[2022] NZLJ 378

Justice, the media, and the Christchurch mosque terrorist

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

DIMENSIONS AND CONCLUSIONS

The Islamic dimension

The Islamic faith and culture were central to the case against Brenton Harrison Tarrant. Not only were mosques and the faithful targets of the attacks but there was also a determination to recognise and honour the religion throughout the judicial process.

This manifested itself in numerous ways but there were two principal dimensions to the part Islam played. The first was recognition of a spiritual domain during proceedings. This required meeting needs that were specific to the faith and to involve victims and families in ways that were consistent with their diverse cultures and beliefs. The second was to ensure that officers of the court, ministry officials and media representatives had sufficient knowledge of Islamic religious and cultural imperatives to provide an inclusive environment and avoid cultural errors that could potentially retraumatise victims.

The Christchurch attacks were cathartic for many New Zealanders. Undercurrents of Islamophobia had permeated the western world in the wake of the 9/11 attacks in America and the rise of Islamic State (ISIS, ISIL or Dā'ish). Although New Zealanders had no direct experience with this form of aberrant extremism, many of its Muslim population felt a degree of 'otherness'. This was exacerbated by the fact that there had been a lack of awareness of increasing far-right/white supremacist rhetoric and behaviour. Mansouri has stated that "the Christchurch Mosque attacks occurred in a local and global context of persisting Islamophobia ..." (Fethi Mansouri "Islam and Muslims in Australia: The Social Experiences of Early Settlement and the Politics of Contemporary Race Relations" (2020) 14(1) Politics and Religion at 127–147). This view appears to be borne out by the Royal Commission's conclusion that, prior to the shootings, New Zealand's security services had had an "inappropriate concentration" on a perceived threat from Islamic extremists (<christchurchattack.royalcommission.nz/the-report/>).

However, the events of 15 March 2019 triggered an immediate outpouring of empathy summed up by New Zealand Prime Minister Jacinda Ardern's use of phrases such as "[w]e are them. They are us" which were repeated in newspaper headlines, on banners, and on signs placed with flowers outside mosques (see, for example, the front page of *The New Zealand Herald*, 18 March 2019, which featured hearts representing the (then) 50 victims and the phrase "They are us"). Haider and others state that the New Zealand reaction "presents an outright challenge to the anti-Muslim sentiments of hatred and hostility" (AS Haider, S Al-Salman, LS Al-Abbas "Courtroom Strong Remarks: A Case Study of the Impact Statements from Survivors and Victims' Families of the Christchurch Mosque Attacks" (2022) 35(2) International Journal of Semiotics of Law at 753–770).

However, although there were widespread displays of empathy and 'oneness', it is obvious to the authors that, at the time of the attack, New Zealand and its official agencies had insufficient knowledge of the religious and cultural needs of the group most directly affected by an act of terror on a scale unseen in New Zealand in modern times.

This knowledge gap, and insufficient appreciation of the fact that the New Zealand justice process was alien to many of the survivors and their families, was the likely cause of the distress that some said they felt during the initial proceedings following Tarrant's arrest.

Five Muslim professionals who had been involved in the Operational Support Group (set up by the court to liaise with the Muslim community) assisted the authors in understanding the faith-based imperatives of the case. They were Haamid Ben Fayed, Dr Shaystah Dean, Zeenah Adam, Zimna Thaufeeg, and another member who wished to remain anonymous.

Haamid Ben Fayed, an Auckland-based lawyer who specialises in dispute resolution, is also a qualified Imam. He told the authors (interviewed 27 January 2022) that issues that emerged from the community's experience in the early hearings provided lessons for the planning of subsequent stages of the justice process. As a result, there had been "generally positive feedback" from the community about the way the sentencing unfolded.

> There was a lot of goodwill, immediate goodwill that was built up by the government's response and the response of New Zealanders that provided an entry point from which to build trust. The affected population had had quite negative experiences with government, media, and the courts. They also had difficulty understanding the rationale behind particular processes, particularly when there were 15 to 20 processes all unfolding at the same time and up to 20 people to deal with.

The sheer scale of the attacks and the number of victims and their families meant many had been directly impacted while many more had also felt affected. A series of steps were taken to deal with the issues that had emerged and to meet the objectives set for dealing with the victims and the expectations of the wider Muslim community:

- Recognition that existing processes needed to be augmented.
- A team of Muslim professionals were engaged to provide training and advice.

