

The Importance of Racial Identity in Forensic Mental Health Assessment

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When the American Psychiatric Association issued a public apology to Black, Indigenous, and People of Color (BIPOC) for its support of structural racism in psychiatry,¹ it was both a historic and striking organizational acknowledgment of the harm created by such racism. There are numerous implications for the field of psychiatry broadly, and for other medical and mental health professions, from this public acknowledgment and apology. One such implication is that the recognition of past racially-based harms is necessary to promote more meaningful progress in fairness and justice as they apply to citizens of different races. It further suggests that explicitly considering the impact of race (an approach we will term “race conscious”) is more likely to yield meaningful information in this regard than will an approach that does not openly consider the possibility that race influences the perceptions and behavior of a given individual.

In the present discussion, we focus on these implications as they apply to mental health evaluations in legal contexts. We consider the extent to which the

acknowledgment of racial discrimination and the appraisal of its impact in individual cases is likely to promote more comprehensive and accurate forensic psychiatric and psychological evaluations. (For present purposes, we use the term “forensic mental health assessment,” or FMHA, to describe specialized mental health evaluations conducted to inform legal decision-makers or assist attorneys by performing relevant, thorough, and balanced evaluations. We use “forensic psychiatric” or “forensic psychological” when the implications are more discipline-specific.) As part of this discussion, we consider how the racial identity of an examinee, particularly a BIPOC individual, might help to clarify the relation between someone’s race and their perceptions, expectations, and behavior relevant to legal questions.

Identity

We define “identity” as how a person perceives self (“who I am”) and how the person is regarded and treated by others (“who that person is perceived to be”), especially as the latter involves perceptions based on a special grouping or classification to which the person belongs (or is perceived to belong). Examples of classifications frequently encountered in self-identity, or categorical identification by others, include race, ethnicity or culture; gender and gender identity; other demographic groups (e.g., appearance, age, socioeconomic status, profession or employment status, immigrant status, nationality, sexual orientation, chronic illness); capacities-related classifications (e.g., mental, physical or intellectual capabilities; exceptional talents); and beliefs (e.g., a religion,

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political orientation). This definition encourages consideration of “intersectionality,”² which involves the idea that a person’s identity and how one is perceived and responded to by others may require combinations of identities and how these identities intersect across multiple categories. In addition, it refers to the multiple levels of oppression and marginalization associated with these intersecting attributes. The consideration of intersectionality may be informed by determining who is included in a category, what role is played by inequality, and how this category is like other categories.^{3,4}

There are three questions that are particularly important to assessing identity in this context:

What is my experience of how others will perceive and respond to me given these characteristics?

How do I expect others will perceive and respond to me given these characteristics?

How do I think/feel about myself related to these characteristics? (proud, inferior, burdened, privileged, marginalized, or some combination)

Rationale for Present Focus on Race

The present discussion focuses on race and racial identity in the context of FMHA. Of course, there are various influences that affect whether people become involved in criminal or civil litigation. One such race-relevant influence is whether a BIPOC individual is disproportionately likely to be arrested for conduct that probably would not result in the arrest of a white individual. Another involves how the individual’s perception of being more likely to be arrested influences racial identity. BIPOC individuals are often treated unfairly, and their beliefs (based on experience) that they will be treated unfairly can sometimes influence the behavior that is the focus of the forensic question.

But there are certainly many other influences, such as poverty. It can be argued that being poor in the United States adversely influences human development, creates a burden, and has an impact on illegal behavior. It is difficult to focus on race and racial identity without attention to other considerations that might also be relevant.

We do not suggest that the concept of identity in FMHA should be limited to race. As the present discussion incorporates intersectionality, other considerations (e.g., ethnicity, sex, sexual orientation, gender, gender identity, religion, socioeconomic status, and

ability status) may well be important aspects of identity, particularly when it is appraised through an intersectional lens.

Nevertheless, we begin with race because it seems so important. It is embedded within the social, economic, and political structures of the United States, influencing access to and distribution of resources and opportunities. It exerts a powerful influence on how people think of themselves and how others respond to them. It has received little attention as a formal part of the FMHA process, and we propose that this change.

