# TERRORISM OFFENCES OF INTERNET PUBLISHING UK LEGAL NOTES

There is neither an academic nor an international legal consensus regarding the **definition of the term "terrorism"**.[1][2] Various legal systems and government agencies use different definitions of "terrorism". Moreover, the international community has been slow to formulate a universally agreed upon, legally binding definition of this crime. These difficulties arise from the fact that the term "terrorism" is politically and emotionally charged.[3]

Angus Martyn in a briefing paper for the Australian Parliament has stated that "The international community has never succeeded in developing an accepted comprehensive definition of terrorism. During the 1970s and 1980s, the United Nations attempts to define the term foundered mainly due to differences of opinion between various members about the use of violence in the context of conflicts over national liberation and self-determination."[4] These divergences have made it impossible to conclude a Comprehensive Convention on International Terrorism that incorporates a single, all-encompassing, legally binding, criminal law definition of terrorism.[5]

In the meantime, the international community adopted a series of sectoral conventions that define and criminalize various types of terrorist activities. In addition, since 1994, the United Nations General Assembly has condemned terrorist acts using the following political description of terrorism: "Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them."[6]

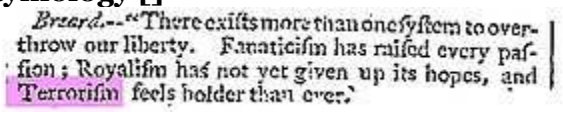
A 2003 study by Jeffrey Record for the US Army quoted a source (Schmid and Jongman 1988) that counted 109 definitions of terrorism that covered a total of 22 different definitional elements.[7] Record continued "Terrorism expert Walter Laqueur also has counted over 100 definitions and concludes that the 'only general characteristic generally agreed upon is that terrorism involves violence and the threat of violence.' Yet terrorism is hardly the only enterprise involving violence and the threat of violence. So does war, coercive diplomacy, and bar room brawls".[8]

As Bruce Hoffman has noted: "terrorism is a pejorative term. It is a word with intrinsically negative connotations that is generally applied to one's enemies and opponents, or to those with

whom one disagrees and would otherwise prefer to ignore. (...) Hence the decision to call someone or label some organization 'terrorist' becomes almost unavoidably subjective, depending largely on whether one sympathizes with or opposes the person/group/cause concerned. If one identifies with the victim of the violence, for example, then the act is terrorism. If, however, one identifies with the perpetrator, the violent act is regarded in a more sympathetic, if not positive (or, at the worst, an ambivalent) light; and it is not terrorism."[3] For this and for political reasons, many news sources (such as Reuters) avoid using this term, opting instead for less accusatory words like "bombers", "militants", etc.[9][10]

In many countries, acts of terrorism are legally distinguished from criminal acts done for other purposes.

## Etymology []


*Brard.*—"There exiſts more than one ſyſtem to overthrow our liberty. Fanaticiſm has raiſed every paſſion; Royaliſm has not yet given up its hopes, and Terroriſm feels bolder than ever."

A 30 January 1795 use of the word 'terrorism' in *The Times*, an early appearance in English. The excerpt reads: "There exists more than one system to overthrow our liberty. Fanaticism has raised every passion; Royalism has not yet given up its hopes, and Terrorism feels bolder than ever."

The term "terrorism" comes from French *terrorisme*, from Latin: '**terror'**, "great fear", "dread", related to the Latin verb *terrere*, "to frighten". The *terror cimbricus* was a panic and state of emergency in Rome in response to the approach of warriors of the Cimbri tribe in 105BC. The French National Convention declared in September 1793 that "terror is the order of the day". The period 1793–94 is referred to as *La Terreur* (Reign of Terror). Maximilien Robespierre, a leader in the French revolution proclaimed in 1794 that "Terror is nothing other than justice, prompt, severe, inflexible."[11]

The Committee of Public Safety agents that enforced the policies of "The Terror" were referred to as "Terrorists".[12] The word "terrorism" was first recorded in English-language dictionaries in 1798 as meaning "systematic use of terror as a policy".[13]

Although the Reign of Terror was imposed by the French government, in modern times "terrorism" usually refers to the killing of people by non-government political activists for political reasons, often as a public statement. This meaning originated with Russian radicals in the 1870s. Sergey Nechayev, who founded People's Retribution (Народная расправа) in 1869, described himself as a "terrorist".[14] German anarchist writer Johann Most helped popularize the modern sense of the word by dispensing "advice for terrorists" in the 1880s.[15]

According to Dr Myra Williamson: "The meaning of “terrorism” has undergone a transformation. During the reign of terror a regime or system of terrorism was used as an instrument of governance, wielded by a recently established revolutionary state against the enemies of the people. Now the term “terrorism" is commonly used to describe terrorist acts committed by *non-state or subnational entities* against a state.[16]

## In international law []

### The need to define terrorism in international criminal law []

Ben Saul has noted that a "A combination of pragmatic and principled arguments supports the case for defining terrorism in international law",[17] including the need to condemn violations to Human rights, to protect the state and deliberative politics, to differentiate public and private Violence, and to ensure International Peace and Security.

Carlos Diaz-Paniagua, who coordinated the negotiations of the proposed United Nations Comprehensive Convention on International Terrorism, noted, on his part, the need to provide a precise definition of terrorist activities in international law: "Criminal law has three purposes: to declare that a conduct is forbidden, to prevent it, and to express society's condemnation for the wrongful acts. The symbolic, normative role of criminalization is of particular importance in the case of terrorism. The criminalization of terrorist acts expresses society's repugnance at them, invokes social censure and shame, and stigmatizes those who commit them. Moreover, by creating and reaffirming values, criminalization may serve, in the long run, as a deterrent to terrorism, as those values are internalized."[18] Thus, international criminal law treaties that seek to prevent, condemn and punish terrorist activities, require precise definitions:

"The definition of the offence in criminal law treaty plays several roles. First and foremost, it has the symbolic, normative role of expressing society's condemnation of the forbidden acts. Second, it facilitates agreement. Since states tend to be reluctant to undertake stringent obligations in matters related to the exercise of their domestic jurisdiction, a precise definition of the crime, which restricts the scope of those obligations, makes agreement less costly. Third, it provides an inter-subjective basis for the homogeneous application of the treaty's obligations on judicial and police cooperation. This function is of particular importance in extradition treaties because, to grant an extradition, most legal systems require that the crime be punishable both in the requesting state and the requested state. Fourth, it helps states to enact domestic legislation to criminalize and punish the wrongful acts defined in the treaty in conformity with their human rights' obligations. The principle of *nullum crimen sine lege* requires, in particular, that states define precisely which acts are prohibited before anyone can be prosecuted or punished for committing those same acts."[19]

Saul noted in this sense that, missing a generally agreed, all-encompasing, definition of the term:

"'Terrorism' currently lacks the precision, objectivity and certainty demanded by legal discourse. Criminal law strives to avoid emotive terms to prevent prejudice to an accused, and shuns ambiguous or subjective terms as incompatible with the principle of non-retroactivity. If the law is to admit the term, advance definition is essential on grounds of fairness, and it is not sufficient to leave definition to the unilateral interpretations of States. Legal definition could plausibly retrieve terrorism from the ideological quagmire, by severing an agreed legal meaning from the remainder of the elastic, political concept. Ultimately it must do so without criminalizing legitimate violent resistance to oppressive regimes – and becoming complicit in that oppression."[20]

### *Obstacles to a comprehensive definition []*

Diaz-Paniagua has noted that, in order to "create an effective legal regime against terrorism, it would be necessary to formulate a comprehensive definition of that crime that, on the one hand, provides the strongest moral condemnation to terrorist activities while, on the other hand, has enough precision to permit the prosecution of criminal activities without condemning acts that should be deemed to be legitimate. Nonetheless, due to major divergences at the international level on the question of the legitimacy of the use of violence for political purposes, either by states or by self-determination and revolutionary groups, this has not yet been possible."[21] In this sense, Bassiouni notes:

"to define "terrorism" in a way that is both all-inclusive and unambiguous is very difficult, if not impossible. One of the principal difficulties lies in the fundamental values at stake in the acceptance or rejection of terror-inspiring violence as means of accomplishing a given goal. The obvious and well known range of views on these issues are what makes an internationally accepted specific definition of what is loosely called "terrorism," a largely impossible undertaking. That is why the search for and internationally agreed upon definition may well be a futile and unnecessary effort." [22]

Sami Zeidan, a Lebanese diplomat and scholar, explained the political reasons underlying the current difficulties to define terrorism as follows:

"There is no general consensus on the definition of terrorism. The difficulty of defining terrorism lies in the risk it entails of taking positions. The political value of the term currently prevails over its legal one. Left to its political meaning, terrorism easily falls prey to change that suits the interests of particular states at particular times. The Taliban and Osama bin Laden were once called freedom fighters (mujahideen) and backed by the CIA when they were resisting the Soviet occupation of Afghanistan. Now they are on top of the international terrorist lists. Today, the United Nations views Palestinians as freedom fighters, struggling against the unlawful occupation of their land by Israel, and engaged in a long-established legitimate resistance, yet Israel regards them as terrorists. Israel also brands the Hizbullah of Lebanon as a terrorist group, whereas most of the international community regards it as a legitimate resistance group, fighting Israel's occupation of Southern Lebanon. In fact, the successful ousting of Israeli forces from most of the South by the Hizbollah in 2000 made Lebanon the only Arab country to actually defeat the Israeli army. The repercussion of the current preponderance of the political over the legal value of terrorism is costly, leaving the war against terrorism selective, incomplete and ineffective." [23]

In the same vein, Jason Burke, a British reporter who writes about radical Islamist activity, said:

There are multiple ways of defining terrorism, and all are subjective. Most define terrorism as "the use or threat of serious violence" to advance some kind of "cause". Some state clearly the kinds of group ("sub-national", "non-state") or cause (political, ideological, religious) to which they refer. Others merely rely on the instinct of most people when confronted with innocent civilians being killed or maimed by men armed with explosives, firearms or other weapons. None is satisfactory, and grave problems with the use of the term persist. Terrorism is after all, a

tactic. The term "war on terrorism" is thus effectively nonsensical. As there is no space here to explore this involved and difficult debate, my preference is, on the whole, for the less loaded term "Militancy". This is not an attempt to condone such actions, merely to analyse them in a clearer way.[24]

The political and emotional connotation of the term "terrorism" make difficult its use in legal discourse. In this sense, Saul notes that:

"Despite the shifting and contested meaning of "terrorism" over time, the peculiar semantic power of the term, beyond its literal signification, is its capacity to stigmatize, delegitimize, denigrate, and dehumanize those at whom it is directed, including political opponents. The term is ideologically and politically loaded; pejorative; implies moral, social, and value judgment; and is "slippery and much-abused." In the absence of a definition of terrorism, the struggle over the representation of a violent act is a struggle over its legitimacy. The more confused a concept, the more it lends itself to opportunistic appropriation."[25]

Historically, the dispute on the meaning of terrorism arose since the laws of war were first codified in 1899. The Martens Clause was introduced as a compromise wording for the dispute between the Great Powers who considered francs-tireurs to be unlawful combatants subject to execution on capture and smaller states who maintained that they should be considered lawful combatants.[26][27]

More recently the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts, which applies in situations Article 1. Paragraph 4 "... in which peoples are fighting against colonial domination and alien occupation and against racist regimes...", contains many ambiguities that cloud the issue of who is or is not a legitimate combatant.[28] Hence depending on the perspective of the state a resistance movements may or may not be labelled terrorist group based on whether the members of a resistance movement are considered lawful or unlawful combatants and their right to resist occupation is recognized.[29] These difficulties have led Pamala Griset to conclude that: "the meaning of terrorism is embeded in a person's or nation's philosophy. Thus, the determination of the 'right' definition of terrorism is subjective." [30]

### *The sectoral approach []*

In order to elaborate an effective legal regime to prevent and punish international terrorism, rather than only working on a single, all-encompassing, comprehensive definition of terrorism, the international community has also adopted a "'sectoral' approach aimed at identifying offences seen as belonging to the activities of terrorists and working out treaties in order to deal with specific categories thereof".[31] The treaties that follow this approach focus on the wrongful nature of terrorist activities rather than on their intent:

On the whole, therefore, the 'sectoral' conventions confirm the assumption that some offences can be considered *in themselves* as offences of international concern, irrespective of any 'terrorist' intent or purpose. Indeed, the principal merit of the 'sectoral approach' is that it avoids the need to define 'terrorism' of 'terrorist acts' (...) So long as the 'sectoral' approach is followed, there is no need to define terrorism; a definition would only be necessary if the punishment of the relevant offences were made conditional on the existence of a specific

'terrorist' intent; but this would be counter-productive, inasmuch as it would result in unduly restricting their suppression.[31]

Following this approach, the international community has adopted the following sectoral counter-terrorism conventions, open to the ratification of all states:

- The 1963 Convention on Offences and Certain Other Acts Committed On Board Aircraft
- The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft
- The 1971 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation
- The 1979 Convention on the Physical Protection of Nuclear Material
- The 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation
- The 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation
- The 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf
- The 1991 Convention on the Marking of Plastic Explosives for the Purpose of Identification
- The 1997 International Convention for the Suppression of Terrorist Bombings.
- The 1999 International Convention for the Suppression of the Financing of Terrorism
- The 2005 International Convention for the Suppression of Acts of Nuclear Terrorism

Analyzing these treaties, Andrew Byrnes observed that:

These conventions – all of which are described by the United Nations as part of its panoply of anti-terrorist measures – share three principal characteristics:

(a) they all adopted an "operational definition" of a specific type of terrorist act that was defined without reference to the underlying political or ideological purpose or motivation of the perpetrator of the act - this reflected a consensus that there were some acts that were such a serious threat to the interests of all that they could not be justified by reference to such motives;

(b) they all focused on actions by non-State actors (individuals and organisations) and the State was seen as an active ally in the struggle against terrorism - the question of the State itself as terrorist actor was left largely to one side; and

(c) they all adopted a criminal law enforcement model to address the problem, under which States would cooperate in the apprehension and prosecution of those alleged to have committed these crimes.[32]

Byrnes notes that "this act-specific approach to addressing problems of terrorism in binding international treaties has continued up until relatively recently. Although political denunciation of terrorism in all its forms had continued apace, there had been no successful attempt to define 'terrorism' as such in a broad sense that was satisfactory for legal purposes. There was also some scepticism as to the necessity, desirability and feasibility of producing an agreed and workable general definition."[33] Nonetheless, since 2000, the United Nations General Assembly has been working on a proposed Comprehensive Convention on International Terrorism.

## Comprehensive conventions []

The international community has worked on two comprehensive counter-terrorism treaties, the League of Nations' 1937 Convention for the prevention and punishment of Terrorism, that never entered into force, and the proposed Comprehensive Convention on International Terrorism, that has not been finalized yet.

### *League of Nations []*

In the late 1930s, the International community made a first attempt at defining terrorism. Article 1.1 of the League of Nations' 1937 Convention for the prevention and punishment of Terrorism,[34] which never entered into force, defined "acts of terrorism" as "criminal acts directed against a State and intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public". Article 2 included as terrorist acts, if they were directed against another state and if they constituted acts of terrorism within the meaning of the definition contained in article 1, the following:

"1. Any willful act causing death or grievous bodily harm or loss of liberty to:

> a) Heads of State, persons exercising the prerogatives of the head of the State, their herary or designated successors;
>
> b) The wives or husbands or the above-mentioned persons;
>
> c) Persons charged with public functions or holding public positions when the act is directed against them in their public capacity.

2. Willful destruction of, or damage to, public property or property devoted to a public purpose belonging to or subject to the authority of another High Contracting Party.

3. Any willful act calculated to endanger the lives of members of the public.

4. Any attempt to commit an offence falling within the foregoing provisions of the present article.

5. The manufacture, obtaining, possession, or supplying of arms, ammunition, explosives or harmful substances with the view to the commission in any country whatsoever of an offence falling within the present article."[35]

### *Proposed Comprehensive Convention on International Terrorism []*

Since 2000, the United Nations General Assembly has been negotiating a Comprehensive Convention on International Terrorism. The definition of the crime of terrorism, which has been on the negotiating table since 2002 reads as follows:

"1. Any person commits an offence within the meaning of this Convention if that person, by any means, unlawfully and intentionally, causes:

> (a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or the environment; or

(c) Damage to property, places, facilities, or systems referred to in paragraph 1 (b) of this article, resulting or likely to result in major economic loss, when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or abstain from doing any act."[36]

That definition is not controversial in itself; the deadlock in the negotiations arises instead from the opposing views on whether such a definition would be applicable to the armed forces of a state and to Self-determination movements. Thalif Deen described the situation as follows: "The key sticking points in the draft treaty revolve around several controversial yet basic issues, including the definition of ´terrorism´. For example, what distinguishes a "terrorist organisation" from a 'liberation movement'? And do you exclude activities of national armed forces, even if they are perceived to commit acts of terrorism? If not, how much of this constitutes 'state terrorism'?"[37] The coordinator of the negotiations, supported by most western delegations, proposed the following exceptions to address those issues:

"1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.

2. The activities of **armed forces** during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention.

3. The activities undertaken by the military forces of a State in the exercise of their official duties, **inasmuch as they are governed** by other rules of international law, are not governed by this Convention.

4. Nothing in this article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws."[38]

The state members of the Organisation of the Islamic Conference proposed instead the following exceptions:

"2. The activities of **the parties** during an armed conflict, **including in situations of foreign occupation**, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention. 3. The activities undertaken by the military forces of a State in the exercise of their official duties, **inasmuch as they are in conformity** with international law, are not governed by this Convention."[38]

**Sectoral Conventions []**

The various sectoral counter-terrorism conventions define and criminalized particular categories of terrorist activities.

### *Terrorist Bombings Convention []*

Article 2.1 of the 1997 International Convention for the Suppression of Terrorist Bombings defines the offence of terrorist bombing as follows:

"Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a State or government facility, a public transportation system or an infrastructure facility:

> a) With the intent to cause death or serious bodily injury; or
>
> b)With the intent to cause extensive destruction of such a place, facility or system, where such a destruction results in or is likely to result in major economic loss.[39]

Article 19 expressly excluded from the scope of the convention certain activities of state armed forces and of self-determination movements as follows:

"1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States, and individuals under international law, in particular the purposes and principles of the Charter of the United Nations, and international humanitarian law. 2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.[40]

### *Terrorist Financing Convention []*

Article 2.1 of the 1999 sectoral United Nations International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention) defines the crime of terrorist financing as the offence committed by "any person" who "by any means, directly or indirectly, unlawfully and wilfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out" an act "intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act."

### *Nuclear Terrorism Convention []*

The 2005 United Nations International Convention for the Suppression of Acts of Nuclear Terrorism defines the crime of nuclear terrorism as follows:

Article 2

1. Any person commits an offence within the meaning of this Convention if that person unlawfully and intentionally: (a) Possesses radioactive material or makes or possesses a device:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or to the environment;

(b) Uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material:

(i) With the intent to cause death or serious bodily injury; or

(ii) With the intent to cause substantial damage to property or to the environment; or

(iii) With the intent to compel a natural or legal person, an international organization or a State to do or refrain from doing an act.[41]

Article 4 of the convention expressly excluded from the application of the convention the use of nuclear weapons during armed conflicts without, though, recognizing the legality of the use of those weapons:

1. Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law are not governed by this Convention, and the activities undertaken by military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

3. The provisions of paragraph 2 of the present article shall not be interpreted as condoning or making lawful otherwise unlawful acts, or precluding prosecution under other laws.

4. This Convention does not address, nor can it be interpreted as addressing, in any way, the issue of the legality of the use or threat of use of nuclear weapons by States.[42]

**Definitions of terrorism in other UN decisions []**

In parallel with the criminal law codification efforts, some United Nations organs have put forward some broad political definitions of terrorism.

***UN General Assembly Resolutions []***

On December 17, 1996, the non-binding United Nations Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism, annexed to the UN General Assembly Resolution 51/210, condemned terrorist activities in the following terms:

"1. The States Members of the United Nations solemnly reaffirm their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable,

wherever and by whomsoever committed, including those that jeopardize friendly relations among States and peoples and threaten the territorial integrity and security of States;

2. The States Members of the United Nations reaffirm that acts, methods and practices of terrorism are contrary to the purposes and principles of the United Nations; they declare that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;"

3. Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them;" [43]

Antonio Cassese has argued that the language contained in these declarations "sets out an acceptable definition of terrorism."[44]

### *UN Security Council []*

In 2004, United Nations Security Council Resolution 1566 condemned terrorist acts as:

"criminal acts, including against civilians, committed with the intent to cause death or serious bodily injury, or taking of hostages, with the purpose to provoke a state of terror in the general public or in a group of persons or particular persons, intimidate a population or compel a government or an international organization to do or to abstain from doing any act, which constitute offences within the scope of and as defined in the international conventions and protocols relating to terrorism, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature,"

### *The High-Level Panel on Threats, Challenges and Change and the Secretary General []*

Also in 2004, a High-Level Panel on Threats, Challenges and Change composed of independent experts and convened by the Secretary-General of the United Nations called states to set aside their differences and to adopt, in the text of a proposed Comprehensive Convention on International Terrorism, the following political "description of terrorism":

"any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act."[45]

The following year, the then Secretary-General of the United Nations Kofi Annan endorsed the High Level Panel's definition of terrorism and asked states to set aside their differences and to adopt that definition within the proposed comprehensive terrorism convention before the end of that year. He said:

"It is time to set aside debates on so-called "State terrorism". The use of force by states is already thoroughly regulated under international law. And the right to resist occupation must be understood in its true meaning. It cannot include the right to deliberately kill or maim civilians. I endorse fully the High-level Panel's call for a definition of terrorism, which would make it clear that, in addition to actions already proscribed by existing conventions, any action constitutes terrorism if it is intended to cause death or serious bodily harm to civilians or non-combatants with the purpose of intimidating a population or compelling a Government or an international organization to do or abstain from doing any act. I believe this proposal has clear moral force, and I strongly urge world leaders to unite behind it and to conclude a comprehensive convention on terrorism before the end of the sixtieth session of the General Assembly."[46]

The suggestion of incorporating such a political definition of terrorism into the comprehensive convention was rejected. United Nations' member states noted that a political definition such as the one proposed by the High-Level Panel on Threats, Challenges and Change, and endorsed by the Secteray General, lacked the necessary requirements to be incorporated in a criminal law instrument. Carlos Diaz-Paniagua, who coordinated the negotiations of the proposed Comprehensive Convention on International Terrorism, stated that a comprehensive definition of terrorism to be included in a criminal law treaty must have "legal precision, certainty, and fair-labeling of the criminal conduct - all of which emanate from the basic human rights obligation to observe due process."[47]

### European Union []

The European Union defines terrorism for legal/official purposes in Art. 1 of the *Framework Decision on Combating Terrorism* (2002).[48] This provides that terrorist offences are certain criminal offences set out in a list consisting largely of serious offences against persons and property that;

...given their nature or context, may seriously damage a country or an international organisation where committed with the aim of: seriously intimidating a population; or unduly compelling a Government or international organisation to perform or abstain from performing any act; or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation.

## In national law []

### Argentina []

Argentinean National Reorganization Process dictatorship which lasted from 1976 to 1983, defined as "terrorist" as "not only who sets bombs and carry guns, but also those who spread ideas opposite to Christian and western civilization".

### India []

The Supreme Court of India adopted Alex P. Schmid's definition of terrorism in a 2003 ruling (Madan Singh vs. State of Bihar), "defin[ing] acts of terrorism veritably as 'peacetime equivalents of war crimes.'"[49][*dubious* – *discuss*]

### Syria []

In relation to the United States attack on Abu Kamal the Syrian Foreign Minister Walid Muallem defined terrorism as "Killing civilians in international law means a terrorist aggression."[50]

### United Kingdom []

The United Kingdom's Terrorism Act 2000 defined terrorism as follows:

(1) In this Act "terrorism" means the use or threat of action where:

> (a) the action falls within subsection (2),
>
> (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public and
>
> (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

(2) Action falls within this subsection if it:

> (a) involves serious violence against a person,
>
> (b) involves serious damage to property,
>
> (c) endangers a person's life, other than that of the person committing the action,
>
> (d) creates a serious risk to the health or safety of the public or a section of the public or
>
> (e) is designed seriously to interfere with or seriously to disrupt an electronic system.[51]

The Terrorism Act 2000 defines terrorism so as to include not only violent offences against persons and physical damage to property, but also acts "designed seriously to interfere with or to seriously disrupt an electronic system" if those acts are (a) designed to influence the government or to intimidate the public or a section of the public, and (b)be done for the purpose of advancing a political, religious or ideological cause.[52]

Section 34 of the Terrorism Act 2006 amended sections 1(1)(b) and 113(1)(c) of Terrorism Act 2000 to include "international governmental organisations" in addition to "government".[*citation needed*]

### United States []

*See also: Domestic terrorism in the United States*

### *United States Code (U.S.C.) []*

Title 22, Chapter 38 of the United States Code (regarding the Department of State) contains a definition of terrorism in its requirement that annual country reports on terrorism be submitted by the Secretary of State to Congress every year. It reads:

"Definitions ... the term 'terrorism' means premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents;"[53]

Title 18 of the United States Code (regarding criminal acts and criminal procedure) defines international terrorism as:

"[T]he term 'international terrorism' means activities that . . . involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; [and] appear to be intended . . . to intimidate or coerce a civilian population; . . . to influence the policy of a government by intimidation or coercion; or . . . to affect the conduct of a government by mass destruction, assassination, or kidnapping; and [which] occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum."[54]

### *US Code of Federal Regulations []*

The US Code of Federal Regulations defines terrorism as "...the unlawful use of force and violence against persons or property to intimidate or coerce a government, the civilian population, or any segment thereof, in furtherance of political or social objectives" (28 C.F.R. Section 0.85).

### *US national security strategy []*

In September 2002 the US national security strategy defined terrorism as "premeditated, politically motivated violence against innocents".[55] This definition did not exclude actions by the United States government and it was qualified some months later with "premeditated, politically motivated violence against noncombatant targets by subnational groups or clandestine agents".[56]

### *United States Department of Defense []*

The United States Department of Defense recently changed its definition of terrorism. Per Joint Pub 3-07.2, *Antiterrorism,* (24 November 2010) the Department of Defense defines it as "the unlawful use of violence or threat of violence to instill fear and coerce governments or societies. Terrorism is often motivated by religious, political, or other ideological beliefs and committed in the pursuit of goals that are usually political."

The new definition distinguishes between motivations for terrorism (religion, ideology, etc.) and goals of terrorism ("usually political"). This is in contrast to the previous definition which stated that the goals could be religious in nature.

### *USA PATRIOT Act []*

The USA PATRIOT Act defines domestic terrorism activities as "activities that (A) involve acts dangerous to human life that are a violation of the criminal laws of the U.S. or of any state, that (B) appear to be intended (i) to intimidate or coerce a civilian population, (ii) to influence the policy of a government by intimidation or coercion, or (iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping, and (C) occur primarily within the territorial jurisdiction of the U.S."

### *US National Counterterrorism Center []*

The US National Counterterrorism Center (NCTC) define terrorism the same as United States Code 22 USC § 2656f(d)(2). The Center also defines a terrorist act as a: "...premeditated; perpetrated by a sub-national or clandestine agent; politically motivated, potentially including religious, philosophical, or culturally symbolic motivations; violent; and perpetrated against a noncombatant target." [57]

## In general insurance policies []

Some insurance companies exclude terrorism from general property insurance (e.g. home insurance). An insurance company may include a specific definition of terrorism as part of its policy, for the purpose of excluding at least some loss or damage caused by terrorism. For example, RAC Insurance in Australia defines terrorism thus:

"Terrorism means an act including but not limited to the use of force or violence and/or threat, of any person or group of persons done for or in connection with political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public in fear."[58]

## Scholars and recognized experts on terrorism []

Numerous scholars have proposed working definitions of terrorism. Bruce Hoffman, a well-known scholar, has thus noted that:

It is not only individual agencies within the same governmental apparatus that cannot agree on a single definition of terrorism. Experts and other long-established scholars in the field are equally incapable of reaching a consensus. In the first edition of his magisterial survey, "Political terrorism: A Research Guide," Alex Schmid devoted more than a hundred pages to examining more than a hundred different definition of terrorism in a effort to discover a broadly acceptable, reasonably comprehensive explication of the word. Four years and a second edition later, Schimd was no closer to the goal of his quest, conceding in the first sentence of the revised volume that the "search for an adequate definition is still on" Walter Laqueur despaired of defining terrorism in both editions of his monumental work on the subject, maintaining that it is neither possible to do so nor worthwhile to make the attempt. "Ten years of debates on

typologies and definitions," he responded to a survey on definitions to conducted by Schmid, "have not enhanced our knowledge of the subject to a significant degree." Laqueur's contention is supported by the twenty-two different word categories occurring in the 109 different definition that Schmid identified in survey. At the end of this exhaustive exercise, Schmid asks "whether the above list contains all the elements necessary for a good definition. The answer," he suggests" is probably 'no'." If it is impossible to define terrorism, as Laqueur argues, and fruitless to attempt to cobble together a truly comprehensive definition, as Schmid admits, are we to conclude that terrorism is impervious to precise, much less accurate definition? Not entirely. If we cannot define terrorism, then we can at least usefully distinguish it from other types of violence and identify the characteristics that make terrorism the distinct phenomenon of political violence that it is." [59]

In this sense, after surveying the various academic definitions of terrorism, Vallis concluded that:

"Most of the formal definitions of terrorism have some common characteristics: a fundamental motive to make political/societal changes; the use of violence or illegal force; attacks on civilian targets by "nonstate"/"Subnational actors"; and the goal of affecting society. This finding is reflected in Blee's listing of three components of terrorism:

1. Acts or threats of violence;
2. The communication of fear to an audience beyond the immediate victim, and;
3. Political, economic, or religious aims by the perpetrator(s)." [60]

Academics and practitioners may also be categorized by the definitions of terrorism that they use. Max Abrahms has introduced the distinction between what he calls "terrorist lumpers" and "terrorist splitters." Lumpers define terrorism broadly, brooking no distinction between this tactic and guerrilla warfare or civil war. Terrorist splitters, by contrast, define terrorism narrowly, as the select use of violence against civilians for putative political gain. As Abrahms notes, these two definitions yield different policy implications:

"Lumpers invariably believe that terrorism is a winning tactic for coercing major government concessions. As evidence, they point to substate campaigns directed against military personnel that have indeed pressured concessions. Salient examples include the Soviet withdrawal from Afghanistan in 1989, the U.S. withdrawal from Lebanon in 1984, and the French withdrawal from Algeria in 1962. Significantly, terrorist splitters do not regard these substate campaigns as evidence of terrorism's political effectiveness. Rather, they contend that disaggregating substate campaigns directed against civilian targets versus military ones is critical for appreciating terrorism's abysmal political record." [61]

| Date | Name | Definition and notes |
|---|---|---|
| 1987 | L. Ali Khan | "Terrorism sprouts from the existence of aggrieved groups. These aggrieved groups share two essential characteristics: they have specific political objectives, and they believe that violence is an inevitable means to achieve their political ends. The political dimension of terrorist violence is the key |

| Date | Name | Definition and notes |
|---|---|---|
| | | factor that distinguishes it from other crimes."[62] |
| 1988 | Schmid and Jongman | "Terrorism is an anxiety-inspiring method of repeated violent action, employed by (semi-)clandestine individual, group, or state actors, for idiosyncratic, criminal, or political reasons, whereby—in contrast to assassination—the direct targets of violence are not the main targets. The immediate human victims of violence are generally chosen randomly (targets of opportunity) or selectively (representative or symbolic targets) from a target population, and serve as message generators. Threat- and violence-based communication processes between terrorist (organization), (imperiled) victims, and main targets are used to manipulate the main target (audience(s), turning it into a target of terror, a target of demands, or a target of attention, depending on whether intimidation, coercion, or propaganda is primarily sought".[63] |
| 1989 | Jack Gibbs | "Terrorism is illegal violence or threatened violence directed against human or nonhuman objects, provided that it: (1) was undertaken or ordered with a view to altering or maintaining at least one putative norm in at least one particular territorial unit or population: (2) had secretive, furtive, and/or clandestine features that were expected by the participants to conceal their personal identity and/or their future location; (3) was not undertaken or ordered to further the permanent defense of some area; (4) was not conventional warfare and because of their concealed personal identity, concealment of their future location, their threats, and/or their spatial mobility, the participants perceived themselves as less vulnerable to conventional military action; and (5) was perceived by the participants as contributing to the normative goal previously described (supra) by inculcating fear of violence in persons (perhaps an indefinite category of them) other than the immediate target of the actual or threatened violence and/or by publicizing some cause."[64] |
| 1992 | Alex P. Schmid | short legal definition proposed to the United Nations Office on Drugs and Crime: "Act of Terrorism = Peacetime Equivalent of War Crime".[65][*verification needed*] |
| 1997 | Rosalyn Higgins | Judge at the International Court of Justice, "Terrorism is a term without any legal significance. It is merely a convenient way of alluding to activities, whether of States or of individuals widely disapproved of and in which wither the methods used are unlawful, or the targets protected or both."[66] |
| 2002 | Walter Laqueur | "Terrorism constitutes the illegitimate use of force to achieve a political objective when innocent people are targeted."[67][68] |

| Date | Name | Definition and notes |
|---|---|---|
| 2002 | James M. Poland | "Terrorism is the premeditated, deliberate, systematic murder, mayhem, and threatening of the innocent to create fear and intimidation in order to gain a political or tactical advantage, usually to influence an audience".[69] |
| 2004 | M. Cherif Bassiouni | "'Terrorism' has never been defined..."[70] |
| 2004 | Bruce Hoffman | By distinguishing terrorists from other types of criminals and terrorism from other forms of crime, we come to appreciate that terrorism is :<br>• ineluctably political in aims and motives<br>• violent—or, equally important, threatens violence<br>• designed to have far-reaching psychological repercussions beyond the immediate victim or target<br>• conducted by an organization with an identifiable chain of command or conspiratorial cell structure (whose members wear no uniform or identifying insignia) and<br>• perpetrated by a subnational group or non-state entity.<br>We may therefore now attempt to define terrorism as the deliberate creation and exploitation of fear through violence or the threat of violence in the pursuit of political change. All terrorist acts involve violence or the threat of violence. Terrorism is specifically designed to have far-reaching psychological effects beyond the immediate victim(s) or object of the terrorist attack. It is meant to instil fear within, and thereby intimidate, a wider `target audience' that might include a rival ethnic or religious group, an entire country, a national government or political party, or public opinion in general. Terrorism is designed to create power where there is none or to consolidate power where there is very little. Through the publicity generated by their violence, terrorists seek to obtain the leverage, influence and power they otherwise lack to effect political change on either a local or an international scale.[71] |
| 2004 | David Rodin | "Terrorism is the deliberate, negligent, or reckless use of force against noncombatants, by state or nonstate actors for ideological ends and in the absence of a substantively just legal process."[72][73] |
| 2005 | Boaz Ganor | "Terrorism is the deliberate use of violence aimed against civilians in order to achieve political ends."[74] |
| 2007 | Daniel D. Novotny | "An act is terrorist if and only if (1) it is committed by an individual or group of individuals privately, i.e. without the legitimate authority of a recognized state; (2) it is directed indiscriminately against non-combatants; (3) the goal of it is to achieve something politically relevant; (4) this goal is pursued by means of fear-provoking violence."[75] |

| Date | Name | Definition and notes |
|---|---|---|
| 2008 | Carsten Bockstette | "Terrorism is defined as political violence in an asymmetrical conflict that is designed to induce terror and psychic fear (sometimes indiscriminate) through the violent victimization and destruction of noncombatant targets (sometimes iconic symbols). Such acts are meant to send a message from an illicit clandestine organization. The purpose of terrorism is to exploit the media in order to achieve maximum attainable publicity as an amplifying force multiplier in order to influence the targeted audience(s) in order to reach short- and midterm political goals and/or desired long-term end states."[76] |
| 2008 | Lutz,James M.Lutz, Brenda J | "Terrorism involves political aims and motives. It is violent or threatens violence. It is designed to generate fear in a target audience that extends beyond the immediate victims of the violence.<br><br>The violence is conducted by an identifiable organization. The violence involves a non-state actor or actors as either the perpetrator, the victim of the violence, or both. Finally, the acts of violence are designed to create power in a situation in which power previously had been lacking."[77] |
| 2008 | Tamar Meisels | advocates a consistent and strict definition of terrorism, which she defines as "the intentional random murder of defenseless non-combatants, with the intent of instilling fear of mortal danger amidst a civilian population as a strategy designed to advance political ends."[78] |
| 2011 | Dr. Sergey Zagraevsky | characterized terrorism as "the dirtiest weapon of the weak against the strong"[79] |

**Notes**

1. ^ Williamson, Myra (2009). *Terrorism, war and international law: the legality of the use of force against Afghanistan in 2001*. Ashgate Publishing. p. 38. ISBN 978-0-7546-7403-0.
2. ^ Schmid, Alex P. (2011). "The Definition of Terrorism". *The Routledge Handbook of Terrorism Research*. Routledge. p. 39. ISBN 0-203-82873-9.
3. ^ [a] [b] Hoffman (1998), p. 32, See review in The New York TimesInside Terrorism
4. ^ Angus Martyn, The Right of Self-Defence under International Law-the Response to the Terrorist Attacks of 11 September, Australian Law and Bills Digest Group, Parliament of Australia Web Site, 12 February 2002.
5. ^ Diaz-Paniagua (2008), p. 47.
6. ^ 1994 United Nations Declaration on Measures to Eliminate International Terrorism annex to UN General Assembly resolution 49/60 ,"Measures to Eliminate International Terrorism", of December 9, 1994, UN Doc. A/Res/60/49
7. ^ Record, p. 6 (page 12 of the PDF document), citing in footnote 10 Alex P. Schmid, Albert J. Jongman, et al., *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature*, New Brunswick, New Jersey: Transaction Books, 1988, pp. 5-6.

8. ^ Record, p. 6 (page 12 of the PDF document) citing in footnote 11: Walter Laqueur, *The New Terrorism: Fanaticism and the Arms of Mass Destruction*, New York: Oxford University Press, 1999, p. 6.
9. ^ Staff, City Diary: Reuters sticks to the facts, City Diary, *The Daily Telegraph*, 28 September 2001
10. ^ Hoffman, (2006) pp. 28–30
11. ^ Burgess
12. ^ Early History of Terrorism, http://Terrorism-Research.com
13. ^ Harper
14. ^ Crenshaw, p.77
15. ^ Crenshaw, p. 44.
16. ^ Williamson, Myra (2009). *Terrorism, war and international law: the legality of the use of force against Afghanistan in 2001*. Ashgate Publishing. p. 43. ISBN 978-0-7546-7403-0.
17. ^ Ben Saul, "Defining 'Terrorism' to Protect Human Rights" in Sydney Law School Legal Studies Research Paper ,No. 08-125 (2008) p. 1
18. ^ C.F. Diaz-Paniagua, *Negotiating terrorism: The negotiation dynamics of four UN counter-terrorism treaties, 1997-2005*, City University of New York (2008) p. 41.
19. ^ C.F. Diaz-Paniagua, *Negotiating terrorism: The negotiation dynamics of four UN counter-terrorism treaties, 1997-2005*, City University of New York (2008) pp. 46-7.
20. ^ Ben Saul, "Defining 'Terrorism' to Protect Human Rights" in Sydney Law School Legal Studies Research Paper ,No. 08-125 (2008) p. 11.
21. ^ C.F. Diaz-Paniagua, *Negotiating terrorism: The negotiation dynamics of four UN counter-terrorism treaties, 1997-2005*, City University of New York (2008) p. 47.
22. ^ M. Cherif Bassiouni, "A Policy-oriented Inquiry of 'International Terrorism'" in: M. Cherif Bassiouni, ed., *Legal Responses to International Terrorism: U.S. Procedural Aspects*, (Dordrecht, Boston and London: Martinus Nijhoff Publishers, 1988) xv – xvi.)
23. ^ Sami Zeidan, Desperately Seeking Definition: The International Community's Quest for Identifying the Specter of Terrorism, 36 Cornell International Law Journal (2004) pp. 491-492
24. ^ Jason Burke. *Al Qaeda*, ch.2, p.22)
25. ^ Ben Saul, *Defining Terrorism in International Law* (Oxford: Oxford University Press, 2006), p. 3.
26. ^ Rupert Ticehurst (references) in hist footnote 1 cites The life and works of Martens are detailed by V. Pustogarov, "Fyodor Fyodorovich Martens (1845-1909) — A Humanist of Modern Times", *International Review of the Red Cross* (IRRC), No. 312, May–June 1996, pp. 300-314.
27. ^ Rupert Ticehurst (references) in hist footnote 2 cites F. Kalshoven, *Constraints on the Waging of War*, Martinus Nijhoff, Dordrecht, 1987, p. 14.
28. ^ Gardam p. 91
29. ^ Khan
30. ^ Griset, p. xiii. See also: Smelser, p. 13
31. ^ **a b** Andrea Gioia, "The UN Conventions on the Prevention and Suppresion of International Terrorism" in Giuseppe Nesi, ed., *International Cooperation in Counter-terrorism: The United Nations And Regional Organizations in the Fight Against Terrorism*, p. 4 (2006).
32. ^ Byrnes (2002), p. 11
33. ^ Byrnes (2002), p. 11
34. ^ League of Nations' 1937 Convention for the prevention and punishment of Terrorism
35. ^ League of Nations, 1937 Convention for the prevention and punishment of Terrorism, art 2.

36. ^ United Nations General Assembly, Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, Sixth session (28 January-1 February 2002), Annex II, art. 2.1.
37. ^ Thalif Deen, POLITICS: U.N. Member States Struggle to Define Terrorism, IPS 25 July 2005.
38. ^ [a] [b] United Nations General Assembly, Report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996, Sixth session (28 January-1 February 2002), Annex IV, art. 18.
39. ^ Terrorist Bombings Convention art. 2.1.
40. ^ Terrorist Bombings Convention art. 19.
41. ^ Nuclear Terrorism Convention, art. 2.
42. ^ Nuclear Terrorism Convention, art. 4.
43. ^ See also: 1994 United Nations Declaration on Measures to Eliminate International Terrorism annex to UN General Assembly resolution 49/60 ,"Measures to Eliminate International Terrorism," of December 9, 1994: "Criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes are in any circumstance unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or any other nature that may be invoked to justify them."
44. ^ Cassese (2002), p. 449.
45. ^ Report of the High Level Panel on Threats, Challenges and Change "A more secure world: Our shared responsibility" (2004) para. 164.
46. ^ United Nations General Assembly, Secretary General, Report of the Secretary-General *In larger freedom: towards development, security and human rights for all* Chapter 3 (2005) para. 91.
47. ^ Robert P. Barnidge, *Non-State Actors and Terrorism: Applying the Law of State Responsibility and the Due Diligence Principle* 2007, p. 17.
48. ^ State Watch.
49. ^ "IN THE SUPREME COURT OF INDIA CRIMINAL APPELATE JURISDICTION CRIMINAL APPEAL NO. 1285 OF 2003 Madan Singh vs. State of Bihar". 2003.
50. ^ "Middle East | Syria hits out at 'terrorist' US". BBC News. 2008-10-28. Retrieved 2010-02-22.
51. ^ UK Terrorism Act 2000 art. 1.
52. ^ "UK Terrorism Act 2000". Opsi.gov.uk. 2000-07-20. Retrieved 2010-02-22.
53. ^ 22 U.S.C. section 2656f(d)
54. ^ 18 U.S.C. section 2331(1)
55. ^ 2007, Edward P.; Jones, Andy; Kovacich, Gerald L. *The corporate security professional's handbook on terrorism* (illustrated ed.). Elsevier. p. 5. ISBN 0-7506-8257-4.
56. ^ Rockmore, Tom; Margolis, Joseph; Marsoobian, Armen (2005). *The philosophical challenge of September 11: Metaphilosophy* **35** (3). Wiley-Blackwell. p. 15. ISBN 1-4051-0893-2.
57. ^ "http://www.nctc.gov/witsbanner/docs/2010_report_on_terrorism.pdf".
58. ^ *Building, contents and personal valuables Product Disclosure Statement and policy wording*, RAC Insurance, 28 April 2006, retrieved 2011-02-13
59. ^ Bruce Hoffman, *Inside terrorism*, 2 ed., Columbia University Press, 2006, p. 34.
60. ^ Rhyll Vallis, Yubin Yang, Hussein A. Abbass, Disciplinary Approaches to Terrorism: A Survey, University of South Wales, p. 7. For similar surveys see also: Hoffman, Bruce *Inside terrorism*, 2 ed. Columbia University Press, 2006, p. 34; and Alex Schmid, Statistics on Terrorism: The Challenge of Measuring Trends in Global Terrorism" in *Forum on Crime and Society*, v. 4, N. 1-2 (2004) pp. 52-53.

61. ^ Abrahms, Max. "Lumpers versus Splitters: A Pivotal Battle in the Field of Terrorism Studies." Cato. http://www.cato-unbound.org/2010/02/10/max-abrahms/lumpers-versus-splitters-a-pivotal-battle-in-the-field-of-terrorism-studies/.
62. ^ Ali Khan, *A Legal Theory of International Terrorism*, Connecticut Law Review, Vol. 19, p. 945, 1987
63. ^ Academic Consensus Definition of "Terrorism," Schmid 1988, United Nations website. See also: Schmid, Jongman *et al. Political terrorism: a new guide to actors, authors, concepts, data bases, theories, and literature*. Amsterdam: North Holland, Transaction Books, 1988.p.28
64. ^ Dallas A. Blanchard, Terry James Prewitt. *Religious Violence and Abortion: The Gideon Project*, 303,333. Cites Gibbs, Jack P. 1989. "The Conceptualization of Terrorism." American Sociological Review 54, no. 2 (June): 329-40.
65. ^ United Nations Office on Drugs and Crime,Definitions of Terrorism
66. ^ Rosalyn Higgins, "The General International Law of Terrorism" in Rosalyn Higgins and M. Flory, *International Law andTerrorism* (1997) p. 28.
67. ^ Tony Coady, *et al. Terrorism and Justice: Moral Argument in a Threatened World* Melbourne University Publishing, 2002 ISBN 0-522-85049-9, ISBN 978-0-522-85049-9 p. 8. Cites Walter Laqueur *The Age of Terrorism*
68. ^ Steven Best, Anthony J. Nocella, *Terrorists Or Freedom Fighters?: Reflections on the Liberation of Animals*, Lantern Books, 2004 ISBN 1-59056-054-X, 9781590560549 371 cites Cites Walter Laqueur *The Age of Terrorism*
69. ^ A.K.M. Atiqur Rahman Economic Cost Of Terrorism In South Asia: The Case Of Bangladesh p. 3. Paper presented at the International Conference on Terrorism in South Asia: Impact on Development and Democratic Process Soaltee Crowne Plaza, Kathmandu, Nepal November 23–25, 2002.
70. ^ 36 Case Western Reserve Journal of International Law 2&3, 2004, p. 305
71. ^ Bruce Hoffman, *Inside terrorism*, 2 ed., Columbia University Press, 2006, p. 41.
72. ^ [1] Chicago Journals - Ethics 114 (July 2004): 647–649
73. ^ Uwe Steinhoff. *On the Ethics of War and Terrorism* p. 119
74. ^ The Jerusalem Center for Public Affairs, "The Relationship Between International and Localized Terrorism", Vol. 4, No. 26, 28 June 2005
75. ^ Linden, Edward V., ed. (2006). "2". *What is Terrorism?*. Focus on Terrorism **8**. Nova Publishers. pp. 23–32. ISBN 1-60021-315-4, 9781600213151 Check |isbn= value (help). Retrieved 2010-02-22.
76. ^ Bockstette
77. ^ James M. Lutz and Brenda J. Lutz, *Global Terrorism*. London: Routledge, 2008, p. 9
78. ^ THE TROUBLE WITH TERROR: THE APOLOGETICS OF TERRORISM -- A REFUTATION, by Tamar Meisels [2]
79. ^ Sergey Zagraevsky. 365 reflections on a human and humanity

**References []**


- Bockstette, Carsten (December 2008). *Jihadist Terrorist Use of Strategic Communication Management Techniques*, George C. Marshall Center for European Security Studies no 20, p. 1-28 ISSN 1863-6039
- Burgess, Mark. A Brief History of Terrorism, Center for Defense Information.
- Byrnes, Andrew (2002). Apocalyptic Visions and the Law: The Legacy of September 11 A professorial address by Andrew Byrnes at the ANU Law School for the Faculty's 'Inaugural and Valedictory Lecture Series', May 30, 2002.

- Diaz-Paniagua, Carlos Fernando (2008), *Negotiating terrorism: The negotiation dynamics of four UN counter-terrorism treaties, 1997-2005*, Ph.D. dissertation, City University of New York, July 2008, AAT 3296923
- Cassese, A. (2002), *International Law*, Oxford University Press, 2002, ISBN 0-19-925939-9</ref>
- Crenshaw, Martha, *Terrorism in Context*
- Gardam, Judith Gail (1993). *Non-combatant Immunity as a Norm of International Humanitarian*,Martinus Nijhoff ISBN 0-7923-2245-2.
- Griset, Pamala L. & Mahan, Sue (2003). *Terrorism in perspective*, SAGE, 2003, ISBN 0-7619-2404-3, ISBN 978-0-7619-2404-3
- Harper, Douglas. "Terrorism", Dictionary.com Online Etymology Dictionary. (accessed: August 10, 2007).
- Hoffman, Bruce (1998). "*Inside Terrorism*" Columbia University Press 1998 ISBN 0-231-11468-0.
- Hoffman, Bruce (2006),*Inside terrorism*, Edition 2, Columbia University Press, 2006. ISBN 0-231-12699-9, ISBN 978-0-231-12699-1.
- Khan, Ali (Washburn University - School of Law. 1987). *A Theory of International Terrorism*, Connecticut Law Review, Vol. 19, p. 945, 1987
- Record, Jeffrey (December 2003). Bounding the Global War on Terrorism, December 1, 2003 ISBN 1-58487-146-6.
- Smelser, Neil J.; *et al.* (2002). *Terrorism: perspectives from the behavioral and social sciences*, National Academies Press, 2002, ISBN 0-309-08612-4, ISBN 978-0-309-08612-7
- Ticehurst, Rupert. *The Martens Clause and the Laws of Armed Conflict* 30 April 1997, International Review of the Red Cross no 317, p. 125-134 ISSN 1560-7755


**Ahmad Faraz - convicted in Britain for publishing Muslim Brotherhood writings**

**As the Muslim Brotherhood's first ever President addresses the UN about Islamophobia CagePrisoners explores the parameters of freedom of expression in a case that saw the first books banned in the UK since Lady Chatterley, in this exclusive interview**

In December 2011 bookseller and publisher Ahmad Faraz was found guilty for possessing and distributing books that purpotedly promoted terrorism and was sentenced to three years in prison.

