetic (see, e.g., Cohn et al., in press), 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 (see, 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 has allegedly made disparaging racial remarks during an altercation. Furthermore, given that most experiments have operationalized ''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. (in press) refer 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, unpublished master's thesis). 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).

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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 among 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 operationalization of the concept.

WHITHER ''RACE SALIENCE''?

Many unanswered questions regarding these issues await additional empirical investigation. More general assessments of the literature on race of defendant effects have been published elsewhere (e.g. Mitchell et al., 2005; Sommers, 2007), so we focus our present attention on briefly identifying some of the important future directions in the investigation of ''race salience.'' First, although researchers continue to write in general terms about ''race salience,'' in almost every published investigation this variable has been operationalized 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' predeliberation 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.

Future investigation would also benefit from increased attention to underlying psychological mechanisms. We originally used the phrase ''race salience'' to refer to aspects of a trial that would raise White mock jurors' concerns about avoiding racial bias. A testable hypothesis would therefore be that a trial based on a racially charged incident should activate White jurors' motivations to avoid prejudice (see, e.g., Dunton & Fazio, 1997; Plant & Devine, 1998) or more general race-related thoughts (see, e.g., Sommers, Warp, & Mahoney, 2008). Few published mock juror studies have explicitly examined questions of process such as these (see Sommers, 2007). To do so would contribute to a clearer articulation of what ''race salience'' is and when and how it affects mock jurors.

It is also important to note that so far investigations of ''race salience'' have been exclusively mock juror/jury experiments. The generalizability 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, 2005). 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

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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 implausible assertion that contemporary juror racial bias is the exclusive province of Black jurors (see, 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 of the responsibility. Our 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 a central 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 operationalizing the variable, 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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