Two Australian “terrorist” trials set dangerous precedents

Mike Head
28 June 2005

In separate decisions, both handed down on June 10, two Muslim men were committed for trial in Sydney on “terrorist”-related charges in circumstances that underscore how the so-called “war on terrorism” is being exploited to set far-reaching legal and anti-democratic precedents.

The first case amounts to a direct attack on the right to free speech. Central Local Court Magistrate Michael Price ordered Bilal Khazal, a 35-year-old former Qantas baggage handler, to stand trial on a charge of knowingly collecting or making documents connected with terrorism.

There was nothing secretive about the “document” that Khazal compiled, nor was it linked to any specific terrorist activity or planning. He published on a Jihadist website a book, titled *Provisions on the Rules of Jihad—Short Wise Rules and Organisational Structures that Concern every Fighter and Mujahid Fighting against the Infidels*, dedicated to the “martyrs of Islam”. According to evidence given in court, it was a collection of documents, written in Arabic under the name of Abu Mohamed Attawaheedi.

The Australian Security Intelligence Organisation (ASIO) linked Khazal’s computer to the material on the internet from September 2003 until May 2004. Khazal’s counsel said that once ASIO and the police brought the book to his attention, he removed it from the internet. Two months later, he was arrested and charged.

It appears, from the evidence tendered, that the book offered inflammatory support and advice for a reactionary Islamic fundamentalist “holy war”. It praised the terrorist attacks of September 11, 2001, hailing Al Qaeda’s “impressive success of the conquest of New York”.

These atrocities, which involved the indiscriminate killing of nearly 3,000 innocent people, embodied the reactionary character of Al Qaeda’s perspective. They also provided a convenient pretext for the Bush administration and its allies to institute police-state measures in the name of combatting terrorism.

One of Zhazal’s documents listed “targets that should be assassinated,” including US President George W. Bush and members of his cabinet, US General Tommy Franks and CIA chief George Tenet, along with “infidels” in Arab countries. Other texts provided a checklist for assassins, from organising budgeting and transport to checking wiring before using a time-bomb.

However, no specific terrorist act was outlined, and no evidence was produced in court linking the material to any proposed terrorist act or preparations for terrorist activity.

Despite the deeply reactionary nature of the perspective advocated by Khazal, he was exercising a basic democratic right when he expressed it. Democratic rights exist precisely to protect the expression of opinions that are condemned or regarded as repugnant. Once a precedent is established for outlawing a particular political or religious point of view, it can be used against others.

Crown Prosecutor Geoffrey Bellew told the court that Khazal had compiled a terrorist manual by collecting articles he found on the internet.

But Khazal’s counsel Murugan Thangaraj said the book was only a general document about terrorism. “This document does not direct any specific act to any specific person,” he said. “There is no connection of this book to a terrorist act because there has been no act of terrorism identified in the book and no terrorist act seriously contemplated.”

Thangaraj said his client would not have written any more “than a couple of pages” in the book. He did little more than “cut and paste” articles already available on the internet. Yet, Magistrate Price declared: “I find there is a reasonable prospect that a reasonable jury properly instructed will convict you of this indictable offence.”

Section 101.5 of the Criminal Code is sweeping in its terms, as are all the “anti-terrorism” provisions that the Howard government inserted in the Act in 2002. The section created an offence, punishable by 15 years imprisonment, to “collect or make a document” that is knowingly “connected with preparation for, the engagement of a person in, or assistance in a terrorist act” even if “the terrorist act does not occur”.

If the accused is acquitted of “knowing” of the “connection,” he can be found guilty of an alternative charge of being “reckless” as to the connection, which can mean imprisonment for 10 years. There is a defence that the document was not intended to facilitate a terrorist act, but the accused bears “an evidential burden” in proving that he lacked the intention.

Thus, the section can not only criminalise the writing of supposedly pro-terrorist opinion, but also reverses the centuries-old principle that the prosecution must prove its case “beyond a reasonable doubt”.

Nevertheless, it seems that the prosecution is not confident of getting a jury to convict Khazal. On the opening day of the committal hearing, a year after Khazal was first arrested, the police laid a second charge against him of inciting another person to commit a terrorist act.

No details are known of that charge. Price adjourned the hearing to allow Khazal’s lawyers time to prepare, but proceeded to direct that Khazal be arraigned on the first charge in the New South Wales Supreme Court on July 1. In the meantime, Khazal was to remain free on bail, because of a previous ruling that he posed no actual threat to the community.

Khazal’s committal for trial sets a precedent that could be used against anyone who writes, compiles or publishes anything that could

be construed as advocating terrorism. The threat to basic democratic rights is even greater because the Code defines "terrorism" in ways that can include traditional forms of political protest directed at pressuring a government to change its policy.