The books in question included works by Sheikh Abdullah Azzam, written at a time when Britain was openly supporting Afghan and foreign *mujahideen* against the Soviet occupation of Afghanistan, as well as the famous 1950s work of Syed Qutb, Milestones. This particular edition of Milestones was deemed to 'support terrorism' because it included appendices of thirteenth century exhortations to jihad which themselves were taken from the pre-Qutb syllabus of the Muslim Brotherhood.

At the time of Faraz's trial the Arab world had just been rocked by a series of revolutions that ousted western-backed dictators and brought supporters of the same Muslim Brotherhood into influence and power from Tunisia to Egypt, whose publictions had also once been regarded as 'terrorist' by their rulers.

CagePrisoners conducted this interview with Ahmad Faraz the night before he began his three-year prison term as a convicted bookseller. It is published just after Egypt's new leader Mohammed Morsi, addressed the assmebly of the United Nations about the "organised campaign" of Islamophobia in the world, as the Muslim Brotherhood's first ever President.

**CagePrisoners: Could you please introduce yourself?**

Ahmad Faraz: Ahmed Faraz. I have just been found guilty of eleven counts in the possession and dissemination of terrorism publications.

**CP: Tell us a bit about your background.**

AF: I'm 32 years old. I was the manager of the Maktabah bookshop in Birmingham.

**CP: What were you doing before that?**

AF: I studied Islamic theology at Birmingham University followed by a PGCE [Professional Graduate Certificate in Education].

**CP: Tell us about your first arrest, prior to this conviction. Why did it happen?**

AF: The honest truth is I still don't know the exact reasons why the police chose to arrest me, and the other brother from the Maktabah bookshop. It was overall linked to another investigation that they had ongoing, an alleged 'plot to kidnap a British soldier'. They arrested me and another brother from the bookshop and they seized thousands of books and DVDs. After 7 days (they) let us go. That was in 2007.

**CP: Were you asked about a plot?**

AF: They never asked about a plot. Ironically, they never asked about the books in detail either. After all of that, the police would like people to believe that arrest was to do with books. We know this because in this trial they had police officers give reasons for entering and searching our premises. At that time, none of the invoices were taken from the bookshop and stock wasn't seized. Instead stock was taken from our storage but we did not know, definitively, what the reasons were for linking us to that investigation.

**CP: What happened as a result of that?**

AF: They kept the stock. Of course we were chasing them to get it back as no charges had been made.

In the meantime, I decided to pursue my career as a teacher. I applied for a CRB [Criminal Records Bureau] check, which is clearance that you need for a teaching job - which they actually ask the police for. After four months, they said I was clear but was being 'investigated for terrorism'. So we realised then that these guys are still pursuing something, even though I had been released without charge. The shop was closed by then, and there was no real website.

**CP: AT the time of your arrest quite a controversial and powerful statement that several politicians responded to in the press. Can you tell us about that?**

AF: I was interviewed by a BBC journalist on the night after I was released without charge. I stated that Britain had become, or was en route to becoming a police state for Muslims. And my contention was that it wasn't a police state for other communities. It was a police state for Muslims. Mainly due to the laws that have been legislated and the people being prosecuted. The target group was Muslims. So where people had been committing a crime, and they weren't Muslims, a certain set of laws would be applied. And when it came to prosecuting Muslims, a different set of laws would come into place. It wasn't even handed with regards to their approach.

**CP: You are specifically referring to the 'glorification of terrorism' provision in the 2006 Terrorism Act?**

AF: Correct. When that law came out in April 2006, it was seven or eight months before my first arrest in January 2007. There was a lot of ambiguity about this law and what it covered. We knew that at that time, there was a provision with regards to bookshops, and publications. So this was new. This wasn't in the 2002 or 2000 [antiterror] legislation. We then thought the reason why we were arrested in 2007 was because of the 2006 legislation. But we weren't actually arrested or investigated for that.

**CP: Would you say you tried to stay within the law when it came to the bookshop?**

AF: Definitely. Documents came to the surface during the trial, emails and other correspondence with our solicitors. (They) clearly show that we were trying to stay within the law. We were trying to find what the law says.

**CP: Can you give examples of that?**

AF: We had meetings with our solicitors, with barristers. They found, for example, personal notes I had to myself saying that ideas for the website would be submitted to the CPS to check if there was anything illegal. We want to know where we stand and we will remove it (anything illegal). We had the Maktabah project plan, which had various teams, including a legal team that would have monthly reviews of content. We knew that if there was a problem, we wanted to resolve it with in the law. Our lawyers even asked us what material might be controversial, what can we do to make sure we don't fall foul of the law. But of course, at this time, no body knew what the law was. Ours was the first – a test case.

**CP: You have a background in education as you said. You were studying for your PhD. That PhD thesis and the discussion material deriving from it, you were prosecuted for. Can you explain what that was about?**

CP: My undergrad dissertation was 'Christian responses to the early expansion of Islam'. My university department and the tutor, who was tutoring my dissertation, were happy with my work and they asked me to continue in the same vein, and to do a PhD. I liked that idea. I'd also just done my PGCE. In 2006, before even before the first arrest, I emailed my tutor, saying, 'I've got access to primary source material'. When I met her, before the first arrest, I told her about the amount of primary source material I had accumulated and that I wanted to do my PhD on contrasting world views comparing Hamas and Al-Qaida. She liked the idea, and this remained the case even after the first arrest. I told her that a lot of the literature that exists now about Hamas and Al-Qaida is academic, where so-called scholars have been writing about terrorism, without primary source material. They've cut and paste and modified from other peoples work

and it's not really of a high scholarly level. However I have access to primary source material - I have many important interviews with people that haven't even been publicised. So I'm in a position to write something which will add real academic value.

**CP: When you say 'primary source' material, what do you mean?**

AF: We have had an old archive of media material that has continuously been updated, to do with conflict zones and jihad the Islamic world. Much of this we inherited, and a lot of the material we gathered was sent to us continuously over a period of time. There was so much material that I couldn't look at it all and just put them in folders on our computers for future reference. Now, a lot of the stuff which they have now charged me with, the Section 58s [Terrorism Act 2000], are materials that came in January 2007, just days before the arrest. So we didn't have time to go through it.

**CP: What was the impact on you personally, and your family, did it change your perception about the UK and about what was going on?**

AF: I was a qualified teacher but, as a result, wasn't allowed to pursue that career. But al-Hamdulillah, Allah is *al-Razzaaq* [the Provider]. They closed the door, and He opened another door. We are a people of principles, and that's what we at Maktabah have always been. And we are neither an extremist bookshop, nor do we keep lop-sided material. What we wanted to do was present Islam as a whole. We didn't have ten bookshelves on Jihad; we had many shelves on different matters from jurisprudence to spirituality. After the first arrest the shop was closed, and we decided that we will resurrect the website, and tried to create the world's largest free online Islamic library. That went live in '08. In 2010, it was seized and closed.

**CP: What was the name of the first police operation?**

AF: Operation Gamble

**CP: And the name of the second operation?**

AF: Unhook

**CP: Do you feel there's any significance in the names of these cases?**

AF: In my first interview, I actually said, 'look at the name of the actual operation, 'Gamble''. At that time, they had arrested nine individuals or so, and we thought the 'Gamble' was to bring in Maktabah. In my statement after the first arrest, I said 'this is to discredit the bookshop'.

**CP: Can you tell us a little bit about the second arrest?**

AF: The first arrest occurred with breaking the door down, charging in, 5 o'clock in the morning or so. After that arrest I told that officer I was liaising with in regards to return of property, 'if you ever want to talk to me again, don't come and raid my house and knock my door down. You know where I am, tell me, and I'll come to the police station'. He just laughed it off. The second arrest was for the 'offence' of distributing books. They raided my house again at 5 o'clock in the morning, three years later, breaking the door down *again*, knowing that I had not caused any problems in the past.

**CP: How long did you have to remain in remand, in custody?**

AF: I was in the police station for seven days after which I went to prison. Belmarsh, for seven weeks. After that I was granted bail.

**CP: How was your time in Belmarsh?**

AF: Belmarsh is a remand prison so it's not like other prisons that are more settled. It's high security and lots of Muslims in each of the blocks. I was the longest standing to be arrested and charged, in the West Midlands. I was arrested in 2007 and charged in 2010.

**CP: Why do you think it took them that long?**

AF: This is a very important point actually, if I give you the chronology. According to the police testimony, in September 2008, they looked at the books and the DVDs. They sought advice from the one of the DI's [detective inspector] in the 'Gamble' case. He said the material may be anti-Western but it *does not* promote terrorism. The CPS [Crown Prosecution Service] had not made a decision at that time, they needed advice themselves. In September they decided to pursue the Maktabah. At that time they said their computers were down, the data they had of the copies they'd made, failed. It wasn't until January the prosecution decided to go ahead with the case. Actually the prosecution said they didn't their terrorism 'expert' Bruce Hoffman (from RAND) June 2009 and he didn't come back with his report until December 09. In January 2010 they arrested me.

**CP: What you were charged with?**

AF: I was charged on thirty counts, split into three 'chapters'. The first ten were Milestones, the Sheikh Abdullah Azzam books: Defence of the Muslims Lands, Lofty Mountain, Join the Caravan, Army of Madinah; The Absent Obligation; and videos: 21st Century Crusaders, Malcolm X and the Genocide in Gujarat. This was the stuff that they said had terrorist implications. The second 'chapter' as the prosecution called it, were those items that we had in our possession with a view to distribute. And they included mainly videos. And the last ten were [computer] files that they said could be of use to terrorists.

**CP: Tell us about some of those counts. What is the significance of the first 10, the ones related to the books?**

AF: It's my personal opinion that they targeted these books, not because of their prominence within the Muslim world as such, but because they want to outlaw discussion on jihad as a concept.

**CP: Would it be right to say it's more about the authors, or the content or both?**

AF: The authors will now become more of an issue. You can say Sayyid Qutb and Sheikh Abdullah Azzam were at centre stage.

**CP: During the prosecution, do you think the jury and the judge were significantly aware of the connotations of banning a book, the appendices of which were part of the syllabus of the Muslim Brotherhood, which has now taken power all over North Africa?**

AF: No. Can a jury of 12 random people from the public have the right understanding and framework to digest this material? The answer would obviously be no. Even the prosecution kept saying 'Milestones itself is not a problem, but *this* edition of Milestones is the problem' and 'Abdullah Azzam himself is not a problem, but *this* book published *here* is a problem'. The law didn't come out and say this book is banned, or they fall foul of the law as such. Nobody knew what the law was – this was a test case. The solicitors didn't know, the judge himself wanted clarification as to what the laws says. Judge Calvert-Smith earlier this year said that this law applies 'if a significant amount of people are encouraged to commit a specific terrorist offence within specific period of time'. But if you have published in 2000 and distributed in 2010 [as we did], what's the timescale? They had to have gone into a person's mind and find his intentions. And this case is about books – which are not something this society associates with crime.

**CP: What about the second ten counts?**

AF: These were the 'wills' they found, which I had stopped selling. They referred to them as the 'Al-Qaida material'. I actually took them off the shelves when I come into management. I was found not guilty on all counts.

**CP: And the last 10?**

AF: They were Section 58s, where the crime is mere possession. If someone has a file or a book that could be of some use to a terrorist, then merely having that in your possession is a crime. Now, the prosecution has to show two things: One, you had knowledge that you had it in your possession, and two, that you didn't have a reasonable excuse having it. The jury decided that I knew I had it in my possession and that I did not have a reasonable excuse for possessing it.

**CP: Can you tell us a little bit about the material, why did you have it?**

AF: The honest truth, many of the counts in this last chapter I saw for the first time in the police station. I accept responsibility, if it's on the computers that we generally run, then that's fine. We are not going to shy away from that. The fact is looking at the volume - we had 3 million files that they found. It took seven officers nine months to sieve through and flag up 70,000 files. So if it took *them* that long, they haven't proved one bit that I had knowledge. For example, the 'Al-Qaida training manual' came in a folder, which was part of another folder which had files on Palestine. So when I actually received it, I put it in my PhD dissertation, under my video research on *Palestine* and *Hamas*.

**CP: Most of this material that you have been convicted on was in that PhD' folder '?**

AF: Pretty much all of it, yes.

**CP: Despite you having contacted your supervisor earlier to discuss your PhD?**

AF: I told her originally in 2003 and then in 2006. It came up in the case because the emails between me and her were brought up.

**CP: Surely that satisfies the legitimate excuse?**

AF: The jury didn't accept it, they didn't accept the fact it was a reasonable ground.

It was *Qadr Allah* [Allah's will], they found other files within those millions of files. The defence barrister said the prosecution speech was 80 per cent talking about other cases and other related things. So the prosecution would say here we have a file which depicts killings, for example. Mere possession of these files was enough for them to claim that was part of my psyche.

**CP: About the Al-Qaida manual. You are aware that it was identified in the case of Rizwaan Sabir, who downloaded it to study 'The difference between the operational methods of Al-Qaida and Hamas'. Was the prosecution aware of what had happened in this case?**

AF: It wasn't mentioned directly. The computer expert said that this document exists in various forms all over the internet. It's even on the US Justice Department website. Firstly however, I would ask who determined it's *the* 'Al-Qaida manual'? Secondly, I didn't know I was in possession of it. And thirdly, if I did know and if it was the Al-Qaida manual, then if you are doing a PhD on Al-Qaida clearly you can collect material for it. I didn't know I had it but if I did know I had it, it would have been for a legitimate purpose. One video they tried to prosecute me for under Section 58 was called 'Manhattan Raids'. When they saw it was of some young brothers flying around doing kicks and what not it was thrown out. The point I want to make is that the prosecution threw all this stuff in, and hoped some of it would stick. Much of it didn't, but enough of it did.

**CP: Effectively the government was trying to teach 12 mostly non-Muslim jurors very complex issues about Islam that most Muslims find very difficult to understand. How did they show that?**

AF: They had two so-called experts. One was a person called Matthew Tariq Wilkinson, who I hadn't heard of before.

**CP: Is he a scholar of Islam?**

AF: I wouldn't say that. He memorised two *juzz* [two thirtieths] of the Qur'an, and his PhD I think was on 'Muslim boys in education'.

He very clearly had no Islamic credentials in terms of terrorism or jihad. His basic argument was that where ever you find literature talking about jihad that equals terrorism. And where ever you find martyrdom this equals suicide bombing. So his simple conclusion regarding the books was that extolling the virtues of jihad means glorifying terrorism.

**CP: How did he go about explaining US support for the Afghan mujahideen against the Soviets?**

AF: Neither he nor Hoffman [the other expert] explored this in this in their reports [submitted to the court before trial]. He was cornered in his cross examination and scored own goals for the prosecution. This is why up until the verdict today, we thought, both their experts' testimonies backfired on the main thesis. But the jury didn't accept the end arguments made by the defence.

**CP: Just interpret the scholarship of someone like Wilkinson. He said that the word '*shuhada*' martyrs, isn't found in the Quran. Isn't that enough to say the nature of his report couldn't be called 'expert'?**

AF: In terms of his Islamic conclusions: very dubious. But what he and people of his ilk usually do is bring credibility for the prosecution through the judge. This is an inside person who explains things in such a way, that an outsider can't really see. Wilkinson and the judge were both old Etonians, they both told each other so. He's telling the judge about the pretext, subtext, context and his take on why, of all places, the books were being published in Birmingham. In summing up, the judge actually quoted Wilkinson's analysis. He said, in that in 2001 attacks in New York go off, and Maktabah published this book. And then this bomb goes off, and you have this book published, and so on. This was his chronology.

**CP: Was this argument brought by the opposition itself?**

AF: No

**CP: So effectively the judge made an argument against you that the prosecution didn't bring?**

AF: There were certain points the judge made that the prosecution were not actually making.

**CP: Do you think it was clear to the jury based on the fact that the three books by Sheikh Abdullah Azzam were all written at the time of the height of the Soviet occupation in Afghanistan when Britain and America were training mujahidin units, in the Welsh and Scottish mountains, supplying them with cash, logistical support and Blowpipe and Stinger anti-air craft missile systems? Do you think the prosecution was fully aware of the fact Britain was supporting jihad even *now* in Libya. And those same fighters, who may have fought against Britain and America in the past, are now respected leaders in their country?**

AF: Wilkinson rejected it, but Hoffman accepted it. He said contradictory things, sometimes three times in different ways. He accepted Sheikh Abdullah Azzam was not a terrorist. In the closing summary of the defence, Libya was discussed. This was not a unique moment in history where Britain had supported a jihad. It had done so when it suited interests. In the end though, the jury followed the direction of the judge.

To look at it in one way the defence didn't call witnesses because the prosecution witnesses messed up so much

**CP: So, you didn't even bring a case?**

AF: Didn't call any case, no witnesses, and I didn't stand myself

**CP: So you effectively felt the case went very well, that you didn't have to stand yourself?**

AF: It's supposed to be a strong statement, to present that there is so much evidence [in our favour], and really if you look at the direction by the judge, its *Qadr Allah* that this verdict was given.

**CP: Why do you think they came to this conclusion?**

AF: I personally think, the judge allowed unrelated cases to come in. The prosecution were allowed to say this attack was linked to this book and that attack to another. Apparently one of the 7th July bombers had one of these books, somewhere.

**CP: What's the next step? Do you have an appeal planned?**

AF: Nothing's been finalised, none of us actually expected it to be like this, we thought if it goes pear shaped it will do so in different ways.

**CP: Some of the authors of the books that you have been successfully prosecuted for were themselves imprisoned by the same regimes and their inheritors who were recently ousted in revolutions in Egypt. What do you think that says for Britain today?**

AF: I think Britain is not unique in the anti-Muslim stance its taking. Look at it Europe-wide. Each of the countries is putting in practice different measures that are discriminatory to Muslims. Whether it's banning a mosque in Switzerland somewhere, or banning niqaab in France. Or other such measures in Holland. In this country they do not want Muslims growing up with concept of ummah, and struggling for justice and rights. They don't want people growing up on this. Or they will be seen as enemies of the state.

**CP: Britain, until recently, saw itself as a refuge for people who didn't have freedom of expression as a result of those oppressions they were facing. Britain is the land of Shakespeare, of Wordsworth, of literature. It produces more than 100, 000 original titles every year and yet is prosecuting, successfully, someone for publishing books. What do you think that says about the future of Britain and how it likes to see itself?**

AF: What I said earlier, when it comes to Islam and Muslims, rules change, even in the height of the Irish 'Troubles'. One could ask, how much Irish poetry or Irish books were banned, even when bombs were going off regularly on the British mainland. Western civilisation, Britain included, likes to portray itself as the defender of justice, where fair trials exist. This is where freedom of speech is not played with, compromised at all. I made a statement in 2007, at a time when Salman Rushdie was being knighted for expressing his views, even though he was blasphemous towards the Queen amongst other things.

**CP: How do you feel about this case personally?**

AF: Allah be praised, everyone likes to quote Ibn Taymiyyah at this time. Having a connection to Allah, nothing they can do to you can harm you. They can't attack you; they can't take your *emaan* [faith] from you. And that's the most precious thing. They might take other things that you might find precious. But the most precious thing is connection to Allah and *emaan*. As long as you have that, and the Qur'an, al-Hamdulillah, it's all a blessing.

**CP: Is there anything more you'd like to share with our readers?**

AF: General point, society, civilisation, peoples, historically always looked into understanding three big questions: One, who created me and what's around me? So I know I exist, we know we exist, we know everything around me exits, but who made it all? Secondly, after the first hurdle: why did he [Allah] make us? And thirdly: what's going to happen once we die? We Muslims need

to focus, keeping these three points ahead of us and not losing our focus on to other things. Our focus should be on Allah and our allegiance is with Allah and his Messenger ﷺ. I haven't signed a contract with anybody else, just Allah and the Prophet ﷺ. I was speaking to someone earlier, if this prosecution took place in the 70's it would be more detrimental to people and the world. But this is the age of the internet; people have access to information. It's not going to be detrimental as it could have been. Governments have realised you can't control people with old traditional way, like media-control. The recent things that have happened in the Middle East, people have been 'tweeting' and 'facebooking' between themselves. And when the riots began here, they were considering taking *Facebook* down, because of its potential. For Muslims, we have to focus on what our duties are and what Allah has told us to fulfil. In the end we are all going to die, and before we do, do we want to live a life where we served Allah alone, and worshipped Him alone, and not served the tyrannies of the injustice and did we have keep to our principles alone.

Further related information see:

Conviction of thought: how Islamic concepts are ruled on in UK courts

Banning books in Britain, fifty years after Lady Chatterley

Banning and burning books: a new milestone in the war on terror

How could Britain ban books in the 21st century?

**R v Faraz - Testimony of Matthew 'Tariq' Wilkinson for the prosecution** - Day 1, 2, 3

**DIY terrorist author sentenced to 12 years jail**

Lindy Kerin reported this story on Friday, September 25, 2009 18:10:00

Listen to MP3 of this story ( minutes)

Alternate WMA version | MP3 download

MARK COLVIN: That Sydney man who produced a do-it-yourself terrorism book has been sentenced to at least nine years' jail.

39-year-old Bilal Khazal of Lakemba has been convicted for putting the terrorism handbook on the Internet.

It promoted methods of assassination and violent acts in the name of restoring Islam.

Lindy Kerin reports.

LINDY KERIN: Provisions on the Rules of Jihad was the name of the book compiled by Bilal Khazal and published on an Internet site supported by Al Qaeda. The terrorism handbook was put together by the 39-year-old over three days in September 2003.

Today he was sentenced to 12 years in jail, with a non-parole period of nine years. When the sentence was handed down his supporters hurled abuse at the judge and the bar table, while

outside the court, they said Mr Khazal had been unfairly treated because he's Muslim.

KHAZAL SUPPORTER: We're not happy with this. It's not fair.

JOURNALIST: What were you saying to the judge?

KHAZAL SUPPORTER: The bloke's not guilty right. He's not done nothing. With the book he make it. We're not interested in this book he make. Go see what happened in Iraq. Three four million kids in the street.

What happened here? Nothing happened here. Have you seen any car bomb in Australia? Have you seen anyone being killed? It's not fair.

JOURNALIST: Do you think he's been victimised?

KHAZAL SUPPORTER 2: Yes, because only Muslim. That's it.

LINDY KERIN: Provisions on the Rules of Jihad contained a collection of Internet downloads from various sites, as well as commentary from Bilal Khazal.

It detailed how to shoot down planes, strike motorcades and assassinate high-ranking government officials in Australia, Britain, the US and other countries.

It also listed specific methods of assassinations, including remote detonation of devices, letter bombs and sniper attacks.

His defence team argued that Bilal Khazal had simply cut and pasted the information from existing sites and that he wasn't fully responsible for the document. But the Judge Megan Latham didn't accept that; she said:

MEGAN LATHAM (voiceover): The prisoner has applied himself to the task of searching and downloading from the Internet sites a quantity of material, which has then been edited, arranged, indexed and footnoted and formatted into a comprehensive document, albeit with few alterations and additions.

I do not accept that he had not thereby demonstrated considerable application to the task.

LINDY KERIN: Justice Latham also said the nature and extent of the publication of the document was designed to maximise the speed and reach of the material. She said Bilal Khazal had not shown any remorse or contrition and continues to minimise the severity of the offence; she said:

MEGAN LATHAM (voiceover): It beggars belief that a person of average intelligence who had devoted themselves to the study of Islam over a period of some years would fail to register the nature of the material.

LINDY KERIN: Bilal Khazal was born in Lebanon and moved permanently to Australia with his family in 1986. The court heard that since arriving here, he's studied Islam intensively.

He's worked with Qantas for 10 years as a cleaner and driver. Since 1994 he's been working as a volunteer journalist for a magazine titled Call to Islam.

Bilal Khazal's lawyer Adam Houda says his client will be lodging an appeal.

ADAM HOUDA: Well we've lost round one, but there'll be round two which we intend to win by knock out.

LINDY KERIN: Andrew Lynch is the director of the Gilbert and Tobin Centre of Public Law at the University of New South Wales. He says the sentence under the new terrorism laws is not surprising.

ANDREW LYNCH: The legislation sets down a maximum penalty of 15 years purely for this kind of activity, which is collecting or making a document. And so the jury having decided that Khazal was guilty of that offence, it was really to be expected that the sentence that Justice Latham would hand down, was certainly going to be within that range.

She's decided that on the basis of the document that she's had evidence on, that it was towards the serious end of the permissible range of sentencing and that's where the result has come out.

LINDY KERIN: In sentencing Bilal Khazal Justice Megan Latham said it was important the jail term should act as a deterrent.

But Andrew Lynch says that would-be terrorists are unlikely to be deterred.

ANDREW LYNCH: The difficulty with the deterrent argument with any terrorism offences is that I think people are very sceptical as to whether those people who are so committed to a political religious or ideological cause as to contemplate terrorist activity are going to be deterred by a jail sentence.

I mean most terrorist plots involve at some point, the, well rely upon rather the suicide bombing. It's very difficult to deter people who are prepared to sacrifice their own lives in pursuit of a cause.

MARK COLVIN: Andrew Lynch from the University of New South Wales ending Lindy Kerin's report.

**Bookseller Ahmed Faraz jailed over terror offences**


Ahmed Faraz: Denied charges

Continue reading the main story

**Related Stories**

- Beheading films 'found at home'
- Bookshop owner on terror charges
- Man in court on 30 terror charges

A bookseller from Birmingham has been sentenced to three years in prison for possessing and distributing material which promoted extremism.

Ahmed Faraz had material including an al-Qaeda training manual, bomb-making instructions, and footage of murders - Briton Ken Bigley's among them.

Faraz, 32, had claimed the material was for academic research.

Judge Justice Calvert-Smith said it was "grossly irresponsible" to publish the books in the way he had.

Faraz was found guilty of possessing and disseminating some of the most well-known publications found in the homes of people convicted of terrorism-related offences over the past decade.

Some of them were accounts of resistance by Muslims in various historic events, including the battle against the Soviet Union in Afghanistan.

Other material related more directly to al-Qaeda's philosophy or its historic roots.

One of the books he was found guilty of disseminating through his Maktabah bookshop was an edition of Milestones, an important text in the development of Islamist political thinking in the 20th century.

The book, by Sayyid Qutb, is freely available and is studied widely. But police said the special edition of Milestones sold by Faraz was developed specifically to promote extremist ideology.

The edition of Lofty Mountain by Abduallah Azzam sold by Faraz contained endorsements by Osama Bin Laden, and was found to be in possession of Mohammed Sidique Khan, the ringleader in the 7 July bombings of 2005 in London.

Other charges related to military training videos, including bomb-making instructions.

**'Glorify terrorism'**



The guilty man's brother Razwan Faraz said he believed freedom of speech was being attacked

Judge Justice Calvert-Smith described it as "the first substantial case of its kind".

He said: "It is grossly irresponsible to publish these books in the way that you have published them.

"They were published differently to appeal to young people who had recently converted to Islam or became more religiously inclined as they got older."

He added: "These books did glorify terrorism. They implied approving of such attacks as 9/11 or 7/7."

Faraz and Maktabah had no role in specific terror plots, the judge said, although Maktabah was unique in its commercial role as a publisher of extremist materials.

Mr Justice Calvert-Smith said he reduced Faraz's sentence on account of his community work.

The court heard in mitigation from Daniel Friedman that Faraz carried out anti-drugs work and acted as a mentor to teenagers in the Sparkhill area.

His sentence was also reduced as he was convicted under the Terrorism Act 2006, new legislation that might have been difficult to interpret.

He will serve 18 months and remain on licence for the remainder of his sentence.

**Outcry over Turkish publisher's arrest and detention**

International protests follow imprisonment of Ragip Zarakolu, director of Belge Publishing House, under anti-terrorism laws



- Alison Flood
- guardian.co.uk, Wednesday 2 November 2011 11.29 GMT
- Jump to comments (...)

Ragip Zarakolu in 1998. Photograph: Heribert Proepper/AP

The international literary community is demanding the immediate release of Turkish publisher and free speech activist Ragip Zarakolu, who has been arrested and imprisoned in Turkey under the country's anti-terrorism laws.

Zarakolu, director of Belge Publishing House, a member of Turkish PEN and chair of Turkey's Freedom to Publish Committee, is one of more than 40 activists who were detained in Istanbul on Friday, according to PEN and the International Publishers Association. The arrests are part of a crackdown against Kurdish political parties which has seen more than 1,800 supporters of the banned Koma Civakên Kurdistan party jailed since 2009. PEN said that if an appeal against the charges is unsuccessful, Zarakolu will be held through a trial process which is likely to last over a year.

Zarakolu founded Belge in 1977 and has tested publishing restrictions in Turkey ever since by releasing controversial books from Armenian, Greek and Kurdish authors in Turkish editions, including books documenting the Armenian genocide. His office was firebombed by a right-wing extremist group in 1995, said PEN, he was banned from leaving Turkey between 1971 and 1991 and he has been the subject of repeated charges, most recently being fined for releasing Mehmet Güler's The KCK File/The Global State and Kurds Without a State in March 2011.

Bjørn Smith-Simonsen, chair of the International Publishers Association's freedom to publish committee, said that Zarakolu "does not belong to prison, he deserves a Nobel prize". Calling him "the pride of publishing" and "the limelight of freedom to publish in Turkey", Smith-Simonsen demanded he be released immediately. "The trial is likely to begin in a year's time only. Ragip Zarakolu's health is not good. We fear that he will not stand his detention conditions in the terrible F-type (high security) prisons," he said. The IPA is intending to meet the Permanent Representative of Turkey to the United Nations Office in Geneva as soon as possible to urge the Turkish government to release the publisher immediately.

Smith-Simonsen was joined in his appeal by PEN America's Freedom to Write director Larry Siems, who called Zarakolu "an internationally recognised defender of the right to write and publish freely". "It is essential not to confuse the efforts of those who, like Ragip Zarakolu, have worked to bring down barriers of censorship in Turkey with those who press political agendas through violence," said Siems. "We emphatically protest his arrest."

Poet and essayist Peter Balakian, whose memoir Black Dog of Fate: An American Son Uncovers His Armenian Past was published in Turkey by Belge, called the arrest "a blow to Turkey's efforts to create a free and open society". "Ragip Zarakolu has been honoured by almost every leading publishing organisation in the world for his courage, his patience, his intellectual rigour and his pursuit of genuine democracy," said Balakian. "For over four decades Ragip and his late wife and son have been at the cutting edge of social change in Turkey, publishing books on subjects that the government has deemed taboo— especially subjects dealing with minority issues in Turkey and the histories of minority cultures."

Zarakolu founded Belge with his wife Ayse Nur, who received the PEN/Barbara Goldsmith Freedom to Write Award in 1997, dying in 2002. Goldsmith, a writer and historian, said that "if Zarakolu is not given his freedom, then all of us give up our freedom to write. If Zarakolu is not free, then none of us are free."

**Legality**

**United Kingdom**

Possession of *Inspire* has been successfully prosecuted under Section 58 of the Terrorism Act 2000.[40][*dubious – discuss*] Several people have been arrested and jailed for possessing the magazine, and copies have also been found in the possession of British terrorism suspects. Mohammed

Abu Hasnath, 19, of east London, was arrested in October 2011 and sentenced in May 2012 to 14 months in jail for possessing several editions of *Inspire*.[41]

On December 6, 2012, Ruksana Begum, 22, of Islington, north London was sentenced to one year in prison after two editions of Inspire magazine were found on a micro SD card in her phone following an anti-terrorist raid in June of that year. Her brothers, Gurukanth Desai and Abdul Miah were sentenced to 12 and 16 years imprisonment respectively in February 2012 after pleading guilty to plot to blow up the London Stock Exchange. Passing sentence, Mr Justice Fulford stated that Begum "is of good behaviour and a good Muslim" and there was nothing to suggest she was involved in terrorist activity.[42] He accepted that she gathered the material in an attempt to explore and understand the charges her brothers faced. After taking into account time spent on remand, Begum will be[*needs update*] released in one month, after serving half her sentence.[43]

**Australia**

On April 16, 2013, an Australian man was arrested for possessing and collecting editions of the magazine on a USB drive.[44]

The Terrorism Act 2000 makes it an offence to collect or possess information likely to be of use to a terrorist.[27][28] Bilal Zaheer Ahmad, 23, from Wolverhampton, is believed to be the first person convicted of collecting information likely to be of use to a terrorist, including the al-Qaeda publication Inspire.[27][28]

The Terrorism Act 2006 makes it an offence to "glorify" terrorism.[29] There are concerns that this could limit free speech.[30][31][32]

DA-Notices are official but voluntary requests to news editors not to publish items on specified subjects, for reasons of national security.[33]

**Banning and Burning Books: A New Milestone in the War on Terror** **Featured**


Illegal: The 60s Syed Qutb classic, Milestones, was readily available in Egypt during the Mubarak regime. The dissemination of this version, published by Maktabah booksellers in

England, was made illegal because of the appendices which include the syllabus of the Egyptian Muslim Brotherhood

**Landmark conviction of Ahmad Faraz for distributing and publishing books exposes extremely serious implications for society at large and Muslims in particular**

In August 1966, Egyptian thinker and writer Sayyid Qutb was convicted in Cairo of conspiring against the State. The evidence used to incriminate him consisted primarily of extracts from his book *Milestones*, a treatise on Islamic governance written by Qutb during a previous stint in prison. For Egyptian President Nasser, the ideas contained in *Milestones* were as threatening to his position as the birth of Moses was to the Pharaoh thousands of years earlier. Nasser's solution to his dilemma was little different from that of the Pharaoh. Kill the ideological revolution in its infancy. Qutb was executed in prison on 29 August 1966. All known copies of the book were confiscated and burned by military order, and anyone found in possession of it was prosecuted for treason.

Almost half a century later, on 13 December 2011, British Muslim Ahmed Faraz was sentenced to 3 years in prison in London after being convicted of disseminating a number of books which were deemed to be terrorist publications. One of those books is Qutb's *Milestones*. In a trial which lasted over two months, jurors had the entirety of Qutb's thoughts and ideas, as expressed in his book, read out to them to decide whether or not such ideas are permissible in 21st Century Britain. They ultimately concluded that they were not and *Milestones* has now been criminalised as a "terrorist publication" and effectively banned in Britain.

*Milestones* is also published by Penguin Books, who previously found themselves in the dock in 1960 (around the same time that Qutb was writing *Milestones*) after publishing *Lady Chatterley's Lover*, the last case of its kind until now. However, the CPS case was that the *Milestones* special edition published and sold by Faraz contained a number of appendices intended specifically to promote extremist ideology. Yet these appendices merely consisted of a series of articles about Qutb by contemporary thinkers and writers and a syllabus of three books taught by Hassan al-Banna, the founding ideologue of the Muslim Brotherhood, the very party that has recently been democratically elected in Egypt - following similar trends in Tunisia - after enduring decades of dictatorial rule.

Other books Faraz was selling which are now also effectively banned include those of Abdullah Azzam, a Palestinian scholar who became one of the leaders of the jihad in Afghanistan against Soviet occupation. Azzam's *Defence of Muslim Lands* and *Join the Caravan* were essentially Islamic edicts that received the highest validation at the time and were heavily promoted in the Western and Muslim world to encourage Muslims to join the Western-backed jihad against the Soviet Union. Both books were readily available to purchase from mainstream booksellers Amazon and Waterstones until very recently, neither of whom it seems will be similarly prosecuted.

The case has extremely serious implications for issues of freedom of speech and freedom of thought in Britain today. In the land of Shakespeare and Wordsworth where more books are published every year than in any other country in the world, books will now be banned and ideas prohibited. It has always been a principle of freedom of speech, especially within academia, that the best way to defeat ideas is to debate them, not prohibit them. Perhaps it is for this reason that Adolf Hitler's *Mein Kampf* remains available in bookstores and libraries today. It is

probably the same reason that the prosecution's expert witness Bruce Hoffman admitted under cross-examination that none of the books would have been banned in the United States under the First Amendment.

Many will argue that since Faraz was also convicted of possessing information likely to be of use to a person committing or preparing for an act of terrorism, the books ought to be viewed through this prism. The reality is that over the course of three years, the police seized and examined 19 computers, 25 hard drives, 15,000 books, over 9,000 DVDs and videos and millions of documents, all of which belonged to a busy bookstore. Out of these, they could only find four documents which the jury concluded fell afoul of this specific law and which it could not even be proven had ever been read by Faraz. Were the police to trawl through the entire stock and database of any bookstore, it is highly likely that they would find a handful of similar items.

The case also has wider implications for the Muslim community. Faraz' case is the latest in a series of cases before the courts, buttressed by prejudicial statements from senior politicians, in which efforts have been made to criminalise Islamic political thought. To believe or to even discuss an Islamic mode of governance, the political union of Muslim countries in a Caliphate and the issues of military jihad have become synonymous with glorifying terrorism, what Tony Blair notoriously described in 2005 as an "evil ideology". Now that the books from where those ideas come are being banned, the logical next step may be to ban the very source of those ideas – the Qur'an itself. For those who may accuse this writer of scaremongering, investigative journalist Yvonne Ridley was met with the same incredulity five years ago when she announced to thousands of Muslims that the government would try and ban *Milestones*.

The last time that a political treatise like *Milestones* was considered such a threat to national security in this country that it needed to be banned was in the late 18th Century when Thomas Paine was sentenced to death in absentia for seditious libel for his book *The Rights of Man*. The book was burned by the public hangman. For years after, whenever men were tried for treason, invariably the Crown offered as evidence to the jury the fact that these men possessed a copy of *The Rights of Man*. Now that *Milestones* and *Join the Caravan* have been similarly criminalised, it follows that like in Nasser's Egypt, they will be destroyed in their thousands by the State by way of burning. But will all of us who possess copies have to burn them ourselves or risk being arrested and prosecuted for possessing "un-British" books, a crime now equivalent with terrorism?

**Melbourne man to face trial over Al Qaeda magazines**

By court reporter Sarah Farnsworth

Posted Tue Apr 16, 2013 5:21pm AEST

 **Photo:** Adnan Karabegovic has been bailed on a $500,000 surety and with strict conditions. (file photo) (AAP: Julian Smith)

**Related Story:** Court told man was preparing for war before arrest

**Map:** Melbourne 3000

A Melbourne man has been committed to stand trial on terrorism offences after being found in possession of Al Qaeda magazines.

Adnan Karabegovic, 24, has pleaded not guilty to seven charges of collecting and possessing editions of the online magazine Inspire - a publication produced for Al Qaeda.

The court heard Karabegovic was found in possession of a USB stick containing four editions of the magazine which contained articles on "open source jihad".

Two more editions were found on his computer.

Open source jihad is described as a shift away from Al Qaeda's traditional attacks to home-grown terrorist acts.

The articles included instructions on how to make bombs using everyday household items, making petrol bombs to spark bushfires, becoming an urban assassin, poisoning water supplies and the killing of women and children.

There were also articles showing rifle stances alongside a picture of the Sydney Opera House and ideas on how to get scientists to make weapons of mass destruction.

The prosecution told a committal hearing that in January 2012 Karabegovic unfurled a banner from a freeway overpass that said: "Get your troops out of Muslim lands you filthy Kafir (infidel)."

A second banner stating "Get your troops out of Muslim lands you filthy convict pigs" was also draped off a telephone exchange.

The court heard in secretly recorded conversations, Karabegovic spoke to other people about planning for war and his attempts to buy a gun.

He also spoke of the permissibility of the Mujahideen and of troops being sent to "kill our brother and sisters".

"There is no choice. You are either preparing for war, or at war," he told a friend in a recording.

In later conversations he talked about defending Islam, the need for action and about the possibility of travelling to Bosnia.

Prosecutors alleged Karabegovic knew he was under surveillance but did not care.

The court heard that in a police interview after his arrest he stated the USB stick belonged to his parents and he was only interested in the current affairs articles in the magazines.

Karabegovich was originally facing 12 charges but the charges were revised today.

He was bailed on a $500,000 surety with strict bail conditions, including a night-time curfew and daily reporting to police.

The court also banned Karabegovich from having anything to do with the Al Furqan Islamic Information Centre in Springvale South.

He will face the Supreme Court later this month.

**Al-Qaeda material bride Ruksana Begum jailed**


Begum had two editions of al-Qaeda's Inspire magazine on a micro SD memory card

A new bride who had al-Qaeda terrorist material on her mobile phone has been jailed for a year.

Ruksana Begum had been married a month when anti-terrorist officers raided an address in London in July.

The 22-year-old earlier pleaded guilty to having material which was likely to be useful to someone committing or preparing an act of terrorism.

Begum, of Islington, north London, appeared at the Old Bailey with only her eyes visible beneath a black veil.

After taking account time spent in custody, Begum, who has been remanded in Holloway prison, is expected to be released in a month after serving half her sentence.

The court heard that her brothers, Gurukanth Desai, 30, and Abdul Miah, 25, who Begum lived next door to in Cardiff, pleaded guilty to a plot to blow up the Stock Exchange and were sentenced to 12 and 16 years imprisonment respectively in February.

**'Handgun training'**

Begum, who has a first-class accountancy degree, married in June and moved to London with her new husband, who cannot be named for legal reasons.

Last month she admitted having two editions of al-Qaeda's Inspire magazine on a micro SD memory card in her mobile.


Begum's brothers Gurukanth Desai and Abdul Miah were jailed for a plot to blow up the Stock Exchange

Kate Wilkinson, prosecuting, said: "These items contained both instructional and ideological material."

They included instructions on remote control detonation, handgun training and how to ignite forest fires.

Hossein Zahir, mitigating, said Begum downloaded the material because she wanted to understand why her brothers had taken the path they had.

He told the court: "She is an intelligent and articulate young woman who does not share the views of others who do not care."

Mr Justice Fulford said there was nothing to suggest that Begum was involved in terrorist activity.

"She is of good behaviour and a good Muslim.

"Against this background, I accept on the evidence before me that this defendant gathered together the contents of the SD card in order to explore and understand the charges which her brothers faced."

**Woman jailed after al-Qaida terrorist material found on her phone**

Ruksana Begum, whose brothers were sentenced in February for a plot to blow up the Stock Exchange, jailed for a year for possession of 'instructional and ideological material'



- Press Association
- guardian.co.uk, Thursday 6 December 2012 15.17 GMT

Two editions of al-Qaida's Inspire magazine were found on this SD memory card, which was recovered from the east London home of Ruksana Begum. Photograph: Metropolitan Police/PA Wire

A woman who had al-Qaida terrorist material in her mobile phone was jailed for a year on Thursday. Ruksana Begum, 22, who has a first-class accountancy degree, had been married for a month when anti-terrorist officers raided an address where she was staying in east London in July.

The Old Bailey heard today that her brothers, Gurukanth Desai and Abdul Miah, pleaded guilty to a plot to blow up the Stock Exchange and were sentenced this year to 12 and 16 years jail in February. Mohammed Chowdhury, who was jailed for 13 years for the same December 2010 plot, asked to marry her but she had never met him. She married in June and moved to London with her new husband.

Begum, who lived in Cardiff next door to Miah, pleaded guilty last month to having material that was likely to be useful to someone committing or preparing an act of terrorism. This was two editions of al-Qaida's Inspire magazine on a micro SD memory card in her mobile.

Begum, of Islington, north London, appeared with only her eyes visible beneath a black veil to be sentenced after being remanded in Holloway prison.

Kate Wilkinson, prosecuting, said: "These items contained both instructional and ideological material." The terrorist material included instructions on remote control detonation, handgun training and how to ignite forest fires.

Hossein Zahir, defending, said Begum downloaded the material a few weeks before because she wanted to understand why her brothers had taken the path they had. He said: "She was confident that her brothers were innocent and they would be acquitted. Then they pleaded guilty. She accessed this material, which is easily accessible, before coming to London to understand the background and ideology which led to her brothers' incarceration. She is an intelligent and articulate young woman who does not share the views of others who do not care."

After taking into account time spent in custody it is likely Begum will be released in a month after serving half her sentence. The judge, Mr Justice Fulford, said there was nothing to suggest that Begum was herself involved in terrorist activity. He added: "Instead, this defendant, with other members of her family, was devastated by the arrest and later imprisonment of her brothers for serious terrorist offences.

"The family, which was previously respected in the community where they lived in Cardiff, were ostracised.

"She is of good behaviour and a good Muslim. Against this background, I accept on the evidence before me that this defendant gathered together the contents of the SD card in order to explore and understand the charges which her brothers faced. There is no evidence that she was motivated by their ideology or was preparing to follow them. She damaged what could have been a potentially blossoming future by committing these offences."

But, said the judge, the material could have aided a terrorist, and such serious offences would always carry a prison sentence.

Metropolitan deputy assistant commissioner Stuart Osborne, senior national co-ordinator of counter-terrorism, said: "The public should be in no doubt that Inspire is a terrorist publication with the ultimate aim of encouraging attacks. Today's sentencing reflects the fact that possessing a copy of a terrorist publication is a serious offence. Anyone caught in possession of this, or any other terrorist material, can expect to be brought before the courts."

Online extremist sentenced to 12 years for soliciting murder of MPs

Back to Local News

Tweet

**29 July 2011**

An online extremist from Wolverhampton has been sentenced to 12 years in prison for soliciting the murder of MPs who voted for the Iraq War, and other terrorist-related offences.

Bilal Zaheer Ahmad, from Dunstall Hill, pleaded guilty last month (13/5/11) to using the website Revolutionmuslim.com to encourage users to 'raise the knife of jihad' against nearly 400 Members of Parliament who he claimed had supported the 2003 invasion.

The 24-year-old advised readers on the site's message board how to find out constituency surgery details and even provided a link to a Tesco online shopping site selling knives.

The web posting, which appeared on the radical US-based site, followed the conviction last November of Roshonara Choudhry for the attempted murder of MP Stephen Timms.

Choudhry, who stabbed the Labour member for East Ham in the stomach at a surgery meeting, was radicalised after viewing extremist material online - including some featured on Revolutionmuslim.com.

Ahmad praised her attack on Timms and said it should inspire others to follow suit.

Subsequent enquiries into the IT worker's online activity, following his arrest in November, uncovered more offences. This resulted in further guilty pleas, including one for intent to stir up religious hatred, against Hindus. This is the first successful conviction for this offence in the UK.

In addition, Ahmad admitted three counts of collecting information likely to be of use to a terrorist, including the al-Qaeda publication Inspire. This is the first successful prosecution for possessing the online jihadist magazine.

The investigation was carried out by the West Midlands Counter Terrorism Unit, whose officers said international cooperation was key in securing the conviction.

Head of WM CTU, Detective Chief Superintendent Kenny Bell said: "This was a challenging investigation for the unit because Ahmad, a serial online extremist, was posting on foreign-based websites. But the assistance received from agencies both in Britain and the United States meant we were able to identify, track and bring him to justice in a matter of days.

"This close cooperation also meant we were able to collect a substantial amount of evidence that was strong enough to secure a guilty plea, and therefore spare the tax payer the cost of a trial.

"Online extremism is an area of counter terrorism policing that we are increasingly focussed on.

"We need to protect vulnerable individuals from being urged to commit serious crimes by extremists and radicalisers who are exploiting the Internet.

"We can and will track offenders down."

Ahmed was sentenced at Bristol Crown Court.

Members of the public concerned about potential extremist material on the Internet can anonymously report sites to specialist officers at the national Counter Terrorism Internet Referral Unit. Details can be found at direct.gov.uk/reportingonlineterrorism

Details of the offences

1. SOLICITING TO MURDER, contrary to section 4 of the Offences against the Person Act 1861.

Bilal Zaheer Ahmad on the 4th November 2010 did solicit or encourage persons unknown to murder another person or persons namely Members of the United Kingdom Parliament.

2. PUBLISHING WRITTEN MATERIAL WITH INTENT TO STIR UP RELIGIOUS HATRED, contrary to section 29C of the Public Order Act 1986.

Bilal Zaheer Ahmad on the 20th Match 2009 published written material in an internet forum, namely a comment in a threat entitled 'Veil Banned in Rural College' on the forum pages of www.islamicawakening.com which was threatening, intending thereby to stir up religious hatred.

3. COLLECTING INFORMATION, contrary to section 58(1)(a) of the Terrorism Act 2000.

Bilal Zaheer Ahmad on or before 12th October 2010 collected information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely 'Inspire Magazine Fall Edition'.

4. COLLECTING INFORMATION, contrary to section 58(1)(a) of the Terrorism Act 2000.

Bilal Zaheer Ahmad on or before the 5th January 2010 collected information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely 'Zaad-e-Mujahid: Essential Provisions of a Mujahid'.

5. COLLECTING INFORMATION, contrary to section 58(1)(a) of the Terrorism Act 2000.

Bilal Zaheer Ahmad on or before 8th February 2010 collected information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely '39 ways to serve and participate in Jihad'.

**UK jails teenager for possessing al-Qaeda's online magazine**

**Posted on 05-11 at 11:47:48 CST**

LONDON (BNO NEWS) -- A teenager from London was sentenced to more than one year in jail on Friday for possessing copies of al-Qaeda's English-language online magazine, which provides commentary as well as information on how to carry out terrorist attacks, police said.

Mohammed Abu Hasnath, 19, was arrested in October 2011 as he was cycling along East India Dock Road near his house in east London. At the time of his arrest, detectives searched a backpack he was carrying in which they found a USB stick containing several copies of Inspire, al-Qaeda's English-language online magazine.

Inspire was launched by al-Qaeda in the Arabian Peninsula (AQAP) in July 2010 to attract aspiring jihadis who cannot read Arabic, and it has frequently been found in the possession of terrorism suspects. It offers instructions on bomb-making, weapons training, security measures as well as encryption lessons for beginners. It also offers extremist heavyweight Qur'anic commentary and rudimentary propaganda.

"This is a serious terrorist offence and we hope this will send a clear message that anyone caught in possession of such material can expect to be bought before the courts," said Deputy Assistant Commissioner Stuart Osborne who is the senior national coordinator counter-terrorism.

Hasnath was sentenced to 14 months on Friday but officials did not say why Hasnath was in possession of the documents and if he had any plans to carry out a terrorist attack. "We do not have that information," a Scotland Yard spokesman said, giving no other details when asked about the motive.

