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The impact of defendant ethnicity on the psycholegal opinions of forensic mental health evaluators

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ABSTRACT

The impact of ethnicity on clinicians' decision making has received a great deal of attention and research. Several studies have documented that client ethnicity significantly influences diagnoses, testing and assessment protocols, recommendations for treatment, and expected outcomes. However, there is limited research examining the impact of a criminal defendant's ethnicity upon forensic mental health experts. To examine this issue, the authors reviewed 816 forensic reports on competency to stand trial submitted to the Hawaii judiciary between 2007 and 2008 and compared recommendation rates across categories of defendant ethnicity. Significant differences between ethnic groups were found in recommendations of competency to stand trial. Specifically, Asian misdemeanant populations were found to be incompetent to stand trial at higher rates than other ethnic groups. These findings highlight the potential impact that ethnicity may have on clinicians' decision making in certain forensic settings.

1. Introduction

Persons with ethnic minority backgrounds in the United States are well documented as being over-represented in the criminal justice system when compared to their population base rates (Harris, Steffensmeier, Ulmer, & Painter-Davise, 2009). For example, ethnic minorities are arrested at higher rates than their population rates would predict. In 2010, Caucasian Americans, representing 63.7% of the total U.S. population, represented only 45.8% of inmates housed in local jails, while African Americans, representing 12.6% of the population, represented 36.9% of inmates housed in local jails (Minton, 2013; US Census, 2011).

Sadly, disparities exist in the mental health field as well. Persons with ethnic minority backgrounds are more often diagnosed with a mental illness, given more severe diagnoses, and spend more time involuntarily committed to inpatient psychiatric units than Caucasians in similar circumstances or with similar presenting symptoms (Feinstein & Holloway, 2002; Hicks, 2004; Lawson, Hepler, Holladay, & Cuffel, 1994). Previous research indicates that rates of psychological diagnosis and inpatient treatment are disproportionately high for ethnic minorities (Schultz et al., 2000; Thompson, 2010). Research also suggests that ethnic minority status is a significant negative predictor for psychiatric patients seeking hospital release (Callahan & Silver, 1998), and other researchers have found that ethnic minority status lengthens hospital stays among adolescents (Balkin, 2011). Alternatively, ethnic minorities sometimes have *lessened* contact with mental health systems—for example, Asian-Americans are often under-represented in the mental health system, with some authors describing that persons of Asian descent associate mental health needs with higher levels of cultural and familial shame and stigma (Masuda et al., 2009). Although a complete understanding of these mixed findings is still lacking, these findings do suggest that ethnicity can be an influential factor on an individual's involvement with mental health services.

The intersection of mental illness and the criminal justice system is undeniable. Recent studies have shown that 17.1% of male inmates in U.S. jails, and 34.3% of female inmates, are diagnosed with serious mental illness (Steadman, Osher, Robbins, Case, & Samuels, 2009), and that more than 64% of inmates report at least one mental health symptom (James & Glaze, 2006). Given the disproportionate representation of minorities in the criminal justice system, coupled with the complex interaction of patient ethnicity and mental health care, the ethnicity of mentally ill offenders could play an important role when entering the criminal justice system. Members of some ethnic categories might be more likely to present as clinically unstable upon arrest if they have disproportionately higher historical rates of treatment refusal. Others may present with higher rates of mental health diagnoses or treatment histories. Ultimately, defendants' ethnicities might impact court-ordered mental health evaluation referral rates or the recommendations of the evaluator and/or the trier of fact in court.

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The stakes for these types of forensic evaluations are high. Evaluators often make recommendations on a defendant's ability to understand and manage their court proceedings, their legal responsibility, or their risk for violence (Melton et al., 2007). Each of these psycholegal opinions carries considerable weight with the court; courts follow the recommendations of evaluators in 80-99% of forensic cases (Cruise & Rogers, 1998; McNichols, Gowensmith, & Jul, 2011; Zapf, Hubbard, Galloway, Cox, & Ronan, 2004). Moreover, these psycholegal assessments have tremendous implications for the defendant who is under evaluation. The results of a forensic evaluation often mean the difference between various verdicts, sentencing, and placement options. Given these implications it is critical for evaluators to be sensitive to any impact that ethnicity could have on the psycholegal opinion they posit.

Discrepancies in diagnosis, treatment outcomes, and hospitalizations have led professionals across the mental health spectrum to underscore the importance of cultural competence. However, Heilbrun and Brooks (2010) argue that cultural competence in forensic evaluators is especially insufficient, stating, "One of the striking gaps in forensic psychology is between those who provide services and those who are assessed and treated…it is crucial that this gap be narrowed." The authors suggest that the field can improve cultural competence by "increasing the number of forensically trained psychologists of African American, Asian American, Latina/Latino, American Indian, Alaska Native, Native Hawaiian, and multiracial backgrounds." Further, Weiss and Rosenfeld (2012) hold that the cultural competence of forensic psychologists has not kept pace with the "ever-increasing diversity of individuals evaluated by forensic psychologists."

Most elements of the forensic evaluation process show limited cultural sensitivity. Even areas of relative strength in forensic cultural competency—for example, the development and availability of culturally informed forensic assessment instruments (or "FAIs")—have had a limited impact. While most of the leading FAIs have been normed on persons from diverse ethnic backgrounds and have been shown to be effective with those populations, the use of these instruments varies widely in real-world practice (Elbogen, Mercado, Scalora, & Tomkins, 2002; Gowensmith, Murrie & Boccaccini, 2011; Odeh, Zeiss, & Huss, 2006). Many practitioners ignore empirically validated assessment instruments and predictive factors in lieu of less predictive methodologies that may or may not apply to minority populations (Elbogen et al., 2002; Gowensmith, Murrie, & Boccaccini, 2012; Odeh, Zeiss & Huss, 2006; Robinson & Acklin, 2010). Other areas in forensic evaluation research have virtually ignored the impact of the defendant's ethnicity on the evaluation.

Despite the potential ramifications of an individual's ethnicity on psycholegal opinions and dispositions, the impact of a defendant's ethnicity on the forensic evaluation process has not been sufficiently explored. The need for research in this area has been raised by many researchers, including Hicks (2004), stating,

> "Many areas of psychiatric assessment and treatment have not been studied specifically to confirm their applicability in various ethnic groups, and this should be an acknowledged limitation of the research. As a field, forensic psychiatry should encourage research in the area of race and ethnicity, because it affects the validity of our opinions and complicates clinical care in the special populations with whom we work."

The impact of ethnicity on forensic assessment has, to date, been poorly researched and is subsequently largely unknown. Virtually no empirical evidence exists regarding the impact of a defendant's ethnicity on any stage of the forensic evaluation process—the initial referral rates for forensic evaluation, the opinions offered by the forensic evaluators in routine practice, or ultimate disposition of these cases. The potential for biased evaluator opinions or biased legal outcomes for persons with minority backgrounds, thus, remains unknown. Research in this area—especially research exploring how ethnicity impacts routine, day to day forensic evaluations performed in the field—is critical. This study examined the impact of defendant ethnicity on the forensic evaluation process of actual competence to stand trial (CST) cases. CST evaluations are the most common types of court-ordered evaluation (Melton et al., 2007), with estimates nearing 60,000 evaluations per year and rising (Bonnie & Grisso, 2000). We used actual cases in the field to examine the role of defendants' ethnicity on initial referral rates for CST evaluation, the psycholegal opinions of the forensic evaluators, and the ultimate judicial dispositions of the court.

2. Methods

2.1. Sample selection process

We reviewed an initial sample of 1650 forensic reports on 719 defendants that addressed cases submitted to the Hawaii Judiciary between September 2007 and December 2008.[1] Of these reports, we retained only those addressing the psycholegal question of competency to stand trial, resulting in a total of 1010 reports on 580 defendants. The sum of these evaluations totals more than the sum of defendants due to some defendants being evaluated by more than one evaluator (felony defendants in Hawaii are concurrently evaluated by 3 independent, certified evaluators).

All of the evaluations used in the study were initial CST evaluations. No repeated or subsequent competency evaluations were included. Every CST report filed at court during the study period was requested statewide. The majority of reports were obtained from Oahu county ($n = 308$, 53.1%), while others were collected from Hawaii county ($n = 207$, 35.7%), Maui county ($n = 36$, 6.2%), and Kauai county ($n = 29$, 5.0%). Courts were at times unable to retrieve specific evaluation reports due to filing errors or similar circumstances; however, this occurred at random and was not disproportional to any specific county or court.

Defendants' ethnicities were recorded from court records; when ethnicities were not available from court records, researchers used codes provided by the forensic examiners themselves. Defendants were coded into one of seven broad categories: Caucasian/White, Hispanic/Latino/Latina, Asian, Black/African American, Native American/American Indian, Pacific Islander/Hawaiian (or "PIHA"), multiple ethnicities including Pacific Islander/Hawaiian, or multiple ethnicities not including Pacific Islander/Hawaiian.

There was great ethnic variability in our original sample, with 32.9 % ($n = 191$) identified by collateral data or self-report as White/Caucasian, 22.9% ($n = 133$) as Asian, 13.1% ($n = 76$) as PIHA, 3.6% ($n = 21$) as Black/African American, 1.4% ($n = 8$) as Hispanic, and 6.7% ($n = 39$) of an unknown ethnicity. The remaining 19.3% ($n = 112$) defendants were multiethnic, with most of those ($n = 75$, 12.9%) identifying both PIHA and other ethnic backgrounds.

Given the population demographics in Hawaii, the only ethnicity categories with sample sizes large enough for meaningful statistical analysis were Caucasian/White, Asian, and Pacific Islander/Hawaiian (or "PIHA"). Asians in Hawaii typically originate from home countries in Japan, China, Korea, or the Philippines, although other Asian countries are also represented. The PIHA category included a combination of individuals who described their ethnicity as exclusively Native Hawaiian, as exclusively from another Pacific Island (most typically Guam, Tonga, American Samoa, Samoa, or the Marshall Islands), or as a combination of either Hawaiian or Pacific Islander with other ethnicities (for example, part Native Hawaiian and part Caucasian). The resulting sample used for the study ($n = 816$ evaluation reports across 469 defendants)

[1] In this study, "case" refers to the defendant, not the CST report itself. As a result, a case can include either one single CST evaluation report submitted pursuant to a defendant's misdemeanor charge, or the sum of three separate CST evaluation reports for a felony defendant. "Evaluation report" refers to any single evaluation report submitted on a case.