The PCL-R and Capital Sentencing: Reply to DeMatteo et al. (2020b)

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The consensus of the authors is that Robert Hare should take the lead in this article. Following the first five authors, the list of authors is alphabetical. The views and opinions expressed here are those of the authors. They do not represent their respective institutions, organizations, regulatory bodies, or this journal's Editorial Board. Individual authors may have expressed the findings and their views in ways that differ from this consensus commentary. Robert Hare and Andreas Mokros receive royalties from the sale of the PCL-R and its derivatives. They and several other authors occasionally receive fees for PCL-R training. Address correspondence concerning this article to Mark E. Olver, Department of Psychology, University of Saskatchewan, 9 Campus Drive, Arts Building Room 154, Saskatoon, SK S7N 5A5, Canada. E-mail: mark.olver@usask.ca.

Abstract

DeMatteo et al. (2020a) published a Statement in this journal declaring that the Psychopathy Checklist-Revised (PCL-R) "*cannot and should not*" be used in U.S. capital-sentencing cases to assess risk for serious institutional violence. Their stated concerns were the PCL-R's "imperfect interrater reliability," its "variability in predictive validity," and its prejudicial effects on the defendant. In a Cautionary Note, we (Olver et al., 2020) raised questions about the Statement's evaluation of the PCL-R's psychometric properties, presented new data, including a meta-meta-analysis, and argued that the evidence did not support the Statement's declaration that the PCL-R "cannot" be used in high stakes contexts. In their reply, titled "Death is Different," DeMatteo et al. (2020b) concurred with several points in our Cautionary Note, disputed others, asserted that we had misunderstood or mischaracterized their Statement, and dismissed our new data and comments as irrelevant to the Statement's purpose. This perspective on our commentary is inimical to balanced academic discourse. In this article, we contend that DeMatteo et al. (2020b) underestimated the reliability and predictive validity of PCL-R ratings, overestimated the centrality of the PCL-R in sentencing decisions, and underplayed the importance of other factors. Most of their arguments depended on sources other than capital cases, including mock trials, Sexually Violent Predator (SVP) hearings, and studies that included the prediction of general violence. We conclude that the rationale for the bold "cannot and should not" decree is open to debate and in need of research in real-life venues.

Keywords: psychopathy, Psychopathy Checklist-Revised, field reliability, institutional violence, capital sentencing

The PCL-R and Capital Sentencing:

A Commentary on "Death is Different" (DeMatteo et al., 2020b)

DeMatteo et al. (2020a) recently published a "Statement" in this journal expressing their concerns about the use of the Psychopathy Checklist-Revised (PCL-R; Hare, 2003) in U.S. capital-sentencing decisions. Because the instrument cannot predict serious institutional violence "*with a high degree of accuracy and precision*," they concluded that the PCL-R "*cannot and should not be used*…when making high-stakes decisions *about legal issues* such as capital sentencing" (p. 134, emphasis added).

In our reply, subtitled "A Cautionary Note on DeMatteo et al. (2020)," Olver et al. (2020) raised doubts about the data and psychometric evidence offered by DeMatteo et al. (2020a) in support of their attempt to obviate the use of the PCL-R in capital sentencing, and provided new analyses and data to support our arguments. We suggested that the Statement overestimated the PCL-R's centrality in high stake sentencing decisions and underplayed the importance of other factors. These factors include the circumstances surrounding the crimes, the crimes themselves, the "nature" of the defendants, their general demeanor, admissions of guilt, and expressions of emotion and remorse (Sundby, 1998), and the part played by purpose-built risk tools (Guy et al., 2015).[1]

The Relevance of Research Cited in the Cautionary Note

In their response to our Cautionary Note, titled "Death is Different," DeMatteo et al. (2020b) ignored or dismissed several of the issues we had raised. They also claimed that some data we presented were "either (a) based on misunderstanding or mischaracterization of our Statement, or (b) irrelevant to the purpose and content of our Statement." Alternative (a) is inimical to

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[1] DeMatteo et al. (2020a, p. 134) stated, "there is compelling evidence to suggest that characterizing defendants as 'psychopaths' has a substantial prejudicial impact that may make jurors more inclined to support the death penalty for them." We examine the bases for this assumption in a separate article (Hare et al., 2020).

academic discourse. Readers can decide for themselves the merits of the Statement and the

Cautionary Note. Alternative (b) is a matter of interpretation and open to debate.

Among other things, (b) refers to the inclusion of studies in our meta-analyses that dealt with

the reliability of PCL-R ratings, and their use in the assessment of risk for institutional violence

in general, not only for risk assessment confined to "serious" institutional violence among death

row inmates. Some of these studies had used the Psychopathy Checklist: Screening Version

(PCL: SV, Hart et al., 1995), a psychometrically parallel version of the PCL-R (Cooke et al.,

1999; Higgs et al., 2018), while others had not been peer-reviewed. DeMatteo et al. (2020b)

considered such studies "irrelevant, misleading, or distracting for the Statement's focus."

However, the meta-analyses reviewed in their Statement comprised precisely the same sorts of

studies that DeMatteo et al. (2020b) faulted us for using. For example, they stated, "[We]

summarize the empirical literature regarding the ability of PCL–R scores *to predict violence*,

with a particular focus on the PCL–R's ability to predict serious *institutional* violence"

(DeMatteo et al., 2020a, p. 133-134). They bolstered their arguments with "a large meta-analysis

of published and unpublished studies" (p. 137) by Guy et al. (2005). About one-third of the

studies listed by Guy et al. (2005) had not been peer-reviewed; several used the PCL: SV. None

of the studies (to our knowledge) involved death penalty inmates.

