
Jurors Report that Risk Measure Scores Matter in Sexually Violent Predator Trials, but that Other Factors Matter More[§]

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After deliberating to a verdict, jurors ($N = 462$) from 40 sexually violent predator (SVP) trials completed a questionnaire asking them to rate the extent to which risk measure scores, diagnoses, expert witness testimony, and offender characteristics described during the trials influenced their commitment decisions. Jurors reported that offenders' sexual offending history, failure to change, and lack of remorse had the strongest influence on their commitment decisions. They reported that testimony about risk instrument scores (e.g., Static-99) and psychopathy had less influence on their decisions, but those who did report being influenced by instrument results were especially likely to view the offender as being at a high risk for reoffending. Overall, findings suggest that SVP jurors view risk measure results as important, but not as important as other offender, offense, and testimony characteristics, including some that have limited relevance to recidivism risk. Thus, findings also suggest that experts may need to better educate jurors regarding factors that do and do not relate to recidivism risk. Copyright © 2015 John Wiley & Sons, Ltd.

Texas, like many states, has enacted sexually violent predator (SVP) laws to facilitate post-sentence civil commitment of a small subgroup of offenders considered especially high risk for reoffending (see Miller, Amenta, & Conroy, 2005). The state uses results from actuarial risk measures, psychological evaluations, and offender records to help identify offenders who appear to meet criteria for SVP commitment. But final decisions about civil commitment are made in a courtroom, by a judge or jury,¹ following adversarial proceedings. Most of the testimony in Texas SVP trials comes from mental health experts. The state calls at least two experts in almost every case, and the respondent (i.e., the offender's counsel) calls experts in some, but not all, cases (Boccaccini et al. 2013). These experts, usually psychologists or psychiatrists, offer diagnoses, perceptions of offender risk, and opinions regarding whether offenders have a "behavioral abnormality" that makes them likely to reoffend in the future (Wevodau, 2010). At the conclusion of each trial, the jury decides whether or not the offender has a "behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence" (Texas Health & Safety Code § 841.023). If so, he is civilly committed, indefinitely, as an SVP.

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¹ Respondents have the option of jury or bench trials in Texas, but almost all choose a jury trial.

Identifying Factors that Influence SVP Jurors' Decisions about Offenders

Sexually violent predator jurors hear testimony about many characteristics of offenses (e.g., force, grooming), victims (e.g., sex, age, relationship to offender), and offenders (e.g., diagnosis, risk). But which of these factors do jurors view as most important when making decisions about offenders? Some of these factors are empirically related to future offending (e.g., number of prior offenses), while others are not (e.g., remorse, treatment motivation; see Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005). In nearly all SVP hearings, mental health experts testify about the results of risk assessment measures designed to predict future sexual offending. Scores on these types of measures, such as the Static-99 (Hanson & Thornton, 2000), are among the strongest known predictors of sexual recidivism, and they clearly perform better than unstructured clinical judgment (see Hanson & Morton-Bourgon, 2009). But results on these measures, often communicated by experts using mathematical terms (e.g., recidivism rate, risk ratio, percentile), can be difficult to understand (Varela et al., 2014), raising questions about how much importance jurors place on them when making commitment decisions.

In May of 2007, our research team began surveying jurors at the end of Texas SVP trials in an attempt to understand the influence of risk measure scores in actual SVP trials. We collected data about offenders' risk measure scores and the types of experts who testified at trial. We also asked jurors to rate the extent to which risk measure scores had influenced their decision about the offender, and to estimate the likelihood that the offender would reoffend if released.

Although people often lack insight into their decision-making processes (e.g., Nisbett & Wilson, 1977), there are several reasons why it may be important to study jurors' perceptions of their own processes. It is only under very rare circumstances that researchers have the opportunity to experiment using real trials (e.g., Diamond et al., 2003), and the manipulations in these experiments typically involve the procedures jurors follow, not the evidence presented. Jury researchers must instead rely on mock jury designs to study cause-and-effect relationships in jury trials. But no mock jury study can come close to replicating the experience of an actual juror in a real trial. Even when researchers use jury pool members as participants, testimony from real cases, and live re-enactments, mock jurors know that they are not rendering real verdicts. Real jurors are faced with the task of making decisions that will affect the lives of real people, including offenders, victims, their families, and the community. Of course, the gravity of a real trial does not mean that real jurors' introspective reports about what influenced their decisions are any more accurate than they would have been if researchers could conduct such experiments. But collecting introspective reports from actual jurors allows for comparisons with findings from necessarily artificial mock jury studies and opportunities to look for findings that generalize across both experimental and field studies.

The combined findings across field studies and laboratory experiments – each with their different strengths and limitations – are arguably more useful than findings from either type of study alone. For example, findings of high importance for a variable (e.g., type of evidence, risk communication strategy, type of expert) across laboratory and field studies should encourage attorneys and experts to emphasize (or be ready to challenge) that variable in the courtroom. Findings of low importance for a factor

across both types of studies would suggest a need for attorneys and experts to anticipate that real jurors will not find the factor to be persuasive, and strategize accordingly. For example, if experimental and field research findings combined to show that mock jurors were not influenced by risk measure scores and found them to be unimportant, it would suggest that experts planning to testify about risk measure scores should devote significant effort to carefully explaining the importance of these scores to jurors. This same pattern of findings might also lead researchers to design experiments to test the efficacy of different strategies for communicating the importance of risk measure results to jurors. A related benefit of field studies is that they may be useful in identifying the most fruitful areas for future experimental research. Indeed, it is possible to gather jurors' impressions of many trial variables in a single field study, whereas experimental designs are typically limited to only one or two experimentally manipulated variables.

