

US Marine lawyer Michael Mori discusses fight to release Guantanamo prisoner David Hicks

Richard Phillips
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Former US Marine lawyer Michael “Dan” Mori spoke with the *World Socialist Web Site* about his recently published memoir, *In the Company of Cowards: Bush, Howard and injustice at Guantanamo*. The 292-page book, published by Viking, chronicles the part he played in the struggle to secure Australian citizen David Hicks’ release from the infamous Guantanamo Bay military prison.

Hicks was captured in Afghanistan by the Northern Alliance in late 2001, sold to the US military and then sent to Guantanamo, where he spent the next five and a half years. The then 26-year-old was subjected to sleep deprivation, beatings and solitary confinement. Mori was appointed Hicks’ defence lawyer in November 2003, almost two years after the young Australian was captured in Afghanistan.

Over the next four years, the seriously under-resourced and relatively inexperienced military lawyer fought to expose the illegal nature of Hicks’ detention, the bogus “terrorist” charges and the thoroughly anti-democratic character of the so-called Military Commissions. Mori explains his increasing anger and disbelief over the Bush administration’s repudiation of the Geneva Conventions and his shock at the complicity of Australian Prime Minister John Howard’s Liberal-National government in Hicks’ incarceration.

Mori visited Australia several times, addressing thousands of people at public meetings and protests to explain the blatant violations of Hicks’ basic rights. During this period, Mori was told that he was under military investigation over his determined defence of Hicks. In 2007, he was threatened with court martial by the chief prosecutor at Guantanamo, Colonel Mo Davis. Hicks was repatriated in 2007, after being made an offer he could not refuse—plead guilty to “providing material support for terrorism” or spend an indefinite period in Guantanamo. The deal, which included seven months in a high-security South Australian prison and a one-year media gag, was orchestrated by the Howard government and the Bush administration.

Mori, who now lives and works in Australia as a civilian lawyer, was interviewed by the WSWWS in Sydney.

Richard Phillips: You write in your book that you were born and raised in Massachusetts, the heartland of the 1776 American Revolution. Could you explain why this was significant?

Dan Mori: This history shaped me as a kid and instilled some basic principles. I visited the sites of the American Revolution and learnt about the democratic principles of the new nation and its struggle against British colonial rule. I went to Lexington and Bunker Hill, where the Boston Massacre occurred, and heard about the trial of the British soldiers who had shot and killed American civilians but who were defended by John Adams and given a fair trial.

So understanding this history, I didn’t think giving someone a fair trial was radical at all. I quickly learnt with Guantanamo, however, that this principle, and other core values of our country since its birth, were being repudiated. I found myself stuck in a system that was doing what the American revolutionaries had complained about. The Declaration of Independence speaks about how the British had treated the American revolutionaries—“depriving us, in many cases, of the benefit of trial by jury” and “transporting us beyond seas to be tried for pretended offences.”

RP: You write that this was not just the product of President George W. Bush but that there was fundamental agreement by hundreds of senior figures in the administration and the military.

DM: Yes but not just hundreds; there were thousands. This was particularly the case in relationship to the Geneva Conventions, and it really bothered me. You could understand why the Bush administration and its civilian lawyers wanted to do away with the Convention protections, but why did the military leadership and others go along with it?

The military had, in fact, begun setting up Article 5 tribunals to deal with war prisoners in Afghanistan. These tribunals, which are outlined in the Geneva Conventions, determine whether or not each person is entitled to prisoner of war status. Instead, we were confronted with a made-up system, a made-up category of “enemy combatants” and various lawyers making blanket statements that the Conventions no longer applied. None of this could have happened without a lot of people going along with it.

RP: What does that say about the state of democracy in the US?

DM: I don’t want get involved in all of that but it does say a lot about some people in certain positions. The joint chiefs and the military heads could easily have said that they opposed the Guantanamo military commissions and called for Article 5 tribunals. If America was not going to follow these rules then what kind of example was it setting for the rest of the world?

RP: You write that the Geneva Conventions became a “grey area” after the “war on terror.”

DM: I did my law training just a month before September 11, and we studied what the Geneva Convention said and its principles. It was all there in black and white, but then all of sudden the Bush administration and its lawyers got together to obfuscate it so they could avoid giving people basic protections. It was very disheartening.

