

# Australia: Jack Thomas appeals against retrial on terrorist charges

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29 July 2008

Lawyers for a Melbourne worker, Jack Thomas, will appear in the High Court, Australia's supreme court, on August 1 to seek leave to appeal against a decision by the Victorian Court of Appeal in June that he face re-trial on two terrorist-related charges. Thomas has been granted bail, but the Rudd government is still keeping him under a "control order"—a modified form of house arrest originally imposed by the previous Howard government in 2006.

The continuing persecution of Thomas underscores the essential unity between Howard and Rudd governments on using the "war on terror" as a pretext to justify the ripping up of basic legal and democratic rights. Instead of calling a halt to the political witchhunt against Thomas, the Labor government has authorised some of its most senior lawyers, including a former Solicitor-General, to fight his appeal against the re-trial.

Thomas's two convictions were thrown out by the Victorian Court of Appeal in August 2006 because he was tortured before his interrogation by the Australian Federal Police (AFP) in Pakistan in 2003. Yet, he now faces trial again based on two media interviews, even though he told the Australian Broadcasting Corporation's "Four Corners" television program and the *Age* newspaper exactly what he told the police; that he was not a terrorist, but went to Afghanistan in early 2001 to defend the Taliban regime against the warlords of the Northern Alliance. After being shocked by the September 11 attacks, he had accepted money from an alleged Al Qaeda-linked individual simply to get back home to Australia.

The consistent picture that emerged from all the interviews is that of a confused young man from a working class family who converted to Islam in 1999 and ended up in the wrong place at the wrong time. Thomas, now 35, was initially detained at Pakistan's Karachi airport in January 2003 while trying to return home to Melbourne. After five months of questioning by Pakistani

and American intelligence officials, as well as Australian intelligence, ASIO, and the AFP, Pakistani authorities finally released him without charge in mid-2003.

For the following 16 months Thomas lived in Australia under close police and ASIO surveillance, with absolutely no evidence of involvement in terrorism. He was suddenly arrested in late 2004, however, just as the Howard government was bringing forward a new raft of "anti-terrorism" legislation, including provisions for semi-secret trials and executive banning of organisations. He was then placed on trial amid an ongoing scare campaign, triggered by the Howard government's November 2005 "security alert".

Nevertheless, a jury cleared Thomas of two serious charges that he was actually involved in, or intended to carry out, terrorist acts. He was convicted on two lesser charges—accepting money from a terrorist organisation and altering dates in his Australian passport—and sentenced to five years' jail.

The Court of Appeal then overturned those charges in August 2006. Not only had the AFP breached Australian law by denying Thomas access to legal advice before questioning him in Pakistan but the interview followed more than 100 hours of interrogation, torture and duress at the hands of Pakistani, US and Australian officers.

Thomas's acquittal triggered a vicious media response, with newspapers accusing the judges of handing a victory to "terrorists". Four months later, the same judges granted a Howard government application for a re-trial based on the two media interviews, making a mockery of the centuries-old rule against "double jeopardy"—being tried twice for the same offence. The judges argued that the media interviews were "new evidence" that was "not known and could not have been known to the Crown at the trial".

During 2007, Thomas and his lawyers gathered material to challenge this ruling. They subpoenaed ASIO officers

and “Four Corners” journalist Sally Neighbour and produced proof that ASIO had known as early as April 2005, via phone taps and other surveillance, that Neighbour had made frequent calls to Thomas to interview him. By the time that Thomas was placed on trial, ASIO had recorded approximately 24-28 phone calls between Thomas and Neighbour.

Before the first “Four Corners” interview, the journalist “contacted T [Thomas] by telephone 10-12 times ... using his home or mobile telephone number”. Before a second interview, “approximately 8-10” calls were recorded, and for a third interview, six calls were intercepted. ASIO knew the location for each interview, despite Thomas’s efforts to avoid “the surveillance which T suspected was in place”.

Thomas’s lawyers submitted that because ASIO and the AFP “worked as a team” in the operation against Thomas, the ABC interviews were in fact known, or knowable, by the police and prosecution officials. The lawyers said it was “unthinkable” that ASIO and the AFP could “hide behind some sort of cloak of divisibility”.

Rejecting Thomas’s application in June, the three judges went to extraordinary lengths to clear ASIO of any involvement in the prosecution of Thomas. The judges admonished Thomas’s lawyers for arguing that ASIO would have passed the media interview information onto the AFP, describing the proposition as “offensive to fundamental notions of privacy and freedom of speech, and ignores the express limitations on ASIO’s activities ... [as] clearly defined by the ASIO Act”.

The judges declared that ASIO played no part in Thomas’s prosecution, and this “should reassure the Australian community about ASIO’s adherence to the limits of its statutory charter”. On the face of it, these reassurances are not credible. ASIO has a long record of surveillance, infiltration, dirty tricks and frame-ups directed against the labour movement, political activists and alleged “terrorists” such as Mohamed Haneef and Izhar ul-Haque.

Moreover, the claim flies in the face of the findings of the AFP’s own Street Review, conducted last year after a judge found that ASIO and AFP officers had kidnapped and falsely imprisoned ul-Haque, a young medical student, in an effort to coerce him into becoming an informer.

The purpose of the Street Review was to exonerate the AFP and ASIO, and recommend means of strengthening the collaboration between the two agencies and the Director of Public Prosecutions. Even so, the Review’s

report noted that “at both operational and management levels there are informal arrangements between the AFP and ASIO to exchange information and discuss operational matters”.

In trying to reassure the public about ASIO, the court’s ruling dovetails with the Rudd government’s repeatedly stated goal of “restoring public confidence” in the terrorism laws and the security agencies, following the exposure and collapse of the operations against Haneef and ul-Haque.

The subpoenaed evidence raises another question: did Neighbour and the ABC become part of an ASIO scheme to entrap Thomas into making statements that could be used against him if he were not convicted on the AFP interview obtained via torture? According to the judges, the journalist “was aware of the possibility of surveillance by ASIO” as she pursued her arrangements with Thomas.

One thing is clear. Under both Howard and Rudd, the pursuit of Jack Thomas has set a series of far-reaching precedents. First, ASIO and the AFP were involved in his torture in Pakistan. Then the charges against him were politically timed, and he was convicted on the basis of statements obtained via torture. After he was acquitted on appeal, the Howard government subjected him to Australia’s first ever control order, and the judges then swept aside the double jeopardy rule to order a re-trial. Now, evidence of ASIO collusion in his prosecution has been whitewashed in order to reject an appeal against the re-trial.

Broadening public opposition to the abuses being committed under the banner of the “war on terror”—including the treatment of Thomas, Haneef and ul-Haque, as well as Guantánamo Bay detainee David Hicks—became a critical factor in last year’s defeat of the Howard government. With the advent of the Rudd government, however, nothing has changed. Labor has maintained the control orders on Thomas and Hicks and insisted that Thomas must stand trial all over again—a process that could drag on for several years.



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