



# Determining criminal responsibility: How relevant are insight and personal attitudes to mock jurors?

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## ABSTRACT

High levels of insight are interpreted as indications of a treatment compliance and good outcome by clinical professionals. However, it is unclear whether a defendant's insight plays a role in the decision-making of jurors when determining criminal responsibility. It may be the case that personal biases and attitudes toward the mentally ill and the insanity defense are more relevant in such decisions. This study examines the influence of two core dimensions of insight and personal attitudes on juror decision-making. Participants read trial scenarios describing a defendant who is accused of a violent crime and is diagnosed with schizophrenia. Assigning a verdict of not criminally responsible to the defendant was not influenced by insight, but instead, by supportive attitudes of the insanity defense and higher attributions of blame to external factors and to psychological factors. These findings highlight the need for continued investigation in the area of extra-legal factors that guide legal decision-making when defendants have a mental disorder.

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## 1. Introduction

A great deal of research has examined the prevalence of insight among patients with schizophrenia, and some purport that the commonality of this feature implies that it is a symptom of schizophrenia and other psychotic disorders (Buckley et al., 2004). Yet, if one has poor insight, or a lack of understanding that one's delusional beliefs are false and that the voices one hears are not real, then is that patient accountable for his/her violent actions during a psychotic episode? This has been raised in the literature (Antonius, 2005), and questions whether poor insight is relevant in decisions that are made about mentally disordered offenders. However, examination of how insight might be relevant in decisions regarding mentally disordered offenders (MDOs) has yet to be examined. On the other hand, the views and opinions of the decision-maker may play a role when making such decisions, specifically, individual attitudes about mental illness and decisions about criminal responsibility. The current study seeks to investigate whether perception of insight and implicit juror biases may serve to influence mock juror verdict decisions of cases where the issue of criminal responsibility is raised.

The term, insight, has been frequently used in the psychosis literature, but some have argued that insight cannot be quantified (Beck-Sander, 1998) and others have emphasized that insight can be measured but as a multi-faceted construct (Amador et al., 1993; Lincoln, Lüllman, & Rief, 2007). Broadly defined as a lack of awareness into oneself, it is argued that lack of insight is a prototypical symptom of psychosis, usually present

at the core of definitions of schizophrenia (Tranulis, Freudenreich, & Park, 2009). Poor insight in schizophrenia has been compared to anosognosia in neurological disorders (Amador & Paul-Oudouard, 2000) because of commonalities, such as a severe lack of awareness of their illness even with conflicting evidence. Several researchers have suggested different features of what may constitute good insight, such as a perception that medications help with psychotic symptoms (Lin, Spiga, & Fortsch, 1979), a recognition of symptoms associated with relapse (Heinrichs, Cohen, & Carpenter, 1985), and an awareness of having a mental disorder (Schwartz, Cohen, & Grubaugh, 1997). From the empirical literature, insight has several consequences for individuals with psychosis. Demonstrated as predictors of good treatment compliance and outcome, high levels of insight may be interpreted as indications of a good prognosis by clinical professionals (Schwartz, 1998). Lincoln et al. (2007) conclude from their review of the literature that good insight into one's illness is associated with positive outcomes, such as treatment adherence and better long-term functioning. However, they also point out, along with Wiffen, Rabinowitz, Lex, and David (2010), that insight is also associated with negative features, such as depression, feelings of hopelessness, and reductions in quality of life. Moreover, McEvoy, Appelbaum, Apperson, Geller, and Freter (1989) have found that poor insight more often leads to involuntary commitment to hospital, and Schwartz et al. (1997) conclude from their study that good insight is associated with improvement in compliance and outcome in an inpatient setting.

Given the association between insight and treatment outcome, it is curious whether the level of insight that a psychotic patient may exhibit has an impact within a criminal justice setting. There have been some researchers who have examined the connection between insight and themes within the criminal responsibility arena. For example, Owen

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and his colleagues (2009) investigated the association between insight and the legal concept of mental capacity (i.e., ability to make decisions). In their cross-sectional study, they found that low insight was significantly associated with incapacity, or impaired decision-making. Other researchers have focused on insight's association with violence. Bjørkly (2006) reviewed the literature that examines the association between insight and violence risk. They found that about half of the investigations found support for a relationship, but due to contrasting base rates (i.e., studies that found positive associations tended to have higher base rates of violence in their samples) and a lack of description for how insight was defined, these findings do not provide conclusive evidence for an association and indicates that research is still in its infancy.

