

Storytelling Rituals in Jury Deliberations

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Abstract

Research on jury deliberation tends to focus on deliberative outcomes, such as verdict decisions. Less attention is paid to the actual process of deliberation. This paper analyzes a video recording of a mock jury deliberation in a simulated criminal trial, focusing on facial expression, gesture, and discourse. Drawing on ethnomethodology and micro-sociological theories of ritual, I examine how jurors make sense of the evidence presented to them and how they work together to collectively produce a coherent narrative of events. I argue that a focus on the ritual dynamics of the deliberation help to understand how such a co-production can occur.

Key words

Jury deliberation; ritual; emotions; narrative; commonsense

Resumen

La investigación sobre la deliberación del jurado tiende a centrarse en los resultados de esa deliberación, como pueden ser los veredictos. Menos atención genera el proceso mismo de deliberación. Este artículo analiza una grabación de vídeo de la deliberación de un jurado en un simulacro de juicio penal, y se fija especialmente en las expresiones faciales, los gestos y los discursos. Basándome en la etnometodología y en teorías de ritual microsociológicas, examino la forma en que los jurados buscan el sentido de las pruebas que se les presentan y la forma en que trabajan juntos para producir una narración coherente de los hechos. Argumento que poner el énfasis en las dinámicas rituales de la deliberación ayuda a entender cómo se realiza esa producción colectiva.

Palabras clave

Deliberación del jurado; ritual; emociones; narración; sentido común

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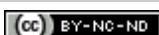


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1. Introduction

Most research on jury deliberation focuses on characteristics of the discussion and verdict decision. Scholars have examined, among other things, the relative influence of majority and minority viewpoints (MacCoun and Kerr 1988, Clark 1999), the role of gender, social class, and race (Hastie *et al.* 1983, Marder 1987), how factions influence consensus (Kerr *et al.* 1979, Tindale *et al.* 1990), and the impact of verdict-driven or evidence-driven deliberation (Hastie *et al.* 1983, Kameda 1991, Devine *et al.* 2007).

While this body of research has produced valuable evidence about decision-making outcomes, there is much less research examining the dynamics of the jury deliberation process. In an exhaustive review, Devine and colleagues (2001) note that while much research has been conducted on jury deliberation, most studies “focus on quantitative summaries yet fail to capture rare and potentially decisive phenomena.” They suggest that this literature would benefit from in-depth studies that look at “key events or exchanges” in juror interactions (Devine *et al.* 2001, p. 711; see also Diamond and Rose [2018], who make much the same point seventeen years later).

This paper delves into the in-depth dynamics of jury deliberation. I investigate two related phenomena. The first is the extent to which the deliberation takes on ritual dynamics. The second is the extent to which the jury engages in a process of group storytelling. These two phenomena are interrelated – it is through a particular form of ritualized interaction that they co-create a believable story of “what happened”. In the deliberation room, jurors offer competing accounts to influence each other (Devine 2012). This is largely achieved through practical reasoning, drawing on a shared stock of normative assumptions (i.e. commonsense) and assertions of expert knowledge backed up by personal experience (Garfinkel 1967, Manzo 1993). Over the course of the deliberation, as jurors present, assess, adopt, and disregard various elements of a story, they develop a rhythm and shared focus to their talk and demeanour that is characteristic of an interaction ritual, resulting in a sense of solidarity and shared emotion (Collins 2004). These ritual elements bring jurors together in a way that encourages more collective storytelling and decision-making. A feedback loop is created, whereby storytelling creates a shared rhythm and focus, leading to feelings of solidarity and shared emotion, leading to a further commitment to collective storytelling.

2. The ritual of jury deliberation

The tradition of ritual theory within sociology has long pointed out the micro-level, ritual foundation of social solidarity (Goffman 1967, Collins 2004). An interaction ritual can be broadly defined as any encounter where participants mutually focus their attention. It can be as formal as a religious ceremony (Durkheim 1912/1996) or as informal as acquaintances greeting each other in the street (Goffman 1967). Following Collins (2004), who has developed a sophisticated model for how rituals both create and sustain a shared moral order, interaction rituals share the following distinct features: (1) people are physically together and aware of each other’s bodily presence; (2) there are delineated boundaries between who is participating in the interaction and who is an outsider; and (3) participants have a shared focus of attention and a (4) shared mood. This shared focus and mood builds over time, leading to a rhythmic coordination and synchronization in conversation, bodily movements, and emotions. Collins calls this “rhythmic entrainment”, where participants become “caught up in the rhythm and mood of the talk” (Collins 2004, 48). As emotions are aroused, participants become even more invested in and entrained by an interaction, thus perpetuating and amplifying a feedback loop (see also Hallett 2003). When this happens, an interaction ritual comes to be marked by the type of collective effervescence described so well by Durkheim (1912/1996), along with feelings of social solidarity and shared emotion.

Solidarity is a feeling of interconnectedness within and membership to a social group. Solidarity in a successful interaction ritual is accompanied by momentary bursts of emotional energy or charge. This can be a rush of shared emotion – it is the buzz that comes from good interactions.

The model described above is an ideal-type. Rituals can also fail, fall flat, or be asymmetrical (with one side gaining emotional energy while another side loses it). A strength of Collins' model is that it is particularly well-suited to empirical scrutiny. The ingredients and outcomes of successful ritual can be observed and documented by those who pay close enough attention. For instance, solidarity can be observed by watching interactions closely: people synchronize their body movements, make sustained eye contact, and follow the rules of turn-taking. Interactions are smooth, not stilted, and people are more likely to touch, smile, and express emotion. Sociologists have used this approach to study a range of diverse interactions, including teacher-student interactions in the classroom (Ritchie *et al.* 2011), activist groups (Summers Effler 2010), consumer commitment to ethical practices (Brown 2011), restorative justice conferences between victims and offenders (Rossner 2013), membership of American mega-churches (Wellman *et al.* 2014), and internal corporate online interactions (DiMaggio *et al.* 2018).