With these strengths and limitations of jurors' introspective reports in mind, we asked jurors to rate the extent to which various types of offender, offense, and witness characteristics had influenced their commitment decisions (see Table 1), and to provide ratings of how likely the respondent was to recidivate if released. We were particularly interested in comparing the extent to which jurors would report being influenced by risk measure scores as opposed to more clinically oriented information (i.e., testimony about "behavioral abnormality") and factors that are not empirically associated with future offending. For example, researchers have described factors such as poor remorse, poor treatment motivation, and significant violence in sex offense(s) as "potentially misleading risk factors" (Hanson & Morton-Bourgon, 2005, p. 1158), due to their small and non-statistically significant relationships with sexual recidivism in meta-analyses, and research has consistently shown that risk measures scores are stronger predictors of recidivism than clinical judgment (see Hanson & Morton-Bourgon, 2009).

Table 1. Study 1 jurors' ratings of the influence that expert testimony, offense, and offender characteristics had on their decisions

	<i>M</i>	<i>SD</i>
Respondent's past sex crimes	5.69	0.71
The respondent has been given multiple chances to change, but hasn't	5.56	0.85
Sexual behavior during the crime(s)	5.45	0.89
Respondent did not feel bad about his offenses	5.43	1.16
Testimony about the respondent having a behavioral abnormality	5.38	0.87
State PhD expert	5.14	1.02
Number of respondent's victims	5.13	1.13
Respondent has not taken advantage of treatment opportunities	5.13	1.33
State MD expert	5.12	1.11
Amount of violence involved in sex offenses	5.11	1.17
Crimes suggest respondent is a "predator"	5.05	1.34
Test scores from experts about the likelihood of the respondent offending again	4.98	1.07
Age of respondent's victim(s)	4.89	1.45
Respondent's behavior in prison	4.40	1.44
Testimony about psychopathy	4.29	1.45
Gender of respondent's victim(s)	4.10	1.73
Respondent's behavior in the courtroom	3.93	1.66
Respondent PhD expert	3.46	1.41

N = 299 to 302 (respondent expert *n* = 80). 1, not at all influential; 6, very influential.

Prior Reports of Findings from Texas SVP Jurors

We collected data from 26 SVP jury trials between May of 2007 and August of 2009 (Study 1), revised our questionnaire, and collected data from an additional 14 trials between November of 2009 and July of 2010 (Study 2). In our first publication of the results from these studies, we examined Study 1 jurors' ratings of offender risk and found that although jurors viewed some offenders as more likely to reoffend than others, their ratings of reoffense risk were unrelated to the risk measure scores (e.g., Static-99) experts presented during the trials (Boccaccini et al., 2013). In other words, there was no evidence that the risk measure scores mattered to the SVP jurors. The only case characteristic that predicted the perceived likelihood of reoffense was the presence of a defense (respondent) expert, with jurors rating offenders as less likely to reoffend when an expert testified on their behalf ($n = 7$ trials).

For Study 2, the judge asked that we remove all questions that were even broadly related to the ultimate issue in SVP trials, so we were not allowed to ask about perceived risk. We instead used Study 2 to gather opinions about expert witnesses, sex offenders, and recidivism. For example, we asked jurors to respond to a series of questions asking whether a specific likelihood of recidivism (i.e., 1%, 15%, 25%, 50%, 75%) indicated that the offender was "likely" to reoffend. We found that more than half (54%) of the jurors considered a 1% chance to mean that the offender was "likely" to reoffend, and that most (82%) considered a 15% chance to indicate that the offender was "likely" to reoffend (Knighton, Murrie, Boccaccini, & Turner, 2014). We also found that most jurors reported that they needed to hear testimony from mental health experts to make good decisions in SVP trials (92%), that experts who use tests like the Static-99 make more accurate decisions about future offending than experts who do not (73%), and that the experts they heard testify were honest (91%), as opposed to biased (9%; see Boccaccini, Murrie, & Turner, 2014a). None of these publications reported any findings related to jurors' perceptions of the factors that influenced their commitment decisions, which we asked about on both the Study 1 and Study 2 questionnaires.

Existing Research on Factors that Influence Perceptions of Sex Offender Risk

Findings from several lines of research suggest that SVP jurors are likely to report being influenced by factors other than risk measure scores. In two studies, researchers asked mock jurors to quantify the weight they placed on the respondent's past offenses, most recent offense, and expert testimony (Krauss et al., 2012; Lieberman, Krauss, Kyger, & Lehoux, 2007). In both studies, jurors placed about 65% of the weight on past or recent offenses, and only 35% on expert testimony. Researchers have also found that while adding information about prior convictions to the description of an offender's case increases mock jurors' perceptions of the likelihood that the offender will recidivate, including additional information about diagnoses or risk assessment instrument results does not lead to any changes in jurors' risk estimates (Scurich & Krauss, 2014).

Although expert testimony may be less influential than offender and offense characteristics, some types of expert testimony appear to be more influential than others. For example, mock jury research suggests that jurors asked to make decisions in SVP cases are more clearly influenced by testimony based on clinical judgment than by testimony based on risk assessment instrument results (see, e.g., Krauss, McCabe, & Lieberman,

2012; McCabe, Krauss, & Lieberman, 2010; cf. Guy & Edens, 2003). It may also be that clinically based testimony that includes certain provocative diagnostic labels may be more influential than other testimony. Sex offenders described as “psychopathic” are apparently viewed as more likely to reoffend than high-risk sexual offenders without a psychopathy label, at least among female mock jurors (Guy & Edens, 2003, 2006).