---

(back to preceding text)

36. The Crown's application for leave to appeal was referred for consideration by the full Court of Appeal. On 1 May 2008 the full Court (Sir Igor Judge, President of the Queen's Bench Division, Aikens and Swift JJ) granted leave to appeal against the judge's ruling, on the basis that he had erred in concluding that he was bound by the decision in *R v K*. The Court then proceeded to hear and dismiss the appeal. In essence, the Court held that, having regard to the decision of the differently constituted Court of Appeal in *R v G* two days before, by which the Court was bound, it was not open to the Crown to argue that the observations of the Court in *R v K* on the ambit of the defence of reasonable excuse in section 58(3) were not part of the ratio decidendi.

37. The Court granted a certificate in similar terms to the certificate in *R v G* and on 11 June 2008 the Appellate Committee granted leave to appeal. The three points of law of general public importance certified by the Court of Appeal are:

a) What are the ingredients of the offence contained in section 58(1) of the Terrorism Act 2000?

b) What is the scope of the defence contained in section 58(3) of the Terrorism Act 2000?

c) What is the relationship between section 57 and section 58 of the Terrorism Act 2000?

38. We find it convenient to address the issues in a slightly different order. We start with the ingredients of the offence contained in section 58(1) of the 2000 Act, but leave over consideration of the defence in section 58(3). We shall then deal with the ingredients of the offence in section 57(1). These two steps pave the way for considering the relationship between the two sections. After that, we shall come to the defence in section 58(3) and, in that connection, first consider the defence in section 57(2).

*The Section 58 Offence*

39. As the formulation of the first point of law itself suggests, the ingredients of the offence created by section 58(1) must be found by interpreting that subsection, which creates the offence. On the one hand, it tells anyone who is interested what he is not permitted to do; on the other, it tells the prosecution what it must prove if someone is to be convicted of the offence. If the Crown proves the elements in subsection (1) beyond a reasonable doubt, then it is entitled to ask for a conviction - unless the defendant successfully raises a defence under subsection (3).

40. Putting flesh on these bones, a person can commit an offence under subsection (1) in either of two ways. First, he commits an offence if he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism. There are allegations to that effect against both Mr G and Mr J. Secondly, he commits an offence if he possesses a document or record containing information of that kind. There is an allegation to that effect against Mr J.

41. Section 58 is the current embodiment of a provision which was first found in legislation applying to Northern Ireland and was later extended to Great Britain by the Criminal Justice and Public Order Act 1994. Section 57 embodies a provision with a similar history. Lord Lloyd of Berwick was asked to review the terrorism legislation and his report, *Inquiry into Legislation against Terrorism*, was published in 1996. Lord Lloyd explained the thinking behind the provision that became section 57 in paras 14.4 and 14.5 of his report:

"14.4 The purpose of the provision is to allow action to be taken against a person who is found in possession of articles which, though perhaps commonplace in normal circumstances, are well known to be used in the manufacture of bombs. It is, of course, not the possession of the items themselves which constitutes the offence, but possession in such circumstances as to give rise to a reasonable suspicion of their connection with terrorism.

14.5 The need for the police to intervene against the terrorist at an early stage, before he has an opportunity to plant a bomb, is well recognised. Given that terrorist bombs are usually home-made, it is quite possible that, during a search of premises occupied by a suspected terrorist, the police will find materials such as timers or chemicals in highly incriminating circumstances without also finding explosives or other prohibited materials. If other evidence exists, he might be charged with conspiracy to cause explosions, or with the new offence of being concerned in the preparation of a terrorist act. Otherwise I see no reason why the person should not be required to account to the court for his possession of the articles."

Lord Lloyd went on to give his views on the provision which became section 58 at para 14.8:

"Its purpose is similar to that of the offence of possession described above and the case in favour of retaining the power is very much the same. It is designed to catch possession of targeting lists and similar information, which terrorists are known to collect and use."

42. Obviously, on one reading, section 58(1) could cover a multitude of records of everyday common or garden information, which might actually be useful to a person who was preparing to carry out an act of terrorism - e g a Yellow Pages directory listing outlets where he could buy fertiliser and other chemicals for making into a bomb, a timetable from which he could discover the times of trains to take him to the city where he was going to plant his bomb, or an A to Z directory of that city which he could use to find his way to the target. But, rightly, appearing for the Crown, Mr Perry QC repudiated any such interpretation. Parliament cannot have intended to criminalise the possession of information of a kind which is useful to people for all sorts of everyday purposes and which many members of the public regularly obtain or use, simply because that information could also be useful to someone who was preparing an act of

terrorism.

43. Indeed, it is clear from what Lord Lloyd said in his report that the aim was to catch the possession of information which would typically be of use to terrorists, as opposed to ordinary members of the population. So, to fall within the section, the information must, of its very nature, be designed to provide practical assistance to a person committing or preparing an act or terrorism. Because that is its nature, section 58(3) requires someone who collects, records or possesses the information to show that he had a reasonable excuse for doing so. The information is such as “calls for an explanation", as Lord Phillips of Worth Matravers LCJ, said in *R v K* [2008] 2 WLR 1026, 1031, para 14. Of course, it is not necessary that the information should be useful only to a person committing etc an act of terrorism. For instance, information on where to obtain explosives is capable of falling within section 58(1), even though an ordinary crook planning a bank robbery might also find it useful.

44. The role of extrinsic evidence is limited. It can be used to explain to the jury the significance of something in the document, say, a chemical formula, in connection with the planning of an explosion. It can also be used to explain the true nature of the information in a document which has been prepared so as to appear innocuous but whose actual nature and contents are concealed by the use of some sort of code or equivalent device. But, since the document must contain information which is, of its very nature, likely to be useful to a potential terrorist, evidence cannot be led with the aim of showing that a document, such as a timetable, containing everyday information, should be treated as falling within section 58(1). That evidence will be relevant to a charge under section 57(1), but not to a charge under section 58(1).

45. Interpreted in that way, section 58(1) would cover, for instance, a training manual about making or planting bombs or explosives, or a document containing information about how to get unauthorised entry to military establishments, government offices etc. It would also cover information, whether in the form of an electronic key or otherwise, which enabled a potential terrorist to obtain access to such information. Parliament has made it an offence to collect, record or possess such material, unless the defendant can show that he has a reasonable excuse for doing so.

46. To be guilty of the section 58 offence, the defendant must collect or make a record of the information in question, or must possess a document or record containing such information. So far as possession is concerned, it is noticeable that section 58 does not contain any equivalent of section 57(3), which allows the court to assume that the defendant was in possession of the articles in question in certain circumstances. The obvious inference is that, under section 58(1), the Crown must prove beyond a reasonable doubt that the defendant knew that he had the document or record and that he had control of it. So, in order to prove its case under section 58(1), the Crown must satisfy the jury beyond reasonable doubt, for instance, either that a defendant who owned a flat was aware that her boyfriend had brought a document of the relevant kind into the flat, or else that, despite her claim that he had kept it locked away beyond her control, she not only knew that the document was in the flat, but she also had control over it. If the Crown fails to establish these matters, the defendant does not rely on any defence under subsection (3): she is entitled to be acquitted simply because the Crown has not proved her possession of the document, which is one of the essential elements of the section 58(1) offence.

47. Is it a requirement for conviction of an offence under section 58(1)(b) that the defendant not only possessed the document but was aware of the nature of the information which it contained? In our view, it is. The immediate setting of section 58(1)(b) is important. Section 58(1)(a) makes it an offence to collect or make a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism. That paragraph envisages the defendant collecting or recording that particular kind of information, rather than collecting or recording a general mass of information which happens to contain information of the kind in question. But in order to collect or record that particular kind of information, the defendant must know what he is looking for. So knowledge of the nature of the information is certainly a necessary element in the offence in para (a). Paragraph (b) deals with someone who possesses a document or record containing information of the relevant kind, which he or someone else has collected or recorded. Given that knowledge of the nature of the material is required where the offence is committed in the manner specified in para (a), it would be very strange if similar knowledge were not also required for commission of the offence in the manner specified in para (b). We are therefore satisfied that the Crown must prove that the defendant was aware of the kind of information which was in the document or record which he possessed. That conclusion is in line with the approach of the House in *Sweet v Parsley* [1970] AC 132.

48. This does not mean, of course, that the Crown has to show that the defendant knew everything that was in the document or record. It is enough if he knew the nature of the material which it contains. That may often be apparent from the title of the document or from even a cursory glance at its contents. Nor can a defendant keep a document in his possession and claim ignorance of its contents by deliberately choosing not to inquire into them. If the document is hidden in some way, this will often be a basis on which the jury can be asked to infer that the defendant was aware of the nature of its contents.

49. Section 58(1) focuses on the nature of the information which the defendant collects, records or possesses, rather than on the circumstances in which he does so. The description of the information is given in general terms: information will meet that description, irrespective of who might commit or prepare an act of terrorism and so be likely to find the information useful. It could be a third party or it could indeed be the defendant himself. So the offence is apt to catch someone who gathers the information and stores it with a view to passing it on to someone else who is preparing an act of terrorism. But, equally, it will cover someone who does these things with the intention of using the information himself to prepare an act of terrorism. Or else, the accused may have gathered and stored the information without having any clear idea of what he intends to do with it. None of this matters, since the legislation makes it an offence simply to collect, record or possess information of this kind. Parliament must have proceeded on the view that, in fighting something as dangerous and insidious as acts of terrorism, the law was justified in intervening to prevent these steps being taken, even if events were at an early stage or if the defendant's actual intention could not be established. At the same time, Parliament enacted section 58(3), which introduced the necessary element of balance by giving the accused a defence if, with the benefit of section 118, he proves that he had a reasonable excuse for doing what he did.

50. To summarise: in order to obtain a conviction under, say, section 58(1)(b), the Crown must prove beyond reasonable doubt that the defendant (1) had control of a record which contained information that was likely to provide practical assistance to a

person committing or preparing an act of terrorism, (2) knew that he had the record, and (3) knew the kind of information which it contained. If the Crown establishes all three elements, then it has proved its case against the defendant and he falls to be convicted - unless he establishes a defence under subsection (3).

*The Section 57 Offence*

51. Section 57 of the 2000 Act derives from section 16A of the Prevention of Terrorism (Temporary Provisions) Act 1989. The effect of that provision was considered by Lord Hope of Craighead in *R v Director of Public Prosecutions, Ex p Kebilene* [2000] 2 AC 326. What he said is relevant to the interpretation of section 57, even though section 57 is different from section 16A in certain material respects.

52. So far as section 57 itself is concerned, the elements of the offence are to be found in subsection (1). It is immediately obvious that the section covers the possession of far more things than could ever fall within the scope of section 58. While section 58 is concerned only with the possession of documents or records containing information, section 57 extends to the possession of any “article". This includes a substance and any other thing: section 121.

53. The first thing that the Crown has to establish under section 57(1) is that the defendant possessed the article in question. So the Crown must prove both that the defendant knew he had the article and that he had control of it. But, in the case of section 57, subsection (3) contains a provision which allows the court to assume that the defendant was in possession of the article in question if it was on any premises at the same time as the defendant or was on premises of which the defendant was the occupier or which he habitually used otherwise than as a member of the public. The court is not, however, able to make that assumption if the defendant adduces evidence to show that he did not know of the presence of the article on the premises or that he had no control over it. In that event, the court is to treat what that evidence contains as proved, unless the prosecution disproves it beyond reasonable doubt. See section 118(3)-(5).

54. Next, and crucially, the Crown must prove beyond reasonable doubt that the circumstances in which the defendant possessed the article gave rise to a reasonable suspicion that his possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism. So, in contrast to section 58(1), the circumstances of the defendant’s possession form one of the crucial elements of the section 57(1) offence.

55. It is unusual, but not unprecedented, for Parliament to create an offence of this kind, based on a reasonable suspicion as to the purpose behind a defendant’s possession. Section 57(1) is presumably modelled on section 4(1) of the Explosive Substances Act 1883, which provides:

“Any person who makes or knowingly has in his possession or under his control any explosive substance, under such circumstances as to give rise to a reasonable suspicion that he is not making it or does not have it in his possession or under his control for a lawful object, shall, unless he can show that he made it or had it in his possession or under his control for a lawful object, be guilty of felony, and, on conviction, shall be

liable to penal servitude for a term not exceeding fourteen years, or to imprisonment for a term not exceeding two years, and the explosive substance shall be forfeited."

Section 9 includes within the definition of "explosive substance", for example, apparatus used, or intended to be used, with any explosive substance. So the section would apply, for instance, to a timer. Under section 4(1) the Crown has to prove that the circumstances of the defendant's possession or control of an explosive substance are such as to give rise to a reasonable suspicion that he does not have it for a lawful object. In this context, "object" is synonymous with "purpose": *R v Berry* [1985] AC 246, 254D-E. It is not necessary for the Crown to go further and to prove what the accused's unlawful object was - which might well be impossible to establish. The defendant is then given a defence if he can show that, despite appearances, he actually had the substance in his possession or under his control for a lawful object. Similarly, under section 57(1) of the 2000 Act, the Crown does not need to prove what the accused's purpose connected with the commission, preparation or instigation of an act of terrorism actually was - something which might well be impossible to prove. It is enough if the Crown satisfies the court or jury, beyond reasonable doubt, that the circumstances give rise to a reasonable suspicion that the defendant's possession was for the relevant purpose. The defendant is then given a defence under subsection (2).

56. Most people have no lawful reason for having an explosive as such. On the other hand, they may have a perfectly good reason for having a timer. So, under section 4(1) of the 1883 Act, in practice, in the case of a timer, more is likely to be required to justify the reasonable suspicion that the defendant's possession was not for a lawful object than in the case of an explosive as such. Cf the reasoning of Lord Taylor of Gosforth LCJ on the proof of mens rea in *R v Berry (No 3)* [1995] 1 WLR 1, 13 B-C. The same will apply in the case of, say, a bag of fertiliser under section 57(1) of the 2000 Act, since many people have a perfectly good reason for having fertiliser. As Lord Hope of Craighead said of the predecessor of section 57(1) in *R v Director of Public Prosecutions, Ex p Kebilene* [2000] 2 AC 326, 387B-C, "It should not be thought that proof to this standard will be a formality."

*The overlap between Section 57(1) and Section 58(1)*

57. Obviously, the scope of section 57 is different from the scope of section 58 in a number of ways. First, section 57 applies only to possession, while section 58 applies also to collecting or making a record. Secondly, section 57 applies to the possession of any "article", widely defined. By contrast, section 58 applies to the collection of information of a certain kind and to the possession of a "document or record" containing that information.

58. Thirdly, precisely because section 57(1) covers any "article", the section only bites on the defendant's possession of the article in certain circumstances, viz "circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism." It is not the possession of the article as such which is criminal, but its possession in those particular circumstances. By contrast, section 58 is directed at information of a particular kind, viz, "information of a kind likely to be useful to a person committing or preparing an act of terrorism." So, while section 57 focuses on the *circumstances of the defendant's possession* of the article, section 58 focuses on the *nature of the information* which the defendant collects, records or possesses in a

document or record. Subject to the defence in section 58(3), the circumstances in which the defendant did these things are irrelevant. So, unless it amounts to a reasonable excuse under subsection (3), his purpose in doing them is irrelevant. In particular, there is nothing in the terms of section 58(1) that requires the Crown to show that the defendant had a terrorist purpose for doing what he did.

59. The definition of "article" in section 121 of the 2000 Act is wide enough to cover a document or record. And indeed, after the Act came into force, the Crown soon adopted the practice of charging defendants with possession of a document or record, contrary to section 57(1) or, alternatively, contrary to section 58(1). In *R v M* [2007] EWCA 298, however, the Court of Appeal held that documents or records to which section 58 applied could not fall within the differently drawn terms of section 57, since

"Parliament could not have intended that the regime for documents and records in section 58 could be sidestepped by using section 57 and describing them as articles. Section 58 is not redundant."

The point came before the Court of Appeal again in *R v Rowe* [2007] QB 975. The court held that, because certain assumptions made by the court in *R v M* had been wrong, it need not follow that decision. The court then went on to conclude that the decision in *R v M* had been wrong. Lord Phillips put the point in this way, at p 985, paras 34-36:

"34. There is undoubtedly an overlap between section 57 and 58, but it is not correct to suggest that if documents and records constitute articles for the purpose of section 57, section 58 is almost superfluous. Collecting information, which falls within section 58 alone, may well not involve making a record of the information. Equally a person who possesses information likely to be useful to a person committing or preparing an act of terrorism may well not be in possession of it for a purpose connected with the commission, preparation or instigation of an act of terrorism.

35. Sections 57 and 58 are indeed dealing with different aspects of activities relating to terrorism. Section 57 is dealing with possessing articles *for the purpose* of terrorist acts. Section 58 is dealing with collecting or holding information that is *of a kind likely to be useful* to those involved in acts of terrorism. Section 57 includes a specific intention, section 58 does not.

36. These differences between the two sections are rational features of a statute whose aims include the prohibition of different types of support for and involvement, both direct and indirect, in terrorism. There is no basis for the conclusion that Parliament intended to have a completely separate regime for documents and records from that which applies to other articles."

On this basis, the Court of Appeal held that the possession of a document or record could, in an appropriate case, fall within section 57 as well as section 58. The decision in *Rowe* was not challenged in the hearing before the House. It is plainly correct for the reasons which Lord Phillips gave.

*The operation of the defences under section 58(3) and under section 57(2)*

60. We turn now to consider the operation of the defence in section 58(3). At para

50 above we summarised the elements of the offence created by section 58(1). It is only where the prosecution has already proved all these elements, and so is otherwise entitled to a conviction, that the defendant needs to rely on the defence in section 58(3) in order to avoid conviction. If, applying section 58(3), the jury accept that the defendant had a reasonable excuse for possessing the material, then, because of that additional factor in the circumstances, he is entitled to be acquitted, *even though it remains the case that the Crown has proved all the necessary elements of the offence in terms of section 58(1)*. It necessarily follows that, if the jury do not accept the defence put forward by the defendant under section 58(3), the defence fails and their duty will be to convict him of the offence under section 58(1).

61. Mr McNulty contested that approach. Even though the defences in section 57(2) and section 58(3) are expressed in very different terms, they are similar in one particular respect, viz, that section 118(2) applies to both of them. For that reason Mr McNulty relied on authority dealing with section 57(2) as support for his submission that section 118(2) applied in relation to section 58(3) so as to produce the result for which he contended. It is therefore convenient to look first at section 57(2).

62. As already indicated in para 55, the need for the defence in section 57(2) only arises when the Crown has proved all the elements of the offence in section 57(1). Under subsection (2), it is a defence for the defendant to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism. So the jury must acquit the defendant, if they find this defence proved, *even though they are simultaneously satisfied beyond a reasonable doubt that the circumstances of his possession give rise to a reasonable suspicion that it was for a purpose connected with the commission, preparation or instigation of an act of terrorism*. In other words, the defendant has a defence when, despite any reasonable suspicion to the contrary, his possession of the article in question was not in fact for a purpose connected with the commission etc of an act of terrorism.

**Judgments - R *v* G (Respondent) (on appeal from the Court of Appeal Criminal Division)**
**R *v* J (Respondent) (on appeal from the Court of Appeal Criminal Division)**

---

HOUSE OF LORDS

SESSION 2008-09

REPORT

[2009] UKHL 13

*on appeal from:[2008] EWCA Crim 922 [2008]EWCA Crim 1161*

**APPELLATE COMMITTEE**

**R *v* G (Respondent) (on appeal from the Court of Appeal Criminal Division)**

**R *v* J (Respondent) on appeal from the Court of Appeal Criminal Division)**

**REPORT**

**Counsel**

***Appellant(G):***

**David Perry QC**

**William Hays**

***Appellant (J):***

**Mark Heywood**

**Ben Temple**

**(Instructed by Crown Prosecution Service)**

***Respondent(G)*:**

**Ian Leist**

**Emily Dummett**

***Respondent(J)*:**

**Lawrence McNulty**

**Peter Lownds**

**(Instructed by Smith Partnership (G),**

**Tuckers (J))**

***Hearing dates:* 24, 25 and 26 NOVEMBER 2008**

***ON***

**WEDNESDAY 4 MARCH 2009**

**REPORT**

**from the Appellate Committee**

**4 MARCH 2009**

**R *v* G (Respondent) (on appeal from the Court of Appeal Criminal Division)**

**R *v* J (Respondent (on appeal from the Court of Appeal Criminal Division)**

ORDERED TO REPORT

The Committee (Lord Phillips of Worth Matravers, Lord Rodger of Earlsferry, Baroness Hale of Richmond, Lord Brown of Eaton-under-Heywood and Lord Mance) have met and considered the cause *R v G (Respondent) (on appeal from the Court of Appeal Criminal Division)* and *R v J (on appeal from the Court of Appeal Criminal Division)* We have heard counsel on behalf of the appellants and respondent. The report has been prepared by Lord Rodger.

1. This is the considered opinion of the committee.

2. There are two appeals before the House which raise issues relating to the interpretation of section 58 of the Terrorism Act 2000 ("the 2000 Act"). Since some of the argument is based on a comparison between section 57 and section 58, it is convenient to begin by setting out the relevant parts of both.

3. Section 57(1)-(3) provides:

"(1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

(2) It is a defence for a person charged with an offence under this section to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism.

(3) In proceedings for an offence under this section, if it is proved that an article -

(a) was on any premises at the same time as the accused, or

(b) was on premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public,

the court may assume that the accused possessed the article, unless he proves that he did not know of its presence on the premises or that he had no control over it."

Subsection (4) originally provided for a maximum of 10 years imprisonment plus a fine on conviction on indictment, but this was increased to 15 years imprisonment by section 13 of the Terrorism Act 2006 ("the 2006 Act"). On summary conviction the maximum penalty is imprisonment for six months and a fine not exceeding the statutory maximum.

4. Section 58(1)-(3) provides:

"(1) A person commits an offence if-

(a) he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or

(b) he possesses a document or record containing information of that kind.

(2) In this section 'record' includes a photographic or electronic record.

(3) It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for his action or possession."

Subsection (4) provides for a maximum penalty of 10 years imprisonment plus a fine on conviction on indictment and a maximum penalty of six months imprisonment and a fine not exceeding the statutory maximum on summary conviction. Subsection (5) empowers the court, before which a person is convicted of a section 58 offence, to order the forfeiture of any document or record containing information of the kind mentioned in subsection (1).

5. Section 118(1)-(4) is important for the operation of both these sections. They provide:

"(1) Subsection (2) applies where in accordance with a provision mentioned in subsection (5) it is a defence for a person charged with an offence to prove a particular matter.

(2) If the person adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution prove s beyond reasonable doubt that it is not.

(3) Subsection (4) applies where in accordance with a provision mentioned in subsection (5) a court -

(a) may make an assumption in relation to a person charged with an offence unless a particular matter is proved, or

(b) may accept a fact as sufficient evidence unless a particular matter is proved.

(4) If evidence is adduced which is sufficient to raise an issue with respect to the matter mentioned in subsection (3)(a) or (b) the court shall treat it as proved unless the prosecution disproves it beyond a reasonable doubt."

By subsection 5(a), subsections (2) and (4) apply to sections 57 and 58 of the 2000 Act.

*The Facts of G's Case*

6. The first case concerns a Mr G who is awaiting trial in the Crown Court at Woolwich where he faces two counts of terrorism. The first is under section 5(1) of the

2006 Act. It alleges that between 13 April 2006 and 3 February 2007 Mr G was preparing to commit acts of terrorism. The second count, under section 58 of the 2000 Act, alleges that between 27 January 2005 and 3 February 2007 Mr G collected information of a kind that was likely to be useful to a terrorist.

7. In 2005 Mr G was sentenced, for a number of non-terrorist offences, to detention in a young offender institution for a period of three years six months. On 22 March 2006 he was released on automatic conditional licence, but on 26 March 2006 he was re-arrested under section 136 of the Mental Health Act 1983 and returned to detention. His licence was subsequently revoked. On 25 October 2006, he was transferred to an adult prison. During his time in detention, Mr G had converted to Islam.

8. In the current proceedings against Mr G, the prosecution case is that, while in custody, he collected and recorded information likely to be of use to a person committing or preparing an act of terrorism. The items which he collected include plans for making bombs, including a diagram of a pipe bomb, and various textbooks containing information relating to explosives. He made notes on how explosives could be manufactured and used. No explosives or viable explosive device or part of any explosive device were recovered from him. The Crown further alleges that Mr G drew a map of the Territorial Army Centre in Chesterfield and identified the location of the armoury there. He wrote down plans to attack the Centre and to kidnap the caretaker. Extremist material containing his observations on the waging of Jihad in Great Britain was also recovered from him.

9. The items in question were recovered during repeated searches of Mr G's cell accommodation at HMYOI Stoke Heath on 4 April and 10 August 2006, and at HMP Featherstone on 30 December 2006 and 23 January 2007.

10. Mr G was released from prison on 2 February 2007, but was immediately arrested and interviewed by police officers under caution in relation to these various items. In summary, the explanation which Mr G gave for collecting and recording the information was that he wanted to "wind up" the prison staff because they were provoking him. He said, "... so I wanted to wind them up and I know how this terrorism stuff ... really gets on their nerves...". He said that he left the material in his cell so that it could be found.

11. After the second interview it became apparent to the interviewing officers that Mr G was mentally ill and was not fit to be questioned further.

12. On 7 February 2007 Mr G was diagnosed as suffering from a paranoid psychosis or schizophrenia and on 12 June he was transferred to Ashworth Hospital under the provisions of the Mental Health Act 1983.

13. In a psychiatric report dated 7 November 2007, Dr Qurashi, a consultant forensic psychiatrist, concluded that Mr G is suffering from a severe and enduring mental illness, viz paranoid schizophrenia, which had not previously been diagnosed or treated. The Crown accepts that, in Dr Qurashi's opinion, Mr G collected and recorded the information in question as a direct consequence of his illness. In his

report Dr Qurashi said this:

"In summary [G's] account of the various documents found in his cell whilst on remand was to 'wind up' prison officers. He has consistently reported that he had no intention of committing acts of terrorism. When asked why he felt the need to antagonise prison officers he believes that [they] were 'whispering' about him. This is highly likely to be a psychotic experience, namely an auditory hallucination."

14. Dr L P Chesterman prepared a further psychiatric report dated 20 March 2008 at the request of the Crown Prosecution Service. It included the following passage:

"It would of course be a matter for a jury to determine [G's] intent. Whilst the presence of mental illness may be relevant to [G's] motivation for committing the alleged index offences, his mental illness would not have prevented him forming the necessary intent nor does Dr Qurashi express such an opinion."

15. On 18 January 2008 Calvert-Smith J ordered a preparatory hearing under the Criminal Procedure and Investigations Act 1996 to resolve whether evidence about Mr G's mental illness, and his motivations in light of it, was capable of amounting in law to a defence under section 58(3) of the 2000 Act. At the preparatory hearing on 8 February 2008, Pitchford J held that Mr G had no defence of reasonable excuse under section 58(3) and granted leave to appeal.

16. Five days later, on 13 February 2008, the Court of Appeal (Lord Phillips of Worth Matravers LCJ, Owen and Bean JJ) gave judgment in two appeals which are relevant for present purposes. In *R v Zafar* [2008] 2 WLR 1013, the Court dealt with the interpretation of section 57 of the 2000 Act, while in *R v K* [2008] 2 WLR 1026, the Court considered, first, the nature of the documents which fall within the section and, secondly, the scope of the defence of reasonable excuse under section 58(3).

17. As to the nature of the documents which fall within section 58(1), the Court said this in *R v K* [2008] 2 WLR 1026, 1031, paras 13 and 14:

"A document or record will only fall within section 58 if it is of a kind that is likely to provide practical assistance to a person committing or preparing an act of terrorism. A document that simply encourages the commission of acts of terrorism does not fall within section 58.

14. The provisions of section 2 of the 2006 Act, and in particular those of section 2(5), require the jury to have regard to surrounding circumstances when deciding whether a publication is likely to be useful in the commission or preparation of acts of terrorism. Contrary to [counsel for the Crown's] submissions, we do not consider that the same is true of section 58 of the 2000 Act. The natural meaning of that section requires that a document or record that infringes it must contain information of such a nature as to raise a reasonable suspicion that it is intended to be used to assist in the preparation or commission of an act of terrorism. It must be information that calls for an explanation. Thus the section places on the person possessing it the obligation to provide a reasonable excuse. Extrinsic evidence may be adduced to explain the nature of the information. Thus had the defendant in *R v Rowe* [2007] QB 975 been charged under section 58, evidence could have been admitted as to the nature of the

substitution code possessed by the defendant. What is not legitimate under section 58 is to seek to demonstrate, by reference to extrinsic evidence, that a document, innocuous on its face, is intended to be used for the purpose of committing or preparing a terrorist act."

18. The Court then went on to deal, at p 1031, para 15, with the scope of the defence of "reasonable excuse" in section 58(3):

"As for the nature of a 'reasonable excuse', it seems to us that this is simply an explanation that the document or record is possessed for a purpose other than to assist in the commission or preparation of an act of terrorism. It matters not that that other purpose may infringe some other provision of the criminal or civil law."

19. On 2 April 2008 a differently constituted Court of Appeal (Rix LJ, Henriques J and Sir Richard Curtis) heard Mr G's appeal and allowed it, but reserved judgment. On 29 April 2008 the Court held that it was bound by the decision in *R v K* concerning the defence of reasonable excuse, and so it would be a reasonable excuse if Mr G had collected the material to wind up the officers. The court, however, certified that three questions of law of general public importance arose. On 11 June 2008 the Appellate Committee granted the Crown leave to appeal.

20. We turn now to explain the circumstances in which the Crown's appeal in Mr J's case comes before the House.

*The Facts of J's Case*

21. Mr J is at present in custody awaiting trial at the Crown Court sitting at Birmingham. In terms of the amended indictment, Mr J faces six counts. On the first count he is charged with possessing articles for a purpose connected with the instigation, preparation or commission of an act of terrorism, contrary to section 57(1) of the 2000 Act. The particulars of that offence are given in these terms:

"[J], on the 15th day of December 2006, had in his possession an iPod portable digital media player containing an electronic torrent file entitled 'Military Training.torrent', a digital file (numbered 804) containing a document entitled 'How Can I Train Myself for Jihad?' and a digital file (numbered 1012) containing a document entitled '39 Ways to Serve and Participate in Jihad', a CD-ROM (identified as exhibit TAS/23, disk number 61) containing a digital file (identified as folder 14) entitled the 'Al Qa'eda Training Manual' and a Sony Ericsson mobile telephone containing a digital file containing a video recording of West Midlands Police Headquarters in circumstances which give rise to a reasonable suspicion that his possession of them was for a purpose connected with the commission, preparation or instigation of an act of terrorism."

The five other counts are of possessing records containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, contrary to section 58 of the 2000 Act. These refer to the five items covered by the first count: the Military Training.torrent file (count 2), the digital file entitled "Al Qa'eda Training Manual" (count 3), the digital file containing a document entitled "How Can I Train Myself for Jihad?" (count 4), the digital file containing a document entitled "39 ways to Serve and Participate in Jihad" (count 5) and the digital video file containing

moving images of the West Midlands Police Headquarters.

22. The prosecution case against Mr J is that, when arrested on 15 December 2006, he was in possession of a large quantity of digitally stored information, contained on his iPod digital music player, telephone, laptop computer and two collections of digital disks. A considerable quantity was of an extreme Islamist nature. Some of it was clearly of a kind likely to be useful to a terrorist in that it included the electronic "key", viz the torrent file, to a large library of bomb-making, guerrilla, poisons, chemical weapons, improvised weapons and other manuals, some with an express terrorist (as opposed to simply military) purpose, such as the Terrorist's Handbook and the disk containing the copy of the Al Qa'eda Training Manual.

23. In count 1 the prosecution case is that Mr J possessed the specified articles in circumstances which give rise to a reasonable suspicion that his possession of them was for a purpose connected with the commission, preparation or instigation of an act of terrorism. In the remaining counts the prosecution case is that Mr J had certain articles in his possession and they contained information that was of a kind likely to be useful to a person committing or preparing an act of terrorism.

24. In a defence statement dated 5 September 2007 Mr J set out the nature of his defence to each of the charges. He dealt specifically with the individual items under counts 2 to 6. So far as count 1 is concerned, he said that the presence of the files and video was not for any purpose connected with the commission, preparation or instigation of any act of terrorism held [sic] by himself or anyone else.

25. In respect of the Military Training.torrent file (count 2) Mr J said that he acquired it as a result of an internet search which he conducted in respect of military training, when speculating on alternative careers which he might pursue in the future. The search was conducted out of curiosity to learn the nature of the training he would have to undertake were he to return to his home country, the Gambia, and undertake a military career there. He went on to say that, when he downloaded the file, he was unfamiliar with the procedure for opening it and so he was never able to open it. He was therefore never aware of the exact content of the torrent file or the contents of the material to which it might afford access. For the avoidance of doubt, he denied that the file contained information likely to be useful to a terrorist, he was unaware of his possession of any information likely to be useful to a terrorist and he asserted that he had a reasonable excuse for possession of the file.

26. In respect of the digital file entitled "Al Qa'eda Training Manual" (count 3), Mr J said that on a number of occasions he purchased, or was given, material relating to Islamic religious, historic and current affairs. It was a tenet of his Islamic belief that followers were obliged to learn about their faith. The DVD was one such item and at the time of his arrest Mr J did not know its complete content and was not aware of a file entitled "Al Qa'eda Training Manual" or of its content. In this case also he stated for the avoidance of doubt that he was unaware of possessing any information likely to be useful to a terrorist and asserted he had a reasonable excuse for possessing the file.

27. So far as the digital file containing a document entitled "How Can I Train Myself for Jihad?" (count 4) is concerned, Mr J made the same kind of explanation as in relation to count 3, with the addition of a reference to a tenet of Islamic belief that all Muslims are obliged to participate in Jihad. The file was obtained pursuant to that

obligation and contained material of a theological nature relating to Jihad. He repeated the same points, for the avoidance of doubt, as in respect of count 2.

28. The nature of his defence to count 5 relating to the document entitled "39 ways to Serve and Participate in Jihad" was the same as the nature of his defence to count 4.

29. In relation to count 6, he had acquired a mobile phone with a video facility. Shortly afterwards, he was travelling on a bus and decided to test the phone's capability and so activated its video function. There were no signs to indicate that videoing was prohibited in the area and, indeed, the actual images captured were immaterial to him. For the avoidance of doubt, he denied that the file contained information likely to be useful to a terrorist, he was unaware of his possession of any information likely to be useful to a terrorist, he had a reasonable excuse for the creation and possession of the video and he had no way of knowing that he was committing an offence by videoing what he captured.

30. When interviewed by the police, Mr J answered "No comment" to all questions which were put to him.

31. On 12 December 2007 Mr J pleaded not guilty to all the counts on the indictment.

32. On 1 February 2008 Mr J invited the trial judge to give an indication as to sentence. The judge agreed, but allowed an adjournment for him to give instructions in person to his solicitors and counsel as to whether or not to enter guilty pleas.

33. On 7 February 2008 Mr J pleaded guilty to counts 2, 3, 4 and 6. Counts 1 and 5 were not disposed of, but the prosecution indicated that it proposed in due course to offer no evidence on count 1 and to invite the court to order count 5 to lie on the file on the usual terms. Sentence was adjourned until 25 February.

34. In the meantime, as already explained, on 13 February, the Court of Appeal handed down its judgment in *R v K*, dealing with the defence of reasonable excuse under section 58(3). Basing himself on that decision, Mr J applied to vacate his guilty pleas on the basis that he had received erroneous legal advice as to the ambit of the section 58 offence, particularly (but not exclusively) in relation to the defence of reasonable excuse. On 25 February the judge heard the application but reserved his ruling and directed that an affidavit be filed in respect of these matters. On 10 March an affidavit made by Mr J was filed and on 19 March the judge ruled that Mr J could vacate his guilty pleas. He directed that a preparatory hearing take place; Mr J was arraigned and pleaded not guilty to each of the four counts to which he had previously pleaded guilty.

35. At the invitation of the Crown, Judge Chapman ruled on a question of law formulated in these terms, under reference to *R v K*:

"For the purposes of the counts contrary to section 58 of the Terrorism Act 2000, in the event that the defendant raises evidentially in the trial that he had a reasonable excuse for his possession of one or more of the records of information referred to in the indictment, is it necessary for the prosecution to prove that his possession was 'for

a purpose … to assist in the preparation or commission of an act of terrorism'…?"

The judge answered the question in the affirmative and refused the Crown leave to appeal. He explained his answer in this way:

"I regard myself as bound by the decision of the Court of Appeal in *R v K* and it seems to me that the only way I can interpret that, because it is plain and simple language, is that the effect is that the Crown must prove that possession was for a purpose to assist in the preparation or commission of an act of terrorism. It is a conclusion that has resonance in common sense. Otherwise, if the Crown's argument is correct, whilst it may be possible for someone to demonstrate a reasonable excuse to (sic) possession of such items on the basis of academic or political research, counter-espionage, law enforcement, it certainly would not cover in the ordinary way curiosity, and it might have this consequence that people engaged in non-terrorist activities, who were in possession of articles which were likely to be useful to a person committing or preparing an act of terrorism, would be guilty of a terrorist offence. So we have the argument that a safe cracker reading his handbook on how to handle gelignite would be caught by a terrorist provision. The Court of Appeal seemed to be making it plain that a reasonable excuse for the purposes of this section of this Act encompasses not just the kind of excuse which would be a reasonable way of dealing with possession of an offensive weapon but extends to other activities which, of themselves, may infringe either criminal or civil law. The narrowing of the kind of documents caught by section 58 is no doubt designed to exclude things in ordinary circulation like maps, timetables, elementary books on chemistry, mobile phones, use of the internet, that sort of thing which might or could be of use to someone preparing to commit an act of terrorism, whether or not that was the intention. And the narrowing of the definition at paragraph 13 in the case of *R v K* seems to me not only common sense but what the Parliament must have intended."

**Man jailed for 30 years for terrorism offences**
18 March 2011


A former British Airways worker has been jailed for 30 years after supplying an international terrorist with information about airlines, which could be used to plot a terrorist attack.

Rajib Karim, 31, was jailed for engaging in conduct in preparation of acts of terrorism, terrorist fundraising and possessing a document likely to be of use to a terrorist.

Rajib Karim was convicted on 28 February at Woolwich Crown Court of five counts of engaging in conduct in preparation of terrorist acts contrary to section 5 (1) of the Terrorism Act 2006.

He was sentenced to 14 years, 20 years, 12 years, 20 years and 24 years imprisonment.

Offences for which a guilty plea was entered and sentences:

Fundraising for the purposes of terrorism contrary to section 15(3) of the Terrorism Act 2000 - three years imprisonment.

Possessing a document likely to be useful to a terrorist contrary to section 58 (i) (b) of the Terrorism Act 2000 - two years imprisonment.

Engaging in conduct in preparation of terrorist acts contrary to section 5 (1) of the Terrorist Act 2006 - six years imprisonment.

Engaging in conduct in preparation of terrorist acts contrary to section 5 (1) of the Terrorist Act 2006 - four years imprisonment.

All sentences are to run concurrently.

**Deputy Assistant Commissioner Stuart Osborne, Senior National Coordinator Counter Terrorism**, said:

"Today's sentence reflects the seriousness of the matters that were brought before the court. This is a man who was clearly engaged in preparation for acts of terrorism. Had he prolonged that preparation any further, the consequences could have been very dramatic.

"Rajib Karim was providing information that could help fulfil Anwar al-Awlaqi's intention of attacking the US or finding ways to get packages or people with explosive devices onto aircraft. The significance of that could have been quite immense, and could potentially have led to loss of life.

"Although Rajib Karim went to great lengths to disguise his activities, experts from the Metropolitan Police Service Counter Terrorism Command undertook a painstaking investigation process, decrypting a sophisticated series of coded electronic messages. This process took nine months and gave detectives access to a body of evidence which exposed Rajib Karim's terrorist activities and led to his conviction."

During the trial at Woolwich Crown Court, jurors heard that Rajib Karim arrived in the UK from Bangladesh in 2006 and deliberately set out to find a job that would be useful to him to plan terror attacks.

Having found work in the IT department of British Airways (BA) based in Newcastle in April 2007, Karim kept a low profile. But in the privacy of his own home, he was busy making violent propagandist videos for proscribed terrorist organisation Jamaat -ul Mujahideen Bangladesh (JMB).

Throughout this period, he also worked with his younger brother Tehzeeb Karim and other associates to raise funds for JMB, al-Qaeda and other terrorist organisations who were then involved in the insurgent activity in Iraq, in the border areas of Pakistan, Afghanistan and also in the Yemen.

In December 2009, Tehzeeb and two others travelled from Bangladesh to Yemen where they

successfully made contact with radical cleric Anwar al-Awlaqi, and the new division of al-Qaeda which had established itself there, known as al-Qaeda in the Arabian Peninsular (AQAP).

Tehzeeb put al-Awlaqi in touch with his brother Rajib prompting a frank exchange of messages between the radical cleric and the BA worker, as they contemplated how they could exploit Rajib's position within the airline company to launch a terrorist attack.

Rajib's response was honest, without exaggerating his importance. He volunteered information on how he could cause disruption to BA both operationally and financially, by attacking their computer servers, which he said would ground their entire fleet. He also offered to begin recruiting other people.

During the course of their correspondence, Karim told al-Awlaqi there may be an opportunity for him to train as cabin crew during an upcoming strike, which he was encouraged at once to take up. Although Karim filled out an online application form he was not eligible to join the cabin crew as he did not have five year's service.

Al-Awlaqi urged Karim to be patient, to stay in the UK while applying for his UK passport, and not to engage in any activity that would expose him to scrutiny as there was a longer term goal. He wrote: "Our highest priority is the US. Anything there even on a smaller scale compared to what we may do in the UK, would be our choice. So the question is, with the people you have, is it possible to get a package, or a person with a package on board a flight to the [US]...".

Rajib Karim was convicted on 28 February of five counts of engaging in conduct in preparation of acts of terrorism, contrary to section 5 of the Terrorism Act, following a trial at Woolwich Crown Court.

He pleaded guilty to a further two counts of engaging in conduct in preparation of acts of terrorism, alongside terrorist fundraising and possessing a document likely to be of use to a terrorist at earlier hearings.

**Four men charged with terrorism offences**
30 April 2012


Four men arrested in Luton last week by the Counter Terrorism Command have today, Monday 30 April, been charged with terrorism offences.

They will appear in custody at Westminster Magistrates' Court this afternoon.

[A] Zahid Iqbal, 30 (28.9.81) of Bishopscote Road, Luton,
[B] Mohammed Sharfaraz Ahmed, 24 (23.5.87) of Maidenhall Road, Luton,

[C] Syed Hussain, 21 (25.3.91) of Cornel Close, Luton,
[E] Umar Arshad, 23 (16.5.88) of Crawley Road, Luton,

have been jointly charged with:

On diverse days between 1 January 2011 and 25 April 2012 within the jurisdiction of the Central Criminal Court, Zahid Iqbal, Mohammed Sharfaraz Ahmed, Umar Arshad and Syed Farhan Hussain, with the intention of committing acts of terrorism, or assisting others to commit such acts, engaged in conduct in preparation for giving effect to that intention, namely:

i) facilitating, planning and encouraging travel overseas
ii) organising, encouraging and participating in physical training
iii) purchasing survival equipment
iv) downloading, researching and discussing electronic files containing practical instruction for a terrorist attack
v) discussing methods, materials and targets for a terrorist attack including firearms and improvised explosive devices
vi) collecting and supplying funds for terrorist purposes overseas

Contrary to section 5 (1) of the Terrorism Act 2006

[A] Zahid Iqbal is further charged alone with two offences contrary to section 58(1) (b) of the Terrorism Act 2000:

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Zahid Iqbal was in possession of documents or records containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely:

i) Complete Inspire Summer 1431/2010
ii) Inspire Fall 1431/2010
iii) Inspire 3 'Special Issue' November 1431/2010
iv) Inspire 4 Winter 1431/2010
v) Inspire March 2011 Spring 1431/2011/issue 5
vi) Inspire 6 Summer 1432/2011/issue 6

Contrary to section 58(1) (b) of the Terrorism Act 2000

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Zahid Iqbal was in possession of a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely 44 Ways to Support Jihad.

Contrary to section 58(1) (b) of the Terrorism Act 2000

[B] Mohammed Sharfaraz Ahmed is further charged alone with three offences Contrary to section 58(1) (b) of the Terrorism Act 2000:

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Mohammed Sharfaz Ahmed was in possession of a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely:

i) Complete Inspire Summer 1431/2010
ii) Inspire Fall 1431/2010
iii) Inspire 3 'Special Issue' November 1431/2010
iv) Inspire 4 Winter 1431/2010
v) Inspire March 2011 Spring 1431/2011/issue 5
vi) Inspire 6 Summer 1432/2011/issue 6

Contrary to section 58(1) (b) of the Terrorism Act 2000

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Mohammed Sharfaz Ahmed was in possession of a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely 44 Ways to Support Jihad.

Contrary to section 58(1) (b) of the Terrorism Act 2000

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Mohammed Sharfaz Ahmed was in possession of a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely 21 Techniques of Silent Killing.

Contrary to section 58(1) (b) of the Terrorism Act 2000

[C] Umar Arshad is further charged alone with four offences Contrary to section 58(1) (b) of the Terrorism Act 2000:

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Umar Arshad was in possession of documents or records containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely:

i) Complete Inspire Summer 1431/2010
ii) Inspire Fall 1431/2010
iii) Inspire 3 'Special Issue' November 1431/2010
iv) Inspire 4 Winter 1431/2010
v) Inspire March 2011 Spring 1431/2011/issue 5
vi) Inspire 6 Summer 1432/2011/issue 6
Contrary to section 58(1)(b) of the Terrorism Act 2000

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Umar Arshad was in possession of a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely 44 Ways to Support Jihad.

Contrary to section 58(1) (b) of the Terrorism Act 2000

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Umar Arshad was in possession of a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely 21 Techniques of Silent Killing.

Contrary to section 58(1) (b) of the Terrorism Act 2000

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Umar Arshad was in possession of a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely The Al Qaeda Manual.

Contrary to section 58(1) (b) of the Terrorism Act 2000

[E] Syed Farhan Hussain is further charged alone with four offences contrary to section 58(1) (b) of the Terrorism Act 2000:

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Syed Farhan Hussain was in possession of documents or records containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely:

i) Complete Inspire Summer 1431/2010
ii) Inspire Fall 1431/2010
iii) Inspire 3 'Special Issue' November 1431/2010
iv) Inspire 4 Winter 1431/2010
v) Inspire March 2011 Spring 1431/2011/issue 5
vi) Inspire 6 Summer 1432/2011/issue 6

Contrary to section 58(1) (b) of the Terrorism Act 2000

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Syed Farhan Hussain was in possession of a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely The Book of Jihad.

Contrary to section 58(1) (b) of the Terrorism Act 2000

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Syed Farhan Hussain was in possession of a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely 44 Ways to Support Jihad.

Contrary to section 58(1) (b) of the Terrorism Act 2000

- On 2 September 2011 within the jurisdiction of the Central Criminal Court Syed Farhan Hussain was in possession of a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely The Explosives Course 2.

Contrary to section 58(1) (b) of the Terrorism Act 2000

***Judgment: approved by the Court for handing down***
*(subject to editorial corrections)**

*Delivered:* **28/6/07**

**IN THE COURT OF APPEAL IN NORTHERN IRELAND**

_____

**THE QUEEN**

**-v-**

**ABBAS BOUTRAB**
**also known as YOCEF DJAFARI,**
**also known as ABBAS FAWWAZ,**
**also known as BRAHMIN ABAOU**

_____

**Before: Kerr LCJ, Campbell LJ and Higgins LJ**

_____

**HIGGINS LJ**

[1] At Belfast Crown Court before Weatherup J, sitting without a jury, Abbas Boutrab, also known variously as Yocef Djafari, Abbas Fawwaz and Brahmin Abaou, (the appellant) was convicted of Counts 1, 2 and 5 on Bill of Indictment 572/04. He was acquitted by direction of the Learned Trial Judge of Counts 3 and 4.

[2] Count 1 alleged possession of articles for a purpose connected with terrorism, contrary to Section 57(1) of the Terrorism Act 2000. The particulars of offence were that

> Abbas Boutrab (AKA Yocef Djafari, AKA Abbas Fawwaz, AKA Brahmin Abaoui), on 14 April 2003 in the County Court Division of Belfast had certain articles, namely 25 computer discs which contained text, photographs and diagrams in his possession in circumstances giving rise to a reasonable suspicion that the said items were in his possession for a purpose connected with the commission, preparation or instigation of an act of terrorism.

[3] Count 2 alleged collecting information likely to be useful to terrorists contrary to Section 58(1)(a) of the Terrorism Act 2000. The particulars of offence were that

> Abbas Boutrab (AKA Yocef Djafari, AKA Abbas Fawwaz, AKA Brahmin Abaoui), on a date unknown between the 7th day of October 2002 and 15th day of April 2003, in the County Court Division of Belfast, collected or made a record of information namely 25 computer discs of a kind likely to be useful to a person committing or preparing an act of terrorism.

[4] On Count 5 he was charged with having custody or control of a false passport in the name of Fabio Parenti contrary to Section 5(2) of the Forgery and Counterfeiting Act 1981. The appellant

does not appeal against his conviction on Count 5, but appeals against his conviction on Counts 1 and 2 on grounds which will be referred to later in this judgment.

[5] On 8 April 2003 members of the Police Service of Northern Ireland attached to the Foreign National Unit visited a flat at Whitehouse Court, Newtownabbey, County Antrim. They spoke to the occupier of Flat 2E, the appellant, who identified himself as Abbas Boutrab, an Algerian national who was seeking asylum in the United Kingdom. Police were suspicious of the identity of the appellant and further enquiries led them to believe that he was wanted by Garda in the Republic of Ireland under the name of Yocef Djafari, an Algerian national who had applied for asylum in the Republic of Ireland. A search warrant was obtained under the Immigration Act 1971 and on 14 April 2003 the same members of the Foreign National Unit together with Immigration Officers and other police conducted a search of the flat 2E. Twenty floppy discs and 5 compact discs (the subject of Counts 1 and 2) were found in a chest of drawers beside the bed. Other items including a mobile phone, the false passport in the name of Fabio Parenti, an identification card that included a photograph, an Italian cash card and Inland Revenue documents were seized. Also seized were a Belfast City library card in the name of Abbas Boutrab, two notebooks and various handwritten notes, a London underground ticket and three passport sized photographs. The appellant was arrested under Section 24 of the Immigration Act 1971 as he was suspected of being in the United Kingdom illegally and was taken to Antrim Road Police Station. On 11 June 2003 a further search was undertaken at the appellant's flat. Further items were seized. These included a vehicle and engine manual in English, a Jiujitsu combat manual in English, various handwritten notes, a personal cassette player and various items of tools and equipment. On 3 November 2003 at HMP Maghaberry the appellant was arrested under Section 41 of the Terrorism Act 2000. From 3 November 2003 to 9 November 2003 he was interviewed in the presence of his solicitor and an interpreter. On 9 November 2003 he was charged with various offences to which he replied "I am not guilty".

