



The impact of defendants' race in competency to stand trial referrals

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ABSTRACT

In the United States, competency to stand trial (CST) evaluations ensure that criminal defendants are capable of participating in their defenses, thus ensuring an important legal right. However, some research has suggested that the CST process may be impacted by legally irrelevant factors such as a defendant's race and cultural background. However, the majority of researchers examined factors that are predictive of CST recommendations and decisions. Few studies have focused on potential racial discrepancies in attorney referrals for CST evaluations and whether they are exacerbated by professional experience. The current study examined potential racial disparities in referrals for CST evaluations among 322 law students and 102 attorneys. Participants were randomly assigned to read vignettes describing either African American or Caucasian defendants who varied in their fitness to stand trial. The participants were asked to indicate whether they would refer the client for a CST evaluation and to describe their reasoning. The results indicated that both law students and attorneys were generally more likely to refer unfit rather than fit defendants, indicating an understanding of the legal criteria. Law students displayed a racial bias, only when referring the defendants who were unfit due to the lack of a rational understanding of the relevant legal case, $\chi^2(1) = 4.90, p = 0.03, \Phi = 0.13$. Fitness condition was the only significant predictor of attorney referrals. The generally encouraging results indicated that professional experience did not increase racial biases.

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1. The impact of defendants' race in competency to stand trial referrals

Discrimination against African Americans has been a persistent issue in the United States, resulting in a disproportionate number of African Americans in the criminal justice system. The National Prisoner Statistics program indicated that in 2014, African American men had the highest rate of incarceration and were imprisoned at a rate 3.8 to 10.5 times higher than that of Caucasian men (Carson, 2015). Numerous researchers have found evidence of racial discrepancies in areas relating to the forensic mental health system, with African Americans at an increased likelihood of being involuntarily hospitalized (Lawson, Hepler, Holladay, & Cuffel, 1994), put in seclusion (El-Badri & Mellso, 2002; Flaherty & Meagher, 1980) and treated with higher doses of antipsychotic medication (Segal, Bola, & Watson, 1996). As a result, many researchers have attempted to pinpoint aspects of the justice system that are particularly at-risk for racial bias.

2. Competency to stand trial

In the United States, criminal defendants have the right to participate in their own defense. This right is interpreted as including both

defendants' physical presence and cognitive capacities. Competency to stand trial (CST) evaluations are conducted when defendants' abilities to assist in their defense are in doubt. CST evaluations are the most commonly conducted forensic mental health assessment (Melton, Petrila, Poythress, & Slobogin, 2007). Approximately 60,000 CST evaluations have been estimated to occur annually (Bonnie & Grisso, 2000), a number that has likely increased in recent years (Johnson & Seaman, 2008).

An attorney or judge can request a CST evaluation, which is then conducted by one or more mental health professionals (Finkle, Kurth, Cadle, & Mullan, 2009). The criteria for CST evaluations in most states are based on guidelines described in *Dusky v. United States* (1960), which includes an assessment of whether defendants have the ability to work with an attorney and possess a factual and rational understanding of their cases. Although the final decision rests in the hands of the judge, rates of agreement between clinical evaluators and the court have been estimated at or above 90% (Freckelton, 1996; Zapf, Hubbard, Cooper, Wheelles, & Ronan, 2004). When defendants are found to be incompetent and restorable they are admitted to a psychiatric hospital until they are restored to competency (Finkle et al., 2009). While the competency criteria represent the enforcement of a crucial legal right, researchers have critiqued the *Dusky* holding for its brevity and ambiguity (Pirelli, Gottdiener, & Zapf, 2011). This ambiguity is particularly concerning as research has shown that racial bias tends to emerge (even by "well-intentioned, liberal and highly educated individuals" p. 2) in ambiguous situations (Hodson, Dovidio, & Gaertner, 2004).

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Morris, Haroun, and Naimark (2004) conducted a survey to evaluate forensic psychiatrists' and psychologists' application of related standards of rationality when determining the competency of defendants. The 273 participants read two vignettes describing defendants with varying levels of competency, were provided with three standards of competency, and were asked to assess whether the defendant was competent as defined by each provided standard. The results were surprisingly mixed in both vignettes, with almost half of the respondents incorrectly applying the provided standard. Notably, experience with competency evaluations did not improve accuracy in the application of the provided standards. Furthermore, a large portion of the participants incorrectly reached the same conclusion under all three standards, indicating a lack of specificity when applying legal standards and highlighting a question regarding what variables were being used to evaluate competency.

3. The impact of legally irrelevant variables on CST evaluations

Although evaluations should be based solely on the *Dusky* criteria, researchers have suggested that demographic factors may impact the determination of competency. For instance, African American defendants were more likely than defendants of other racial groups to receive referrals to inpatient facilities for CST evaluations while awaiting trial (Pinals, Packer, Fisher, & Roy-Bujnowski, 2004) and were more likely to be deemed incompetent once referred (Nicholson, Kugler, & Steinberg, 1991). Similarly, in an examination of archival data, Ho (1999) found that, when compared to white defendants with intellectual disabilities, African American defendants with intellectual abilities were more likely to be found incompetent.

