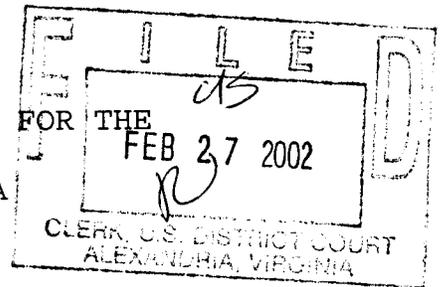


IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division



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

PROTECTIVE ORDER

This matter comes before the Court upon the Government's Motion for Protective Order to prevent the unauthorized disclosure or dissemination of classified national security information and documents which will be reviewed by or made available to the defense in this case.

Pursuant to the authority granted under Section 3 of the Classified Information Procedures Act, 18 U.S.C. App. 3 (CIPA); the Security Procedures Established Pursuant to Pub. L. 96-456, 94 Stat. 2025, by the Chief Justice of the United States for the Protection of Classified Information (reprinted following CIPA Section 9); Rules 16(d) and 57 of the Federal Rules of Criminal Procedure; the ordinary principles of contract law; the general supervisory authority of the Court; and in order to protect the national security,

IT IS HEREBY ORDERED THAT:

1. The Court finds that this case will involve information that has been classified in the interest of national security.

The storage, handling, control, and use of this information will require special security precautions mandated by statute, executive order, and regulation.

2. The procedures set forth in this Protective Order are intended to govern the time period throughout all post-indictment proceedings, including trial and post-trial (including appellate) matters in this case, and may be modified from time to time by further order of the Court acting under its inherent supervisory authority.

3. As used herein, the terms "classified national security information and documents," "classified information" and "classified documents" refer to:

A. any document which has been classified by any Executive Branch agency in the interest of national security or pursuant to Executive Order 12958 as "CONFIDENTIAL," "SECRET," "TOP SECRET," or "SENSITIVE COMPARTMENTED INFORMATION," or information contained in such document;

B. any document or information, regardless of its physical form or characteristics, now or formerly in the possession of a private party or a foreign government which (1) has been derived from information from the United States government that was classified, and (2) that has subsequently been classified by the government pursuant to Executive Order 12958 as "CONFIDENTIAL," "SECRET," "TOP SECRET" or "SENSITIVE

COMPARTMENTED INFORMATION (SCI)";

C. verbal classified information known to the defendant or defense counsel; or

D. any information regardless of origin and including foreign classified documents, that could reasonably be believed to contain classified information, or that refers or relates to national security or intelligence matters, unless and until the Court Security Officer or counsel for the United States advises otherwise in writing, or the material in question is produced to the defense by the Government as unclassified material.

4. The words "documents" or "information" shall include, but are not limited to, all written or printed matter of any kind, formal or informal, including originals, conforming copies and non-conforming copies (whether different from the original by reason of notation made on such copies or otherwise), and further include, but are not limited to,

A. papers, correspondence; memoranda; notes; letters; reports; summaries; photographs; maps; charts and graphics; inter-office and intra-office communications; notations of any sort concerning conversations, meetings, or other communications; bulletins; teletypes, telegrams, and telefacsimiles; invoices; worksheets; and drafts, alterations, modifications, changes and amendments of any kind to the foregoing;

B. graphic or oral records or representations of any

kind, including, but not limited to, photographs, charts, graphs, microfiche, microfilm, videotapes, sound recordings of any kind, and motion pictures;

C. electronic, mechanical or electric records of any kind, including, but not limited to, tapes, cassettes, disks, recordings, films, typewriter ribbons, word processing or other computer tapes or disks, and all manner of electronic data processing storage; and

D. information acquired orally.

5. All classified documents and information contained therein shall remain classified until the documents bear a clear indication that they have been declassified by an authorized agency or department of the United States.

6. Information in the public domain is ordinarily not classified. However, such information may be considered as classified, and therefore subject to the provisions of CIPA, if it is confirmed by any person who has, or has had, access to the classified information, and that confirmation corroborated the information in question. Any attempt by the defendant or defense counsel to have such information confirmed or denied at trial, or in connection with any proceeding in this case, shall be governed by CIPA and all provisions of this Order.

7. "Access to classified information" means having access to, reviewing, reading, learning, or otherwise coming to know in

any manner any classified information.

8. "Secure area" shall mean a physical facility accredited for the storage, handling, and control of classified information.

9. In accordance with the provisions of CIPA and the Security Procedures, the Court designates Christine Gunning as Court Security Officer for this case, and Michael P. Macisso, Charles L. Alliman, Earl D. Hicks, James P. Londergan, and Barbara J. Russell as Alternate Court Security Officers, for the purpose of providing security arrangements necessary to protect from unauthorized disclosure any classified documents or information to be made available in connection with this case. Defense counsel shall seek guidance from the Court Security Officer with regard to appropriate storage, handling, transmittal, and use of classified information.

