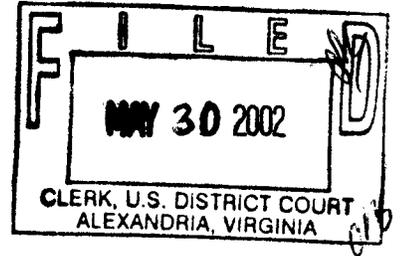


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division



UNITED STATES OF AMERICA)
)
 v.)
)
 JOHN PHILLIP WALKER LINDH)

Criminal No. 02-37-A

ORDER

The matter came before the Court on defendant's motion for access to certain captured combatants detained by the United States Department of Defense at Guantanamo Bay, Cuba, and who may be potential witnesses. This Order memorializes the bench rulings issued in the course of the hearing on this motion held on Tuesday, May 28, 2002.

For the reasons stated from the bench and for the reasons to be stated in a forthcoming memorandum opinion,

It is hereby **ORDERED** that defendant's motion for access to certain captured combatants detained at Guantanamo Bay is **GRANTED** in part and **DENIED** in part. This motion is **GRANTED** insofar as defendant, by counsel, will be permitted to submit to a group of Department of Justice (DOJ) and Department of Defense (DOD) attorneys who are separate and independent from the attorneys who represent the government (the "firewall attorneys")¹ written questions directed to each of the captured combatants designated by defense counsel. The questions may be screened by the firewall attorneys and, in the event any question is objected to,

¹ This group of attorneys will include two Assistant United States Attorneys from a district other than the Eastern District of Virginia.

the firewall attorneys must immediately file the objection and the reasons in support thereof with the Court. This filing is to be under seal and clearly marked for the eyes only of the Court and defense counsel. Defense counsel will be required to file a prompt response, after which the Court will resolve the objection. All of the questions, except those as to which an objection is sustained, will be put to the various designated detainees by DOD interrogators who will have the discretion to interweave the questions submitted by defense counsel with other portions of the interrogation. The firewall attorneys must promptly provide defense counsel with a written summary of each detainee's response to the questions submitted and defense counsel may then submit to the firewall attorneys written follow-up questions to be put to any detainee. Again, the firewall attorneys may promptly file objections to any follow-up questions and defense counsel may promptly respond, after which the Court will resolve the objection. The DOD interrogators will then promptly put the follow-up questions to the detainees to which they refer. Thereafter, as soon as practicable, the firewall attorneys must furnish defense counsel with a video recording of the pertinent portions of the interrogation of each detainee.²

The motion is **DENIED** in all other respects, including specifically the request for face-to-face contact with each captured combatant in Guantanamo Bay, Cuba.

The Court notes, however, that the results of this procedure will be evaluated by the Court to determine whether it has provided defendant with fair and reasonable pretrial access to potential witnesses consistent with the Fifth Amendment.

More specifically, it is **ORDERED** that the parties comply with the following schedule in

² Defendant, by counsel, may retain a translator/interpreter to prepare a transcript of any pertinent portions of the interrogation of any detainee provided the translator/interpreter is properly cleared and executes the appropriate confidentiality agreements.

implementing this procedure:

- (i) defense counsel must submit written questions to the firewall attorneys for the first ten of the detainees designated by defense counsel on or before 12:00 p.m., Tuesday, June 4, 2002;
- (ii) the firewall attorneys must file any objections to these interview questions by 5:00 p.m., Wednesday, June 5, 2002;
- (iii) defense counsel must respond to these objections by 5:00 p.m., Thursday, June 6, 2002, after which the Court will promptly resolve the objections without oral argument;
- (iv) defense counsel must submit written questions for the remaining detainees designated by defense counsel on or before 12:00 p.m., Friday, June 7, 2002;
- (v) the firewall attorneys must file any objections to these interview questions by 5:00 p.m., Monday, June 10, 2002;
- (vi) defense counsel must respond to these objections by 5:00 p.m., Tuesday, June 11, 2002, after which the Court will promptly resolve the objections without oral argument;
- (vii) while DOD interrogators will have discretion as to the time and circumstances of putting these questions to each detainee, the unobjected questions must be put to the detainees within five days of their receipt and any questions as to which objections have been overruled must be put to detainees within five days of the Court's ruling;
- (viii) the firewall attorneys must provide English summaries of the interview responses

- within forty-eight hours of completion of each interview;
- (ix) defense counsel must submit to the firewall attorneys any follow-up questions for the detainees within twenty-four hours of receiving the English summaries of the questions;
 - (x) the firewall attorneys must provide the video recording of the interrogation of each detainee as soon as practicable;
 - (xi) all submissions in connection with this procedure must be filed under seal and *ex parte* for the eyes only of the Court, defense counsel, and the firewall attorneys;
 - (xii) the government must provide defense counsel with the qualifications of its interpreter/translator used during the interviews or interrogation of the detainees with respect to the questions submitted by defense counsel.

It is further **ORDERED** that the government notify the Court by pleading if it objects to defense counsel's contacting the detainee in Norfolk, Virginia, by 5:00 p.m., Thursday, May 30, 2002.

It is further **ORDERED** that counsel for the government is **DIRECTED** to file a pleading identifying the firewall attorneys as soon as practicable, who, if possible, should not be Assistant United States Attorneys from the Eastern District of Virginia.

The Clerk is directed to send copies of this Order to all counsel of record.

/S/

May 30, 2002
Alexandria, Virginia

T.S. Ellis, III
United States District Judge