Korey Wise was a New York teenager in 1989, the year of the brutal attack of an anonymous woman who would come to be known as the Central Park Jogger. The victim in this crime had been injured so badly that she was left with no memory of the assault. No physical evidence linked Wise to the scene. But investigators almost immediately focused their efforts on five African American youths, including Wise, who were already in police custody for another altercation in the park that night. All five eventually confessed during video-recorded interrogations. All five were convicted. Wise served 11.5 years in prison until DNA evidence and the confession of the actual attacker finally exonerated him.

In fall 1996, Santa Monica, California police ordered Darryl Hicks and George Washington, also both African Americans, out of their car at gunpoint as they pulled into the parking garage of a hotel. They were handcuffed and placed in separate police cars while their vehicle was searched. Police claimed the men were detained because they fit the description of suspects wanted in a string of 19 armed robberies and because one of the men appeared to be "nervous." Washington and Hicks would later sue the police department for false arrest and civil rights violations. In ruling for the two men, the court
determined that the armed robberies had not even occurred in Santa Monica and that neither of them even fit the descriptions of the robbers to begin with.

However, for the media attention garnered by the Central Park attack, neither of these miscarriages of justice stand out as particularly remarkable. In both cases—one of false conviction and the other of false arrest—innocent individuals were targeted by investigators for crimes they did not commit. As the various chapters in this book attest, a wide range of factors contribute to such outcomes, including problematic police practices, fallible eyewitnesses, and the misuse of forensic evidence. Although it is possible and even plausible that some of these factors were at play in the two cases just described, the unambiguous common denominator of these incidents is that they both involved Black men. Indeed, analysis of postconviction DNA exonerations indicates that these two cases are more rule than exception: As of 2010, 60% of the wrongful convictions identified by the Innocence Project have involved a Black defendant. As such, the focus of this chapter is to explore the role played by race in the arrest, conviction, and sentencing of individuals charged with criminal offenses and by association to consider the role played by race in the conviction of the innocent.

Race can impact the investigation and prosecution of crimes in many different ways. As just one example, the robust cross-race bias (or other-race effect) in eyewitness identification indicates the potential for race to contribute to wrongful conviction. This mismatch between the race of a witness and culprit is one way in which race can facilitate wrongful conviction even absent racial animus or prejudice on the part of the individuals involved. Of course, simply because race is implicated in a process that makes conviction of the innocent more likely does not necessarily implicate racism in said process. That said, racism, particularly against Black suspects and defendants, has a long and pervasive history in the United States legal system. In this chapter, we trace the prevalence of racism in the legal arena and assess the circumstances under which such racism is most likely to occur. By doing so, we do not mean to imply that all racial disparities in the system—including those related to wrongful conviction—are attributable to racism. However, given that other chapters in this volume touch on race as it relates to other issues, such as eyewitnesses and at-risk populations, we focus our present analyses on the matter of racism.

Much of this analysis will focus on differences in how the system treats White and Black individuals, as this racial dichotomy has influenced decades of research in the social sciences (Hagan, 1987). At the same time, more recently researchers have argued that the analysis of racism and discrimination in the legal system must be expanded to include members of other minorities, such as Hispanics and Asian Americans (e.g., B. D. Johnson & Betsinger, 2009). Less data exist on this question of other racial and ethnic
groups outside of White and Black groups, but when possible, we explore this literature as well (e.g., Reitzel, Rice, & Piquero, 2004).

We examine current theoretical explanations for racial bias and prejudice (e.g., Dovidio & Gaertner, 2004) and examine psychological mechanisms and social conditions that contribute to racism in various legal contexts. We focus on attitudes toward the legal system, issues of racial policing, juror decision making, and racial bias experienced by legal actors (attorneys, court employees, court users). We then review psychological research that demonstrates how racism can be reduced and offer examples of how this research can be applied to the legal system. Finally, we offer conclusions that draw explicit links between the present analysis of racism and this volume’s more specific focus on wrongful conviction.

**PSYCHOLOGICAL FOUNDATIONS OF RACISM**

Researchers who study racism have approached the topic from various theoretical viewpoints. Early research, conducted during the first part of the 20th century, focused on describing racism and measuring its prevalence in society (e.g., Katz & Braly, 1933). During this period, racism and prejudice were thought to be forms of psychopathology by the expression of some abnormal behavior (Dovidio, 2001). Considering racism to be abnormal, researchers investigated root causes for the behavior and focused on individual factors that may contribute to it. Racists were conceived to be a particular subset of society, and researchers presumed that if they could identify these individuals, racism could be rooted out by helping those people with biased beliefs (Dovidio, 2001).

This model of racism changed in the face of the rise of Nazi Germany and the Holocaust. By mid-century, it had become clear that prejudice toward outgroups could be developed and expressed by ordinary citizens. Classic social psychological research studies conducted at this time also revealed how easily individuals altered their behavior when social norms, authorities, or both pressured them to do so. With regard to prejudice, in particular, research indicated that societal hierarchies and competition quickly led to the development of bias, retaliatory behavior, and hatred between two competing groups (Sherif, White, & Harvey, 1955). It was during this time that researchers began to approach the study of prejudice and racism from a different vantage point, suggesting that development and maintenance of prejudice occurred naturally through social and cognitive processes.

