

Bush administration bases case against John Walker Lindh on coerced statements

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According to legal papers filed March 15 in the United States District Court for the Eastern District of Virginia, the Bush administration is basing its prosecution of John Walker Lindh almost entirely on statements Lindh made while in extreme physical and mental duress and after he was denied access to his lawyer.

Charged with conspiracy to murder United States nationals and assisting terrorist organizations, Lindh, who turned 21 last month, faces a maximum penalty of multiple life terms in prison plus a 30-year enhancement for carrying a firearm while assigned to a Taliban unit fighting the Northern Alliance in Afghanistan.

The practice of using forced confessions to frame political opponents and justify their execution or imprisonment was so despised by the framers of the United States Constitution that they enacted the Fifth Amendment expressly to guarantee that no person “shall be compelled in any criminal case to be a witness against himself.”

There are dozens of Supreme Court decisions upholding that right, the most famous being *Miranda v. Arizona*, which requires police to notify people that they are entitled to remain silent and consult an attorney before answering questions during a custodial interrogation. These cases establish that statements that are not “voluntary” cannot be admitted into evidence at a trial.

No objective person could conclude that Lindh’s statements were “voluntary” in any sense of the word.

The events through which Lindh passed during the weeks leading up to his interrogation sessions were traumatic in the extreme. Last July, well before the United States went to war against Afghanistan, the Taliban stationed Lindh in the Takhar province of northeastern Afghanistan to face the rebel Northern Alliance. In November, under a ferocious assault by US-backed Northern Alliance troops, his unit retreated on foot to Kunduz, a trek of some 100 miles. Lindh became very ill. His group surrendered to troops under the command of General Dostum, a warlord notorious for his brutality to prisoners.

On November 24, Lindh arrived at Mazar-i-Sharif and was imprisoned with other “foreign Taliban” in the Qala-i-Janghi fortress. A videotape made the next day shows CIA agent Johnny Spann and another agent, currently known only as “Dave,” attempting to interrogate Lindh, who remains silent.

The tape records Spann telling Lindh, “You believe in what you’re doing here that much, you’re willing to be killed here?” Dave adds, “The problem is, he’s got to decide if he wants to live or die, and die here. We’re just going to leave him, and he’s going to f___ing sit in prison the rest of his f___ing short life.”

These threats from Lindh’s American captors violated the Geneva Convention on prisoners of war, which requires a captured fighter to

give only his name, rank and serial number, and prohibits interrogators from using any form of physical or mental intimidation.

Later that day a firefright broke out between guards and prisoners. Spann was killed under circumstances that are not entirely clear. Lindh, who took no part in the fighting, was shot in the leg. He was taken into a large basement area by other prisoners fleeing the action.

For almost a week, Lindh remained holed up in the basement with hundreds of his fellow prisoners while Northern Alliance soldiers, American special forces and US helicopter gunships massacred hundreds of others who were trapped in the compound. The ordnance employed by the US was massive. Reporters counted more than 40 missiles hitting the fort, blowing prisoners to pieces.

Once all the prisoners above the basement level were dead, Northern Alliance soldiers moved in and threw grenades down air vents to kill the men huddled below ground. Next, they poured gasoline into the chamber and ignited it. Finally, they flooded the basement with freezing water. Most of the prisoners who took refuge in the basement were killed. Somehow, Lindh and a handful of others, surrounded by decomposing corpses, survived the onslaught.

Medical workers turned Lindh—wounded, emaciated and in shock—over to the US military on December 1. For the next week, he was held in a windowless room near Mazar-i-Sharif under 24-hour guard, without receiving any treatment for his wounded leg.

The youth’s parents retained prominent San Francisco attorney James Brosnahan, a senior partner in one of California’s largest law firms, to represent their son. Fifty-four days would pass before the US government allowed Brosnahan to speak to his client.

Ignoring Lindh’s repeated requests to consult an attorney, military interrogators questioned him relentlessly until December 7, when Lindh was transferred, blindfolded and shackled, to Camp Rhino south of Kandahar. Soldiers transporting him threatened him with death and torture.

Upon arrival, Lindh was stripped, bound with duct tape to a stretcher, and placed in a cold, dark metal shipping container for more than two days, covered only by a single blanket. According to his attorneys, because of his extreme discomfort Lindh got no sleep while in the container.

On December 9, Lindh was taken out of the container and brought to a tent. The first thing he saw when his blindfold was finally removed was a group of FBI agents. When he again asked for an attorney, the agents told him none was available. This occurred almost a week after Brosnahan first tried to contact Lindh, an event widely reported in the media.

