Chapter One

Understanding Terrorism Trials

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A terrorist bomb left on a train results in death and destruction. This scenario evokes painful memories for the citizens of Paris, London, Madrid, Moscow, Colombo and Mumbai.

Terrorist incidents – or the fear of them – are characteristic of many cities around the world. In 1946 the King David Hotel in Jerusalem was bombed, killing 91 people. In June 1961 the Strasbourg-Paris train was sabotaged by a secret group opposed to Algerian independence. In October that year some 200 Algerians were cut down in the streets of Paris or beaten to death later in the Prefecture. Moscow experienced a bomb attack in 1977, including on a crowded station of the Metro. Munich saw an armed group storm the Olympic village in 1972; the same city also saw its 1980 Oktoberfest disrupted by a bomb. In the same year Bologna was rocked by an improvised explosive device killing 85. In March 1979 a Tory member of the British Parliament, Airey Neave, was assassinated by a car bomb as he left the Palace of Westminster while five months later Lord Mountbatten, the last British viceroy of India, was blown up in his fishing boat off the coast of Ireland. In 1992 two of Italy's most famous investigating magistrates, Giovanni Falcone and Paolo Borsellino, were assassinated by the Mafia. The same year Lima's business district was rocked by explosions. In 1995 Timothy McVeigh blew up a federal building in Oklahoma, killing 168. The same year the poisonous chemical, Sarin, was left in plastic bags on several Tokyo subway lines (punctured by sharpened umbrella tips), while Paris experienced a series of attacks at its railway stations, involving exploding gas bottles. In 1996 the Central Bank in Colombo was bombed. Mumbai suffered at least eight major terrorist attacks between 1993 and 2008. In 2001 New York and Washington were struck by an al-Qaeda attack involving hijacked planes flying into buildings, killing over 3000. In 2004 an al-Qaeda cell detonated a bomb on a train in Madrid killing 191, while another cell of the same group killed 52 in London the following year. In 2007 the Delhi-Lahore train was rocked by explosives just out of New Delhi, killing 68. In 2011 Andreas Breivik killed 8 people in Oslo, then another 69 at a youth camp. In 2014 Boko Haram was reported to have killed over

7000 in terror attacks in Nigeria. In 2015 Paris was hit by one attack in January involving al-Qaeda and another in November by IS killing, 137 people.

This list is but a tiny proportion of the terrorist-linked attacks that have led both to heightened security measures and debates about how the courts can deal with such matters. It excludes for the most part terrorist violence carried out by governments. To put the above list into context, there were estimated to be over 13,000 terrorist attacks in 2014 in 95 countries killing more than 33,000.[1] Only three per cent of the fatalities were in western countries. Or to take another context: in the decade to 2015 there were an estimated 71 deaths due to terrorism on US soil compared to over 300,000 from gun-related violence.[2] The action taken in the US to curb gun-related violence has not matched the attempts to combat terrorism.

This book is relevant to those who are concerned with terrorist issues, including students, teachers, journalists, policy makers and members of the public. It is also particularly relevant to those who are concerned to protect the rule of law in the face of attacks to curb it in the wake of terrorist fears – outlined in greater detail in the review of the legal landscape for terrorist trials in Chapter Two. Those with an interest in visual evidence in justice proceedings will find fascinating the detailed explanation of how interactive simulations are produced. The book also engages with wider issues about the way we respond to images, including beheading videos, used in some terrorist trials both in Australia and the UK.

One of the key issues that this book explores is whether juries can be fair in a terrorism trial – where emotions are high, fear is in the air and the risk of intimidation is present. Certainly the UK government did not think so during the Troubles in Northern Ireland. Nor the French after some jurors were threatened in 1986. Even the United States experimented for a while with using military tribunals in Guantanamo Bay to handle terrorism cases – including one for Australian detainee David Hicks. Apart from the security

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[1] National Consortium for the Study of Terrorism and Responses to Terrorism: Annex of Statistical Information. (2014). *Country Reports on Terrorism, 2014,* Retrieved from http://www.state.gov/j/ct/rls/crt/2014/239416.htm

[2] Qiu, L. (2015, October 5). Fact-checking a comparison of gun deaths and terrorism deaths. *PolitiFact.* Retrieved from http://www.politifact.com/truth-o-meter/statements/2015/oct/05/viral-image/fact-checking-comparison-gun-deaths-and-terrorism-/

concerns, these jurisdictions doubted that juries could be trusted to render just verdicts. This book sheds some light on this question. We consider how fears of terrorism and prior attitudes, including views about David Hicks, shape juror responses to the information presented to them.