RP: Could say something about your impressions when you first visited Guantanamo?

DM: I was very concerned about what was happening at

Guantanamo, even before my first visit, and shocked by the realisation that we had set up a detention camp halfway round the world from the actual battlefield and in a place where the Geneva Conventions no longer applied. It was surreal.

RP: Throughout all this the Howard government maintained that Guantanamo and the military commissions were lawful and could provide a fair trial. Could you comment on that?

DM: I just couldn't get over it. The defence lawyers obviously said the process was a violation of basic legal rights, the US Supreme Court found it illegal, which validated everything we had been saying, and the British opposed it. A number of military prosecutors then issued emails criticising the commissions. The Howard government admitted that Hicks had not broken any Australian laws but it kept saying it had faith in the process. They even supported the made-up "providing material support for terrorism" charges, which were illegal and ultimately thrown out in the American courts.

RP: David Hicks and many others have said that he was "pawn in a political process." Can you elaborate?

DM: Yes that's right. It didn't matter who it was, the US government was going to drag in individuals and make examples of them. It wasn't a legal process but a political process. David, like many others down in Guantanamo, was simply caught up in all this—trapped in US politics, international politics, war on terror politics and Australian politics. This is what happens when law and justice issues are completely corrupted by political agendas.

Of course, all this wasn't just about David Hicks but it concerned the illegal treatment of an Australian citizen. Eventually the Australian population realised that it concerned the larger issue of basic democratic rights for everyone.

RP: The brutal treatment of Hicks and other Guantanamo prisoners and its endorsement by the Howard government are war crimes. Do you support war crimes actions against those responsible for this?

DM: You're not going to get me into trouble on that one. I will say, however, that within the Military Commission Act of 2006 there's a small section that provides immunity to Americans who violate the Geneva Conventions, and it's back-dated to 1997. I don't know what happened in 1997, but in the same statute that created the military commissions—a war-crimes system to try everybody else in the world—they actually give themselves immunity from being prosecuted for war crimes. This was hypocrisy at the highest level and it shocked me.

RP: Let's go to the issue of "getting into trouble." You came under investigation by the military. Could you elaborate?

DM: Yes, I was investigated for my public statements on the case and the military commission system. Later Colonel Davis accused me of violating the uniform code of military justice. I was shocked initially by all this because I didn't believe that I'd done anything wrong. It spooked me a little at first but I just kept on going.

RP: Were these sorts of accusations unprecedented?

DM: Yes, but everything about the military commissions was unprecedented. Nobody had confronted any aspect of the commissions before and there were frustrations all round because everything about the process was political and had nothing to do with due process and justice.

RP: Guantanamo still exists—scores of people remain there without charge, there's force feeding of those involved in hunger protests—and Obama has arrogated to himself the authority to carry out drone killings against anyone, including US citizens. All sorts of pseudo-legal justifications are being provided for these illegal acts.

DM: I call the drone assassinations "executive-directed killings" because they are organised by the executive branch. They're not carried out on a battlefield in a combat operation with bullets flying but under conditions where the people, at the moment that they're being targeted, are not posing a threat to anyone.

While this goes way beyond the sort of things we faced as defence lawyers at Guantanamo it's all part of the same process. The fact that you can target people not in a combat situation is extraordinary. Not only can people be detained, interrogated and held without trial but they can now be targeted anywhere and killed according to the determination of the executive branch. The fact that governments have kill lists and can execute people in this way is alarming and says a lot about where governments are today.

We don't know anything about the facts of this process but are simply told that a suspected Al Qaeda affiliate member was killed. If the reasons for these killings are so clear and necessary then why isn't there any due process?

RP: You cite Tom Paine in the opening of your book—"He that would make his own liberty secure, must guard even his enemy from oppression; for if he violates this duty, he establishes a precedent that will reach unto himself." Why did you choose this quote?

DM: Well because this is what it's all about. If you're not willing to stand up for the rights of people you do not like, or don't happen to agree with, then you will allow governments to operate in a manner that will come back to bite you. This has been shown throughout history and it's important for people to stand up for basic legal principles.

It was public opinion in Australia that really swayed everything and secured David Hicks' release from Guantanamo Bay, and the Australian people should never forget it. People have to be engaged, active and debating all these sorts of issues because they're still ongoing. It's also important to be critical of the media and what it says and does.



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