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New York Times

March 27, 2007

### New Detainee At Prison Camp

WASHINGTON, March 26 (Reuters) - American authorities have transferred a man suspected of involvement in terrorist attacks in East Africa to the military prison camp at Guantánamo Bay, the Pentagon said Monday.

A Pentagon spokesman, Bryan Whitman, said the man, Abdul Malik, had admitted involvement in a 2002 attack on a hotel in Mombasa, Kenya, that killed more than a dozen people, and in the attempted downing of an Israeli airliner near Mombasa.

"He came into U.S. custody this year," Mr. Whitman said. "He was picked up in East Africa." Mr. Whitman would not provide the nationality of the suspect.

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Wall Street Journal

March 27, 2007

Pg. 19

### The Gitmo Blues

By David B. Rivkin Jr. and Lee A. Casey

Winning a war is a difficult business under the best of circumstances. In democratic polities, the prospects for victory dim whenever there is strong domestic opposition, as there is today with respect to the handling of both Iraq and the broader war on terror. But far from merely challenging a particular military strategy or a discrete set of combat-related decisions, many critics deny that the United States is fighting a war at all.

Terrorism, they say, is a manageable problem that modern American society must learn to accept as the price of its pluralistic institutions and role as a global super-power.

Nothing illustrates this better than the continuing challenges to Guantanamo Bay. Even European officials who have visited the American base acknowledge conditions there --

including housing, food, medical care and recreation -- are better than in most civilian penitentiaries around the world. What most critics really object to is the entire "laws of war paradigm" that has been employed since 9/11 by the Bush administration.

Some claim, incorrectly but passionately, that the U.S. cannot be at war with a non-state like al Qaeda, and that the classification of al Qaeda and Taliban prisoners as "unlawful enemy combatants" violates the Geneva Conventions. Others care less about the legal questions, but assert that Guantanamo and the "war on terror" have done fundamental damage to the U.S. diplomatic position around the world -- sullyng its reputation, straining its alliances and undercutting its leadership of the international community. Notably, the prescription of both the policy and law-driven challengers is to close Guantanamo, and to abandon the "war on terror" in favor of an internationally cooperative law-enforcement approach.

The critics rarely acknowledge that using the U.S. criminal justice system would present numerous problems. The most obvious: It would be virtually impossible to prosecute many al Qaeda detainees captured overseas by the U.S. and its allies. This is not because, as alleged by the various human rights organizations, they have been harshly interrogated and any evidence obtained in the process would be inadmissible. The more fundamental problem is the hyper-technical nature of evidentiary and other rules in America's 21st century justice system. Convicting people based upon physical evidence gathered on overseas battlefields, or relying on testimony of soldiers and intelligence agents who at the time of capture were operating in a stressful combat environment, would be exceedingly difficult. The likely result of trying captured al Qaeda members under criminal justice rules is that many of them would go free and return to the fight.

These costs aside, the benefits of adopting the law-enforcement model would be ephemeral at best. There is no doubt that the war on terror in general, and Guantanamo in particular, have cost the U.S. diplomatically. Al Qaeda and its supporters have won -- at least for the time-being -- this propaganda point. Even some high-level American officials have, according to a recent report in the New York Times, argued that the base should be closed and the detainees transferred to the U.S.

But whatever the immediate diplomatic benefit that might be gained by adopting this suggestion, it is naïve to imagine that closing the Guantanamo detention facilities, and even agreeing to treat captured jihadists as ordinary criminal defendants, would end international criticism of U.S. efforts to defend itself.

After all, many critics' appreciation for the American civilian judicial system is both new and very much conditional. Long before the war on terror, Europe already was refusing to send criminal suspects to the U.S. if there was any chance that the death penalty would be inflicted. So, in order to obtain the transfer or extradition of terror suspects from these states, the U.S. would have to agree not only that they would be processed through the normal criminal system -- accepting the inevitable intelligence cost of presenting all of the evidence against them in open court -- it would also have to agree to eschew the death penalty. And, once that point is won, the question immediately arises whether lifetime imprisonment is itself consistent with Europe's evolving human rights norms.

As for leading non-governmental organizations like Amnesty International and Human Rights Watch, they have long promoted an agenda that requires the subjection of national justice systems to international institutions such as the International Criminal Court. (It was, in fact, originally proposed as a counter-terrorism criminal court.) The claims of bias and lack of independence such groups have leveled against American military commissions can equally be flung at American civilian courts. That was done in the case of the alleged 20th 9/11 hijacker, Zacharias Moussaoui, who was tried in the Eastern District of Virginia. The critics argue that, although federal judges serve for life, they are all employees of the federal government and have taken an oath of allegiance to the U.S. Constitution. The juries that would ultimately determine jihadists' fates are composed of U.S. citizens, the very men and women who are the terrorists prime and preferred t

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Detainees not only mystery in Cuba

\* Geoff Elliott

\* March 27, 2007

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"I doubt you'll see them around," said Sergeant Brian Scott, a media spokesman for the Joint Task Force on Guantanamo. Could we interview them? "No."

It's just another story that can't be told in this bizarre chunk of land, under perpetual lease to the US from the Cubans since 1903. The rules prevent it. Media can't talk to any Cubans or Haitians.

Nor, of course, to the detainees.

David Hicks makes his first quasi-public appearance this morning in a makeshift courtroom that officers on Guantanamo used to call the "Pink Palace", a reference to the washed-out pink the place was painted when it was an administrative building.

The Pink Palace was originally built as a military aircraft terminal and control tower. But now this ordinary building, washed over in the colour khaki these days, represents so much more.

The incongruity of Guantanamo is how it looks like a relic of the Cold War but in reality it is trying to catch up to the shock of a new world in which stateless characters plotted on, and were successful in, attacking the US.

But in the world of detention centres, Guantanamo's Camp Delta is widely acknowledged as state-of-the-art, unlike the tribunal facilities, something even chief US military prosecutor Morris Davis admits.

"You can do the math as well as I can. If we are going to try 75 cases and only do one at a time and each one is going to take 120 days, I'll be retired long before we get to the end of this process, and some of these folks (detainees) are going to die of old age before they get to a courtroom," Colonel Davis said.

<http://www.theaustralian.news.com.au/story/0,20867,21452431-2702,00.html>

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From: (b)(6) DoD OGC  
Sent: Tuesday, March 27, 2007 5:17 PM  
Subject: GTMO Bird: Hicks; New detainee; GTMO

All:

Here is today's GTMO Bird.

Thanks,

(b)(6)

Office of General Counsel, Legal Counsel Department of Defense

(b)(2) (DSN)(b)(6)  
(fax)

CAUTION: Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.

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New York Times  
March 27, 2007  
Pg. 1

Plea Of Guilty From Detainee In Guantanamo By William Glaberson GUANTÁNAMO BAY, Cuba, March 26 - In the first conviction of a Guantánamo detainee before a military commission, an Australian who was trained by Al Qaeda pleaded guilty here Monday to providing material support to a terrorist organization.

The guilty plea by the detainee, David Hicks, was the first under a new military commission law passed by Congress in the fall after the Supreme Court struck down the Bush administration's first system for trying inmates at Guantánamo.

The guilty plea is sure to be seen by administration supporters as an affirmation of its efforts to detain and try terrorism suspects here, although the government's detention policies still face significant legal and political challenges.

The plea by Mr. Hicks came after an extraordinary day in a pristine red, white and blue courtroom here. Earlier the military judge had surprised the courtroom with unexpected rulings that two of Mr. Hicks's three lawyers would not be permitted to participate in the proceedings, leaving only Maj. Michael D. Mori of the Marine Corps at the defense table. After several acrimonious sessions in which Major Mori claimed that the judge, Colonel Ralph H. Kohlmann of the Marines, was biased, the judge insisted that he was impartial and the hearings came to a close.

But in the evening Judge Kohlmann called the court back into session, saying he had been approached by lawyers who said Mr. Hicks was now prepared to enter a plea.

Mr. Hicks, a stocky 31-year-old former kangaroo skinner who has been held at the prison for five years, was accompanied by guards to a defense table, and Major Mori said he was now prepared to plead guilty to one of two specifications in the charges against him.

