IN THE UNITED STATES ARMY
COURT OF CRIMINAL APPEALS

HEARST NEWSPAPERS, LLC, et al., Petitioners, v. ROBERT B. ABRAMS General, U.S. Army, in his official capacity as Commander of United States Army Forces Command, Fort Bragg, NC, and General Court-Martial Convening Authority, PETER Q. BURKE Lieutenant Colonel (O-5), AG, U.S. Army, in his official capacity as Commander, Special Troops Battalion, U.S. Army Forces Command, Fort Bragg, NC, and Special Court-Martial Convening Authority, MARK A. VISGER Lieutenant Colonel (O-5), J.A., U.S. Army, in his official capacity as Preliminary Hearing Officer for Article 32 Proceedings against Robert B. Bergdahl, Sergeant, U.S. Army, and UNITED STATES, Respondents.	**AFFIDAVIT OF DIEGO IBARGUEN IN SUPPORT OF PETITIONER'S PETITION FOR EXTRAORDINARY RELIEF IN THE NATURE OF A WRIT OF MANDAMUS** Army Misc. Dkt. No. _____

AFFIDAVIT OF DIEGO IBARGUEN IN SUPPORT OF PETITIONER'S PETITION FOR EXTRAORDINARY RELIEF IN THE NATURE OF A WRIT OF MANDAMUS

STATE OF NEW YORK :
: ss.
COUNTY OF NEW YORK :

I, Diego Ibarguen, of full age and being duly sworn according to law, upon my oath depose and say:

1. I am employed as Counsel at The Hearst Corporation, Office of General Counsel. In that capacity, I represent the San Antonio *Express-News*, ("*Express-News*") a Hearst Newspapers, LLC newspaper.

2. I submit this affidavit in support of the Petition by the *Express-News* and other media entities for extraordinary relief in the nature of a writ of mandamus.

3. Attached as Exhibit A to this Affidavit is a true and correct copy of an article titled, "Bowe Bergdahl's release: What you need to know" by Jolie Lee, published by *USA TODAY* on June 2, 2014. The article is also available at http://www.usatoday.com/story/news/nation-now/2014/06/02/bowe-bergdahl-need-to-know/9860091/.

4. Attached as Exhibit B to this Affidavit is a true and correct copy of an article titled, "Army Sgt. Bowe Bergdahl to be charged with desertion" by Sig Christenson, published by the *Express-News* on March 26, 2015. The article is also available at http://www.mysanantonio.com/news/local/article/Bergdahl-to-be-charged-with-desertion-6158411.php.

5. Attached as Exhibit C to this Affidavit is a true and correct copy of an article titled, "Bowe Berdahl's lawyer: Trump's comments are un-American" by Thomas Gibbons-Neff, published by *The Washington Post* on August 20, 2015. The article is also available at https://www.washingtonpost.com/news/checkpoint/wp/2015/08/20/bowe-bergdahls-lawyer-trumps-comments-are-un-american/.

6. Attached as Exhibit D to this Affidavit is a true and correct copy of a September 15, 2015 press release and exhibits thereto issued by Eugene Fidell, counsel to Sgt. Robert B. Bergdahl.

7. Attached as Exhibit E to this Affidavit is a true and correct copy of an article titled, "Bergdahl faces desertion charge, but dodges capital punishment" by James Rosen and Adam Ashton, published by the McClatchy Washington Bureau on March 25, 2015. The article is also

available at http://www.mcclatchydc.com/news/nation-world/national/national-security/article24782233.html

8. On July 31, 2015, I sent a letter to Lt. Col. Peter Burke on behalf of the *Express-News* and several other media entities. A true and correct copy of that July 31, 2015 letter is attached as Exhibit F to this Affidavit.

9. On August 6, 2015, Lt. Col. Burke responded to my July 31, 2015 letter by mail. A true and correct copy of Lt. Col. Burke's August 6, 2015 response is attached as Exhibit G to this Affidavit.

10. On September 12, 2015, I sent an email on behalf of the *Express-News* to Gen. Robert B. Abrams. A true and correct copy of that September 12, 2015 email, with attachments, is attached as Exhibit H to this Affidavit.

11. On September 15, 2015, Maj. Margaret Kurz responded, by email, to my September 12 email to Gen. Abrams. Attached to Maj. Kurz's September 15 email was a letter response from Maj. Kurz. A true and correct copy of Maj. Kurz's September 15 email, with attachment, is attached as Exhibit I to this Affidavit.

12. On September 18, 2015, I sent an email on behalf of the *Express-News* to Gen. Abrams and Lt. Col. Burke. A

true and correct copy of that September 18 email is attached as Exhibit J to this Affidavit.

13. On September 25, 2015, Maj. Margaret Kurz responded, by email, to my September 18 email to Gen. Abrams and Lt. Col. Burke. Attached to Maj. Kurz's September 25 email were letter responses from Maj. Kurz and Lt. Col. Vanessa A. Berry. A true and correct copy of Maj. Kurz's September 25 email, with both attachments, is attached as Exhibit K to this Affidavit.

14. Attached as Exhibit L to this Affidavit is a true and correct copy of an article titled, "Witness says Bergdahl's plan was to run 20 miles to another base" by Sig Christenson, published by the *Express-News* on September 18, 2015. The article is also available at http://www.mysanantonio.com/news/local/article/Witness-says-he-tried-to-alert-higher-ups-about-6513837.php.

15. Attached as Exhibit M to this Affidavit is a true and correct copy of an article titled, "Bowe Bergdahl Should Not Be Imprisoned, Army Investigator Says" by Richard A. Oppel, Jr., published by the *New York Times* on September 18, 2015. The article is also available at http://www.nytimes.com/2015/09/19/us/bowe-bergdahl-should-not-be-imprisoned-army-investigator-says.html?_r=0.

16. By telephone on October 2, 2015, Eugene R. Fidell and Lt. Col. Franklin D. Rosenblatt, JA, counsel for Sgt. Bergdahl, specifically authorized me to represent to the Army Court of Criminal Appeals that Sgt. Bergdahl consents to the relief sought by the *Express-News* and other media entities.

Diego Ibarguen

Subscribed and Sworn to
before me this 2nd day of October, 2015.

Notary Public
My Commission Expires:

LORI J. HORSLEY
Notary Public, State of New York
No. 01HO6077703
Qualified in New York County
Commission Expires Nov. 16, 2018

EXHIBIT A

Bowe Bergdahl's release: What you need to know

USA TODAY NETWORK **Jolie Lee, USA TODAY Network** *9:50 a.m. EDT June 2, 2014*

(Photo: AFP/Getty Images)

After nearly five years in captivity by the Taliban, U.S. Sgt. Bowe Bergdahl was released May 31.

Who is Bergdahl?

Bergdahl was the only known American prisoner of war (/story/news/world/2013/06/20/bowe-bergdahl-pow-taliban/2441833/)in the Afghanistan war. He is from Hailey, Idaho, and was 23 years old when he disappeared from his base in southeastern Afghanistan on June 30, 2009.

The U.S. government said it believes Bergdahl was in Pakistan for most of his time in captivity. Since his capture, Bergdahl has appeared in several videos released by the Taliban.

Why was Bergdahl released?

President Obama released five Taliban prisoners at Guantanamo Bay in exchange for Bergdahl (http://%20His%20national%20security%20team%20was%20unanimous%20in%20its%20support%20of%20the%20trade,%20Hagel%20told%20reporters U.S. intelligence revealed Bergdahl's health was deteriorating and the trade was made "essentially to save his life," said Defense Secretary Chuck Hagel. The administration's national security team was unanimous in support of the exchange.

MORE: U.S. Sgt. Bergdahl freed in Afghanistan (/story/news/nation/2014/05/31/us-detainee-freed-in-afghanistan/9809219/)

TWEETS ABOUT SGT. BOWE BERGDAHL

What happened during the release?

The United States and the Taliban had started negotiating indirectly through the government of Qatar in November. Several dozen special operations troops were involved, and there was the potential for violence with the presence of 18 armed Taliban members. No shots were fired and the exchange went as well as could be expected, Hagel said. Bergdahl was flown to an Army hospital in Landstahl, Germany, for evaluation before he returns to the United States.

Later in the day, the five Guantanamo detainees were flown to Qatar. The detainees will be closely monitored and banned from traveling outside of Qatar for at least one year.

Was Bergdahl a deserter?

It's unclear whether Bergdahl had lagged behind when he was captured or if he was trying to desert the Army. Hagel has declined to say what he believes happened. Some fellow soldiers have taken to social media to call Bergdahl a deserter, including on the Facebook page "Bowe Bergdahl is NOT a hero (https://www.facebook.com/boweisnotahero)."

Prior to his capture, Bergdahl had indicated his disillusionment with the Army in e-mails to his parents, according to a 2012 article in *Rolling Stone (http://www.rollingstone.com/politics/news/americas-last-prisoner-of-war-20120607?page=2)*. Bergdahl told his parents he was "ashamed to even be American." If it's determined Bergdahl deserted, he would face five years in prison and a dishonorable discharge.

What does Bergdahl's release mean for U.S. relations with the Taliban?

Senior U.S. officials involved in the swap said Bergdahl's release could further reconciliation with the Taliban and achieve more security in Afghanistan. But Republican congressional leaders said the exchange would embolden terrorists to kidnap Americans. They also expressed concerns that the five detainees would return to the fight against the United States.

The Guantanamo detainees "are hardened terrorists who have the blood of Americans and countless Afghans on their hands," said Sen. John McCain, R-Ariz.

MORE: Is it ever right to negotiate with terrorists? (/story/news/world/2014/06/01/bergdahl-release-taliban-prisoner-trade/9835759/)

Contributing: Associated Press

Follow @JolieLeeDC on Twitter.

Read or Share this story: http://usat.ly/1mJbUHT

EXHIBIT B

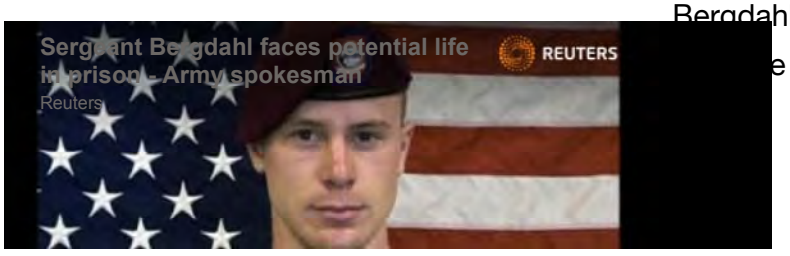
http://www.mysanantonio.com/news/local/article/Bergdahl-to-be-charged-with-desertion-6158411.php

Army Sgt. Bowe Bergdahl to be charged with desertion

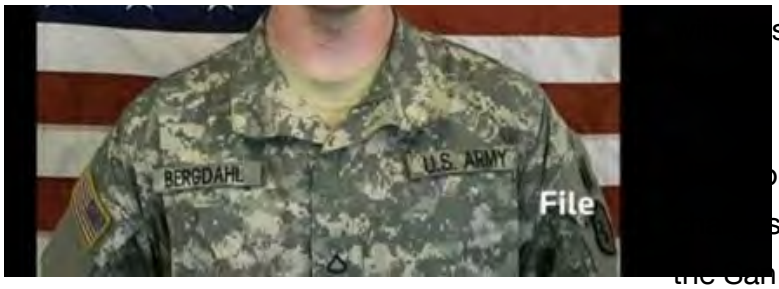
By Sig Christenson Updated 12:41 am, Thursday, March 26, 2015

IMAGE 1 OF 14

This is an image of Sgt. Bowe Bergdahl taken while he was being held by the Taliban.



SAN ANTONIO — Army Sgt. Bowe Bergdahl, who disappeared in 2009 from e in Afghanistan, will be charged



sertion and misbehavior before the
according to his lawyer.

rney, Eugene Fidell, called the
s "very serious" in an interview with
the San Antonio Express-News but didn't say how Bergdahl's defense team would move forward.

Bergdahl faces a maximum life sentence for misbehavior before the enemy and five years for desertion.

"The defense team is consulting about this and we hope to have a further announcement as soon as possible," Fidell said Wednesday, adding that Bergdahl "is philosophical about the situation."

