

Justice, the media, and the Christchurch mosque terrorist

Journalism scholars Gavin Ellis and Denis Muller present part three of a case study in institutional co-operation

THE SENTENCING

The sentencing hearing of Brenton Harrison Tarrant on 51 counts of murder, 40 of attempted murder and one of terrorism began in the High Court in Christchurch on 24 August 2020. He was flown to Christchurch by military aircraft the day before. The four-day hearing was conducted amid high security that included traffic barriers and parking restrictions in the Justice and Emergency Precinct. Police monitored white supremacist activity and determined the location of known followers before the hearing. The presiding Judge, Justice Cameron Mander, began with an outline of proceedings and reiterated to media the obligations they had in reporting the hearing. He said it would begin with the Crown prosecutor, Barnaby Hawes, reading a 26-page summary of facts. Justice Mander warned that its content would be “distressing” but stressed the need for it be stated in open court and read into the record.

Sections of the summary were harrowing. The court heard how Tarrant aimed a weapon slowly and deliberately at the heads of people who appeared to be alive and systematically shot them. One of those in the main prayer room of the Masjid an-Nur mosque was 3-year-old Mucaad Ibrahim. He was clinging to his father's leg when Tarrant shot him with two precisely aimed shots. A wounded woman lying in the driveway with her arms raised and crying for help was then shot twice at point-blank range and killed. Tarrant's vehicle ran over her body as he fled.

The reading of the summary was followed by the presentation of victims' impact statements. Media were provided with a list of those who wished to be reported and the permitted camera angles for each. The list included phonetic spelling of each name to ensure correct pronunciation. Originally 55 victims had indicated they wished to present statements. However, as the hearing progressed and was witnessed by victims and their families on a live-stream video link provided by the court, the number increased to 92. This compared with only three victim impact statements representing different victim groups that had been given at the terrorism trial in Norway of Anders Breivik, although 45 were called as witnesses and had victim impact statements read into their evidence. Commenting on this, Solveig Laugerud and Åse Langbelle (“Turning the Witness Stand into a Speaker's Platform: Victim Participation in the Norwegian Legal System as Exemplified by the Trial Against Anders Behring Breivik” (2017) 51(2) *Law & Society Review* 227) concluded that there was ambivalence among victims towards these integrated statements because some preferred to give evidence about the crime rather than speak of the impact it had on their lives. They attached more importance to this

than to answering questions from counsel. The absence of a trial denied Tarrant's victims that evidential opportunity but as more victims addressed the Christchurch court, the impact of their words grew.

The statements were read over three days and each day more victims contacted police family liaison officers or victims court advisors asking to appear either in person or remotely. These late decisions were due, in part, to a change in the atmosphere within the courtroom. The prospect of Tarrant's addressing the court — as was his right — had created high anxiety but this changed when he indicated he did not wish to speak on his own behalf. This change also led to an unanticipated request from the victims to the court. Through the court victim advisors who were present with them throughout the hearing, they indicated to the Judge that they wanted a change to the strict camera angle directions to allow them to have a clear picture of the defendant. The Judge granted their wish.

On the first day, Tarrant had displayed little reaction to victim impact statements. Only once did he appear to acknowledge his victim as he sat in the dock surrounded by security staff. The single acknowledgement came when Janna Ezat, whose son had been killed in the attack, addressed Tarrant directly and said: “I decided to forgive you Mr Tarrant because I don't have hate ... I have no choice.” The defendant gave a slight nod and wiped his eye.

COVERAGE

Domestic media coverage of the sentencing was conditioned by four factors.

- Justice Mander had meticulously prescribed the boundaries within which reporting would take place.
- There was an acknowledged determination among the New Zealand media to deny Tarrant a platform for white supremacist polemics should he attempt to mimic Anders Breivik in court.
- The media also recognised the empathy for the victims and widespread support the Muslim community had received following the attacks.
- Finally, the sentencing was taking place in conditions that tested editorial systems and control when Auckland (where most maintained their principal newsrooms) entered a high-level COVID-related lockdown on the eve of the hearing.

