



Listening to voices: The use of phenomenology to differentiate malingered from genuine auditory verbal hallucinations



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ABSTRACT

The experience of hearing a voice in the absence of an appropriate external stimulus, formally termed an auditory verbal hallucination (AVH), may be malingered for reasons such as personal financial gain, or, in criminal cases, to attempt a plea of not guilty by reason of insanity. An accurate knowledge of the phenomenology of AVHs is central to assessing the veracity of claims to such experiences. We begin by demonstrating that some contemporary criminal cases still employ inaccurate conceptions of the phenomenology of AVHs to assess defendants' claims. The phenomenology of genuine, malingered, and atypical AVHs is then examined. We argue that, due to the heterogeneity of AVHs, the use of typical properties of AVHs as a yardstick against which to evaluate the veracity of a defendant's claims is likely to be less effective than the accumulation of instances of defendants endorsing statements of atypical features of AVHs. We identify steps towards the development of a formal tool for this purpose, and examine other conceptual issues pertinent to criminal cases arising from the phenomenology of AVHs.

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1. Introduction

Experiences of hearing voices in the absence of any appropriate external stimulus, referred to in the psychiatric literature as auditory verbal hallucinations (AVHs), are a common feature of many psychiatric disorders. Although they are most frequently found in people diagnosed with schizophrenia, with approximately three in four people with this diagnosis experiencing AVHs, they may also be found in people with other psychiatric diagnoses including bipolar disorder, borderline personality disorder, and posttraumatic stress disorder, as well as healthy members of the general population (McCarthy-Jones, 2012).

Ever since the publication of one of psychology's most well-known and controversial studies (Rosenhan, 1973a), it has been recognized that trained mental health professionals may be deceived by individuals falsely claiming to be experiencing AVHs. Although there is little reason to suspect that distressed individuals routinely presenting to mental health services are falsely claiming to hear voices, there are a number of situations where there may be a potential benefit for individuals to falsely claim to be experiencing AVHs. Such individuals are said to be malingering, which the DSM-IV-TR (APA, 2000) defines as “the intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives” (p. 739). These external incentives may include attempting to evade military service, obtaining unwarranted social welfare payments, or escaping prosecution either

through being found incompetent to stand trial, or not guilty by reason of insanity at trial. This is true despite some studies suggesting that persons found not guilty by reason of insanity serve a longer time with loss of freedom than those who are found guilty of the crime (Perlin, 1990). The existence of defendants malingering AVHs in criminal cases (e.g., *People v. Schmidt*, 1915) and persons malingering AVHs to gain financial advantage (e.g., Jaffe & Sharma, 1998) are well documented. Indeed, it has been claimed that AVHs are the most frequently malingered symptom of psychosis by criminal defendants (Schmidt, 2009).

The reasons individuals choose to malingering AVHs specifically (as opposed to other experiences associated with psychosis) may include the perceived association between AVHs and insanity in the public eye (e.g., Leudar, Thomas, McNally, & Glinski, 1997), and the effectiveness of AVHs in potentially obtaining a successful insanity plea. In Knoll and Resnick's (2008) three-stage conception of professional psychiatric opinion formation for the applicability of an insanity defense, the presence of AVHs can be seen to aid the formation of an opinion of insanity at all three stages. Knoll and Resnick's conception can be applied to the Model Penal Code insanity standard developed by the American Law Institute in 1955. This states that “A person is not responsible for his criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of the law” (Knoll & Resnick, 2007).

In line with this Code, Knoll and Resnick (2008) argued that opinion must firstly establish if the defendant had a “mental disease or defect.” A psychiatric diagnosis per se is not enough to meet this requirement. The DSM-IV-TR (APA, 2000) contains an explicit disclaimer that simply having a diagnosis included in the manual does not imply that it meets

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legal criteria for a mental disease in an insanity defense (Knoll & Resnick, 2007). Given that AVHs are defined as a characteristic symptom of schizophrenia, and that the 1982 American Psychiatric Association Position Statement on the Insanity Defense stated that for a disorder to be a “mental disease or defect” it should “usually be of the severity (if not always of the quality) of conditions that psychiatrists diagnose as psychoses”, AVHs are likely to lead to the judgment that the individual has a “mental disease or defect”.

Secondly, expert opinion must establish evidence of capacity. AVHs may overwhelm an individual's ability to conform his/her conduct to the requirements of the law. Similarly, in the case of a deific decree (in which a person hears the voice of God instructing him/her to perform an action), a criminal defendant could argue he/she did not know the wrongfulness of his/her actions, and therefore qualify for insanity in U.S. states that do not have an “inability to refrain” arm of the insanity test. Yet only 16 states in the U.S. have an insanity standard that allows for consideration of the capacity to conform one's conduct to the requirements of the law (Knoll & Resnick, 2007). In deciding whether a person could refuse to obey a command AVH, the evaluator must assess the consequences an individual believes will follow as a result of failing to obey the voice (Knoll & Resnick, 2007). The perceived consequences for failing to obey a command hallucination may range from restless sleep, to a significant danger to the self, to a belief that one's soul will spend eternity in Hell. Only consequences of the severity of these latter types are likely to meet the insanity standard.

Finally, the defendant must establish that the AVH played a causal role in the offense. Here it is critical for the psychiatric evaluator to establish the relationship between the AVH and the defendant's criminal behavior (Knoll & Resnick, 2007). In summary, given that veridical AVHs can, for the reasons outlined above, lead to a successful insanity defense, malingered AVHs may lead to an unjust trial outcome.