[6] The substance of the case relied on by the prosecution on Counts 1 and 2 was that the contents of the floppy discs had been downloaded by the appellant from a computer in the Belfast Central library and that they contained information in connection with the making and use of explosives for attacks on aircraft and the manufacture of silencers for firearms. The prosecution alleged that in all the circumstances this indicated a terrorist purpose. Examination of the 20 floppy discs and the 5 compact discs revealed a number of document files written in Arabic one of which was password protected. These files, identified as MAS2 to MAS8, were extracted and compiled on a compact disc and translated into English. The English versions were identified as MA2 to MA8 and were summarised. The findings of the Learned Trial Judge relating to these files were set out at paragraph 9 of his judgment. He said –

> "The translator's summary of MAS2 stated that it consisted of a document on how to make improvised detonators which can be admitted undetected on to an aircraft with the intention to blow it up. The English text in MA2 bears the title "In the Name of God the Merciful the Compassionate" and under the heading "Making Detonators" sets out a number of photographs with related instructions. The first photograph appears to show the inner parts of a camera, with a component known as a capacitor removed from its housing. As the evidence was to establish, a capacitor is an electrical component that stores energy. The text refers to the capacitor as an item found within the flash circuit of photographic cameras. The text states that such an instrument, which can be utilised to make an electric blasting detonator, can be accessed on to aircraft without suspicion. There then follows photographs and text which describe the removal of the capacitor from the circuit using a soldering iron, the removal of the paper filling from the capacitor, the filling of the

> capacitor with three substances required to make a detonator (booster – initiator – igniter) and the resealing of the capacitator. There then follows detailed notes and instructions relating to a team of people carrying items on to an aircraft, with the items to be assembled and detonated by one of their number in the toilet of the aircraft. The document concludes "This operation is to be carried out in African airports or poor countries who do not care or where there are no modern explosive detectors and it is God who grants success."

[7] The summary of MAS3 stated that it consisted of a document showing a diagram of a silencer with details on how it operated. The English text in MA3 contains an explanatory figure for the internal components of a silencer involving an outer tube, an inner tube, the use of freeze plugs fixed by screws and rubber pieces obtained from rubber door stoppers.

[8] The summary of MAS4 stated that it consisted of Part I of a document on how to make improvised firearm silencers illustrated by a diagram. The English text in MA4 is headed "The Manufacturer of Silencers Part I" and sets out in photographs and text an aluminium tube fixed to a vice, the measuring and marking and drilling of holes in the tube and the use of freeze plugs and rubber parts from doorstoppers.

[9] The summary of MAS5 stated that it consisted of Part II of a document on how to make improvised firearm silencers illustrated by diagrams. The English text in MA5 has the heading "This is Part II of the Manufacture of Silencers, which is Supplementary to Part I" and shows the fitting of the rubber pieces from the doorstoppers and the use of the freeze plugs. This includes the advice that, as plugs must be bored carefully in the middle and this can only be done with a lathe to determine the middle of the plug, three plugs should be taken to a turner with the excuse that the user had a data press that was being repaired. Further, it was advised that a number of turners should be visited so as not to arouse suspicion and that lying was permissible as there was a state of war. The comment is added that those who do not like what the author is saying should be hit over the head with the silencer to wake them up, and as Colin Powell had called the army invading Iraq the occupying army "what are you waiting for."

[10] The summary of MAS6 stated that it consisted of a document on how to make improvised silencers for MI6 and Kalashnikov rifles illustrated by diagrams. The English text in MA6 contains diagrams and text illustrating the fitting of a silencer to an M16 or a Kalashnikov.

[11] The summary of MAS7 stated that it consisted of a document containing a continuation on how to make improvised silencers. The English text in MA7 contains further directions on the use of freeze plugs in the making of a silencer.

[12] The summary of MAS8 stated that it consisted of a document containing what seemed to be a course or manual on the manufacture of explosives, which included mercury fulminate, lead azide, silver azide, petric acid, tetryl, cyclonite, RDX, TNT, C4, C5, hexolite, TNT plus tetryl, a plastic explosive, a number of explosive mixtures, fuses and electric and non-electric detonators. The English text in MA8 states that it contains "A Course in the Manufacture of Explosives. For the Fighter Group Champions of Truth. Until the Will of God be Done. Prepared by Ibnul-Islam Seeking God's Forgiveness". The cover sheet states "In the name of the God the Merciful the Compassionate. May blessing and peace be upon the leader of Mujahideen. The Islamic Information Centre presents Equipment Of Those Longing For The Lord of the Worlds". The text sets out methods of preparation for initiating substances and boosting substances and explosive substances and notes on fuses and detonators.

[13] A Principal Scientific Officer at Forensic Science Northern Ireland examined the documents MA2 to MA8 and concluded that the information contained within them was clear, understandable, easy to follow and viable. At paragraph 31 of his judgment the Learned Trial Judge referred to the evidence of the Principal Scientific Officer that –

> Using the information a range of explosives could be produced from relatively readily available materials and some of the more sensitive explosives could be used in the construction of improvised detonators.

[14] Tests were carried out to verify the viability of the information contained in the files. These established that an explosive device could be created and that a workable silencer could be manufactured by following the instructions contained in the files. The Learned Trial Judge expressed himself as 'satisfied as to the viability of the information contained in the documents produced from the discs'.

[15] The documents relating to the silencer were examined by a Senior Scientific Officer at Forensic Science Northern Ireland. He stated that, in general, the instructions were capable of being followed without difficulty, except for slight changes in the methodology and materials, the meaning of which had probably been corrupted in translation. Using the documents a home-made silencer was produced at the laboratory. This was tested using a Colt M16 and resulted in significant sound reduction.

[16] The tools and equipment found in the appellant's flat included a drill, an oil can, ear defenders, a stethoscope, a magnet and magnetic holders, circlip pliers, a tyre pressure gauge, a circuit tester pen, a tool roll of small files, a plastic holder containing screwdriver heads and dies, a bench vice, an adjustable jubilee clip, a clutch plate puller and an adjustable bolt. Comparisons were made between the tools found and items referred to in the documents extracted from the floppy discs. The cassette player was examined for association between the cassette player and some of the tools and equipment, but none was found.

[17] The cassette player, which was damaged, was examined by a Senior Scientific Officer at Forensic Science Northern Ireland. It was found to have been opened and the back plastic casing separated from the front plastic casing and the electronic circuit board removed. The electronic circuit board was broken into four pieces and four components had been removed from the circuit board, namely radial type capacitors which were probably electrolyte capacitors. The capacitors were cylindrical and approximately 5 to 15 millimetres in length and 4 to 10 millimetres diameter with two leads protruding from the base and had values of 220 micro-farads, 100 micro-farads and 47 micro-farads. They were described as being the same type of capacitor as those referred to in MA2.

[18] The defendant did not give evidence, but challenged several aspects of the prosecution case, in particular, the provenance of various items in the documents extracted from the computer discs. However the Learned Trial Judge was satisfied that the items produced came from the appellant's flat and that the documents produced originated in the computer discs. The Learned Trial Judge then analysed the ingredients of the offences alleged in Sections 57(1) and 58(1)(a). He commenced his conclusions at paragraph 85 and said –

> "[85] For the purposes of the two offences under the Terrorism Act I am satisfied that the discs produced to the Court were those recovered from the defendant's flat and the contents of the discs produced to the Court represented the contents at the time the discs were recovered from the defendant's flat.
>
> [86] For the purposes of the charge under section 57 I am satisfied on the first issue that the defendant was in possession of the discs. I proceed to consider whether I am satisfied on the second issue that the defendant was in possession for a terrorist purpose. The prosecution rely on the circumstances discussed above to establish the defendant's terrorist purpose, namely the contents of the documents produced from the discs, the viability of the contents, the possession of the tools and equipment, the use of aliases, the contents of the documents recovered from the defendant's flat, the contents of the mobile phones, and the contents of the interviews.

[87] The contents of the documents produced from the discs contained not merely a menu for the manufacture of explosives or silencers. Counsel for the defendant objected to the contents of the documents being treated as evidence of terrorist purpose. There are passages in the documents that provide a religious and political and terrorist context for the preparation and use of the explosives and the silencers. I am satisfied that the contents of the discs included material that would advance a terrorist purpose, namely the manufacture and use of an explosive device and the construction of a silencer for a firearm. I am satisfied from the contents of the discs that the material on the discs was intended by the authors to be used for terrorist purposes, and that it advocated such terrorism in the name of Islam, although I do not regard the evident purpose of the authors as evidence of the purpose of the reader. I do however regard the contents as evidence of terrorist purpose.

[88] Access to the contents was limited as the defendant did not have a computer in his flat. He stated that he had only skimmed the documents at the time of downloading and there was no evidence of the defendant having access to the documents at other times or of having printed copies of the documents. Further it is the case that the part of the contents of the documents dealing with explosives promotes suicide bombing and the part dealing with the use of silencers involves a means of attack that would contemplate the escape of the perpetrator. Terrorism may take many forms and I do not find it to be a contraindication of terrorist purpose that there is possession of material that includes such different projects. In addition the contents relating to the explosives material give instructions that the attack be carried out in Africa or where there are no modern detectors at airports, but terrorist explosives attacks need not be limited to aircraft.

[89] I am satisfied as to the viability of the information contained in the documents produced from the discs. The tests carried out on the basis of the instructions establish that an explosive device can be created and that a workable silencer can be manufactured by following the instructions. That there were details not included in the instructions and that the inexperienced operative might not have completed the manufacture of the explosives and the silencer to the standard achieved in the forensic tests does not diminish the viability of the instructions. However viability is not evidence of terrorist purpose.

[90] The tools and equipment acquired by the defendant coincided in some respects with the equipment referred to in the instructions contained in the documents produced from the discs. Many items acquired by the defendant would have had a use for DIY, and some instances of DIY undertaken by the defendant were confirmed, or they would have had a use for a motor mechanic. I am not satisfied that the defendant's possession of the items recovered in itself is evidence of terrorist purpose.

[91] There were many items of equipment and ingredients required by the instructions that had not been acquired by the

> defendant, and there was no item recovered that demonstrated the completion of the preparatory stages in the construction of an explosive device or a silencer.
> [92] The cassette player recovered from the defendant had four capacitors missing. The defendant denied that he had removed those parts and claimed that he had found the broken Walkman and retained it to use other unspecified parts. A capacitor is a key ingredient of the instructions on the manufacture of the explosive device. It is beyond the bounds of credibility that the defendant should have possession of instructions on the manufacture of an explosive device with the use of a capacitor from a camera and also that the defendant should find a cassette player from which capacitors had already been removed. I am satisfied that this cannot be coincidence and that the defendant acquired the cassette player and removed the capacitors.
> [93] The defendant used a number of aliases. I am satisfied that he applied for asylum under different names in Holland and the Republic of Ireland and Northern Ireland. He acquired and made use of false identity documents in Holland and the Republic of Ireland and in Northern Ireland. I am satisfied that the defendant, known as Abbas Boutrab, used the four aliases discussed above. He claimed through his solicitor that he used the false identity documents in order to facilitate a drifter lifestyle. I am not satisfied that he voluntarily lived a drifter lifestyle. He moved from one country to another when he was liable to be detained by the authorities. In those circumstances a new identity would have facilitated his movement from one country to another. I am not satisfied that the use of aliases in itself is evidence of terrorist purpose."

[19] In relation to the count alleging possession of articles for a purpose connected with terrorism contrary to Section 57(1) of the Terrorism Act 2000 (Count 1) the Learned Trial Judge concluded at paragraph 104 –

> "[104] Taking account of the matters discussed above, I am satisfied on the basis of the contents of the documents produced from the discs recovered from the defendant, and of the recovery of the cassette player with the missing capacitors, that the defendant possession of the discs was for a terrorist purpose. I am satisfied that he had acquired a cassette player and removed the capacitors. I reject his explanation for the absence of the capacitors from the cassette player. I am satisfied that his possession of the material was not out of curiosity but was for a terrorist purpose under section 57(1)."

[20] In relation to the count alleging collecting information likely to be useful to terrorists contrary to Section 58(1)(a) of the Terrorism Act 2000 (Count 2) the Learned Trial Judge concluded at paragraph 109 –

> "[109] For the purposes of the charge under section 58(1)(a) I am satisfied that the defendant collected the information on the discs and that it was likely to be useful to a terrorist. As I am satisfied that the defendant had possession of the information for a

terrorist purpose I am satisfied that he had no reasonable excuse for collecting the information for the purposes of section 58(1)(a)."

[21] Accordingly the appellant was found guilty of both Counts 1 and 2 in the indictment.

[22] The grounds of appeal, amended at hearing, were –

"1. That the conviction of the Defendant on the charge of possession of articles, namely 25 computer discs, for a purpose connected with terrorism, contrary to section 57(1) of the Terrorism Act 2000 is unsafe and unsatisfactory for the following reasons:

a) while the Appellant accepts that computer discs were removed from his premises by Police on 14th April 2003, the absence of forensic integrity in relation to the control and movement of the discs thereafter by the Police Service of Northern Ireland was such that the Learned Trial Judge was wrong to conclude (as he did at paragraph 85 of his Judgment) that he was satisfied beyond a reasonable doubt that computer discs presented to the Court by the Crown at trial were the computer discs of the Appellant and that their content as presented in evidence was the content of the discs as found in the Appellant's flat on 14th April 2003.

b) In the alternative, if the Learned Trial Judge was correct in finding on the issue of possession of the computer discs, the Learned Trial Judge was wrong to conclude that the Appellant had possession of those discs, and their contents, for a purpose connected with terrorism (see paragraph 104 of the Judgment). In particular:

i) the Learned Trial Judge was wrong to conclude that the evidence in relation to the absence of capacitors from a cassette player recovered from the Appellant's premises was reliable;

ii) the Learned Trial Judge was wrong to conclude that the Appellant has removed any capacitors from the cassette player. There was no evidence before the Court that this was so;

iii) even if the findings of the Learned Trial Judge at (i) and (ii) above were appropriate findings of fact, the Learned Trial Judge was wrong to conclude that missing capacitors from a cassette player was evidence of a terrorist purpose of the Appellant;

iv) the finding of the Learned Trial Judge implicit from paragraph 92 of his Judgment, that there was a terrorist significance associated with the removal of the capacitors from a cassette player, was wholly against the weight of the evidence, and in particular the evidence of Ian William Fulton, Forensic Scientist;

c) If the Court is satisfied that the evidence in relation to possession was reliable, the Learned Trial Judge was wrong to conclude that there was other evidence supportive of the Appellant's guilt as set out in paragraphs 105 to 108 of his Judgment. In particular:

i) while it is accepted that a lie may be relied on as evidence supportive of guilt, there was no evidence before the Court from which the Learned Trial Judge could ever have come to the conclusion that the Appellant had lied during his interview with the Police about the circumstances by which he came to have possession of the cassette player or its condition at the time that he took possession of it;

ii) there was no evidence to support the finding of the Court that the Appellant in any way tampered with the cassette player or removed any part thereof;

iii) the Learned Trial Judge was wrong to conclude that the evidence of the Appellant's possession of certain tools and equipment was in any way supportive of the Appellant's guilt under section 57(1) of the Terrorism Act 2000;

iv) the Learned Trial Judge was wrong to conclude that the use of aliases by the Appellant was in any way supportive of the Appellant's guilt under section 57(1) having regard to the evidence of the Immigration Police witnesses called on behalf of the Crown and Nathalie Caleyron, a witness called on behalf of the Appellant.

v) the Learned Trial Judge was wrong to conclude that any lie told by the Appellant during the course of interview in relation to his use of aliases previously was in any way supportive of the Appellant's guilt under section 57(1).

d) The conviction of the Appellant was against the weight of the evidence.

2. That the Conviction of the Appellant of collecting information likely to be of use to terrorists contrary to section 58(1) of the Terrorism Act 2000 was unsafe and unsatisfactory for the following reasons:

a) the Learned Trial Judge was wrong to conclude that the Appellant had collected information forming the content of the discs and had stored the information on the computer discs presented to the Court by the Crown;

b) In the alternative, if the Learned Trial Judge was correct in holding that the Appellant had collected information and stored same on the discs presented to the Court, the Learned Trial Judge was wrong to conclude that the Crown had established beyond a reasonable doubt that the Appellant had collected the information contained on the discs without reasonable excuse;

c) The Conviction of the Appellant was against the weight of the evidence.

3. The conviction of the Appellant on the offence of being in possession of articles in circumstances giving rise to a reasonable suspicion that the items were in his possession for a purpose connected with the commission, preparation or instigation of an act of terrorism contrary to section 57(1) of the Terrorism Act 2000 is unsafe for the following reasons:

a) given the nature of the criminality alleged in respect of the conviction under Section 57(1) and the nature of the criminality alleged in respect of the conviction under Section 58(1)(a) the Learned Trial Judge should have required to prosecutor to elect between the offences and/ or should not have convicted the Appellant in respect of both offences

b) and in any event given the nature of the criminality alleged the charge under section 58(1)(a) was the more appropriate

4. The conviction of the Appellant on the offence of collecting information likely to be of use to a person committing or preparing an act of terrorism contrary to section 58(1)(a) of the Terrorism Act 2000 is unsafe for the following reason :

a) the Learned Trial Judge erred in deciding the question of whether the information was likely to be of use to terrorists solely by reference to the viability of the information , and in thereby deciding that the information of a kind likely to be of use to any terrorist

b) the Learned Trial Judge erred in determining that the Appellant had a relevant 'terrorist purpose' in that he failed to distinguish between the relevant elements of Section 58 as against Section 57 of the Terrorism Act 2000."

[23] At the commencement of the appeal Mr B Macdonald QC who, with Mr Hutton, appeared on behalf of the appellant, stated that it was not disputed that the appellant was in possession of the articles, the subject of Count 1 contrary to section 57(1), nor was it disputed that he collected the information, the subject of Count 2 contrary to Section 58(1). In this event he acknowledged that paragraphs 1(a) and 2(a) of the Grounds of Appeal were no longer relevant. The grounds on which the appeal was brought were therefore summarised by Mr Macdonald as –

i. that the Learned Trial Judge should have withdrawn the Count alleging an offence contrary to section 57 as an offence contrary to section 58 was the correct charge;

ii. that the Learned Trial Judge adopted the wrong approach to section 58;

iii. that the prosecution failed to prove a terrorist purpose; and

iv. that the prosecution had failed to disprove a reasonable excuse in relation to count 2 and that the Learned Trial Judge wrongly relied on the matters that were or were held to be proved namely that the appellant was in possession of the computer discs for a terrorist purpose as negativing reasonable excuse.

i. Section 57 or Section 58.

[24] The twenty five computer discs represented the subject matter of both Count 1 contrary to Section 57(1) and Count 2 contrary to Section 58(1). It was submitted by Mr Macdonald QC that an offence is committed under Section 57(1) where a person has in his possession articles in circumstances which give rise to a reasonable suspicion etc., whereas a person commits an offence under Section 58(1) where he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism. Thus, he submitted, Section 57 is concerned with articles and Section 58 with information. The twenty five computer discs contained information and it was the nature of the information stored in them that, allegedly, gave them a sinister nature, not their description as computer discs. Thus the appropriate charge related to the information contained in them and not their character as computer discs and therefore the appropriate charge was an offence contrary to Section 58(1) and not Section 57(1). It was submitted the Learned Trial Judge should have required the prosecution to elect which of the two charges to pursue. Such an approach was endorsed in *R. v M, Z, I, R, and B* 2007 EWCA 218. In that case the defendants had been charged with offences contrary to section 58(1). Following submissions made at committal proceedings the prosecution added offences contrary to Section 57(1) in respect of the same subject matter. At their trial preliminary rulings were sought from the Recorder of London that the assumed facts did not constitute an offence against Section 57(1). The Recorder ruled against that submission but gave leave to appeal before the trial commenced. The question for the Court of Appeal was – 'Is data electronically stored on compact discs or computer hard drives capable of being an 'article' for the purposes of Section 57'. Mr Macdonald relied on paragraph 36 of the judgment of the Court where Hooper LJ said: –

"It is apparent from the wording of the two sections and their juxtaposition that Parliament has laid down a different regime for documents and records and intended so to do. For the purposes of section 58 possession of a document of a kind likely to be useful to a person "instigating" an act of terrorism is not enough (unless, of course, the document is also of a kind likely to be useful to a person "committing or preparing" an act of terrorism"). Parliament has not chosen to

use the "diffusely drawn terms" of section 57 (to adopt the words of Mr Edis in describing section 57) when the making or possession of documents or records is in issue. Mr Edis rightly submitted that legislation can and often does create overlapping offences. But Parliament could not have intended that the regime for documents and records in section 58 could be sidestepped by using section 57 and describing them as articles. Section 58 is not redundant."

[25] Mr Macdonald QC also relied on the linguistic canon of construction g*eneralibus specialia derogant* as explained in Bennion on Statutory Interpretation 4th Edition at page 998. The learned author states –

Where the literal meaning of a general enactment covers a situation for which specific provision is made by some other enactment within the Act or instrument, it is presumed that the situation was intended to be dealt with by the specific provision. …It is presumed that the general words are intended to give way to the particular.

[26] Mr Kerr QC, who with Mr Magill appeared on behalf of the Crown, submitted that the literal and plain interpretation of Section 57 should be applied. He submitted that if the subject matter was an article (within Section 57) and if it could be shown that possession of it was in suspicious circumstances and for a purpose connected with the commission, preparation or instigation of an act of terrorism, then the offence was made out. He noted the concession made by prosecuting counsel in *R. v M and Others* that section 57 had never been used to ground a charge for the making or possession of documents. He submitted that this was not the experience in this jurisdiction and referred to *R. v O'Hagan* [2004] NICC 17, in which the defendant was found guilty of an offence contrary to Section 57 where the article was a computer which had been accessed for information from the hard drive and where the information recovered from the hard drive was the essence of the charge.

[27] Section 57 of the Terrorism Act 200 provides –
"57. - (1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

(2) It is a defence for a person charged with an offence under this section to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism.

(3) In proceedings for an offence under this section, if it is proved that an article-

(a) was on any premises at the same time as the accused, or

(b) was on premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public,

the court may assume that the accused possessed the article, unless he proves that he did not know of its presence on the premises or that he had no control over it."

[28] Section 58 of the Terrorism Act 2000 provides -
"58. - (1) A person commits an offence if-

(a) he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or

(b) he possesses a document or record containing information of that kind.

(2) In this section “record” includes a

photographic or electronic record.

(3) It is a defence for a person charged

with an offence under this section to prove

that he had a reasonable excuse for his

action or possession.”

[29] Sections 57 and 58 of the Terrorism Act create different offences covering acts preparatory to the commission of an act of terrorism. Section 57 is concerned with possession in circumstances that give rise to a reasonable suspicion that it is for a purpose connected with the commission, preparation or instigation of an act of terrorism. Section 58 creates several offences relating to information. These include collecting information, making a record of information, and possessing a document or record containing information. In each instance the information must be of a kind likely to be useful to a person committing or preparing an act of terrorism. A person may collect information but not necessarily record it. A Section 57 offence involves possession by a person in suspicious circumstances where his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism. A person possessing a document or record containing information of a kind likely to be useful to a person committing or preparing an act of terrorism may not possess it in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism. There is no reason to suppose that in creating this distinction Parliament intended that a person possessing an electronic record containing information likely to be useful to a terrorist could only be charged under section 58 or, if charged under section 57, could not also be charged under section 58. Therefore there was no reason for the Learned Trial Judge to require the prosecution to select the charge on which to proceed. Nor was there any reason that the judge was required to convict on one only but not both.

[30] Following the hearing of this appeal counsel brought to the attention of the court a decision of the Court of Appeal in England and Wales in *R.v Rowe 2007 EWCA Crim 635* and leave was granted for further submissions to be made. This was an appeal against two convictions for possession of articles contrary to section 57 of the Terrorism Act 2000. The article the possession of which was the subject of the first count was a W.H. Smith notebook containing manuscript notes that included instructions on how to assemble and operate a mortar. The article the possession of which was the subject of the second count was a substitution code, found in a video case. This code set out a list that included articles or places, each bearing a code that consisted of a particular model of mobile phone. The articles included components of explosives. The places included the type of venue susceptible to terrorist bombing, such as 'airport' and 'army bases'. The list also included 'Target 1, Target 2, Target 3. There was a second list of countries, 'Bosnia, Poland, Romania, Bulgaria, Albania, Czechoslovakia, Hungary and Yugoslavia', against each of which was an English county, by way of code. The appellant

accepted that he was in possession of each item and the notes in the notebook were in his handwriting, as were the codes. The prosecution case was that each item was held for a terrorist purpose. The appellant gave innocent explanations for the possession of each. It was submitted that the appellant should have been prosecuted under section 58 as the mortar notes and substitution codes were not articles for the purposes of section 57. This led to a consideration of the decision in *R. v M & others*. In giving the judgment of the Court the LCJ referred to the House of Lords decision in *R. v Kebeline 2000 AC 326* in which charges under section 16A of the Prevention of Terrorism Act were under consideration (possession of articles for a purpose connected with the commission, preparation or instigation of acts of terrorism). The charges related to possession of a quantity of documents, cards, money and books for terrorism purposes. Reference was also made to section 16B which related to collecting or recording information or possession of records or documents of a nature likely to be useful to terrorists in planning or carrying out acts of terrorism. At page 336 paragraph 31 Lord Bingham said this about section 16A and 16B –

> "Both sections, it is clear, have grown as a response to Irish terrorism, although the application of those sections has now been extended. They are directed not to unlawful possession of explosives or firearms, both of which may be the subject of prosecution without resort to these sections, but to the possession of articles and items of information innocent in themselves but capable of forming part of the paraphernalia or operational intelligence of the terrorist."

[31] In *R.v Rowe* the LCJ commented on this stating -

> 32. We would make a number of points:
> i) This was an example of a predecessor to section 57 of the 2000 Act being used in relation to the possession of documents and records. We would add that apart from the present case there are a number of other instances of prosecutions being brought under section 57 in relation to documents or records.
>
> ii) It did not occur to anyone in Kebilene that a charge under section 16A could not be brought in respect of documents.
> iii) In re-enacting equivalent provisions in the 2000 Act Parliament can be assumed to have intended that the sections should have the scope that their predecessors had been accepted to have.

He concluded that important assumptions had been made in *R. v M & Others* which were wrong and that the court was not bound by that decision. In relation to sections 57 and 58 he said –

> 34. There is undoubtedly an overlap between section 57 and 58 , but it is not correct to suggest that if documents and records constitute articles for the purpose of section 57, 58 is almost superfluous. Collecting information, which

falls within section 58 alone, may well not involve making a record of the information. Equally a person who possesses information likely to be useful to a person committing or preparing an act of terrorism may well not be in possession of it for a purpose connected with the commission, preparation or instigation of an act of terrorism.

35. Sections 57 and 58 are indeed dealing with different aspects of activities relating to terrorism. Section 57 is dealing with possessing articles for the purpose of terrorist acts. Section 58 is dealing with collecting or holding information that is of a kind likely to be useful to those involved in acts of terrorism. Section 57 includes a specific intention, section 58 does not.

36 These differences between the two sections are rational features of a statute whose aims include the prohibition of different types of support for and involvement, both direct and indirect, in terrorism. There is no basis for the conclusion that Parliament intended to have a completely separate regime for documents and records from that which applies to other articles.
37 For these reasons we have concluded that the decision in *R v M,Z,I,R & B* was based on false assumptions and false analysis and that it was wrong. Does the guidance to be derived from Simpson indicate that we should not follow it?

38 There is an important difference between this case and Simpson . The court has certified a point of law of general public importance. We, if asked, would do the same. If we felt compelled to follow *R v M,Z,I,R & B* we would also, if asked, give permission to appeal to the House of Lords. We have considered whether this is the appropriate course. We have decided that it is not. This is not a case, such as Simpson , where the predominant reason for not following a previous decision was that it was manifestly unsound. In this case the unsatisfactory features of the procedure that we have described above have had the result, not merely that the court reached a decision that is manifestly unsound, but that it did so in circumstances that were truly 'per incuriam'.

39 If we follow *R v M,Z,I,R &B* the result will be that both that case and a number of other prosecutions under section 57 will be dealt with on what we believe will ultimately be demonstrated to be a false footing. We do not consider that this would be acceptable. Accordingly we propose to treat the decision as wrongly reached per incuriam and to reject the new ground of appeal, which has in the event effectively not been pursued.

[32] The submissions made on behalf of the appellant were -

1. The ratio in *R v M & others* is to be preferred

2. It is not a principled basis on which to decide a point of statutory construction to rely on the fact that there may have been previous prosecutions on a particular provision, applied in a particular way, when the point raised was neither considered nor argued.

3. The Court of Appeal in *R v Rowe* (at para 32) is attempting to apply the Barras principle (see Bennion, page 512) in an inappropriate manner – this is not a situation where Parliament could be intended to have known that the meaning of the word 'article' had been pronounced upon or settled by the courts.

4. The Court of Appeal in *Rowe* in any event states that the reasoning in R v M & others is not manifestly unsound

5. Neither authority deals expressly with the doctrine of generalibus specialia derogant. The Appellant points again to Bennion, page 998-9, where it is stated as follows :

> "Generalibus specialia derogant – Where the literal meaning of a general enactment covers a situation for which specific provision is made by some other enactment within the Act or instrument, it is presumed that the situation was intended to be dealt with by the specific provision. This is expressed in the maxim generalibus specialia derogant (special provisions override general ones). Acts very often contain general provisions which, when read literally, cover a situation for which specific provision is made elsewhere in the Act. This maxim gives a rule of thumb for dealing with such a situation; it is presumed that the general words are intended to give way to the particular. This is because the more detailed a provision is, the more likely is it to have been tailored to fit the precise circumstances of a case falling within it."

Neither Court either in *Rowe* or *M* proceeded upon the basis of such presumption, however it is submitted that this Honourable Court should so proceed. Acting upon such a presumption the Court should only find that presumption displaced or rebutted if there are sufficient features within the Act that point away from the presumption – it is submitted that there are no such features.

[33] The Court of Appeal in *R. v Rowe* was entitled to approach the decision in *R. v M & Others* in this way. It accords with the submissions of Mr Kerr to which we have referred and with the experience in this jurisdiction in previous cases. There is no basis upon which the decision in *R. v, M & Others* should be preferred.

ii. <u>The Learned Trial Judge adopted the wrong approach to section 58.</u>

[34] It was submitted by Mr Macdonald QC that the conditions that must be met before an offence under section 58 could be established are stricter in that the intent required for the offence under section 58 is more specific. He described the intent required for an offence contrary to section 57 as 'looser'. Whereas for an offence contrary to section 57 the purpose need

only be connected with the commission, preparation and instigation of an act of terrorism, an offence contrary to section 58 is only committed where the information is of a kind likely to be useful to a person actually committing or preparing an act of terrorism. He submitted that the court had to decide what was the sinister purpose for which the information was collected, recorded or possessed in a document or record and whether it was within the wording of section 58. The test was not simply an objective one - whether the information was of a kind likely to be useful to a person committing or preparing an act of terrorism. There must be evidence of sinister purpose or intent. It was submitted the Learned Trial Judge had failed to find a sinister or criminal purpose or intent, although it was acknowledged that he could have done so. In support of this approach to section 58 he relied on two paragraphs in *R. v O'Hagan*, supra, in which Morgan J stated –

"[32] There has been some controversy about the proper interpretation of this provision. The prosecution say that it is sufficient to prove collection and/or possession and that the information is likely to be useful to any terrorist. The defence contend that it is necessary to prove that the information is to be made available to a person contemplating the commission or preparation of an act of terrorism since other wise there is no likelihood of the information being useful to such a person.

[33] The prosecution approach can be supported by a literal interpretation of the section but I am not inclined to accept it. A burglar who holds the plans of a house in contemplation of stealing from it does not commit an offence under s.58 of the 2000 Act. If the owner of the house happens to be the chief of police for the area he still does not in my view commit that offence whether he knows that fact or not. The same information held by another person may readily give rise to the inference that an offence under s.58 has been committed. In each case one has to look to all the surrounding circumstances to examine the purpose to which the information is to be put. That is the mischief at which the section is aimed."

[35] Mr Macdonald argued that this approach was to be preferred to that adopted by the Court of Appeal in *R v Lorenc* 1988 NI 96 and on which the Crown relied. For the prosecution Mr Kerr submitted that section 58 should be interpreted literally and that the test was an objective one. 'Was the accused in possession of a document or record containing information and was that information of a kind likely to be useful to a person committing or preparing an act of terrorism?' It was submitted that this approach was reinforced by the existence of the defence of reasonable excuse.

[36] In *R v Lorenc* the appellant was convicted of the unlawful possession of three army manuals contrary to section 22(1)(c) of the Northern Ireland (Emergency Provisions) Act 1978. Section 22 provided –

"S.22. (1) No person shall, without lawful authority or reasonable excuse (the proof of which lies on him):

(a) collect, record, publish, communicate or attempt to elicit any information with respect to any person to whom this paragraph applies which is of such a nature as is likely to be useful to terrorists;

(b) collect or record any information which is of such a nature as is likely to be useful to terrorists in planning or carrying out any act of violence; or

(c) have in his possession any record of or document containing any such information as is mentioned in paragraph (a) or (b) above."

[37] Section 22 is similar in its terms to section 58 of the Terrorism Act 2000. In *R v Lorenc* the manuals contained details relating to the use of rifles, booby traps and incendiaries and it was alleged they contained information which was of such a nature as was likely to be useful to terrorists in planning or carrying out any acts of terrorism. The defendant appealed on the ground, inter alia, that the manuals did not contain "information" within the meaning of section 22(1)(c) of the 1978 Act. It was submitted that "information" in this context was the same as "intelligence" and connoted something likely or intended to be used in planning or carrying out an act of violence. In rejecting that submission Lord Lowry LCJ said -

"Subsection 1(c) forbids a person to "have in his possession any record of or document containing" the same kind of information, that is, information "of such a nature as is likely to be useful to terrorists in planning or carrying out any act of violence." We have no doubt that the contents of the army manuals were of such a nature as to be likely to be useful to terrorists in planning or carrying out acts of violence."

[38] It is clear that Lord Lowry LCJ did not consider that any evidence of criminal or sinister purpose was necessary, subject always to the statutory defence. That the statutory defence was then a legal one and now an evidential one is of no significance for the purposes of this appeal. To require the prosecution to prove some fact beyond collection, recording or possession of information and that such information is likely to be useful to terrorists, is to require more that the wording of the section requires. The approach endorsed in *R v Lorenc* is clearly correct and should be followed. It would appear that Morgan J was not referred to *R v Lorenc*.

iii. <u>The prosecution failed to prove 'terrorist purpose' as required by section 57.</u>

[39] A person commits an offence contrary to section 57 where he has in his possession an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism. Section 57 (2) provides that it is a defence for a person charged with an offence under section 57 to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism. Section 57(2) is to be read in conjunction with section 118, the relevant paragraphs of which provide –

"118. - (1) Subsection (2) applies where in accordance with a provision mentioned in subsection (5) it is a defence for a person charged with an offence to prove a particular matter.

(2) If the person adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not."

[40] The Learned Trial Judge found that the defence had raised an issue with respect to non terrorist purpose and that the appellant had discharged the evidential burden. The legal burden then passed to the prosecution to prove beyond reasonable doubt that the appellant's possession of the computer discs was for a terrorist purpose. The Learned Trial Judge then considered the various circumstances relied upon by the prosecution to establish the appellant's terrorist purpose. He rejected a number of them on the basis that they were not evidence of terrorist purpose – for example, the contents of the documents recovered from the appellant's flat and the use of aliases. However he regarded the contents of the documents produced from the computer discs as evidence of terrorist purpose, although he did not regard 'the evident purpose of the authors as evidence of the purpose of the reader' ( see paragraph 87). He then considered the cassette player recovered from the appellant's flat with the four capacitors missing. He expressed his views on this at paragraph 92 in these terms –

"[92] The cassette player recovered from the defendant had four capacitors missing. The defendant denied that he had removed those parts and claimed that he had found the broken Walkman and retained it to use other unspecified parts. A capacitor is a key ingredient of the instructions on the manufacture of the explosive device. It is beyond the bounds of credibility that the defendant should have possession of instructions on the manufacture of an explosive device with the use of a capacitor from a camera and also that the defendant should find a cassette player from which capacitors had already been removed. I am satisfied that this cannot be coincidence and that the defendant acquired the cassette player and removed the capacitors."

[41] At paragraph 104 he set out his conclusion on this aspect of the charge contrary to section 57 –

"[104] Taking account of the matters discussed above, I am satisfied on the basis of the contents of the documents produced from the discs recovered from the defendant, and of the recovery of the cassette player with the missing capacitors, that the defendant possession of the discs was for a terrorist purpose. I am satisfied that he had acquired a cassette player and removed the capacitors. I reject his explanation for the absence of the capacitors from the cassette player. I am satisfied that his possession of the material was not out of curiosity but was for a terrorist purpose under section 57(1)."

[42] Having concluded that the appellant was in possession of the computer discs for a terrorist purpose the Learned Trial Judge then considered in paragraphs 105 to 108 other evidence supportive of the appellant's guilt.

[43] It was submitted that the Learned Trial Judge's reliance on these two matters (the documents recovered and the finding of the recorder with the capacitors missing) was erroneous and against the weight of the evidence. Several matters were highlighted. There was no direct evidence that the appellant had removed any capacitors from the cassette recorder or that any capacitors missing from the recorder could be used in any explosive device. In addition there was no evidence that the capacitors missing from the recorder were the relevant type or size or were capable of being used in any explosive device. Many of the items identified in the computer documents as required for assembling an explosive device were not found in his flat. Furthermore no computer was found in the appellant's flat nor was there any forensic evidence to indicate the presence of explosives or weapons there. Generally speaking what was found was so limited that it provided an insufficient basis upon which to be satisfied that it was no coincidence that the appellant was in possession of instructions on the manufacture of an explosive device with the use of a capacitor from a camera and a cassette player from which capacitors had already been removed. It was submitted that the conviction on count 1 was thereby unsafe. Mr Kerr countered this submission with the claim that the contents of the documents and the absence of the capacitors in the cassette provided sufficient evidence for the ultimate finding by the Learned Trial Judge.

[44] In a case of circumstantial evidence it is important to concentrate on the matters which are proved. The matters relied on by Mr Macdonald QC are not facts proved as such which point in a particular direction. They reflect the absence of evidence and may be characterised as neutral factors. They should be considered but in a case that depends on circumstantial evidence a judge or jury must concentrate on the facts that are proved and determine whether those facts point

beyond a reasonable doubt to one conclusion only. The Learned Trial Judge concluded that the evidence in this case, namely the contents of the documents (to which reference will be made later) and the absence of the capacitors from the cassette proved the elements of the offence under section 57. That was a conclusion he was entitled to reach on the evidence presented.

> iv. that the prosecution had failed to disprove a reasonable excuse in relation to count 2 and that the Learned Trial Judge wrongly relied on the matters that were or were held to be proved namely that the appellant was in possession of the computer discs for a terrorist purpose as negativing reasonable excuse.

[45] In relation to count 2 contrary to section 58 the Learned Trial Judge said at paragraph 83 –

"[83] The defendant is charged under section 58(1)(a) which comprises two parts, namely, that he (for the purposes of the present case) "collects" information and further that the information is of a kind likely to be useful to a person committing or preparing an act of terrorism, which I shall abbreviate to describe as a terrorist. I have found that the discs produced in Court were those found on the defendant's premises, and the contents appearing in the documents produced in Court were present on the discs when they were seized in the defendant's flat. Counsel for the defendant accepted that in that event the defendant collected the information and further that it was of a kind likely to be useful to a terrorist. I am satisfied that the defendant collected the information. For information to be of a kind likely to be useful to a terrorist it must be viable, in that it is capable of being used to advance an act of terrorism. I am satisfied that the information was likely to be useful to a terrorist."

[46] He then said that the appellant in his interviews with the police had raised the issue of reasonable excuse. He then turned to Count 2 contrary to section 58 and said at paragraph 109 –

"[109] For the purposes of the charge under section 58(1)(a) I am satisfied that the defendant collected the information on the discs and that it was likely to be useful to a terrorist. As I am satisfied that the defendant had possession of the information for a terrorist purpose I am satisfied that he had no reasonable excuse for collecting the information for the purposes of section 58(1)(a)."

[47] It was the appellant's case that as there was insufficient evidence to prove a terrorist purpose for Count 1 contrary to section 57, there was no basis for the Learned Trial Judge's finding that he had no reasonable excuse for collecting the information, the subject of Count 2 contrary to section 58. In addition it was submitted that the finding that the material was likely to be of use to 'any' terrorist was insufficient. The Learned Trial Judge should have considered the specific use to which the material would be put. Furthermore he had failed to find expressly that the information would be likely to be useful to a person committing or preparing, rather than simply instigating, an act of terrorism. Therefore it was submitted the conviction on Count 2 was unsafe.

[48] It was submitted by Mr Kerr QC on behalf of the prosecution that, for the purposes of section 57, it must be proved that a person was in possession of the relevant article for a purpose connected with the commission, preparation or instigation of an act of terrorism, not that he was the person who would commit the act. The Learned Trial Judge had carefully considered all the evidence and his analysis of the facts found could not be criticised and he was entitled to arrive at the conclusions he made. There was sufficient evidence for the Judge to conclude that the appellant was in possession of the computer discs for a 'terrorist purpose' and that he had no reasonable excuse for collecting or recording the information contained in them. It was

submitted that the Learned Trial Judge did not have to consider the specific use to which the material could be put and in regard to the bomb and the silencer this was self evident as were the details that would assist in the preparation of a terrorist act. He referred to various relevant documentary exhibits taken from the computer discs. These included -

> Exhibit 65 - relating to the making of detonators using a capacitor found in photographic cameras that can be taken onto aeroplanes without arousing suspicion and used to construct an explosive device.
> Exhibit 67 - which is a scale drawing of the internal components of a silencer.
> Exhibits 69 and 71 - which explain how silencers are manufactured. On page 2 of Exhibit 71 there are instructions on how not to rouse suspicion and on page 7 instructions on the type of tubing to use for continuous firing.
> Exhibit 77 - a written course on making explosives taken from the 'largest Salafist Jihad encyclopaedia on CD'.

Conclusions

[49] In a very careful and well reasoned judgment the Learned Trial Judge correctly approached the charges contrary to sections 57 and 58 of the Terrorism Act 2000. Offences contrary to both sections can be committed in a variety of ways and the sections do overlap. The computer discs are clearly articles within section 57 and there was more than sufficient evidence for the judge's finding that the appellant had them in his possession in circumstances which gave rise to a reasonable suspicion that his possession was for a purpose connected with the commission preparation or instigation of an act of terrorism. Equally the appellant collected or made a record on 25 computer discs of information of a kind likely to be useful to a person committing or preparing an act of terrorism. The nature of the information was self evidently of such a kind and the judge's conclusions cannot be faulted. There is no basis upon which to conclude that the verdicts are unsafe and the appeal against conviction is dismissed.

Terror Arrests: the full charges

30 January 2007

Rizwan Ditta, 29, and Mohammad Bilal, 25, were charged under the Terrorism Act with the following charges.

Rizwan Ditta is charged with:

1. On a date before 26th October 2006, at 4, Royd Terrace, Halifax, you possessed an article, namely a computer file entitled "The Mining", in circumstances which give rise to a reasonable suspicion that your possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism.

Contrary to Section 57(1) Terrorism Act 2000

2. On a date before 26th October 2006, at 4, Royd Terrace, Halifax, without reasonable excuse, you possessed a record, namely a computer file entitled "The Mining", containing information of a kind likely to be useful to a person committing or preparing an act of terrorism.

Contrary to Section 58(1) Terrorism Act 2000

3. On a date before 26th October 2006, at 4, Royd Terrace, Halifax, you possessed an article, namely a computer file entitled "Attack Against American Troops", in circumstances which give

rise to a reasonable suspicion that your possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

Contrary to Section 57(1) Terrorism Act 2000

4. On a date before 26th October 2006 at 4, Royd Terrace, Halifax, without reasonable excuse, you possessed a record, namely a computer file entitled "Attack Against American Troops", containing information of a kind likely to be useful to a person committing or preparing an act of terrorism.

Contrary to Section 58(1) Terrorism Act 2000

5. On a date before 26th October 2006, at 4, Royd Terrace, Halifax, you possessed an article, namely a computer file entitled "Al Sunnah Election Centre", in circumstances which give rise to a reasonable suspicion that your possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

Contrary to Section 57(1) Terrorism Act 2000

6. On a date before 26th October 2006, at 4, Royd Terrace, Halifax, without reasonable excuse, you possessed a record, namely a computer file entitled "Al Sunnah Election Centre", containing information of a kind likely to be useful to a person committing or preparing an act of terrorism.

Contrary to Section 58(1) Terrorism Act 2000

7. On a date before 26th October 2006 at 4, Royd Terrace, Halifax, you possessed an article, namely a computer file entitled "Algerian Salafist Group", in circumstances which give rise to a reasonable suspicion that your possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

Contrary to Section 57(1) Terrorism Act 2000

8. On a date before 26th October 2006, at 4, Royd Terrace, Halifax, without reasonable excuse, you possessed a record, namely a computer file entitled Algerian Salafist Group, containing information of a kind likely to be useful to a person committing or preparing an act of terrorism.

Contrary to Section 58(1) Terrorism Act 2000

9. On a date before 26th October 2006 at 4, Royd Terrace, Halifax, you possessed an article, namely computer files entitled "Hamas Bomb" and "Instructions", in circumstances which give rise to a reasonable suspicion that your possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

Contrary to Section 57(1) Terrorism Act 2000

10. On a date before 26th October 2006, at 4, Royd Terrace, Halifax, without reasonable excuse, you possessed a record, namely computer files entitled "Hamas Bomb" and "Instructions", containing information of a kind likely to be useful to a person committing or preparing an act of terrorism.

Contrary to Section 58(1) Terrorism Act 2000

11. On a date before 26th October 2006, at 4, Royd Terrace, Halifax, you possessed an article, namely a computer files entitled "Sound of Jihad" and "Sout Al Jihad in Iraq", in circumstances which give rise to a reasonable suspicion that your possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

Contrary to Section 57(1) Terrorism Act 2000

12. On a date before 26th October 2006, at 4, Royd Terrace, Halifax, without reasonable excuse, you possessed a record, namely computer files entitled "Sound of Jihad" and "Sout Al Jihad in Iraq", containing information of a kind likely to be useful to a person committing or preparing an act of terrorism.

Contrary to Section 58(1) Terrorism Act 2000

13. On a date before 26th October 2006, at 4, Royd Terrace, Halifax, without reasonable excuse, you possessed a record, namely a document contained in a computer file entitled "Zaad E Mujahid", containing information of a kind likely to be useful to a person committing or preparing an act of terrorism.

Contrary to Section 58(1) Terrorism Act 2000

Mohammed Bilal is charged with:

1. On 23rd January 2007, at 3, Thrum Hall, Halifax, without reasonable excuse, he possessed a record containing information of a kind likely to be useful to a person committing an act of terrorism, namely 5 copies of a CD entitled "The Manhattan Raid" and a computer file of the same title.

Contrary to Section 58(1)(b) Terrorism Act 2000

2. On 23rd January 2007, at 3, Thrum Hall, Halifax, without reasonable excuse, he possessed a record containing information of a kind likely to be useful to a person committing an act of terrorism, namely a disc containing a clip entitled "Al Qaeda".

Section 58(1)(b) Terrorism Act 2000.

G v R [2008] EWCA Crim 922 (29 April 2008)

---



2008-04-29

**Neutral Citation Number: [2008] EWCA Crim 922**

Case No: 200800837

**IN THE SUPREME COURT OF JUDICATURE**
**COURT OF APPEAL (CRIMINAL DIVISION)**
**ON APPEAL FROM CROWN COURT WOOLWICH**
**THE HONOURABLE MR JUSTICE PITCHFORD**
**T20087038**

Royal Courts of Justice
Strand, London, WC2A 2LL

29/04/2008

B e f o r e :

**LORD JUSTICE RIX**
**MR JUSTICE HENRIQUES**
**and**
**SIR RICHARD CURTIS**

---

**Between:**

| | |
|---|---|
| **G** | **Appellant** |
| **- and -** | |
| **Regina** | **Respondent** |

---

**Mr I Leist (instructed by Sonia Lawrence Smith Partnership) for the Appellant**
**Mr D Perry QC, Mr William Hays (instructed by Crown Prosecution Service) for the Crown**
**Hearing dates : 2nd April 2008**

---

**HTML VERSION OF JUDGMENT**

---



**This is the judgment of the court :**

1. This is an appeal pursued by a defendant awaiting trial, G, who stands charged with two counts of terrorism. The appeal arises under section 35 of the Criminal Procedure and Investigations Act 1996 (the "1996 Act") following a preparatory hearing.

2. The two counts of terrorism are respectively under section 5(1) of the Terrorism Act 2006 (the "2006 Act") and section 58 of the Terrorism Act 2000 (the 2000 Act"). The first count, under the 2006 Act, alleges that between 13 April 2006 and 3 February 2007 G was preparing to commit acts of terrorism. The second count, under the 2006 Act, alleges that between 27 January 2005 and 3 February 2007 G collected information of a kind that was likely to be useful to a terrorist.

- On 18 January 2008 Calvert Smith J ordered a preparatory hearing under the 1996 Act to resolve whether evidence about G's mental illness and G's motivations in the light of it were capable of amounting in law to a defence under section 58(3) of the 2000 Act. The prosecution accepted that it could do so for the purpose of the count under section 5(1) of the 2006 Act but disputed the position under section 58 of the 2000 Act.

- The preparatory hearing was heard by Pitchford J (the "judge") on 8 February 2008. He held that G had no defence of "reasonable excuse" under section 58(3) of the 2000 Act. The judge gave leave to appeal. A few days later, on 13 February 2008 this court handed down a reserved judgment in *R v. K* [2008] EWCA Crim 185 in the course of which Lord Phillips of Worth Matravers CJ, giving the judgment of the court, held that bad or even seriously criminal conduct could amount to a "reasonable excuse" for the purposes of section 58(3) as long as a defendant's possession of documents or records was for a purpose other than to assist in the commission or preparation of an act of terrorism. In the circumstances the Crown now concedes on this appeal that *K* provides G with a potential defence of reasonable excuse under section 58(3) of the 2000 Act, but submits that *K* is not binding on this court and is in any event *per incuriam* and wrong.