Although the previous studies were conducted with American samples, the issues and findings regarding bias in CST evaluations are not exclusive to the United States. For instance, Rogers, Gillis, McMain, and Dickens (1988) conducted a study on a Canadian sample that broadly examined this issue using the psychological and medical files of 470 patients drawn from the Metropolitan Toronto Forensic Service. The researchers found a significant relationship between competency decisions and socio-demographic variables. In fact, the researchers were able to predict competency decisions with 71% accuracy using only defendants' gender, age and race. Specifically, individuals who were deemed to be unfit were most likely to be non-white, older, or female.

Notably, not all research has found evidence of a demographic bias. In an examination of the predictive efficiency of clinical, criminological and sociodemographic variables in a sample of 468 criminal defendants referred for CST evaluations, Cooper and Zapf (2003) found that only clinical variables and employment status significantly predicted clinician decisions. Additionally, Advokat, Guidry, Burnett, Manguno-Mire, and Thompson (2012) conducted a study comparing individuals who were deemed to be competent ($n = 43$) and incompetent ($n = 15$). Although the sample size was small, they found that the individuals did not differ significantly on race, intellectual capacity or severity of their crime.

Although a substantial portion of the relevant research examines clinical bias, some researchers have examined the impact of demographic biases on attorney referrals for CST evaluations. Studies investigating attorneys' perceptions about their clients' competencies have found that attorneys doubt the competency of approximately 8–15% of their clients, but only refer 20–50% of these cases (Hoge, Bonnie, Poythress, & Monahan, 1992; Poythress, Bonnie, Hoge, Monahan, & Oberlander, 1994). The research is inconclusive as to whether or not racial biases are part of this discrepancy. Berman and Osborne (1987) found that attorneys did not appear to be influenced by the race or age of their clients, but were more likely to refer defendants who were accused of a violent crime and those without a high school diploma. However, a more recent study found a significant impact of defendants' ethnicity on both clinicians' recommendations and

attorneys' referral decisions (McCallum, Maclean, & Neil Gowensmith, 2015). McCallum et al. (2015) reviewed the forensic case files of all male defendants submitted to a Hawaii judiciary between 2007 and 2008. The sample consisted of 191 Caucasians, 133 Asians, 76 Pacific Islanders/Hawaiians (PIHA). The researchers coded for charge type, diagnoses, court dispositions, and psycholegal recommendations for each case file and referral rates. The results indicated that Asians were arrested at a rate of 8.6% but were referred at a rate of 36%, $p(X \geq 129) < 0.001$. This significant discrepancy did not occur in other groups. The researchers also found that Asians were deemed to be incompetent 49% of the time in comparison to 34% for other ethnic groups. Cultural differences between attorneys and defendants might play a role. In a study using vignettes, Varela, Boccaccini, Gonzalez, Gharagozloo, and Johnson (2011) found that Caucasian attorneys were more likely to deem defendants to be more mentally ill when defendants who were clearly mentally ill spoke English rather than defendants with the same symptoms who spoke Spanish, $F(3,103) = 4.77$, $p = 0.03$, Cohen's $d = 0.41$, 95% CI [0.04, 0.81]. This bias in CST referrals could be due to the fact that attorneys were misattributing signs of mental illness as cultural discrepancies.

The current study investigated potential racial biases in law student and attorney referrals for CST evaluations. We hypothesized that regardless of the race of the participants, participants from both samples would refer African American clients for CST evaluations more frequently than they would Caucasian clients within the unfit conditions, displaying a paradoxically positive effect resulting from the tendency to over-diagnose minority defendants. Law students were included in this study to provide insight into whether a potential racial bias is intuitive, or emerges through legal experience.

4. Methodology

4.1. Participants

4.1.1. Student sample

A Qualtrics panel was used to recruit law students for the study. Qualtrics is a survey software generator that partners with online panel agencies. Potential participants are invited to participate via email and are compensated for their time. Qualtrics includes built-in quality control services, such as catch questions, digital fingerprinting and response time checks, and is commonly used in research settings to access a variety of samples (e.g., Lanz & Bruk-Lee, 2017; Woznyj, Shanock, Heggstad, & Long, 2017). The initial panel for this study consisted of 2529 students. After the screening test, 355 (14.0%) students identified as law students and were therefore eligible to complete the survey. The data from 32 (1.2%) participants were excluded from analyses because these individuals responded to less than 10% of the survey. Therefore, the analyses described in this paper included 322 students. The majority of the sample identified as female ($n = 179$, 55.5%), 141 participants identified as male (44%) and two declined to indicate gender (0.5%). The participants' ages ranged between 25 and 68 years old ($M = 28.32$, $SD = 8.3$). The sample identified as Caucasian ($n = 212$, 65.8%), African American ($n = 50$, 15.5%), Hispanic ($n = 41$, 12.7%), Asian ($n = 35$, 10.9%) and other ($n = 4$, 1.2%). After completing the study, the student participants received compensation through Qualtrics. Each participant was able to choose to receive their compensation in the form of money or monetary equivalent rewards (e.g., gift cards).

4.1.2. Attorney sample

The survey was sent via email to approximately 700 attorneys working at two legal organizations in New York and Texas. These law firms were selected due to their mission; they specialize in local criminal defense and were more likely to include attorneys for whom competency to stand trial referrals were relevant. The survey was sent to all attorneys at participating firms and a screening test verified that participants

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