

Sydney man faces “terrorist” trial for compiling book

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Yet another major terrorist trial opened in Australia last week, bringing the number of cases currently underway to five, with a total of 27 Islamic or Tamil men facing lengthy imprisonment. The wave of trials highlights the fact that despite last year’s defeat of the Howard government, and the collapse of the police frame-ups against Mohamed Haneef and Izhar ul-Haq, nothing has changed in the domestic “war on terror”.

The trial that commenced in Sydney last Wednesday of Belal Khazaal, a former Qantas baggage-handler, makes clear that the nine-month-old Rudd government is proceeding with all the most anti-democratic features of the anti-terrorism legislation introduced by the Howard government between 2002 and 2006.

The two charges against Khazaal constitute a direct attack on the right to free speech. Essentially, he is on trial in the New South Wales Supreme Court for advocating and writing about terrorism, not for being involved in terrorist acts, even in the most indirect manner. He is charged with “knowingly collecting or making a document connected with terrorism” and “inciting a person to commit a terrorist act”. If found guilty, he could be jailed for 25 years.

Since Khazaal was arrested in mid-2004—just months before a federal election in which the so-called war on terror was used as a distraction from mounting discontent with the Howard government—his prosecution has been riddled with far-reaching violations of basic legal and civil rights. These have included denial of access to key documents and other evidence against him, closed hearings, secret and anonymous witnesses, confidential court rulings and an attempt to remove his lawyers from the case.

If Khazaal is convicted it will set a dangerous precedent that can be used against anyone who writes, compiles or publishes anything that could be construed as encouraging terrorism. The threat to basic democratic rights is even greater because the counter-terrorism laws define “a terrorist act” in ways that can include traditional forms of political protest or industrial action directed at pressuring a government to change its policy. And because of the wording of the terrorism laws, the prosecution does not have to prove any specific time, place or method, only that “an” attack was intended.

The “document” that Khazaal is accused of compiling has not been linked to any terrorist activity or planning. Nor was it published surreptitiously, an essential requirement of any terrorist plot. He posted on a publicly-available Jihadist web site an Arab-language book composed of material gathered from other identified sources already in the public domain.

From the evidence tendered, it appears that the manuscript, whose title has been translated as *Provisions on the Rules of Jihad—Short judicial rulings and organisational instructions for fighters and*

Mujahideen against infidels, offered inflammatory support and advice for an Islamic fundamentalist “holy war”. It praised the terrorist attacks of September 11, 2001, hailing Al Qaeda’s “impressive success of the conquest of New York”.

The media has played up the prosecution’s assertions that the book listed “targets that should be assassinated,” including US President George Bush and members of his cabinet, such as Donald Rumsfeld and Colin Powell, US generals and intelligence officials, along with “infidels” in Arab countries. Other texts apparently provided a checklist for assassins, from organising budgeting and transport to checking wiring before using a time-bomb.

However, no specific terrorist act was outlined, and no evidence has been produced in court suggesting that any assassination or other terrorist activity was committed or attempted as a result of someone reading the material, which was posted on-line in September 2003. Once the Australian Security Intelligence Organisation (ASIO) and the police raised objections to the book with Khazaal in May 2004, he removed it from the Internet. Two months later, however, he was arrested and charged.

There is no doubt that the perspective advanced by Khazaal was thoroughly reactionary and repugnant. The September 11 atrocities, which involved the indiscriminate killing of nearly 3,000 innocent people, embodied Al Qaeda’s contempt for ordinary working people. They also gave the Bush administration and its allies a convenient pretext to institute police-state measures at home, and military aggression abroad, in the name of combatting terrorism.

Nevertheless, Khazaal was exercising a basic democratic right when he expressed his views. The struggle for freedom of expression and other democratic rights has spanned centuries, precisely to protect the voicing of political, ideological and religious opinions, no matter how unpopular, dissenting or abhorrent. Once a government is allowed to outlaw a particular point of view, the precedent can be used against any other.

Both sections of the federal Criminal Code under which Khazaal has been charged are sweeping in their terms, as are all the provisions in the terror laws. Section 101.5 creates an offence, punishable by 15 years imprisonment, to “collect or make a document” that is knowingly “connected with preparation for, the engagement of a person in, or assistance in a terrorist act” even if “the terrorist act does not occur”.

If Khazaal is acquitted of “knowing” of the “connection,” he can be found guilty of an alternative charge of being “reckless” as to the connection, which can mean imprisonment for 10 years. There is a defence that he did not intend to facilitate a terrorist act, but he bears “an evidential burden” in proving his lack of intention. In that way,

the section also reverses the centuries-old principle of “innocent until proven guilty”.

Section 11.4 of the Code, which covers incitement, goes even further in criminalising opinion. Incitement is defined to outlaw “urging” the commission of an offence, which could mean merely advocating or encouraging support for terrorism. Although the accused must intend that the offence be committed, he can be found guilty “even if committing the offence incited is impossible”.