The COVID restrictions meant many Auckland newsrooms — where pool material was collated — required staff, in spite of their essential-worker status, to work from home to minimise the possibility of infection. Television New Zealand staff, however, needed to work onsite and a team

devoted to the sentencing coverage was isolated from other staff. A back-up team was isolated from all staff, ready to take over if a member of the sentencing crew contracted the virus.

The COVID restrictions stretched editorial command and control functions but most New Zealand media organisations had maintained permanent Christchurch staff, many of whom had been involved in coverage of the 2019 attacks. New Zealand media adhered to an agreed protocol, which stipulated that court coverage would be undertaken by senior journalists. As a result of these factors, editorial executives reposed high trust in the Christchurch teams, which exercised a high level of autonomy in how they covered the hearing. This relationship had been illustrated by an episode that occurred during the hearing in which Tarrant changed his plea to guilty. The journalists in court at that time agreed among themselves that publication of certain details was not in the public interest. Each contacted their editor to convey what was couched as a decision, not a request. All editors concurred with the stand and, although he was unaware of these developments, Justice Mander subsequently suppressed reporting of what had occurred.

COVID limited media space in the courtroom. Precedence was given to major New Zealand media: both broadcast television networks (one of which also ran radio networks), the public service radio broadcaster, both major newspaper chains (one of which also ran radio networks), and a New Zealand news website. Three foreign services that retain New Zealand-based correspondents — the *Guardian* and the news agencies Associated Press and Australian Associated Press — were also allocated spaces. Journalists told the authors that being present in the same space as the victims and the gunman was gruelling but informed the victim-centric approach to coverage. Another courtroom was set aside for an additional 25 reporters who watched a live Virtual Meeting Room (VMR) feed from the main courtroom.

Each of New Zealand's five largest metropolitan areas has a single daily newspaper. The smallest by circulation, the *Waikato Times*, is inclined to follow the country's regional newspaper tradition of featuring local issues on its front page. The remaining metropolitan papers — the *New Zealand Herald* in Auckland, *Dominion Post* in Wellington, *The Press* in Christchurch, and the *Otago Daily Times* (ODT) in Dunedin — often lead with national stories.

In the week of the sentencing hearing, the Tarrant case was the lead story in the *Waikato Times* on two days, the *Herald* on three, *The Press* and *ODT* on four, and the *Dominion Post* on five. On the second day of the hearing, the case relinquished its lead spot in *The Press* to a story about swingeing cuts to hospital services in Christchurch but the front page also carried a large banner stating: *Mosque survivors — Anguish and fury over gunman*.

New Zealand newspaper coverage throughout the week identified with the victims, even in a first-day description of Tarrant's appearance in the courtroom, such as the following from *The New Zealand Herald*: “[I]n a tense silence, as the Corrections officers unchained his cuffs, and wearing grey sweatpants and shirt, he looked around the courtroom where victims and survivors of his attacks sat, including Imam Gamal Fouda of Masjid an-Nur where 44 Muslims were killed during Friday prayer” (Kurt Bayer and Anna Leask “Christchurch mosque terror attack sentencing: Gunman Brenton Tarrant planned to attack three mosques” *The New Zealand Herald* (online ed, 24 August 2020)).

There was also extensive reporting of the 26-page summary of facts read to the court on the first day, including confirmation that the gunman had intended to target a third mosque in Ashburton, south of Christchurch. *The Press* reported: “[d]uring the next 45 minutes he [Crown prosecutor Barnaby Hawes] reconstructed, in all the appalling detail, the most abhorrent crime — a crime that took 19 minutes and took 51 lives — New Zealand has ever seen” (Martin van Beynen “It was a calm and merciless slaughter. But Christchurch mosque shooting victims showed humanity” *Stuff.co.nz* (online ed, 25 August 2020)).

Victim impact statements, some read and others presented in pre-recorded videos, began on the first day and continued for a further two days. Media described how the victims' statements ran a gamut from horror and anger to forgiveness. A number of those who had agreed to having theirs published found their statements described in detail by media. *The Press* said one victim described telling a man holding a four-year-old boy that the child was dead. Another looked directly at the gunman and said: “[m]y heart is broken but we are not broken. We are united. You have done that and I thank you for that” (Marine Lourens and Jody O’Callaghan “Mosque victim to gunman: ‘We became more determined and united than ever’” *Stuff.co.nz* (online ed, 24 August 2020)).

