

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)
)
) v.) CRIMINAL NO. 02-37-A
) (J. ELLIS)
JOHN WALKER LINDH)

GOVERNMENT’S STATUS REPORT ON DEFENSE REQUEST FOR INTERVIEWS

At the April 1, 2002 hearing, the Court directed the Government to file by April 25, 2002 a report concerning the status of defense requests for interviews. We report as follows:

A. Background

1. In a letter dated April 5, 2002, defense counsel identified 46 categories of potential witnesses it wished to interview. In some cases, the witnesses were identified by pseudonym and in other cases by categories (e.g., Request Number 35: “Individual who cut Mr. Lindh’s hair [as depicted in a photograph produced to the defense.]”)

2. The Government carefully reviewed this letter and determined that the request sought interviews from 56 members of the United States military forces and 10 employees of the Federal Bureau of Investigation.¹

3. On April 15, 2002, defense counsel identified five additional categories of witnesses and the Government identified 11 more individuals responsive to this request.

4. Thus, the total number of military and FBI employees requested for interviews is 77.

5. The Government, upon receipt of these letters, promptly and aggressively set out to locate and cause contact to be made with each of these individuals, a number of whom

¹ CS-1 was also requested for an interview in this letter. As the Court knows from our prior filing, CS-1 declined to be interviewed.

are still overseas. To assist the Government, we obtained invaluable assistance from the offices of General Counsel of DOD, Army, Navy, Marine Corps, NCIS, Army CID, and the FBI, and staff judge advocates in locations around the world and at military facilities in the United States. After receiving notification that an individual had agreed to be interviewed, the Government communicated this determination to defense counsel on a “rolling” basis.

B. Results

6. As of today, the Government has obtained interview decisions from 75 of the 77 individuals.² A total of 24 individuals agreed to be interviewed by defense counsel:

1. US Army #10
2. US Army #11
3. US Army #12
4. US Army #17
5. Army CID #1
6. Army CID #2
7. Army CID #3
8. FBI Laboratory expert
9. US Navy #2
10. US Navy #4
11. US Navy #5
12. US Navy #6
13. US Navy #7
14. US Navy #9
15. US Navy #21
16. USMC #1

² The status of the remaining two individuals is as follows: As to the first individual, the Government received an ambiguous response and has sought clarification (after discussing the matter with defense counsel.) As to the second individual, the Government has been unable to date to get in touch with him but our efforts are continuing.

17. USMC #2
18. USMC #4
19. USMC #16
20. USMC #17
21. NCIS #1
22. NCIS #2
23. NCIS #3
24. Army CID #4

All other individuals declined interviews with defense counsel.

C. Protocol

7. The Court made it clear to the Government that the first step that needed to be taken in connection with this project was for each witness to make his or her own decision as to whether the witness wished to be interviewed. As to these individuals, with the exceptions noted at footnote 1, that step is now complete.

8. As the Government indicated to the Court at the April 1, 2002, there are certain administrative protocols which defense counsel must now comply with, in particular, the requirements of 32 CFR Part 97, which require that defense counsel make a litigation request for information from DOD. We understand that the "Tuohy" letters are being provided by defense counsel today.

9. We anticipate that both DOD and FBI will grant the requested interviews and that these interviews will begin promptly. Our aspiration and intention is to insure that, with few exceptions, defense counsel is given the opportunity to interview each of its requested witnesses during the month of May 2002. (In some cases, due to the current location and responsibilities of a few individuals, that may be impossible, but we expect this situation to be extremely rare and will work to insure that these interviews take place as soon as possible.)

10. The Government and defense have conferred on several occasions and will continue to do so in order to address issues related to the protocol for the interviews. We are confident we can work through these issues but, if not, we will promptly bring these matters to the Court's attention.

Respectfully submitted,
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