In Allport’s (1954) seminal text, *The Nature of Prejudice*, he argued that human beings have a natural tendency to form groups, favor members of groups to which they belong (i.e., ingroups), and dislike and compete against individuals from other groups (i.e., outgroups). Such divisions had serious
consequences—individuals' attitudes, beliefs, and interactions with members of outgroups ("them") were reported to be considerably less positive than with ingroup members ("us"). Given that race is one of the first features individuals notice when perceiving other people (see Ito & Uralnd, 2003), it follows that prejudice toward members of another race—or racism—can result from normal cognitive processing. Allport (1954) also argued that racism was maintained and encouraged through societal structure, such as segregation in the American South, which separated the races and encouraged detrimental treatment of the outgroup, as less contact between the races led to misunderstandings of traditions, cultural values, and beliefs. These observations had a great impact on the study of prejudice, and Allport's research is considered the foundation of modern day approaches to understanding and reducing prejudice.

In more recent times, researchers have built on Allport's work by acknowledging the effects that societal norms and socialization have on racism, but they have also found that racism can take different forms and be expressed in different ways in different circumstances (e.g., Dovidio, Kawakami, & Beach, 2002). Modern day racism theories have grown out of the changing racial landscape of the United States (and, to a lesser extent, other societies). Following the Civil Rights Movement and into today, blatant racism is no longer socially acceptable in most circles. Whites report more positive attitudes in regard to Blacks, view racial integration more favorably, and report fewer negative stereotypes in regard to Blacks than they used to. However, even in the 21st century, Black individuals continue to suffer disadvantages in health care, employment, and other domains that can be linked to processes of racism (Pearson, Dovidio, & Gaertner, 2009). Contemporary theorists suggest that many individuals hold two separate but influential forms of prejudice: implicit prejudice (i.e., an unconscious, automatic reaction to outgroup members) and explicit prejudice (i.e., a cognizant, openly reported prejudiced toward outgroup members; e.g., Dovidio, Kawakami, Johnson, Johnson, & Howard, 1997; Lepore & Brown, 1997).

To explain how these forms of prejudice affect Whites' reactions to Blacks, Dovidio and Gaertner (2004) proposed a theory of aversive racism. According to the theory, White individuals are socialized to believe that racism and discrimination are wrong, so they openly report explicit attitudes congruent with this racial egalitarianism. However, society still reinforces and maintains negative stereotypes regarding Black individuals (Devine & Elliot, 1995). Although Whites who report they are not prejudiced reject blatant racist ideology, they still typically have knowledge of negative stereotypes in regard to Blacks, which fosters a feeling of uneasiness and discomfort toward Black persons (Dovidio & Gaertner, 2008).

Thus, White aversive racists do not openly endorse negative stereotypes about Black people, but they do report implicit attitudes congruent with these
stereotypes, which can unknowingly affect their behavior (for a review, see Dovidio, Kawakami, & Beach, 2002). For instance, Dovidio et al. (1997) conducted a study in which respondents had to report both their explicit racism by using self-report surveys, as well as implicit racism by using a reaction-time task. Although self-report measures of racism predicted White individuals' observable behavior in an interracial interaction, implicit attitudes predicted their nonverbal behavior toward a Black confederate. White people with more negative implicit attitudes toward Black people appeared more uncomfortable, made less eye contact, and were rated as being less friendly overall by an independent observer.

Although White aversive racists are prepared to react in socially desirable ways to situations in which their actions could be construed as prejudiced, they often defer to stereotypical beliefs expressed in subtle and discreet ways in situations where their actions will not seem influenced by race (Dovidio & Gaertner, 2004). White aversive racists are also more likely to express biased beliefs about Black persons when social norms in regard to the task are ambiguous. For instance, Dovidio and Gaertner (2000) reported that prejudice toward a Black candidate was only expressed by White individuals when the candidate's qualifications for the position were not clear. When both a White and Black candidate had strong (or weak) qualifications for a job, racism was not expressed. Racism toward Blacks is also more likely to be exhibited in situations where Whites' behavior can be rationalized, with Whites claiming their racist decisions were based on other factors and not race (Hodson, Hooper, Dovidio, & Gaertner, 2005).

Aversive racism theory suggests that racism toward Black individuals in the modern legal system should take different forms depending on the specific context. Thus, implicit racism toward Black individuals may occur in situations in which actors in the legal system must make quick decisions, and therefore may be forced to rely on their knowledge of negative stereotypes about Blacks, causing them to react in a racist manner. Because individuals who are prejudiced understand that blatant expressions of racism are not socially appropriate, overt displays of racism toward Blacks should be most likely in situations in which there are no social norms in the environment or in which factors besides race can be used to justify an action or decision.

**Scientific Methods Used in Racism Research**

A number of methodologies have been used to study racism in the legal system. In this section, we discuss and give examples of these methodologies, including archival analyses of justice data, public opinion polls, experiments using mock jurors, and self-report data in regard to legal experiences and
perceptions. As with any type of research, each of the methods reviewed here has limitations. Researchers and research programs therefore benefit from striving to converge empirical conclusions arrived at through studies using a range of methodologies.

