

Defending The Despised

By Tony West

It's a time of national crisis: Americans fear attack from enemies lurking within their borders. With tensions running high, nine enemy combatants are entangled in an incident that leaves five Americans dead. The accused combatants are put on trial in an atmosphere inflamed with public outrage. Most favor execution with little or no due process. Who should represent these unpopular defendants?

Not some of America's best and brightest legal talent, according to Charles "Cully" Stimson, the Pentagon's senior official in charge of military detainees. In a recent interview, Stimson expressed his dismay that lawyers from many of the nation's top law firms will represent several detainees in upcoming military tribunals. After reading off the names of these law firms on the air, Stimson called the list "shocking" and suggested that the firms' corporate clients "make those law firms choose between representing terrorists or representing reputable firms."

What would Stimson say to John Adams? Founding Father, signer of the Declaration of Independence and our second president, Adams defended those nine enemy combatants, British redcoats, when they stood trial for firing on a crowd of unarmed Americans in 1770 in an incident now known as the Boston Massacre.

Although it nearly cost him his legal and political career, Adams later recalled that representing those soldiers was "one of the best pieces of service I ever rendered my country."

Our legal system depends on the willingness of talented attorneys to step out of their comfort zone and defend the most unpopular among us. This commitment to ensure meaningful representation for the despised is a defining element of our nation's unique character. When lawyers defend unpopular clients, they not only fulfill an ethical obligation but also breathe life into

core American values of justice, due process and the rule of law.

Often, such lawyers come from major law firms equipped with the resources necessary to mount vigorous defenses that hold the government accountable. In so doing, they help preserve the integrity of our criminal justice system. This is particularly true in times like these, when fear and crisis tempt us to seek safety in legal arrangements that are more expedient than just.

Courageous advocates can be found in more unlikely quarters, as well. Twenty-year U.S. Navy veteran

A Pentagon official is dismayed that lawyers from many of the nation's top law firms will represent detainees in upcoming military tribunals.

Lt. Cmdr. Charles Swift, a military defense attorney, was doing his duty when he was assigned to represent Osama bin Laden's driver, a Guantánamo Bay military detainee. What began as a fairly straightforward exercise in drafting a plea agreement led Swift to launch a series of groundbreaking legal challenges that ended with the U.S. Supreme Court ruling in *Hamdan v. Rumsfeld* that the Bush administration's military commission system, as constituted, was unlawful.

Two weeks after his Supreme Court victory, Swift learned that he had been passed over for a promotion, which, under the Navy's "up or out" policy, will end his military career this spring.

Representing individuals most of us would condemn is difficult because it often requires a normally risk-averse population — attorneys — to put themselves on the line. Unlike other service professions, such as physicians, the public associates advocates with their clients. The public opprobrium that comes with defending the unpopular often means careers, and sometimes even lives, are put in jeopardy.

And yet such representations bring into stark relief the principles that animate our system of justice. Although I and my law partners — James Brosnahan, George Harris and Raj Chatterjee — certainly received our fair share of hate mail and threats during our defense of John Walker Lindh, the first American citizen prosecuted in the war on



terrorism, we also received this poignant reminder: A retired military serviceman wrote to us and said he had served in combat abroad to protect a unique legal system that would ensure Lindh a vigorous defense and fair trial at home.

Part of what makes Stimson's comments so disturbing is that, as deputy assistant secretary of defense for detainee affairs, he is responsible, in part, for maintaining the integrity of a military tribunal system under fire for its lack of procedural protections. Stimson's "naming names" and encouraging corporate America to abandon law firms that represent detainees is a transparent attempt to question the patriotism of those firms — a modern-day blacklist, reminiscent of those inspired by Sen. Joseph McCarthy's infamous witch hunt for Communists a generation ago.

It would be a fitting irony if a new generation of law-school graduates and newly minted lawyers looked to that list as a guide to law firms that reflect the best traditions and most enduring values of the legal profession.

To their credit, senior government officials, including Attorney General Alberto Gonzales, reportedly have distanced themselves from Stimson's views. But such efforts may be too little, too late, because Stimson's comments ema-

nate from an approach practiced by this administration since the days following Sept. 11. It's an approach that rebuffs congressional inquiry seeking administration accountability, attacks judicial oversight attempting to maintain the rule of law and discourages dissent by warning, as former Attorney General John Ashcroft did in 2001, that those who question the administration's anti-terrorism reforms "aid terrorists" by attempting to "scare peace-loving people with phantoms of lost liberty."

In this context, Stimson's comments are unremarkable. It is also this context that makes the efforts of those lawyers willing to risk public disapproval so important in a democracy that lives by the rule of law.

This week, we celebrate the birth of Dr. Martin Luther King Jr. Among the many lessons he taught us was that, though the moral arc of the universe is long, it bends toward justice. Yet history's arc does not bend by accident. If justice is our destiny, it is only because there are those willing to stand up and speak out, even when — especially when — doing so is unpopular.

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