Forces Command, in a press release, said Bergdahl had been formally charged with desertion with Intent to shirk important or hazardous duty and misbehavior before the enemy by endangering the safety of a command, unit or place.

The Army did not say what Bergdahl did, but added that he would face an Article 32 investigative hearing at Joint Base San Antonio-Fort Sam Houston. No date for that hearing, which is similar to a civilian grand jury and is used to decide whether a trial should be called, was revealed in the press release.

Bergdahl has been at Fort Sam Houston since arriving in San Antonio last

summer following his release from nearly five years' captivity under the Taliban. He has been in the crosshairs of a politically charged controversy since the day of his release.

Conservatives have bashed him as a deserter, while some fellow soldiers claimed GIs died in a fruitless search for him. A previous investigation, however, found that Bergdahl had done nothing wrong as a Taliban prisoner up to his May 31 release, and no one has publicly come forward with proof of misconduct.

The latest investigation by Maj. Gen. Kenneth Dahl looked into his actions prior to vanishing from Combat Outpost Mest-Lalak on June 30, 2009. Dahl's investigation could have found that Bergdahl went AWOL from his post or deserted it.

Deserters are soldiers who have been absent without leave for a month. Typically, less than 1 percent the total force, they're usually lower-ranking GIs in their first terms. Desertion and AWOL cases tailed off as the Iraq war wound down, reflecting a 2002 Army study that found such cases tend to rise during wartime as more demands are placed on troops and enlistment standards are lowered.

A former Army lawyer now working as a professor at South Texas College of Law in Houston, Geoffrey Corn said Bergdahl could face an Article 32 investigative hearing or ask Milley for an expedited administrative separation that would result in an other-than-honorable discharge. In exchange, the Army would drop the charges.

Corn said if Bergdahl seeks that option, he would lose future benefits.

"It's not as bad as a court-martial discharge, but it's pretty close. It's the lowest non-punitive discharge that can be awarded," Corn said, explaining there would be no jail time if a deal were struck. "And it's up to the general to decide whether to accept it and it's up to the accused to decide to offer it. It's kind of a plea bargain."

sigc@express-news.net

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EXHIBIT C

The Washington Post

Checkpoint

Bowe Bergdahl's lawyer: Trump's comments are un-American

By Thomas Gibbons-Neff August 20

Army Sgt. Bowe Bergdahl's lawyer lashed out at presidential hopeful Donald Trump Thursday, after the billionaire called Bergdahl a "dirty rotten traitor" in front of a packed town hall in New Hampshire.

"This is the lowest kind of demagoguery. Mr. Trump's comments are contemptible and un-American," Eugene Fidell said in a statement. "They are a call for mob justice."

Berdgdahl, who spent five years in captivity at the hands of the Taliban after leaving his outpost in Afghanistan in 2009, is currently awaiting trial on charges of desertion and misbehavior before the enemy.

"Sergeant Bergdahl cannot speak out in his own defense because he is facing a preliminary hearing in the military justice system," Fidell said. "Nor, as a practical matter, is he in a position, for the moment, to bring the defamation lawsuit Mr. Trump richly deserves."

Treason is the only crime defined in the Constitution and is punishable by death.

"No American should have to put up with this kind of unprincipled behavior, especially from a person seeking public office," Fidell said.

Trump's remarks are not the first he made on Bergdahl. During the first GOP presidential debate Trump made similar comments, stating that six soldiers died searching for Bergdahl — something Fidell said the Army found to be untrue.

Thomas Gibbons-Neff is a staff writer and a former Marine infantryman.

EXHIBIT D

The Bergdahl Investigation Executive Summary and Interview

September 15, 2015

The executive summary of Major General Kenneth R. Dahl's 2014 investigative report and the transcript of his lengthy interview of Sergeant Bergdahl are unclassified. The defense believes it is in the public interest for these documents to be made available without further delay.

The defense asked that the report be made public over five months ago. We were told that the convening authority lacked the power to do so.

On June 24, 2015, we asked the Army's Professional Conduct Council whether it would violate the Army's *Rules of Professional Conduct for Lawyers* for the defense to make the executive summary and interview transcript public once they are submitted at the preliminary hearing scheduled to begin on September 17, 2015. We requested expedited consideration.

Yesterday – 82 days later – the Professional Conduct Council refused to provide an interpretation on the ground that we had not asked the convening authority to rescind or modify the protective order governing the case.

In light of that refusal, and notwithstanding the convening authority's earlier response, we asked the convening authority to rescind the protective order in whole or in part to permit us to disseminate the executive summary and interview transcript when they are submitted at the preliminary hearing.

Receiving no response, we submitted copies of our communications with the convening authority to the Professional Conduct Council and requested a definitive answer to our June 24 request for an ethics interpretation by 10:00 a.m. today.

We have heard nothing from either the convening authority or the Professional Conduct Council.

Copies of the Request for Interpretation and related documents are attached.

Eugene R. Fidell
Civilian Defense Counsel

DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON, DC 20310-0104

September 14, 2015

Mr. Eugene R. Fidell
1129 20th Street, N.W., 4th Floor
Washington, DC 20036

Dear Mr. Fidell:

I have been asked to respond on behalf of the Department of the Army Professional Conduct Council to your request for an interpretation under Rule 9.1 of Army Regulation 27-26, Rules for the Professional Conduct for Lawyers (1 May 1992). You have asked whether it would violate the professional responsibility rules if you released certain information to the news media that you plan to offer into evidence at a preliminary hearing.

The Department of the Army Professional Conduct Council will not issue an advisory opinion regarding this matter. The applicable rules permit you to ask the convening authority to rescind or amend any protective order prohibiting release of the materials that you seek to release. Indeed, your request for an advisory opinion notes that you are already pursuing this remedy.

Thank you for request and for your zealous defense of your client.

Sincerely,

Daniel McCallum
Deputy General Counsel
(Operations and Personnel)

BEFORE THE
DEPARTMENT OF THE ARMY
PROFESSIONAL CONDUCT COUNCIL

Request for Interpretation

Introduction

This is a request for an interpretation under Rule 9.1(e) of AR 27-26, *Legal Services: Rules of Professional Conduct for Lawyers* (1 May 1992), at 31. That rule provides that "[a]ny lawyer subject to [the Army] Rules may request an opinion from the [DA Professional Conduct] Council." This request includes the required description of the factual situation that is the subject of contention, a discussion of the relevant law, and the requester's opinion as to the correct interpretation.

Expedited consideration is requested.

Request for Recusal

Charges against SGT Bowe R. Bergdahl are the subject of an Article 32, UCMJ, preliminary hearing and related extraordinary writ litigation before the U.S. Army Court of Criminal Appeals and the U.S. Court of Appeals for the Armed Forces. I request that no one who has participated in,. advised with respect to, or reviewed either those matters or the AR 15-6 investigation conducted in 2014 by MG Kenneth R. Dahl play any role in the consideration of this request for a Professional Conduct Council interpretation.

Procedural Setting and Facts of the Case

SGT Bergdahl is an active duty noncommissioned officer. He is represented by three attorneys: Eugene R. Fidell (civilian defense counsel, admitted in the District of Columbia and Connecticut), LTC Franklin D. Rosenblatt, JA (individual military counsel, admitted in Colorado), and CPT Alfredo N. Foster, Jr., JA (detailed defense counsel, admitted in Oregon).

SGT Bergdahl was held prisoner by the Taliban-affiliated Haqqani network for nearly five years until he was exchanged for five Guantánamo detainees on 31 May 2014. On 25 March 2015 he was charged with violations of Articles 85 (desertion) and 99(3) (misbehavior before the enemy), UCMJ. These charges carry very serious penalties. MCM ¶¶ 10e(1), 23e. They will be considered by a field grade judge advocate serving as preliminary hearing officer at a hearing to be convened in San Antonio, Texas, on 17 September 2015 in accordance with Article 32, UCMJ.

The purposes of a preliminary hearing are to determine whether there is probable cause to believe an offense has been committed and that the accused committed it; whether a court-martial would have jurisdiction; whether the charges are in proper form; and to make a recommendation as to how the charges should be disposed of. Unless there has been such a hearing (or the accused waives it), no charge can be referred to a general court-martial for trial. The defense has the right to introduce matters going to probable cause, matters in defense, and matters in mitigation.

It is an understatement to observe that SGT Bergdahl's case has been and continues to be the subject of intense and highly politicized media interest. Much of this interest—greater than in any court-martial case in several decades—has been stoked by a variety of shows on such media as Fox News Channel, which has a sizable audience—both military and civilian—around the country. Fox "analysts" (including a retired Army Reserve field grade officer) have repeatedly gone on the air with information said to have been leaked by government officials. In one instance it appeared that classified information had been compromised by such an "analyst." In several instances persons appearing on Fox have disseminated demonstrably false information, leading Department of Defense and Army public affairs at one point to issue strong public denials.

Among Fox's latest sources is a retired CIA employee who claimed on the air that SGT Bergdahl had been high on drugs when he allegedly left his duty station in Afghanistan. Fox spared its many viewers the fact that that retiree had been indicted on seven counts of perjury and false statements in connection with the notorious Iran-Contra scandal but was pardoned by President George H.W. Bush before his scheduled trial in federal district court.

An entire Facebook page has been established by persons unknown with the title "Bergdahl is a Traitor." One of the numerous candidates for the Republican nomination for President of the United States has publicly branded him a traitor, as did at least one Fox show host. The retired field grade officer referred to above also asserted on Fox that SGT Bergdahl had given aid and comfort to the enemy. The *Army Times* Facebook page immediately spawned a deluge of hostile comments following a recent op-ed about SGT Bergdahl's case by a respected retired Air Force judge advocate. A printout of these is attached. More comments in the same ugly vein have certainly been added since it was generated.

The media and Internet echo chamber have repeated highly inflammatory claims that at least six Soldiers died searching for SGT Bergdahl and that he deserted to the Taliban. These claims are false, as witness the fact that on 10 June 2015 government counsel advised the preliminary hearing officer that "[t]he Government does not intend to produce evidence at the Article 32 hearing that service

members were killed or wounded during the search for SGT Bergdahl, or that SGT Bergdahl intended to desert to the enemy."

The amount of venom with which the Internet seethes concerning SGT Bergdahl is beyond description. Matters are even worse in the blogosphere, which has become a veritable cesspool of hatred and abuse. The reader is encouraged to use any popular search engine and the search term "Bergdahl" to test these propositions.

In short, it has been "open season" on SGT Bergdahl. His immediate commander believes he is in physical danger, and therefore has required since last year that he be accompanied by NCOs whenever he leaves Fort Sam Houston. Even on the installation, there is a high risk of confrontation simply by his visiting Brooke Army Medical Center.

Links to examples of hostile and inflammatory commentary are provided in the first attachment to this request. An exhaustive catalogue would consume many more pages.

There is increasingly strong reason to doubt whether SGT Bergdahl can receive a fair trial given the prolonged barrage of opprobrium that has been heaped upon him over the last year.

Governing Law for the Preliminary Hearing

The Sixth Amendment confers a right to a public trial. U.S. Const. amend. 6. Article 32 hearings are subject to the Sixth Amendment right to a public trial. *ABC, Inc. v. Powell*, 47 M.J. 363, 365 (C.A.A.F. 1997).

The *Manual for Courts-Martial, United States* (2012 ed.) is the governing regulation. As amended on June 17, 2015, *see* Exec. Order No. 13696, 80 Fed. Reg. 35,783, 35,798-99 (2015), the *Manual* provides in Rule for Courts-Martial 405(i)(4):

> (4) *Access by spectators.* Preliminary hearings are public proceedings and should remain open to the public whenever possible. The convening authority who directed the preliminary hearing or the preliminary hearing officer may restrict or foreclose access by spectators to all or part of the proceedings if an overriding interest exists that outweighs the value of an open preliminary hearing. Examples of overriding interests may include: preventing psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety or privacy of a witness or alleged victim, protecting classified material, and receiving evidence where a witness is incapable of testifying in an open setting. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Convening

> authorities or preliminary hearing officers must conclude that no lesser methods short of closing the preliminary hearing can be used to protect the overriding interest in the case. Convening authorities or preliminary hearing officers must conduct a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. If a convening authority or preliminary hearing officer believes closing the preliminary hearing is necessary, the convening authority or preliminary hearing officer must make specific findings of fact in writing that support the closure. The written findings of fact must be included in the report of preliminary hearing.