That charge described Mr. Hicks's stay in a Qaeda training camp where, it said, he learned kidnapping techniques and was trained in how to fight in an urban environment. Prosecutors have said that Mr. Hicks, who was captured in Afghanistan in late 2001, had never shot at Americans there but that he had taken part in other activities, including collecting intelligence on the American embassy there.

Australia officials, who have described Mr. Hicks as a "lost soul" and "soldier wannabe," had been pressing the United States to resolve the case, and a prosecutor said Mr. Hicks would probably be back there within a year. Major Mori had waged an unusual campaign to rally support for Mr. Hicks in Australia.

During the plea, Judge Kohlmann led Mr. Hicks through a brief session in which he asked whether the earlier dispute about whether his lawyers were authorized to participate in the proceedings had influenced his decision to plead guilty.

"No, sir," Mr. Hicks, dressed in a tan prison uniform, answered calmly several times.

The road to Mr. Hicks's guilty plea was long and fraught with legal and diplomatic strife. The Pentagon had originally hoped to begin trying detainees in the spring of 2002, but the Bush administration's system for military tribunals has been the subject of lengthy legal challenges. The Supreme Court struck down the administration's first plan for tribunals last June, ruling that a principal flaw was that the president had established them without Congressional authorization.

In October, Congress enacted a new law providing for military tribunals, but lawyers for detainees and other critics have challenged it as establishing a trial system that does not afford defendants the same protections as civilian courts. Critics note, for example, that the rules allow for the use of evidence obtained by coercion.

In addition to the legal challenges, the policy of holding "enemy combatants" without charges for as long as five years has drawn international protest, including from allies of the United States.

The Hicks case has drawn particular criticism in Australia, where Mr. Hicks, a high school dropout, turned to Islam after unsuccessfully trying to join the army and then joining an evangelical church.

On Monday, after Mr. Hicks's guilty plea, the judge adjourned the case for further proceedings this week, evidently so that the lawyers could settle on what specific acts he may acknowledge. The sentence will be decided by a five-member military commission. Lawyers have suggested that he might serve out the remainder of any sentence in Australia. Asked whether Mr. Hicks might be back in Australia by the end of the year, a military prosecutor said, "The odds are pretty good."

Mr. Hicks's arraignment Monday was the first public proceeding under the new tribunal rules. The hearing quickly turned fractious, especially after the judge disqualified the two lawyers.

Mr. Hicks appeared startled as his long-awaited day before the tribunal turned into something a free-for-all, rather than the orderly arraignment that had been anticipated.

"I am shocked because I just lost another lawyer," Mr. Hicks said, after the judge said that one of his two civilian defense lawyers, Joshua L. Dratel, had not complied with the judge's rules for handling a military commission case. Mr. Dratel, a well-known lawyer in Manhattan, has been a central player in the Hicks case.

"Right now you do not represent Mr. Hicks," said Judge Kohlmann, the presiding judge of the new military commission organization, who assigned himself to the Hicks case.

Referring to the Bush administration's previous plan for military commission trials struck down by the Supreme Court, Mr. Dratel said in the courtroom before he left that Monday's events showed that the new commission process was as problem-plagued as the old one.

"You cannot predict from one day to the next what the rules are," Mr. Dratel said.

The judge rejected each assertion that he was acting arbitrarily or was biased. In an even tone, but with a flushed face that suggested irritation, he methodically moved through the day's events, turning aside each defense complaint. The defense claims, he said "do not raise matters that would cause a reasonable person to question my impartiality."

Even before Monday's hearing, the case against Mr. Hicks had been marked by an unusual public dispute between Mr. Hicks's military lawyer, who has openly attacked the tribunals, and the military prosecutor.

And Monday, Major Mori was also critical of the judge, saying that some of his rulings seemed aimed at helping the government prove its case against Mr. Hicks. Major Mori said some rulings appeared to be "fixing the rules to fix their mistakes."

Judge Kohlmann said his rulings had been impartial, aimed only at assuring that the case moved ahead professionally and quickly.

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Washington Post

March 27, 2007

Pg. 1

Australian's Guilty Plea Is First At Guantanamo By Josh White, Washington Post Staff Writer  
GUANTANAMO BAY, Cuba, March 26 -- Australian David M. Hicks pleaded guilty to one charge of material support for terrorism during a brief military hearing Monday night, becoming the first Guantanamo prisoner to officially accept criminal responsibility for aiding terrorists since the detention facility opened more than five years ago.

The plea during the first day of hearings under the Military Commissions Act of 2006 marks a victory for the Bush administration, which is now likely to secure a conviction in the first case it pursues under Congress's new rules.

Col. Ralph H. Kohlmann, the military commission's presiding officer, has not accepted the plea but is expected to do so in hearings this week.

Military commission officials here said Kohlmann and lawyers for both sides will work out details of Hicks's plea. Then a full military commissions jury panel will meet to decide on a sentence. Hicks faces a possible life term, but prosecutors said in recent days that they probably will not seek a term longer than 20 years.

Defense lawyers for Hicks said late Monday night that they could not discuss details of the guilty plea or whether there is an agreement with prosecutors about a sentence, although they said the case will probably be disposed of by the end of the week. Australian officials were planning for Hicks's possible return within days so he could serve his sentence.

Hicks, 31, entered a plea of guilty to one specification of providing material support for terrorism and pleaded not guilty to one specification of supporting terrorist acts.

Prosecutors alleged that Hicks trained with al-Qaeda in Afghanistan and met Osama bin Laden, but they were not prepared to present evidence that Hicks attempted to kill anyone.

Maj. Michael D. Mori, Hicks's military defense attorney, entered the pleas at a late hearing on Monday after a three-hour session in the afternoon that dealt primarily with legal issues. Hicks became the first detainee out of hundreds who have gone through Guantanamo Bay to have his case adjudicated. If his plea is accepted, he will be the first detainee from Guantanamo Bay to be convicted of a crime.

Congress wrote new rules for the commissions after the Supreme Court overruled the administration's earlier version of the trials, calling them unconstitutional. Attorneys for Guantanamo detainees have challenged the new law, and members of Congress have vowed to push legislation giving more rights to the detainees. Hicks's guilty plea could give the government a conviction that will not be challenged.

"I don't look at it as a victory," said Air Force Col. Morris Davis, the chief prosecutor, who said he is pleased the military commissions are underway. "We are satisfied where we stand at this moment."

David H.B. McLeod, a civilian lawyer from Australia who is on Hicks's defense team, said Monday night that he would not comment on the guilty plea other than to say it was "the first step toward David returning to Australia."

Hicks was among the first detainees to arrive at Guantanamo in January 2002 and has spent more than five years incarcerated here.

U.S. military prosecutors allege that he has been involved in militant extremism since the late 1990s, when he joined liberation fighters in Kosovo. Hicks later traveled to Afghanistan and trained with al-Qaeda forces, met bin Laden and secured a tank at an airport in Kandahar, according to the U.S. government. He later allegedly supported the Taliban.

Australian officials have been pressuring President Bush to try Hicks swiftly and have been negotiating to have Hicks returned to Australia to serve out any prison term.

Lawyers from Australia and a delegation representing the Australian government were in the courtroom on Monday, and Hicks, in a tan tunic and pants, at one point looked back, nodded and smiled to people in the front row.

Much of Monday's legal wrangling dealt with Hicks's defense team. The presiding officer ruled that his two civilian attorneys were not qualified to represent him in court, in part because one refused to sign a form he felt would compromise his ethical responsibilities. The lawyers, Rebecca Snyder and Joshua Dratel, separately stormed out of the courtroom.

"I'm shocked because I just lost another lawyer," Hicks said when Kohlmann asked if he wanted Dratel to remain at his defense table, even though he could not represent him. "What's the sense of him sitting here if he's not my lawyer and can't represent me?"

Hicks's father and sister traveled to Cuba for the hearing and spent several hours meeting with him in a private room in the morning, getting the opportunity to hug him, pass on family messages and share lunch with him.

Defense Department officials announced Monday that they had transferred a high-value detainee into Guantanamo over the weekend. Abdulmalik Abdul-Jabbar, who allegedly admitted to participating in a 2002 hotel attack in Kenya and to plotting to shoot down an Israeli airliner near Mombasa, was the first direct transfer to the prison since September 2004. He was arrested in Africa in recent days.

