

**NEW YORK
CITY BAR**

BARRY M. KAMINS
PRESIDENT
Phone: (212) 382-6700
Fax: (212) 768-8116
bkamins@nycbar.org

July 7, 2006

The Honorable Bill Frist
Majority Leader
United States Senate Majority Leader
509 Hart Senate Office Building
Washington, DC 20510

The Honorable Harry Reid
Minority Leader
United States Senate Minority Leader
528 Hart Senate Office Building
Washington, DC 20510

Dear Senator Frist and Senator Reid:

I am writing on behalf of the Association of the Bar of the City of New York¹, to urge Congress to act quickly to establish a professional advisory panel with a mandate to advise Congress and its committees about the appropriate means to establish a military commission system that would respond – in a transparent non-politicized manner – to the Supreme Court's June 29 decision in *Hamdan v. Rumsfeld*.

As you are no doubt aware, on the day of the *Hamdan* decision, several members of Congress stated their intention to introduce legislation which seeks, among other things, to authorize the President to establish military commissions which would be empowered to try Guantanamo detainees.² We respectfully suggest that special care be taken, in this instance, to guarantee that legislation be propounded which moves the process and the nation forward after careful consideration of all alternatives in pursuit of two goals: first, to permit the just trial and punishment of enemy detainees consistently with national security; and second, to satisfy the legal standards enunciated by the high court in *Hamdan*.

¹ The Association is an independent non-governmental organization with a membership of more than 22,000 lawyers, judges, law professors and government officials, principally from New York City, but also from around the United States and from 50 other countries.

² Meanwhile other legislation is being suggested, for example, an amendment of the Uniform Code of Military Justice proposed by the National Institute of Military Justice to authorize military commissions without limitation to the present circumstances at Guantanamo. See <http://nimj.com/documents/UCMJ.Amendments.rev1.pdf>


We are mindful that the President's Military Order creating military commissions was adopted in haste without the active participation of the Judge Advocates, consultation with Congress or public comment. In response to vigorous reaction, including from our Association, the rules for military commissions were ameliorated, though many of its procedures remain controversial. Despite the initial haste, the commissions have yet to try a single case. The *Hamdan* decision now offers Congress an opportunity to address military commissions after thorough analysis and deliberation.

With those goals in mind, and mindful of the current legislative posture, we propose that Congress act quickly to establish an advisory panel -- comprised of experts in the fields of military justice, the law of war, and international law -- and give that panel a mandate to provide Congress and its committees with a detailed legislative proposal to satisfy the twin goals set forth above. Adoption of this non-partisan process would educate and benefit Congress and the American people, and would facilitate the introduction, debate and passage of legislation born from the experience and expertise of practitioners and scholars in complex areas of the law which even many skilled attorneys find daunting. Among the ranks of the Offices of Judge Advocate General, the active bar of civilian attorneys who regularly represent our troops in courts martial and other proceedings, and our nation's law schools and bar associations, there are many fine lawyers and other experts in national security affairs, who would welcome the chance to bring their experience, intellect and professionalism to bear in the service of Congress.

Legislation authorizing the panel's creation and the method of selecting its members would be relatively simple to draft. There are precedents among laws passed in recent sessions of Congress, where advisory commissions have been created, for example, with members selected jointly by subcommittee chairs and ranking members. In 1999, for instance, Congress authorized the creation of the Millennial Housing Commission, to study and report to Congress on affordable housing issues. The Commission was charged with recommending specific legislation to address its findings. Its two co-chairs and twenty members were appointed by various designated Congressional committee and subcommittee chairs, acting in pairs or as appointing committees. Given the current posture, we believe Congressional action as outlined above would help to establish a process that would promote the best interests of all involved.

Thank you for considering our views. If you have the need for drafting assistance or further information in your consideration of this important matter, we would be glad to provide assistance.

Respectfully,



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The Honorable Dennis Hastert
Speaker of the House
United States House of Representatives
235 Cannon House Office Building
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
United States House of Representatives
2371 Rayburn House Office Building
Washington, DC 20515

Dear Speaker Hastert and Democratic Leader Pelosi:

I am writing on behalf of the Association of the Bar of the City of New York¹, to urge Congress to act quickly to establish a professional advisory panel with a mandate to advise Congress and its committees about the appropriate means to establish a military commission system that would respond – in a transparent non-politicized manner – to the Supreme Court's June 29 decision in *Hamdan v. Rumsfeld*.

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