

Australian government's "terrorist" case against Dr Haneef unravels

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In a serious blow to the Howard government's scare-mongering campaign, Stephen Keim QC, the barrister for detained Indian Muslim doctor Mohamed Haneef, has leaked a revealing transcript of his client's initial police interview and called on the government to release any undisclosed information it has on the case.

Keim's action is another sign that the Howard government's efforts to whip up new fears of terrorism by connecting the young man to the recent failed bombings in London and Glasgow have begun to unravel in the face of growing public disquiet over the indefinite detention of the 27-year-old doctor.

The released transcript directly contradicts several key police and government allegations that were broadcast throughout the media over the past three weeks in a bid to link Haneef to those arrested in Britain. It exposes police claims that Haneef had lived with two of the arrested men, who are his second cousins, and had no explanation for seeking to fly to India on a one-way ticket.

Australian Broadcasting Corporation radio's "AM" program this morning reported the collapse of the centrepiece of the police-government campaign, that Haneef's former mobile phone SIM card was found in the jeep that was rammed into the Glasgow Airport terminal. British and Australian sources told an "AM" reporter that the card was found, eight hours after the Glasgow incident, hundreds of kilometres away in Liverpool. The card was in one of two mobile phones seized in the apartment of one of Haneef's cousins, Sabeel Ahmed, who has not been accused of any direct involvement in the bombings.

Reflecting the mounting opposition, leading lawyers have strongly defended Keim's courageous stand in declaring that he was the source of the leaked transcript, potentially risking his career. The barrister, a widely respected figure in the legal profession, challenged the government to arrest him after Prime Minister John Howard, Attorney-General Philip Ruddock and Australian Federal Police (AFP) Commissioner Mick Keelty made threats of legal action to punish whoever leaked the document.

Keim said his handing of the 142-page transcript to a journalist was completely legal and ethical, and necessary to counter the government's own systematic leaking of prejudicial material calculated to skew public opinion against Haneef. His statement exposed the methods of deceptive media leaks that the government and its security agencies have employed, not just against Haneef but every individual charged with terrorist offences over the past five years.

"My client has been subject to a barrage of leaks," Keim told reporters. In a media statement, he said "an aggressive campaign of leaking, selectively and misleadingly, from the same document and other allegedly secret documentation held by law-enforcement agencies had been perpetrated in recent weeks. These leaks could only have been motivated by a desire by those perpetrating them to suggest to the Australian public that the case against Dr Haneef was stronger than the Australian Federal Police, through their counsel, the commonwealth DPP, had been able to put before the court."

Ruddock has threatened to pursue charges of contempt of court or breaches of professional ethics against Keim, and declared that the transcript's release could delay Haneef's trial, extending his detention. Keim responded: "I challenge the Prime Minister, his ministers, Mr Keelty and the police to produce the legal basis which would make anything I've done illegal. They know where I am. If they think I've done anything wrong, they can come and take me away."

What the transcript shows

The released transcript of the July 3 AFP interview reveals at least three crucial false statements in the subsequent police court affidavit. According to the affidavit, Haneef "had no explanation as to why he did not have a return ticket" from India to Australia.

In reality, Haneef told the police his father-in-law had booked and paid for a one-way ticket to India scheduled for July 2 "because I didn't have any money". He explained that the sole purpose of his trip was to see his wife, Firtous Arshiya, and new-born daughter, after they were re-admitted to hospital following an urgent Caesarean birth on June 26. The doctor said his employer, the Gold Coast Hospital, could confirm that he had wanted to leave earlier but could not organise another doctor to cover his absence.

The affidavit also states that Haneef told police he lived in Britain with his two cousins, and that in an on-line conversation with his cousin Sabeel just before the bombing bids he had not mentioned the recent birth of his daughter. Haneef actually told police he had not lived with his cousins, and that his conversation with Sabeel had been solely about the birth of his child.

The full transcript shows that despite a marathon six-hour questioning of Haneef—who willingly answered all questions and did not request legal advice—two senior AFP agents came up with nothing. Most of the interview consisted of Haneef giving the police every conceivable piece of information about his life and his personal affairs, including the names of all his relatives, details of his email addresses, Internet account, computer, car, bank accounts, finances and places of worship.

