

Australia: latest “terrorist” case relies on police entrapment

Mike Head
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In the lead-up to this year’s scheduled federal election, the Howard government, assisted by a complicit media, is pursuing a series of dubious prosecutions of Muslim men on terrorist charges. With the collapse of all the lies told in order to invade Iraq, the government wants to produce some evidence of major terrorist plots to justify its assault on basic democratic rights under the banner of the “war on terror”.

A young Sydney man was committed for trial this week on charges that are the result of a two-year campaign of police persecution, dirty tricks and entrapment designed to provoke and lure him into making threats of violence against government officials. After a two-day hearing—parts of which were held in secret—a magistrate last Tuesday ordered Zeky “Zak” Mallah, a 21-year-old unemployed worker, to stand trial on two charges: planning a terrorist act and threatening to seriously harm an undercover federal officer.

Mallah, who was only 18 when the operation against him began in early 2002, has been held in an isolation cell in a notorious maximum-security jail since his highly-publicised arrest last December. If convicted of the terrorist charge, he could be jailed for life.

The case against him hinges on the secret testimony of undercover officers from the New South Wales state police and the Australian Security Intelligence Organisation (ASIO). Posing as a freelance journalist working on an exposé of ASIO and its increasing powers, a police agent enticed Mallah into selling him a video recording, purportedly showing the young man claiming responsibility for a planned suicide attack.

Prosecutor Desmond Fagan told the court Mallah expected to be fatally shot while attacking either the ASIO or Department of Foreign Affairs buildings in Sydney. Fagan said Mallah intended to take hostages and “kill at least two” federal agents. The supposed purpose of the attack was revenge for the government’s seizure of Mallah’s passport in 2002 and to stop what he considered to be the government’s “spying on” Australian Muslims. However, when the video was played in court, it contained no mention of taking hostages or killing officers.

Fagan argued that because Mallah had a political motive—that of opposing and attempting to change the government’s security policy—his threats fitted the definition of “terrorism”. As part of the barrage of “counter-terrorism” legislation introduced since mid-2002, terrorism is defined in the most sweeping terms. It can include any act intending to advance “a political, religious or

ideological cause” by influencing a government in a way that could seriously disrupt any public facility.

According to the prosecution, the police spy offered Mallah \$3,000 for his story, after saying that the price he could obtain for the material depended on how graphic it was. During one of three secretly tape-recorded meetings, the officer told Mallah he could make good money selling Mallah’s story, and that he usually charged 70 cents a word. A transcript of one bugged conversation played to the court revealed how the officer led the young man on.

“It depends on who I sell them to. If I can get a good enough story together for, say, *Time* magazine, I can get a lot of money, but if it’s going to the *Daily Telegraph* or the *Sydney Morning Herald*, it’s not so much money,” the officer allegedly told Mallah. On the recording, the young man replied: “What I have got will hit *Time* magazine... It’s worth television too. I will tell you that.”

On the face of it, this is a classic case of entrapment, which occurs when someone is induced or persuaded by law enforcement agents to commit a crime that they had no previous intent to carry out.

Under cross-examination, Detective Inspector Derek Schagin, field commander of the operation, denied that the officer had encouraged Mallah to commit a criminal offence by offering to buy the video. Rather, he claimed, the officer was merely “discovering what his intentions were”. But Mallah was arrested just 10 minutes after receiving the cash, well before the police could have known the contents of the video.

The officers involved were aware of the potential illegality of their actions. Under the counter-terrorism legislation, the purchase of the video would make them accomplices in a planned terrorist act, rendering them liable for life imprisonment. It seems that a conflict arose among the officers. Schagin said he was of the opinion that the surveillance and video transaction could proceed without a controlled operation certificate, which protects undercover officers from criminal prosecution. However, Detective Sergeant David Gowel, of the joint counter-terrorism taskforce, believed it would be “prudent” to obtain a certificate.

Australian law offers defendants little or no protection against such undercover operations. Courts can exclude evidence that is illegally or improperly obtained, but only if they rule that the need to protect the individual against unlawful and unfair treatment outweighs the so-called “public interest” in securing a conviction. In practice, judges rarely rule evidence inadmissible, especially if

the charge is serious.

