

Friday, October 13, 2006

### **U.S. military signals its criminal defense lawyers to pretend to defend.**

JAG lawyer Charles D. Swift did a spectacular job in convincing the United States Supreme Court to reject the Guantanamo military commission tribunals. (See also here how "The Bush administration's denial of basic trial rights to Guantanamo inmates reveals the government's charade in claiming to fight for freedom" and here about Congress's denial of habeas corpus rights to suspected enemy combatants). Unfortunately, Mr. Swift's summertime premonition that he would be squeezed out of the military came true this week. Ever the gentleman more than necessary, Mr. Swift continues having no negative words about his expulsion from the military, an expulsion that sends the wrong message to the remaining and future military criminal defense lawyers that their jobs can be jeopardized by following their obligation under lawyer's ethical rules to zealously defend their clients. National Institute of Military Justice president Eugene Fidell is quoted as saying that Mr. Swift was "a no-brainer for promotion," and that "it's too bad that [Swift's love of the Navy is] unrequited love." I know and respect Gene Fidell very much, going back to the early nineties, when we both served on the local ACLU board. I doubt he was trying to be polite to the military; perhaps he felt it was unnecessary for him to tell people what was so obvious, which is that the military acted despicably in expelling Mr. Swift, particularly when doing so just four months after the Supreme Court handed Mr. Swift its spectacular Hamdan decision. Kudos to the New York Times for taking the kid gloves off, and confirming: "The Navy gave no reason for refusing Commander Swift's promotion. But there is no denying the chilling message it sends to remaining military lawyers about the potential consequences of taking their job, and justice, seriously." Beware, military members risking your lives as part of your jobs. This is the same military criminal defense system that will represent you in criminal court if you are unable to afford a retained lawyer. Jon Katz. ADDENDUM (October 21, 2006): See and hear this revealing story by Nina Totenberg about the military's termination of Charles Swift, the military's wrongheaded policy of rewarding legal generalists with promotion and penalizing lawyers of Mr. Swift's caliber with expulsion, and Mr. Swift's remaining a gentleman to the end (staying a gentleman does not necessitate being a sycophant nor a weakling, and is in line with successful and powerful t'ai chi practitioners). By the way, Nina Totenberg is a powerhouse of a journalist. I have briefly spoken with her twice over the span of nineteen years. She is thoroughly dedicated to excellent journalism.

Posted by Jon Katz in Criminal Defense at 00:00