Australia: Five men convicted of terrorist "conspiracy"

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After spending nearly four years in "super-max" prison cells, five Sydney Islamic men were convicted last Friday on charges of "conspiring to commit acts in preparation for a terrorist act" and now face possible life imprisonment. They will go before a pre-sentence hearing in December.

The guilty verdicts in the New South Wales Supreme Court followed one of Australia's lengthiest trials—nearly 12 months—and one of the longest recorded jury deliberations—23 days. That the jury took so much time suggests doubts and concerns among the 12 jurors. A defence lawyer, David Dalton SC, said there were "significant grounds" for appeal.

Mass media outlets greeted the verdict with claims that the men had been "conspiring to plan a devastating terrorist attack in Sydney" (*Daily Telegraph*) and had been "part of Australia's largest terrorist network" (*Sydney Morning Herald*).

In reality, the five were arrested, charged and convicted without any evidence of a specific terrorist plot. Federal crown prosecutor Richard Maidment SC emphasised in his closing address to the jury that no such evidence was required to convict.

Together with last year's seven-month trial in Melbourne of 12 men that ended with an array of convictions, and some acquittals (see "Contradictory verdicts in Australia's largest terrorism trial"), the prosecution arose from the former Howard government's November 2005 declaration of an "imminent" terrorist threat.

Most of the men placed on trial in Melbourne and Sydney were arrested in the country's largest ever house raids, involving more than 600 state and federal police and intelligence officers. Code-named "Operation Pendennis", the arrests came just four days after Howard, supported by the Labor Party and the Greens, used a supposed terrorist emergency to recall the Senate to rubberstamp the first instalment of far-reaching extensions to anti-terrorism laws introduced since 2002.

A crucial amendment substituted the words "a terrorist act" for "the terrorist act" in all the federal legislation. The change permitted people to be arrested and jailed, potentially for life, without the prosecution having to produce evidence that an actual terrorist act was being prepared, let alone carried out.

Within weeks of the spectacular arrests, the controversial anti-terror bills were passed in their entirety, imposing two new forms of detention without charge—preventative detention and control orders (a form of house arrest). They also outlawed "advocacy" of terrorism, and expanded sedition to include voicing support for groups resisting Australian military interventions, such as those in Iraq, Afghanistan, East Timor and Solomon Islands.

Backed by the Labor opposition, the Howard government utilised the "emergency" to try to overcome mounting public scepticism in the "war on terror" and growing opposition to the interventions in Afghanistan and Iraq. It was also used to justify the introduction of police-state powers that could be employed to deal with political dissent and social unrest.

For all the claims of an "imminent" threat, the arrested men had been under intense electronic and physical surveillance by the police and the Australian Security Intelligence Organisation (ASIO) for at least 16 months, and in some cases since 2000. Their phones were tapped, houses bugged and movements tailed. The Australian Federal Police intercepted 97,480 calls, recorded 16,400 hours of listening material and intercepted more than 26 gigabytes of Internet traffic—all without any evidence of a concrete terrorist plot.

The arrests were accompanied by sensational media claims of plans to blow up strategic sites and kill thousands of people. In Melbourne, the target was claimed to be an Australian Rules Football grand final. That allegation was discredited and abandoned during last year's trial. In Sydney, police fed the media with accusations of plans to attack the Harbour Bridge, the Opera House and the Lucas Heights nuclear reactor. These claims were dropped even before the Sydney trial commenced last November.

The Sydney jury heard from 300 witnesses, examined 3,000 exhibits, watched 30 days of surveillance tapes and listened to 18 hours of phone intercepts. But, there was still no evidence of an actual target or plan. Instead, prosecutor Maidment told the jury: "This was a case that relied on circumstantial evidence, creating a picture in the nature of a mosaic or a large jigsaw puzzle."

The crown prosecutor continued: "The crown does not suggest that the evidence reveals that they had reached any firm conclusion as to what precise action was to be carried out." The jury only needed to be satisfied that there was an "understanding" to commit a terrorist act. "You do not even need to have spoken it. An agreement, in this context, can be reached by an understanding," Maidment said.

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A key part of the "mosaic" was that the group was motivated by "a perception that the participation of Australia in the conflict in Iraq and Afghanistan ... were acts of aggression against the wider Muslim community". By this test, any opponents of the US-led wars in the Central Asian region could be accused of being prepared to support terrorist-related activity.

