

US prosecution brief defends brutal treatment of American Taliban POW

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In opposition papers filed March 29 for an April 1 hearing on defense motions to compel the production of evidence, prosecutors admitted that US officials stripped John Walker Lindh nude, tied him to a stretcher, and kept him in a metal shipping container for two days before an FBI agent allegedly obtained a written *Miranda* waiver of Lindh's Fifth Amendment right to remain silent and consult an attorney.

Lindh, a 21-year-old native of the San Francisco Bay area, was captured with a Taliban fighting unit last November. He is charged with 10 counts of conspiracy to commit murder and aiding terrorist organizations along with a firearms enhancement. If convicted, Lindh could be sentenced to three terms of life imprisonment plus 30 years. At today's hearing in the United States District Court for the Eastern District of Virginia, the trial judge will be determining what evidence the government will be required to turn over before trial, and whether the prosecution must provide further specifics regarding the criminal allegations. Trial is set to begin August 26.

The prosecutors do not acknowledge any impropriety in the treatment of Lindh at the US Marines' Camp Rhino. In a section of their brief entitled "A Note about 'Torture,'" they lambast the defense for having written that "Mr. Lindh believed that the only way to escape the torture of his current circumstances was to do whatever the FBI agent wanted." Using a tactic that has become a staple of the American right wing, they blamed the mistreatment on Lindh himself:

"Were the facilities at Camp Rhino ideal? Of course not. But the United States Marine Corps had not plucked John Walker Lindh out of the California suburb where he used to live and dropped him into a metal container in the middle of Afghanistan. Rather, it was Lindh who—by traveling thousands of miles and sneaking into Afghanistan, by seeking out training at an Al Qaeda camp in shoulder weapons and grenades and Molotov cocktails and battlefield tactics, by swearing allegiance to jihad, and by fighting with the Taliban—set into motion the chain of events that led him to that metal container in the desert."

The government's barbaric treatment of Lindh at Camp Rhino is looming as one of the crucial issues in the case. The prosecution is relying on supposedly incriminating statements

Lindh made during three FBI interrogation sessions there on December 9 and 10. If Lindh's lawyers establish that the waiver of the rights to remain silent and consult an attorney was not voluntary, then according to the rule of *Miranda v. Arizona* the statements cannot be used at trial and the case will have to be dismissed.

Despite their proclamation that "this wasn't torture," the prosecutors confirm the defense's essential allegations about Lindh's mistreatment after he survived the five-day massacre of Taliban prisoners at Qala-i-Jhangi fortress: "On December 1, 2001, John Walker Lindh came into the custody of the United States military forces." The next day US Special Forces removed Lindh—still with a bullet lodged in his leg—from Sherberghan hospital and transferred him to US Army custody at Mazar-i-Sharif, where he underwent almost a week of interrogations while under the influence of morphine and valium.

Lindh was airlifted from Mazar-i-Sharif on December 7. According to the prosecution papers, "When he arrived at Camp Rhino, Lindh was treated as a potentially dangerous detainee given his suspected affiliation with a terrorist organization. His ragged clothing was removed, he was searched, and he was then placed in a large metal container, where he was initially secured to a stretcher. Within an hour or two, he was wrapped in two comforters for warmth. He was given plenty of water. Within two days, he was provided medical 'scrubs' to wear and was released from the stretcher."

The prosecution papers do not mention the defense allegations that for the trip from Mazar-i-Sharif and for the next two days Lindh was blindfolded and shackled, and that the container was freezing cold. Nor do they explain why Lindh, if he was being treated properly, was still wearing "ragged clothing" a full week after passing into the custody of the US military.

The prosecution brief continues: "On December 14, 2001, Lindh was flown from Camp Rhino to the USS Peleliu" where the next day "he was operated on by the Peleliu's senior surgeon to remove a bullet lodged in his leg" and "he received daily medical treatment for the bullet wound as well as mild frostbite on his toes." There is no explanation regarding how a prisoner being well treated contracted "mild frostbite on his

toes.”