Throughout the interview, Haneef repeatedly denied any knowledge of the London and Glasgow attacks, or any involvement in terrorism. He told AFP agent Adam Simms he had never had firearms, explosives or terrorist training and denied he had ever been asked "to take part in jihad or anything that could be considered similar to jihad".

Haneef volunteered the information that he had left his SIM card behind in Britain with Sabeel. He explained that after being told that British police wished to ask him about the card, far from absconding he had tried four times to phone a British police officer, Tony Webster. Haneef said he feared he was being "framed". When he gave the card to his cousin, more

than a year earlier, it had only one month's worth of use left, on a pre-paid plan.

Lawyers and judges speak out

Last Monday, a magistrate granted bail to Haneef after he had been detained for police questioning without trial for nearly two weeks, then charged with “recklessly” providing support to a terrorist organisation. The only police evidence cited was that, before he left Britain more than a year ago, the young doctor gave his nearly-used SIM card to Sabeel Ahmed, who has not even been charged with membership of a terrorist group.

Before Haneef could be released, the government effectively overturned the court ruling by ordering that he be kept indefinitely in immigration detention. Without any notice or hearing, Immigration Minister Kevin Andrews revoked his visa on “bad character” grounds, declaring that he was “reasonably suspected” of “association” with a terrorist organisation. Haneef's lawyers have filed an appeal against that decision in the Federal Court, but in the meantime the Queensland state Labor government has declared that the young doctor will be treated “as a terrorist” in jail, subjected to solitary confinement for 23 hours a day.

The Howard government's actions, followed by its threats against Keim, have clearly generated public suspicion, as well as outrage in the legal profession and sections of the judiciary. Lawyers' groups have sprung to the barrister's defence. Sean Reidy, chairman of the criminal law section of the Queensland Law Society, said Keim acted lawfully. He added that the legal fraternity was “monitoring the case closely,” Keim was a lawyer of the “highest integrity” and the government attack appeared to be “vicious and personal”.

“You have to have a great deal of concern for the administration of justice when in high-profile cases lawyers are being personally attacked. This is exactly what happened in the Tampa case,” Reidy said, referring to 2001, when the government denounced lawyers for attempting to help refugees legally challenge their forced removal to the remote Pacific island of Nauru.

Australian Bar Association president Stephen Estcourt SC said thousands of lawyers were deeply concerned at the government's handling of the case. “The disquiet is pretty universal,” he said. “The cancellation of Dr Haneef's visa following so closely on the granting of bail is a cynical exercise and constitutes an assault on the rule of law.” Estcourt said he was also concerned by Ruddock's comments about a possible tightening of the laws to make it harder for judges and magistrates to use their discretion in bail cases. He said this indicated that Ruddock believed he could simply frame new laws to overcome independent-minded judicial officers.

The Australian Lawyers Alliance (ALA), representing 1,500 lawyers, said the government's treatment of Haneef was “deplorable”. ALA national director and Perth barrister, Tom Percy, said: “When the government is able to usurp the decision of a magistrate, the rule of law no longer applies”. Prominent Melbourne barrister, Robert Richter QC, accused the government of “terrorising” the legal system.

Concern among judges became apparent on Wednesday during an urgent directions hearing in Brisbane of Haneef's appeal against the visa cancellation. Federal Court judge Jeffrey Spender described as “absolutely astounding” the government's argument that an association of any kind with criminals—even “a cup of coffee, a picnic with the kids”—was enough for a non-citizen to fail the Migration Act's character test.

“I have been associated with persons involved in criminal activity. I have defended them, charged with murder. Unfortunately I wouldn't pass

the character test on your statement,” the judge said to Roger Derrington, SC, representing the immigration minister.

Justice Spender also said that the visa cancellation's timing was “curious”. “There is room for the view that this was an act of circumventing the inconvenience of having him on bail,” he said. One of the grounds for the appeal is that the minister's purpose in cancelling the visa was to allow Haneef to be detained when he had been granted bail, and that that was an “improper purpose”.