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Gitmo detainee asks for more attorneys  
Staff and agencies  
26 March, 2007

By MICHAEL MELIA, Associated Press Writer 1 hour, 45 minutes ago GUANTANAMO BAY NAVAL BASE, Cuba - An Australian who allegedly trained with al-Qaida and fought for the Taliban in Afghanistan said in a courtroom Monday that he needed more lawyers to defend himself against a charge that he provided material support for terrorism.

David Hicks, wearing a khaki prison jumpsuit, was being arraigned Monday - the first suspect to face prosecution under revised military tribunals established after the U.S. Supreme Court U.S. Supreme Court last year found the Pentagon 's system for trying Guantanamo detainees was unconstitutional.

The 31-year-old former kangaroo skinner and outback cowboy said he was satisfied with his defense team but would ask later for more defense lawyers.

"I'm hoping to have more lawyers and paralegals to get equality with the prosecution," Hicks told the military court's presiding officer, Marine Corps Col. Ralph Kohlmann.

"All of the options obviously have to be discussed, from not guilty and tough it out, through to 'How do I get out of here at the earliest opportunity,'" McLeod told reporters.

"His support for the al-Qaida organization is what we intend to prove," said Air Force Col. Morris Davis, the chief prosecutor for the tribunals.

Hicks would be eligible for life in prison if convicted, but Davis noted that similar cases - such as that of the American-born Taliban soldier John Walker Lindh - have resulted in 20-year sentences.

A case against Hicks began in 2004 but was put on hold while the Supreme Court considered the legality of the military trial system devised by the Bush administration. The Australian was charged again under new rules established by Congress and signed into law by President Bush in October.

A challenge of the reconstituted system is pending before the Supreme Court. Lawyers for detainees have asked the high court to step in again and guarantee that they can challenge their confinement in U.S. courts.

The military says the new rules address some concerns of defense lawyers by allowing detainees to see all the evidence against them and making other changes.

During their meeting on Sunday morning, McLeod said Hicks had sunken eyes and showed other signs of weariness from his ordeal of living alone in a small cell. While optimistic that he "has a life ahead of him," he said Hicks was nervous about his first court appearance in nearly three years.

"He recognizes the process ... is one that's designed to achieve convictions," McLeod said.

Terry Hicks, who last saw his son in August 2004, was scheduled to arrive in Guantanamo on Monday with his daughter, Stephanie, to see David.

"He's not going to be the same person I saw three years ago," Terry Hicks said. "We've got to brace ourselves for that bit."

<http://www.localnewsleader.com/brocktown/stories/index.php?action=fullnews&id=85413>

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US: Stop the Guantanamo Circus

Hicks Pleads Guilty; New Detainee Arrives (Guantanamo Bay, March 27, 2007) - Two defense lawyers for Guantanamo detainee David Hicks were barred from representing their client yesterday, highlighting the failure of US military commissions to meet fair trial standards,

Human Rights Watch said today. Hicks, the first person to be charged before the military commissions authorized by Congress in 2006, pleaded guilty to a single criminal charge. Hicks' plea came as the Defense Department announced the transfer of a new detainee to Guantanamo. The Kenyan detainee, taken into custody in Kenya, appears to be a criminal suspect who belongs in civilian criminal court.

"The antics at the Hicks hearing underline the illegitimacy of the Guantanamo tribunals," said Jennifer Daskal, advocacy director of the US Program at Human Rights Watch and an observer at the hearing.

Hicks' two civilian defense counsel were prevented from representing him as his hearing got underway on March 26. The presiding judge provisionally dismissed the assistant defense counsel, stating that the government was precluded from assigning civilian government employees to represent defendants, even though military commission rules allow the Department of Justice to assign its civilian lawyers to the prosecution. The judge then removed Joshua Dratel, Hicks' longtime civilian counsel, because he agreed to abide by all "existent" rules, but refused to agree to "all" rules for the tribunal without first knowing what those rules stated. According to the judge, this ran afoul of civilian counsel's obligations to agree to military regulations governing representation - regulations which have not yet been issued.

"Those who doubted these tribunals would be fair have been proved right," said Daskal. "The commission can't even establish basic rules for lawyers representing the defendant. There's little reason to think that if Hicks had gone to trial he would have received a fair hearing."

Hicks' sole remaining lawyer, Major Michael Mori, had recently been threatened by the chief prosecutor of the military commission, Col. Morris Davis, who warned that Mori could be held criminally liable under Article 88 of the Uniform Code of Military Justice because he made public criticisms of President Bush's detainee policies. Mori filed a prosecutorial misconduct motion about this matter, but because Hicks pleaded guilty the motion will likely never be heard.

Originally the US government had charged Hicks with attempted murder, among other offenses. Hicks pleaded guilty yesterday to one count of material support for terrorism - a crime typically prosecuted in civilian courts. Hicks will appear before the military commission for sentencing later this week and could receive a sentence of up to life imprisonment. He is expected to serve most of his term in Australia.

Human Rights Watch called again for the Bush administration to close the Guantanamo Bay detention facility, stating that the remaining detainees should either be charged and tried in federal court, or released. More than 380 detainees at Guantanamo have not been charged with crimes or held in accordance with the laws of war, and have been denied any opportunity for a meaningful review of the basis for their detention in an independent court.

#### Transfer of New Detainee

Human Rights Watch also raised concerns about the transfer of a criminal suspect to military custody at Guantanamo instead of to US civilian custody. The Department of Defense announced on March 26 that it had transferred Mohammad Abdul Malik to Guantanamo over the weekend.

"The Bush administration is still using the 'war on terror' to hold criminal suspects while denying them their basic rights," said Daskal. "If Abdul Malik committed terrorist acts, I'm sure federal prosecutors would be happy to indict him."

Abdul Malik is a Kenyan citizen. Kenyan authorities detained him in late February, and local human rights groups briefly saw him in detention in Nairobi. He reportedly disappeared from custody soon after. A March 14 Kenyan media article referred to police sources who stated that he had been flown to Guantanamo.

The Pentagon, which did not reveal where Abdul Malik has been held for the past three weeks, reported that he had confessed to participating in a 2002 hotel attack in Mombasa, Kenya, as well as involvement in a plot to shoot down an Israeli civilian airliner near Mombasa.

Human Rights Watch expressed concern that Abdul Malik was held incommunicado for several weeks and interrogated about alleged criminal activities under questionable circumstances.

"Where was Abdul Malik held these last weeks?" said Daskal "If he was held in secret detention, by the CIA or the military, it raises serious questions about the treatment he experienced and the value of his confession."

Abdul Malik's transfer to Guantanamo comes not long after the extradition of another terrorism suspect from Kenya to Houston, Texas, for prosecution in US federal court. Daniel Joseph Maldonado, a US citizen, was arrested in Kenya in late January for illegally entering the country from Somalia, sent to the United States, and charged with undergoing training in weapons and bomb-making. Abdul Malik was reportedly arrested at a foreign exchange bureau in Mombasa.

"The vastly different treatment of these two terrorism suspects shows the US sees Guantanamo as a parallel criminal justice system for foreigners," said Daskal. "Americans suspected of terrorism rightly go before US courts, while foreigners get sent to Guantanamo for indefinite detention and unfair proceedings."

Human Rights Watch called on the United States to bring Abdul Malik to trial in US federal court, pointing out that discrimination on the basis of nationality in criminal proceedings is prohibited under international law. In an important UK decision in December 2004, the House of Lords struck down a law that permitted the indefinite detention of foreign terrorism suspects, but not UK nationals.

Except for 14 detainees transferred to Guantanamo from CIA custody in September 2006, transfers to Guantanamo had stopped in September 2004.

[http://hrw.org/english/docs/2007/03/27/usdom15572\\_txt.htm](http://hrw.org/english/docs/2007/03/27/usdom15572_txt.htm)

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The incongruity of Guantanamo is how it looks like a relic of the Cold War but in reality it is trying to catch up to the shock of a new world in which stateless characters plotted on, and were successful in, attacking the US.

