

A Psychological Perspective on the Racial Disparities in Sentencing

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The surge in the number of individuals incarcerated in the United States has become an increasing problem. In December 2013, there were approximately 1.5 million males who were incarcerated in the United States (Carson, 2014). While the number of individuals incarcerated in the United States is relatively high, the number of African Americans, particularly males, incarcerated is astonishing. Out of the men who are incarcerated, most of them are African American; African American men also have a higher incarceration rate. According to Carson (2014), in December 2013, 37% of male inmates were African American, compared to the 32% of European American males and 22% of Hispanic/ Latino males; this is roughly 500,000 African American males incarcerated. In addition, 3% of African American males in the United States were incarcerated compared to 1% of Hispanic/ Latino males and 0.5% of European American males (Carson, 2014).

Despite African Americans making up only 13% of the United States population, 40% of those incarcerated are African American, while 39% of those incarcerated are European Americans; European Americans make up 64% of the United States population (Hagler, 2015). Not only do African American males account for the majority of males incarcerated, they are also more likely to receive harsher sentencing. According to the American Civil Liberties Union (2014), the sentencings imposed on African American males are approximately 20% longer than those imposed on European American males who have committed similar crimes; this includes being sentenced for life without the possibility of parole. In addition, as of 2012, African Americans account for 65.4% of

inmates who are serving life sentences without the possibility of parole for nonviolent offenses (American Civil Liberties Union, 2014).

One of the questions posed by the community directly affected by this issue is why do African American males receive longer and harsher sentencing than European American males who have committed similar crimes. A potential answer to this question is because of prejudice, discrimination, and stereotyping, based on the historical treatment of African Americans within the United States. While it is easy to assume that the disparity in sentencing is due to racial biases, a statement like this without concrete findings is considered to be of no value. However, the articles being discussed in this review provide plausible explanations as to why these disparities in sentencing exist, from a psychological perspective, by evaluating the role psychologists using psychological assessments for forensic evaluations play in the sentencing process.

Forensic opinions are often grounded in psychological assessments. According to Weiss and Rosenfeld (2012), the measures that are most often used in forensic assessments are not usually developed for, or validated in, individuals who come from minority cultural backgrounds. Since African Americans make up the majority of individuals in the forensic population (African American males in particular), administering assessments that are culturally biased may play a role in the harsher sentencing of African American males; misinterpreting the results of these assessments may play an even larger role. When interpreting these assessments, there is a strong possibility that the influence of culture is being ignored, resulting in deliberate and automatic prejudice, stereotyping, and discrimination by the examiner.

In order to investigate this topic further, peer reviewed articles were obtained from PsycINFO via EBSCO Host through Alliant International University's online library. Federal and national statistics of the United States were also used, as well as educational textbooks and specialization books. Within this review, there will be an overview of the key social concepts related to the racial disparities in sentencing, the role of psychologists and psychological assessments in forensic settings, how scoring differences between African Americans and European Americans on the MMPI-2 subtly create stereotypes, the presence of automatic prejudice and discrimination in clinicians interpreting MMPI-2 scores, and the relationship between ethnicity and sentencing.

### **Deliberate and Automatic Prejudice, Discrimination, Stereotyping, and Intergroup Bias**

Based on our belief system and perspective, we tend to gravitate toward certain groups of people and steer clear from others. A social concept that mirrors this phenomenon is known as intergroup bias. Intergroup bias is when members of the same group (ingroup) demonstrate favoritism toward one another in comparison to people belonging to other groups (outgroup) (Brewer, 2010); there is a tendency to favor those who look like us and/ or can relate to our experiences. Intergroup bias is relatively harmless unless this bias begins to drift in the direction of prejudice and discrimination. Prejudice is defined as a preconceived negative belief that is directed toward a particular group of people and/ or an individual because he or she belongs to that particular group; these feelings are often assumed to function in an automatic manner (Bodenhausen & Richeson, 2010). However, discrimination can be described as treating an individual differently, primarily negatively, because he or she is a member of a certain group

(Bodenhausen & Richeson, 2010); discrimination can and is often driven by prejudice. In addition, one could argue that stereotyping is the prequel to prejudice and discrimination, since a stereotype is a generalized belief about certain features of a particular group; this could potentially cause one to apply these generalized beliefs to members of a certain group and in turn treat them differently. The key component of a stereotype is applying a certain feature of group to all of the members in that particular group; some of these features may be true for some, but are not true for all.

So why do African American males receive longer and harsher sentences than European American males? As stated previously, prejudice, discrimination, and stereotyping, based on the historical treatment of African Americans within the United States could be a reason why these sentencing disparities exist; a deeper question would be to ask how and why do these social concepts develop. In order to understand how and why this may occur, one must consider the influence of one's perspective; how one perceives a situation may be different from how someone else perceives the same situation, due to world view differences. These differences in perspective could possibly explain why African American males receive longer and harsher sentences than European American males.