In this discussion, we use a social definition of race rather than one that is biological, anthropological, or genetic. We consider race to be the self-identified membership in a group or groups influenced by national origin and sociocultural influences. Data collected as part of the United States census include the following racial groups: White, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander.⁵ Individuals are asked to self-identify as part of reporting race census data, and membership in more than one racial group may be endorsed.

Identity and FMHA

We assert that sometimes BIPOC individuals’ experience of racism in society has influenced their development in ways that are important to understand when investigating the facts and motivations associated with the forensic question in a case. We elaborate on this point with examples later in this discussion.

In this respect, it is important to distinguish between race (a social construct) and racial identity (a psychological construct). It is important to ask about the social construct to determine the group(s) to which the examinee reports belonging. But we suggest that this by itself is insufficient. It is the perceptions of self and others related to race that are most useful in appraising how race might have influenced a particular individual.

It is likely that race, and the associated domain of racial identity, exert a potentially substantial influence on human behavior. But there are very likely to be individual differences. For some BIPOC examinees, their status as persons of color and their associated racial identity may make little difference in addressing the referral questions posed to the forensic clinician. For others, or with different referral questions, the impact may be substantial. We offer some

proposed guidance for appraising this in the present section, working under the race-conscious assumption that we cannot meaningfully address relevance and impact without some level of explicit consideration.

This proposed guidance involves two steps: considering relevance and appraising meaning and impact. The question of relevance can be addressed in two ways. First is the *prima facie* relationship between racial identity and the referral question. One could envision certain kinds of legal questions that are either quite broad (e.g., the culpability consideration in federal sentencing and capital sentencing evaluations) or specific to race (e.g., a personal injury litigation in which race-based workplace discrimination is alleged), for which the relevance would appear high. Relevance might be less apparent, but still possible, in other kinds of evaluations (e.g., juvenile transfer and reverse transfer evaluations involving amenability to treatment; *Miranda* waiver evaluations involving knowing, intelligent, and voluntary waiver of right), depending upon the race and behavior of police and treatment providers. In still other cases, there might be little apparent basis to assume that race or racial identity would be influential (e.g., trial competence evaluation with a BIPOC individual represented by a Black attorney). The relevance review at this step can prompt the examiner to investigate in more depth or be satisfied that this is not needed.

Before an examiner makes this decision, however, it would also be important to ask examinees directly whether they think that their race will affect how the litigation will proceed. An examiner who has reviewed the legal question and case circumstances and perceives little relevance to race, and who has questioned the examinee and learned that the examinee does not see race as important, may conclude that the question was considered, found not to be relevant, and needs only brief documentation in the report.

When it appears that race is (or may be) relevant, however, the next step involves appraising meaning and impact. At present, we are not aware of measures of racial identity that would be appropriate for use as part of legal proceedings. Moreover, such measures might have limited applicability when intersectionality is considered. This means that the examiner will need to exercise skill and judgment in gathering individualized information during the interview and

subject this information to cross-checking from records and collateral interviews. In the next section, we make specific suggestions for interview questions.

Assessing Racial Identity in FMHA

Gathering information on racial identity begins with the examiner. In this section, we discuss examiner knowledge, identity, and purpose. Then we address examinee considerations.

Examiner Knowledge

Appraising racial identity in the forensic interview will require basic knowledge of common social norms and beliefs about the various identity groups noted earlier. Consistent with cultural competence,⁶ this requires knowing (or learning) about how our society stereotypes and responds to BIPOC individuals, both as interpersonal social stereotypes and more broadly through laws, institutional policies, and practices. Cultural competence also requires humility and inquisitiveness about these concerns, and a willingness to seek and respect additional information from those who understand the cultures involved. Currently, forensic psychiatrists receive no direct guidance on point from the AAPL Ethics Guidelines⁷ or the AAPL Ethics Committee,⁸ beyond the general observation that the Guidelines are grounded in respect for persons, honesty, and social responsibility. Forensic psychologists can reference the importance of justice and respect for rights and dignity from the Ethical Principles of Psychologists and Code of Conduct (EPPCC),⁹ and the individual differences stemming from cultural differences cited in both the EPPCC and the Specialty Guidelines for Forensic Psychology (SGFP).¹⁰ Neither discipline appears to have directly addressed the use of racial identity in FMHA as an approach to appraising the impact of race on the legally-relevant characteristics of examinees, however.

