



DEPARTMENT OF DEFENSE
HEADQUARTERS, JOINT TASK FORCE GUANTANAMO
U.S. NAVAL BASE, GUANTANAMO BAY, CUBA
APO AE 09360

REPLY TO
ATTENTION OF

JTF-GTMO-CDR

27 December 2011

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Order Governing Written Communications Management for Detainees
Involved in Military Commissions

This Order supersedes all prior guidance, including the 19 May 2008 "Military Commissions Counsel Visitation of Detainees Practices Guide" and the 22 November 2011 "Revision of Privileged Communications Screening Procedures."

1. Background and Scope.

a. Under DoD policy, directive, and instructions, the Commander, Joint Task Force Guantanamo (JTF-GTMO) is responsible for maintaining safety and security, as well as good order and discipline, within JTF-GTMO detention facilities, protecting national security, and safeguarding classified information while facilitating legal processes associated with JTF-GTMO Detainees. To this end, the Commander, JTF-GTMO has adopted security practices to fulfill his obligations. Personnel at JTF-GTMO interact with Detainees in compliance with DoDD 2310.01E, DoDD 2311.01E, and DoDD 3115.09 and coordinate a variety of matters with regard to attorney visits, correspondence between attorneys and detainees, attorney-detainee meetings, attorney ingress into and egress from the detention facilities, and similar matters.

b. JTF-GTMO's practices outlined below are comparable in certain respects to the rules and regulations governing other similarly secure federal facilities such as those operated by the Federal Bureau of Prisons, *see, inter alia*, 28 C.F.R. § 540.71(b), 28 CFR § 543.13(f), 28 CFR § 501.3 *et seq.*, Bureau of Prisons Program Statement 5800.16 (Mail Management Manual), and the authority of the Bureau of Prisons to prevent Detainees suspected of terrorist acts from directing or facilitating acts of terrorism while in detention, and to mitigate the risk to the safety and security of detention personnel and Detainees, with appropriate modifications to account for requirements of law and procedure pertaining to military commissions.

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c. The procedures listed below are comparable in certain respects to those in the already-issued Protective Order and Procedures for Counsel Access to Detainees at the U.S. Naval Station in Guantanamo Bay, Cuba, 577 F.Supp.2d 143 (D.D.C. 2008) (Hogan, J.) for the habeas proceedings brought by Detainees at Guantanamo, and the Amended Protective Order for Habeas Cases Involving Top Secret/Sensitive Compartmented Information and Procedures for Counsel Access to Detainees at the U.S. Naval Station in Guantanamo Bay, Cuba, issued on January 9, 2009, with appropriate modifications to account for requirements of law and procedure pertaining to military commissions.

d. The procedures listed below are intended to provide military commissions Defense Counsel with instructions to facilitate correspondence with certain Detainees. They do not confer any substantive rights upon those Detainees or create any legal obligation for the Commander, JTF-GTMO or the Department of Defense. These procedures are subject to change, including modifications of these procedures for communications with a specific Detainee, if I determine different procedures are reasonably necessary to protect persons against the risk of death or serious bodily injury. *See* 28 C.F.R. § 501.3.

e. This Order does not govern the transmission of material to a Detainee via electronic media. A separate Order shall set out the procedures for the handling and processing of that material if and when electronic media is authorized for transmission to a Detainee. Until such a supplemental order is issued, all material must be provided in physical form and processed according to the procedures set out herein.

f. The provisions of this Order are not intended to, and should not be construed or implemented to, be contrary to the laws, executive and other orders, directives and regulations governing classified, Controlled Unclassified Information or Sensitive but Unclassified Information (including the transmission of such material to a Detainee), the requirements of Military Commission Rule of Evidence (MCRE) 505, or relevant provisions in Protective Orders issued by military judges detailed to particular military commission proceedings in accordance with 10 U.S.C. § 948j.

g. The Commander, JTF-GTMO, or his designee, is the final arbiter for issues arising from this Order, except to the extent that the matter is within the authority of a detailed military judge, pursuant to the authority granted by the Military Commissions

Act, the Manual for Military Commissions and the Regulation for Trial by Military Commission.

