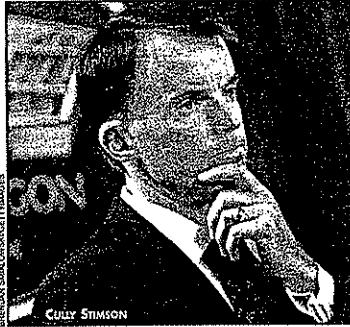


## Risky Business



DEBISHION SHAW LOWERY SITTIG & BATES

## Unintended Consequences

Remarks on detainees cement bond between firms and corporate clients.

By ANNA PALMER

It's a rare day when law firms get called out for their pro bono work.

But that's exactly what happened when Pentagon official Charles "Cully" Stimson rattled off a list of firms representing Guantánamo Bay detainees—such as Mayer, Brown, Rowe & Maw; Jenner & Block; WilmerHale; and Covington & Burling—predicting that businesses would shun their outside counsel for making the companies foot terrorists' legal bills.

"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," said Stimson in an interview with Federal News Radio Jan. 11.

And it has played out, but not in quite the way Stimson expected. Instead of Fortune 500 companies such as Microsoft, DaimlerChrysler,

■ Theodore Olson and Neal Katyal agree: We need the best lawyers. **Points of View, Page 78**

SEE **DETAINÉES**, PAGE 14

## Corporations Decry Official's Detainee Screed

DETAINÉES, FROM PAGE 1

and Pfizer dumping their outside counsel in a fit of political protest, firms have largely gotten support from corporate America and from within their partnership ranks.

"Pro bono service and the rule of law are great traditions in the American legal profession, and we at GE have no intention of—and strongly disagree with the suggestion of in any way—discriminating against law firms that represent us on the basis of the pro bono, charitable, or public service that the lawyers in those firms choose to engage in," Brackett Denniston, senior vice president and general counsel at General Electric, said in a statement. Jenner & Block and Covington, two firms involved in representing detainees, have done legal work for GE.

GE's not alone in its position. "I intend to continue to use the firms that regularly represent us. The fact that they engage in pro bono work or work for other clients that I don't necessarily

others, have refuted the position that detainees should not have well-equipped legal counsel.

"His egregious comments gave us a great educational moment," says Karen Mathis, president of the ABA. "Every accused person should receive adequate legal representation, and it's encourag-

ing to see that his comments were universally rejected."

### AN ALL-VOLUNTEER ARMY

Large law firms haven't always been so passionate about representing accused terrorists. Shortly after Sept. 11, 2001, when President George W. Bush announced that

detainees could be held indefinitely in Guantánamo Bay, Cuba, and would be tried by military commissions, Center for Constitutional Rights President Michael Rattner got together a small group of lawyers to take on the case of Australian detainee David Hicks. The lawyers mostly

SEE **DETAINÉES**, PAGE 15

## For Detainees, a Load of Legal Firepower

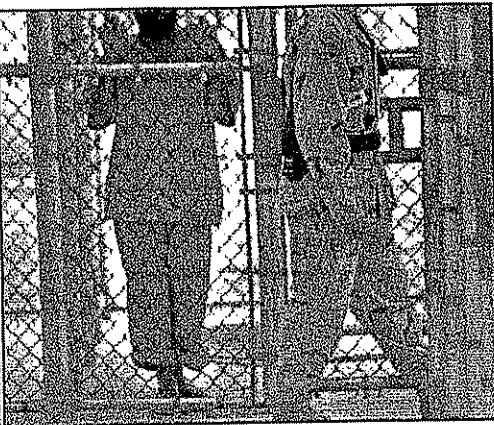
A Pentagon official's claim that corporate America is paying for detainees' legal teams is true—technically. Fees from corporate clients go into general revenues that are used to cover pro bono expenses. Below are some firms and the clients they've handled.

Firm	Representations	Guantánamo Detainee Attorney
Alston & Bird	Boeing, Pfizer, Dow Chemical Co.	Jonathan Fee, a D.C.-based international trade and regulatory partner who focuses on importers' U.S. customs issues
Covington & Burling	United Technologies Corp., General Electric, JPMorgan Chase & Co.	David Remes, D.C.-based partner who has represented the PhRMA and the National Football League
Debevoise & Plimpton	Carlyle Group, Verizon Communications	Jeffrey Lang, New York-based litigation counsel focusing on securities transactions, M&A, and complex commercial disputes
Heller Ehrman	BP, Microsoft, Visa	Kit Pierson, D.C.-based partner, outside counsel to American Psychological Association and Microsoft in antitrust litigation
Hunton & Williams	General Dynamics, Altria, Bank of America	Steven Valerio, L.A.-based partner who represented legal historians as amici in <i>Hamdan v. Rumsfeld</i>
Jenner & Block	General Electric, Lockheed Martin, General Dynamics	Jeffrey Coleman, a Chicago-based litigation partner and fellow of the American College of Trial Lawyers
Mayer, Brown, Rowe & Maw	U.S. Chamber of Commerce, AT&T, Dow Chemical Co.	Gary Isaac, Chicago-based counsel who has represented Union Carbide Corp. and Dow Chemical Co.
Perkins Coie	Boeing, Northrop Grumman, Honeywell International	Harry Schneider, Seattle-based partner who is on firmwide management and executive committee
Pillsbury Winthrop Shaw Pittman	Morgan Stanley, DirecTV, McKesson	David Cynamon, Washington-based partner with more than 30 years of experience in complex civil and appellate litigation
Shearman & Sterling	DaimlerChrysler, Goldman Sachs Group	Thomas Wilner, Washington-based partner and head of international trade and government relations practice
Sullivan & Cromwell	AT&T, Goldman Sachs Group, Securities Industry Association	Michael Cooper, New York-based counsel, former litigation partner, and past president of the New York Bar Association
Sutherland Asbill & Brennan	Ford Motor Co., Procter & Gamble, Archer Daniels Midland	John Chandler, Atlanta-based partner and chair of litigation practice who has represented all Big Four accounting firms
Weil, Gotshal & Manges	General Motors, General Electric, CBS	Anant Raut, Washington-based associate who is a cooperating attorney with the Center for Constitutional Rights
WilmerHale	Morgan Stanley, Boeing, Verizon Communications	Stephen Olesky, Boston-based litigation and real estate partner who has represented Monsanto Co. and Sears, Roebuck
Venable	Marriott International, Lockheed Martin	Carol Elder Bruce, Washington-based partner and former assistant U.S. attorney for the District of Columbia

