

Following US Supreme Court ruling**Australian government demands new “kangaroo court” for David Hicks**

By Richard Phillips
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Last week the US Supreme Court found that the Bush administration’s military commission trials of Guantánamo inmates were illegal and that they violated both the Geneva Conventions and the US constitution. For the Australian government, the ruling has created a serious political dilemma. From the outset, Canberra has slavishly backed the kangaroo courts and shamelessly collaborated in Washington’s four and a half year detention of 31-year-old Australian citizen David Hicks in Guantánamo Bay.

The Howard government, which has stood alone in the world in its praise of the infamous military commissions, now faces increasingly forthright demands—from sections of the corporate media, from Australia’s peak law bodies and from broad layers of ordinary people—for Hicks’s immediate release.

Hicks was captured by Northern Alliance forces in Afghanistan in late 2001 and sold to the US military. The Australian is one of only 10 people in Guantánamo charged under the military commissions and was brought before the blatantly undemocratic process in August 2004. At the time, despite more than two years of brutal physical and psychological pressure, Hicks pleaded not guilty to frame-up charges of aiding the enemy, attempted murder and conspiracy to commit war crimes.

According to Hicks’s lawyers and a range of legal experts, these charges have been rendered invalid by the US Supreme Court ruling.

Prime Minister Howard and senior government ministers, however, immediately reacted to the American court ruling by urging Washington not to release Hicks and to instead create a new legal mechanism to try the Guantánamo prisoners.

In line with his government’s standard operating procedure, Howard sought to blame someone else for his support for the illegal commissions, telling Macquarie Radio on June 30 that Canberra had been given “bad legal advice” about their legality.

“[W]e were quite happy to go along with the military

commission procedure,” Howard said, “because we were told, subject to the changes to it that we had negotiated with the Americans, that it was acceptable. Now the American Supreme Court has decided otherwise... [I]t seems on the face of it [that] I do need a bit more advice.”

These claims are absurd and contemptible.

For the past four and a half years, Howard and his senior ministers have poured scorn on the United Nations Human Rights Commission, Amnesty International, the International Red Cross and countless legal experts, as well as former American military officers and FBI interrogators, who have warned that the military commissions were illegal.

According to Canberra, the military commissions—which accepted hearsay evidence obtained by torture and barred any civilian court appeal process—were “fair” and would “follow due process”.

Attorney-General Phillip Ruddock issued a ministerial statement in November 2003 hailing the courts, claiming they would deliver a “just outcome”. Howard, one of 11 trained lawyers in the Cabinet, even declared that the commissions “respect basic principles of our criminal justice system”.

Moreover, while these patent lies were being circulated, Canberra initiated legal action to prevent any Freedom of Information access to any of its correspondence with the US concerning Hicks’s case. Compelling evidence about the torture and abuse of Hicks, and fellow Australian prisoner Mamdouh Habib, was arrogantly rejected by Howard with claims that the psychologically and physically traumatised men were in “good health”. Anyone presenting detailed evidence about the real goings-on in Guantánamo was simply denounced by Howard government officials as “biased” or “soft” on Islamic terrorism.

Howard, Ruddock and Foreign Minister Alexander Downer have rejected overtures from Bush administration officials for the repatriation of Hicks, and continued to insist that he be tried in the US. Hicks cannot be tried in Australia because he has not broken any Australian laws.

Canberra has repudiated any defence whatsoever of Hicks’s legal and democratic rights. As Foreign Minister Alexander Downer made clear when Hicks

was initially detained in late 2001: “We are an ally of the United State and we agree with them [their treatment of Hicks]. They’re perfectly entitled to take tough action.”

The government’s central purpose has been to demonstrate its unwavering loyalty to the Bush administration and thereby secure Washington’s support for Australia’s neo-colonial operations in the Asia-Pacific region. Hicks is regarded, in other words, as totally expendable—a useful tool in the pursuit of Canberra’s geo-political interests.

Growing demands for Hicks’s release

David Hicks’s lawyers—Major Michael Mori and David MacLeod—and Terry Hicks, David’s father, have stepped up their demands for his repatriation. Their calls have been echoed by Australia’s legal fraternity, including the Law Council of Australia, former High Court judges and the New South Wales Director of Public Prosecutions, as well as sections of the corporate media, the church and various human rights organisations.

NSW Director of Public Prosecutions Nicholas Cowdrey, for example, has denounced the Howard government and demanded Hicks be freed. Likewise, former High Court chief justice Gerard Brennan told the Australian press that “Hicks, who has committed no offence against Australian law, has been subjected for years to a procedure that could never be just.... An Australian citizen’s right to justice should never be a mere trading item in international relations.”

Fairfax-owned daily newspapers—the Melbourne *Age* and the *Sydney Morning Herald*—have published comments and editorials demanding Hicks’s freedom.

On Sunday, Michelle Grattan, chief political editor of the *Age*, bluntly declared that Howard, who had become “obsessive” about Hicks, had been “hung out to dry” by the Supreme Court.

Hicks “did not pose any security threat,” she wrote, and his actions in Afghanistan “didn’t produce any terrorist act or plan for one.” Canberra should cut its losses and call for the Australian citizen to be freed, she concluded.

Predictably, Howard, Ruddock and Downer have reacted to these comments with frenetic denunciations of Hicks, trampling on the presumption of innocence

and regurgitating previous attempts to paint him as a dangerous Islamic jihadist.

Howard told the media on June 30 that Hicks was a “threat to the United States”, was a member of Al Qaeda, and had “committed more serious offences than most” in Guantánamo. This was repeated yesterday by Foreign Minister Downer, following a heated one-hour meeting with David MacLeod, Hicks’s Australian lawyer. Afterwards, Downer told the media that Hicks was a member of Al Qaeda. He provided no evidence to substantiate the claim or any detail on what Hicks’s alleged “serious offences” were.

Like Howard, Labor leader Kim Beazley has rejected calls for Hicks’s release, instead urging the government to pressure Washington to put Hicks on trial in an American civilian court. US civilian court processes, Beazley claimed, were “among the best in the world and that is where justice may be obtained and that is where the US should try him.” He did not oppose Howard’s clear violation of presumption of innocence or the bogus terror allegations.

Labor’s shadow attorney-general Nicola Roxon has used the situation to try and outflank Howard from the right, claiming that any delay in trying Hicks in a US court or military tribunal would “compromise national security”.

Notwithstanding Labor’s craven support, the Howard government faces major problems. None of its allegations against Hicks can be substantiated, except on the basis of evidence obtained under torture. The current charges are therefore likely to be dismissed in a civilian court hearing.

In addition, US courts martial do not accept conspiracy as a charge and even if such a trial did proceed, defence lawyers could introduce damaging and detailed evidence about the torture, abuse and other illegal methods employed by the US in Guantánamo—something both Washington and Canberra want to avoid.

On July 4, even as Howard was urging Washington to stand firm on Hicks, the Pentagon announced that it planned, in the next two weeks, to release and repatriate, without charge, the last remaining 59 Afghan nationals in Guantánamo accused of association with the Taliban or Al Qaeda. It also revealed that another 60 Afghans would be freed from the US military prison at Bagram Air Base during the same time.

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