

Juror empathy and prejudice in terrorist cases:

Can the accused get a fair trial ?

David Tait
Faculty of Law
University of Canberra

Issues

- Wider project:
 - Impact of interactive visual evidence on jurors.
 - Can judges counter prejudice against defendant?
- This paper:
 - Importance of juror background – empathy, attitudes to terrorism
- Current ‘terrorism’ trials

The study

- ARC Linkage Project
- Partners - AFP, DPP (ACT), AIJA, architects, engineers
- CIs include psychologists, lawyers, architect, communication expert, forensic scientists, from 5 universities
- Stage 3 - 'Realistic' experiment in NSW Supreme Court
- Terrorism scenario

The three conditions

- 1. Prosecution IVE (*4 groups of 12*)
- 2. Prosecution IVE plus judicial instructions (*4 groups of 12*)
- 3. Prosecution IVE plus judicial warnings plus Defence IVE (*4 groups of 12*)

Key variables

- ‘Guilt’ reported by jurors before deliberation
- ‘Guilt’ reported by jurors after deliberation
- Demographic variables, including educational level, age, gender
- Attitudes to terrorism
- Vicarious empathy

Fear of terrorism

- 1: How concerned are you about the threat of terrorism in Sydney?
- 2: How concerned are you about the risk of losing a friend or relative in an incident such as the Bali Bombings?
- (1=Very concerned... 6=Not at all concerned)

Vicarious Empathy

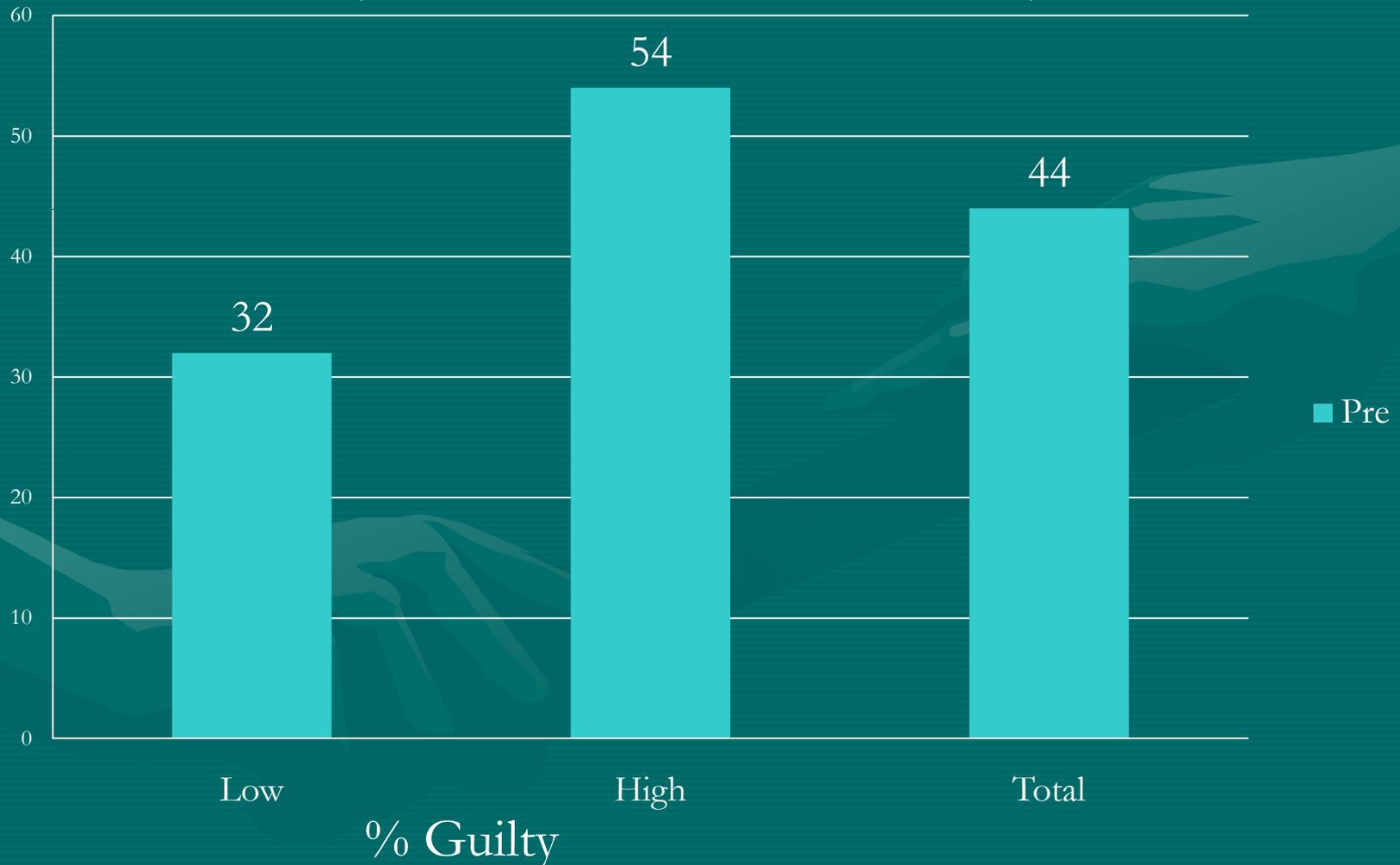
- 7 items including:
- 1: If I see that someone is *feeling sad because he or she was hurt by another person*, I feel angry.
- 3: I feel angry for other people when they have been *victimized by others*.
- 4: I feel angry for a person when his or her *feelings have been hurt* by someone else.
- 5: I get angry when a *friend of mine is hurt* by someone else.
- 6: When *someone I know gets angry at someone else*, I feel angry at that person too.
- Vitaglione and Barnett (2003)