Secondary Analyses

These studies reexamine existing data sets to investigate whether race makes a difference in such areas as police profiling, sentencing, and the death penalty. These studies take one of two approaches. Either they reanalyze an existing data set or data from an existing study or they conduct a meta-analysis that combines data across several existing studies. For example, Baldus, Pulaski, and Woodworth (1983) examined 2,000 murder cases in Georgia over the span of 5 years and found that Black individuals were disproportionately sentenced to death when the victim was White, controlling for 230 race-neutral variables such as prior convictions. Their analysis found that among defendants who killed a White victim, Black defendants were 4.2 times more likely than White defendants to be sentenced to death. Regardless of race of the victim, Black defendants in were 1.1 times more likely than White defendants to be sentenced to death. Similar analyses of death penalty cases from other states have found that in controlling for other characteristics, Black defendants (compared with White defendants) who kill White victims are disproportionately likely to be sentenced to death (e.g., Bowers, 1984).

The major limitation of any kind of reanalysis of existing data is that the current researchers have no control over methodological issues, including the selection of participants, measures, manipulations (if relevant), and dependent measures. For example, two studies described in more detail later in this chapter (Bucolo, 2007; Singer, 2004) were reanalyses of data collected by the first circuit federal court. A major limitation of the findings has to do with sample selection. Each of the three samples of participants (attorneys, court employees, and court users) was selected differently. The attorney sample included all female attorneys in the First Circuit and a subset of male attorneys because only 20% of the attorneys were female. The employee sample included the whole population of court employees. The court users were a nonrandom sample of people coming out of the federal courthouses in the first circuit. This means that the sample included couriers who were just in the courthouse to deliver packages as well as witnesses in cases. Further, trying to make causal statements regarding preexisting data sets can also be difficult. Numerous potential confounds can affect the results of any case, and even controlling for multiple covariates cannot eliminate the possibility that there are other factors besides race that can account for racial differences found in these archival analyses.
Public Opinion Polls

A variety of public opinion polls have examined racial and ethnic differences in attitudes about justice issues, including racial profiling. These public opinion polls are often national polls. As one example, the Gallup Poll (Gallup & Newport, 2004) conducted a telephone survey of a randomly selected national sample of 2,250 adults, ages 18 years and older on the topic of racial profiling. The survey explored whether people thought racial profiling was widespread and justified in the domains of highway driving, airport checkpoints, and theft prevention in shopping malls or stores. Although a majority of Black and Hispanic respondents thought that racial profiling was widespread when it came to motorist stops and shopping mall questions, only half of White respondents thought racial profiling was widespread. Hispanic respondents were more likely than Black respondents (who were more likely than White respondents) to think racial profiling was widespread in airports.

The major disadvantage to surveys such as this one has to do with the limitations of self-report data. Respondents may not know the answers to the questions they are asked, or they may know their true beliefs but be unwilling to share them. Poll respondents may vary in how much they have thought about these issues. In addition, on the sampling front with the availability of caller ID and cell phones, fewer people are willing to participate in national polls, and the attitudes of some groups (e.g., young adults who only have a cell phone) may be underrepresented.

Lab-Based Experiments Using Mock Jurors

The majority of psychologists who study racism in the courts have used mock juror research designs. Some of these experiments have used college student participants (Bucolo & Cohn, in press; Cohn, Bucolo, Pride, & Sommers, 2009), whereas others have made a concerted effort to obtain more representative samples (Sommers, 2006). These experiments have manipulated different aspects of court proceedings in examining the impact of race. Some have manipulated the opening and closing statements (Bucolo & Cohn, in press). Others have manipulated the testimony of the defendant during the court proceedings (Cohn et al., 2009). Still others have manipulated the simplicity of jury instruction and diversity of the jury in the penalty phase of capital trials (Shaked-Schroer, Costanzo, & Marcus-Newhall, 2008).

An example of one of these studies is Cohn et al. (2009), in which college student participants were shown one of two videotapes of an actual case that involved a Black defendant and a White victim. In the study, mock jurors always knew the race of the defendant and victim. But the testimony was manipulated such that in one condition the incident in question was depicted
as a racially charged dispute (race salient) and in the other condition the alter-
cation was described in race-neutral terms (race not salient). When race was a
salient trial issue, White mock jurors were significantly less likely to convict
the Black defendant than when race was not a salient issue at trial. In addi-
tion, in the race-not-salient condition, racial attitudes were related to verdict
decision: the higher the participants' racism scores, the more likely they were
to convict the Black defendant.

Self-Report Perception and Behavior Studies

Yet another means of studying racism in the courts is to ask participants
in the legal system about their perceptions and experiences of racial bias
(Bucolo, 2007; Singer, 2004). Each of the circuits of the federal court and sev-
eral of the state courts has commissioned studies of gender and racial–ethnic
bias within their respective court systems. In the first circuit of the federal court,
for example, surveys were sent to male and female White and minority court
employees, attorneys, and court users about their perceptions of and experi-
ences with racial and ethnic bias in the court (Bucolo, 2007; Singer, 2004).