Prejudice, discrimination, and stereotyping often derive from how we have been taught to see others (e.g., teaching from our parents, influence from the media, and societal constructs). From childhood, we begin to associate specific characteristics to certain groups of people, which can later influence the way we interact with them; the way in which we interact with these groups can be deliberate (consciously) or automatic (unconsciously). For example, Quillian (2008) suggests that society tends to associate

positive traits to European Americans while negative traits are often associated with African Americans and Latinos; the association of which traits belong to which group is often automatic and unintentional. These associations have become automatic and unintentional because these traits have been exposed to us on a daily basis, so much to the point where we have become immune and start to believe these traits as being true. These ideas have become so deeply embedded in us to the point where people are unaware that they have prejudice feelings or believed stereotypes about certain groups of people; they are more unaware how these unconscious thoughts and feelings influence their behavior.

### **The Role of Psychologists and Psychological Assessments in Forensic Settings**

Forensic psychology is defined as the intersection between psychology and the legal system; forensic psychologists often work in a variety of settings as it relates to the legal system, including working within correctional facilities, working for the courts, and assisting in the legal decision making process. Psychologists and other mental health professionals are often involved in conducting evaluations for both civil and criminal legal proceedings (Borum & Grisso, 1995), such as competency to stand trial (e.g., whether or not the defendant has the mental ability to understand the charges being brought against him or her), criminal responsibility (e.g., the defendant's mental state at the time of the offense), malingering, workers' compensation, child custody evaluations, competency to waive Miranda Rights, and risk of physical or sexual violence (Graham, 2012). In order for a clinician to adequately answer the referral questions, he or she will administer a series of psychological assessments to assess for mental health symptoms and/ or psychological dysfunction; cognitive, personality, and projective assessments are

often used in these types of evaluations. In addition, psychological assessments can assist in case formulations since these assessments have the ability to identify the personality and/ or intellectual characteristics that are not always visible.

To gain a more clear understanding of the role psychological testing plays in forensic settings, it is first important to evaluate their use. In a study conducted by Borum and Grisso (1995), the researchers surveyed forensic psychologists and forensic psychiatrists about their use of psychological testing for forensic evaluations, particularly competency to stand trial and criminal responsibility, and their views on the importance of using psychological assessments in forensic settings. By doing this, the researchers were able to compare the views of forensic psychologists to the views of forensic psychiatrists, which allowed them to assess for differences in views as they relate to psychological testing, as well as differences in how often these assessments are used between both groups. The findings from Borum and Grisso (1995) suggest that the use of psychological testing in forensic settings is recommended for assessing criminal responsibility or competency to stand trial, because it increases the level of sophistication if included in the reports. The findings also provide insight on how forensic psychologists and psychiatrists differ in their views of psychological testing, which may influence the way a forensic evaluation is conducted and interpreted; viewing psychological assessments as being of low importance may result in carelessness in interpretation, which ultimately has a negative impact on the individual being evaluated.

Borum and Grisso (1995) also found that the Minnesota Multiphasic Personality Inventory, Second Edition (MMPI-2) is one of the psychological assessments that is most commonly used in forensic settings. The MMPI-2 is a personality assessment that is used

to generate descriptions of and inferences about individuals based on their scores (Graham, 2012). In particular, the MMPI-2 is a self-administered questionnaire that consists of 567, true and false, items; the items on this assessment were designed to evaluate psychopathology, as well as evaluate personality traits. For the purpose of this review, the utilization, scoring, and interpretations of the MMPI-2 will be the only psychological assessment discussed due to its popularity in forensic settings.

### **Ethnicity and the MMPI-2**

#### **Scoring Differences**

Over the years, research studies have compared the scores of African Americans and European Americans on the MMPI and the MMPI-2 to assess for ethnic differences. According to Graham (2012), studies have indicated that although the differences are small, African Americans score higher on Clinical Scales 4 (a measure of psychopathic deviance), 6 (a measure of paranoia), 8 (a measure of schizophrenia) and 9 (a measure of hypomania), with the elevations varying depending on the setting; this finding has the potential to stereotype and stigmatize African Americans. There is a strong possibility that the forensic examiners interpreting MMPI-2 profiles will overlook the African American offenders who truly present the chronic symptoms associated with elevated Clinical Scales due to this prevalent finding; this may result in a sentencing recommendation of sending the individual to prison instead of to a psychiatric facility to receive treatment.

