

# Jury throws out charges in first Australian “terrorist” trial

Mike Head  
25 April 2005

In the first real test of the Howard government’s barrage of anti-terrorism laws, a Sydney jury this month threw out charges laid against a young unemployed worker, Zeky “Zak” Mallah. After a 13-day trial, Mallah, 21, was found not guilty of preparing to storm government offices and shoot dead intelligence or foreign affairs officers in a supposed suicide mission.

The New South Wales Supreme Court jury accepted the young man’s testimony, and the argument of his lawyers, that he had made false threats of violence in a bid to gain media publicity. His aim, Mallah told the court, had been to highlight his harassment and denial of basic rights by the federal government and the Australian Security Intelligence Organisation (ASIO).

During the trial, Mallah’s barrister, Phillip Boulten SC, pointed out that his client’s “bizarre plan” could never have worked. Mallah had carried out no reconnaissance of the buildings he had threatened to blow up, and the rifle he had bought was unsuitable, due to its length.

The jury’s decision is another setback for the Howard government, which orchestrated the highly dubious prosecution in the lead-up to the October 2004 federal election. Last July, just three months before the election, Mallah became the first person to be committed for trial under the “counter-terrorism” legislation adopted in 2002. Nine months later, he was the first to be acquitted.

The outcome also constitutes an indictment of the many media outlets that assisted the government by providing sensational and uncritical coverage of the police case. Rupert Murdoch’s *Daily Telegraph* last year, for example, described Mallah’s activities as a “chilling plot”.

Mallah’s acquittal also exposes the frame-up methods employed by the New South Wales police, which conducted a dirty undercover operation against the young man. The police were acting on behalf of the state Labor government, which has repeatedly sought to outdo the federal government in stoking fears of terrorism.

Together with ASIO, the state police conducted a classic entrapment campaign. A detective posed as a journalist to lure Mallah into making violent threats by offering \$3,000 for his story. The jury rejected the charge that Mallah had “prepared to

commit a terrorist act” by attempting to sell a videotape, a three-page statement and photographs to the police spy. In the material, Mallah denounced ASIO and the Foreign Affairs Department for seizing his passport in 2002 and vowed to seek revenge.

The jury also dismissed a second charge of preparing a terrorist act, simply on the grounds that Mallah had bought a .22 calibre rifle and 97 rounds of ammunition. Mallah testified that he bought the rifle for protection after his home was broken into.

If Mallah had been found guilty of either charge, he could have faced life imprisonment. Under section 101.6 of the Criminal Code—one of the vague “anti-terrorism” measures introduced by the Howard government with bipartisan support from the opposition Labor Party—anyone can be jailed for life for “doing any act in preparation for, or planning a terrorist act”, even if no terrorist act actually occurs. Section 100.1 of the Code also defines “terrorist act” to include making a “threat of action”.

Even though the jury concluded that Mallah’s threats to maim officials were not serious, the presiding judge, Justice James Wood, last week sentenced Mallah to 30 months’ imprisonment, after Mallah pleaded guilty to a lesser charge of making a threat against a Commonwealth officer. His lawyers originally offered the Director of Public Prosecutions a deal, whereby Mallah would plead guilty to this offence, in return for the dropping of what was initially a single terrorism charge. But the prosecuting authorities were so determined to proceed with a “terrorism” trial that they not only rejected the offer, but added the “threat” charge, and the second count of “preparing for terrorism”.

Justice Wood imposed the heavy sentence, despite acknowledging that Mallah had been led on by the media. Wood said it was “regrettable” that the *Daily Telegraph* and another Murdoch paper, the *Australian*, together with the Nine television network and radio networks had given Mallah “an entirely undeserved and unnecessary exposure,” encouraging his imagination to run wild. The attention also risked heightening public concerns about terrorist activity and inflaming divisive and discriminatory views, the judge said.

With parole, Mallah may be released in September this year

on a two-year good behaviour bond. He has already spent 16 months in jail, mostly in solitary confinement. For much of the time he has been locked in a cell for 23 hours a day, denied contact visits and brought to court hearings in shackles.

