

San Francisco Bar Wants Probe of Pentagon Lawyer

By Carol Rosenberg

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The San Francisco Bar Association is asking its state bar to conduct a formal disciplinary investigation of a senior Pentagon official who cast fellow lawyers as dishonorable for offering free-of-charge legal service to U.S.-held captives at Guantanamo Bay, Cuba.

It's the latest twist in an uproar roiling national legal circles over a deputy assistant secretary of defense's broadcast call Jan. 11 for corporate America to boycott law firms that defend Guantanamo captives.

Since then, the Pentagon has renounced the remarks of the deputy, attorney Charles "Cully" Stimson, who has in turn released a brief apology.

But the board of directors of the 8,000-attorney San Francisco bar voted Wednesday night to ask the California Bar to conduct an investigation into whether Stimson, an inactive member, acted unethically. It asks that, if conclusive, he "be disciplined appropriately, up to and including disbarment."

A spokeswoman for the California Bar said all complaints are investigated; discipline is rare.

In 2005, according to a bar report, it conducted 9,962 inquiries, which resulted in 283 resignations and 30 individuals being disbarred.

Still, Miami defense lawyer Neal Sonnett said, the San Francisco action illustrates that anger over Stimson's remarks has not abated.

His remarks and Guantanamo will be the subjects of multiple resolutions at the Feb. 8-10 national meeting of the American Bar Association, in downtown Miami, Sonnett said.

"What Stimson has done, perhaps to his everlasting regret, is focus attention on all the problems surrounding the Guantanamo legal issues," said Sonnett, who was an ABA observer at an earlier Guantanamo war court.

Sonnett listed attorney access, habeas corpus, the coming Military Commissions among the issues -- saying "all of these now are being talked about now a lot more on The Hill and elsewhere as a result of the anger over Stimson's remarks, particularly because he's in charge of detainee affairs."

At issue is whether Stimson was unethical in using a radio interview aimed at federal employees to recite a list of leading law firms who let lawyers defend detainees -- and said corporate executives "are going to make those law firms choose between representing terrorists or representing reputable firms."

Legal groups and some newspaper editorials swiftly condemned the comments as at odds with the bedrock American principle of free or pro-bono representation.

Six days later, Stimson apologized in a three-paragraph letter to The Washington Post, renouncing his own remarks as at odds with his "core values."

He never explained the first statement, or why the retreat -- and some newspaper editorials and legal groups have rejected the apology.

Friday, Navy Cmdr. Jeffrey Gordon said the Pentagon had nothing more to say on the episode -- and offered no response to the California Bar challenge.

San Francisco Bar President Nanci Clarence said Friday that the board asked for the disciplinary investigation by "an overwhelming majority."

The board includes attorneys whose firms offer pro-bono business at Guantanamo, and were singled out by Stimson in his Federal News Radio broadcast.

"By essentially calling for an economic embargo of the lawyers involved in the cases," said Clarence, "we think an official in his position is coercing lawyers to either avoid or not participate in the defense of the powerless and the poor."

"And that's absolutely antithetical to the ethical rules that govern this profession."

Legal circles don't agree on whether the remark constituted an ethical breach.

Harvard law professor Alan Dershowitz, for example, wrote to The New York Times after Stimson's apology that, as a lawyer, Stimson was free to articulate an unpopular opinion "without fear of bar discipline."

But, Dershowitz continued, "as a senior Pentagon official, a purported representative of the

United States government, he should be fired if his views do not reflect that of the government, as I surely hope they do not."

Yale law professor Judith Resnik countered that the issue had to be analyzed through a constellation that includes Stimson's powerful position, overseeing detainee affairs; his remarks and his status as an attorney.

"The bedrock principle is everybody gets a lawyer by their side when the state is about to take their liberty, life, property," she said. "I believe that in this context it is fair to describe what he did as unethical."

Stimson, a former federal prosecutor, has active membership, in good standing, in the Maryland Bar. He joined Sept. 17, 1992, and has never been disciplined there, according to the Maryland Bar's public information phone service.

The Attorney Grievance Commission there said it does not disclose ongoing investigations; so it was not possible to know whether fellow Maryland attorneys had sought a similar inquiry on the East Coast.

In his Jan. 17 apology, Stimson said he has been a defense lawyer and had in the past "zealously represented unpopular clients" and "I support pro bono work."

The Pentagon has consistently declined to elaborate.

And the apology has stirred even more anger in some circles.

. The New York Times said he failed in his bid "to spin his way out of his loathsome attempt to punish lawyers who represent inmates of the Guantnamo Bay internment camp."

. The Daily News of New York ran a column under the headline, "FLUNKY'S APOLOGY IS A SORRY EXCUSE."

. Chicago Rep. Jan Schakowsky, D-Ill., wrote President Bush, asking that he fire him; The White House has not yet responded, her office said.

. Eugene Fidell, president of the National Institute of Military Justice, called the apology "deeply inadequate" and his radio remarks a possible violation of the Military Commissions Act's provision protecting defense lawyers' independence.