It is also possible that the value jurors place on risk measure results varies depending on the implications of the results. For example, mock jurors in one experimental study reported that Static-99R results were more important and easier to understand when the results indicated high risk than when they indicated low risk (Varela *et al.*, 2014). But jurors in actual SVP trials are more likely to be presented with results indicating moderate to high levels of risk, rather than results indicating low risk (Boccaccini *et al.*, 2013), raising questions about whether this same pattern of findings would be evident among jurors from actual SVP trials.

Current Research

In this article, we report findings concerning Texas SVP jurors’ introspective reports of the factors that influenced their commitment decisions across 40 different SVP trials ($N=463$). We collected introspective reports in both Study 1 (Boccaccini *et al.*, 2013) and Study 2 (Boccaccini *et al.*, 2014a; Knighton *et al.*, 2014). Our primary goal was to compare jurors’ beliefs about the importance of risk measures scores to other factors in these cases, especially factors more closely related to clinical judgment (e.g., testimony that the offender has a “behavioral abnormality”) and “potentially misleading” risk factors that are not statistically related to recidivism risk (e.g., minimal remorse for offenses, poor treatment motivation, and significant violence during the sexual offense(s); see Hanson & Morton-Bourgon, 2005, p. 1158).

At each trial, an expert witness testifying for the state presented results from measures administered for the purpose of risk assessment. These measures included the Static-99 (Hanson & Thornton, 2000), the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R; Epperson *et al.*, 1998), and Hare’s Psychopathy Checklist-Revised (PCL-R; Hare, 2003). The Static-99 and MnSOST-R are actuarial measures, scored on the basis of offense, offender, and victim information in offenders’ correctional files. Both measures were moderate predictors of sexual recidivism ($d=0.67-0.76$) in the most recent meta-analysis of sex offender recidivism measures, although the Static-99 has been used in many more studies ($k=63$ vs. 12; Hanson & Morton-Bourgon, 2009). Although not designed as a risk measure, the PCL-R is a 20-item measure of affective, interpersonal, and behavioral psychopathic traits, scored on the basis of file review and interview, commonly used by experts in SVP evaluations (Jackson & Hess, 2007). Texas SVP evaluators are required by statute to assess for psychopathy, and all use the PCL-R (see Boccaccini, Murrie, Rufino, & Gardner, 2014b). Although meta-analytic findings show that PCL-R scores are only modest predictors of sexual recidivism ($d=0.40$ for PCL-R total scores), sexual offenders who score high on the PCL-R and a measure of sexual deviance are significantly more likely to reoffend (odds ratio = 2.80–3.21) than other offenders (see Hawes, Boccaccini, & Murrie, 2013).

Our secondary goals were to examine whether jurors perceived risk measure scores to be more important in some trials than others, whether we could explain variability in the perceived importance of risk measure scores using case characteristics (e.g., risk

measure scores presented at trial), and whether jurors' views on the importance of risk measure scores were associated with their ratings of how likely offenders were to reoffend.

STUDY 1

Method

Participants

Participants were actual jurors in 26 SVP civil commitment trials held in Montgomery County, Texas, the single location for all SVP trials in the state of Texas. All but one of the trials ended in commitment, with the other ending in a hung jury (that respondent was eventually committed in a subsequent hearing after data collection was complete). At the time of this study, only one Texas SVP trial (which occurred before our data collection) had ever ended with the jury unanimously agreeing that the respondent did *not* have a behavioral abnormality. Earlier research with jurors from this same sample of 26 trials showed no statistically significant relationships between the risk measure scores experts presented in these trials and jurors' perceptions of offender risk (Boccaccini et al., 2013).

Of the 312 jurors who deliberated to verdicts, 96.8% ($n=302$) participated in the study. Of these 302 participants, 156 (51.7 %) were female, 141 (46.7%) were male, and four did not provide information about their sex. Most of the jurors identified themselves as White/Caucasian ($n=271$, 89.7%), while fewer identified themselves as Hispanic ($n=12$, 4.0%), Black/African American ($n=11$, 3.6%), or did not report their racial/ethnic background ($n=1$, 0.3%). The mean age among the jurors was 47.16 years ($SD=12.88$).

Respondents

The respondents (all male) ranged in age from 28 to 58 years ($M=45.11$, $SD=8.27$), with 11 (42%) identified as White, 9 (35%) as Black, and 6 (23%) as Latino. The number of victims per respondent ranged from two to seven ($M=2.73$, $SD=1.11$). Most ($n=22$, 85%) respondents had been convicted of sexual offenses with female victims, while four (15%) had been convicted of sexual offenses with male victims. With respect to victim age, 12 respondents had both child and adult victims, seven had child victims only, and seven had adult victims only. In each trial, a psychologist testifying for the state had scored each respondent on the Static-99, MnSOST-R, and PCL-R. Respondents' scores ranged from 2 to 8 on the Static-99 ($M=5.08$, $SD=1.26$), 6 to 21 on the MnSOST-R ($M=10.65$, $SD=4.00$), and 12 to 35 on the PCL-R ($M=24.11$, $SD=5.83$).

Expert and Character Witnesses

The state called a psychiatrist to testify in each of the 26 trials. The state called one doctoral level psychologist as an expert in 24 trials, two psychologists in one trial, and no psychologists in the other trial. The respondent called an expert to testify in

seven of the 26 hearings. There were no cases in which respondent experts reported risk measure scores.