The prosecutors claim the military “provided him the very same medical treatment provided to wounded United States military personnel.” It is difficult to believe that the United States military would delay for more than two weeks surgery to remove a bullet from a leg from one of its own soldiers or sailors.

The brief concludes: “On December 31, 2001, [Lindh] was transferred to the USS Bataan, where he received mail from his family and was permitted to dictate a letter to his family; where he was visited by the chaplain; where he received additional medical care; and where he continued to grow stronger and healthier; and where, on January 22, 2002, he was flown off the Bataan to begin the journey back to the United States to face criminal charges.”

The prosecutors do not explain why the military held Lindh incommunicado until December 31, when Lindh’s family and the lawyer they retained for him were desperately trying to reach him, and why the lawyer and family remained unable to meet with Lindh until January 25, the morning before his first court appearance.

The prosecution brushed off the claim that the US government improperly interfered with James Brosnahan, the prominent San Francisco lawyer hired by Lindh’s parents. According to the prosecutors “the US Government was under no obligation to facilitate communication between Mr. Brosnahan and Lindh” because Lindh’s father, not Lindh himself, retained Brosnahan’s services, and Lindh’s father “had no authority to confer upon Mr. Brosnahan a status in this case different than that held by any other attorney in the United States.”

This outrageous contention that Brosnahan did not represent Lindh flies in the face of a statement made by George W. Bush himself on December 21, 2001. In an obvious reference to Brosnahan’s letters seeking access to Lindh, Bush said, “The administration has heard from his lawyer, and we’ve told his lawyer that at the appropriate time we will let everybody know, including his family, how we’re going to proceed.”

Again, the prosecutors blamed Lindh himself for the government’s interference with his rights. Writing that “by December 2001, Lindh had long abandoned his family in his effort to go on jihad,” they argued that his family had no right to retain a lawyer for him. Apparently, Lindh was supposed to have shopped for his own lawyer while blindfolded, shackled and strapped to a stretcher inside a metal shipping container in the Afghanistan desert.

Among the more important matters nowhere discussed in the prosecution’s opposition papers is the contention made repeatedly by the defense that Lindh requested to speak to an attorney several times prior to the FBI interrogations. The rule is well established that once a criminal defendant invokes his right to counsel all questioning must cease and any subsequent statements must be suppressed.

Moreover, the prosecution’s own papers show that the bulk of the allegedly incriminating statements Lindh made during his military and FBI interrogation sessions—of which there are no tapes or transcripts—are essentially of an abstract or ideological character. Examples of such supposedly “incriminating” statements include: “The defendant stated that it was a mistake [for Bin Laden and Al Qaeda] to attack governments that are supported by the United States and that it was more effective to attack the head of the snake,” (brackets in prosecution brief) and “the defendant stated he understood the strategy behind the bombing of US embassies, US Naval vessels and US military installations.”

On the other hand, the prosecution’s brief references Lindh statements demonstrating that he has not confessed to any conspiracy to murder Americans, the principal charge in the indictment. According to the prosecution, “(1) Lindh claimed he was not involved in the killing at QIJ [of CIA officer Spann]. (2) Lindh stated he saw no Americans while he fought in Afghanistan. (3) Lindh claimed he was not a combatant in the QIJ uprising and stayed in the basement bunker the whole time. (4) Lindh claimed he told an Al Qaeda leader he did not want to engage in any operations outside of Afghanistan and that he was only interested in fighting for the Taliban” (brackets in prosecution brief).

Finally, the prosecutors are resisting the release of evidence that would show whether Lindh, in fact, was involved in terrorist training or combat against Americans and their allies. Most significantly, they are asking the trial court to deny the motion to compel them to identify “Dave,” the CIA agent heard on the November 25 videotape along with Johnny Spann threatening Lindh’s life if he did not submit to interrogation. (The court papers refer to him as Confidential Source (CS) 1.)

Spann was killed later that day, the only American death specified in the indictment, and “Dave” is obviously a critical witness. The prosecution is also seeking to suppress information about the camps where Lindh supposedly received his training, US military deployments in the area of Lindh’s unit, and the relationship between the US military and the Northern Alliance warlord Abdul Rashid Dostum.



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