

Race in Forensic Evaluations: The AP-LS Practice Committee Offers Practical Considerations

The members of the AP-LS Practice Committee are (in alphabetical order) Ariel Breaux, Psy.D.; Yenys Castillo, Ph.D.; Lara Guzmán-Hosta, Psy.D.; Antoinette Kavanaugh, Ph.D.; Rebecca Rivas, M.A.; Danielle Rynczak, J.D., Psy.D.; & Mark Worthen, Ph.D.

Riggs-Romaine and Kavanaugh (2019) introduced the important work of considering when and how to incorporate the racial identity and experiences of evaluatees in forensic assessments. Since then, many of us continue to struggle with how best to acknowledge the importance of race in our evaluatees' lives. In the spirit of anti-racist work, we offer some suggestions and ideas to think about when considering race (and other identities) in our evaluations.

1. Consider race.

A white male police officer, with his hands in his pockets, knelt on a black man's neck for over nine minutes until, he, George Floyd, died; another black male dead at the hands of police officers (referring to George Floyd's death; for an analysis of risk of death by police use of force, see Edwards, Lee & Esposito, 2019). This last week, jurors found the officer guilty of murder on all three counts, as ongoing deaths at the hands of officers continue to be reported. A year of nightly news streaming the numbers of COVID-19 infections and deaths, flashing pictures of the ones we have lost; the statistics highlighted the disproportionate impact on people of color (e.g., CDC, 2019; U.S. Department of Labor, 2021; for a discussion of racial health inequities, see Lawrence, Edwards & David, 2014). Mass shootings, mass protests, mass political upheaval, and a rallying cry for change. If we are privileged enough not to feel the everyday effects of unrest in our lives, we need only to have turned on the television this past year to know that racism, in all its forms – individual, institutional, structural - exists.

In this country race matters. As the Centers for Disease Control and Prevention (CDC) Director Dr. Rochelle Walensky recently recognized, structural barriers impact where we work and live, and in turn, the resources we can access and the social capital we wield (CDC, 2021). Research has highlighted racial differences in many areas related to forensic work. For example, black students are more likely to be punished than white students for the same offense (Riddle & Sinclair, 2019) and black adults are 3 to 4 times more likely to be diagnosed as psychotic (“clear and pervasive pattern” identified by Schwartz & Blankenship, 2014). There is growing research indicating disparities in many aspects of the criminal justice system, including who gets incarcerated in the U.S. and the length of sentence they serve (Carson, 2014).

Even if at the conclusion of our analysis we decide that race should not be explicitly identified in any given evaluation (for a discussion of the risks and benefits of identifying race in forensic evaluations, see Riggs-Romaine & Kavanaugh, 2019), or reported but not discussed at length, because it is not directly relevant to the psycho-legal question (see below under #7), we need to consider race. Per the APA (2020), race is predominantly a social construct (rather than a biological reality) that creates a power differential that influences every aspect of a person's life, including the background information gathered for forensic evaluations, from education and employment to physical and mental health to how one views themselves (see David, 2019 for an

explanation and historical context of internalized oppression), and, as such, is inseparable from one's identity. By failing to consider race, we ignore potential bias in our data and eliminate key data points in our analysis. For example, if research suggests black people are more likely to have been diagnosed with psychotic disorders, should we not consider such information when reviewing prior diagnoses? And if we do not consider race, we leave out important data such as exposure to and effects of discrimination, racism, microaggressions, and racial trauma.

2. Resist the urge to avoid racial identity exploration in order to be “objective” or “neutral.”

Color-blindness is an ideology that has perpetuated racism. Some evaluators may still take the stand, in line with color-blind racial ideology (CBRI; Neville, Gallardo, & Sue, 2016), that race should altogether be avoided in their analyses or not explicitly identified in their evaluations. The logic being that identifying or considering race group membership or race based differences, in and of itself, perpetuates racism. The U.S. Supreme Court Chief Justice John Robert's opinion in a 2007 case involving a local school district's effort to achieve diversity exemplifies this approach when he wrote “The way to stop discrimination on the basis of race is to stop discriminating on the basis of race” (*Parents in Community Schools v. Seattle School District*). Research on color blindness exposure and training, however, suggests the approach may be harmful. For example, some evidence suggests that people exposed to color blind teachings subsequently show a greater degree of explicit and implicit racial bias (Richeson & Nussbaum, 2004; Holoien & Shelton, 2012), are less likely to identify overt instances of bias (Apfelbaum, Pauker, Sommers, & Ambady, 2010), and appear more biased in the eyes of black observers (Apfelbaum, Sommers, & Norton, 2008). When applied to the legal system, color blindness assumes that our laws and systems create equal obstacles for white, black, and indigenous people of color (BIPOC). Making the argument that race matters in an evaluation does not make you any less neutral than considering any other potentially relevant factor. By failing to consider race (and other identities which are just as important but not the focus of this article) in our forensic evaluations, we our teaching stakeholders is race is irrelevant; as such we perpetuate the myth, social lie, and racist and color-blind sentiment that race does not matter.