10. The Court Security Officer shall arrange for an appropriately approved secure area for the use of counsel for the defense and their employees. The Court Security Officer shall establish procedures to assure that the secure area is accessible to defense counsel, employees of defense counsel, and authorized witnesses accompanied by defense counsel during normal business hours and at other times upon reasonable request, as approved by the Court Security Officer and in consultation with the United States Marshal Service. The secure area shall contain a separate working area for defense counsel, and will be outfitted with any

secure office equipment requested by defense counsel that is reasonable and necessary to the preparation of the defense. The Court Security officer, in consultation with defense counsel, shall establish procedures to assure that the secure area may be maintained and operated in the most efficient manner consistent with the protection of classified information. The Court Security Officer shall not reveal to the government the content of any conversations she/he may hear between defense counsel and their employees, nor reveal the nature of documents being reviewed by them, or the work generated by them, except as authorized by defense counsel. In addition, the presence of the Court Security Officer shall not operate as a waiver of, limit, to otherwise render inapplicable, the attorney-client privilege.

11. Filing of Papers by Defendant. Any pleadings or other document filed by the defendant shall be filed under seal with the Court through the Court Security Officer and shall be marked: "Filed in Camera and Under Seal with the Court Security Officer." The time of physical submission to the Court Security Officer shall be considered the date and time of filing. The Court Security Officer shall promptly examine the pleading or documents and, in consultation with representatives of the appropriate agencies, determine whether the pleading or document contains classified information. If the Court Security Officer determines that the pleading or document contains classified information,

she/he shall ensure that the portion of the document, and only that portion, is marked with the appropriate classification marking and that the document remains under seal, unless the Court directs that a redacted version of the document be placed on the public record. Any document filed by the defendant that does not contain classified information shall immediately be unsealed by the Court Security Officer and placed in the public record. The Court Security Officer shall immediately deliver under seal to the Court and counsel for the government any pleading or document to be filed by the defendant that contains classified information; the Court shall then direct the clerk to enter on the docket sheet the title of the pleading or document, the date it is filed, and the fact that it has been filed under seal with the Court Security Officer.

12. Filing of Papers by the Government. Pleadings or documents filed by the government containing classified information shall be filed under seal with the Court through the Court Security Officer. Such pleadings and documents shall be marked: "Filed in Camera and Under Seal with the Court Security Officer." The date and time of physical submission to the Court Security Officer shall be considered the date and time of the filing.

13. Protection of Classified Information. The Court finds that, in order to protect the classified information involved in

this case, no person except counsel for the defendant shall have access to the classified information in this case unless the Court grants permission. "Counsel for the defendant" is defined as the following individuals, assuming they receive the appropriate security clearances and execute the Memorandum of Understanding referenced in this order: **James J. Brosnahan, George c. Harris, Tony West, Raj Chatterjee, William Cummings and David T. Williams.** No defense counsel shall have access to any classified information in this case unless that person shall first have:

A. received an approval for access to the appropriate level of classification from the Court on a need to know basis;

B. received from the Court Security Officer the appropriate security clearance for the level of classified information involved in this litigation (For the purpose of establishing security clearances necessary for access to classified information that may be involved in this case, Standard Form 86 ("Security Investigation Data for Sensitive Position"), attached releases, and full fingerprints shall be completed and submitted to the Court Security Officer forthwith by defense counsel and all persons whose assistance the defense counsel requires.); and

C. signed the Memorandum of Understanding in the form attached hereto, agreeing to comply with the terms of this Order.

An executed original of each signed Memorandum of Understanding shall be filed with the Court. The substitution, departure, or removal for any reason from this case of counsel, for the defendant, or anyone associated with the defense as an employee or witness or otherwise, shall not release that person from the provisions of this Order or the Memorandum of Understanding executed in connection with this order.

Persons other than counsel for the government, appropriately cleared Department of Justice employees, and appropriately cleared personnel of the originating agency, can only obtain access to classified documents and information after having been granted a security clearance by the Court Security Officer, and with permission of the Court. Before any person other than counsel for the government, appropriately cleared Department of Justice employees, and personnel of the originating agency, is permitted by the Court to inspect and review classified information, he or she must also sign the Memorandum of Understanding.

14. Access to Classified Information. In the interest of National Security, the defendant shall not have any access to classified information except as provided for by the procedures in Section 14 (F) and (G). Defense counsel shall have access to classified information only as follows:

A. All classified information produced by the

government to counsel for the defendant, in discovery or otherwise, and all classified information possessed, created, or maintained by the defense, shall be stored, maintained, and used only in the secure area established by the Court Security Officer.

B. Defense counsel shall have free access to the classified information made available to them in the secure area, and shall be allowed to take notes and prepare documents with respect to those material.

C. No person, including defense counsel, shall copy or reproduce any classified information in any form, except with the approval of the Court Security Officer or in accordance with the procedures established by the Court Security Officer for the operation of the secure area.

D. All documents prepared by counsel for the defense (including without limitation, pleadings or other documents intended for filing with the Court) that do or may contain classified information, must be prepared in the secure area with approved word processing equipment and in accordance with the procedures approved by the Court Security Officer. All such documents and any associated material (such as notes, drafts, copies, typewriter ribbons, magnetic recordings, exhibits) containing classified information shall be maintained in the secure area unless and until the Court Security Officer

determines that those documents or associated material are unclassified in their entirety. None of these materials shall be disclosed to counsel for the government.

