Department of Defense
Military Commission Order No. 3

September 21, 2005

SUBJECT: Special Administrative Measures for Certain Communications Subject to Monitoring

References: (a) Military Commission Order No. 1 (current edition)

(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) Section 113(d) of Title 10 of the United States Code

(d) Section 140(b) of Title 10 of the United States Code

(e) Military Commission Order No. 3 (February 5, 2004)

1. PURPOSE

This Order promulgates policy, assigns responsibilities, and prescribes procedures for matters related to monitoring certain communications of persons who are subject to trial by military commission pursuant to references (a) and (b). This Order supersedes reference (e).

2. AUTHORITY

This Order is issued pursuant to section 7(A) of reference (a) and in accordance with references (b), (c), and (d).

3. COMMUNICATIONS SUBJECT TO MONITORING

This Order applies solely to the monitoring of communications (including oral, electronic, written, or any other means) between individuals whom the President has determined to be subject to reference (b) and their defense counsel (including Civilian Defense Counsel, Detailed Defense Counsel, and any interpreter or other person detailed or employed to assist in the defense of such person), for security or intelligence purposes. For purposes of this Order, "monitoring" includes both real-time interception and analysis and recording of the subject communications by any means.

4. POLICIES AND PROCEDURES

A. *Approval of Monitoring*. The Commander of the Combatant Command with control of the detainee, or that commander's designee, shall approve any communications monitoring that may be conducted pursuant to this Order. Communications monitoring conducted pursuant to this Order shall be approved only upon a determination that such

monitoring may prevent communications aimed at furthering or facilitating terrorist operations or other illegal acts.

B. *Notification to Defense Counsel.* In cases in which the Combatant Commander, or designee, determines that communications subject to this Order will be monitored, the Detailed Defense Counsel and Civilian Defense Counsel shall be notified in advance of any monitoring of their communications. The Detailed Defense Counsel and Civilian Defense Counsel may, in turn, notify the individual with whom they are communicating that their communications will be monitored.

C. *Action Agent.* A Department of Defense intelligence collecting entity ("monitoring entity") will conduct any monitoring approved pursuant to this Order.

D. *Review of Monitored Communications.* Monitoring entity personnel shall review any monitored communications for security and intelligence purposes as well as for purposes of assessing distribution restrictions consistent with this Order.

E. *Prohibited Monitoring.* Communications solely between two or more defense counsel shall not be monitored.

F. *Use and Disclosure of Monitored Communications.* Information derived from communications monitored pursuant to this Order shall not be used in proceedings against the individual who made or received the relevant communication; and such information shall not be disclosed to personnel involved in the prosecution or underlying prosecution investigation of said individual. Information that may prevent communications aimed at furthering or facilitating terrorist operations or other illegal acts and derived from monitored communications may be disclosed to appropriate persons other than those involved in such prosecutions.

G. *Reporting Requirements.* The monitoring entity will report promptly to the Combatant Commander, or that commander's designee, any monitored communication deemed relevant to the furthering or facilitating of terrorist operations or other illegal acts. If the Combatant Commander, or designee, is satisfied that a reasonable suspicion exists to believe that such communications may further or facilitate terrorist operations or other illegal acts, he shall report promptly such information through established intelligence or law enforcement reporting channels.

5. EFFECTIVE DATE

This Order is effective immediately.

Gordon England ACTING
Deputy Secretary of Defense