

# Pentagon official witch-hunts Guantánamo detainees' lawyers

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On January 13 the *New York Times* reported that the senior Pentagon official in charge of military detainees accused of terrorism, Charles D. Stimson, had publicly attacked lawyers representing prisoners at Guantánamo Bay, Cuba, saying he was dismayed that attorneys at many of the nation's top firms were representing "terrorists." He encouraged the firms' corporate clients to protest by taking their business elsewhere.

Channeling witch-hunter Joe McCarthy, Stimson, the deputy assistant secretary of defense for detainee affairs, read off the names of firms contracted to provide defense for detainees in an interview conducted by Federal News Radio, a Washington DC station with a regular audience of government employees. He went on to insinuate that some attorneys were receiving payment for their services, perhaps from dubious sources.

When the interviewer asked who was paying for the legal representation, Stimson replied, "It's not clear, is it? Some will maintain that they are doing it out of the goodness of their heart, that they're doing it pro bono, and I suspect they are; others are receiving moneys from who knows where, and I'd be curious to have them explain that."

He said further, "I think, quite honestly, when corporate CEOs see that those firms are representing the very terrorists who hit their bottom line back in 2001, those CEOs are going to make those law firms choose between representing terrorists or representing reputable firms, and I think that is going to have major play in the next few weeks. And we want to watch that play out."

Indicating the outcome he was aiming at, Stimson continued, "I think the news story that you're really going to start seeing in the next couple of weeks is this: As a result of a FOIA [Freedom of Information Act] request through a major news organization, somebody asked, 'Who are the lawyers around this country representing detainees down there?' and you know what, it's shocking." The FOIA request he referred to was one submitted by Monica Crowley, a right-wing radio talk show host who recently asked for the names of lawyers and firms representing detainees.

The comments elicited a quick reaction from lawyers, ethics experts and bar association officials, all identifying Stimson's attack as repugnant and ignorant of the core duty of lawyers to represent unpopular clients. The president of the American Bar Association, Karen Mathis, issued a statement condemning Stimson's comments: "Lawyers represent people in criminal cases to fulfill a core American value: the treatment of all people equally

before the law. To impugn those who are doing this critical work is deeply offensive to members of the legal profession, and we hope to all Americans."

David J. Cynamon, a partner at Pillsbury Winthrop Shaw Pittman, who is representing Kuwaiti detainees held at Guantánamo, told the *Jurist*, "It is truly incredible that Stimson, an attorney himself, does not appear to understand or care about the fundamental obligation of lawyers to represent unpopular and indigent clients."

Stephen Gillers, a law professor at New York University told the *New York Times*, "It's possible that lawyers willing to undertake what has been long viewed as an admirable chore will decline to do so for fear of antagonizing important clients . . . We have a senior government official suggesting that representing these people somehow compromises American interests, and he even names the firms, giving a target to corporate America."

The day following Stimson's outburst, Robert C. Pollock, a member of the *Wall Street Journal's* editorial board, launched a similar assault against Guantánamo defense attorneys on the *Journal's* editorial page, also citing law firms by name and quoting an unnamed "senior U.S. official," (presumably Stimson) as saying, "Corporate CEOs seeing this should ask firms to choose between lucrative retainers and representing terrorists."

Stimson's comments come days after the five-year anniversary of the opening of the notorious detention center at Guantánamo Bay. Since its establishment, Guantánamo has held some 770 prisoners, only 10 of whom have ever been charged. The camp—a link in the chain of illegal US internment camps throughout the world, from Abu Ghraib to the secret dungeons scattered throughout Europe and the Middle East—has been used to detain, abuse and torture captives deprived of all legal rights.

Earlier this month, the American Civil Liberties Union (ACLU) made a public information request which revealed that FBI agents working at the US detention center at Guantánamo Bay reported numerous instances of military personnel and contractors using abusive interrogation tactics akin to those utilized at Abu Ghraib, including wrapping a detainee's head in duct tape and a female guard wiping menstrual blood on a detainee's face. Generally, the report confirms that detainees have been exposed to a combination of extreme mental and physical abuse for years.

Based on the reports, Anthony Romero, the ACLU's executive director concluded, "Despite the government's statements, there seems to be increasingly little doubt that torture is occurring at

Guantánamo.”

Stimson’s remarks were so crude and flagrant in their contempt for due process and democratic rights that they came under attack from elements of the political establishment itself. Such views do not improve the much-tarnished image of the US government around the world. Perhaps more importantly, the comments were directed against major corporate law firms with powerful corporate clients; these are not people to be trifled with in such a light-minded fashion.