- Mandatory training of all court and relevant Ministry of Justice staff on Islamic culture and faith, as well as the effects of trauma.
- Broadly based research on international responses to terror attacks, including research into the retraumatising of victims and mitigation techniques employed by Norwegian authorities during the Breivik case.
- Appointment of a Muslim lawyer to act as co-counsel with the barrister assisting the victims.
- Integration between the Justice response, the Canterbury District Health Board, and health professionals to ensure that justice responses and processes were 'trauma-informed'.
- A Victims Survey to identify individual needs.
- Post-hearing debriefings where victims could seek clarification on the proceedings that had taken place.
- Language services to translate key documents and communications. Translators and live translation of proceedings were available at all court sittings.
- Whānau spaces in the court precinct with prayer and wudu (cleansing) facilities and gender separate areas.
- Private rooms for discreet security searches by gender-matched staff.
- Wellbeing rooms with Muslim psychologists available onsite.
- Media representatives in court for the sentencing distanced from victims to give the latter a sense of 'space'.
- Separate entrances to the court provided for those wishing to avoid media contact.
- Waiving of restrictions to allow Court Victim Advisors to conduct home visits that facilitated the building of more effective relationships and trust.
- Extensions to existing victim assistance schemes to allow for the funding of childcare and meals.

Unusual flexibility was built into the support system because of the scale of the attacks and the need to meet the faith, cultural and language needs of the impacted communities. It recognised the need for time to develop individual relationships with victims because a team approach might fail to build the required levels of trust. It also included protocols to ensure consistency in communication about processes for victims. Face-to-face contact with victims and families from the attacks onward was an important aspect of building trust. However, the families were faced with up to 30 different government agencies and NGOs attempting to interact with them. Efforts were made to minimise multiple contacts and allow victims and their families to develop relationships with individual advisors who were able to talk them through the often-confusing processes and provide 'a familiar face' during distressing aspects of the sentencing.

Media briefings by the Islamic professionals were held where media leaders and journalists were given an overview of Islam, the Muslim community, and the victim group. The briefings outlined the community's previous experiences of media, media coverage of Muslims globally, the importance of understanding cultural/religious diversity within the community, and the inter-connected nature of the community. Journalists were warned of unintentional cultural biases in media reporting that feed into white supremacist agendas. The briefings also covered trauma and the impact this can have on individuals and group dynamics. Media organisations were urged to use warning notices and advice on graphic coverage and use of an opt-out button to allow blocking of online coverage. The New Zealand Ministry of Health developed a series of messages and links to resources and services that could be used by media on stories relating to the attacks. The media representatives were urged to emphasise a trauma-informed approach including:

- Upholding the dignity of a person wanting privacy walking into court.
- Providing the opportunity (and autonomy) for people to decide how they tell their story.
- Reigniting the "we are one" narrative.

Victims and their families were also briefed on their rights and how to handle approaches from the media. Haamid Ben Fayed told the authors there was a range of reactions to contact with news media during proceedings.

> Some individuals were very open and willing to talk to the media and have established good working relationships with journalists. Some have been repeatedly contacted by journalists to comment or feature in stories covering the ongoing impact/events associated with the attacks ... Others have actively stayed away from the media and have made explicit requests to not be approached by the media. Some victims requested ways to enter/exit the court precinct without being seen or approached by the media.

He said there were generally positive responses to the way in which proceedings were covered by media although their rational acceptance of the role of the media could not prevent emotional responses to seeing and hearing reports that triggered traumatic memories. An example was the triggering effect of media reports of Tarrant's attempts to initiate proceedings against the Department of Corrections. While these were matters of public interest, some members of the Muslim community expressed frustration with the media for 'giving him oxygen'. Nevertheless, reactions expressed through social media indicated a sense of empowerment among both those directly affected and the wider New Zealand Muslim community. The tightly regulated timings for the release of media coverage stipulated by Justice Mander (see part 2) also appeared to have a positive impact. It appeared to have allowed for more contextualised, balanced, and accurate reporting.