- In effect, therefore, the Crown, which is the respondent to this appeal, has accepted that in the light of *K* the forensic burden falls on it to explain why this appeal should not be allowed.

- In our judgment the Crown failed in that burden, as we determined at the time of the hearing. We therefore allowed G's appeal, but reserved our reasons, which are now contained in this judgment.

*The background facts*

- On 28 January 2005 the appellant was sentenced, in respect of a number of non-terrorist offences, to detention in a young offender institution for a period of 3½ years. He was born on 21 August 1985, so that he was then 19, and is now 22. On 25 October 2006, after he had turned 21, he was transferred to an adult prison. During his time in detention, he had converted to Islam.

- As for the current proceedings against him, the prosecution case is that while in custody the appellant collected and recorded information likely to be of use to a person committing or preparing an act of terrorism. The items collected by him include a chemical formula for producing hydrogen chloride, plans for making bombs including a diagram of a pipe bomb, and various text books on explosives. He made notes on how explosives could be manufactured and used. He also drew accurate maps of the Territorial Army Centre in Chesterfield and identified the location of the armoury there. There was also material containing his observations on the waging of jihad in Great Britain. These items were found during repeated searches of the appellant's cell accommodation: on 4 April 2006 and 10 August 2006 (at HMYOI Stoke Heath), and on 30 December 2006 and 23 January 2007 (at HMP Featherstone).

- On 2 February 2007 the appellant was arrested and interviewed under caution. In summary, his explanation for collecting and recording the information was that he wanted to "wind up" the prison staff because they were provoking him. He said: "...so I wanted to wind them up and I know how this terrorism stuff...really gets on their nerves..." He said that he left the material in his cell to be found. After two interviews the appellant was assessed to be unfit for further questioning.

- On 12 June 2007, the appellant was admitted to Ashworth Hospital under the Mental Health Act 1983.

- In a psychiatric court report dated 7 November 2007, Dr Qurashi, a consultant forensic psychiatrist, concluded that the appellant is suffering from a severe and enduring mental illness, namely paranoid schizophrenia, which had been previously undiagnosed and untreated. It is accepted by the Crown that in Dr Qurashi's opinion the appellant collected and recorded the information in question, now the subject of prosecution, as a direct consequence of his illness. In his report Dr Qurashi had said this (at para 14.9):

  "In summary G's account of the various documents found in his cell whilst on remand was to "wind up" prison officers. He has consistently reported that he had no intention of committing acts of terrorism. When asked why he felt the need to antagonise prison officers he believes that [they] were "whispering" about him. This is highly likely to be a psychotic experience, namely an auditory hallucination."

-

- In his ruling the judge set out a significant passage in Dr Qurashi's supplementary report dated 17 December 2007, in part as follows:

"**1. Comment on whether G's criminal behaviour is a direct consequence of his illness?**

It is my opinion that G's alleged criminal behaviour, in terms of generating the written material, was indeed a direct consequence of an untreated, severe psychotic illness. As I have stated in my court report, at paragraph 14.9, dated 7th November 2007, G's reasons for generating the written material were based on psychotic, deluded reasons. He firmly believed that prison officers were provoking him in an attempt to antagonise him by, for example, standing at his cell door whispering throughout the night. In my experience G is describing an auditory hallucination. He also believed prison officers were "out to get him and kick him" (at paragraph 8.54). This is a paranoid persecutory delusion. G reports that his response was to "provoke" the prison officers who he believed were intentionally provoking him. Therefore, if G had not experienced these psychotic experiences within the prison estate he would not, in my opinion, have generated the offending materials…

During his time in prison he is described as being a disruptive prisoner. It is well recognised that individuals experiencing a severe, untreated psychotic illness are described, by lay individuals, as being agitated, aroused, uncooperative and disruptive. A severe psychosis not only affects thoughts but also mood, perceptions (of self, others and the environment) and consequent behaviour. His presentation in prison, while untreated, is to be contrasted with his presentation when treated. I have had the benefit of observing him and assessing him, with members of the multidisciplinary team, in both states. When unmedicated he is provocative, antagonistic, intimidating, verbally abusive, disinhibited, demanding, suicidal, suspicious and, of note, other patients complained of G "winding them up". When provided with treatment G is an amenable, co-operative individual (paragraphs 11.6-11.33)."

*The statutory regime*

- Section 1 of the Terrorism Act 2000 defines terrorism:

  "1(1) In this Act "terrorism" means the use or threat of action where
  (a) the action falls within subsection (2),

  (b) the use or threat is designed to influence the government or to intimidate the public or a section of the public, and

  (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

  Subsection (2) describes action involving various serious consequences, such as serious violence against a person or serious damage to property.

- Section 58 (headed "Collection of information") describes the offence which is the subject-matter of this appeal and provides:

  "58 (1) A person commits an offence if –
  (a) he collects or makes a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, or

  (b) he possesses a document or record containing information of that kind…

  (3) It is a defence for a person charged with an offence under this section to prove that he had a reasonable excuse for his action or possession."

- The defence of reasonable excuse under section 58(3) is at the heart of the judge's ruling, in the first paragraph of which he said:

"I am asked to rule whether the defendant's mental illness is capable in law of constituting a reasonable excuse for collecting information contrary to section 58(1) of the Terrorism Act 2000."

- In the light of *K* (and of another decision of the same constitution of this court handed down at the same time, *R v. Zafar* [2008] EWCA Crim 184) the Crown submits that the true construction of section 58 of the 2000 Act has to be considered together with section 57 of the same Act, which concerns the offence of "Possession for terrorist purposes", and provides:

"57 (1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.

(2) It is a defence for a person charged with an offence under this section to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism."

G is not charged with an offence under section 57.

- Section 118 of the 2000 Act (headed "Defences") provides:

"118 (1) Subsection (2) applies where in accordance with a provision mentioned in subsection (5) it is a defence for a person charged with a defence to prove a particular matter.

(2) If the person adduces evidence which is sufficient to raise an issue with respect to the matter the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not."

Subsection (5) mentions inter alia sections 57 and 58. Thus section 118(2) applies to the defences stated in sections 57(2) and 58(3).

- Section 5(1) of the 2006 Act, headed "Preparation of terrorist acts", an offence under which G is also charged but which is not the subject-matter of the judge's ruling, provides:

"5 (1) A person commits an offence if, with the intention of –
(a) committing an act of terrorism, or

(b) assisting an another to commit such acts,

he engages in any conduct in preparation for giving effect to his intention."

*The ruling*

- Before the judge, the Crown's position was stated in its skeleton argument dated 25 January 2008 as follows:

"The defence as set out in his interviews and in his Defence Statement is that he was not preparing or intent on any terrorist acts (count 1) and he had possession or collected the material with the purpose to "be disruptive and to provoke the prison staff" (count 2)…It is conceded that his mental state and his stated defence are matters that a jury would be entitled to consider in respect of count 1. He must be proved to have had the intention to commit an act of terrorism or to assist another to commit an act. However in respect of count 2 it is submitted that the evidence of his mental state and his declared defence affords no defence in law and is not therefore admissible in respect of that count."

That submission was developed by reference to decisions where the courts had ruled on what might or might not amount to a reasonable excuse. It was accepted that such situations might be fact specific. It was submitted that in the present case G's defence "amounts to no more than an explanation and not an excuse or if it may amount to an excuse that no reasonable man would think it properly excusable and therefore reasonable." Only "truly innocent" possession could go unpunished, such as that in the hands of a journalist or for the purposes of legitimate academic study. The reasonable excuse defence should be a narrow one.

- There was nothing in that skeleton to refute reliance on the medical evidence as a matter of causation (other than an observation that it did not amount to evidence of insanity or automatism). It was conceded that the medical evidence was relevant to the jury's decision on section 5(1) of the 2006 Act (count 1). However, given the narrow interpretation to be given to section 58(3), the medical evidence simply was not relevant to count 2.

- In its skeleton argument in response dated 4 February 2008, the defence did not appear to submit that the Crown's contention was wrong in principle, but that the medical evidence could turn what might otherwise be an unreasonable excuse into a reasonable one. Thus –

  "it is submitted that a reasonable man might consider [G's] winding up of prison officers by collecting material is properly excusable and therefore a reasonable excuse, because it was a direct consequence of his illness."

  In response to that, it appears to have been only at the preparatory hearing itself that the Crown expanded its argument to say that G's medical illness did not cause his conduct.

- In the result two points appear to have been presented to the judge, one relating to the width of the section 58(3) defence as a matter of law, the second being a point of

causation. These two points are reflected in the judge's ruling (see below). It seems, however, that defence opposition on the first point may have been muted.

- The judge recognised that Dr Qurashi's reports provided evidence that G's conduct was caused by his illness. He said (at 4G of the transcript of the ruling): "Thus it is Dr Qurashi's view that [G's] collection of the information was also caused by the illness." He also said (at 7B), immediately after citing from Dr Qurashi's supplementary report: "...Dr Qurashi expresses the firm view both as to causation of the delusion to which he referred and as to causation of a wish to provoke the prison officers." Nevertheless, the judge concluded that G's mental illness "is not capable of constituting a reasonable excuse" under section 58(3), and to have done so because there was no sufficient causal connection between the illness and G's conduct (at 11E/G). How was that?

- As for the two separate points before the judge, the first was whether the purpose of winding up the prison staff was capable of being a reasonable excuse for the collection of the material. To that question, reflecting the Crown's argument, the judge answered, No, and possibly did so, it seems, without dispute. He said (at 9F-10D):

  "Here it seems to me that just because a defendant has a purpose for the collection of section 58 information other than the assistance of terrorism does not necessarily provide him with an excuse since the section requires no particular intention. Nor does the section require any degree of likelihood that the information will fall into the possession of a terrorist. Its purpose is to prohibit a collection which, objectively viewed, would be useful to a terrorist if it came into the possession of a terrorist. However, I can envisage the presence of a reasonable excuse when material is collected for academic research or when the defendant did not realise on reasonable grounds that the information may assist a terrorist.

I do not understand it to be disputed by the defence, and I agree with the prosecution, that the collection of this information for the purpose of making mischief with prison staff is not capable of excusing the collection. It may have been a reason for the collection, but it was not an admissible excuse for it. The reason why I reach that view is that upon the defendant's own account, he deliberately collected information of this quality because he wanted to wind up the prison staff."

- It seems from that passage of the judge's ruling that an illegitimate reason cannot amount to a reasonable excuse. We shall call that the "illegitimate reason" point.

- The second point was one of causation, because of the medical evidence that what caused G to act in the way that he did was his mental illness. That may ultimately have been the real point of dispute argued below. We shall call it the "causation" point. However, the two points became somewhat unified in the judge's formulation of the issue before him in the very first paragraph of his ruling (at 2C):

"I am asked to rule whether the defendant's mental illness is capable in law of constituting a reasonable excuse for collecting information contrary to section 58(1) of the Terrorism Act 2000."

- On this point, the judge accepted the Crown's submission that "there is no evidence that the mental illness caused the prohibited act…only that its delusions created the occasion for the prohibited and deliberate response" (at 11B). The judge reasoned (at 11D/G):

"Mr Leist on behalf of the defendant argues, relying on the decision of the House of Lords in *Wang*…that I should leave to the jury the question whether there is a sufficient connection between the mental illness and the collection of information to render the mental illness a reasonable excuse. In my judgment, for the reasons advanced on behalf of the prosecution, Mr G's mental illness is not capable of constituting a reasonable excuse to the charge under section 58 of the

Terrorism Act 2000. The reason it is not is that it does not affect [G's] ability to make a choice whether or not to respond as he did to the circumstances as he believed them to be."

- In the light now of *R v. K* the position has now been reversed. Whereas the causation point appears to have been the essential point argued below, on this appeal, in the light of *K*, it is the illegitimate reason point which has been put in the forefront of the argument on behalf of G. Nevertheless, the causation point cannot be overlooked. Perhaps, after all, they are intertwined.

*R v. K*

- In *K*, the appellant, K, was charged under section 58(1) with the possession of documents concerning the formation and organisation of jihadist movements. At a preparatory hearing K submitted that section 58 was insufficiently certain to comply with the doctrine of legality either at common law or under article 7 of the European Convention of Human Rights. The argument was that the words "likely to be of use to" were so broad and undefined as to criminalise myriad items of legitimate material.

- The Crown submitted, in answer to the court's enquiry, that section 58 was intended to cover information of any kind, whether or not on its face it would raise a reasonable suspicion that it might be intended to be used for the commission or preparation of an act of terrorism, provided it could be proved by extrinsic evidence that the person charged with possessing it intended it to be used for the commission of an act of terrorism. Thus an A to Z could fall within the scope of the section. The court also raised questions about the section 58(3) defence of reasonable excuse. The Crown's submission in this connection was that only a lawful purpose for possessing the information could provide a reasonable excuse.

- The court rejected these submissions, having considered section 58 of the 2000 Act in the light of provisions of section 2 of the 2006 Act. It concluded:

"13. We consider that it is plain from the language of section 58 that it covers only documents that fall within the description in (3)(b) [of section 2]. A document or record will only fall within section 58 if it is of a kind that is likely to provide practical assistance to a person committing or preparing an act of terrorism. A document that simply encourages the commission of acts of terrorism does not fall within section 58.

14. The provisions of section 2 of the 2006 Act, and in particular those of section 2(5), require the jury to have regard to surrounding circumstances when deciding whether a publication is likely to be useful in the commission or preparation of acts of terrorism. Contrary to Mr Sharp's submission, we do not consider that the same is true of section 58 of the 2000 Act. The natural meaning of that section requires that a document or record that infringes it must contain information of such a nature as to raise a reasonable suspicion that it is intended to be used to assist in the preparation or commission of an act of terrorism. It must be information that calls for an explanation. Thus the section places on the person possessing it the obligation to provide a reasonable excuse. Extrinsic evidence may be adduced to explain the nature of the information...What is not legitimate under section 58 is to seek to demonstrate, by reference to extrinsic evidence, that a document, innocuous on its face, is intended to be used for the purpose of committing or preparing a terrorist act.

15. As for the nature of 'reasonable excuse', it seems to us that this is simply an explanation that the document or record is possessed for a purpose other than to assist in the commission or preparation of an act of terrorism. It matters not that that other purpose may infringe some other provision of the criminal or civil code.

16. If section 58 is interpreted in accordance with this judgment, its effect will not be so uncertain as to offend against the doctrine of legality..."

- Paragraph 15 of that reasoning has to be understood in the light also of paragraph 10, where Lord Phillips said:

"As to the question of what constituted a reasonable excuse, Mr Sharp submitted that this meant a purpose for possessing the information that was lawful. We asked Mr Sharp whether this meant that a defendant could properly be convicted under section 58 if he explained that he possessed information as to how to make explosives for the purpose of committing a bank robbery. Mr Sharp had no ready answer to that question."

- This court in *K* was therefore able to uphold the ruling made in the preparatory hearing in that case, which had also been to reject the submission that the statute was too uncertain to meet the doctrine of legality.

- On the basis of this reasoning, it is submitted by Mr Leist on behalf of G that the judge was wrong to have said, even if encouraged at that time to do so by lack of determined opposition on his part, that the collecting of information for the purpose of winding up of the prison staff was not a reasonable excuse. He says that a reasonable excuse is simply an explanation that information "is possessed for a purpose other than to assist in the commission or preparation of an act of terrorism" (*K* at para 15). It is an explanation, where it is needed, that rebuts the "reasonable suspicion that it [the information in question] is intended to be used to assist in the preparation or commission of an act of terrorism" (*K* at para 14). In that context, G's mental illness is simply further, albeit important and objectively independent, evidence in support of G's case that he collected and possessed the material in question for a purpose other than to assist in the commission or preparation of an act of terrorism.

*The submissions of the Crown*

- On behalf of the Crown, Mr David Perry QC, in his wide-ranging skeleton argument dated 26 March 2008, accepts that the judge's reasoning in his ruling (on what we have called the illegitimate reason point) is inconsistent with the decision in K, but submits that jurisprudence in relation to section 58 and its differences from section 57 has become the subject of disarray: and that in these circumstances this court should regard what was said about section 58 in *K* as not binding on it, either because it was obiter or *per incuriam* or both.

- In brief, Mr Perry submits that this court erred in *K* in interpreting section 58 as incorporating the requirement found in section 57, but not in section 58, that the information in question should "give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism" (see section 57(1) from which that language is quoted, and see also *K* at para 14 where it is stated that the material under section 58(1) "must contain information of such a nature as to raise a reasonable suspicion that it is intended to be used to assist in the preparation or commission of an act of terrorism"). This was in effect to turn the section 58 offence into an offence requiring specific intent, which is how the language of section 57(1) had been interpreted in *R v. Rowe* [2007] EWCA Crim 635, [2007] QB 975.

- In *Rowe* a constitution of this court comprising five judges presided over by Lord Phillips CJ had considered sections 57 and 58 and what a previous decision had said about them in *R v. M* [2007] EWCA Crim 218. In *M* this court had held, on an appeal arising from a preparatory ruling, that electronically stored data was not an "article" within section 57(1), as distinct from "a record of information" or "a document or record" within section 58(1). Otherwise, the court in *M* would have had difficulties in distinguishing the two sections, but as it was "Section 58 is not redundant" (at para 36). *Rowe* held that the decision in *M* had been reached *per incuriam* (applying *R v. Simpson* [2003] EWCA Crim 1499, [2004] QB 118) and therefore did not follow it. In the course of

his judgment in *Rowe* Lord Phillips said this about the distinction between the two sections:

"34. There is undoubtedly an overlap between sections 57 and 58, but it is not correct to suggest that if documents and records constitute articles for the purpose of section 57, section 58 is almost superfluous. Collecting information, which falls within section 58 alone, may well not involve making a record of the information. Equally, a person who possesses information likely to be useful to a person committing or preparing an act of terrorism may well not be in possession of it for a purpose connected with the commission, preparation or instigation of an act of terrorism.

35. Sections 57 and 58 are indeed dealing with different aspects of activities relating to terrorism. Section 57 is dealing with possessing articles *for the purpose* of terrorist acts. Section 58 is dealing with collecting or holding information that is *of a kind likely to be useful* to those involved in acts of terrorism. Section 57 includes a specific intention, section 58 does not."

- In *R v. Zafar*, which the constitution of this court which decided *K* (Lord Phillips CJ, Owen and Bean JJ) also decided on the same day, the appeal arose out of convictions under section 57. The articles in question were computer discs which stored literature of an extremist nature. This court quashed the convictions on the ground that the trial judge had failed to direct the jury that they had to be satisfied that each appellant had intended to use the relevant articles to incite his fellow planners to fight in Afghanistan. It held that section 57 was to be interpreted in such a way as to require a direct connection between the article possessed and the prospective act of terrorism. Lord Phillips said (at para 29) that –

"The section should be interpreted as if it reads:

"A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that he intends it to be used for the purpose of the commission, preparation or instigation of an act of terrorism.""

- Mr Perry submits that in *K* this court, by inserting into section 58(1) the language found in section 57(1), language which in *Zafar* it interpreted as requiring the intent there defined, was removing the essential distinction between the two sections (accepted in *Rowe*), whereby section 57 concerned an offence of specific intent and section 58 did not. But, he submits, the distinction between the two sections should be marked and maintained. In section 57, possession of the article in question must give rise to a reasonable suspicion that the article is possessed for a terrorist purpose, but it is a defence to show that the article was not possessed for a terrorist purpose. In section 58, the information in question must be of a kind likely to be useful to a person committing or preparing an act of terrorism, but it is a defence to show that there was a reasonable excuse for the collection or possession of that information. Section 58 (punishable by up to 10 years imprisonment) is a lesser offence than section 57 (now punishable by up to 15 years imprisonment). The collection and recording of relevant information is likely to be a precursor to a more serious wrong and the criminal law targets the lesser wrong in order to deter the greater.

- As for reasonable excuse, it is the fact that information is likely to provide assistance to a person committing or preparing an act of terrorism that imposes on a person in possession the obligation of providing a reasonable excuse for the possession of it. The concept of reasonable excuse had been considered in cases arising out of terrorist legislation in Northern Ireland which was the precursor of the modern legislation under consideration in these proceedings, cases such as *R v. McLaughlin* [1993] NI 28. There Sir Brian Hutton LCJ sitting in the Northern Ireland court of appeal quashed convictions based on the recording of police messages on the ground that the defendant had there proved that he had the "reasonable excuse" of acting as a radio buff for his own pleasure and interest and not for terrorist purposes (at 35a/b). In *R v. Boutrab* [2005] NICC 36, Weatherup J in the crown court at Belfast, hearing a case under section 58 of the 2000 Act directed himself (at para 84) that mere curiosity "being an innocent purpose" is

capable of being a reasonable excuse for the purposes of section 58(3). Mr Perry submits that in no case prior to *K* has it ever been suggested that an illicit or normatively improper purpose (albeit other than terrorism) could provide a reasonable excuse. The rationale of *K* in this connection undermines the normative content of the defence and also fails to take account of the fact that terrorists make use of people who commit crimes for non-political motives (see *Report of the Commission to Consider Legal Procedures to Deal with Terrorist Activities in Northern Ireland* (Cmd 5185 (1972), the Diplock Report)). The possession of information for a general criminal purpose should not be a reasonable excuse: it is likely to provide practical assistance to a person committing or preparing an act of terrorism; it is not reasonable in itself; and the possession of information likely to be of use to a terrorist does not offend against the principle of legal certainty, since the possessor is likely to be aware of the objective nature and utility of the material in question and therefore can be required to have a good reason for his conduct. The defence of reasonable excuse only arises once the accused has been proved to have been in possession of such material as to give rise to the need for a defence. Once that need arises, an unreasonable let alone an illicit purpose will not provide a defence.

- Mr Perry's written submissions did not deal with the causation point. He confined himself to the argument that *K* was wrong to say that possession for a non-terrorist purpose was a reasonable excuse. That was not binding because the passages in question were not part of the *ratio* of the case; and in any event the decision was *per incuriam* since the court was not referred to cases where the reasonable excuse defence had been considered, but applied less restrictively. *Simpson* and *Rowe* themselves showed that a decision could be reconsidered in such circumstances.

*Discussion and decision*

- These submissions have not persuaded us that we can treat *K* as other than binding us for relevant purposes. That the material parts of *K* relevant to this appeal are not merely *obiter dicta* is clear from the first sentence of its para 16, where Lord Phillips says:

"If section 58 is interpreted in accordance with this judgment, its effect will not be so uncertain as to offend against the doctrine of legality."

That shows that all the reasoning which has gone before is directly relevant to the issue in that appeal, which was whether section 58 was too uncertain.

- The question therefore arises whether *K* was decided *per incuriam*. It is true that Lord Phillips states that the court in that case received less assistance than it would have liked. Nevertheless, Lord Phillips was familiar with sections 57 and 58, having considered them in *Rowe*, and indeed *Rowe* is referred to by him at para 14 of the court's judgment. That and other authority such as *M* was also referred to in *Zafar* which was heard at the same time as *K* and where judgment was handed down on the same day as in *K*. Although it seems that the court in *K* was not assisted by reference to earlier cases on "reasonable excuse", such cases (a) do not say in terms that *only* a legitimate and normatively benign motivation can amount to reasonable excuse, and (b) demonstrate that what can amount to a reasonable excuse can depend on the construction of individual statutes: see, for instance, *R v. Tabnak* [2007] EWCA Crim 380, [2007] 2 Cr App R 4, another recent judgment of this court given by Lord Phillips, on that occasion concerned with the meaning of reasonable excuse under section 35(3) of the Asylum and Immigration (Treatment of Claimants) Act 2004.

- Therefore we regard ourselves as bound by *K*, in which case Mr Perry recognises that this appeal must succeed.

- Having said that, we are not necessarily persuaded that in *K* this court was saying that questions of purpose, motivation or intention entered into the definition of the offence (as in section 57) as distinct from entering into consideration of the defence of

reasonable excuse. However, that does not affect the reasons for which it is necessary in our judgment to allow this appeal.

*The causation point*

- In those circumstances, it is not necessary to decide whether the judge was right or wrong in his decision on the causation point, and indeed we have read and heard little argument about it. Nevertheless, the point was raised by the appeal and was kept alive by Mr Leist for G. Thus the single ground of appeal conflated both points in saying that –

"The Learned Judge erred in ruling that the Defendant had no defence in law and/or that he had failed to establish an evidential basis to his defence that he had a reasonable excuse under s 58(3) Terrorism Act 2000, in that he was mentally ill at the time of the commission of the offence, namely collecting material of a kind likely to be useful to a person committing or preparing an act of terrorism."

Moreover, while devoting his two skeleton arguments since the ruling below almost exclusively to *K*, Mr Leist did submit, in the final paragraph of his last skeleton, as follows:

"In the event that *R v. K* does not apply, the appeal should nonetheless be allowed since [G's] defence may still be considered a reasonable excuse since "winding up" prison officers falls short of "general criminal activity", and the features of his defence, including his personal health and characteristics as set out in paras 8 and 9 of the supplementary skeleton [ie the first skeleton on appeal], are issues capable of determination by a jury."

- In the absence of full, or indeed any real, argument on the causation point, we are reluctant to say more than this. Mr Perry acknowledged that, if *K* was binding, the medical evidence was not necessary to G's defence of reasonable excuse, but was relevant to it, as it was to count 1 of the indictment. He also very fairly acknowledged that, even if

*K* was not binding or was hereafter overruled, the causation point was a separate issue in the light of which the question of reasonable excuse may well have been raised sufficiently for the purposes of section 118 to come into effect. This was, as we understood it, because he was prepared to recognise that the issue of causation was not concluded by the fact that G's mental illness did not amount to insanity or compulsion. We would content ourselves with saying that we would ourselves be inclined to agree with that way of looking at things: see *R v. Wang* [2005] UKHL 9, [2005] 1 WLR 661, [2005] 2 Cr App R 136. Moreover, *Tabnak*, to which the judge referred for the distinction between ability and inability to make a choice, seems to us to depend on the peculiar factors relating to the different and rather special statute in that case, rather than to express a general principle in relation to causation and reasonable excuse. However, in the absence of detailed argument, we stress that we are not making any decision on that point.

*Conclusion*

- In sum, we allow this appeal. G's defence is capable of amounting to reasonable excuse for the purposes of section 58(3) and section 118 of the 2000 Act. It will be a matter for the jury to say whether it does.

**Brothers charged with 11 terrorism offences**
7:00am Thursday 4th October 2012 in News

Two Bradford brothers charged with terrorism offences were described by neighbours yesterday as religious and respectful men.

Saeed Muhammed Ahmed, 20, and 19-year-old Naeem Muhammed Ahmed are charged with a total of 11 offences under Section 58 of the Terrorism Act 2000. They are due to appear at Westminster Magistrates Court later this month.

They were arrested in Little Horton on September 19 at a residential address following a pre-planned intelligence-led operation by detectives from the North East Counter Terrorism Unit (CTU).

Saeed Muhammed Ahmed is charged with seven offences of collecting records of information of a kind likely to be useful to a person committing or preparing an act of terrorism, contrary to section 58 (1)(a) of the Terrorism Act 2000.

Naeem Muhammed Ahmed, 19, is charged with four offences under section 58 (1)(a).

The pair, believed to be brothers, were described by one resident, Wajid Hussain, as deeply religious.

He said he saw plain clothes police search the brothers' house a month ago.

"They are only young kids," he said. "They are very religious people and pray five times a day. They have lived around here for years and I just can't believe it.



"This is a big shock as this is a very quiet street. They only go to the mosque and home – you never see them. It is very rare to see them outside."

Due to the nature of the investigation, police have also not released details of the street they were arrested in.

But it has been stressed that there was no risk to public safety before the pair were captured.

Another neighbour, who declined to be named, said that he had seen lots of police in the area weeks before.

"I didn't know what had happened but had seen them being arrested," he said.

"This has really shocked me as they are devout Muslims."

Searches of the properties where they were arrested were conducted and items were seized.

When the pair were arrested, they were taken to a local police station in Bradford and charged, before being released on bail.

Following the arrests, a 16-year-old male from the Little Horton area has been bailed pending further enquiries.

A spokesman for the North East CTU said: “These charges follow a pre-planned operation by the North East CTU. We would like to reassure people that there is nothing to suggest a risk to any community in connection with this investigation.”

After news of the arrests, councillors, including Respect Councillor Alyas Karmani for Little Horton, spoke out.

Coun Karmani said: “We need to wait until more facts emerge about these two individuals.

“But as a Council I don’t think we are being proactive enough to engage young people who are at risk of extremism.”

Labour Coun Nazam Azam, for the City ward, said: “I would like to reassure the public that there is nothing to suggest that anybody was in harm’s way.”

**Teen charged with terrorism offences and accused of possessing explosives and The Anarchist’s Cookbook**

Library picture

Published on thePublished 12/12/2012 11:26

10 comments

Tweet

Email thisPrint this

**A 16-year-old boy from Northamptonshire has appeared in court charged with terrorism offences after he was allegedly found with books on how to make improvised bombs, landmines and explosives.**

A teenager has appeared in court charged with possessing explosive substances and terrorist manuals.

The 16-year-old appeared before Westminster Magistrates' Court yesterday charged with a range of terrorism offences, including the possession of about 20 books about how to make improvised bombs.

Northamptonshire Police yesterday confirmed he had been charged with possessing explosive substances as well as indecent Manga cartoon images of children.

The former Northamptonshire schoolboy, who cannot been named for legal reasons, was arrested in the county earlier this year.

The teenager is charged with knowingly possessing explosive substances, namely sulphur powder and potassium nitrate, between January 1, 2012 and February 26, 2012, contrary to Section 4 of the Explosives Substances Act 1883.

He is also charged with possessing a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism between October 1, 2011 and February 26, 2012, contrary to Section 58(1)(b) of the Terrorism Act 2000.

These include books and manuals, details of which were released as part of the charges.

The youth also faces a further charge of possessing a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely a book containing a drawing of an improvised explosive device between October 1, 2011 and February 26, 2012, contrary to Section 58(1)(b) of the Terrorism Act 2000.

He will next appear at Westminster Magistrates' Court on January 23

**Four charged with terror offences**
19 July 2012


Four people were charged on Wednesday 18 July with terrorism offences following an investigation by the Metropolitan Police Service's Counter Terrorism Command which saw a series of arrests on 5 and 7 July.

Three men from London have been charged with preparing for acts of terrorism and one woman has been charged with possession of a document likely to be of use to a terrorist, as part of the same operation.

All four will appear at Westminster Magistrates' Court on Thursday 19 July.

The three men charged under section 5(1) of the Terrorism Act 2006 with preparing for acts of terrorism are:

[A] Richard Dart, 29, of Broadway, W13;
[C] Imran Mahmood, 21, of Dabbs Hill Lane, Northolt;
[D] Jahangir Alom, 26, of Abbey Road, Stratford, E15.

The full wording of the charge is as follows:

Between the 25th day of July 2010 and 6th day of July 2012, with the intention of committing acts of terrorism or assisting another to commit such acts, engaged in conduct in preparation for giving effect to his intention, namely:

i. Travelling to Pakistan for training in terrorism
ii. Travelling abroad to commit acts of terrorism
iii. Advising and counselling the commission of terrorist acts by providing information about travel to Pakistan and terrorism training, and operational security whilst there.
Contrary to Section 5 Terrorism Act 2006.

The woman charged with possession of a document likely to be of use to a terrorist, contrary to section 58 of the Terrorism Act 2000 is:

[G] Ruksana Begum, 22, of Provost Estate, N1.

The full wording of the charge is:

On the 5th day of July 2012, without reasonable excuse, Ruksana Begum was in possession of a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism, namely a micro SD card which contains documents entitled "Inspire 8", "Inspire 9 Winter 2012 Edition" and "Shahida and Al-Fidous" contrary to Section 58(1)(b) of the Terrorism Act 2000.

The charges were on the advice of the Crown Prosecution Service.

The terrorism act also seems to ban anyone from knowing their enemy. If you read their manuals, you have a better chance of defending against their methods. You have a better chance of spotting someone gathering ingredients for explosives. Even after all of these years of crap regarding terrorism, I'm sure that I could go around gathering ingredients and no one would think anything of it. Who even knows what goes into black powder anymore?

I couldn't believe this:

http://www.guardian.co.uk/uklatest/story/0,,-6203638,00.html

What the hell? How the hell can this happen in the UK?

This is unbelievable.

Go to google and type in ‘al qaeda manual’, possessing the first result in word format can get you f***** in the UK, that’s if you’re non-white and Muslim. Type in terrorist handbook, again, the first result can get you into trouble. It’s the same with all the other manuals.

Now what reason would a non-white muslim have for looking up information about how to commit terrorist activities?

That has to be the vaguest thing ever!

She's been charged. As proper reporters, they're reporting what happened. Naturally ambiguous, as they're not saying anything for certain. It's the nature of the publication that makes it vague. You should be thankful that it's reported vaguely like that, and not:

"TERRORIST SCUM BITCH ARRESTED FOR PLOTTING ASSASSINATIONS, BOMBING!!"

It's amazing the number of people who think that to fight terrorism we need to lower ourselves to the same level as the terrorists. If terrorists kill innocent people, then, the argument goes, it's ok to torture people we suspect may be terrorists ... or thinking about becoming terrorists ... or possessing the same reading material some terrorists have ... or reading a book about terrorism ... or talking about terrorism to a friend in the pub ...

If we throw out basic principles of justice, we become nothing better than terrorists ourselves. And if we let ourselves become indistinguishable from terrorists, then the terrorists will truly have won.

I could understand it if she's collecting this information and 'jotting down' stuff about it, if she's actually researching it for a book or something like that, but any ordinarily sane person would not necessarily have any interest in hoarding stuff like this, unless of course she just happens to have a morbid fascination with Islamist terror tactics and collects it as a hobby, the same way people collect Nazi memorabilia.

Or maybe she feels she has the right to collect a history of what is going on. There are a lot of

people who have potential books on their hard drives and in their minds. Repressive regimes hate historians who would keep the story straight.

http://www.guardian.co.uk/uklatest/story/0,,-6203638,00.html

It's ironic really. Suppressive societies which we are apparently trying to "free" in the current wars we are waging also had governments which created laws that banned certain types of books and arrested people for possessing reading material which were seen to be a danger to the "State".

What's going to be next? Are certain fictional novels going to be banned because they may contain content which could instruct someone how to build a bomb for example? Or how to shoot a sniper rifle? Or to create a biological weapon? I have several books on germ warfare and biological weaponry, some fictional and some factual. Some of those books contain descriptions of how such weapons could be created. They were bought in a bookstore that is in no way fundamental, etc. On the contrary, they were purchased in the large chain type bookstores that exist in just about all suburban shopping centres. Now am I automatically a terrorist because I have purchased such books? They were in fact purchased for research purposes but that's beside the point. Have I popped up flagged somewhere but have been discounted as a threat because my name is not 'Hassan' or 'Mustafa'?

'Likely to be useful'? Hell that means we all have reading material that is 'likely to be useful to a person committing or preparing an act of terrorism', be they on our computer or on our bookshelves. That means that any book which could be construed as a fictional crime book which gives a description of a bomb, could be seen as being 'likely to be useful to a person committing or preparing an act of terrorism'. The newspapers often detail how a certain bomber went about their activities. Should such stories also be banned, lest they prove 'useful to a person committing or preparing an act of terrorism'?

The ambiguity of such a sentence is quite terrifying if you actually think about it. It means anyone could be under suspicion, simply because you looked at a particular website or possess certain books. It reminds me of Christians who are arrested and tried as criminals in Muslim states for acting against the State by giving out bibles. Have we become like those countries we so fear? Are we becoming fundamentalists in our zeal to fight the 'war on terror'?

What if this woman's name had been Nancy Smith instead of Malik? Would she have been seen to be a threat? And since when has the possession of reading material been seen as being a precursor to terrorist activities? They have no proof that she was about to commit an act of terrorism. She only had the reading material. Was she building a bomb in her garage? Was she purchasing other materials which could be used to build a bomb? Was she inciting others to violence through those reading materials?

Are we going to have book burning days where any books which describe anything which could be construed as being dangerous to our 'society' is set on fire? Are we going to monitor people as they buy books just in case they buy a bit too many of the one type of book at the one time or show a pattern in reading style or topic?

'Likely to be useful'? Hell that means we all have reading material that is 'likely to be useful to a person committing or preparing an act of terrorism', be they on our computer or on our bookshelves. That means that any book which could be construed as a fictional crime book which gives a description of a bomb, could be seen as being 'likely to be useful to a person committing or preparing an act of terrorism'. The newspapers often detail how a certain bomber went about their activities. Should such stories also be banned, lest they prove 'useful to a person committing or preparing an act of terrorism'?

The ambiguity of such a sentence is quite terrifying if you actually think about it. It means anyone could be under suspicion, simply because you looked at a particular website or possess certain books. It reminds me of Christians who are arrested and tried as criminals in Muslim states for acting against the State by giving out bibles. Have we become like those countries we so fear? Are we becoming fundamentalists in our zeal to fight the 'war on terror'?

Sure they are works of fiction. To you or I. But to someone described so ambiguously, they could be instructional movies and books. Anything can be construed as being educational or instructional to any person. So what if she had books about al qaeda, poisons, grenades, rifles? Does not mean that she was about to commit an act of terrorism. As I said before, I have several books, both factual and fictional, about biological weapons and terrorism. Does not mean that I'm about to create a home lab and go and blow people up now does it? One charge she is faced with is because "she possessed information likely to be useful to a person committing or preparing an act of terrorism on her computer hard drive". Now in short, that could apply to anyone and anything. For all we know, she could have episodes of MaGyver on her HD, where he miraculously creates an explosive device from kitchen items to save so and so..

That's the point you and many others are missing. That the laws could apply to anyone at all. If you're caught perusing the wrong website because the contents of said website are not approved by your Government, you could face being charged because you "possessed information likely to be useful to a person committing or preparing an act of terrorism on (your) computer hard drive". Now I don't know about you, but that does not sit well with me. A university student for example, could be writing a paper on terrorism and the means by which terrorists achieve their goals, etc. Now how would such a student go about writing such a paper if they aren't allowed to read or have access to such information? I have a friend who wrote such a paper on that very topic and she was actually scared that she'd be arrested for having downloaded documents similar to the woman mentioned in the article. She is not a terrorist but a person completing a Phd and that was her research area. The whole idea that a person could be arrested for possessing "information likely to be useful to a person committing or preparing an act of terrorism" is a scary one because that could amount to being anything at all.

So because I have such books and was sent such documents (from my work and friends for research mostly), I somehow don't like my husband or am not a 'typical woman'? How sad it is to be a such a small minded man like you Vince. Now I have to say, I don't know any woman who reads romance books. How you have a narrow view of your fellow men and women does not astound me actually. I expect that someone like you has such a dim view of society in general.

For your information Vincent, all the documents that I have on terrorism on my computer were downloaded from Government websites. All the books I have on bio terrorism, weapons, poisons, crime, were for work purposes as I needed to be kept up to date as to what fell under the law and what did not. A few of the documents I have on my computer which would have me

arrested had I been that woman in the UK were sent to me by my boss and fellow work mates so that I keep up to speed so that if I do ever decide to return to work, I won't have to catch up or be behind. Some I got myself after they were recommended to me by others. I have gone into your normal run of the mill book store chains and purchased such books as well. If they did pose such a danger to the public, they'd be banned. But they are not.

I have friends who read such materials out of interest and I must admit such writings are quite interesting. The Al Qaeda manual for example is interesting to read because it shows how insane fundamentalist attempt to justify their beliefs. You might say you are 'rational and normal' for never having read books on terrorism, crime, etc, but do not assume that your voluntary ignorance somehow makes you 'normal'. It just makes you ignorant.

I worked for the Government you silly little man. Does that mean the Government and the agencies that operate under it's auspice somehow do not like their country? Does that mean that the media who publish speeches or show terrorists and their writings in the news, somehow do not like their country? Now this woman in England only had those materials in her possession. Did they find any other evidence to support that she might commit an act of terrorism or intended to? Now the fact that these manuals are so readily available on the internet also needs to be addressed. Why are they so widely available for anyone to download? Just do a search on Terrorist and Al Qaeda on Vivisimo for example, and there is even a menu showing several Al Qaeda manual's to be viewed or downloaded from the internet. Some with links to US Government agency sites that have the manual on file.

Do you realise how many gun nuts possess such weapons or books about such weapons? Does that mean that they are all out to commit acts of terrorism? I doubt it. Now does possession of such books or such knowledge mean that you automatically don't like the Government? Again I doubt it. As if it did, then half of the US population would need to be locked up. As well as all gun lovers around the world.

Now Section 57(1) of the Terrorism Act 2000 states that:

"(1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism."

Now what circumstance was this woman involved in that placed her in a 'suspicious' category? As the article goes, she was only in possession of said documents. Now does that mean that merely being in possession of such documents means that you are automatically suspect? If someone quotes one such 'article' in this forum for example and it's sent to you via email as one of the reply mailer options this forum offers and you read it, does that mean you have committed a crime for having this piece of writing on your computer? This is what I meant by the law being vague Vincent. I could send you the whole Al Aqaeda document via the PM option or by email, and you'd have been deemed to have broken the law if you open such a message or email as it puts you in possession of such 'article'. As I said before and as you keep on just not getting. Anything can be useful to someone who wishes to commit a criminal act. I have a novel here by Richard Preston. Nothing special and quite boring and typical really, but it's about bio-terrorism and it's quite descriptive in how the terrorist portrayed in the book goes about committing his attacks. Now someone in the UK could have such a book in their possession,

having purchased it from any bookstore and they could be seen as having broken the law.

Now the Terrorism Act 2000 also states under Section 57(2) that she only needs to prove that she did not intend to commit an act of terrorism by possessiong such 'articles'. And if they found nothing else but these articles and documents in her home and nothing else to prove that she was planning anything or providing it to another individual who was planning an act of terror, she'll walk free. Shame they named her in the article if such a thing occurs now isn't it? They might have ruined this woman's life by portraying her in the media as some sort of terrorist when nothing has been proven as yet.

If a law were passed tomorrow which stated that participating in or being a member of a forum which could prove useful to an individual wishing to commit a crime, would you just accept it and say 'it's a law' and never question such a law? Because such a law would mean that you would not be able to partake in any discussion in this particular forum, as your doing so would result in your having broken said law.

Now the ambigious nature of the Terrorism Act 2000 has been questioned by lawyers, judges, the media, etc. There is a reason why they were dubious of the wording of the legislation. One reason that comes to mind is the abject waste of police and government time, not to mention tax payer money, in policing such an ambigious piece of legislation. You enjoy the freedoms that you have because the laws allow you to. Terrorists don't want you to enjoy such freedoms. Now the scary thing is that many laws being passed in the bid to combat terrorism are eroding the very freedoms we have, that terrorists are so hateful of. We are becoming a closed, suspicious, angry and fundamentalist society that many of these terrorists want us to become. I don't know about you, but if I were a student writing a research paper on terrorism for example, and the police come and knock down my door, arrest me for having breached section 57 of the Terrorism Act 2000, name me to the media, without any proof whatsoever that I was planning to or aiding a terrorist aside from having accessed certain documents on the internet, I'd be pissed off, not only because of what happened to me, but because the actions of the police are tantamount to the actions of the police in societies where people have no freedoms. I'd also be pissed off that my tax payer dollars are being put to such use.

Laws that are so ambigious can be used by the State to erode the freedoms we pride ourselves in having and that is the primary reason why people are questioning their validity in our society.

I would have thought it bloody obvious that a lawyer, police, government workers might have terroist bokks etccccccc, & lawyers would have books on understanding the criminal mins too, just because i did not cover that when i said authors or students, just means i thought you where intelligent & i did not have to state the fucking obvious to you.

oh & you missed soldiers too, yeah gee whizz i guess they have all that stuff too....

Yes there is a huge difference. But it was you who made the point of saying that anyone who was charged with something was automatically guilty. Now I had not read James' comments about the speeding tickets before I posted, but while they are vastly different, both are still crimes. Many who are charged with a particular speeding or other vehicular crime do get to court and it's thrown out for whatever reason.

That this woman was charged does not mean that she is automatically guilty. As the law stands at present, anyone can be charged under section 57 of the Terrorism Act 2000 if they fall anywhere within the realm of possessing any material which could be construed as being against the act. Now that particular statute is quite vague in its wording, which means that anyone can be charged, even if their reason for accessing or possessing such materials is completely innocent. So this woman being charged under said Act does not mean that she is guilty. All they found were documents, nothing else. At present there is no proof whatsoever that she was about to use the documents to commit an act of terrorism. So they will have to investigate just why she was in possession of these documents. And if those reasons prove to be totally innocent, her reputation and her life has been ruined as she was named in the article, and branded a terrorist.

But if we were to follow your reasoning, there would be no trial, no investigation, absolutely nothing. If we were to follow your reasoning, you'd have her thrown in jail to rot for life and she could very well be innocent. And because the wording and language of the legislation is so vague, it can happen to anyone at all. Any book, article, textbook, story, etc, could be seen to be something that can be an aid to terrorism and anyone having in their possession any such material could be charged. It's because of the vague nature of the language of the Act that caution is essential as the freedom it erases from you, the public and the individual, is far greater than you may realise.

---

Now what reason would a non-white muslim have for looking up information about how to commit terrorist activities?

Literature on guns, rockets, explosives as far as I know is okay, lets not forget that controls on such items are extremely tight here. Information is one thing, getting the materials is another, constructing the actual bombs is another thing all together. (Only a qualified person would attempt to make a bomb – they can blow up in your face)

What reason would a non-White Muslim have for looking up such information? I don't think s/he would need a reason, but we could say curiosity, it could be an interest, it may have something to do with the persons work, it could be something to show off to friends etc.

I have American war footage on my comp, I have the bombing of Bagdad and other stuff, that is all okay yeh? I also have some footage from the Iraqi side, that's where as a Muslim it gets dodgy. I have some Al-Qaida footage, as a Muslim I reject them completely, they follow a deviant ideology and have brought death to many innocents Worldwide, I download it just for the hell of it (I have vids from the Americans, the Baathists, the Sunni Nationalists and the Takfiris (Al-Qaeda etc.). Lets say I get caught with such material on my comp, then what? Regardless of my views on terrorism since I am Non-White and Muslim I would be fucked, to hell with the American footage, I have some stuff from Al-Qaeda! Now I'm an avid James Bond fan, I love the series, I love the tuxedos, the gadgets, the weapons, the cars etc. Now lets say I had a replica P99 (Replicas are legit as long as they are only used on private property – at home) a gun holster, surveillance gadgets. On top of this lets say I had those manuals you can get online (I don't have any), war footage (from both sides) and miscellaneous jottings e.g. "Rumsfeld sucks elephant dick, die motherfucker". I think I could get into a lot of trouble. In reality none of these things connect however with the Terrorism Act 2000, any bastard could make some flimsy connection and lock me up.

She's been charged. As proper reporters, they're reporting what happened. Naturally ambiguous, as they're not saying anything for certain. It's the nature of the publication that makes it vague. You should be thankful that it's reported vaguely like that, and not:

"TERRORIST SCUM BITCH ARRESTED FOR PLOTTING ASSASSINATIONS, BOMBING!!"

Hey, come on now! lets not jump the gun! :)

But is the whole of the UK plotting to committ terrorism, or just mostly non-white Muslims?

I was just saying they could net the whole UK population if they wanted to. Its obvious that this law will be used to only to further demonise the Muslim community. Check this link out:

Rocket launcher 'found at dentist's house'
(http://www.nwemail.co.uk/news/viewarticle.aspx?id=420965)

This received virtually no news coverage.

Police found rocket launchers, chemicals, British National Party literature and a nuclear or biological suit at his home.

The find came shortly after they had recovered 22 chemical components from the house of his alleged accomplice, Robert Cottage, a former BNP election candidate, who lives in Colne.

The haul is thought to be the largest ever found at a house in this country.

**Man jailed for possessing collections of terrorist publications**

April 26, 2013, 6:46 pm

A man was jailed at the Old Bailey for two years today, Friday, 26 April, after admitting possessing collections of terrorist publications which contained extreme ideology and material relating to violent jihad.

Khalid Javed Baqa, 48, of Priory Road, Barking, accepted that the material would probably be distributed by his associates.

On 5 July 2012 officers from the Metropolitan Police Service (MPS) Counter Terrorism Command executed search warrants under the Terrorism Act 2000 at Baqa's home.

During the search officers found 93 copies of a CD containing multiple files/folders under the title "Awakening" and 18 copies of a disc with similar material stored under the title "Pure intentions".

The underlying message of both discs was the encouragement and promotion of extremist Islamic beliefs and the purported justification, glorification and encouragement of violent jihadist activity against those who did not share such beliefs, the court heard.

Further copies of both discs were found elsewhere in Baqa's home, car and workplace. In total he had 141 copies of the "Awakening" CD and 211 copies of the second disc.

The contents of the discs and large amount of copies made it clear that they were created for widespread distribution.

It is not known who created the original two discs from which the copies were made.

The court accepted that Baqa was storing the discs for someone else and was intending to return them to that person in due course.

Baqa accepted the discs would have been distributed by others.

Following the searches on 5 July 2012 Baqa was arrested on Wednesday, 18 July by detectives from the MPS Counter Terrorism Command.

On Tuesday 2 April 2013 Baqa appeared at the Old Bailey and pleaded guilty to the following:

Count 8.
Dissemination of terrorist publications contrary to section 2 (1) and
(2) (f) of the Terrorism Act 2006
Khalid Baqa on 21 April 2012 and 5 July 2012 had a terrorist publication namely a quantity of discs titled O' Muslim FREE CD in his possession with a view to its becoming the subject of conduct falling within any of the following (a) distribution or circulation; (b) giving, selling or lending; (c) offering it for sale or loan; (d) providing a service to others enabling them to obtain, read, listen to or look at the publication; (e) transmitting the contents of the publication electronically with the intention, either directly or indirectly of encouraging others into the commission, preparation or instigation of an act of terrorism, or intending the effect of his conduct to be the provision of assistance in the commission or preparation of such acts.

