



Edited by John Pearse

INVESTIGATING TERRORISM

Current Political, Legal and
Psychological Issues



WILEY Blackwell

Investigating Terrorism

*Current Political, Legal and Psychological
Issues*

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In memory of Tom, Andrew and John Mc – who achieved so much.

About the Editor

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About the Contributors

Lord Carlile of Berriew, CBE, QC, was called to the Bar in 1970. He became a Queen's Counsel in 1984, is a Master of the Bench of Gray's Inn and sits as a deputy High Court judge. From 2001 to 2011 he was the UK Independent Reviewer of Terrorism Legislation. He now advises in a professional capacity on terrorism and compliance matters.

Peter Carter, QC, was called to the bar in 1974, made Queen's Counsel in 1995 and is a Master of the Bench of Gray's Inn. From 2003 to 2005 he was chair of the Bar Human Rights Committee. He is ranked as a leading criminal silk by Chambers Guide to the Legal Profession, with an emphasis on fraud, terrorism, homicide and trafficking. He is an expert in international human rights law. He appears pro bono in appeals to the Privy Council. He has appeared in domestic and regional human rights courts outside the UK and participated in *amicus* briefs in overseas jurisdictions. He was one of the team instructed on behalf of both Houses of Parliament to present an *amicus* brief for the US Supreme Court in the Guantanamo Bay case of *Rasul v. Bush* which successfully challenged the US government's denial of constitutional and international human rights to the detainees.

Peter Clarke, CVO, OBE, QPM, joined the Metropolitan Police in 1977 after graduating in Law from Bristol University. After attending the Royal College of Defence Studies, in May 2002 he became the head of the Anti-Terrorist Branch and for nearly six years led all terrorist investigations in the UK and against British interests overseas, including the London bombings (2005), the transatlantic airliners 'liquid bomb' plot (2006) and attacks in Bali, Saudi Arabia, Turkey, Qatar and elsewhere. He retired in 2008 and in 2009 he was appointed by the prime minister to the UK National Security Forum to advise government on the implementation of the UK National Security Strategy. From 2009 to 2013 he was a non-executive director of the Serious

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John G. D. Grieve, MPhil, CBE, QPM, served as a detective throughout London in roles that varied from undercover officer to intelligence policy chair. He was the first Director of Intelligence and led the Anti-Terrorist Squad as National Co-ordinator during the 1996–1998 bombing campaigns before becoming the first Director of the Racial and Violent Crime Task Force. He retired in 2002. He holds a number of academic posts including Senior Research Fellow at the University of Portsmouth; Professor Emeritus at London Metropolitan University; Honorary Fellow at Roehampton Institute, Surrey University; and Honorary Doctor at London Metropolitan University. In 2004 he was appointed as a Commissioner of the International Independent Monitoring Commission for the Peace Process in Northern Ireland, in which role he served until 2011. He is the independent chair of the Home Office/Ministry of Justice Independent Advisory Group on Hate Crime. He has published extensively on policing issues including investigation, counter-terrorism, intelligence, crisis management, community engagement, prevention and cultural changes.

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Max Hill, QC, is Head of Red Lion Chambers in London, chair of the Kalisher Trust and a Bencher of Middle Temple. He is a former chairman of the Criminal Bar Association of England and Wales. He has unrivalled experience prosecuting terrorism trials, from *R v. Hulme and others* 2003 (Real IRA), to *R v. Ibrahim and others* 2007 (21 July 2005 London bombers) and *R v. Faraz* 2011 (terrorist publications). He represented the Metropolitan Police Service at the Coroner's Inquests into the London bombings of 7 July 2005. He has a broad practice in general crime, spanning homicide to fraud and money laundering, as well as regulatory proceedings. He is also a Crown Court Recorder, authorized to sit at the Central Criminal Court.