The 2015 *Manual* amendments supersede AD 2015-09 (24 Feb 2015), Procedures for the Implementation of Section 1702 of the National Defense Authorization Act for Fiscal Year 2014, ¶ 10 of which provided:

> d. *Spectator Access*. Access by spectators to all or part of the proceedings may be restricted or foreclosed at the discretion of the convening authority who directed the preliminary hearing or the preliminary hearing officer. Preliminary hearings are public proceedings and should remain open to the public whenever possible. When an overriding interest exists that outweighs the value of an open preliminary hearing, the preliminary hearing may be closed to spectators. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Convening authorities or preliminary hearing officers must conclude that no lesser methods short of closing the preliminary hearing can be used to protect the overriding interest in the case. Convening authorities or preliminary hearing officers must conduct a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. If a convening authority or preliminary hearing officer believes closing the preliminary hearing is necessary, the convening authority or preliminary hearing officer must make specific findings of fact in writing that support the closure. The written findings of fact must be included in the report of preliminary hearing. Examples of overriding interests may include preventing psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety or privacy of a witness or alleged victim, protecting classified materials and receiving evidence where a witness is incapable of testifying in an open setting.

None of the examples cited in R.C.M. 405(i)(4) or AD 2015-09 ¶ 10d as "overriding interests" are relevant to the documents the defense wishes to be able to disseminate, as explained more fully below.

Need for an Interpretation

In accordance with R.C.M. 405 and AD 2015-09, government and defense counsel have exchanged lists of the evidence they intend to offer and the witnesses they plan to call. Government counsel have indicated that they plan to call live witnesses concerning SGT Bergdahl's alleged conduct and its alleged consequences in order to show probable cause and presumably why the charges should be disposed of by court-martial rather than other available means. Among other documents, government counsel have indicated that they plan to offer into evidence the transcript of MG Dahl's lengthy interrogation of SGT Bergdahl. Neither that transcript nor the executive summary of MG Dahl's AR 15-6 report have been made public. Neither one is classified.

The convening authority who appointed the preliminary hearing officer issued a protective order preventing the defense from disseminating case documents that contain sensitive but unclassified information. A copy is attached. The defense is asking the convening authority to clarify or modify the protective order to permit the defense to disseminate unclassified case documents such as the transcript of SGT Bergdahl's interrogation and MG Dahl's executive summary. The defense wishes to be able to disseminate both of those documents at such time as they are marked in evidence by the preliminary hearing officer. This is important as a matter of affording SGT Bergdahl a fair hearing in the court of public opinion, since the government's live witnesses' testimony will be heard by the numerous news media representatives who are expected to attend the preliminary hearing, whereas mere documentary evidence will not be accessible by them or other new media in real time. In effect, the public will have only the government's side of the story, but not the defense's, as part of the critical news cycle.

Government counsel sent the defense the following email on 15 June 2015:

> The 25 March 2015 protective order issued by LTC Burke in his capacity as the convening authority was intended to highlight to the parties their responsibility to protect the privacy interests of the individuals mentioned in the documents, and to protect the due process of the current proceedings. Paramount within that due process concern was the accused's right to a fair trial.
>
> The protective order does not affect the preliminary hearing proceedings since the disclosure of information during those proceedings would not be considered an unauthorized disclosure as contemplated within the order. Accordingly, the defense should present evidence, conduct direct and cross examination, and present their arguments at those proceedings as they would if there was not a protective order in place.

Due to the national interest in the case, the protective order focused on the importance of protecting individuals' privacy rights—personally identifiable information (PII)—that will be implicated if PII is released in violation of the Privacy Act. Further, sensitive information as contemplated by the protective order is again defined as information that contains PII in accordance with AR 380-5, paragraph 5-19.

Independent of, and unrelated to the protective order, the Defense has been provided government owned documents and information for the limited purpose of preparing for the Article 32 preliminary hearing-not for release to the media or other third parties unrelated to Defense's preparation of their case. If the Defense desires to make such releases they must go to the appropriate official—in the case of the AR 15-6 Investigation, it is the Director of the Army Staff—and request the appropriate release of the relevant documents. Trial counsel do not have the authority to authorize release of the documents to third parties, or assist or approve redactions within documents.

The Government's release of information is bound by the Freedom of Information Act and the Privacy Act, and the Government cannot authorize or condone the release of information outside of those official procedures. Further, the attorneys representing the Government must comply with Army Regulation 27-26, Rule 3.6 Tribunal Publicity. The rule recognizes the potential risk that the release of information to a public forum could have a substantial likelihood of materially prejudicing an adjudicative proceeding. Defense counsel should ensure that any contemplated release of information complies with their similar local bar rules governing the release of information.

The Prosecution will continue to abide by the rules protecting privacy interests of individuals, the right of the accused to have a fair trial, and the public's right to attend public proceedings, e.g., the preliminary hearing. The release of documents by the Defense to the public that either does not have PII or has the PII redacted only risks impacting the rights of the accused.

Question Presented

The meaning of government counsel's email is less than clear, but it appears, among other things, to caution SGT Bergdahl's defense team about our professional responsibility obligations. I therefore request an opinion on the following question:

WOULD IT VIOLATE RULE 3.6 FOR THE DEFENSE IN *UNITED STATES V. BERGDAHL* TO MAKE AVAILABLE TO THE NEWS MEDIA COPIES OF MG DAHL'S EXECUTIVE SUMMARY AND THE TRANSCRIPT OF SGT BERGDAHL'S INTERROGATION ONCE THOSE DOCUMENTS ARE OFFERED IN EVIDENCE AT THE PRELIMINARY HEARING, PROVIDED PERSONAL IDENTIFYING INFORMATION HAS BEEN REDACTED?

Requester's Opinion as to Correct Interpretation

The answer to the Question Presented is No.

The course of action described in the Question Presented lies outside the ambit of Rule 3.6(a).* Dissemination of case exhibits is not "a statement" within the meaning of the rule, and even if it were, it would not "have a substantial likelihood of materially prejudicing an adjudicative proceeding or an official review process thereof" since those exhibits will be available to both the preliminary hearing officer and those officials who will thereafter review that officer's report. Because a preliminary hearing generates only a recommendation that binds neither the CA nor anyone else, it does not constitute "an adjudicative proceeding" within the meaning of Rule 3.6(a). While the term "adjudicative proceeding" is not defined in the Army Rules, it is defined in Rule 1.0(m) of the ABA Model Rules of Professional Conduct, which provides in pertinent part that a "body acts in an adjudicative capacity when a neutral official, after presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter." A report submitted under Article 32, UCMJ, simply does not fall within that definition. It follows that subsequent review processes also lie outside the sweep of Rule 3.6(a).

The proposed course of action could not adversely affect the preliminary hearing because the documents will be (indeed, *already are*) in the hands of the preliminary hearing officer.

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* Government counsel's email suggested, presumably on the basis of Rule 8.5(f), that SGT Bergdahl's defense counsel "should ensure that any contemplated release of information complies with their similar local bar rules governing the release of information." I am admitted to practice in the District of Columbia and Connecticut, each of which has a tribunal-type choice-of-law provision that makes the Army Rules the governing standard for conduct subject to those rules. Conn. Rules of Prof'l Conduct R. 8.5(b) & Commentary, 2015 CONN. PRACTICE BOOK 65; D.C. Rules of Prof'l Conduct R. 8.5(b)(1); *see also* Colo. Rules of Prof'l Conduct R. 8.5(b)(1); Or. Rules of Prof'l Conduct R. 8.5(b)(1).

If the focus is not the preliminary hearing but a potential court-martial or non-judicial punishment proceeding somewhere down the road, then there still can be no objection to the proposed course of action since there is no reason to believe dissemination of either document would materially prejudice any such proceeding. I know of no basis for fearing that public knowledge of either document would harm the government's interests in any such disciplinary action, and if the concern is that such knowledge would be inimical to SGT Bergdahl's interests, I can represent that the pros and cons of such dissemination have been discussed with him and he approves the proposed course of action.

Rule 3.6(b)(1) indicates that a statement relating to "the expected testimony of a party or witness" "ordinarily is likely to" materially prejudice a covered proceeding, but that has no bearing on SGT Bergdahl's own statement since he has already given that statement under oath; it is not "expected testimony"–especially once government counsel offers it at the preliminary hearing.

Similarly, Rule 3.6(b)(2) refers in the same vein to "any confession, admission, or statement given by an accused or suspect." That language was obviously written to cover situations where the accused or suspect objects to the extra judicial statement. Here, however, the accused affirmatively wishes his interrogation to be made available to the public. It would pervert the clear intent of the rule to turn what was meant to be a shield for the accused into a sword for the government.

Rule 3.6(b)(4) indicates that a statement relating to "any opinion as to the guilt or innocence of an accused or suspect" "ordinarily is likely to" materially prejudice a covered proceeding, but to the extent that MG Dahl's executive summary expresses such an opinion, SGT Bergdahl is content to have it known to the public through the media.

Rule 3.6(c)(2) permits "a lawyer involved in the investigation or litigation of a matter [to] state without elaboration . . . the information contained in a public record." I do not intend to elaborate on the contents of these documents when making them available to the media (assuming the Council agrees that the answer to the Question Presented is No); rather, I need to know whether the defense can, without fear of professional discipline, disseminate the documents themselves, letting the public in our democratic society make of them what it will.

In this connection, I invite the Council's attention to the Comment to Rule 3.6, which recites that "there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. . . . [T]he subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy." The pertinence of these considerations to this case, which has garnered worldwide attention, is obvious.

In view of Army Rule 8.5(e), which provides that "[t]hese Rules should be interpreted and applied in light of the similar rules and commentary thereon contained in the" the ABA Rules, the Council should take into account Comment [7] to ABA Model Rule 3.6. It is not reflected in the Comment to Army Rule 3.6, having been adopted in 1994 by the ABA House of Delegates in response to *Gentile v. State Bar of Nevada*, 510 U.S. 1030 (1991), two years after the Army Rules were issued. *See* ABA CENTER FOR PROF'L RESPONSIBILITY, A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT 1982-2013, 508, 510-11 (Art Garwin ed. 2013)).

Comment [7] provides that

> extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by . . . third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

Given the Niagara of adverse publicity that has washed over SGT Bergdahl for many months to and including the present (and shows no sign of abating), Comment [7] is squarely applicable. *See also* RESTATEMENT (THIRD), THE LAW GOVERNING LAWYERS § 109(1) ("lawyer may . . . make a statement that is reasonably necessary to mitigate the impact on the lawyer's client of substantial, undue, and prejudicial publicity recently initiated by one other than the lawyer or the lawyer's client"). SGT Bergdahl has been called every name in the book; there have been demands for his execution (a penalty to which he is not subject). Metaphorically and (I fear) actually, it is as if he had a target painted on him. It is preposterous for him not to be able to defend himself in the court of public opinion by disseminating, if he so chooses, his own statement given under oath in the course of a government interrogation and the executive summary of an AR 15-6 investigation conducted by a respected General Officer, neither of which is classified and both of which will be offered in evidence at a public proceeding.

An expert opinion from Professor Lawrence J. Fox of Yale Law School, one of the nation's leading experts on professional responsibility, is attached.

If the Council concludes that the answer to the Question Presented is Yes, then I request that the matter be promptly referred to the Secretary of the Army or the General Counsel, as his designee, for an exception, as provided AR 27-26 ¶ 5.

Request for Expedited Consideration

Expedited consideration is respectfully requested so that I and SGT Bergdahl's detailed and individual counsel can ensure that we do not inadvertently violate any ethical duty. A definitive response is needed before the preliminary hearing commences on 17 September 2015 since the live testimony to be presented by the government will be known immediately to the media and it would be extremely unfair for the defense's hands to be tied while awaiting an ethics ruling.

Please contact me if any additional information is required.