Mallah, an orphaned child from an Islamic background, was only 18 when the police-ASIO operation against him began in early 2002. First, he was interrogated by ASIO without any legal representation. Next, Foreign Minister Alexander Downer cancelled his passport because he “might prejudice the security of Australia or of a foreign country”.

Then, the government refused to give any reasons for stripping him of his basic democratic right to travel, which prevented him from travelling to Lebanon to meet relatives and his intended bride. Finally, when Mallah challenged the passport decision in the Administrative Appeals Tribunal, the hearing was held behind closed doors. Mallah and his lawyer were even denied access to key government evidence.

Mallah set about protesting this injustice by conducting a series of media interviews, against the advice of his lawyer. The undercover detective was not the only media representative that Mallah approached. In November 2003, for instance, the *Weekend Australian* quoted from a letter by Mallah, declaring a vague personal “jihad” against ASIO. Mallah’s publicity-seeking was hardly the conduct of a terrorist. If he were genuinely preparing a violent assault, he would not have sought to advertise it in advance.

When Mallah took the stand in his own defence he spoke of political motives. “The government, ASIO and the police have ruined my life,” he told the court. “I set myself up on terrorism charges on purpose. I would get publicity to get my point of view across.”

Notwithstanding the government’s failure to gain a terrorism conviction, several dangerous precedents have been set in the Mallah case. During the pre-trial proceedings earlier this year, Justice Wood rejected a defence application to disallow the evidence gathered illegally and improperly by the undercover detective. Australian criminal law does not prohibit the use of incriminating material gathered through entrapment. But the Evidence Act gives judges a discretion to exclude it. Wood, however, ruled that the so-called “public interest” in securing a conviction outweighed Mallah’s unlawful and unfair treatment.

The judge also granted non-publication orders to bar the media from reporting aspects of the case relating to the undercover police officer, although the jury was not told of these orders. Thus, there was a partial suppression of public information about the methods used against Mallah. The prosecution did not, however, apply to utilise the Howard government’s legislation passed late last year, again with Labor’s backing, to permit secret sessions in terrorist trials.

As soon as Mallah was acquitted, Attorney-General Philip Ruddock’s spokesman said he would consider making legal changes. Even before the verdict was known, senior police and ASIO officials, including Australian Federal Police

Commissioner Mick Keelty, began agitating for measures to ensure future convictions. One proposal was the introduction of special terrorist courts. These would be based on the French model, which allows judges to detain and interrogate suspects for up to two years. Such courts would violate the Australian Constitution, which requires jury trials for serious offences.

In an attempt to whip up new “terrorist” hysteria, ASIO director-general Dennis Richardson claimed that only 10 percent of those involved with Al Qaeda, Jemaah Islamiah and other terrorist groups in Australia would ever face court because of the difficulties in obtaining convictions. It was often impossible for Australian authorities to obtain sufficient evidence to “meet proper legal standards,” he claimed.

Richardson declared that his agency would use its vast powers of surveillance, bugging and secret detentions and interrogations against anyone it considered a valid target, even if they had committed no offence. “Through the ASIO Act, the Australian parliament has recognised that it is possible for someone to pose a threat to security without necessarily being in breach of the law,” he told an international law conference.

Richardson offered no evidence for his alarmist scenario of large numbers of terrorists “remaining free”. Only six people—all Muslim men—have been charged under the terrorism laws, and so far just one has been convicted. Jack Roche last year pleaded guilty to plotting to bomb the Israeli embassy and was imprisoned for nine years. Roche revealed that he had cooperated with ASIO for a considerable period before being prosecuted.

Four other individuals still face trial. Two of them—Sydney student Izhar ul-Haque and Melbourne worker Jack Thomas—have been released on bail, in the face of strenuous prosecution objections, because the presiding judges ruled they posed no actual threat to the community.

Regardless of these embarrassing setbacks, the Howard government, its Labor counterparts and the security agencies, along with their accomplices in the media, are intent on pursuing the “war on terrorism” as a means of eroding and overturning long-held legal and democratic rights.



To contact the WSWs and the  
Socialist Equality Party visit:

**[wsws.org/contact](http://wsws.org/contact)**