But in the world of detention centres, Guantanamo's Camp Delta is widely acknowledged as state-of-the-art, unlike the tribunal facilities, something even chief US military prosecutor Morris Davis admits.

"You can do the math as well as I can. If we are going to try 75 cases and only do one at a time and each one is going to take 120 days, I'll be retired long before we get to the end of this process, and some of these folks (detainees) are going to die of old age before they get to a courtroom," Colonel Davis said.

<http://www.theaustralian.news.com.au/story/0,20867,21452431-2702,00.html>

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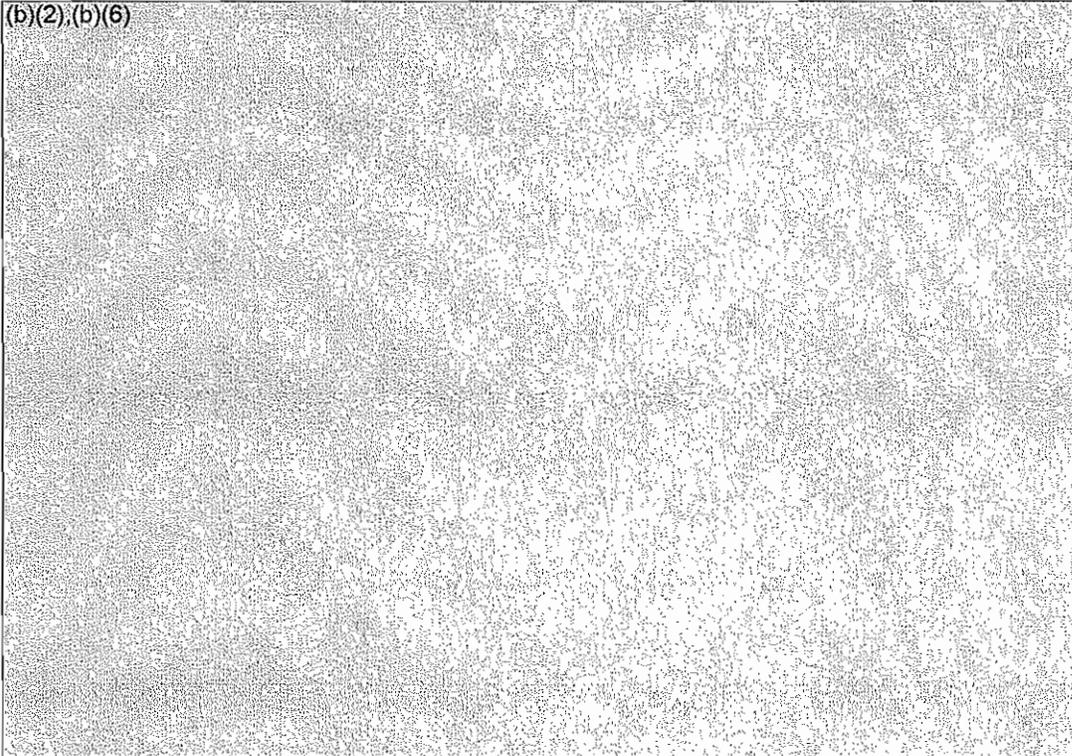
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Thursday, March 29, 2007 5:58 PM

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Attachments:

GTMO Bird:YouTube;Hicks;Human Rights Watch; Gates; al-Rawi;  
Testimony - Katyal.pdf; Testimony - Massimino.pdf; Testimony - Philbin.pdf; Testimony -  
Taft.pdf; Picture (Metafile)

All:

Here is today's GTMO Bird. Attached please find transcripts from the HASC hearing on GTMO and MCA. Audio can (For a short time) be heard at [http://armedservices.house.gov/hearing\\_information.shtml](http://armedservices.house.gov/hearing_information.shtml)<http://armedservices.house.gov/audiocast.shtml>

Thanks,

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Martin Sheen appears in YouTube video supporting Guantanamo detainee By Carol Rosenberg McClatchy Newspapers (MCT)

GUANTANAMO BAY NAVY BASE, Cuba - The U.S. attorneys who went global by making a YouTube video about a Sudanese man being held as a captive have added a little celebrity power to their campaign: an Internet appeal by actor Martin Sheen. The outspoken activist and West Wing veteran appears in a new four-minute YouTube video vouching for Adel Hamad, 48, a former hospital administrator whose lawyers say he has been wrongly detained here for five years as an enemy combatant. "No one should be detained without a court hearing just on the word of a president. Any president," says Sheen, who played a U.S. president named Josiah Bartlett in the popular TV show.

The video, Guantanamo: Waiting for Justice, splices together footage of Hamad's family in a red-brick, mud-hut village in Sudan and Sheen in a studio making his plea. It appeared Tuesday on YouTube.

It is part of an Internet campaign conducted by the Oregon Federal Public Defender's Office, court-appointed attorneys who are among hundreds of U.S. lawyers who have filed unlawful detention lawsuits in federal court on behalf of suspected terrorists held at Guantanamo. The Oregon team, after being stymied in the courts, went global in January and courted world opinion on their client's behalf with a YouTube video first, Guantanamo Unclassified. That 10-minute video, the public defenders boast, was the first-ever YouTube habeas corpus petition. Since its debut, it has gotten 75,000 hits and elevated the profile of the man listed as Detainee No. 940 in Pentagon files.

Their Internet campaign also comes amid a legal struggle between the Bush administration and civil liberties lawyers over whether foreigners held as enemy combatants have the right to sue for their freedom in federal courts. The White House and Congress have twice stripped Guantanamo prisoners of recourse to habeas corpus; and the U.S. Supreme Court has affirmed detainee rights.

A likely Supreme Court showdown is looming, either this term or next, over a recent federal appeals court ruling that Guantanamo captives have no constitutional rights.

Hamad, 48, born in Sudan, was handed over to U.S. troops after his arrest in Peshawar, Pakistan, where he says he was working as a hospital administrator.

The Pentagon says he is an unlawful "enemy combatant" in league with al-Qaida, although Defense Department officials have notified his attorneys that he could be sent home once U.S. officials negotiate an agreement with counterparts in Khartoum, Sudan.

He denies working for al-Qaida. He says he was a humanitarian relief worker when Pakistan police took him from his home in July 2002 and handed him off to U.S. forces, across the border, in Afghanistan.

"We Americans must not allow fear to overcome our faith in the laws and values that have made this country great," Sheen says in the video. "Like the right not to be detained indefinitely, even by the president."

Portland, Ore., public defender Patrick Ehlers said no one on the team knew Sheen personally, but got him to speak on the video through friends of friends who serve on The Innocence Project, attorneys who advocate using DNA testing to exonerate wrongly convicted U.S. prisoners.

Guantanamo: Waiting for Justice was made by staff at the Oregon Public Defender's Office and includes Hamad family photos and a woman reading a letter from Hamad's wife, Lana, to President Bush, asking him to reunite her husband with their four children.

"Please join me in asking President Bush to answer Mrs. Hamad's question," Sheen says. "When will he come home, Mr. President? When will his good name be cleared?"

Pentagon policy prevents the military from discussing the cases of specific detainees.

Rare exceptions have included the so-called high-value prisoners, among them Khalid Sheik Mohammed, the alleged al-Qaida kingpin blamed for masterminding the Sept. 11 attacks.

They have also discussed the case of David Hicks, the Australian who is pleading guilty to material support of terrorism at the first U.S. war-crimes tribunal since World War II. The U.S. says he sided with al-Qaida and the Taliban amid the U.S. invasion of Afghanistan in 2001.

Hicks' guilty plea is likely to come Friday, with sentencing possible on Saturday.

<http://www.kansascity.com/mld/kansascity/news/world/16989220.htm>

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YouTube Video mentioned above

<http://www.youtube.com/watch?v=0v1Q-RtKn9k>

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Hicks is guilty: get over it

THE Left likes to take its information pre-digested, with pre-formed opinions offered by wannabe celebrities.

Whether its Al Gore's hyperbolic disinformation on global warming or a curtain call of aspiring actresses bleating about maggot-free sheep, the fellow travellers prefer the easy intellectual road.