Examiner Identity

Preparation also requires examiners' careful consideration of their own identities and how that may influence the evaluation process and case conceptualization. Consistent with the American Psychological Association's Race and Ethnicity Guidelines in Psychology,² for example, psychologists are urged to "strive for awareness of their own positionality in relation to ethnicity and race" (Guideline 3) and "strive to provide assessment, intervention, and

consultation free from the negative effects of racial and ethnocultural bias” (Guideline 9). This will likely require an awareness of one’s own identities, including those of privilege and of disadvantage, and how they may intersect. It would include a thorough reflection on one’s values, worldview, and definitions of normality. This consideration should also include the awareness of how the examiner may be viewed by others across multiple contexts, due to culturally embedded stereotypes or access to privileges and resources.

Similarities and differences in the identity of the examiner and examinee can have implications for the type and quality of data obtained in the evaluation. Cultural differences between the evaluator and the person being evaluated can have a variety of influences that may be relevant (e.g., self-presentation, expectations, response to fatigue or boredom, perceived and actual differences in power and status, and other factors). The culture of examiners will affect the language they use, the questions they ask, and their patience in awaiting responses. Examiners’ culture may affect their understanding of the meaning of specific words, family dynamics, and even whether the examinee makes eye contact. Some BIPOC examiners, for example, might have a different experience with appraising racial identity in BIPOC examinees than will white examiners, perhaps involving considerations such as ease in establishing a working relationship and personal reactions to information provided. This is an important question to be considered in future research and scholarship.

Examiner’s Purpose

The examiner’s reasons for assessing identity are to describe the person’s self-perception in terms of identity, examine any impact of society’s identity-based responses to the person in ways that may be relevant for the forensic referral question, and examine whether that impact is relevant for understanding the forensic referral question. The results may reveal social reactions to the person’s group identity that have been stressful and detrimental to the person’s welfare and development. Sometimes these may be mitigating or aggravating factors in relation to an offense. Sometimes they may influence the appraised legally relevant functional capacities or vulnerabilities in other cases. Without gathering accurate information in this area, however, it is not possible to meaningfully appraise their potential impact.

The examiner is typically interested in specific information about a litigant’s functional legal capacities, culpability, or future conduct, all of which can be sought through direct questioning using structured or semistructured approaches.¹¹ But there is sometimes additional relevant information that is not as easily captured through structured approaches. Additional information may be obtained depending on the working relationship between examiner and the examinee. The broader aspects of an examinee’s history or the circumstances of an event can be relevant in certain kinds of FMHA, in which the influence of racial identity is strongest and the legal question broadest (e.g., culpability incorporating influences throughout the examinee’s life).¹²

Examinee Considerations

When racial identity appears possibly relevant to the referral questions in FMHA, the examiner then considers how to describe it and how it might affect the legally relevant characteristics being evaluated. We offer the following as examples of questions that might be used in an interview to appraise racial identity:

I want to talk a bit about how you see yourself and how you think other people see you. For example, when people ask your race, what do you say? (Narrow down as needed; learn person’s language for it.) What does that mean? Does that matter?

Let’s call that part of your identity, a part of who you are or how other people see you. How important is that to you?

How do you feel about that? Okay, or not okay, or someplace between? What makes it seem that way?

Does that make a difference in your life? How?

Have you ever been treated differently because of your race? Tell me about that. (Include self-perception, welfare, development.)

If so, how did you feel about being treated differently? What did you do?

As with any FMHA, information obtained directly from an examinee should not be used without cross-checking the aspects yielding observable behavior against information from other sources.¹² Caretakers, teachers, employers, partners, and acquaintances sometimes have information relevant to an identity appraisal. They may have had observations of or interactions with the person that are consistent with what the person has told the examiner about their self-identity, or others that are not.

