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January 17, 2007

**Worldview Commentary No. 253 on Chicago Public Radio, 91.5 FM WBEZ**

*“Guantanamo Prisoners: ‘First, Let’s Punish All the Lawyers’”*

Every so often a public servant makes a statement so foolish that it deserves to be recorded in the annals of American idiocy. My personal favorite is the former Virginia congressman who once called a press conference to announce that he was *not* one of the ten dumbest members of Congress.

Now the deputy assistant secretary of defense for detainee affairs, one Charles Stimson, has entered the competition. Mr. Stimson, a lawyer, is the Pentagon official in charge of our prisoners at Guantanamo. In a radio interview last week, he observed that many lawyers who represent those prisoners in court challenges of their imprisonment, come from leading law firms which also represent major American businesses.

So far, so good. But then Mr. Stimson made his bid for immortality: when corporate Chief Executive Officers find this out, he opined, “those C.E.O.’s are going to make those law firms choose between representing terrorists or representing reputable firms.”

This statement is so boneheaded that one hardly knows where to begin. What about the presumption of innocence? Did Mr. Stimson forget that, until they are convicted in a fair trial, prisoners at Guantanamo are *alleged* terrorists? Surely he knows that hundreds of them, after protesting their innocence, have been set free. Must law firms choose between representing *innocent* people or representing business clients?

And what of the ethical obligations of lawyers? Mr. Stimson must have dozed through the law school class where they teach that in our system, even the most unpopular prisoner, accused of the most awful crime, is entitled to a proper legal defense.

In fact, the representation of prisoners at Guantanamo by lawyers from many of our leading firms is a proud moment in the history of the legal profession.

One large firm began even before the Pentagon allowed prisoners at Guantanamo to see lawyers. For over two years after prisoners first arrived there in 2002, the government’s position was that they had no legal rights, and therefore no need for lawyers. Not even the courts, argued the Bush Administration, could hear pleas from the prisoners.

The firm of Shearman and Sterling, which represents the government of Kuwait along with a host of Fortune 500 companies, took on the cases of families of Kuwaiti prisoners at Guantanamo in challenging the government’s position. The Shearman team was led by partner Tom Wilner, one of the most talented and principled lawyers I have ever met.

In tandem with lawyers from the Center for Constitutional Rights in New York, the Shearman lawyers worked courageously and effectively on behalf of their clients. They donated what little fees they received to charities for victims of the 9/11 terrorist attack.

Other leading firms agreed to represent *amici curiae* – such as former federal judges, former US diplomats, and former top military lawyers – in filing friend-of-the-court briefs in support of the prisoners' case. It was my happy task to recruit some of those law firms. Major Chicago firms like Jenner & Block, Mayer Brown Rowe and Mawe, and Schiff Hardin and Waite were among the first to say, yes.

I never felt prouder to be a lawyer. Unlike Mr. Stimson, those lawyers understood – and argued before the Supreme Court – that what was really at stake was the rule of law. If the government can imprison hundreds of people for years on end, with no access to lawyers or courts, we are at the mercy of men and women, not laws.

In June 2004 the Supreme Court ruled in *Rasul v. Bush* that our courts do have jurisdiction to hear *habeas corpus* petitions by prisoners at Guantanamo alleging that they are unlawfully detained.

From then on many more lawyers – some 500 lawyers from 120 firms – joined in the defense of the prisoners, still underway despite severe legislative restrictions. So far as I know, none has received a dime for this time-consuming and expensive work. Unlike Mr. Stimson, our legal profession understands the importance of the rule of law, not only to our system but to our standing in the world.

Stimson's foolish remark – which would be dangerous if it were taken seriously – has now been repudiated by newspaper editorials, members of Congress and the President of the American Bar Association. Without directly criticizing him, Attorney General Alberto Gonzales has commented, "Good lawyers representing the detainees is the best way to assure that justice is done."

Through its press spokesman, a lowly Lieutenant Colonel, the Pentagon has commented that Stimson's views do not represent those of the Department of Defense.

That is not enough. No one with Stimson's misapprehension of our legal system should be in charge of the legal rights of prisoners. Surely the Pentagon can find other posts for which he is more qualified.

And surely the Secretary of Defense – and, better yet, the President -- can rise to the challenge of not only repudiating Stimson's implied threat, but reaffirming our country's commitment to ensuring a proper defense for those we accuse – sometimes wrongly -- of heinous crimes.

**Doug Cassel's commentaries are generally broadcast Wednesdays during the noon hour of the Worldview program on Chicago Public Radio, 91.5 FM, and rebroadcast at 9 PM in the evening. Views expressed are personal views of the author and not necessarily those of Notre Dame Law School, the Center for Civil and Human Rights or Chicago Public Radio.**