

Appendix A

The plea agreement between John Walker Lindh and the United States, resolving the first terrorism case linked to the events of September 11, 2001.

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

UNITED STATES OF AMERICA,

v.

JOHN LINDH,
Defendant.)

CRIMINAL NO. 02-37A

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, and Randy I. Bellows, David N. Kelley, and John S. Davis, Assistant United States Attorneys, and the defendant, John Lindh, and the defendant's counsel, James J. Brosnahan, George C. Harris, Tony West, Raj Chatterjee, and William B. Cummings, pursuant to Rule 11(e) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

GENERAL PROVISIONS

Appendixes 244

1. The defendant, John Lindh, pursuant to Rule 11(e)(1)(A), agrees to plead guilty to Count Nine of the Indictment and to a Criminal Information filed herewith. Count Nine charges the defendant with supplying services to the Taliban, in violation of Title 50, United States Code, Section 1705(b), Title 18, United States Code, Section 2, and Title 31, Code of Federal Regulations, Sections 545.204 and 545.206(a). The Criminal Information charges the defendant with carrying an explosive during the commission of a felony which may be prosecuted in a court of the United States, in violation of Title 18, United States Code, Section 844(h)(2). The maximum penalty for the violation of Count Nine is ten years' imprisonment; a fine of \$250,000; three years of supervised release; and a \$100 special assessment. The penalty for the offense charged in the Criminal Information is ten years' imprisonment, consecutive to any term of imprisonment imposed on Count Nine; a fine of \$250,000; three years of supervised release; and a \$100 special assessment. The defendant is aware that any term of supervised release is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant's being returned to prison for the full term of supervised release. The parties agree that if two terms of supervised release are imposed in this case, the terms are to be served concurrently. *See* 18 U.S.C. section 3624(e).
2. The defendant agrees that pending sentencing in this matter he will not seek release from detention.
3. Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction. Restitution is not applicable in this case.
4. At sentencing in this case, the Government will move to dismiss Counts 1 through 8, and Count 10.

SENTENCING MATTERS

5. Pursuant to Rule 11(e)(1)(B), the parties stipulate and agree that the correct application of the United States Sentencing Guidelines is as follows:

- i. As to Count Nine, the most analogous offense guideline is section 2M5.2. The applicable base offense level is 26. A twelve-level upward adjustment is appropriate because the provisions of § 3A1.4 apply. The defendant's criminal history category, therefore, is Category VI. A three-level reduction is appropriate for Acceptance of Responsibility, pursuant to § 3E1.1(a) and (b), resulting in an Offense Level Total for Count Eight of 35. Accordingly, the Sentencing Guideline Range on Count Eight is 292–365 months, subject to the statutory maximum of ten years' imprisonment.
 - ii. As to the offense charged in the Criminal Information, the offense guideline is section 2K2.4, and the guideline sentence is ten years' imprisonment.
 - iii. Accordingly, the appropriate total sentence of imprisonment is twenty years. Neither party will seek an upward or downward departure from that sentence.
 - iv. As to both Count Nine and the offense charged in the Criminal Information, no fine is appropriate.
6. The defendant is aware that 18 U.S.C. Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence up to and including twenty years' imprisonment, or the manner in which that sentence was determined, on the grounds set forth in 18 U.S.C. Section 3742 or on any ground whatever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States to appeal as set forth in 18 U.S.C. Section 3742(b).
 7. The United States will not further criminally prosecute the defendant for the specific conduct described in the Indictment, the Criminal Information, or the Statement of Facts.

WAIVER OF RIGHTS

8. The defendant represents to the Court that the defendant is satisfied that his attorneys have rendered effective assistance. The defendant understands that by entering into this agreement, the defendant surrenders certain rights as provided in this agree-

ment. The defendant understands that the rights of criminal defendants include the following:

- a. If the defendant persisted in a plea of not guilty to the charges, the defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the defendant, the United States, and the judge all agree.
- b. If a jury trial is conducted, the jury would be composed of twelve laypersons selected at random. The defendant and the defendant's attorney would assist in selecting the jurors by removing prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that the defendant is presumed innocent, that it could not convict the defendant unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt, and that it was to consider each charge separately.
- c. If a trial is held by the judge without a jury, the judge would find the facts and, after hearing all the evidence and considering each count separately, determine whether or not the evidence established the defendant's guilt beyond a reasonable doubt.
- d. At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those witnesses and the defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence in the defendant's own behalf. If the witnesses for the defendant would not appear voluntarily, the defendant could require their attendance through the subpoena power of the Court.
- e. At a trial, the defendant could rely on a privilege against self-incrimination to decline to testify, and no inference of guilt could be drawn from the refusal of the defendant to testify. If the defendant desired to do so, the defendant could testify in the defendant's own behalf.

