

A Guide to the Forensic Assessment of Race-Based Traumatic Stress Reactions

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A large body of empirical evidence has accumulated over the past decade documenting the psychiatric and emotional consequences of racism and racial discrimination. Still, little has been written in the legal or psychiatric assessment literature that is focused on describing the direct and specific effects of racism and offering guidance to forensic psychiatrists in understanding, assessing, and treating the race-based stress reactions that may occur as a result of exposure to racial discrimination or harassment. This article uses the analysis of a case study to illustrate and extend previous work on the evaluation of racial discrimination by providing a guide to the forensic assessment of the psychiatric and emotional impact of race-based encounters—a guide that can be used both in preparing expert reports and in developing treatment approaches.

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In recent decades there has been growing empirical evidence of the psychiatric impact of discrimination and harassment on nondominant group members (i.e., Latino, Asian, Native, and African Americans).^{1,2} A large body of published research has accumulated in which a variety of research methods, measures of racism and discrimination, timeframes (exposure over lifetime, one year, one month), and outcome variables with samples at various stages of life (adolescent, adult, elderly) have been used.^{3,4} The researchers found exposure to racial discrimination to be prevalent; in different studies, between 40 and 98 percent of racial minority participants reported that they had experienced racial discrimination.^{1–6} Researchers also reported statistically significant relationships between perceived experiences with racism and a range of psychiatric and emotional reactions such as distress, decreased levels of life satisfaction and compromised well-being,^{3,6–8} as well as adjustment, stress reaction, and mood and anxiety disor-

ders.^{9–16} Much of this work has implications for forensic assessment and evaluation in civil lawsuits alleging racial discrimination and harassment.

Despite the evidence that some percentage of participants who experienced racial discrimination also reported psychiatric and emotional consequences from their experiences, little is written in the psychiatric and forensic literature that is focused on describing or examining the effects of racism. Only a few articles on the impact of racism have been published in psychiatric journals. A recent analysis of forensic psychology journals found that less than 10 percent of published empirical articles addressed racial issues or populations.¹⁷

Hicks¹⁸ argued that forensic psychiatrists may not be adequately incorporating a consideration of race, ethnicity, and culture in forensic evaluations, citing, for instance, empirical evidence of misdiagnoses and higher rates of involuntary commitment among racial minorities. Forensic psychiatrists may have limited guidance in understanding and addressing concerns germane to racial minorities.

Mental Health Professionals and Expert Testimony

While there is no explicit legal requirement or established standard for the kind of evidence used for

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expert testimony, psychiatrists and other mental health professionals are increasingly called on to provide assessments in legal cases. They are also called on to testify about the psychological damages or injury associated with a variety of legal claims, including claims in civil cases of racial discrimination.¹⁹

A search of psychiatric journals found only four published articles to aid psychiatrists in addressing the emotional distress or trauma that can result from encounters with racism.^{9,18,20,21} The scholars who authored those articles—Butts,⁹ Hicks,¹⁸ Ravin and Boal,²⁰ and Griffith and Griffith²¹—noted that psychological reactions to racial discrimination often do not fit criteria for disorders in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR).²²

Also, the DSM does not include consideration of the racial-cultural context of the listed diagnoses. Butts⁹ argued for a link between allegations of racial discrimination and symptoms of post-traumatic stress disorder (PTSD) in some clinical cases. He noted that the use of DSM criteria by clinicians assessing cases of alleged racial discrimination that involve no direct physical violence do not qualify the nonviolent symptoms as traumatic stressors or PTSD. He called for PTSD criteria to be changed because African Americans who are subject to alleged racial discrimination and who have symptoms consistent with PTSD all too often have the severity of their symptoms dismissed because the stressor was not deemed “catastrophic enough” (Ref. 9, p 336) to meet DSM requirements for diagnosis.

It should be noted that allegations of racism or racial discrimination can sometimes be false or inaccurate. At the same time, it must be recognized that targets can feel and be harmed by events attributed to racial discrimination, and traditional assessment tools may not adequately capture the emotional and psychological reactions that people have to such encounters.

In a case study, Ravin and Boal²⁰ described reactions to housing discrimination, and found that the targets’ symptoms of depression and anxiety did not fit typical clinical patterns on diagnostic instruments. Griffith and Griffith²¹ described the legal aspects of psychological damages in racial discrimination cases with an analysis of the lack of conceptual clarity in, and a disconnection between, legal and psychiatric definitions of mental suffering. They contend that this disconnection makes it difficult for psychiatrists

to evaluate potential harm or impairment, particularly in cases of subtle or negligent, rather than overt or intentional, racial discrimination.

