

June 10, 2010

Joan A. Lukey
President
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The Honorable Carl Levin
Chair, Armed Services Committee
United States Senate
269 Russell Office Building
Washington, D.C. 20510

The Honorable John McCain
Ranking Member, Armed Services Committee
United States Senate
241 Russell Office Building
Washington, D.C. 20510

Re: National Defense Authorization Act/Inspector General
Investigation Provision

Gentlemen:

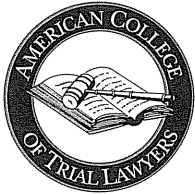
The American College of Trial Lawyers, an invitation-only, non-political organization comprised of leading members of the trial bars in the United States and Canada, has been committed for sixty years to protecting the rule of law. Subsumed within the latter concept are the core democratic principles of the writ of *habeas corpus* and the entitlement of an accused to effective representation by counsel.

On behalf of the College, I write to express the College's strong opposition to Section 1037 of H.R. 5136, the National Defense Authorization Act for F.Y. 2011. That section, which was included in the bill passed by the House last week, mandates that "the Inspector General of the Department of Defense shall conduct an investigation of the conduct and practices of ... military and non-military lawyers who represent Guantánamo detainees in *habeas corpus* proceedings or in military commissions ... and for whom there is reasonable suspicion that they have engaged in [conduct as defined in section (a)(1)]." The College, which is comprised of plaintiffs' and defendants' civil trial lawyers and, on the criminal law side, prosecutors and criminal defense lawyers, believes that Section 1037, particularly with regard to the definition of prohibited conduct, is impermissibly vague and potentially chilling on the advocacy of Guantánamo defense lawyers. As such, the College believes that this section is inconsistent with the rule of law and the administration of justice.

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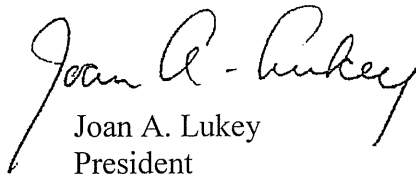
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We are motivated by concerns for both military and non-military advocates, the latter group including more than forty of our own Fellows who have engaged or are engaging in detainee representation in their individual capacities. (The College does not itself represent detainees, or authorize individual lawyers to do so in the name of the College.) The College would never condone conduct that undermined the security of the United States or placed our military at risk. At the same time, we cannot condone legislation that places at risk attorneys who do no more than meet their ethical obligation of zealous advocacy. To the extent that such attorneys engage in improper or unlawful conduct, the courts, the regulatory agencies of the legal profession, and the tribunal before whom such conduct occurs, all have the authority, and the responsibility, to address such behavior. To the extent that an investigation is necessary to determine whether misconduct has occurred, the College firmly believes that the Department of Justice, not the Department of Defense, is the appropriate arm of the executive branch to conduct such an investigation, and that an investigation of an attorney by an entity that is, in essence, his or her adversary is inherently unfair.

We urge that the Senate refrain from including an analog to section 1037 in its own version of the National Defense Authorization Act, and we urge the Conference Committee to refrain from including such a provision in the final legislation.

We would be pleased to answer any questions that you may have. Please do not hesitate to contact me. Thank you for considering our comments.

Sincerely,


Joan A. Lukey
President