2. Definitions.

a. Defense Counsel:

(1) A military judge advocate detailed by the Chief Defense Counsel of the Office of the Chief Defense Counsel (OCDC), pursuant to 10 U.S.C. 948k and Rule for Military Commissions (RMC) 503, to represent a particular Detainee in a military commission, including serving as individual military counsel (IMC) pursuant to 10 U.S.C. § 949c(2), RMC 506(c), and ¶ 9-2 of the Regulation for Trial by Military Commission; or serving as learned counsel pursuant to RMC 506(b) and ¶ 9-1.a.6 of the Regulation for Trial by Military Commission; or

(2) A qualified civilian attorney performing duty with the OCDC and detailed by the Chief Defense Counsel, pursuant to ¶¶ 9-1.a.5 and 9-1.b.1.A-C of the Regulation for Trial by Military Commission, to represent a particular Detainee in a military commission, including serving as learned counsel pursuant to RMC 506(b) and ¶ 9-1.a.6 of the Regulation for Trial by Military Commission; or

(3) A qualified civilian attorney retained by a particular Detainee and who meets the requirements of 10 U.S.C. § 949c(b)(3) and ¶ 9-5 of the Regulation for Trial by Military Commission, including serving as learned counsel pursuant to RMC 506(b) and ¶ 9-1.a.6 of the Regulation for Trial by Military Commission.

(4) “Defense Counsel” does not include a civilian attorney who has been determined eligible by the Chief Defense Counsel to be placed in a pool of available civilian attorneys but who has not yet been retained by a particular Detainee or appointed as learned counsel on behalf of a particular Detainee.

(5) “Defense Counsel” does not include any attorneys or support personnel not specifically described as Defense Personnel.

(6) The term “Lawyer” in this Order refers to “Defense Counsel,” as defined above.

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b. Defense Personnel: Includes co-counsel, interpreters, translators, paralegals, investigators, experts, consultants and all other personnel or support staff authorized and engaged in, or employed to assist in the defense of a particular Detainee, pursuant to the authority found in the Manual for Military Commissions and the Regulation for Trial by Military Commission.

c. Detainee-Accused: A detainee for whom the Chief Defense Counsel has detailed a Defense Counsel pursuant to ¶¶ 2.a(1) or 2.a(2) above. This includes individuals against whom charges have been sworn, to whom the Chief Prosecutor has addressed a proffer letter or a cooperation discussion letter, or who are in the post-trial stages of a military commission pursuant to 10 U.S.C. §§ 950b, f and g.

d. Military Commission Privilege Team: A team comprised of one or more DoD attorneys and one or more intelligence or law enforcement personnel who have not taken part in, and, in the future, shall not take part in, a military commission, a Combatant Status Review Tribunal, Administrative Review Board, Periodic Review Board, or habeas corpus proceedings involving the Detainee-Accused (other than acting as a Privilege Team member for the habeas corpus or other proceedings). All members of the Privilege Team will be bound by a non-disclosure agreement to preserve the lawyer-client and other related legally-recognized privileges to the fullest extent possible in a manner consistent with this Order. If required, the Military Commission Privilege Team (hereinafter Privilege Team) may include interpreters and translators, provided that such personnel meet these same criteria.

e. Lawyer-Client Privileged Communications:

(1) Defined as communications that are privileged within the meaning of MCRE 502, which may include original handwritten or typewritten correspondence between a Detainee-Accused and his Defense Counsel bearing the signature of the Defense Counsel (or a representative of the Defense Counsel encompassed by MCRE 502) or the Detainee-Accused, as is appropriate for the particular communication.

(2) Attorney Work Product is encompassed within Lawyer-Client Privileged Communications.

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f. Other Case-Related Material:

(1) Defined as communications between a Defense Counsel and a Detainee-Accused that are related to the Detainee-Accused's military commission proceeding but are not privileged within the meaning of MCRE 502. This includes discovery and related material when releasable to the Detainee-Accused, and records of commission proceedings, including court filings when releasable to the Detainee-Accused.

(2) Documents initially identified as Other Case-Related Material that are subsequently incorporated by Defense Counsel or the Detainee-Accused into work product or lawyer-client communications or that are aggregated to support a particular communication or reflect the lawyer's mental impressions or strategy, may become Lawyer-Client Privileged Communications under MCRE 502. If such material is already in the possession of the Detainee-Accused, JTF-GTMO personnel are not responsible for retrieving documents previously submitted as "Other Case-Related Material," or re-marking them in conformity with ¶ 4 below.

g. Military Commissions Non-Legal Mail and Material: All correspondence, documents, media in any form, or similar material that do not fall within ¶¶ 2.e or 2.f above.

h. Contraband:

(1) Defined as any physical item or prohibited information that Commander, JTF-GTMO, or his designee, has deemed to be impermissible or inappropriate for a Detainee to possess, be informed of (orally or in writing) or view, subject to the exception in ¶ 2.h(4) below, or any physical item which is prohibited from transmission to a Detainee without prior authorization by Commander, JTF-GTMO, or his designee. This includes material that, if introduced into the detention facility, reasonably could be expected to result in immediate and substantial harm to the national security, imminent acts of violence, future events that threaten national security, or present a threat to the operation of the detention facilities or to U.S. Government personnel. This material may exist in any form, including correspondence, documents, electronic media, or similar material.

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(2) Contraband includes Physical Contraband, as that term is defined in ¶ 2.i below.

