Department of Defense

Appointing Authority Regulation No. 1

August 20, 2004

SUBJECT: Disclosure of Communications

References:
(a) Military Commission Order No. 1 (Mar. 21, 2002)
(b) Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 F.R. 57833 (Nov. 16, 2001)
(c) Military Commission Order No. 3 (Feb. 5, 2004)
(d) Military Commission Instruction No. 8, current edition
(e) Department of Defense Directive 5105.70, "Appointing Authority for Military Commissions" (Feb. 10, 2004)

1. PURPOSE

This Regulation establishes confidentiality of certain communications between an individual and his or her attorney, and between an individual who has been detailed a Defense Attorney or has been served with a copy of approved charges and his or her psychotherapist.

2. AUTHORITY

This Regulation is issued pursuant to Section 7(A) of reference (a) and Section 6.3 of reference (e), and in accordance with references (b), (c), and (d).

3. COMMUNICATIONS SUBJECT TO THIS REGULATION

This Regulation applies only to communications between an individual and his or her attorney or persons who have been designated as members of the Defense Team, and to communications between an individual who has been detailed a Defense Attorney or has been served with a copy of approved charges and his or her licensed psychotherapist, including a licensed psychiatrist or psychologist, or a medical provider working under the supervision of a licensed psychiatrist or psychologist.

4. DISCLOSURE OF COMMUNICATIONS

A. Communications between Attorney and Client.

1) Communications (oral, electronic, written, or any other means) made between an individual and his or her attorney, or persons who have been designated as

members of the Defense Team, shall not be disclosed and are not subject to disclosure unless:

a. The communications contemplate the future commission of a crime or fraud;

b. Such disclosure is necessary for the security of the facility where the individual is detained;

c. Such disclosure may prevent communications aimed at facilitating terrorist operations;

d. The communications relate to the conduct, furtherance, facilitation, or prevention of further terrorist or other illegal acts;

e. Communications were monitored pursuant to reference (c);

f. The individual consents in writing to such disclosure; or

g. The individual voluntarily disclosed the content of the communications to a third party, if the disclosure itself is not privileged.

2) Communications disclosed pursuant to Section 4(A)(1)(a), (b), (c), (d), or (e) of this Regulation shall be disclosed to the appropriate persons other than those involved in prosecution or the underlying prosecution investigation of the individual.

B. Communications between Psychotherapist and Patient.

1) Communications (oral, electronic, written, or any other means) made between an individual who has been detailed Defense Attorney or has been served with a copy of approved charges and his or her psychotherapist, including a licensed psychiatrist or psychologist, or medical providers working under the supervision of a licensed psychiatrist or psychologist, for the purpose of facilitating diagnosis or treatment of the individuals' mental or emotional condition, shall not be disclosed or be subject to disclosure unless:

a. The communications contemplate the future commission of a crime or fraud;

b. Such disclosure is necessary for the safety or health of the individual;

c. Such disclosure is necessary for the security of the facility where the individual is detained;

d. Such disclosure may prevent communications aimed at facilitating terrorist operations;

e. The communications relate to the conduct, furtherance, facilitation, or prevention of further terrorist or other illegal acts;

f. The communications were made during a mental examination conducted by a military psychologist or psychiatrist pursuant to Section 6(D) of reference (d);

g. The individual consents in writing to such disclosure; or

h. The individual voluntarily disclosed the content of the communication to a third party, if the disclosure itself is not privileged.

2) Communications disclosed pursuant to Section 4(B)(1)(a), (b), (c), (d), (e), or (f) of this Regulation shall be disclosed to the appropriate persons other than those involved in prosecution or the underlying prosecution investigation of the individual.

5. EFFECTIVE DATE

This Regulation is effective immediately.

John D. Altenburg, Jr.
Appointing Authority
for Military Commissions