

Rule by deception

By Ian Barker QC and Robert Toner SC

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According to traditional legal theory, the attorney-general is the first law officer of the Commonwealth. One of his traditional duties is to resist abuse of liberties bestowed by law.

It is difficult indeed to see a single decision made by Attorney-General Ruddock which would suggest he has much interest in resisting abuses of liberty either here or overseas. In the creation of Australian statutes he constantly attempts to confer the maximum investigative and coercive powers upon anonymous agents of secret government organisations, and to put the powers beyond reach of any judicial interference. In the process of this repressive legislation, the government takes from every member of the community a right, corresponding to each power bestowed.

Along with the rest of the government, Mr Ruddock has long displayed an indifference to the treatment of the two Australian prisoners in American hands. He has long maintained that he has no concern about the incarceration of Hicks and Habib by a foreign power, unprotected by judicial scrutiny, in defiance of the Geneva Conventions, and beyond the reach of habeas corpus. He has no complaint about proposed trial by military commission and sees no potential for unfairness in the procedure. He sees nothing wrong with rule by presidential decree, in defiance of the US Congress and its statutes.

We do not know what Mr Ruddock's view is of the US judicial decisions which have turned all this on its head; presumably he was disappointed at the emergence of some appearance of the rule of law.

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Habib was arrested in Pakistan, not in the Afghanistan war zone. The Americans can offer no proof he was any sort of enemy combatant. He could have been sent straight to Guantanamo Bay, but was sent firstly to Egypt, for interrogation by Egyptian methods. It is reasonable to infer that our government knew of this when it happened, but it has made no complaint then or since.

Whenever allegations are publicly made about abuses by the US military of those held at Guantanamo Bay, in particular Hicks and Habib, Mr Ruddock's response is to say that he accepts the American assurance that all is well and allegations of torture are suspect. Since 11 September 2001 the governments of Australia and the USA have collaborated very closely in the so-called war against terrorism, part of which resulted in the imprisonment without trial of Hicks



The ASIO building part of the Russell Defence complex.
Photo: Michael Jones / News Image Library

and Habib. One 13 November 2001 President Bush made a military order for the *Detention treatment and trial of certain non-citizens in the war against terrorism*. The order was followed by the secret publication on 6 March 2003 of the report of a Pentagon working group of lawyers called *Working group report on detainee interrogations in the global war on terrorism*. The principal author of the document is about to become the attorney-general of the United States. The document purports to be a justification of interrogation by torture by the authority of presidential decree. It is legal nonsense, and deeply offensive nonsense at that, apparently now disowned even by the president.

But given the status of Habib and Hicks, it is not unreasonable to assume the Australian Government knew of this document when it was created. If they did not know of it then, they know of it now, but we have yet to hear a word of concern from the attorney-general that Australian citizens might have been interrogated by torture perhaps pursuant to the legal justifications offered to the president in the working paper.

In 2004 American methods of interrogation became public when the awful Abu Ghraib photographs were published. But, we were told, no-one in senior office knew about such goings-on, either here or the United States. But Australia did know about it. In spite of Senator Hill's obfuscation, a Senate inquiry got half way to the truth, after publication of the letter of 24 December 2003, drafted by the Australian military lawyer Major O'Kane, to the International Red Cross.

We now know that the Red Cross expressed deep concern to the coalition forces about the treatment of prisoners, following a visit to Abu Ghraib in October 2003. It seems that O'Kane drafted the response from the coalition. The letter blandly brushed off the Red Cross' concerns. It asserted that every effort was made to uphold the Geneva Conventions, at the same time talking about different rules for 'high value detainees'. The letter was nonsense, but must have been known to the Australian Government. It is little wonder the government kept O'Kane away from the Senate inquiry.

The release of Habib seems to have thrown the Australian Government into a tailspin. His release without charge should be a matter of the greatest embarrassment to Mr Ruddock; we cannot detect even a blush. The attorney-general has said several times that Mr Habib is to be singled out for special treatment. He will not have a passport, he will be kept under surveillance, and his freedom to speak to the press may be inhibited. Is this Australia? Usually one would expect the attorney-general to give some recognition to the presumption of innocence. In the meantime Mr Ruddock continues to support a military commission trial for Hicks.

Nothing suggests that our attorney-general has the slightest problem with events at Guantanamo Bay or Abu Ghraib. It all sits uneasily with traditional concepts of his high office.



Mamdouh Ahmed Habib shedding a tear as he is interviewed on the channel's 60 Minutes programme on 13 February 2005. During the exclusive interview Habib claimed that he was regularly tortured by his US captors, who electrocuted and beat him and threatened him with sexual assault by specially trained dogs. Photo: AFP Photo / Channel 9 / News Image Library

Changing Children's Lives in Asia

Hundreds of children in South East Asia suffer from severe facial deformities that can be treated. Many of these children will never have the life saving operation required to change their lives. They will not have the opportunity to go to school; their communities will believe they are 'bad luck' leaving them little opportunity for a normal life.

Operation Smile Australia (OSA) is a small non-government funded organisation based at Brisbane's Mater Hospital. OSA aims to give these children the opportunity of a normal life by providing them with the life changing surgery they need. This is achieved in three ways:



- 1. Missions to South East Asian** countries where Australian doctors and nurses volunteer their time to operate on local children with severe facial deformities.
- 2. Clinical Observerships** where South East Asian doctors are hosted for three months in Australia and trained in surgical procedures and post-operative care.
- 3. World Care Patient Program**, where children are brought to Brisbane's Mater Children's Private Hospital from their home countries to have their operation.

OSA conducts two missions a year and treats four World Care Patients. Missions cost from \$30,000 and each World Care Patient \$15,000 therefore, donations, sponsorships and fundraising support is vital for OSA to continue its work. If you would like to help OSA we can be contacted on 07 3840 2866 or admin@operationsmile.com.au