Listening to David Hicks' supporters attempt to justify his guilty plea is a reminder of the shallow nature of those locked into finding causes which serve to amplify their anti-American prejudices.

Claiming to seek only justice, they aggressively denigrate those who are actually attempting to see justice applied to advocates of chaos and theocratic tyranny, like their self-confessed terrorist and hero Hicks.

It is somewhat ironic that Guantanamo Bay, where Hicks has been held pending appeals and his day in court, probably came to the consciousness of most young Australians through the 1992 film A Few Good Men.

Nominated for four Oscars, the movie starred Tom Cruise as Lt Daniel Kaffee, Jack Nicholson as Colonel Nathan R. Jessep and Demi Moore as Lt-Cdr Jo Anne Galloway.

It's probably best remembered for Aaron Sorkin's fast-moving script and the following exchange between the tough Nicholson character: "You want answers?"

Cruise's character replies: "I think I'm entitled."

Nicholson: "You want answers?"

Cruise: "I want the truth."

Nicholson, contemptuously: "You can't handle the truth."

And that's how it is with the Hicks' deniers, from his father, Terry (who admitted on December 12, 2001, that his son had called him on September 28 - just 17 days after al-Qaeda's attacks on the World Trade Centre Tower and the Pentagon, and told him he was fighting for the Taliban) to a slew of deluded ratings-chasers like Ray Martin, almost the entire cabal of the ABC's staff commentators, and their sob-sisters at SBS.

They can't handle the truth.

The current Opposition Leader Kevin Rudd has to be added to that list too, though not his predecessor Kim Beazley, who was more prescient about national security matters.

Rudd has repeatedly told the ABC's Lateline program that Hicks "should be put before a civilian court, either in America or here".

Bringing him here was never an option, as host Tony Jones pointed out, because it would have involved passing retrospective laws, the option championed by electronics millionaire and adventurer Dick Smith and a handful of other deluded individuals who relied on the deluded views of poisoned civil rights lawyers for guidance.

Rudd, however, has pledged that, should he be elected, he would seek advice from the Attorney-General's Department about "an appropriate course of action" which could result in Hicks being freed.

Here's a tip for the ALP's new White Knight: if he or the A-G or anyone else altered the terms of the prisoner transfer agreement under which Hicks is returned to Australia, it would make meaningless every other international agreement on such transfers Australia is party to.

Rudd, and other leading Labor figures, were notably absent from the line-up of politicians commenting on Hicks on Tuesday. Clearly, they can't handle the truth.

Here's another fact that Hicks' supporters find hard to swallow - US military commissions aren't new. They go back to World War II. Further, the Guantanamo detainees were due to begin appearing before them in 2002 but for a string of appeals - which they were entitled to under Western law, not the Islamist sharia law supported by the Taliban Hicks says he was prepared to die for.

The principal flaw was technical. The US Supreme Court found the tribunals had been established by the White House, not Congress, and they were dissolved. But only for a blink. Congress approved them with all haste.

The Greens, the Democrats, the ALP and political fringe-dwellers like the former Family Court judge Alastair Nicholson have been talking about upholding the Geneva Convention, but the convention permits holding enemy combatants for the duration of a war.

Under its terms, Hicks could languish in Yatala maximum security prison as long as fighting continued in Afghanistan. If there is no war, the convention doesn't apply. Which do they want?

Justice Nicholson should just stick to his knitting.

It has also been said that Americans wouldn't be subjected to the US military tribunals.

That's absolutely true. They were set up to deal with foreign combatants. Most countries, including Australia, have special courts which deal with foreigners on particular matters, but it is worth noting that John Walker Lindh, the US Taliban, faced an American civil court and was rewarded with 20 years in jail.

As for hearsay evidence, Australian courts accept hearsay in certain circumstances and there are few trials more demanding of the admission of hearsay than those into crimes conducted during battle.

The Hicks' cheer squad won't acknowledge that his father Terry told the press in December 2001 that his son David was a terrorist, saying: "I think of a terrorist as someone with a bomb strapped to him, but he's a terrorist in our eyes as he's fighting against his own kind."

If they still have trouble accepting reality, perhaps there is another Hollywood film that will help them understand which side David Hicks signed-up with: United 93.

Hicks' al-Qaeda friends hijacked four planes on 9/11. Three reached their targets. This is the story of the fourth. On second thoughts, the Hicks lobby won't like this one either. It's too close to the truth they would rather ignore.

<http://www.news.com.au/dailytelegraph/story/0,22049,21463023-5001031,00.html>

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Potential windfall seen in Guantanamo for Hicks

28 Mar 2007 19:56:39 GMT

By Jane Sutton

GUANTANAMO BAY U.S. NAVAL BASE, Cuba, March 28 (Reuters) - Australian David Hicks could cash in on his notoriety in his homeland as the only prisoner convicted in the Guantanamo war crimes tribunals, a unique status he is expected to hold for the near future.

The 31-year-old pleaded guilty on Monday to providing material support for terrorism and is expected to learn his sentence when the tribunal resumes at the Guantanamo Bay U.S. naval base later this week.

Although he is not well known in the United States, Hicks is a household name and political symbol in his native Australia. He was captured in late 2001 in Afghanistan, where he was accused of helping al Qaeda fight American troops and their allies during the U.S.-led invasion after the Sept. 11 attacks.

The former farmhand and high-school drop-out could make more than \$1 million Australian -- equivalent to about \$860,000 -- if he sells the story of five-year incarceration at Guantanamo, Australian celebrity publicist Max Markson told the the Sydney Morning Herald's Web site.

"He could make an absolute fortune, everyone wants to talk to him," Markson said. "There'll be the book and then there'll be the movie."

Hicks' potential windfall will also depend on whether the Australian government pursues him under a law that bars convicts from benefiting financially from their crimes.

Hicks has attained celebrity status in his homeland, where criticism of his treatment by the United States has grown louder and more political as Prime Minister John Howard faces year-end elections.

"The prime minister has aligned himself with the United States and the war on terror. Hicks' cause became a way of attacking that alliance," said television journalist Leila McKinnon, who is covering the tribunals for Nine Network Australia.

"It's not that people think he's necessarily innocent but recently there's been growing anger about how long he'd been held without charges or trial."

Hicks has claimed he was abused and sodomized at Guantanamo, charges the U.S. military denies.

#### 'FLEETING' AUDIENCE

But interest in Hicks' story could be short-lived, cautioned Charlotte Abbott, senior editor at Publishers Weekly. She said books about the misadventures of so-called American Taliban John Walker Lindh, or by British former Guantanamo prisoner Moazzam Begg were not best sellers.

"The current events cycle is so fast. The audience can be fleeting because so much information is available in other forms," Abbott said.

"I'm sure there will be a publisher interested. The question is how popular the book will be. Especially if he (Hicks) is not around to promote it" because he is in prison.

No detail of Hicks' life at the detention camp is inconsequential for the reporters from his homeland, who persuaded the prison librarian to reveal Hicks' favored choice of reading material: surfing and saltwater fishing books.

Hicks is the only detainee charged so far in the new military tribunal system the U.S. Congress created after the Supreme Court struck down an earlier version that President George W. Bush authorized to try foreign captives on terrorism charges.

The military says as many as 80 of the 385 men held at Guantanamo will likely face prosecution, but the process is moving so slowly that no one else is likely to see his case resolved soon, in large part because of a shortage of courtroom space at Guantanamo.

Although Hicks had faced a maximum sentence of life in prison if convicted, the chief prosecutor, Air Force Col. Moe Davis, said he never planned to ask for more than 20 years. That request will now be trimmed because of his guilty plea and will take into account the five years Hicks has spent at Guantanamo, according to Davis. Under a long-standing diplomatic agreement, Hicks will serve his sentence in Australia.

<http://www.alertnet.org/thenews/newsdesk/N28357568.htm>

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Hicks to detail support for al-Qaida before Guantanamo tribunal

GUANTANAMO BAY NAVAL BASE, Cuba: Australian David Hicks has pleaded guilty to a war-crime charge but must still provide an account of his activities with al-Qaida to seal an agreement to send him home.