Juror Ratings of the Influence of Offender, Offense, and Victim Characteristics

Participants completed a “juror questionnaire” asking them to rate the extent to which each of the 18 case characteristics listed in Table 1 influenced their “ultimate decision about the respondent.” In Texas SVP hearings, the ultimate issue is whether the respondent has a “behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence” (Texas Health & Safety Code § 841.023). Texas defines a behavioral abnormality as a “... congenital or acquired condition that, by affecting a person’s emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person” (Texas Health & Safety Code § 841.002, 2000).

Jurors rated the perceived influence of the 18 characteristics on a scale from 1 (not at all influential) to 6 (very influential). Because we used the same questionnaire for each trial, we wrote the 18 rating items so that they would apply to each case. For example, we asked jurors to rate the importance of the “age of the respondent’s victim(s),” as opposed to asking about the influence of victims being children, which would not apply in cases with respondents who offended against adults. We developed the 18 items to address factors that we believed were likely to be discussed in these hearings, based on conversations with the presiding judge.

Juror Ratings of the Likelihood of Future Offending

We asked jurors to provide a rating of the likelihood that the offender would commit a sexual offense if released into the community: “If this respondent were released into the community without any supervision, how likely is it that he would commit another sexual offense in the first year after he was released?” (1 = not at all likely, 6 = very likely).² We used ratings on this item as an outcome measure, to help gauge the extent to which jurors’ preferences for certain types of evidence were associated with their opinions about the respondents. We were not able to use trial outcomes as a dependent measure because all but one trial ended in commitment (one trial ended with a hung jury).

Procedure

A research team member recruited participants after the jurors deliberated and rendered their verdicts. At the end of each trial, the judge introduced the researcher to the jurors and briefly explained the nature and purpose of the voluntary study. The judge then excused the jury to the jury room, where the researcher explained the purpose of the study, provided information needed in order to allow potential participants to provide informed consent, and distributed a consent form and the study questionnaire to interested participants.

² The judge did not allow us to include any survey questions asking about the ultimate legal issue, such as questions asking jurors to rate the extent to which they believed the respondent had a behavioral abnormality or should be committed.

Results

Perceived Influence Ratings

Table 1 reports the mean perceived influence rating for each of the 18 case characteristics across all 26 trials. The sample size for most ratings ranged from 299 to 302, but there were only 80 ratings of the perceived influence of respondent experts, because only seven trials included testimony from a respondent expert. Overall, jurors rated most of the case characteristics as important, with mean ratings on the six-point rating scale of 5.0 or greater for 11 of the 18 items.

Jurors gave more moderate ratings to testimony concerning risk measure scores ($M=4.98$, $SD=1.07$) and psychopathy ($M=4.29$, $SD=1.45$). These two items received only the 12th and 15th highest ratings (in terms of absolute value). Consistent with prior research (e.g., Scott et al., 2010), jurors rated the respondent's past sex crimes ($M=5.69$, $SD=0.71$) and sexual behavior during the crime(s) ($M=5.45$, $SD=0.89$) as among the most influential characteristics. Two other characteristics with especially high ratings were related to the respondent's character: "The respondent has been given multiple chances to change, but hasn't," ($M=5.56$, $SD=0.85$) and lack of remorse ($M=5.43$, $SD=1.16$).

We used *t*-tests to compare jurors' ratings of the relative importance of risk measure scores and testimony about psychopathy to their ratings of more clinical aspects of expert testimony (i.e., behavioral abnormality) and factors statistically unrelated to recidivism risk (i.e., respondent does not feel bad about offenses, failure to take advantage of treatment opportunities). Jurors gave significantly higher ($p < 0.001$) influence ratings to testimony about the offender having a behavioral abnormality than to testimony about risk measure scores ($d=0.38$) or psychopathy ($d=0.89$). They also assigned significantly higher ($p < 0.01$) influence ratings to offenders not feeling bad about offenses (i.e., lack of remorse) and failure to take advantage of treatment opportunities compared with risk measure scores ($d=0.38$ and 0.22) and testimony about psychopathy ($d=0.87$ and 0.59).

Hierarchical Nature of Jury Data and Variability across Trials

Although we found that jurors gave relatively low ratings to the importance of risk measure scores and testimony about psychopathy across trials, this pattern may not apply to all SVP trials. Data from this study are nested, with jurors nested within trials. Each trial focused on a different respondent, with a different offense history, evaluated by different experts, who assigned different risk measure scores. What was especially important to jurors in one trial may have been of much less importance to jurors in other trials. For example, jurors may have rated risk measure scores as highly important when the scores were high (e.g., because the high scores confirmed preconceived notions that sex offenders are dangerous), but as less important when the scores were low. We used multilevel linear modeling (MLM) to measure the extent to which there was variability in jurors' ratings of the perceived influence of risk measure scores and testimony about psychopathy across trials, and whether jurors considered risk measure scores or psychopathy testimony to be more influential in some types of cases than others. We conducted MLM analyses separately for the risk measure and psychopathy importance ratings. We began by specifying a separate unconditional random-effects

model for the rating to examine whether there was a significant amount of variation in jurors' ratings across trials. The proportion of total variance attributable to trials is an intraclass correlation coefficient (ICC), which can be tested for statistical significance.

Intraclass correlation coefficient values were moderate to large in size and statistically significant for both ratings. For example, 19% of the variance (ICC = 0.19, $p < 0.001$) in ratings of the importance of test scores was attributable to differences among jury groups. In other words, jurors from the same trial tended to rate the importance of risk measure scores similarly to one another, but differently from jurors from other trials. The ICC value was even larger for ratings of the importance of testimony about psychopathy (ICC = 0.26, $p < 0.001$).