They may have observed the actions of individuals, groups, or institutional policies that have affected the person. Thus, information from collateral informants about an examinee's identity often may be helpful. The content of the collateral interview should parallel that of the interview with the person being evaluated, although the focus should be on observed behavior rather than inferred meaning. The process of FMHA frequently yields some inconsistency across sources, so it is primarily the patterns that recur across sources that should be emphasized most in drawing conclusions about racial identity.

Interpretation

The Interpretation/Opinions section of the report is where the examiner provides analysis of how the racial identity information from the Data/History section is relevant for addressing the report's forensic question(s). In this section, the examiner considers how the information collected can be integrated into conclusions informed by a variety of sources. Such consideration can be informed by "hypothesis testing": operationalizing different explanations and gauging which of the explanations is a "best fit" with the aggregated data. One approach to systematically considering the impact of a single influence, or of multiple influences, involves considering a case in which, for example, racial identity was very influential in affecting relevant functional-legal capacities, another in which it was moderately influential, and a third in which it had relatively little impact. This is somewhat similar to the forensic evaluative process of reconstructing a mental state at the time of the offense. Such reconstruction involves describing the characteristics of a certain kind of behavior, the research base for this description, and the extent to which it is consistent with the specific information in this case. In the course of this information-gathering and reasoning, the examiner can consider each outcome in terms of how well it accounts for other information gathered in the evaluation.

Examiners should not offer interpretations that are not supported. The support for the influence of racial identity on functional-legal capacities in a given case can come from both nomothetic and idiographic sources. The former considers whether the conclusion is supported by empirical scientific data, and examiners should seek to incorporate any such data that are available. For instance, a Black examinee

who cited a fear of police conduct during traffic stops might be considered in light of relevant empirical research regarding racial differences in such traffic stops.¹³ Another example is a Black male who, in the course of a trial competence evaluation, describes an increased likelihood of an unfavorable sentence due to his race. A review of the empirical data on differential arrest rates and sentencing disparities for Black males charged with minor offenses¹⁴ might help the examiner consider whether there is scientific support for this belief.

In addition, however, the support for the impact of racial identity should have an idiographic component, the extent to which examinees' perceptions, attitudes, and expectations are consistent with their previous life experience. This would be appraised using standard FMHA approaches described throughout this discussion and elsewhere,^{12,15,16} which should serve to limit overreaching. For examiners who conclude that they do not have sufficient expertise to use this kind of material, the options would include enhancing their expertise in the short term (through consultation and case-based research) and the long term (through additional reading and continuing education).

Communicating in Reports and Testimony

The report should describe the examiner's procedures in data collection relevant to racial identity. One step involves initially considering relevance and asking some questions about racial identity. If this initial consideration does not indicate that further information is needed, this should be noted (probably in the History section of the report). When it is relevant, however, further information must be gathered to appraise the relationship between racial identity and the legal domains being evaluated. Detailed documentation should describe the information obtained (and from what sources) and its meaning. The specific content of what is reported should depend upon the nature of the appraised racial identity and its influence on the outcomes associated with the forensic referral question, with the examiner justifying this appraised content and relationship to functional-legal capacities in the same way as when describing the relationship between examinee symptoms or characteristics and functional-legal capacities in FMHA.

When testimony is needed in cases in which FMHA has used racial identity to a significant extent,

it is important that such racial identity be clearly described in the report to provide a foundation for testimony. The more formal use of racial identity proposed in the present discussion represents an expansion of the information already sought in FMHA, and in some cases the seeking of new information. But the more novel aspect of its use involves integrating it into the interpretation of findings and opinions about the relationship between racial identity and the relevant legal capacities being appraised in the FMHA.

This may elicit additional questions on direct or cross-examination, or even from the judge. In response to challenges that the use of racial identity is not generally accepted in the field (in *Frye*¹⁷ jurisdictions) or does not reflect a construct that is generally accepted, testable, has been tested, and has been subjected to peer review (in *Daubert*¹⁸ jurisdictions) it is important to describe racial identity as part of the historical information that is already gathered in FMHA. Often historical information is sought on topics such as school adjustment, job experience, sexual history, family functioning, peers, and trauma and adverse experience. Racial identity incorporates information from all these areas and more, by more formally considering the relationship between race, the response of others based on race, and how that contributed to the development of self-concept. Consideration of the substantial body of scientific evidence on the impact of race and racial prejudice¹⁹ on self-concept can be useful as well.

