

Justice Being Detained

Brian Steketee

It is very reassuring to hear from Alexander Downer that there is no suggestion that David Hicks is suffering from mental illness. As we know, the Foreign Minister is not one to gild the lily. And the Howard government has always been keen to protect the rights of this Australian citizen. And pigs fly.

It turns out that Downer's diagnosis came courtesy of Scott Weinhold, the public affairs officer for the American Embassy in Canberra, who spent three minutes with Hicks last month. A more expert opinion came from a psychiatrist at Guantanamo Bay this week, and according to Downer he assessed his mental health as good. That, his American military lawyer Michael Mori says, was after a five minute interview where no notes were taken.

His Australian lawyer David McLeod has spent much longer with Hicks this week, long enough to notice that he looked dishevelled, with hollow eyes, and was suffering from serious depression. Perhaps he is exaggerating but that assessment would be more in line with the now extensive experience Australia has of what indefinite long term detention does to many people – it sends them mad.

Perhaps Hicks is every bit as bad a piece of work as the Government apparently believes. He himself has claimed to have been a member of the Taliban and to have trained with the Muslim terrorist group Lashkar-e-Toiba in Pakistan. He has expressed anti-Semitic sentiments. *The Australian's* Martin Chulov writes in his book ***Australian Jihad*** that Hicks met Osama bin Laden on eight occasions.

This makes it all the more remarkable that the Government has succeeded in turning him into a martyr in the eyes of many Australians. In a Newspoll survey for *The Australian* last month, 27% said they were in favour of the way the Government had handed the Hicks case, and 56% against. A few years ago, many Australians would have been battling to know who Hicks was, let alone have strong opinions about his treatment. That does not mean John Howard will be thrown out of office over the issue. But it does suggest that voters reject the Government's unstated attitude that he can rot in hell, with or without being charged.

Australians who only sporadically engage with political issues realize better than the Government that "innocent until proven guilty" is an important principle. Why do we go to war against nasty dictators who sweep aside the rule of law and jail people without trial if we are prepared to do the same ourselves? Just how useful is Howard's fervent friendship with George Bush if he is not prepared to insist, as Tony Blair did, that Guantanamo Bay

prisoners be brought home or that at least Hicks be charged and receive a fair trial within a reasonable period?

Hicks is now in his sixth year in detention. Even with earlier charges against him dropped after the US Supreme Court struck out the military commission due to hear them, that amounts to a case of justice delayed is justice denied. Belatedly, and because he wants to avoid the issue becoming a growing irritant in an election year, Howard has demanded the Americans lay charges by the middle of this month. Even if he were now to receive a fair trial – and that is open to question under the reconstituted military commission – many Australians would have difficulty accepting a guilty verdict.

Australians also have come to learn about the effects of indefinite mandatory detention. Voters strongly supported this policy in the name of border protection after we experienced a wave of boat people and went through September 11. There was little public sympathy for detainees who threw themselves into barbed wire and sewed their lips together. But as time went by, it became clear that these were more than instances of trouble-making and attention-seeking and were often a symptom of illness.

According to Barrister Claire O'Connor, who took action to obtain mental treatment for more than 10 asylum seekers, "many of the thousands who were processed in detention centres then granted protection and other visas from the late 1990's, will have ongoing mental health problems as a result of the way that Australia detained them while they were being processed." Psychiatrist Jon Jureidini told the Federal Court in 2005 that the Baxter Detention Centre in South Australia is "an environment almost designed to produce mental illness... There is a pervasive atmosphere of hopelessness." Mary Babanec, a former nurse in detentions centres, said in 2005 that over two years "I watched almost everybody demonstrate illnesses that were indicative of problems associated with long term incarceration".

One of O'Connor's clients was Abdul Hamidi, who was assessed by a psychologist in 2004 as requiring immediate hospitalization: "His stomach was so ribboned with scar tissue that he could no longer be stitched when he cut himself and he had to have sterile strips instead. ". O'Connor said: "Both arms had cuts from the armpit to the wrist and his neck was similarly scarred. He had tried to hang himself in detention, had swallowed shampoo on one occasion and had cut his feet". This was not enough evidence for the Immigration Department, which refused access to a psychiatrist.

O'Connor took the case to the Federal Court, where the Government finally agreed to the judge's request to allow a doctor to see him. Hamidi was diagnosed as depressed and suffering from a psychotic condition and spent seven months in a psychiatric hospital. Like most other asylum seekers he eventually was accepted as a genuine refugee and allowed to stay in Australia. More than two years later, he is still receiving psychiatric treatment and is on sickness benefits. Peter Qasim, who spent more than six

years in detention before his release, continues suffering illness and depression.

O'Connor also acted for three Iranian asylum seekers subsequently found to be refugees. In a judgement on their case in 2005 Justice Paul Finn of the Federal Court said the Government had shown "culpable neglect" in not providing adequate mental care. After being taken to court the following year, the Federal Government agreed to pay \$400,000 for the mental harm caused to Shayan Badraie who was five when he was sent to Woomera and seven by the time he left Sydney's Villawood detention centre. On top of the settlement, the Government spent about \$1.6 million fighting the case.

The numbers in detention centres have fallen greatly in recent years and the Human Rights and Equal Opportunity Commission last month praised the Immigration Department and private operators GSI for the improved conditions and attitude of staff. But, calling for the repeal of mandatory detention, it added that the fundamental problem had not changed: the length of detention and the uncertainty about how much longer it would last. "Discussions with mental health teams confirmed what is already well known: the uncertainty and length of detention inevitably leads to mental health problems."

At least the government now acknowledges this. It has set up an expert health advisory group for detention centres and it includes a mental health sub-committee chaired by NSW Institute of Psychiatry director Louise Newman, a strong critic of past policies. "We are looking at policies that mean vulnerable people are not held for long periods in detention," she said yesterday. "A lot of the trouble we saw before could have been avoided".

Newman sees a parallel between the treatment of asylum seekers, particularly those on Nauru, and the prisoners at Guantanamo Bay. She says she would find it improbable that Hicks was not suffering any mental health problems. Quite apart from psychological torture such as sleep deprivation used against him, "not many people are going to withstand conditions that make them feel cut off, hopeless and out of touch with reality, no matter how strong an individual they are."

If eventually found guilty after a proper trial, Hicks would not deserve much sympathy. But perhaps we could point out to our great mates the Americans that sending prisoners mad will not make it any easier to secure convictions.

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