



## Defendant mental illness and juror decision-making: A comparison of sample types



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### ABSTRACT

Two studies were conducted with separate student and community samples to explore the effect of sample types and the influence of defendant mental illness on juror decision-making. Following the completion of a pre-trial questionnaire in which jurors' attitudes towards mental illness were assessed, participants were provided with a robbery trial transcript, wherein the mental illness of the defendant was manipulated. Participants then answered a questionnaire to assess their knowledge of the scenario, their verdict, verdict confidence, and sentencing decision. Limited relationships were found between the variables in both Study 1 and Study 2. Neither attitude ratings nor mental illness type had a significant effect on juror decisions. Samples differed in terms of the paths through which juror decisions were achieved. Findings suggest that sample type may be particularly relevant for this topic of study, and that future research is required on legal proceedings for cases involving a defendant with a mental illness.

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### 1. Introduction

Stigma towards mental illness is unfortunately very common (Rüsch, Angermeyer & Corrigan, 2005). It can be defined as pejorative beliefs and attitudes towards mental illness (MI), which may result in prejudice and discrimination toward individuals with mental illness (Link & Phelan, 2001). Many initiatives around the world have been introduced to combat this issue (e.g., Opening Minds Campaign in Canada, Time to Change in the UK, StigmaBusters in the USA); however, more work needs to be done to address and eliminate stigma towards MI. An overwhelming number of people with MI become involved in the criminal justice system, with prevalence rates in American prisons and jails at 14%, and rising (Fazel & Danesh, 2002). This is partly due to an identified failure on the part of the mental health system in terms of providing suitable services, but it is also due to rising "tough on crime" policies and to the correctional facilities' inability to appropriately deal with this population (Skeem, Manchak, & Peterson, 2011). Stigma towards MI may similarly play a role in the criminalization of this group.

Much attention in the last decade has been given to rehabilitation initiatives in prisons and upon release into the community; however, little research to date has dealt with the matter of stigma in the courtroom during trial proceedings, before individuals with mental illness can become inmates. Some literature has explored attitudes towards the insanity defense, but there is a gap in terms of specifically addressing juror attitudes and stigma towards MI. The aim of the current study was

to explore the issue of juror stigma toward criminal defendants with mental illness. Using a non-insanity case to eliminate the potentially confounding influence of attitudes toward the insanity defense, this study examined how stigma towards mental illness might operate independently.

#### 1.1. Stigma towards mental illness

Stigma develops from recognizing and labelling a difference between a person and other people (Link & Phelan, 2001). Evidence of separating *us* from *them* is apparent in the very nature of the labels used in society, e.g., identifying someone as "schizophrenic" or "depressed" instead of saying that a person lives with schizophrenia or depression. Abnormal behaviour and symptoms of mental illness influence society's perception of people with MI as a group and attribute stereotypes to them (Ben-Zeev, Young, & Corrigan, 2010). Labels and diagnostic classifications further exacerbate stigma by increasing the public's sense of "differentness" and expose people with mental illness to discrimination and negative social consequences (Corrigan, 2007). The public is likely to stigmatize a person labelled as mentally ill even in the absence of any abnormal behaviour (see Link, Cullen, Frank, & Wozniak, 1987). Particularly strong stigma has been attached to individuals who are labelled both with a MI and as an offender, which consequently can lead to discrimination in terms of finding community treatment and housing (Lamb & Weinberger, 1998).

#### 1.2. Beliefs about mental illness

The media is likely the public's primary source of information about mental illness. Unfortunately, the media often provides an inaccurate

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image of people with mental illness. They promote negative images and stereotypes—for example, criminality, unusual behaviour, threat-making, and risk-taking are common themes surrounding fictional characters with mental illness (Francis, Pirkis, Dunt, & Blood, 2001). There is similarly a strong link between mental illness and violence in news media messages, with stories sensationalizing rare and tragic events (Francis et al., 2001). As a vehicle for negative and pervasive stereotypes of unpredictability, violence, and dangerousness (Angermeyer & Dietrich, 2006; Stuart, 2003), the media raises society's anxiety and fear, and nurtures beliefs of danger (Kobau, Dilorio, Chapman, & Delvecchio, 2010; Taylor & Gunn, 1999).

Given the general public's exposure to the media portrayals of dangerousness in relation to mental illness, Pescosolido, Monahan, Link, Stueve, and Kikuzawa (1999) wanted to explore its effects in terms of examining how mental illness is perceived. In this study, Pescosolido and colleagues controlled for the type of mental health problem and its severity in a vignette involving the diagnosis of a disorder (schizophrenia, depression, alcohol dependence, or cocaine dependence) or a control case (a troubled or distressed person), and asked participants to evaluate the competence of the individual (i.e., ability to make his/her own treatment decisions, ability to manage his/her own money, etc.) and the perceived dangerousness of this individual (i.e., likelihood of violence towards others, likelihood of self-harm, etc.). Participants reported less perceived competence and increased expectations of violence if the person in the vignette was labelled as having a mental illness compared to the control. These authors suggested that the public's perceived link between mental illness and violence is central to stigma and discrimination, and that people are more likely to condone forced legal action and coerced treatment when dealing with issues involving violence. There are, however, often marked differences in the public's concerns, beliefs, and attitudes: people with psychoses, schizophrenia, drug addiction, or alcoholism are considered unpredictable and violent more often than are people with depression and anxiety disorders (Angermeyer, Buyantugs, Kenzine, & Matschinger, 2004; Angermeyer & Dietrich, 2006; Corrigan, River, Lundin, Wasowski, Campion, Mathisen, et al., 2000; Crisp, Gelder, Rix, Meltzer, & Rowlands, 2000; Schomerus, Holzinger, Matschinger, Lucht, & Angermeyer, 2010).