(3) Examples of Contraband include:

(a) Information relating to any ongoing or completed military, intelligence, security or law enforcement operations, investigations or arrests or the results of such activities by any nation or agency;

(b) Current political or military events in any country; historical perspectives or discussions on jihadist activities, including information generated or distributed by or on behalf of foreign terrorist organizations, individuals or groups engaged in terrorist activities, to include material such as “Inspire” magazine;

(c) Information about security procedures or changes to security procedures at JTF-GTMO or the U.S. Naval Station at Guantanamo Bay; information about the physical layout of the detention facilities;

(d) Information about the operation of or changes to the detention facility;

(e) Information about present and former detention personnel or other U.S. Government personnel (including their names, locations or assignment history); and

(f) Information regarding the status of other Detainees (including former Detainees) at Guantanamo and information regarding any detention of Detainees; and classified, Controlled Unclassified Information or Sensitive but Unclassified Information that has not been approved by the Government for release to the Detainee-Accused.

(4) The following types of information are *not* Contraband *if* Defense Counsel reasonably believe they are directly related to the military commission proceeding involving the Detainee-Accused:

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(a) Information relating to any ongoing or completed military, intelligence, security, or law enforcement operations, investigations, or arrests, or the results of such activities, by any nation or agency;

(b) Information relating to current political events in any country;

(c) Information concerning living conditions of Detainees at JTF-GTMO; and

(d) Information relating to the status of other Detainees, including former Detainees.

i. Physical Contraband: Consists of paper fasteners (including staples, paper clips, and binder clips), money, stamps, cigarettes, weapons, chemicals, drugs, writing instruments, items of value and material that may be used in an escape attempt, or that present a threat to the operation of the detention facilities or to U.S. Government personnel. "Physical Contraband" does not include written communications.

3. Requirements for Defense Counsel and Defense Personnel Written Communications with Detainee-Accused.

a. Security Clearance.

(1) Written communications with a Detainee-Accused shall be authorized for Defense Counsel and Defense Personnel only after JTF-GTMO has verified that they possess a valid, current United States security clearance at the level deemed necessary by the appropriate U.S. Government personnel.

(2) All Defense Counsel and Defense Personnel must sign the appropriate non-disclosure agreement (i.e., SF Form 312, Form 4414, and/or DD Form 1847). This paperwork shall be provided to the Staff Judge Advocate at JTF-GTMO before access to the Detainee-Accused shall be permitted.

(3) Prior to granting access to a Detainee-Accused where such a requirement has been deemed necessary by appropriate U.S. Government personnel, JTF-GTMO personnel must verify that Defense Counsel and Defense Personnel have received the appropriate briefings from intelligence personnel.

b. Acknowledgement of and Compliance with Written Communications
Procedures.

(1) Before being permitted to provide written Lawyer-Client Communications or Other Case-Related Materials to a Detainee-Accused, Defense Counsel and Defense Personnel must agree to comply fully with this Order and must sign Attachment A, acknowledging an agreement to comply with it.

(2) This Acknowledgement shall *not* be considered an agreement by Defense Counsel or Defense Personnel that the terms and conditions herein are necessarily legally permissible. Even if Defense Counsel or Defense Personnel elect to challenge the procedures in this Order, Defense Counsel or Defense Personnel may not knowingly disobey an obligation imposed by this Order until such time, if any, that it is modified or revoked by DoD, or other competent authority.

(3) Defense Counsel, Defense Personnel, and anyone acting on Defense Counsel's behalf shall fully abide by the requirements of this Order. Defense Counsel are required to provide the Staff Judge Advocate, JTF-GTMO with signed Acknowledgements from such personnel upon Defense Counsel's utilization of those individuals in a manner that implicates this Order.

(4) The lead Defense Counsel is responsible for the supervision of all Defense Personnel and shall ensure their compliance with this Order.

c. Verification of Defense Counsel Representation and Defense Personnel
Involvement.

(1) Written communications with a Detainee-Accused, other than via standard Non-Legal Mail and Materials procedures, shall be granted to Defense Counsel and Defense Personnel only after JTF-GTMO has received verification of their relationship to the Detainee-Accused.

(2) Military Defense Counsel and Civilian Defense Counsel performing duties with the OCDC shall provide to the Staff Judge Advocate, JTF-GTMO, a letter from the Chief Defense Counsel indicating that he/she has been detailed

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under RMC 503 or ¶ 9-1.a.5 of the Regulation for Trial by Military Commission as counsel representing a specific Detainee-Accused.

(3) Civilian Defense Counsel retained by a Detainee-Accused pursuant to 10 U.S.C. § 949c(b)(3) shall provide a letter from the Chief Defense Counsel indicating that he/she meets the requirements of 10 U.S.C. § 949c(b)(3) and ¶ 9-5 of the Regulation for Trial by Military Commission, and has been retained by the Detainee-Accused. These Civilian Defense Counsel shall also provide the Staff Judge Advocate, JTF-GTMO with a copy of the signed Affidavit and Agreement by Civilian Defense Counsel (MC Form 9-2).