"I think [Cully Stimson] just doesn't understand the economics of law firms," says James Jones, a former managing partner at Arnold & Porter who is now a legal consultant.

agree with doesn't affect my decision," says William Barr, general counsel of Verizon Communications and former attorney general under President George H.W. Bush. Debevoise & Plimpton and WilmerHale have both represented Verizon and are active in representing detainees.

Since his initial comments, Stimson has apologized; the Defense Department, the Bush administration, and Attorney General Alberto Gonzales have distanced themselves from him; and conservative, liberal, and nonpartisan groups including the Center for Constitutional Rights, the American Bar Association, and the National Lawyers Guild, among



**CALL TO ARMS:** More than 500 lawyers signed up to represent Guantánamo Bay detainees seeking to file habeas petitions.

#### DETAINEES, FROM PAGE 14

specialized in death-penalty cases, with one exception: Thomas Wilner, a partner at white-shoe firm Shearman & Sterling, who was representing 12 Kuwaitis detained at Guantánamo.

The public's reaction to lawyers representing detainees was less than enthusiastic: In 2002, the center received more than 300 pieces of hate mail.

But Rattner and the other lawyers, including Theodore Shaw from the NAACP Legal Defense and Education Fund and Joseph Margulies, soldiered on, and by June 2004 the U.S. Supreme Court had ruled in *Rasul v. Bush* that detainees who had not been formally charged could bring habeas corpus petitions.

"Within days, we decided the best strategy was to get as many habeas petitions filed as possible," says Rattner.

Rattner started calling law firms and other lawyer associations, such as the American College of Trial Lawyers, to organize legal counsel for detainees. The response was overwhelming: The trial lawyers alone placed about 75 detainees with outside legal counsel even after warning lawyers of the financial cost. The group estimated that each case would cost at least \$10,000 in out-of-pocket expenses, says Dennis Suplee, former chairman of Philadelphia-based Schnader Harrison Segal & Lewis.

"We just wanted to make sure people knew what they were getting into," says Suplee.

Since the initial call for counsel, there have been at least 500 lawyers from more than 120 corporate law firms that have gotten involved, including Venable; Weil, Gotshal & Manges; Alston & Bird; and Perkins Coie.

Although almost 380 detainees have been released, there are nearly 400 detainees suspected of links to al Qaeda and the Taliban that are still at Guantánamo Bay. The Pentagon has charged at least 10 suspects with war crimes.

Despite Stimson's comments that firms would see a backlash for representing detainees, firms such as WilmerHale and Heller Ehrman say they have not gotten negative feedback from clients.

"All the reaction we've had from our clients have been very supportive of the representation that we've undertaken," says William Perlstein, co-managing partner of WilmerHale. The firm is representing six Bosnian detainees.

One of Stimson's central arguments was that corporations hit by Sept. 11 were, in effect, paying for the legal bills of detainees. Although firms acknowledge that expenses for pro bono cases come out of their general operating budget, they contend that fees are negotiated with

clients up front, and how the firms choose to spend the money thereafter is their own decision.

"I think he just doesn't understand the economics of law firms," says James Jones, a former managing partner at Arnold & Porter who is a consultant with Hildebrandt International. "Clients are paying lawyers' fees determined by the market, and they are getting, presumably, value for the money they are paying."

This isn't the first time a law firm has struggled with or been taken to task for having controversial clients. During World War II,

lawyers wrestled with a call from the federal government and the American Bar Association asking American attorneys to represent internees of Japanese ancestry. More recently, D.C.-based Arent Fox struggled in 1997 over whether the firm should represent a European insurance company being sued by Holocaust survivors.

"Usually, our partners have the discretion to work on any matter they want to work on, be it a conservative political issue [or] liberal. As long as it's not a conflict, we don't tend to stop them from doing it," says Marc Fleischaker, chairman of Arent Fox.

During the 1997 controversy, Fleischaker says, the firm, which has long represented the U.S. Holocaust Memorial Museum, had an open meeting with partners on both sides of the issue debating whether to take on the client. Ultimately, the firm decided not to represent the insurance company.

The decision for many of the firms involved in the detainee representation wasn't as controversial. WilmerHale; Mayer, Brown; and Heller Ehrman used the firms' regular process of checking conflicts with other clients and having management sign off on detainee cases, but didn't check with clients or have an all-partner vote before deciding to take the cases.

"We don't have any policy against taking controversial matters or taking unpopular clients; it's part of what we do as lawyers," says Kit Pierson, head of Heller Ehrman's pro bono practice, who has been representing eight detainees. "We view that as part of our mission as lawyers and pretty fundamental to the system of justice."

Anna Palmer can be contacted at [apalmer@alm.com](mailto:apalmer@alm.com).