Respectfully submitted,

Eugene R. Fidell

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Attorney for Sergeant Bergdahl

24 June 2015

Atch: Examples of Hostile Coverage
Army Times Facebook Page Comments
Protective Order
Declaration of Prof. Lawrence J. Fox

Examples of Hostile Coverage

https://www.facebook.com/pages/Bowe-Bergdahl-is-a-Traitor/232609076949303

http://www.foxnews.com/politics/2015/06/16/trump-announces-white-house-bid-joins-crowded-gop-field/

http://www.newsmax.com/Newsfront/Carl-Higbie-Bowe-Bergdahl-death-traitor/2015/03/26/id/634761/

http://www.foxnews.com/politics/2015/04/07/ncis-report-on-bowe-bergdahl-raises-new-questions/

http://www.foxnews.com/politics/2015/06/15/former-cia-operative-bergdahl-was-high-when-captured-in-afghanistan/

http://www.newsmax.com/Newsfront/Tony-Shaffer-Bowe-Bergdahl-plead-charge/2015/03/18/id/631046/

http://www.newsmax.com/Newsfront/Bowe-Bergdahl-Taliban-Russian-Mob-Tony-Shaffer/2015/04/06/id/636811/

http://www.newsmax.com/Newsfront/Tony-Shaffer-Bowe-Bergdahl-desertion-White-House/2015/03/26/id/634751/

http://www.foxnews.com/politics/2015/01/28/bergdahl-to-be-charged-with-desertion-ex-military-intel-officer-says/

http://www.foxnews.com/us/2015/03/19/white-house-trying-to-get-bergdahl-to-cop-to-deal/

http://www.mediaite.com/tv/the-guys-a-traitor-bolling-oreilly-guest-battle-over-bergdahl-charges/

http://nation.foxnews.com/2015/01/27/retired-officer-oreilly-bergdahl-be-charged-desertion

http://www.breitbart.com/video/2015/01/26/report-bergdahl-to-be-charged-with-desertion/

http://www.hollywoodreporter.com/live-feed/megyn-kelly-scores-rare-ratings-710470
http://insider.foxnews.com/2015/03/25/man-who-led-search-bergdahl-soldiers-died-looking-him

Army Times
June 21 at 1:15pm ·
The case of Sgt. Bowe Bergdahl raises questions about the role of commanders in the military justice system, says a former military lawyer. http://ow.ly/OAFe8

Commentary: Bowe Bergdahl and imbalance in military justice system

Editor's note: Rachel VanLandingham is an associate professor of law at Southwestern Law School and served as an active-duty judge advocate in the
ARMYTIMES.COM

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178 shares

Write a comment...

Remove**Deputy Tank** The military justice system is SUPPOSED to be a tool for commanders to enforce discipline. THAT'S why there are no lawyers at NJP level and the burden is "more likely than not". We're trying to turn military courts martial into civilian courts with civilian standards, and they just don't fit.Like · Reply · 104 · June 21 at 1:23pm

9 Replies

Remove**Marion Yarger-Ricketts** Please stop portraying this traitor as an American soldier. He is a disgrace to our military! If you must post a picture of him post it out of uniform. Thank you!Like · Reply · 82 · June 21 at 2:00pm

6 Replies

Remove**Shane Willis** This is just a power grab by the judicial branch over the military. And someone tell this pig of a lawyer not to trumphet American Service Members while making excuses for a traitor, Service Members do indeed deserve better than being equated to terrorists and traitors.Like · Reply · 45 · June 21 at 1:34pm

7 Replies

Remove**Veronica Oconnor** Screw a plea bargain....HE ABANDONED HIS POST!!!!Like · Reply · 57 · June 21 at 1:20pm

1 Reply

Remove**Beau H Deacon** I agree commanders need to be removed from the sexual assault cases. There is an extreme conflict of interest on the part of the commanders which causes them to try and disappear incidents instead of see prosecutions and convictions.

I disagree howev...See MoreLike · Reply · 30 · June 21 at 2:16pm

Remove**Daniel Baum** I've learned that justice is usually seen as unfair by those who have committed crimes no matter if it is a civilian court or the military's. The only ones who truly get a better shake are those with big money and influance.Like · Reply · 18 · June 21 at 1:43pm

Remove**Jonathan Bettandorff** If their having issues in the justice system... Declare Marshall law on his ass put him in front of a firing squad.... I volunteer myself, my rifle, and the ammo if that's an issue tooLike · Reply · 8 · June 21 at 2:09pm

1 Reply

Remove**Auntray Jones** Oh no the Military a Justice System got it right on this one! Because of his actions many others were killed or seriously injured and families were put in unspeakable pain. He must and will be held accountable for his actionsLike · Reply · 9 · June 21 at 1:49pm

Remove**Deb Evans** Deciding a Soldiers' fate is the role of Army Commander's everyday!

All Commander's have oversight, whether it's the Commander they report to or a Senate Oversight Committee. ...See MoreLike · Reply · 8 · June 21 at 2:24pm

Remove**Vincent Ferraro** This lawyer does not know what he is talking about. Bergdahl was a political decision. We also do not see a better job outside the military on the assault and rape problem.Like · Reply · 3 · June 21 at 4:09pm

Remove**Jenny Tracz Alexander** This is the most biased and garbage article I've ever seen Army Times post. Get your facts right and reengage, you clearly have no idea how UCMJ works in the military.Like · Reply · 11 · June 21 at 2:34pm

Remove**Charlie Motz** I have never seen our military justice system operate this slowly. The traitor left his position and his comrades in arms without permission in a combat environment. There is no reasonable excuse or reason. This is not a civilian court. Try the...See MoreLike · Reply · 5 · Yesterday at 2:55am

Remove**Chad Pilkington** Since when does Army Times take sides on

debates?
"Apparently assuming that five brutal years as a prisoner of the Haqqani Network (cohorts of the Taliban) wasn't sufficient punishment, the Army recently decided to initiate criminal proceedings against Sgt. SergeantBergdahl for improperly leaving his post in a warzone." ...See MoreLike · Reply · 7 · June 21 at 3:08pm

1 Reply

Remove**Charles Miller** This is what happens when a Commander in Chief politicizes a legal decision so as not to embarrass himself - even though it hasn't worked. Unfortunately, the GO in this case, has had his hands tied by the Commander in Chief because his poolitical agenda is more important than military justice for the soldiers who were killed looking for this jerk.Like · Reply · 1 · Yesterday at 9:35am

Remove**Anthony Lancaster** Who paid Army times to post this ridiculous and apparently biased article? Gen Milley will be a great choice and if he isn't afraid to step down because of what the Senate might do, then it only makes his nomination and selection that much more reason...See MoreLike · Reply · Yesterday at 1:11pm

Remove**Jose Bilyeu** I understand some of the points made but as far as that traitor he may have been held prisoner for five years doesn't wipe out his actions of leaving his gear and weapon behind and walking out on his post and battle buddies. This man Bowe Bergdahl is at best a deserter and at worse a traitor.
The person who wrote this article needs to stay in her lane when it comes to the Bergdahl matter.Like · Reply · 3 · Yesterday at 5:14am

Remove**James Yount** Yeah, because the lawyers have not screwed the civilian system into the dirt...Like · Reply · 1 · June 21 at 4:25pm

Remove**Elena Rooney** We have military lawyers, use them. Commanders should not approve or disapprove anything bc they don't have legal training. It's should automatically go to legal, have a top attorney there in each post to determine either its going to a court-martial or not. Do not use civilians bc they don't know the military system.Like · Reply · 1 · June 21 at 4:22pm

4 Replies

Remove**Josh Ua** Commanders also listen to their lawyers, that's why they go to their Attorneys for advice. Plus, when it comes to a court-martial, the defendant is seen by an actual Judge. Commanders aren't abusing anything, it's just Bergdahl's attorney trying to take the heat off of himself.Like · Reply · 4 · June 21 at 2:55pm

Remove**Colby Troxell** Are you insinuating that he is not a deserter Army Times???Like · Reply · 3 · June 21 at 7:04pm

Remove**John Penree** He deserted his post and sought to join with the enemy during a time of war. Being held captive and treated like a chi-boy for 5 years instead of being welcomed with open arms to join in the jihad by the enemy, does not constitute a punishment or ...See MoreLike · Reply · 3 · June 21 at 7:11pm · Edited

Remove**Mike Girres** Don't waste anymore time HANG THAT COWARD ! Girres Michael A. PV- E2 U.S. Army Retired (DAV)Like · Reply · 3 · June 21 at 4:47pm

1 Reply

Remove**Kevin Mills** "Imbalance" describes the entire military 'justice' system, period. I've yet to see actual justice done by it.Like · Reply · June 21 at 2:22pm

Remove**Robert May** GOOD soldiers died looking for this asshat. Firing squad.. That is all.Like · Reply · 4 · June 21 at 5:48pm

1 Reply

Remove**David Rannikko** General George Washington would have just hung him. The military justice system was never meant to be that of the civilian system. When you join you know what's expected of you and the circumstances when you don't meet those expectations.Like · Reply · 4 · June 21 at 2:07pm

Remove**James Whitten** He is a piece of sh**. Don't blame army. Remember the soldier that died looking for him. Hang POS.Like · Reply · 4 · June 21 at 2:47pm

Remove**Ralph Humphrey** Time wasted court Martial the traitor then the firing squad!Like · Reply · 4 · June 21 at 1:56pm

Remove**Sonny Lucas** When POTUS arranged this trade the who do you think is stopping justice for this traitor?!!Like · Reply · Yesterday at 9:07am

Remove**Marilyn Porod** He is a disgrace to the Military.Like · Reply · 21 hrs

Remove**Grant Sulham** I'm willing to bet that this lawyer has no military experience. Additionally, her bias shows by stating Bergdahl's captivity is enough punishment. Last she has such little faith in commanders that she believes one will sell out to get selected.Like · Reply · 5 · June 21 at 2:04pm

Remove**Frank W. Walker Jr.** So Army Times is now defending deserters.Like · Reply · 20 hrs

Remove**Kyle Pflager** Been saying this since day one, when I was an MP and arrested people, it's a joke. Commanders have way to much power for criminal casesLike · Reply · 1 · June 21 at 5:12pm

Remove**Carl Crittendon** This article is nothing but a rant by a ignorant civilian lawyer who doesn't understand the subject.Like · Reply · June 21 at 7:58pm

Remove**Steve Maloy** Non-judicial punishment means instead of going to a court-martial the incident is handled locally. The offender can lose

money, rank, off-time, and freedom of movement. It saves time and money. If the commander can lose his/her position of authority because a subordinate does something wrong then they should have the power to punish too.Like · Reply · 1 · June 21 at 5:44pm

Remove**Don Fritz** I am astonished that a writer for this paper supports a traitor to the Military - where are the writers coming from these days - would not have happened in my day - proud member of the USMA Class of 74.Like · Reply · Yesterday at 2:49pm

Remove**Kyle Loyd McKinney** Seems that army times isn't a neutral party in this instead of just the facts they want us to believe we are the only one that feels it should go to military trial and be fully punished up to hanging by the neck if found guilty of desertionLike · Reply · 1 · Yesterday at 6:09am

Remove**Nancy Lynn Smith** Please stop portraying him as an American soldier. Good soldiers were killed looking for him. He abandoned his post.Like · Reply · June 21 at 6:34pm

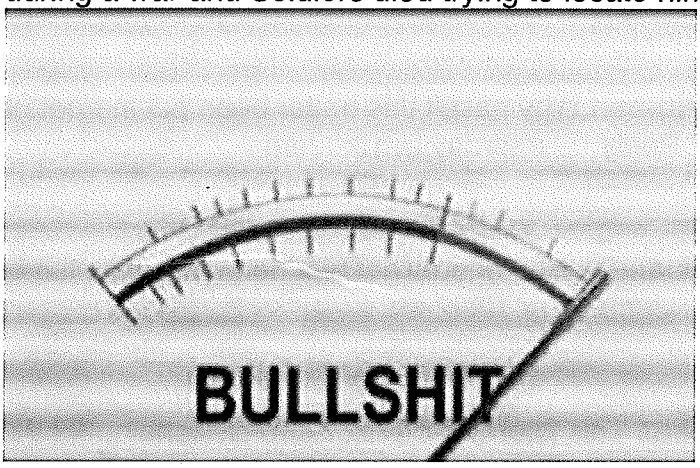
Remove**Thomas Sutherland** Death by musketry is the prescribed method. Nothing will happen to this scumbag until Obama leaves office. They must protect the Emperor.Like · Reply · 2 · June 21 at 2:42pm

Remove**Todd Griffin** Another lawyer saying anybody but them is unable to be just and execute the law, what BS. Also, Bergdahl was not a POW, he was a deserter that was held captive; BIG DIFFERENCE.Like · Reply · 22 hrs

Remove**David Copeland** He is a TRAITOR!! Burn this p.o.sLike · Reply · 2 · June 21 at 3:49pm

Remove**Sean Newton** Love how the pathetic writers of this page keep trying to pass this POS off as anything but filth.. The military has gotten weak with this liberal BSLike · Reply · June 21 at 9:39pm

Remove**Shawn Anderson** This case is nothing but BS!! he left his post during a war and Soldiers died trying to locate him!