On 27 August, at the completion of the impact statements, the *Dominion Post* devoted its front page to extracts from nine of them under the heading “Heed Our Words: Gunman stays silent as victims stand proud”.

Foreign coverage generally followed a similar pattern to domestic reporting. The *Berliner Zeitung* covered the case extensively, running headlines such as “The victims of the Christchurch Mosque assassin have their say”. The introduction to its coverage of the sentencing began: “White roses as a symbol of peace: Muslim men and women carried the fabric flowers into the courtroom, in which Judge Cameron Mander more than three and a half hours later pronounced the sentence against the mosque bomber [sic] in Christchurch” (<www.berliner-zeitung.de/politik-gesellschaft/urteil-gegen-christchurch-attentaeter-die-hoechste-jemals-verhaengte-straefeli.101293?pid=true>). The New Zealand correspondent for Britain's *Guardian* wrote that local media had focused on victims right to the point where Tarrant was sentenced (<www.theguardian.com/world/2020/aug/27/new-zealand-media-put-christchurch-gunman-in-his-place-with-focus-on-victims>).

Coverage in the Australian media was extensive and prominent on the first day, and while the case continued to receive substantial prominence across the four days of the hearing, the volume of content lessened as the days went by. Like the New Zealand media, the Australian media focused its coverage on the victims, portraying their courage, anger and forgiveness. A headline on the online service of the Australian Broadcasting Corporation captured the general approach: “Christchurch mosque survivors and families stare down gunman Brenton Tarrant in sentencing hearing” (<www.abc.net.au/news/2020-08-25/christchurch-mosque-shootings-brenton-tarrant-sentencing-day-two/12590116>). The fact that the Nine Entertainment Ltd newspapers — *The Age*, *The Sydney Morning Herald* and the *Australian Financial Review* — took their coverage from *Stuff.co.nz* meant that their content replicated that of many major New Zealand newspapers. The rest of the Australian media largely relied

on Australian Associated Press. AAP had staff in the court, subject to all the conditions, and the professional acculturation, that went with those circumstances.

The twice-daily three-minute pool television packages produced by Television New Zealand — which formed the basis of much of the overseas broadcast coverage (CNN and Al Jazeera ran extensive coverage) and placed emphasis on the impact statements — showed victims reading their statements and also their impromptu comments directed at the defendant. Some agreed to be filmed. Those who did not wish to have their faces shown were filmed from the rear. Others elected to direct their comments only to the court.

The lack of reaction by Tarrant and his diminished demeanour during the hearing — he was described by the *Otago Daily Times* as “a pale and puny figure” (“No mercy for killer” (online ed, 28 August 2020)) — led *The Press* to compare him in an editorial to the Nazi war criminal Adolph Eichmann, whose ‘ordinariness’ had led German political philosopher Hannah Arendt to coin the phrase ‘the banality of evil’ (Hannah Arendt *Eichmann in Jerusalem: A report on the banality of evil* (Viking Press, 1963)) and prompted Canadian singer-songwriter Leonard Cohen to write a poem describing his undistinguished appearance (“All There is to Know About Adolph Eichmann” from *Selected Poems, 1956–1968* (Bantam Books, 1971)). The editorial noted: “... the phrase ‘banality of evil’ comes to mind because many will have had the same reaction when they saw the gunman in court that Cohen had about Eichmann” (Editorial *The Press* (online ed, 25 August 2020)).

Tarrant had waived his right to be represented by counsel and during the sentencing hearing indicated he did not wish to exercise his right to speak on his own behalf. Therefore, the fourth day of the hearing was devoted to final submissions by the Crown and submissions on the defendant's behalf made by stand-by counsel appointed by the court after Tarrant had dispensed with his lawyers in July 2020. Justice Mander then began two hours of remarks before passing sentence. He catalogued each of the killings in graphic detail. *The Press* stated that the Judge “went to lengths to describe the horror of the slaughter at the mosques” ((28 August 2020) at 2). The *Otago Daily Times* reported Justice Mander's description of the killing of Mucaad Ibrahim: “It was brutal and beyond callous — your actions were inhuman. You deliberately killed a 3-year-old infant by shooting him in the head as he clung to the leg of his father. The terror you inflicted in the last few minutes of that small child's life is but one instance of the pitiless cruelty that you exhibited throughout ... You showed no mercy” (“No mercy for killer”, above).

