

Haneef “terrorism” charges dropped: a debacle for the Australian government

By Mike Head
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In a major blow to the Howard government and the entire methodology of the “war on terror,” the Commonwealth Director of Public Prosecutions (DPP) has been forced to admit serious “mistakes” in the case against Indian Muslim doctor Mohamed Haneef, and to drop the “terrorist” charge against him. After 25 days of incarceration, the case against Haneef has completely unravelled in the face of growing public opposition to the government’s witch-hunt.

Desperate to extricate itself from the fallout, the government has freed Haneef from prison, but is still holding him in “residential detention”—an unprecedented form of executive house arrest. In obvious disarray, it has attempted to distance itself from the case by asking the Solicitor-General, David Bennett, for legal advice on Haneef’s visa, which Immigration Minister Kevin Andrews revoked two weeks ago to prevent him being released on bail.

Haneef has been whisked away to an undisclosed location, with his passport confiscated and his status unclear—thus barred from working. His family in India, the Indian government and his lawyers are demanding that his visa be reinstated so that he can leave the country freely without a stain on his reputation. His lawyers are preparing for a Federal Court hearing on August 8, where they will challenge the government’s visa decision. Over the past 24 hours, more than 10,000 people have signed an online petition calling for the visa’s reinstatement.

Haneef’s legal team said it had been inundated by calls from lawyers volunteering their services to obtain compensation—potentially exceeding a million dollars—for wrongful arrest, false imprisonment, malicious prosecution and defamation. The Law Council of Australia, which represents the country’s 50,000 legal practitioners, reported it had been bombarded with more messages of support for the young doctor in three weeks than it received for former Guantánamo Bay detainee David Hicks in five years.

It is now clear to everyone that in an effort to revive its plummeting electoral fortunes and whip up new fears of terrorism, the Howard government was prepared to lock up an innocent man without trial, jail him for up to 15 years on a bogus “terrorist” charge and permanently ruin his life and career. As immigration barrister Nicholas Poynder commented last night, the government used an unprecedented “toxic cocktail” of extraordinary terrorism and immigration powers for political purposes.

For days after Haneef was arrested at Brisbane Airport on July 2, police leaks and government smears fed a media frenzy that sought to poison public opinion. On July 4, the headline on Murdoch’s national broadsheet, the Australian, was “Doctors linked to terror plot”. The *Sydney Morning Herald* shouted: “How a doctor’s jihad network led to raids in Australia”.

Now the case has become a debacle, not just for the Howard government but also for Labor, the so-called opposition party. Labor backed the government every inch of the way as it detained the 27-year-old doctor for almost two weeks without charge and then, after a court allowed him out on bail, ordered him into indefinite immigration detention.

For all the claims by Attorney-General Philip Ruddock and Queensland Premier Peter Beattie that the ultimate outcome shows that the legal system “works,” the reality is that the police-state powers of the federal and state governments were only thwarted by mounting public pressure for Haneef’s release. As numerous lawyers and commentators have noted, Haneef’s persecution was defeated by the “court of public opinion” rather than the formal legal process.

The young doctor’s lawyers, solicitor Peter Russo and barrister Stephen Keim, helped precipitate the collapse of the case by publicly releasing the transcript of a police interview, which showed that

the prosecution had misled the court by making serious false allegations against Haneef. The lawyers also conducted frequent media interviews to counter what Russo termed the “barrage” of prejudicial material leaked to the media by the authorities.

Prosecutor A.J. McSparran finally told a Brisbane magistrate’s court yesterday there would be “no reasonable prospect of a conviction of Dr Haneef being secured”. He said prosecutors had made two mistakes at a bail hearing on July 14. One was their allegation that Haneef’s former mobile phone SIM card had been found in a burning jeep at Glasgow Airport when, in fact, it had been found in the possession of the brother of a terrorism suspect hundreds of kilometres away in Liverpool. The second error was their claim that Haneef had once lived with the two brothers, his cousins, in Britain, when in fact he had not.