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Amy McKee, BSc, MSc, DClinPsy, is a clinical psychologist based in the north west of England providing risk assessments, management advice, consultancy and treatment interventions with forensic populations. She has extensive experience of working with offenders who present with complex forensic and mental health needs and provides training to specialist investigation and interviewing courses with a focus on understanding the offender, particularly child offenders and female offenders. She has provided advice on media appeals, investigative interview strategies and downstream monitoring support to police forces throughout the United Kingdom on a number of major inquiries, and has worked closely for a number of years with the North West Counter Terrorism Unit, providing consultation services, risk and threat assessments, training and research. Currently she is working on Project Regulus examining pathways of lone actor terrorists by bringing together academic, practitioner and clinical perspectives to enhance counter-terrorism practice. This research is being carried out in collaboration with NWCTU, SO15 and University College London.

Geraldine Noone is a sergeant in An Garda Síochána with over 30 years' service. She has considerable operational and training experience and specializes in investigative interviewing with An Garda Síochána and other European law enforcement agencies. She is a senior interview adviser and is responsible for the design and delivery of advanced interview and interview adviser courses. In addition, she is the business leader in the development of the Garda Síochána Interviewing Model (GSIM) and the *Manual of Guidance and Training* which supports this model. She is currently researching the psychological and background factors associated with 'no comment' interviews for a PhD at Liverpool University.

Carys Owen was called to the Bar in 2002 following a short career in the British Army as an Intelligence Corps officer. Since 2009 she has specialized in terrorism cases, both civil and criminal. Her civil terrorism cases have included Guantanamo Bay litigation (involving a novel use of the Norwich Pharmacal disclosure regime: *Shaker*

Aamer v. Secretary of State for Foreign and Commonwealth Affairs [2009] EWHC 3316 (Admin)), *Abu Hamza* (deprivation of British citizenship: *Abu Hamza v. Secretary of State for the Home Department* SC/23/2003), various exclusion, deportation, and terrorist asset freeze cases, as well as control order and TPIM cases involving suspected members of the transatlantic bomb plot, among others. Her criminal terrorism cases have involved bomb plotting in the UK as well as terrorist training abroad and possession of terrorism materials.

Karl Roberts is a forensic psychologist and is Professor and Chair of Policing and Criminal Justice at the University of Western Sydney in Sydney, Australia. He is also an Adjunct Professor of Criminology and Criminal Justice at the University of Massachusetts. His areas of expertise are within the field of interpersonal violence and law enforcement investigation with a focus on the behavioural assessment of offenders, investigative interviewing by law enforcement, and risk assessment and risk management. He works closely with law enforcement and other agencies throughout the world, providing training and advice to investigations, and has advised over 400 major police investigations worldwide.

Andrew Silke is Head of Criminology and Director for Terrorism Studies at the University of East London. He has a background in forensic psychology and criminology and has worked both in academia and for government. He has written extensively on terrorism and counter-terrorism and is frequently invited to speak at international conferences. Professor Silke serves by invitation on the UN Roster of Terrorism Experts and the European Commission's Network of Experts on Radicalisation. He is a member of the UK Cabinet Office National Risk Assessment Behavioural Science Expert Group. He has provided research advice to both the Royal Society in the UK and the National Academy of Sciences in the US and briefings to select committees of the House of Commons, and he was appointed in 2009 as a specialist adviser to the House of Commons Communities and Local Government Committee. In 2010 he gave invited oral testimony before the Canadian Special Senate Committee on Anti-Terrorism.

Clive Walker is Professor of Criminal Justice Studies at the School of Law, University of Leeds, where he has served as the Director of the Centre for Criminal Justice Studies (1987–2000) and as Head of School (2000–2005, 2010). He has been a visiting professor at many universities, including George Washington and Stanford in the United States, and Melbourne and New South Wales in Australia. He has published extensively on terrorism issues. His most comprehensive work on terrorism is his book *Terrorism and the Law* (Oxford University Press, 2011). He is currently the special adviser to the Home Office's Independent Reviewer of Terrorism Legislation and has served as a special adviser to the parliamentary select committee which scrutinized what became the Civil Contingencies Act 2004. That experience resulted in another book, *The Civil Contingencies Act 2004: Risk, Resilience and the Law in the United Kingdom* (Oxford University Press, 2006).