Opening Khazaal’s defence, his counsel George Thomas told the jury that his client had written only a few paragraphs of the 102-page document. Thomas said that if Khazaal had written the material, certain inferences could flow. “But if he is taking something written by somebody else and putting it together as some sort of compilation to create the book, then some different inferences might flow.”

Many unanswered questions remain about the decision to prosecute Khazaal, who has remained free on bail since 2004 because a court accepted that he posed no actual threat to the community. ASIO is known to have interviewed him many times since 1994, and to have kept him under surveillance because of his known Islamic fundamentalist views. His book was posted on the internet in September 2003, but he was not charged until mid-2004, in the lead-up to a federal election, when the Howard government was anxious to claim some successes in the domestic “war” and to stir fresh insecurities in the minds of voters.

During the pre-trial hearings in the NSW Supreme Court proceedings, Khazaal and his lawyers were refused access to key documents, including the Warrant Affidavit that was sworn to search his home in May 2004. Justice Anthony Whealy ruled in October 2006 that the affidavit should not be disclosed because of “the real possibility of a threat to national security”. The judge said it was essential to protect confidential sources and ongoing counter-terrorism activities, and that this “public interest” overrode Khazaal’s right to procedural fairness.

Whealy decided that even Khazaal’s lawyers should be barred from reading the affidavit. The judge’s reasons could be used against virtually anyone accused by ASIO and the Australian Federal Police of an offence. He claimed that lawyers could make “inadvertent disclosures” of national security information to other people, and foreign spies could be interested in acquiring the information. Finally, he argued that Khazaal should take “considerable comfort” from the fact that Whealy, as the presiding judge, would know and understand the nature of the confidential information. This proposition leaves the accused completely in the hands of a judge, with no way of independently testing or contesting key evidence.

At several points in the preliminary hearings, the judge closed the court, took testimony from unidentified ASIO witnesses, heard confidential submissions and issued confidential judgments. All of these procedures smack of the Star Chamber under the old British monarchy—trampling over the right to a fair trial and preventing public scrutiny of the prosecution case. “National security proceedings” amendments passed to the terror laws in 2004 create wide-ranging powers for courts to take such measures, at the request of the federal attorney-general, and also require defence lawyers to obtain an ASIO security clearance if they wish to view confidential evidence.

During 2006, the federal government made an extraordinary bid to bar two of Khazaal’s lawyers, Peter Lange and Adam Houda, from representing him, claiming that the pair had wrongly seen copies of secret documents. After five days of legal argument, the judge rejected the application, but only because he was not convinced that Lange and

Houda had acted deliberately or recklessly. Whealy left the door open to lawyers being removed in the future, saying the right of an accused to counsel of his choice was “important” but not “absolute”.

If Khazaal is found guilty, he will become the second person in Australia to be jailed essentially for expressing views regarded as pro-terrorist. In 2006, Sydney architect Faheem Khalid Lodhi was convicted on circumstantial evidence of preparing to commit an unspecified terrorist act. Lodhi was found guilty of collecting maps and other information—all readily publicly available. The prosecution case relied heavily on his political and religious views—particularly his opposition to the invasion of Iraq—as proof that he was intent on terrorist retaliation.

Four other terrorist cases are proceeding, all of which began under the Howard government but are being pursued vigorously under Rudd. One is the re-trial of Melbourne worker Jack Thomas, who this month lost a High Court bid to prevent him from being put on trial again. In 2006, the Victorian Court of Appeal overturned his initial conviction, for receiving funds from a terrorist organisation in Pakistan, because his police interviews had been coerced. Thomas remains on bail because a court accepted that he posed no terrorist threat, yet the Rudd government has kept him under a control order, a form of house arrest.

In another prosecution, three alleged supporters of the Sri Lankan Tamil separatist group, the Liberation Tigers of Tamil Eelam (LTTE), were arrested in mid-2007 and charged with LTTE membership, support or links, even though the LTTE has not been listed in Australia as a terrorist organisation. All three men were also later released on bail, but face a lengthy wait for their trial in Melbourne.

The two largest trials, one in Melbourne and one in Sydney, involve 22 Islamic men accused of conspiring to prepare terrorism, or being members or supporters of an unnamed terrorist organisation. The twin trials arose from a terrorism alert declared by Howard in 2005 to justify a new barrage of police-state laws on the pretext of preventing an imminent terrorist attack within Australia.

All the measures being applied in these trials were introduced by the Howard government, voted for by the then Labor opposition, and enthusiastically matched at the state and territory level by Labor governments. The Rudd government has sought to placate the growing public distrust of the “war on terror” by convening a judicial inquiry into the Haneef debacle, for the express purpose of “restoring public confidence” in the terrorism laws. The current trials are another warning that Labor is intent on preserving extremely draconian laws and a powerful police and intelligence apparatus for use against rising political discontent and social unrest in the coming period.



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