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Experts denied chance to testify at military trial

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U.S. NAVAL BASE GUANTANAMO BAY, Cuba -- The three-member panel of military officers overseeing the tribunal of Australian terror suspect David M. Hicks yesterday denied a defense-team motion to allow six experts on military and international law to testify.

Army Col. Peter E. Brownback, the officer in charge of the panel, left open the possibility that legal experts may be called to testify, but only after being allowed on an individual and issue-by-issue basis as the case proceeds.

The ruling came as the panel opened hearings on dozens of pretrial motions filed in the case of Mr. Hicks, a suspected al Qaeda member detained in Afghanistan in November 2001 and charged with conspiracy to commit war crimes. His trial is scheduled to open next month.

Mr. Hicks is one of four terror suspects to be charged in the tribunals -- called military "commissions" by the Bush administration -- which have not been used by the United States since the end of World War II to try and execute a group of Nazi saboteurs arrested in New York.

Civilian and Pentagon-appointed lawyers for Mr. Hicks had sought permission to use testimony from several law professors and a former judge in the international trials of Yugoslavian war-crimes suspects to clear up confusion over which laws will be applicable in the Hicks trial.

"There's no book out there on military commissions because there just haven't been any in such a long time," argued Marine Maj. Michael Mori, one of Mr. Hicks' lawyers.

With the motion denied, military prosecutors argued in favor of going a step further by excluding all legal specialists from testifying on grounds that allowing them would delay the trial and "create a legal sideshow" over the meaning of law. The panel presiding over the case denied the claim, saying the issue of whether to allow any experts will be decided on an individual basis.

Mr. Hicks, 29, whom military officials have said has spent extended periods of time in solitary confinement during his detention, appeared calm in court yesterday. He wore a blue-gray suit. Officials said he was allowed a brief visit with his half-sister, Stephanie, who traveled here to watch yesterday's proceeding.

Like the majority of the approximately 550 terrorism suspects held here, the four men charged with conspiracy to commit war crimes were arrested during the 2001 campaign to topple the al Qaeda-supporting Taliban regime in Afghanistan.

In addition to Mr. Hicks, the three others charged here are Osama bin Laden's chauffeur, Salim Ahmed Hamdan, 34, of Yemen; Ali Hamza Ahmad Sulayman al Bahlul, 33, also of Yemen; and Ibrahim Ahmed Mahmoud al Qosi, 44, of Sudan.

The tribunals for the four first opened in August, when defense lawyers challenged the qualifications and impartiality of a six-member, Pentagon-appointed panel chosen to rule on the cases.

In the Hicks and the Hamdan cases, the Pentagon responded by dumping three of the officers, Air Force Lt. Col. Timothy Toomey, Marine Col. R. Thomas Bright, and Army Lt. Col. Curt Cooper, from the panel.

Col. Bright previously oversaw the transfer of prisoners such as Mr. Hicks and Mr. Hamdan from Afghanistan to Guantanamo, and Col. Toomey had served as an intelligence officer in Afghanistan. Col. Cooper was dropped for having called the prisoners "terrorists."

Mr. Hicks' defense team argued yesterday that it would be unfair if his case is allowed to proceed with only three members left on the panel and no alternate. Col. Brownback and the other remaining panel members, Air Force Col. Christopher Bogdan and Marine Col. Jack Sparks Jr., did not rule on the matter yesterday.