

# Arrest of Zak Mallah: test case for Australia's anti-terror laws

**Richard Phillips****17 December 2003**

In a joint state and federal police operation, Zak Mallah, a 20-year-old unemployed youth, was arrested in southwestern Sydney on December 3 under the Howard government's new anti-terror laws. Mallah, a Muslim, is accused of preparing to commit a terrorist act. He could be jailed for life if found guilty.

By all accounts Mallah is an unstable young man who has been disoriented by 18 months of secret police scrutiny and harassment. It appears that the Howard government has singled him out to test its blatantly anti-democratic legislation.

Australian Federal Police (AFP) officers and members of the newly formed New South Wales Counter-Terrorist Coordination Command seized Mallah at a park near his home. According to press reports, they were responding to information provided by the Australian Security Intelligence Organisation (ASIO), the domestic secret police. Mallah's small bedsitter was later raided and various items taken, including videotapes, notebooks and other material that the police claimed incriminated him.

Police in combat gear were positioned around Bankstown Local Court, for Mallah's court appearance the day after his arrest. Everyone entering the building was electronically screened. Mallah did not apply for bail and was imprisoned in Silverwater jail. Last week he was transferred to Goulburn prison, pending his move into isolation in the High Risk Management Unit or Supermax section of the jail.

In a blatant violation of his basic rights, Mallah has been denied all contact with relatives, friends or local Islamic social workers and can only be seen by his lawyer. His trial will begin in the Central Local Court on December 23, after prosecution lawyers present their brief.

Mallah has been charged under Section 106.1 of the

Crimes Act, which outlaws "preparation for, or planning, a terrorist act". But the definition of terrorism is so broad that it can include virtually any activity disapproved of by the government. This law was part of the ASIO Terrorism Bill introduced in July this year and widely opposed by legal experts, civil liberty organisations, religious organisations and numerous community groups.

A terrorist act, as characterised by the new legislation, is any activity or threat "made with the intention of advancing a political, religious or ideological cause" to coerce, influence or intimidate any federal, state or territory government or any member of the public. The definition includes "advocacy, protest, dissent or industrial action".

This means that planning for strikes and demonstrations can be regarded as "preparation for a terrorist act", and is thus illegal. Moreover, contrary to usual legal precedent, there is no presumption of innocence—the legal burden is on those charged to prove their innocence. In Mallah's case he will have to establish that he was not planning an act of terror.

Australian-born and raised Mallah had a difficult childhood and has lived alone for the last two and a half years after both his Lebanese parents died. On leaving secondary school he worked in a series of casual low paying jobs in supermarkets and other retail outlets. Although he has a married brother and receives some support from a cousin, he is largely cut off from the Lebanese community and has few friends.

According to one press report, Mallah began to be tracked by Australia's spy agencies after he attended lectures organised by the local Islamic Youth Movement, indicating a high degree of state surveillance of Australia's Muslim and Middle Eastern communities since September 11, 2001.

In May 2002, Mallah attempted to renew his Australian passport in order to visit Lebanon, meet relatives and arrange to be married. A fortnight after lodging his application, Mallah was contacted by an unidentified government official who told him that he would not be given a passport without an immediate interview. A taxi was provided to take Mallah to a local unmarked office.

On arrival, two men, who said they were ASIO agents, interrogated him for two hours demanding to know his views on religion, violence and the September 11, 2001 terrorist attack on the US. Two weeks later, an Australian Federal Police officer presented him with a letter stating that Mallah's passport application had been rejected on the grounds that he "might prejudice the security of Australia or of a foreign country".

With backing from the NSW Council of Civil Liberties, Mallah began legal action in the Administrative Appeals Tribunal to reverse this denial of his basic rights. The outcome of this case, which began earlier this year, is still pending. Mallah's lawyer was prevented from cross-examining or even being present when ASIO agents presented evidence during the appeal.

While it is not clear how often police visited Mallah over the last year, on September 29, 2003, NSW Police Counter-Terrorism Command raided his home. He was arrested and interrogated for 10 hours before being bailed and later fined \$1,400 for possession of a .22 calibre rifle.

Two weeks later, the NSW Director of Public Prosecutions announced that it would be appealing the fine and that Mallah could face a jail sentence over the rifle.

According to friends and relatives, these events disoriented Mallah, who became angry, confused and began contacting the media against the advice of his lawyer. As Mallah's cousin Lena Mokbel recently explained to the *Sydney Morning Herald*: "When they told him he couldn't have his passport because he was a suspected terrorist and a suicide bomber that was it—it really affected him mentally."

After Mallah's court appearance, his lawyer Adam Houda said that the young man required urgent counselling and assistance. Lebanese Muslim Association spokesman Keysar Trad, who has been in regular contact with Mallah over the last month, told

the press: "He gets regular visits from our friends in the security agencies—they just go in and do a search every few weeks—and that will affect any person. I am concerned that he is receiving so much attention..."

Trad later told the *World Socialist Web Site*: "I don't believe this young man is a threat to anybody. Everything he says is open, there is nothing hidden about him. To interpret his statements as those of a terrorist are ridiculous. He needs help. If anything, his erratic comments to the press are an indication of a cry for help."

Some journalists have alleged that Mallah attempted to sell them a videotape of him reading from the Koran to cover the cost of his \$1,400 fine. Whether this is true or not, on November 22-23 the Murdoch-owned *Australian* newspaper published an article, quoting from a letter purportedly written by Mallah and declaring his personal jihad against ASIO.

The *Australian* used Mallah's letter, which could be interpreted in various ways, to claim that he represented the "disturbing face of Australian-Islamic radicalism" and was a "would-be suicide bomber". But there is little evidence in the public arena to prove that he planned to become a "suicide bomber".

If the letter was indeed from Mallah, his decision to give to it the Murdoch press is hardly the action of someone planning a suicide bombing against ASIO. Mallah's letter indicates an isolated young man, who is justifiably angry about the constant police harassment and who is desperately trying to defend himself and expose the violation of his basic democratic rights.



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