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PM - John Dowd QC comments on Haneef trial

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Reporter: Mark Colvin

MARK COLVIN: John Dowd QC is a former leader of the NSW Liberal Party, Former State Attorney-General, former Judge, and current Chairman of the Executive Committee of the International Commission of Jurists.

I asked him first whether Dr Haneef would be able to get a fair trial after the Immigration Minister's comments today.

JOHN DOWD: In a high profile case like this the chance of getting an unbiased jury is always difficult anyway. This makes it more difficult because now the Executive has lumbered in and labelled him as a person associating with people of criminal conduct and therefore with terrorists.

MARK COLVIN: All right well let's look at the detail of just that sentence, those couple of sentences that he came out with. He says that he "reasonably suspects" Dr Haneef. Would that normally be enough?

JOHN DOWD: Well, it's a very different test under the Migration Act and revocation of a visa is not done lightly. But he can form an opinion about character based on information and that's the trouble with the Immigration Act, it's not circumscribed like other criminal proceedings. I presume there will be an appeal against this decision.

But, it shows what a draconian power it is that the Immigration Act can be used to deal with somebody merely on a suspicion.

MARK COLVIN: And the precise nature of the suspicion is that he has had an association with people who are suspected of criminal conduct, namely terrorism.

JOHN DOWD: Well Mark, what you've underlined is the danger of an association with. I mean we associate with criminals all the time, particularly in the legal profession. But every criminal has associations, which are both innocent and guilty. So that association is the word of the widest compass. And based on an association, now me may be a cousin, he may be a friend of, he may have gone through med-school with him, he may be in touch with him. It doesn't make you a crime. This is a consorting type offence. That is you're guilty of an offence because you know someone who's not yet proven to be guilty of an offence.

MARK COLVIN: Well we already know, or think we know that one of the elements of this case is somebody giving somebody else their SIM card. Now, there may well be people listening who've done this with members of their family for instance, or friends, because they were going overseas or whatever. Are they now liable to be criminals?

JOHN DOWD: Well, if they're covered by a 457 visa of course. And remember, it's an Immigration Act dealing with specific types of visa, giving the Minister certain powers. But young people are playing with SIM cards all the time and people do, do that sort of thing.

But, it's more of a worry Mark if the rest of the world watches us. This is a high-profile international series of cases.

People in other television stations, the Al-Jazeera's and so on, that go to millions of people throughout the world are going to know that in Australia, the Executive comes in and takes people into custody, even after the courts have allowed them out. That's the message that the rest of the world will get.

And a lot of people are going to say what sort of country is this?

MARK COLVIN: At the very beginning of this process, Mick Keelty, the Head of the Australian Federal Police, who's regarded by many people as a sober-sided bureaucrat, an apolitical leader of the police force, came out and said, above all we must remember that this person has the presumption of innocence.

Does he still have the presumption of innocence and if not, what has that done to Mick Keelty's reputation?

JOHN DOWD: Well I think Keelty has acted meticulously correctly in all of this. He's a very astute, able policeman.

What this does is it sends a message; the presumption is there, but it's a rebuttable presumption. So when you've got the government of Australia saying this man associates with people who may be criminals, they've rebutted that in the public mind presumption and they've made him guilty, because he's guilty by association.

Now this is a very low threshold offence anyway in the particular proceedings, reckless indifference, recklessly doing something. It's not difficult to prove and it's part of the problems of the terror laws that we've brought in.

There's a lot of offences out there, like raising money for people overseas and various movements like Sri Lanka and the Tamils and so on. There are a lot of people will be involved in offences and that's not the sort of Australia that we want.

We protect people, governments ought to respect decisions by the courts and even though technically the Minister has not in any way adverted, nor do I advert to the decision of the magistrate, which may or may not be subject of an appeal.

Nevertheless, the world now knows this government waited till the release on bail to do it. And you don't have to be terribly bright to work out the sequence of events.

MARK COLVIN: And when Philip Ruddock says, "you may question me now, but if we let somebody out and there was a terrorist action, you'd be asking me a whole different set of questions, quite rightly". What do you say to that? What's your answer to that argument?

JOHN DOWD: Well, it's of course perfectly correct, but it isn't the question. It's not a question of whether he can answer the questions if it goes bad. You can't run a legal system on the basis of a worst-case scenario. You've got to run a legal system on the basis of a series of principals. And we seem them eroded in times of terror in times of

crisis. The erosion of those rights, everybody loses, because ultimately innocent people get caught up in it as well as the guilty.

So it's not good enough to say well, you know if things went bad you'd be annoyed. That's not good enough. You've got to look at every case and do what's right, not what's politic.

MARK COLVIN: Former Liberal Leader, former judge and current Chairman of the Executive Committee of the International Commission of Jurists in Geneva, John Dowd.

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