Count 9.
Dissemination of terrorist publications contrary to section 2 (1) and
(2) (f) of the Terrorism Act 2006
Khalid Baqa on 21 April 2012 and 5 July 2012 had a terrorist publication namely a number of discs titled Pure Intention in his possession with a view to its becoming the subject of conduct falling within any of the following (a) distribution or circulation; (b) giving, selling or lending; (c) offering it for sale or loan; (d) providing a service to others enabling them to obtain, read,

listen to or look at the publication; (e) transmitting the contents of the publication electronically with the intention, either directly or indirectly of encouraging others into the commission, preparation or instigation of an act of terrorism, or intending the effect of his conduct to be the provision of assistance in the commission or preparation of such acts.
Baqa was jailed for two years on each count to run concurrently.

The judge ordered the following charges to lie on file:

Count 1
Collection of information contrary to section 58 (1) (b) of the Terrorism Act 2000 Khalid Javid Baqa between 21 April 2012 and 6 July 2012 possessed a record of a kind likely to be useful to a person committing or preparing an act of terrorism, namely a disc O' Muslim FREE CD containing 39 Ways to Support and Participate in Jihad and Issues 2, 3, 4 and 6 of Inspire Magazine.

Count 2.
Collection of information contrary to section 58 (1) (b) of the Terrorism Act 2000 Khalid Javid Baqa between 21 April 2012 and 6 July 2012 possessed a record of a kind likely to be useful to a person committing or preparing an act of terrorism, namely a disc O' Muslim FREE CD containing 39 Ways to Support and Participate in Jihad and Issues 2, 3, 4 and 6 of Inspire Magazine.

Count 3.
Collection of information contrary to section 58 (1) (b) of the Terrorism Act 2000 Khalid Javid Baqa between 21 April 2012 and 6 July 2012 possessed a record of a kind likely to be useful to a person committing or preparing an act of terrorism, namely a disc O' Muslim FREE CD containing 39 Ways to Support and Participate in Jihad and Issues 2, 3, 4 and 6 of Inspire Magazine.

Count 4.
Collection of information contrary to section 58 (1) (b) of the Terrorism Act 2000 Khalid Javid Baqa on 5 July 2012 possessed a document of a kind likely to be useful to a person committing or preparing an act of terrorism, namely a copy of 42 Ways of Supporting Jihad by Talut Mujahid.

Count 5.
Collection of information contrary to section 58 (1) (b) of the Terrorism Act 2000 Khalid Javid Baqa on 5 July 2012 possessed a document of a kind likely to be useful to a person committing or preparing an act of terrorism, namely a copy of 44 Ways to Supporting Jihad by Anwar Al-Awlaki.

Count 6.
Collection of information contrary to section 58 (1) (b) of the Terrorism Act 2000 Khalid Javid Baqa on 5 July 2012 possessed a record of a kind likely to be useful to a person committing or preparing an act of terrorism, namely a disc.

Count 7.
Collection of information contrary to section 58 (1) (b) of the Terrorism Act 2000 Khalid Javid Baqa on 5 July 2012 possessed a record of a kind likely to be useful to a person committing or preparing an act of terrorism, namely a disc.


**APPEAL COURT, HIGH COURT OF JUSTICIARY**

**[2010] HCJAC 7**

**Lord Osborne**

**Appeal No. XC878/07**

OPINION OF THE COURT

**Lord Reed**
**Lord Clarke**

delivered by LORD OSBORNE

In

NOTE OF APPEAL AGAINST
CONVICTION AND SENTENCE

by

MOHAMMED ATIF SIDDIQUE

Appellant;

against

HER MAJESTY'S ADVOCATE

Respondent:

_____

**For the appellant: D Findlay, Q.C.; Ram; Aamer Anwar & Co, Glasgow**

**For the Crown: D Ogg QC, A.D.; Crown Agent**

29 January 2010

**The background circumstances**

[1] On 17 September 2007, at the High Court at Glasgow, the appellant was convicted on charges (1), (3), (4) and (5) in the indictment that he faced, which were subject to certain deletions and amendments. The terms of the charges on which the appellant was convicted were as follows:

> "(1) between 1 March 2003 and 13 April 2006, both dates inclusive, at 4 Myretoungate, Alva, Clackmannanshire; Ibrox Public Library and Glasgow Metropolitan College, both Glasgow, at Glasgow Airport, Renfrewshire and elsewhere to the Prosecutor unknown, you did possess articles in circumstances which give rise to a reasonable suspicion that your possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism, namely, computers, computer files, video files, pictures and sound files and other files; a memory card containing computer files; mobile phones containing files and photographic images; a number of CDs and floppy disks containing computer files and audio files, video files and word documents depicting amongst other things terrorist propaganda, instructions and information on making bombs, the use of various weapon systems, terrorist and guerilla tactics, surveillance techniques, suicide and sacrificial operations and terrorist training camps: CONTRARY to the Terrorism Act 2000, section 57(1) as amended;
>
> ....
>
> (3) on various occasions between 1 September 2003 and 30 September 2005 at Glasgow Metropolitan College, Glasgow, you did conduct yourself in a disorderly manner and did show to various students there images of suicide bombers and images of the murder and beheading of persons by terrorists, threaten to become a suicide bomber and carry out

acts of terrorism in Glasgow or elsewhere, place said students in a state of fear and alarm and commit a breach of the peace;

(4) between 1 September 2003 and 13 April 2006, both dates inclusive, at 4 Myretoungate, Alva, Clackmannanshire, Ibrox Public Library and Glasgow Metropolitan College, Glasgow and elsewhere to the prosecutor unknown you did provide instruction or training in the making or use of firearms and explosives by means of the Internet in that you did set up, manage and control websites namely www.freewebs.com/al-battar, www.freewebs.com/sout-al-jihad and www.freewebs.com/muaskar-al-battar containing links to documents providing instructions on how to operate various weaponry and to make explosives and further, containing links to other websites containing similar documents: CONTRARY to the Terrorism Act 2000, section 54(1) as amended; and

(5) on 13 April 2006, at 4 Myretoungate, Alva, Clackmannanshire, and elsewhere to the prosecutor unknown you did distribute or circulate terrorist publications by means of websites previously set up by you, namely, www.freewebs.com/al-battar, www.freewebs.com/sout-al-jihad and www.freewebs.com/muaskar-al-battar containing links to terrorist publications with the intention that the effect of said distribution and circulation be a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism or the provision of assistance in the commission or preparation of such acts or you were reckless as to whether your conduct had an effect abovementioned: CONTRARY to the Terrorism Act 2006, section 2(1)".

Charge (2) in the indictment alleged a contravention of section 58(1)(a) of the Terrorism Act 2000, "the 2000 Act", namely collecting or making a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism. However, the jury had been charged to the effect that charge (2) was an alternative to charge (1) and that, in the event of the

jury convicting on charge (1), which they did, they would not require to consider and return a verdict on charge (2).

[2] On 23 October 2007 the appellant was sentenced to 6 years' imprisonment in respect of charge (1), ordered to run from 13 April 2006; 6 months' imprisonment in respect of charge (3); 2 years' imprisonment in respect of charge (4) and one year's imprisonment in respect of charge (5). The period of imprisonment imposed on charge (3) was ordered to run concurrently with that on charge (1); the periods imposed on each of charges (4) and (5) were ordered to run concurrently but to run consecutively to the period imposed on charge (1).

**The grounds of appeal**

[3] On 17 April 2008, the appellant lodged a Note of Appeal against both conviction and sentence. Leave to appeal has been granted in respect of grounds (2), (3) and (4), as regards conviction, and also in respect of sentence. The grounds of appeal in respect of which leave to appeal has been granted are in the following terms:

> "(2) Misdirection
>
> The learned trial judge in his directions to the jury *quoad* charge (1) failed to adequately direct the jury that they had to be satisfied that the appellant possessed the articles in circumstances that gave rise to a reasonable suspicion that he intended that they be used for the purposes of the commission, preparation or instigation of an act of terrorism. The learned trial judge failed to adequately direct the jury that they had to distinguish and discriminate between 'propaganda or ideological material' and other material in the possession of the appellant when assessing the Crown case. The learned trial judge in directing the jury, failed to adequately make clear that they had to be satisfied that there was a direct connection between the articles possessed by the appellant and an intended act of terrorism. Reference is made to the case of *Zafar* v *R* [2008] E.W.C.A. Crim.184.

At page 108 the learned trial judge invited the jury to speculate as to the extent to which a young Scottish Muslim would have an interest in Middle Eastern politics or religion. To invite the jury to speculate in this way amounted, of itself, to a material misdirection.

The Crown led evidence from Evan Kholman. Said witness was designed in the indictment as an 'International Terrorism Consultant' and was responsible for the production of Crown production 4. A copy of Crown production 4 is attached to this Note of Appeal at Appendix 3. Crown production 4 makes reference to and provides opinion evidence of the articles that the Crown relied upon in seeking a conviction. Under reference to the case of *R* v *K* [2008] E.W.C.A. Crim.185, it is submitted that the trial judge misdirected the jury in the course of his charge by directing them that in assessing the question of whether the appellant's possession of the articles was for a purpose connected with the commission, preparation or instigation of an act of terrorism they (the jury) were entitled to take into account the opinion evidence of Evan Kholman. The evidence of Evan Kholman was under reference to *R* v *K* 'extrinsic evidence' and the trial judge should have directed the jury accordingly.

The failure to do so resulted in inadequate and inappropriate directions being provided to the jury as a result of which the appellant did not receive a fair trial.

(3) Reasonable excuse

Section 58(3) of the Terrorism Act 2000 provides for a statutory defence of reasonable excuse. The trial judge misdirected the jury as to what amounted to a reasonable excuse. Reference is made to the trial judge's charge at pages 62 *et seq* and page 108. It is submitted that the directions provided to the jury in relation to what in fact could amount to a reasonable excuse were too narrow. Under reference to *R* v *K* all that is required to establish a reasonable excuse is that an individual possessed the document or

record for a purpose other than to assist in the commission or preparation of an act of terrorism.

(4) Unbalanced charge

The learned trial judge having decided it was appropriate to rehearse the evidence, failed to present a balanced picture. In particular: (i) he rehearsed in detail the evidence relied upon by the Crown in sharp contrast to the evidence relied upon by the defence; as an illustration reference is made to page 117 of the learned trial judge's charge. The learned trial judge (at pages 90 to 100) gave an extensive recital of the Crown documents, rehearsing titles and contents before summarising same. No such rehearsal was presented to the jury in the Crown speech where minimal reference to these documents was made. The learned trial judge's reference to defence case extended to a mere 41/2 pages".

**The evidence led at the trial**

[4] It may fairly be said that the evidential basis for the appellant's convictions, as described in the report to this court by the trial judge, is somewhat diffuse. A prominent source of evidence for the Crown came from Evan Kholman, a skilled witness possessing expertise entitling him to give opinion evidence on the situation in the Middle East and beyond. He is an American who described himself as an international terrorism consultant, holding a degree in international politics from the Edmund Walsh School of Foreign Service at Georgetown University and a jurist doctorate from the Law School at Pennsylvania University. He also holds a certificate in Islamic Studies from the Prince Alwaleed bin Tallal Centre for Muslim-Christian Understanding, also at Georgetown University. He had given published evidence to the United States Congress on terrorism and had studied that subject for 10 years. He was the author of a book entitled "Al Qaida Jihad in Europe the Afghan-Bosnian Network". He had become a consultant in 2004,

having been a research fellow for 7 years. His research had involved him interviewing known terrorists as well as studying terrorist publications and general articles and books. He was consulted by the United States Justice Department, the Federal Bureau of Investigation and the Metropolitan Police in London. He had testified in several Court cases in England.

[5] Mr Kholman had produced a report (Crown production 4) dealing with what he termed the "decentralisation of Al Qaida's terrorist network". He described Al Qaeda as being two things. First, it was an organisation with some hierarchical structure based in Afghanistan and Iraq. Osama bin Laden founded it in 1987 and remained its "Amir". Second, it was an ideology adopted by persons who had taken it upon themselves to take independent action in support of Al Qaeda's ideals, even if they had not actually joined the organisation in any formal sense. The aims of Al Qaeda were numerous, but included: (1) the removal of Western influence from Muslim countries; (2) the imposition of Sharia law throughout the Muslim world; (3) the displacement of the United States of America as a global super-power; and (4) the removal of certain persons, perceived as tyrants, ruling countries in the Muslim world.

[6] In about 1986, Al Qaeda and its antecedents had determined that, in order to achieve these goals, a Muslim Army had to be created. It had to have troops, who would have to be properly trained. This was done by establishing a series of camps along the Afghan-Pakistani border designed to train troops in the use of weapons, explosives and guerilla tactics. Some of this training had been recorded on video tape. As a result of American attacks on the camps, it had become increasingly difficult to carry out any such training. Because of this, a new tactic had been developed in the years 2001 to 2003 whereby potential Mujihadeen (troops), especially those from Western countries, would not be trained in camps, but in their home countries. This had been the brain-child of, amongst others, Shaykh Youssef Al-Ayyiri, known as "Al-Battar". It was he too who widened the fight from attacking purely Western targets to carrying out atrocities, even in the heart of the Muslim world, notably the bombing of Western residences in

Riyadh in 2003, which had killed several Muslims. The tactic was that everywhere was to become the front line. It was with this globalisation of the conflict that some of the material found on the appellant's laptop computer was concerned. Some of this material was in English, having been published by "At Tibyan", an underground collective in the United Kingdom, the goal of which was to translate and distribute Al Qaeda material with a view to the recruitment of English speakers, notably British nationals, to the cause of, putting matters loosely, "jihad". The trial judge observes that the evidence supported the idea that the appellant had been seduced by this material and was planning to do, or assist in doing, just what it suggested.

[7] Turning to the appellant's background and the alleged breach of the peace, the trial judge records that at the time of his detention in April 2006, the appellant was aged 20. He had been born in Scotland of parents of Pakistani Sunni Muslim origin. He lived in the family home at 4 Myretoungate, Alva. His father ran a local shop, including an off-licence. The Deputy Headmaster of Alva Academy, who had taught the appellant computing and social education, described him as a polite and very respectful pupil who was not a high achiever. The appellant had passed 7 Standard Grades; 3 at general level (English, French and Sciences) and 4 at foundation level (including computing). From school, the appellant went to Clackmannan College where he undertook a national qualification in computing. He performed poorly, passing 8 and failing 9 of the modules. Again, he was described as a pleasant, quiet and respectful student. He then enrolled at Glasgow Metropolitan College, formerly Glasgow College of Building and Printing, to do a similar course, this time in computing and information technology, which could have led on to a Higher National Diploma. It was with his actings in his class at that college that the breach of the peace charge, charge (3), was concerned.

[8] The trial judge observes that the evidence from the staff of the college provided an interesting contrast of impressions. According to Alexander Patterson, who taught desktop publishing and graphic design, it was a pleasure to go into this particular class. The students

were lively and mixed well with each other. Since at least one of the students maintained that she had complained about the appellant's activities to him, the trial judge observes that it was unfortunate that he was not asked about any complaints made. By contrast, Stephen Aitken, who taught website development, maintained that the class did not get on together. It was one of the worst classes with which he had had to deal in recent times, given the existence of a disruptive element within it. The trial judge states that it was fair to comment that, having regard to the other evidence about what occurred in the class, Mr Patterson substantially played down the existence of any problem activities. In that connection, he purported not to have been aware of any difficulties with what appeared on the appellant's computer screen, other than that he once saw it displaying what he took to be Arabic. Mr Aitken had been concerned in the web design class that the appellant had been using the symbolism of black flags. He had sought, but failed to obtain, an explanation from the appellant as to why he was doing this, but the matter was taken no further.

[9] Brian Glancey, who taught the use of information technology as a business resource, spoke of two occasions upon which he told the appellant to stop accessing the websites he was looking at, notably ones displaying images of Osama bin Laden and musings and exploits of suicide bombers. He had told the appellant that it was inappropriate to access what he called "terrorist websites". He had reported that access to his line manager. Again nothing positive appeared to have been done about that. The impression gained from the block of evidence concerned was that the staff were reluctant to do anything for fear of some accusation of racist conduct. William Stein, who also taught aspects of desktop publishing, had also told the appellant to stop accessing what he considered to be "inappropriate sites" which contained the logo of a circle and a rifle, at about the time of Ken Bigley's murder.

[10] On the student side, the first witness was the class representative, Razia Hussein. Her evidence was the most detailed given about the appellant's activities. This was perhaps because

of her position as class representative and her outgoing nature. She deliberately sought out and spoke to the appellant, despite his apparent quiet and reserved personality. She was one of the disruptive elements referred to by Mr Aitken. Although a Shi'ite, and not a woman conforming to the stricter codes of Islamic dress, she had maintained that she got on quite well with the appellant. She was a "class friend". She had said that the appellant accessed the internet at every class where there was internet access available. He had been viewing and showing her websites, such as ones with a dead person pointing to the sky (heaven), armies (people in masks and uniforms) and people getting blown up, as well as those of persons reciting the Koran. The appellant had attempted to explain to her how certain conduct was right and to tell her what Muslims ought to do, notably "commit jihad" which she took to mean "to go and blow oneself up probably". The appellant had said "quite a few times" that he wanted to be a suicide bomber.

[11] Razia Hussein was adamant in cross examination that this was why the appellant was accessing the sites and not because he wanted to find out why suicide bombers did what they did. He had never mentioned to her that he was engaged in any form of research programme. Videos were available on websites of females entering a theatre, presumably the Chechen guerilla siege of the Moscow Theatre, and of a beheading. The appellant had said that he had joined, or was going to join, a training group in Edinburgh or Stirling and also somewhere in England. He said that he had met Osama bin Laden, who was his idol. He had also said that he was going to blow Glasgow up. Razia Hussein had asked the appellant to tell her when that was going to happen, so that she could run away. A specific incident involved a class trip to a Ministry of Defence building in Glasgow, of which she maintained the appellant had been part. The appellant had told her that he had been watching the building in order to report back to his leaders. Her impression had been that he did not appear to be joking, although she did not always take what he said as seriously intended. At times she had been frightened, as what he was viewing, showing to the class and saying was disturbing. She called the appellant "Al Qaeda" or "suicide bomber". She did not go to the police, but did report his conduct to her course leader,

Mr Patterson. Other students, in evidence, spoke to more or less the same type of conduct. The trial judge observes that their evidence, along with that of Razia Hussein, must have been broadly accepted by the jury, since conviction of a breach of the peace in respect of that type of conduct followed. Francesca Dimilta spoke to two occasions when she saw the appellant accessing websites showing troops and Osama bin Laden talking to the camera. The appellant had said, in response to a question from Razia Hussein, that one site was that of "Al Qaeda". He had told Razia Hussein that he believed in what Al Qaeda were doing and approved of the procedures they carried out, such as "the bombings and things". On one occasion when he had been talking to Razia Hussein, he had said that he wanted to be a suicide bomber and had mentioned bombing Glasgow. Miss Dimilta thought his beliefs were genuinely held and she was "a bit alarmed" by them, although she accepted that she did not think that he would actually become a suicide bomber and did not regard what he had said as a threat. She confirmed that Razia Hussein had reported the appellant's activities to the college.

[12] Fozia Begum was Razia Hussein's cousin. She spoke in evidence to being shown websites by the appellant, including one where somebody got his head cut off. She had described this to the appellant as sick, but he had replied that "they" had deserved "it". There was another video of a "guy who died", but was laughing as he had "committed jihad". She spoke to the appellant accessing such videos many times in class. She too said that he had told her that he had seen Osama bin Laden, that he was his idol or god and that Muslims should follow him. She did not believe that he had seen him, as he had been laughing at the time. He had said that he was going to blow up Glasgow city centre, was going to get training and would do anything for his people. She said that she too had told Mr Patterson about this.

[13] Sue-Yin Law in evidence initially claimed that she could recall seeing only newsreel footage of sand, people and soldiers on the appellant's computer. However, the contents of her police statement reminded her of an occasion when, in December 2003, the appellant had said

something about becoming a "sacrifice for God" and that his name would become known "in his country". Finally, Kyle Ramsay said that he had seen the appellant visiting Arabic websites, including one in which a person had been beheaded. The appellant had said that he was going to be famous and his classmates would remember his name. Under reference to his police statements, he said that the appellant had "....said that one day he would make a name for himself ....". He had also mentioned bombing George Square in Glasgow.

[14] The trial judge states in his report to this court that the evidence showed a consistent pattern of the appellant showing his classmates unpleasant images and what might be described loosely as "terrorist propaganda". He had told them that he was going to become a terrorist, notably a suicide bomber, and that he would bomb part of central Glasgow. The defence position taken up in cross examination took several tacks. It had been primarily focused on the first and principal witness on this aspect of the case, Razia Hussein. The defence, correctly anticipating the damaging nature of her testimony so far as charge (1) was concerned, launched a fairly sustained attack on her evidence as neither credible nor reliable. It was asserted in cross examination to have been the "figment of an over-ripe imagination". An attempt was made to portray her first as a woman in whom the appellant was unlikely to have confided, given that: (a) she was a Shi'ite and the appellant was a Sunni; and (b) the appellant would not have approved of her failure to comply with the Islamic dress codes. However, her evidence was not that the appellant had been confiding anything to the class, but rather that he was explaining, with some enthusiasm, his current political and religious views and boasting of his future terrorist intentions. Secondly, the defence had sought to poke fun at Razia Hussein by focusing upon her mispronunciation of "Al Qaeda", her lack of in-depth knowledge of the activities of Osama bin Laden and of Middle Eastern politics. Thirdly, the defence put to her that the appellant had not even gone on the Ministry of Defence trip, although no evidence was led to support that contention.

[15] There was considerable use of Razia Hussein's statements to the police in relation to what were strenuous efforts to undermine her testimony. She was accused of lying, for example about reporting the activities of the appellant to Mr Patterson, and, essentially of being a fantasist. The problem with that approach was that her evidence was subsequently supported in large measure by the other students in the class. The importance of Razia Hussein's evidence, observes the trial judge, was ultimately not so much in relation to proof of the breach of the peace, given its essentially minor nature, but in its revelation of the appellant's motives in accessing what were essentially "terrorist" websites and, by extension, downloading and retaining material from them. It was this material that was to form the backbone of the terrorist acts charges.

[16] The defence position during the trial was that the appellant was only accessing the sites out of curiosity, in order to ascertain the thinking behind the suicide bombers and other terrorists. The trial judge observes that there was no evidence that that was the case, other than a passing reference in one of the appellant's interviews that he wanted to know what they were thinking. Given, amongst other things, the level of the appellant's intellectual functioning, the trial judge considered that it was highly unlikely that he was conducting academic research into the subject. Given his extensive downloading, and concealing, of the material it was equally unlikely that his efforts were out of a genuine interest in understanding the mind of the terrorist. On the contrary, as Razia Hussein had said, the trial judge considered that he was accessing the material because he intended to become a terrorist and not because he wanted to understand the innermost thoughts of a terrorist, or a terrorist's perception of the propaganda encouraged rapid route to heaven.

[17] In his report, the trial judge next dealt with the evidence relating to the appellant's intended travel to Pakistan. On 5 April 2006, the appellant had been intending to travel with his uncle Rafique to Lahore in Pakistan. He had been booked on the 7.45pm flight from Glasgow. At about 3.00pm on that day, the Glasgow Airport police had been tasked, as part of an ongoing

operation, with stopping and detaining the appellant and his uncle under and in terms of schedule 7 of the Terrorism Act 2000. That schedule permits the police so to do, and to question or "examine" a person at an airport for the purpose of determining whether that person "is or has been concerned with the commission, preparation or instigation of acts of terrorism". The schedule also allows the police to search such a person or anything which he plans to take onboard an aircraft (schedule 7, paragraph 8(1)(c)).

[18] The appellant had been stopped by the police at Glasgow Airport shortly before 7.00pm on the date in question. He had been carrying a laptop computer. He was examined intermittently by the police over a period of some 5 hours until about midnight. At one point during the interview, Detective Constable Murray, contrary to certain police guidelines, switched the laptop computer on. He explained that the purpose of this was to make sure that it was a genuine computer, that the material in it was not password protected and in case anything on it required immediate action. It was not password protected and Detective Constable Murray accessed a number of document and image files, all in the appellant's presence. The police discovered nothing incriminating on the laptop, but decided to seize it and send it for further examination. Neither the appellant nor his uncle made the flight to Pakistan, returning to the appellant's home in Alva pending retrieval of their tickets, boarding passes and passports.

[19] The laptop was later examined by a civilian expert, Michael Dickson, a forensic analyst from the police E-Crime Unit. He looked first for e-mails. There were none. That was considered to be curious, given that there were several e-mail accounts in the name of Atif Siddique and others belonging perhaps to members of his family. What was ascertained was that the user of the laptop -and it was not disputed that this was the appellant - had accessed a large number of websites, including tawheed.com/forums, islamicthinkers.com\forum and forumsforfree chat rooms. The trial judge observes that the accessing of these websites was not criminal in itself, but the nature of the sites had a potential significance in confirming that the user of the forums

and the manager of the freeweb sites were the same person, not disputed to be the appellant. The accessing of the forums, using an appropriate username and password was capable of providing a clue as to where the appellant obtained at least some of the downloaded material discovered in his possession.

[20] Mr Dickson and his corroborating colleague had come to look for a sub-folder which ought to have been stored under the folder entitled "documents and settings\mohammed atif\my documents". It was named simply "No.1" but could not be found at that location. Rather it had been moved and concealed under the folder "windows/options". This folder is not where a person would normally store "my documents" or other items of personal important interest. This was, no doubt why the police at the airport had not found it. The sub-folder was opened and found to contain a variety of pictures, sound and video files.

[21] The first file considered was a video file (1) WMV, which was copied onto a separate DVD (L54). This was a publication by "At Tibyan". The video file contained the file: "The Expedition of Shayk Umar Hadid". It purported to have been released by the "Al Qaeda Network in the Land of the Two Rivers". According to Mr Kholman, the original Arabic version was put onto the internet in October 2005 and the English sub-titled edition only in January 2006. The version in the appellant's laptop was the sub-titled version. It was in honour of prisoners and glorified the work of the suicide bombers of the "Iraqi Martyrdom Battalion". It called upon other Muslims to join that Battalion. It was essentially an Al Qaeda propaganda and recruitment video, the English version targeting English speakers in the West.

[22] Five document files were found and printed off (Crown production 112). All of these were in English as follows: (1) "The Islamic Ruling on the Permissibility of Self-Sacrificial Operations" (some 60 pages). This again was an At Tibyan publication. It translated the views of Shayk Yusuf Al Uyayri, a former bodyguard of Osama bin Laden, who was implicated in the bombing of the U.S.S. Cole at Mogadishu. It was originally made available after the Riyadh bombings in Arabic

on the official Al Qaeda website, namely the "Al Neda Centre for Islamic Research". It was intended as a justification of the bombings as the Arab world might otherwise disapprove of such behaviour near some of the most sacred sites of Islam; (2) "Constants on the Path of Jihad". This also had originally been written by Al Ayyiri, lectured upon by an Imam in the United Kingdom and again published by At Tibyan. This explained the so-called true meaning of jihad as a "holy war", that is to say, a violent struggle and not just, as the defence suggested several times during the trial, an inner or moral struggle with the tenets of Islamic faith. This document also urged Muslims to join in that jihad; (3) "Mourning over a Knightess: A Muslimah". This had been put on the worldwide web by Louis Atiyyatullah, an Al Qaeda internet theorist, and concerned the female participants in the siege of the Moscow Theatre. It was intended to shame Muslim male youths into action. It was more propaganda intended as a recruitment tool; (4) "The Book of Jihad". In its original Arabic form, this tome was a work of some antiquity, having been written around the year 800 during an attack of Egypt by Byzantine forces. Its significance lay in its recent translation into English, presumably with the intention of guiding English-speaking Mujihadeen; and (5) "Declaration of War Against the Americans Occupying the Land of the Two Holy Places", a paper written by Osama bin Laden himself.

[23] Within the laptop there was a sub-folder containing an additional 12 document files, which had been printed off (Crown production 119). These had mostly been accessed last on 29 March 2006, although created in June 2005. They were: (1) "Advice Regarding Ubudiyyah", servitude to Allah, again a publication of At Tibyan being a translation of the work of Shayk Abu Mohammed Al Maqdisi. He was the inspiration behind Abu Musa Al Zarqawi, the former head of Al Qaeda in Iraq. Its suggested that any Muslim should be in servitude to Allah and be prepared to lay down his life to Allah, if that is what it takes to protect the goals of Islam; (2) "There once was a False God Called America", again by the theorist Louis Attiyatallah, lauding the Al Qaeda strategy against the United States; (3) "Ramadan in Camp X Ray", relating to the United States military prison camp at Guantanamo Bay, Cuba. (4) "The Tag Du'A (Prayer) is the

Weapon of the Believer". This again was an At Tibyan publication which stated that it was incumbent upon Muslims to pray for the violent destruction of the enemies of Islam. It includes the quotation: "May Allah fill their homes and graves with fire"; (5) "The Ruling Regarding Killing Oneself to Protect Information". This document co-written by Dr Ayman Al-Zawahiri, the Deputy Head of Al Qaeda. It concerned what to do if captured. It stressed the legitimacy of suicide in such a situation to avoid revealing information concerning the Mujahadin; (6) "Usamah from Riches to Terror" a biographical news feature about Osama bin Laden; (7) "The Badr al Riyadh Tape" containing compliments on the Riyadh bombings by Louis Atiyyatullah; (8) "The Operation of No.11 Rabi Al Alwaal", a reference again to the 2003 Riyadh bombings, originally in Arabic. This contained a chapter called "Why Riyadh" written by Shayk Yosef Al Ayyira, explaining and defending Al Qaeda's new strategy of bombing even Muslims in Islamic countries; (9) "Are the Taliban from Ahl as Sunnah", justifying the Taliban as legitimate Muslims and rulers of Afghanistan. This too called upon Muslims to support the Taliban and to go to Afghanistan to do so; (10) "The Path to the Land of Battle", once again an At Tibyan publication, pointing out various countries from which a person could access the frontline in Afghanistan. One of these was, of course, Pakistan; (11) "Tawhid of Action", encouraging Muslims to engage in suicide bombings and featuring the bombing of the U.S.S. Cole, and finally (12) "Verily the Victory of Allah is Near", an At Tibyan translation of the now-imprisoned Saudi clerics' suggestion that Islam is winning the battle.

[24] All of these various publications had certain common themes. First, there was that of suicide and martyrdom, as two different concepts. Martyrdom was said to be justified by Islamic jurisprudence; even if it killed civilians. Secondly, they purported to justify war against the United States of America, the United Kingdom and their allies.

[25] Mr Kholman explained in evidence that the documents were not easy to locate, or at least not all of them, unless a person was aware in advance of any search of the authors and the titles.

Many had been produced in the years 2004 to 2005 and had been released in password-protected websites. Not surprisingly, Al Qaeda found it difficult to maintain websites on which their propaganda and other material was readily available for long periods. Individual members or sympathisers had similar difficulties. What tended to occur therefore was that an individual with terrorist material would buy website space with, for example, a stolen credit card. He would then post the material on it. It would remain there for only a few days before the fraud was discovered. By that time however the chat forums would have advertised the existence of the site to those interested and they would have had the time to download the material. It was a legitimate inference from this that a person having a large cache of this type of material, such as the appellant had had, must have been one of a relatively small community of people wishing to collect it, that is to say those having sympathy with its contents. That was so even though, as the defence pointed out, any individual piece of material could have been downloaded by one person and distributed widely by way of CD, e-mail or further websites.

[26] In addition to the material on his laptop, the appellant had a bag of audio CDs some of which contained "Nasheeds"; incantations which include calls to martyrdom and which usually accompanied images of suicide bombers, or other Mujihadeen on video. On his mobile telephone, alongside images of his family, there were those of two persons in camouflage jackets named "Libbi" and "Yahya al Libi". There was one of protesters carrying barriers saying "Behead those who insult Islam" and "Massacre those who insult Islam", presumably taken from news footage of the demonstrations in London which resulted in the successful prosecution of persons creating and carrying such placards.

[27] The trial judge observes that an important question for the jury was what the appellant was doing, or going to do, with the material described in his laptop whilst going to Pakistan, ostensibly, according to what he said to the police, to stay for a while on his uncle's farm. The material itself contained a clue to that as did his remarks to his classmates. But there were two

further important pointers, according to the trial judge: first, the other material discovered in his house and elsewhere; and secondly, records of chats which he had had with someone calling himself "Oceanblue".

[28] The trial judge went on in his report to this court to deal with other material considered relevant to the issues in the trial. About a week after his detention at Glasgow Airport, the police had raided the appellant's house in Alva. They did so using what the trial judge describes as "the customary panoply of a raid on a suspected terrorist residence; breaking the door down, securing the hands of the occupants with plastic ties and escorting them unceremoniously to a detention centre; in this case to Govan Police Station".

[29] Recovered in the house was the family computer, Crown label production 64. All the files ultimately recovered from this computer and deemed relevant to the case had been deleted. They were recovered from their deleted state. Very little of any significance was found stored on the computer in the former files. However, some sub-folders and files within a folder called "Windows\internet" were recovered. This was a folder in which a person would not normally have been expected to store personal material. The material was copied on to a data CD (Crown label production 56) and printed out (Crown production 108). There were images of Osama bin Laden, a man with his eyes closed and apparently in heaven and again surrounded by others (jazeera-q82.gif), various people in masks holding guns (jihadiman.gif) and animations or films of such people.

[30] Of more significance was the material found in the "slack space" of the home computer. The slack space of a computer was an area of the hard disk where a file had been stored but had been partially over-written by another file. The slack space was that area still containing remnants of the original file. In this space were fragments of a message from Khalid to Yahya Ayash, partly over-written on 6 January 2006, advising him to leave home. The name Yahya Ayash was used elsewhere on the computer in the owner's registry and was, according to Mr Kholman, that of a

master bombmaker for Hammas in the late 1980s, known as "the Engineer". It was one of several names, including also atifsiddique, al-battr and abuals an ansaree, used by the appellant to access web forums. There were other fragments of conversations with the "signature" of the user being: "we promise we will not let you live safely....oh Americans wait for us, we have brought slaughter upon you". There was another posting from the user of this computer to someone else who was saying there was nothing special about a particular video clip. This described the user as "we the extremists and Islamic terrorists".

[31] On a windowsill in a bedroom in the appellant's home there was an MP3 recorder. Such a device could be used to store documents as well as music files. It could be used to transfer documents from one computer to another. It did contain documents although they had all been deleted. They were recovered and copied onto a CD (Crown label production 63). The documents included: (1) "Verily the victory of Allah is near", which was also on the appellant's laptop; and (2) the "Path to the Land of Battle". Under a carpet in the bedroom there was a CD (Crown label production 69) on which the appellant's DNA was found. It was in a badly damaged condition but the material on it was copied to another CD (Crown label production 58). It had two files on it. The first was a video called "Beyond the Mountains", which showed scenes of people training in a mountainous region. It also had images of suicide bombers. The second was "Operation Zabul", which had footage of training and of a helicopter. It showed the "possibly staged" capture and "possibly faked" execution of a person called a "pig", being supposedly an assistant of the President of Afghanistan. There was also a video called "Qahr Ur Saleeb", of an hour and a half duration, starting with the image of a room with the Koran on a table and guns propped up against a wall. It showed helicopters, persons apparently making and placing bombs and an Australian in combat gear saying various things such as "As you kill us you will be killed. As you bomb us you will be bombed". It had men looking at a screen showing the helicopter, dead bodies and the identity card of an American called Danny Dietz, maps of a town with embassies marked and a vehicle being blown up.

[32] A floppy disk (Crown label production 65) was found on a shelf in another bedroom. There were four deleted documents found on the disk and these were printed off (Crown production 109). They were all in Arabic but were translated by a Mrs Hart (Crown production 192). They included a 157 page thesis about jihad which, as a linguist, Mrs Hart said meant "to fight in the cause of Allah", derived from the verb meaning to struggle. This thesis defined "the enemy" as, first, the Jews, then the Christians in the West, then the Christians in the East and ultimately the Shi'ites too; it contained a section on "Preparing for Battle" with subsections on specialised military training, possessing weapons and forming small groups.

[33] On the shelf in this bedroom there was also a bag of 54 floppy disks, (Crown label production 66). One of these was copied and printed out (Crown production 200). The document was in English, but was not titled. It commenced with an historical introduction referring to the fall of the Muslim Caliphates in 1924 and continued:

> "The confrontation that Islam calls for with these godless and apostate regimes does not know Socratic debates, Platonic ideals or Aristotelean diplomacy. But it knows the dialogue of bullets, the ideals of assassination, bombing and destruction and the diplomacy of the cannon and machine gun".

It referred to the young coming prepared for jihad, defined as holy war, and appeared to be work by someone wishing to see the restoration of an Islamic caliphate. It then had a number of different lessons set out. There was no first lesson, but the second was entitled "Necessary Qualifications and Characteristics for the Organisation's Member". These included being a Muslim and being prepared to undergo martyrdom. There was no third lesson, but the fourth was on "military bases", from which operations could be launched. The fifth was on means of communication and transportation and the care necessary when using them. The sixth was on training, in fitness, shooting and tactics. The seventh concerned weapons and the eighth related to member safety. The ninth was on what was called a security plan and included the need to be

taught how to answer questions at airports such as "Why are you going to Pakistan?". There were more missing lessons, but the twelfth was on espionage and the eighteenth on prison and detention.

[34] Evidence was also led concerning materials sent by the appellant to his cousin Shazie Rehman by e-mail from "atifsiddique786" in March and April 2003 (Crown production 6). This was recovered in the form of printed documents from her house in Bridge of Allan. Shazie Rehman was a biomedical student. However, she seemed incapable of remembering just how she had come to receive the documents, or to print them off. She said in evidence that she had not asked for the material. The material consisted of a number of documents translated as follows: (1) "Your answers about the Taliban" and "Taliban: Allah's blessing on Afghanistan". This stated, amongst other things, that "military training is an Islamic obligation, mandatory upon every sane Muslim...."; (2) "In the Heart of Green Birds", containing the invocation "Oh Muslims read the stories..." and stating "We are terrorists and terror is an obligation in the Book of Allah. Let the west and east know that we are terrorists and we strike fear". The document contained various stories of "martyrs" in Bosnia; (3) "An Advice to Those who Abstain from Fighting in the Way of Allah"; (4) "Major Signs before the Day of Judgement"; (5) "Stories of the Pious" and (6) "Martyrdom not suicide". This included such phrases as: "....the one who contributes his life to the cause of Allah....his doing is sacrificial, he gives his life away for Islam and Muslims, which is the highest"; and "the one who blows up the enemies of Allah by blowing himself up as well cannot be considered as suicide and he is, Allah willing, a martyr".

[35] The trial judge also refers to items found by another of the appellant's lecturers at college in Glasgow, namely Stella Martin, in her own laptop computer inside a folder of the appellant's work. It was agreed in a joint minute that these were contained in Crown production 186 and were in Arabic. They were translated and found to contain the full text of the wills of four martyrs, addressing threats to American soldiers, etc.

[36] The trial judge in his report then goes on to narrate certain findings of Mr Dickson, the forensic analyst, who, using the term "Oceanblue", found two instances on the appellant's laptop in the Windows swap file. The first was an e-mail address "Oceanblue2007@etc" and the second was a message reading: "Oceanblue - Sayif, been looking for you for almost a year, pm (private message) asap" contained in a chat forum. There was also material recovered from computers seized by the West Yorkshire police in the form of three chat logs; two native chat forums from October and November 2005 and a third one undated being a word document cut and pasted from a log. This third one was a conversation between "Oceanblue" and someone calling himself "Abu Hafs al Ansuree" and stored in a file called "Yahyaconv.rtf". "Oceanblue" was a word mentioned on the laptop and Abu Hafs etc and was one of the user-names for forums on the home computer. Put another way, the conversation involved the appellant. It read, in part: "My parents wouldn't let me practice deen as much as I would like (this was when I was staying in Scotland) ie keeping of the beard...they finally shaved it off forcibly....which led me to run away from the house for the first time....". The trial judge states that this was considered fairly clearly to be the appellant writing. The reply was in the form of advice to dedicate his life in the path of Allah, to fight those who rejected Tawheed, to purchase a laptop and to use fictitious names on the forum. The reply to that was that the user had many names including "Yayya-Ayash" and "Atifsiddique786".

[37] He also referred to just having seen a "video of chop chop", presumably one of the beheading videos earlier referred to. The log dated 25 October between the same participants stated: "I suggest you make a strategic return, a temporary one so that everyone thinks all is fine and well. The reason is we know what you desire to do for the sake of Allah". The ones in early November started with the same names and then one changed to Muhammed Atif and included: "We have to be under cover" "I need to do something...I want something".

[38] The trial judge goes on to describe the websites referred to in charges (4) and (5) in the indictment. These were set up using an internet site called "freeweb". This site allowed users to create relatively basic websites. The home computer user, proved to be the appellant by reference to the web browsing patterns and access to Atif files at the same time as the freeweb site was accessed, had built his own website called "Al Battar" (Crown production 114). Ultimately, it was not disputed that the appellant was the manager of this site. The purpose of the main webpage of the site was stated to be: "To provide you with Islamic downloads and online lectures by different Shayks, it will also have some links to good Islamic pages, forums and websites". It invited the visitors to tell others of its existence. It carried the quotation: "And at what time on earth was Jihad more needed than it is now when the enemies of Islam have surrounded our land like wolves, taking from there what they wish...if not the time for Jihad, O Sons of Adam, when? We need the Jihad, the Jihad does not need us". There were also three other webpages, one of which provided site links to other sites.

[39] There were two other webpages being managed by the same computer user, the appellant, although these could not be accessed directly from the webpages of "Al Battar". The first was "Mu'askar Al Battar", which had links to copies of 18 editions of the magazine of the same name. The magazines were in Arabic. They were printed off and translated (Crown production 189). The degree to which the appellant understood Arabic was perhaps not entirely clear, observed the trial judge. However, in his opinion, so far as the charges before the Court were concerned, that was not a matter of central importance, where he could be taken to understand the general source and tenor of the material which had been put onto the websites.

[40] The magazine title according to Mrs Hart, meant: "The Camp of the Sword that Cuts", the Sword that Cuts (Al-Battar), being the nickname of a martyr. The magazines had a number of regular features on weapons, survival, religion and Jihad. They contained items intended to train the reader and to encourage him to go to a place with a group of friends and for them all to

train in terms of the magazine. The training included light weapons and physical fitness. The magazine declared itself to be issued by the Military Committee of Al Qaeda to spread military education among young men. Reference was made to lessons on how to interrogate and resist interrogation, on assassinations, on rumours and propaganda etc.

[41] The second webpage was called "Sawt Al-jihad" (Crown production 117) and contained links to another magazine of the same name, meaning "The Voice of Jihad" and concerning the jihad in the Arabian Peninsula. Mrs Hart also translated these editions (Crown production 191) which were found to contain material on "Preparing for Jihad", including detailed material on the composition and manufacture of explosives. It contained information on operations in markets - such as where to conceal an explosive package - and operations on buses and at bus stops. In one editorial, there was a call upon the young men of the nation to follow the example of the martyrs who targeted western oil companies and to join the jihad. Richard Cawthorne, a forensic explosive expert, gave evidence that the information on explosives was real and explosives could be created if the materials were obtained and the instructions followed. Hew Griffiths, a forensic firearms expert, spoke of the practical value of the articles on firearms, although much of the information was available elsewhere, for example, in Janes Publications, in other books and on the internet.

[42] The trial judge explains that it was a major contention of the appellant's defence that the magazines were, in any event, available on another website called "ePrism", set up in Israel by a former Israeli security operative, namely Reuven Pez. The magazines were certainly available on this site, if looked for there. Mr Pez's motives were literally academic and not intended to instruct or train persons in the making of firearms or explosives. A further contention for the defence was that Mr Kholman's own site contained material which might also be used as propaganda. However, it was fairly plain that this was not his intention. In any event, what was on their websites was of marginal relevance to the charges unless it could be said that the

material on the appellant's sites was so widely distributed anyway that it could be of no practical use to terrorists. In that regard, the defence adduced a retired Lieutenant Colonel, Nigel Wylde, on the value of this material and its usefulness to terrorists. The jury were directed that the issue on charges (4) and (5) was whether they were satisfied that the material in the links provided on the appellant's site was instruction or training material in the making and use of firearms and explosives. If it was, and the appellant's intention in putting the material on his site was to assist terrorists, then the fact that the material could be gathered by someone else from another website might not be of any great significance. It was clear that the jury were so satisfied of the appellant's intention.

**The relevant statutory provisions**

[43] It is convenient at this stage to set forth the statutory provisions which pertain to charges (1), (4) and (5) in this case. Section 57 of the Terrorism Act 2000 is in the following terms:

> "57 **- Possession for terrorist purposes.**
>
> (1) A person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism.
>
> (2) It is a defence for a person charged with an offence under this section to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an act of terrorism.
>
> (3) In proceedings for an offence under this section, if it is proved that an article -
>
> (a) was on any premises at the same time as the accused, or
>
> (b) was on premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public, the court may assume that the

accused possessed the article, unless he proves that he did not know of its presence on the premises or that he had no control over it.

....."

Section 54 of the 2000 Act is in the following terms:

"54 - **Weapons training**

(1) A person commits an offence if he provides instruction or training in the making or use of -

(a) firearms, .....

(b) explosives, or

(c) chemical, biological or nuclear weapons.

....

(5) It is a defence for a person charged with an offence under this section in relation to instruction or training to prove that his action or involvement was wholly for a purpose other than assisting, preparing for or participating in terrorism.

...."

Section 1 of the 2000 Act is in the following terms:

1. - **Terrorism: Interpretation**

(1) In this Act 'terrorism' means the use or threat of action where -

(a) the action falls within subsection (2),

(b) the use or threat is designed to influence the government or an international governmental organisation or to intimidate the public or a section of the public, and

(c) the use or threat is made for the purpose of advancing a political, religious, racial or ideological cause.

(2) Action falls within subsection if it -

(a) involves serious violence against a person,

(b) involves serious damage to property,

(c) endangers a person's life, other than that of the person committing the action,

(d) creates a serious risk to the health or safety of the public or a section of the public, or

(e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not subsection (1)(b) is satisfied.

(4) In this section -

(a) 'action' includes action outside the United Kingdom,

(b) a reference to any person or to properties is a reference to any person, or to property, wherever situated,

(c) a reference to the public includes a reference to the public of a country other than the United Kingdom, and

(d) 'the government' means the government of the United Kingdom, of a part of the United Kingdom or of a country other than the United Kingdom.

.....".

Section 118 of the 2000 Act is in the following terms:

"118 - **Defences**

(1) Subsection (2) applies where in accordance with a provision mentioned in subsection (5) it is a defence for a person charged with an offence to prove a particular matter.

(2) If the person adduces evidence which is sufficient to raise an issue with respect to the matter, the court or jury shall assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

(3) Subsection (4) applies where in accordance with a provision mentioned in subsection (5) the court -

(a) may make an assumption in relation to a person charged with an offence unless a particular matter is proved, or

(b) may accept a fact as sufficient evidence unless a particular matter is proved.

(4) If evidence is adduced which is sufficient evidence to raise an issue with respect to the matter mentioned in subsection (3)(a) or (b) the court shall treat it as proved unless the prosecution disproves it beyond reasonable doubt.

(5) The provisions in respect of which subsections (2) and (4) apply are -

(a) sections ....54, 57, ....of this Act....."**.**

**The submissions for the appellant**

[44] Senior counsel for the appellant began by narrating the circumstances of the appellant's conviction as we have set them out. The grounds of appeal to be argued related only to the convictions on charges (1) and (4). He then explained to the court the statutory provisions which related to the matters in question which were sections 57(1), (2), and (3) of the 2000 Act; in that connection he told us that there was no dispute that the appellant had been "in possession" of certain material. He then made a comparison between the provisions of sections 58 and 57 of the 2000 Act. In relation to section 58 there was provided for in subsection (3) a defence of "reasonable excuse". There was no such defence in relation to the offence created by section 57. Senior counsel went on to explain the provisions of section 54(1), (2), (3), and (5) of the Act. Section 118, to which he next referred was concerned with defences and the onus of proof in relation to them. Subsections (1), (2), (3), (4), and (5) were relevant. The expression "terrorism" was defined in section 1(1) to (5). There was a distinction between what might be called active and passive behaviour.

[45] Senior counsel then went on to explain the evidential background of the case which could be seen from the trial judge's report to this Court. He said that "At Tibyan", to which frequent reference had been made, was a publishing house producing Islamic material in the English language. Next he drew attention to the document, Crown production 112, entitled "The Islamic Ruling on the Permissibility of Self-Sacrificial Operations - Suicide, or Martyrdom?" published by At Tibyan. He also drew attention to a paper by Osama bin Laden to be found at page 898 of production 112. While this material was inflammatory, it contained ancient and modern writing, all of which was public. No secrecy surrounded it. Much of it was available on a website operated by an ex-member of Mossad. Next he drew attention to Crown production 119 which began with a quotation from the Koran which enjoined the slaying of the infidels. This was simply part of the historical background to Islamic culture. It was of no practical utility to anyone. The Court

should not attribute any undue weight to such material. What was important in the context of the present case was to focus specifically upon the statutory provisions upon which the convictions had been based.

[46] It was necessary to examine in detail the requirements of section 57 of the 2000 Act, invoked in charge (1) in the indictment. The first ingredient for guilt was the possession of an article. No particular controversy surrounded that in the context of the present case. The second ingredient was crucial. It was the requirement that the possession was "in circumstances which give rise to a reasonable suspicion that [it] is for a purpose connected with the commission, preparation or instigation of an act of terrorism". It was submitted that this part of section 57 did not require the identification by date, time and place of some act of terrorism, but it did require the identification of an act of terrorism, as opposed to some general tendency of a terrorist nature. In this particular connection, the inference referred to at page 18 of the trial judge's report said to arise from the possession by a person of a cache of a certain type of material, that they must have had sympathy with its content was not justified. The trial judge had referred to material which might be seen as propaganda; the dissemination of material such as that did not constitute any crime under section 57 of the 2000 Act. It was accepted that the appellant had said that he had had an ambition to become a suicide bomber, but that was merely a declaration of intent. In this connection what the trial judge had said at page 55 of the transcript of his charge to the jury was wrong. In relation to much of the material described in evidence and referred to at pages 19 to 24 of the trial judge's report, it could be said that it amounted only to propaganda, which did not come within the scope of section 57. However, there was other material which might be capable of providing actual assistance in a terrorist context. In relation to the "chat logs" most of the messages exchanged were not specific to the appellant. As regards the websites, the material was relevant to a more practical type of operation; however it was material that was readily available. In essence, there was material in

the possession of the appellant which had gone beyond mere propaganda; however that material was widely available; it was not in any sense secret, nor had it been surreptitiously acquired.