(4) Defense Personnel shall provide a letter from the Chief Defense Counsel indicating that he/she is authorized to participate in the military commission proceeding involving the Detainee-Accused, and that he/she meets the qualifications to do so.

(5) In order to facilitate communication, all Defense Counsel must provide the Staff Judge Advocate, JTF-GTMO with a notification of representation which includes Defense Counsel's business and e-mail addresses, telephone number, and the name of the specific Detainee-Accused represented.

(6) If Defense Counsel withdraws from representation of a Detainee-Accused, or if the representation is otherwise terminated, Defense Counsel shall immediately inform the Staff Judge Advocate, JTF-GTMO of that change in circumstances. This requirement also applies when any Defense Personnel, as defined in ¶ 2.a above, resign or are terminated.

d. The Defense Counsel shall promptly report to the Commander, JTF-GTMO any information learned from a Detainee-Accused that reasonably could be expected to result in immediate and substantial harm to the national security, imminent acts of violence, or future events that threaten national security, or that presents a threat to the operation of the detention facilities or to U.S. Government personnel. In his discretion, the Commander, JTF-GTMO may disseminate the relevant portions of the information to law enforcement, military, and intelligence officials, as appropriate.

e. In the event any Non-Legal Mail or messages from a Detainee-Accused to individuals other than his Defense Counsel (including family, friends, or attorneys other

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than Defense Counsel) are given to Defense Counsel or included with Lawyer-Client Privileged Communications or Other Case-Related Material, Defense Counsel shall return the documents to military personnel at JTF-GTMO for processing.

f. When a Defense Counsel hand-carries Lawyer-Client Privileged Communications or Other Case-Related Material into or out of a meeting with a Detainee-Accused, the Defense Counsel shall possess and, on demand, present the appropriate courier authorization identification from the Defense Intelligence Agency or other appropriate authority and a local courier authorization letter from the JTF-GTMO J-2. The Defense Counsel may delegate courier responsibilities to a subordinate encompassed by MCRE 502 or to a courier under the supervision of the Chief Defense Counsel.

4. Defense Counsel Handling and Marking of Communications with a Detainee-Accused.

a. Because of the potential for harm posed by the introduction of this material into the detention facility, Defense Counsel shall not include Contraband in Non-Legal Mail and Material or in Lawyer-Client Privileged Communications or Other Case-Related Material, subject to ¶ 2.h(4) above. If Defense Counsel believes information that does or may otherwise constitute Contraband needs to be transmitted to a Detainee-Accused because it is directly related to the military commission proceeding involving that Detainee-Accused, Defense Counsel are strongly encouraged to seek guidance from JTF-GTMO personnel via the Staff Judge Advocate prior to transmitting the information to the Detainee-Accused.

b. When sending material to a Detainee-Accused or bringing such material to a meeting with a Detainee-Accused, Defense Counsel shall separate Lawyer-Client Privileged Communications, Other Case-Related Material, and Non-Legal Mail and Material.

c. Defense Counsel shall ensure all communications with the Detainee-Accused are marked with appropriate classification markings, including banner and portion markings. Unclassified communications shall be banner marked but do not require portion marking.

d. Lawyer-Client Privileged Communications.

(1) Each page of incoming material shall include Defense Counsel's initials or signature on the top right corner, as well as the name and Internment Serial Number of the Detainee-Accused. The top and bottom of each page shall also be marked as "LAWYER-CLIENT PRIVILEGED COMMUNICATION UNDER MCRE 502."

(2) The Defense Counsel shall include an identically marked cover sheet indicating the number of attached pages and a signed attestation by the Defense Counsel that the attached communication is privileged from disclosure under MCRE 502 and that, to the best of his or her knowledge and belief, the attached communication does not contain Contraband, classified, Controlled Unclassified Information or Sensitive but Unclassified Information that the intended recipient of the communication is not authorized to receive under MCRE 505, the Military Commissions Act, and the laws, orders, directives and regulations governing classified, Controlled Unclassified Information or Sensitive but Unclassified Information, including any protective orders in the case.

e. Other Case-Related Material.

(1) Each page of incoming material shall include Defense Counsel's initials or signature on the top right corner, as well as the name and Internment Serial Number of the Detainee-Accused. The top and bottom of each page shall also be marked as "OTHER CASE-RELATED MATERIAL."

(2) Discovery Material. In addition to the markings described in ¶¶ 4.c and 4.d(1) above, before being provided to a Detainee-Accused by a Defense Counsel, material provided by the Government in discovery must be marked by the Government in a manner that makes clear that the material have been approved for release to the Detainee-Accused. The specific language for these markings shall be determined by the Government and placed on each page of the document as part of the discovery process. The Government shall provide a list of the approved markings to Defense Counsel, the Privilege Team and JTF-GTMO personnel.

