



Incarceration Without Trial at Guantanamo Bay of David Hicks Statement by the Council of Australian Law Deans

The view of the Council of Australian Law Deans can be very simply stated. It is that it is unacceptable for anyone to be incarcerated for an indefinite period of time without having the opportunity to argue, before a competent and impartial tribunal that operates with fair procedures, that they should not be detained, or the opportunity to answer any charge that is laid against them. This principle is fundamental to the rule of law, and has manifestly failed to be observed in the Hicks case.

It is vital to understand that this has nothing to do with whether David Hicks is a good or bad person, or whether he might have committed a serious crime, or whether he might constitute a danger to society. There is a general principle here that transcends the position of David Hicks or of any other individual. No one should be locked away without some objective proof of their guilt or danger to society. David Hicks has been deprived of that principle for an unconscionably long period of five years.

Why is this important? If Hicks is a bad person, why does this matter?

There are two fundamental reasons. First, the rule of law is built on our faith in the better chance of open and fair procedures to produce right results than closed and secret systems that ask us to trust the decisions of faceless officials. The latter is not only highly susceptible to error but also capable of extraordinary abuse—even if those making the decisions are doing their best to do so in good faith. History demonstrates vividly that this is so in actuality, not just in theory.

Secondly, departures from the rule of law in the name of counter-terrorism ultimately undermine our efforts to establish the rule of law as a credible and compelling alternative to terror. This is demonstrated most obviously in the celebrated cases of prisoner abuse. Ultimately we can sell democracy and the rule of law to the world only by persuasive example, not by force. This requires universal standards, and is undermined by resort to the techniques of those whose tyranny and contempt for the rule of law we are trying to combat.

**Council of Australian Law Deans
June 2006**