

Howard government caught out lying over Hicks release from Guantánamo

Richard Phillips
1 November 2007

In another exposure of the politically manipulated character of the Guantánamo Bay military commissions, a senior US military prosecutor revealed last week that Vice President Dick Cheney personally intervened to secure a “plea-bargain” for the repatriation of Australian citizen David Hicks earlier this year. As part of the deal, Hicks, who was captured in Afghanistan in late 2001, is currently in a South Australian prison and will be released on December 30.

The revelation is acutely embarrassing for the Howard government. As well as confirming what millions of people around the world already knew—that the Guantánamo military trials make a mockery of legal process—it demonstrates that the Australian government could have acted far earlier to obtain Hicks’s release, but refused to do so. Instead of defending Hicks’s basic legal rights and demanding his release, Canberra branded the young Australian as an Al Qaeda terrorist and endorsed his incarceration in the Guantánamo hellhole, where he was subjected to torture, sleep deprivation and other illegal measures.

Information about Cheney’s intervention appeared in a *Harper’s Magazine* article written by Scott Horton, a New York civil rights lawyer. An unnamed senior US military officer told the magazine: “One of our staffers was present when Vice President Cheney interfered directly to get Hicks’s plea bargain deal. He did it, apparently, as part of a deal cut with Howard. I kept thinking: this is the sort of thing that used to go on behind the Iron Curtain, not in America. And then it struck me how much this entire process had disintegrated into a political charade.”

Harper’s Magazine also cited comments by Air Force Colonel Mo Davis, the chief military commission prosecutor at the Hicks trial, who resigned in protest from the military in October over backroom interference in the military commissions. As Davis told the *Australian* newspaper on October 24: “I think it is a disgrace to call it a military commission—it is a political commission.”

Prior to resigning, Davis filed a formal complaint alleging

that Brigadier General Thomas Hartmann had “overstepped his mandate by interfering directly in cases”. Hartmann was an official legal adviser to the head of the convening authority for the trials, Susan Crawford, who in turn was appointed by Dick Cheney. She is a former employee, long-standing friend and associate of the US vice president.

Davis told *Harper’s Magazine* that “senior defence officials discussed in a September 2006 meeting the ‘strategic political value’ of putting some prominent detainees on trial.” He said that he felt pressure to pursue cases that were deemed ‘sexy’ over those that prosecutors believed were the most solid or were ready to go.”

An angry internal memo from Davis declared: “If someone above me tries to intimidate me in determining who we will charge, what we will charge, what evidence we will try to introduce, and how we will conduct a prosecution, then I will resign.”

Hartmann apparently wanted to use classified evidence in closed sessions of the court. He also wanted trials of so-called high profile cases, which could be used for television broadcasts during next year’s US elections to bolster the Bush administration’s claims to be fighting terrorism.

Coming in the midst of the Australian election campaign, media reports of Cheney’s involvement in the Hicks plea-bargain were not what Howard wanted to hear. Obviously Cheney’s “political fix” was specifically organised to assist Australian Prime Minister Howard, who has provided ongoing political support for the US-led invasions of Afghanistan and Iraq.

For five years the Howard government sycophantically defended the Guantánamo Bay prison and denied mounting evidence of abusive treatment meted out to Hicks and other detainees. But by late last year, after a dogged campaign by Terry and Beverly Hicks, David’s parents, the Howard government confronted a broad-based movement demanding the young Australian’s immediate release.

Hicks’s American military lawyer Major Michael Mori addressed meetings of thousands throughout Australia. The Howard government faced a federal court case over its

failure to act over Hicks's ongoing incarceration and senior lawyers were suggesting it should be charged with war crimes over the issue.

By February, when Cheney visited Australia, Howard was desperate to get the Hicks case out of the public eye. With an election due within months, the treatment of Hicks was one more factor generating anti-government hostility. The matter was clearly discussed with the US vice president.

Following Cheney's return to the US, the stalled military commission trial of Hicks was suddenly fast tracked. On March 27, the Australian was given an ultimatum: he could face a kangaroo court and the prospect of being incarcerated in Guantánamo for years, or accept a plea bargain negotiated, not with the prosecutors, as is the usual procedure, but between Susan Crawford's advisers and his defence lawyers.

Under these circumstances, Hicks decided to plead guilty to the trumped-up charge of "providing assistance to a terrorist group" and renounce all legal rights to challenge his treatment by US authorities. He was given a suspended sentence of more than six years, with time in Guantánamo taken into account, and the remainder to be served in a South Australian prison.

Under the deal, Hicks is barred from making any comment to the media for a year. The date was obviously selected so he would remain politically gagged until after the federal election.

Questioned about these latest revelations, Howard and other senior ministers claimed that they had nothing to do with the deal and had only wanted the Hicks issue resolved "as quickly as possible".

Foreign Minister Alexander Downer even suggested on ABC radio that the government had always intervened on Hicks's behalf and that neither Cheney nor any other Bush administration official would be able to organise a plea bargain. "Dick Cheney couldn't do a plea bargain ... No, that is not how it works," Downer said. "It has to be done by the prosecution with the defendant. And that was what happened."

But as *Harper's Magazine* established, that is not what happened.

Moreover, the claim that the government was interested in helping Hicks is simply a lie. Howard and his ministers repeatedly justified Hicks's continued incarceration, suppressed allegations of torture and insisted that Hicks and fellow prisoner Australian Mamdouh Habib were being treated well. To cover their tracks, they blocked Freedom of Information access to all correspondence with Washington on Hicks.

At one point, Attorney-General Philip Ruddock even claimed that sleep-deprivation, which was regularly used on

Hicks and other prisoners, was not torture. Ruddock and other senior ministers also insisted that the military commissions would be "fair" and in line with the American legal system, even after the US Supreme Court ruled they were illegal.

If the Howard government continues to falsify its record on Hicks, it does so secure in the knowledge there will be no criticism from the Labor opposition. Labor leader Kevin Rudd declared last week that he was "very interested" in what Howard might say about the Cheney deal, but then made clear that Labor stood behind the further persecution of Hicks. Rudd told the media that Labor would support any recommendation by the Australian Federal Police to impose a "control order" on Hicks and supported "absolutely" the provision for control orders in the Howard government's anti-terror laws.

The state Labor government in South Australia passed legislation on October 23 specifically aimed at muzzling Hicks. Under the new law, any money Hicks receives, either directly or via his relatives and friends, for media interviews or any future publications, will be confiscated. The law is so open-ended that guilt or innocence is irrelevant. Anyone charged by an overseas court, including one as patently lawless as the Guantánamo military commissions, is barred from receiving money for publications.

Labor's support for these draconian measures means that, like the Howard government, it accepts as legitimate the protracted detention of Hicks, his abuse at the hands of the US military, and his fraudulent "trial" on terrorism charges. This is part and parcel of Labor's bipartisan backing for the bogus "war on terrorism" and for the more than 40 anti-terror laws introduced by the Howard government since 2001 that have overturned longstanding legal and democratic rights.

The Socialist Equality Party demands the immediate repeal of all of the anti-terror laws and the immediate and unconditional release of David Hicks, who along with Mamdouh Habib, should be paid full compensation for their illegal imprisonment in Guantánamo.

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