A judge presiding over new military tribunals at the U.S. Naval base in Guantanamo Bay, Cuba, will decide whether the details of the confession are enough to convict Hicks of providing material support for terrorism at a hearing expected Friday.

The session is meant to formalize a plea agreement, but critics said anything could be expected following a tumultuous arraignment Monday where the judge disqualified two of Hicks' three defense attorneys before his surprise guilty plea.

"Nobody knows how these things are supposed to happen, which is why they should be held in U.S. federal courts with accountability," said Jennifer Daskal of Human Rights Watch. Hicks, a 31-year-old Muslim convert, received al-Qaida training and was captured in Afghanistan shortly after the Sept. 11 attacks. He was among the first prisoners taken to the U.S. military prison at Guantanamo in January 2002.

The former kangaroo skinner is the first detainee to appear before reconstituted tribunals. The U.S. Congress approved the new system to prosecute Guantanamo detainees last year after the Supreme Court struck down as unconstitutional the Pentagon's previous efforts to try them. Prosecutors say they expect to charge as many as 80 of the 385 men held at Guantanamo. Human rights groups say the tribunals are illegal because they do not offer the same protections as U.S. courts, but the military insists they are fair and appropriate to try terror suspects.

A panel of at least five military officers will approve Hicks' sentence under guidelines from the judge. The sentence must be approved by two-thirds of panel members if it calls for 10 years or less, while three-quarters would have to approve a longer sentence. Hicks, whose extended imprisonment has provoked a popular outcry in Australia, will serve any sentence at home under a prisoner-exchange agreement with the United States.

<http://www.iht.com/articles/ap/2007/03/29/news/CB-GEN-Guantanamo-Hicks.php>

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Minister says Australia cannot reduce sentence imposed at Guantanamo Bay

CANBERRA, Australia: The government would be powerless to reduce any sentence served in an Australian prison by an Australian Guantanamo Bay detainee who this week admitted aiding al-Qaida, the attorney-general said Thursday.

Former kangaroo skinner David Hicks, 31, is likely to be transferred to a prison in his hometown of Adelaide soon after he is sentenced by a U.S. military commission at the American naval base on Cuba this week.

Hicks - sent to Guantanamo weeks after his capture by the U.S.-backed Northern Alliance in Afghanistan in December 2001 - pleaded guilty this week to a war-crime charge of providing material support to terrorism.

Attorney-General Philip Ruddock said an agreement between Washington and Canberra formally came into effect Thursday that would allow Hicks to apply to return to Australia if he were sentenced to prison.

"The arrangement provides for enforcement of the nature and duration of any sentence, so that the Australian government could not unilaterally shorten or dispose of any such sentence," Ruddock told Parliament.

But Hicks' father said Thursday his son could use Australian courts to contest the legality of whatever sentence, if any, is imposed.

"The legal profession aren't happy about the way it has been done," Terry Hicks told reporters on his return to Adelaide from Guantanamo Bay, where he attended his son's hearing. Australian legal groups have condemned the U.S. military commission system as unfair.

<http://www.iht.com/articles/ap/2007/03/29/asia/AS-GEN-Australia-Guantanamo-Hicks.php>

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Hicks letters from Guantanamo

DAVID Hicks is likely to admit he was armed with an AK47 and guarded a Taliban tank when he faces a Guantanamo Bay military tribunal within the next couple of days.

Hicks will be asked to explain why he pleaded guilty to providing material support for terrorism.

The commission will want to know if his confession was genuine before it hands down his sentence.

Hicks's father Terry yesterday said his son was likely to admit to minor offences.

"Some of the minor things he has been charged with he may have done," Mr Hicks said in Adelaide after returning from an emotional reunion with his son.

"He is supposed to have been guarding a tank that wasn't going anywhere anyway, so that's not a lie."

Mr Hicks said his son would find Yatala Prison in Adelaide a "five-star hotel" compared with Guantanamo Bay.

One of Hicks's closest confidants yesterday said he would be devastated if denied the opportunity to renew his relationship with his children.

Louise Fletcher, who shared a flat with Hicks 10 years ago, said she received letters from the confessed terrorist during his time in the US military jail.

In one letter, dated May 2004, he was elated he had established contact with Bonnie, now 14, and Terry, 12.

"This is the most exciting thing that's happened yet," he wrote in the censored letter, stamped "Approved by US Forces".

"I can't wait to be home with them."

Ms Fletcher revealed the letters after Hicks's former father-in-law, Dennis Sparrow, said the former Taliban fighter had forfeited his rights as a father.

"After all that time behind bars, this is one of the big things he's been waiting for," Ms Fletcher said yesterday.

"And if he couldn't see them he'd be very hurt -- devastated."

The mother of four described Hicks as a modern-day Indiana Jones. Before he left Australia, he spent hours studying the Koran and was excited about going to fight for the Kosovo Liberation Army.

But Ms Fletcher believes he wasn't politically motivated.

"It was nothing like that. He was just an adventurer. He just wanted to travel the world and see things."

Some of Hicks's earlier letters were confiscated by ASIO officials, but the three she showed the Herald Sun reveal a curious and, at times, upbeat Hicks keen for news of friends in Adelaide.

"I can't wait to see him. I want him to come home. I miss him," Ms Fletcher said.

In another letter, Hicks said he had taken up chewing tobacco because he couldn't get cigarettes.

Ms Fletcher's greatest concern is Hicks's state of mind after years in detention and his prospects of a normal life when he is released.

"Who's going to give him a job, or a house to live in? People are going to be harsh to him, and that worries me."

Mr Hicks said his son's Australian lawyers were considering legal action to free him when he returns to Adelaide.

But Attorney-General Philip Ruddock said only America could pardon Hicks under an agreement that allows prisoners to serve their terms on home soil.

Mr Ruddock said Governor-General Michael Jeffery signed off on the agreement yesterday, ensuring Hicks could serve his term at home.

"The arrangement with the United States is such that only the United States can pardon a prisoner," he said.

<http://www.news.com.au/heraldsun/story/0,21985,21471708-662,00.html>

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Washington Post

March 29, 2007

Pg. 13

Rights Group Challenges Assurances On Torture By Peter Finn, Washington Post Foreign Service MOSCOW, March 28 -- Human Rights Watch on Wednesday challenged the value of "diplomatic assurances" routinely obtained by the United States from other governments that inmates returned home from Guantanamo Bay, Cuba, will be treated humanely.

The New York-based advocacy group said governments with records of torture "don't suddenly change their behavior" because of agreements with Washington. The group called on the United

States "to establish screening procedures so that a person being transferred from Guantanamo Bay has an effective opportunity to challenge his transfer before an impartial body." If an inmate faces a credible threat of torture, then the United States should find a third country to settle the prisoner, the human rights group said. It noted that five Chinese Muslims from the Uighur ethnic minority who faced the risk of persecution in China were resettled in Albania. Other inmates, the group said, should have the same opportunity. "We think that as a rule diplomatic assurances are inherently untrustworthy," said Carroll Bogert, associate director of Human Rights Watch, which released a report Wednesday on the fate of seven Russians returned here in March 2004 after being held in Guantanamo Bay. "For governments that already torture, it's just another piece of paper."

State Department legal adviser John B. Bellinger III said diplomatic assurances are not prohibited under international law and are an "important tool" in preventing torture of people being returned to foreign countries. He said the credibility of the government offering the assurances must be assessed. In some cases, he said, the United States has chosen not to accept them.

Human Rights Watch, he said, wanted to have things both ways. "We can't both immediately close Guantanamo but not send anyone back to their home country," he said. The group's call for an impartial body to consider prisoners' concerns would go against treaty obligations for the U.S. government to decide whether prisoners face danger.

Human Rights Watch questioned the worth of diplomatic assurances after examining the fate of the seven Russians, who it said were released from Guantanamo because U.S. authorities lacked evidence to prosecute them.

"The Russian authorities have variously harassed, detained, mistreated, and beaten the former Guantanamo detainees since they returned," the group said in a report titled "The 'Stamp of Guantanamo': The Story of Seven Men Betrayed by Russia's Diplomatic Assurances to the United States."

Two of the seven are in prison for the 2005 bombing of a gas pipeline in the Russian republic of Tatarstan. A third is in a pretrial detention center in Russia after being accused in an October 2005 armed uprising in the capital of Kabardino-Balkaria, a republic in southern Russia.