Like · Reply · 19 · June 21 at 1:32pm

Remove**J.d. Spearhead** Put that dirt bag traitor in front of a FIRING SQUAD!Like · Reply · Yesterday at 7:23am

Remove**Earl Jones** Traitor, coward, deserter should face the firing squad.Like · Reply · June 21 at 8:28pm

Remove**Jim Parisian** Bergdahl should be in Ft. Leavenworth.Like · Reply · Yesterday at 11:31am

Remove**Red Seewun** the only thing wrong with the military justice system is that this scumbag isn't dead yet.Like · Reply · 4 · June 21 at 2:53pm

Remove**John Concepcion** It's all in the name. Uniformed Code of Military Justice. It's as archaic as our country and should remain so. The difference between right and wrong and maintaining good order and discipline isn't something lawyers excel at.Like · Reply · Yesterday at 10:22am

Remove**Jay Crain** If I am not mistaken what he is charged with is

desertion and giving aid to the enemy. I went back and looked up desertion in time of war and giving aid and comfort to the enemy are both capital crimes under the MCM. Either one could land him in Ft. Le...See MoreLike · Reply · June 21 at 10:21pm

Remove**Randell Pittman** Why hasn't this traitor been put in front of a firing squad?Like · Reply · Yesterday at 10:02am

Remove**Joel Heernandez** You should get him home or executed by firing squadLike · Reply · June 21 at 10:27pm

Remove**Ernie Stokes** This idiot is a traitor. Keep civilians out of the military courts.Like · Reply · Yesterday at 11:05am

Remove**Alvin Burk** STOP TRYING TO BLAME THE ARMY FOR THIS SOLDIER THAT WENT AWOL DURING WAR !!!Like · Reply · 4 · June 21 at 1:58pm · Edited

Remove**Judy Northrup Bernard** STOP addressing him with rank pleaseLike · Reply · 9 · June 21 at 1:28pm

2 Replies

Remove**John Sanders** Military judicial system. a total joke. you are guilty no matter what. they will try you numerous times until they get the guilty verdict that they want. just google past high profile cases. my point will be proven. and this is coming from someone who retired from the army. oif vet.Like · Reply · 11 · June 21 at 1:28pm

1 Reply

Remove**J Aileen LS** Set an example. Firing squad for traitors.Like · Reply · 9 · June 21 at 2:23pm · Edited

Remove**Frank Cannon** We have a lawyer who has more than likely never been in combat units or operations and does not understand the responsibilities that commanders have telling us how it should be done.

We have a soldier who deserted his post in a combat area, putting hi...See MoreLike · Reply · June 21 at 4:11pm · Edited

Remove**Christine Murphy** The military justice system worked fine until civilians got involved.Like · Reply · 23 hrs

Remove**Thomas Zeller** How is a civilian lawyer without a day in uniform let alone a JAG have any valid opinions on how the Uniform Code of Military Justice works? It's something we all willingly subscribe to the moment we put up our right hands and swear our oath of service...See MoreLike · Reply · June 21 at 5:37pm · Edited

Remove**David Sigmon** The only question it raises in my mind is the availability of rope in the supply chain.Like · Reply · 8 · June 21 at 1:23pm

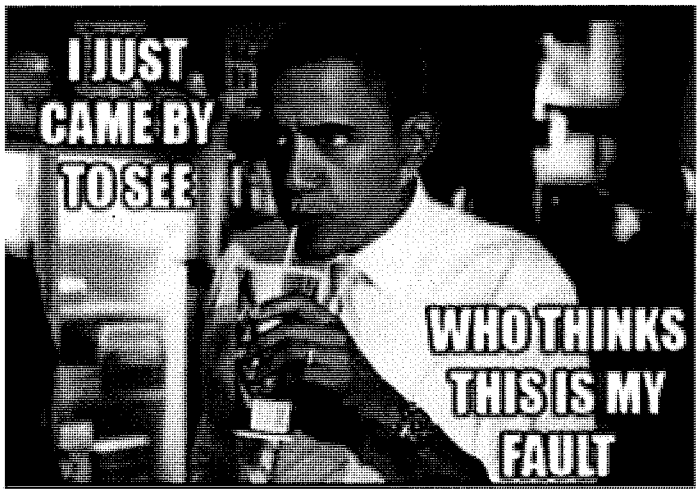
Remove**Jamie Kay Stone** Just when I feel the Army Times is beginning to redeem itself, it turns around and pulls this crock of shit. He's a traitor. Criminals and wrongdoers always feel like they're being treated unfairly when presented with discipline and justice. Thanks for...See MoreLike · Reply · Yesterday at 6:47am

Remove**Russell Nordan** For the writer of this article to have been a military JAG officer and never learned that the UCMJ exsist to ensure the maintenance of good order and discipline in the Armed Forces is unbelievable. This officer's training during her service must have b...See MoreLike · Reply · 1 · June 21 at 5:23pm

Remove**James Sullivan** I don't know about other officers' commissioning programs, but in my ROTC, we had training on the UCMJ. And while I was on active and reserve duty, we had OPD about it as well. And the multiple times I was an investigating officer, I reread the artic...See MoreLike · Reply · 1 · June 21 at 5:11pm · Edited

Remove□□□□□□□ □□□□□□□ with all due respect to the writer and eminent deference to her technical knowledge, nothing about commander's court martial authority is about the technicalities of civilian

law enforcement practices. the commander's authority exists for wartimes not...See MoreLike · Reply · June 21 at 4:23pm · Edited



Remove**John DeBose**
Like · Reply · 7 · June 21 at 1:30pm
57 Replies

Remove**Buck Foley** What a bunch of horse shit The military system works just fine, It supports discipline. I think there should be requirement in the good old USA for anyone who wants to be in the government first serve a term in the military. That way they would know what they are talking about. As for Bergdahl, he is a deserter and a collaborator and should be shot.Like · Reply · 1 · June 21 at 2:28pm

Remove**Talon Herbison** The whole UCMJ prosses needs to be scraped and rebuilt from the ground up. The Commander has to much influence with no repercussions to bad decisions rendered. The appeals process is a terrible joke were nothing is ever over turned except is the very w...See MoreLike · Reply · 2 · June 21 at 9:53pm
1 Reply

Remove**Bradley Blair** He betrayed his entire country and his brothers. Fry that asshole.Like · Reply · 6 · June 21 at 1:28pm

Remove**Donald Devaney** Bergdahl did not dessert - He did what many soldiers always do, he went to town and then smoked some dope with his Afghan Army buddies and lo and behold was captured. this case should

not be more than an Article 15 in my 60 year Army opinion.Like · Reply · Yesterday at 2:12am

Remove**Glen E Coleman** The writer of this article is disloyal, arrogant treason loving clown. I was over searching for this piece of shit, Bergdahl. He deserted his post and should have to pay for his actions in the form of a firing squad. The decay of our military continues...Like · Reply · June 21 at 5:23pm

Remove**Sherry Reilly** If this traitor doesn't die by firing squad, then military justice has failed...Like · Reply · 1 · June 21 at 1:52pm

Remove**Christopher David Knox** Kill that tool. Deserter and traitor.Like · Reply · 1 · June 21 at 4:04pm

Remove**Kathy Kerr** They need to stop wasting the military's time and strip him of all rank and send his traitor ass to Leavenworth KansasLike · Reply · June 21 at 6:14pm

Remove**Terrie Mccormick Dodd** How much did the American people pay for
Him.Like · Reply · 5 · June 21 at 1:23pm

3 Replies

Remove**Cleveland Robinson** stop calling him Sgt and stop showing that piece of shit with our flagLike · Reply · 7 · June 21 at 1:34pm

Remove**Mike Taylor** Quit trying to search for a "Big Army" problem when this is a coward who abandoned his post.

Or, were you also in RC-East in 2009? I was in the Korengal at the time with B/2-12, and the brief was that he ran off on his own and may be a combatant. ...See MoreLike · Reply · 7 · June 21 at 2:18pm

Remove**Travis Meharry** He should be fucking dead. I am ashamed of

army upper leadership and the definitive lack of courage displayed by the senior officers of this administrations military.Like · Reply · 1 · June 21 at 2:51pm

Remove**Lestant Jacob Mary Deutsch** Execution by firing squad!Like · Reply · 3 · June 21 at 1:26pm

Remove**Charlie Brown Gamino** Not even a Sgt. How did he earn the rank.Like · Reply · June 21 at 3:55pm

Remove**Joseph Holyk** And he still is not a Sergeant. He's a fucking private.Like · Reply · June 21 at 8:29pm

Remove**Nwazaion Nonso** did military justice confirm me a terrorist that my punishment be the death of my father? how can my father be killed by government for my offence?Like · Reply · June 21 at 1:38pm

Remove**Ted Heath** The Author of this article is a seriously misinformed dumb ass. smile emoticonLike · Reply · 1 · June 21 at 3:45pm

Remove**Andrew Keeler** Kill the bastardLike · Reply · 8 · June 21 at 1:16pm

Remove**Stephen Finnegan** Put him in the U.S. Disciplinary Barracks for life, where he belongs. He got soldiers killed looking for his traitorous ass.Like · Reply · 3 · June 21 at 11:29pm

Remove**Kevin Ramsdale** I think we should stop calling him sgtLike · Reply · 2 · Yesterday at 12:25am

Remove**Dennis Fulton** HES A DESERTER AND A TRAITOR SHOOT HIS TREASONOUS STUPID ASS !! □□Like · Reply · 1 · June 21 at 1:58pm

Remove**Matthew Jacobsen** This article brings up good points on conflict of interest. Though the Berghdal case is quite different from sexual assault cases, especially in matters of national interest and politics.Like · Reply · 2 · June 21 at 1:26pm

Remove**John John Kew** sent the guy home. give him a pension. blame George Bush for sending him to Iraq. young men must fight and die for older man s game. crazy. There was a same incident during the Viernam war. I blame George Bush. Bush belong in jail not Sgt Bergdahl. Gave Bergdahl the medal of honour. american hero.Like · Reply · 1 · Yesterday at 2:50am

Remove**Robert Buckner** Court martial and prison is where this guy need to be to leave your post in a time of war is punishable by the death penaltyLike · Reply · 2 · June 21 at 6:52pm

Remove**Laurance Sorrentino** The Army is covering their own butts in the Bergdahl case. His immediate command structure covered for him being AWOL/Deserter. They moved him around on the Morning Report from one catagory to another to reflect his time away as "Good Time."Like · Reply · Yesterday at 1:50am

Remove**Art Stringer** Screw Bergdhal. By the way he is no longer a SGT.Like · Reply · 2 · Yesterday at 1:36am

Remove**Frank Humpal** Ideally the system should work but like so many things with out checks and balances small people abuse the power and it's usually the enlisted people get the short end of the stick. Anyone who has not been in the service would be surprise at the abuses that the system toleratesLike · Reply · Yesterday at 9:25am

Remove**Daniel Brown** They need to get on with this case AND STOP THE NONSENSE.Like · Reply · June 21 at 3:50pm

Remove**Douglas Knudsen** I will wait to hear the full story before making accusations. Last story I heard was that he was high when he was capturedLike · Reply · 1 · June 21 at 1:22pm

4 Replies

Remove**Theresa McLendon** Plea bargain? Absolutely not! Prison for life!Like · Reply · 1 · June 21 at 1:36pm