TERMS OF COOPERATION

9. The defendant agrees to cooperate fully, truthfully and completely with the United States, and provide all information known to the defendant. A failure to cooperate fully, truthfully and completely is a breach of this plea agreement, as determined by the Court. The defendant acknowledges that he has been advised that the United States will not seek a downward departure from the applicable sentencing guidelines, or from the sentence imposed, pursuant to Section 5K of the Sentencing Guidelines, Title 18 U.S.C. Section 3553(e), or Rule 35(b) of the Federal Rules of Criminal Procedure, in respect to the defendant's cooperation. In regard to that cooperation:
 - a. The defendant agrees to testify fully, truthfully and completely at any grand juries, trials or other proceedings, including military tribunals.
 - b. As required by the United States, the defendant agrees to be available for debriefing by law enforcement and intelligence officers and for pre-trial conferences with prosecutive authorities. The timing and location of such debriefings and meetings shall be determined by the United States. Should defense counsel wish to attend particular debriefings, the Government will seek to schedule such debriefings consistent with the schedule of defendant's counsel, who shall make themselves reasonably available.
 - c. The defendant agrees to provide all documents, records, writings, or materials, objects or things of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation, excepting documents privileged under the attorney-client privilege.
 - d. The defendant agrees that, upon request of the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice. The defendant stipulates to the admissibility of the results of this polygraph examination if later offered in a proceeding to determine the defendant's compliance with this plea agreement; however, the defendant reserves the right to challenge the weight that should be attributed to such polygraphs by contesting the accuracy of such polygraphs.

- e. The defendant agrees that the accompanying Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.
- f. The defendant is hereby on notice that he may not violate any federal, state, or local criminal law while cooperating with the government.

ADDITIONAL GENERAL PROVISIONS

Appendixes
248

- 10. The United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other criminal prosecution against the defendant. Regardless of any other provision of this agreement, however, the United States may use any statement made by the defendant, whether in the form of the Statement of Facts accompanying this plea agreement or in the debriefing of the defendant or in some other form, against the defendant in any prosecution of the defendant resulting from the defendant's breach of the plea agreement, whether such breach is caused by the defendant's providing false information, failing to provide full and complete cooperation, or for any other valid reason. Such a prosecution includes, but is not limited to, a prosecution for perjury or false statements.
- 11. This plea agreement does not restrict the Court's or Probation Office's access to information and records in the possession of the United States.
- 12. This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant's providing full, complete and truthful cooperation.
- 13. The accompanying Statement of Facts signed by the defendant is hereby incorporated into this Plea Agreement. Defendant

adopts the Statement of Facts and agrees that the facts therein are accurate in every respect and that had the matter proceeded to trial, the United States would have proved those facts beyond a reasonable doubt.

ASSIGNMENT OF ANY PROFITS OR PROCEEDS FROM PUBLICITY

14. The defendant hereby assigns to the United States any profits or proceeds which he may be entitled to receive in connection with any publication or dissemination of information relating to illegal conduct alleged in the Indictment. This assignment shall include all profits and proceeds for the benefit of the defendant, regardless of whether such profits and proceeds are payable to himself or to others, directly or indirectly, for his benefit or for the benefit of the defendant's associates or a current or future member of the defendant's family. The defendant shall not circumvent this assignment by assigning the rights to his story to an associate or to a current or future member of the defendant's family, or to another person or entity who would provide some financial benefit to the defendant, to the defendant's associates, or to a current or future member of the defendant's family. Moreover, the defendant shall not circumvent this assignment by communicating with an associate or a family member for the purpose of assisting or facilitating their profiting from a public dissemination, whether or not such an associate or other family member is personally or directly involved in such dissemination.

Appendixes
249

SPECIAL ADMINISTRATIVE MEASURES

15. The defendant is aware of the provisions of 28 C.F.R. Section 501.2 governing conditions of incarceration in national security cases. If a determination is made that such special administrative measures are applicable, the government will endeavor nonetheless to treat the defendant in a manner comparable to the treatment of other federal inmates at the same security classification level, regarding such matters as access to educational opportunities, prison library privileges, books, magazines,

newspapers, radio and television, visitation, and religious observances. The government also will endeavor to modify the currently existing special administrative measures to effect the same result.