Singer (2004) studied perceptions and experiences of racial bias by judges
and attorneys of the first circuit court. Among court employees, 50.9% of
minority employees believed that there was race bias in the court, compared
to 36.3% of White employees. Among minority attorneys, 52.6% believed
there was race bias in the court, compared with 31.1% of White attorneys.
Respondents who perceived racial bias were also asked whether the race, eth-
nic, or both biases were widespread or limited. Among employees, 51.7% of
non-White employees and 30.5% of White employees thought that racial bias
was widespread. Among attorneys, 30.6% of non-White attorneys and 25.4%
of White attorneys thought that racial bias was widespread. This means that
although minority employees and attorneys are equally likely to believe there
is race bias in the court, minority employees are more likely to perceive it as
widespread. When it comes to believing that the managers of the court are try-
ing to eradicate racial bias, the discrepancy is between employees and attor-
neyes, regardless of race. Among employees, 22.7% of minority employees and
32% of White employees believed the managers were trying to eradicate racial
bias. In contrast, 66.7% of minority attorneys and 86.2% of White attorneys
believe that managers are trying to eradicate racial bias.

Attorneys and employees in this study were asked about experiences with
race, ethnic, or both types of bias with regard to the following five behaviors:
(a) did not take my opinions seriously, (b) was unwilling to accommodate my
schedule or time requirements, (c) made inaccurate assumptions regarding my
professional status, (d) made demeaning or derogatory comments to me, and
(e) made inappropriate comments about my physical appearance or clothing.
Singer (2004) found that minority employees were more likely than White employees to report that their views were not taken seriously, that comments were made about their physical appearance, or that they were targeted by demeaning or derogatory comments. Interestingly, minority and White attorneys did not differ in these experiences.

RELEVANT RESEARCH ON RACISM IN JUDICIAL DECISION MAKING

The relevant research on racism in judicial decision making focuses on the following three areas: secondary analysis of arrests and sentencing, racism in decisions made by mock jurors, and racial profiling and treatment by police. The secondary analyses section focuses on both juveniles and adults. The racism in mock juror decisions argues that the nature of racism has changed. The racial profiling and treatment by police section differentiates between objective and subjective perception and between citizen and police perception.

Secondary Analysis of Arrests and Sentencing

By accessing existing databases, researchers have been able to demonstrate that an individual’s race affects how he or she is treated within the legal system; unfortunately, these analyses typically find that racism toward Black individuals exists at many points in the system (e.g., Hagan, 1987). Analyses have consistently found that Black individuals are more likely than their White counterparts to be arrested by police, to be referred to the criminal justice system to be processed, and to be placed in prison when found guilty of committing a crime (e.g., Keen & Jacobs, 2009).

Although some attempts have been made to explain these racial discrepancies by examining other factors associated with contact with the criminal legal system, these analyses often reveal that racism accounts for some of the differences found between Blacks’ and Whites’ interactions in the legal system. Aversive racism provides a useful theoretical perspective for examining these disparities. For instance, Fite, Wynn, and Pardini (2009) examined the racial discrepancies among White and Black juveniles arrested for three types of crime: property crime, violent crime, and drug offenses. Although Black individuals were more likely than White individuals to be arrested for all three types of crimes, analyses indicated that childhood risk factors (e.g., living in a disadvantaged neighborhood) accounted for some of the differences found among White and Black juveniles arrested for violent crimes and property crimes. However, these factors could not explain differences in arrest for drug crimes. One possibility is, therefore, that race has a
direct effect on police enforcement priorities when it comes to the stereotypic crime of drug use.

Similar secondary analyses that investigate prison sentences have sought to explain differences found in the length of prison sentences given to Black and White defendants. Researchers have analyzed prison data from many states over different time periods and found that Blacks receive significantly longer prison sentences than do Whites who commit the same crimes (e.g., Hagan, 1987; S. L. Johnson, 1985). However, it should be noted that these racial discrepancies appear to exist only for comparisons of Black and White men, with Black women being sentenced to the same prison terms as White women (Steffensmeier & Stephen, 2006). Furthermore, although sentencing guidelines were enacted during the late 1980s and early 1990s to reduce the effects of extralegal factors on sentencing decisions, research assessing racial disparities following the establishment of these guidelines still finds that Blacks receive longer sentences than Whites, usually because judges have departed from the guidelines (B. D. Johnson, 2003).

Mitchell, Haw, Pfeifer, and Meissner (2005) analyzed 70 archival studies of racial bias in sentencing to identify 116 separate effects of race on prison sentences. Overall, they found that there was a small, yet significant, racial disparity with Black individuals receiving longer prison sentences than White individuals. This disparity persisted even when researchers controlled for prior record and crime severity. This effect was substantially weaker, but still significant, in studies in which other societal factors were included in the prediction models, such as socioeconomic status, presence of an attorney for the defendant, and other legal factors.