The previous day, Victorian Supreme Court justice Bernard Bongiorno warned about the dangers of sacrificing the presumption of innocence for “political expediency”. He declared that “the whole foundation of our criminal justice system” could be at risk.

Bongiorno granted bail to two accused members of the separatist Liberation Tigers of Tamil Eelam (LTTE). He expressed doubt that they would be convicted under the anti-terrorism laws for fund-raising for the LTTE, given that the organisation was not listed in Australia or Sri Lanka as a terrorist organisation. The two leading members of the Tamil community in Melbourne had been denied bail since their arrests on May 1. Following Justice Bongiorno's ruling, a magistrate granted bail to another Tamil man who was extradited from Sydney on similar charges last month.

Broader concerns

Widespread public concern in India about Haneef's treatment has forced Indian Prime Minister Manmohan Singh to intervene, making a statement expressing the hope that Australia would extend “all the facilities” to Haneef. The Indian government had earlier summoned Australia's envoy to the foreign ministry in New Delhi to demand that Haneef be treated “fairly and justly under Australian law”.

In Brisbane, where Haneef is detained, Muslim leaders said Muslims were being targetted in the wake of his arrest. Dr Mohamad Abdalla told the Murdoch-owned *Courier-Mail* many believed that if Haneef were not a Muslim, the anti-terrorism laws would not have applied to him. “Muslims are feeling now, many of them, particularly the vulnerable ones, who is going to be next?” he said. “Since the issue of Haneef started, people have been meeting every night until 10, 11 o'clock, discussing what they can do. How they can respond?”

Murdoch's outlets, which have vociferously fuelled all the allegations made by the government and its police agencies in the “war on terror” since 2001, have intervened prominently in the Haneef case, including by obtaining and publishing the police interview transcript. Behind these actions are concerns, spelt out in an *Australian* editorial on July 18, that the handling of the case is seriously discrediting the entire framework of the anti-terrorist laws.

While defending the visa cancellation, the editorial said the government's problem was that growing numbers of people no longer trusted it. “Without a speedy explanation by the government of exactly why he must remain in custody, Dr Haneef will continue to be martyred by the same anti-Howard forces who managed to turn David Hicks from a confessed terror trainee into the focus of widespread, and politically costly, public sympathy”.

In other words, Haneef's persecution is now compounding the damage to the government's credibility caused by its complicity in the five-year detention of Hicks in Guantánamo Bay, before he pled guilty to a dubious minor charge in order to get back to Australia. Far from being concerned about legal rights and civil liberties, the Murdoch stable is alarmed that the government's ability to trample over these basic rights has become compromised.

The *Australian's* legal affairs writer, Chris Merritt, elaborated these concerns, writing: "The great lesson from the fiasco in Guantánamo Bay was that the legal response to terrorism will fail utterly unless it wins public acceptance. The only reason David Hicks is serving a trifling sentence in Adelaide—instead of rotting in Cuba—is because the Australian public lost faith in the US military commission process... Instead of speculating about what sort of punishment could be meted out to this lawyer [Stephen Keim], those responsible for the war on terror should remember the great lesson from the Hicks case: the court of public opinion can sometimes be far more powerful than a court of law."

Letters to newspapers indicate that broad layers of people are now disgusted not only with the Howard government, but the Labor Party as well for its "in-principle" endorsement of every action taken against Haneef. Labor leader Kevin Rudd's support for the government's conduct is entirely in line with Labor's six-year record of backing the so-called "war on terror" and voting for every piece of anti-terrorism legislation.

Occupying office in every state and territory, Labor's partnership has been crucial in handing constitutional powers to the federal government to impose its laws, and in passing legislation that has either matched or exceeded the federal measures. The state Labor government in Queensland has had no qualms in consigning Haneef to solitary confinement "as a terrorist".

Since 2001, there has been complete bipartisan agreement between the Howard government and the Labor "opposition" on boosting the powers of the police, intelligence and military apparatus as public opposition deepens to militarism, worsening social inequality and the assault on basic legal and democratic rights.



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