The interactions that take place during a jury deliberation lend themselves well to this sort of scrutiny (Rossner and Tait 2011). Jurors gather together, demarcated from the rest of the court into a private room. They share a focus on assessing the evidence presented during the trial. Jury deliberations are also sites for emotional exchange (Collins 2014, Rossner and Meher 2014). Jurors express their emotion and strategically incite emotional responses in others (Lynch and Haney 2015; see also Hastie 2001), and emotions can be produced and shared through the deliberation ritual itself (Sprain and Gastil 2013). There is also evidence that jurors who report positive deliberative experiences are likely to be satisfied with the deliberation process (Gastil *et al.* 2007) and report increased trust in their fellow jurors and the institution of the jury (Gastil *et al.* 2008). This can be interpreted as tentative support for the claim that a successful ritual charges a participant with solidarity and emotional energy. Through an analysis of talk, facial expression, gesture, and demeanour, this paper will document the mutual focus and rhythm that lead to solidarity and shared emotion as jurors co-produce a narrative about "what happened".

3. Storytelling and the jury

It is well established that storytelling takes unique form in legal context (Merry 1990, Ewick and Silbey 1995, Conley and O'Barr 2005, Sarat 2015). Indeed, a trial can be viewed as a process whereby a story, that any lay person would recognize as a story, becomes transformed into a specific kind of narrative: one of evidence, witnesses, fact patterns, etc. (Rock 1991). A series of events might no longer take the form of a linear narrative with complexities and subtleties, as it might traditionally be told by a novelist or a filmmaker. Instead, the narrative is "flattened" into one that fits certain legal criteria (Cammiss 2006). Elements of the story are told out of order and piecemeal, a significant amount of time and effort is spent establishing what may seem to be relatively mundane facts. The result may be fragmented, disjointed, and not a little confusing. This leaves the jury with a difficult task: transforming evidence, testimony, and argument back into something they recognize as a story (Holstein 1985).

One way this is achieved is by bringing a familiar narrative structure to the evidence and events presented at trial. The realm of stories is a familiar place for jurors, as it is consistent with meaning-making in everyday life (Bruner 1986, Ochs 2011). In the story model of juror decision-making (Bennet and Feldman 1981, Hastie and Pennington 1991, Pennington and Hastie 1991, 1992), jurors take what information they can from the trial, and impose a narrative of events, assigning meaning and

rank ordering the evidence and testimony to develop a plausible account of “what happened”. Throughout a trial, jurors create and revise a story in their heads as they process information presented to them. This enables comprehension and allows them to reach a (pre-deliberation) verdict. What is missing from this account is an explanation of the role of group-level deliberation dynamics. In other words, how do the various stories that each juror tells himself or herself about “what happened” turn into a “master narrative” that is shared by the group?

What is a story?

Simply put, a story is “an account of a sequence of events in the order in which they occurred to make a point” (Polletta *et al.* 2011, p. 3, citing Labov and Waletzky 1967). This definition obscures the complexities and debates around the form stories can take (Do they need a plot? Do they need an ending? Must there be a moral?). However, it is useful in that it allows a distinction to be made between stories and reasons, both of which are frequently utilized during deliberation (Bruner 1991, Polletta and Lee 2006). While reasons can be simple statements that justify an opinion by evoking general principles, stories “integrate description, explanation, and evaluation; they are detached from the surrounding discourse; they are allusive in meanings; and they are iterative in the sense that they elicit more stories in response” (Polletta and Lee 2006, p. 702). This final point is particularly relevant when investigating how a group co-creates a story. Storytelling is often a social and culturally-patterned activity. It is largely shaped by the teller, but also by the audience, who may respond, dispute, or add to it. In this way, stories evolve (Ochs and Capps 2009). In a jury deliberation, jurors work together to create a “master narrative” of what “actually happened” drawing on a combination of the stories that are presented to them at trial and the stories from their own lives (Conley and Conley 2009; see also Lerner 1992). This master narrative is continually asserted, challenged, and revised over the course of the deliberation.

Using commonsense to tell a story

Jurors attempt to persuade each other using a number of narrative strategies, largely drawing on various conceptions of “commonsense” (Finkel 2009). A small body of research in this area uses ethnomethodological approaches to uncover the “actual practices” of the jury. This work is inspired by the classic observations made by Garfinkel (1967) in his study of a civil jury. Garfinkel noted a tension around the “official line” and actual practices of jurors. There are clear rules about what makes a “good juror” – one who privileges the law and evidence over sympathy, suspends personal preferences, and acts as “any man”. A “good juror” is careful and measured and objective in separating fact from fancy (Garfinkel 1967, p. 111).¹ While jurors accept the official line, they also use a number of “rules of everyday life”, or commonsense strategies, to make sense of their decision. Jurors use these strategies to sort the different claims made during the trial and by other jurors into a “corpus of knowledge, that has in part the form of a chronological story and in part the form of a set of general empirical relationships” (Garfinkel 1967, p. 107). Garfinkel provides an account of the “rules” jurors employ to develop a story of “what happened”. Research in this tradition focuses on the different ways that jurors “do” decision-making. Consistent with an ethnomethodological approach, scholars in this area tend to provide in-depth analysis of one or a small number of jury deliberations.

