

Australia: terrorism trial of Jack Thomas to rely on coerced evidence

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After a series of court hearings over recent months, partly held behind closed doors, a young Australian worker, Jack Thomas, will go on trial next year on terrorism-related charges, with the prosecution largely relying on statements obtained from him under torture in Pakistan in early 2003.

The Howard government's determination to place Thomas, now 31, on trial sets a number of far-reaching precedents. Not only is the prosecution based on coerced evidence, which the courts have traditionally ruled inadmissible. None of the charges relate to any alleged "terrorist" activity in Australia. Nor is there any suggestion that Thomas has been involved in planning terrorist acts since he returned to Australia in mid-2003.

Instead, the "counter-terrorism" laws pushed through parliament in 2002 are being applied extra-territorially to accusations levelled against Thomas in Pakistan, where he was interrogated by US and Pakistani intelligence and detained without trial for five months.

Moreover, the timing of Thomas' arrest last November—17 months after he was released and repatriated to Australia for lack of evidence for charges under Pakistani law—points to his case being used by the Howard government, with the complicity of the mass media, for purely political purposes. It is part of the ongoing campaign waged by the federal government, together with its state and territory Labor counterparts, to whip up public fears of terrorism and justify the imposition of police-state measures.

Just before Thomas was arrested, the Howard government unveiled new laws permitting secret or semi-secret trials for terrorism-related offences. These provisions overturn the centuries-old principle of public trials, designed to protect individuals against the Star Chamber methods once used by the British monarchy.

The new procedures—set out in the National Security Information (Criminal Proceedings) Act—were quickly passed with Labor Party backing last December. In March this year, the Act was amended to allow it to apply retrospectively to prosecutions, like that of Thomas, which began before the Act came into force. These secrecy provisions have already been applied in the preliminary hearings against Thomas.

Based on material fed to it by the government, the Australian Security Intelligence Organisation (ASIO) and the Australian Federal Police (AFP), the media has dubbed Thomas as "Jihad Jack" and portrayed him as a highly dangerous member of a terrorist network. Initially, he was placed in solitary confinement for 23 hours a day and brought to court in chains.

Yet, the flimsiness of the case against Thomas was underscored in February this year, when a Victorian Supreme Court judge ordered his release on bail, and in March when the magistrate at his committal hearing dismissed several charges against him as implausible. They

included allegations of planning to break detainees out of the US detention camp at Guantánamo Bay and of complicity in a plot to shoot down a plane carrying Pakistani President General Pervez Musharraf.

Of the remaining four charges against Thomas, one accuses him of possessing a falsified Australian passport in Pakistan in January 2003. Two others are catch-all charges, alleging that between July 2002 and January 2003, while Thomas was in Pakistan, he intentionally provided resources to a terrorist organisation, "namely Al Qa'ida or another terrorist organisation" that would help that organisation "engage, directly or indirectly, in preparing, planning, assisting in or fostering the doing of a terrorist act".

The fourth charge, added only in June this year, alleges that while in Pakistan he received funds from Al Qaeda and another terrorist organisation, knowing that the organisation was a terrorist one. This late addition, made after Thomas has already been committed for trial, also suggests that there may be weaknesses and contradictions in the prosecution's evidence. If convicted Thomas faces a jail term of up to 25 years for each terrorism charge and 5 years for the passport charge.

Above all, this case will be a test of the use of torture under the government's anti-terrorism laws. Thomas was initially interrogated by the US and Pakistani intelligence services in January 2003 in Pakistan. Later, in March that year, AFP officers interviewed him, presumably based on the information extracted these agencies.

At a public rally held in defence of Thomas in February this year, his lawyer Rob Stary commented: "In conventional criminal terms ... there is no way that this record of interview would be admitted in Australia because there has been 100 hours of interrogation and there's been number of other unknown persons involved in his earlier interrogation and all these threats were made to him [before he was] asked to participate in the formal record of interview."

Before Thomas' jury trial, set to begin on January 30, 2006, the Victorian Supreme Court will hold a *voir dire* inquiry to determine the admissibility of the "formal record of interview" given to the AFP by Thomas in Pakistan.

Thomas grew up in Melbourne and trained to be a chef. He converted to Islam in 1996, and in March 2001 travelled to Pakistan with his wife and baby daughter to pursue studies in Islam, before proceeding to Afghanistan.

After the September 11 terrorist attacks and the invasion of Afghanistan by the US administration, Thomas along with many others fled across the northwest frontier into Pakistan and then to Karachi. Thomas was repulsed by the September 11 attacks and in a telephone conversation with his family expressed shock and disbelief.

On January 4, 2003, Thomas tried to return to Australia to join his

family but Pakistan's Inter-Services Intelligence (ISI) snatched him from the plane as it was about to take off. For the next 18 days, the CIA and ISI interrogated him. According to Thomas, he was threatened with execution, or deportation to Guantánamo Bay and was told that his young wife would be raped.

Thomas had no lawyer present during these interrogations. The material supplied to his lawyers has corroborated his torture allegations against the CIA and ISI officials. It suggests that in January or February 2003, Thomas complained of torture to Australian consular officials who had met him in detention.

Despite a campaign by his family and friends in Australia, the Howard government refused to assist Thomas. Instead, AFP officers interrogated Thomas again in March 2003 in Karachi. Still Thomas had no lawyer present even though his family had retained an Australian lawyer, Rob Stary. The AFP read Thomas his rights before the interview but when he asked for his lawyer, they refused on the basis that no such right exists under Pakistani law.

The ISI, with the complicity of the Australian authorities, detained him until June 2003 when he was repatriated to Australia for lack of evidence for charges under Pakistani law. On his arrival, the Australian agencies did not even interview Thomas, despite lurid media claims that he was a terrorist.

Over the next year and a half, Thomas held down three jobs and lived with his family in suburban Melbourne while saving for a deposit to buy a house. His wife gave birth to their second child. He was placed under close surveillance and his phones and e-mails were monitored continuously by ASIO.

On November 18, 2004, Thomas was arrested in a dawn raid. The AFP executed two search warrants simultaneously at Thomas' house and at his parents' house nearby. AFP and the Victoria Police joint counter-terrorism task force officers armed with automatic weapons and attack dogs terrified his wife and two young children.

Beforehand, the AFP issued a press release to ensure full television coverage of the dramatic raid. It was a stage-managed media event designed to brand Thomas as a dangerous terrorist who had been on the run from the police. Cynthia Banham of the *Age* typified the media coverage, writing, "After years on his trail, police have finally caught up with the taxi driver known as "Jihad Jack" [who had] for nearly three years ... eluded Australian authorities".

On the day of the raid, Victorian Labor Premier Steve Bracks boasted in parliament that Thomas' arrest vindicated his government's sweeping counter-terrorism legislation and the spending of \$100 million on anti-terrorist measures.

When Thomas was brought before the Melbourne Magistrates Court on November 24, for the benefit of a willing media, his guards wore body armour, court staff carried guns and special operations police surrounded the court. The magistrate refused bail for Thomas, accepting the prosecution argument that he posed a threat to national security.

Thomas was detained in the Acacia High Security Unit of Barwon maximum-security prison. He was not able to communicate with any other prisoner and was forbidden physical contact with his family. Every time he left his cell, including for medical appointments, Thomas had to wear a body belt and was shackled with handcuffs and leg irons.

His psychiatric condition deteriorated considerably, compounded by the memory of his detention in Pakistan. According to his lawyers, three psychiatrists stated that Thomas had suffered post-traumatic stress and had given an account consistent with someone who had

been repeatedly tortured.

The Victorian Supreme Court rejected an application for bail last December. The federal Anti Terrorism Act 2004 had abolished the centuries-old common law presumption in favour of bail, requiring instead that the accused to prove "exceptional circumstances" to be released.

Because of Thomas' worsening mental condition, his lawyers made another application in February this year. He was finally granted bail on strict conditions, requiring him to visit the local police station twice a day, provide a \$100,000 in surety and refrain from visiting any international points of departure. The prosecution appealed unsuccessfully to the Full Supreme Court, insisting that he was a "sleeper agent," supposedly waiting to be activated for terrorist activities.

At a committal hearing that began on March 22, the prosecution applied to bar the media and the public, including Thomas' parents, for most of the proceedings. As a result, bulk of the hearing was held in secret.

In addition to the general secrecy provisions in the National Security Information (Criminal Proceedings) Act, Thomas' trial is likely to become a test case for other sections of the Act, which permit the Attorney-General to issue "criminal non-disclosure" and "witness exclusion" certificates. These bar the defence from cross-examining or otherwise testing the veracity of selected prosecution witnesses and documents if the Attorney-General considers it is "likely to prejudice national security". At the moment, the prosecution witness list for Thomas' trial includes several whose identity has not been disclosed.

These measures could make it impossible for Thomas to mount an effective defence. Without being able to face his accusers, challenge their accounts, and call into question their reliance on torture, his trial would be fundamentally flawed.

In addition, to participate in the closed-door sections of his trial, his lawyers would have to undergo ASIO security checks, a requirement that many lawyers, including Thomas' lawyer Rob Stary, strenuously oppose and may refuse to abide by.

In a crude attempt to intimidate and silence Stary, the AFP raided community radio station 3CR on the day the committal hearing began, confiscating tapes of an interview given by Stary. They claimed Stary's interview contradicted statements made in court.

Stary has since been served with a subpoena ordering him not to say anything about the case to anyone. Apart from denying the public the right to know key facts about the case, this legal censorship severely disadvantages Thomas' defence by handicapping his lawyers in seeking support and potentially vital information from the community.

With the assistance of a complicit media, Jack Thomas is being used as a guinea pig for methods—such as the admission of evidence obtained by torture, secret witnesses, closed-door hearings and gagging of lawyers—normally associated with totalitarian regimes.



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