Media coverage of victim impact statements or VIS (see part 3) was shared widely within the Muslim community and produced consistently positive comments. The delivery of the statements themselves was described by Haamid Ben Fayed as "empowering and cathartic". A Community Impact Statement read to the court also provided an opportunity to describe wider effects of the terrorist attacks.

> People spoke afterwards of the strength they felt facing Tarrant and speaking their truth. People felt honoured and respected by the judge. Many people reported that they felt some sense of closure following this process ... There was a growing sense of confidence and empowerment that emerged over the week. This was evidenced by the number of people who signed on to deliver a VIS at late notice, after seeing others deliver theirs. People also began to ad lib and pour their emotion into their statements, and this was allowed by the judge which also gave people confidence. The energy in the main courtroom was largely supportive of people's statements, with applause often following.

> Unfortunately, there were some who had different experiences. For example, some victims were not aware that they could change their mind and elect to deliver a statement at late notice. Some were not aware of other options available to them, such as pre-recording or presenting in their own language. As a result, they did not agree to do a VIS and then were upset after seeing others deliver with flexibility. An important learning here was to ensure that all victims are individually aware of their rights and what options are available to them.

Victims and their families utilised the full range of support services that had been put in place for the court process. Their experiences were varied and often depended on the relationship with a particular agency or staff member. Some relied on the court victim advisors while others were drawn to the independent community-based organisation, Victim Support. The New Zealand Council of Victim Support Groups evolved during the 1980s from several small voluntary groups. It works with victims in the areas of homicide, suicide bereavement, family violence and other crimes and trauma.

The passing of sentence on Tarrant brought a measure of closure to the victims and the wider Muslim community but it was by no means the end of media coverage. Stories directly related to the terrorist and coverage of events where a parallel was drawn continue to appear in New Zealand media. Some have had the effect of retraumatising victims, especially speculative stories raising the possibility of further proceedings or questioning the permanence of the sentence. Reaction to speculation that Tarrant could serve his sentence in his own country (Australia) had a mixed reaction ("Mosque gunman Brenton Tarrant could serve out sentence in Australia, Scott Morrison reveals" *The New Zealand Herald* (online ed, 28 August 2020)). While many were deeply disturbed by the speculation, other members of the Muslim community said they would prefer to see him removed from New Zealand. Justice Minister Andrew Little stated that a law change would be necessary for his deportation. Current law allowed for deportation at the end of a prison sentence but, as Tarrant faced a whole-of-life term, he would serve out his sentence in New Zealand ("Christchurch mosque attack sentencing: Deporting Brenton Tarrant would require new law, Justice Minister says" *The New Zealand Herald* (online ed, 27 August 2020)).

Tarrant's full-life term did not end the fears that his attacks had engendered in the Muslim community. Many victims report continuing to feel unsafe or targeted as Muslims. There is a concern that copycat attacks are possible, and coverage of threats to their safety have reinforced this. There are also fears that an emphasis on Tarrant's rights, choices, and public impact may encourage copycat aggressors who do not see his fate as a deterrent. The ongoing disquiet was the subject of a seven-part investigation by Stuff investigative journalist Eugene Bingham in 2022 (<www.stuff.co.nz/national/300598389/how-pleas-for-help-in-the-leadup-to-the-christchurch-attacks-fell-through-the-cracks--chapter-1-the-iceberg?cx_rmv3=new>).

Nonetheless, the official and public reaction to the Christchurch attacks received widespread support, including from within the Muslim community. However, New Zealand has not fully reversed negative attitudes that preceded the crime.

On 3 September 2021 eight people were stabbed — none fatally — in an incident described by Prime Minister Ardern as an ISIS-inspired act of terrorism. The attacker, Ahamed Samsudeen, entered a supermarket in a suburb of the country's largest city, Auckland, and attacked shoppers before he was shot dead by members of the Special Tactics Group who had him under surveillance.

Haamid Ben Fayed believes coverage of that attack — where the death of the attacker allowed media to describe him as a "terrorist" while ongoing court processes required Tarrant to be described as an "alleged terrorist" — reinforced the stereotype of "terrorist Muslims". He told the authors individuals in the Muslim community had experienced increased racism, discrimination and threats since that attack, but the Christchurch mosque attacks did represent a turning point.