Explaining Variability in Ratings of Risk Scores and Psychopathy Testimony across Hearings

The ICC values indicate that risk measure scores and psychopathy testimony were seen as more influential in some hearings than others. We used two-level MLM models in an attempt to better understand when each type of characteristic was more likely to be rated as influential by jurors. We used juror sex (0 = male, 1 = female) as a juror level characteristic and victim age (0 = no child victims, 1 = at least one child victim), the presence of a respondent expert (0 = no respondent expert, 1 = one respondent expert), and risk measure scores as case level characteristics. We used Static-99 and MnSOST-R scores in the model examining ratings of the importance of risk measure scores, and PCL-R scores in the model examining ratings of the importance of testimony about psychopathy.

Table 2. Multilevel linear modeling results for analyses examining the relation between case characteristics and jurors' ratings of the importance of risk measure scores and testimony about psychopathy

Variables	Slope coefficient	Standard Error	<i>t</i> ratio	<i>p</i>
Influence of risk measure scores (Study 1)				
Static-99 score	-0.12	0.10	-1.24	.23
MnSOST-R score	-0.04	0.03	-1.12	.28
Child victim (0 = no, 1 = yes)	0.10	0.23	0.41	.69
Respondent expert testified	0.01	0.25	0.02	.98
Juror sex (0 = male, 1 = female)	0.15	0.12	1.12	.28
Influence of testimony about psychopathy (Study 1)				
PCL-R score	0.08**	0.02	3.97	0.001
Child victim	-0.02	0.33	-0.06	0.96
Respondent expert testified	-0.50	0.27	-1.84	0.08
Juror sex (0 = male, 1 = female)	0.35*	0.15	2.37	0.02
Influence of Static-99 (Study 2)				
Static-99 score	0.01	0.04	0.13	0.90
Influence of MnSOST-R (Study 2)				
MnSOST-R score	0.03	0.02	1.38	0.20
Influence of PCL-R (Study 2)				
PCL-R score	0.01	0.01	1.71	0.12

Note. *** $p \leq 0.001$. ** $p \leq 0.01$. * $p \leq 0.05$.

MnSOST-R, Minnesota Sex Offender Screening Tool-Revised; PCL-R, Hare's Psychopathy Checklist-Revised.

Table 3. Multi-level linear modeling results for model examining the relation between jurors' ratings of the importance of case characteristics and likelihood of reoffending

Case characteristic	Slope coefficient	Standard error	<i>t</i> ratio	<i>p</i>
Respondent's past sex crimes	-0.02	0.02	-1.08	0.28
Failure to change	0.04**	0.02	2.71	0.007
Sexual behavior during (crimes)	< 0.01	0.02	0.07	0.94
Lack of remorse	0.01	0.01	0.91	0.37
Behavioral abnormality	0.02	0.02	0.89	0.38
State PhD expert	0.01	0.02	0.59	0.56
Number of victims	-0.02	0.01	1.76	0.08
Failure to take advantage of treatment	0.02	0.01	1.20	0.23
State MD expert	-0.02	0.02	1.24	0.22
Amount of sexual violence	0.02	0.01	1.61	0.11
Crimes suggest is "predator"	0.05***	0.01	3.96	< 0.001
Risk measure scores	0.04**	0.02	2.77	0.006
Age of victims	0.01	0.01	0.96	0.34
Behavior in prison	0.01	0.01	1.00	0.32
Testimony about psychopathy	< 0.01	0.01	0.25	0.80
Victim gender	< 0.01	0.01	0.35	0.73
Behavior in courtroom	< 0.01	0.01	0.50	0.62

Note. Dependent variable (likelihood of recidivism) log-transformed to reduce skew.

*** $p \leq 0.001$ ** $p \leq 0.01$ * $p \leq 0.05$.

Table 2 summarizes the results of the two-level models. Overall, there were few statistically significant effects. No case characteristic (that we were able to measure) helped to explain variability in ratings of the importance of risk measure scores, including Static-99 and MnSOST-R scores. Thus, there was no evidence that jurors viewed risk measure scores as more important when the scores indicated high risk than when they indicated lower risk. Moreover, the non-significant effects for the Static-99 and MnSOST-R scores were negative in direction (-0.12 and -0.04, respectively), indicating that the trend (non-significant) was for jurors' ratings of the influence of risk measure scores to decrease slightly as risk measure scores increased.

There was, however, evidence that jurors' ratings of the importance of testimony about psychopathy increased as PCL-R scores increased (slope coefficient = 0.08, $p = 0.001$). The only other significant finding was that female jurors viewed testimony about psychopathy as more important than male jurors (slope coefficient = 0.35, $p = 0.02$).

Perceived Likelihood of Reoffending

We used a single two-level MLM model to examine the relationship between jurors' ratings of the importance of case characteristics and the likelihood that the respondent would reoffend in the next year if released into the community (see Table 3). Data for the perceived likelihood of reoffending rating item were negatively skewed (skew = -1.68, SE = 0.14) due to most jurors rating the respondent as highly likely to reoffend ($M = 5.30$, $SD = 0.98$). We reflected and log-transformed ratings on this item to reduce skewness (skew = 0.78, SE = 0.14) and used this transformed variable in our

³ Because the data were reflected prior to being log-transformed and analyzed, negative coefficients indicate a positive effect (see Tabachnick & Fidell, 2007). Although all of the slope coefficients in this model were actually negative, we present them as positive to facilitate the appropriate interpretation of the MLM effects.

analyses.³ The ICC for the likelihood of reoffending item was 0.11 ($p < 0.001$), indicating that jurors from the same trial tended to perceive the offender similarly in terms of risk, but that perceived risk varied from trial to trial. Although the risk measure scores presented in court do not explain this variability (see Boccaccini *et al.*, 2013), it may be that jurors' ratings of the importance of risk measure scores can.

