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## **How Ashes Triumph Could Save the 'Last Brit' in Guantanamo**

Chance remark about cricket brings hope of release for 'abused' David Hicks

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They call him 'the Australian Taliban,' the ranch hand captured by Northern Alliance fighters in Afghanistan in December 2001.

Now a casual comment about cricket may save him from life imprisonment in the notorious Guantanamo Bay prison. David Hicks qualifies as being Camp Delta's last Brit.

That Hicks has a right to British nationality was discovered only because his American military defence lawyer, Major Michael Mori, takes an interest in cricket. On a visit to his client a few days after England's cliff-hanging Ashes victory, he asked him how he felt about his side's defeat.

'He told me he'd never felt very partisan about the Ashes,' Mori said last week, 'and wouldn't much mind if England took the series - because his mum had never claimed Aussie nationality and still carried a UK passport. My jaw hit the floor. I asked him, "Do you realise that may mean you're legally a Brit?" We both knew that the implications of that could be stunning.'

Despite the outcry over human rights abuses, Australia's right-wing government has raised no objections to Hicks's detention at Guantanamo, nor to his impending trial there next month before a military commission. Australia is the only EU or Commonwealth government not to have protested about Guantanamo.

Britain succeeded in having the last of the nine former UK prisoners returned home earlier this year and has repeatedly denounced the lack of legal protections at Guantanamo, and its proposed trial process.

In February 2004, Foreign Secretary Jack Straw said: 'The military commissions, as presently constituted, would not provide the type of process which we would afford British nationals... The detainees should either be tried in accordance with international standards or they should be returned to the UK.'

A few months later, Attorney-General Lord Goldsmith said: 'There are certain principles on which there can be no compromise. Fair trial is one of those - which is the reason we in the UK have been unable to accept that the US military tribunals proposed for those detained at Guantanamo offer sufficient guarantees of a fair trial in accordance with international standards.'

Hicks, 30, left school without qualifications and worked in the outback, where he met the mother of his children, a boy now 10 and a girl of 11. When the relationship broke down in the late Nineties, he moved to Japan and trained horses. In 1999 he watched TV reports about Serbian atrocities in Kosovo, and went to Albania to train with the Kosovo Liberation Army. On returning to Australia at the end of the war, Hicks converted to Islam.

In 1999 he went to Pakistan to further his religious studies. There, according to his Guantanamo charge sheet, he joined a Kashmiri separatist group and eventually travelled to Afghanistan.

The Americans allege he was 'seized on the battlefield' at the end of the campaign that toppled the Taliban after 9/11. But Hicks has told his lawyers and family he was captured, unarmed, while waiting at a taxi stand. The charges - almost identical to those faced by other British detainees - allege he was at al-Qaeda training camps.

Hicks says he has suffered physical and psychological abuse from his captors. In an affidavit last December, he said he had been beaten with fists and rifle butts while blindfolded, subjected to extreme cold and strobe lights, and 'had my head rammed into asphalt several times'.

Hicks's mother - who has asked not to be named - was born in Croydon in 1949 and his grandparents served in the British forces during the Second World War. Until 2002 only children of British fathers could apply to register as UK nationals, but the law was changed. Hicks did not know of the change - he was already at Guantanamo.

Major Mori submitted Hicks's application at the British embassy in Washington on 16 September. But despite the urgency of his situation - his trial is set to begin on or before 20 October - the government has yet to respond.

Michael Shwarz of Bindman & Partners, Hicks's London solicitor, said last night: 'David has an open-and-shut case, and we are extremely concerned about the UK authorities' apparent reticence to recognise his rights. In the absence of prompt and effective action by the UK government, David is exposed to continued brutal detention and a legal process which many, including the UK government, accept is fundamentally unfair.'

The Guantanamo military commissions obey none of the usual rules of evidence, and will admit confessions obtained under duress and classified material that the prisoner cannot see.

A Home Office spokeswoman said she could not comment on an individual case, but confirmed that the child of a British mother had an automatic right to register as a British national.