

Australia's first "control order" imposed on Jack Thomas

Mike Head
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In the first use of draconian police-state powers introduced last December, the Howard government has imposed a house arrest-style "control order" on Melbourne man Jack Thomas, just a week after he was acquitted on all terrorist-related charges.

The move is a blatant attempt by the government to reverse the damaging setback it suffered when Thomas was acquitted, and to shore up the "war on terror" as a means of overturning fundamental legal and democratic rights. It followed a weeklong media witchhunt, led by Rupert Murdoch's newspapers, demanding that Thomas—derogatorily branded "Jihad Jack"—be punished by any means, regardless of the law.

Without any trial, or even prior notice, Thomas has been deprived of the basic freedom of movement and communication. Holidaying with his wife and children, he was compelled to return immediately to Melbourne and report to the Australian Federal Police (AFP). A federal magistrate granted the 12-month order in a secret "ex parte" hearing.

Thomas is required to remain in his house between midnight to 5 a.m. every day, report to police three times a week and be fingerprinted. He has been barred from leaving Australia, stopped from using any telephone or email service not approved by the AFP and prohibited from communicating with a long list of individuals. Any breach of these conditions will mean imprisonment for five years.

The order—personally sought by Attorney-General Philip Ruddock—shows the scope for political abuse of the sweeping "counter-terrorism" laws rushed through federal and state parliaments at the end of last year. Under the legislation, a control order can be applied for, and granted, without any evidence.

All that the government has to claim is that it would "substantially assist in preventing a terrorist act" or that the person received training from a "listed terrorist organisation" and the order is "reasonably necessary for the purpose of protecting the public from a terrorist act".

A magistrate issued the order even though a Victorian Supreme Court jury earlier this year dismissed the only charges against Thomas that accused him of actually planning any terrorist act. Moreover, on August 18, three Appeals Court judges unanimously acquitted Thomas of the other, more minor, charges of accepting money from a terrorist group and falsifying his passport.

His conviction had been based on an illegal confession, extracted through weeks of torture in Pakistan by US, Pakistani and Australian officials. Acting on orders from Canberra, AFP officers

were directly involved in the abuse and coercion of Thomas. They also deliberately flouted Australian law that requires a prisoner to be given access to legal advice before questioning.

Now the government, and the mass media, is touting the very same allegations by the AFP, obtained via torture, to justify the control order and brand Thomas as an "available resource" for Al Qaeda. This has been combined with the equally unsubstantiated accusation that Thomas is "vulnerable" because his wife has "links" with "extremists" such as Indonesian cleric Abu Bakir Bashir.

The timing of the announcement underscores its politically-contrived character. If Thomas posed a real terrorist threat, he could have been placed under a control order eight months ago. He has been under close surveillance by the AFP and the Australian Security Intelligence Organisation (ASIO) since he returned to Australia from Pakistan in mid-2003. ASIO and the AFP have vast powers to monitor people, including by infiltrating groups, tapping phones, intercepting mail, bugging premises, hacking into computers and searching homes.

The move against Thomas also came just a week after an AFP "preventative detention and control orders" report for 2005-06 revealed that, as at June 30, not one preventative detention or control order had been made since the laws came into effect on December 14. This raised obvious questions about the way these powers were introduced.

Prime Minister John Howard and the state and territory leaders, all from the Labor Party, joined hands to rush the laws through their parliaments after Howard declared a terrorist "alert" last November. Amid a blaze of media hysteria, several arrests were made in Sydney and Melbourne days later, but without using the powers. It will be months, if not years, before these cases go to trial, leaving many unanswered questions regarding how much evidence actually existed about an imminent terrorist plot.

Ruddock recently announced a review aimed at extending the 14-day limit on preventative detention orders, in response to the latest alleged terrorist conspiracy in Britain. No doubt Ruddock wants to use the Thomas case as a pretext to push for an expansion of his powers.

Thomas's solicitor, Rob Sary, said he would be "vigorously challenging" the control order in a federal magistrates court on September 1, while Thomas's family denounced it as a "political stunt". His brother Les said: "Obviously, the decisions to quash my brother's convictions and make him a free man were a setback

to the Australian Federal Police and the attorney-general's office, whose claims of Jack being some kind of terrorist sleeper were thrown out by a jury... the government is trying to save face in this case and score propaganda points".