> It's good that we can say we're on the right track. That is heartening. Some people get quite offended by the suggestion that we're not there yet, but some things just do take time.

The Australian dimension

Australia provides several reference points in assessing the effectiveness of measures designed to meet the concerns set out in part 1 of this series of articles.

There was strong public interest in that country because the defendant was an Australian citizen. This guaranteed that there would be ongoing media coverage against which New Zealand media performance could be compared.

Equally significant was the relationship between Australian media and the judiciary and how this contrasted with their New Zealand counterparts.

As the authors found (see part 3), there was a marked contrast between the Tarrant-focused media coverage of the attacks in March 2019 and the victim focus of sentencing coverage which had been provided by agreement-bound and accredited senior journalists in New Zealand.

The media's relationship with the Australian judiciary had marked contrasts with that in New Zealand. It is also inherently more complex as Australia has nine territorial jurisdictions — the Commonwealth plus one for each of the six states and two territories — compared to this country's single judicial hierarchy. Each has its own approach and, hence, a differing relationship with media.

For two reasons, the authors chose to concentrate their research on the state of Victoria. Firstly, it had 'fallen victim' to a similar form of disregard of court orders as New Zealand had experienced in the 'Millane Trial' and, secondly, it has a body that can be compared with New Zealand's Media and Courts Committee (see part 1).

In the first Melbourne trial of Cardinal George Pell on historical child abuse charges, a suppression order was in place until the completion of a second trial on other charges. The order was widely ignored by foreign media and, after Pell was found guilty of abusing two boys (later overturned on appeal) Australian media ran reports that referred to the case in a manner which, although he was not named, led the Director of Public Prosecutions to bring contempt proceedings against 27 media companies, editors and journalists. A number of charges were withdrawn but fines totalling more than $A1 million were imposed (<www.abc.net.au/news/2021-06-04/george-pell-trial-leads-to-contempt-of-court-fine-for-news-media/100190944>). Foreign media were beyond

the reach of the Australian court. The case and its aftermath further eroded an already difficult relationship between media organisations and the judiciary.

Alex Lavelle as editor of *The Age* in Melbourne (interviewed 3 August 2021) was one of the senior staff against whom a charge of contempt was withdrawn. His perspective on the relationship between the media and the courts in the context of the Tarrant trial is informed by his experience in his role as editor during both the Christchurch massacre and the Pell contempt proceedings.

He said that his approach to covering the Tarrant proceedings was based on "a general concern not to cause any more distress or any more unnecessary incitement". *The Age* took its coverage from *Stuff.co.nz*, which was both accredited to cover the hearing and a signatory to the New Zealand media's voluntary guidelines discussed in part 1. He regarded *The Age* as a signatory by proxy.

Mr Lavelle said the voluntary guidelines "takes out the competitive edge and the temptation to push boundaries" but he noted there was a very competitive edge to the media in Australia and he doubted such a protocol would be accepted there.

A further barrier, in his view, was the relationship between the courts and the media:

> The relationship in Australia is problematic, born out of lack of trust on both sides and a lack of understanding on both sides about what the role of the media is, from the court's point of view, and what the role of courts is, from the media point of view. It's a shame. Communication is poor. Trust is not great.

Mr Lavelle also said that one of the reasons the relationship was poor was that the courts were reluctant to accept the media's mission to hold power to account, which included holding the courts to account.

His observations tend to reinforce the key difference between New Zealand and Victoria on media-court relations: that the New Zealand relationship operates at the institutional level — the Media and Courts Committee — while the Victorian relationship is at the operational interface between judges, court officials and court reporters.

There is nothing in Victoria like New Zealand's Media and Courts Committee. That committee works at an institutional level, with senior representatives from the media and the courts participating in its work. On the available evidence, the closest Victoria comes to it is the County Court's Media and Communications Committee. It is chaired by Judge Liz Gaynor, a judge of the County Court.

Judge Gaynor (interviewed in an email exchange over several days in July 2021) said the County Court generally enjoyed a positive working relationship with court reporters. She said she and the court's media officers hosted meetings with regular court reporters to discuss general issues of mutual interest and to provide a forum for questions about the court's operations. She noted that one of the challenges in maintaining good relations was the high turnover of journalists who reported the courts, although there remained a relatively stable group of regular reporters.