Arguments against Racial Identity in FMHA

We anticipate that there may be various arguments against using racial identity in FMHA as we have described it. Such arguments may be made on various grounds: relevance, reliability, precedent, secondary gain, use with white litigants, violation of equal protection, and being patronizing. We discuss each in the sections that follow.

Relevance

One argument against using racial identity is that it does not necessarily affect the legally relevant capacities of the types of forensic questions that are addressed in FMHA. This argument appears overly narrow, for two reasons. First, race appears to have substantial influence on most aspects of life in the United States.²⁰ It is not likely that the thinking, motivation, capacities, and behavior that are the

subject of FMHA would be different. Second, the specialties of forensic psychiatry and forensic psychology have not yet developed approaches to formally appraising the influence of race on litigants' perceptions and capacities, making it difficult to determine such impact across a large number of cases or study it with group-based research. Accordingly, the present proposal assumes that racial identity will be relevant in some cases and not others, but its relevance and salience cannot be meaningfully judged without considering it.

Reliability and Validity

A second argument against using racial identity in FMHA is based on the accurate observation that there is not a measure with acceptable psychometric properties that can quantify it. This should serve as a justification for the attempt to develop such a measure suitable for use in forensic contexts but argues against including racial identity in forensic evaluations until such a tool exists.

Racial identity as we describe it in this article is highly contextual, however. This might make it impossible to "measure" using classic psychometric approaches. A systematic review of existing measures and their applicability in forensic contexts is needed. But certainly, what could be developed is an interview guide, to define and clarify the components of racial identity. Perhaps this interview guide could be applied in a structured professional judgment sense (e.g., Douglas & Otto²¹), with the examiner drawing conclusions about (for example) the strength of the relationship between the examinee's racial identity and certain kinds of behavior. An example of this kind of tool is the Juvenile Adjudicative Competence Interview, which was developed to guide examiners by providing a structure for questioning and other information-gathering that is informed by research and relevant theory translated into practice.²²

Much of the information obtained in FMHA does not come from formal measures with established psychometric properties. There is an important contribution provided by interviews with the litigant and with collateral informers, as well as by the review of records. There is historical information that is now obtained through questioning, clarifying, and reviewing that complements other information obtained using measures and structure. At present, racial identity would be appraised through direct questioning,

collateral interviewing, and record reviewing. If a more specialized tool appropriate for use in FMHA becomes available, then examiners could consider whether to use it in addition to these other information-gathering approaches.

FMHA Precedent

A third arguement is that racial identity appears to be outside the scope of usual FMHA content. It is not a clinical symptom, an aspect of intellectual functioning, or a symptom of brain dysfunction. It is not a functional-legal capacity associated with a legal question. Therefore, one might argue that we should avoid using it to keep from changing a basic aspect of FMHA.

FMHA is not limited to appraising aspects of the person, however. There are situational influences that are recognized and incorporated into FMHA; two clear examples are child custody evaluations and risk assessments. There is also the consideration of the interaction between personal and situational influences. One widely recognized model of competencies,¹¹ for example, poses the question of whether the capacities of the individual are sufficient to meet the demands of the situation, a question clearly influenced by the incorporation of the concept of person–situation interaction.

There are other aspects of FMHA that are included largely because they offer contextual information that helps the legal decision-maker to better understand the examinee. Social history, employment history, educational history, and other historical domains are frequently included in forensic reports even if it is not clear in advance whether they will have a relationship with the forensic questions being addressed, and, if so, what that relationship might be.

Secondary Gain

Another argument against using racial identity in FMHA involves the potential for its misuse. Some people who are BIPOC might exaggerate the effect of racial discrimination on their thinking and behavior to seek a more favorable legal outcome.