Magistrate Geoffrey Bradd granted an application by the NSW Police Commissioner for the undercover officer to testify in closed court, on the grounds that his identity had to be protected. Mallah's counsel, Phillip Boulten, objected, saying his client's position was that "all the evidence in this case capable of being heard against him should be heard in open court". The magistrate's ruling restricted media and public scrutiny of the evidence.

Determined to extend the use of secret sessions in "terrorist" trials, the Howard government is trying to push legislation through parliament allowing Attorney-General Philip Ruddock to issue ministerial certificates to declare that certain witnesses and evidence cannot be heard in public for national security reasons. In some instances, even the accused and their lawyer could be barred access to material, making a mockery of the trial.

The entrapment of Mallah was the culmination of a protracted ASIO campaign against him, conducted with the personal involvement of leading figures in Howard's government, including Foreign Minister Alexander Downer.

First, in May-June 2002, Downer and ASIO stripped the teenager of his passport, alleging that he represented a security risk. At the time, Mallah, who has lived in Sydney all his life, had suffered the deaths of his parents in the previous two years, and was working in a low-paid casual supermarket job.

After he was interrogated by ASIO, without any lawyer present, Downer exercised a power under the Passports Act to withhold a passport from anyone who "might prejudice the security of Australia or of a foreign country".

The government refused to state why it had taken this anti-democratic decision, which prevented Mallah from travelling to Lebanon to meet relatives and his intended bride. But it appears that Downer was closely involved in the decision. In September 2002, he told the Channel Nine "Sunday" program: "My concern about this particular individual is activities that he potentially could undertake overseas."

When Mallah sought review of the decision in the Administrative Appeals Tribunal (AAT), which finally heard the case in March 2003, the government and ASIO relied on secret evidence. Mallah and his lawyers were not permitted in the AAT hearing while counsel for the federal government gave evidence, and his counsel could not cross-examine the ASIO evidence. Mallah's lawyers told the AAT: "I am at a disadvantage in this case by not knowing the evidence and it's akin to boxing in the dark."

Next, before the AAT decision was handed down, state police raided Mallah's home—a tiny public housing unit—in September 2003. He was arrested and interrogated for 10 hours before being bailed and later fined \$1,400 for possession of a rifle. Two weeks later, the New South Wales Director of Public Prosecutions announced an appeal against the fine, stating that Mallah could face a jail sentence over the rifle.

These events, according to friends, relatives and Islamic community leaders, angered and disoriented Mallah, who began contacting the media, against the advice of his lawyer, denouncing the government's harassment of himself and other Muslims. He

appeared on the "Sunday" program, challenging the government to charge him with a crime if it considered him a security threat.

On November 22-23, the *Weekend Australian*, a Murdoch publication, quoted from a letter purportedly obtained from Mallah, declaring a vague personal "jihad" against ASIO. The *Australian* used the document to portray Mallah as a "would-be suicide bomber". Yet, if Mallah were seriously preparing a violent attack on ASIO, he would hardly seek to publicise it in advance.

The police sting operation then commenced, leading to Mallah's arrest last December. It appears that a high-level decision was then taken to prosecute Mallah for the far more serious terrorist charge, as well as the alternative charge of threatening a federal officer.

True to form, the media, led by the Murdoch outlets, have uncritically presented the ASIO and police case. Reporting on this week's committal hearing, for example, Murdoch's *Daily Telegraph* described Mallah's activities as a "chilling plot".

What the record indicates, however, is that an isolated young man, possibly in need of counselling and assistance, has been persecuted, and has desperately sought to expose the attacks on his democratic rights. ASIO and the police have encouraged and exploited his frustrated responses in order to set him up on serious terrorist charges.

Mallah's trial is unlikely to be held before the election, for which Prime Minister John Howard is yet to set a date. In the meantime, at least three other young men (see: Australia's first "terrorist" charges: timed for Howard's election campaign) could face equally sensationalised committal hearings. As happened at Mallah's hearing, only the prosecution case will be presented and the defence will have few opportunities to challenge it.

Having seized upon the September 11, 2001 attacks in the United States as a pretext to introduce police-state style measures, including secret detention and interrogation without trial, executive outlawing of political groups, and life imprisonment for loosely defined terrorist offences, the government and its security agencies are continuing to excite fears of terrorist plots for cynical political purposes.



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