The authors found two critical differences between this and the New Zealand model. The first is that the court's primary relationship is with the regular court reporters and not senior editorial representatives from the media. The second was that issues with the media were dealt with in court rather than through the consultative processes that mark the New Zealand committee.

Judge Gaynor would not be drawn on whether a committee like that in New Zealand would be possible or desirable, but said that in general, issues between the courts and the media were resolved co-operatively in open court and in good faith. With terrorism-related trials, there was a general concern by the authorities about the disclosure of information that could compromise existing or future investigations. These concerns were generally dealt with by the use of suppression orders. However, applications for these orders were heard in open court with the media having the opportunity to object.

CONCLUSIONS

The New Zealand judicial system was on trial in the Tarrant case. The level of New Zealand and international scrutiny of the court process was unprecedented in this small nation. At issue was the ability of the system to balance principles of open justice against the need to prevent the hearing becoming a touchstone for white supremacists.

The court was faced with several imperatives. It had to ensure that the New Zealand justice system delivered a fair and dignified process and would be recognised internationally as having done do. It needed to minimise the risk of re-traumatising the victims and their families, while giving the victims and their families a voice that was not subordinated to the accused's voice. It had to minimise the risk that the accused would use the proceedings as a platform to spread his white-supremacist ideology. It needed to satisfy these needs while, at the same time, ensuring that the principles of open justice were adhered to.

These requirements had to be met while respecting the right of the media to report, yet minimising the risk that media beyond the reach of the New Zealand jurisdiction would ignore or violate court orders. Beyond mainstream media, the need to prevent the misappropriation of court materials for disinformation or propaganda purposes required innovative measures that stretched across multiple government agencies.

In defining these objectives, the New Zealand justice system drew on Norway's experience with the trial of Anders Breivik in 2012. This approach was given added relevance by the fact that Breivik was referenced in the Christchurch terrorist's manifesto, *The Great Replacement*.

A dimension absent in the Norwegian case was the faith and culture of the Christchurch victims. Islam was a focus for the attacker and a way of life for the victims and their families. The ways in which this dimension was accommodated by both state agencies and the court was, in our view, ground-breaking. There was recognition of the importance of religion and culture in both the need for inclusive justice and protecting the wellbeing of victims in faith-based crimes. The needs of the Muslim community were identified and then met by (a) ensuring there were people from within the community to advise and assist and (b) providing those involved in the court process (including media) with sufficient knowledge to ensure they were both respectful of belief and acutely aware of the potential for re-traumatising a culturally defined community.

The preparations for the proceedings had originally been based on Tarrant's initial not guilty plea, with a trial and weeks of testimony, much of which would have been deeply distressing to victims and their families. His change of plea and a four-day sentencing hearing reduced the potential for disruption and disobedience but the objectives remained; the management of risks while meeting the requirements concerning the administration of justice and the need for transparency.

It is clear that this complex range of objectives contained some inherent tensions. One was between adhering to the principles of open justice and minimising the risk that the accused would propagandise. Another was between respecting the right of the media to report while minimising the risks of re-traumatising the victims and their families. Overlaying this was the danger of court orders being flouted and court materials being misappropriated.

To a very great extent, these tensions were resolved by a remarkable degree of co-operation between the court system and the New Zealand media. This rested on two foundations, one of long standing and one created voluntarily by the media in the lead-up to the proceedings.

The foundation of long standing was the Media and Courts Committee, established in 2001. Its composition — five judges, six senior media representatives, representatives of the Office of the Chief Justice, and a senior Registry official — is a measure of the importance attached to it by both the judiciary and mainstream media organisations. Over time it had developed protocols for such matters as the use of cameras in courts. More importantly it had engendered a high level of trust between these two pillars of democracy, the judiciary and the press.

The institutional-level nature of the New Zealand relationship clearly meant that decisions taken jointly by judicial and media representatives on New Zealand's Media and Courts Committee, chaired by a High Court judge, would carry the authority necessary to secure buy-in by each side, while recognising that judges have inherent jurisdiction over their own courts. This arrangement was reinforced by the presence on the committee of several representatives of the Media Freedom Committee, an industry body that had liaised with government agencies on a broad range of issues including protocols for coverage of terrorist incidents.