Simon Wells completed 30 years with the Metropolitan Police, and for 20 years he promoted the principles and practices of behavioural science for the benefit of law enforcement. Between 2003 and 2008 Simon was the course director of the National Negotiators Course and the operation head of the Hostage and Crisis Negotiation Unit. He was engaged in communicating and negotiating on behalf of the UK government, often with al-Qaeda, the Taliban and other 'insurgent' groups. He continues to interact with those involved in terrorism threatening national security, as well as training, coaching and mentoring support for the United Nations, and the US and UK governments. He is a co-director of Acacia 17, a company set up to provide expertise in communication skills, and has published on a wide range of issues, most recently on 'Crisis Negotiation: From Suicide to Terrorism', in *Handbook of Research in Negotiation* (Edward Elgar, 2013).

Adrian West is a forensic clinical psychologist working in the National Health Service. During the past 20 years, he has also advised the police service on many serious crime investigations. His contribution to risk assessment in relation to the diverse forms of violent extremism is founded on a commitment to evidence-based practice, alongside the hope that future generations will find a way of living with each other that is more tolerant of difference.

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Introduction

When this book was just a fledgling proposal it was sent to a number of anonymous reviewers to critique and one of the questions they were asked to address was:

To whom will this book be useful?

I am told that one of the responses was simply ‘al-Qaeda’. Under such circumstances I must start by outlining what this book is not about. It will not be revealing law enforcement or security service working practices and methodologies or any details of sensitive operational activity in the terrorist field. Rather, its purpose is to look at all of the very practical problems that those entrusted with investigating terrorism have been confronted with since the world order, and our perception of that world order, was drastically changed following the attacks on the Twin Towers and the Pentagon in the United States on September 11, 2001 – universally known as 9/11.

I am using the term ‘investigate’ in a very elastic fashion, given that I include in it not only law enforcement officers engaged in this field but also the lawyers tasked with prosecuting and defending terrorist suspects and the psychologists who have been challenged to explain and help us try to understand the motivation and belief systems that allow individuals to engage in such extreme behaviour: what drives a suicide bomber to carry out his or her mission, for example?

Prior to 9/11, the United Kingdom had endured three decades of terrorist conflict and unrest emanating principally from Northern Ireland, where one of the protagonists, the Provisional Irish Republican Army (PIRA), had repeatedly shown itself capable of detonating explosive devices throughout the British Isles. Such outrages led to the loss of many lives and many more people injured by such attacks, but over time the negative impact and press coverage they received, together with notable enforcement operations against them, led to a substantial change in

strategy: advance warning with coded telephone messages replaced random attacks, allowing the police to evacuate the target areas and, while this '10 pence' tactic resulted in considerable damage and disruption to services, there was a substantial reduction in the number of people killed or injured.

In a strange way, this became accepted as the norm: there was an expectation of attack and people needed to remain alert and vigilant; essential infrastructure received additional protection; civil and military contingencies were drawn up, but intentional large-scale loss of life was no longer part of the equation. In addition, as the population of the British Isles neared the concluding years of the twentieth century, there was an expectation of peace, brought about by the successful political peace process which culminated in the signing of the Good Friday Agreement in April 1998. All augured well for the twenty-first century – but 9/11 changed that.

So much has been written on this subject that it will serve no useful purpose to describe the events here, and indeed it was a day where our individual memories of the unfolding events will be indelibly etched in our minds, our thoughts and our feelings as an episode of unforgettable atrocity. We will all remember where we were that day.

It changed our perceptions of terrorism and it changed how we responded to terrorism, and that, in many ways, is one of the motivations behind this book. To what extent has the investigation of such offences changed? Has it matured and evolved to be able to deal with the new dimensions brought about by increased communication and travel opportunities, by the globalization process? What are the problems and practical difficulties that are now presented to the police or security services? Are there new legal and constitutional challenges as a result of this new terrorist paradigm and, if so, how have we responded to them over the course of the last 13 years?

