

Australian detainee at Guantanamo Bay pressured to plead guilty

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After two years' illegal detention without charge or trial, David Hicks, one of two Australian citizens held at Guantanamo Bay, Cuba, is being pressured to plead guilty to conspiracy. In a direct violation of Hicks's basic democratic rights, the Pentagon has appointed a military defence lawyer, Major Michael Mori, and indicated that unless the 28-year-old Australian admits to conspiracy there will be no trial.

As Hicks's Australian lawyer, Stephen Kenny, cautiously told a New York press conference on December 18: "If a deal is struck that is reasonable and acceptable, then I presume we will go to a military commission. [However], if no arrangement is reached, David Hicks will be simply moved back down the list, and he may or may not come before a military commission some time in the future."

Kenny, an Adelaide-based solicitor and the first civilian lawyer to visit a Guantanamo Bay prisoner, was speaking to the media after he had met with Hicks for five days. Kenny, who has been acting for the Hicks family since late 2001, can only act as a consultant to Major Mori. He is barred from publicly discussing conditions at the prison or providing a detailed account of Hicks's treatment. Kenny did not meet the other detained Australian, Mamdouh Habib, held at Guantanamo Bay.

"Under the agreement I have with the US government, I'm cleared to say that David Hicks has never killed or injured any civilian or any US military or Australian military personnel. Unfortunately, that is all I can say," Kenny told ABC television last week. Despite the limited extent of these remarks, they point to the fact that there is no real evidence that Hicks was engaged in "terrorist activities" or has committed any crime. Hence the US is exerting pressure to get him to plead guilty to conspiracy—a charge that is notoriously vague and wide-ranging.

Hicks was captured by Northern Alliance forces in Afghanistan in December 2001 before being handed over to the US military and flown—blindfolded and manacled—to Guantanamo Bay in early 2002. Like the rest of the inmates at the prison, he has been constantly interrogated by American military forces and denied all access to his family or a lawyer, until this month. One of six prisoners the Bush administration plans to bring before a military tribunal, Hicks's hearing is expected in March 2004.

The detentions and military tribunals are in violation of the Geneva Conventions and have been condemned by Amnesty International and numerous human rights organisations and legal experts around the world.

The trials, which will be heard before a panel of three military officers, allow hearsay, unsworn statements and statements from prisoners obtained under interrogation without the presence of a lawyer. President Bush has the final say on any trial outcome. Prisoners can only be defended by US military lawyers, but can choose a civilian solicitor to act as a consultant, subject to US government approval and censorship.

Choosing his words carefully, Kenny told the New York press conference: "[David Hicks] has not been ill-treated since his arrival in Guantanamo Bay, if you ignore the isolation, his lack of access to the outside world and the denial of his basic human rights". In an indirect

reference to British Lord Johan Steyn's recent blunt condemnation of the Guantanamo Bay detentions, Kenny described the prison as a "physical and moral black hole". He said Hicks had lost weight, was not eating well and was depressed.

Kenny said the US was attempting to establish a hierarchy of law in which American suspects received the fairest legal proceedings, followed by prisoners from Britain and then Australia, ahead of other nationals. US lawyers, he continued, were starting to understand that the erosion of law at Guantanamo Bay was "an attack on fundamental liberties that will eventually reach into the United States system".

He denounced the Howard government for not doing "the right thing" to secure Hicks's release. "[A]t the end of the day the Australian people will judge them on that and I hope they judge them harshly," he added.

On returning to Australia on December 24, Kenny said that while Australian intelligence officers had grilled Hicks for a total of 10 to 12 days during the past two years the Howard government had refused to provide any information about these interviews. Kenny also attacked the government for not releasing official correspondence on Hicks's imprisonment.

In fact, a day before Kenny's return to Australia, Foreign Affairs Minister Alexander Downer issued a "conclusive certificate" to stop a Freedom of Information (FOI) request for 108 pages of internal documents on the case.

Early this year the *Australian* newspaper attempted to gain access to these papers, which include correspondence, internal minutes from Australia's Department of Foreign Affairs and a December 17 cable from Washington giving the Howard government legal advice on how to deal with Hicks's detention.

The Howard government first blocked the FOI request on July 21. When the *Australian* attempted to have this overturned by the Administrative Appeals Tribunal, which was scheduled to hear the case on January 19, Downer intervened again, claiming that any release of the documents would damage international relations. Downer has also threatened Federal Court action if the Administrative Appeals Tribunal rejects his ministerial certificate.

This response confirms that the Howard government is anxious to cover up all information about its collusion with the Bush administration in the illegal detention of Hicks and Habib. The material could confirm a *New York Times* article on May 4, which reported that the US government lacked any real evidence against Hicks and wanted him repatriated to Australia. Moreover, the documents would further expose the Howard government's refusal to defend the basic rights of its own citizens and its political subservience to Washington.

Kenny ridiculed Downer, declaring: "To say that it's going to end diplomacy is a load of rubbish—countries release documents all the time... What we're talking about is obviously a secret deal done between the US and Australian governments that they're clearly embarrassed about... Australia's about to get a free trade agreement with the United States—are

they going to keep that secret as well?"