For instance, Gibson (2016) demonstrates ways jurors employ taxonomic notions of how a “normal, innocent person” should act. Such notions draw on typifications or a shared knowledge of the characteristics people have and roles they play in a society (Schutz 1967). In the jury deliberation he analyzed (a drug smuggling case), most jurors were not happy with the story asserted by the defense: they did not think it was “normal” for an unemployed woman (and a mother of a young child) to take two vacations from Arizona to New York in two weeks, particularly with a friend who she

¹ Note the similarities between this and what makes an effective lawyer (Sarat and Felstiner 1986).

should have known to be a drug smuggler. Such “normative assertions” (Manzo 1994) carry implicit shared assumptions about the priorities and needs of unemployed people and mothers, and the dynamics of friendship. Underlying such taxonomic distinctions are generative rules of normalcy, or abstracted assumptions about reasons for action, rules for the expression of emotions, and rules guiding interactions within relationships (Gibson 2016; see also Polletta and Lee 2006 for an analysis of reasons and their underlying principles).

In addition to such typifications, jurors may tell stories that make general claims of expertise (Manzo 1994), often drawing on their personal experience (Manzo 1993). Like Douglas (1971), jurors prize experiential knowledge, sometimes more than expert conjecture. When jurors make such assertions, they need to be recognized by the group as legitimate claims to knowledge in order to have any relevance. In this way, such claims are interactional achievements (Schegloff 1982).²

Maynard and Manzo (1993) examine the strategies that jurors employ to “do” justice as a practical activity. When faced with a defendant who clearly meets the elements of the charge, but other factors lead most jurors to conclude it is not right to convict, jurors reconstruct their task as one of “doing justice”. They frame their narrative in these terms and tell stories from their own lives that allow them to acquit a “guilty” person. In a similar vein, Conley and Conley (2009) demonstrate the collaborative nature of storytelling when it comes to how jurors “do” credibility when discussing particular witnesses.

This paper seeks to add to this body of knowledge. The ethnomethodological approach to studying how jurors make meaning through talk provides valuable insights into deliberation practices. I add to this a ritual framework, arguing that jurors don’t just make meaning through their talk – the deliberation is an embodied, emotional exchange that takes on ritual form, leading to feelings of solidarity and shared emotion. As jurors develop rhythmic entrainment and feelings of solidarity, the “master narrative” becomes a co-production. The analysis below explores the relationship between commonsense reasoning, storytelling, and interaction ritual. Using mock jurors deliberating in a realistic setting, it provides a dynamic exploration of the ritual elements of how jurors negotiate the contours of a story.

4. The current study

This study uses a video-recording of a mock jury deliberation. The data were collected as part of an Australian Research Council-funded study of juries and interactive visual evidence (JIVE) (Tait and Goodman-Delahunty 2016). The JIVE project was a large-scale experiment with mock jurors that examined how juries interpret different kinds of visual evidence. Jury-eligible participants were from the greater Sydney region, and were identified with the help of a market research firm. Once they consented to take part in the research, participants were divided into 12 person juries, with similar demographic distributions.

Two common criticisms of mock jury research are its lack of ecological validity (Bornstein 1999) and its consequentiality (Bornstein and McCabe 2005). That is, they are not realistic and there is no reason for mock jurors to take their task seriously. This is a valid critique, as much jury research is conducted on psychology undergraduate students who are presented with a transcript of a mock trial (though see Bornstein *et al.* 2017). Often, they do not deliberate. When they do, it is often in a fairly artificial setting. In order to make each jury experience as realistic as possible, the research team in this study secured the use of a heritage courtroom in downtown Sydney normally used by the New South Wales Supreme Court. Jurors sat in a real

² Schegloff examines some strategies that people use, such as nodding one’s head and saying “uh-huh”, to validate and encourage a speaker. It is worth noting that these examples can also indicate the rhythmic entrainment of an interaction ritual (Collins 2004).

courtroom during the trial and retired to a real deliberation room for their deliberation.

A Supreme Court judge – one of the partner investigators – agreed to preside over the simulated trial. Real lawyers and expert witnesses performed their roles, and a member of the research team acted as the defendant. The story told at trial was as follows: A bomb explosion killed several commuters on a train in downtown Sydney. The source of the explosion was traced to a gym bag underneath a seat in one of the carriages. “Mr. Wheel”, a single white man in his thirties, was charged with murder and possession of explosives. The prosecution added the following elements to the story: CCTV footage identified Mr. Wheel carrying such a bag onto the train, and then leaving the train several stops later without the bag. They also provided evidence that Mr. Wheel’s family had strong ties to a white supremacist organization. At Mr. Wheel’s house, chemicals that could be used in bomb making, as well as hateful literature, were found. Additionally, a police forensic scientist presented evidence of explosive residue inside the gym bag and animated visual evidence of the bomb’s likely path. The defense told an alternative version of events: Mr. Wheel volunteered at a community centre in the north of the city as a tennis coach. After a long day of tennis, he boarded the train to go home. He got off the train at the stop closest to his home, and, realising that he accidentally left his bag on the train, immediately reported it to the lost and found office at the train station. He denied any knowledge of a bomb on a train, or any white supremacist literature or chemicals at his house, which he shares with his brother. A forensic scientist for the defense presented evidence suggesting that the bomb could have been in an alternate location (not in the defendant’s bag, but in a nearby cardboard box) and still produce the same residue found in the train carriage. Jurors also received judicial instruction on how to interpret visual evidence and deliberate. Each trial lasted about an hour, with the deliberations taking approximately 1 hour and 15 minutes. Deliberations took place in real jury rooms at the courthouse and were video recorded with participants’ consent.³

Unlike real jury deliberations in most Common Law jurisdictions, the researchers employed a facilitated deliberation method. This is similar to the model adopted in civilian mixed tribunals consisting of both lay and professional judges, where deliberations are led by the presiding professional judge (Ivković 2015), or in the case of the Spanish lay jury, by a clerk of the court (Jimeno-Bulnes and Hans 2016). For the purposes of this study, facilitation enabled the deliberation to take place in under two hours. Under an impartial facilitator’s guidance, jurors engaged in a series of discussions around specific points of the trial. Following this, the facilitator took a vote by asking jurors to raise their hands, resulting in a majority verdict. Using this approach, the facilitator performed many of the tasks of a foreperson, but did not participate in any discussions. However, in order to keep the deliberations a reasonable length, the facilitator would at times guide the jury to a new topic or piece of evidence to discuss. This resulted in the deliberations being more standardized.