While studies have suggested that scoring differences between ethnic groups are minimal, not much research has been done to assess for ethnic differences amongst individuals belonging to the forensic population. In addition, the studies that have been

done previously show a significant weakness, particularly in their design; the most common weakness is due to the underrepresentation of African Americans in the sample, which has the potential to skew the data and yield inaccurate results. For example, in a study conducted by Ben-Porath, Shondrick, and Stafford (1995), the researchers examined the relationship between ethnicity and MMPI-2 scores in individuals who completed this assessment as part of their court-ordered evaluation. The findings from Ben-Porath et al. (1995) suggest that within forensic settings, African American males only score higher on the Cynicism and Antisocial Practices Content Scales in comparison to European American males. However, the findings from this study should be interpreted with caution, due to the bias in participant selection; 137 of the men were European American and only 47 of the men were African American. Since African American males make up the majority of men incarcerated, using a sample size that does not adequately represent the prison population eliminates the chances of statistical generalization; the findings from this study can only be applied to the participants in this study. Despite this significant weakness, laypersons, and even some clinicians, have a tendency to believe that this is true for all of the individuals incarcerated. Essentially, this weakness has the potential to cause people to believe that scoring differences between African American and European American offenders do not exist, and therefore the psychological assessment data should be interpreted in the same way.

### **Interpretations of Scoring**

Although there are research studies that indicate that scoring differences between different ethnic groups exist, the way in which psychologists interpret the psychological test scores and form diagnostic impressions is a greater concern; psychological test scores

are meaningless without the interpretation from the clinician. Unfortunately, studies that measure how psychologists interpret psychological test scores and form diagnostic impressions within the forensic population is scarce, specifically those studies that assess for ethnic biases in the evaluating clinician. Although the next study being reviewed was not conducted with a forensic sample, the information in the study can be useful in recreating a study that assess for ethnic biases in psychologists evaluating individuals who belong to the forensic population.

Knaster and Micucci (2013) examined whether a client's ethnicity had an effect on the way psychologists and psychologists in training interpreted selected Clinical Scale profiles on the MMPI-2. The participants in this study were asked to rate the severity of six symptoms that were based on three common MMPI-2 profiles, in which the ethnicity of the client was randomly assigned as being either African American or European American (Knaster & Micucci, 2013); the utilization of random assignment gave the participants an equal opportunity to see either an African American or European American profile, therefore yielding more accurate results. The findings from Knaster and Micucci (2013) suggest that the ethnicity of a client does not have an effect on the way a clinician interprets the Clinical Scale profiles on the MMPI-2. This further suggests that interpretations are solely based on the scores generated by the MMPI-2. However, Knaster and Micucci (2013) did not assess for whether or not the participants noticed the client's assigned ethnicity when rating the severity of the client's symptoms; it is possible that the participants made a rating solely based off of the clinical profiles because the ethnicity of the client went unnoticed. Essentially, the researchers assumed

that the participants would pay attention to the client's ethnicity; therefore the findings from this study should be interpreted with caution.

Factors, such as ethnicity and culture, may affect the way psychopathology manifests in the individual being assessed, and can also influence the way these scores are interpreted by the examiner (Butcher, Hass, Greene, & Nelson, 2015); this factor is particularly important since forensic settings have ethnic and/or cultural groups that are overrepresented (e.g., African Americans) within this population. In a study conducted by Pottick, Kirk, Hsieh, and Tian (2007), a random sample of psychologists, psychiatrists, and social workers were asked to review a vignette and determine if the youth being described antisocial behaviors were indicative of a mental disorder or non-disorder, based on the criteria stated in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)*. Each of the participants were randomly assigned to one of three groups, in which each of the participants were given different information: Some participants were given a vignette with additional contextual information indicating that the youth's behavior was due to presence of interpersonal dysfunction unrelated to environmental factors, the youth's demonstrated behavior was a response to living in a dangerous environment and would change depending on the context, or solely contained the criteria of conduct disorder in accordance to the DSM-IV. Pottick et al. (2007) found that clinicians consider contextual information before making a judgment as to whether or not a mental illness is present. Surprisingly, Pottick et al. (2007) also found that clinicians were less likely to consider a mental illness being present in the youths who were African American or Latino, but were more likely to judge that a mental illness was present in European Americans. Pottick et al. (2007) pose the idea that the clinicians tend

to associate delinquency more with African Americans and Latinos, and mental illness with European Americans; delinquency results in criminal punishment while the presence of a mental illness results in treatment. The findings from this research study pose the question as to whether or not the decisions made by clinicians is a result of deliberate or automatic discrimination, prejudice, and stereotyping.

