

# Guantánamo's kangaroo court convicts Australian David Hicks

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The sham trial of Australian detainee David Hicks at the Bush administration's prison camp at Guantánamo Bay is drawing to a close. Yesterday presiding judge Colonel Ralph Kohlman formally convicted Hicks on one charge of "providing material support for terrorism", and released the details of a plea bargain that will return Hicks to Australia to serve his jail term. The deal provides for a maximum of seven years, but all but nine months have been suspended.

The strenuous efforts to dress up proceedings cannot disguise the fact that the entire affair is a legal charade designed to justify the Bush administration's phony "war on terror." The plea bargain itself smacks of a dirty deal between Washington and Canberra. One of its key aims is to bolster the fortunes of the Howard government in upcoming national elections later in the year by wiping the issues of David Hicks and Guantánamo Bay off the political agenda.

Hicks is the first Guantánamo Bay detainee to be charged and tried before the newly constituted US military commission. His case has been fast tracked in order to accommodate Australian Prime Minister John Howard's calls for an early resolution. Howard, who is directly responsible for Hicks's protracted detention, only began calling for a speedier trial when opinion polls began recording overwhelming popular opposition to the flagrant abuse of Hicks's basic democratic and legal rights.

Major elements of the plea deal are specifically designed to muzzle Hicks in the lead up to the Australian election. He cannot speak to the media for a year and, following that period, must hand over to the Australian government any proceeds he earns from telling his story. Referring to the barbaric feudal practice used to silence opponents, Michael Ratner, president of the Center for Constitutional Rights, told the *New York Times*: "It is a modern cutting out of his tongue."

The sentence has been timed to ensure that Hicks is incarcerated throughout the 2007 election campaign. The plea bargain set a maximum sentence of seven years, not including the five years that Hicks has already spent in Guantánamo Bay. However, after the formalities of

sentencing before a jury of US military officers were carried out, the judge suspended all but nine months of the sentence, meaning that Hicks will be in jail for the rest of the year. He will serve two more months in Guantánamo Bay and the remainder, under an arrangement with the Howard government, in an Australian prison. Under the plea deal, Hicks has agreed to cooperate with US investigations and testify in other military commission trials.

Hicks has been held for five years without charge in the Pentagon's barbaric facility, much of it in solitary confinement. The 31-year-old Australian has complained of maltreatment and clearly bears the signs of psychological, if not physical, torture. Nevertheless, as part of the plea deal, he has been compelled to declare that he has "never been illegally treated by any persons in the control or custody of the United States." He has also been required to give an undertaking that he will not sue the US government for any illegal treatment. The very fact that the Pentagon made a point of insisting on these clauses indicates that it has flouted international law and maltreated Hicks and other prisoners.

The systematic abuse of prisoners at Guantánamo Bay is so widely known that US Defence Secretary Robert Gates told a congressional committee yesterday that any trials held there would inevitably be tainted by previous interrogation practices involving physical coercion. He called for future trials to be moved out of Guantánamo, saying: "My own view is ... no matter how transparent, no matter how open the trials, if they took place at Guantánamo, in the international community they would lack credibility."

In fact, from the outset, the entire process has constituted a flagrant abuse of basic democratic rights. The military commissions had to be reconstituted after the US Supreme Court last year ruled them unconstitutional. Chief prosecutor Colonel Morris Davis declared yesterday that the kangaroo court was as fair, if not fairer, than the International Criminal Court or the UN tribunals on Yugoslavia and Rwanda. Lex Lasry of the Law Council of Australia pointed out, however, that the commission's rules block the defence

from challenging how evidence is obtained and allow for confessions obtained by coercion and torture.

Lasry, who was in Guantánamo as an observer, described the court proceedings as “pretty dysfunctional”. On Tuesday, just prior to Hicks’s formal guilty plea, Judge Kohlman effectively excluded two of Hicks’s three lawyers. Civilian lawyer Joshua Dratel was prevented from defending his client after refusing to agree in advance to court procedures that have yet to be drawn up. Kohlman overruled a motion by Hicks’s remaining lawyer Major Michael Mori challenging the judge’s impartiality.

In comments to Australian Broadcasting Corporation (ABC) radio today, Hicks’s father Terry again declared that the only reason his son agreed to the plea deal was to get out of the Guantánamo “hell-hole”. Terry Hicks, who has campaigned tirelessly for his son’s rights during the past five years, told the ABC: “I believe one of the provisos was that he had to sign a form to say he wasn’t badly treated. We know for a fact that he was, and I’m going to push that issue.”

David Hicks was forced to demean himself even further by apologizing to the US and Australian governments and by acknowledging as accurate each fact in the charge sheet, point by point. Hicks agreed that he travelled to Afghanistan in January 2001 with the assistance of the Kashmiri Islamic fundamentalist militia Lashkar-e-Taiba. He underwent three separate courses at an Al Qaeda training camp near Kandahar, was in Pakistan at the time of the September 11 attacks on the US and then returned to Afghanistan.

What the “facts” actually demonstrate is the concocted character of the single charge brought against him. “Providing material support for terrorism” is not a war crime. Moreover, the charge was imposed retrospectively. Chief prosecutor Colonel Morris Davis conceded that Hicks was not the “worst of the worst”—as Bush has described the Guantánamo detainees. “I am not going to stand here and tell you David Hicks is on par with Osama bin Laden. That would be ridiculous,” Davis said. But that is precisely how Hicks has been portrayed by the US and Australian governments over the past five years, in order to justify his prolonged detention without trial.

In reality, Hicks was never anything more than a minor foot soldier, who was introduced to bin Laden like every other recruit at the Al Qaeda camp. He saw very little action defending the Taliban regime in Kabul against the US-backed Northern Alliance militia, before deciding to flee. It should be noted that Hicks was defending a regime that controlled 90 percent of the country, and which was recognised at the time as the legitimate government of Afghanistan by several US allies—including neighbouring Pakistan.

Hicks has maintained his denial of any prior knowledge of the September 11 attacks. The prosecution also withdrew claims that he had been asked to be a martyr for Al Qaeda and that he had met other foreign Taliban supporters, including the American John Walker Lindh and Britain’s Robert Reid.

The flimsy character of the case against David Hicks was tacitly acknowledged by the Pentagon when it signed off on a prison term of just nine months. The maximum sentence for the charge of “providing material support for terrorism” is life imprisonment. In Hicks’s case, the prosecution had initially called for 20 years, but then agreed to a deal that set the maximum of seven years, excluding the five years and two months already served.

For five years, the Australian government was the only one in the world not to demand the release of its citizens from Guantánamo Bay, which openly flouts international law and the Geneva Conventions. That is the only reason Hicks was not released years ago, and remains in detention today. Up until a few months ago, Prime Minister Howard was determined to make an example of the young man in order to justify his government’s support for the Bush administration’s phony “war on terror” and its ongoing criminal occupation of Iraq.

According to the plea bargain deal, Hicks must be repatriated to Australia within 60 days, that is, by May 29, five or six months before the federal election. Howard is hoping that, by then, any memory of the inhuman and illegal treatment of David Hicks will have faded—with the help of the media—into the dim and distant past.



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