Although the results of Mitchell et al.'s (2005) meta-analysis were not interpreted using an aversive racism framework (Dovidio & Gaertner, 2004), some of the effect-size moderator analyses revealed that racism toward Blacks was expressed in unique patterns across situations. For example, racism experienced by Blacks did not occur for all crime types. The effects of race on prison sentences were the strongest (i.e., the greatest discrepancies existed between sentences for Blacks and Whites) when researchers compared prison sentences given to White and Black individuals convicted of nonfederal drug crimes; however, there were no significant differences in prison sentences given to Whites and Blacks convicted of nonfederal property crimes. Furthermore, the strength of the race effect was found to decrease over time, with the largest disparities evident in studies conducted prior to 1970 and the smallest racial disparities evident in studies conducted after 1990. These results suggest that even though Blacks still experience racism in the sentencing decisions, it is not as widespread or as pervasive as it was only a few decades ago.

Even more sobering are analyses indicating that Blacks are more likely than Whites to receive the death penalty in capital cases. Although approxi-
mately 12.3% of the U.S. population is Black, 42% of inmates on death row are Black (NAACP Legal Defense and Educational Fund, 2006). Although early comparisons of this racial disparity were very basic and did not consider other potential factors that could account for it, more rigorous reviews have concluded that such disparities can be attributed, at least in part, to racial bias (e.g., Baldus, Woodworth, Zuckerman, Weiner, & Broffitt, 1998). In particular, victim race is a significant variable that affects decisions in capital cases: Defendants who victimize Whites are more likely than those who victimize Blacks to be charged with a capital crime, to be convicted, and to be sentenced to death (U.S. General Accounting Office, 1990).

Research has found that Blacks who murder Whites are more likely than Whites who murder Whites to be sentenced to death row in various states, including Maryland, Georgia, Missouri, Ohio, Florida, and Texas (Baldus et al., 1983; Bowers, 1984). An aversive racism theoretical approach (Dovidio & Gaertner, 2004) might explain that such crimes elicit negative stereotypes and beliefs about Black individuals of which Whites are aware but often do not utilize when interacting with Blacks (Devine & Elliot, 1995).

In short, race has the clear potential to influence police enforcement priorities, arrest decisions, and judicial and capital sentencing. Moreover, experimental research not reviewed in this section also indicates the impact of suspect race on crime-related perceptions and split-second judgments (see Eberhardt, Goff, Purdie, & Davies, 2004). The conclusion that individuals of particular races are more likely to be targeted by law enforcement, perceived as dangerous, arrested, and sentenced harshly raises a variety of serious concerns in regard to equity in the legal system, not the least of which is the increased risk factor for wrongful arrest and conviction among members of certain racial groups. This is a sobering conclusion that transcends mere speculation: As just one quite serious example, quantitative analysis has identified defendant (and victim) race as a statistically significant risk factor for erroneous conviction in capital cases (e.g., Harmon, 2004).

Racism in Decisions Made by Mock Jurors

Although it is difficult to ascertain the precise extent to which aversive racism (Dovidio & Gaertner, 2004) affects issues such as arrests and sentencing, experimental studies that use mock jurors provide researchers with the opportunity to directly test hypotheses derived from the theory. Early studies of mock juror decisions tended to find that Black defendants were more likely than White defendants to be found guilty, sentenced to longer prison sentences for various crimes, or both, including burglary (Gordon, Bindrim, McNicholas, & Walden, 1988), manslaughter (Gray & Ashmore, 1976), and rape (Klein & Creech, 1982).
Despite these findings, Sommers's (2007) review pointed out that the effect of defendant race in mock-juror research has not always been consistent. Although some researchers find that White jurors treated Black defendants more harshly than they treated White defendants, other researchers find that race has no effects on guilt and sentencing decisions. Still other researchers report that White jurors treat members of their own race more harshly than they treat Black defendants. Meta-analyses that assess the effect of defendant race and juror decisions have also been difficult to interpret with some finding no effect (Mazzella & Feingold, 1994), whereas others find that both White and Black jurors are more likely to find minority (as compared with White) defendants guilty and sentence them to longer prison sentences (Mitchell et al., 2005). Furthermore, the effect of defendants' race on jurors' decisions is minimized in experiments that include more formal legal procedures, such as judge's instructions.

The result of Mitchell et al.'s (2005) recent meta-analysis also supports contentions by Sommers and his colleagues (Sommers, 2007; Sommers & Ellsworth, 2001, 2009) that the nature of racism toward Black defendants in the modern legal system has changed. Their observations are consistent with the aversive racism approach (Dovidio & Gaertner, 2004) by suggesting that many jurors are aware that blatant prejudice toward Black defendants is no longer acceptable. However, White jurors are still aware of negative stereotypes of Black persons and may hold implicit attitudes about Black persons that are negative and therefore may still use these stereotypes under certain occasions. Consistent with this hypothesis, researchers who examine what have been termed stereotypic crimes (i.e., crimes perceived as being performed exclusively by members of a particular race) find that when Black persons commit such crimes, they are more likely than White persons to be found guilty and receive longer prison terms (Gordon et al., 1988). As noted earlier, secondary analyses of sentencing also find that Black persons are sentenced to longer prison terms than are Whites for particular crimes (Mitchell et al., 2005), suggesting that these stereotypes are pervasive within society and the legal system.