The presence of a facilitator, the lack of a unanimous verdict, and the use of mock jurors are limitations of this design, reducing the robustness of claims about storytelling and ritual in deliberation. However, there are two reasons to be relatively confident about these claims. The first is that, as will be discussed below, the findings are consistent with in-depth research on real jury deliberations, as reported by Maynard and Manzo (1993), Conley and Conley (2009) and Gibson (2016). Second, while it may seem reasonable to hypothesize that these factors would limit effective ritual and emotional exchange, this was not the case. During the deliberation and in discussion after its conclusion, jurors were enthusiastic and committed to the exercise (Goodman-Delahunty *et al.* 2011). Even with a facilitator present to keep the deliberation within a reasonable time, jurors developed the mutual focus and

³ For more information on the larger research project, see Tait and Goodman-Delahunty (2016). In total there were twelve deliberations.

rhythm of an interaction ritual. This will be discussed in more detail below. It is possible that without the constraints of the facilitator and in a real setting, the findings presented below would be even stronger.

5. Methodology and analytic approach

This paper examines a deliberation from a single jury who received visual evidence, expert testimony, and judicial instructions. It does not present the results of the larger experiment (see Tait 2011 and Tait and Goodman-Delahunty 2016). The exploratory nature of the investigation and the unique richness of the video data make an analysis of a single case suitable.⁴ The data are drawn from the video and audio recording of the deliberation.

A few notable scholars have used video and audio recordings of juries to investigate the dynamics of deliberation (Maynard and Manzo 1993, Manzo 1993, 1994, 1996, Conley and Conley 2009, Gibson 2016). One reason this literature is so small may be the lack of data available on real deliberating juries, due to legal protections. To date, there very few sources of data on real jury deliberations, aside from a few that have been filmed for televised documentaries (one in Wisconsin in 1986 and four in Arizona in 1997).⁵

The overwhelming majority of research on jury deliberation (and jury decision-making more broadly) comes from simulated trials with mock jurors. Examples of in-depth studies of mock jury deliberations include an analysis of the complexity of discussion (Holstein 1985), the psychoanalytic dynamics of emotions during deliberation (Winship 2000), and the role of emotion in the capital-penalty of deliberation (Lynch and Haney 2015).

This analysis seeks to understand how jurors make sense of the deliberation process, and how they work together to create a plausible story, and participate in a successful interaction ritual.⁶ Taking cues from Goffman (1967) and Collins (2004), this paper takes the encounter as the unit of analysis, focusing on the dynamics of the situation, and not on any individual characteristics of a juror.

The value of a video recording is that both audio and visual cues guide the analysis. A video recording of a deliberation produces a large amount of data (as Diamond and collaborators [2003] have also noted). It is possible to document what people look like, what they say to each other, how they say it, and how others in the room react to specific statements. In this article, still frames from the deliberation are used to examine key instances of facial and bodily cues and gestures. To analyze facial expressions, this analysis adopts Ekman's (Ekman and Friesen 1975, Ekman 2004) coding framework for studying facial expression and emotion.

Visual data on body language, group focus and solidarity is influenced by Collins's (2004) approach to analyzing interaction ritual (see Rossner 2011 for an in-depth explanation of using video to analyze ritual interactions). Verbal exchanges are transcribed in a modified version of conversation analytic transcription conventions

⁴ For more on the use of a single interaction as a methodology, see Schegloff (1987). As is the convention with such a methodology, the aim is not to generalize, but rather to explore the range of linguistic and para-linguistic practices that such a deliberation might entail. See also Tait (2001) for a discussion about the methods of observing court rituals.

⁵ A second source are from the Arizona Jury Project, where 50 civil juries were recorded and their deliberation transcribed, coded and analysed by a team of social scientists (Diamond *et al.* 2003). This data has produced significant insight into the workings of the jury, including how jurors respond to "blindfolding" (Vidmar and Diamond 2001), rules around discussing evidence (Diamond *et al.* 2003), how they navigate the unanimity requirement (Diamond *et al.* 2006), how they comprehend judicial instructions (Diamond *et al.* 2012), and how they talk about experts (Diamond *et al.* 2014). While some excerpts and exchanges between jurors are presented in these works, most data is quantified and presented in aggregate form. This quantification is made possible by the Project's unique access to multiple deliberations.

⁶ Jurors, of course, can fail to agree on a single story, although hung juries are exceedingly rare. See Thomas (2010).

(Atkinson and Heritage 1984). In these data, individual jurors are identified by a number, juror 1, juror 2 and so on.

There is a large body of social-psychological literature on how gender, race, social class, bias, and prior attitudes may impact jury decision-making (see Devine 2012 for a thorough review). This research suggests that while background characteristics and attitudes can impact decision-making, in some cases deliberation seems to reduce prior biases (Tait 2011, Devine 2012). This analysis does not seek to underplay what jurors bring with them to the deliberation table in terms of status characteristics and attitudes. However, it follows the approach set out by Maynard and Manzo (1993), that “the immediate invocation of social structural or other variables (...) obscures appreciation of forms of practical action that lie in the details of actual deliberative proceedings” (Maynard and Manzo 1993, p. 174). In other words, the “actual practices” of talk and interaction are foregrounded in the present analysis, though of course insights gained from such a micro-level analysis can reveal structure.