3. Do not assume identity.

Ask your evaluatee how they identify. An individual's identity may not be apparent; and making an assumption about racial or ethnic background can lead to misunderstandings or inaccurate reporting (e.g., Metzger Leins, & DeLapp, 2018). Assessing racial trauma within a DSM-5 framework: The UConn Racial/Ethnic Stress & Trauma Survey. *Practice Innovations*, 3(4), 242–260.. To avoid this, clinicians should be direct when asking an evaluatee about their racial and ethnic identity (Cardemil & Battle, 2003). Asking, “How do you identify in terms of race and ethnicity?” should be incorporated with all other questions used to gather information about an evaluatee. This is an important question to ask every evaluatee, as racial identity holds significance for everyone, not just people of color (Sue, 2015). A discrepancy between how the person presents versus how they identify themselves is a data point that can be furthered explored and explained in your report. For example, when a discrepancy exists the evaluator should consider if is related to a combination of a mental health issue, an attempt to avoid dehumanization that marginalized people often face, or a response to racial trauma.

4. Use a cultural framework.

An appreciation of your evaluatee's—and your own—cultural identity will (1) facilitate rapport, and (2) help you develop hypotheses regarding the relevance of the evaluatee's cultural identity to the psycholegal question. Although several variables can influence the effectiveness of a structured interview, such interviews, utilized consistently across examinees, may lessen the impact of implicit bias and increase reliability (Macan & Merritt, 2011; Macan, 2009). As such, we recommend using a multicultural framework to guide identity questions, data gathering, and case conceptualization. For example, the Pamela Hays (2016) ADDRESSING model invites a more nuanced understanding of the individual by enabling recognition of multidimensional cultural influences along some or all of the following nine dimensions.

- Age and generational influences
- Developmental or other Disability
- Religion and spirituality
- Ethnic and racial identity
- Socioeconomic status
- Sexual orientation
- Indigenous heritage
- National origin
- Gender

Other models include the APA's ecological model (APA, 2017), the RESPECTFUL Model (D'Andrea & Daniels, 2001), and the CAMINO (which specifically addresses the experiences of immigrant communities, particularly Latinx as discussed in Silva, Paris, & Anez, 2017).

5. Consider appropriate placement of cultural and racial data.

Consistent with Riggs-Romaine, and Kavanaugh (2019), we advocate against simply including race or cultural data as an identifying element such as gender, hand dominance, or unique identifying physical characteristics such as tattoos or scars. Instead, we advocate for including information about race and culture gathered through an idiosyncratic lens germane to the evaluatee. This information is as clinically relevant as similar information routinely collected, such as educational history, medical history, and trauma history. As such, it should be presented in the background/history section of the report. Like any routinely connected information, when it directly relates to the legal issue, we must articulate the nexus between the two types of data in the report's opinion section.

6. Consider race in the selection and administration of appropriate testing.

Testing in forensic mental health assessment is carefully considered for specific clinical and legally-relevant questions. For example, differential diagnoses, questions of malingering, ability to be restored to competency, and violence risk are among many questions where testing could be useful. However, historically there have been limitations in the availability of instruments and trained professionals that can administer testing to non-White clients. Given that black, Indigenous and people of color (BIPOC) individuals are overrepresented in the criminal justice

system and that the forensic workforce is predominantly White and English-speaking (Kois & Chauhan, 2016), referring cases out systematically is not a sustainable solution.

A good place to start is by assessing acculturation. Forensic evaluators working with BIPOC evaluatees are well served to routinely assess acculturation. For some clients, their degree of acculturation to American culture could impact their ability to understand and navigate the American criminal justice system. While a formal instrument can be useful (Zea, 2003) familiarity with the construct can assist with data gathering. Important acculturation factors include educational experiences in the U.S., language proficiency, self-reported racial and ethnic identity, and power differential between the dominant cultural values and the evaluatee's intersectional identities (Benuto, 2013; Zambrana & Carter-Pokras, 2010). When considering diagnostic or forensic instruments, forensic evaluators must ensure the research supporting the instrument matches the individual being assessed. The language translation of the instrument should also be supported by sound research. It is recommended that when deviating from the standardization of a test, the data only be reported qualitatively rather than making statistical comparisons that do not match the individual (see American Educational Research Association, American Psychological Association, & National Council on Measurement in Education (Eds.), 2014 for guidelines; Fernandez, Boccaccini, & Noland, 2007).

