

Carolyn B. Lamm
President

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The Honorable Carl Levin
Chair
Senate Armed Services Committee
United States Senate
Washington, DC 20510

The Honorable John McCain
Ranking Member
Senate Armed Services Committee
United States Senate
Washington, DC 20510

Dear Senators Levin and McCain:

Last Friday, the House Armed Services Committee reported out H.R. 5136, the National Defense Authorization Act for Fiscal Year 2011 (NDAA). The bill includes a section directing the Department of Defense Inspector General to investigate lawyers representing Guantanamo detainees. We urge you to oppose the inclusion of any similar provision as your committee marks up the NDAA.

More specifically, as reported by the House Committee on Armed Services, Section 1037 of the NDAA requires the Inspector General to conduct a 90-day investigation of lawyers who represent Guantanamo detainees for whom there is a reasonable suspicion that they have engaged in any conduct or practice that interferes with the operations at Guantanamo, violates any applicable Department of Defense Policy, violates any law within the Inspector General's exclusive jurisdiction, or generates any "material risk to a member of the U.S. Armed Forces."

Lawyers have an ethical duty to represent their clients with diligence and zeal, and to take whatever lawful and ethical measures are required to vindicate a client's cause. Those who engage in inappropriate conduct or counsel a client to engage in conduct that is criminal or fraudulent are subject to the disciplinary authority of the jurisdiction(s) in which they are admitted to practice, regardless where the conduct occurs. Likewise, the Department of Justice is the appropriate agency to investigate and prosecute allegations of legal wrongdoing. The Department of Defense Inspector General is not the appropriate authority to investigate allegations of misconduct in the representation of Guantanamo detainees.

The American system of justice depends on the essential role of lawyers in counseling their clients. This includes providing zealous and effective counsel, even to those accused

of heinous crimes against this nation in the name of causes that evoke our contempt. In furtherance of this objective, in August 2003, the ABA adopted a policy calling upon Congress and the Executive Branch to insure that all defendants in any military commission trials receive the zealous and effective assistance of counsel.

Almost all of the civilian lawyers involved in the Guantanamo cases have appeared *pro bono* at great personal and financial sacrifice under difficult conditions. In the past, many of these lawyers have complained to the ABA that their efforts to provide effective assistance of counsel have been hampered by rules, policies, and tactics of the Departments of Defense and Justice.

If passed, this legislation will have a severe chilling effect on the ability of lawyers to provide zealous advocacy and effective assistance of counsel to their clients at Guantanamo. It will 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.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn B. Lamm". The signature is written in black ink and includes a long horizontal flourish at the end.

Carolyn B. Lamm
President

cc: Members of the Senate Armed Services Committee