

Understanding the Value of Group Decision Making in Forensic Evaluations

Using Cognitive and Social Psychological Research

Alissa Sherry, Ph.D.

Michelle Munevar, M.S.

Legal Consensus, PLLC

Abstract

The gap between experimental social science and applied psychology is a great loss to the clinical practitioner. Decades of social science research have the potential to fundamentally change service provision in new and innovative ways. The current paper explores how research on individual and group bias can be used to make forensic evaluations, particularly child custody evaluations, more robust against bias. Drawing from the work of Sunstein and Hastie (2015) and their application of these tenets to business decision-making, group approaches to forensic evaluations, using scientifically supported procedures, has the potential to increase complex decision making, decrease heuristic and other destructive biases, and provide the court with more reliable predictions in an otherwise unwieldy area of forensic practice.

Introduction

According to the National Science Foundation's (NSF) Directorate for Social, Behavioral, and Economic Services, only 9% of the 1.5 million U.S. companies surveyed engaged in developing new innovations in either goods or services (NSF, 2010). The healthcare industry (not including pharmaceuticals), managed to hover around the same percentages with 9% of companies generating new or significantly improved services and only 3% engaging in any new or significantly improved processes for delivering those services. Recent shifts in how we think about innovation suggest that social science has a lot to offer. The U.S. President's National Science and Technology Council (NSTC; also known as the "Nudge Committee") has made incredible strides in streamlining access to social programs and improving government efficiency by simply applying long established social science research to solving policy problems (Social and Behavioral Sciences Team Annual Report, 2015).¹ The NSTC's focus on the interaction between individual human behavior and the implementation of programs and policy is setting a new gold standard for multi-disciplinary service provision innovation.

The creation and accomplishments of the NSTC inspired us to think more broadly about what applied psychology could learn from other areas of social science in an effort to solve some of the problems that still plague service provision, specifically in the area of forensic evaluations. More specifically, peer-reviewed, replicated, and admissible social science research has existed for decades that might be able to offer new, innovative ideas for how forensic evaluations might be strengthened scientifically to reduce bias and judgment error. We present some of these below², using the context of Child Custody and Parenting Plan Evaluations (CCPPE) in the family law context as an example.

The Fallibility of Clinical Judgment

¹ For example, the NSTC was able to significantly increase the number of people obtaining health insurance and double the rate at which workers enrolled in workplace savings plans simply by changing the language or delivery individuals were informed of their choices (Social and Behavioral Sciences Team Annual Report, 2015).

² The authors would like to thank Cass Sunstein and Reid Hastie for their book entitled, *Wiser: Getting Beyond Groupthink to Make Groups Smarter*, which provided much of the inspiration for the application of these ideas to this particular setting.

Clinical judgment is far from perfect. In therapeutic settings, judgment errors have been associated with ineffective treatment (Wolfgang, et al., 2006) and premature dropout rates (Epperson, Bushway, & Warman, 1983). Such judgment errors when made in forensic settings have the potential for much greater social justice and legal consequences.

Judgment accuracy increases when actuarial approaches³ (i.e., statistical formulas, base rates, mechanical assessment) supersede clinical approaches (i.e., interview data, spending time with an examinee) (Ægisdóttir, et al., 2006; Nisbett, Krantz, Jepson, & Kunda, 1983; Dawes, et al., 1989; Harris & Rice, 2007; Meehl, 1954; Garb, 1998; 2005), a finding that persists regardless of one's clinical experience (Dawes, 1994; Einhorn & Hogarth, 1981; Faust, 1984, 2006; Garb, 1998, 2005; Lichtenberg, 2009; Pitz & Sachs, 1984; Ruscio, 2006; Spengler, et al., 2009; Sternberg, Roediger, & Halpern, 2007; Wiggins, 1973). In fact, Wiggins (1973) noted "there is little empirical evidence that justifies the granting of "expert" status to the clinician on the basis of his [or her] training, experience, or information processing ability" (p.131), a statement that would make most forensic psychologists cringe. However, research has demonstrated an inverse relationship between clinical/educational experience and judgment accuracy (Faust, 1986; 1994; Faust & Ziskin, 1988; Garb, 1989; Ziskin, 1995), likely because as examiners become more experienced, they rely more on confirmatory biased hypothesis testing, cognitive shortcuts, and heuristics based on prior experience, rather than on actuarial data (Strohmer, et al., 1990). Without these scientific anchors, professionals rely instead on informal, intuitive, "gut feeling" processes, perhaps also privileging theoretical orientation and interpersonal sensitivity as a way of understanding clients rather than science-driven explanations (Dawes, et al., 1989). Without firm scientific anchors, human beings are inherently prone to overestimate the accuracy of their predictions (Dunning, Heath, & Suls, 2004; Locke & Covell, 1997; Sakai & Nasserbakht, 1997; Stoltenberg, McNeill, & Crethar, 1994; Watkins, 1995; Fischhoff, Slovic, & Lichtenstein, 1977;

³ A good example of a prototypical actuarial prediction model might be that of a car insurance company. This industry has computed how age, sex, and past driving records work together to try to reliably predict the chances of a particular individual having a car accident.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: What Cognitive Science Can Tell Us about Jury Decision Making

Also available as part of the eCourse

[What Cognitive Science Can Tell Us about Jury Decision Making](#)

First appeared as part of the conference materials for the
2018 STUDIO WEBCAST: What Cognitive Science Can Tell Us about Jury Decision Making
session

"What Cognitive Science Can Tell Us about Jury Decision Making"