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Trends. Social Cognition and the Legal Adjudication of Terrorism Cases

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Abstract: This Trends article discusses the impact of terrorism on the justice system and security.

Public discourse on the legal adjudication of terrorism cases has centered on the tension between collective security and individual rights. On the one hand has been the cited need for the efficient collection of data, the protection of sources and methods, and the minimization of threat and risk to a population. On the other hand has been the cited need for protection of due process, legal representation, standards of evidence, open trials, and the minimization of threat and risk to the legal integrity of the alleged perpetrator.

Of less notice but significant impact is the effect of the salience of a terrorism case on judicial and juridical cognition. One threat to just social cognition is the hypothesized phenomenon of predecisional distortion that denotes jurors' biased interpretation of new evidence to support whichever verdict is tentatively favored as a trial progresses. The bias increases with juror confidence in whichever verdict is currently prepotent as the most likely to be correct. Even with clear instructions to ignore prior beliefs, the bias of predecisional distortion remains robust.

One might assume, then, that jury instructions should include, not only warnings against premature decisions, but also against any tentative judgments. However, the empirical support for such warnings being effective counter-bias tactics is not significant. What's more, terrorism cases prosecuted in an era of war against terrorism with global reach and of the need for homeland security and defense may well exacerbate the biasing of judicial and juridical cognition. Thus, not only may individual rights be constricted in time of war, but also justice may become ever rarer. This should be of concern to political leaders because wrong verdicts lessen collective security in that the real perpetrators will still be at large. (See Carlson, K.A., & Russo, J.E. (2001). Biased interpretation of evidence by mock jurors. *Journal of Experimental Psychology*, 7, 91-103; ForsterLee, L., Horowitz, I. A., & Bourgeois, M. J. (1993). Effects of preinstruction and evidence technicality. *Journal of Applied Psychology*, 78, 14-21; Pennington, N., & Hastie, R. (1992). Explaining the evidence: Tests of the story model for juror decision making. *Journal of Personality and Social Psychology*, 62, 189-206; Wegener, D. T., & Petty, R. E. (1995). Flexible correction processes in social judgment: The role of naïve theories in corrections for perceived bias. *Journal of Personality and Social Psychology*, 68, 36-51.)