March 8, 2010

EDITORIAL

**Are You or Have You Ever Been a Lawyer?**

In the McCarthy era, demagogues on the right smeared loyal Americans as disloyal and charged that the government was being undermined from within.

In this era, demagogues on the right are smearing loyal Americans as disloyal and charging that the government is being undermined from within.

These voices — often heard on Fox News — are going after Justice Department lawyers who represented Guantánamo detainees when they were in private practice. It is not nearly enough to say that these lawyers did nothing wrong. In fact, they upheld the highest standards of their profession and advanced the cause of democratic justice. The Justice Department is right to stand up to this ugly bullying.

Senator Charles Grassley, Republican of Iowa, has been pressing Attorney General Eric Holder Jr. since November to reveal the names of lawyers on his staff who have done legal work for Guantánamo detainees. The Justice Department said last month that there were nine political appointees who had represented the detainees in challenges to their confinement. The department said that they were following all of the relevant conflict-of-interest rules. It later confirmed their names when Fox News figured out who they were.

It did not take long for the lawyers to become a conservative target, branded the “Gitmo 9” by a group called Keep America Safe, run by Liz Cheney, daughter of former Vice President Dick Cheney, and William Kristol, a conservative activist (who wrote a Times Op-Ed column in 2008). The group released a video that asks, in sinister tones, “Whose values do they share?”

On Fox News, Ms. Cheney lashed out at lawyers who “voluntarily represented terrorists.” She said it was important to look at who these terrorists are, including Salim Ahmed Hamdan, who had served as Osama bin Laden’s driver. Let’s do that.

Mr. Hamdan was the subject of a legal battle that went all the way to the Supreme Court. Ms. Cheney conveniently omitted that the court ruled in favor of his claim that the military commissions system being used to try detainees like him was illegal. Republican senators then sponsored legislation to fix the tribunals. They did not do the job well, but the issue might never have arisen without the lawyers who argued on behalf of Mr. Hamdan, some of whom wore military uniforms.

In order to attack the government lawyers, Ms. Cheney and other critics have to twist the role of lawyers in the justice system. In representing Guantánamo detainees, they were in no way advocating for terrorism. They were ensuring that deeply disliked individuals were able to make their case in court, even ones charged with heinous acts — and that the Constitution was defended.

It is not the first time that the right has tried to distract Americans from the real issues surrounding...
detention policy by attacking lawyers. Charles Stimson, the deputy assistant secretary of defense for detainee affairs under George W. Bush, urged corporations not to do business with leading law firms that were defending Guantánamo detainees. He resigned soon after that.

If lawyers who take on controversial causes are demonized with impunity, it will be difficult for unpopular people to get legal representation — and constitutional rights that protect all Americans will be weakened. That is a high price to pay for scoring cheap political points.