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AMERICAN TALIBAN AVOIDS CHARGE OF TREASON, CLAIMS TO BE VICTIM OF COERCION

By Jennifer Malone

After John Walker Lindh pled not guilty to charges of conspiring to kill Americans abroad, providing material assistance to terrorists, and giving goods and services to the Taliban, Gail Spann stated, "John Walker [Lindh] is a traitor ... I think all Americans feel the same way I do." Spann is the mother of the CIA officer, Johnny Spann, who was killed in a prison uprising last year shortly after interviewing Lindh. Though Spann considers Lindh a traitor, none of the ten charges against Lindh include treason. Prosecutors have used Lindh's statements to the FBI and evidence of his anti-American sentiment to portray him as a cold-blooded terrorist. The defense has argued that Lindh is a youth who believes in a religious cause and was coerced into making statements by governmental mistreatment.

"Carrying arms for the Taliban while fighting Americans fits both a legal and common-sense description of [treason]."

-- Victoria Toensing, former deputy assistant attorney general

Many have expressed frustration that Lindh has not been charged with treason. Attorney General John Ashcroft has explained that not all conduct against the United States by U.S. citizens is susceptible to a treason charge. Treason against the United States consists only of "...levying War against them, or in adhering to their Enemies, giving them Aid and Com-

fort." U.S. Const. art. III, § 3.[1].

For a treason conviction, the Constitution requires testimony from two witnesses to the treasonous act or a confession in open court. U.S. Const. art. III, § 3.[1]. Brian Landsburg, law professor at the University of the Pacific, McGeorge School of Law, stated, "Wholly aside from the substantive question of whether Lindh committed treason, this requirement makes treason prosecutions tough to sustain." According to Ashcroft, if evidence is found showing Lindh participated in the murder of Spann, Lindh could be charged with treason.

Victoria Toensing, a former deputy assistant attorney general, argues that evidence is already sufficient to charge Lindh with treason. "Carrying arms for the Taliban while fighting Americans fits both a legal and common-sense description of that constitutional charge [of treason]." Toensing points to Supreme Court precedent in which Hans Max Haupt was convicted of treason for harboring his son, a German saboteur, during World War II. In that case, the Court accepted the testimony of FBI agents who conducted surveillance of Haupt's actions. "Comfort" was inferred from Haupt's allowing his son to enter and exit his home.

Because the United States was involved in a military conflict, Toensing believes testimony by two Americans that Lindh was fighting beside the enemy is sufficient for treason. Former Supreme Court Chief Justice John Marshall once wrote, "...If a body of men be actually assembled for the purpose of

effecting by force a treasonable purpose, all those who perform any part, however minute, or however remote from the scene of action, ... are to be considered as traitors." *Ex Parte Bollman and Ex Parte Swartwout*, 8 U.S. 75, 126 (1807).

During his statements, Lindh claimed his only purpose was religious. Lindh explained his conversion to Islam, his journey to study Islam, and his choice to fight with the Taliban. Lindh knew Bin Laden and al-Qaeda were "against America" and al-Qaeda's purpose was to fight Americans. He knew Bin Laden had sent operatives in June 2001 to the United States to conduct suicide missions. By September 12, 2001, Lindh learned of the terrorist attacks of September 11th and understood that they were ordered by Bin Laden. Shortly thereafter, he was sent to the front lines to protect Bin Laden.

Lindh's knowledge and anti-American actions call into question his alleged religious purpose. His anti-American sentiment is cemented by emails Lindh sent to his parents in which he referred to President George W. Bush as "...your new president...I'm glad he is not mine."

Whatever his purpose, Lindh has avoided a treason charge to date. Meanwhile, the defense attacks the admissibility of Lindh's statements to the FBI. The defense claims Lindh's waiver of his Miranda rights was involuntary because he was physically mistreated. However, Lindh told *CNN* that he had been treated well and received adequate treatment.