The next section presents a series of key exchanges from the jury deliberation. In these exchanges there are three emerging interactional achievements: (1) the shift in dynamic that takes place from jurors making individual statements independent of each other, to jurors working together to produce a coherent narrative; (2) the way jurors use commonsense notions to interpret and evaluate the evidence and each other’s competing stories; and (3) the way jurors engage each other to assess the merits of a story. That is, they co-produce a story of “what happened”.

6. The jury deliberation

Twelve jurors and one facilitator sit in a small room around a dark wooden table. The image below is taken from the first few seconds of the deliberation. The camera remains fixed above and behind the facilitator’s left shoulder. Consequently a few jurors are not in the frame unless they, or the people obscuring them, move (which does happen at different points during the deliberation). This limits some visual information. Jurors are numbered 1 through 12 starting with the person sitting on the facilitator’s immediate right and proceeding counter clockwise around the table. Juror 1 is out of the shot, but there is a clear view of jurors 2 through 7. For the most part jurors 8 and 9 are obscured (though become visible at some points during the deliberation), juror 10 and 11 are partially obscured. Juror 12 is in view, but only in profile.

FIGURE 1



Figure 1. The start of the deliberation.

The facilitator suggests that they go around the room and each make a general statement. Once each person has spoken once, the group moves to a less structured deliberation where they assess the evidence, the expert witnesses, and the judicial instructions.

After these first statements, a general consensus forms that there is not enough evidence and no strong motive to convict the defendant (jurors 10 and 11 make up a minority faction who are willing to convict, jurors 8 and 9 are not sure). Similar to the real juries analyzed by Conley and Conley (2009), jurors are quick to point out the gaps in both the prosecution and defense story presented at trial, thus hinting at the existence of a "real story" that needs to be uncovered. Most jurors make very similar opening statements (see Maynard and Manzo 1993 for a similar phenomenon in the real jury they analyzed). For example:

Juror 4: I thought there were some things that were missing, that we weren't hearing, that didn't seem to connect up... The motive didn't really strike me as being particularly shown.

Juror 5: There was no motive really identified.

Juror 6: Yes, I felt that he simply forgot his bag and he had no proven motive to commit this crime.

Juror 12: Just for the amount of evidence we were given, I didn't find that there could be many conclusions made.

On the other hand:

Juror 10: The physical evidence from the technical guy pretty well concluded that it did come from the bag, so that was sort of strong, in my opinion.

While an early consensus is building, it is not a group effort. As they go around the room each juror makes a discrete statement with little collaboration. Even when they move into an unstructured discussion, jurors do not engage with each other. Jurors are making claims and giving reasons, but not storytelling. The general tone is closer to that of "position statements" that might be made in meetings in institutional settings, as discussed by Manzo (1996). Jurors appear disengaged from each other (see Figure 1) While each juror is speaking, they focus their eyes on the facilitator, not on each other. The jurors' actions and statements suggest little group cohesion. Only when they begin to argue or work out a story together do they develop rhythm, entrainment, and other signs of an interaction ritual.

An initial attempt at storytelling

There is a brief moment of discord at the conclusion of this section. After a discussion where jurors identify the issues important to them, the facilitator asks if there is anything to add. Before she finishes speaking, Juror 3, who has her right hand on the side of her forehead, begins to move her hand away from her head and slowly wave her finger in the air toward the facilitator. She is sitting back from the table a little, with her other hand resting on her lap on top of a large coat. Her face appears tense, with narrowed eyes and a creased brow. Her lips are pursed together and the area around her nose is creased. Overall, her expression indicates anxiety. She appears reluctant to assert herself, by subtly moving her fingers in the air, she seeks permission from the facilitator to speak.

FIGURE 2



Figure 2. Seeking permission to speak.

She continues to wave her finger and make eye contact with the facilitator until the facilitator nods at her. At this point she begins to speak.⁷

Excerpt 1: Juror 3 questions the CCTV

(8:49)

- 1 Juror 3 ((rubbing her eyes)) The um...the uhh evidence . showing . anyone
 2 bringing a cardboard box into the station on the cameras ((hand on
 3 cheek)). They . they had a photo of him carrying the bag ((rubbing chin)).
 4 but they never showed any . someone bringing the cardboard ((takes hand
 5 away from face, gestures toward facilitator)). They woulda checked all the
 6 cam[eras] and all the footage to see if
 7 Juror 12 [Oh] ((grimace))
 8 Juror 3 someone was carrying a cardboard box. ((moves hand behind and rubs
 9 back))
 10 Juror 12 Not all stations have cameras =
 11 Juror 2 [Yeah] ((whispers))
 12 Juror 4 =and. Got no idea what they've got on
 13 Facilitator [We'll have a discussion in a little while.
 14 ((holds up hand))
 15 Juror 12 [Yeah, good, good.]
 16 Juror 2 [Yes, hahaha]
 17 ((smiles))
 18 Juror 5 The simulation was not really. It was not built up as to how they went
 19 about simulating it. It was just something they put up there.
 20 Juror 3 [thank you] ((looks at juror 12, who nods in return))
 21 Juror 2 Just just one of the main issues is WHO were the "supposed victim"
 22 ((gestures quotes)) ummm.....
 (9:32)

Juror 3 anxiously suggests that if there was CCTV footage of the defendant carrying his gym bag on the train (this was presented to them), then there should be similar footage of the hypothetical cardboard box that the defense expert suggests could have also been on the train carrying the bomb. This is the first attempt to articulate a story connecting the defendant, the bag, the box, and the train. She appears apprehensive and tentative about this; her hands touch her face the whole time. Juror 12, 2, and 4 roundly reject her statement in lines 10-12. Juror 12 is the most forceful in her rejection (line 7. See also Figure 3). She sits up and moves her head slightly backwards. At the same time she relaxes her lower jaw and pulls her lips

⁷ The notations that follow is a variation of Conversation Analysis (see Sacks *et al.* 1974, Schegloff 2007). Briefly, brackets denote overlapping speech, underlined text denotes emphasis, full stops denote brief pauses, double brackets denote non-verbal cues.

back in a frown, grimacing and displaying an expression of disgust. Juror 2 and 4 appear to back her up. Her body position is such that she is discouraging juror 3 from continuing with this story (Goodwin 1984).