7. Consider race in the analysis of the psycho-legal question.

Race is relevant to several psycho-legal questions. A Black man's narrative of police mistrust, based on experiences of how police patrol his neighborhood, may influence his ability to provide a knowingly, intelligent, and voluntary Miranda waiver. Similarly, when assessing a woman's parental practices, an evaluator would do well to consider whether a mother's seemingly maladaptive actions stem from an attempt to ensure the survival of her dark-skin child. Contemporary and intergenerational racial trauma could also help assess criminal responsibility, identify mitigating sentencing factors, and determine damages in personal injury cases. Race is inseparable from a person's self-concept and has complex interactions and intersections with other aspects of identity and experience. For instance, a person with a female assignment at birth may be particularly susceptible to negative outcomes for being both black and nonbinary. The relationship between race and the psycho-legal question could also be impacted by the degree to which evaluatees identify with certain races, their attachment to particular racial groups, their evaluations of race, and the meaning they ascribe to racial phenomenon. Once we incorporate race into our conceptualizations, we recommend explaining how and why race was considered, included, or excluded from our reports.

8. Incorporate cultural humility and antiracist practices in our training programs and professional development.

Our training programs should reflect the importance of considering race, as well as other potentially relevant aspects of one's identity, in forensic work. As such, we need opportunities to have difficult conversations about race. To that end, the Practice and BRIDGE committees are co-sponsoring a series, "Let's Talk," that creates a space for us to engage in dialogue around race (and other identities). We suggest creating curricula that include opportunities to explore racial identity and ethno-cultural responsiveness, as well as offer experiential and in-vivo activities and

other training opportunities that allow for further exposure to anti-racist practices. Additionally, exposure to multidisciplinary ideology and concepts related to issues of race and ethnicity, such as critical race theory, social justice teachings, and the history of race relations in the U.S., will allow trainees to acquire a more comprehensive understanding of race and ethnicity related issues and their multilevel impact. We should continue to do the same work and exploration alone and with others as part of our ongoing professional development.

References

- American Educational Research Association, American Psychological Association, & National Council on Measurement in Education (Eds.). (2014). *Standards for educational and psychological testing*. American Educational Research Association.
- American Psychological Association. (2017). *Multicultural Guidelines: An ecological approach to context, identity, and intersectionality*. <http://www.apa.org/about/policy/multicultural-guidelines.pdf>
- American Psychological Association. (2019). *APA Guidelines on race and ethnicity in psychology*. <https://www.apa.org/about/policy/guidelines-race-ethnicity.pdf>
- Apfelbaum, E.P., Pauker, K., Sommers, S.R., & Ambady N. (2010) In blind pursuit of racial equality? *Psychological Science*, 21(11), 1587-1592. <https://doi.org/10.1177/0956797610384741>
- Apfelbaum, E. P., Sommers, S. R., & Norton, M. I. (2008). Seeing race and seeming racist? Evaluating strategic colorblindness in social interaction. *Journal of Personality and Social Psychology*, 95(4), 918–932. <https://doi.org/10.1037/a0011990>
- Benuto, L.T. (2013), *Guide to psychological assessment with Hispanics*. Springer.
- Bhugra, D. (2001). Ideas of distorted ethnic identity in 43 cases of psychosis. *International Journal of Social Psychiatry*, 47(1), 1–7.
- Boulanger, M., Dethier, M., Gendre, F., & Blairy, S. (2013). Identity in schizophrenia: A study of trait self-knowledge. *Psychiatry Research*, 209(3), 367-374.
- Cardemil, E. V., & Battle, C. L. (2003). Guess who's coming to therapy? Getting comfortable with conversations about race and ethnicity in psychotherapy. *Professional Psychology: Research and Practice*, 34(3), 278-286.
- Carson, E. A. (2020). *Prisoners in 2019*. Washington, DC: Bureau of Justice Statistics, Office of Justice Programs, US Department of Justice. <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=7106>
- Centers for Disease Control and Prevention (2021, April 19). *Health equity considerations and racial and ethnic minority groups*. <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>
- Centers for Disease Control and Prevention (2021, April 8). *Media statement from CDC Director Rochelle P. Walensky, MD, MPH, on racism and health*. <https://www.cdc.gov/media/releases/2021/s0408racism-health.html>