(3) Records Relating to the Military Commission Proceeding. In addition to the markings described in ¶¶ 4.c and 4.d(1) above, before being provided to a Detainee-Accused by a Defense Counsel, filings and other military commission proceeding material must be marked by the Government as appropriate for public

release or release to the Detainee-Accused. The specific language for these markings shall be determined by the Government and placed on each page of the document when these documents are processed. The Government shall provide a list of the approved markings to Defense Counsel, the Privilege Team and JTF-GTMO personnel.

(4) Other Material. If the Other Case-Related Material is not discovery provided by the prosecution or a record from the military commission proceeding, the Defense Counsel shall include an identically marked cover sheet indicating the number of attached pages and a signed attestation by the Defense Counsel that the attached communication is related to the case and that, to the best of his or her knowledge and belief, the material does not contain Contraband, classified, Controlled Unclassified Information or Sensitive but Unclassified Information that the intended recipient of the communication is not authorized to receive under MCRE 505, the Military Commissions Act, and the laws, orders, directives and regulations governing classified, Controlled Unclassified Information or Sensitive but Unclassified Information, including any protective orders in the case.

f. Military Commissions Non-Legal Mail and Material.

(1) Each page of incoming material shall include Defense Counsel's initials or signature on the top right corner, as well as the name and Internment Serial Number of the Detainee-Accused. The top and bottom of each page shall also be marked as "MILITARY COMMISSION NON-LEGAL MAIL AND MATERIAL."

(2) Defense Counsel shall send Non-Legal Mail and Material to a Detainee-Accused through the United States Postal Service. It shall be reviewed by Government personnel at JTF-GTMO under the Standard Operating Procedures for Detainee Non-Legal Mail. However, in extraordinary circumstances, if a Defense Counsel requires delivery of such material to the Detainee-Accused in an expedited manner, the Defense Counsel can submit a request for expedited processing to JTF-GTMO via the Privilege Team. In the request, the Defense Counsel shall state the requested delivery date for the material and an explanation for why expedited processing is required. The Privilege Team shall deliver the Defense Counsel's request and the Non-Legal Mail and Material to personnel at

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JTF-GTMO. If the request is granted, this material shall, to the maximum extent possible, be given expedited priority by JTF-GTMO.

(3) During some meetings with a Detainee-Accused, a Defense Counsel may receive Non-Legal Mail or Material from the Detainee-Accused which requires expedited processing for reasons related to the military commission proceedings. (For example, the Detainee-Accused may provide the Defense Counsel with a letter of introduction for the Defense Counsel to use when meeting with a witness.) In such instances, the Defense Counsel can submit a request for expedited processing to JTF-GTMO via the Privilege Team. In the request, the Defense Counsel shall state the date by which processing is required and an explanation for why expedited processing is required. The Privilege Team shall deliver the Defense Counsel's request and the Non-Legal Mail and Material to personnel at JTF-GTMO. If the request is granted, this material shall, to the maximum extent possible, be given expedited priority by JTF-GTMO.

5. Obligations of Military Commission Privilege Team—Generally.

a. To the fullest extent possible and consistent with the terms of this Order, the Privilege Team must preserve the lawyer-client and other related legally-recognized privileges. Members of the Privilege Team shall not disclose to any person any information provided by a Detainee-Accused or Defense Counsel, except as provided in this Order.

b. Without disclosing specifics about the information provided by a Detainee-Accused or Defense Counsel, the Privilege Team may consult with security and intelligence experts at JTF-GTMO as needed regarding potential Contraband or other unauthorized information the Privilege Team becomes aware of when executing its responsibilities under this Order. Whenever possible, the Privilege Team shall advise the Defense Counsel before consulting with these experts.

c. The Privilege Team shall maintain a log which contains general information about its processing of material under this Order (such as the number of pages, date of review, etc., but *not* including details about the content of the documents), as well as information about Contraband or other unauthorized material that was placed into the mail or meeting process by Defense Counsel or Defense Personnel. This log and information shall be kept in a secure location, and shall not be disclosed to any person

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except as provided in this Order or as necessary to address these issues with competent authorities, to include the Chief Defense Counsel. Whenever possible, the Privilege Team shall advise the involved Defense Counsel in advance before disclosing this information.

d. The Privilege Team shall report to the JTF-GTMO Commander any information that reasonably could be expected to result in immediate and substantial harm to the national security, imminent acts of violence, or future events that threaten national security, or that presents a threat to the operation of the detention facilities or to U.S. Government personnel. In his discretion, the Commander, JTF-GTMO may disseminate the relevant portions of the information to law enforcement, military, and intelligence officials, as appropriate.

e. This Order does not authorize the Privilege Team to conduct a classification review of any document encompassed within the provisions of this Order.