FIGURE 3



Figure 3. Grimace of disbelief.

The facilitator interrupts this exchange (line 13), cutting off juror 4. Jurors 5 and 2 are trying to get her attention, waving their hands in the air. She motions for them to speak and juror 5 makes a short statement followed by juror 2. These two statements do not flow from the previous exchange and are uttered completely independent of each other. Juror 5 brings up his opinion of the computer simulation, and juror 2 questions who the intended victims are. These isolated utterances suggest a series of monologues rather than dialogue.

Although the conversation has moved on, juror 3 still focuses on the previous exchange. She signals towards juror 12, drawing her attention away from juror 5, who now has the floor. She nods her head and softly says "thank you". Juror 12 nods back and then returns her attention to juror 5. Juror 3 looks down briefly and then also turns her head toward juror 5. As shown in figure 4, compared to the other participants (especially juror 2, 4, 5, 6, 7, and 12) she disengages from the interaction. She leans back in her chair, covers herself with her coat, and prevents herself from talking by covering her mouth.

FIGURE 4



Figure 4. Juror 3 withdraws.

Commonsense reasoning to test the defendant's story

At this point in the deliberation there is little indication of group rapport. The jurors appear uncomfortable and unsure of each other. Most of them hesitate slightly before they speak. However, a rhythm begins to develop over time. In the next stage, the facilitator asks the jurors to discuss which pieces of evidence were the most convincing. Similar to the earlier discussion, most jurors were not satisfied with the prosecution evidence. At the same time, many are skeptical of parts of the defendant's story. Jurors begin to use various commonsense explanations to attempt to develop a narrative of what (likely) happened or not.

Juror 9: When I am on a train, I always put whatever I take with me a clear and visible means to take it out. I mean, they didn't go into his character, what his occupation was or whatever, and I was watching him and the way he sort of got up and sat down and he was very meticulous in his actions, even in his choice of speech and so on, and I would have thought the guy was pretty cluey, you know, more an accountant style or something, where everything fitted in a pattern. So I wouldn't have thought that the sports bag would have ended up under his seat. I woulda thought that it woulda been near his feet or on the chair next to him? Uh, and I can't see a fellow like that actually leaving something behind, given that he does the same thing every week. How, all of a sudden, would he forget the bag? It just didn't seem correct to me. But as I say, given the innuendo, and my feeling was yes there was guilt, I don't think anything was proven beyond reasonable doubt.

Juror 9 employs a combination of normative assumptions of how an "accountant" would act as well as drawing on personal experience of how one rides a train. Though he suspects that the defendant is guilty, he does not draw on the prosecution evidence to reach this conclusion (hence him stating that nothing was proven beyond reasonable doubt). Rather he uses these strategies of practical reasoning to test the defendant's story. In his view, the defendant doesn't fit the taxonomic notion of someone who leaves things on a train. He looks too "cluey" and like an "accountant", not someone who would "actually leave something behind" (the actor playing the defendant was a member of the research team, a white British man in his 30's). Based on his own experience of carrying bags on trains, it does not make sense that a man like him would place his bag between his feet and then forget about it. In other words, the defendant's story does not fit one of a "normal, innocent person" (Gibson 2016).

Juror 8 speaks next, and again uses personal experience and normative assumptions to bolster juror 9's debunking of the defendant's story.

Juror 8: ... I've got two kids and carry shopping on the train and, I know where my bags are. If you've only got one person with one bag surely it's NOT likely that you would forget your bag, I kind of thought.

Juror 9: mmmmm.

Juror 8 uses a similar strategy of recounting personal experience plus making normative assumptions about what a "normal" person in the defendant's position would do. Juror 9 supports her, murmuring in agreement. Both juror 9 and 8 are obscured due to the location of the (static) camera, so their facial expression, gestures, and interactions with each other cannot be observed.

Most jurors use variations of commonsense reasoning to voice their suspicion of the offender. However, there are equally plausible counter-stories, again drawing on methods of practical reasoning.

Juror 7: Ahh, the prosecutor made a great thing about 'why didn't he report the cardboard box?' And I think I can understand where the defendant was coming from when he said he just didn't think to mention it (shrugs his shoulders). I really don't think I would. So far as the bag being left on the train, I think THOUSANDS of people do that EVERYDAY on suburban trains. If you want to go to the railway lost property office, you'll see MILLIONS of items left on the train, you know, bikes, backhoes and tractors and goodness knows what. You know, HUGE items (demonstrates size with

hand gesture), not just small items like bags. So either side really didn't convince me.

According to this logic, the defendant's failure to remember his bag when he got off the train is consistent with what "thousands" of people do every day. Juror 7 is making a claim in support of the defendant's story by drawing on typifications of what "normal" commuters do (they don't think too much about cardboard boxes they may see underneath a seat near them and they forget their bags on the train).