The subtitle of the book is 'Current Political, Legal and Psychological Issues', and there is no doubt that the legal landscape has changed considerably in the UK since 9/11, with the introduction of many new specialist pieces of terrorist legislation. We know it remains an explicit goal of Western governments to charge and prosecute and to bring to justice those responsible for terrorist acts, but in the UK we have witnessed successive governments facing repeated legal challenges and many instances where they have been defeated in their attempts to respond to this new terrorist threat (detention without trial, extended pre-charge detention, and control orders are just a few examples). Does this suggest that they have legislated in haste and failed to understand the complex nature of international terrorism and the threat it poses to the traditional laws and political values of the country? Indeed, there are those that have interpreted recent legislation as heralding a success for the terrorist specifically because the new laws seek to undermine such tradition and values: hasty legislation represents the real threat to the life of a nation.

We shall explore this shifting political and legal landscape but also attend to the many emerging psychological issues. Where better to start than to examine the meaning and power of the word itself? In psychological research it is important to establish a personal or group baseline, how people normally respond in a given situation, because it is any departure or change from this that is so informative. So,

whether I am speaking to the business community, police officers on a terrorist senior investigators' course, or delegates at legal conferences, I often ask them to complete the following sentence:

To me, terrorism means ...

Just reflect on this question. While many countries and their legislators often disagree on an acceptable definition for this term, individuals from all walks of life have no such difficulty. Initially, references are often made to acts demonstrating extreme levels of violence, loss of life, and attempts to influence the political debate by violent means. A more personal dimension is often revealed when people consider their own safety (or lack of it) and the extreme levels of fear engendered by terrorist acts and terrorist groups. The notion of the 'mad' terrorist or suicide bomber sometimes permeates the debate. Interestingly, as the debate broadens and the emotional membrane is removed, terrorist acts can be seen as a form of communication, albeit communication *in extremis*. The removal of these emotional shrouds is very important, as it provides for a more informed and efficient decision-making environment. It also represents another goal of this book – to provide a critical analysis, devoid of unhelpful emotional rhetoric, of a number of thorny issues that psychologists working in this field have to contend with on a regular basis.

This book is divided into three sections. Part I provides the reader with an insight into the political, legal and policing context that has dominated events for the past 13 years. Given that nothing takes place in a vacuum, it is so important to set the scene in order to understand the true impact of terrorism in these critical arenas. Part II examines the impact of terrorist acts on the criminal justice process, and we have chosen to explore the implications and consequences on the legal, policing and prison systems following the failed suicide bombing attempts on the London Underground system in July 2005. In Part III we bring together individual and group perspectives in trying to make sense of terrorist acts. Can we better understand the motivation of suicide acts or the dynamics that underpin terrorist groups? In this section we also examine where widespread anti-terrorist measures actually disrupt established community cohesion, and we conclude by examining the crucial importance of intelligence in contributing to and securing an enduring peace.

Part I: Political, Legal and Policing Context

In Chapter 1 we examine the legal and political landscape of the last 13 years, a period of considerable activity and intense debate including the rather turbulent passage of the Justice and Security Act 2013 through both Houses of Parliament. Lord Carlile of Berriew, who was appointed by the UK government as the independent reviewer of terrorist legislation only a few hours before the 9/11 attacks (a position he held for almost 10 years), and his colleague Carys Owen provide the necessary insight and gravitas to illuminate this landscape. Their review covers many of the contentious

legal issues of the decade that often exposed in a very public manner the tensions between the executive and the judiciary. Such issues included the vexed question of stop and search, detention without trial, extended pre-charge detention, control orders and, most recently, the notion of secret courts. They debate the extent to which our legal system has managed to respond effectively to the ever-changing and global aspects of modern terrorism in a manner and form that is acceptable and proportionate and that upholds the fundamental principle of the rule of law.

In Chapter 2 Peter Clarke draws on his considerable experience as a former National Coordinator of Terrorist Investigations to provide an authoritative yet objective overview of the evolving landscape that sets terrorist investigations apart from traditional major crime. In his six years as head of terrorist investigations in the UK he had ultimate responsibility for numerous terrorist plots on a scale and magnitude never previously experienced. These included the 'liquid bomb' attack destined for airlines departing from the UK, the 'fertilizer' case and the dreadful 7 July suicide attacks in London and the arrest and prosecution of the failed suicide attackers of 21 July 2005. He explains why, in the post-9/11 world, there had to be a complete recalibration of terrorist investigations if the UK is to remain successful in the fight against such attacks.

