

David Hicks bullied into guilty plea at Guantánamo kangaroo court

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After more than five years of imprisonment in Guantánamo Bay where he endured torture and protracted periods of solitary confinement, Australian citizen David Hicks finally pleaded guilty to one charge of “providing material support for terrorism” as part of a plea bargain to get out of the US hell-hole.

Hicks is the first prisoner illegally incarcerated in Guantánamo Bay to be brought before a military commission. The vague charge, the commission itself, and Hicks’s guilty plea are all legal travesties, which not only violate the Geneva Conventions but centuries-old basic legal principles.

The real guilty parties are the Bush administration and its political accomplice, the Australian government. Prime Minister John Howard and his ministers have violated the legal rights of one of their citizens and endorsed the Guantánamo regime where fear and intimidation, sensory deprivation and other torture techniques are routine.

Both Washington and Canberra immediately seized on Hicks’s guilty plea as a vindication of their actions. US defence spokeswoman Major Beth Kubala claimed Monday’s hearing demonstrated that the “process is transparent, legitimate and moving forward.”

In the Australian federal parliament, Howard read the charge sheet, while Justice Minister David Johnston gloated, “When you plead guilty you put yourself in the dock and you don’t go home that night.” In line with its failure to defend Hicks’s basic rights throughout his ordeal, the Labor opposition has refused to make any statement until the proceedings are finished.

So obvious is the legal farce that conservative National Party MP Barnaby Joyce felt compelled to comment: “One of the many reasons why the law disapproves of prolonged incarceration without charge or trial is because of the intolerable pressure it places

on the accused to plead guilty just to escape detention... The only thing that is guilty here is the judicial process under which he was being tried.”

Joyce was expressing the sentiments of broad layers of Australians who are appalled at Hicks’s treatment.

The military commission hearings are neither “transparent” nor “legitimate” but kangaroo courts established to produce guilty verdicts that will justify the entire Guantánamo operation and the so-called “war on terror”. The process allows unlimited detention without trial, the use of evidence extracted under torture, severe restrictions on prisoners’ defence lawyers and many other reversals of long-established legal rights.

The very conduct of Monday’s hearing, which was designed to intimidate and threaten Hicks and his defence lawyers, further exposed the legal norms being established under the “war on terror”. Presiding Judge Marine Colonel Ralph Kohlman made no pretence of impartiality as he bullied Hicks and his defence lawyers during the three-and-a-half-hour arraignment.

Early in the proceedings, Hicks was asked by Kohlman whether he was satisfied with his legal defence team. Hicks said he was, but wanted “equality with the prosecution” and that he would ask at a later date for more lawyers and paralegals. Kohlman’s response was to evict from the court two of the three members of Hicks’s legal team.

Kohlman told assistant defence counsel lawyer, Rebecca Snyder, that she would have to step aside because she was a Defence Department employee and could not act for Hicks until she changed her reserve status in the military. Stunned by the decision, Hicks declared: “I’m shocked, because I just lost another lawyer”, only to be sharply reprimanded for “interrupting”.

Kohlmann then declared that Hicks's American civilian lawyer Josh Dratel could not act as a defence lawyer until he signed a legal document agreeing in advance to the commission's guidelines for defence counsels. The rules had not even been formulated.

Dratel immediately refused, protesting that the military commissions were an "ad hoc" system that was making up the rules as it went along. He told the judge that his obligation was to his client, not the military process, and he would not sign any document that provided "a blank cheque that draws on my ethical obligations as a lawyer."

A series of heated exchanges followed between Hicks's remaining lawyer, Major Michael Mori and Kohlmann. Mori challenged the judge's impartiality because Kohlmann had been involved in the 2004 military trials that were ruled unconstitutional by the US Supreme Court. Mori also cited the judge's attempts to start the arraignment last week, when he knew that Dratel could not attend. Kohlman rejected these arguments and then closed the hearing.

The blatantly biased nature of the proceedings undoubtedly had its impact. A short while later, an unexpected special night session of the military commission was hurriedly convened, at which Major Mori told the judge that his client had agreed to plead guilty.

The charge of "providing material support to terrorism" is another legal fraud cooked up by the Pentagon after the US Supreme Court ruled that Washington's previous military commissions and the initial charges against Hicks were unconstitutional. "Providing material support to terrorism" is not a war crime under the Geneva Conventions or the laws of war. Moreover, it is being imposed retrospectively. It therefore constitutes an open violation of the US Constitution and the Australian Criminal Code and would be unacceptable in any genuine court of law.

Journalists attending the Guantánamo kangaroo court reported that Hicks was in a dishevelled state, with dark lines around his eyes and more than 13 kilos heavier than in 2004, when he last appeared in public. He has grown his hair to chest-length to block out the prison lights that remain on his cell 24 hours a day. According to his family and lawyers, Hicks is in bad health with stomach and back complaints and is deeply depressed and disoriented.

Hicks's father Terry spent three hours with his son before the arraignment. He told the media that David, who was chained to the floor, was so distressed that he was prepared to do anything to get out of Guantánamo. He appeared to have little understanding of mass popular demands in Australia for his release and did not trust the US military commissions to honour any plea-bargaining deal or allow him to serve out any sentence in Australia.

Terry Hicks directly blamed the Howard government for his son's guilty plea, saying: "The Australian government, I believe, are the ones that put the pressure on David. They demonised him, they pre-judged him for five years. I suppose Mr Howard would be throwing his hands up with glee at the moment..."

The Murdoch media in Australia immediately went into overdrive with a blazing "Guilty" headline on the front page of Sydney's *Daily Telegraph*. The *Australian* had no fewer than three comments and an editorial all attacking those who criticised Hicks's treatment, and claiming that Hicks's plea justified his systematic vilification as "a terrorist" who had now received his just desserts.

The only thing proven by the guilty plea is that most people, if sufficiently brutalised, can be made to say whatever their torturers want. The lengthy columns in the *Australian* demonstrate the complete contempt, not only within the newspaper's editorial board but more generally in Australian ruling circles, for basic democratic rights and due legal process.

Howard is no doubt hoping that he will be able to bury the issue. But for many ordinary working people, it is blindingly obvious that Hicks has been battered into submission and treated unjustly. The illegal detention and prosecution of Hicks in a US kangaroo court is the real crime—for which both the US and Australian governments should be held accountable.



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