- D'Andrea, M., & Daniels, J. (2001). RESPECTFUL counseling: An integrative model for counselors. In D. Pope-Davis & H. Coleman (Eds.), *The interface of class, culture and gender in counseling* (pp. 417-466). Sage.
- David, E. J. R. (Ed.). (2014). *Internalized oppression: The psychology of marginalized groups*. Springer Publishing Company.
- Edwards, F., Lee, H., & Esposito, M. (2019). Risk of being killed by police use of force in the United States by age, race–ethnicity, and sex, *Proceedings of the National Academy of Sciences*, (34) 16793-16798; first published August 20, 2019.
<https://doi.org/10.1073/pnas.1821204116>
- Fernandez, K., Boccaccini, M.T., & Noland, R. (2007). Professionally responsible test selection for Spanish-speaking clients: A four-step approach for identifying and selecting translated tests. *Professional Psychology: Research and Practice*, 38, 363-374.
- Hays, P. A. (2016). *Addressing cultural complexities in practice: assessment, diagnosis, and therapy* (3rd ed.). American Psychological Association. <https://www.apa.org/pubs/books/4317397>
- Holoien, D. S., & Shelton, J. N. (2012). *You deplete me: The cognitive costs of colorblindness on ethnic minorities*. *Journal of Experimental Social Psychology*, 48, 562 - 565.
<https://doi.org/10.1016/j.jesp.2011.09.010>
- Kois, L., & Chauhan, P. (2016) Forensic evaluators' self-reported engagement in culturally competent practices, *International Journal of Forensic Mental Health*, 15(4), 312-322.
- Lin, L., Stamm, K., & Christidis, P. (2018). How diverse is the psychology workforce? News from the APA's Center for Workforce Studies. *Monitor in Psychology*, 49, 19.
<https://www.apa.org/monitor/2018/02/datapoint.aspx>
- Macan, T. (2009). The employment interview: A review of current studies and directions for future research. *Human Resource Management Review*, 19(3), 203–218.
<https://doi.org/10.1016/j.hrmr.2009.03.006>
- Macan, T., & Merritt, S. (2011). Actions speak too: Uncovering possible implicit and explicit discrimination in the employment interview process. In G. P. Hodgkinson & J. K. Ford (Eds.), *International review of industrial and organizational psychology* (Vol. 26, pp. 293–337). Wiley-Blackwell. <https://doi.org/10.1002/9781119992592.ch8>
- Neville, H. A., Gallardo, M. E., & Sue, D. W. (Eds.). (2016). *The myth of racial color blindness: Manifestations, dynamics, and impact*. American Psychological Association. <https://doi.org/10.1037/14754-000>
- Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. 701 (2006).

- Richeson, J. A., & Nussbaum, R. J. (2004). The impact of multiculturalism versus color-blindness on racial bias. *Journal of Experimental Social Psychology*, 40(3), 417–423. <https://doi.org/10.1016/j.jesp.2003.09.002>
- Riggs-Romaine, C. L. & Kavanaugh, A. (2019) Risks, benefits, and complexities: Reporting race & ethnicity in forensic mental health reports, *International Journal of Forensic Mental Health*, 18(2), 138-152. <https://doi.org/10.1080/14999013.2018.1531094>
- Riddle, T., & Sinclair, S. (2019, April). Racial disparities in school-based disciplinary actions are associated with county-level rates of racial bias. *Proceedings of the National Academy of Sciences*, 116(17), 8255-8260. <https://doi.org/10.1073/pnas.1808307116>
- Schwartz, R. C., & Blankenship, D. M. (2014). Racial disparities in psychotic disorder diagnosis: A review of empirical literature. *World Journal of Psychiatry*, 4(4), 133–140. <https://doi.org/10.5498/wjp.v4.i4.133>
- Sue, D. W. (2015). *Race talk and the conspiracy of silence: Understanding and facilitating difficult dialogues on race*. John Wiley & Sons Inc.
- U.S. Department of Labor. (2021). *Employment status of the civilian population by race, sex, and age*. <https://www.bls.gov/news.release/empsit.t02.htm>
- Williams, D. R., Lawrence, J. A., & Davis, B. A. (2019, April). Racism and health: Evidence and needed research. *Annu Rev Public Health*, 1(4), 105-125. <http://doi.org/10.1146/annurevpublhealth-040218-043750>
- Zambrana, R. E., & Carter-Pokras, O. (2010). The role of acculturation research in advancing science and practice in reducing health care disparities among Latinos. *American Journal of Public Health*, 100, 18-23.
- Zea, M. C., Asner-Self, K. K., Birman, D., & Buki, L. P. (2003). The abbreviated multidimensional acculturation scale: Empirical validation with two Latino/Latina samples. *Cultural Diversity and Ethnic Minority Psychology*, 9, 107-126.