Part II: The Criminal Justice Process

In Chapter 3 John Pearse provides a critical overview of the history and application of the current police interview model and provides details of confidential research findings relating to counter-terrorism police practice undertaken by him. Importantly, he is also able to provide a unique insight with an in-depth examination of the urgent interviews with the first detained suicide bomber (Omar). This represents the first time that a ticking bomb scenario has unfolded in Western Europe, and he is able to focus in some detail on the first series of interviews with the terrorist, which are designed to establish the location of other bombs, bomb-making equipment or other bombers – where public safety is the overriding consideration rather than obtaining prosecution evidence. In terrorist cases such interviews can lead to lengthy legal challenge and this case remains a prime example.

In Chapter 4 Max Hill, as prosecution counsel in the Omar case, tackles the thorny issue of the extent to which police officers can conduct urgent or public safety interviews at times and under circumstances not allowed within conventional legislation. This is a rarely used tactic and as such has been challenged through the UK legal system up to the Court of Appeal and has yet to be settled in the European Court. In a clear and forthright manner, this chapter outlines the special requirements and appropriate conduct necessary to ensure that investigating officers remain within the letter and spirit of the law when engaged in this potentially life-saving interaction.

Chapter 5 by Peter Carter, the defence counsel in the Omar case, is much more than an insight into a single terrorist case. It includes a lively introduction that sets

out the fundamental roles and responsibilities of both defence and prosecution counsel in a clear and uncluttered exposure that dispenses with much of the arcane 'legal speak' that often adorns such texts. It also provides an insight from the defence perspective into how to undermine the prosecution case legitimately, as well as highlighting some of the little-known difficulties faced by defence counsel in the run-up to major terrorist trials. He is able to provide a clear and cogent legal argument in relation to why the urgent interviews with Omar should not have been allowed in evidence – a decision that has yet to be scrutinized in the European Court.

In Chapter 6 Geraldine Noone provides the first published version of a new police interviewing model, the An Garda Síochána Interviewing Model (GSIM), which she and her colleagues developed for use by the police in Ireland. Following the critical review of the established UK interviewing model (PEACE) by Pearse (in Chapter 3), this represents a refreshing opportunity to examine the evolution of a new model some two decades after the nationwide introduction of PEACE in the UK. The utility of the model, developed against a rapidly changing political, legal and cultural backdrop, is predicated on identifying the personal characteristics of the person to be interviewed (whether as victim, witness or suspect, or indeed a combination) rather than the labels themselves. Its introduction has been timed to complement the roll-out of advanced interview training in Ireland, and both the model and the training are currently under evaluation.

In Chapter 7 we welcome the collaborative efforts of Gisli Gudjonsson, Adrian West and Amy McKee who tackle the complex issues surrounding the imprisonment of terrorist offenders and the subsequent need for risk assessments not only while they are in detention but, more crucially, for a parole board that may consider their release. Undertaking risk assessments for the prison population is now established practice but that is not the case for terrorists, and the practice of psychologists conducting risk assessments with this population in the absence of empirically validated risk assessment tools has proved to be a contentious issue within the normally urbane psychological society. The authors succeed in illuminating this rather impenetrable domain with an incredibly well-researched and up-to-date review of the issues from around the globe and a clear exposé of the professional issues for all practitioners.

We close Part II with a chapter that is dedicated to hostage negotiation and communication skills in terrorist cases. The author, Simon Wells, is an extremely experienced detective from New Scotland Yard who for many years was the Director of the famous Hostage Negotiation Course, which was recognized worldwide as the benchmark in this area. He provides an insight into the skills and knowledge required to direct and deal with a range of incidents including hijacking, kidnapping and siege or barricade situations. In this wide-ranging chapter he provides a valuable insight into the key psychological processes and vulnerabilities that can assist negotiators in understanding the terrorist personality and how to convert this knowledge into tangible and productive resolutions.