

Australian jury dismisses main charges in Melbourne “terrorism” case

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After deliberating for more than two days, a jury of nine women and three men dismissed two serious terrorism charges against Jack Thomas, a young Melbourne worker, on February 26. The decision to reject the Howard government’s threadbare case, based on confessions made under coercion in a Pakistani jail, reflects underlying resistance to the government’s dismantling of basic democratic and legal rights as part of the “war on terror”.

The criminal proceedings against Thomas over the past 15 months were conducted against a backdrop of an ongoing government and media campaign of fear and hysteria directed against Muslims, designed to stereotype them as actual or potential terrorists. Thomas himself was dubbed by the media as “Jihad Jack” and the authorities initially brought him to court in shackles, directly prejudicing his chances of a fair trial by seeking to create the impression of a dangerous and violent fanatic.

But after the prosecution ultimately presented just a single day of evidence, the jury acquitted Thomas of the only two charges that alleged that he was actually involved in, or intended to carry out, terrorist acts. The first was that he worked and trained with Al Qaeda in Pakistan between July 2002 and January 2003, providing himself as a resource to that organisation. The second was that he had agreed to become an Al Qaeda “sleeper,” awaiting terrorist instructions upon his return to Australia in mid-2003.

Thomas’ acquittals on these charges mark the second occasion within a year—in the only two cases to go to juries so far under the terrorist laws—that a jury has dismissed charges in the face of lurid police, government and media claims of “terrorist cells” and imminent threats in Australia. Last April, Zeky “Zak” Mallah, 21, was found not guilty of preparing to storm government offices in a supposed suicide mission (see “Jury throws out charges in first Australian ‘terrorist’ trial”).

However, Thomas, 32, a father of three children from the Melbourne western suburb of Werribee, was found guilty of two lesser offences—intentionally receiving funds from a terrorist organisation and travelling on a false passport. He could be sentenced to 25 years jail on the first charge and two years on the second. Thomas will appeal against the guilty verdicts, but Supreme Court Justice Philip Cummins denied

bail and remanded him pending a pre-sentence hearing on March 2.

These convictions and the methods by which they were achieved set dangerous precedents. The prosecution case relied on evidence that should never have been admitted into court—above all, an 80-minute taped interview that Thomas was compelled to give the Australian Federal Police (AFP) in March 2003 while he was being held for five months and tortured in a Karachi prison.

The interview was the result of more than 100 hours of interrogation during which Pakistani and CIA interrogators choked and suffocated him. Thomas was chained to a metal plate in the floor of his “dog kennel” cell, with his hands cuffed behind his back and a hood covering his face. He was threatened with execution, told his wife would be raped and that his testicles would be crushed.

Thomas told the AFP that he agreed to the taped interview because he believed he had done nothing wrong and that cooperation with the Australian authorities would end the torture and allow him to be reunited with his family in Australia. He was also denied his rights under Australian law to have legal advice and representation before making such a taped statement.

“I did not understand my rights,” he told the media. “They say you have a right to silence but keep going [talking] as you are—it’s better to be perceived as co-operative. They are using the fact that you are in indefinite detention and in legal limbo. I could not contact anyone. I was never in handcuffs talking to the Australians. I was always in handcuffs talking to the Americans. At the end of the day, I did not have much choice.”

During the AFP interview Thomas freely admitted that he had been given an airline ticket and \$US3,500 to return to Australia, while denying vehemently that he ever agreed to assist any terrorist attack in Australia. “None of this money was ever planned or was ever intended for terrorism,” he told the AFP.

The picture that emerged from the police tape was clearly one of a confused young man who had converted to Islam during the 1990s and went to Afghanistan in March 2001 in an effort to defend the fundamentalist Taliban regime against the warlords of the Northern Alliance.

Thomas told the AFP he originally went to the al-Farooq camp in Afghanistan so he could fight for the Taliban government. He had no idea the camp was run by Al Qaeda until the attacks on America on September 11, 2001. Thomas said he saw Osama bin Laden three times and thought about pledging his loyalty to the group before deciding against it.