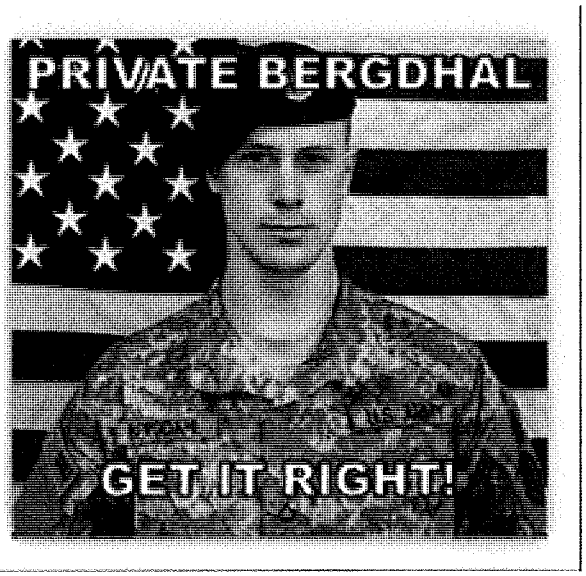
Remove**David L C Fuller** He is not a Sgt. Quit calling him oneLike · Reply · 1 · June 21 at 4:56pm

Remove**Barry Needham** Why is he still called sgt ?!Like · Reply · 1 · June 21 at 1:29pm

2 Replies

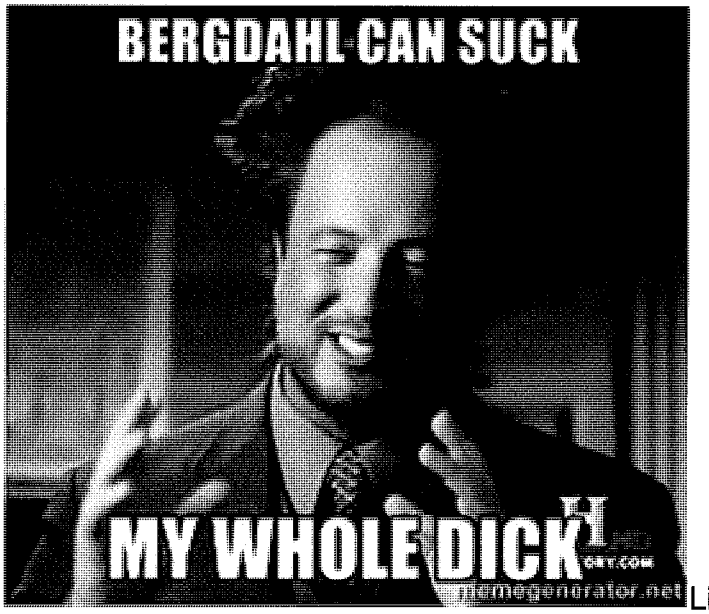
Remove**Brian Auggie Augustyniak** Fry his ass..any soldier that has deployed knows you dont leave your weapon without purposely leaving itLike · Reply · 1 · Yesterday at 1:39am

Remove**Ryan Hammerfist** supposed pow.Like · Reply · 1 · June 21 at 2:10pm



Remove**Rebecca Sanford**

Like · Reply · 1 · June 21 at 1:50pm



RemovePJ Laszar Like · Reply · 1 · June 21 at 1:57pm

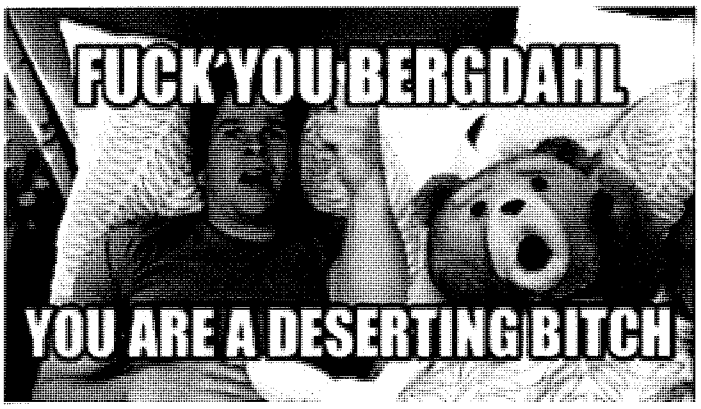
1 Reply

RemoveCharles Bishop He is scum that left his post to join the enemy and got good men killed not to mention if he participated in any attacksLike · Reply · 1 · June 21 at 1:47pm

RemoveMicheal Robert Dunkin The left wingdings know he will be found guilty under the UCMJ.Like · Reply · June 21 at 8:22pm

RemoveVincent Rogers He is a traitor kill him and stop wasting tax payers money.Like · Reply · Yesterday at 12:35am

RemoveGilbert San Roman Bergdahl against the wall...wink emoticonLike · Reply · Yesterday at 2:48pm

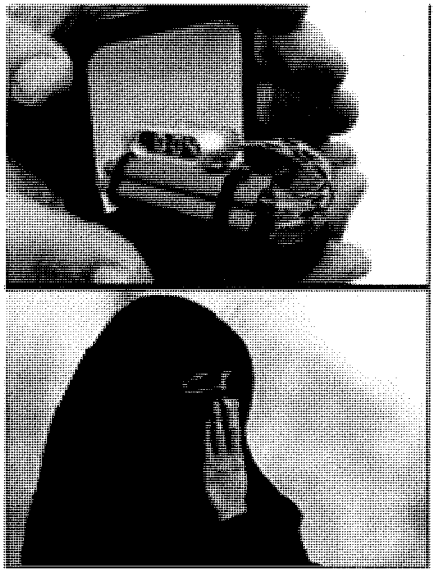


Remove**Katie Mussack**
Like · Reply · June 21 at 2:25pm

Remove**Robert Smith** He should have Beed shoot by now. A traitorLike · Reply · June 21 at 5:16pm

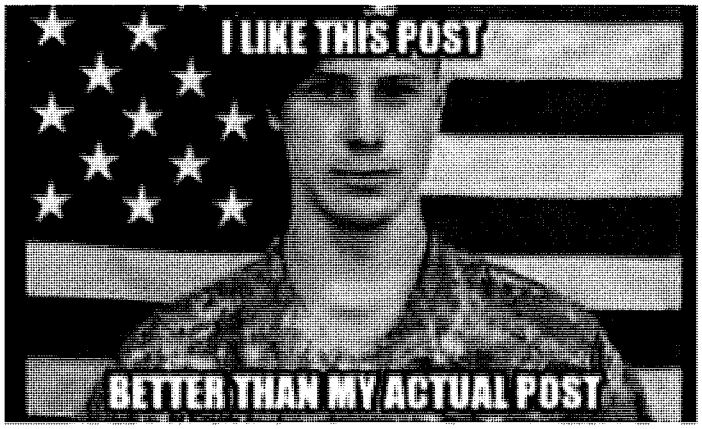
Remove**Judi Glisson Green** Please stop showing him in uniform with that beret.Like · Reply · June 21 at 3:56pm

Remove**Dawn Rodgers** Hes going to say anything to be able to walk, if he does walk than theres something wrong with our govt! Hes not a soldier damn sure no hero hes a towel head lover! This POS needs to rot in hell for what he did and to the true heroes that lost there lives for this POS! He chose to be with the towel heads, he was treated good by his new family! POW my ass thats a joke, he was a cry baby cause he wanted to go home!Like · Reply · June 21 at 7:03pm · Edited



Remove**Alexis Lopez**
Like · Reply · June 21 at 7:22pm

Remove**Chris Christilaw**



Like · Reply · June 21 at 7:37pm

Remove**Gail Parker** He went A.W.O.L.!!! He's a TRAITOR !!! Imprisonment,there's NO OTHER choice!!! Except execution. What's so hard to decide???Like · Reply · June 21 at 5:26pm

Remove**Veteran From Hell**
Like · Reply · Yesterday at 1:03am

Remove**Artourus Barbari E Lupi** even though this piece of fucking shit is a fucking traitor....everyone is entitled to rights...wtf... because the overwhelming inculpatory evidence should have been enough to secure a conviction against him... we all have rights... not a fucking power...See MoreLike · Reply · June 21 at 3:59pm

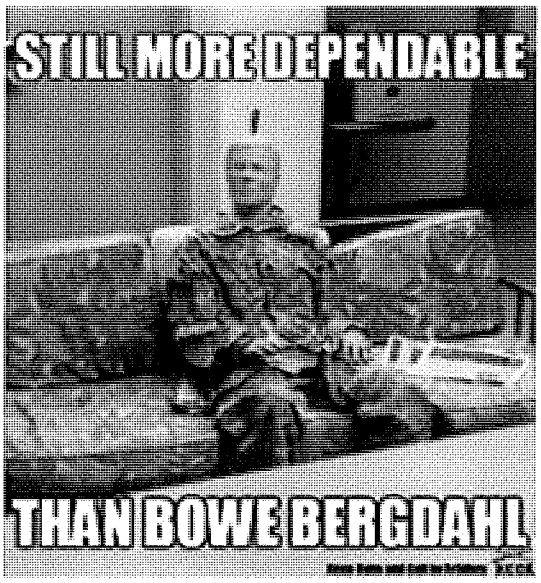
Remove**Hermelinda Rippstine-Rippy** Just court martial him and put him on the electric chairLike · Reply · June 21 at 1:44pm

Remove**James A. Mathias** He was found Guilty. Burn him down.Like · Reply · June 21 at 10:31pm

Remove**Randy Harrington** Piece of crap he should hang himself with his bed sheetLike · Reply · June 21 at 3:49pm

Remove**Jim Collier** Execute him.Like · Reply · Yesterday at 10:17am

Remove**Deborah Curcio-Rangel** Is he kidding? He stands a better chance with them than NCO's. Let him have it.
They'll let destroy him as they should.Like · Reply · June 21 at 3:12pm



Remove**David Cecil Patch**
Like · Reply · June 21 at 2:20pm

Remove**James Morrison** he should be shot for desertionLike · Reply · Yesterday at 12:18am

Remove**Leon Just** This is such bullshit he's a god damn traitor and he needs to be treated as oneLike · Reply · 22 hrs

Remove**Gary Sinclair** He's a deserter and because of him good men died. Why is this even a discussion?Like · Reply · June 21 at 1:46pm

Remove**Ernie Smith** If it cant be handled in house then you have shitty leadership this pussy brigade military bullshit people who cant run a shower leading soldiers in battle is a fucking disgrace to those who served before us who but boots in asses and squared away this...See MoreLike · Reply · Yesterday at 12:22am · Edited

Remove**Steve Parisian** I realize this is not 100 years ago, but he should still be hung for what he did to his own unit. He's lower than scum. Worst person ever, right up there with out POTUS!Like · Reply · Yesterday at 11:49am

Remove**Calvon D Hinson** Anthony hmmm.
Non lawyers practicing law to save e7's and aboveLike · Reply · June 21 at 2:31pm

Remove**Penny Cline** F R Y. B O W E !!Like · Reply · June 21 at 6:38pm

Remove**Daniel Grimes** Fry is sorry worthless traitor ass.. death shod be his real punishmentLike · Reply · June 21 at 4:15pm

Remove**Michael Barthelemy** I also love the part where this dumb writer says he was exchanged for 5 "former" GTMO detainees. They were only "former" because of the exchange. I'm in serious doubt of this writer having ever completed a single college course.Like · Reply · Yesterday at 6:08am

Remove**Daniel Victor Fontanella** I say"death by firing squad" or leatheal injection just to see that little bitch sufferLike · Reply · June 21 at 5:30pm · Edited

Remove**Ron Portillo** Why is he still a sgtLike · Reply · Yesterday at 1:53am

Remove**Hank Wortman** He Definetly does not deserve the title of Sergeant....he didn t earn itLike · Reply · June 21 at 8:33pm

Remove**Janet M. Kell** Wish traitors still faced the firing line!Like · Reply · June 21 at 7:48pm

Remove**Bobby Johnson** Get a pic out of my uniform. He does not deserve to be seen wearing thisLike · Reply · Yesterday at 6:04am

Remove**Korey Kilburn** Just shoot the traitor already and quit talking about him.Like · Reply · 23 hrs

Remove**Daniel N Celina Romero** Dudes a bum behead him nowLike · Reply · June 21 at 5:16pm

Remove**Joshua Bailey** Shoot that traitorous piece of shit fucker in the face.Like · Reply · June 21 at 5:36pm

Remove**Stuart Phillips** Simple answer: follow the lead of many allied countries, and have charging decisions made by JAG. Currently, they advise only.Like · Reply · June 21 at 2:07pm

