Australia: The role of Howard and Ruddock in the witch-hunting of Mohamed Haneef

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New evidence has emerged that the former Howard government effectively overruled police, intelligence and prosecution authorities last July to insist that Indian-born Muslim doctor Mohamed Haneef be charged with a terrorist offence. The evidence is contained in submissions made to the current official inquiry into the Haneef case, headed by former judge John Clarke QC.

Up until now, all the key figures in the ultimately unsuccessful frame-up of the young man—Prime Minister John Howard, Attorney-General Philip Ruddock and Immigration Minister Kevin Andrews—have maintained that they had no direct involvement in the criminal process, which was left strictly in the hands of the Australian Federal Police (AFP), acting on legal advice from the Commonwealth Director of Public Prosecutions (DPP).

Official records have now been produced, however, that provide documentary evidence pointing to the opposite verdict: that Howard and his ministers, despite being advised of a lack of evidence, were personally involved in seeking to railroad an innocent man to jail for purely political purposes, that is, to buttress the "war on terror" and justify the draconian counter-terrorism powers introduced since 2001.

The case against Haneef, who was arrested at Brisbane airport on July 2 last year, collapsed after three weeks when the AFP and DPP admitted in court on July 27 that the central allegation against him—that his old mobile phone SIM card had been found in the jeep that exploded into Glasgow Airport on June 30—was completely false. After Haneef had already been detained for 25 days, the DPP was compelled to drop the charge against him, that by giving his SIM card to a relative in Britain he had "provided support" to a terrorist organisation, while reckless as to whether it was a terrorist organisation. The Howard government went into damage control, quickly allowing Haneef to return home to India.

Documents submitted to the Clarke inquiry indicate that each of the authorities formally responsible for the arrest, detention and charging of Haneef—the AFP, the Queensland Police Service (QPS) and the DPP—thought there was never enough evidence to charge him. The Australian Security Intelligence Organisation (ASIO) also gave "consistent advice" to the government that it had no evidence linking Haneef to the British terror attack. Yet, on July 14, after 12 days of detention without trial, the doctor was charged with an offence that could have led to him being jailed for 15 years.

As soon as Haneef was arrested on July 2, his treatment became a terrorism test case, with authorities making the first-ever use of powers contained in post-2001 anti-terrorism legislation to effectively detain people indefinitely for questioning, as well as a political test case. Facing defeat at the federal election due before the end of the year, the Howard government sought to whip up new fears of "terrorist cells" operating in Australia, with Howard declaring that the arrest was a wake-up call to the Australian people to remind them of the seriousness of the "war on terror".

Unnamed "government sources" and "police investigators" immediately bombarded the media with highly prejudicial leaks, insinuating that Haneef, who had left Britain in July 2006 to take up a post at the Gold Coast Hospital, was directly implicated in two failed bombings in London and Glasgow on June 29 and 30, and that he and other foreign-born doctors working in Australia could have established local terror cells.

Documents previously obtained by Haneef's lawyers via Freedom of Information (FOI) procedures show that that prime minister's department was closely involved in the affair from the outset. On July 4, senior officials from the department met with immigration, foreign affairs, police and intelligence representatives to orchestrate the handling of the case and prepare an "options paper" canvassing several possibilities, including cancelling Haneef's visa, so that he could be detained or deported, even if no charges were laid.

By the same day, however, the British police knew—and presumably told their Australian counterparts—that the person with whom Haneef had left his nearly-expired SIM card in Britain, his second cousin Sabeel Ahmed, had no prior knowledge of the London and Glasgow attacks and was not part of any terrorist organisation. This meant that Haneef could not have "provided support" to a terrorist organisation by giving his cousin the card.

Although the public knew none of this at the time, by the second week of July there was mounting concern, including in legal circles, that Haneef had been detained and interrogated for days on end without any charge. Photos had appeared in the media showing the young man in the back of a police van, bound and shackled Guantánamo Bay-style. Without any evidence, he was being incarcerated around-the-clock in solitary confinement.

Pressure began to grow for Haneef to be either charged or released. On July 5, for the first time, Haneef obtained legal representation, from solicitor Peter Russo, and on July 9 a barrister, Stephen Keim SC, appeared on his behalf in court to challenge a police application for an extension of five more days

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of detention. The application was adjourned for two days, leaving Haneef imprisoned. Keim then asked the magistrate who was considering the application to disqualify himself on the grounds of bias.

At this critical juncture, according to the records handed to the Clarke inquiry by Haneef's legal team, a previously undisclosed meeting was held between Ruddock and senior officials of the Attorney-General's department. At that meeting, Ruddock signed a key document on the Haneef case, which was sent to the Office of the DPP.

