

## **Statement of the Association of Professional Responsibility Lawyers on Proposed Defense Department Investigation of Lawyers Representing Guantanamo Prisoners**

The Association of Professional Responsibility Lawyers (“APRL”) urges Congress not to adopt proposed legislation calling for an investigation by the Inspector General of the Department of Defense of the conduct and practices of lawyers representing prisoners at Guantanamo Bay.

### **APRL’s Interests**

APRL is an independent national organization of lawyers whose practices concentrate upon professional licensing and discipline, professional responsibility and the law of lawyering. Its membership practices in every American jurisdiction and includes foreign lawyers. APRL conducts study and educational programs nationally and internationally. APRL members are particularly interested in matters relating to attorney licensing and discipline, risk management and multijurisdictional practice.

### **APRL’s Reasons for Opposing the Proposed Legislation**

The House of Representatives has passed H.R. 5136, including Section 1037, which directs the Inspector General of the Department of Defense to investigate the conduct and practices of military and non-military lawyers representing prisoners at Guantanamo Bay and to report to Congress on his findings within 90 days. The bill is now before the Senate.

Specifically, the investigation is to cover any conduct or practice that has “interfered with the operations of” the detention facility at Guantanamo Bay, “violated any applicable policy of the Department,” “violated any law within the exclusive investigative jurisdiction of the Inspector General,” or “generated any material risk to a member of the Armed Forces of the United States.”

The military lawyers are defending prisoners and/or assisting in pursuit of writs of habeas corpus as required by statutes, regulations, and the lawful orders of their military superiors, under the supervision of the Judge Advocate Generals of their respective services. APRL has been privileged in recent years to receive presentations from several military lawyers regarding their work for Guantanamo prisoners, and APRL has followed the work of the military lawyers through press reports and the work of APRL’s individual members. APRL has been impressed by the way in which military lawyers have maintained the highest traditions of our nation and the legal profession by providing zealous defense to those accused of

wrongdoing, by taking whatever lawful and ethical measures that will serve to vindicate the defendant's rights.

Civilian lawyers for the detainees typically assist the military lawyers in defense and/or habeas corpus actions. Overwhelmingly, they do so as a public service, at great financial sacrifice, and under extremely difficult circumstances. In general, APRL believes that the civilian lawyers, like the military lawyers, have maintained the highest traditions of our nation and the legal profession by providing zealous defense to those accused of wrongdoing.

While the conduct of these lawyers has generally been praiseworthy, it is possible that some of them may have engaged in individual acts of improper conduct. All lawyers are subject to discipline by the courts if they have advised or assisted in criminal or fraudulent conduct; if they have engaged in conduct involving fraud, deceit or misrepresentation; or if they have engaged in conduct prejudicial to the administration of justice. All lawyers are subject to prosecution for criminal misconduct. Military lawyers are subject to discipline by their respective services for violation of laws, regulations, policies, or orders of their superiors.

Careful and deliberate proceedings of that sort can address any actual improprieties that may have occurred, while taking account of the needs of lawful and zealous action on behalf of those lawyers' clients and while giving the lawyers who are the subject of those proceedings appropriate procedural protections. In contrast, an unfocused and hasty investigation by the Inspector General into ill-defined activities and conduct is unlikely to take full account of such needs and is likely to be seen as threatening by the lawyers representing Guantanamo prisoners. As a result, there is a grave risk that it will chill proper and lawful conduct that the Inspector General or Congress might view negatively. Moreover, such an investigation will provide no procedural protections for the lawyers whose conduct is scrutinized. Finally, it would impair the independence of counsel in representing their clients.

The proposed investigation appears to be a response to allegations of impropriety which have been the subject of an investigation by the Department of Justice for the past year. That investigation, rather than the proposed investigation by the Inspector General, is the proper vehicle for inquiring into the alleged improprieties. Moreover, an investigation by the Inspector General would divert resources (both those of the Department of Defense and those of the lawyers under scrutiny) that are sorely needed to pursue prosecution and defense of the matters in which the lawyers are engaged.