

A dangerous precedent: Australian man convicted of “preparing terrorism”

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In a case that sets a number of disturbing precedents for the political use of Australian “counter-terrorism” laws, a Sydney Muslim man faces life imprisonment after being convicted on circumstantial evidence of preparing to commit an unspecified terrorist act.

Members of the New South Wales Supreme Court jury clearly had doubts about convicting Faheem Khalid Lodhi, a 36-year-old architect. They announced their verdicts on Monday, five days after telling the judge that they were deadlocked. Following a week of deliberations, they had reported on June 14 that they were unlikely to reach a verdict, but they were ordered to continue.

Justice Anthony Whealy sent the six men and six women home for half a day and instructed them to reconvene the following day, saying that juries were often able to reach unanimous verdicts if given more time to consider the evidence. After a further period of leave over the weekend, the jury declared Lodhi guilty of three out of four charges. Justice Whealy remanded Lodhi in custody to face sentencing submissions on June 29.

Lodhi is the first person to be convicted of planning an unidentified terrorist act in Australia. He was found guilty of collecting two maps of the national electricity supply system, seeking a price list for potentially explosive chemicals, and possessing information on the manufacture of poisons and bombs. He was acquitted of downloading 38 aerial photographs of military sites in preparation of a terror act.

The Howard government alleged that in October 2003, Lodhi was planning a bombing attack, motivated by “violent jihad”. The jury was told that his possible targets were the national electricity grid or three Sydney military bases—Victoria Barracks, HMAS Penguin or Holsworthy Barracks. He was acquitted, however, of any plan involving these defence facilities.

Because of the extraordinary wording of the terrorism laws, the prosecution did not have to prove Lodhi had planned a specific time, place or method, only that he deliberately sought information to prepare “an” attack. Under the legislation, actions that may be perfectly innocent in themselves—such as legally obtaining maps and photographs—can lead to life imprisonment, if the accused can be depicted as having a vague terrorist intent.

Prime Minister John Howard and leading ministers quickly hailed the convictions as a victory for their anti-terrorism legislation, which was amended late last year to remove any need for the prosecution to prove that a particular terrorist act was intended. “This is a demonstration that our new anti-terrorism laws are strong, they’re effective and they’re working,” Howard said. Justice Minister Chris Ellison declared that the convictions would have been impossible without the toughened legislation.

Even though Lodhi may appeal, federal Attorney-General Philip Ruddock called a media conference within hours of the verdict to state: “Obviously the evidence being there and the jury having found him guilty I welcome that outcome.” An Australian Federal Police spokesman further prejudiced any appeal by Lodhi, hailing the verdict as a win

against terrorism that sent “a very clear message to those involved in terrorism”.

The prosecution case relied heavily on citing Lodhi’s political and religious views—particularly his opposition to the invasion of Iraq—as proof that he was intent on terrorist retaliation and had produced a “pack of lies” to hide his intentions.

When Crown Prosecutor Richard Maidment SC asked Lodhi about the Iraq invasion, Lodhi said he believed it contravened international law and the United Nations charter. It was an “illegal invasion ... because the basis on which Iraq was invaded was wrong and everybody knows that it was wrong.” But he denied suggestions that, in response, he had planned a terrorist attack on Australian soil.

Defence barrister Phillip Boulten SC asked Lodhi what he thought of the September 11, 2001 attacks on the World Trade Center in New York. Lodhi replied: “My opinion is that it was wrong. The killing of innocent people is not part of Islam.” He was equally firm on the US-led invasions of Afghanistan and Iraq, saying it was wrong to invade a country “just because you want to”.

Whether Muslim or not, broad layers of ordinary people in Australia have similar opinions. If such views can be held against Lodhi as relevant evidence of terrorist motives, many others can also be targeted.

Lodhi took the stand as the first witness for the defence, freely opening himself up to cross-examination, and categorically denied each of the allegations, describing them as “completely absurd”. He testified that he acquired the maps and chemical prices as part of planned business ventures, and wanted to use the military site photographs to enhance his resume, because he had worked on the sites as an architect.