The potential for examinees to manipulate or skew information they provide is a common concern in FMHA. Although disproportionate attention is often directed toward the possibility that symptoms or deficits will be exaggerated (or fabricated) for the litigant's gain, there are other response styles

(underreporting or denial, random responding, general uncooperativeness) that are considered in FMHA in addition to exaggeration and malingering.²³ It is certainly important to seek information that is not deliberately distorted and is whenever possible consistent across sources, whether with racial identity or other domains. Approaches to obtaining such information, beyond using specialized measures or response style scales, include asking the examinee to repeat the information at different times, comparing what is said to information obtained from different sources, and describing inconsistencies to make it clear that in some cases the information is more likely to be consistent across sources and not deliberately distorted. These standard FMHA approaches to response style should be used in appraising racial identity.

Use with White Litigants

It is possible that white people might attempt to use racially based grievances to argue for less culpability for their offenses or other misconduct directed at the object of their grievances. For example, the prospect that it could be applied in the attempt to diminish culpability for racially motivated, targeted violent acts is unsettling. We observe, in this context, that there is a very substantial difference between grievances stemming from racial discrimination and marginalization versus grievances associated with the perceived loss of advantage stemming from societal actions attempting to address the impact of such discrimination.

That notwithstanding, information about racial identity might be useful to better understand some individuals who are white and consider that as an important part of who they are and what motivates their behavior. Knowing more about this area in some cases might not serve to lessen perceived culpability, or predict future conduct or likely response to rehabilitation interventions. But it has the potential to do so in other cases, and such domains are common components of opinions requested in FMHA.

Like most of the characteristics typically assessed by forensic evaluators, racial identity has the potential to be helpful or harmful to the litigant's interests. The job of a forensic evaluator is not to help either side, but to describe the person, in context, as objectively as possible. How the parties use this information is beyond the control of the evaluator. As an

analogy, consider psychopathy, which might be used by a criminal defense attorney as a way of exculpating a client and by a prosecutor seeking to impose a more severe sentence. Similarly, white defendants might seek to use strongly and consistently held racist beliefs in their family of origin as an exculpating explanation for committing a hate crime. The same information could be used by a prosecutor seeking a longer sentence.

It is unclear how legal decision-makers might respond to this kind of information regarding a white examinee. Certainly, an attorney, functioning as a legal advocate, might craft an argument that is distressing to many (e.g., “my client has diminished culpability for this hate crime because he was raised from birth in a family of white supremacists”). Indeed, racial identity, like many constructs used by forensic psychiatrists and forensic psychologists, has the potential for use that seems misleading. Providing the most accurate information possible and contextualizing it with other findings from the FMHA should allow the forensic evaluator to help the court mitigate potential misuse. Ultimately, however, controlling such misuse is the responsibility of judges, while providing accurate information about racial identity falls in the domain of the forensic expert.

Violation of Equal Protection

An argument might be made that a concept that looks for the effects of racial prejudice, then uses that concept to help explain (and potentially mitigate culpability for) criminal behavior, violates the concept of equal protection set forth in the Eighth Amendment. The argument might elaborate on this by observing that unless white defendants have access to the same use of racial identity, this would be inconsistent with the longstanding advocacy of neutral principles in the context of the Equal Protection clause.

There are two responses to this. First, as we suggest in the previous section, the use of racial identity would not be limited to litigants who are not white. Second, even if racial identity were used far more often with BIPOC litigants, class-based protections relevant to FMHA already exist within the law. Defendants of average intelligence do not have *Atkins* protections under *Atkins v. Virginia*.²⁴ Those who are older than 17 do not have access to *Roper* protections (*Roper v. Simmons*²⁵).

Unequal access to protections under the law is not new. Whether racial identity would be disallowed under an Eighth Amendment argument remains to be seen, but there seems ample precedent suggesting that it would not.

Racial Identity is Patronizing

It might be argued that using a construct such as racial identity is patronizing, erroneously treating individuals who are BIPOC as though they are disabled or different from others who are not BIPOC. Underlying this argument is the assumption that people are treated similarly and have comparable opportunities regardless of race, so considering racial identity is unnecessary because there is not any racial discrimination that might affect the thoughts, emotions, and behavior of BIPOC individuals.

