

To: The Senate Legal and Constitutional Committee

From: Alex Reisner
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Re: Inquiry into the provisions of the Anti-Terrorism Bill (No. 2) 2005

November 9, 2005

Senators,

In your deliberations with regard to the provisions incorporated into the Anti-Terrorism Bill (No. 2) 2005 may I suggest that the following points are worthy of consideration.

1. What evidence has been provided to Parliament that the new laws will significantly enhance the restriction of terrorist activity affecting Australia?
 - a) So far as I know, no information has been provided to the public that the government has undertaken analyses that have produced data supporting such a conclusion.
 - b) Has the government determined the degree of disaffection the implementation of these laws will engender in new and first generation Australian's, for example of middle-eastern origin, and the consequences that may result?
 - c) With the availability to the government of supercomputing power has it attempted to develop models to test the various consequences engender by the new laws and their probabilities?

While the Treasury has denied that it produced models for Cabinet as to the effect of the proposed industrial relations legislation, it admitted that it did provide certain advice, and the fact remains that such models can be designed, examined and assessed – it is one of the provinces of “econometricians”. Isn't it well past time that similar analyses should be undertaken when introducing the sort of legislation proposed in the Anti-Terrorism Bill (2005) rather than following what appears to be an *ad hoc* and hasty approach to that legislation? The adage that legislation drawn up in haste is bad legislation hasn't lost any validity even if we are in the 21st century.

2. Although Lord Acton died just over a century ago his words ought to give pause: *Liberty is not a means to a higher political end. It is itself the highest political end...liberty is the only object which benefits all alike, and provokes no sincere opposition...The danger is not that a particular class is unfit to to govern. Every class is unfit to govern... Power tends to corrupt, and absolute power corrupts absolutely.*

One of the analyses that ought to have been critically undertaken is an assessment of abuses that could and might well occur under the new legislation. The behaviour of the current executive branch in the United States is a telling example.

The recent raids and arrests of suspected terrorists in Victoria and New South Wales, if media reports are reliable, suggest that legislation now in place was sufficient to mount the operations True, we are told by the ABC “[Victorian Police]Commissioner Nixon says some of the charges laid against those arrested in the raids have been made possible by a change to existing anti-terrorism laws that was rushed through federal Parliament last week.” But what

are the additional charges and were they essential to the operation taking place? We the public don't know. Are you Senators satisfied that that “change to the existing anti-terrorism laws” was essential?

3. Following are three examples which are relevant to the issue before the Committee.

All three deal with the effect of the political climate of the times, and involve a strong feeling of apprehension in the community, while the specter of over reaction and abuse of executive power gains reality.

- a) The murder trial in the state of Massachusetts of Nicola Sacco and Bartolomeo Vanzetti extended over seven years, 1920–27, and ultimately resulted in their execution. Sacco and Vanzetti, two Italian anarchists who had immigrated to the United States in 1908, one a shoemaker and the other a fish monger, were arrested for the murders of a paymaster of a shoe factory, and the guard accompanying him. On May 31, 1921, Sacco and Vanzetti were brought to trial, and on July 14 the jury found them both guilty.

Many believed the defendants had been convicted for their radical, anarchist beliefs rather than for the crime for which they had been tried. Attempts to initiate a retrial on the basis of misidentification were thwarted and a confession by Celestino Madeiros, then under a sentence for murder, was ignored. The state Supreme Court refused to upset the verdict, because at that time the trial judge had the final power to reopen on the grounds of additional evidence. The two men were sentenced to death on April 9, 1927.

The then governor of Massachusetts appointed an independent advisory committee consisting of the presidents of Harvard University and the Massachusetts Institute of Technology, and a former judge. On August 3, 1927, the governor refused to exercise his power of clemency; with which the advisory committee agreed. Sacco and Vanzetti, still maintaining their innocence, were executed on August 23, 1927.

In 1977 the governor of Massachusetts, Michael Dukakis, issued a proclamation stating that Sacco and Vanzetti had not been treated justly and that no stigma should be associated with their names.

- b) Joh Bjelke-Petersen was premier of Queensland from 1968 to 1987. His government's hardline approach to political protest and industrial action led to numerous confrontations between demonstrators and police and in 1977 the Queensland government went so far as to ban street demonstrations altogether, leading to further violent protest.

According to the Wikipedia “extensive Special Branch monitoring (including telephone tapping) of suspected subversives was routine, including not only Labor Party parliamentarians, but also National Party figures who had incurred Bjelke-Petersen's displeasure. Bjelke-Petersen regularly accused political opponents of being covert communists bent on anarchy. His rhetoric and charisma rated highly among conservative and rural voters.”

- c) The anti-terror legislation and its enforcement in France has been singled out for comment and praise in various quarters, and it has been suggested that had similar measures been in force in the UK the July 7, 2005 London bombings might have been prevented.

On July 1, 2003 Henri Astier reporting for BBC News Online wrote, “Laws approved after a wave of bombings in Paris in 1986 created a group of specialist anti-terror judges - which [Jean-Louis Bruguiere] now heads,” and according to human right lawyer Patrick Baudouin, “People are

indiscriminately arrested, often in violent conditions.”