Neither judges' inherent jurisdiction nor the role of the media in holding that power to account were compromised by the work of the consultative body. On the contrary, it appears to have avoided the hostile media reactions encountered during the proceedings against Pell in Melbourne, leaving the authors to conjecture that Victoria — and other Australian jurisdictions — might benefit from the institutional-level dialogue practised by the New Zealand Media and Courts Committee.

The second foundation on which the co-operation in New Zealand rested was the voluntary adoption by New Zealand's five largest media organisations of the protocol for covering the Tarrant proceedings. This was developed in April 2019, the month after the atrocity in Christchurch, and was the work of the Media Freedom Committee. It was born out of concern that the accused might try to use any legal proceedings to amplify his white supremacist or terrorism ideologies. The protocol called for the media to cover the proceedings in accordance with the principles of open justice while limiting dissemination of statements or symbols championing these ideologies. At the suggestion of a senior court official, the Chief Advisor Judicial Communications, the protocol also included a commitment to using senior journalists to cover the proceedings.

The New Zealand Prime Minister, Jacinda Ardern, had vowed never to utter the accused's name, and while the media would not commit to that, it was generally agreed to use it only when it was material to the story.

This culture of restraint by the media reflects a preparedness to act collaboratively for the common good and to set aside their usual competitiveness in order to do so. It also reflects the communal outrage that New Zealand society so obviously felt when the atrocity was perpetrated, and a determination not to allow it to become socially divisive or a cause célèbre among extremists.

Across the Tasman a different culture prevailed. When Victorian courts wished for something not to be published, they used the formal judicial mechanism of a suppression order, a breach of which would render the transgressor liable to a charge of contempt of court. For the media's part, the view was that although the protocol adopted for the Tarrant case was useful as a guide, the Australian media were unlikely to do something similar because of what was seen as a sharper competitive edge. In this context it may be observed that one very significant difference between the two countries is that this sometimes cut-throat competition is led by Rupert Murdoch's News Corp, which has a reputation for pushing institutional and societal boundaries. That organisation has had no direct ownership in New Zealand mainstream media since selling its interests in newspapers in 2003 and pay television in 2013. In Australia the view in the journalism profession is that the Murdoch media "push the boundaries", as Alex Lavelle, the former editor of *The Age*, put it. Murdoch's News Corporation, controls about two-thirds of Australia's metropolitan daily newspaper circulation, as well as Sky News, a largely subscription television channel.

The Pell case and similar disregard of New Zealand court orders in the trial of Jesse Kempson for the murder of British tourist Grace Millane clearly informed preparations for the case against the Christchurch mosque attacker. The international media's access to the Tarrant proceedings were governed by two constraining factors. The first was the registration process that was required in order to gain access to the proceedings. The second was the pooling arrangement for images, executed and managed by New Zealand media, that controlled the flow of visual material from the court to any international media.

Both the New Zealand media's voluntary protocol and rigid adherence to the detailed rulings of the court — handed down through a series of minutes written in advance by the presiding judge, Justice Mander — were material factors in coverage of the sentencing.

Two of these rulings were critical in limiting the risk that any of the court's objectives would fail. One was that there would be no live broadcasting of the proceedings. The other was that there would be only two daily windows for reporting of any kind, one during the midday lunch adjournment and the other at the end of the sitting day. These in effect eliminated the use of Twitter and other real-time reporting tools.

The registration process for accrediting overseas media required them to agree to be bound by all orders of the court as if they were enforceable in the countries in which they

operated. Funnelling footage and images through the New Zealand media, which had so demonstrably shown its commitment to supporting the court's objectives, was a vital practical means by which compliance with the court orders was achieved. Nonetheless, the decision to allow international media to receive an audio-visual feed of proceedings was, for New Zealand at least, a ground-breaking experience. The fact that none of the recipients broke the agreement or court orders suggests that this system of registration and delivery could be usefully employed in other jurisdictions in high-profile proceedings with international interest.

These restraints, and the means by which they were achieved, raise an important question about the editorial independence of the media. Did the New Zealand media (and those overseas organisations that registered) surrender too much of their editorial independence in the interests of serving the greater good?