Racial identity as described in this article does not presume that individuals who are BIPOC have necessarily been damaged by society. Like any group identified by medical or behavioral science, BIPOC individuals vary in their development, their resilience, and the circumstances of their lives. But considering racial identity can potentially identify BIPOC examinees for whom racism has had substantial adverse effects that would be relevant for the forensic evaluation. It begins with the assumption that racial discrimination is real and is very likely to be experienced by BIPOC individuals in a variety of obvious and subtle ways. How individuals respond to such discrimination is a different, albeit related, question; their response, we suggest, should be appraised in a more formal and rigorous manner than is reflected in current practice.

Implications

There are implications for practice, ethics, and research/scholarship that can be drawn from this discussion. We address each in this section.

Practice

The present potential for integrating racial identity into FMHA practice in the United States seems clear but challenging. Part of the challenge involves novelty. Although there is recognition of the importance of race in FMHA,⁶ this is typically part of a larger emphasis on cultural competence. There are a small

number of noteworthy exceptions involving guidance to the assessment of race-relevant outcomes such as traumatic stress reactions.²⁶ The present proposal suggests there are more legally relevant questions that can be informed by an appraisal of racial identity, as was once suggested in the context of family law.²⁷ It offers a specific approach to implementing this goal that is conceptually and methodologically within the parameters of good forensic practice. How well this proposal can both complement and reform the broader FMHA process will also depend upon its future support through research, scholarship, and practice guidelines.

Professional Ethics Guidance

The AAPL Ethics Guidelines for the Practice of Forensic Psychiatry⁷ are largely silent on the role of race and its impact on forensic psychiatric assessment. It would be important to consider this explicitly in any future revision, building on its current acknowledgment of the respect for rights and dignity. The American Psychological Association is currently revising three important sets of standards relevant to FMHA: the Ethical Principles of Psychology and Code of Conduct,⁹ the Specialty Guidelines for Forensic Psychology¹⁰ and the Guidelines for Child Custody Evaluations in Family Law Proceedings.²⁸ Each of these ethics documents provides foundational or general language (in areas such as fairness/justice, and respect for rights, dignity, and cultural differences) under which a more specific proposal such as racial identity could be considered. The added specificity of this kind of proposal will be important to ensure that ethics codes and guidelines offer useful and contemporary assistance to examiners.

The use of constructs such as racial identity can help bridge the gap between general recognition and more specific application. Indeed, although the present article has focused primarily on race, the other influences noted previously (e.g., gender, sexual orientation, religion, ability status, poverty) could be integrated into appraising identity using a similar approach.

Research and Scholarship

Empirical research could help to inform and test the application of racial identity in FMHA in various ways. Research focused on several questions would offer valuable information that might yield answers

about the effectiveness and value of using racial identity in FMHA:

Is racial identity alone sufficient to explain or cause certain relevant behaviors?

Does it affect some behavior more strongly than others?

What are the potential contributions of good qualitative research identifying idiographic contributions to racial identity?

There is also critical analysis that does not involve collecting original data, but may focus more on aggregated data, theory, and related perspectives from legal analysis, psychiatry, psychology, and other disciplines that can be reviewed for relevance and applicability. Although the role of race and racial identity has been quite limited in FMHA, it can draw upon the concept of intersectionality³ for future development. This could help to guide the application of racial identity combined with other important aspects of broader cultural identity as they apply in FMHA.

Conclusion

This discussion has focused on racial identity, an individual's race as it contributes to self-concept, and its potential relevance when examining legally relevant behavior. Racial bias and its impact on racial identity have rarely been considered as they might apply in FMHA. Accordingly, racial identity has not been consistently considered in the practice of FMHA, nor has it been the subject of supporting research in this area. We propose three steps to address this. First, the practice of FMHA should consistently involve gathering and documenting relevant information about racial identity. Second, when that information is relevant to the capacities or outcomes being considered in that particular evaluation, the relationship between racial identity and those capacities should be described and explained. Third, the research literature should be expanded to consider the numerous questions raised by the application of racial identity in FMHA to provide an empirical research base to help address these questions with stronger scientific support.

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