6. Mail from Defense Counsel to a Detainee-Accused (“Incoming Mail”).

a. After completing the requirements under ¶ 4 above, Defense Counsel shall send Incoming Mail (including Lawyer-Client Privileged Communications, Other Case-Related Material and requests for expedited Non-Legal Mail and Material) addressed to his/her Detainee-Accused at an address for the Privilege Team in the Washington, D.C. area that shall be provided by the Government. This material can also be delivered to the Privilege Team at JTF-GTMO via the Office of the Staff Judge Advocate.

b. Defense Counsel shall seal the Lawyer-Client Privileged Communications, Other Case-Related Material and Non-Legal Mail and Material in separate envelopes. Defense Counsel shall clearly mark the outside of all envelopes containing the material with an appropriate annotation depending on the category of material:

LAWYER-CLIENT PRIVILEGED COMMUNICATION UNDER MCRE 502 —
FOR DELIVERY TO DETAINEE

MILITARY COMMISSION OTHER CASE-RELATED MATERIAL —
FOR DELIVERY TO DETAINEE.

MILITARY COMMISSION NON-LEGAL MAIL OR MATERIAL —
FOR DELIVERY TO DETAINEE

c. Each envelope shall also include the Detainee-Accused's name and Internment Serial Number and the Defense Counsel's name and return address and the classification level of any information contained within it. Envelopes received by the Privilege Team that are not properly marked shall be returned to Defense Counsel unopened.

d. Incoming material shall not include Physical Contraband (including paper fasteners, staples, paperclips, and binder clips) or other Contraband.

e. Prior to placing the material into the envelope, Defense Counsel shall ensure each page of Incoming Mail is marked in accordance with ¶ 4 above.

f. The Privilege Team shall open the envelopes to inspect the contents for Physical Contraband and to verify that each page of the material includes the markings as required by ¶ 4 above. This inspection shall not include a review of the substantive content of the Incoming Mail, but enables the Privilege Team to flag for different processing any items that appear to violate this Order that are apparent (in plain view) from the inspection for Physical Contraband.

(1) Physical Contraband shall be removed from the envelopes and shall not be processed for delivery to the Detainee-Accused.

(2) If, in executing its inspection under ¶ 6.f above, the Privilege Team observes material that is not correctly marked as required by ¶ 4 above, that material shall not be processed for delivery to the Detainee-Accused. This incorrectly marked material can include:

(a) General interest magazines, print media, or third party communications that are marked as Lawyer-Client Privileged Communications.

(b) Classified information, Controlled Unclassified Information or Sensitive but Unclassified Information whose markings indicate it is not approved for release to the Detainee-Accused.

(3) If, in executing its inspection under ¶ 6.f above, the Privilege Team observes material that appears to be Contraband, as defined by this Order, that material shall not be processed for delivery to the Detainee-Accused.

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g. The Privilege Team shall consult with Defense Counsel regarding the material described in ¶¶ 6.f(1)-(3) above, in an effort to address the apparent problem(s).

(1) If the discussions resolve the apparent problem, the material shall be processed for delivery to the Detainee-Accused.

(2) If the discussions do not resolve the problem and if the material does not implicate the concerns articulated in ¶ 5.d above, the material shall be returned to Defense Counsel by the Privilege Team, with a written explanation regarding why it was not processed for delivery to the Detainee-Accused.

(3) If the discussions do not resolve the apparent problem and if the material does implicate the concerns articulated in ¶ 5.d above, the material shall not be returned to Defense Counsel by the Privilege Team, and the Privilege Team shall provide a written explanation regarding why it was not processed for delivery to the Detainee-Accused.

h. Following the inspection under ¶ 6.f above, the Privilege Team shall annotate each page of the material with the Internment Serial Number of the Detainee-Accused, a code indicating which Privilege Team member conducted the inspection, and a standardized marking that indicates the Privilege Team has processed the material in accordance with this Order.

i. The processing by the Privilege Team described in ¶¶ 6.f-h above shall generally be completed within five business days of the Privilege Team's receipt of this material.

j. The Privilege Team shall seal the processed material in separate envelopes marked as:

LAWYER-CLIENT PRIVILEGED COMMUNICATION UNDER MCRE 502 —
APPROVED FOR DELIVERY TO DETAINEE

OTHER CASE-RELATED MATERIAL — APPROVED FOR DELIVERY TO
DETAINEE.

REQUEST FOR EXPEDITED NON-LEGAL MAIL OR MATERIAL —
FOR DELIVERY TO JTF-GTMO STAFF JUDGE ADVOCATE.