Astier continues, “Suspects can be held for four days, as opposed to two in other cases, before a formal investigation is launched. The legislation also created a new catch-all charge of 'conspiracy in relation to terrorism', which has enabled judges to cast their nets wide. 'There is no doubt that [Mr Bruguiere] has used his powers to the full under the penal code,' French terrorist expert Olivier Roy says. The judge's habit of picking up van-loads of suspects in spectacular raids has made France the most hostile environment for militants in Europe. But the 'Bruguiere method' has been criticised by human rights advocates, who accuse the judge of running roughshod over defendants' rights.

“In June [2003] Mr Bruguiere ordered a series of raids near Paris, in which 1,200 officers arrested 160 alleged members of the [Iranian People's Mujahideen]. 'Police turned up at six in the morning, and pulled them out of bed,' says Mr Baudouin. Most suspects were released - after spending up to four days in police stations and being subjected to questioning. 'Suspects are placed in a position of weakness compared to policemen who continually harass them,' says Mr Baudouin, who represents three of the 17 who have been placed under judicial investigation. Of these 17, 11 are in preventive detention - and could remain there for a long time. French justice moves slowly, particularly in terror cases. In the biggest case ever initiated by Mr Bruguiere, involving 138 people accused of aiding Algerian militants, defendants spent up to four years in preventive detention before their trial in 1998. In the end 51 were cleared and many others were given suspended sentences.”

Astier concludes, “Besides accusations of heavy-handedness and abuse of preventive detention, critics accuse Mr Bruguiere and his colleagues of not giving defendants a fair chance. Examining judges are supposed to keep an open mind during their investigations, but according to Mr Baudouin, French anti-terror judges systematically side with the prosecution. 'They prepare extremely long, complicated questions, provide the answers themselves, and then ask - what do you say about this?' he says. 'There is no real dialogue with suspects.' Such criticisms, however, are confined to France's small human rights community. They are occasionally mentioned by left-leaning newspapers like *Le Monde*, but fail to have an impact with the population at large. For the overwhelming majority of French people and politicians, Mr Bruguiere is a hero. And in this post-11 September world, they feel that an erosion of civil liberties is a small price to pay for the sense of increased security that comes with having a powerful 'sheriff' around.”

To what extent the heavy-handed if not draconian legislative approach has exacerbated the current violence spreading from the impoverished immigrant Parisian suburbs is unclear, but it certainly wouldn't have helped to defuse the situation.

The impression left by governments of the day in the United States, Great Britain, France and Australia is that quickly conceived and poorly drawn legislation is being substituted for carefully implemented intelligence gathering followed by determined but considered action rather than a flurry of motion. The current attempt by Britain's Blair government to incarcerate individuals suspected of intended terrorism for up to 90 days without charge (over 20 times the 4-day period current in France in mid-2003) indicates the effect of the London bombings. If the guy *is* a terrorist and you are sufficiently clairvoyant to know he or she will kill, maim and destroy vital infrastructure fine, but if you are wrong or if use of the law is abused (for example as a political weapon) you are into the realm of a police state.

A report in the November 8 *Scotsman* is pertinent in regard to the concerns regarding the anti-terrorism bill currently before the Australian Parliament. Under the heading “Universities warn over terror Bill” the paper reports that the universities claimed in a public row with government ministers that the Terrorism Bill is a threat to academic freedom because “the Bill risks criminalising librarians and scientists going about their daily work, [the] vice-chancellors' group, Universities UK, warned.” [Universities UK's current membership stands at 126. It includes all the UK universities and some colleges of higher education.]

While UK Education Minister Bill Rammell rejected their concerns and insisted that the laws would only catch people who intended to commit or incite terrorist acts, *The Scotsman* reports that Professor Drummond Bone, Universities UK president, criticised the wording of the Bill.

Universities UK has grave concerns that certain elements of the Terrorism Bill might cut across academic freedoms. We are sure that this is unintentional. But the Bill is drafted in such a way that it might well get in the way of normal academic work. It might provoke the kind of suspicion and intolerance we are trying to deal with.

We think that the Bill is drafted in such a way which could cut across academic freedoms and get in the way of the daily business of universities.

When you start talking about [something] being 'suspicious' - that's a word which gets used in Clause 6 - 'suspicion' is a very unfortunate phrase. One gets worried when chemists might be forbidden from producing a certain kind of noxious substance. Where do you draw the line there?

Finally, the recent call by the Australian Government to enlist 980 additional ASIO operatives in the next five years has been met with an immediate challenge by Dr Michael McKinley, Senior Lecturer in International Relations at the Australian National University. “[T]he current university system... is producing graduates of lesser analytical capability in the area of political science and international relations,” and added that ASIO needs experts with backgrounds in politics, sociology and the economic concerns that underpin terrorism. “It's not just in the area of terrorism studies that it needs to be addressed but as many people have been pointing out - and as the Government keeps denying - the standard quality of graduate which is coming out of the Australian universities now is ... markedly less than it was say 10 or 12 years ago.”

And he told *The Australian*, that cost cutting has meant that universities had to take a broad approach: “The smorgasbord is popular, [and] there is a flow-on effect to our honours students ... it's not that they're stupid, it's just that they're less prepared [and] this is knocking on into PhDs as well. [The security agencies] need people who are capable of conducting quite high-level research using information which frequently is contested and ambiguous. I don't believe that that skill level is available.”