Maidment further insisted that the group's mindset was exemplified by the reactions of two of the men when arrested. The jury heard that one shouted: "Sharia law is going to prevail throughout this land. It is going to be ruled by it." Another told police: "May Allah curse you, your children and your wives."

The prosecutor said: "Those kind of sentiments ... betray a state of mind that is consistent with people who are prepared to do just what the crown has alleged; namely, to engage in preparation for the commission of terrorist acts involving the discharge of weapons or the use of weapons or the use of firearms or the use of the detonation of explosive devices, thus, threatening, property, lives and injury."

According to this logic, any religious fundamentalist, or for that matter, anyone opposed to the current legal order, could be declared guilty of a potentially heinous conspiracy.

Once the verdicts were announced, new contradictions emerged. The jury was not told that before the trial commenced, four alleged co-conspirators had pleaded guilty to lesser charges of committing acts in preparation for a terrorist act, or possessing items connected with the preparation of a terrorist act.

Two of the men had already been released on parole. With time served since his arrest in November 2005, one was freed in May after three years and six months in jail. The other was released last week after three years and 11 months in custody. With a history of psychiatric illness and drug abuse, he had been deemed mentally unfit to plead and his sentence was discounted due to his mental ill-health.

The third "co-conspirator" is serving a minimum term of 10 and a half years, while the name of the fourth, who has been jailed for a minimum of 14 years, remains the subject of a court suppression order.

These plea bargains raise many questions, not least whether deals were struck for any of the four to provide evidence against the others. The four did not testify and police told journalists that none provided information. However, some may have received lesser sentences for assisting the police in ways that deliberately did not expose them to defence cross-examination at the trial.

During the Melbourne trial, the prosecution (also led by Maidment) was forced to abandon its reliance on star witness, Izzydeen Atik, a former member of the group who received a reduced sentence for turning police witness and testifying that the plot involved attacking the football grand final. Defence lawyers cross-examined Atik, exposing a long record of fraud, forcing the judge to warn jurors not to rely on his evidence because he was a conman, liar and social security fraudster.

The Melbourne trial also highlighted the role of police provocateurs in entrapping disaffected, and sometimes mentally unstable, individuals. An undercover infiltrator offered the alleged ringleader, Muslim cleric Abdul Nacer Benbrika, cheap ammonium nitrate and, while being secretly filmed by police, took Benbrika to a remote hilltop to show him how to detonate the explosive. Were similar acts of provocation and entrapment involved in Sydney?

Many other unanswered questions remain about the Sydney trial. Before it began, there were 110 days of pre-trial arguments, during which the presiding judge, Justice Anthony Whealy, delivered 65 judgments. All but two of the judgments were suppressed. Whealy wrote a total of 100 non-publication and suppression orders.

From what has been reported publicly, the prosecution case was based substantially on covertly recorded conversations between some of the men about wanting to do "something big" to stop Australia's involvement in the US-led wars. In various instances, these statements were apparently made defiantly after the men became aware that their conversations were being bugged. Again, however, there was no evidence, apart from purchases of ammunition and chemicals, that the men seriously intended to do anything.

The much-publicised trials in Melbourne and Sydney were conducted under the Rudd Labor government. While Labor has dropped the discredited term "war on terrorism", its modus operandi is no different from Howard's.

In August this year, in the second largest police-intelligence raids ever conducted in Australia, around 400 officers searched 19 homes around Melbourne at dawn, arresting four Lebanese- and Somali-Australians over alleged plans to attack a Sydney army base. (See: "Australian police carry out sweeping new 'anti-terror' raids").

Just a week later, the government unveiled measures to further boost the anti-terrorism laws, including expanding the definition of terrorism to cover psychological harm, rather than physical harm, and creating new offences such as terrorist hoaxes, threats and "inciting violence". Other changes would permit "emergency" police searches of homes without warrants, make it even harder to get bail and streamline secrecy measures for semi-public trials. (See: "Australia: Rudd government toughens anti-terror laws").

If a terrorist attack were to occur in Australia, political responsibility would lie directly with the Howard and Rudd governments. Just as Howard joined the Bush administration's criminal invasions of Afghanistan and Iraq, Rudd is following Obama in escalating the onslaught in Afghanistan and now neighbouring Pakistan. And, like his predecessor, Rudd is exploiting the fertile recruiting ground for Islamic fundamentalism created by these policies to bring forward laws that tear up basic legal and democratic rights.

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