Justice Mander sentenced Tarrant to life imprisonment without parole. It was the first time in New Zealand legal history that a whole-of-life sentence had been imposed. New Zealand media coverage reflected widespread approval of the sentence. The front page of *The Press* read, in Arabic and English, “الحمد لله Thank God” (28 August 2020).

Following the sentencing, *The New Zealand Herald* revealed court documents that showed Tarrant had tried to avoid appearing in person at the hearing. He requested that he appear via video link from his Auckland prison cell. Justice Mander rejected the application which, he said, raised concerns that Tarrant was trying to “avoid having to face the consequences of being publicly held accountable for his

offending” (Kurt Bayer “Christchurch mosque attack: Mass killer Brenton Tarrant tried to avoid appearing at own sentencing” *The New Zealand Herald* (online ed, 28 August 2020)).

Throughout the four-day hearing, news media followed Justice Mander's directions on publication. The authors were unable to find any examples of suppression orders being breached by either New Zealand or overseas media that had registered to cover the hearing either in person or remotely. Nor were we able to find any examples of misuse of the video feeds from the court. Major social media platforms co-operated with the New Zealand Police to ensure there was no unauthorised copying or misuse by individuals.

Court officials and media executives concurred that coverage of the hearing reflected a ‘victim-centric’ approach and that any misuse of the court process to foment racial hatred or white supremacist messages had been avoided. The consensus was that the coverage domestically and internationally had positively served the interests of justice. Court victim advisors told the authors that the victims' response to coverage had generally been positive.

However, positive reaction to media coverage was almost immediately undone by speculation that Tarrant might serve his sentence in his homeland of Australia, where he would be closer to family. The Muslim community in New Zealand was infuriated by such a suggestion — which had the support of then deputy prime minister Winston Peters (leader of a party in the coalition government). The situation was defused by the Prime Minister Jacinda Ardern saying it was not a consideration. There is, in fact, no provision in New Zealand law for such a prisoner transfer. However, the manner in which the Muslim community focused part of its anger on news media for reporting the possibility was a measure of the fragility of the relationship between the victims and journalists.

AFTERMATH

Ten days after the attacks on the Christchurch mosques, a Royal Commission of Inquiry was announced. The inquiry began in April 2019 but the extent of its enquiries meant it did not report its findings and recommendations until three months after the sentencing. Tarrant was among the 400 people heard by the commission (<christchurchattack.royalcommission.nz/the-report/download-report/download-the-report/>).

In October 2021 a coronial inquiry into the deaths of the Christchurch Mosque victims was opened to consider a number of issues that the affected parties believed had not been fully resolved by the criminal proceedings or the Royal Commission. A large group of submissions focused on the emergency first response to provide medical aid to victims and the survivability of those who died. The Chief Coroner, Judge Deborah Marshall, issued a minute setting out the scope of the inquiry and set down a hearing date for mid-December 2021 that was subsequently adjourned to February 2022 (<coronialservices.justice.govt.nz/assets/Documents/Publications/Scope-of-inquiry-Minute-October-2021-plus-appendices.pdf>).

Following the announcement of the coronial inquiry, Tarrant retained a human rights lawyer, Dr Tony Ellis, who sent a memorandum to the Chief Coroner in which he said his client wished to be represented at the hearing and objecting to the process being adopted. The memorandum also

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[T]he only conclusion that can be reached is that the non-disclosures, and changing of evidence, and reconstructions, were all attempts by the police to make the evidence match their theory, which was that Allen was the offender.

CONCLUSION

These cases join the likes of Arthur Allan Thomas, Teina Pora, and many others in our unfortunate history of wrong-

ful convictions. While it is positive that these miscarriages of justice were ultimately revealed and resolved, it is troubling that they continue to occur, especially as a consequence of the same common causes. Going forward, all actors within the justice system should take pause and consider how they can best avoid repeating these tragic — but all too common — miscarriages of justice. □

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stated that Tarrant claimed his guilty pleas had been made under duress “or in breach of the right not to be subjected to torture or cruel treatment”. Dr Ellis indicated that an appeal against the convictions was likely. Dr Ellis said Tarrant had provided him with a 15-page document alleging mistreatment. The claims received extensive news media coverage. However, a week later Tarrant again dismissed his counsel.