Finally, Carter²³ argued that DSM criteria fail to assess racial aspects of peoples’ experiences and that the criteria do not consider the effects of emotional pain in the evaluation of traumatic stressors.²⁴ Evaluators should be mindful that one may experience emotional pain as a result of both actual and objectively verifiable acts of racial discrimination, as well as of less objectively verifiable acts (i.e., acts that may be painful to the target, but that may not be factually supported, or acts that are otherwise ambiguous). Psychiatrists and other mental health professionals serving as independent evaluators should consider the factual evidence for alleged racial discrimination and other race-based experiences and the context in which claims are made.

The purpose of the current article is to extend previous work by providing a guide to the forensic assessment of the psychiatric and emotional impact of race-based encounters—a guide that can be used in preparing expert reports as well as in developing treatment approaches. We begin with a review of legal options and limitations specific to racial discrimination, followed by a case report. Next, we provide an analysis of some of the considerations specific to the forensic evaluation of psychological damages in civil claims of racial discrimination, racial harassment, and hostile work environments.

Remedy for Legally Prohibited Racial Discrimination

Advances in civil rights law have opened up federal, state, and local avenues through which targets of racism can seek remedy or redress. Targets can seek legal remedy under the Civil Rights Acts of 1866 (section 1891), the Civil Rights Act of 1964, and the Civil Rights Act of 1991. In addition, targets can seek remedy under Title VII of the 1964 Civil Rights Act, which prohibits discrimination in the workplace, and compensatory damages for intentional infliction of emotional distress can be recovered under civil tort law. Claims and complaints can also be filed through city and state court systems and through Municipal and State Departments of Human or Civil Rights.

Since 1964, these legal avenues, which, while not required, often include the testimony of forensic witnesses to substantiate claims of emotional distress

and other forms of psychiatric impairment, have provided greater access to redress for incidents of racism. At the same time, there have been limits to legal redress such that the laws, legal standards, and processes in place today sometimes themselves present significant barriers to the pursuit of remedies for race-related encounters for several reasons. Thus, despite the availability of legal remedies, there are challenges that are difficult to overcome when filing claims for race-related encounters.

First, for work or school claims, the target must follow organizational grievance procedures before filing a complaint with the Equal Employment Opportunity Commission (EEOC). Since discrimination complaints for most protected groups are addressed within a set of general procedures designed as a catch-all for such complaints, many organizations do not have specific procedures for filing complaints regarding race-based discrimination. Given the lack of specific guidelines for racial matters, targets may have difficulty determining if they have been subjected to treatment for which legal protection is provided. This difficulty potentially compromises the first step in filing a complaint.

If the matter is not resolved to the complainant's satisfaction within the organization, the complainant must follow the procedures established by the EEOC to file a complaint, including adherence to the EEOC's strict time limits. The filing of the complaint is followed by an EEOC investigation, which preferably leads to a settlement or to the authorization of further legal steps, such as a civil suit.

Second, the standards for a claim of legally prohibited racial discrimination or hostile work environment (i.e., disparate treatment or impact) to be substantiated in a court of law are very difficult to meet. The burden is on the plaintiff to provide evidence that the act was severe and pervasive and that it was intentional, done because of race and with racial animus. Furthermore, assuming the allegations are true, evidence must be provided that the plaintiff's experience of racial discrimination or a hostile work environment was the cause of extreme emotional distress or some type(s) of functional impairment. Defendants have the option of providing evidence that there was a nondiscriminatory reason for their behavior or that the allegations had little merit. While overt racism still exists, the combination of legal prohibitions and changes in social attitudes about race since the 1960s has resulted in today's racism being more

subtle and covert. Nevertheless, the potential for psychological and emotional harm remains.

Research has indicated that subtle acts of racism can and often do have a strong psychological impact on targets. For example, one study found that subtle or ambiguous racial discrimination was more strongly associated with negative effect than was overt discrimination.²⁵ In another study, the authors found that subtle discrimination predicted distress, and argued that the fact that incidents of subtle racial bias often occur within targets' close social networks (e.g., among coworkers, supervisors) may contribute to the negative psychological impact.²⁶ While advances have been made with respect to establishing legal definitions of subtle and even unconscious acts of sexual harassment such that proving intent is less important,²⁷ the same is not true of racial discrimination. As such, proving intent and showing that the conduct was sufficiently severe and pervasive can be extremely challenging, particularly when the encounter with racism may be the proximate cause of the emotional distress or functional impairment.²²

Substantiating a claim of racial discrimination is often so difficult that few complainants can successfully partake of legal remedy except when the racist act is overt and physical. For instance, two separate analyses of racial harassment cases (Chew and Kelly²⁷ and Carter RT, unpublished data) found that 80 percent of plaintiffs did not prevail in the courts. Furthermore, the researchers found that in the 20 percent of claims that were successful, plaintiffs were subjected to blatant forms of racism in which explicit racial animus was found or in which the plaintiff endured hostile treatment for prolonged periods (Carter RT, unpublished data). These findings suggest that the courts only find in favor of plaintiffs who have been exposed to particularly severe and overt racial discrimination or harassment.