[47] Senior counsel recalled that he had submitted that propaganda material did not fall within the scope of section 57 of the 2000 Act. That approach was based upon authority. In that connection he referred to *R* v *K* [2008] 3 All ER 526, a decision of the Court of Appeal, Criminal Division. It had to be acknowledged that that case was one brought under section 58 of the 2000 Act; however, there were observations of assistance in connection with section 57. The observations of the Court in paragraphs 12 to 14 were helpful. The material concerned had to be of practical utility. Perhaps of more assistance was *R* v *Zafar and others* [2008] 4 All.ER 46. That was a case concerned directly with the interpretation of section 57 of the 2000 Act. It had to be interpreted in such a way that it required a direct connection between the object possessed and the act of terrorism. Reliance was placed on paragraphs 6 to 8, 13 to 29 and 31 of the judgment of the court. In relation to paragraph 21, it was accepted that there was some material in this case that went beyond mere propaganda and could fall into category (iv), referred to in that paragraph. Senior counsel invited the court to follow the approach referred to in paragraph 31.

[48] With the benefit of hindsight, it might be thought that charge (1) in the present indictment should not have gone to the jury, upon the basis that there was insufficient relevant evidence to support it. However, it had done and a conviction in terms of it currently stood. Now the issue was whether there had been appropriate directions in relation to that charge. It was submitted that there had not and that, as a consequence, a miscarriage of justice had occurred. It was submitted that the trial judge, in directing the jury, had failed adequately to make clear that they had to be satisfied that there was a direct connection between an article possessed and an intended act of terrorism. The need for that direction had been rendered the greater by the misconceived nature of the submissions made by Advocate depute to the jury, particularly at

pages 37 and 38 of the transcript of his speech. Senior counsel then went on to examine in detail the terms of the trial judge's charge to the jury, particularly at pages 49 to 57 of the transcript. He submitted that there was a fundamental misdirection of the jury, particularly at pages 55 to 57 of the transcript. Quite simply the trial judge's directions did not reflect the proper interpretation of section 57, as expanded in *R* v *Zafar*. Furthermore, the trial judge failed to direct the jury that they required to be satisfied that the appellant possessed an article that gave rise to a "reasonable suspicion" of the kind set forth in section 67(1); in his directions to the jury, the trial judge had elided that element of the legislation. It was accepted that the Crown did not need to establish the date, time and place of a contemplated act of terrorism, but the nature of the contemplated act had to be shown. The trial judge had failed to distinguish between a propaganda and other ideological material and material of the relevant kind. He ought to have directed the jury relating to the very limited relevance of the former.

[49] Senior counsel next drew our attention to the passage in the transcript of the charge to the jury at pages 107 to 108. This passage was concerned with the issue of "reasonable excuse" in connection with charge (2) in the indictment. While there was no conviction on that charge, the passage concerned invited speculation on the part of the jury and was unnecessary and confusing. In this connection senior counsel relied upon *R* v *Malik* [2008] EWCA Crim.1450, a case concerning directions to a jury in relation to a charge brought under section 58 of the 2000 Act. In paragraph 9 of the judgment of the court it was emphasised that propagandist or theological material that simply encouraged the commission of acts of terrorism did not fall within section 58.

The most recent authority relevant to the issues arising was *R* v *G*; *R* v *J* [2009] 2 All ER 409, a decision of the House of Lords, relating to both sections 57 and 58 of the 2000 Act. The Opinion of the Committee was delivered by Lord Rodger of Earlsferry. Reliance was placed particularly upon paragraphs 39, 42 to 46 and 50 to 60.

[50] Senior counsel next proceeded to consider the part of ground of appeal 2 that related to the evidence of Evan Kholman. The trial judge had given certain directions in relation to that witness at pages 9 to 10 of the transcript of the charge. However, what he said there was not enough. There should have been a direction specifically focused upon the significance of his evidence, having regard to what was said in *R* v *K* at paragraph 14 regarding extrinsic evidence. This aspect of the ground of appeal was related to the first part of it, which was focused upon the failure of the trial judge adequately to define the offence involved in charge (1) of the indictment. Reverting to the earlier part of ground of appeal (2), senior counsel examined pages 47 to 53 of the transcript of the charge in detail. The offence under section 57 was not properly defined in those passages. Further, the trial judge had not adequately directed the jury in relation to the defence available to a charge under section 57, having regard to the provisions of section 57(2) and section 118 of the 2000 Act. In particular the law relating to onus enshrined in section 118 was not explained at all by the trial judge. The shortcomings of the trial judge's charge were relevant also to the conviction under charge (4) of the indictment, brought under section 54 of the 2000 Act. Summarising his position, senior counsel sought the quashing of the convictions recorded in terms of charges (1) and (4) of the indictment upon the basis of misdirection. Ground of appeal (4) was not to be argued.

**The submissions of the Crown**

[51] The Advocate depute began his submissions by recognising that there existed controversy in relation to the operation of section 57 of the 2000 Act. The Lloyd Report was a pre-cursor of the legislation. The context had been the consideration of permanent terrorist legislation in 1996 against a background of expansion in the use of the internet, although the Report itself made no reference to that use. It was significant to note that in section 121 of the 2000 Act the word "article" was given a very wide definition as "includes substance and any other thing".

[52] The question which arose in connection with section 57 was what was the legislative intention. It would be wrong in that connection to start with a search for some particular act of terrorism, which would be to interpret the offence created out of existence. Looking at *R* v *G*; and *R* v *J*, at page 10 of the Report, the charge involved in *J's* case was set forth; it referred only to "an act of terrorism". There was no specification. The words used in section 57 were "...instigation of an act of terrorism". It was submitted that the words "of an act" were otiose having regard to the definition of "terrorism" found in section 1 of the Act. The words were simply used to enable the fact-finder to draw an inference from circumstances. All this was in accordance with what the House of Lords had said in *R* v *G; R* v *J*. As regards *R* v *Zafar*, it was not submitted that the case was wrongly decided in any respect. It was important to notice that no attack was mounted against the conviction under charge (5) of the indictment; in certain respects, the criteria involved in relation to that charge were the same as in relation to charge (1).

[53] *R* v *Director of Public Prosecutions, ex parte Kebeline and others* [1999] 4 All ER 801 was instructive. The Prevention of Terrorism (Temporary Provisions) Act 1989 was under consideration, section 17A of which used the expression "acts of terrorism". At page 543, Lord Hope of Craighead equiparated the expression "acts of terrorism" simply with the word "terrorism".

[54] Reverting to *R* v *G*; *R* v *J*, it was evident that *J's* case was similar to that of the appellant. In paragraph 22 there was an indication of the material in which *J* had been in possession. Paragraph 43 was important, since it focused attention upon particular material which would be of use to terrorists, as opposed to ordinary members of the population, such material as would provide practical assistance to a person committing or preparing to commit an act of terrorism. It was evident from paragraph 44 that what was said there relating to "extrinsic evidence" was said in the context of a case brought under section 58 of the 2000 Act. What was said in

paragraph 49 reinforced the submission that no specific act of terrorism required to be contemplated. Turning to that part of the case that dealt with section 57 of the 2000 Act, paragraph 51 and following were important. It was part of the requirements of section 57 that there had to arise a "reasonable suspicion". That was dealt with in paragraph 55. Reverting to the terms of section 57(1) of the 2000 Act, the word "purpose" appeared; it was submitted that it was not necessary for the Crown to prove what the "purpose" was, in any particular case. In order to rebut the defence in this case the Crown had led evidence relating to expressions of intention by the appellant that he wanted to blow himself up. That was in response to the appellant's defence that he was in possession of articles simply to satisfy his own curiosity.

Reverting to the case of *R* v *G*; *R* v *J*, the Advocate depute contended that what was said in paragraph 68 was important regarding the proper approach to a defence under section 57(2) and section 118 of the 2000 Act.

[55] The Advocate depute moved on to consider *R* v *Zafar*. He relied particularly on paragraphs 22 to 25. It was not necessary for the Crown to show "an act of terrorism"; if they were able to do so, that might assist in giving rise to an inference of "reasonable suspicion". But, even if they had to do so, they could, since it was evident from some of the material relevant to the appellant that he contemplated a suicide bombing in George Square, Glasgow. While propaganda might be seen as outwith the scope of section 57, the possession of propaganda had to be regarded as part of the "articles" which ought to be looked at as a whole. It was necessary to look at charge (1) of the indictment as a whole; it was not appropriate to focus on each and every particular element in it. The combination of articles had a significance of its own.

[56] The Advocate depute had compiled a "route map" for the application of section 57(1) of the 2000 Act. This bore on the matter of appropriate directions. There were four stages involved. First, it was necessary to look at the articles, their description, and their significance and hear any expert evidence that might be relevant to them. Secondly, it was necessary to look at the

circumstances of possession, the nature of the combination of articles, such issues as concealment, and any statements of the purpose of possession that were available. Thirdly, the question had to be asked whether those circumstances gave rise to a reasonable suspicion that the possession of the articles was intended to be used for the purpose of any act of terrorism. If the circumstances did yield such a reasonable suspicion, beyond reasonable doubt, then the person accused would be guilty. Fourthly, in such an event, the provisions of section 57(2) and 118 might operate to provide a defence. Taking an approach such as that, the Advocate depute conceded that for an accused person to say, as the appellant had done here, that he possessed articles on account of his "curiosity" would be to state a relevant defence. Nevertheless, there was in the evidence an ample basis for conviction, despite that contention. The Advocate depute at the trial had followed the approach just outlined in his speech to the jury. At page 37 to 38 of the transcript of his speech, he had submitted that the appellant's possession of the material to which he referred had been for a terrorist purpose. Although he stated that it was not necessary for him to satisfy the jury as to the particular terrorist purpose, that was evident from the evidence and was the appellant's purpose to become a suicide bomber.

[57] The Advocate depute then turned to examine the trial judge's directions to the jury. Two questions arose; first, were the essential components, or any of them missing? Second, if so, was there, in consequence, a miscarriage of justice? It had to be borne in mind that a trial judge was not under necessity of adopting a legalistic approach; indeed, to do so could well be counter-productive. It might be said that there was indeed misdirection, taking the form of the omission of reference to "reasonable suspicion"; but, if that were the case, there was no miscarriage of justice. The expert evidence had been dealt with in a faultless manner. No challenge had been made to Mr Kholman as regards his experience and qualifications, which were ample. At no time had the trial judge suggested that the expert evidence assisted the jury to conclude that the accused had an intention to commit an act of terrorism. The expert had given skilled explanations as to the significance of evidential features of the case, which was legitimate.

Another expert had been led who spoke regarding bomb-making and the instructions which had been found. What had been described as "extrinsic evidence" in *R* v *K*, in paragraph 14 was applicable to a case brought under section 58 of the 2000 Act, but not in relation to a case under section 57, where it was permissible. During the course of the trial no expert witness had been asked to answer a question which was one apt to be answered by the jury itself. Such a course would have been objectionable. On the whole matter the appellant's criticisms of the trial judge's directions in relation to expert witnesses had not been made out.

[58] Turning to the directions on the available defence, it might be thought that there was a difficulty. At pages 47 to 48 of the transcript of the charge, where he dealt first with the matter of the defence, it had to be accepted that he had not referred specifically to section 57(2) of the 2000 Act. It had to be accepted that at page 49 of the transcript of the charge what the trial judge had said was in error because there was no reference in that passage to "reasonable suspicion". However, at page 52 he had set a higher test than that which the legislation itself set, since again, he had not mentioned reasonable suspicion. So the misdirection was unduly favourable to the appellant.

[59] As regards the matter of the statutory defence, the Advocate depute accepted that there was no specific passage in the charge setting out the statutory defence enacted in section 57(2) or section 118 of the 2000 Act. However, it was submitted that the jury could have been in no real doubt about the circumstances where a defence would be available. In this connection he referred to passages at page 62, 75 and 107 of the transcript of the charge. The Advocate depute agreed that the approach that had been taken was not in accord with that desiderated by Lord Rodger of Earlsferry in *R* v *G*; *R* v *J*, in paragraphs 54, 55 and 62. Reference was made to the passage at page 111 in the transcript of the charge where, in laymen's terms, however, the trial judge had indicated the nature of the defence.

[60] In essence, the defences actually stated on charges (1) and (2) were the same; that there had been merely curiosity on the part of the appellant which accounted for his possession of articles. What was said at page 111 was very generous to the appellant; it could properly be seen as a direction in relation to a defence under section 57(2).

[61] The Advocate depute did concede generally that, in dealing with what he called this "statutory minefield" a judge should stick to the statutory scheme in the way that Lord Rodger of Earlsferry had desiderated in *R* v *G*; *R* v *J*. However, the departures from that course in the present case did not amount to a miscarriage of justice because either they raised the "bar" that the Crown had to cross for a conviction to a level higher than it should be, or they were generous in characterising the defence of curiosity in the way that they did.

[62] There were certain simple features in the case; in particular, the jury would not have been taxed in concluding that the materials found in the possession of the appellant related to terrorism; a suicide bombing was plainly an act of terrorism. More generally it should be borne in mind that there was an undisputed conviction on charge (5) in the indictment. It was a short step from that to a conviction on charge (1).

[63] Summarising his position, the Advocate depute drew attention to *Blackstone's Guide to the Anti-Terror Legislation*, Oxford University Press 2002, paragraph 6.5 and *Black's Legal Dictionary* in relation to the word "act". Summarising his position the Advocate depute said that while the trial judge had set for the Crown a higher than necessary task in his charge, none of the deficiencies in that charge had acted to the detriment of the appellant. The charge adequately, if not exactly, reflected the offences alleged and the defences to them. There had been overwhelming evidence in the articles and circumstances showing that what was required by the statute had been proved. No appeal had been focused on the conviction on the charge brought under section 54 of the 2000 Act. The directions relating to that were proper and appropriate.

**Reply by senior counsel for the appellant**

[64] First of all, the conviction on charge (5) could not be relied upon in relation to the conviction on any of the other statutory charges; that a charge had been brought under different legislation, namely section 2(1) of the Terrorism Act 2006, which allowed for the possibility that conviction might be on the basis of recklessness; that did not feature in relation to any of the other charges.

[65] So far as sections 57 and 58 of the 2000 Act were concerned, they were Draconian in effect. They were enacted to forestall the occurrence of damaging events that had not happened. Specific provisions had been built into them to provide for a statutory defence, which were important. It was therefore wholly appropriate that these statutory provisions should be carefully explained to a jury. In the present case, the appellant's defence had not been put to the jury as the statute contemplated by the trial judge. That was wrong and had resulted in an unfair trial and a miscarriage of justice. The defences available under sections 57 and 58 were separate and distinct; they had been conflated. It was impossible to know what had been the impact of that approach. It was necessary to have sympathy for the trial judge, since he did not have the benefit of authorities which were now available, but nevertheless he did not proceed appropriately.

**The Decision**

[66] We consider first that part of ground of appeal (2) that relates to the treatment by the trial judge of the evidence of Evan Kholman. What the trial judge said about the expert evidence from this witness is to be found between pages 9 and 12 of the transcript of his charge, as a sequel to his directions relating to the evidence of witnesses generally. There he said:

> "....expert testimony can pose particular problems when dealing with technical matters in fields which you may not be entirely familiar with. As I mentioned during the trial, it is

not the function of a skilled witness to come into court and to tell a jury things that a jury should already know. Their function is not to tell you about things that are within your own knowledge. The function of the expert is to deal with matters which a jury is not expected to be aware of, perhaps such as the detailed personalities involved in Middle Eastern politics where that is relevant. We may all be familiar with some of the people who have been mentioned in this case, but not others, but it may be the function of an expert to explain who everybody is and what part they play, etc, etc.

Again, with an expert witness, whether he is talking about armaments, whether he is talking about Middle Eastern politics it is for you to assess that expert evidence and to decide which expert to accept and which expert to reject, again applying all the things that I have mentioned, the body language, the inherent probability, the comparing and contrasting with known fact. You may not wish to judge an expert simply by the enthusiasm for his subject, but you should take into account matters of importance. What are the qualifications of the witness, for example? First of all, is the witness duly qualified in the field about which he speaks? Secondly, is he experienced in the particular area about which he speaks? In that sense what practical knowledge does he have, where is he getting his information from? Thirdly, is there a reason to suppose that the witness is, for some reason, biased? Mr Findlay mentioned, and I think criticised Mr Kholman for taking money for what he does. Well, Ladies and Gentlemen that is not an unusual thing for an expert to be doing. We don't often get skilled witnesses coming into the court for nothing, for reasons which I am sure you will readily appreciate, but you have got to consider are the criticisms which were made of his testimony well merited. Is the fact that he has certain material on his website something which deserves criticism and, if so, what effect does that criticism have on his testimony? Does that affect his testimony generally? Does it affect his testimony specifically on the matters which he told you about, namely who's who in Middle Eastern politics, why are certain things being put out

on the web etc? So, all of these points may be significant in determining whether the expert is someone you accept as a person who actually knows what he is talking about and is trying to tell you about it honestly and reliably.

It is for you the jury then to decide what evidence you accept and what evidence you reject, and, of course, also what weight or importance you attach to a particular piece of testimony and what inferences, what conclusions of fact you draw from the testimony that you have heard".

[67] So far as these directions are concerned, in our view, they are entirely unexceptionable, being of a kind that would be appropriate where expert testimony had been led. However, the appellant's criticism of the trial judge's directions in relation to Mr Kholman's evidence, as we understand it, has a more particular focus. The criticism appears to be that the trial judge misdirected the jury by directing them that, in assessing the question of whether the appellant's possession of articles was for a purpose connected with the commission, preparation or instigation of an act of terrorism, they were entitled to take into account the opinion evidence of Mr Kholman. It is also said that that evidence was "extrinsic evidence", as understood in *R* v *K* and that the trial judge should have directed the jury accordingly.

[68] It is true that, at a number of points in the trial judge's charge, at which he was discussing the evidence led to support the Crown case, he referred to the evidence of Mr Kholman. Such references are to be found at pages 80, 82, 83, 84, 86, 90, 104 and 129 of the transcript of his charge. However, having considered those references, we can discern nothing that is objectionable in them. By and large, the references were to passages in Mr Kholman's evidence where the significance of some individual or practice in the Islamic world had been explained by him, performing his function as an expert witness in that respect. We are unable to conclude that any of these references to his evidence amount to misdirection.

[69] In *R* v *K*, the Court of Appeal, Criminal Division had been concerned with a conviction under section 58 of the 2000 Act. An issue arose in relation to the legitimacy of the use of extrinsic evidence to show that information was intended to be used for the commission of an act of terrorism. What the Court held was that extrinsic evidence might be adduced to explain the nature of information, but that it was not legitimate under section 58, to seek to demonstrate, by reference to extrinsic evidence that a document which was innocuous on its face, was intended to be used for the purpose of committing or preparing a terrorist act. That is the essence of what was said in the judgment of the Court delivered by Lord Phillips of Worth Matravers C.J., in paragraph [14].

[70] We would make two points in relation to this part of the appellant's ground of appeal. First, the *dicta* founded upon taken from paragraph [14] of the judgment concerned were pronounced in the context of a prosecution brought under section 58 of the 2000 Act. In the present appeal we are not concerned with such a matter. While charge (2) of the indictment was brought under that enactment, there was no conviction on that charge. Accordingly, it is difficult to see what relevance the *dicta* concerned can have in the context of a conviction under section 57 of the Act, the terms of which are quite different from those of section 58. Second, the references in the directions to the jury given by the trial judge, in so far as they referred to the evidence of Mr Kholman, make it clear that no suggestion was being made that Mr Kholman's evidence could be used directly by the jury for the purpose of reaching an affirmative conclusion as to whether an offence had been committed under section 57(1) of the 2000 Act. In these circumstances, we cannot conclude that the trial judge was under any duty to give any specific directions relating to the evidence of Mr Kholman, as desiderated in ground of appeal (2).

[71] We turn now to deal with the main criticism of the directions given to the jury in relation to charge (1) focused in this ground of appeal. The starting point in a consideration of this matter must be the recognition that, in any solemn criminal trial, the jury should be given directions on

the definition and meaning of any crime charged in the indictment, and, in particular, on the elements necessary to be proved by the prosecution. Bearing that in mind, it is necessary, in the first place, to consider the nature of the offence created by section 57(1) of the 2000 Act and the ingredients of the offence which require to be proved. The most authoritative source of guidance on these matters is to be found in the decision of the House of Lords in *R* v *G; R* v *J*, in which the nature of the offences created by both sections 57 and 58 of the 2000 Act was considered. Unfortunately, that guidance was not available to the trial judge in this case when he charged the jury. Nevertheless, we must have regard to it.

[72] The report of the appellate committee was delivered by Lord Rodger of Earlsferry. He dealt with the section 57 offence in paragraphs [51] to [56] and the overlap between sections 57(1) and 58(1) in paragraphs [57] to [59] of the report. Finally, he dealt with the operation of the defences under sections 58(3) and 57(2) in paragraphs [60] to [70]. In paragraph [52] the scope of section 57 is considered. The possession may extend to any "article", which is widely defined in section 121. In paragraph [53], the point that is made is that the Crown must establish under section 57(1) that the accused possessed the article in question. No issue arises in relation to that matter in the present case. However, in paragraph [54], Lord Rodger of Earlsferry continued in this way:

> "Next, and crucially, the Crown must prove beyond reasonable doubt that the circumstances in which the defendant possessed the article give rise to a reasonable suspicion that his possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism. So, in contrast to section 58(1), the circumstances of the defendant's possession form one of the crucial elements of the section 57(1) offence".

In paragraph [55] Lord Rodger went on to say:

> "It is unusual, but not unprecedented, for Parliament to create an offence of this kind, based on a reasonable suspicion as to the purpose behind a defendant's possession. Section 57(1) is presumably modelled on section 4(1) of the Explosive Substances Act 1883...[his Lordship then went on to quote the provisions of that enactment]....Similarly, under section 57(1) of the 2000 Act, the Crown does not need to prove what the accused's purpose connected with the commission, preparation or instigation of an act of terrorism actually was - something which might well be impossible to prove. It is enough if the Crown satisfies the Court or jury, beyond reasonable doubt, that the circumstances give rise to a reasonable suspicion that the defendant's possession was for the relevant purpose. The defendant is then given a defence under subsection (2)".

[73] Lord Rodger went on in paragraph [58] to explain further the nature of the offence created by section 57(1). He observes:

> "Thirdly, precisely because section 57(1) covers any 'article', the section only bites on the defendant's possession of the article in certain circumstances, *viz*, 'circumstances which give rise to a reasonable suspicion that his possession is for a purpose connected with the commission, preparation or instigation of an act of terrorism'. It is not the possession of the article as such which is criminal, but its possession in those particular circumstances...".

[74] In paragraph [62] Lord Rodger explained the nature of the defence available under section 57(2) of the 2000 Act saying:

> "As already indicated in paragraph [55] the need for the defence in section 57(2) only arises when the Crown has proved all the elements of the offence in section 57(1). Under subsection (2) it is a defence for the defendant to prove that his possession of the article was not for a purpose connected with the commission, preparation or instigation of an

> act of terrorism. So, the jury must acquit the defendant, if they find this defence proved, even though they are simultaneously satisfied beyond a reasonable doubt that the circumstances of his possession give rise a reasonable suspicion that it was for a purpose connected with the commission, preparation or instigation of an act of terrorism. In other words, the defendant has a defence when, despite any reasonable suspicion to the contrary, his possession of the article in question was not in fact for a purpose connected with the commission etc. of an act of terrorism".

A further complication in the operation of this legislation arises from the terms of section 118 of the 2000 Act, which deals essentially with the onus of proof in relation to defences such as that available under section 57(2). This matter was dealt with in paragraph [63] by Lord Rodger. There he said:

> "Suppose that the Crown leads evidence to prove all the elements in section 57(1) beyond reasonable doubt. Then, if the defendant adduces sufficient evidence to entitle the Court or jury to find that the defendant did not have the article for a purpose connected with the commission etc of an act of terrorism, they are to assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that the defence is not satisfied. The section gives statutory expression to the familiar concept of an evidential burden on a defendant to raise a defence, which the Crown must then disprove beyond reasonable doubt".

[75] Before concluding our consideration of the nature of the offence created by section 57(1) of the 2000 Act and the statutory provisions relating to a defence to it, it is also necessary to notice what was said in *R* v *Zafar and others*. It is not necessary to consider the details of the circumstances of that case, but it is important to bear in mind the interpretation of section 57 that the Court of Appeal, Criminal Division reached in that case. The Court held that in order to have the required certainty of meaning, section 57 of the 2000 Act had to be interpreted in a way

that required a direct connection between the object possessed and the act of terrorism. The matter was put in this way by Lord Phillips of Worth Matravers C.J., in paragraph [29] of the judgment of the Court:

> "We have concluded that if section 57 is to have the certainty of meaning that the law requires, it must be interpreted in a way that requires a direct connection between the object possessed and the act of terrorism. The section should be interpreted as if it reads:
>
> > 'a person commits an offence if he possesses an article in circumstances which give rise to a reasonable suspicion that he intends it to be used for the purpose of the commission, preparation or instigation of an act of terrorism'".

[76] A further point of importance emerges from the case just discussed, which is expressed in paragraph [31] of the judgment of the Court:

> "Not without hesitation we have concluded that possessing a document for the purpose of inciting a person to commit an act of terrorism falls within the ambit of section 57. We have considered the definition of 'instigate' in a number of dictionaries and, in each case, have found the word 'incite' as a synonym. *Black's Law Dictionary* (7th ed 1999), page 800 defines 'instigate' as 'to goad or incite (someone) to take some action or course'. We have concluded that section 57 must be construed having regard to the normal meaning of 'instigate'....".

[77] Having completed this examination of the character and requirements of section 57 of the 2000 Act, we find ourselves immediately able to reject the argument advanced by the Advocate depute to the effect that the words "act of terrorism" should simply be read as a synonym for the word "terrorism". We see no justification for that approach in the authorities to which we have just referred.

[78] We turn now to consider the directions given by the trial judge in this case, with a view to seeing whether the jury were given adequate directions on the definition and meaning of the crime charged in charge (1) in the indictment, namely that created by section 57(1) of the 2000 Act. The trial judge begins his consideration of the crimes charged at page 45 of the transcript. After dealing with the statutory nature of the crimes brought under the 2000 Act, at page 47, he deals with charge (1). While in the opening passage on that page, the trial judge, in effect, follows the statutory wording of section 57(1), particularly referring to possession of an article in circumstances which give rise to a reasonable suspicion that his possession was for a purpose connected with the commission, preparation or instigation of an act of terrorism, that is the only part of the charge in which he follows the statutory language. Almost immediately thereafter, on page 47, he departs from it and refers to the possession of articles for the relevant purpose, eliding any reference to "reasonable suspicion". That language is repeated at page 49 of the transcript where the trial judge said:

> "...the second thing that the Crown have to prove, and this is the important issue in this case, the Crown have to prove that his possession of these articles was for a purpose connected with the commission, preparation or instigation of an act of terrorism".

After dealing with the nature of an act of terrorism, with which we do not have to be concerned here, at page 52, the trial judge reverts to what he states were the essentials for proof of the crime, again making no reference to the statutory language itself and, in particular, the words "reasonable suspicion". At page 53 the trial judge says:

> "Again it's a progression on that line of thinking, ladies and gentlemen, that the articles themselves must for a conviction have some role to play in the commission, preparation or instigation of the act of terrorism. They must have some connection with the commission, preparation or instigation of the act of terrorism. They must be capable,

therefore, of contributing in some way to the commission, preparation or instigation of that act".

[79] Thereafter, the trial judge enters upon a consideration of the nature of the other charges in the case and goes on to give a summary of the evidence relied upon. At page 100, by way of a summary, he reverts apparently to the requirements of section 57(1), but again does not follow the statutory definition of the offence, making no reference to circumstances giving rise to a "reasonable suspicion". It is to be noted at page 100, for the first time, the trial judge refers to the importance of the consideration of what was the intention of the accused in having the material concerned.

[80] At page 107, the trial judge makes reference to the position of the defence, putting the matter in this way:

> "....the defence, of course, ask you not to draw any inference that the accused had the material for a purpose connected with terrorism, and [counsel] has put it to you that this material could all simply have been the product of genuine research of someone with a reasonable inquiring, presumably, mind about the fate of his fellow Muslims in and around the Middle East".

It is to be noted that the trial judge does not specifically follow the statutory language in section 57(2), or explain that language to the jury. Nor does he make any reference to the effect of section 118 of the 2000 Act, in so far as it bears upon the onus resting upon any party relating to the defence.

[81] In the light of our examination of the relevant parts of the charge, while it is evident that, at the very outset of his consideration of the offence alleged in charge (1) of the indictment, the trial judge followed the statutory language of section 57(1), almost immediately he then departed

from the use of that language and, throughout the rest of his charge, he treated the offence as if section 57(1) contained no

reference to "circumstances which give rise to a reasonable suspicion". We consider that that amounted to a material misdirection. In the course of the discussion before us, the Advocate depute accepted that there had indeed been a misdirection of the jury in relation to that aspect of the matter, but contended that the effect of this direction was to set the task of the Crown in proof of the offence at a higher level than the law in fact required. Since the jury had concluded that the Crown had proved the offence to that higher level, there was in fact no miscarriage of justice consequent upon the misdirection. While that argument might be thought to be superficially attractive, it is one which we reject. It appears to us that there is a crucial relationship between the statutory language used in section 57(1) and the defence created by section 57(2). That latter subsection, of course, provides that it is a defence for a person charged with an offence under section 57(1) to prove that his possession of the article was not in fact for a purpose connected with the commission, preparation or instigation of an act of terrorism. However, if the jury had previously been instructed that the requirement of section 57(1) was that the offence consisted in possession of an article for a purpose connected with the commission, preparation or instigation of an act of terrorism, it is logically impossible to see how the defence could ever be established. In other words, the provisions of section 57(2) can properly operate only upon the basis of the strict application of the statutory language used in section 57(1) as the definition of the offence and, in particular, the use there of the words "in circumstances which give rise to a reasonable suspicion that....".

[82] In the light of these considerations we have reached the conclusion that, upon the basis of the directions given to the jury, there was a serious likelihood of confusion in their minds regarding the nature of the offence created by section 57(1), and the operation of the statutory defence available under section 57(2) of the 2000 Act. In our view, therefore, the giving to the

jury of the directions to be found in the charge relating to these matters amounted not only to a misdirection, but also to a miscarriage of justice. In that connection, we have been particularly influenced by the fact that, in this case, there was a defence of what has been referred to as "curiosity", as an innocent explanation for the appellant's possession of the articles in question. That being the background, it was of particular importance that accurate directions should be given on the matters concerned. Likewise, while at page 100 of the transcript of the charge there is a reference to the intention of the appellant in relation to the material concerned, we do not consider that that, of itself, is sufficient to amount to a direction consistent with the decision in *R* v *Zafar*, to the effect that section 57 requires to be interpreted in a way that requires a direct connection between the object possessed and the act of terrorism. In our view there should have been clear directions to that effect, which there were not. Again, we consider that that amounts to misdirection, which, in the circumstances of this case must be seen as a miscarriage of justice.

[83] Having reached the conclusion that we have, we find it unnecessary to reach any conclusion in relation to the submissions made in relation to what might be described as propaganda material, although, having regard to what was said in *R* v *Zafar and others* in paragraph [31], it is difficult to avoid the conclusion that, at least in certain circumstances, propaganda material might be considered relevant to a purpose connected with the instigation of an act of terrorism.

[84] Likewise, we find that it is unnecessary for us to comment on the passage at page 108 of the transcript of the charge which was criticised as involving speculation on the part of the trial judge.

[85] Although the matter does not figure in ground of appeal (2), it was argued before us that the trial judge had failed to give appropriate directions to the jury as regards the operation of the defence provided for by section 57(2) and the operation of section 118 in relation to that defence. We have come to agree with those submissions. Where a statutory defence is specifically provided for, as in section 57(2) and there are statutory provisions relating to the onus of proof

in relation to such a defence, in our view, specific directions regarding those matters should be given to the jury. That was not done in this case. We regard this as a material misdirection productive of a miscarriage of justice, in the circumstances of this case, where there was a particular defence, which we have already described.

[86] It was faintly argued on behalf of the appellant that his conviction on charge (4), brought under section 54(1) of the 2000 Act should also be quashed, apparently upon the basis that there was a failure on the part of the trial judge to give appropriate directions on the defence to that charge. However, that matter is not focused in any ground of appeal and we therefore decline to give effect to that argument. No doubt for that reason, the Advocate depute did not deal with it.

[87] In these circumstances we are minded to quash the appellant's conviction on charge (1) of the indictment. The case will be put out By Order two weeks after the issue of this opinion to enable the Crown, if so advised, to seek authority to bring a fresh prosecution on that charge.

**Teen terror suspect accused of possessing bomb-making books and explosive substances to appear in court this month**


**A 16-year-old Northamptonshire boy charged with explosives and terrorism offences after he was found with books on how to make improvised bombs will appear in court next month.**

The teenager, who cannot be named for legal reasons, did not attend a hearing at Westminster Magistrates' Court in London yesterday but he is due to appear on March 11 at Birmingham Youth Court.

The boy, who was arrested at his home in Northamptonshire in February last year, is charged with possessing explosive substances, namely sulphur powder and potassium nitrate, and numerous books and manuals including The Terrorist Handbook, CIA Explosives For Sabotage Manual and The Anarchist Cookbook, along with a book on how to make Semtex.

Since his arrest he has been detained under the Mental Health Act in secure accommodation in the West Midlands area, Northamptonshire Police said previously.

He is also charged with possessing a record of information of a kind likely to be useful to a person committing or preparing an act of terrorism between October 1 2011 and February 26 2012, contrary to Section 58(1)(b) of the Terrorism Act 2000.

These include books and manuals including The Terrorist Handbook; The Black Book Companion: State-Of-The-Art Improvised Munitions; CIA Explosives For Sabotage Manual; Home-made C4 - A Recipe For Survival; Home-made Semtex; Improved Landmines - Their Employment And Destructive Capabilities; An Anarchist Cookbook - Recipes For Disaster; and Zips Pipes and Pens - Arsenal Of Improvised Weapons.

**Two German men charged under the Terrorism Act**

After being arrested at Dover on 15 July, Christian Emde and Robert Baum are due to appear in court in London


Two men have been charged under the Terrorism Act after being arrested in Dover. Photograph: Sean Smith for the Guardian

Two German men have been charged with terrorism offences after they were arrested at a major UK port.

Christian David Erkart Heinz Emde, 28, and Robert Baum, 23, were on Tuesday charged with offences under the Terrorism Act.

They were arrested by officers from the South East Counter Terrorism Unit at Dover port in Kent on 15 July.

They are accused of collecting or possessing information likely to be useful to a person committing or preparing an act of terrorism contrary to section 58 of the Terrorism Act 2000.

Both men have been remanded in custody to appear at City of Westminster magistrates' court on Wednesday.

MI5 / MI6 / GCHQ / CTIRU should positively deny any involvement in "Operation Cupcake" alleged cyber attack on "Inspire" magazine

By

wtwu
on June 4, 2011 5:18 PM | Permalink | Comments (8)

Last summer, there was a bit of fuss about about an alleged Al Quaeda associate produced glossy electronic magazine, called "Inspire", written in English, for the benefit of wannabe jihadi extremists in the USA and the UK etc, without arabic language skills.

This week, the Washington Post has repeated the story with the added twist of uncritically "crediting" British Intelligence with carrying out a stupid "cyber attack", which the US authorities had supposedly decided not to go ahead with.

List of cyber-weapons developed by Pentagon to streamline computer warfare

By Ellen Nakashima,
31 May 2011

[..]

Last year, for instance, U.S. intelligence officials learned of plans by an al-Qaeda affiliate to publish an online jihadist magazine in English called Inspire, according to numerous current and senior U.S. officials. And to some of those skilled in the emerging new world of cyber-warfare, Inspire seemed a natural target.

The head of the newly formed U.S. Cyber Command, Gen. Keith Alexander, argued that blocking the magazine was a legitimate counterterrorism target and would help protect U.S. troops overseas. But the CIA pushed back, arguing that it would expose sources and methods and disrupt an important source of intelligence. The proposal also rekindled a long-standing interagency struggle over whether disrupting a terrorist Web site overseas was a traditional military activity or a covert activity -- and hence the prerogative of the CIA.

The CIA won out, and the proposal was rejected. But as the debate was underway within the U.S. government, British government cyber-warriors were moving forward with a plan.

When Inspire launched on June 30, the magazine's cover may have promised an "exclusive interview" with Sheik Abu Basir al-Wahishi, a former aide to Osama bin Laden, and instructions on how to "Make a Bomb in the Kitchen of Your Mom." But pages 4 through 67 of the otherwise slick magazine, including the bomb-making instructions, were garbled as a result of the British cyber-attack.

It took almost two weeks for al-Qaeda in the Arabian Peninsula to post a corrected version, said Evan Kohlmann, senior partner at Flashpoint Global Partners, which tracks jihadi Web sites.

Mainstream media commentators and Twitterati have dubbed this as "Operation Cupcake", and have gleefully repeated and elaborated it, without bothering to analyse the story at all.

If this was a deliberate "cyber attack", then it was extremely inept.

- Even the Washington Post article mentions that a corrected version of the .pdf file was being distributed after less than 2 weeks, so what exactly did this supposed "disruption" actually achieve ?

  Like most internet censorship, it has suffered from the
  Streisand effect. As a result of the publicity, many more people have now downloaded copies of Inspire magazine than ever would have bothered to otherwise.

  See Media Perpetuates Myths About "Virus Attack" on Inspire Magazine

  You can download copies of all 5 editions (so far) of "Inspire" magazine, as well as proof of the "Cupcake" corruption from the Public Intelligence website.

  They, like us, are also sceptical of the provenance of this magazine. It could so easily be some sort of scam perpetrated by one of the unscrupulous wannabe private sector "terrorist trackers" who provide convenient "evidence" in support of multi-billion dollar counter-terrorism budgets and repressive laws.

  Does Anyone Take These Al-Qaeda Magazines Seriously?

- If "British intelligence" was involved in this alleged incident, then why was such an obviously American "Cupcake" recipe used as the criminal damage payload to corrupt the .pdf file ? Even the wikipedia entry for Cupcake recognises that these are called "**Fairy Cakes**" in the United Kingdom.

  Since "Inspire" magazine is supposedly aimed at internet self-radicalising wannabes in the United Kingdom and the USA etc, why would British intelligence use an American "joke" ?

- British intelligence agencies i.e. GCHQ, MI5 the Security Service, MI6 the Secret Intelligence Service, the Metropolitan Police SO15 Counter Terrorism Command and the Counter Terrorism Internet Referral Unit, all claim to work within the law.

  The Police (but not the Intelligence Agencies) have legal powers to demand that an Internet Service Provider removes a file from a public website under the Terrorism Act 2006 section 3.

  The Intelligence agencies and the Police may have legal powers for Intrusive Surveillance involving otherwise illegal computer access ("hacking").under the Regulation of Investigatory Powers Act 2000.

  **None of them** have any legal **exemption from the Computer Misuse Act 1990**, as amended by the Police and Justice Act 2006, to modify or corrupt any computer data:

  Unauthorised acts with intent to impair, or with recklessness as to impairing, operation of computer, etc.

(c)to impair the operation of any such program or the reliability of any such data; or

This offence is punishable by up to 10 years in prison and / or an unlimited fine.

- The corrupted first edition of "Inspire" magazine contains not only the amateur pipe bomb "recipe", which is rather less sophisticated information than what you could pick up from watching episodes of US criminal forensics tv dramas like CSI or NCIS etc., but also some screenshots of a supposed "jihadist" data encryption program and a "public key":

  Al-Ekhlaas Network ASRAR El Moujahedeen V2.0 Public Key 2048 bit-

  This is encryption system is **neither** open source like GnuPG or PGP, **nor** is it compatible with them.

  There must be reasonable suspicion that this is a crude attempt to con wannabe jihadists into using an encryption system which can be read by someone else and which immediately self-incriminates a user of it as a"terrorist suspect".

- The contact emails for "Inspire" magazine are all, suspiciously, only from entirely USA based free email providers: hotmail,com, gmail.com, fastmail.net and yahoo.com.

  Why would any Al Quaeda associated group choose to give the US authorities automatic access to their Communications Traffic Data (email addresses, IP addresses, web browser details , times and dates and amount of data transmitted etc.), even if the contents of emails are actually strongly encrypted ?

- It is unclear if there was any "hacking" at all. Anyone could simply have seeded a corrupted / faked / amended copy of the Inspire magazine (.pdf) into a per to peer file sharing network e.g. using BitTorrent.

The British mainstream media has been busy publishing stupid, anonymous briefings from Whitehall officials which use the idiotic "neither confirm nor deny" formula, which, given the proven lies which it has been used to cover up in the past, is as good as an admission of guilt in the public mind.

However they cannot decide which branch of "British Intelligence" should be praised or blamed for "Operation Cupcake"

e.g. The Daily Telegraph claims it was MI6 the Secret intelligence Service

MI6 attacks al-Qaeda in 'Operation Cupcake'

British intelligence has hacked into an al-Qaeda online magazine and replaced bomb-making instructions with a recipe for cupcakes.

By Duncan Gardham, Security Correspondent

7:16PM BST 02 Jun 2011

[...]

A Pentagon operation, backed by Gen Keith Alexander, the head of US Cyber Command, was blocked by the CIA which argued that it would expose sources and methods and disrupt an important source of intelligence, according to a report in America.

However **the Daily Telegraph understands** an operation was launched from Britain instead.

Al-Qaeda was able to reissue the magazine two weeks later and has gone on to produce four further editions but one source said British intelligence was continuing to target online outlets publishing the magazine because it is viewed as such a powerful propaganda tool.

[...]

It is alarming how many of the hundreds of "news" stories on this topic around the world appear to be simply churnalism, blindly parroting the Daily Telegraph and its naming of MI6.

However, the Guardian claims it was GCHQ:

British intelligence used cupcake recipes to ruin al-Qaida website

GCHQ officers sabotaged online jihadist magazine in English as part of cyber war against terrorists

Richard Norton-Taylor, security editor
guardian.co.uk, Thursday 2 June 2011 19.40 BST

Whitehall sources have revealed that British intelligence officers successfully sabotaged the launch of the first English language website set up by an al-Qaida affiliate.

The officers, understood to be based at Government Communications Headquarters (GCHQ) in Cheltenham, attacked an online jihadist magazine in English called Inspire, devised by supporters of al-Qaida in the Arabian Peninsula.

A pdf file containing fairy cake recipes was inserted into Inspire to garble most of the 67 pages of the online magazine, including instructions on how to "Make a Bomb in the Kitchen of Your Mom".

Though the authenticity of claims made about Inspire have been questioned, British security and intelligence sources say they believe the magazine, and the bomb-making instructions, were genuine.

The sabotage took place a year ago, following a dispute between agencies in the US about who should take on the role of attacking the Inspire website.

Publicising the achievement amounted to little more than a propaganda exercise - "just to let them know", as one British official put it on Thursday.

The Associated Press also goes for GCHQ and also seems to be be complicit in being briefed by anonymous government spokesmen, who cannot be challenged directly.:

British spies to terrorists: make cupcakes not war

By PAISLEY DODDS, Associated Press - 03 June 2011

[...]

"We're increasingly using cybertools as part of our work," a British government official who spoke on condition of anonymity to discuss intelligence matters said Friday, confirming that the Inspire magazine had been successfully attacked.

The hackers were reportedly working for Britain's eavesdropping agency, GCHQ, which has boosted its resources in the past several years.

[...]

But choosing to hack into al-Qaida-affiliated websites or other systems is also risky business for intelligence agencies. Infiltrating a site can often expose sources and methods, a second British official said, also speaking on condition of anonymity to discuss cybersecurity matters. He would not specify how Inspire was hacked.

British officials consider al-Qaida in the Arabian Pensinsula to be a significant threat to U.K. interests.

The local newspaper website This Is Gloucestershire, assumes that it must have been GCHQ in Cheltenham:

GCHQ staff replace bomb-making instructions with cupcake recipes

Saturday, June 04, 2011, 07:00

By emma tilley citizen.news@glosmedia.co.uk

[...]

A GCHQ spokesman said news of the operation was "pure speculation."

She said: "We cannot confirm or deny any of our operational capabilities."

This Cold War anonymous briefing nonsense is simply not good enough any more when dealing with internet stories from overseas.

Named official spokesmen either Home Office or Foreign Office officials or the Ministers who are supposedly elected to be accountable to the public for the actions of their bureaucrats, should be issuing a very firm denial of any British involvement in such a stupid plot.

The main reason for an **unambiguous official denial** should be the forthcoming terrorism trial of the Cardiff, London and Stoke on Trent plotters who were charged on 27th December 2010:

Nine Charged with conspiracy to cause explosions in the UK

[...]

ENGAGING IN CONDUCT IN PREPARATION FOR ACTS OF TERRORISM, contrary to section 5(1) of the Terrorism Act 2006.

PARTICULARS OF OFFENCE: on diverse days between the 1 day of October and 20 day of December 2010, with the intention of committing an act or acts of terrorism, engaged in conduct in preparation for giving effect to that intention, namely and including, downloading, researching, obtaining and discussing materials and methods; researching, discussing, carrying out reconnaissance on, and agreeing potential targets; travelling to and attending meetings; igniting and testing incendiary material.

Those charged with the above are:

Gurukanth Desai - aged 28 - of 89 Albert Street, Cardiff.
Omar Sharif Latif - aged 26 - of 28 Neville Street, Cardiff.
Abdul Malik Miah - aged 24 - of 138 Ninian Park Road, Cardiff.

Mohammed Moksudur Rahman Chowdhury - aged 20 - of 26 Stanliff House, Cassilis Road, London (E14).
Shah Mohammed Lutfar Rahman - aged 28 - of 64 St Bernard's Road, London.

Nazam Hussain - aged 25 - of 47 Grove Street, Stoke-on-Trent.
Usman Khan - aged 19 - of 4 Persia Walk, Stoke-on-Tent.
Mohibur Rahman - aged 26 - of 81 North Road, Stoke-on-Trent.
Abul Bosher Mohammed Shahjahan - aged 26 - of 9 Burmarsh Walk, Stoke-on-Trent.

Eye Spy magazine, whose mostly uncritical pro-intelligence agency and pro-police editorial viewpoint, seems to ensure that they are thrown various tidbits of information, report:

"MI5 Surveillance Success - Alleged terror plotters surveilled and targeted iconic buildings and symbols of London"

Eye Spy, Volume IX, Number Eight 2011 (issue 72) page 40

Other materials found in residences included an al-Qaida support journal called '*Inspire*' that contained bomb-making instructions. The features included: 'How to make a pipe bomb in the kitchen of your mom'; 'What to expect in jihad' and 'Tips for brothers in the US'

Obviously the alleged British "Operation Cupcake" failed to prevent these plotters from getting hold of the full first edition of "Inspire" magazine with the full pipe bomb recipe.

Since no actual explosives or firearms or money etc. was found, this will be Yet Another Terrorism Thought Crime Trial, where, presumably one of the key bits of evidence will be the downloading and possession the alleged "Inspire" magazine.

If "British Intelligence" continue to simply "neither confirm nor deny" that they were involved in altering or faking this edition of "Inspire" magazine, then there is every chance that a judge and jury will believe that it has been planted by "British Intelligence", thereby prejudicing its use as evidence in the trial.

Unless the British Government explicitly denies any involvement in "Operation Cupcake", then Intelligence Agency witnesses will be subpoenaed to be cross examined in Court. The prosecution may then have to drop the charges, for fear of revealing intelligence "operational sources and methods".

Web censorship - anonymity / security issues with reporting.direct.gov.uk and the Counter Terrorism Internet Referral Unit - UPDATED 01May11

By

wtwu
on April 10, 2011 8:40 PM | Permalink | Comments (4)

Spy Blog and others, try to be vigilant about UK Government, schemes involving technological systems and infrastructures which, if not operated honestly, transparently and under strict control, could easily be abused to betray our freedoms and liberties, either now or in the future.

The Conservative / Liberal Democrat coalition government appear to be, for no good reason, persisting with the **stupid web censorship plans** championed by the authoritarian, former hardline Communist, former Labour Home Secretary John "not fit for purpose" Reid (who is now a paid consultant to multi-national private security companies bidding of public sector contracts e.g. EU Plans for Internet Censorship

According to this **misspelled** Home Office press release web page, there is now a secretive, unaccountable Web Censorship quango, with a web form for allegedly "anonymous" denunciations:

Challenge online terrorism and extremism

Thursday, 07 Apr 2011

Information leaflets and posters have been sent to every police force in the UK advising the public on how to identify and report offensive or illegal content.

"Information leaflets and posters", to promote a world wide web based campaign - surely this is not the correct media communications strategy ?

- How many leaflets and posters have been distributed ?
- Have the spelling mistakes in this Press release web page also found their way into the printed material ?

- How much public money has this cost ?

It promotes an online tool - which can be found on the Directgov website (new window) - that allows people to report material anonymously.

**Challenge and report**

Security minister, Baroness Neville-Jones, said that it's vital that online extremisim is taken seriously: 'I want to encourage those who come across extremist websites as part of their work to challenge it and report it through the DirectGov webpage.

'By forging relationships with the internet industry and working with the public in this way, we can ensure that terrorist use of the internet does not go unchallenged.'

"extremi**sim**" [sic] should presumably be spelled "extremism"

Why not use the existing MI5 Security Service or the Metropolitan Police secure online web forms then ?

Websites reported to Directgov via its online form are referred to the national Counter Terrorism Internet Referral Unit.

The specialist team of police experts work with industry and partners in the UK and abroad to investigate and take down illegal or offensive material if neccessary.

"ne**cc**essary." [sic] Does the Home Office Press Office really have no access to spell checkers ? Surely all Civil Servants should be able to spell "necessary", something which some of them, clearly, are not ? Presumably "national" should also start with a capital letter.

> Who exactly are the Counter Terrorism Internet Referral Unit ? It seems to have been set up by the unaccountable private company the Association of Chief Police Officers and the Home Office's secretive Office for Security and Counter Terrorism,

- Who is the person in charge ?
- Who exactly are these "partners in the UK and abroad" ?
- How can they be contacted by the public, apart from via this allegedly "anonymous" web form ?
- How is their effectiveness and value for money assessed and by whom ?
- What are the mechanisms for detecting and correcting the mistakes and "collateral damage" that they will inevitably make ?
- How is this website reporting and takedown mechanism compatible with the stated European Union policies on the topic, which stress that they must not damage the fundamental human rights of freedom of speech and association etc. ?