Results from the two-level MLM model indicated that jurors' ratings of the perceived likelihood of reoffending increased as their ratings of the importance of risk measure scores (slope coefficient = 0.04, $p = 0.002$) increased (see Table 3). In other words, jurors who rated risk measure scores as important also tended to rate respondents as especially likely to reoffend, even after accounting for the effects of other influence item ratings.

The case characteristics in Table 3 are listed in order from those with the highest mean rating to those with the lowest mean rating. The findings in Table 3 show that many of the factors with the highest ratings across cases (e.g., past sex crimes, sexual behavior during the crime, lack of remorse) were not significantly associated with perceptions of the likelihood of reoffending. Although one possible explanation for the lack of relationship between these highly rated characteristics is range restriction, there was as much, if not more, variability in the ratings of these traits across trials as in the ratings of risk measure scores. For example, the ICC values, from unconditional random-effects models, were 0.15 ($p = 0.02$) from the past sex crimes item and 0.12 ($p = 0.03$) for the sexual behavior during the crime item.

There were two statistically significant predictors other than ratings of the influence of risk measure scores: respondent has been given opportunities to change, but hasn't (slope coefficient = 0.04, $p < 0.007$) and crimes suggest that the respondent is a predator (slope coefficient = 0.04, $p < 0.001$). Perhaps most importantly, jurors' ratings of several potentially misleading predictors of risk (e.g., lack of remorse, failure to take advantage of treatment, and amount of violence involved in the sexual offenses) were not predictive of their ratings of the likelihood of recidivism in this model.

Discussion

The primary goal of Study 1 was to compare actual SVP jurors' ratings about the importance of risk measure scores with their ratings of other factors in these cases. Across the SVP trials, jurors rated most factors as being influential, but they tended to rate factors other than risk measure scores as having the most influence on their decisions, including several factors that are only minimally related to recidivism (e.g., lack of remorse, treatment motivation). Consistent with previous mock jury research, jurors rated the respondent's offense history as most influencing their ultimate decision (Krauss *et al.*, 2012; Lieberman *et al.*, 2007; Scott *et al.*, 2010), and rated more clinically oriented testimony (e.g., about the respondent having a behavioral abnormality) as more influential than risk measure scores (Krauss *et al.*, 2012). These findings help to clarify seemingly contrasting findings from existing research (Boccaccini *et al.*, 2013; Boccaccini *et al.*, 2014a) by showing that SVP jurors report viewing risk measure results as important, but not as important as many other offender, offense, and testimony characteristics.

Jurors did report that risk measure scores and testimony about psychopathy were more important in some trials than others. Although mock jury research findings suggested that jurors would view higher risk measure scores as more important than lower risk measure scores (Varela *et al.*, 2014), there was mixed support for this

pattern in the Study 1 data. Jurors' ratings of the importance of testimony about psychopathy did increase as PCL-R scores increased, but their ratings of the importance of risk measure scores did not increase as Static-99 or MnSOST-R scores increased. One possible explanation for the difference between our findings for the two actuarial measures and those from mock jury research is that the mock jury study compared perceptions of low and high risk measure scores, while the Static-99 and MnSOST-R scores presented in the Texas SVP trials almost always fell in the moderate- to high-risk ranges. It may be that low risk measure scores do not resonate with jurors' preconceived notions that all sex offenders are dangerous (see Varela et al., 2014), but that both moderate and high risk measure scores do.

For the PCL-R, there was a larger range in scores (12–35), which allowed for an examination of jurors' perceptions of testimony about psychopathy when there were high, moderate, or low scores. This range of scores corresponds more closely with the high- and low-risk conditions in experimental research (Varela et al., 2014). Together, these findings from mock jury and field research suggest that attorneys and experts should expect jurors to be skeptical of risk measure scores indicating low risk, but not necessarily those indicating moderate levels of risk. We also found that female jurors rated testimony about psychopathy as more influential than male jurors, which is consistent with mock jury research (Guy & Edens, 2003; Krauss et al., 2012).

We also found that risk measure scores were more important to some jurors than to others, and that jurors who rated risk measure scores as highly influential also tended to view the respondent as especially likely to reoffend. In contrast, many of the case characteristics that jurors rated as more important than risk measure scores were not predictive of their perceptions of recidivism risk (see Table 3). Because all 26 of the respondents fell into either the moderate- or high-risk range on at least one risk measure, this pattern of findings could indicate that these jurors were appropriately attending to risk measure testimony (and concluding relatively high risk). Mock jury researchers have also found that some jurors are more influenced by risk measure testimony than others. For example, mock jurors who are encouraged to process information analytically are more likely to be influenced by risk testimony than those encouraged to think experientially (Lieberman & Krauss, 2009; Lieberman et al., 2007). Although our study design does not allow for an examination of juror processing style, our findings add to the small but growing body of research suggesting that some jurors may be more likely to attend to risk measure testimony than others, while at the same time highlighting the need for additional research to better identify these jurors.

One limitation of Study 1 was that we did not ask jurors to make separate ratings of the influence of Static-99, MnSOST-R, and PCL-R results. Instead, we asked them to rate the importance of "test scores" and "testimony about the respondent being a psychopath" because we were not sure that jurors would know the specific measures by name. Thus, it could be that jurors were strongly influenced by one measure, but not another. We had also assumed that experts and attorneys would use the terms "behavioral abnormality" and "diagnosis" synonymously. After collecting data for Study 1, it was clear that attorneys and the court considered "behavioral abnormality" to be a much broader concept, with diagnoses being only one factor that could contribute to an offender having a behavioral abnormality. For example, attorneys argued that information about recidivism risk, volitional impairment, and other factors (e.g., treatment failure) related to the concept of behavioral abnormality. Finally, it was also apparent by the end of Study 1 that our study questionnaire

was missing rating items for other information that was emphasized in many of the trials. For example, jurors almost always heard testimony from the respondent, who has no Fifth Amendment right to protect him from testifying in a civil proceeding.