Chew and Kelly²⁷ noted that as claimants in work-related racial harassment cases move from the EEOC process to the courts, the number of cases declines. Chew and Kelly²⁷ stated that "while 56,000 racial harassment charges were filed with the EEOC between 1980 and 1999, only 735 judicial opinions on racial harassment could be found during the same period, meaning that only 1.3 percent of the (possible EEOC) charges were litigated" (Ref. 27, p 5). Though it is difficult to know the specific reasons for the low number of judicial opinions in relation to the EEOC charges litigated, Chew and Kelly inferred

that the number is low because of the legal and social obstacles associated with racial harassment claims. At the same time, the low number of judicial opinions could be because some cases were resolved or settled, and in some instances, settled in the plaintiff's favor. Other cases may have been dismissed by the EEOC or the courts because the cases lacked merit or for technical reasons. Some may not have been pursued by plaintiffs all the way through the EEOC process for other reasons.

It is not possible to track every outcome since many are not documented in public records. Chew and Kelly were left with what public records were available. Nevertheless, given the possible odds against prevailing, as well as the stress of litigation in general, it seems that pursuit of the avenues of redress might become another source of emotional and psychological distress for nondominant group members.^{28,29} It follows that psychiatric professionals are not only called on to assist as forensic experts to evaluate possible emotional distress or injury in claims of racial discrimination. Mental health professionals may also serve as treating clinicians and not forensic evaluators, providing what may be the only source of relief to targets when legal redress fails or becomes emotionally taxing.

Case Report

A.Y. was a young African-American man with a history of depression, for which he had received treatment. He had worked as a salesman in a retail store for several years. During his employment in the store, he alleged that, unlike other employees, he was denied time off, was given menial assignments (e.g., mopping), and was spoken to in a demeaning manner by his store manager. In addition, he alleged that he was required to keep close tabs on black customers who came into the store to ensure that they did not steal anything.

A.Y. stated that he followed organizational procedures to file several complaints against his manager over the years of his employment. He alleged that his store manager retaliated against him by threatening to fire him and stated that he endured the mistreatment and threats of termination because he needed the job. He was subsequently fired and filed a lawsuit against his employer.

The testimony of A.Y.'s coworkers at the store was examined by the evaluator before a meeting with A.Y. Three current employees and two former em-

ployees of the store supported many of the allegations he made. Store managers, who testified for the defense, indicated that he had filed complaints and that there were differences in treatment by the store's managing staff. However, their attributions for the differences in treatment were not consistent with his allegations. Moreover, records (i.e., employment records, records of complaints filed, company policy documents, etc.) and deposition testimony by defense witnesses affirmed that he had been treated differently from other employees, some of whom were white or Hispanic.

During the preliminary phase of the evaluation, A.Y.'s medical and psychological records were reviewed. Ideally, in addition to interviewing him, interviews with relatives and others in his social network would have been conducted. But in this case, gathering that important collateral information was not possible because his lawyer would not authorize the consultant to do so. In instances in which the evaluators have limits placed on the evaluations imposed by the subject's attorney or others, they have a decision to make about whether to continue with the assessment. One possible way to handle this situation is to include the restrictions and limits on the assessment in the expert's report.

The evaluator's interview with A.Y. explored his medical, psychiatric, developmental, and occupational histories, and yielded general and specific accounts of his work-related experiences and encounters. His prior experiences with race and his perceptions of race relations were also assessed, including the ways in which he coped with the situation at work.

The interview revealed that while the symptoms of A.Y.'s previous depression had ceased, he had begun to suffer from symptoms of depression, generalized anxiety, low self-esteem, and feelings of humiliation following his encounters with racism at his job. He indicated that his interpersonal relationships became strained, particularly after he was fired. His responses to the interview questions indicated that he had intrusive thoughts, flashbacks, difficulty concentrating, irritability, and jumpiness. In addition, he felt that his work experiences consisted mostly of hostile actions intended to demean, denigrate, and degrade him and to communicate his inferior status because of his race (i.e., racial harassment as described by Carter).²⁴ He appeared to experience race-based traumatic stress injury as a result of the racial harass-

ment and hostile work environment at his former job.

Considerations

One function of the forensic evaluation in race-related cases is to determine whether the particular situation was the proximate cause of the psychological damages or injury suffered. Another is to assess the extent of functional impairment as it relates to the particular situation.^{30,31} Accurate establishment of causation necessitates the collection of a thorough history of all aspects of the claimant's life before the incident. To establish the claimant's functioning before the alleged discrimination, the history should include family background, personality, developmental experiences, and psychiatric, medical, educational, and occupational histories.

