British court to hear bulk of terrorism trial in secret

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Last month's revelation that an entire trial of two suspects to be charged with terrorist offences was to be held in secret exposes once again the growing lawlessness within the British ruling elite.

In a chilling, top-secret judgement befitting a police state dictatorship issued on May 19, which only became public due to an appeal lodged by the *Guardian* and other newspapers, it was ruled that the trial could take place in total secrecy, with the identity of the two suspects concealed. No journalists were to be permitted to cover the trial, nor even to report on its existence.

Then on June 4, as part of the appeals court review, it was ruled that the media could report on the trial's existence. A week later, the appeals court instructed the names of the suspects to be released and that parts of the trial would be held in public. Erol Incedal and Mounir Rarmoul-Bouhadjir will now be tried for offences under the Terrorism Act 2006 and Terrorism Act 2000 in October.

The appeals court judgement was generally hailed as a great victory for the rule of law, but it was nothing of the sort. The so-called compromise to allow parts of the trial to be held openly amounts to little more than window-dressing, given that all of the evidence in the case will be presented in secret. Moreover, the parts to be held in public will be confined largely to the opening formalities of swearing in the jury, reading the charges to the defendants and the judge's opening statement, as well as an unspecified portion of the prosecutor's initial remarks.

Regardless of such token gestures, nothing can take away from the fact that a senior high court judge in a country hailed for its ostensible commitment to the rule of law was prepared to permit a criminal prosecution to proceed behind closed doors. No one apart from the participants in the proceedings was to be aware of the identity of those charged, or even that they were being charged. It demonstrates that there exists a section of the ruling elite working to put a system in place that would permit the disappearance of "suspects" without a trace. They could be locked up for life without anyone knowing about it.

This danger is by no means lessened by the appeals court judgement, which ruled that coverage of the trial would be severely regulated. Only a hand-picked selection of journalists will be allowed to attend parts of the proceedings, while expert observers and legal organisations are excluded entirely, and all notes and records of events must be locked securely in the court during the case. At its conclusion, a "review" will be undertaken to determine what can and cannot be published.

Subsequent reports revealed that far from being a compromise worked out by the appeals court justices involved, the revised terms were proposed and signed off within the home office by the government. The Kafkaesque character of the whole affair was further underlined by reports that the appeals court judges issued three judgements: one released to the public, one issued in "private" to the participants in the hearing, and an "ex parte" ruling—i.e., one that is presented exclusively to one of the parties, in this case the government.

No appeal was lodged to the court of appeals decision.

Instead, the judgement was hailed by commentators. The *Telegraph* proclaimed it was a "victory for open justice," while Conservative MP David Davis described the decision as a "massive improvement on the original draconian proposal."

Even those who desperately sought to portray the judgement as a defence of the rule of law could not

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avoid pointing to its deeply troubling implications. Mary Neill, writing on the Keep Calm Talk Law web site, noted that both suspects were being charged under the Terrorism Act 2000 for possessing material likely to be used in the conduct or preparation of a terrorist act. The basis for this was the possession of a document entitled "bomb making," which she listed along with another entitled "39 ways to serve and participate in Jihad."

Neill then asked, "Individuals have been charged with, and convicted of, possessing these documents in conjunction with other terrorist offences, yet those trials have not been held in private. What is different in this case? Well, we may never know."

The news of the trial came to light in the weeks leading up to the emergency passage of legislation through parliament in less than three days to grant the intelligence agencies even more surveillance powers.

The government acted with similar disregard for parliamentary oversight in the case of the terrorism trial, as the remarks of Conservative MP Dominic Raab show. He declared on the ruling, "It still allows the state to hand-pick journalists to report on the case, subject to undefined conditions. The house has had no explanation of why this is necessary given existing powers like PII [public interest immunity] and the state is relying on very vague common law powers, not set and defined by elected members of this House."

The fact that parliament has offered no serious opposition to the assault on democratic rights was summed up by Raab, who wound up his critique of the government's actions by merely calling for a parliamentary debate on the issue "in the near future."

The latest assault on the legal process is part of a long list of legislative reforms and judicial rulings stretching back to the previous Labour government with grave consequences for democratic rights. The series of Terrorism Acts passed between 2000 and 2006 contained a number of draconian provisions strengthening the power of the state and extremely broad definitions as to what would be deemed a terrorist act. The 2006 act, under which Incedal is being charged, makes the "instigation" or "encouragement" of a terrorist act a criminal offence, even if no evidence exists that plans for such an act had been made.

Claims of "national security" have been used to abrogate the legal principle of open justice, a principle with roots going back even further than the Magna Carta of 1215.

Last year, the Justice and Security Act was passed, creating the mechanism for evidence in civil trials to be presented to a court in secrecy by the government and without the presence of the defendant's lawyer. Evidence so presented can be used by the court in reaching a decision in the trial, even though the defendant has no knowledge of the details. Only legal representatives selected by the government are allowed access to the material.

During discussions of the measures, they were fully supported by Prime Minister David Cameron, who commented in 2012, "This is the right way forward."

As the British ruling class prepares a more aggressive militarist foreign policy, it can no longer tolerate the existence of democratic rights and institutions at home. The clampdown on public access to legal proceedings is aimed at preventing any information about the activities of the state, the intelligence services and its allies from coming out in the courts, as in the case of torture revelations relating to the Guantanamo Bay inmate Binyim Mohammed.

The decision to strictly regulate the media's coverage of a criminal trial comes in the context of the vicious attacks against the *Guardian* over its publication of National Security Agency whistle-blower Edward Snowden's revelations. With threats of violence and the shutdown of the paper if it did not comply, figures at the highest level of the British state succeeded in having large quantities of information provided to the newspaper on hard drives destroyed.

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