What doesn't make a difference

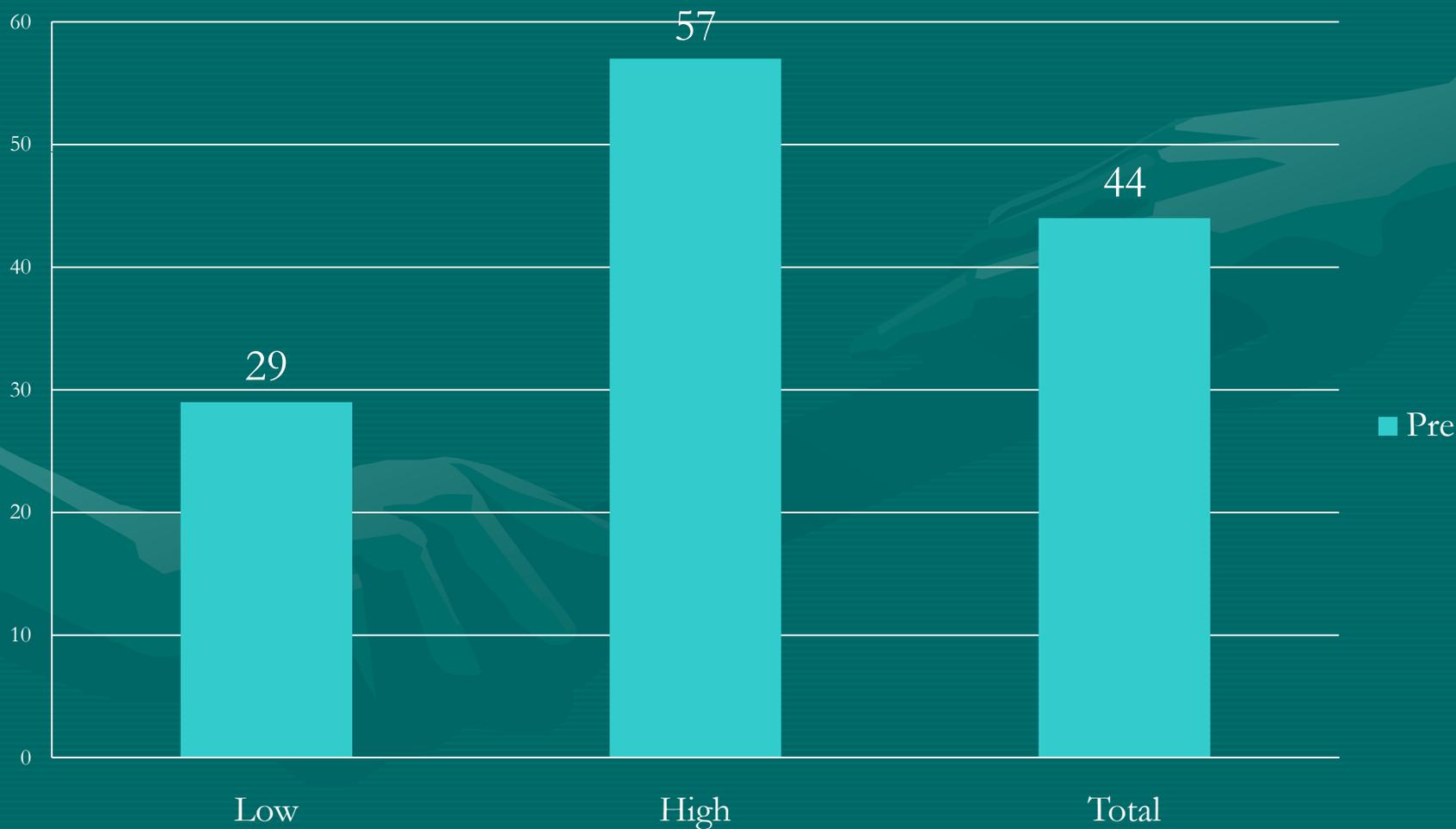
- Age
- Gender
- Education
- Most attitudinal measures



Juror verdicts vary according to fear of terrorism (before deliberation)



Juror Verdicts vary according to levels of empathy (before deliberation)



So what explains differences in perceived guilt levels?

