

As legal case against American Taliban POW unravels

## Judge shows pro-government bias at hearing for John Walker Lindh

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During a four-hour pretrial hearing, government prosecutors conceded they had no evidence that John Walker Lindh received terrorist training from Al Qaeda or fought against American troops. Nevertheless, they announced they were going forward with charges carrying a potential sentence of life imprisonment.

Lindh, a 21-year-old native of northern California, was captured last autumn with a Taliban fighting unit in Afghanistan. He is being prosecuted by the US government for conspiring to commit murder and aiding terrorist organizations.

The April 1 hearing in the United States District Court for the Eastern District of Virginia, located nine miles from the Pentagon, concerned defense requests that the prosecution be required to specify its criminal allegations against Lindh and that it turn over more evidence to his legal team. For the most part, Judge T.S. Ellis III denied the defense motions. He only granted Lindh's lawyers additional access to some narrow categories of information and held out the possibility that they could gain access to witnesses in the future.

In the course of arguments on the motions, prosecutors made concessions that directly contradicted key allegations in Lindh's criminal indictment. Most importantly, in response to a defense request that the government turn over its evidence of terrorist training at the camps where Lindh prepared for military service with the Taliban, the prosecution said it had none. This flies in the face of the indictment's paragraph 12, which alleges: "In or about June and July 2001, as part of his al Qaeda training, Lindh participated in terrorist training courses."

Scrambling to hold the case together, Assistant US Attorney David N. Kelly declared, "It's not what you learn there; it's how you use it." However, the government also conceded it had no evidence Lindh "used it" to fight against any Americans. When asked whether the prosecution case would include alleged attempts by Lindh to kill American citizens, Kelly replied, "At the moment, I am not aware of

it."

Paragraph 24 of the indictment describes the November 25, 2001 killing of CIA agent Johnny Michael Spann during the uprising that triggered the US-led massacre of Taliban prisoners at the Qala-i-Jhangi compound in northern Afghanistan. Spann's widow attended an earlier pretrial hearing and told the media afterwards that Lindh should be executed for his role in the murder of her husband. But when asked about Spann's death at the hearing, Assistant US Attorney John Davis said, "There is no evidence at this time and no allegation of personal involvement in that overt act of this conspiracy."

The more the prosecution was obliged to reveal the weakness of its legal case, the more openly Judge Ellis sided with the prosecutors. Rejecting the defense motion that the government specify the Americans Lindh allegedly conspired to murder, Ellis interjected, "Do you think Mohammed Atta knew the names of the people in the World Trade Center?" Raising his voice, he added, "Do you think any terrorist cares who they kill?"

By lumping Lindh—who traveled first to Yemen as a teenager, and then to Pakistan at age 20 to study Islam—with Atta, the alleged ringleader of the September 11 hijackers, the trial judge revealed that he already considered Lindh guilty of heinous crimes. Moreover, by making such a statement in a courtroom full of media, knowing that it would be widely reported, Ellis demonstrated that he had no concern about protecting the local jury pool from being contaminated by prejudicial pretrial publicity.

That was not the judge's only pro-prosecution outburst. At another point in the hearing, when defense lawyer George C. Harris said, "The defendant contests that he ever intended to be part of a conspiracy to kill civilians or Americans," Ellis interrupted, "Well what was he doing out there?" Realizing his blunder, the judge then added, "You don't have to answer that. . . . It was an inappropriate question."

Throughout, Ellis disregarded accepted standards of

judicial demeanor. When rejecting a request that the prosecution identify military personnel who spoke to Lindh as “too broad,” he added, “I would assume not everyone Mr. Lindh grunted at falls into that category.” Later, when the defense asked for access to interviews with alleged Taliban and Al Qaeda prisoners being held by the US military at Guantanamo Bay, Cuba, Ellis said derisively, “I presume there are people at Guantanamo Mr. Lindh knows.”

Ellis was contemptuous of Lindh’s defense team, assembled from San Francisco’s Morrison & Foerster, one of the world’s largest and most highly regarded law firms. Although the lawyers are defending a client facing life imprisonment, Ellis complained about their “voluminous” filings, and threatened to cancel oral arguments if they did not limit their papers.

At another point, Ellis told Harris, a graduate of Yale Law School with twenty years of legal experience, to sit down and be quiet, stating, “Usually when I say you’re going to want something, I’ll make the argument as well as you will.”

James Brosnahan, lead counsel for the defense, pleaded with Ellis to order that the prosecution state particulars about its charges against Lindh. “What is the conspiracy that my client is alleged to have been in?” Brosnahan asked. He continued: “We don’t know who was supposed to be murdered. . . . We don’t know the names of any co-conspirators. It’s not fair.” In conclusion, the lawyer asked rhetorically, “Is it real, this case?” Ellis denied the defense motion.

Although he denied most of the defense’s discovery requests, including the identity of “Dave,” the CIA agent heard with Spann on videotape threatening Lindh with death at the Qala-i-Jhangi fortress, Ellis instructed prosecutors to contact “Dave” and other witnesses to find out whether they would agree to voluntary interviews with defense counsel. He set a further court hearing for May 31 to rule on defense requests to compel interviews with witnesses who decline to speak to them voluntarily.

After the hearing, Brosnahan told the press that he “thought it was interesting that the government admitted it had absolutely no evidence that Mr. Lindh did anything against any American.” He added, “I think fair-minded people would wonder just what is the government’s case.”

Brosnahan distributed a chilling photograph of Lindh at Camp Rhino, Afghanistan, probably taken on December 7 or 8. In the photograph, Lindh is nude, lying supine on a canvas stretcher. He is blindfolded, and his hands are shackled with tight plastic handcuffs as well as some other material. He is fastened to the stretcher with what appears to be several strips of duct tape across his bare chest. The photograph of Lindh at Camp Rhino has been widely disseminated,

including airings on some TV cable news channels.

Prosecutors admit that Lindh was restrained in this manner for at least two days in a freezing-cold metal shipping container, with a bullet lodged in his leg from a gunshot wound suffered two weeks before. Lindh later was treated for “mild frostbite” on his toes. “The government had said that they treated John the same as American soldiers,” Brosnahan said to the media. “The picture might indicate to the casual observer that was not the case.”

Evidence regarding the brutalization of Lindh at Camp Rhino is critical for the defense. Following two days restrained inside the container, Lindh supposedly waived his rights to remain silent and consult an attorney, and then submitted to two days of FBI interrogation. If the defense establishes that Lindh was coerced to sign the waiver because he believed that such action might improve the conditions of his confinement, then his statements to the FBI must be suppressed and the prosecution will be left without evidence to present at trial. The suppression motion will be considered some time before the August 26 trial date.

Also on Monday, the defense filed a motion for an order directing the government to stop destroying evidence. According to the defense papers, the prosecution sent a letter claiming that US Army officials destroyed original notes of interviews with Lindh because “it did not have adequate storage facilities.” The destroyed notes could have been important because there are no tapes or transcripts of Lindh’s allegedly incriminating statements. The defense motion also references information from the prosecution that photographs and videotapes of Lindh taken after he left Camp Rhino were ordered destroyed by US Navy commanders.

What is becoming increasingly apparent as the criminal proceedings move forward is that the government’s case against Lindh is not a legitimate legal case at all, but rather a politically motivated prosecution intended to make an example of Lindh and set a precedent for a broader government crackdown on domestic dissent.



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