It is also recommended that the evaluator seek corroborating information about the alleged incidents and their possible impact on the plaintiff from family members, friends, colleagues, and other witnesses. Medical, psychiatric, and employment records should also be consulted to document prior functioning.^{19,30} Such documentation is particularly important in cases such as A.Y.'s, where there was a pre-existing psychiatric condition. Assessment of psychological injury typically includes a complete and detailed evaluation of the nature of the alleged incident or incidents in question and the type and severity of the claimant's psychiatric symptoms elicited in response to the incident(s). To document any existing functional impairment, the evaluator must assess the current and long-term effects of the incident on the claimant's functioning.

Forensic evaluations of racial discrimination have similarities with other psychological damage evaluations. The points to be considered are the same regardless of whether the encounter is or is not supported by the evidence and whether the situation is or is not racial; it is important to learn how and in what ways the complainant felt harmed. Careful and comprehensive assessment would be just as important in those situations when the allegations are based on evidence presented in court.

It is important to note that there are several unique factors that should be taken into consideration in conducting a structured assessment of the psychiatric and emotional effects of race-based encounters. As in any forensic evaluation, the evaluator should consider the characteristics of the alleged incident, both

its objective features (which might include a research-based analysis of the social framework in which the event occurred) and its subjective meaning from the perspectives of the involved parties. However, in assessing race-based encounters, the evaluator should incorporate an analysis of racial-cultural influences. The racial-cultural factors should include consideration of the parties in the litigation; dispositional factors, such as racial identity ego status, that might influence the appraisal; and coping and psychological outcomes. In addition, it is important to weigh the utility of making a clinical diagnosis of a mental disorder versus providing a detailed description of symptom clusters that comprise race-based traumatic stress reactions or impairment for the injured party.³² Finally, it is essential that the evaluator maintain a professionally independent approach. Each of these considerations is discussed below.

Assessing the Stressor

While it is important to adhere to the alleged fact pattern when legal claims are being pursued, in assessing and treating the impact of race-based events, it is equally important to understand the target's subjective perception of the alleged event. It is possible that the subject believes that he was a victim of racism based on his subjective experience of racism. In some instances, it might not be possible for the evaluator to determine whether the event was an instance of racism. In situations of this sort, a conditional report of harm to the target might be offered wherein the fact pattern is left to be determined by the court. Race-based encounters are often subtle, ambiguous, and complex and may be difficult for those not subjected to such experiences to recognize. Therefore, evaluators might include a social framework analysis that helps the court and jury to place the events in a social-cultural context.

Contrary to popular opinion, research has tended to show that some racial minorities go through an extensive process of evaluation, wherein they consider all alternate causes before attributing an otherwise ambiguous encounter to racism. For example, a series of experimental studies found that members of low-status groups (e.g., blacks) are less likely to attribute poor performance to discrimination, even when the situation was ambiguous and there was a 50 percent probability that they had been discriminated against.³³ In a qualitative study consisting of in-depth interviews with black men who had en-

countered consumer racial profiling, Crockett and colleagues³⁴ found that the men nonetheless reported exercising a great deal of caution in attributing their subsequent consumer experiences to racial discrimination.

Thus, as in A.Y.'s case, where a series of incidents accumulated before a complaint was filed, it is likely that a claimant who complains of being exposed to a negative race-based encounter has not arrived at his determination lightly. It is also possible that the determination may or may not be objectively verifiable or true, since in many instances the determination is based on subjective perception. That racial bias cannot be objectively verified does not mean that the person did not feel distress from his or her encounter, but the allegations of the situation should be judged according to the merits of the situation and the people involved.

Although most incidents to which racial minorities are exposed would not meet the standards necessary for legal remedy, people can be seriously affected by these events, nonetheless. Some research has indicated that subtle and ambiguous racial encounters can have an even greater psychological and emotional toll than can more blatant acts.^{25,35} For example, one study found that African-American women had greater cardiovascular reactivity to ambiguous racial encounters than they did to overt racial encounters.³⁵

Health psychology research on general stress provides additional support for the impact of ambiguous events. Studies have found that stress increases if an event is ambiguous, negative, unpredictable, and uncontrollable; that negative life events in personal relationships (i.e., work and family) tend to be stronger predictors of depression; that stress reactions occur whether the stressor(s) are objective (e.g., an accident) or subjective (e.g., perception of discrimination); and that both objective and subjective stressors have been shown to be independent predictors of psychological and health effects.³⁶ It is important to highlight that some people exposed to stressful situations or events can adapt and cope effectively with them while others cannot adapt or cope.