Many unanswered questions remain about the decision to prosecute Khazal, including its timing. ASIO is known to have interviewed him many times since 1994, and his book was posted on the internet in September 2003, but he was not charged until mid-2004, in the lead-up to last October's federal election.

In his second decision, Magistrate Price sent Faheem Khalid Lodhi, 35, an architect, to trial on a string of charges after a protracted and hotly-contested hearing in which secret evidence was heard in closed sessions. Price granted several suppression orders, preventing the disclosure of prosecution evidence, in the first test of far-reaching secrecy provisions inserted into the counter-terrorism legislation last year.

Price committed Lodhi for trial even though the prosecution had just withdrawn the evidence of a key witness. An alleged Jemaah Islamiah member, Arif Naharudin, testified via video link from Singapore, where he has been held for nearly three years without charge under that state's draconian laws.

Naharudin was critical to the government's claim that Lodhi rose to a prominent position in a Pakistani training camp run by Lashkar-e-Toiba, an Islamic Kashmiri group that the Howard government later proscribed as a terrorist organisation.

For several months, Lodhi's barrister, Phillip Boulten SC, had sought to cross-examine Naharudin, after successfully discrediting another star witness, Ibrahim Ahmed al-Hamdi, a "terrorist suspect" detained in the United States (see "Secret evidence used in Australian 'terrorist' trial").

In an apparent attempt to protect Naharudin from being similarly discredited, the prosecution applied for, and was granted, orders suppressing reportage of his testimony, blocking any public cross-examination and preventing the disclosure of details of his interrogation by authorities in Singapore, which has worked closely with Washington and Canberra in the "war on terror".

Price granted the orders on the basis of affidavits from ASIO director-general Dennis Richardson and Australian Federal Police chief Mick Keelty, stating that their terrorism investigations would be compromised if the information were disclosed to Lodhi's lawyers. This itself has set a dangerous precedent for secret evidence to be used against defendants on the authority of the government's security agencies, which have a long record of being used for political purposes, including during the anti-communist witchhunting of the 1950s.

On the final day of the committal hearing, the prosecution withdrew Naharudin's evidence because the government refused to hand over a document relevant to his credibility. Nonetheless, Price sent Lodhi to trial on charges of committing an act in preparation for a terrorist attack and "recklessly" making documents to facilitate a terrorist act.

As the WSWS has previously stated, we have no means of independently assessing the allegations against Lodhi. But the prosecution's reliance on such dubious witnesses points to a weak case. Numerous other contradictions exist. For example, the court was told that Lodhi planned to bomb the national electricity grid because he used an assumed name to request maps of the grid. Yet, the maps are freely available to the public.

Lodhi's case is particularly important to the Howard government because it rests upon an alleged conspiracy involving French citizen Willie Brigitte. The media has regularly featured Brigitte's name, presenting him as proof of official claims of the existence of "terror sleeper cells" in Australia, planning bombing attacks. Brigitte, who has been detained without trial in France, has not been called as a witness against Lodhi, however.

The supposed Brigitte connection was splashed all over the media again the day before Price sent Lodhi to trial. Rupert Murdoch's Sydney tabloid, the *Daily Telegraph*, depicted Lodhi as "our most dangerous man," who had "worked closely" with Brigitte. It reported that Lodhi would be manacled and flown into Sydney via helicopter for his hearing "amid fears supporters may attempt to break him out".

No evidence was offered for these highly prejudicial claims, except concerns reportedly expressed by unnamed "prison and security officials". The source of these allegations seems to be the New South Wales state Labor government of Premier Bob Carr, which has kept Lodhi imprisoned in virtual isolation for the past year.

Carr's government announced in parliament on June 8 that Lodhi had been reclassified as an AA risk to national security, making him Australia's first high-risk terrorist category inmate. He has been placed in an undisclosed maximum security prison under 24-hour surveillance. Contact with other prisoners has been limited to one person at a time for a maximum of two hours and all his mail is photocopied and phone calls monitored.

The Carr government's intervention highlights the bipartisan character of the assault on basic legal and democratic rights. Federally, Labor has supported every one of the Howard government's measures, while the state Labor governments have introduced matching legislation.

Despite the orchestrated hysteria about "terror cells," however, only six people—all Muslim men—have been charged under the terrorism laws, and so far just one has been convicted. In April, a jury threw out the only case that has gone to trial, finding 21-year-old Zeky "Zak" Mallah not guilty of preparing to kill government officials in a supposed suicide mission. The only conviction—that of Jack Roche—was obtained via a guilty plea in unclear circumstances. Three other defendants, including Khazal, have been freed on bail because judges ruled they posed no threat to the public.

Given these setbacks, the Howard government and its Labor counterparts are anxious to secure convictions in an effort to maintain the pretence that their anti-democratic measures have been imposed to protect ordinary people from actual terrorist threats.