Remove**Matthew Petri** He should have been shot for desertion. UCMJ *frag out* POSLike · Reply · June 21 at 4:34pm

Remove**Carlos Villate** TruthLike · Reply · June 21 at 2:00pm

Remove**Lee Oscar** He should be executed.Like · Reply · June 21 at 7:13pm

Remove**Terrie Mccormick Dodd** Time to kiss your ass is overLike · Reply · June 21 at 1:40pm

Remove**Dante Vonnegut** "Id love to spit Beechnut in that dudes eye and shoot him with my old .45"Like · Reply · June 21 at 3:25pm

Remove**Tim Walz** Like · Reply · Yesterday at 12:52am

Remove**Billie Hill** Did any of you read the article to the end? The authors point is it is a conflict of interest for the general to be deciding on the case, when he is awaiting Congress' approval to have the top job in the Army, assuming many voting congressman will weig...See MoreLike · Reply · June 21 at 4:03pm · Edited

Remove**Mike Pulos** When will this traitor be formally charged and go to Courts Martial?Like · Reply · June 21 at 3:49pm

Remove**Betty Shaw Elwell** Send him back.Like · Reply · June 21 at 7:53pm

Remove**Manuel Gilliam** That has nothing to do with that. He left own his own.Like · Reply · June 21 at 5:51pm

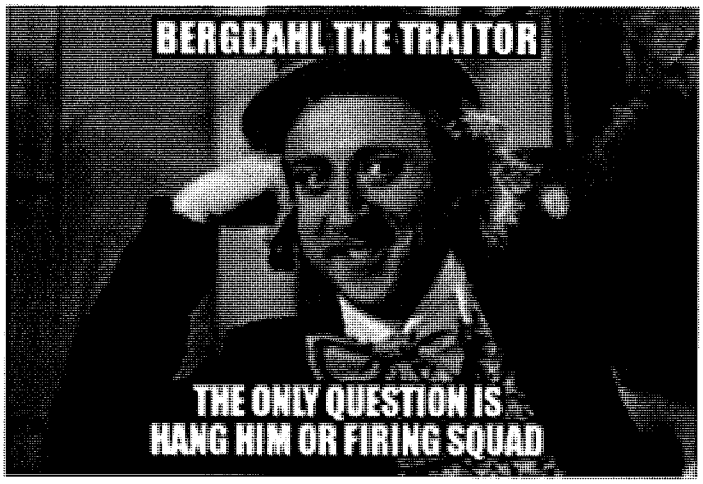
Remove**Isaiah Fisher** Why is he still a Sgt not a prisoner should be cell mate with buddy ObamaLike · Reply · June 21 at 5:46pm

Remove**Anthony Ratzburg** What does sexual harassment have to do with this sorry fuck deserting his post ? I will tell you NONE !!!!!!Like ·

Reply · June 21 at 1:35pm

Remove**Paul Bergeron** USMJ works fine, I wish Congress could work as good, for getting stuff done, they surely know when to vote for a PAYRAISE!!!!!Like · Reply · June 21 at 11:12pm

Remove**Frank C. Irons** Bedrgdahl is a Traitor. Obama just about portrayed him as a hero. I have never heard of a cout marshall to take as many year as this joke has. in the Rose Garden with Bregdahl's family. Then instead of thrown into the stockaid waiting for trial, given a job while being investiaged. Yet Chris Kyle was a hero. When he was "MURDERED", his widow never got a call nor a letter of condolence from the President.Like · Reply · 22 hrs · Edited



Remove**Scott Willis** Like · Reply · June 21 at 6:21pm

Remove**Wuod Okuyu** Ave been following closely waiting for the verdict,burden of proof lies to the prosecuterLike · Reply · June 21 at 1:35pm

Remove**Shirley Temple** I think he's innocent.Like · Reply · Yesterday at 1:56am

Remove**Drew Scafidi** Commanders consult extensively with their lawyers before making charging decisions and throughout the entire ucmj

process.Like · Reply · Yesterday at 7:45am

Remove**Arthur Deich** He left his post during wartime and I don't care how you put in how you look at it that is treason during wartime you were to be taken out to the field by your superiors and we shot in the head how come he wasn't done that wayLike · Reply · June 21 at 7:45pm

Remove**Joseph Holyk** Imbalance as in officers get away with murder?Like · Reply · June 21 at 8:27pm

Remove**Ben Woyvodich** He got captured while deserting. The punishment for the crime hasn't been administered. His capture is what is likely to occur if you wander around enemy territory alone and unarmed.Like · Reply · June 21 at 3:38pm

Remove**Brent Anthony Hames** He gave up the title of "SOLDIER" when he broke the FIRST GENERAL ORDER.Like · Reply · June 21 at 2:47pm

Remove**Rick-Sharon Ferreri** The government keeps laggingLike · Reply · June 21 at 11:48pm

Remove**Graciela Mezta Vidal** this ia a PUNK ASS BITCHLike · Reply · June 21 at 6:43pm

Remove**Debbie Etchison Culver** Traitor. Fireing sqaudLike · Reply · June 21 at 4:06pm

Remove**Eric Coger** Pure horse-crap. We read about judges all the time in the civilian side that sentence sex offenders and other serious criminals to very short or very long sentences. There will always be disparities. And there should be. Congress should stop looking so...See MoreLike · Reply · Yesterday at 12:03am

Remove**Gene Harding** I'll admit there are some flaws in the military system like in any other, but this time and in this case, yeah we got this one. This worm isn't getting off the hook.Like · Reply · June 21 at 7:10pm

Remove**Marvin Haylett** He needs to face a courts martial. We the Soldiers and family who served and lost friends and loved ones deserve the truth. No plea bargens or deals. If proven beyond a boubt that he deserted his post he should be officially labeled a deserter and face...See MoreLike · Reply · June 21 at 2:03pm

Remove**Jonathan Andrew Shockey** Fuck him he can go to hellLike · Reply · June 21 at 10:37pm

Remove**Josh Kosanovich** The relationship you're trying to draw between the two shows how little you know about an oath to your brothers in combat. You dragged bergdahls name and face into this to get clicks. FTA! All for my comrades! You stir burning shit in jp8 with a stick so you don't get it on your hands. You mam are the stick.Like · Reply · June 21 at 9:33pm

Remove**Matthew Ursery** Now, it is not necessary to off this guy although by the book he should be. What I find offensive is that they still call this poor excuse for an American SGT. He did not earn those stripes. They were given to him because he did something tremendously ...See MoreLike · Reply · June 21 at 8:53pm

Remove**Deb Evans** Geez people, The article is about Commander's making legal decisions without legal degrees.Like · Reply · June 21 at 3:00pm

Remove**Brandon Selles De Jesus** Just shoot him in the head and go on with your lives.....Like · Reply · 20 hrs

Remove**Lee S Burnett** Deserter in war zone... Death... O wait promote.. Give back pay.. Pow pay... Hang his ass!!!!!!!Like · Reply · Yesterday at 11:55am

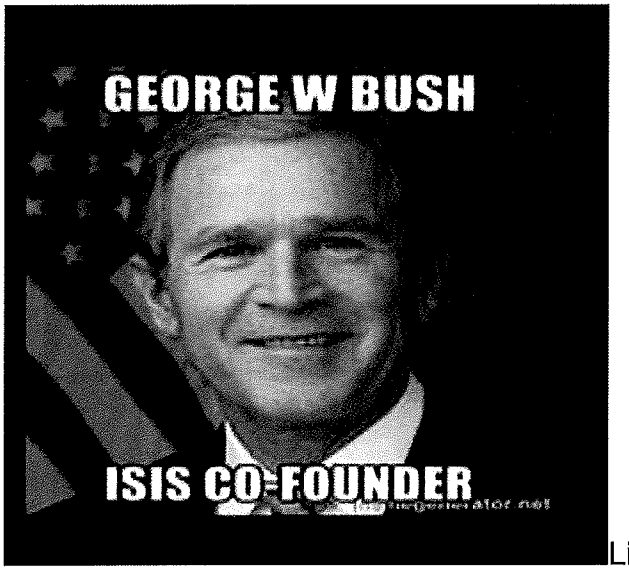
Remove**John Dodd** General Milley will do what obama tells him. He was/is not a POW, he is a Muzzie deserter. Hang him high.Like · Reply · June 21 at 8:35pm

Remove**Donald Devaney** He did not desert - sorry about that error.Like · Reply · Yesterday at 2:13am

Remove**Brendan Flynn** Execute the traitor.Like · Reply · 4 · June 21 at 1:27pm

Remove**Tom Bowers** Last sentence of the article: "Our service men and women deserve better." This may be true, but Bergdahl doesn't. He deserves to be hung by the neck until dead.Like · Reply · 22 hrs

Remove**Lisa M Wood** Like · Reply · June 21 at 8:08pm



Remove**Lisa M Wood** Like · Reply · June 21 at 8:08pm

Remove**Kobie Johnson**

Like · Reply · June 21 at 3:56pm

Remove**Chuck Griffiths** "Are you a pussy and kiss-ass? Then here's your star"Like · Reply · 1 · June 21 at 1:26pm

Remove**Walt Clark** Obama and his disgusting bunch will hobble anything that should happen to this lying piece of garbage.Like · Reply · June 21 at 3:37pm

Remove**Tracy Usry** What do you call it?Like · Reply · Yesterday at 12:42pm

Remove**Jon Davis** The army times is a joke.Like · Reply · June 21 at 2:49pm

Remove**Darla Kuboi** He is a should be shot that was what this country use to do with people who deserted their post and commandLike · Reply · June 21 at 6:17pm

Remove**Dwayne Perry** ...and STILL we wait !!!Like · Reply · June 21 at 5:42pm

Remove**Jarvis Russette** Just shoot that fuc'erLike · Reply · June 21 at 2:48pm

Remove**Silvio Pilgrim** The guy is guilty of many things, but it will not be heard for PR and friendly psyops reasons.Like · Reply · June 21 at 3:06pm · Edited

Remove**Holly Lynn Hindes** He shouldn't even have the title "SGT". So...anything else this article speaks of is really irrelevant.Like · Reply · June 21 at 5:00pm

Remove**Jean Huber Angulo** AgreeLike · Reply · June 21 at 10:14pm

Remove**Robin Mccord** Kill him already get on with itLike · Reply · June 21 at 9:27pm

Remove**Earl Malick** This guy is a joke he is no hero just a stupid man that what he is. Do the trial and make him spend some more time and forget about him.Like · Reply · Yesterday at 11:58am

Remove**Nathaniel Walker**

Like · Reply · June 21 at 1:35pm

Remove**Robbie Reaves** You mean, " Private McFuckstick"!Like · Reply · June 21 at 4:23pm

Remove**David Kelly** My theory is. He was a spy for us. Pretty sure I'm right.Like · Reply · June 21 at 8:00pm

Remove**Malachias Gaskin** Hang him from the neck until dead.Like · Reply · June 21 at 8:41pm

Remove**Michele Frost** tired of hearing bout' this coward b*stard too.. hang him.. and bring Obama and The Butcher too.. we need to start making examples of anyone who betrays us.. and OUR country..Like · Reply · June 21 at 10:42pm

Remove**Adem Nimani** Forever US ARMYLike · Reply · June 21 at 1:30pm

Remove**John Castaneda** How's it imbalanced , the court was forced by the white house to do what they did.Like · Reply · Yesterday at 10:38am

Remove**Joe Becerra** Fuck the military justice system. Nobody wanted to deal with this fuck to begin with. We should of never of traded the 5 ass hates for this fuck! Let's think big here. I'll give you a clue. He's in the