Some theorists have argued that nonrandom acts of violence or psychological trauma such as that resulting from racial discrimination differ from random acts (e.g., accidents and natural disasters) in the type of meaning targets attribute to their experiences.³⁷ Thus, in ascertaining the impact of a partic-

ular, even subtle, event on a claimant, it may be important that the evaluating psychiatrist or psychologist explore what meaning the event as a whole, as well as specific aspects or characteristics of the event, may have for the person. In this vein, it is important that the evaluators provide an open and supportive environment in which claimants are encouraged to articulate clearly the details of their experiences, whether or not the events are supported by the evidence. Specific aspects of the incident that should be assessed include: characteristics of the actors involved (race/ethnicity, extent of power and influence of the parties); number, nature, intensity, ambiguity, duration, and chronicity of the event(s); perception of the negativity, controllability, and suddenness of the event(s) from the point of view of all parties; the extent to which the event(s) constituted a threat or caused feelings of fear and helplessness in the plaintiff; and how the person responded to the incident, including attempts to cope and adapt.^{31,38} This assessment process can also assist in establishing a clear timeline of events.

Several instruments that assess the incidence and stress of racism are available and can be used to determine the impact on claimants of encounters with various types of racism.³⁹ However, these measures do not connect a specific event of racism with specific types of reactions or symptoms. Moreover, it would be important to distinguish between minor everyday encounters with racism (i.e., those that racial minorities have adapted to or dismissed) from encounters with racism experienced as major insults or that are otherwise injurious and are thus more difficult to dismiss. Caution is called for here, since some racial claims are not real or valid. Others cannot be legally or administratively remedied regardless of how claimants may feel. It is also important to consider the influence of previous or concurrent stressors on the claimant's psychological and emotional reactions to the event.^{31,38} Although widespread, racism continues to be a sensitive topic. It is possible for a person to make a claim of racism when other factors contributing to the incident are more salient than race. It is also possible and somewhat more common for individuals who have made a claim of racism to be ridiculed and accused of being overly sensitive, thereby isolating claimants from social support and intensifying their reactions to the incident.

The perception of hypersensitivity in claimants is often further reinforced when courts regularly dismiss all

but the most blatant and severe acts of racial discrimination or harassment as insignificant or unworthy of legal remedy. The impact of having one's experience dismissed can add to the injury of the target of race-based encounters. It is important that forensic psychiatrists remain open-minded in ascertaining how even a subtle or ambiguous event may have had a significant impact on the claimant, irrespective of the specifics of the claims presented.

The claimant's presentation of race-based events may initially come across as confused or vague. Therefore, it may be useful for the evaluator to use Carter's²⁴ categories (i.e., racial discrimination, racial harassment, and discriminatory harassment) as a way to capture critical characteristics of the alleged events as perceived by the claimant as well as by other witnesses.

Carter²⁴ defined racial discrimination as a form of avoidant racism, reflected in behaviors, thoughts, and policies that have the effect of maintaining distance or limiting contact between dominant and nondominant racial group members. Racial harassment, according to Carter, is a hostile form of racism that involves feelings, thoughts, and actions intended to communicate a target's subordinate status due to membership in a nondominant racial group. Carter described discriminatory harassment as an aversive form of racism involving thoughts, behavior, actions, or policies and procedures that create distance between racial group members and possess a strong hostile element.

While not recommended for the purpose of drawing legal conclusions by the expert, the use of the distinct categories and definitions proposed by Carter can assist in uncovering what elements and characteristics of specific incidents might contribute to different affective, cognitive, and behavioral responses of the claimants, regardless of the merits of their claims. The use of these categories may also help in discerning the type of event alleged and in identifying more subtle or unconscious aspects of acts of racism.

These categories can also be used to identify the reactions a target may have had to encounters with racism. One would expect perhaps a stronger reaction to or impact from hostile and demeaning encounters with racism or more awareness of hostile than avoidant types of racism. Moreover, racial minorities may be more accepting of the avoidant type of racism since it could be perceived as less personal.

A.Y.'s experiences illustrate the utility of differentiating between the types of racism. The evaluator's assessment suggested that A.Y. felt that he was the target of hostility designed to communicate his inferior status at work. Some research has indicated that exposure to hostility (e.g., harassment) is associated with more extreme emotional and psychological reactions than are other forms of racism.^{40,41}

Considering Dispositional Factors

Stress research indicates that a person's appraisal of an event is more predictive of the extent and intensity of the stress response than is the nature of the event itself,⁴² and that variety in the appraisal of a particular event is influenced by individual differences.⁴³ How one appraises an event (e.g., whether it is viewed as positive or negative or as a threat or a challenge) influences how one copes with it and what psychological responses the event elicits. Research on PTSD has also found that even among individuals exposed to the same event, the incidence of PTSD is variable, and that certain dispositional characteristics could make some people more vulnerable to development of the disorder.⁴⁴

Carlson³⁸ identifies five factors that may influence reactions to traumatic stressors, including: (1) biological predispositions to resilience or vulnerability to stress, (2) developmental level at the time of the event, (3) severity of the traumatic event, (4) social context/resources (e.g., socioeconomic status and availability of social support), and (5) life events before and after the traumatic event. Therefore, it is important that forensic psychiatrists include a thorough examination to develop a concrete understanding of dispositional factors in the assessment of race-based traumatic stress reactions.