Research suggests that stereotypes of dangerousness associated with mental illness are on the rise, yet studies show that only a minority of people with mental illnesses are in fact violent (Link, Phelan, Bresnahan, Stueve, & Pescosolido, 1999). Monahan's research (1984, 1988) acknowledges the debate surrounding the link between violence and mental illness. While recognizing that the belief that people with mental illness are violent has been a foundational concern in mental health law for a long time, Monahan had concluded that (1) the best predictors of violence among the mentally ill are in fact the same demographic factors that are the best predictors of violence among non-disordered offender populations, and that (2) the diagnosis or severity of disorder or personality traits are the poorest predictors of violence among the mentally ill (Monahan, 1984, 1988). Monahan (1988, 2002) suggests that not only have these conclusions been challenged by much research (see Binder & McNeil, 1988; Klassen & O'Connor, 1988), but also that research surrounding this issue is inconsistent. This ongoing debate highlights the need for additional research examining the link between violence and mental illness, as well as societal perceptions of this link.

### 1.3. Factors influencing juror decisions

It is essential to distinguish between a guilty verdict based on the evidence provided in court, and a biased verdict based on stereotypes or stigma. Jurors are asked to decide the case solely on the evidence given at trial and the legal instructions given by the trial judge, and to make their decision without sympathy, prejudice, or fear. While jurors are instructed to remain impartial, they inadvertently each come into

this role with previous life experiences, stores of knowledge, heuristics, and biases, which have the potential to interfere in decision-making (Colwell, 2005; Jones, 1997; Louden & Skeem, 2007; Nikonova & Ogloff, 2005).

Jurors have been found to be influenced by many types of extra-legal factors and characteristics (Bornstein & Rajki, 1994; ForsterLee, ForsterLee, Horowitz & King, 2006; Mazzella & Feingold, 1994). These characteristics can be features of the juror, including juror age (e.g., Mossière & Dalby, 2008), juror gender (e.g., Breheny, Groskopf, & Galieta, 2007; Guy & Edens, 2003, 2006; McNamara, Vattano, & Viney, 1993; Pozzulo, Dempsey, Maeder, & Allen, 2010; Schutte & Hosch, 1997), and juror race (e.g., Bornstein & Rajki, 1994; Brewer, 2004; Foley & Chamblin, 1982; Sommers & Ellsworth, 2001). Influential defendant-centered characteristics include gender (e.g., Pozzulo et al., 2010), race (e.g., Sommers & Ellsworth, 2000), and attractiveness (e.g., Mazzella & Feingold, 1994). Jurors may subconsciously find these types of defendant characteristics relevant in court, and be more likely to assume a defendant is guilty when the defendant possesses characteristics that are more stereotypically associated with criminality (i.e., males, Black, unattractive, etc.). Correspondingly, mental illness could be an influential defendant characteristic. Society's stigma towards mental illness, particularly labelling people with MI as unpredictable and dangerous, creates a link between MI and criminality. Therefore, based on stereotype consistency, a juror may be more likely to give a guilty verdict to a defendant who has a mental illness than to one who does not.

### 1.4. Jurors and mental illness in court

People with serious mental illness are often charged with more serious crimes than other people arrested for similar behaviours (Tellier & Felizardo, 2011). The relevance and importance of dealing with MI in a legal context has been recognized with the development of Mental Health Courts<sup>1</sup> and the existence of the Not Guilty by Reason of Insanity (NGRI) defense; however, juror bias towards mental illness has not received much attention in the psycho-legal literature. NGRI is used when a mental disorder rendered the person incapable of appreciating the nature and quality of the act or of knowing that it was wrong. The literature suggests that negative attitudes towards the insanity defense are prevalent and are strongly predictive of juror judgements in insanity cases (see Skeem & Golding, 2001; Skeem, Louden & Evans, 2004).

Previous American research has found that people are unsupportive of the insanity defense because of their belief in the myths associated with it (e.g., it is an overused loophole that allows criminals to go free), and are more likely to select a guilty verdict in an NGRI case if they report negative attitudes toward the defense (Skeem & Golding, 2001; Skeem et al., 2004; Vitacco, Malesky, Erickson, Leslie, Croydsdale, & Bloechl, 2009). A Canadian study by Maeder and Fenwick (2011) attempted to correct for biases regarding the insanity defense<sup>2</sup> by using education about NGRI to improve juror attitudes. Findings revealed that mock jurors' attitudes toward the insanity defense were in fact significantly more positive if they received education about the defense (i.e., the rarity of its use, its consequences, etc.) compared to a control group. This change, however, had no effect on the jurors' ultimate verdict decisions—even when participants' attitudes toward the defense improved with education, they were still largely unwilling to find the defendant NGRI (Maeder & Fenwick, 2011). This may suggest that factors other than misconceptions about the defense drive verdict decisions in insanity cases. Bloechl, Vitacco, Neumann, and Erickson (2007) propose that the public's negative attitudes toward the insanity

<sup>1</sup> Limitations of Mental Health Courts are beyond the scope of the current article and as such are not described here. See Steadman and Redlich (2006) for an evaluation of mental health courts in the U.S.

<sup>2</sup> This study examined the Not Criminally Responsible on Account of Mental Disorder defense, which is the Canadian equivalent to the American NGRI.

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