The FBI agents presented Lindh with a written “*Miranda* waiver,” giving up his right to remain silent and consult with an attorney. He

signed. Two days of questioning followed. After the FBI finished interrogating him, Lindh was transferred to the USS Peleliu, where he finally received medical attention, including surgery for his leg wounds, and rest. He was then transferred to another warship, the USS Batan, where he remained until his return to the United States on January 23.

On January 25, just before his first court appearance, Lindh was finally allowed to meet with Brosnahan.

Incredibly, despite the widespread international media attention then being paid the so-called “American Taliban,” there are no tapes or transcripts of the Lindh interrogations. Lindh signed no statements. Instead, the only record consists of military and FBI “summaries,” some prepared as long as six weeks after the interrogations.

Moreover, as the defense has pointed out in its recent court papers, the summaries conflict. For example, the later ones omit Lindh’s telling his interrogators that he became “disillusioned” by the September 11 attack on the World Trade Center, but that he could not leave the front lines in Takhar without being killed. That fact directly contradicts the indictment, which makes much of the fact that Lindh remained with his unit after learning of the attack.

Under established American law, prosecutors must turn over all the evidence relating to the crime charged. To date, however, the prosecution has produced only censored copies of the military and FBI summaries of the Lindh interrogations, along with some tangential documents such as medical records relating to the surgery on his wounded leg. On March 15, the defense had to file a motion for a court order to force the prosecution to turn over the rest of the evidence.

The defense motion to compel production seeks 13 different categories of evidence, some of which strongly suggest the holes in the prosecution’s case. These include the identity of “Dave,” the CIA agent who, along with Johnny Spann, threatened Lindh with death, as well as information about the massacre at Qala-i-Janghi prison. The defense also seeks the records of any relationship between the United States and the Northern Alliance, and those documenting US military activities in the area where Lindh was stationed.

However, much of the defense motion is directed to Lindh’s statements, including the complete summaries of the interrogation sessions, along with the names of the interrogators and the dates, times and places of the sessions. The defense is also seeking evidence concerning Lindh’s treatment after his capture in Afghanistan, such as photographs and videotapes showing him being stripped naked and placed in the metal container. Finally, the defense is requesting the evidence that the military interfered with the Red Cross’s attempt to deliver Lindh letters from his parents informing him that he had an attorney.

Included in the defense requests is one demonstrating the brutish manner in which the government treated Lindh before his return to the United States: “Mr. Lindh seeks several unofficial photographs that were taken by and with US Naval, Marine and other military personnel, apparently as souvenirs for their own personal use.”

The Bush administration cannot speak honestly about the Lindh prosecution. At a February 5 press conference, after Lindh’s lawyers filed their first round of court papers detailing his mistreatment and denial of access to his attorney, Attorney General John Ashcroft declared that Lindh “has, by his own statements, been treated well and received adequate food and medical treatment while in the custody of US officials. At each step in this process, Walker Lindh’s rights, including his rights not to incriminate himself and to be represented

by counsel, have been carefully, scrupulously honored.”

The contradiction between the printed record and Ashcroft’s statement was not lost on reporters who were present. After he finished speaking, Ashcroft turned the podium over to the local US Attorney, Paul McNulty, for questions and answers. The following exchange took place:

QUESTION: Can you respond ... on the issue of whether there was ever a time that he requested legal representation prior to the FBI statements?

McNULTY: ... that gets into really the defense’s arguments in this case. And there will be plenty of time and a proper place, not here, for us to address those issues. And I’m going to decline from getting into that now.

QUESTION: In one of the court papers filed today, it claims that ... the government custodians threatened him with death and torture. Do you have any knowledge of those claims?

McNULTY: This is in the document that his—I’m not aware of those issues.

QUESTION: Can you speak to his incarceration conditions? His lawyers have contended that he was denied medical treatment, he was not fed, he was shackled to his bed, that sort of thing.

McNULTY: These are allegations that have been made with regard to his condition when he was in Afghanistan, I assume, right? Well, I’m not in a position to be able to address those kinds of issues today. Today we have set forth the allegations against the defendant that are in the indictment. There are a number of arguments that his counsel may seek to make in both this detention hearing context tomorrow and in further proceedings, and we’ll address those at the appropriate time. I’m not going to address them today.

To all appearances, Lindh is an idealistic, but politically confused young man who found himself trapped in the dead end of Islamic fundamentalism. He has been singled out for a legal vendetta not only to provide the Bush administration with a convenient scapegoat for September 11, but also to intimidate and silence administration critics. The fact that the government must resort to strong-arm tactics and then lie about it underscores the bankrupt and fraudulent character of this prosecution.



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