It would be preferable to assess for functional impairment rather than settle on a particular diagnosis. Psychiatric scholars have pointed out that reliance on a specific diagnosis may not be appropriate in forensic assessment, and some think using a diagnosis could be misleading in forensic psychiatry or psychology. Greenberg *et al.*³² observed that the DSM authors have inserted language in the text that highlights the risk of the use of diagnosis in forensic evaluations, and they recommend a focus on impairment rather than on DSM diagnoses.

There is considerable variation in how persons perceive experiences in general and experiences with race and racism in particular. How a person experiences and makes meaning of an encounter with rac-

ism depends on many factors associated with that individual's background, health, and cognitive processing. The primary dispositional factor that should be considered in the assessment of race-based traumatic stress is racial identity ego status.

Racial identity ego statuses are important aspects of dispositional or individual differences that influence how people process racial information. According to Helms⁴⁵ and Carter,⁴⁶ racial identity refers to one's psychological orientation to one's demographic racial group. Racial identity research has shown that people have distinct dispositional or psychological resolutions regarding their membership in a particular racial group.⁴⁷ Each of these racial identity resolutions or ego statuses is associated with a constellation of distinct thoughts, behaviors, attitudes, values, and emotions related to one's own racial group as well as to the dominant racial group.

Racial identity ego statuses are distinct from what is typically referred to as race identity, which is socio-demographic group membership based on skin color and physical features. There are black, people of color, and white racial identity ego status models. The process of racial identity ego status development is different for members of distinct racial groups because of varied social, political, and historical experiences. Some examples of racial identity ego statuses across racial groups are: being color-blind and thinking that race is not salient for self or for others and adopting the cultural values of the dominant group; feeling confusion about race and culture; and realizing the meaning of one's race and working to internalize the culture of one's racial group. Ultimately, whether one is white or a racial minority, one can evolve a non-oppressive racial identity ego status in which one's race and culture are positive and valued aspects of one's personality. A white person can be nonracist and positive about his whiteness and work against oppression. To recognize race-based traumatic stress, one needs a mature and developed racial identity ego status.

A large body of research has provided empirical evidence for the validity of the racial identity ego status construct (for a review, see Carter⁴⁸), as well as the validity and reliability of the various measures created to assess it (e.g., the measure of black racial identity described by Helms and Parham⁴⁹; the measure of white racial identity described by Carter and Helms⁴⁸; and the measure of racial identity for people of color by Helms⁴⁵). Researchers have found that racial identity

ego statuses influence perceptions of discrimination among African Americans,^{5,50} and they have also found that it predicts endorsement of racist beliefs among white people.⁵¹ This suggests that regardless of one's race, for individuals (either claimants or evaluators) to recognize racism, they must have a developed and mature racial identity ego status. Thus, as part of the assessment process, it should be determined whether the claimant is able to recognize racism and understand its meaning. Assessment of claimants' racial identity ego statuses can be accomplished through open-ended interviews focusing on how racial-cultural histories have influenced the development of their racial identity statuses over time, or through use of an empirically validated racial identity measure.

A racial-cultural assessment should include an examination of the racial composition of the claimant's family, neighborhood, schools, and other organizations, as well as how the racial climate in these institutions may have influenced his experiences. It is important to explore the claimant's positive and negative experiences across racial groups in general, as well as any memorable racial events that may have occurred during his formative years. The frequency and intensity of exposure to both minor and major discrimination across the lifespan of the claimant should also be documented. A prior history of specifically race-related trauma could predispose a claimant to more acute reactions to discrimination or to seeing racism where it does not exist. It is important to note that some experiences of discrimination may be subtle and institutional. The evaluating psychiatrist should be attentive to experiences that may have had racial undertones (e.g., being assigned to special education, conflict with teachers, or involvement in the criminal justice system), and should carefully consider how race may have contributed to these experiences.

To develop a comprehensive assessment that captures the full scope of the experiences of the claimant, the evaluator should provide context for the claimant's racial identity ego status assessment by also collecting a racial-cultural history. A detailed racial-cultural history will allow the forensic psychiatrist or psychologist to determine whether the claimant may have developed particular sensitivities or vulnerabilities as the result of past exposure to stressful or traumatic racial events. These experiences may have influenced a claimant's reaction to the encounter with racial discrimination. For some claimants, a seem-

ingly minor racial event could be the final incident in a series of encounters over the course of a lifetime that significantly eroded the claimant's capacity to cope. A thorough racial-cultural assessment can provide a context for reactions that may appear extreme given a relatively subtle incident. It is possible that a doctrine similar to tort law's "thin-skull" doctrine may come into play here. In tort law the defendant is liable for harm even if the person harmed had existing vulnerabilities. In the case of racism, one scholar has observed that "underlying vulnerability does not conceptually preclude recovery" (Ref. 52, p 116).