Thus, we decided to revise our study questionnaire and include questions relating to each risk measure, testimony from the respondent, and clinical diagnoses (as opposed to “behavioral abnormality”). The court asked that we limit our questionnaire to one typed page and that we remove any questions even broadly related to the ultimate legal issue (e.g., respondent’s risk for reoffending). Although smaller in scope than Study 1, we conducted Study 2 to provide information that was missing from Study 1.

STUDY 2

In Study 2, we asked jurors from 14 SVP hearings to rate the importance of 11 offender and offense characteristics. Specifically, we included separate ratings for each risk measure score, the respondent’s testimony, and the respondent’s diagnosis. We also retained six items (with some minor wording changes) from Study 1 as points of comparison for the new rating items (see Table 4).

Method

Participants were jurors from 14 SVP civil commitment trials held in Montgomery County, Texas. Of the 168 jurors who deliberated to verdicts, 95.8% ($n=161$) participated in the study. Of these 161 participants, 87 (56.9%) were female, 66 (43.1%) were male, and eight did not provide information about their sex. Most of the jurors identified themselves as White/Caucasian ($n=138$, 85.7%), while fewer identified themselves as Hispanic ($n=7$, 4.3%), Black/African American ($n=5$, 3.1%), or did not report their racial/ethnic background ($n=11$, 6.8%). The mean age among jurors was 45.04 years ($SD=12.79$).

All 14 of the trials ended in commitment, and all of the respondents were male. An expert testifying for the state, usually a psychologist, had scored offenders on the

Table 4. Study 2 jurors’ ratings of the influence that types of evidence had on their decisions about respondents

	<i>M</i>	<i>SD</i>	<i>N</i>
Respondent has been convicted of multiple sex crimes	5.75	0.61	161
Extent to which respondent does not seem to feel bad about his offenses	5.43	0.89	161
Respondent’s sexual behavior during the crime(s)	5.40	1.16	161
Testimony about the respondent’s diagnosis	5.39	0.78	161
State MD expert	5.31	0.84	159
State PhD expert	5.24	0.81	159
Respondent’s testimony	5.11	1.29	144
MnSOST-R score	4.34	1.38	147
Static-99 score	4.32	1.09	159
PCL-R score	4.27	1.18	135
Respondent PhD expert	4.04	1.54	45

MnSOST-R, Minnesota Sex Offender Screening Tool-Revised; PCL-R, Hare’s Psychopathy Checklist-Revised.

Static-99 (14 trials), MnSOST-R (13 trials), and PCL-R (12 trials). Respondents' scores ranged from 1 to 7 on the Static-99 ($M=4.36$, $SD=1.65$), 3 to 15 on the MnSOST-R ($M=7.92$, $SD=3.48$), and 10 to 36 on the PCL-R ($M=20.04$, $SD=8.18$). The state called a doctoral-level psychologist and a doctoral-level psychiatrist as experts in all 14 trials. The respondent called an expert (PhD psychologist) to testify in four of the 14 trials.

Each juror rated the extent to which the 11 characteristics listed in Table 4 influenced their "ultimate decision about the respondent" using the same rating scale from Study 1 (1 = not at all influential, 6 = very influential). At the request of the court, we did not include any items that could be construed as being directly relevant to the jurors' ultimate decisions, such as questions about dangerousness or likelihood of reoffending.

Results and Discussion

Overall, jurors' introspective ratings from Study 2 (Table 4) were similar to those from Study 1 (Table 1). For example, jurors' ratings for the respondent's lack of remorse were nearly identical in both studies ($M=5.43$ in each study). The finding of similar mean ratings for items that were included in both studies suggests that it is appropriate to make comparisons between Study 1 and Study 2 ratings.

There was no evidence that jurors viewed the results from one risk measure as more influential than others. Mean perceived influence ratings were similar for the Static-99 ($M=4.32$, $SD=1.09$), MnSOST-R ($M=4.43$, $SD=1.38$), and PCL-R ($M=4.27$, $SD=1.18$). Jurors' mean rating of the influence of testimony about diagnoses ($M=5.39$, $SD=0.78$) was nearly identical to Study 1 jurors' mean rating of the influence of testimony about behavioral abnormality ($M=5.38$, $SD=0.87$). Jurors rated testimony about the respondent's diagnosis as much more influential than testimony about any risk measure score [$t(146-158)12.01-12.55$, $p < 0.001$, $d = 1.10-1.14$], consistent with prior research indicating that jurors are more strongly influenced by clinically based than by actuarially based testimony.

We used MLM models to examine whether jurors' ratings of the importance of Static-99, MnSOST-R, and PCL-R scores varied across trials. ICC values were less than 0.01 ($p > 0.50$) for each of the three rating items. Thus, unlike Study 1, there was no evidence that jurors from some trials viewed risk measure results as more influential than jurors from others. Because there was no significant variability in the perceived influence of risk measure scores, it makes sense that jurors' ratings on these items were not related to the risk measure scores that experts presented in court (see Table 2).