E. Defense counsel shall discuss classified information only within the secure area or in an area authorized by the Court Security Officer.

F. Defense counsel shall not disclose without prior approval of the Court the contents of any classified documents or information to any person not authorized pursuant to this Order, including the defendant, except the Court, Court personnel, and the attorneys for the government, who have been identified by the Court Security Officer as having the appropriate clearances and the need to know that information. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to any person not named in this Order. Any person approved by the Court for disclosure under this paragraph shall be required to obtain the appropriate security clearance, to sign and submit to the Court the Memorandum of Understanding appended to this Order, and to comply with each and every term and condition of this Order. If preparation of the defense requires that classified information be disclosed to persons not named in this Order, the Court Security Officer shall promptly seek to obtain security clearances for them at the request of defense counsel.

G. Defense counsel shall not disclose to the defendant, without prior concurrence of counsel for the government, or, absent such concurrence, prior approval of the Court, the contents of any classified documents or information provided to the defense in connection with the litigation of this matter. The Government shall review and respond to any such request promptly. Counsel for the government shall be given an opportunity to be heard in response to any defense request for disclosure to the defendant of classified information. This Court will consider a defense request to disclose classified information to the defendant where the government refuses to concur.

H. The defendant, defense counsel, employees of defense counsel, and defense witnesses shall not discuss classified information over any standard commercial telephone instrument or office intercommunication system.

I. Any documents written by the defense that do or may contain classified information shall be transcribed, recorded, typed, duplicated, copied, or otherwise prepared only by persons who have received an appropriate approval for access to classified information.

15. Classified Information Disclosed to Defendant. Should classified information be disclosed to the defendant in the course of this litigation, the defendant is enjoined from

disclosing such classified information to any unauthorized person at any time. Nothing in this order shall be construed as a limitation on the government in filing additional criminal charges against the defendant in the event of an unauthorized disclosure of classified information, or instituting civil litigation to further enforce these agreements.

16. Classified Information Procedures Act. Procedures for the public disclosure of classified information by the defense shall be those provided in Sections 5 and 6 of CIPA. No classified information may be disclosed by the defense except:

A. to the Court, court personnel, and government attorneys and their agents and employees identified by the Court Security Officer as holding proper approvals for access to classified information;

B. to representatives of the agency or department originating the classified information who have been identified by the Court Security Officer as holding proper security clearances and having the need to know the classified information;

C. in accordance with the procedures of CIPA and the procedures established by the Court Security Officer; and

D. to persons who have been authorized to have access to classified information pursuant to this Order or to CIPA.

17. Any unauthorized disclosure of classified information

may constitute violations of United States criminal laws. In addition, any violation of the terms of this Order shall be immediately brought to the attention of the Court and may result in a charge of contempt of Court and possible referral for criminal prosecution. Any breach of this Order will also result in the termination of a person's access to classified information. Persons subject to this Order are advised that direct or indirect unauthorized disclosure, retention, or negligent handling of classified documents or information could cause serious damage, and in some cases exceptionally grave damage, to the national security of the United States or may be used to the advantage of a foreign nation against the interests of the United States. This Order is to ensure that those authorized by the Order to receive classified information will never divulge the classified information disclosed to them to anyone who is not now authorized to receive it, without prior written authorization from the originating agency and in conformity with this Order.

18. All classified information to which the defendant, defense counsel, defense counsel employees, or any defense witnesses has access in this case will remain the property of the government. The defendant, defense counsel, defense counsel employees, and defense witnesses shall return all classified information in their possession obtained through discovery from

the government in this case, or for which they are responsible because of access to classified information, upon demand of the Court Security Officer. The notes, summaries, and other documents prepared by the defense that do or may contain classified information shall remain at all times in the designated and approved secure area or in the custody of the Court Security Officer for the duration of this case. At the conclusion of this case, all such notes, summaries, and other documents are to be destroyed by the Court Security Officer in the presence of defense counsel.

19. A copy of this Order shall be issued forthwith to counsel for the defendant, who shall be responsible for advising the defendant of the contents of this Order. Counsel for the defendant who are to be provided access to classified information shall execute the Memorandum of Understanding appended to this Order, and defense counsel shall file an executed original with the Court and the Court Security Officer and serve executed original of such document upon the government. The execution and filing of the Memorandum of Understanding is a condition precedent for defense counsel being granted access to classified information in this case.

Date 2/27/02

/S/
T.S. Ellis, III
United States District Judge

Classified Information Procedures Act, or as provided for in the Protective Order entered in the case of United States v. John Phillip Walker Lindh now pending in the Eastern District of Virginia.

2. I agree that this agreement and any other nondisclosure agreement will remain binding upon me after the conclusion of the proceedings in the above-captioned case.

I have received and read a copy of the Protective Order entered in this case by the United States District Court for the Eastern District of Virginia on _____, 2002, relating to classified information. I understand this Protective Order, and I agree to comply with the provisions of it.

I declare under penalty of perjury under the law of the United States that the foregoing is true and correct to the best of my knowledge, information, and belief.

Signature

Date

Witness