

A secret trial in Canberra points to extent of Australia's police-state powers

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In circumstances that remain shrouded in official secrecy, an Australian citizen—reportedly a former military and intelligence officer—was prosecuted, convicted and imprisoned in Canberra last year via a criminal trial that was completely hidden from public scrutiny. Jailed for 15 months last year, the man was released in August but is still gagged by secret “Commonwealth orders” from informing anyone about his case.

The very existence of the man's case was concealed from the public until November 8 when the Australian Capital Territory (ACT) Supreme Court published a judgement dismissing his challenge to extraordinary actions by the ACT prison authorities and the Australian Federal Police to seize book manuscripts he had written in jail and raid the home of his brother, to whom he had sent a copy of the manuscripts. According to the court, the police operation was legal and necessary in order to avoid any risk of a breach of the secrecy orders.

No known precedent exists in Australia for a totally secret trial. For such proceedings and imprisonment to take place entirely behind closed doors, under undisclosed “Commonwealth orders,” points to the advanced nature of the police-state powers created over the past two decades.

From the experience of the prisoner, still identified only under an alias as “Alan Johns,” it is now legally possible for the federal government and its police and intelligence agencies to convict and incarcerate a person without any public knowledge—not even that the person has been arrested and placed on trial.

The right to a public trial is one of the basic democratic principles established, as a protection against tyranny, by the English Revolution of the 1640s. One of the principal demands of the opposition

that ultimately overthrew Charles I and ended the absolute monarchy was the abolition of the notorious secret courts of the Star Chamber, which were used to suppress political dissent and execute opponents of the regime.

Many aspects of the “Alan Johns” case are unknown because of the government's suppression orders, yet it appears to set a chilling precedent. It also demonstrates how far the security forces will go to suppress information they want kept from the public's eye.

It is understood that Johns was a soldier and later a military intelligence officer, but details about his alleged crime and background have been kept secret. It seems that he was convicted of an offence under the Intelligence Services Act of 2001, which outlaws the disclosure of information about the operations of the spy agencies.

All the details were gagged, either by orders issued by a judge under that Act or “public interest immunity” court orders, or a “national security” certificate obtained by federal Attorney-General Christian Porter, using legislation imposed under the banner of fighting terrorism. So secret are the suppression orders that Johns told the ACT Supreme Court he had received no explanation of them himself.

According to the November 8 court ruling, Johns's seized documents consisted of the manuscript of an “alternative history fiction novel” and a memoir about his experiences inside the prison. The manuscripts were written as one of the goals of a Mental Health Recovery Plan after Johns was diagnosed with a mental health disorder.

Johns had asked that Canberra-based author, Robert Macklin, be allowed to visit to help him with publishing. However, the jail's general manager notified the federal police (AFP) about the manuscripts

and Macklin's potential visit. Citing a danger to the breaching of the "Commonwealth orders," the AFP raided Johns's cell and his brother's home in Melbourne, and the prison chief restricted Johns's email and phone communications.

Macklin, a former corporate media journalist and the author of books glorifying the activities of the Special Air Services (SAS) in Afghanistan, wrote in a *Canberra City News* column last week that Johns was a former captain in Army Intelligence. Johns had spent "10 stressful years" while "fighting for his country and seeing his fellow soldiers killed in the bloodied dust of Uruzgan Province" and the next five years working for the Department of Foreign Affairs with "postings to Iraq and other places."

"WitnessJ8," a new Twitter profile, was created last week, claiming to be posted by Johns. It stated: "After 15 years serving my country—ten in uniform, and five more recently in a suit—I was cast into a secret trial and incarcerated." The Twitter post also referred to deployments in Timor, Afghanistan, Iraq and Indonesia.

Mandarin, a Canberra news site specialising in public servants' issues, said it had contacted the owner of the Twitter account and independently confirmed parts of the statements.

After being criticised for allowing the secret trial, ACT Justice Minister Shane Rattenbury, the leader of the Greens in the ACT's Labor Party-Greens coalition government, told the media he had no knowledge of the trial or imprisonment. That was despite being nominally in charge of the territory's courts and prisons. He described the secrecy as "disturbing" and "extraordinary," but proposed no action in response.

Civil liberties and lawyers' organisations have voiced concerns. The Law Council of Australia, the peak body for the legal profession, said open justice was "fundamental" to fair trials and renewed its calls for a review of federal secrecy laws.

Civil Liberties Australia CEO Bill Rowlings asked how many other such cases there had been in the past 20 years. He wrote: "Now the hunt is on to find out how many secret prisoners, arraigned and convicted in secret trials for secret offences, are in other jails throughout Australia."

During the past 20 years, the "war on terrorism" has been exploited as a vehicle for overturning many

fundamental legal and democratic rights, including the basic principle of habeas corpus—no detention without trial.

The precedent set by Johns's case is not only far-reaching. It has immediate implications for two trials currently underway against whistle-blowers and lawyers who exposed war crimes and illegal spying conducted by the Australian military and intelligence apparatus.

One involves ex-military lawyer David McBride, who revealed a cover-up of abuses committed by Special Forces during the invasion and occupation of Afghanistan. The other is a prosecution of Canberra lawyer Bernard Collaery for helping a client, an ex-intelligence officer known only as "Witness K," to expose the surreptitious Australian Secret Intelligence Service bugging of East Timor's government cabinet room during oil and gas negotiations in 2004. The federal government is currently seeking to have much of both these trials heard in secret.

Beyond that, the federal government and the AFP have refused to rule out prosecuting several journalists who were subjected to intimidating AFP raids in June. Police ransacked the home of News Corp journalist Annika Smethurst, who reported plans for domestic surveillance by the Australian Signals Directorate. The next day, AFP officers raided the headquarters of the Australian Broadcasting Corporation, whose journalists had published information about Special Forces killings and other war crimes in Afghanistan.

These operations, combined with the conduct of secret trials, underscore how much is at stake in fighting for the freedom of Julian Assange, the WikiLeaks founder, and whistle-blower Chelsea Manning. Both have been jailed and persecuted for exposing the war crimes, mass surveillance and regime-change conspiracies of the US government and its allies, including those in Canberra.



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