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k. The sealed envelopes for Lawyer-Client Privileged Communications and Other Case-Related Material shall clearly indicate the identity of the Detainee-Accused to whom the envelopes are to be delivered and, based on the markings found on the documents, the classification level of the documents contained within it.

l. The sealed envelopes containing Lawyer-Client Privileged Communications, Other Case-Related Material and Request for Expedited Non-Legal Mail may be returned to the Defense Counsel or Defense Personnel for transmission to JTF-GTMO in a manner consistent with the classification level of the information. If requested by Defense Counsel, the Privilege Team shall place this material on the next mail courier run to JTF-GTMO.

m. Within two business days of receipt of Lawyer-Client Privileged Communications and Other Case-Related Material from the Privilege Team or Defense Counsel, personnel at JTF-GTMO shall deliver the sealed envelope to the Detainee-Accused without opening the envelope.

n. If Defense Counsel desires confirmation that the documents were delivered to the Detainee-Accused, Defense Counsel shall provide a self-addressed envelope for that purpose. The Detainee-Accused shall be responsible for mailing any confirmation of delivery to Defense Counsel. This method shall be the sole and exclusive means by which confirmation of delivery is provided to Defense Counsel.

7. Mail Sent from Detainee-Accused to Defense Counsel (“Outgoing Mail”).

a. Detainees shall be provided by JTF-GTMO with paper and a writing utensil to prepare written communications to Defense Counsel. Access to such items may be limited or restricted because of the Detainee’s disciplinary and/or medical status, although a Detainee’s disciplinary status shall not be a basis for denying all access to such items.

b. In the presence of JTF-GTMO staff, the Detainee-Accused shall seal the written communication into an envelope that shall be annotated as “LAWYER-CLIENT MATERIAL – FOR MAIL DELIVERY TO DEFENSE COUNSEL.” Each envelope shall be dated and labeled with the name and Internment Serial Number of the Detainee-Accused and the name of Defense Counsel and the presumptive classification level of

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any information contained within it. The sealed envelope shall be placed in a courier bag which shall then be locked and provided to the Privilege Team.

c. The Privilege Team shall store all Outgoing Mail in a safe location in the secure area at JTF-GTMO in a manner designed to protect any classified material and lawyer-client and related privileges until properly transferred to a Government-designated courier for delivery to the Defense Counsel.

8. Material Brought by Defense Counsel into a Meeting with a Detainee-Accused.

a. Defense Counsel and Defense Personnel may only bring into a meeting with a Detainee-Accused material which meets the requirements for Incoming Mail in ¶ 4 above, and that has been previously inspected and processed by the Privilege Team in accordance with ¶ 6 above. This material shall be submitted to the Privilege Team with sufficient time for such inspection to be conducted and for the material to be sent to JTF-GTMO on the next courier run (if required), but generally not less than five business days in advance of the visit. Material not provided to the Privilege Team sufficiently in advance of a scheduled meeting may not be inspected and transported to JTF-GTMO in time for Defense Counsel to bring it into the meeting.

b. Defense Counsel and Defense Personnel may bring writing utensils, and blank paper into a meeting with a Detainee-Accused. JTF-GTMO personnel may perform a Physical Contraband inspection of the bags and briefcases of Defense Counsel and Defense Personnel. Written material are subject to inspection by the Privilege Team to ensure they have been marked and processed in accordance with ¶¶ 4 and 6 above.

c. Defense Counsel may request permission to bring into an initial meeting with a Detainee-Accused letters, tapes, or other communications introducing Defense Counsel to the Detainee-Accused. This material is Non-Legal Material and shall be submitted to the Staff Judge Advocate at least fourteen days prior to the scheduled visit so they can be processed through the appropriate security channels. The Commander, Joint Detention Group, shall not unreasonably withhold approval of such requests, if this review determines that sharing the communication with the Detainee-Accused would not reasonably be expected to result in immediate and substantial harm to the national security, imminent acts of violence, or future events that threaten national security, or present a threat to the operation of the detention facilities or to U.S. Government personnel.

9. Material Brought Out of a Meeting Between Detainee-Accused and Defense Counsel.

a. Material Retained by Detainee-Accused.

(1) At the completion of each meeting, the Detainee-Accused shall be allowed to retain any written notes made during the meetings and any written material that was processed pursuant to ¶ 8 above and brought into the meeting.

(2) For the written notes made during the meeting, the Defense Counsel shall mark them pursuant to the procedures in ¶ 4 above. All material shall then be inspected by the Privilege Team pursuant to the procedures in ¶ 6 above.

(3) Under no circumstances should a Detainee-Accused or Defense Counsel commingle Lawyer-Client Privileged Communications, Other Case-Related Material, and/or Legal or Non-Legal Material.

b. Material Retained by Defense Counsel.

