Risk in the eye of the beholder

Impact Statement

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The human brain has an incredible capacity to make quick and often accurate judgments in complex situations. Yet, psychological research has repeatedly demonstrated that our initial judgments based on intuition and automatic processing can be less than optimal, or even incorrect. When decisions have far reaching consequences, such as in legal decision making, intuitive judgments are often not desirable. It is precisely the circumstances of high stakes and complex information in which decisions are made by judges, jurors, and mental health experts who are called upon to provide an evaluation of an individual's risk of violent or sexual recidivism. Furthermore, research about cognitive bias and heuristics has demonstrated that adjusting initial intuitive impressions when new information becomes available takes focused and intentional cognitive effort that may be difficult to summon, particularly in emotionally-charged situations.

The research findings in this dissertation related to forensic risk evaluations have several implications for forensic mental health evaluators. First, forensic mental health professionals should consider the potential for contextual factors and task-irrelevant information to influence their perceptions of recidivism risk, including when they are relying upon a structured risk assessment instrument. Affirmative steps that may help minimize errors in judgment related to bias include avoiding exposure to task-irrelevant information and employing a consensus-based approach to risk evaluations. Second, the use of a structured risk assessment instrument may provide a guide for focusing on relevant risk factors but should not be viewed as proof that a risk evaluation has not been affected by bias. Nevertheless, based on current standards and guidelines, the use of a structured instrument to assess recidivism risk is preferred to relying upon unstructured clinical judgment. Finally, where a forensic evaluator is called upon to provide a report or testimony to legal decision-makers, transparency about the information obtained and the process employed to arrive at a risk judgment may help inform decisions in a way that making only conclusory statements does not.

The findings from the mock juror experimental studies in this dissertation, in contrast to the results from comparable previous studies, suggest that providing lay jurors with factual information contained in an actuarial risk assessment instrument (the Static-99R) can be effective in mitigating the influence of their initial impression of a defendant in a sexually violent predator (SVP) civil commitment case (hereafter, SVP respondent). Unlike previous studies that have typically used expert testimony about the results of a risk assessment instrument, leaving open the possibility that the credibility or likability of the expert affects the weight jurors give the testimony, we provided mock jurors with a list of the risk factors contained in the Static-99R, the total score, and the observed recidivism rates derived from it. Providing this "pared-down" version of sexual recidivism risk assessment resulted in mock

jurors' giving more realistic (and lower) estimates of the SVP respondent's risk of sexual recidivism, regardless of their initial impressions of his likability. Furthermore, the actuarial risk information eliminated observed between-group differences in civil commitment recommendations, wherein mock jurors who initially read negative risk-irrelevant contextual information about the SVP respondent were significantly more likely to recommend civil commitment than those who read initial positive risk-irrelevant information about the SVP respondent. The encouraging real-world implications of these findings suggest that providing jurors directly with the list of risk factors and associated recidivism rates may decrease the likelihood of jurors making civil commitment decisions based on their initial emotionally laden impressions of an SVP respondent, rather than the relevant criteria that must be satisfied as legal justification for civil commitment.

However, the findings from the three experimental studies about mock jurors' judgments in SVP civil commitment cases indicate that jurors are unlikely to base their judgments solely on a sexual recidivism risk estimate. Specifically, we found that only a small minority of mock jurors ultimately rendered an estimate of sexual recidivism risk that was within the range of observed recidivism rates indicated by the Static-99R. In fact, we found that mock jurors' preexisting, grossly overestimated sexual recidivism rates were significantly related to their estimates of sexual recidivism risk in the individual case, both before and after receiving information about actual, observed sexual recidivism rates provided in the Static-99R. Moreover, mock jurors who endorsed harsh sentencing and restrictive management strategies for people convicted of a sexual offense exhibited an increased likelihood of recommending civil commitment, irrespective of the Static-99R information or their own estimates of the SVP respondent's risk of sexual recidivism. In fact, among mock jurors who recommended civil commitment, we found that their own ratings of the importance of the Static-99R to their recommendation did not significantly predict whether they recommended civil commitment. Perhaps most concerning was our finding across all three studies that the more importance mock jurors assigned to the impact of the crime on the victim in their decision making, the more likely they were to vote for civil commitment.

Taken together, the findings from the series of SVP civil commitment studies have implications specific to SVP civil commitment cases. First, providing jurors with a list of sexual recidivism risk factors and the risk estimate derived from a structured risk assessment instrument for the case at hand, may help mitigate the influence of risk-irrelevant factors (such as initial impressions of the SVP respondent and jurors' preexisting beliefs about sexual recidivism rates). Second, screening methods might be employed in an effort to dismiss jurors who are likely to be unwilling or unable to objectively weigh the evidence as it relates to the legal criteria required for civil commitment decisions. Finally, whereas the impact of

the crime on the victim appears to significantly affect commitment decisions, courts should seriously consider emphasizing that SVP civil commitment is not intended as punishment, and therefore jurors should avoid punishment-seeking motives in their decisions (although I acknowledge that such an instruction may have limited effects).

More broadly, there are several implications for legal systems employing structured risk assessment instruments to inform legal decision-making. First, the extent to which estimated recidivism rates indicated by a structured risk assessment instrument influence the judgments made by the decision-maker (i.e., a judge or juror) are likely to vary depending on factors that are unrelated to recidivism risk (such as risk-irrelevant characteristics of the defendant) and the personal attributes of the decision-maker (for example, their preexisting beliefs and attitudes). In other words, when it comes to human judgment, statistical information about recidivism rates may be expected to have limited effects on the decision given the presence of more salient factors, even if the decision-maker is not consciously aware of how such factors influence their decisions. Therefore, an expectation that risk assessment instruments will necessarily result in less biased and more objective decision-making should be tempered by the realities of how the human mind processes information. In fact, it is more likely that a risk estimate derived from a structured risk assessment instrument, like other pieces of evidence, will be weighed according to the judgment of the decision-maker about the weight it deserves. Structured risk assessment instruments can inform human judgment; they do not replace it.

Finally, as risk assessment instruments are lauded and implemented in various decision-making tasks in the forensic mental health and legal arena, researchers should conduct research that focuses on how structured measures of risk and resulting risk assessment affect human judgments and decisions. Whether the decision is about the appropriate type of treatment indicated, the level of supervision to which an individual should be subjected, or whether an individual can be released to the community with low risk to the public, the likelihood of recidivism indicated by a structured risk assessment instrument will always be viewed from the perspective of the decision-maker.