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Punishing the Pro Bonos

By Hernán D. Vera

It's getting ugly out there. If you think that Southern California lawyers are immune from personal attacks for providing *pro bono* services to unpopular clients, think again.

Several weeks ago, the city of Santa Clarita held a special public forum on immigration. The city invited Judy London, the Directing Attorney of Public Counsel's Immigrants' Rights' Project, to speak for the purpose of educating the public about our immigration laws. After London provided an objective and dispassionate analysis, a resident loudly called for her immediate indictment, prosecution and incarceration for having the temerity to provide legal assistance to "illegals." The city council did nothing to quell such outrageous remarks, and to the contrary, added fuel to the fire through some immigrant-bashing of its own. Councilman Bob Kellar told the crowd that "illegals" have no constitutional rights to be protected. The sheriffs on hand at the hearing provided London with safe escort to her car out of concern for her safety.

The practice of attacking *pro bono* attorneys for the perceived sins of their clients is nothing new. Recall the ugly criticism of the Bush administration's deputy assistant secretary of defense for detainee affairs, Cully Stimson, who in a Jan. 11, 2007 radio interview called into question the patriotism of the many private law firms providing *pro bono* representation to the detainees at Guantanamo. Stimson speculated that the law firms' corporate clients would react poorly to the knowledge that their outside counsel were engaging in this work: "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."

All attorneys should come together to oppose unequivocally any effort to criminalize, intimidate, or delegitimize the legal representation of individuals or groups considered unpopular - especially *pro bono* efforts to increase access to justice for marginalized clients.

The reaction was exactly the opposite. The Association of Corporate Counsel and many others sent letters condemning Stimson's attack, and pledged their strong support for *pro bono* efforts aimed at increasing access to justice.

But the accusations continued. In 2009, Liz Cheney and others ran a series of nasty ads aimed at smearing the so-called "Al Qaeda Seven" - current Department of Justice officials who had previously participated in representing Guantanamo detainees. Again, the criticism drew strong rebukes from all quarters, including letters from many top Bush administration officials.

And now, a new line of attack has opened up, but this time in Congress. On May 28, 2010, the U.S. House of Representatives passed the National Defense Authorization Act for Fiscal Year 2011. Section 1037 of the bill instructs the Department of Defense Inspector General to investigate attorneys representing Guantanamo detainees (military or civilian) for whom there is a "reasonable suspicion" that such lawyers have engaged in any conduct or practice that interferes with the operations at Guantanamo, violated any applicable Department of Defense policy, violated any law within the Inspector General's exclusive jurisdiction, or generated any "material risk to a member of the U.S. Armed Forces."

Bar leaders around the country are lining up in opposition. The New York State Bar Association has

warned that the language will have a "chilling effect" on lawyers' ability to provide effective and zealous advocacy to their Guantanamo clients. The President of the American Bar Association, Carolyn Lamm, wrote a letter to Senate Armed Services Committee Chairman Carl Levin and Minority Chairman John McCain stating that the bill would "compromise the professional independence of counsel and divert already starved defense resources from defending clients to defending the conduct, practices, actions and strategies of their lawyers." *Pro bono* lawyers are rightly concerned with the bill's broad language, since no one knows what arguments, tactics, or practice may be considered to "interfere with the operations of Guantanamo."

Other controversial bills create similar perils. SB 1070, the divisive Arizona statute that instructs local law enforcement to detain and arrest all persons suspected of being undocumented, has also raised concerns about the possible chilling effect on attorneys (among its many other constitutional defects). Section 13-2929 of the Arizona law makes it a Class 1 misdemeanor for a person who is committing another offense (like speeding) to: "Transport or move or attempt to transport or move an alien in this state...if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law." On its face, this provision would prohibit a *pro bono* attorney from driving her undocumented client to the courthouse, to a meeting, or any other destination required for effective representation.

Whatever your view on the immigration debate or the conditions at Guantanamo, all attorneys should come together to oppose unequivocally any effort to criminalize, intimidate, or delegitimize the legal representation of individuals or groups considered unpopular - especially *pro bono* efforts to increase access to justice for marginalized clients. Whether it is for Public Counsel or the Pacific Legal Foundation, law firms that engage in pro bono work are upholding the highest ideals of the legal profession and the principles of equal justice on which all Americans should agree. The public and our elected representatives do not owe us any thanks, but they do owe us unfettered access to our clients and to the courthouse so that we can defend the freedoms enjoyed by all.

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