SUPERVISED RELEASE

16. During the period of supervised release, the defendant may in appropriate circumstances apply to the Court and his probation officer for permission to travel out of his district of supervision, including out of the country. *See* U.S.S.G. section 5D1.3(c)(1).

Appendixes

250

BREACH OF THE PLEA AGREEMENT

17. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence.
18. If the defendant fails in any way to fulfill completely all of the obligations under this plea agreement, including but not limited to his candid, forthright, truthful and complete cooperation, the United States may seek release from any or all its obligations under this plea agreement. If released from its obligations under this plea agreement, the United States may prosecute the defendant to the full extent of the law. The defendant agrees that any prosecution and sentencing subsequent to a breach of this plea agreement is not barred by the Double Jeopardy Clause of the Constitution or any other Constitutional provision or law or rule and that such rights as he might otherwise have enjoyed under these provisions are hereby waived, except that the defendant may raise any defense or make any claim that he could have raised prior to the entry of the Plea Agreement.
19. If the defendant fails to fulfill his obligations under this plea agreement, and the matter proceeds to trial, the defendant understands and agrees that any statements he makes pursuant

to or associated with this plea agreement, including but not limited to the Statement of Facts submitted in connection with this plea agreement and such statements as the defendant makes during the debriefing process, are admissible if offered by the Government at pre-trial proceedings and/or at trial and may be used for any purpose. Defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, or any other federal rule, that defendant's statements pursuant to this agreement should be suppressed or are inadmissible, except on relevancy grounds.

DESIGNATION

20. The Government agrees not to object to the defendant's request to the Court for a recommendation that he be assigned to a suitable Bureau of Prisons facility near his parents' homes. The Government further agrees to communicate to the Bureau of Prison, at the defendant's request, factors potentially relevant to the secure incarceration of the defendant during his term of imprisonment, and to make appropriate recommendations as to those factors, including recommendations related to personal safety. The parties recognize that it is solely within the discretion of the Bureau of Prisons to determine where and in what manner the defendant is actually incarcerated, and this plea agreement in no way limits the exercise of that discretion.

UNLAWFUL ENEMY COMBATANT STATUS

21. With the following exception, the United States agrees to forego any right it has to treat the defendant as an unlawful enemy combatant based on the conduct alleged in the Indictment. The exception is as follows: For the rest of the defendant's natural life, should the Government determine that the defendant has engaged in conduct proscribed by the offenses now listed at 18 U.S.C. § 2332b(g)(5)(B), or conduct now proscribed under 50 U.S.C. § 1705, the agreement contained in this paragraph shall be null and void, and the United States may immediately

invoke any right it has at that time to capture and detain the defendant as an unlawful enemy combatant based on the conduct alleged in the Indictment.

REPRESENTATIONS BY THE DEFENDANT

22. The defendant agrees that this agreement puts to rest his claims of mistreatment by the United States military, and all claims of mistreatment are withdrawn. The defendant acknowledges that he was not intentionally mistreated by the U.S. military.

Appendixes

252

CREDIT FOR TIME SERVED

23. The United States recommends that the defendant be given credit by the Bureau of Prisons for such time as he has been in custody of the United States, including the time period between December 1, 2001 and January 22, 2002, while the defendant was in the custody of the United States military. The parties recognize and acknowledge that the Bureau of Prisons will determine the computation of credit for time served.

CONCLUDING REPRESENTATIONS

24. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement.
25. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.
26. *Defendant's Signature:* I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the indictment. Further, I fully understand all rights with respect to the provisions of the *Sentencing Guidelines and Policy Statements* which may apply in my case. I have read this plea agreement

and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

Date: _____

John Lindh

Defendant

27. *Defense Counsel Signature:* We are counsel for the defendant in this case. We have fully explained to the defendant the defendant's rights with respect to the pending indictment. Further, we have reviewed the provisions of the *Sentencing Guidelines and Policy Statements* and we have fully explained to the defendant the provisions of those Guidelines which may apply in this case. We have carefully reviewed every part of this plea agreement with the defendant.

Appendixes

253

To our knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____

James J. Brosnahan, Esq.

George C. Harris, Esq.

Tony West, Esq.

Raj Chatterjee, Esq.

William B. Cummings, Esq.

Respectfully submitted,

PAUL J. McNULTY

UNITED STATES ATTORNEY

By:

Randy I. Bellows

David N. Kelley

John S. Davis

Assistant United States Attorneys

APPROVED: _____

Date: