

Expert Opinion

Cultural Competency in Forensic Practice: Bridging the Divide

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Cultural Competency has been defined as a “learning attitude, including reflection, humility, appreciation of privilege, and appreciation of historical/cultural contexts and explanatory frameworks that stretch boundaries” (Bullock, 2011, p. 9). One of the most cited definition widens the scope to include congruent behaviors, attitudes, and policies that come together in a system, agency, or amongst professionals, and enable work in cross-cultural situations (Cross et al., 1989). These definitions call us to consider cultural factors within all aspects of our profession, including research, design, training, policy/procedure, and quality improvement. Past multicultural efforts focused on affecting individual attitudes and beliefs, which were contained within the therapeutic dyad. While important, these ideas together infer that culture influences all aspects of psychology. In this article, we propose that there is a discrepancy between professional guidelines, emerging case law, and a dearth of forensic research in comparison to general psychology. Furthermore, we offer some ideas as to the rationale for this divide, and encourage our division to fill this gap.

Psychology has a long tradition of scientific contributions regarding race and culture, with significant social implications. For example, the Clark studies (Clark & Clark, 1939; 1950) impacted federal policies regarding racial segregation. And more recently, Implicit Bias (Greenwald & Banaji, 1995) has had wide-ranging implications on policing (Lim, 2017), jury selection/deliberation (Key, 2015), and corrections (Spohn, 2015). The field of psychology has been a trailblazer in cultural competency within the social sciences, providing some of the first practice guidelines in 1981, which warned clinicians to become aware of their clients’ cultural backgrounds or risk causing harm (Sue, Arrendondo, & McDavis, 1992). Currently, a vast

amount of literature regarding the interaction of cultural factors in psychotherapy, assessment, and research exist within the field of clinical and counseling psychology, in addition to guidance for applied practice. Yet, comparatively, the subfield of forensic psychology has a scarcity of literature with regards to applied cultural competency, with just a few addressing best practices.

According to the guideline 2.08, our own division offers us the importance of individual and group differences in forensic practice (APA, 2013):

When scientific or professional knowledge in the discipline of psychology establishes that an understanding of factors associated with age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, socioeconomic status, or other relevant individual and cultural differences affects implementation or use of their services or research, forensic practitioners consider the boundaries of their expertise, make an appropriate referral if indicated, or gain the necessary training, experience, consultation, or supervision (p. 10).

The American Academy of Psychiatry and the Law made specific requirements for culturally competent practice in the 2005 guidelines (AAPL, 2005). Further, the academy highlighted seven areas where cultural competency impacts forensic evaluations, which included interviewing, acceptance, clinician cultural knowledge, communication, transference/countertransference, and context. Many defendants differ greatly from the attorneys and judges who rule over their legal proceedings, as well as the psychiatrists who often evaluate them. These differences among the

defendant population may often result in differences within their perspectives and outlooks on psychology and the law. The history of the United States is marked by ongoing multicultural diversification, and thus, psychological & psychiatric assessment and the law must make these advances as well. Mossman et al. (2007) called on psychiatrists and psychologists to further develop their skills in evaluation and increase their awareness of personal biases through the use of culturally sensitive clinical and evaluative practices, while minimizing obstacles to exact psycholegal conclusions.

In late 2017, the American Psychological Association (APA) released a new set of practice guidelines that extend the bounds of culturally competent practice to consider issues of intersectionality, marginalized identities, historical context, and institutional power and privilege. Specifically, guideline #5 speaks to the subfield of forensic psychology:

Psychologists aspire to recognize and understand historical and contemporary experiences with power, privilege, and oppression. As such, they seek to address institutional barriers and related inequities, disproportionalities, and disparities of law enforcement, administration of criminal justice, educational, mental health, and other systems as they seek to promote justice, human rights, and access to quality and equitable mental and behavioral health services (APA, 2017).

These guidelines from general psychology, as well as specialty subfields of forensic psychiatry and psychology, communicate both the minimal ethical standard as well as the aspirational direction of cultural competency. Yet, there is a dearth of research informing the forensic practitioner about incorporation of culturally competent practice in a way that is transparent, articulated, and defensible. Hicks (2004) pointed out that while cultural competency is mandated for ethical practice, there has been little guidance provided for the clinician attempting to integrate cultural issues into their forensic practice and reports. There are a handful of applicable articles including Weiss & Rosenfeld (2012) that offer useful guidelines for Competency to Stand Trial (CST) evaluations.

In addition to professional guidelines, there are emerging case findings that point to the importance of culturally competent forensic practice. Two Washington State Supreme Court cases emphasized the gravity of culturally competent practice in CST evaluations. In the case of *Sisouvanh* (2012), the court emphasized cultural competency in CST evaluations, yet acknowledged the intricacies and challenges as well:

As amici curiae rightfully point out, the basic need for cultural competency on the part of an expert or professional person conducting a competency evaluation is important and indisputable... Thus, a trial court could not properly accept the competency evaluation of an appointed expert who refused to acknowledge the importance of cultural competency and who failed to reasonably account for the need for cultural competency in his or her evaluation. To be clear, even if an appointed expert acknowledges the importance of cultural competency, if the expert nevertheless fails to sufficiently account for the need for cultural competency in his or her evaluation of the defendant, the expert's evaluation will not meet minimum standards of adequacy.

Although cultural competency is a requirement in competency evaluations, the determination of how much investigation and research into particular cultures is necessary in order to conduct an adequate competency evaluation often will be at least fairly debatable in any particular case. Even members of majority groups belong to “many subcultures based on economic, occupational, religious, or geographic factors,” and an appointed expert must determine which relevant cultures or subcultures, if any, merit special consideration... Cultural competency in forensic evaluations is “a new field,” and various “clinicians and scholars may hold different viewpoints” (*State v. Sisouvanh*, 2012).

More recently, a subsequent case in Washington State reiterated the need for culturally competent CST evaluation citing the *Sisouvanh* case (*Ortiz-Abrego*, 2017).

As we know, the practice of forensic psychology is distinct from general clinical practice. Objectivity is the backbone of forensic practice, and it is possible that discussing cultural factors, including the politicalized issues of race, gender, and sexual orientation, may risk appearing subjective or preferential to legal parties. For forensic clinicians, addressing cultural factors could call into question their objectivity with retaining parties, thus endangering their livelihood. This may point to a philosophical conflict between objectivity and culturally competent practice. As the new APA guidelines encourage, the field of forensic psychology is challenged to reconcile this potential conflict. In addition, the Washington State cases may predict similar cases in the future that challenge us to clearly articulate how we implement culturally competent practice in our reports and on the stand.

An estimated 86% of psychologists identifying as White, compared to almost half of incarcerated individuals who identify as racially and ethnically diverse. While this indicates a basic demographic mismatch between provider and consumer, it does not address the multiplicity of cultural identities and factors that exist within the psychological dyad that require knowledge, awareness, and skill. This points to a discrepancy between the ethical and aspirational professional guidelines and the available literature (American Psychological Association, 2015; Kalmbach & Lyons, 2006). The demographic differences among evaluators and the individuals they evaluate can be surprising information; however, the potential for cultural misunderstandings within a forensic evaluation which may result from this discrepancy is just as concerning.

A recent survey by Kois & Chauhan (2016) explored how often, and in what context, 100 forensic evaluators considered culture in their forensic work. Almost three-fourths of evaluators studied reported lack of training opportunities as an obstacle to cultural competence in the workplace. Moreover, almost half of the evaluators mentioned funding restrictions challenging as well. Thus, we urge those within the subfield of forensic psychology to allocate sufficient resources and time to the understanding and education to obtain cultural competency.

A study by Neimeyer et al. (2010) revealed licensed psychologists working in private practice were less likely to seek continuing education courses regarding cultural competency when compared to those working in academic institutions, community mental health, or medical settings. As mentioned previously, funding for continuing education, as well as a lack of access to scholarly journals and other research for those within private practice may be attributable to this discrepancy. However, we encourage those within the field to foster a sense of accountability for developing and maintaining cultural competence within themselves and others moving forward.

In light of evolving professional guidelines and emerging case law, it is increasingly important for forensic psychology to address issues of cultural disparity. Our division is encouraged to work together to construct clear, pragmatic, and defensible guidelines that incorporate culturally competency into specific areas of our practice, ranging from pre-trial evaluations, risk-assessment, and custody/parenting evaluations just to name a few. Further, more research in this area is needed to support clinicians in this effort. Finally, our field may need to examine whether there are any inherent philosophical conflicts between the demands and realities of forensic practice in light of the APA's new aspirational guidelines.

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