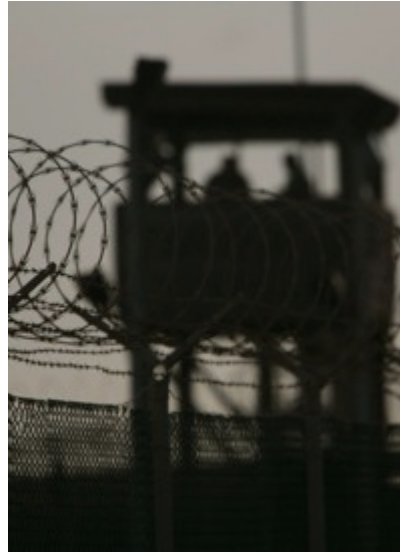




Written by [Joe Wolverton, II, J.D.](#) on February 13, 2012

## Lawyer for Gitmo Detainee Challenges Mail-reading Rule

[James Connell, defense counsel for Ali Abdul Aziz Ali](#), in his pleading asks the federal court to block enforcement of the rule, citing a violation of his client's constitutional right of access to counsel, as well as the privilege afforded communication between attorneys and clients. Connell, a lawyer based in Washington, D.C., also charges that the correspondence guidelines infringe upon the privacy legally afforded all mail exchanged between private citizens.



As [reported by the Washington Post](#), Connell explained, "The Supreme Court has said there is a reasonable expectation of privacy in a letter when you mail it from one person to another and there have to be certain requirements before the government can violate that."

As [reported last December in The New American](#), the commander of the Guantanamo Bay detention facility, Rear Admiral David Woods, issued a fundamental rule change regarding the military's right to access and review written communication exchanged between Gitmo prisoners suspected of being co-conspirators in the attacks of September 11, 2001 and the attorneys representing them.

According to details of the rules published by [the Associated Press](#), all the covered correspondence sent back and forth between any of the five detainees categorized as 9/11 co-conspirators and their legal counsel would be thoroughly reviewed by law enforcement and Department of Defense personnel.

In response to a request for input from Admiral Woods, the attorneys for the five prisoners have written a memo opposing the new rule based on their averment that such a scheme would violate the privilege afforded communication between attorneys and clients. Furthermore, were the rule to be enforced, their clients would be deprived of the right to counsel guaranteed to individuals by the U.S. Constitution.

Specifically, as set forth in the Supreme Court's decision in the case of [Brewer v. Williams](#) 430 U.S. 387 (1977), the applicable rights granted by the Sixth and 14th Amendments "mean at least that a person is entitled to the help of a lawyer at or after the time that judicial proceedings have been initiated against him, whether by formal charge, preliminary hearing, indictment, information, or arraignment." After the initiation of legal proceedings, a defendant has a right to confer with counsel whenever he is questioned by an agent of the government.

The Sixth Amendment to the U.S. Constitution reads:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause



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of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Given the gravity of the situation and the substantial effect on one of the Bill of Rights' most fundamental guarantees, the lawyers for the five detainees have requested an extension in the time originally afforded them to review the letter and the order sent them by Admiral Woods.

The lawyers also insisted that they needed more time in order to account both for delays in obtaining the necessary security clearances and for the new restrictions on the exchange of correspondence with their clients.

On February 4, that [request was denied by Department of Defense officials](#). Bruce MacDonald — the senior Pentagon official overseeing all aspects of the war crimes tribunal process underway at Guantanamo — refused to allow the attorneys representing the suspected 9/11 co-conspirators any additional time for preparing for the impending military tribunals. This could prove to be a significant obstacle to the zealous defense of the five men represented by the attorneys who filed the motion as Attorney General Eric Holder announced in April that the five would be arraigned before military tribunals sometime in 2012. All five face the death penalty if convicted of the charges against them.

In defiance of the new rule, in January, the head of the Office of the Chief Defense Counsel for Guantanamo Bay military tribunals, Colonel J.P. Colwell, sent an e-mail ordering all lawyers under his command to ignore rules authorizing and requiring officials at the naval facility's detention center to open and read all correspondence between lawyers and the five detainees.

The other four detainees have also been in custody at the Guantanamo facility since 2006 after having been detained — and allegedly tortured — by the Central Intelligence Agency at secret "black site" prisons located throughout the world.

Attorneys representing these high-profile detainees have repeatedly complained about policies in place at the prison. In November of 2011, for example, lawyers sent an open letter to the Deputy Secretary of Defense for Detainee Affairs decrying the regular revocation of the attorney-client privilege. The letter accused the Joint Task Force Guantanamo of opening, reading, confiscating, and analyzing letters sent between the detainees and their legal counsel. The lawyers insist that such actions are illegal.

Per the Associated Press account: "What they keep wanting to do is to have their intelligence employees promise not to tell anybody about our communications and say that's good enough," said Bryan Broyles, deputy chief defense counsel for the military commissions. "And as a matter of law it's not," he stressed.

For his part, Rear Admiral David Woods testified that the new rules serve to balance his responsibility to accommodate the free exchange of correspondence between lawyers and clients and his obligation to maintain order and safety at the Detention Facility based in Cuba.

Furthermore, Woods stated that those tasked with monitoring the mail do not read the letters so much as verify that the pages are properly marked as privileged communication.

Connell disagrees, however, and in his suit he avers that the rule, in force since late December, must conform to applicable U.S. law regardless of the crimes with which his client is charged.

According to the *Washington Post*: "A Pentagon spokesman, Army Lt. Col. Todd Brasseale, said the military would not comment on the suit. But officials have defended the rule as a necessary security step, denying it violates attorney-client privilege and makes it impossible to ethically represent the



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defendants."

Connell's client, Ali Abdul Aziz Ali (also known as Ammar al-Baluchi), allegedly transferred most of the money that came to the hijackers of the planes used in the attacks of September 11, 2001. The 9/11 Commission reported that Ali "helped them [the hijackers] with plane tickets, traveler's checks, and hotel reservations," and "taught them about everyday aspects of life in the West, such as purchasing clothes and ordering food." Aziz responded that he often provided this service to travelers from Dubai as a means of supplementing his income. He claims that there was no way he could have known of the ultimate aims of those to whom he provided such assistance.

*Photo: AP Images*



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