

Australian man jailed on evidence derived from torture

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In what was obviously a political test case for the barrage of “anti-terrorist” laws introduced in Australia since 2002, Jack Thomas, a young Melbourne worker, was sentenced to five years’ jail last week. It was a severe sentence, given the jury had thrown out the only charges against him that he was actually involved in, or intended to carry out, terrorist acts.

Thomas, 32, was convicted on two lesser charges—receiving funds from a terrorist organisation and travelling on a false passport. Yet, he was given a non-parole period of two years, so that even with “good behaviour” and allowance for the four months he has already served awaiting trial, he will not be freed before 2008.

Victorian Supreme Court Justice Philip Cummins said it was necessary to jail Thomas, even though he had cooperated with police and had “excellent prospects for rehabilitation,” because in terrorism cases, “the principle of general deterrence is of pre-eminent importance”. In other words, an example had to be set.

The judge also established a far-reaching legal precedent by explicitly sanctioning the use of evidence obtained illegally under duress. The prosecution case relied almost totally on an interview conducted with Thomas in a Pakistani jail where he was denied his right under Australian law to first seek legal advice.

Justice Cummins ruled the evidence admissible and declared: “I consider that the conduct in Pakistan of the Australian officials and officers was at all times proper.”

During the pre-trial hearing into the admissibility of the confession, however, high-ranking Australian Federal Police (AFP) officers conceded that the interview with Thomas did not comply with Australian law. The AFP’s national manager of counter-terrorism,

Andrew Colvin had written to the Pakistani authorities: “We are prepared to conduct the record of interview regardless of whether Thomas is allowed access to a lawyer.”

Moreover, the interview was based on forced confessions previously obtained under torture by Pakistani and US intelligence operatives. The judge was clearly nervous about being seen to rubberstamp the reliance on torture, which has never been permitted in Australian courts. Cummins referred to protestors, who had been outside the court at the start of the proceedings last year, some carrying placards that read: “No confession by torture.”

While claiming to agree with the demonstrators, the judge told Thomas: “Had your interview of 8 March 2003 derived from torture, physical or mental, I would unhesitatingly have rejected it. It did not”.

The judge gave no reasons for making that final assertion, which flew in the face of all the evidence. In March 2003, Thomas had been jailed for five months and tortured in a Karachi prison. During more than 100 hours of interrogation, Pakistani and CIA agents had shackled, choked and suffocated him. He was threatened with execution, told his wife would be raped and that his testicles would be crushed.

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. Thomas told the AFP he originally went to Afghanistan in March 2001 so he could fight for the Taliban government, which was then under attack by Northern Alliance warlords.

He said he had no idea the training camp he joined 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 insisted that he took the money and an airline ticket from a man called Khalid Bin Attash and changed a date in his passport simply in order to get back home to Australia. The jury clearly believed him because it acquitted him on the two charges of aiding a terrorist group and preparing for a terrorist act.

In handing down the sentence, the judge reprimanded Thomas's barrister, Lex Lasry QC, for referring to the case's political context. He condemned as "unfortunate" and "deeply inappropriate," Lasry's argument that the proceedings were a "trophy trial" designed to show the AFP was working hard to counter-terrorism.

In fact, the Howard government mounted the prosecution, amid a blaze of police, government and media claims of "terrorist cells" in Australia, to justify the "war on terror" and the array of laws introduced to overturn basic civil liberties and democratic rights. The government was anxious to get a conviction and a substantial sentence after a jury had thrown out the only other case brought under the legislation (see "Australian jury dismisses main charges in Melbourne 'terrorism' case").

At the same time, the judge defended the politics of the "war on terror". After declaring that "Australia has a deep duty to protect its citizens from terrorism," he endorsed British Prime Minister Tony Blair's statement to the federal parliament last week that "there is no prosperity without security and no security without justice". Blair's parliamentary address was a cynical defence of the invasions of Afghanistan and Iraq, which were based on proven lies and violations of international law.

Thomas has lodged an appeal against his conviction on the grounds that it was obtained on the basis of inadmissible evidence derived from torture. His lawyer, Rob Stary, told the media: "Mr Thomas was subject to interrogation for a lengthy period of time, not just by the Australian intelligence and Federal Police agencies, but by US and Pakistani agents... it was our view that the whole interview process then becomes contaminated."

A spokesman for federal Attorney-General Philip Ruddock immediately pre-empted the appeal by saying he was satisfied with the outcome, echoing the judge's

comments that it had not been a "trophy trial".

While awaiting sentence, Thomas, who already suffers from post-traumatic disorder and depression due to his ordeal in Pakistan, was held in solitary confinement in a maximum security prison, confined to a cell for 23 hours a day. He was allowed only one contact visit a month with his wife and children. These inhuman conditions are likely to continue.

His father, Ian Thomas, told reporters: "Probably the thing that's very... weighing heavily on our minds, is the conditions that Jack's being held under. They truly are very punitive."

Once again, the "war on terror" has been used to violate fundamental legal rights, in this case paving the way for evidence derived from torture, contrary to the international Convention Against Torture and longstanding legal rulings.



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