Increases in odds of conviction before deliberation

- **Vicarious empathy** – ‘High’ vs Low 3.7 times (.sig 001)
- **Fear of terrorism ‘High’ vs ‘Low’** 3.0 times (sig .003)
- Similar pattern when continuous measures used – 1.8 and 1.7 (effect of increase in one standard deviation)

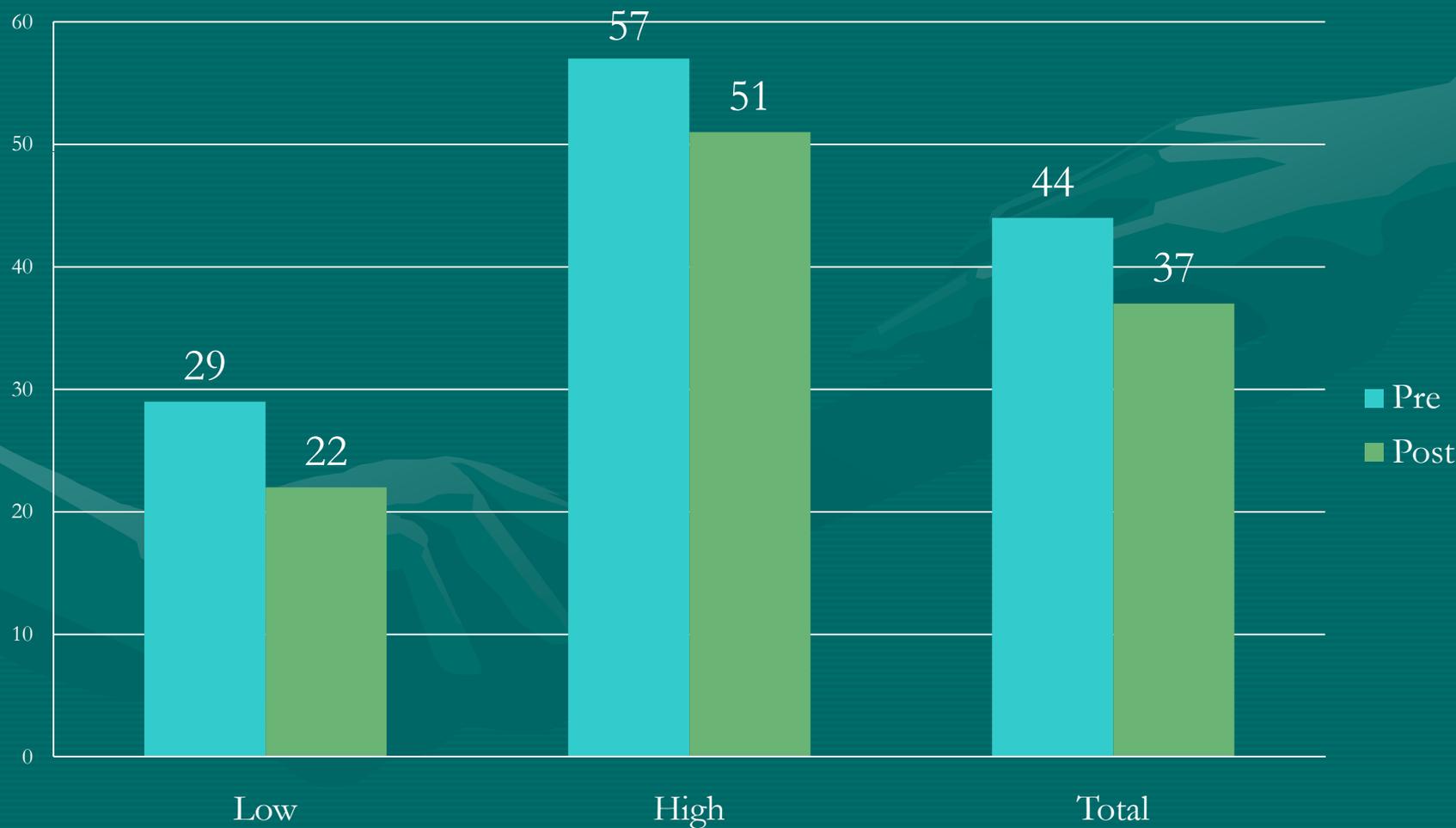
Add another terrorism-related variable

Increases in odds of conviction before deliberation

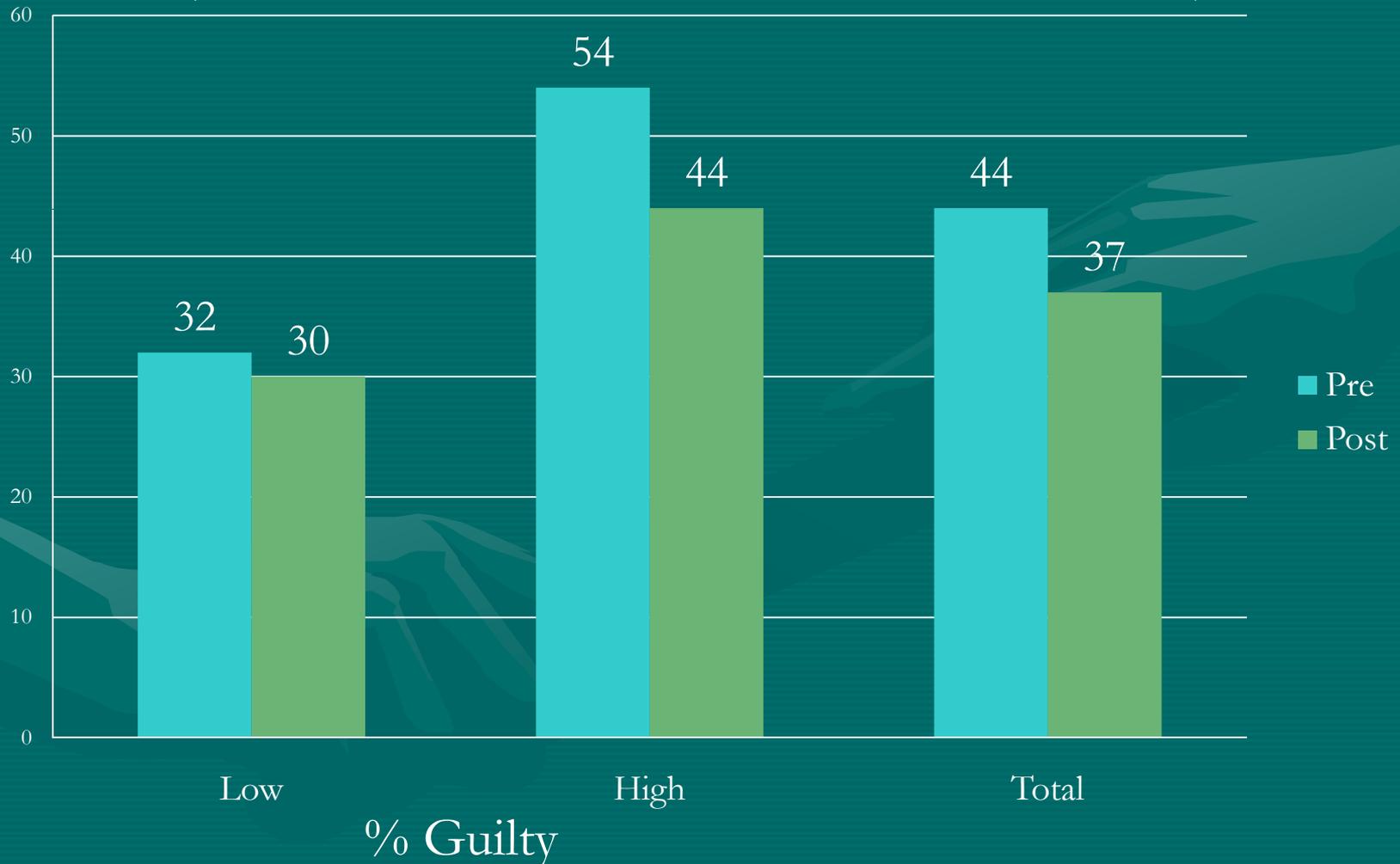
- **Vicarious empathy** – ‘High’ vs Low 3.2 times (.sig 003)
- **Fear of terrorism ‘High’ vs ‘Low’** 2.8 times (sig .006)
- Belief that **David Hicks was guilty** of terrorist offences ‘Yes’ vs ‘No’ 2.2 times (.04)

Juror Verdicts vary according to levels of empathy

(before and after deliberation)



Juror verdicts vary according to fear of terrorism (before and after deliberation)



And after deliberation?

- *Increases in odds of conviction*
- Vicarious empathy— 3.9 times (sig <.001)
- Fear of terrorism – 2.2 times (.04)



Summary

- Attitudes about ‘terrorism’ and empathy can have powerful impact on verdict in terrorist-related trial
- Deliberation reduces number of jurors voting guilty
- Terrorism prejudices seem to decline with deliberation
- Empathy harder to shift