Past successes

In the last year, reporting through Directgov has helped the government remove content which has included beheading videos, terrorist training manuals and calls for racial or religious violence.

Successes include:

* removing a number of videos encouraging martyrdom operations that had been uploaded to a UK-based website
* shutting down a website that provided detailed video instructions on bomb making
* removing a number of videos encouraging acts of terrorism from a social networking site

To report content visit the Directgov website (new window) .

Have any of these "successes" actually involved websites physically hosted in the United Kingdom ?

Have any of them involved invoking the "takedown notice" legal powers under the controversial Terrorism Act 2006 sections 1 to 4, Encouragement etc. of terrorism ?

## Is this web form really "anonymous" ?

Has the Marsham Street kremlin learned anything about running an **anonymous whistleblower website submission form**, from the likes of WikiLeaks.org and its couple of other emulators ?

The actual web form is at

https://reporting.direct.gov.uk/

**Portsmouth man guilty of publishing 'terror handbook'**

Mr Brown said terrorists would have mistrusted his website

Continue reading the main story

### Related Stories

- Terror book writer driven by cash
- Man 'published terror handbook'

A man has been found guilty of publishing a "terrorist handbook" that explained how to make bombs.

Terence Brown, 47, of Portsmouth, made CDs at home containing thousands of pages of information on topics such as "how to make a letter bomb".

He was found guilty at Winchester Crown Court of nine terrorism-related charges and a further count relating to the proceeds of crime.

Brown, who denied the charges, has been bailed until sentencing on Friday.

During the three-week trial, the court heard that Brown set up a website based on the 1970s book - the Anarchist's Cookbook - selling CDs containing information compiled from an al-Qaeda training manual, the Mujahideen Poisons Book and other sources.

He told the jury he never thought the information would be used by terrorists and had only done it to make money.

The venture, run from Brown's terraced home in Portsmouth, was estimated to have generated tens of thousands of pounds.

Brown was found guilty of seven counts of collecting information that could have been used to prepare or commit acts of terrorism under the Terrorism Act 2000.

He was also found guilty of two counts of selling and distributing the information under the Terrorism Act 2006 and a further count under the Proceeds of Crime Act.

**More on This Story**

**Related Stories**

- **Terror book writer driven by cash** 09 MARCH 2011, HAMPSHIRE & ISLE OF WIGHT
- **Man 'published terror handbook'** 25 FEBRUARY 2011, HAMPSHIRE & ISLE OF WIGHT

**R v Faraz [2012] EWCA Crim 2820 – Case Comment (Russell Fraser)**
1 Reply

***Background***

The appellant, Ahmed Raza Faraz, was convicted on 12 December 2011 of seven counts of disseminating a ‘terrorist publication’, contrary to section 2(1)(a) and (2) of the Terrorism Act 2006, by distribution; and four counts of possessing information likely to be useful to a person

committing or preparing an act of terrorism, contrary to section 58(1)(b) of the Terrorism Act 2000. The appellant was sentenced to three years' imprisonment.

### *Appeal*

The appellant appealed against his convictions under 2(1)(a) and (2) of the Terrorism Act 2006 on the ground that the judge allowed the prosecution to admit in evidence 'the possession by named terrorist offenders of material similar or identical to that allegedly disseminated by the appellant, for the purpose of considering whether the material comprised a 'terrorist publication' for the purposes of section 2 of the 2006 Act'. The appellant also appealed on the ground that the judge did not direct the jury on the constituent parts of the section 2 offence in terms which were compatible with Article 10 of the European Convention on Human Rights (ECHR). Article 10 provides that everyone has the right to free speech but that this right can is subject to qualifications 'as are prescribed by law and are necessary in a democratic society.'

### *The indicted material*

The appellant was the manager of the Maktabah Islamic bookshop in Birmingham. He sold books, articles, videos and DVDs in the shop and through a website. The prosecution's case was that certain of this material supported 'militant Islam'. The indicted material was described by the Court of Appeal as follows:

'The centrepiece of *Milestones – special edition* (count 1) was the work of Sayyid Qutb, a leading member of the Muslim Brotherhood, who executed in Egypt in 1966 in consequence of his opposition to President Nasser and his suspected involvement in a plot to bring down his Government. The special edition was edited by the appellant in his pen name A. B. Al-Mehri. It contained a biography of the author… and nine appendices containing works by various authors. The book was offered for sale in the form in which it was indicted in or about April 2006… The special edition was alleged by the prosecution to be a polemic in favour of the Jihadist movement encouraging violence towards non-believers. *Malcolm X, Bonus Disc* (count 2) was a DVD containing a film about the life of the deceased Muslim leader. It included a number of trailers and other recordings of interviews with the families of men who had died 'fighting' US forces in Afghanistan and Israeli forces in the occupied Palestinian territory. It included footage of a suicide bomber driving to his death in Iraq. *21st Century Crusaders* (count 4) was a DVD. It purported to be a documentary focused upon the suffering of Muslims around the world. It included an interview with a masked man who defended terrorist attacks by or on behalf of Al-Qaeda. *The Lofty Mountain* (count 5) included a text written by Abdullah Azzam justifying the expulsion of the Russian occupation of Afghanistan in the 1980s. The work included a biography of Azzam, accounts of the Battle of the Lion's Den in 1987, in which Osama Bin Laden was a volunteer, the biography of a journalist who died while working as a medic in support of the fighters against US forces in Afghanistan in December 2001, and Azzam's account of Bin Laden's role in expelling the Russian army from Afghanistan. *Join the Caravan* (count 6) was a book founded upon a text by Sheikh Azzam. The translator's foreward praised his work and

writing. *Defence of the Muslim Lands* (count 7) was also founded upon a text by Sheikh Azzam. Its appendices included a discussion upon the justification for suicide operations in Chechnya. Finally, *The Absent Obligation* (count 8) was a book whose central text was written in the 1970s by Mohammed Abdus Faraj, an Egyptian Muslim, who was implicated in the death of President Anwar Sadat of Egypt and was executed. The text argued for the need for jihad in defence of the Islamic faith against a corrupt ruler.'

The appellant contended that the materials did not encourage acts of terrorism but instead offered buyers materials of a religious and political nature which were to foster discussion of the theory behind them. Read properly, the material did not encourage terrorism. The appellant did not give evidence to raise the statutory defence under section 2(9) that the publications did not represent his views (Though there is little logic in this being a defence. A person may sell material with the intention that it directly encourages another to commission an act of terrorism which in turn affects, for example, the price of oil or certain stock prices. That person's purpose might to make some financial gain as a result of the shifting markets. He does not share the views expressed in the material, but why should he be less culpable?).

***The statutory offence***

Section 2 of the Terrorism Act 2006 provides:

2(1) A person commits an offence if he engages in conduct falling within sub-section (2) and, at the time he does so (a) he intends the effect of his conduct to be a direct or indirect encouragement or other inducement to the commission, preparation or instigation of acts of terrorism; or (c) he is reckless as to whether his conduct has an effect mentioned in paragraph (a) or (b).

2(2) For the purposes of this section a person engages in conduct falling within this sub-section if he (a) distributes or circulates a terrorist publication… or (e) has such a publication in his possession with a view to its becoming the subject of conduct falling within any of paragraphs (a) to (e).

2(3) For the purposes of this section a publication is a terrorist publication, in relation to conduct falling within sub-section (2) if matter contained in it is likely (a) to be understood, by some or all of the persons to whom it is or may become available as a consequence of that conduct, as a direct or indirect encouragement or other inducement to them to the commission, preparation or instigation of acts of terrorism…

At trial the prosecution applied for permission to adduce evidence that individuals convicted of terrorist offences possessed several of the publications indicted. The prosecution said that the material important explanatory evidence within the meaning of section 100(1)(a) and (2) of the Criminal Justice Act 2003 and was relevant to three matters: whether the items were terrorist publications; the appellant's intent in distributing the publications; and whether the material

was being disseminated by the appellant within the meaning of section 2(1). The judge agreed that it was important explanatory evidence and was relevant to whether the items were terrorist publications and permitted the prosecution to adduce by way of admissions the names of the offenders, a summary of the offences committed and the fact that they had possessed the relevant publications.

**Grounds of appeal**

*Admission of the other cases*

The appellant submitted at appeal that the other material did not provide an explanation which the jury needed to hear and nor was it probative of the question whether a publication was a 'terrorist publication'. The appellant also submitted that section 2(8) of the TA 2006 expressly stated that 'it is irrelevant… whether any person… is in fact encouraged or induced by that matter to commit, prepare, or instigate acts of terrorism' and as such that ought to have determined the application to adduce the material. The question of the material's capacity to encourage 'was to be judged, on the facts, of the present case, solely upon an assessment of its contents in the context in which it was disseminated.'

Alternatively, the appellant argued, the question whether any individual was encouraged was not 'a matter of substantial importance' or that 'the jury would find it impossible or difficult properly to understand other evidence in the case' without it because of the terms of section 2(8).

The Court of Appeal held that the identity of the publications' readership could be important evidence in assisting the jury decide whether the material constituted an encouragement to acts of terrorism and therefore was a 'terrorist publication'. It was, however, concerned that there had been a risk that without a proper judicial direction the jury might not have appreciated that judging the likely effect of the material was a separate exercise to deciding that the readership *was* encouraged to commit terrorist offences. The court said:

'In our judgment, the evidence was admissible, if at all, for the extremely limited purpose of demonstrating that among the readership of the Maktabah publications were people who were prepared to commit terrorist acts.'

However, earlier the court had observed 'that there would be among Maktabah's readership some who were more likely than others, particularly those who were already sympathetic to the objectives of militant Islam, to interpret any given text as encouragement.' Even though the court recognised the manifest potential for evidence that the publications were owned by those convicted of terrorist offences to lead the jury to convict simply on that basis, this earlier observation surely lends weight to the defence's argument that it ought not to be admitted with reference to section 2(8). The court was right to say that evidence that a person had indeed been encouraged by the publications to commit offences would be admissible. But that ought to have

forced the conclusion that anything less than direct evidence would be too prejudicial to the appellant's case and ought not to have been admitted. No direction of a judge would be sufficient to obviate the risk that a jury might convict on the possession of the publications alone.

The appellant nonetheless succeeded with this ground of appeal as the court found the judge failed to give the jury suitable directions to '[head] off the risk of unfair prejudice'.

*Article 10 ECHR*

In respect of count 1 concerning the publication *Milestones* the appellant submitted that section 2 of the TA 2000 offends Article 10 since the offence created was disproportionate. The judge ought to have read down the requirements of section 2 as section 3 of the Human Rights Act 1998 allows and thus comply with the Article 10 obligations. The appellant set out four submissions:

(1) The alternative requirement for recklessness in section 2(1)(c) should not have applied if the jury was to conclude that the subject matter of the publication was 'political or religious ideas'.

(2) The requirement of a likelihood that the publication would be understood as encouragement in section 2(3)(a) should not apply to the extent that the jury concluded 'that the publication was a legitimate expression of a political or religious view'.

(3) The jury should have been directed that the encouragement required by section 2(3)(a) was for the 'imminent' commission, preparation or instigation of acts of terrorism.

(4) The judge should have left to the jury an Art 10 defence, namely, the jury should be slow to convict in respect of a publication which amounted to a political or religious argument even if it would be understood to encourage terrorism.

The appellant argued that these additional restrictions were needed so as not to offend Article 10. The Court of Appeal considered the judge's directions and concluded that the jury could only convict if they were sure that: the appellant distributed the publication; at the time the publication would be understood by a significant number of its readers, directly or by necessary implication, to be encouraging the instigation, preparation or commission of a terrorist offence within a reasonable timescale; and at the time the appellant intended that the publication should be so understood or, knowing of a serious and obvious risk that it would be so understood, he distributed it.

Again, given the court's earlier observation that some may interpret 'any given text as encouragement' the mere act of selling any book might be categorised as 'reckless' on this account. This is further compounded by the court's view that '[in] judging the capacity of the publication to encourage unlawful acts of terrorism the question whether the publication was a

correct interpretation of the teaching of Islam was of marginal relevance.' Applying this opinion, it is not difficult to imagine the selling of the Quran itself as potentially being a contravention of section 2. A bookseller may understand that there may be some who would interpret that text as encouraging an act as defined by section 1(1) of the Terrorism Act 2000. He may also know that the risk of someone so understanding the book is obvious. And if he then sells the book he is guilty of an offence. The defence under section 2(9) may not be available because he may not wish to state that the contents do not represent his views. The clear problem is the breadth of the offence created by section 2. Defining the material by its readership and not on its content alone is wrong and could lead to capricious results. The implications for free speech and the free exchange of ideas should be obvious. Historical works, religious allegories, autobiographies of certain figures: all are susceptible to perverse interpretations. But more troublingly, prosecutions of this sort are entirely dependant on the direction political winds are blowing at any given time.

This post focuses on the Court of Appeal decision rather than an in-depth examination of the legislation itself. The court below did carry out that exercise and the appellant put before the court much commentary and authority on the principles of Article 10. *Milestones* is currently available to buy on Amazon and several of the other indicted publications can be found online. Qutb wrote *Milestones* in 1964, long before the emergence of Al Qaeda and transnational terrorism as we know it today. This represents a further difficulty in defining literature by reference to external factors with no inquiry into the mind of the author. Although the appellant succeeded, cases of this sort will return to the courts. When they do, it is likely that the assessment of the compendious commentary and authorities on freedom of speech that the Court of Appeal decided did not concern it in this case will be have to be addressed.

*Russell Fraser is a pupil barrister at 2 Dr Johnson's Buildings. He previously worked as a paralegal on Special Immigration Appeals Commission and Terrorism Prevention and Investigation Measures cases. He writes in a personal capacity and tweets at @russell_fraser*

You asked why – here is the answer

Published 27/07/2011 Uncategorized18 Comments
Tags: BBC, Islamism, Self Loathing Liberal Elite, Terrorism, The Guardian

 Following the revelation that the mass murders in Norway were carried out by a white Nordic man rather than Islamists, hours of radio time and a good amount of TV broadcast time were devoted to trying to make a number of people feel stupid for having initally suggested the attack had been perpetrated by Islamist terrorists.

Plenty of bloggers and media talking heads, whose worldview favours the notion of mass immigration, seized on the news that an Anders and not an Ahmed had carried out the atrocities in Oslo and on Utoya and posed effectively the same question in a range of variations:

Why do we always assume Muslims are behind every terrorist outrage?

The idea for this was to make people feel stupid and guilty for having made an incorrect assumption, to make them feel bigoted and prejudiced for jumping to conclusions.

But the fact of the matter is the reason so many people rushed to the Islamist terrorist conclusion is that in recent years so many attacks and foiled attacks have been carried out by people citing passages from the Qur'an as justification for their attempts to kill people they view as infidels. Whether it is exploding themselves on tube trains and buses, engaging in a concerted copycat effort two weeks later, plotting to blow up shopping centres, trying to kill people outside nightclubs with car bombs, attempting to denotate explosives in shoes or ignite underpants over the Atlantic, drive a car bomb into an airport terminal building or plotting to mix liquid chemicals together in coordinated fashion on a number of jets simultaneously, the common theme of this incredibly disproportionate number of attacks and attackers is Islamism.

This has been re-emphasised today with the updated news that the two German nationals arrested at Dover and charged at City of Westminster Magistrates' Court with collecting or

possessing data likely to be useful in a terrorist act, Christian Emde, 28, and Robert Baum, 23, are fanatical Muslim converts.

So it should come as no surprise that suddenly all those 'right on' voices determined to apply the labels of racist, xenophobe and bigot to people less 'internationalist' than themselves seem to have gone rather quiet again. And they will remain so until there is another rare non-Islamist assault on civilians. It is a safe bet that the phone ins on Five Live, LBC and other stations will not be editorially re-focused to ask why so many fanatical Muslims are hell bent on attacking western countries and killing as many people as possible. It doesn't fit in with their narrative of telling us how wrong we are to rightly point out the Islamist threat dwarfs all others.

There are a number of threats this country faces, foreign and domestic, and it is not racist or bigoted to state the fact that the biggest and most determined of those threats comes from fanatical Muslims who subscribe to the Islamist mindset. The evidence supports it.

**Banning books in Britain, fifty years after Lady Chatterley**

The main charges against Faraz were brought under the Terrorism Act 2006, and included the dissemination of terrorism publications, and also section 58, which makes possession of material related to terrorism an offence.

The jailing of a Birmingham bookseller last week for distributing books that are freely available in university and private libraries, is as extraordinary a development in twenty-first century Britain, as was the 1960 case against Penguin Books for publishing D.H.Lawrence in an unexpurgated edition. But Ahmad Faraz's case has made no such waves, attracted no defence from the hundreds of distinguished authors, celebrity intellectuals, and bishops, who swayed the jury for Penguin and saw in a verdict for freedom of speech.

In those days the prosecution was worried about the impact on "servants" of reading a novel about sex across the class divide. Today, the judge in Kingston Crown Court found Faraz "grossly reckless" in publishing and distributing books and videos, some of which were found among the possessions of men involved in major terrorism cases of the last decade. The Hon Justice Calvert-Smith stressed that"there is no indication that Mr Faraz ever intended to carry out a terrorist attack," but nonetheless sentenced him to three years.

The main charges against Faraz were brought under the Terrorism Act 2006, and included the dissemination of terrorism publications, and also section 58, which makes possession of material related to terrorism an offence – in this case books and videos. The key book in the trial was Syed Qutb's *Milestones*, outlawed and burned by President Nasser in 1960 as part of his crackdown on his erstwhile allies, the Muslim Brotherhood. (The MB are now well ahead in elections in Egypt and poised to challenge another military government.)

This was not the first time Faraz had been arrested. In 2007, he was detained in connection with Operation Gamble. He was released without charge, but the police took a wealth of evidence from his Maktabah bookshop. At the time, Detective Inspector Haddon of West Midlands Police stated that while the material they had seized was anti-western, it was not illegal.

In the two month case in Kingston the defence were so confident that there was no case to answer, that they opted not to present their case. So important evidence, that showed that Faraz had gone to great efforts to speak to his team, lawyers and even the police about the content of the material the Maktabah bookshop sold, was not considered by the jury. Emails and notes recovered by the police proved that Faraz was particularly concerned with any legal liability that might arise from the publications. Confusion surrounding the Terrorism Act of 2006 left a great deal vague in terms of what was beyond the law.

All the material under the section 58 offence of possession of terrorist material, should be understood within the context of its use by Faraz. The files were found on his hard drive in a folder entitled PhD. He had intended to do a PhD following his Masters. And the prosecution had seen detailed communication with his former Masters dissertation advisor about his ideas for a PhD. Faraz had explained to her that he had accumulated a large archive of primary source material for the specific purpose of researching the differences in position between Hamas and Al Qaeda.

One of the main facts reported in the section 58 offence, related to his possession of an Al Qaeda training manual. This was part of what was found in his PhD collection. This is the same manual that was brought up in the case of Rizwan Saabir, a Masters degree student at Nottingham University, who was arrested for having a colleague download the manual from a US government website – it was freely available. Saabir was released after a week, and later paid £20,000 in compensation for the way in which he was treated. He is now a PhD student at Strathclyde University.

When it came to summing up for the jury, Justice Calvert-Smith made various additions to the prosecution case, notably linking the publication of various materials with a time line of international terrorism events. These were points that the prosecution had never offered. In addition he conflated the ideas and thoughts in the books, with what he saw as Faraz's world view and intention in disseminating them.

The judge relied heavily on the government's Muslim expert, Matthew 'Tariq' Wilkinson, who is on the education committee of the Muslim Council of Britain. Wilkinson, who was educated at Eton and Cambridge, as was the judge, gave evidence for two days. It was Wilkinson's testimony that the judge relied on in both his summing up and his judgment.

Calvert-Smith began his sentencing stating that *Milestones*, as in the words of Wilkinson, was Manichean, separatist and excessively violent. He further took the expert's opinion that Qutb's desire for the implementation of the Shariah in Egypt through force, if necessary, was an ideologically incorrect position as Qutb had used the Qur'an out of its correct context. The judge explicitly stated that Qutb had used"selected quotes" in order to justify a skewed position on Islam and justify his concept of jihad. It was this basis that set the tone for the rest of the sentencing, as Calvert-Smith chose to use that specific ideological view of Qutb.

A number of other books were considered in the trial, but the largest sections of discussion were specifically on Syed Qutb, *Milestones*, and also Abdullah Azzam's historical books on the war in Afghanistan in the period when it was supported by the United States.

The most difficult aspect of this case to understand, is how could the jury reasonably have come to the conclusion that the material sold by Ahmed Faraz was the major factor in the decision making process of a suicide bomber. In fact, the defence successfully rebutted both the government's key witnesses - Wilkinson and Bruce Hoffman of the US-based RAND Corporation - to show that all of the books specifically mentioned that civilians should not be attacked. Apparently, this key point was ignored by both judge and jury.

Curiously the one book that the jury acquitted Faraz of disseminating, was the *Army of Madinah in Kashmir*, by Dhiren Bharot – convicted in the UK for fantasising attacks against civilians. The book by Bharot, was the only one that spoke of hijacking and attacking civilians, while all those where the jury found Faraz guilty specifically made the point, that such activity was Islamically unlawful.

During the trial one juror was inadvertently given a police document that stated that they planned, in the event of a conviction for Faraz, to roll out other prosecutions against other people for disseminating similar materials. One such arrest took place the day after the trial ended.

## Far right extremist father and son convicted of terrorism offences

14/05/2010

County Durham father Ian Davison is the first man in England and Wales to be convicted of a terrorism-related offence involving the fatal poison Ricin, said Crown Prosecution Service Counter Terrorism Division lawyer Stuart Laidlaw.

Mr Laidlaw described Ian Davison and his son, Nicky, who were sentenced today at Newcastle Crown Court, as: 'Nazi zealots who believed in white supremacy and revered Adolf Hitler. They hated minority ethnic groups, be they Black, Asian, Muslim or Jewish.

'A search of Ian Davison's home resulted in the discovery of a quantity of Ricin. Expert evidence suggested it was about 10 fatal doses. Ian Davison made that Ricin.

'I decided that Ian Davison should be charged with producing a chemical weapon under the Chemical Weapons Act 1996. He is the first person to be convicted of that offence in the UK. I was also satisfied that the evidence as a whole supported a charge of preparing for acts of terrorism.'

Mr Laidlaw said that the evidence for preparing for acts of terrorism included:

- Ian Davidson's production of Ricin;
- Collection and distribution of terror manuals;
- Internet posts encouraging violence for the 'cause'.

He added: 'There was also his production and posting of a video showing pipe bombs being detonated. Recovered from his computer were chat room conversations with like-minded persons about potential acts of terror.

'It may be that there was no specific plan or target but the law does not require there to be.

'People should make no mistake about how serious Ian and Nicky Davison were in their hatred of anyone who they considered a threat to their race. It is clear that they wanted to take violent, direct action and to that end they both downloaded terror manuals from the internet.'

While Ian Davison pleaded guilty to six charges, his son Nicky denied three of possessing information likely to be useful to a person committing or preparing an act of terrorism. After a trial at Newcastle Crown Court, he was convicted on 30th April 2010.

Mr Laidlaw said: 'This case demonstrates, yet again, that the Crown Prosecution Service will actively prosecute those who pursue terrorism as a way of achieving their ends, whatever their background, cause or motives.'

**Ends**

**Notes to Editors**

1. Media enquiries by phone: 020 7710 8127. Out of hours pager: 07699 781926.
2. Ian Davison was charged and pleaded guilty to six offences: 1 x Preparing for acts of terrorism contrary to section 5(1) of the Terrorism Act 2006; 1 x Producing a chemical weapon contrary to section 2(1)(b) of the Chemical Weapons Act 1996; 3 x Possessing a record or information likely to be useful to a person committing or preparing an act of terrorism contrary to Sec 58 (1) (b) of the Terrorism Act 2000; 1 x Possessing a prohibited weapon (a spray canister designed or adapted to discharge a noxious liquid, gas or other thing) contrary to Sec 5 (1) (b) of the Firearms Act 1968.
3. Nicky Davison was charged and convicted of 3 x Possessing a record or information likely to be useful to a person committing or preparing an act of terrorism contrary to Sec 58 (1) (b) of the Terrorism Act 2000.
4. The media are reminded of reporting restrictions which continue in place in relation to this case. For further details contact CPS Press Office.

| | | |
|---|---|---|
| Offence | : | **Possessing/Collecting a record of information likely to be useful to a person committing or preparing an act of terrorism** |
| Legislation | : | Terrorism Act 2000 |
| Section | : | Section 58 |
| Maximum Penalty | : | 10 years imprisonment |
| **Cases** | : | Bahader Ali (2013-04-26) |
| | | Mujahid Hussain (2013-04-26) |
| | | Norman Idris Faridi (2013-03-20) |
| | | Ruksana Begum (2012-12-06) |
| | | Umer Farooq (2012-11-16) |

Umran Javed (2012-09-18)

Shasta Khan (2012-07-20)

Mohammed Abdul Hasnath (2012-05-11)

Mohibur Rahman (2012-02-09)

Robert Baum (2012-02-06)

Asim Kausar (2012-01-27)

Bilal Zaheer Ahmad (2011-07-29)

Rajib Karim (2011-03-18)

Terence Roy Brown (2011-03-11)

Trevor Hannington (2010-06-25)

Ishaq Kanmi (2010-06-24)

Nicky Davison (2010-05-14)

Ian F Davison (2010-05-14)

Ilyas N Iqbal (2010-03-19)

Ilyas Iqbal (2010-03-19)

Trevor Hannington (2010-06-25)

Ishaq Kanmi (2010-06-24)

Nicky Davison (2010-05-14)

Ian F Davison (2010-05-14

Ilyas N Iqbal (2010-03-19)

Terence Robert Gavan (2010-01-15)

Mohamed Shamin Uddin (2009-12-10)

Houria Chahed Chentouf (2009-11-02)

Neil C Lewington (2009-09-08)

Sultan Muhammad (2008-08-19)

Abdul M Patel (2007-10-26)

**Germans jailed over UK terror offences**

Christian Emde and Robert Baum in court. (File pic)

Continue reading the main story

**Related Stories**

- German men admit terror offences

Two German nationals have been jailed by a judge at the Old Bailey after pleading guilty to possessing documents useful to terrorism.

Christian Emde, 28, and Robert Baum, 23, who are both converts to Islam from Solingen in Germany, will also be automatically deported from the UK.

They were arrested in July 2011 as they tried to enter the UK via Dover.

They had a computer and hard drive with material that has appeared in key trials linked to online radicalisation.

Judge Peter Rook described the material they had in the possession as "chilling reading".

**'Extremist literature'**

Emde admitted four counts of having documents that were likely to be useful for terrorism and was jailed for 16 months, minus 193 days he has already spent in custody.

Baum admitted one similar charge and was jailed for 12 months. The prosecution said his document was at the lower scale of extremist literature.

The men were found carrying 2,968 euros (£2,467) which Judge Rook said should be paid towards the prosecution costs.

The documents they were carrying were electronic copies of Inspire magazine, an English publication launched by al-Qaeda in the Arabian Peninsula (AQAP).

Continue reading the main story

**“Start Quote**

The offence was committed by accident when he made the unexpected trip to this country”

End Quote Timothy Green Christian Emde's solicitor

This off-shoot of the main group had been the power base for Anwar al-Awlaki, a US-Yemeni preacher who was killed last year.

The magazine was designed to appeal to Western English-speaking recruits to al-Qaeda and its articles are widely available and shared online.

Emde's articles included "How to make a bomb in the kitchen of your mom" which was eight pages of instructions on home-made explosive devices.

Another article detailed how to modify a car so that it could become the "ultimate moving machine" for an attack on the "enemies of Allah" in a city centre.

The article recommended attaching blades to a truck so that the driver could cause maximum carnage as quickly as possible. Baum's article was an ideological essay called 39 Ways to Participate in Jihad.

What is not clear is what the men were doing.

**Studying Islam**

Emde, who is unemployed, and Baum, a warehouseman, had originally planned to travel to Egypt - but when they discovered it would be too expensive, they changed their mind and headed to the UK.

Emde had a link to someone who had been banned from the UK and had arrived at Dover with a ticket to travel to Birmingham, bought by another man described only as "Mr Abdalla".

During extensive police interviews, Emde had said he was keen to understand all the arguments of Islam and that he had been studying extremism for two years.

Prosecutor Sarah Whitehouse said Emde did not appear to be planning any terrorism himself, but given the amount of material on his hard drive, he did have more than a "casual interest" in the subject. Germans jailed for terror offence

The documents we found included full instructions on how to make home-made explosives and how to shield explosives from detection by scanners and sniffer dogs”

Ms Whitehouse said the material the men had was hosted on websites based in the US and nobody in Germany had, thus far, been prosecuted for having it in their possession.

Timothy Green, for Emde, told the Old Bailey that his client had become a Muslim in 2003 and that he had opposed the invasions of Afghanistan and Iraq. He had been the moderator of a website for people who shared his views.

At their first two appearances in court, the two men refused to stand. Both men said standing would be an act of worship that went against Islam.

But Mr Green said that Emde now regretted the offences and had had a "very difficult six months in the UK".

He spoke no English and had received no prison visits. No prison clothes could be found to fit him because of his large size, Mr Green said.

He had no desire to stay in this country any longer than he had to and wanted nothing more than to be sent back to Germany.

Mr Green added: "Mr Emde is not a terrorist. He was not going to pass the documents to anyone.

"The offence was committed by accident when he made the unexpected trip to this country."

Det Ch Supt Mark Warwick, from the South East Counter Terrorism Unit, said the case was heavy-going due to the large volume of material and the need to translate a great deal of it.

He said: "The documents we found included full instructions on how to make home-made explosives and how to shield explosives from detection by scanners and sniffer dogs."

"We also found guidance on how to demolish buildings using explosives.

"Possessing these kinds of materials are serious offences and we will investigate anyone who breaks the law in this way and ensure they are brought to justice."

TERENCE ROY BROWN – CONVICTED TODAY OF TERRORISM OFFENCES AT WINCHESTER CROWN COURT

Attributed to Moira Macmillan, CPS Counter Terrorism Division lawyer:

*Terence Brown made money from producing and selling CD Roms which contained details of step-by-step instructions that could be used by anyone planning or committing a terrorist attack.*

*He has stated throughout that he has no terrorist sympathies and was simply making a living by gathering together information that was already available on the internet, charging for pulling it together and sending it out on disc.*

*The law is clear that it is a crime to gather this information without a reasonable excuse or to disseminate material which is clearly intended to be of use to terrorists. A person's intentions or motivation for doing this is irrelevant. What is significant is the fact you have this material in your possession, or distribute it, and that it can be useful to someone with a terrorist purpose.*

*Although Brown called his collection The Anarchist Cookbook, it is not the same as the book published in America in the 1970s in protest against American involvement in Vietnam. While Brown used the same title, what he collected and sold had very different content and was on a very different scale – if printed out it would run to tens of thousands of pages – and included hundreds of instructions on making bombs, explosives and poisons such as Ricin.*

*By their guilty verdicts today, the jury has shown that they do not believe that Brown's explanation for his actions were reasonable.*

**Neo-Nazi jailed for planning racist bombing campaign**

Judge hands Neil Lewington indefinite sentence and says he was 'in process of embarking upon terrorist activity'

Neil Lewington has been given an indefinite prison sentence. Photograph: Metropolitain police/PA

A neo-Nazi who planned a racist terror campaign in Britain was today given an indefinite prison sentence at the Old Bailey.

Neil Lewington wanted to emulate the Oklahoma bomber, Timothy McVeigh, and the Soho nail bomber, David Copeland, and kept videos detailing their attacks at his home.

The 44-year-old unemployed electrician, of Tilehurst, Reading, was found out after being arrested at Lowestoft railway station, in Suffolk, for drunkenly abusing a female conductor.

When he was stopped and searched in October last year, police found he was carrying components for two "viable improvised incendiary devices". Police then discovered a bomb factory in his bedroom.

Anti-terror officers found evidence that he planned to make shrapnel bombs in tennis balls and use them to target Asian families.

Their discoveries included nearly 9lb (4kg) of weedkiller, pyrotechnic powders, fuses and igniters.

They also found a notebook entitled Waffen SS UK Members' Handbook, with a logbook of drawings of electronics and chemical devices.

The link between Lewington's extremist views and his interest in explosives was illustrated by a note which said: "Compressed thermite grenade vs Paki front door."

He also wrote a "mission statement" in which he boasted of two-man hit squads attacking "non-British people" at random. He told one woman that "the only good Paki was a dead Paki", the court heard.

Lewington was given an indeterminate sentence for public protection and told he must serve at least six years after being convicted of having explosives with intent to endanger life and preparing for terrorism.

He was also found guilty of two charges of possessing articles for terrorism including weedkiller, firelighters and three tennis balls, two counts of having documents for terrorism, and one allegation of having explosives.

"This man, who had strong if not fanatical rightwing leanings and opinions, was on the cusp of embarking on a campaign of terrorism against those he considered non-British," Brian Altman QC, prosecuting, said.

"In addition to his extreme views on race and ethnicity, the defendant had an unhealthy interest in bombers as well as bombings.

"He admired, and might soon have emulated, the bombers about whom he possessed two compilation videotapes had he not been captured, albeit quite fortuitously."

Judge Peter Thornton said Lewington was "a dangerous man, somebody who exhibits emotional coldness and detachment You would not have been troubled by the prospect of endangering somebody's life."

Thornton said the devices Lewington was found with at Lowestoft were made "to a very high standard", and the igniters and timers only needed wiring up for them to be set off.

"These were dangerous firebombs, meticulously constructed, all set to go," he added.

Thornton said that while Lewington had selected no specific target to attack, he "clearly had in mind" Asian and black people.

"You were in the process of embarking upon terrorist activity," he said. "You were going to use or threaten action involving either serious violence to people or serious damage to property.

"This action was designed to intimidate non-white people and it was for the purpose of pursuing the ideological cause of white supremacy and neofascism, albeit in a rather unsophisticated way."

**When does knowledge become a crime?**

Consider the case of Terence Roy Brown who ran afoul of the British authorities for selling terrorist manuals. He was convicted in 2011 for "Possessing/Collecting a record of information likely to be useful to a person committing or preparing an act of terrorism", "Concealing and/or transferring criminal property" and "Dissemination of a terrorist publication".

R v. Terence Roy Brown

Terence Roy Brown, a citizen of the United Kingdom, ran an online business, in which he advertised and sold an annual edition of a CD-ROM that he called the "Anarchist's Cookbook" (the title is nearly identical to that of a well-known book called The Anarchist Cookbook). Rather than a single publication, however, these discs contained 10,322 files, some of which were complete publications in their own right. These included terrorist manuals such as the Al-Qaida Manual and instructions for the manufacture of different forms of explosives and the construction of bombs. Other files consisted of instructions for making poisons, how to avoid attracting the attention of authorities when travelling and weaponshandling techniques. In an apparent effort to circumvent the law, Mr. Brown posted disclaimers on the website advertising the publication, stating that the instructions they contained might be illegal or dangerous to perform and were intended for "reading pleasure and historical value only". It was clear on investigation that Mr. Brown was motivated purely by commercial incentives. It was also apparent that he deliberately had expanded his collection in the immediate aftermath of the July 2005 London bombs and had significantly increased his profit as a result.

In March 2011, Mr. Brown was convicted of seven counts under the Terrorism Act 2000 (section 58) relating to the collection of information that could have been used to prepare or commit acts of terrorism, two counts under the Terrorism Act 2006 (section 2) relating to the dissemination of terrorist publications and an offence under the Proceeds of Crime Act 2002 relating to the transfer of criminal property (his use of the profits from his business).

The excuse raised by Mr. Brown at trial was that his activities amounted to no more than the lawful exercise of his right to freedom of expression in relation to material that was freely available on the Internet and that was similar in type, if not volume, to that sold by other online booksellers. The same points were raised during an unsuccessful application to appeal conviction, during which the court ruled that the restriction of Brown's article 10 rights in relation to material that was likely to assist terrorists was justified and proportionate. The court also affirmed the discretion of the prosecuting authorities not to charge every individual who might have committed an offence, but to consider instead each case on its own merits."

Source:
http://www.unodc.org/documents/frontpage/Use_of_Internet_for_Terrorist_Purposes.pdf

Statement from the Crown Prosecution Service:

*Terence Brown made money from producing and selling CD Roms which contained details of step-by-step instructions that could be used by anyone planning or committing a terrorist attack.*

*He has stated throughout that he has no terrorist sympathies and was simply making a living by gathering together information that was already available on the internet, charging for pulling it together and sending it out on disc.*

***The law is clear that it is a crime to gather this information without a reasonable excuse or to disseminate material which is clearly intended to be of use to terrorists. A person's intentions or motivation for doing this is irrelevant. What is significant is the fact you have this material in your possession, or distribute it, and that it can be useful to someone with a terrorist purpose.***

*Although Brown called his collection The Anarchist Cookbook, it is not the same as the book published in America in the 1970s in protest against American involvement in Vietnam. While Brown used the same title, what he collected and sold had very different content and was on a very different scale – if printed out it would run to tens of thousands of pages – and included hundreds of instructions on making bombs, explosives and poisons such as Ricin.*

*By their guilty verdicts today, the jury has shown that they do not believe that Brown's explanation for his actions were reasonable.*

Source: http://blog.cps.gov.uk/2011/03/cps-update-wednesday-9-march.html

Mr Roy Brown was subsequently sentenced to three years in prison, later confirmed on appeal.

Nationalists pose bigger threat than al-Qaeda

**Contrary to popular belief, most terrorist attacks in Europe are the work of extremist nationalists.**

With the death toll nearing 100, Anders Behring Breivik (pictured right) has been arrested and charged with Norway's worst act of terrorism. His lawyer has indicated that Breivik had planned the attack for some time and would explain in court on Monday why he thought his act of terrorism was necessary.

After a predictable and revealing knee-jerk response by security experts interpreting the massacre at a Labour Party summer camp on Utoya island and a car bomb attack on a government building in Oslo as the work of Muslims inspired or directed by al-Qaeda, it transpires that the real culprit in the case was more likely to be motivated by anti-Muslim sentiment.

Significantly, early reports reveal Breivik's admiration for bigoted groups such as the English Defence League and Stop the Islamification of Europe, which campaign against Muslims and the building of mosques. Similarly, Geert Wilders' Freedom Party in Holland appears to win

Breivik's approval because it seeks to protect Western culture from a growing threat of so-called "Islamification".

While we must await the outcome of police investigations and court proceedings before reaching any firm conclusions about Breivik's motivation, it will nevertheless be instructive to begin an analysis of a violent extremist nationalist milieu in Europe and the US, and its dramatic shift towards anti-Muslim and Islamophobic thought since 9/11. To be sure, this will certainly be more relevant than an analysis of al-Qaeda terrorism.

At the outset, however, Breivik may have to explain to outsiders why he did not choose to bomb a mosque instead. Surely, for the violent nationalist confluence he represents, that would have been a direct hit on the enemy. Instead, by choosing to attack a government building and a Labour Party summer school, Breivik is drawing attention to what many fringe nationalists see as the political failure of mainstream and left-wing politicians to confront the Muslim threat. So-called appeasers of the "Islamification of Europe" have become as hated as Muslim activists and therefore face the same kind of attacks.

**Terrorism is propaganda, not just violence**

In addition, Breivik can claim to have followed a long tradition of terrorism target selection that is intended to send a strong message to politicians in an attempt to persuade them to change policy. As leading terrorism scholar Alex Schmid reminds us, terrorism is a form of communication that "cannot be understood only in terms of violence". Rather, he suggests, "it has to be understood primarily in terms of propaganda" in order to penetrate the terrorist's strategic purpose.

Breivik appears to understand Schmid's analysis that terrorism is a combination of violence and propaganda. "By using violence against one victim," a terrorist "seeks to coerce and persuade others", Schmid explains. "The immediate victim is merely instrumental, the skin on a drum beaten to achieve a calculated impact on a wider audience." This is certainly the kind of rationalisation that perpetrators of political violence have adopted in many contexts in pursuit of diverse political causes for decades.

Many extremist nationalists in Norway, the rest of Europe, and North America will be appalled by Breivik's resort to terrorism and in particular his target selection. However, Breivik is likely to argue that he has sent a powerful and coercive message to all politicians in the West that will help put the campaign against the "Islamification of Europe" at the top of their agenda.

Crucial, therefore, for Breivik that he should explain his purpose as publicly as possible so that it is not misunderstood or misinterpreted. He is therefore very likely to want the widest possible audience to know why he has chosen to adopt the established tactic of terrorism so as to win an opportunity to deliver a political message. His innocent victims, he might think, are necessary collateral damage in a war that has to be won.

Breivik may hope that others will take inspiration from his act and seek to emulate him. Terrorism may be repulsive to many who share Breivik's bigoted anti-Muslim views, but it is a tactic that only requires a small number of adherents to achieve its purpose, whatever the cause. So if even only a handful follow his route, Breivik will count that as a success.

Whether he was acting alone or in concert with others, Breivik stands apart from a significant number of other violent nationalists in the West who share his hostility towards Muslims – but whose plans to commit acts of terrorism have so far failed to reach such deadly fruition. Breivik, by contrast, has demonstrated the skills that are necessary to plan and execute acts of terrorism of any kind, especially crucial when bombs and firearms are involved.

**Nationalist terror plots in the UK**

In the UK, for example, there have been important convictions in recent years of violent nationalists before they have been able to carry out terrorist attacks.

Robert Cottage, a former British National Party candidate, was jailed in July 2007 for possessing explosive chemicals in his home. The cache was "described by police at the time of his arrest as the largest amount of chemical explosive of its type ever found in this country".

Martyn Gilleard, a Nazi sympathiser, was jailed in June 2008 after police found nail bombs, bullets, swords, axes and knives in his apartment, as well as a note in which he had written: "I am so sick and tired of hearing nationalists talk of killing Muslims, of blowing up mosques, of fighting back … the time has come to stop the talk and start to act."

Then there is Nathan Worrell, a "neo-Nazi described by police as a 'dangerous individual', who hoarded bomb-making materials in his home, and was found guilty in December 2008 of possessing material for terrorist purposes and for racially aggravated harassment".

And one Neil MacGregor pleaded guilty to "threatening to blow up Glasgow Central Mosque and behead a Muslim every week until every mosque in Scotland was closed".

As Mehdi Hasan, editor of the New Statesman, has pointed out, figures compiled by Europol, the European police agency, suggest that the threat of Islamist terrorism is minimal compared with "ethno-nationalist" and "separatist" terrorism. According to Europol, in 2006, one out of 498 documented terrorist attacks across Europe could be classed as "Islamist"; in 2007, the figure rose to just four out of 583 – less than one per cent of the total. By contrast, 517 attacks across the continent were claimed by – or attributed to – nationalist or separatist terrorist groups, such as ETA in Spain.

More recently, on January 15, 2010, Terence Gavan, a former soldier and British National Party member, was convicted of manufacturing nail bombs and a staggering array of explosives, firearms and weapons. It was, Mr Justice Calvert-Smith said, the largest find of its kind in the UK in modern history. The fact that David Copeland used nail bombs to deadly effect in London in 1999 makes this an especially disturbing case. Gavan had previously pleaded guilty to 22 charges at Woolwich Crown Court:

"Police discovered 12 firearms and 54 improvised explosive devices, which included nail bombs and a booby-trapped cigarette packet, at the home Gavan shared with his mother. He told detectives he had 'a fascination with things that go bang', the Old Bailey heard. After the case, head of the North East Counter Terrorism Unit David Buxton said Gavan posed a significant risk to public safety. 'Gavan was an extremely dangerous and unpredictable individual,' he said. 'The sheer volume of home-made firearms and grenades found in his bedroom exposed his obsession

with weapons and explosives ... Gavan used his extensive knowledge to manufacture and accumulate devices capable of causing significant injury or harm."

Unlike Lewington, Gavan is reported as having specifically Muslim targets in mind. In particular, he is reported to have planned to "target an address he had seen on a television programme that he believed was linked to the July 7 bomb attacks in London". In one hand-written note he explained: "The patriot must always be ready to defend his country against enemies and their governments." Again, like Lewington, he would have posed a threat to Muslim communities throughout the UK, especially those areas such as Bradford and East London most popularly associated with large Muslim populations.

Finally, it is only necessary to recall the circumstances of the Oklahoma City bombing in 1995 to be reminded of extremist nationalists' bomb-making capacity and target selection. Timothy McVeigh was able to utilise skills and contacts he acquired in his US military service to build and detonate a bomb that killed 168 victims, injured 680 others, destroyed or damaged 324 buildings within a sixteen-block radius, destroyed or burned 86 cars, shattered glass in an additional 258 nearby buildings, and caused at least $652m worth of damage.

With minimal help, McVeigh was able to inflict more harm and damage with one bomb than four suicide bombers in London operating under an al-Qaeda flag in London ten years later.

Significantly, McVeigh attacked a federal government building for reasons that will make perfect sense to a number of violent extremist nationalists – most especially Anders Behring Breivik.

Posted by Doctor Robert Lambert (Co-Director of the European Muslim Research Centre, Institute of Arab and Islamic Studies)

This post was first published at www.aljazeera.net

**Conviction for uploading racist videos to YouTube**

15/11/2010

The Crown Prosecution Service (CPS) has successfully prosecuted a man for distributing racially inflammatory recordings after he uploaded racist video clips to the video-sharing website YouTube. Gareth Hemingway pleaded guilty at Leeds Crown Court to five offences under section 21(1) of the Public Order Act 1986 and was sentenced to 15 months in prison.

Following sentencing today at Leeds Crown Court, Stuart Laidlaw, reviewing lawyer for the CPS, said: "Freedom of speech carries with it responsibilities. Publishing something that is abusive and insulting and that is likely to stir up racial hatred is against the law and the CPS will work with the police to prosecute robustly anyone who does so.

"Gareth Hemingway decided to use the very public forum of YouTube to distribute videos of a racist and inflammatory nature which he had edited, and which were designed to provoke violence against ethnic minorities, particularly those living in Dewsbury.

"They called for a racial holy war, described acts of violence and made supportive references to far right groups such as Combat 18 and POWER (Patriots of White European Resistance)."

Mr Laidlaw said that using the internet as a forum for distributing this type of material does not guarantee anonymity. He said: "Using the internet does not mean that people are immune from prosecution. They can be tracked down and prosecuted, as this case shows."

Gareth Hemingway was prosecuted in relation to five videos that he uploaded to YouTube between January and June 2007. They included titles such as "red, white and blue through and through", "oi monkey" and "Dewsbury needs help", and featured racist references and imagery including an assault on a black man by a white man.

When police arrested Gareth Hemingway, they found a collection of Nazi and racist memorabilia at his home.

The material came to the attention of the police when a local journalist researching Dewsbury on the internet came across the videos Gareth Hemingway had posted and reported them. Following an appeal in the Dewsbury Reporter, Gareth Hemingway was identified in an anonymous call to Crimestoppers.

**Eastern Eye Article - We prosecute terrorists no matter what their background or beliefs**
**Sue Hemming Head of Counter Terrorism Division**
**Crown Prosecution Service (CPS)**

The recent conviction of neo-Nazi extremists Michael Heaton and Trevor Hannington serves yet again to dispel the myth that terrorism prosecutions are focussed on the Muslim community. Both were convicted on race hate charges last week for their roles in the far-right extremist group Aryan Strike Force (ASF). Before his trial, Hannington had also pleaded guilty to six charges including offences of possessing and disseminating terrorist publications.

We at the CPS prosecute without fear or favour, regardless of a suspect's ethnic or national origin, religion or belief, political views, gender, age or sexual orientation. It is important the public understand that.

The Crown Prosecution Service is an independent authority responsible for charging all but the most straightforward criminal cases and prosecuting the vast majority of criminal cases in England and Wales - around a million a year. We decide if there is sufficient evidence to take a case to court in line with the Code for Crown Prosecutors – a key document which explains how prosecutors make decisions on every kind of criminal case from shoplifting to murder. The Code explains that a prosecutor needs to have sufficient evidence to afford a 'realistic prospect of a conviction' before he or she can move forward with a case. If there is sufficient evidence, prosecutors must then decide if the prosecution is in the public interest. Terrorism related cases are nearly always likely to be in the public interest.

Heaton and Hannington were members of the Aryan Strike Force (ASF) - a far-right group which advocates violence as a means of eliminating non-white races, Jews, Muslims and others from the UK. The Counter Terrorism Division dealt with this case from the very start, using our in-depth knowledge and experience of this group from an earlier case. As members of the ASF,

they were closely associated with Ian Davison who was recently convicted of preparing for acts of terrorism and of producing the poison Ricin. They enjoyed similar links with his son, Nicky Davison, who was also convicted of terrorism offences. Both father and son were involved with the ASF website. Bringing this case to court took time, dedication and specialist skills from the lawyers and caseworkers in my team – all of whom are specially trained to address complexities common to terrorism and race hate cases. One of our lawyers appeared in court alongside leading counsel to prosecute.

Terrorism makes up the majority of our work but my Division also deals with all allegations of incitement to racial and religious hatred, war crimes and crimes against humanity, official secrets cases, and hijacking as similar skills are required to handle such work. In particular, our prosecutors understand the wider community impact of these cases and need the ability to work closely, but independently, with the police and other agencies. They also have legal skills to interpret complex domestic and international law and obtain information and evidence from abroad.

Some of the offences we advise suspects should be charged with include: preparing for acts of terrorism, training for terrorism, dissemination of terrorist publications, possessing information for terrorist purposes, failing to disclose information which a person knows or believes might be of material assistance in preventing an act of terrorism, and conspiracy to cause explosions.

It is the job of my Division to protect everyone in our society from terrorism, and to this end we speak to communities so that we are aware of their concerns and can feed useful information back about convictions. We have set up two Community Involvement Panels - one on Violent Extremism and one on War Crimes and Crimes against Humanity, where prosecutors discuss and consult with representatives from community groups and NGOs. We have a web page where we provide information on the cases we prosecute and we attend forums, meetings and conferences to reassure the public and organisations about our role and how we work.

No matter what the background or motivation of a defendant, my Division uses terrorism legislation to prosecute only where it is appropriate to do so. This is why, if you look behind the headlines, you will find a range of ideologies in the cases we have dealt with in the last two years. They include white supremacist Neil Lewington from Reading who was convicted of terrorism and explosives offences; Simon Sheppard and Stephen Whittle from Hull who were publishing anti-Semitic material; far right extremist Martyn Gilleard and Tamil Tigers supporter Aranachalam Chrishanthakumar.

I want the public to know that it is the strength of evidence which moves our cases to court. A defendant's personal beliefs may form part of a terrorism case, but they will never be the reason why the case came to court in the first place and we do not single out one group more than another.

30 June 2010