Psychologists within their professional capacity have an obligation to do no harm to those they serve; it is important to note that the standard to do no harm is not based on intent, but is solely based on action. Therefore, deliberate or automatic discrimination, prejudice, and stereotyping are considered to be in violation of this ethical standard if the person on the receiving end is harmed (e.g., being sentenced to prison when mental health treatment is warranted or receiving a longer and harsher sentence). In addition, the American Psychological Association provides aspirational guidelines for psychologists working with ethnic, linguistic, and culturally diverse populations. Principle 8 of these guidelines states that psychologists are to be aware of as well as eliminate any biases, prejudices, and discriminatory practices while in their professional capacity (American Psychological Association, 2015); this requires psychologists to develop a level of sensitivity to issues that could evoke a biased, prejudice, or discriminatory response. Although this guideline is not considered to be an ethical violation if one does not abide by it, all psychologists working with individuals who come from diverse backgrounds should incorporate this principle into their professional practice to ensure that no harm is being done.

### **Sentencing and Ethnicity**

According to Bodenhausen (1988), the judicial system is one of the most common settings where decision making (e.g., verdict and sentencing decisions) is often impacted by social stereotypes. In particular, African Americans are more likely to be sentenced to prison and receive harsher sentencing than European Americans, and are less likely to receive a disposition of probation only, reduced counts, or charge dismissal (Free 1997). These two research studies in particular emphasize the idea that when social stereotypes and prejudice are present, the risk for discriminatory judgment to occur increases.

It is well known that individuals who suffer from a mental illness may be sentenced to a correctional facility instead of being placed at a psychiatric facility to receive treatment. According to the Treatment Advocacy Center (2014), in 2012, there were 10 times more individuals living with a severe mental illness incarcerated (approximately 356,268) than there were in psychiatric state hospitals (approximately 35,000). Based on this astonishing finding, one may often wonder what factors cause one to be sentenced to a correctional facility or receive treatment at a psychiatric facility. The findings from a study conducted by Cohen et al. (1990) regarding youth placement to a correctional facility or psychiatric facility for treatment, indicated that the race of the youth was the only variable that predicted site placement; that is, African Americans were more likely to be sent to a correctional facility while European Americans were more likely to be sent to a psychiatric facility, despite both children committing similar crimes. Within this study, there is a clear indication of deliberate prejudice, discrimination, and stereotyping when determining placement since placement decisions appeared to be primarily based on the race of the youth; a group of people are being

deprived of treatment and are receiving punishment based on their ethnicity while a group of people are receiving treatment based on theirs.

### **Discussion**

There has been an increase in the number of individuals incarcerated in the United States, particularly with African American males. Despite African Americans making up only a small percentage of the United States population, majority of those incarcerated are African American. In addition, the sentencing imposed on African American males is approximately 20% longer than those imposed on European American males who have committed similar crimes (American Civil Liberties Union 2014). This astonishing finding causes one to wonder why African American males receive longer and harsher sentencing than European American males. As discussed in this review, prejudice, discrimination, and stereotyping, based on the historical treatment of African Americans within the United States could be a reason why these sentencing disparities exist. Within the study conducted by Cohen et al. (1990), there is a clear indication of deliberate prejudice, discrimination, and stereotyping when the determining the placement juvenile offenders, since placement decisions appeared to be primarily based on the race of the youth. Basing placement on the basis of race results in a group of people being deprived of treatment and receiving punishment based on their ethnicity, while a group of people receive treatment based on theirs.

The articles discussed in this review provided plausible explanations as to why these disparities in sentencing exist, from a psychological perspective, by evaluating the role clinicians using psychological assessments for forensic evaluations play in the sentencing process; there is a strong possibility that the influence of culture is being

ignored, resulting in deliberate and automatic prejudice, stereotyping, and discrimination by the examiner. Within forensic settings, misusing psychological assessments like the MMPI-2 can have a negative impact on the individual being evaluated; the misuse of these assessments includes examiners misinterpreting the results. Factors, such as ethnicity and culture, may effect the way psychopathology manifests in the individual being assessed, and can also influence the way these scores are interpreted by the examiner (Butcher, Hass, Greene, & Nelson, 2015); this factor is particularly important since forensic settings have ethnic and/or cultural groups that are overrepresented (e.g., African Americans) within this population. According to Brown et al. (2015), it is important for clinicians to not allow their ethnocentric biases influence the way assessment data is interpreted; the interpretation of the data should not be reflective of their preconceived expectations of the individual being assessed. The psychological assessment tools that psychologists use should assist in understanding their client's experiences and should not be reflective of their belief system (Brown et al., 2015). The psychological assessment tools used should also be valid in the client's culture to decrease the risk of interpreting differences as deficits, over-pathologizing behavior that is normal for that cultural group, overlooking symptoms, and misdiagnosis (Brown et al., 2015). Since psychologists have an obligation to do no harm, deliberate or automatic discrimination, prejudice, and stereotyping is considered to be in violation of this ethical standard if the person on the receiving end is harmed (e.g., being sentenced to prison when mental health treatment is warranted or receiving a longer and harsher sentence). To decrease the chances of this happening, it is important for clinicians to be aware of

their automatic prejudices and stereotypes so that they do not engage in discriminatory practices while in their professional capacity.

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