Several of Lodhi’s work colleagues corroborated his testimony that the photos were freely available on an Internet site, and were downloaded at Lodhi’s architectural office with their knowledge. Lodhi told the jury he later threw away the images because they were unclear and of very poor quality. His lawyer, Boulten, pointed out that the photos would have been useless for anyone planning a terrorist attack.

Likewise, Lodhi testified that his inquiries about chemicals were aimed at potentially exporting them to Pakistan. He sent a fax requesting the price list from his office with his architectural firm’s return number on it. Boulten said that had Lodhi wanted to make explosives, he could have bought the ingredients from a gardening store. Friends and relatives confirmed his discussions about the business plans.

Lodhi also dismissed 15 pages of handwritten notes about incendiary devices, saying he had stumbled across the information whilst researching building materials as part of his studies at Sydney University. He had written it down out of curiosity, and had not looked at it since. Boulten said the notes were quite unsophisticated and did not have all the information needed to make bombs.

Lodhi denied any knowledge of a supposed “terrorism manual”, allegedly discovered by intelligence and police officers on a CD at his home. Lodhi insisted that the day of the police raid was the first time he

had seen the CD.

Apart from his political and religious views, the prosecution case rested strongly on Lodhi's contact with a French citizen, Willy Brigitte, whom the Howard government accused of having terrorist links before suddenly deporting him from Australia in October 2003.

The prosecutor, Maidment, referred to Brigitte as "a trained mujahideen" and linked him to Lodhi throughout the trial. Lodhi testified that he had only arranged accommodation in Sydney for Brigitte, a fellow Muslim, as a courtesy and did not see him often.

Many unanswered questions remain about the Brigitte affair. Brigitte was deported without evidence being produced of terrorist activity, amid media headlines about "terror cells" operating in Australia. Numerous reports cited the French investigating judge in the case, Jean-Louis Bruguiere, saying that the Pakistan-based Kashmiri group Lashkar-e-Toiba (LeT) was preparing "a large-scale terrorist action in Australia", possibly with the assistance of a Chechen explosives expert.

Three years later, Brigitte remains in detention under France's draconian terrorism laws, awaiting trial on vague charges of associating with a terrorist organisation. Despite being available to testify at Lodhi's trial, he was not called as a prosecution witness. This fact clearly troubled the jury. Shortly after it began considering its verdict, the jury sent a message to Justice Whealy asking why Brigitte had not been called.

Substantial portions of the evidence were heard in closed sessions, under secrecy provisions in the counter-terrorism legislation. Much of the testimony from Australian Security Intelligence Organisation (ASIO) and Australian Federal Police officers was suppressed despite objections from media organisations. Even court staff handling exhibits were subjected to ASIO security clearances.

Imposed in the name of protecting "national security", such unprecedented secrecy violates the centuries-old right to an open public trial, and prevents public scrutiny of the evidence, as well as creating an intimidating courtroom atmosphere.

For its part, the New South Wales state Labor government did its best to depict and treat Lodhi as a highly dangerous threat to society. He was brought to court each day shackled at the ankles, arms and waist, and wearing an orange Guantánamo Bay-style jumpsuit. He had been classified as an AA risk to national security, making him Australia's first high-risk terrorist category inmate, and kept isolated in an undisclosed maximum security prison under 24-hour surveillance since his arrest in January 2004.

These actions highlight the bipartisan character of the assault on basic legal and democratic rights. Federally, Labor has supported every one of the Howard government's "counter-terrorism" measures, while the state and territory Labor governments have introduced matching legislation, including provisions for detention without trial.

The WSWS has no means of independently assessing the allegations against Lodhi. From the outset, however, the prosecution's case was weak and full of contradictions. At his committal hearing in 2004, one of the government's star witnesses Ibrahim Ahmed al-Hamdi, a "terrorist suspect" detained in the US, admitted under cross-examination that American authorities had stopped asking him to testify in cases because he had been discredited.