When decisions regarding the criminal responsibility of a mentally disordered offender are made, it is unclear whether insight plays a role influencing those decisions. For example, is it possible that a defendant's ability to accept a diagnosis for a mental illness and to recognize the benefits of treatment would cause him/her to appear more responsible for their actions and more amenable to recovery? Extant research has primarily focused on the assessment of criminal responsibility as determined in a clinical evaluation (e.g., Smith & Graham, 1989) or on the legal criteria used to determine a defendant's mental status and intent (e.g., Roberts & Golding, 1991). What is disconcerting is the influence of individual biases on making verdict decisions. While jurors are expected to reach objective verdict decisions based on legally relevant facts, research also indicates that juror characteristics may play a substantial role in determinations of criminal responsibility (Pasewark, 1986). Roberts, Golding, and Fincham (1987) found in their mock juror study that decisions were significantly associated with one's beliefs about mental disorder and criminal responsibility, as measured by a 13-item survey created for their study. The public tends to overestimate the frequency that the defense is applied and underestimate the severity of the sentence the defendant receives (Jeffrey & Pasewark, 1983). Moreover, perceptions that the insanity defense is used frequently are associated with a more negative attitude toward assigning the insanity defense (Vitacco et al., 2009), and jurors' predetermined attitudes concerning the insanity defense greatly influence verdict decisions (Louden & Skeem, 2007). Implicit attitudes concerning the insanity defense may routinely bias decision-making by ignoring objective facts concerning a defendant's crime and mental status.

In the current study, we will investigate the influence of insight on juror decision-making by requiring participants to read and respond to trial scenarios describing a defendant who has been accused of assault and has a current diagnosis of schizophrenia. In the psychiatrist testimony portion of the scenarios, two core dimensions of insight (defendant's acceptance or denial of diagnostic label and need for treatment) will be manipulated in order to investigate the hypothesis that mentally disordered offenders with good insight will be found criminally responsible for their actions more often than their poor insight counterparts. Also, we will be examining the personal attitudes of jurors on the insanity defense, on mental illness, and on blame attribution style, and whether their views influence their verdict decisions. It is hypothesized that more stigmatizing attitudes will lead to a greater likelihood of a guilty verdict that indicates that the defendant is criminally responsible for the violent crime.

## 2. Method

### 2.1. Participants

Three hundred and two undergraduate students participated in the current study. All participants were screened for jury eligibility (i.e., 18 years or older, residents of the province where the study was conducted, and not served on a jury in the past 2 years). The mean age of the participants was 20.6 years ( $SD = 4.36$ ) with ages ranging from 18 to 48 years. The majority of the participants were female

(72.2%;  $n = 218$ ) and over a quarter of participants were male (27.8%;  $n = 84$ ). The average length of post-secondary education was 0.70 years ( $SD = 0.96$ ) and length ranged from 0 to 4 years.

### 2.2. Materials and design

The stimuli material included a fabricated police narrative and a trial summary. The police summary depicted a violent assault carried out by an offender with a mental illness and was accompanied by a trial summary that provided the trial judge's instructions ("you must decide whether the accused was, at the time of the commission of the alleged offence, suffering from a mental disorder so as to be exempt from criminal responsibility") and mental health information involving the defendant (i.e., "diagnosis of schizophrenia," "multiple admissions to the psychiatric units of local hospitals"). To enhance realism, several publicly available court cases were reviewed, which informed the creation of the stimuli. The trial summary information was the source stimuli for manipulating the independent variables, namely, the defendant's level of apparent insight. Specifically, two variables were manipulated, and this included (a) the defendant's perceived amenability to treatment and (b) his recognition of his mental illness. Given the two conditions for each independent variables, four separate stimuli were created and included the following conditions: (1) defendant did not recognize his mental illness but did not want to accept treatment, (2) defendant did not recognize his mental illness but was willing to accept psychiatric treatment, (3) defendant recognized his mental illness and was willing to accept psychiatric treatment, and (4) defendant recognized his mental illness but did not want to accept psychiatric treatment. Each condition was read by equal numbers of participants (75–77 in each condition).

### 2.3. Measures

Participants were asked for both demographic information (i.e., gender, age, student status, number of credits attained, years of post-secondary completed, major and minor, country of birth) and jury-eligible criteria (i.e., province of residence, past jury participation, past work experience in a field related to the CJS). Dependent variables included the participants' decisions regarding the verdict (guilty vs. not criminally responsible due to a mental disorder, NCRMD). If guilt was assigned, participants were asked for their sentencing recommendations. If the defendant was deemed not criminally responsible, participants were asked if they would recommend hospitalization. In addition, all participants were asked to rate, on a 5-point Likert scale, the likelihood the defendant would benefit and participate from treatment, their certainty of their verdict decision, and how credible they found the defendant. Several scales were also used to assess personal biases and social attitudes that may affect resulting verdict outcomes.

#### 2.3.1. Not Criminally Responsible Defense Attitudes Questionnaire (NCRDAQ)

The NCRDAQ evaluates the legal-moral implications and attitudes of the insanity defense and was created for this study but adapted from the Insanity Defense Attitudes Questionnaire (IDAQ; Roberts & Golding, 1991), which is a 20-item scale that probes into individual beliefs about mental illness as a defense for deviant social behavior. For the purposes of this study, minimal modifications were required to create the NCRDAQ, which incorporates the same questions from the IDAQ, but re-worded to coincide with legal terminology commensurate with the Canadian justice system. The NCRDAQ is a 16-item scale and each item is rated on a 5-point Likert system, where higher summed scores denoted stronger attitudes supporting the NCRMD defense, and this scoring is consistent with the original IDAQ. In this study, it was hypothesized that participants who view the NCRMD defense as a necessary moral element of social justice will be more likely to assign that verdict to the defendant.

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