According to the aversive racism framework (Dovidio & Gaertner, 2004), White aversive racists are more likely to refrain from engaging in behavior when they are reminded that their actions could appear prejudiced. Similarly, White jurors are more likely to find Black defendants guilty when they are not reminded that such decisions could appear prejudiced. For example, Pfeifer and Ogloff (1991) found that judges' instructions that included a specific charge stating that jurors could not rely on any prejudices or biases when reaching a verdict eliminated White juror racial bias toward a Black defendant. Such a charge most likely reminded jurors that their decision could appear racist, so when jurors heard the instructions, they were more sensitive to race and less likely to find a Black defendant guilty. Aversive
Racial theory suggests that White jurors are also more likely to find Black defendants guilty of a crime when they are able to rely on other nonracial factors to make their decisions. For example, Hodson et al. (2005) found that White jurors expressed racial bias toward Black defendants (and not White defendants) when they were made aware of inadmissible evidence pointing to the defendant’s guilt. Using this additional evidence, White jurors could rationalize a guilty decision against a Black defendant by feeling that they do not want a guilty person going free.

Sommers and Ellsworth (2001, 2009) have demonstrated that bringing up racial issues can attenuate White juror bias in interracial trials. In their studies, when a trial did not include racially charged witness testimony highlighting racial conflict between a Black defendant and White victim, White jurors were more likely to find a Black defendant (as compared with a White defendant) guilty. When the same incident was depicted as the result of a racially charged altercation, White jurors were not more likely to treat a Black defendant more severely than they were to treat a White defendant. A similar result was reported by Thomas and Balmer (2007), who found that White juror racial bias toward a Black defendant only existed in a case in which issues in regard to the interracial nature of the crime were not emphasized. When mock jurors were not made aware of racial motivations for the crime, they were more likely to find a Black defendant than a White defendant guilty.

More recent research by Cohn et al. (2009) indicated that making racial issues salient at a simulated trial reduced White juror racial bias of both prejudiced and nonprejudiced participants. In their study, self-reported levels of racism were found to predict White juror verdicts only in conditions in which racial salient issues were not brought up during a trial. When racially salient issues were included in witness testimony in a trial, respondents with both high and low racist beliefs were less likely to find a Black defendant than a White defendant guilty. The robustness of these manipulations has been found in other studies that reported that making racial issues salient during voir dire (Sommers, 2006) and during a defense attorney’s opening and closing statements (Bucolo & Cohn, in press) also reduces White juror bias by making jurors cognizant of racial issues. Not only do these converging findings that race has the potential to influence jurors’ decision making suggest one additional way in which racism can contribute to wrongful conviction but they also identify some of the specific circumstances and case types that are particularly susceptible to such problematic outcomes.

Racial Profiling and Treatment by Police

Another area of psycholegal inquiry that has implications for the consideration of wrongful conviction is that of racial profiling. To the extent that
police profile and target members of some racial groups more than others, the potential for overzealous investigation and prosecution of individuals increases with membership in such a social category. Therefore, understanding the causes, effects, and perceptions of racial profiling are research goals that also have relevance to the effort to examine and prevent wrongful conviction.

Researchers who study racial profiling have focused on the issue from both an objective behavioral perspective and a more subjective perceptual perspective. From an objective perspective, researchers have tried to determine whether minority drivers, particularly Black persons, are disproportionately stopped by police on highways (Lamberth, 1998). The subjective researchers are more interested in perceptions that citizens and police have about racial profiling and the factors that increase the likelihood of perceiving racial profiling (Tyler & Wakslak, 2004).

Objective Behavioral Perspective

Researchers who conduct the objective studies (e.g., Lamberth, 1998) recorded the race of drivers on different sections of highways and then recorded the race of drivers stopped on the same area of the highway. They then compared the percentage of minority drivers on the highway with the percentage of minority drivers stopped by police. This has been referred to as baseline/benchmark research (Walker, 2001). Lamberth (1998), who was among the first to conduct such studies, measured disproportionate minority traffic stops on both New Jersey and Maryland highways. He found that Black drivers were disproportionately likely to be pulled over on the highway given the number of Black drivers who use the highway.

Subjective Perception

The majority of researchers have focused on racial profiling from the perspective of citizens. This is referred to as public perception research (Tyler & Wakslak, 2004). With a few exceptions (Glover, 2007), researchers have neglected the perspective of police officers in regard to racial profiling.

Citizens’ Perspective

Most of the research on racial profiling has focused on national or local public opinion polls to determine citizen perceptions of and experiences with racial profiling (Tyler & Wakslak, 2004). Typically, these polls focus on three questions: whether racial profiling is widespread, whether the practice is justified or approved, and whether respondents feel they have been stopped by police due to their race or ethnic background (e.g., Weitzer & Tuch, 2005). With the exception of studies by Piquero and colleagues (e.g., Piquero, 2008; Reitzel et al., 2004), most researchers have focused almost
exclusively on differences between Blacks and Whites and have ignored the citizens’ perspective.

There is a great deal of consistency in the findings on Black versus White differences (Weitzer & Tuch, 2005). Black persons are significantly more likely than White persons to feel that racial profiling is widespread and that police have stopped them because of their race or ethnic backgrounds. Black persons are significantly less likely than White persons to approve of racial profiling and to feel it is justified.