Another key witness, alleged Jemaah Islamiyah member, Arif Naharudin, testified via video link from Singapore, where he has been held for nearly three years without charge under that country's draconian laws. Naharudin was critical to the government's initial claim that Lodhi rose to a prominent position in a Pakistani training camp run by LeT, which the Howard government later proscribed as a terrorist organisation. But Naharudin's evidence was so suspect that it was withdrawn before the trial.

Lodhi's prosecution was particularly important to the Howard government because it rested upon an alleged conspiracy involving

Brigitte. Mass media claims that "terror sleeper cells" existed in Australia were central to the introduction of further "counter-terrorism" measures in the lead-up to the 2004 federal election.

For all the orchestrated hysteria, the government's campaign has suffered significant setbacks. In April 2005, a jury threw out the first "terrorist" case that went to trial, finding 21-year-old Zeky "Zak" Mallah not guilty of preparing to kill government officials in a supposed suicide mission. In effect, the jury concluded that he had been set up by an undercover police officer, who offered him \$3,000 for a video recording in which Mallah made wild threats to attack a government building.

A year later, Jack Thomas, a 32-year-old Melbourne worker, was acquitted of being involved in, or intending to carry out, terrorist acts after returning from Pakistan. Thomas is appealing against his conviction and five-year sentence on two lesser charges—receiving funds from a terrorist organisation and travelling on a false passport. The jury in his case accepted that he had taken money and an airline ticket, and changed a date in his passport, simply to get back home to Australia.

The only other conviction on a charge of involvement in domestic terrorism was obtained via a guilty plea in unclear circumstances. In May 2004, after months of collaborating with the intelligence and police services, Jack Roche suddenly pled guilty amid his trial in Western Australia on charges of conspiring to bomb the Israeli embassy. Because he had cooperated with police, Roche was given a relatively light sentence of nine years and could be released on parole next May.

Two other Islamic men, Izhar ul-Haque and Bilal Khazal, are currently on bail in Sydney awaiting trial, but neither is accused of being involved in a local "terror cell". Ul-Haque, a medical student, is charged with travelling to Pakistan to train with LeT, even though at the time he went it was not listed as a terrorist group. In a direct attack on free speech, Khazal, a former Qantas worker, is charged with "inciting terrorism" by publishing a web site on jihad.

Lodhi was also originally charged with attempting to recruit ul-Haque to LeT between March 2001 and April 2003, while being "reckless" as to whether LeT was a terrorist organisation. This charge was designed to convict Lodhi without proving any criminal intent—he could be convicted simply on the basis that he should have realised that LeT was engaged in terrorism. But that charge was so problematic it was dropped.

Given their setbacks in the Mallah and Thomas cases, the Howard government was anxious to secure a conviction. It has continually argued that its repudiation of basic civil liberties and democratic rights has been necessary to protect ordinary people from actual terrorist threats.

Last November, just after Prime Minister John Howard declared a highly dubious "terrorist alert", 22 other men from Sydney and Melbourne were arrested in massive police raids and charged with terrorism-related offences. They are still waiting for court hearings.

In every instance, the arrests and prosecutions under the new anti-terror laws have been timed to bolster the "war on terror" and help push through new barrages of federal and state laws. In each case, the accused men have suddenly been arrested, after many months of ASIO and police surveillance. Lodhi's arrest—like those of Roche, Mallah, Thomas, ul-Haque and Khazal—came long after his alleged activities and following protracted contact with ASIO.

The media has been fully complicit in the government's campaign. The Sydney *Daily Telegraph* responded to Monday's verdict in an editorial insisting: "The crimes of which Lodhi has been convicted may be new to us and therefore disquieting. But it would be an error to think of him on that basis as some sort of innocent victim, or even as a martyr. Lodhi's intention was to inflict pain, to cause as much suffering as possible. He was and is our enemy and he deserves to be locked up. For a long time."

Since 2001, the government has seized upon the "war" declared by US President George Bush for both domestic and international purposes. Under the guise of combating terrorism it has participated in the invasions

of Afghanistan and Iraq, diverted attention from mounting economic and social problems at home and legitimised previously unthinkable police state-style measures, including semi-secret trials, “preventative” detention and the ability to impose life sentences without any evidence of an actual terrorist act.



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