These examples suggest that jurors come up with their own rationales for why the defendant would or would not leave his bag on the train. Rather than accept the expert evidence, they create their own story from normative assumptions and personal experience.

The Ritual Elements of Group Storytelling

As the jurors deliberate, they follow turn-taking rules, respond to each contribution and create a rhythmic dialogue. There are two parallel stories in competition with each other: one that is consistent with defendant's story and one that challenges it. As the jurors continue to deliberate they evaluate both stories to see which one provides the best fit.

An example of this is when juror 3 attempts to further develop her story. She is still in a defensive position, sitting back and hiding under her coat. A key difference in this interaction is that while the others may not accept her story, they work together to decide if it is plausible. This exchange is markedly different from the previous one: the first interaction was asymmetrical in that she puts forward an interpretation that is quickly and roundly rejected by all. This time, a rhythm had developed amongst the participants, and her story is received quite differently. They start off this exchange with juror 8 comparing the expert witness for the prosecution (who presented animated evidence of the bomb's path) and the expert witness for the defense (who presented the alternative story about a cardboard box containing a bomb).

Excerpt 2: More challenges to CCTV

(35:39)

- 1 Juror 8 ...But the first guy actually explained the full story. I felt like he was just
 2 telling the facts. Which I thought was the [point, of his job.
 3 (Off camera) [It seemed pretty obvious...]
 4 Juror 8 The other guy spent the whole time trying to defend that MA[Ybe there
 5 Juror 3 [mmmmmm]
 6 Juror 8 was a cardboard box, [some...
 7 Juror 3 [but there's no evidence of a cardboard box
 8 Juror 8 That's ri[ght
 9 Juror 1 [that, that was his point.
 10 Juror 2 [Yeah] yeaaaaaaah (indecipherable)
 11 many jurors (indecipherable) The evidence
 12 Juror 3 [That's what I mean, there's no
 13 evidence. That's why I brought back, to the cameras (rubbing eyes).
 14 They have cameras in all stations. They have since September 11th (puts
 15 hand over her mouth). Every station and [every train station.
 16 Juror 8 [Yeah but that]. If there was a
 17 cardboard box. It coulda been on there for like, the last three [dayyys=
 18 Juror 3 [mmmm]
 19 Juror 8 Who know? Doing laps. Who knows then they cleaned them out.
 20 (general murmuring, indecipherable)
 21 Juror 3 They clean those don't they? Hahahaha (smiling and pointing to juror 8)
 22 Juror 7 Haha
 23 Off camera [Now that you think of it
 24 Juror 4 [I should think]
 25 Juror 8 Maybe not!
 26 Juror 3 He was a decoy!
 27 (general laughing)
 (36:18)

In this exchange, juror 3 returns to her line of reasoning about the possibility of CCTV footage of a cardboard box. Although juror 8 and possibly 1 and 7 don't quite accept her story, they use humour to diffuse the situation, and work together to decide if it makes sense. Juror 3 communicates a number of different cues in this exchange. At the beginning (in lines 1-4), as juror 8 is talking, she is intensely focused on her, perhaps readying herself to speak (figure 5).

FIGURE 5



Figure 5. Juror 3 focus.

Although she is still hiding behind her coat, her eyes are narrowed as she focuses on juror 8, to whom she offers agreement and support in line 3 and line 5. She ventures another statement at line 7, similar to her earlier attempt that was rejected by juror 12, but she appears wary; as soon as she finished speaking, she leans back and withdraws, hiding further under her coat (figure 6).

FIGURE 6



Figure 6. Juror 3 withdraws after speaking.

Unlike the previous exchange, the other jurors encourage dialogue. Juror 8 presents a counter argument to juror 3 in lines 16-17, but juror 3 counters this with an additional argument in lines 21 and 24. Her statement in line 24 ("He was a decoy!") is said half in jest, she smiles broadly and cocks her finger toward juror 8 (figure 7). A number of jurors laugh together at this, and the mood is lightened. This shared laughter and smiling indicates a growing rapport developing in the group.

FIGURE 7



Figure 7. Joking and laughter.

FIGURE 8



Figure 8. Mutual Focus.

At the end of this exchange, the jurors appear engaged and mutually focused. They look around the table at each other instead of focusing on the facilitator (figure 8). The jurors continue to test elements of the defendant's story. The conversation begins to develop a rhythm and flow common to high solidarity interactions. In the following exchange, a number of jurors work together to make sense of the evidence. They focus on a few key points. First, the defendant testified that he boarded the train in the north of the city, heading home to Potts Point after spending a few hours volunteering as a tennis coach. He boarded the train with his tennis bag, and disembarked a few stops later in the center of town (Wynyard Station). He realizes that he left his bag on the train and goes to lost property to report this. Meanwhile, the train continues a few more stops to another inner city train station (Redfern) where the bomb is detonated. Some of the jurors work together to evaluate this story:

Excerpt 3: Discussion over commuting and defendant credibility

- 1 Juror 9 If you live at Potts Point, why do you get off the train at Wynyard?
 2 Wouldn't you pick up the rail and get off at King's Cross?
 3 Juror 5 If ...(.)...back home.
 4 Juror 6 Because you've got to change. It's a different railway line.
 5 (several jurors talking at once, indecipherable)
 6 Juror 8 I've got to say, the whole thing about him playing tennis. So what? I
 7 mean, there are nurses out there that kill patients. There are paedophiles
 8 out there who are in the church, you know=
 9 Juror 2 =yes, yes.
 10 Juror 8 So what, he plays tennis. Like, really. I.
 11 Juror 4 It was just an excuse to have an athletic [bag.
 12 Juror 2 [Yes.]
 13 Juror 8 Well, it could be, you know=
 14 Juror 9 =Well if you get off at Wynard and leave it at Wynard why didn't he
 15 ignite it at Wynyard? Why wait 20 minutes until it gets to Redfern, while
 16 supposedly you're not looking at it, so you're assuming it's at Redfern.
 17 Why not Central?
 18 Juror 10 Give him enough time to create his motive – not his [motive...
 19 Juror 8 [And as far as
 20 telling him then about the bag, he could have just been trying to get more
 21 to go – get more people on the train to look for the bag: get more people
 22 on the carriage. I mean, who knows=
 23 Juror 2 =No, the way the system is with the railways, you still would have been
 24 waiting in the queue at lost property and the bomb would have gone off
 25 before they could even tell anyone to look for it.