What exactly transpired at the 8.40 a.m. meeting on July 11, 2007 is not yet known, nor is the exact nature of the document that he signed, referred to as an "MAR summary" in case note records. What *is* clear, however, is that Ruddock personally became involved in the case, contrary to the official position that police investigations, arrests and decisions to prosecute are made without political direction or interference.

According to ASIO's classified submission to the inquiry, on the same day, July 11, it issued written advice to the government that, "while it continued to progress its inquiries, it did not have information to indicate Dr Haneef had any involvement in, or foreknowledge of, the UK terror acts". ASIO added that there was also no information "to indicate that Dr Haneef was undertaking planning for a terrorist attack in Australia or overseas". Therefore, the intelligence agency "did not have sufficient grounds to issue an adverse security assessment" against the young doctor.

At the same time, the police began warning that there was insufficient evidence to lay a charge. In its submission to the Clarke inquiry, the QPS states that on July 13, after a joint review with senior AFP commanders and a British liaison officer of all the evidence, two senior Queensland officers, Detective Chief Superintendent Barnett and Detective Superintendent Hogan, "expressed a clear view that they did not believe that all relevant elements of the proposed charge could be proven at that time".

From the records submitted by Haneef's lawyers, it seems that the relevant personnel in the AFP and the DPP also thought that the evidence was too weak to sustain a charge, or prevent Haneef successfully applying for bail if he were charged. The documents show that precisely for that reason, the AFP began working closely with the immigration department to prepare a government decision to cancel his visa, and throw him into indefinite immigration detention.

Another newly released document, a letter to the Indian government dated July 14—the day Haneef was charged—stated it was the DPP that decided to press charges, contrary to media reports that the AFP had made the decision. That account corroborates an interview that AFP commissioner Mick Keelty gave to the *Bulletin* magazine last October, in which he said he had warned prosecutors there was insufficient evidence. "I was as surprised as anyone when the DPP advised that Haneef could be charged. Because I didn't think the evidence was strong enough," he said.

According to a briefing sent to the Department of Foreign Affairs and Trade on July 15, the DPP also considered the evidence was shaky. Just a day after the charge was laid, the DPP advised the AFP that it would need to provide prosecutors with "a stronger case" in order to prevent Haneef being granted bail because of the exceptionally weak case against him.

In its submission to Clarke, Haneef's legal team states: "The Inquiry will have to resolve the conundrum as to how Dr Haneef was charged when the agency which charged him [the AFP], and the agency which provided it with legal advice [the DPP], both thought there was insufficient evidence".

Documents in Haneef's submission also shed more light on Immigration Minister Andrews's intimate involvement in the plan to thwart the granting of bail by cancelling Haneef's visa. On the afternoon of July 11, just hours after Ruddock signed the MAR document, the AFP's National Manager Counter-Terrorism, Frank Prendergast sent a letter to Peter White, an assistant secretary of the immigration department, containing information to be used "to revoke the visa issued to Dr Haneef". Within two hours of being delivered to White, the letter was sent to Andrews's electorate office, underscoring the political priority and urgency attached to it.

Andrews formally announced the visa decision on July 16, just hours after Haneef was granted bail, but it is clear that the decision was taken, in fact, days earlier. On July 17, Ruddock, as attorney-general, issued a Criminal Justice Certificate to ensure that Haneef remained in immigration detention until he was placed on trial.

The implications of the new evidence of direct political intervention into the decision to charge Haneef go beyond the political and legal culpability of the Howard government. Throughout the Haneef affair, the Labor opposition backed the government all the way. Once the frame-up disintegrated, Labor called for a judicial inquiry in order to "restore public confidence" in the security agencies and the anti-terrorism laws.

On the basis of the brief given to it by the Rudd government, the Clarke inquiry is being conducted in camera, with no public hearings, no sworn testimony, no powers to compel Howard or any of his ministers to give evidence and no cross-examination of any witnesses by Haneef's lawyers. Clarke this week announced that most of the evidence, including the full submissions made by the AFP, DPP and ASIO, would remain secret in order to protect "classified information".

The entire proceedings are being conducted in a manner designed to shield the previous government, and whitewash its attempt to railroad an innocent man to jail. Nevertheless, documented evidence is surfacing that confirms the suspicions of millions of ordinary people: that Haneef's arrest, detention and charging were politically manipulated to justify the use of the "war on terror" in tearing up basic legal and democratic rights and to bolster the Howard government's re-election campaign.

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