We would answer no. Our reasons begin with a reflection on the purposes in a democracy of the media's editorial independence. One purpose is to see that the public is served with accurate, truthful and reliable information untainted by fear, favour, vested interest or constraints on the ability to bear witness and hold power to account. Another is to see that the public interest in the broadest sense is placed above commercial or sectional interest, including the media's own commercial and sectional interest.

Jeremy Bentham's observation that publicity is the very soul of justice reflects the media's core function in satisfying the public interest in the proper administration of justice conducted transparently. At stake in this case, however, were further public interests. One was the public interest in avoiding socially harmful divisiveness, prejudice and hate. Another was the public interest in the media's demonstrating respect for the New Zealand society's mood of outrage at the atrocity and its determination not to allow the perpetrator to benefit in any way from what he had done but to give voice to his victims.

A second reason is that the restrictions followed detailed discussions between justice officials and the media and, while some (such as the timing of the publication windows that presented deadline issues) were accepted reluctantly, the need for the measures was freely acknowledged. The media were not coerced. They acted voluntarily, based on the trust they had in the judiciary to not impose unreasonable restrictions, as well as their reading of the public mood and a commitment to responsible journalism as shown by the terms of their own voluntary protocol. Professional communications advisors played a crucial role in maintaining the flow of information to media and back to the court.

A third reason is that no one interested in the proceedings was denied a comprehensive account of what occurred. None of the proceedings were hidden from view and the media were free to report them as they saw fit, subject only to the constraints already described. There was general acceptance that victims had a right to restrict publication of often deeply personal impact statements, although many chose to make their statements in open court. The facts of the case had been laid out in detail by both the prosecutor and by the judge in his graphic sentencing remarks.

A fourth reason is that this approach represented, in media terms, a high-water mark in the ethics of communitarian responsibility. The New Zealand media voluntarily sublimated their individual competitive and commercial interests to the interests of the wider society. It was a Confucian approach, commonly seen in Asian journalism but very rarely in the West. Of course, taken too far this can lead to the media becoming "clubby" with others in power, as has happened in South Korea and Japan (Y Jiafei *Beyond Four Theories of the Press: A New Model for the Asian & the World Press*, Association for Education in Journalism and Mass Communication 2008). But given the particular circumstances prevailing in New Zealand at the time of these proceedings, this case contains lessons for media across the Western world. There are times when media should reflect the emotional intelligence of the society they serve.

The case also contains lessons for courts in other jurisdictions. As the comparison with Victoria's experience in the Pell matter shows, a relationship between courts and media at the institutional level, rather than just at the operational level, can dramatically affect outcomes where media restraint is required in the interests of the administration of justice. While it might be argued that New Zealand's unitary system of justice in a relatively small country conduces to a more manageable relationship, this cannot be the whole story.

The State of Victoria has a population not much larger than New Zealand's and on a par with Massachusetts, and within its borders operates its own unitary court system similar in structure to New Zealand's. Yet a New Zealand-style media and courts committee in Victoria seems a distant prospect. It is reasonable to conclude that culture is a significant factor. Culture is commonly described as "the way we do things here". New Zealand media compete with each other but not at any cost, and the New Zealand public has demonstrated through regulatory complaint processes that it does not accept the intrusive forms of journalism that characterise Australian and British 'red top' media. The contrast with the boundary-pushing culture of the Australian media in its highly competitive operating environment is clearly one factor that emerges from our research which began with coverage of the attacks in 2019.

Another factor was the use of experienced journalists to report court proceedings. This was apparent in the determination of New Zealand media — set out in their voluntary protocol — to assign only experienced senior staff to cover the Tarrant case and has since been demonstrated by a media group's decision to use the New Zealand government's Public Interest Journalism Fund to establish a court reporting network. In contrast, Australia has a high turnover in court-reporting staff beyond a stable core. For a court system, media boundary-pushing and high staff turnover is an unsettling combination.