Disorder Versus Symptom Clusters

There is no currently accepted legal definition of psychological injury. Koch *et al.*⁵³ define psychological injuries as "stress-related emotional conditions resulting from real or imagined threats or injuries. . ." (Ref. 53, p 3) that must include "causation by a third party" (Ref. 53, p 4). Although a variety of emotional and psychological reactions ranging from symptoms to psychiatric diagnoses have been used in support of legal claims of psychological damages, PTSD is perhaps the most common diagnosis.^{19,21,53} Unlike most DSM diagnoses, causation is an element of the diagnosis and is also implicit in its criteria.¹⁹ While not all incidents of racial harassment/discrimination result in a traumatic reaction, several scholars have posited that the stress associated with racist events may produce emotional and psychiatric reactions that rise to the level of trauma.^{9,25,54,55} Consistent with other scholars,^{9,20} Carter²⁴ argues that the reliance on diagnosable psychological disorders as evidence of emotional distress could cause clinicians to underestimate the true psychological impact of racist experiences.^{25,32}

Currently, racial discrimination and harassment are not listed among the 52 environmental stressors considered to precipitate diagnoses of acute stress, PTSD, and adjustment reactions in DSM-IV-TR. The lack of recognition of racial events as stressors in the diagnostic criteria used by mental health professionals makes it difficult to link the mental health effects of racism to specific types of experiences. Since the law does not require a DSM diagnosis to show evidence of injury and because the DSM does not currently consider the racial or social context of the stressors that cause psychological injury, we recommend that psychiatrists expand their perspectives beyond the DSM.³²

Carter²⁴ has proposed that a broader definition of traumatic stress, such as that presented in the model of traumatic stress presented by Carlson,³⁸ should be used in the conceptualization of psychological injury resulting from racism. Carlson's model does not rely on physical danger or direct threats to one's life as its core criteria as is the case with PTSD. Instead, in line with existing stress research, the person's subjective perception (appraisal) of the event is taken into consideration. Thus, race-based incidents directed at nondominant group members that are experienced by those group members as extremely negative, sudden, and uncontrollable could lead to a race-based traumatic stress reaction. For example, based on the history of racial violence and race-related power differentials in society, a target may perceive particular symbols (e.g., a noose, the confederate flag, a burning cross) as intensely threatening even though the threats communicated and experienced through such symbols would not qualify within the DSM criteria.

Carter²⁴ conceptualizes race-based traumatic stress as a cluster of symptoms that occur as a consequence of the emotional and psychological pain (rather than physical threat to life) that a target may feel after encounter(s) with racism. For an encounter to be considered traumatic, the person must also exhibit symptoms of intrusion, avoidance, and arousal. These reactions may be expressed emotionally, physiologically, cognitively, or behaviorally, and may also include symptoms of anxiety, anger, rage, depression, shame, or guilt.

Although race-based traumatic stress reactions share some of the symptoms of the DSM stress disorders (e.g., PTSD, adjustment reactions), most of the DSM diagnoses do not quite match the etiology or symptom manifestations of persons experiencing race-based traumatic stress. Therefore, it is important that evaluators make a distinction between diagnosis and damages. How a plaintiff's functioning has been impaired should be the emphasis in legal cases with recognition that "diagnosis alone does not equal damages in litigation" (Ref. 56, p 146). Rather, the evaluator should identify areas where the claimant has suffered tangible psychic losses (e.g., confidence and relationship disruptions) that have reduced or impaired the claimant's functioning.³²

While Butts⁹ provided evidence that targets' reactions to racial encounters often fit most of the criteria for a diagnosis of PTSD, Griffith and Griffith pointed out

that in many (and perhaps most) documented cases, the claimant complains of “humiliation or insult rather than psychiatric disorder” (Ref. 21, p 75). It is possible that a diagnosis of PTSD and the concept of disorder in general may be limited for assessing race-related psychological outcomes. Some scholars have noted that due to a history of being unfairly pathologized by mental health disciplines, many nondominant group members are sensitive to being misdiagnosed and may be reluctant to accept being labeled as “disordered” even under normal conditions.^{18,57,58} Other scholars have argued that behaviors that might in fact be considered to be adaptive responses to racism or other forms of oppression are often misinterpreted as evidence of pathology.^{37,59} Recent exposure to racial discrimination or harassment is likely to heighten these sensitivities and could hamper willing participation in the assessment interview.