In the U.S. about 1% of defendants charged with a felony plead insanity, and only 15–25% of these individuals are actually found not guilty by reason of insanity (Callahan, Steadman, McGreevy, & Robbins, 1991). Of this subset of individuals found not guilty by reason of insanity, Thomson, Stuart, and Holden (1992) found that about 9% reported command AVHs (hearing voices commanding them to do things) that were directly related to their offenses. Nevertheless, the potential for malingered AVHs to be involved in such defenses, as well as in other situations in which personal gain is sought, creates the need for clinical experts to be able to establish, as accurately as possible, whether a given individual who reports hearing voices is reporting a veridical experience or is malingering.

While the existence of malingered AVHs naturally focuses attention on preventing miscarriages of justice resulting from malingered AVHs going undetected, there is also the danger of injustice resulting from someone who has genuinely experienced AVHs being incorrectly labeled a malingerer. This issue was raised by the second part of Rosenhan's (1973b) classic study. Rosenhan contacted staff at a hospital to inform them that at some time during the following 3 months, one or more people faking AVHs would attempt to be admitted into the psychiatric hospital. Of 193 judgments on patients made by the staff and obtained by Rosenhan, 21% were alleged with high confidence to be faking. It was then revealed that, in fact, Rosenhan had sent no pseudopatients at all to the hospital. It is hence quite plausible that, in a court of law, some defendants who honestly report having had AVHs may be incorrectly deemed by expert testimony to be malingering.

The ability to accurately assess whether claimed AVHs are veridical or malingered is hence of crucial importance, particularly for the outcome of criminal trials in which the defendant is claiming such experiences as being relevant to his/her defense or their competence to stand trial. Clinicians called on to make this judgment must have a detailed knowledge of the phenomenology of genuine AVHs. Such decisions may also be profitably informed by knowledge of the phenomenology of malingered AVHs (Pollock, 1998). To address these important issues, this paper explores a number of key areas surrounding the relationship

between the phenomenology of AVHs and the malingering of such experiences. Firstly, we argue that an incorrect understanding of the phenomenology of AVHs is still being employed in at least some contemporary criminal trials. This has the potential to lead to instances of defendants being wrongly labeled as malingers. In an attempt to redress this situation, we will examine the phenomenology of genuine AVHs as established by contemporary research. Yet we will show that, although there are at least some phenomenological features of AVHs that are found in the majority of cases, the heterogeneity of AVHs means that an approach to assessing the veracity of an AVH based solely on comparing a claimed instance of an AVH against a profile of a typical AVH is likely to have significant limitations. The phenomenology of malingered AVHs will then be examined, and recommendations made for more valid assessments of AVHs.

2. Inaccurate conceptions of the phenomenology of AVHs in the courtroom

The court documents of a 2004 appeal (People v. Jefferson, 2004) provide a good example of an incorrect conception of the phenomenology of AVHs being used to evaluate the veracity of a defendant's claim to be hearing voices. In 1994, Senque Jefferson was incarcerated in California as a result of being convicted of first degree murder and a series of armed robberies. On the morning of March 10th 2000, as Jefferson was being escorted back from the exercise yard by two prison officers, he kicked one officer in the stomach, and the other in the leg. The appeal documents described how, after Jefferson was in turn punched by one of the officers in his shoulder and the back of his head, he spat on both officers. This led to him being convicted of two counts of battery. Later that same year, on July 3rd 2000, Jefferson was in the infirmary of Sacramento jail. That day he was taken to a holding cell in preparation for a meeting with a committee of mental health professionals to review his placement in the infirmary. The committee decided it would not see him that day, and ordered him to be taken back to his cell. As he was being taken out of the holding cell, Jefferson kicked one of the prison officers twice in the leg. This led to another conviction for battery. These incidents formed the third strike for Jefferson, who under the “Three Strikes Law” was sentenced to 50 years to life in prison.

How did Jefferson defend his actions? In relation to the incident in March 2000, the court documents described that Jefferson argued in his defense that: “As the officers placed him in his cell, defendant heard ‘voices’ outside his head. The voices told him the officers would hurt or kill him when he was in his cell, so he kicked the officers to get them off him.” In relation to the second incident in July 2000, Jefferson argued that “the voices became loud while he waited in the holding cell, telling him not to leave the cell because the officers would hurt him”. Jefferson described how “he heard voices ‘everyday, all day’....The voices were usually those of women he knew when he was out on the street. They told him such things as his food was poisoned or a family member had died. At the time of trial he was on medication – involuntarily – that he felt lowered the voices. Although the voices were powerful, he was able to ignore them better.”

The first part of Jefferson's trial involved establishing whether he was sane or insane. It was here that Jefferson's allegation that he was hearing voices came under scrutiny. One of the court-appointed psychologists met with Jefferson and asked him to describe the voices he heard in order to “determine whether defendant was faking a psychological problem”. Jefferson stated that his voices “were voices of ‘people that he knew in the past’ and were ‘in his ear’”. The court-appointed psychologist attempted to compare the location and content of the voices Jefferson described against what she thought was the typical phenomenology of AVHs. The court documents described how in the court-appointed psychologist's experience, “schizophrenics typically described voices ‘as coming from inside their head and being of either famous people or strangers or groups of people.’ She [the court-appointed

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