Lawyer speaks to WSWS: “David Hicks was a pawn in a political process”

Richard Phillips
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David McLeod, the Australian lawyer for former Guantánamo Bay prisoner David Hicks, spoke with the World Socialist Web Site *last week about the recent testimony of US Air Force Colonel Mo Davis. Hicks was released from a South Australian prison in late December 2007, after being transferred from Guantánamo, following a plea-deal, in March last year. Until last year Davis was the chief prosecutor at Guantánamo but resigned in protest over political interference in the military commissions. Last week he appeared as a defence witness for Salim Hamdan, a Yemeni prisoner in Guantánamo and swore under oath that he would not have charged David Hicks but was pressured to do so by the Pentagon (See* “Former prosecutor testifies that Guantánamo military commissions are show trials”*).*

Richard Phillips: What’s your reaction to Davis’s testimony?

David McLeod: Mo Davis’s statements indicate that the previously leaked emails of former prosecutors stating that the military commissions were politically rigged were right. At the time these emails were pooh-poohed as without substance and from people with personal issues but now these guys have been vindicated by Davis.

You have to understand that Mo Davis was the chief prosecutor and the only people above him were extremely senior and outside the military commission process itself. For him to say that the system was politically tainted from start to finish is significant in the extreme.

The cry of the Hicks case was that he was a pawn in a political process and that is why everyone went to great lengths to ensure that he wasn’t put before a proper court. Had he been put in front of proper court he would have been back in Australia years ago.

As a lawyer I have to be careful in what I say about why he pleaded guilty but I’ve simplified it by saying he chose certainty over uncertainty. The certainty was that he knew that he’d be walking the streets of Australia in nine months time, whereas if he went in the other direction he could have spent the rest of his days at Guantánamo. At that time he was in very poor health and a weak state of mind and couldn’t stand being there for another minute longer. Of course, the architects of the scheme were successful because they managed to grind him down to this level. For them it was a big victory that he pleaded guilty.

Mo Davis discharged his role as chief prosecutor in a corporate environment where he was subject to directions and orders. The moment he released himself from the shackles of office he was able to express his mind freely. Those previously involved in the prosecution have been as one in condemning the process. Davis is simply the biggest fish to have done so, and so openly and although his statements are belated he should be given credit because he could have easily said nothing.

He is obviously very angry and keen as a lawyer to vent his outrage at the so-called process. He was fuming because the plea-deal with David Hicks was done behind his back and this is his opportunity to set the legal record state.

WSWS: The Australian press and politicians have been very quiet about Davis’s testimony. How do you read this?

DM: If you take the David Hicks case out of the legal arena, the whole experience demonstrates the immaturity of the [Australian] Commonwealth government on the international stage. It was prepared to sacrifice an Australian citizen’s rights in order to cosy up to its most important ally. Howard regarded this as the more important issue.

America is also the UK’s most important ally and yet it eventually demanded the release of its citizens. It said either you bring the military commissions up to international standards or you release our citizens. The Australian government was not prepared to do this for one of its own citizens and so the value of Australian citizenship was seriously diminished by the whole process. This is something the Commonwealth government and the parliament as a whole should be completely ashamed of.

WSWS: There was never any real difference between Howard and the Labor Party on this issue.

DM: That’s right. Although those in control of events made sympathetic statements in relationship to David Hicks when they were in opposition, they now say nothing. The

first opportunity that federal attorney-general Robert McClelland had to actually do something for Hicks he consented to Australian Federal Police calls for a control order against him. Nor was McClelland prepared to speak to me.

This shows that whoever is in power is subjected to the same sorts of influences from the counter-intelligence bureaucracy. The Liberal governments were briefed by the spooks from AFP, ASIO, ASIS etc., and these are the same people that are now briefing the Labor government.

Having been in the military, and seen what goes on, I know that these forces are very effective in frightening those making political decisions. As Sir Humphrey from "Yes, Minister" would say, it takes someone with courage to stand up to that.

WSWS: What's your response to South Australian Labor premier Mike Rann's ongoing claims that David Hicks is a terrorist?

DM: I really don't know what's motivating him. I heard him on television declare that he didn't care what any lawyer had to say—and I presume he was talking about me—but Hicks had trained with Al Qaeda and the Taliban and was a really bad bastard.

What the politicians don't seem to get is that just because somebody does something they don't like doesn't mean that it's illegal. Lawyers weren't personally supporting David Hicks the individual but fighting for the rule of law and the rights of David Hicks, an Australian citizen.

Of course, David may have done things that we would not have approved of but the fact of the matter is that he was doing things that were perfectly lawful at the time. It was only subsequently that the Australian government declared that the people he was training with were terrorist organisations. Even former attorney-general Ruddock has admitted that Hicks never contravened Australian law. So for people like Rann to suggest that he is in some way criminally responsible is a huge and different step. The politicians deliberately disregard this fact or gloss over it for political reasons but it's a long and slippery slope when the political executive takes over from the judiciary in the handling of those that the executive believes have contravened the law.

WSWS: And it was never a question of you as an isolated lawyer raising these issues.

DM: Yes. Everyone was in step, from the Law Council through to every law society and bar association in every state and territory in Australia. It was not as if it was "Dad's Army" and I was Corporal Jones out of step in Captain Mainwaring's platoon. All I was doing is what everyone else was saying; I was just the public face.

WSWS: What do Davis's statements now mean for those still inside in Guantánamo?

DM: What can one say that hasn't been said already? The calls that Amnesty International and other human rights organisations have made for an open investigation in Guantánamo have also been vindicated.

WSWS: Several senior Australian lawyers have called for war crimes prosecutions against Howard, Ruddock, and Downer. What's your comment?

DM: You've probably read all the stuff and more aware of all the issues than me—I'm just a humble, practical lawyer—but there have been a couple of written opinions by barristers and legal academics which seem to have great merit. They say that the government, in aiding and abetting America's illegal treatment of David Hicks, has contravened certain sections of the Australian legal code.

No doubt the Commonwealth government will try and hide behind claims that it was an international issue and limit any inquiry or action on this. This is what we encountered in the federal court action we brought against the government over its duty of care for David Hicks.

The Australian and American governments have signed all the same treaties—the international covenant on human rights, the Geneva Conventions, the anti-torture conventions and so on and so forth. All of these things applied to David Hicks and yet the Australian government was not prepared at any stage to independently investigate the situation. Even when it came to torture they relied on two investigations carried out by the American government.

One of the most important reasons why a real inquiry into this whole tragic business is necessary is because David Hicks is not calling for one. Hicks has been so destroyed and debased by the whole process that he's just glad to be home and doesn't want to do anything at all to upset the apple cart. This government is bloody lucky that he hasn't come back as an erudite and articulate activist because he could make the current government quite miserable I suspect.