There seems to be some inconsistency in studies that compare Hispanic with non-Hispanic persons (Reitzel et al., 2004; Weitzer & Tuch, 2005). Blacks are more likely than Hispanics to believe racial profiling is widespread, whereas Hispanics are more likely than Blacks to believe racial profiling is justified. In contrast, Reitzel et al. (2004) found that both Black and Hispanic respondents were more likely than non-Black and non-Hispanic respondents to believe that profiling was widespread. There was no difference between Hispanic and non-Hispanic individuals on whether profiling was justified. Blacks and Hispanics were more likely than Whites to believe they had been profiled.

Some researchers have gone beyond demographic differences and have looked at the factors that predict the belief that racial profiling is widespread and unjustified. In a theoretically sophisticated analysis, Tyler and Waksulak (2004) applied procedural justice principles to predict profiling. Both White and Black individuals see racial profiling as negative, but Whites tend to see it as the result of crime, whereas non-Whites are more likely to see racial profiling as resulting from prejudice. People are more likely to infer that racial profiling occurs when they have not experienced fair treatment from the police or the police have not been fair in dealing with their community. People are more likely to infer that they have been profiled when they are not treated with politeness and respect by the police.

**Police Officers’ Perspective**

The only research on police perspectives on racial profiling (Glover, 2007) is a very preliminary study. Glover conducted in-depth interviews with 11 police officers from a small Texas town with a racially diverse population. In addition, 16 police officers completed surveys. Glover found that the police officers acknowledged the racial profiling but rationalized the use of racial profiling. Police used the expression, “White boy in a no White boy zone” (Glover, 2007, p. 239) and explained racial profiling by using the image of a White person in a predominantly minority neighborhood to justify racial profiling. Of course, in practice, racial profiling is often used when a minority individual is in a predominantly White area. Clearly, the police officers have recognized that it is more politically correct to give as the exemplar image the profiling of a White person rather than a Black person.
APPLICATION OF THE RESEARCH ON RACISM

Although the research mentioned earlier finds that racism toward Black persons occurs in many different aspects of the legal system, racial bias in the system has changed over time from blatant expressions of bias to more subtle and complex associations. Contemporary research indicates that successful attempts to remove such bias from the legal system require multiple approaches specifically designed to curtail the different racial biases that exist. As Piquero (2008) argued, remedies for reducing legal system racial bias toward Black persons needs to be grounded in sound research. On the basis of solid theory and research data, such reforms can specifically target the inequities found in particular areas of the criminal legal system (e.g., policing, the courts). Both national programs and local communities need to draw from this research literature and establish policies aimed at eliminating the racial discrepancies in the system and reduce the disadvantages that minority members experience when they come into contact with the legal system. In addition, of course, efforts to combat racism more generally in the legal system may also have the advantageous effect of reducing racial disparities in wrongful conviction.

In their review of legal remedies to reduce discrimination, Crosby and Dovidio (2008) argued that findings that have originated from the aversive racism framework (Dovidio & Gaertner, 2004) provide a starting point for how such reforms may be structured. Effective policy changes to reduce racism in the legal system should not be hostile and aimed at punishing previous behavior but rather should be proactive and based on social psychological findings regarding human behavior. Such initiatives would focus on factors associated with racism, noting that it is often done implicitly and that discrepancies and small imbalances can account for greater racial disparities.

The theory of aversive racism points to the importance of accountability (Dovidio & Gaertner, 2004). Individuals are not likely to act in a prejudicial manner when there are strong norms that indicate such behavior is not appropriate. For example, racial bias in police work is often attributable to a small number of officers who have significant contact with minorities (Ridgeway & MacDonald, 2009). The prospects of future sanctions against such officers may make all officers more accountable for prejudicial behavior and would most likely reduce discrimination against minorities. On a larger scale, a legal culture in which racism is clearly not tolerated and accepted should reduce racism, primarily by changing the norms of those who work and interact in this system (Crosby & Dovidio, 2008; Piquero, 2008).

Gaertner and Dovidio's (2000) common in-group identity model provides examples of how certain reforms and initiatives could reduce racial bias in the legal system. This model is based on other similar approaches to reducing prejudice among competing groups, such as increased positive interaction.
among members of different groups (Allport, 1954) and reducing outgroup bias through cooperation and working toward unifying goals (Sherif et al., 1955). Gaertner and Dovidio's (2000) model aims at reducing bias through group recategorization. Through recategorization of group membership, individuals from competing groups are more likely to build favorable attitudes, cognitions, and emotions in regard to former out-group members. This does not necessarily mean that original group membership no longer exists; rather, through contact or working toward shared goals and objectives, group members realize that once competing members do share membership in some "superordinate identity" (Gaertner & Dovidio, 2000). Experimental analyses have revealed that superordinate identities lead White individuals to behave more favorably toward Black individuals in different situations. It is important to note that the subgroup identities (e.g., White, Black) are maintained to increase the potential that positive attributes that become associated with other subgroup members could generalize to other groups who become part of the superordinate identity.