A second major theme explored in this book is the impact of visual evidence on jurors. Are people swayed by high-tech evidence, and if so does this push them towards conviction? What if the defence presents equally powerful interactive images – does this counter any advantage the prosecution had from its display? We look at people's first impressions of the visual displays, recorded on surveys completed after the trial. In one of the studies, the jurors also deliberated so we could track how their understanding of allegations and evidence evolved over the course of their discussion, including their reactions to the visual evidence

A final theme concerns the battle of the experts. How do jurors respond to scientific witnesses who lay out the evidence for the prosecution or try to question it for the defence? As lay decision-makers, jurors have been criticised for not being able to follow complex explanations, or for drawing the wrong inferences from what they are told by experts. We followed some jury deliberations to see how jurors make sense of the evidence presented, and how they weigh up the credibility of expert witnesses.

A live simulated trial is a useful method to examine these questions. It allowed us to vary some aspects of the trial presentation to measure the difference they made to mock jury responses. By comparing discussions of the same evidence by a number of juries, we can look for recurring patterns and variations in their reactions.

The project began as part of a discussion about the dangers and possibilities of new forms of evidence that were starting to be used in court, or were forecast within the next decade. Several of our collaborating industry partners on the project had a stake in the outcome: scientific experts who testify in major trials (Australian Federal Police), integration engineers who install new technologies in courts (ICE Design), prosecutors who press cases to court (Australian Capital Territory Director of Public Prosecutions) and judicial bodies committed to improving the quality of court procedures (Australasian Institute of Judicial Administration). Two architectural firms were additional collaborating industry partners. Diane Jones of PTW Architects was active in modifying courtroom designs to incorporate new technologies, and had ideas for creating space in the well of the court for holograms.

The other, Cameron Lyon of Lyons Architects, was responsible for designing several recent courts that incorporated innovative technologies. One of the project researchers, Damian Schofield, provided interactive reconstructions of accidents or crime scenes to police agencies in the UK and the USA. Another, Neal Feigenson, in Connecticut, had provided a prophetic account of how immersive visual displays might transform the courtroom experience. We wanted to see if jurors were likely to be seduced by powerful visual images, particularly those that were immersive or interactive, potentially changing perspective or assumptions in an instant.

To prepare a scenario for a trial simulation about terrorism ran the risk of tapping into prejudices against indigenous people, ethnic minorities, or particular religious communities. Islamophobia was clearly on the rise. While racism is as much as issue in Australia as it is in Europe or North America, that was not our focus. So, to avoid ethnic stereotyping, we imagined our local 'terrorist' as a quiet white tennis-playing resident of Sydney's leafy north shore, and possibly a member of a fictional white power group, 'Sons of the Land.' Someone who looked perhaps like Timothy McVeigh or Anders Breivik. We thought we had written race out of the story. If we thought that, we were wrong. Chapter 12 shows that race was one of the issues that helped jurors make sense of the motivation of the accused.

Sydney was chosen as the setting for this hypothetical crime because the project was carried out there, with local residents as the lay jurors. While the incident was the work of script-writers rather than bomb-makers, the fear of terrorism was real enough as Australians recalled losing 88 compatriots in the Bali bombings of 2002, and federal police swooping in on various Islamic cells, arresting people suspected of planning terrorist bombings around Sydney and Melbourne. A major terrorist trial was held in Sydney's new high security court, and several more trials were to follow. In 2014, Sydney hit the international news with a siege in the downtown Lindt Chocolate Café in Martin Place, in which a lone gunman held 18 people hostage and compelled them to hold an Islamic black flag in the café window.

In the scenario written for the simulation, the accused was charged with several counts of murder. He boarded a train with a tennis bag, and alighted at another station without the bag. The carriage on which the accused had been travelling blew up several stations later. According to the prosecution, the tennis bag was the source of the explosion.

The prosecutor claimed the bag contained a bomb, while the defence said a box alongside it could not be ruled out as the source of the explosion. The trial centred on the evidence of expert forensic witnesses for the prosecution and defence who gave alternative accounts of the circumstantial evidence. The prosecution also provided a range of other evidence, including a bomb-making manual found at the accused's family home, wires and other equipment similar to that found at the scene of the explosion, and some 'white power' (white racial supremacist) literature, although these could not be directly tied to the accused.

The research project was conducted in two stages. Study One was a videotrial simulation, carried out in a university environment, with animations depicting the accused carrying his bag onto the train and placing it under his seat. The mock jurors rendered individual verdicts and did not deliberate. Study Two was a live trial simulation, with mock jurors watching the trial in a real courtroom before deliberating in real jury deliberation rooms. The visual evidence was an animated simulation that appeared to be completely interactive, capable of demonstrating alternative hypotheses about the accused's movements.