He told the AFP officers that he was shocked by the September 11 events and later horrified by the suggestion of assisting a terrorist attack in Australia and decided to return home. "One man's terrorist is another man's freedom fighter. I believe that they are on a wrong path. I don't agree with their methods. They terrorise, they do strike terror," he said.

Thomas also wrote 13 pages of notes for the AFP and the Australian Intelligence Security Organisation (ASIO) describing his training in Islamic fundamentalist camps in Afghanistan and Pakistan, and cooperated in six ASIO interrogations inside Pakistani jails. This cooperation continued after he arrived back in Australia in June 2003.

Despite this, and lacking any evidence that Thomas had made any preparations for a terrorist act or made any contact with alleged terrorists after returning, the federal police suddenly arrested him in November 2004, 17 months later.

Lex Lasry QC, counsel for Thomas, told the court that Thomas was not a terrorist. "He was never a member of a terrorist organisation. He did not belong to Al Qaeda. He never pledged any loyalty or allegiance to them." Lasry told the jury: "This is a trophy trial designed to show the AFP are working hard protecting us from terrorism".

The timing of the case demonstrates that it was a "trophy trial" not just for the AFP but the Howard government. His arrest came just as the government, backed by the Labor opposition, was bringing forward a new raft of anti-terrorist legislation, including measures to allow for closed-door trials and secret evidence.

During the 15-month period that Thomas' trial has taken to get to court, the federal Coalition government and its state Labor counterparts have introduced a further barrage of laws that allow for detention without trial, life imprisonment for "advocating" terrorist acts and lengthy jail terms for "seditious" conduct, which has been extended to include advocating support for resistance to Australian military interventions overseas.

Significantly, the jury asked the judge why the authorities waited 17 months to arrest him. This was damaging to the government case because prosecutor Nick Robinson told the jury that an Al Qaeda operative, Khaled bin Attash, had asked Thomas to lie low for six to 12 months, surveying Australian military installations. The obvious time gap between that supposed arrangement and the arrest indicated that the charges bore no relationship to the evidence but were an attempt to justify and bolster the "war on terror".

Thomas' family expressed relief and gratitude that the jury dismissed the most serious charges. Thomas' father Ian told

reporters: "As we have always known, Jack had nothing to answer for with these charges... the acquittal has been a great victory."

Thomas' solicitor Rob Stary said: "The fact that Jack Thomas has been acquitted of ... supporting a terrorist organisation or being a resource for a terrorist organisation, which were the ... most-serious charges in our view, is a very significant victory."

The media, however, generally presented the findings against Thomas as a victory for the government and resumed their derogatory labelling of Thomas as "Jihad Jack," further prejudicing his sentencing and appeal hearings. As usual, the Murdoch outlets were the most blatant, with the Melbourne *Herald-Sun's* headline declaring: "Jihad Jack guilty of taking al-Qaida money".

Attorney-General Philip Ruddock added his own detrimental commentary, telling ABC radio: "The individual has been convicted of a terrorist offence. I see that as very significant." His remarks simply highlighted the substantial political stake that the government has in the Thomas case.

None of the media coverage referred to other unprecedented features of Thomas' trial. The new secrecy provisions of the anti-terrorist laws were invoked to prevent the press reporting the pre-trial hearings into the admissibility of the AFP interview. FBI officials and unspecified witnesses testified on behalf of the prosecution that the interview was given voluntarily.

At those hearings and at the trial itself, video-link testimony was presented from prisoners in US jails, who were clearly acting under duress or as part of plea-bargaining arrangements. Some appeared on video screens handcuffed and shackled.

While Thomas' trial itself was conducted in open court, Ruddock's legal representatives told the judge that the Attorney-General would seek certificates to shut parts of the proceedings if evidence emerged that endangered national security. Thomas' lawyers were also obliged to obtain ASIO security clearances.

Thomas' convictions on two charges demonstrate how the anti-terrorism laws are being utilised to tear up fundamental democratic rights, including not to be tortured or detained without trial, to have legal assistance and to be tried in open court so that members of the public can assess the alleged evidence.



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