The admissions came after the DPP, Damian Bugg QC, announced on Wednesday a review of all material related to the case against Haneef. The Gold Coast hospital registrar had been charged with “recklessly” providing support to a terrorist organisation by giving a SIM card to a relative later alleged to be linked to a failed plot to bomb central London and Glasgow Airport.

The key participants in Haneef’s persecution are trying to pin the blame for the fiasco on each other. Australian Federal Police (AFP) Commissioner Mick Keelty rejected any suggestion the AFP had mishandled the case. “Nothing the AFP has done has been done without the advice of the DPP,” he insisted.

Above all, Prime Minister John Howard is seeking to wash his hands of the entire affair. “You won’t find anything on the record where I have expressed a view about the guilt or innocence of Dr Haneef,” he said on Wednesday. Howard claimed that his government had not requested, directed or encouraged the prosecution, insisting that it had been entirely the responsibility of Keelty and Bugg.

The record speaks for itself. Even the most cursory examination shows that Howard, together with Ruddock and Andrews, did everything possible not only to brand the young doctor as a dangerous terrorist, but to use his arrest to ratchet up the “war on terror” and justify the barrage of police-state “anti-terrorism” laws that the government has introduced since 2002.

On July 14, amid mounting public opposition to Haneef’s 12-day detention without charge, Howard declared: “All of this is a reminder that terrorism is a global threat. You can’t pick and choose where you fight terrorism. You can’t say I’ll fight it over there but I won’t fight it here. It’s also fair to say that the anti-terrorism laws that this government has enacted are, to their very last clause, needed... If we need to strengthen them, we will.”

Far from being a prosecution simply “botched” by the AFP or the DPP, Haneef’s case was directly orchestrated by the federal government, acting in close concert with Beattie’s state Labor government in Queensland.

According to media reports, no less than 500 police and lawyers were assigned to the case in an attempt to find or concoct any evidence that could sustain a “terrorist” charge. This massive police-legal taskforce, possibly one of the largest ever assembled in Australia, included 200 Queensland police officers. From day one it was a joint federal-state operation.

On July 24, Howard admitted that his cabinet’s National Security Committee, which is comprised of the government’s most senior ministers, had been directly involved in the operation against Haneef, and specifically discussed the decision, nominally taken by Andrews, to cancel the doctor’s visa.

“It was discussed at a meeting of the National Security Committee of Cabinet, but the final decision was taken by Kevin Andrews,” Howard said on national television. He denied that the security committee had directed Andrews to cancel the visa, because the Migration Act requires that the minister personally make such decisions.

It is clear, however, that the inner-cabinet committee decided that Andrews would revoke the visa and Ruddock would then immediately issue a criminal justice certificate, so that Haneef would be detained indefinitely while awaiting trial. In other words, the government, at its highest level, made a calculated executive decision to override a judicial order to release Haneef on bail.

In a radio interview on July 23, Deputy Prime Minister and National Party leader Mark Vaile, who sits on the National Security Committee, blurted out the fact that Haneef was detained in order to keep him in the country, not to pave the way for his expulsion. The next day, Vaile sought to “correct” his statement, saying he had confused the visa decision with the issuing of the criminal justice certificate. His correction only served to expose the repeated claims of Howard, Andrews and Ruddock that the visa move was completely independent from the criminal prosecution.

The government’s crisis was apparent last weekend when the Sydney Sun-Herald quoted a “senior government source” saying it was likely to drop the charge against Haneef and deport him as quickly as possible, in order to limit the political damage. “There is no upside proceeding with this. We keep him here, then it remains an issue every day until the election. We deport him and it’s over,” the unnamed source said.