Study One explored whether seeing interactive visual evidence made a difference to the mock jurors. Some of the mock jurors saw the prosecution case illustrated with interactive visually evidence, some saw the defence use the same visual technology, and some saw a trial in which neither the presentation by the prosecution nor the defence expert used visual interactive evidence. Study Two focused more on what difference it makes when the judge instructs juries about how to treat the visual evidence. It also compared the impact when this evidence was presented by the prosecution only, or by both the prosecution and the defence. Mock jurors consented to the videorecording of their deliberations, and transcripts of their discussions are used in two of the chapters.

Chapter Two provides a review of the legal landscape for terrorism trials across the western world. Some jurisdictions have abandoned jury systems for terrorism matters. Others have kept them but increased the protection for jurors. Most countries have passed harsh legislation to reduce the rights of suspects: fear does not just infuse trials, it shapes the laws that govern investigation, arrest and sentencing. The chapter was co-authored by a legal academic on the research team, Jacqui Horan, and one of the editors, Jane Goodman-Delahunty.

Chapter Three undertakes a review of the role of science in terrorism trials. Forensic evidence is a key component in many contemporary trials, both in identifying victims or perpetrators and in working out the methods and materials used to carry out alleged criminal acts. Nineteenth century trials typically relied on first-hand evidence in the form of eyewitness testimony or confessions from the accused. In contrast, modern trials place greater emphasis on inferences drawn by experts. One of the authors of this chapter, Chris Lennard, is a forensic scientist who led the Australian team to work with the Indonesian police in the investigation of the Bali bombings. His co-author, Anne Wallace, a Law School Dean, teaches lawyers how to understand forensic evidence.

Chapter Four provides a background to the use of images in legal settings, particularly moving images. The co-authors, Neal Feigenson, a legal academic, Christina Spiesel, and artist and law teacher, and Greg Battye, a communications researcher, examine the way we have come to see and interpret images, based on models both in film and computer games. They also introduce us to the use of simulations in trials.

Chapter Five takes the analysis of visual imagery one step further by providing a case study of a particular sort of image–the beheading video, as were allegedly used by some of the suspected terrorists in both the UK and Australia to put them in the right mood to carrying out their activities. Christina Spiesel shows that the images of someone 'about to die' convey fear not by what they show but what they foreshadow.

Chapter Six provides a different form of reflection on gruesome evidence such as beheading videos. It is the expert report on this topic submitted to the court in a major terrorism trial in Sydney, authored by Jane Goodman-Delahunty. To enhance the realism of the report we have included a couple of the images that formed the basis for her conclusions. Also presented in this chapter are key excerpts of the judgment by Judge Whealy allowing the jury to see the images.

Chapter Seven picks up the discussion of interactive visual simulations, providing a detailed explanation on how they are put together, including the one used in this research project. The author, Damian Schofield, designs computer games and visual simulations, such as the one he created for this research project.

Chapter Eight provides a systematic overview of the methodology of the two trial simulation studies outlined in this book and the measures used to inform the major research questions of the project.

Chapter Nine describes the characteristics of the mock jurors and examines their responses to the questionnaires they completed. These include measures of whether the mock jurors were visual or verbal learners, their levels of empathy, their attitudes to various aspects of the justice system, whether they were afraid of terrorism and what they felt about David Hicks.

Chapter Ten looks at how the mock juries voted. In Study Two votes before and after deliberation were gathered. We show the influence of demographic characteristics and prior dispositions on jury verdicts, and check whether some of the variation disappears in the jury room following group deliberation. As with Chapter Eight, this chapter draws on the questionnaire responses from the mock jurors.

Chapter Eleven compares the verdicts of mock jurors who experienced the different conditions. In this chapter we explore whether exposure to interactive visual evidence and the judge's instructions influenced the conviction rate. We look not just at formal verdicts but other measures of possible guilt, such as how likely it was the accused carried out illegal acts, or how confident the jurors were in their decisions.

Chapter Twelve takes up the challenge to find out if there really is a CSI effect. Are people who watch forensic science TV programs more guilt-prone? What about those who expect prosecutors to produce DNA at every trial? We compared mock jurors who were high on these measures with their more sceptical colleagues, in terms of how they responded to the interactive visual evidence and how they voted.

Chapter Thirteen switches from analysing questionnaire responses to interpreting the transcripts of conversations between mock jurors as they deliberated. The chapter explores the way different jury groups worked through the somewhat messy trial evidence. It looks at how the credibility of the accused was assessed using rules and experiences taken from the mock jurors' own lives.

Chapter Fourteen continues in the same vein, reviewing how the jurors talked about the interactive visual evidence. It looks at how realistic they found the simulations and how relevant they were to their verdicts.

Chapter Fifteen summarises the key findings of the research in terms of the major themes of the book. It also provides a series of recommendations for courts, legal practitioners and expert witnesses.