

Australian court freezes former Guantánamo Bay prisoner's bank accounts

Richard Phillips
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Following a brief hearing on August 3, the New South Wales Supreme Court froze all bank accounts related to proceeds from David Hicks's book, *Guantanamo: My Journey*, published last October by Random House. The ruling was the opening move in a "proceeds of crime" legal action launched against the former Guantánamo prisoner by the federal Director of Public Prosecutions (DPP).

The case, which will resume today in the Supreme Court, is a vindictive political attack, orchestrated by the Gillard Labor government, seeking to punish and silence Hicks, and intimidate others whose fundamental legal and democratic rights have been abused in the "war on terror." While the Labor Party was in opposition at the time, it tacitly supported Hicks's detention in Guantánamo Bay.

Hicks's 456-page book details the torture and other illegalities perpetrated against him. After being captured in Afghanistan in late 2001, he was falsely accused of "terrorism" and sent to Guantánamo Bay where he spent the next five and a half years, most of it in solitary confinement. The volume also exposes the complicity of the previous Coalition government of Prime Minister John Howard in this anti-democratic process.

Under the Commonwealth Proceeds of Crime Act, the court can issue a "literary proceeds order" permitting the federal government to confiscate all earnings made from the "commercial exploitation of the notoriety gained from committing an indictable offense".

The so-called "indictable offense" consists of Hicks being coerced to plead guilty in a US military commission to "providing material support for terrorism," in exchange for securing release from Guantánamo. The charge was retrospective—the offence

did not even exist when Hicks was in Afghanistan and was created after he was incarcerated in Guantánamo.

The plea-deal constituted an offer he "could not refuse." If he had failed to accept the deal he could have remained in Guantánamo indefinitely, awaiting trial and then faced lengthy imprisonment at the hands of what amounted to a military kangaroo court. (See: "Guantánamo Bay detainee railroaded into guilty plea")

While Hicks's lawyers are expected to challenge the validity of the Guantánamo military commissions and the "material support for terrorism" charge, new details have emerged about how the plea-deal was cooked up.

In a detailed interview on July 25 with the American-based online journal *Truthout*, former Guantánamo military prosecutor Colonel Morris Davis said that he was "pressured" by the Bush administration into indicting Hicks for war crimes as a "favour" to the Howard government.

Davis said that after being appointed chief prosecutor in September 2005, he told his Pentagon superiors that "the one case I did not want to start with was David Hicks." Davis explained that although Hicks had been depicted by the US and Australian governments as one of the worst "terrorists" in Guantánamo Bay, the opposite was the truth, and any trial would have backfired.

"It was a terrible case. We told the world these guys are the 'worst of the worst' ... [but] David Hicks was just a foot soldier, not a war criminal. But when Congress passed the Military Commissions Act they authorised prosecuting material support, which is what Hicks was charged with, as a war crime. You could prosecute everyone at Guantanamo under that theory," Davis said.

Davis told *Truthout* that in January 2007 he was phoned by Pentagon General Counsel William Jim

Haynes who asked: “How quickly can you charge David Hicks?” The call was made a day after a meeting between US officials and the ambassador to Australia, during which the Hicks case and its impact on the Howard government’s re-election campaign was discussed. “I told Haynes two weeks,” Davis said. “He said ‘two weeks! Two weeks is too long’.”

The *Truthout* article contains damning information on the backroom negotiations between senior US Defence Department officials, Vice-President Dick Cheney and Australian officials. These allegations are verified, the online journal says, by secret US government documents now in its possession.

On February 24, 2007, Cheney met with Howard in Sydney where they discussed how Hicks could be charged under US law and repatriated to Australia.

According to *Truthout*: “After Cheney returned to the US from Sydney on February 25, 2007, he tasked his legal adviser, David Addington, with working with Haynes at the Pentagon and [Susan] Crawford, who had just been appointed convening authority, to quickly hammer out a deal for Hicks without Davis’ knowledge. Within a week of Cheney returning from Australia, Hicks was charged with providing material support for terrorism and attempted murder.”

Even though Davis was the chief prosecutor, he was not informed until the following month that the US Defense Department had organised a secret plea deal with Hicks and his lawyers. There was “no doubt in my mind,” Davis continued, that “this was an accommodation to help John Howard by making the David Hicks case go away. If there was an arraignment, then a trial would have likely been set for the fall [September 2007], about two months before Howard would have faced the voters.”

At the time, the Howard government was facing a landslide defeat in federal elections due by the end of 2007 over its treatment of Hicks, the ongoing Australian involvement in the wars in Iraq and Afghanistan, and other issues. The Guantánamo plea deal was an obvious “political fix” for Howard: Hicks would be repatriated to a South Australian high security prison and held for nine months until late December 2007, prevented from speaking to the media for a year after his Australian release and forced to observe onerous curfew restrictions and report to the police three times a week.

Davis’s revelations have been ignored by the Australian media. The Murdoch-owned *Australian* newspaper continues to slander Hicks and, by implication, the many people who fought to secure his release from Guantánamo. An August 5 editorial in the *Australian* denounced Hicks and declared that the “proceeds of crime” case was “a warning bell for those who want to wage jihad and then cash in on their notoriety.”

The *Australian* editorial, like the “literary proceeds” case itself, is another attempt to protect Washington as well as Howard and his senior ministers for the illegal detention of Hicks and to deflect attention from the horrific war crimes committed as part the US-led “war on terror.” Those responsible for the criminal invasions and ongoing occupations of Afghanistan and Iraq, and the ongoing detention of Guantánamo prisoners, should be the ones on trial, not Hicks.

The author also recommends:

Australian government moves to confiscate book royalties from former Guantánamo prisoner
[29 July 2011]

Guantanamo: My Journey—David Hicks exposes torture and government criminality
[19 May 2011]



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