The fact that racism is not recognized among stressors in the DSM and that systematic assessment of race-related experiences is not common practice among mental health professionals may indicate that the mental health professions have not yet fully accepted the psychological impact of racism. Carter²⁴ posits that it might be more clinically effective to consider the effects of racism as a type of psychological injury rather than as a mental disorder, since the effects of racism arise from environmental stressors rather than from an abnormality of the target. Ortiz argues that for those who suffer trauma as a result of oppression, the distinction between being labeled “sick” or disordered or being recognized as normal people who were exposed to unjust mistreatment “who have survived with tenacity, grace and dignity” (Ref. 60, p 20) is clinically significant. Stefan⁵⁸ makes a similar argument regarding the limitations of rape trauma syndrome. She argues that the use of the syndrome does not fully capture women’s experiences and that the focus in the law and mental health has shifted to the impact of rape on some women and has been less focused on the social acceptance of violence against women. From this perspective, general psychiatric diagnoses may have limited utility in capturing the full scope of the claimant’s experience.⁵⁸

The use of injury in contrast to the use of disorder can yield a finding that a complainant was exposed to an unjust race-based experience(s) that has produced a cluster of symptoms leading to psychiatric impairment. The injury designation indicates that the rights of the person were violated unfairly and that

there is an option to seek redress. The concept of injury can be conveyed in the expert’s report by illustrating the manifestation of damages through indexes of psychological functioning,³² and by describing how symptoms operate in the cluster indicating the presence of a race-based traumatic stress reaction or injury. The designation of race-based traumatic stress injury could make it easier for some people to accept the impairment and to work toward healing, and could facilitate establishing a claim for legal or administrative redress.

Maintaining Evaluator Professional Independence

The maintenance of professionalism is of the utmost importance in forensic assessment, and the assessments performed in racial discrimination and harassment cases are no exception. The legal process is, by its nature, adversarial. In the United States, experts are usually retained by the plaintiff and the defendant, and this relationship can influence the perception that experts represent those who pay their fees.⁶¹ But this situation should not compromise the expert’s independence in conducting assessments and in presenting testimony of the findings contained in the expert’s report.

There is some debate about how the evaluator can be independent and offer a report that is balanced and fair. Most would agree that the evaluator must follow the ethics guidelines for the practice of forensic psychiatry,⁶² which state that the evaluator should strive to be honest and objective by focusing on the accepted scientific methods employed in the field of mental health when rendering an expert opinion. The expert should also employ methods that meet the standards of the mental health profession. These standards can be met by following the guidelines of the respective professional associations (i.e., American Psychiatric Association,⁶³ American Psychological Association,⁶⁴ and so forth), for how to evaluate patients for possible psychiatric harm and injury. In the case of racial discrimination/harassment evaluations in particular, the evaluators’ race and culture may influence how they will assess the claimants’ experiences. Research has indicated that one’s racial identity ego status and cultural worldview can operate as filters that influence in various ways what the evaluator determines as meaningful and relevant, as well as the dynamics of the psychotherapeutic process.^{45,46,65,66} Therefore, it is recommended that

evaluators who have received little or no training in racial-cultural concerns seek consultation and training from experts in this area.

Forensic evaluators are not called on to determine the truth of the legal claims of racial discrimination or harassment, and it is not appropriate for them to do so. The forensic evaluator is asked to address questions of psychological damage or injury, based on the available information. The evaluator can use a variety of valid and reliable resources (e.g., official records and interviews with family members and coworkers) to determine what symptoms and reactions, if any, predated the incident(s). The evaluator should also consider which pre-existing reactions, if any, were made worse by the incident.

It is also necessary to identify the behaviors, if any, that are specific to the incident and that could be attributable to the person's beliefs and perceptions of the alleged incident.^{56,67,68} Family or coworker perceptions of the claimant's psychological or emotional functioning before and after the incidents in question, as well as witnesses' accounts of the events, may serve to corroborate or conflict with the target's claims. Nonetheless, some scholars caution against interviewing defense witnesses (whether employees or employers) in workplace cases, because such witnesses may have personal agendas or be afraid of employer retaliation.⁶⁹ When direct interviews are not possible, an option might be to use deposition testimony.

Conclusion

The existing body of research, as well as clinical experience, tends to support the notion that exposure to racism in various forms can cause psychological and emotional reactions that may rise to the level of trauma. It seems likely that experiences of race-based traumatic stress from discrimination or harassment of various types (e.g., housing, employment, service provision, interpersonal assaults, and racial profiling) are often involved in the development of the presenting problems or may contribute to the poor health of nondominant group members. Nevertheless, it is still rare for most, although perhaps not all, clinicians to perform routine assessments of patients for exposure to race-related experiences. We hope that this article will provide psychiatrists and other mental health professionals with guidance in using the appropriate empirical and clinical resources and training for de-

veloping effective expert reports in race-based legal claims. If the person is seen in treatment, we hope we have provided guidance in how to support targets of racial harassment, racial discrimination, and hostile work environments.

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