Suppression orders — some statutory and others at a judge's discretion — are more common in New Zealand courts than in some other jurisdictions. At times they have been legally challenged by media but this has more commonly related to suppression of a defendant's name rather than suppression of evidence. The media's overall relationship with the courts has not been adversely affected by the power to limit what may be reported. Again this stands in contrast to Victoria, where a court culture that relies heavily on formal restraints such as suppression orders (J Bosland and A Bagnall "An Empirical Analysis of Suppression Orders in the Victorian Courts 2008–2012" (2013) 35 Sydney Law Review at 671–702) has become the subject of controversy (See, for example, K Derkley "Suppression orders in the open courts era" Law Institute Journal, April 2019). This suggests to us that media reaction to court orders is heavily influenced by pre-existing levels of trust. However, the New Zealand

experience, reinforced by the advice of the former Head of Judicial Communications for England and Wales, Michael Wicksteed (see part 1) indicates that a long-term determined effort at the institutional level can overcome these barriers and lead to a relationship of trust. This benefits not just the media and the courts but the wider society that both exist to serve.

We believe the ways in which the judicial system met the needs of the Muslim community may provide a model not only for courts in dealing with communities of faith but with any group that has been collectively targeted by terrorists. It is an area that merits further research.

The conclusions drawn from the Tarrant case leave open one remaining question: would the positive results have endured if the matter had proceeded to a lengthy trial? There is no certain answer. However, it is possible that the provisions put in place would have been robust enough to withstand at least some of the more obvious contingencies.

We believe the ways in which the judicial system met the needs of the Muslim community may provide a model not only for courts in dealing with communities of faith but with any group that has been collectively targeted by terrorists. It is an area that merits further research.

Continuation of not guilty pleas might have indicated a more combative attitude by the accused and a desire to follow Anders Breivik in using the court as a platform. Tarrant's behaviour outside the hearing — complaints, assertions and the hire and dismissal of a number of lawyers — suggest he may be capable of attempting to manipulate. However, two factors suggest such behaviour during a trial could be thwarted. The first is the two-window approach to publication that precluded live coverage. The second is Justice Mander's indication that he would, where necessary, proscribe what could be reported in those windows. If the accused went beyond his legitimate rights, those mechanisms could have suppressed any attempt to, for example, promote white supremacist dogma.

Media were praised for their focus on the victims during the sentencing hearing, a stance that was assisted by Tarrant's decision to waive his right to speak. A fair and accurate report of trial proceedings would, necessarily, have included the defence. Even allowing for the ability of the judge to prevent misuse of the court, the focus would inevitably have fallen on the accused during his defence. This would have presented an ethical dilemma that was avoided by the guilty plea. It was evident during our interviews with editorial executives that there was a general determination not to allow the court reporting process to give oxygen to the white supremacy movement. Careful editing could minimise such possibilities but editors would have been faced with daily challenges to balance that determination against the need to report fairly both sides of the case.

International media 'played by the rules' during the sentencing but would their behaviour change in the cut-and-thrust of the adversarial trial process? Again, the systems suggest there was at least a reasonable chance that the status quo would endure. Although it is questionable whether the agreements signed by international media would have been any more enforceable through breach of contract than through a vain attempt to bring representatives to New Zealand to face a contempt hearing, the New Zealand court had the power to rescind accreditation and cut access to the hearing and any material emanating from it. Any media organisation would need to weigh up the consequences to being barred from the hearing against any short-term benefit in breaking the rules.

The full extent of proceedings related to the Christchurch mosque attacks has yet to play out. The coronial inquest hearing was scheduled to begin in May 2023 but on 3 November 2022 Tarrant filed an appeal against conviction and sentence. Coronial proceedings were paused during the criminal proceedings and the Royal Commission and could be further impacted by his appeal. An appeal could provide Tarrant with an opportunity to address the court and, potentially, to further his supremacist views.

Given such hypotheticals, we hesitate to hold the Tarrant case up as a full model for future management of terrorism and other high profile trials. It does, however, provide both a starting point and some robust suggestions for judicial and media approaches that meet the need for justice to be seen to be done while preventing misuse of the justice system. There is a caveat: the measures employed in the Tarrant case are for exceptional circumstances and should not be seen as appropriate for day-to-day media coverage of court proceedings. Publication windows, for example, would represent a significant curtailment of current rights that extend as far as virtually live coverage from court via Twitter or Twitter-like feeds. A form of accreditation already exists in New Zealand courts to ensure that only bone fide journalists sit on the press bench but extending that to require media organisations to sign a binding contract covering all hearings would be unprecedented and arguably akin to licensing the press.

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