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## AN OPEN LETTER TO THE SECRETARY OF DEFENSE

May 8, 2007

Robert Gates  
Secretary of Defense  
1000 Defense Pentagon  
Washington, D.C. 20301

Dear Secretary Gates:

The Association of Professional Responsibility Lawyers (APRL) is an independent national organization of lawyers practicing in the fields of professional responsibility and legal ethics. Its membership includes law professors, bar association counsel, counsel for lawyers in disciplinary hearings, ethics expert witnesses, legal malpractice litigators, counsel to bar association and disciplinary committees, and in-house law firm and corporate ethics counsel. Consistent with the goals of the organization, APRL addresses legal and ethics issues of vital importance to the profession.

APRL urges you to reconsider your proposal to limit access by civilian lawyers to their Guantanamo detainee clients and to permit screening of written communications between these lawyers and their clients.

In a brief filed in the District of Columbia federal appellate court in April, the Department of Justice, as counsel for the Secretary of Defense, has proposed limiting civilian counsel's access to (a) one meeting to confirm the representation, and (b) no more than three additional visits to prepare a court challenge, including appeal of an "enemy combatant" designation. In addition, the Department of Justice has proposed that mail from lawyers to their clients be reviewed and screened for content by a team composed of one or more Department of Defense lawyers and one or more intelligence/law enforcement officers not involved in a detainee's case.

APRL believes these proposals conflict with the most fundamental principles governing the relationship between attorneys and clients, serve no legitimate purpose, and prevent lawyers from fulfilling their ethical and fiduciary duties to individual clients and the public.

First, limitations on access to a client will improperly interfere with a lawyer's ability to provide adequate representation. The ethics rules governing lawyers in every state require lawyers to exercise independent professional judgment on behalf of clients in providing competent and diligent representation. Competent representation requires adequate preparation and adequate opportunity for counsel to consult with a client. Commentary to the Model Rules

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of Professional Conduct clarifies the lawyer's obligation to act with "reasonable diligence" in representing a client:

A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.

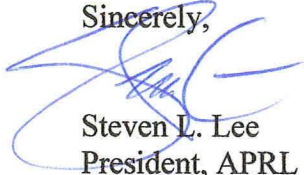
Consistent with this duty, the professional responsibility codes in every jurisdiction impose an independent obligation to consult and communicate with their clients. Indeed, the duty to communicate with a client — especially when the client needs information in order to be able to make reasoned decisions about the representation — is so vital that most jurisdictions impose such a duty in a stand-alone rule. Rule 1.4 of the Model Rules of Professional Conduct is entitled, simply, "Communication." Any limitation on a lawyer's ability to communicate with his or her client when the lawyer determines that communication is necessary, particularly when life and liberty is at stake, conflicts directly with the lawyer's ethical and fiduciary obligations to the client. It is absolutely inconsistent with fundamental due process and disgraceful in a country that values personal liberty.

Second, the Department of Justice's request that a team of government prosecutors monitor attorney-client mail is a far broader invasion of attorney-client confidentiality than any previously proposed or implemented policy. The proposed screening undermines the attorney's duty of confidentiality and defeats the attorney-client privilege. Both are intended to protect lawyer-client communications from invasion by the government or any other third party.

Full and frank communications between clients and their attorneys is essential to effective advocacy and sound advice. The proposal's blanket abrogation of the attorney-client privilege as it applies to lawyers' communications with their detainee clients would make such full and frank communication impossible and thereby make it impossible for such attorneys to fulfill their fiduciary obligation to provide competent, informed, and diligent representation.

Finally, adopting these measures would further reduce, in the eyes of the legal profession and informed observers in this country and abroad, the credibility and fairness of these proceedings. The government's proposal of these measures has called into question whether the United States is willing to provide due process to the detainees and a fair and just adjudication of charges against them. We urge the Departments of Justice and Defense to reconsider their position and to permit lawyers to meet and confer with detainee clients in confidence as needed.

Sincerely,



Steven L. Lee  
President, APRL