Immigration Minister Andrews is now attempting a tortuous exercise in backtracking. By seeking “advice” from the solicitor-general, he is carrying out his second “review” of the visa decision in 24 hours. He announced the first on Thursday morning, when he declared he would ask the AFP to re-examine the still undisclosed information it gave him when he revoked the visa. Within a few hours, however, he issued a statement, saying: “Nothing that has been revealed to me in the last 24 or 48 hours would lead me to believe that information was inappropriate or incorrect.” Howard gave a radio interview on Friday morning endorsing the refusal to reinstate Haneef’s visa.

Late on Friday, after the DPP dropped the charge, Andrews called a media conference to attempt to explain why he was still not reinstating the visa. He said Bennett, as “the highest law officer in the Commonwealth,” would be asked for advice, despite AFP commissioner Keelty having just insisted, at his own joint media conference with DPP Bugg, that the police stood by the information they had originally given Andrews. Andrews was clearly at sea, claiming that Bennett might conclude “there was some material change to the basis of my decision as a matter of legal principle, because of the decision of the DPP”. Andrews added: “Obviously, one doesn’t have legal advisors for nothing.”

As for Howard, his office has let it be known that he is not happy with Andrews’s handling of the issue, even though Andrews has loyally followed Howard’s own script from the outset. It is not yet clear who will become the immediate fall guy—Andrews, Bugg or Keelty. One thing, however, is certain. Howard will plead ignorance of the details and deny all responsibility for the botched frame-up of Haneef, just as he has done with every previous abuse committed by his government, including the “children overboard” lies and the use of false claims, such as “weapons of mass destruction,” to justify the invasion of Iraq.

Labor’s role

Throughout the Haneef affair, Labor leader Kevin Rudd has backed the government’s every move, reiterating Labor’s support for the full range of measures introduced since 2002 in the guise of combating terrorism. These include far-reaching definitions of terrorism and aiding terrorism, detention without trial, semi-secret criminal hearings, the arbitrary outlawing of organisations, and an array of sedition and “praising terrorism” offences that directly attack free speech.

Labor is still trying to protect the government, and shield the counter-terrorism laws, by now calling for the AFP to consider making an apology to Haneef and urging the government to conduct an inquiry into the “mishandling” of the case. Labor’s concern is to maintain the anti-terror powers for its own use if it wins the upcoming federal election.

This is in line with the role played by Beattie, who last week aligned himself with ardent right-wing champions of the anti-terror laws, such as *Australian* columnist Janet Albrechtsen and former National Crime Authority head Peter Faris, calling on the Howard government to drop the case because it was undermining public confidence in the whole “anti-terrorism” framework.

The shift in public sentiment against the Howard government’s long history of lies and scare-mongering was accelerated by the government’s complicity in the five-year incarceration of David Hicks at Guantánamo Bay. The Howard government branded Hicks the “worst of the worst” terrorist before the case against him also disintegrated. While that took nearly five years, the operation against Haneef fell apart in just over three weeks.

The methods displayed in the Haneef case—seizing on an overseas terrorist attack, selecting a vulnerable target, unleashing the full force of the police and intelligence apparatus, vilifying the accused in the media, and locking him away incommunicado—have been the modus operandi in every prosecution under the anti-terrorism laws. In all but one case that eventually went to a jury, the charges were ultimately dismissed. The only convicted person, Faheem Khalid Lodhi, has appealed against his conviction.

If terrorist attacks do occur in Australia, full responsibility will rest with the Howard government, which joined the criminal and barbaric invasions of Afghanistan and Iraq, seeking to bolster the US-led exploitation of the resource-rich region. The collapse of the lies told to justify those interventions is being followed by the exposure of the similar methods being used to promote the “war on terror” at home.

Aided and abetted by the Labor Party, and all the state and territory Labor governments, Howard has repeatedly whipped up terrorist scares to justify trampling over basic legal and democratic rights. In the name of protecting ordinary people from terrorism, the federal and state governments have boosted the powers of the police, intelligence and military forces to unprecedented levels and imposed legislation designed to stifle dissent and intimidate working people as opposition deepens to the bipartisan program of war, militarism and social inequality.

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