DeMatteo et al. (2020b) also dismissed, as irrelevant, the Cautionary Note's inclusion of

relevant data analyzed using variable-centered structural equation modeling (SEM) and person-

oriented latent profile analysis (LPA). We used these sophisticated approaches to gauge the links

among PCL-R factors and violence risk. The data were part of a prospective study of violent

behavior in a large sample of violent offenders. The results of these analyses, in line with similar

published research, illustrated the value of SEM and LPA in delineating the roles of each PCL-R

factor in predicting sexual, sadistic, and other violent behaviors among offenders in a variety of

prison settings (Cale & Burton, 2019; DeLisi, 2019; Krstic et al., 2018, 2019; Thomson, 2019).

Use of the PCL-R in Legal Settings

DeMatteo et al. (2020b) initially construed our Cautionary Note as favoring the PCL-R's use to influence decisions to execute a given offender. However, their supposition was mistaken and antithetical to our standpoint on the proper, professional use of the PCL-R. Since the conception and development of the PCL-R, Hare repeatedly has stressed (and we agree) that it is a measure of the traditional *psychopathy construct*, but a measure (and construct) with important clinical, forensic, and other applications, when used following the highest professional standards. In this respect, it fulfills its purpose well. DeMatteo et al. (2020b) stated several times that the PCL-R is, or is regarded as, the "gold standard" for assessing psychopathy, a common figure of speech for the PCL-R, and one that reflects widespread views of its merits for research and applied purposes. Neal et al. (2019, p. 150) listed the PCL-R as one of six forensic instruments considered by legal experts as being both "Generally Acceptable" and as having "Generally Favorable Reviews." As such, it plays an integral part in criminal justice milieus for which the "degree" of psychopathy (as a dimensional construct) is of importance in forming judgments about an individual's nature, character, and behavioral patterns. That is, the PCL-R provides a valuable source of information—beyond risk assessment—with direct relevance for decision-making in high stakes settings, including capital sentencing.

Field Reliability of PCL-R Ratings

In discussing PCL-R scores, DeMatteo et al. (2020a, p. 142) claimed that their field reliability is not high enough for judicial purposes. Nonetheless, they acknowledged that,

> The relatively low interrater reliability observed in field settings can be attributed in part to the limited quality and quantity of information on which evaluators relied, as well as to the limited training, supervision, and experience of those evaluators; although there is further evidence that it may also be due to the *adverse impact of adversarial proceedings on the judgment of evaluators* (p. 142, emphasis added).

In their reply to our Cautionary Note, DeMatteo et al. (2020b) mirrored our words that the field

reliability of PCL-R scores can be very good or very poor, while only obliquely referring to

examples of the former. DeMatteo et al. (2020b, p. 4) also claimed that we agreed with their

view that the field interrater reliability of PCL-R scores "is substantially lower than that reported

in the PCL-R manual." We do not see this as an area of agreement. DeMatteo et al. (2020b)

stated that the average interrater reliability of PCL-R ratings in Canadian studies was 0.78.

However, we were clear that an *outlier* study (Edens et al., 2015; two of the authors also are

authors of the Statement) accounted for 90% of effect size variability. Removal of this outlier

yielded an effect size of 0.87, identical with the value for the pooled sample of male offenders

and forensic patients described in the PCL-R Manual (Hare, 2003, p. 65).

DeMatteo et al. (2020b) suggested that the only issue of relevance to the Statement is the

field reliability of PCL-R scores in American capital cases. As the Statement put it, "[I]nterrater

reliability is a property of scores obtained for a particular sample of people and in a particular

context; it is not a stable property of the test itself that necessarily generalizes across samples or

contexts" (DeMatteo et al., 2020a, p. 135). Quite so, which raises a thorny problem for DeMatteo

and colleagues: To wit, they based their evaluation of the field reliability of PCL-R scores on

data from adversarial SVP hearings, not from capital cases, a breach of the guidance they offered

in their Statement.

PCL-R Training

DeMatteo et al. (2020b) said that our Cautionary Note made an "odd" recommendation

about "authorized" PCL-R/PCL: SV trainers. They incorrectly implied that Hare, his test

publisher, and his colleagues controlled such training. Many institutions, facilities, and

individuals (including at least one of the Concerned Experts) have long conducted their own

onsite or online workshops. Indeed, these "other" workshops far outnumber those conducted by

Hare and his colleagues. Detailed discussions of the PCL-R's professional use and examples of various training methods are available elsewhere (e.g., Hare et al., 2013; Gacono, 2016).

Unfortunately, not all practitioners are equal in the skills needed to conduct complex psychological evaluations (Blais et al., 2017; Hare, 2016, p. 30). Others fail to follow proper professional standards for administration and interpretation of psychological instruments. The fault with unprofessional use of the PCL-R—including imprudently labeling an individual as a psychopath—lies with the evaluator, not with the tool (Gacono, 2016; Hare, 1998*;* Lyon et al., 2016; Olver & Stockdale, 2010).

Conclusions

In this article, we addressed issues raised by DeMatteo et al. (2020b) and presented evidence that the bulk of the support for their arguments comes from sources other than capital cases. That is, they based much of their Statement on data that, by their own standards, were irrelevant to its purpose (DeMatteo et al., 2020b). We conclude that the rationale for their bold "cannot and should not" decree is open to debate and in need of research in real-life venues.

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