General Discussion

Attorneys, expert witnesses, and consultants look to jury research to help them understand how they can influence and persuade jurors. For many types of cases, they can look to mock jury research for this information, but no mock jury study can replicate what happens in an actual trial. There are few types of cases for which attorneys can consider both mock jury studies, which allow for controlled experimentation, and more ecologically valid field studies to better understand juror decision-making. Our goal was to provide the first available field data describing actual SVP

jurors' perceptions of factors that influenced their commitment decisions. Our findings complement the existing mock jury studies in this area (e.g., Krauss *et al.*, 2012; Scott *et al.*, 2010; Varela *et al.*, 2014) by providing valuable information from more than 450 citizens who served as SVP jurors and rendered legal decisions based on the types of information that are the focus of this study.

As expected based on findings from mock jury research, actual SVP jurors reported that information about the respondents' sexual offenses had the greatest influence on their commitment decisions (Krauss *et al.*, 2012; Krauss & Scurich, 2014; Scott *et al.*, 2010). Texas jurors' emphasis on prior sexual offending clearly helps to explain why nearly all Texas SVP trials have ended in commitment; all offenders considered for SVP commitment have a history of sexual offending, and all 40 SVP respondents in this study had to have been convicted of two or more qualifying sexual offenses to be considered for SVP commitment. But, aside from knowing that jurors rated the respondents' sexual offense history as important, jurors' views on offense characteristics did not help to explain why they viewed some respondents as more likely to reoffend than others (see Table 3). In other words, jurors who reported being heavily influenced by offense characteristics did not necessarily see offenders as being at a high risk for reoffending.

In contrast, most jurors rated testimony about risk measure scores and psychopathy as having a moderate amount of influence on their commitment decisions, at least compared with other offense and offender characteristics. Moreover, they viewed instrument scores as less influential than more "clinical" aspects of expert testimony, such as diagnoses and testimony about the offender having a "behavioral abnormality." Nevertheless, jurors' ratings of the influence of testimony about risk measure scores were predictive of their perceptions of respondents' risk for reoffending. In other words, jurors who reported being influenced by risk measure results also tended to view the respondent as being at a high risk for reoffending. What is not clear is whether this finding indicates that a subset of jurors appropriately responded to testimony about risk measure results, or whether a subset of more punitive jurors simply favored risk instrument results because they tended to confirm their already formed opinion that the respondent was dangerous.

Limitations

Although surveying actual SVP jurors at the end of SVP trials allows us to better understand what these decision-makers believed influenced their trial decisions, jurors may not possess a great deal of insight into their actual decision-making processes (Krauss *et al.*, 2012). It is only through controlled experiments that we can identify factors that truly influence decision-making. But controlled studies cannot replicate the dynamic, unscripted, and unpredictable nature of actual trials, and participants in experiments always know that they are not rendering actual verdicts. The fact that many of our findings are consistent with mock research supports the validity of our field study findings as well as those from mock jury research.

A related limitation is that jurors may have been motivated to portray themselves as having attended to all of the evidence presented in court, irrespective of whether they understood or paid attention to it. This may be one of the reasons why they assigned high importance ratings to many of the case characteristics on our surveys (see Table 1 and 4). Although it seems likely that these demand characteristics had some influence

on jurors' ratings, the fact that they did not assign identical ratings to each factor and that ratings varied significantly across cases suggests that demand characteristics cannot completely explain our findings.

From a research perspective, an important outcome variable for this study would have been commitment status. Ideally, we would have been able to examine whether jurors in non-commitment cases reported being influenced by different factors than jurors in commitment cases. Although we were able to identify factors that predicted jurors' perceptions of offender risk, it is not clear whether these same factors would predict jurors' verdicts in non-commitment cases. Another limitation is that it was difficult to construct a brief questionnaire that was applicable to all cases. We could not ask detailed questions about the influence of specific components of the respondents' sex offenses, treatment history, or other characteristics because they varied from case to case. We also did not have access to trial transcripts, which could have helped us to better understand which factors were discussed in which cases.

Conclusions and Implications for Risk Communication

Despite these limitations, our findings provide attorneys, experts, and researchers with information on the importance that more than 460 consumers of expert testimony placed on risk measure results. The overall pattern of findings suggests that risk measures matter to jurors, but that other factors matter more. Because most experts base their conclusions about offender risk on more than risk measure scores alone – indeed, the legal question addresses more than risk alone – this finding is not necessarily problematic. For example, it is not problematic that jurors are persuaded by the fact that the respondent had been convicted of multiple sexual crimes, as prior offending is a predictor of future offending and is included as an item on many risk measures. Indeed, risk communication research suggests that experts are more effective when they provide information about both risk measure scores and the risk factors that contribute to those scores. For example, experts who “unpack” risk estimates by listing the risk factors used to derive the estimate are more persuasive than those who do not, and persuasiveness increases as the number of risk factors increases (Scurich, Monahan, & John, 2012). The more concerning finding is that jurors view factors with smaller or more inconsistent relationships with recidivism – such as reported lack of remorse or apparent treatment motivation – as more important than risk measure scores.

Because much of the testimony in SVP trials comes from mental health experts, these findings suggest that experts need to better educate jurors regarding factors that do and do not predict future offending. This likely entails better communication of the value of risk measure results and empirically supported risk factors, but also of the limitations of intuitive, ostensibly relevant factors that research fails to support. Of course, for experts to adequately educate the jury, they must have adequate expertise themselves. Clearly some experts in SVP trials testify that these “potentially misleading risk factors” (Hanson & Morton-Bourgon, 2005, p. 1158) are indeed related to recidivism risk (Wevodau, 2010), raising the question of whether the experts are misunderstanding the available literature or deliberately misrepresenting it. Effective risk communication by testifying experts will require a strong understanding of the relevant risk factors and risk measures, as well as an understanding of the ways in which jurors are inclined to err without clear education.

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