In fact, the Howard government has been an active partner in ensuring Hicks's detention in Guantanamo Bay for the past two years. From the outset it refused to call for his release and has taken every opportunity to brand the 28-year-old as a terrorist, while publicly backing the Bush administration's illegal detentions and planned military trials. Senior government ministers have admitted that Hicks and Habib could not be charged or prosecuted under Australian law. Australia is the only country in the world that has not called for the repatriation of its citizens imprisoned in Guantanamo Bay.

For the first time in over two years, David Hicks was granted permission to speak with his father on December 16. The telephone hookup, which was rigorously policed by US authorities, was only allowed after the Hicks family agreed not to discuss conditions at Guantanamo Bay or David's activities in Afghanistan.

Terry Hicks spoke with the *World Socialist Web Site* last week about the phone call and the future facing his son.

Terry Hicks: We were only given 30 minutes and it was mainly restricted to family matters—how he was getting on and what we were doing and so on. At one point David said to me, "you're quite famous over here". I told him he was internationally famous, so we had a joke about that. I guess what he meant was the Americans have been showing him what I've been doing to secure his release and they've tried to use it as a part of their "stress and duress" techniques to crack him.

RP: What were your thoughts during the phone conversation?

TH: It was very emotional, as you can imagine, and after the initial contact my mind went blank. Bev, my wife, was there and David's sister. He asked me about my trip to Afghanistan and we discussed some of that before the Guantanamo Bay authorities put a stop to it.

Before we were stopped, I said that the documentary filmmakers who went to Afghanistan with me wanted to send their best wishes. He seemed quite interested and I told him about the people I met in the Islamic colleges that he attended and knew him. I also explained that I'd met the chap who had been released from Guantanamo Bay and who knew David and had spoken highly of him.

It was at this point that we were told to stop talking about Afghanistan. You could hear murmurings in the background and then a voice said "enough on Afghanistan". David's answer was "we can't talk about Afghanistan anymore" and so that was the end of that. We spoke about the footy results and that sort of thing.

RP: What about David's mental state?

TH: I listened very carefully—often you can tell if people are not well—but his speech seemed normal. My first thoughts were—good, those bastards haven't been able break him.

I asked David about the operation he'd mentioned in a letter. But he said he had had two operations—a hernia and one to remove lumps from his chest—and the doctors were good. He didn't explain what the lumps were. Maybe it was an old injury when he came off a horse a few years ago or maybe the US military hit him too hard or something, I don't know.

Stephen Kenny told me that David looked very fit and had a strict exercise program, but he also said that he was depressed, which is to be expected after having been kept in a cage and having had no contact with the outside world for two years.

RP: Have you had any contact with his military lawyer?

TH: Major Mori, David's defence attorney, has rung me a couple of times and is supposed to be coming over here to talk with us. I asked him straight out whether he was going to put up a fight or just roll over. He assured me he wouldn't roll over for anyone, but I felt like telling him that the Australian prime minister has rolled over without a whimper.

The problem is that Mori has only had five years of experience as a defence lawyer and the last case he took he lost. The main problem though

is the military trial rules.

It's been said that David might be charged with conspiracy. This could be anything—he might have told one of the other inmates that he was going to spit at one of the guards. Conspiracy covers so much ground and if it's like the ASIO laws here then you could be fitted up with anything. A few loose words and you can be labelled a terrorist and have to bear the stigma all your life.

RP: What about the pressure to make him plead guilty?

TH: I really don't know all the details. We want David out and back here as soon as possible but at the same time deep down inside I hope he pleads not guilty because he hasn't committed any crime and it will put some bloody heat on the government.

The problem is they'll be telling David that unless he pleads guilty he won't even get a trial and could be stuck there for years. Even if a plea bargain is accepted, it will be heard before a kangaroo court. How would the US feel if one of their people were treated like this? You wouldn't hear the end of it.

Downer has said that David shouldn't be released because the public would be concerned if they were in the cinema and found themselves sitting next to a terrorist. This is ridiculous. Obviously when you go to the pictures you don't know who you're sitting next to—it could be someone who'd been in jail for murder, robbery or rape. All sorts of people are wandering around the streets, but does that mean they are condemned forever? What do they want—signs branded on people's heads?

Of course, the Howard government has no problems with America illegally detaining hundreds of people in Guantanamo Bay. No worries about that. Or my son being put before a military court in which they can use hearsay and anything he might have said under duress. And to top it off, one man—the US president—has the final say, irrespective of the court decision.

RP: I heard you've been in Perth for a couple of public meetings and had another vigil outside the South Australian parliament last week. What's been the response?

TH: Very good. There is a change in attitudes taking place here—not from the Howard government, of course—but from ordinary people. When you have people held for two years, with no charge, no trial and no access to lawyers or family, this forces the population to think a bit. How is this possible? Why is it continuing? The government can't answer this, except with the usual rubbish about terrorism and so people have become very suspicious of the whole business.

We've been given badges of David and Mamdouh Habib, with something about the Geneva Convention underneath, and I had one on my jacket. I forgot about it and went out shopping this morning and had all sorts of people telling me to keep up the fight. This is important and it shows that little things can grow into big ones.

The main thing people have to realise is that the military tribunal is going to be used as a test case, but not just in America. It could be a foretaste of how things are going to be run here, and that could affect anyone.



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