In May 2022 the coroner assigned to the inquest, Brigitte Windley, refined its scope (<coronialservices.justice.govt.nz/assets/Documents/Publications/Decision-of-Coroner-B-Windley-as-to-Scope-of-Issues-for-Inquiry-28-4-22-signed.pdf>). This followed a three-day preliminary hearing in February 2022 that heard submissions from survivors, grieving families and other interested parties on what they considered to be the issues of most concern. The coroner said the issues for investigation would include whether Tarrant had any help from others on that day; the emergency response efforts; and whether that response might have affected the survivability of the deceased. It would also examine his online activity between 2014 and 2017 and whether he had become radicalised much earlier than had previously been thought.

She excluded from its scope any further investigation into whether there had been any missed opportunities by intelligence, counter-terrorism agencies and other public sector agencies, citing the security-sensitive nature of key evidence on these questions. (The Royal Commission had previously found that New Zealand's security agencies deployed “an inappropriate concentration of resources” to probing Islamic extremism before 2019, when the attacks in Christchurch occurred (Kurt Bayer “Christchurch mosque shootings: Royal Commission report aims to avoid future terror attacks” *The New Zealand Herald* (online ed, 9 December 2020)). The implication of those findings is that the security agencies had spent too much time looking at terrorism perpetrated by people claiming adherence to the Islamic faith and not enough at terrorism that might be aimed at people of the Islamic faith.)

The scope of the inquiry as outlined by the coroner was accepted by Gamal Fouda, the imam of the Masjid an-Nur mosque, where most of the victims died, as satisfying “almost all” of the issues his community wanted to see included. Abdur Razzaq, of the Federation of Islamic Associations of New Zealand, said the federation was pleased at what seemed to be a meticulous approach to identifying the causes and circumstances of the attacks (Kurt Bayer “Christchurch mosque

terror attacks: Full coronial hearing confirmed, with focus on terrorist's early radicalisation” *The New Zealand Herald* (online ed, 5 May 2022)). The coroner set 15 May 2023 for the start of the inquest, and said it would be held in Christchurch. The factors she said she had taken into account in setting the date included the importance of recognising the anniversary of the attack — 15 March — as well as the observance of Ramadan and Eid-al-Fitr. In 2023 Ramadan will begin on 22 March and end on April 20. Eid-al-Fitr begins on 21 April and ends on 22 April. She said she had considered trying to start the hearing in 2022 but logistical complications combined with the Christmas-new year holidays had made it impossible (Anna Leask “Christchurch mosque terror attacks: Full coronial hearing to begin in May 2023, Coroner explains long lead-up” *The New Zealand Herald* (online ed, 30 June 2022)).

As may be deduced from the coroner's considerations, it is expected that New Zealand will continue to recognise the anniversary of the Christchurch mosque attacks, perhaps diminishing in scale as the years progress. Commemoration can be traumatising. For example, an exhibition on the fourth anniversary of Breivik's attacks in Norway (featuring the wreckage of the car bomb he detonated in Oslo) prompted outrage and a controversial memorial to the victims on Utøya was scrapped.

Likewise, media coverage of anniversaries carries the risk of re-traumatising victims and survivors. The risks are greatest when file footage from the event is used and when victims and survivors are intruded upon at remembrance ceremonies and asked for comment. The New Zealand media avoided these risks. On the second anniversary in 2021 they concentrated their coverage on reporting the formal proceedings at the remembrance ceremony in Christchurch, and once again focused on the victims and survivors, as they had at the time of the atrocity and at the sentencing of the perpetrator.

Although from the day of the atrocity onwards there had been widespread displays of empathy and ‘oneness’ towards the Muslim community in New Zealand, it became obvious that New Zealand and its official agencies had insufficient knowledge of the religious and cultural needs of that community in the face of this act of terror. The community's experience in the early hearings of the case exposed these deficiencies and provided lessons for the planning of subsequent stages of the justice process. As a result, there was generally positive feedback from the community about the way the sentencing unfolded. How this was achieved is the subject of the fourth and final article in this series. □