

**Carolyn B. Lamm**  
President

**AMERICAN BAR ASSOCIATION**

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May 27, 2010

The Honorable Nancy Pelosi  
Speaker of the House  
United States House of Representatives  
Washington, D.C. 20515

The Honorable John Boehner  
House Minority Leader  
United States House of Representatives  
Washington, D.C. 20515

**Re: ABA Opposition to Inspector General Provision in NDAA**

Dear Speaker Pelosi and Minority Leader Boehner:

As the House of Representatives prepares to deliberate over H.R. 5136, the National Defense Authorization Act for Fiscal Year 2011 (NDAA), I write to convey the American Bar Association's opposition to Section 1037 of the bill, added late last week, shortly before the House Armed Services Committee approved the legislation.

Section 1037 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 this provision becomes law, it 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 intrude on the attorney-client privilege, threaten the bond of trust and confidence that is essential to the attorney-client relationship, 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.

We urge you to oppose this detrimental provision and to use any available means to strike it from the NDAA.

Sincerely,

A handwritten signature in black ink that reads "Carolyn B. Lamm". The signature is written in a cursive style with a long, sweeping underline.

Carolyn B. Lamm  
President