

The following text may be printed, copy/pasted, or downloaded and emailed.

Australian Seeks Dismissal of Terror Case

PAISLEY DODDS
Associated Press Writer
Monday November 1, 2004

GUANTANAMO BAY NAVAL BASE, Cuba (AP) - Lawyers for an Australian cowboy who allegedly joined Afghanistan's former Taliban regime argued Monday that charges against him should be dismissed, saying reducing the five-member military commission panel to three officers would make his trial unfair.

Defense attorneys said during a pretrial hearing for Australian David Hicks that the dismissals of two members and an alternate would compromise his trial, now due to start Jan. 11. The three were removed from the panel after their impartiality was challenged.

The government is working to replace the panel members for the cases of a Yemeni and a Sudanese. Defense attorneys argued that not doing the same for Hicks would be an injustice since decisions requiring a two-thirds majority would need only two votes rather than four.

Defense lawyer Josh Dratel said his client was being punished for challenging the panel. "It's not a full and fair proceeding," he said.

The 29-year-old Hicks appeared angry throughout Monday's hearing. Terry Hicks said Monday in Australia that his son told him in a letter that he was "teetering on the edge of losing my sanity" because of his time in solitary confinement.

Hicks could be sentenced to life in prison if convicted on charges of attempted murder, aiding the enemy and conspiracy to attack civilians, commit terrorism and destroy property. He has pleaded innocent.

His lawyers asked to call six expert witnesses who they said would help them and the panel consider charges never heard by a military commission.

The presiding officer, Army Col. Peter E. Brownback, denied the request for the specific witnesses to be called but said others could be considered on a case-by-case basis.

"We are being denied an opportunity to provide proof ... that these offenses do not exist," Dratel responded angrily.

Prosecutor Marine Lt. Col. Kurt Brubaker argued not to allow expert witnesses at all, saying bringing in law professors would be a "legal sideshow" and hold up proceedings. "It's up to the commission to determine the law."

Witnesses Hicks' defense had sought to call included Cherif Bassiouni, a law professor at DePaul University in Chicago who is the U.N. Human Rights Commission's independent expert on human rights in Afghanistan.

Hicks' military-appointed defense lawyer Marine Corps Maj. Michael Mori noted such trials haven't been held since World War II and said, "We are not addressing offenses in these commissions that are written out in some law book."

The two members who were dismissed by the commissions' appointing authority were Marine Col. R. Thomas Bright, who assembled lists of detainees bound for Guantanamo, and Air Force Lt. Col. Timothy K. Toomey, who was involved in the capture of suspects in Afghanistan; the dismissed alternate was Army Lt. Col. Curt S. Cooper, who acknowledged calling Guantanamo prisoners "terrorists."

The hearings come on the eve of U.S. presidential elections that could ultimately change the mission, which has detained some 550 terror suspects from more than 40 countries, most without access to lawyers.

Only four detainees, classified as enemy combatants, have been charged with war crimes. Their trials start in December.

Prosecutors say Hicks fought alongside the Taliban and took up arms against U.S. and coalition forces.

Defense attorneys say Hicks has been denied a speedy trial, unfettered access to attorneys and the right to fair proceedings. They also challenged a rule prohibiting him from being present for classified parts of his trial, saying he can't properly defend himself unless he knows the allegations.

Hicks was one of the first prisoners to arrive at Guantanamo in January of 2002.

President Bush ordered the military commissions about three years ago, the first U.S. trials since World War II. If Sen. John Kerry wins election, he could reverse the order. Kerry's running mate, John Edwards, has said he would scrap the commissions and establish a system modeled on military courts-martial.