This exchange begins with juror 9 challenging the defendant's story, arguing that it doesn't make sense to get off the train at Wynyard if you live in Potts Point. He uses local knowledge to poke holes in this narrative. Juror 6 presents a counter argument, confirming that this particular travel arrangement could be plausible.

Juror 8 then approaches the story from a different angle. The defense was relying on a character defense – planting the narrative that someone who volunteers as a tennis coach surely can't be a terrorist. She refutes this, listing instances where so-called "good characters" are criminal. Juror 2 encourages this development, quickly providing confirmation. Juror 4 develops this alternate narrative further, suggesting that he taught tennis as an excuse to transport a bomb on a train. They are working together to build a story that condemns the defendant.

At line 14, juror 9 moves the conversation back to trains. He points out a flaw to the story they are generating (Wynyard and Central are the busiest interchanges, and the most "sensible" places to detonate a bomb). Juror 10 tries to answer this, stumbling on the difference between motive and alibi (presumably). Juror 8 moves back to the discussion in lines 6-13 about the defendant's character, suggesting that he only reported his bag as lost in order to increase the chances of casualty. However, juror 2 refutes this with commonsense reasoning about the long queues at the lost property office.

In this exchange seven different jurors work together to co-produce a story of events. They are trying out a number of different lines, to see what fits best. They are aroused, speaking over each other and overlapping to add different bits. There is a general mood of excitement; the jurors lean in to each other, keen to contribute. In this instance jurors are using a number of strategies to collectively make sense of the story – they draw on typifications (of monsters hiding in plain sight, such as "killer nurses" and "pedophiles in the church"), they test the strength and logic of alternate narratives, they build on each other's statements to ratchet up the narrative of the defendant as despicable (for example, by first rejecting the argument that being a tennis coach is evidence of good character, moving up to the suspicion that he only plays tennis so he had a way to get a bag on a train, to finally speculating that he reported the bag as stolen to maximize casualties). It is a very different kind of interaction from the beginning of the deliberation, where each juror presented discrete, independent statements. In this excerpt jurors demonstrate a shared sense of excitement as they work together to uncover the "real" story. There is a palpable buzz in the room, jurors are excited by their talk and their storytelling.

7. Concluding remarks

This paper examines the ritual dynamics of deliberation and the methods jurors employ to develop a narrative that makes sense to them. It reveals the rich and complex dynamics of jury deliberation. The data are unique in that they allow for both audio and visual components of the analysis. An examination of jurors' faces, bodies, gestures, words, and tone supports the ethnomethodological readings of jury deliberation. Jurors draw together fragments of a story (the evidence presented at the trial), making these fragments whole with commonsense reasoning. They produce a number of discrete statements at first and are quick to disregard competing lines. Over time they develop a rapport, and, while they still might not agree with each other, their interactions are marked by increased cooperation, solidarity, and shared emotion as they slowly co-produce a narrative. This can be seen in how the jurors interact at the end of their deliberation. Unlike earlier exchanges, there is laughing, synchronization and rhythm to their speech, direct eye contact, and an overall lighter mood. They seem to enjoy each other's company. The relationship between ritual and storytelling is iterative – telling stories draws participants in, leading to a mutual focus and shared emotion, resulting in further co-operation and co-production of a story. The end of their deliberation is marked by ritual displays of solidarity – they make eye contact with each other, laugh, smile, and display

behaviours that suggest their emotions are aligned. Indeed, these emotions continued once they left the deliberation room, they were eager to continue discussing the case with each other and with the researchers (Goodman-Delahunty *et al.* 2011).

Of course, the single deliberation presented here may not be indicative of all jury processes. This analysis is an elaboration of one type of trajectory. Other deliberations may follow alternate paths – there may be more dramatic factions, multiple narratives that are never resolved, or extreme abuses of power and status. By presenting a unique set of methodologies and a theoretical framework that emphasizes the ritual dynamics of the group, this study provides social scientists with the tools to better examine these jury dynamics. Future research can build on this to identify effective pathways to collaboration and solidarity.

Jury deliberations are a unique form of conversation that is necessarily constrained. Turn taking rules are modified, and the interaction can at time take on a formal meeting style (Manzo 1996). The methods employed in this research project may further constrain the interaction. The facilitated method of deliberation was a necessary component of the research, due to the operational constraints of data collection. At times during this deliberation, as jurors would begin to develop a momentum and rhythm, they would be thwarted by the facilitator who would interrupt and change the subject (to keep within the time constraints). Without this constraint, perhaps the collective storytelling would play an even larger role in the process. It is worth noting, however, that even with this added element to the deliberation, the structure of talk was remarkably similar to those found in real juries, as analyzed by Maynard and Manzo (1993), Conley and Conley (2009), and Gibson (2016).

The deliberation analysed here details how an interaction ritual unfolds in time and space to produce solidarity, shared emotion, and a collaborative story based on commonsense reasoning. While there is a long tradition in sociology that focuses on the use of commonsense in decision-making, this analysis aims to show the ritual foundations that allow for commonsense storytelling to emerge.

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