



## West Point Society of South Florida

The WPSSF Speaker Series on Issues of National Security and Public Policy presents

### *"Kangaroo Court: Trampling Legal Precedents in the Guantanamo Enemy Combatant Tribunals"*

**Lieutenant Commander Charles D. Swift, U.S. Navy**

Judge Advocate General, Office of Military Commissions in the Department of Defense and  
Defense Counsel to Salim Ahmed Hamdan, an Enemy Combatant

Tuesday October 19<sup>th</sup> 2004

Reception at 11:30 AM. Luncheon at 12:15 PM. Adjournment at 1:45 PM.  
Conrad Hotel, 1395 Brickell Avenue, 3<sup>rd</sup> Floor, Miami

*[We do] not dispute, in any way, the President's power to wage war. And, in the theater of war, the President does not need congressional permission to decide how and when, within the laws of war, to take custody of enemy combatants upon their capture or surrender for the purpose of detention until the war ends and repatriation is possible. That is implicit in the Commander-in-Chief function itself. The moment the President ventures beyond detaining enemy combatants as war prisoners to actually adjudicating their guilt and meting out punishment, however, he has moved outside the perimeter of his role as Commander in Chief and entered a zone that involves judging and punishing. In that zone, the fact that the President entered wearing his military garb cannot obscure the fact that he is now pursuing a different goal—assessing guilt and meting out retrospective justice rather than waging war.*

January 2004 Amicus Curiae Brief to the U.S. Supreme Court by the Military Commission Attorneys for the Defense

Among the thorniest issues raised by the homeland security changes following the September 11<sup>th</sup> attacks are the legal proceedings for enemy combatants detained at Guantanamo Bay Naval Base. Enabled by a country demanding firm action, President Bush issued Military Order of November 21, 2001 that outlined rules for the expeditious detention, treatment, and trial of foreign enemy combatants in new military tribunals. But, based on the "extraordinary emergency" conditions at the time, these tribunals were materially different than the last time America used them—nearly 60 years before in World War II. And though the public largely supported the tribunals' draconian methods as necessary against a vicious enemy, critics immediately questioned the legality and precedent of the process. Among the issues they have raised are the facts that evidence submitted by the prosecution can be cloaked in secrecy and withheld from the defense; that hearsay against the defendants would be permitted; that appeals would be very limited and restrictive; and that the accusations against the defendants could be changed over time—even after imprisonment and numerous interrogations. And perhaps most contentious is the fact that through his military chain of command the President would not only be able to detain enemy combatants during war—as has always been his right—but would now have the unprecedented power to try the combatants without further jurisdictional review by civilian courts.

Commander Swift can speak about the new military tribunals with unique insight, as he is one of only a handful judge advocate generals assigned to represent enemy combatants. Commander Swift is currently defending Salim Ahmed Hamdan, a Yemeni who had worked directly for Osama bin Laden. Singled out by the President along with only a few other detainees to thus far be subjected to the new tribunals, Hamdan seemed to face an open and shut case with the premise that, at a minimum, he was guilty by association. However, far from throwing in the towel, Commander Swift has mounted a vigorous defense of his client based on both the facts of the case and on the alleged illegality and unconstitutionality of the tribunals themselves. Commander Swift co-authored the Supreme Court brief quoted above that goes on to compare President Bush to a dictatorial King George III during revolutionary days. He subsequently sued both the President and the Defense Secretary alleging that the tribunals violate relevant constitutional, diplomatic, and legal precedents. It then comes as no surprise that the *New York Times* described Commander Swift as having "what is perhaps the most controversial job in one of the most controversial aspects of the war on terror". A Naval Academy graduate, Commander Swift's early career involved command and staff positions on surface ships. Since his Seattle School of Law graduation, however, he has a distinguished record in military litigation. He has mostly worked as defense counsel, and has represented more than 150 service members in legal proceedings—including as lead military counsel in over 20 contested courts-martial.

Do not make the mistake of missing this insightful presentation on a key aspect of America's global war against terrorism. Commander Swift will be able to speak with exceptional perspective about one of the most hotly debated legal issues in recent memory—and will do so at a hinge point when the military tribunal process itself is under heavy scrutiny.

**WPSSF Website** Commander Swift's biography can be found at the WPSSF's website, <http://www.aogusma.org/Soc/southfl/index.html>. The site also features relevant links that include the *New York Times* profile of Commander Swift, military law think tank sites, and Department of Defense sites about the tribunals.

**RSVP** Advanced reservations are strongly encouraged, as walk-ins cannot be guaranteed a seat. Advanced payment is preferred in order to minimize at-the-door transactions. To RSVP, return a note with the name of the attendees, along with a check payable to "WPSSF", to Mr. Christopher Johnson, Hunton & Williams, 1111 Brickell Avenue, Suite 2500, Miami, FL 33131. Reservations will also be accepted (with subsequent payment to be mailed) by e-mail at [cjohnson@hunton.com](mailto:cjohnson@hunton.com). The costs for those reserving by October 15<sup>th</sup> follow.

- No charge for candidates actively applying for admission to the Military Academy
- \$25 for active duty military, as well as cadets and midshipmen in commissioning programs
- \$35 for WPSSF members
- \$40 for others

The cost for all who RSVP after October 15<sup>th</sup> or walk in is \$45. Cancellations will be honored through October 15<sup>th</sup>.

**Sponsorship** Sponsorship programs are available for this event, and begin at \$250. Contact Dan Carlo at [jdcarlo@att.net](mailto:jdcarlo@att.net) or (305) 632-9798 for details. The WPSSF is a 501(c)19, non-profit organization.

**Directions/Parking** Call the Conrad Hotel directly at (305) 503-6500 if directions are needed. Valet parking is complimentary.