

Former prosecutor testifies that Guantánamo military commissions are show trials

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In a damning exposure of the US military trials of Guantánamo Bay detainees, Air Force Colonel Mo Davis, the former chief prosecutor at the American prison camp, told a pre-trial hearing on April 28 that senior government and Pentagon officials had corrupted US military justice and that former Australian prisoner David Hicks should never have been charged.

Davis was appearing as a defence witness for Yemeni prisoner Salim Admed Hamdan, who has spent six years in Guantánamo, mostly in solitary confinement. His testimony further highlights the criminal conspiracy between Washington and Canberra to demonise and incarcerate Hicks for almost six years and the lack of basic legal rights for hundreds of other detainees.

Davis has made similar statements to the media before but his latest comments were the first made under oath. One of the reasons he quit his position as chief prosecutor last year was in protest over the backroom deal organised between Washington and Canberra to secure the release of Hicks before the 2007 Australian federal election.

Davis told the hearing that deputy defence secretary Gordon R. England and other top Pentagon officials wanted the highest-profile detainees put on trial before this year's US election because they thought it would have "strategic political value".

Davis testified that he told Defence Department general counsel William J. Haynes III that some defendants could be acquitted. Haynes, according to Davis, responded by declaring: "Wait a minute, we can't have acquittals. If we've been holding these guys for so long, how can we explain letting them get off? ... We've got to have convictions."

Under questioning by Hamdan's defence lawyers, Davis also explained that Air Force Brigadier General Thomas W. Hartmann had sanctioned the use of evidence obtained from water-boarding, a well-known torture technique.

"To allow or direct a prosecutor to come into a courtroom and offer evidence they felt was torture, puts the prosecutor in an ethical bind," Davis said. But Hartmann dismissed the

concerns, stating that "everything was fair game—let the judge sort it."

Hartmann reports directly to Susan Crawford, who is the Convening Authority for the Guantánamo commissions. Crawford is a protégé of US Vice President Dick Cheney and was appointed to the position by him. She was principally responsible for organising the plea-bargain deal with Hicks's defence lawyers.

Davis said that while he was chief prosecutor he was pressured to impose charges on David Hicks even though, contrary to the claims of Washington and Canberra, the Australian was not dangerous or a high profile figure. "The seriousness of what he did," he told the hearing, "would not have met my minimum threshold."

Contrary to standard plea-bargaining practice, Davis was not involved in any way with the deal made with Hicks's lawyers. As he told the *Australian* newspaper last October: "I think it is a disgrace to call it a military commission—it is a political commission."

An unnamed senior US military officer also told *Harper's Magazine* last year: "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."

A day after Davis's accusations, army prosecutor Lieutenant-Colonel William Britt said in a sworn statement that Hartmann chose who would be put on trial in Guantánamo according to whether they would "seize the imagination of the American public" or not. In other words, the decisions were made on a political, not a legal basis, to suit the Bush administration's propaganda requirements.

Michael Berrigan, deputy chief defence lawyer for Hamdan, testified that Hartmann was a bully who refused lawyers' requests for experts and facilities to help prepare their cases. Berrigan told the hearing that the current charges against six Guantánamo prisoners, who have been accused

of involvement in the September 11 terror attacks and could be executed, were drafted by civilian lawyers working for Hartmann. Berrigan said that Hartmann had copies of the charges two weeks before military prosecutors had signed them.

These comments are not only an indictment of the lawlessness of the Bush administration but also of the Howard government which waged a protracted campaign of slander and vilification against Hicks.

Canberra provided the Bush administration with a blank cheque to do what it wanted to Hicks, justifying the denial of legal representation for more than a year and other violations of his basic rights as necessary for the “war on terror”.

Likewise, Labor Party politicians, state and federal, refused to lift a finger to assist Hicks. Only after a nationwide movement emerged demanding Hicks’s release did a few Labor officials begin to timidly criticise the Howard government.

Elected to power last November, the Rudd Labor government refused to demand Hicks’s immediate release from the South Australian prison, where he had been moved to serve out his last nine months under the plea-deal. And when Hicks was eventually released in late December 2007, Labor supported a federal police demand for a 12-month control order on the still traumatised young man. The measure involves a midnight to 6 a.m. curfew, the monitoring of all his communications and compels Hicks to report to police three times a week.

South Australian state Labor premier Mike Rann has continued to vilify the young man and passed special legislation to confiscate any money earned by Hicks for media interviews or for any publication about his treatment in Guantánamo.

Not surprisingly, the Rudd government has not issued any statement on Davis’s sworn testimony exposing the nature of the Guantánamo military commissions. The Australian media, which played a filthy role in slandering Hicks, has said virtually nothing about Davis’s comments.

Terry Hicks, David’s father, and lawyer David McLeod told the *World Socialist Web Site* that Mo Davis’s testimony vindicated their long and difficult struggle.

“Mo Davis, who is out of the system, can now say what he really thinks and that he wouldn’t have even charged David,” Terry Hicks said.

“This shows what we’ve been saying over the years is right—that David was being used for political purposes and that the military commission system was established for political gains, both in the US and here. It was a system set up to crucify people.

“I heard state premier Mike Rann still going on the other night on television about how David was a self-confessed

terrorist because he signed the paper work. I just laughed. How the hell can people like this stand up straight? Howard, Rann and others—they’ve all told lies about David and so I guess they have to keep doing it. Eventually though they back themselves into a corner, which is what John Howard found out,” Hicks said.

David McLeod was asked at a recent legal conference if the Rudd Labor government was any different from the former Howard government in relationship to its treatment of David Hicks. McLeod didn’t mince words: “The whole area of politics, once you have been involved in it as I have,” he replied, “is a teeming morass; it is rotten, filled with maggots.

“You can trust nobody or anything anybody tells you—even if there are 12 bibles in front of you and the body of their dead grandmother that has been sworn on—which is why the government in every respect would have to be just like the previous government.”

Despite Davis’s statement, little will change for those incarcerated in the American prison hellhole. Guantánamo commissions allow hearsay and coerced evidence; defendants are not allowed to make habeas corpus petitions to force a review of their detention; and guilt or innocence is decided by a majority vote by panels of serving military officers.

Yemeni prisoner Salim Admed Hamdan, who could be subjected to a full military trial in May, the first one held in Guantánamo since it was established, is suffering from severe mental health problems. According to his lawyers he is suicidal, hears voices, has flashbacks and talks to himself. He is kept in solitary confinement in a 2.4 metre-by-3.7 metre (8 feet-by-12 feet) cell for at least 22 hours per day.

Pentagon officials, however, deny that such conditions are producing mental health problems and cynically claim that Guantánamo does not have solitary confinement but only “single-occupancy cells”.

In 2002 the Department of Defense stopped reporting suicide attempts in Guantánamo and redefined them as “self-injurious behavior”. According to human rights organisations, there were 350 self-harm incidents in 2005 and four prisoners committed suicide between 2006 and 2007.



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