

Home / News / Opinion / Editorial / Columnists / Nat Hentoff

## Nat Hentoff: Liz Cheney, Bill Kristol resurrect McCarthy with ‘Al Qaida Seven’ ad

- Story
- Discussion

Nat Hentoff writes for Newspaper Enterprise Association | Posted: Thursday, March 11, 2010 12:00 am | (3) Comments

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While preparing a chapter for my next book, “Is This America?” (Cato Institute), on the effect of so many Americans in and out of school being unaware of their roots in the Constitution, I was startled by a replay of a March 2 video ad by Liz Cheney and Bill Kristol.

In “Keep America Safe: Who Are the Al Qaeda Seven?” Cheney and Kristol, directors of keepamericasafe.com, find Attorney General Eric Holder guilty of hiring lawyers “who advocate for, or represented” detainees at Guantanamo. Is the Department of Justice, they charge, the Department of Jihad? “Who are these government officials? Call Eric Holder and tell him advocates for terrorist detainees do not Keep America Safe.”

Calling these lawyers “The Al Qaeda Seven,” the patriotic accusers ask: “What values do they share?”

The next day, the Justice Department’s Information Service Center had a higher volume of calls than usual, many of which complained about the Al Qaeda Seven being on the government payroll. On the same day, Fox News reported that since the inflammatory video ad had condemned the Justice Department “for refusing to identify (the) seven lawyers,” helpfully, “Fox News has uncovered (their) identities and ... the names were confirmed by a Justice Department spokesman.”

I very much doubt that any of the defense lawyers who went, and still go, to Guantanamo have any thought of hiding. If I had a law degree, I would have joined them. As Air Force Col. Morris Davis, a former chief prosecutor at Guantanamo for two years, said of the Cheney-Kristol ad: “If you zealously represent a client, there’s nothing shameful about that. That’s the American way” (alan.com, March 2).

### Resigned out of conscience

Col. Davis had resigned as chief prosecutor in an act of conscience. The colonel, later a defense

witness in a case at Guantanamo, as I reported at the time, partially explained why he resigned by quoting directions he had received as chief prosecutor from Defense Department general counsel William J. Haynes II: “We can’t have acquittals. We’ve been holding these guys for years. How can we explain acquittals? We have to have convictions” (Washington Post, April 29, 2008).

Maybe Liz Cheney’s father, Dick Cheney, vice president during Morris Davis’ tenure and resignation as chief prosecutor, never told her why the colonel, awarded four Air Force service medals, believed his values as an American made it impossible for him to continue in a pseudo-judicial system.

Having lived through the reign of Sen. Joe McCarthy, I can imagine how zestfully he would have praised their Keep America Safe organization. And I expect that the subversives-hunting senator would have included in his long lists of Reds festering in the government the lawyers organized and sent to Guantanamo by the ACLU, the Center for Constitutional Rights and various law firms committed to safeguarding constitutional protections for prisoners held by us.

Researchers at the Seton Hall Law School found — using Defense Department records — that the majority of the detainees had no connections at all to al-Qaida. They had been captured by Afghanistan warlords and sold to us for handsome fees. Nonetheless, for years at Guantanamo, many had “military representatives” instead of the lawyers Cheney-Kristol have pilloried. And the military commission accepted “evidence” against some of them even though it was obtained through torture.

### **Was John Adams a turncoat?**

Eventually, the Supreme Court (*Boumediene v. Bush*) ruled that the fundamental American right of habeas corpus applies to all detainees at Guantanamo. Among the lawyers leading to that decision were “The Al Qaeda Seven.”

In angry reaction to the Cheney-Kristol ad, Col. Davis said, “You don’t hear anyone refer to John Adams as a turncoat for representing the Brits in the Boston Massacre trial” ([alan.com](http://alan.com), March 2).

On March 5, 1770, civilians in a crowd harassing and threatening British troops were fired on, and five were killed. Among the defendants in a subsequent trial was the commander of the troops, Capt. Thomas Preston. At first, no lawyer in Boston would represent Preston or the other defendants on trial in Paul Revere’s widely circulated description of this “horrid massacre.” An exception was a young lawyer, John Adams, determined that this emerging new nation would be known for its justice under law.

Adams interviewed and presented eyewitnesses, and convinced the jury that Preston did not give the order to fire. He was acquitted. As a result, Adams later wrote, he himself had incurred “clamour and prejudices, anxiety and obloquy” that nonetheless prevented a “foul stain upon this country.”

Had Cheney and Kristol’s Keep America Safe been operating at the time, would they have gone after this young lawyer as a disgracefully unpatriotic Tory? If I were teaching a middle-school civics class, I’d open a discussion of what Adams did, along with the Guantanamo lawyers accused in a tape I’d play the “Al Qaeda Seven” ad on YouTube.

3/11/2010

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I am grateful to Liz Cheney and Bill Kristol for contributing to my forthcoming book, "Is This America?"

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