

United States, Trial of John Phillip Walker Lindh

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

A. American Taliban Flies Back, but not to the Cages of Guantanamo Bay

[Source: HUGGLER Justin, "American Taliban flies back, but not to the cages of Guantanamo Bay", in *The Independent*, London, 23 January 2002.]

American Taliban flies back, but not to the cages of Guantanamo Bay

by Justin Huggler
23 January 2002

The American John Walker Lindh, who joined the Taliban, met Osama bin Laden and fought with al-Qa'ida troops as bombs fell on Afghanistan, began his journey home from the war yesterday, to face trial.

He was being flown from the navy assault ship USS Bataan in the Arabian Sea, where he has been held, to a prison in Alexandria, Virginia.

Mr Walker is an al-Qa'ida volunteer. But, unlike the other suspects, he will not be held in the cages of Guantanamo Bay, Cuba. And his fate will not be decided by a military commission. Mr Walker will face justice before a US civilian court, because he is an American citizen.

He was probably the only American who knew in advance of 11 September that something terrible was going to happen. In June, he was training at an al-Qa'ida camp in Afghanistan, where he was told by an instructor that Mr bin Laden had sent operatives to make an attack on America.

Mr Walker stunned America when he emerged, barely able to walk, from a flooded basement, out of one of the darkest episodes of the war – in which more than 150 Taliban prisoners of war were killed by US bombs after they staged a prison revolt in Mazar-i-Sharif.

As he crawled into the light, Americans could barely believe one of their citizens was fighting for the Taliban. Yet there was Mr Walker's face, heavily bearded and wild-eyed with fear, staring at them out of their television screens.

His face keeps coming back to haunt America. Mr Walker appears in the extraordinary video footage of CIA agents interrogating the foreign Taliban volunteers who surrendered at the Qalai Jangi fortress in Mazar. Johnny "Mike" Spann, a CIA agent who was killed hours later, crouches before Mr Walker and snaps his fingers in front of his face. Off camera, "Dave", another CIA man, says: "He needs to decide if he wants to live or die. If he wants to die, he's just going to die here – he can f***** die here." Shortly afterwards, the revolt began.

The charge sheet against Mr Walker contains startling revelations. Not only did he fight alongside the Taliban, he was a member of an al-Qa'ida brigade run by Mr bin Laden, the charges say. The young American allegedly met Mr bin Laden at least once, and spoke with him in a small group.

Many Americans are baying for revenge. The authorities say there isn't enough evidence for a treason charge, which could carry the death penalty. But Mr Walker could face life in prison under charges including conspiring to kill Americans and aiding a terrorist group.

Conditions at the Virginia jail will be very different from those of his affluent upbringing. Mr Walker's former friends say he was a typical American child. He played American football and basketball. His father was an attorney, his mother a housewife. He was named after John Lennon. When he was 10, the family moved from Maryland to California.

And when he was 16, he converted to Islam, reportedly after reading the autobiography of Malcolm X. He went to Friday prayers at an Islamic centre. He changed his name to Suleyman al-Faris.

In 1998, he left to study Arabic and Islam in Yemen. Mr Walker's father, Frank Lindh, says he was not concerned at the time. In October 2000, he moved to a religious school in Pakistan's North West Frontier Province, a recruiting ground for the Taliban. His family lost touch with him.

In May last year, the American charge sheet says, Mr Walker joined a training camp for Harakat ul-Mujahedin, an Islamic group active in Kashmir, identified by the US as a "terrorist organisation". He quickly left the camp and travelled to Afghanistan to join the Taliban. There, the FBI says, he was told he would have to join a brigade of Arabs, because he did not speak an Afghan language, but did speak Arabic.

He was sent to an al-Qa'ida training centre at al-Farooq, where recruits were addressed by Mr bin Laden on several occasions. According to the charges, Mr Walker learnt at the camp that Mr bin Laden was planning suicide attacks. He was asked if he wanted to launch attacks on American interests but chose instead to stay on Afghanistan's front line.

When the American bombing began, he was sent to the front line near Taloqan. When the Taliban started to collapse, he and the other foreign fighters fell back on Kunduz. Eventually, Afghan Taliban leaders negotiated the surrender of Kunduz. Mr Walker was one of about 400 foreign fighters who agreed to surrender to General Rashid Dostum. Which is how Mr Walker found himself on his knees in Qalai Jangi fortress, face to face with the CIA's Johnny Spann.