Pennsylvania Republican Senator Arlen Specter condemned Stimson’s comments and Democrat Senator Patrick Leahy of Vermont, chairman of the Judiciary Committee, wrote to President George W. Bush asking him to disclaim Stimson’s remarks. However, the government did not condemn or even seriously distance itself from the comments until January 17, when Stimson made an unconvincing apology.

In a letter to the editor of the *Washington Post*, Stimson—a former prosecutor and defense attorney—finally accepted the right of the accused to have competent counsel. He also said, “Regrettably, my comments left the impression that I question the integrity of those engaged in the zealous defense of detainees in Guantánamo. I do not.” Was there any other possible interpretation of his statement?

His apology was followed by Pentagon spokesman Bryan Whitman’s statement that Stimson’s remarks, “do not reflect the department’s position, nor are they the views of the senior leadership.” Stimson, as a deputy assistant secretary of defense, is of course a part of that senior leadership.

The *Times* asked US Attorney General Alberto R. Gonzales about Stimson’s comments on January 19; he indicated he had “no problem” with the current system of representation. Gonzales blandly commented, “Good lawyers representing the detainees is the best way to ensure that justice is done in these cases.”

However, Gonzales, in an interview with the Associated Press, indirectly supported Stimson’s initial comments by complaining that the numerous challenges brought by defense attorneys for detainees—several of whom will be facing the possibility of the death penalty next month, according to the *Military Press Service*—have delayed trials for their clients at Guantánamo Bay. He later told the *Washington Post* that his remarks were “not intended as criticism of defense attorneys doing their jobs” but were “a statement of reality.” He told the *Post*, “We had to fight many legal battles to get where we are today.”

Officials at the Center for Constitutional Rights rejected Gonzales’s comments. “The only delay in charging, trying or releasing detainees has been by the Bush administration. To suggest that the legal challenges are what have prevented the detainees from seeing justice is really through the looking glass,” said CCR Executive Director Vincent Warren. “We have been trying for five years to get their cases heard in federal court, and the Bush administration has continued to try to circumvent two Supreme Court rulings and do everything in its power to keep the men at Guantánamo from challenging their detention. Only 10 of the 775 men who have been imprisoned at Guantánamo have even been designated for the military commissions, which are a sham tribunal to begin with.”

Indeed, the Bush administration has worked diligently to keep the light of day from entering its torture chambers. The administration insisted for years that the detainees at Guantánamo had no right to challenge their confinement in a US court. Instead, administration attorneys, such as Gonzales and University of California Berkeley law professor John Yoo, created a new form of court trial which countenances torture, keeps information and even charges secret from the accused and his attorney, removes the right to confront opposing witnesses, permits hearsay evidence, prevents the invocation of the Geneva conventions and even the venerable right to challenge one’s detention and reserves the power to sentence the accused to death. Congress—with key support from Democrats—legalized the new trial procedure in the Military Commissions Act of 2006.

The Act was passed in October and this month Stimson told *military.com* that a manual to govern the trials will be released mid-month with trials resuming in February, giving more civilian attorneys access to the detention center and its inhabitants.

The Military Commissions Act sets stringent standards for civilian defense counsel. Section 949b requires that defense counsel be of good professional character free of all allegations of prior misconduct. Moreover, defense attorneys must be US citizens who have been, “determined to be eligible for access to classified information that is classified at the level secret or higher, and has signed a written agreement to comply with all applicable regulations.” Furthermore, if a detainee chooses to be represented by civilian counsel, he must accept a “detailed” military attorney, provided by the government, as associate counsel.

A US Navy lawyer, Stimson knows perfectly well that the treatment of detainees represents a massive violation of the standards of a “fair trial” developed over nearly a thousand years of legal precedent. He is also aware of the basic protections of the Geneva Conventions, which clearly prohibit violence, torture and humiliating treatment of combatants. In fact, Stimson’s lead position at the Guantánamo Bay facility implicates him in widespread abuse and torture.

His attempt to “terror-bait” attorneys loyal to the United States government reflects the level of desperation within the Bush administration, determined to cover up its innumerable crimes and aware of the hatred felt towards it by growing sections of the population.

There is no indication that Stimson will be removed for his comments or disciplined in any fashion. His remarks express the real attitude of those running Guantánamo toward the detainees and democratic rights. And that attitude is translated daily into practices that are barred by international law and considered inhumane and barbaric by what might rightly—as distinct from Bush’s usage—be called the civilized world.



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