Human Rights Watch said that after a lengthy investigation it concluded that the three were tortured and proceedings against them were riddled with irregularities.

Ravil Gumarov and Timur Ishmuratov, who were accused of the gas pipeline bombing, were first acquitted by a jury, but prosecutors obtained a retrial and they were convicted in May 2006. Rasul Kudaev, accused of involvement in the uprising in Kabardino-Balkaria, has not been prosecuted, but remains in custody nearly a year and a half later.

Russian officials say the three men were treated fairly.

Six of the seven interviewed by Human Rights Watch said they had begged American officials not to be returned to Russia, according to Bogert. She said U.S. officials failed to monitor what happened to the men despite diplomatic assurances from Russia.

Bellinger said the U.S. government did not have independent word on mistreatment of the men and "will be following up on them."

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New York Times

March 28, 2007

Result Of Military Trial Is Familiar To Civilians By William Glaberson GUANTÁNAMO BAY, Cuba, March 27 - In the first session of the new military commission system set up by Congress, the first detainee to face a judge sounded for a time as though he was ready for a trial.

It was David Hicks, an Australian Qaeda trainee who has become by fluke and design one of the best known of the 385 detainees here. Some 75 detainees face similar war crimes prosecutions. On Monday afternoon, Mr. Hicks told the judge that he wanted more lawyers "to give me a better chance in my defense."

Between then and a reconvened session after 8 p.m., things changed. He pleaded guilty to providing material support to a terrorist organization. It was the military equivalent of a plea bargain, the rubber-meets-the-road moment that makes it possible for courts all over America to cope with caseloads that would choke them if every defendant insisted on a trial.

On Tuesday an Australian official said that as part of the deal Mr. Hicks would serve "a bit" more time in prison beyond the five years he has been here, but that he would be allowed to serve it in Australia.

What happened in between the afternoon and evening sessions on Monday, explanations and observations of people at the court here make clear, is just what happens in those tens of thousands of more prosaic cases every day - an emotion-laden measure by both sides of the costs and benefits of pressing ahead.

"It's a way to get home, and he's told us he just wants to get home," Mr. Hicks's father, Terry Hicks, told the Australian Broadcasting Corporation on Tuesday. The father flew out of Guantánamo on Monday between court sessions, after a rare visit with his son.

Though the rules in the military commissions are singular, Mr. Hicks's case showed that the pressures and calculations were much like those that weigh on people in civilian courts. The commissions, the first war crimes trials conducted by the United States since World War II, are heavy with diplomatic, military and legal implications. Still, Mr. Hicks's sudden arrangement with his prosecutors is not likely to be the last deal as the Guantánamo cases stack up and international pressures increase to give the detainees their day in court. The events here were not unlike those in the garden-variety case. It was no secret here over the weekend that plea discussions had long been under way. The sole issue seemed to be whether the deal would be done now or down the road.

Before the hearing on Monday, the chief prosecutor, Col. Morris D. Davis of the Air Force, provided a rough calculation of the terms. Though Mr. Hicks faced a possible life sentence, Colonel Davis said that was not in the cards.

"I don't believe this is a life-sentence case," he said.

He mentioned the 20-year sentence that an American court gave John Walker Lindh, the American Muslim who was a Taliban soldier, a young man whose history was not unlike that of Mr. Hicks. Mr. Hicks, now a plump 31-year-old, has been described as another Westerner in search of meaning in his days in Afghanistan in 2001. The prosecutors say Mr. Hicks once complained to Osama bin Laden about the lack of Qaeda training materials in English.

After the guilty plea, Colonel Davis said Mr. Hicks might be on Australian soil by the end of the year.

The defense, too, had made it plain that anything could occur in court. Before the session on Monday, David H. B. McLeod, an Australian lawyer working with the defense, said he was not sure whether Mr. Hicks would end up pleading guilty, not guilty or entering no plea when he was called on at the planned arraignment by the judge, Col. Ralph H. Kohlmann of the Marines. The answer turned out to be no plea from Mr. Hicks. The session in a heavily secured squat building facing sparkling Guantánamo Bay ended after 5 p.m. By 7 p.m., word circulated that the court would soon be back in session.

Mr. Hicks's decision came quickly after years of delays, setbacks and waiting. The afternoon session was bitter, with disputes between defense lawyers and the military judge over the rules of the tribunals, offering indications that lengthy legal battles were in the offing in the bumpy process.

In Mr. Hicks's case, all that was required on Monday night was a single word: guilty.

It took just a minute for Mr. Hicks's military defense lawyer, Maj. Michael D. Mori of the Marines, to say that word. Mr. Hicks's decision came five years after the United States had initially expected to try detainees.

From the plea, the process is widely expected to take a few days. The lawyers need to cobble together the specific acts that Mr. Hicks will admit to.

Did he, as the charges state, join with a group of Qaeda fighters near Kandahar Airport in the Afghan conflict? Was he armed with an AK-47 when going by the name Abu Muslim Australia? When that is worked out, the judge will summon the panel of commission members, at least five military officers, who will formally decide the sentence. The members, whose names have not been released, are expected here by the end of the week.

Raymond Bonner contributed reporting from London

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Gates: Congress should find way to shut Guantanamo By Susan Cornwell Reuters Thursday, March 29, 2007; 12:19 PM WASHINGTON (Reuters) - Defense Secretary Robert Gates said on Thursday

Congress should look for ways to close the U.S. military prison at Guantanamo Bay, but said any solution must ensure some detainees would remain incarcerated for life.

"Is there a way statutorily to address the concerns about some of these people who really need to be incarcerated forever but that doesn't get them involved in a judicial system where there is the potential of them being released, frankly?" Gates said at a congressional hearing.

"I just don't know the answer," he said.

Gates called for Congress and the White House to discuss the issue.

The United States has faced international criticism over its continued detention of about 385 suspected al Qaeda and Taliban members at the Guantanamo Bay military prison in Cuba.

Human rights groups and other critics have demanded the United States close Guantanamo and that detainees be charged with crimes or released.

President George W. Bush and administration officials have said they would like to close Guantanamo. But they argue it is difficult to accomplish because of the trials to be held there and the group of detainees the United States says should be imprisoned for life.

According to Gates, some of the detainees have said they would attack the United States again if released.

If the United States moves the detainees to some other location, the federal government must ensure the prisoners cannot find a legal avenue to freedom.

"It's an area where frankly I think there needs to be some dialogue between the Congress and the administration," he said.

<http://www.washingtonpost.com/wp-dyn/content/article/2007/03/29/AR2007032900970.html>

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Guantanamo prisoner to be freed

By Clara Story <<mailto:cstory@london.newsquest.co.uk>>

New Malden resident Bisher al-Rawi is to be sent home from Guantanamo Bay within the next 72 hours after British diplomats secured his release.

Mr al-Rawi, an Iraqi citizen who has lived in Britain since he was 16, was arrested by the CIA in Gambia in November 2002 where he was helping his brother Wahab set up a peanut factory.

Foreign Secretary Margaret Beckett read the news of his release out in Parliament earlier today, and a Commons statement is due to be given within the next hour.

After more than four years in captivity, friends and relatives have been concerned about Mr al-Rawi's deteriorating state of mind.

Kingston and Surbiton MP Edward Davey made an appeal in Parliament for his release in January.

A spokesman from the Reprieve charity said a formal statement would follow, but said: "It is fabulous news that he is being brought home and we welcome that. But he is the only British resident being released, and there are a number of residents still in Guantanamo Bay."

[http://www.wimbleonguardian.co.uk/news/topstories/display.var.1294940.0.guantanamo\\_prisoner\\_to\\_be\\_freed.php](http://www.wimbleonguardian.co.uk/news/topstories/display.var.1294940.0.guantanamo_prisoner_to_be_freed.php)

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From this website: <http://humanrights.ucdavis.edu/projects/the-guantanamo-testimonials-project/index>

The Guantánamo Testimonials Project

Pursuant to its mission, the UC Davis Center for the Study of Human Rights in the Americas (CSHRA) has launched a long term research project to assess the effects of the U.S. war on terror on human rights in the Americas.