(1) Following a Defense Counsel's meeting with a Detainee-Accused, the notes or documents used or produced during the visits shall be sealed by the Defense Counsel in the presence of JTF-GTMO personnel. The envelope shall be marked with the Internment Serial Number of the Detainee-Accused and name of the Defense Counsel and labeled as "Military Commissions Meeting Documents—For Delivery to Counsel: and the classification level (or presumptive classification level) of any information contained within it.

(2) Any material the Defense Counsel requires for further meetings can be placed in a separate envelope and made available to Defense Counsel at the next meeting.

(3) Upon completion of all meetings, the envelope(s) shall be sealed into a larger envelope by JTF-GTMO personnel. The larger envelope shall be marked as "Military Commission Meeting Documents—For Delivery to Counsel" and annotated with the Defense Counsel's name and the Detainee-Accused's Internment Serial Number and the classification level (or presumptive classification level) of any information contained within it.

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(4) If the Defense Counsel will not be couriering this material, the larger envelope shall be placed in a courier bag, which shall then be locked and provided to the Privilege Team at JTF-GTMO. The Privilege Team shall store this material in a safe location in the secure area at JTF-GTMO in a manner designed to protect any classified material and lawyer-client and related privileges until properly transferred to a Government-designated courier for delivery to the Defense Counsel.

10. Material Brought Into and Out of Military Commission Hearings.

a. Material Brought Into Commission Hearings.

(1) A Detainee-Accused may bring into a military commission hearing any documents and material properly possessed in accordance with this Order that are necessary and relevant to the Detainee-Accused's military commission proceeding. This material shall not be subject to inspection by the Privilege Team before being brought into a hearing, but are subject to inspection by JTF-GTMO staff for Physical Contraband.

(2) Defense Counsel may bring into a military commission hearing any documents and material necessary and relevant to represent the Detainee-Accused. This material shall not be subject to inspection by the Privilege Team before being brought into a hearing, but are subject to inspection by JTF-GTMO staff for Physical Contraband. Defense Counsel are required to protect classified material, Controlled Unclassified Information and Sensitive but Unclassified Information from unauthorized disclosure, including during commission hearings.

b. Material Brought Out of Commission Hearings.

(1) A Detainee-Accused may not return to the detention facility with material brought out of a military commission hearing unless the material is inspected by the Privilege Team in accordance with the same criteria and procedures outlined in ¶ 9.a above.

(2) Defense Counsel may retain material brought out of a military commission hearing without an inspection by the Privilege Team. As in all situations, if a Defense Counsel knows, reasonably should know, or is uncertain

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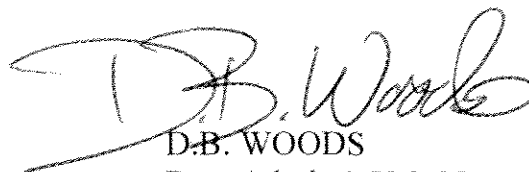
whether material brought out of a military commission hearing with a Detainee-Accused contains classified information, the Defense Counsel must take appropriate measures to protect such material. Defense Counsel who are qualified as couriers at the appropriate level shall seal, handle, transport and secure such material in accordance with DoD regulations. Defense Counsel who are not qualified as couriers at the appropriate level shall give the classified or presumptively classified notes, documents or material used or produced during the hearing to a qualified courier to be stored, handled, and transported as classified material at the appropriate level of classification.

11. Storage of and Access to Legal Material. Detainee-Accused storage of and access to Lawyer-Client Privileged Communications and Other Case-Related Material shall be in accordance with the JTF-GTMO Standard Operating Procedures.

12. Storage of and Access to Non-Legal Material. Detainee-Accused storage of and access to Non-Legal Mail and Material shall be in accordance with the JTF-GTMO Standard Operating Procedures.

13. Failure to Comply. Defense Counsel and Defense Personnel shall follow the instructions in this Order and the directions of the JTF-GTMO staff. Failure to follow this Order, JTF-GTMO procedures, staff instructions, may result in Lawyer-Client Privileged Communications and Other Case-Related Material written communications being returned to Defense Counsel or Defense Personnel.

14. The undersigned is the point of contact for this matter.



D.B. WOODS
Rear Admiral, U.S. Navy
Commanding

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Attachment A

ACKNOWLEDGMENT

The undersigned hereby acknowledges that he/she has read the Order Governing Written Communications Management for Detainees Involved in Military Commissions, understands its terms, and agrees to be bound by each of those terms. Without waiving any right to challenge the contents of this Order before a military commission or other competent authority, the undersigned agrees to fully comply with each of the terms of this Order unless and until they are modified or revoked by such authority. The undersigned understands that failure to comply with the provisions of this order may result in written communications not being processed for introduction into the detention facilities.

BY: _____
(Type or print name)

SIGNED: _____

DATE: _____

ISN of Detainee-Accused: _____