The common ingroup identity model (Gaertner & Dovidio, 2000) suggests that positive contact between outgroup members reduces bias. Researchers have documented that increased racial diversity in settings such as schools leads to more positive attitudes, cognitions, better interactions, and increased acceptance of minorities by White persons (Denson, 2009). However, for such diversity programs to be effective, they must be purposeful with the intention to reduce bias toward minorities. Further, programs that are more successful at reducing bias are not only informative but also provide positive interactions among minority members and White individuals.

Although researchers have not examined how racial diversity programs affect police officers and court officials directly, such programs combined with interactions with minorities may reduce biased behavior by these legal officials. Positive contact and interactions with police are vital not only to reduce racism among police and other legal actors but also to strengthen relationships between Blacks and the police. Many Black individuals report negative experiences when interacting with police officers (e.g., Brunson, 2007), and such contact is often associated with negative attitudes and beliefs about the police, indicating that many Blacks feel the police are prejudiced toward them (Gabbidon & Higgins, 2008). Community programs that increase positive police presence and beneficial interactions between Black persons and the police would benefit both police and community members. Such diversity programs should be rooted in the elimination of negative stereotypes about minorities. By interacting with the police, an "us" versus "them" culture that currently exists could be eliminated, as individuals work together to recategorize themselves into the superordinate identity of "community members."
No research has as yet assessed whether such programs reduce racism in the legal system, but anecdotal evidence suggests that a greater presence of Black persons in a majority-White community is associated with smaller racial discrepancies in arrests between White and Black persons (Keen & Jacobs, 2009). Thus, it possible that more positive interactions between police and Black individuals would eliminate some of the racial bias exhibited by police.

Increasing contact and interactions among Whites and Blacks has also been found to eliminate racial bias exhibited in trial simulation research. For instance, Sommers (2006) found that racial bias toward a Black defendant was reduced when White jurors deliberated in interracial juries rather than in all-White juries. This decreased racial bias was related to improved cognitive processing, as White persons who deliberated in the interracial juries—compared with White individuals who deliberated in homogenous juries—remembered more details and facts about the case and made fewer factual errors in discussing it. In short, one way to combat racial bias at the trial level seems to be to take steps to facilitate the selection of racially representative juries.

Some have also posited that the increased presence of minority members who enter the justice professions would help shape the culture and norms and thereby decrease racism. So far, empirical evidence for this prediction is lacking. Steffensmeier and Britt (2001) actually found that compared with White judges, Black judges gave both White and Black defendants significantly longer prison terms. These researchers explain this finding by suggesting that Black judges recognize that their decisions may be scrutinized more than those of White judges and give harsher sentences to demonstrate that they are “tough on crime.” Further empirical assessment of the effects of the demographics of justice professionals on legal outcomes is clearly needed.

CONCLUSION

Most of this chapter has not focused on the specific question of race and wrongful conviction per se. This is because little research has directly examined the link between race, racism, and such miscarriages of justice, with the exception of some quantitative and qualitative analysis of race and capital cases (e.g., Harmon, 2004). Instead, this chapter has addressed current theoretical explanations for racial bias and prejudice, particularly aversive racism theory, as well as the psychological mechanisms and social conditions that can exaggerate and attenuate racism in settings legal and otherwise.

The relationship between race and wrongful conviction is underresearched and complex. It is unambiguous that wrongful conviction is a miscarriage of justice suffered by Black individuals at a rate disproportionate to their representation in the population at large. What is less clear is whether
this disparity reflects the same disproportionality observed for arrest rates or whether Black individuals are at an even greater risk of wrongful conviction than their already higher rate of arrest and incarceration would predict. In other words, do the high rates of mistaken conviction of Black individuals simply reflect the higher arrest rates for Blacks? Or are there additional factors and processes that lead Black individuals to be overrepresented among the wrongfully convicted, even controlling for baseline racial disparities in arrests? These are important questions that deserve empirical answers.

But either way, it remains the case that by examining the scope, implications, and causes of racism in the legal system more generally, we learn about the potential links between race, racism, and wrongful conviction. When police departments rely on racial profiling, members of particular racial groups become more likely to experience unwarranted police attention or overzealous investigation, rendering arrest of the innocent more likely. To the extent that a suspect’s race influences prosecutors’ determinations of whether to press forward with charges (or their decisions regarding which charges to seek), weak cases become more likely to go to trial for suspects of some racial groups than others, increasing the risk of wrongful conviction for these groups. The presence of racial bias in jury decision making is yet another potential risk factor increases the odds of mistaken conviction for minority individuals.

Accordingly, it seems appropriate to add wrongful conviction to the litany of the potential and documented problems caused by racism in the legal arena. We propose that direct investigation of the link between race and such miscarriages of justice is called for, to more precisely quantify this relationship and to begin to generate concrete strategies for rectifying this important problem. Moreover, we also suggest that a wide range of future directions in the more general investigation of racism in the legal system will also have implications for the examination of wrongful conviction. In short, any study with the objective of better understanding the processes by which race impacts perception and judgment in legal domains may also shed light on the documented yet underresearched link between race and conviction of the innocent.

REFERENCES


298 COHN, BUCOLO, AND SOMMERS