Whether invoked as the rationale for the "extraordinary rendition" of Canadian citizen Maher Arar to Syria <<http://www.maherarar.ca/index.php>> or as the basis for the suppression of indigenous movements in South America <<http://ipsnews.net/interna.asp?idnews=28962>>, the war on terror has had significant effects on human rights in the Americas. But nowhere have these

effects been greater than at the detention facilities of the U.S. Naval Base at Guantánamo Bay, Cuba <the-guantanamo-testimonials-project/guantanamo-background> . Consequently, it seemed appropriate to begin our project by looking into the human rights situation at these facilities.

We begin our endeavor with The Guantánamo Testimonials Project. The goal of this project is to gather testimonies of prisoner abuse in Guantánamo, organize them by the source of the testimonies given and the type of the abuse alleged, and post these testimonies on this site even as we gather them. The strength of these testimonies is considerable. Based on them, a number of distinguished individuals and organizations have called for the closure of Guantánamo <the-guantanamo-testimonials-project/calls-for-the-closure-of-guantanamo> . At CSHRA we take no position as to whether the Guantánamo prisoners are guilty or innocent. Yet we recognize that these individuals are, in either case, entitled to a set of fundamental rights (a) as individuals held during an armed conflict <testimonies/prisoner-testimonies/rights-of-guantanamo-prisoners-as-captured-individuals> , (b) as prisoners in general <rights-of-guantanamo-prisoners-as-prisoners-in-general> , and (c) as ordinary human beings <rights-of-guantanamo-prisoners-as-ordinary-human-beings> .

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New York Times

March 29, 2007

Pg. 21

News Analysis

New Justice System Is A Work In Progress

By Adam Liptak

In the last few weeks, the two most famous prisoners at the Guantánamo Bay naval base responded to proceedings against them by admitting their guilt.

That might appear to be a vindication of the Bush administration's strategy of creating a built-from-the-ground-up military justice system limited to people said to be terrorists. But because of the unusual circumstances of the two admissions, it is not clear yet that either one is truly representative of the system the administration has established, legal experts said. Neither the guilty plea David Hicks entered on Monday, admitting to providing material support to a terrorist organization, nor the wide-ranging confession from Khalid Shaikh Mohammed, contained in a Pentagon transcript of a closed hearing on March 11, had about it the solemn finality of a conviction in a civilian criminal court, and in some ways, they were aberrations.

To hear critics of the administration describe them, the conclusions of the two proceedings were tainted by past abuse and a justice system not worthy of the name.

"The proceedings themselves just demonstrate the absence of fixed rules," said Jonathan Hafetz, a lawyer with the Brennan Center for Justice at New York University School of Law who represents other prisoners at Guantánamo. "This is justice on the fly."

The administration's defenders say the recent developments are more than satisfactory and demonstrate that the administration may have struck the right balance between gathering intelligence in wartime and providing prisoners with the full array of due-process protections.

"We are finally beginning to see," said John Yoo, a law professor at the University of California, Berkeley, and one of the principal architects of the administration's legal strategy after the Sept. 11 attacks, "whether the military commissions can balance a fair trial with protecting national security in a way that the civilian courts cannot. One of the purposes of the military commissions was to provide a forum where the government and Al Qaeda terrorists could reach plea bargains that would allow our intelligence agencies to win their cooperation."

Guilty pleas are common in ordinary criminal cases, too, of course. But in a garden-variety criminal prosecution, the parties bargain, in the famous phrase, in the shadow of the law. In the usual case, defendants make a rational calculation based on the strength of the evidence against them, the state of the law and, most important, outcomes in earlier cases. If defendants think a plea will result in a shorter sentence than the likely one at trial, discounted by the possibility of acquittal, they plead guilty.

None of that holds at Guantánamo. The incentives and calculations are quite different there. Mr. Hicks, for instance, was bargaining in the shadow of many things – the conditions at the base, international diplomacy, homesickness and the possibility of indefinite detention without charge. But he was not, for the most part, bargaining in the shadow of the law. The statute under which he was to be tried was brand new and untested. The relevant regulations are as yet largely unwritten. There is no body of similar trials to set the parameters for settlement discussions.

"The proceedings that led to Hicks's plea," Mr. Hafetz said, "underscore that the military commissions are a makeshift system that lacks legitimacy."

In the hours before Mr. Hicks's plea, the military judge hearing the case, Col. Ralph H. Kohlmann of the Marines, disqualified two defense lawyers, one for refusing to agree to abide by regulations that have yet to be written.

Mr. Hicks's plea appears to be based on his calculation that he will be allowed to serve out his sentence in his home country, Australia. He may even be able to challenge his conviction there, in conventional courts.

The alternative to a transfer to Australia was a trial some months from now with an unpredictable outcome, the possibility of having to serve any sentence at Guantánamo and the risk of continued detention as an enemy combatant even once that sentence was completed. While Mr. Mohammed's calculations seemed very different from Mr. Hicks's, they were just as unusual.

Mr. Mohammed, said to be the mastermind of the Sept. 11 attacks, did not appear before a military commission like the one that heard from Mr. Hicks. The function of a military commission is the one associated with most criminal courts: it hears cases against defendants charged with violating the law and decides whether they are guilty. Military commissions are largely open to the public, and reporters and human rights groups saw Mr. Hicks plead guilty. Mr. Mohammed, on the other hand, appeared before a combatant status review tribunal. The session at which he apparently issued his comprehensive confession was brief, closed to the public and took place before officers whose names were not disclosed.

Detainees appearing before the status tribunals are not represented by lawyers. And the tribunals' purpose is different from that of a military commission. All they are meant to do is determine if the prisoner before it has been properly designated as an enemy combatant. Mr. Mohammed used the opportunity for grandstanding and propaganda, comparing himself to George Washington and pleading on behalf of those he said were falsely imprisoned. He also seemed to allude to having been tortured while in C.I.A. custody, though the transcript was redacted after the topic was introduced. Human rights groups said such abuse could taint and undermine everything Mr. Mohammed said.

The Hicks case is unrepresentative in another way, legal experts said. The vast majority of the 385 men held at Guantánamo have not been charged with any crimes, and the Pentagon may never charge them. The only tribunal they may ever see is the one that heard Mr. Mohammed.

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**Testimony of  
Professor Neal Katyal  
Georgetown University Law Center  
Before the  
House Armed Services Committee  
March 29, 2007**

**INTRODUCTION**

Thank you Chairman Skelton, Representative Hunter, and Members of the Armed Services Committee, for inviting me to speak to you today. I appreciate the time and attention that your Committee is devoting to the legal and human rights crisis surrounding the detainees at Guantanamo Bay.

On Nov. 28, 2001, I testified before the Senate Judiciary Committee about the President's then two-week old plan to try suspected terrorists before *ad hoc* military commissions. I warned the committee that our Constitution precluded the President from unilaterally establishing military tribunals and that our Founders' structure required that these tribunals be set up by Congress. On June 29, 2006, the Supreme Court agreed in *Hamdan v. Rumsfeld*, invalidating the makeshift tribunal scheme devised by presidential fiat alone.<sup>1</sup>

Indeed, every time the Supreme Court has ruled on the merits regarding the Executive's procedures for detainees, it has found them lacking, forcing Congress and the Executive Branch back to the drawing board at great expense in terms of money, time, and trust. Meanwhile, for five years and counting, the nation and the world at large wait for the United States to bring terrorists to justice consistent with our ideals of democracy and the rule of law.

A few weeks after the *Hamdan* decision, on July 19, 2006, I testified before the Senate Armed Services Committee, advocating a unitary court system for all suspected terrorists. I emphasized that our nation's tried-and-true courts-martial institution, complemented by the existing federal criminal justice system, provide all the safeguards needed to bring suspected terrorists to account without abandoning our most deeply-held beliefs about what it means to administer justice. I warned that legislation specifically crafted for a handful of individuals that does away with important criminal procedure guarantees is not only unnecessary but unwise. Such a two-tiered justice system threatens our nation's foundational values, as well as American credibility in the world arena.

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<sup>1</sup> 126 S. Ct. 2749 (2006).