



A MILITARY SALUTE

Paul D. Carrington

RECENT EFFORTS OF MILITARY LAWYERS to provide representation for those “detained” at Guantanamo bring to mind an earlier example of professional moral courage. On July 2, 1942, President Roosevelt proclaimed the appointment of a military commission to try the eight German saboteurs who had been delivered to the United States by German submarines only to be captured, perhaps because two of them had informed on the others. As an addendum to his proclamation, the President appointed two colonels to represent the eight accused in the proceeding, which was to be held immediately.

One of the colonels was Kenneth Royall, whom I later came to know. He had been a classmate of my father and on that account invited me to work in his law firm in the summer of 1953 following my first year in law school. Over lunch, he described his experience in that case as an example of the sort of deeds a lawyer may have an

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I was selected in November 1955 and then trained to kill and type at Fort Ord, California. I was thereafter at Aberdeen Proving Ground, first as an officer efficiency report clerk and then for about six months a legal aid lawyer for soldiers to help them with civil matters. I published an account of the latter experience in Clients I Remember Part IV, 15 EXPERIENCE 29-30 (ABA Fall 2004). I was released from active duty in August 1957, but required to remain active in the Reserves until 1961. My serial number is US 54177124 and I still have my boots.



Kenneth C. Royall

opportunity to perform that can make a whole career worth having. He presented it to me as a challenge to go out and practice a profession of moral worth.

As Royall reported the event to me, the President's appointment was delivered to him in his office in a Quonset hut next to the reflecting pool. It commanded him to proceed immediately with the defense and "under no circumstances" to take the matter to any civil court. Within minutes, he met for the first time his co-counsel, Cassius Dowell. Dowell was a career soldier from Iowa. Royall was a Raleigh lawyer who had remained in the National Guard after his service in the first war. Royall informed Colonel Dowell that it was his view that the President was not empowered to create such a tribunal and that he planned to file a habeas petition with the federal district court in defiance of the Commander-in-Chief. Explaining that the only punishment the President could im-

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pose on him was to send him back to Raleigh to practice law, he had no fear of Presidential rage. But he urged Colonel Dowell to let him proceed with that petition without co-counsel. He did not need Dowell's signature and Dowell's career was on the line. But Dowell insisted on signing the petition, declaring to Royall that he was even more a lawyer than a soldier and that his self regard required him to do whatever could be done for his clients. If Royall would prepare a petition, Dowell emphatically insisted on joining in its presentation.

The district court summarily denied their habeas petition. They then petitioned for certiorari. The Supreme Court granted certiorari and called a special term to hear the case on July 29. In *Ex parte Quirin*,¹ it summarily affirmed the denial of the petition, but not without serious deliberation over the objections advanced by counsel. The military commission then heard the case immediately and convicted all eight defendants. Six of the eight were executed on August 9. Apparently the other two were incarcerated to conceal from Nazi intelligence their treasonous betrayal of the scheme in consideration of the danger to their families that would result from their release. One of those who was executed penned a note to the colonels to say that the convicts had never imagined lawyers to be so brave as to defy the President of the United States just to try to protect enemy soldiers.

As it happened, the colonels were not disciplined. Royall went on to have a luminous career as a member of the Truman cabinet and was in 1953 the most senior partner in a large New York firm. But, he said, the representation of the saboteurs was the high point of his career, and the professional service in which he took the greatest pride. But he had even higher regard for the moral courage of his colleague, to whom he would have erected a monument. In memory of Kenneth Royall, I take this occasion to salute the honor done to our profession by Colonel Cassius Dowell and those military lawyers who even now are performing like service.

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¹ 317 U. S. 1 (1942).