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Defending Detainee Defends Us

Danny Westneat (op-ed)
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Seattle's largest law firm, Perkins Coie, is what back east they call a "white shoe" firm, named for the preppy shoes popular with Ivy Leaguers in the '50s.

It means staid. Corporate. Aligned with power. The firm's top client for nearly a century has been Boeing. Says Harry Schneider, 52, an attorney there for 27 years: "We're not generally known for representing prisoners."

So what are they doing defending Osama bin Laden's former chauffeur?

For the past two years, four Perkins Coie lawyers have logged roughly 2,500 hours - about a third of their total workload - working at no charge for a prisoner they've never met.

That the prisoner is bin Laden's former driver and bodyguard has thrown this establishment firm into the middle of a heated debate about the war on terrorism - and even led to veiled questions about the firm's patriotism.

On behalf of Salim Ahmed Hamdan, accused of being an al-Qaida terrorist, the lawyers have sued our own government. Including our commander in chief. At a time when he says we're at war.

"Of course we knew this wouldn't be popular with everyone," Schneider said, adding the firm thought "long and hard" about getting involved. "Ultimately, we decided the issues at stake were too important to be ignored."

The attorneys insist they're no radicals. They say they're fighting for what is supposed to be one of our core values - that everyone, even the enemy, has a right to a fair trial.

The government doesn't see it that way. This month, a top U.S. official at Guantánamo made waves when he suggested big law firms that represent defense contractors such as Boeing shouldn't let their lawyers work for suspected terrorists.

The message to Perkins Coie was clear: You're either with us, or you're with them.

Threats aside, the real issue is: How should we bring suspected terrorists to justice? Send them to special military tribunals, at which they forfeit many of the rights U.S. courts grant to defendants? Or try them more like we do our own citizens?

In 2001, President Bush decided terrorists are not subject to the usual rules of war, such as the Geneva Conventions. He also denied them the protections of U.S. criminal law because they're not Americans.

Unilaterally, without asking Congress, Bush formed the military tribunals. Hamdan, captured in Afghanistan in 2001, is slated to be tried for conspiracy before a military panel in which the Defense Department will pick the judge and jury and forestall any chance for appeal to an independent body.

This is wrong and actually un-American, the Perkins Coie lawyers argue. Even if it turns out Hamdan is guilty. "You can't subject him to the laws of war without also giving him the protections of the laws of war," said Charles Sipos, 33, also of Perkins Coie. "Do that and our whole system breaks down."

The case was heard by the U.S. Supreme Court this week. The other local attorneys working on it are Joe McMillan, 46, of Perkins Coie, and David East, 30, formerly of Perkins and now of Seattle firm McNaul Ebel.

When Perkins Coie started representing Hamdan, in early 2004 at the request of a Georgetown law professor, Neal Katyal, "we were all alone, with a very unpopular defendant," Schneider said.

But since then, virtually the entire legal establishment has rallied to its side. More than 30 legal briefs were filed before the Supreme Court on Hamdan's side, many of them from the country's bluest of blue-chip law firms. All argue essentially the same thing: Railroad these prisoners and you undermine the very values we're supposedly fighting for.

I find all of this extraordinary, and hopeful. Not just that we live in a country where we can challenge our leaders in court. But that it's a major branch of the power elite - a corporate-law firm such as Perkins Coie - that is leading the charge. For free.

Yes, they're helping a suspected terrorist. But it's not an example of "you're with us or you're with them." It's what makes us better than them.