At a specially-convened media conference Ruddock declared: "If you work on the assumption that only those people who could be convicted of an offence are subject to a control order, then you wouldn't have control orders". Unwittingly, Ruddock spelt out the real purpose of the "control" and "preventative detention" orders introduced last December. They give the government and the security agencies the power to detain people or place them under house arrest without any proof that any terrorist act is even contemplated.

This reverses the presumption of innocence, a principle established over hundreds of years, and paves the way for practices identified with totalitarian regimes. Once people are detained or placed under a control order they cannot tell anyone, including their own families and the media. In other words, they can "disappear" without anyone being able to report it.

In Thomas's case, however, it seems that the government decided to make his control order public in order to whip up fresh fears of terrorist attacks.

Like the government, key sections of the media responded furiously to Thomas's acquittal. Murdoch's outlets in particular accused the judges of handing a victory to "terrorists" and the "enemy". They demanded that the courts disregard the use of torture, and the law itself, in order to convict alleged terrorists and that all relevant legal restrictions be scrapped.

The tone was set on August 17 in an *Australian* editorial, which declared that the judges, and all those who applauded their decision, were using the law "as a weapon in the service of their ideological objections to the national defence effort in the war on terror." (Australian Treasurer Peter Costello last week warned that this "war" could last 50 years or more.)

The editorial derided the ruling as "the blackest of black-letter law". Such a "moral miscarriage," it stated, "must not be repeated". It claimed that the "sad, mad and outright bad" could walk free to serve the cause of "Islamic terrorism" because the police and security services were "shackled by the obligation to protect the interests of the terror suspects while investigations are under way".

This is nothing less than a demand to rip aside all the basic legal protections that exist precisely to protect "suspects"—i.e., people who have not been found guilty of any offence—from police and government frame-ups. The kind of "investigations" that the Murdoch media wants let loose can be seen in the torture of Jack Thomas.

With the full knowledge of the Howard government, Thomas was thrown into solitary confinement in a wire cage in Pakistan, denied food and water, and subjected to severe physical and psychological abuse. Held for three months without trial, he was nearly strangled to death, threatened with severe beatings that would make him "scream," told his wife would be raped and warned that he faced indefinite detention in Guantánamo Bay or some other legal back hole.

Developing on the *Australian's* theme, Murdoch hack Piers

Ackerman, writing in the *Sydney Daily Telegraph*, denounced the judges for relying on "musty black letter legalisms". Ackerman went on to incite anti-Islamic prejudice, branding Thomas an "irksome little creep" who had "signed up for the Islamofascist cause". He accused judges of giving such people "every liberty available under the legal system developed along Judaeo-Christian moral guidelines".

In the erstwhile "liberal" *Sydney Morning Herald*, columnist Gerard Henderson also condemned the judges for focussing on "legal technicalities" and accused defenders of civil rights of aiding terrorism. He claimed that "civil libertarian types (trial lawyers, artists, humanities academics, comedians and the like)" were opposed to all those who maintain that "radical Islamism poses a real and present danger to Western nations".

The greatest danger to democratic norms and precedent is the "war on terror" itself. Throughout the world, it is being used by one government after another to tear up fundamental democratic rights and create the framework for police states.

Ruddock's latest move against Thomas has been greeted with even more strident demands for the abolition of civil liberties. On the front page of yesterday's *Australian*, legal affairs editor Chris Merritt made the chilling comment: "Jihad Jack is on the wrong side in a war. And in war, different standards apply. In earlier conflicts, the legal system dealt swiftly with this sort of fellow. Nazi sympathisers and suspected saboteurs lost a great deal more than a few civil liberties."

By this logic, anyone marked as a terror "suspect" by the government, or anyone making a false confession, under torture, of any alleged terrorist-related activity should not only be deprived of liberty and freedom of speech, but possibly even of life itself. The same goes for alleged "sympathisers"—i.e., those who try to probe the social, political and economic roots of terrorist acts, or who oppose the outrages being conducted under the auspices of the "war on terror," such as the wars in Afghanistan and Iraq. After all, since 2002, "terrorism" has been legally defined to cover any anti-government protest that ends in "violence".



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