B. Lindh agrees to serve 20 years

[Source: BRAVIN Jess, "Lindh agrees to serve 20 years", in *The Wall Street Journal*, New-York, 16 July 2002.]

Lindh agrees to serve 20 years

In Plea Deal Approved by Bush

By Jess Bravin

Staff Reporter of The Wall Street Journal

ALEXANDRIA, Va. – John Walker Lindh agreed to serve 20 years in prison for spending five months as a Taliban soldier, in a plea bargain reached with approval from President Bush.

The surprise deal, announced to a packed courtroom Monday, spares the 21-year-old defendant a possible life sentence, had he been convicted of charges that included conspiring with al Qaeda and the Taliban to kill Americans.

It also relieves the government of a complicated criminal prosecution involving evidence from the battlefields of Afghanistan, testimony from intelligence officers and possibly even the appearance of Taliban and al Qaeda fighters brought from their prison at the U.S. Guantanamo Bay Naval Base in Cuba.

A hint of the deal came right before Monday's scheduled hearing on which some of Mr. Lindh's statements could be used against him. Frank Lindh, the defendant's father, made the puzzling gesture of greeting U.S. Attorney Paul McNulty, warmly shaking the hand of the man heading his son's prosecution.

U.S. District Judge T.S. Ellis III, who lawyers said learned of the deal a half-hour before the hearing, went through a colloquy with the defendant to establish that he understood the consequences of his plea. There is no parole from federal prison.

"Do you feel all right today?" Judge Ellis asked. "Do you feel like you can make decisions about your future?"

"Yes, sir," Mr. Lindh replied.

[...]

Mr. Lindh pleaded guilty to two charges, each carrying a 10-year sentence and a maximum fine of \$250,000. One count, from the original indictment, is supplying services to the Taliban regime, which has been illegal under an order issued by President Clinton in 1999.

In a new charge filed Monday, Mr. Lindh pleaded guilty to carrying an explosive while committing the first offense. He also agreed to cooperate with authorities, including possibly testifying against others before military tribunals. He promised to give the government any money he might earn from selling his story.

Prosecutors agreed to dismiss the indictment's remaining nine counts, dropping accusations that Mr. Lindh supported the al Qaeda terrorist network or conspired to kill Americans.

Lawyers in the case said informal talks about a plea bargain began six weeks ago, and that the defense initially proposed a 10-year sentence. President Bush approved a 20-year term Thursday. The two sides spent the weekend hammering out the particulars, and signed off on the terms around 1 a.m. Monday.

Mr. McNulty called the deal "an important victory for the American people," adding that it proved "the criminal justice system can be an effective tool in combating terrorism."

In recent months, the Bush administration hasn't been so sure. After coming up against such varying hurdles as Mr. Lindh's crackerjack defense team and the erratic courtroom behavior of Zacarias Moussaoui, who is representing himself at trial on charges of conspiring in the Sept. 11 hijackings, officials increasingly are seeking to bypass the justice system altogether.

Instead, officials have designated two U.S.-born men taken in antiterrorism operations as "enemy combatants," holding them in military jails without charge or access to lawyers.

And according to chief defense lawyer James Brosnahan, prosecutors suggested Mr. Lindh might face the same fate should he be acquitted of criminal charges, adding to the pressure for a plea deal.

Defense lawyer Tony West said his client hoped to pursue a Ph.D. in prison, perhaps in Islamic literature. Prosecutors agreed to recommend Mr. Lindh be sent to prison near his parents' home, but the Justice Department will have the final word. Mr. Lindh faces formal sentencing Oct. 4. Judge Ellis can reduce the punishment to less than 20 years, but said he is unlikely to do so.

[**N.B.:** John Walker Lindh was sentenced to 20 years in prison on 4 October 2002 by the Eastern District Court of Virginia.]

Discussion

1. What is Mr. Lindh's status under IHL? Is he a prisoner of war? A civilian? Is the fact that he is a US citizen a relevant factor in determining his status? Under Convention III? Under Convention IV? (GC III, Art. 4; GC IV, Art. 4; P I, Art. 44)
2. If Mr. Lindh were a member of the Afghan armed forces, would he lose his POW status because of his citizenship when captured by the United States? Could Convention III prevent the United States from punishing a US prisoner of war for treason? (GC III, Arts. 4 and 85)
3. Unlike Hamdan, why was Mr Lindh not eligible for trial by one of the military commissions set up by the President's Military Order of 13 November 2001? [**See United States, President's Military Order; and United States, Hamdan v. Rumsfeld**]