White House and doesn't like any of us!Like · Reply · June 21 at 3:10pm

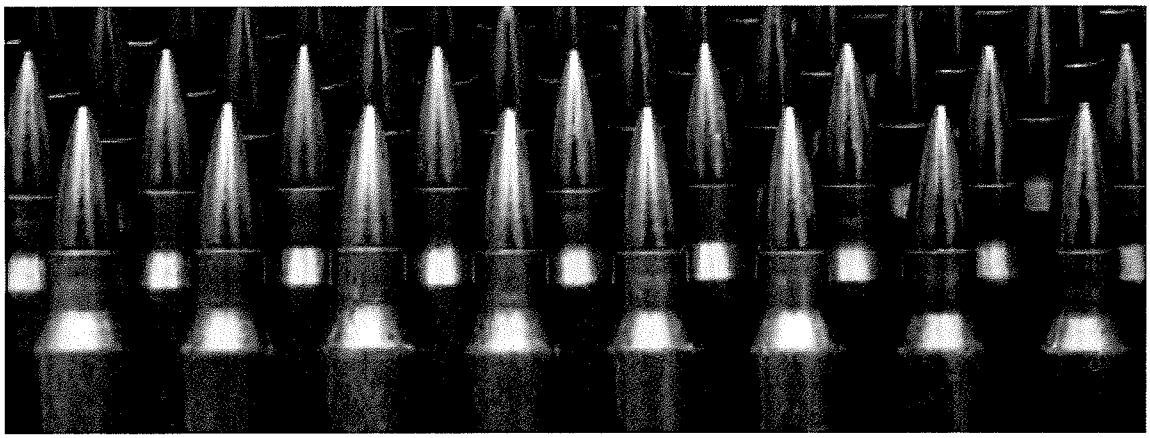
Remove**Richard Dickson** http://lexch.com/.../article_c62835f4-b00d-11e1-bf70...Shooting of suspect at Offutt raises questions How did the driver manage to break into the Air Force base?LEXCH.COMLike · Reply · June 21 at 1:51pm

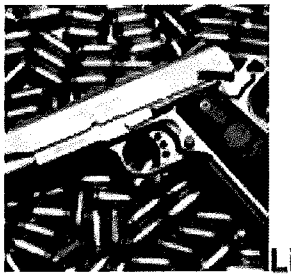
Remove**Luke A Francis** Agreed.Like · Reply · June 21 at 2:55pm

Remove**Steven Montavon** He walked away! Not a soldier not a man!Like · Reply · June 21 at 9:00pm

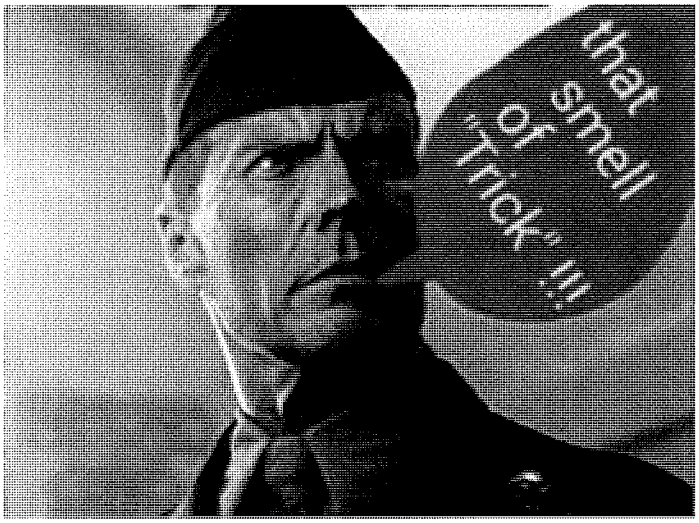
Remove**Bill Ferguson** You know they are gonna let him go. The Army is too kind and gentle.Maybe someone could pay him a visit when he is a civilian. The second he gets out he will get a book deal and a movie contract laughing at us all driving his Ferrari. That's the f*ed up partLike · Reply · June 21 at 4:40pm · Edited

Remove**Elion Rudari** https://www.facebook.com/pages/Guns/1453344734983742 LIKE FOR GUNS tongue emoticon GUNS Website





Like Page1,053 LikesLike · Reply · June 21 at 8:49pm



Remove**Durango Belga**
Like · Reply · June 21 at 8:08pm

Remove**Lila Young** Like · Reply · 15 hrs

Remove**Lucas Lueloff**
https://m.facebook.com/profile.php?id=304350579750317
I PREACH ABOUT HOW TO GET TO HEAVEN THROUGH JESUS

CHRIST!**Luke Lueloff**Community **Like Page**311 Likes17 talking about thisLike · Reply · June 21 at 11:39pm

DEPARTMENT OF THE ARMY
UNITED STATES ARMY FORCES COMMAND
4700 KNOX STREET
FORT BRAGG, NC 28310-5000

AFCS-STB-BC

25 March 2015

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Protective Order for Personally Identifiable Information (PII) and Sensitive Information - United States v. Sergeant Bergdahl

1. References.

a. 5 U.S. Code § 522a, "The Privacy Act" as amended .

b. AR 340-21 (The Army Privacy Program), 5 July 1985.

c. AR 25-2 (Information Assurance), 24 October 2007.

d. AR 380-5 (Department of the Army Information Security Program), 29 September 2000.

2. PURPOSE. The purpose of this Protective Order is to facilitate discovery and to prevent the unauthorized disclosure or dissemination of personally identifiably information and sensitive information. This Protective Order covers all information and documents previously available to the accused in the course of his employment with the United States Government or which have been, or will be, reviewed or made available to the accused, defense counsel, and other recipients of information in this case.

3. APPLICABILITY. "Persons subject to this Protective Order" include the following:

a. The Accused;

b. Military and Civilian Defense Counsel and Detailed Military Paralegals;

c. Members of the Defense Team IAW M.R.E. 502 and U.S. v. Toledo, 25 M.J. 270 (C.M.A. 1987);

d. Security Officers;

e. Members of a Rule for Courts-Martial 706 Inquiry Board (if one is conducted); and

f. Behavioral Health Providers for the Accused.

4. ORDER:

a. The inadvertent or unintentional failure to identify PII and/or designated discovery materials sensitive but unclassified shall not be deemed a waiver in whole or in part of a party's or the United States' claim of confidential treatment under the terms of this Order.

b. If a document or item is produced for which the designation of personally identifiable information (PII) or sensitive information is lacking but should have appeared, the producing party or the United States may restrict future disclosure of the document or item in accordance with this Order by notifying the receiving party in writing of the change in or addition to such restrictive designation with respect to the document or item.

c. The receiving party shall then take reasonable steps to prevent any further disclosure of such newly designated information, except as permitted by this Order.

d. A producing party also may downgrade or remove any designation under this Order by so notifying the receiving party in writing.

e. If a party determines that a previously produced document inadvertently was not identified as containing protected information, the producing party shall give notice in writing that the document is to be treated as protected, and thereafter the designated document shall be treated in accordance with this Protective Order.

f. If a party receives documents containing personally identifying information (PII) they will notify the producing party, and give that party the opportunity to replace said documents with and properly redacted version. Personally identifying information is information that identifies, links, relates, is unique to, or describes the individual, such as name[1], SSN, date and place of birth, mother's maiden name, biometric records, home phone numbers, other demographic, personnel, medical, and financial information, or any other PII which is linked or linkable to a specific individual. This definition of PII is not anchored to any single category of information or technology. Non-PII can become PII when information is publically available and when combined could identify an individual. Documents that contain PII are prohibited from further use or distribution.

PETER Q. BURKE
LTC, AG
Commanding

[1] Names of relevant parties to this case are excluded from this definition.

BERGDAHL EXPERT DECLARATION

Declaration of Lawrence J. Fox

I am a lawyer duly admitted to practice in the Supreme Court of the Commonwealth of Pennsylvania, the Appellate Division, Second Department of the Supreme Court of New York, the Supreme Court of Connecticut, the United States Supreme Court, and numerous federal circuit courts of appeal and district courts. Currently, I am the George W. and Sadella D. Crawford Visiting Lecturer in Law at Yale Law School teaching legal ethics and professional responsibility. I am also the Supervising Lawyer of the Ethics Bureau at Yale, a pro bono endeavor to provide ethics advice, counseling and support to those who cannot afford such services. I am a partner and former managing partner of Drinker Biddle & Reath LLP, a general practice law firm of approximately 650 lawyers with a principal office in Philadelphia and branch offices in New Jersey, New York, California, Delaware, the District of Columbia, Illinois and Wisconsin.

I have been asked by counsel for SGT Bowe R. Bergdahl whether it is permissible under the rules of professional conduct of the Army for counsel to disclose to the public two items at the time these items are introduced at the preliminary hearing of SGT Bergdahl's matter: the transcript of MG Dahl's interrogation of SGT Bergdahl and MG Dahl's executive summary. I have concluded, to a reasonable degree of professional certainty, that such disclosure could not possibly prejudice, let alone materially prejudice, an adjudicative proceeding, nor could disclosure implicate any of the reasons for the applicable rule's limitations on free speech. In the author's view, SGT Bergdahl's seeking an interpretation from the Professional Conduct Council reflects a level of conscientiousness and decorum that goes well beyond anything that was required.

I have regularly been consulted and testified about the ethics and professional responsibility of lawyers in various proceedings in both state and federal courts throughout the United States. I have spent my entire career as a trial lawyer, first at Community Action for Legal Services in New York City and, since 1972, at Drinker Biddle & Reath LLP. My specialties are general commercial litigation and the representation of and consultation with lawyers regarding their professional responsibilities.

I was a lecturer on law at Harvard Law School, teaching legal ethics and professional responsibility from 2007 through 2010. I was the I. Grant Irey, Jr. Adjunct Professor of Law at the University of Pennsylvania Law School from 2000 through 2008, teaching the same topic. I have lectured on legal ethics at more than 35 law schools throughout the country, have been a visiting professor at Cornell University Law School, and was the Robert Anderson Fellow at the Yale Law School in 1997. I have also lectured abroad on legal ethics and professional responsibility.

I have produced and participated in more than 200 continuing legal education seminars, and I have written extensively in the professional responsibility field. I am the author of Legal Tender: A Lawyer's Guide to Professional Dilemmas (American Bar Association 1995); co-author (with Professor Susan Martyn) of Traversing the Ethical Minefield (Aspen 1st ed. 2004; 2d ed. 2008; 3d ed. 2012), a casebook on professional responsibility; Red Flags: Legal Ethics for Lawyers (ALI-ABA, 1st ed. 2005, 2d ed. 2010, Supplement 2009); and Your Lawyer, A User's Guide (LexisNexis 2006); co-author (with Professors Susan Martyn and W. Bradley Wendel) of The Law Governing Lawyers: National Rules, Standards, Statutes, and State Lawyer Codes (Aspen 2006-2007 ed., 2007-2008 ed., 2008-2009 ed., 2009-2010 ed., 2010-2011 ed., 2011-2012 ed., 2012-2013 ed., 2013-2014 ed., 2014-2015 ed., 2015-2016 ed.); co-author (with Professor

Susan Martyn) of The Ethics of Representing Organizations: Legal Fictions for Clients (Oxford University Press 2009); and author of almost 100 articles on legal ethics and related topics and several book chapters. I am the editor and contributing author of Raise the Bar: Real World Solutions for a Troubled Profession (2007) and Ethics Centennial (2009), both published by the American Bar Association ("ABA").

I am a former member and Chair of the ABA Standing Committee on Ethics and Professional Responsibility and a former Chair of the ABA Section of Litigation, the largest section of the ABA representing almost 60,000 trial lawyers. I was an advisor to the American Law Institute's 12-year project, The Restatement of the Law Governing Lawyers. I am a Fellow of the American College of Trial Lawyers, and I was the founder and a member of Ethics 2000, the ABA Commission established to rewrite the Model Rules of Professional Conduct. Currently, I am also a member of the Board of the Connecticut Bar Foundation.

In the last decade I have turned my attention to professional responsibility matters relating to the military. I wrote the Introduction to Chapter 4, "Professional Responsibility, Civility, and Judicial Conduct" in the publication Military Court Rules of the United States (LexisNexis 2d ed. 2014). I have filed a number of amicus briefs in military court proceedings where issues of both professional responsibility and judicial canons of ethics were implicated. And I have counseled a number of military lawyers in connection with ethical questions for which they sought guidance.

My résumé, including my publications, is annexed hereto as Exhibit A. The list of cases in which I have testified in the last four years is annexed hereto as Exhibit B.

Introduction

The Council ought to know my professional relationship to this particular question. As the Council is undoubtedly aware, the rule at issue here, indeed the entirety of the Army Rules of

Professional Conduct for Lawyers, like the rules of every jurisdiction in the United States except California, is premised on the American Bar Association's Model Rules of Professional Conduct, first adopted by the ABA House of Delegates in the early 1980's. The adopted rules included an earlier version of Rule 3.6, "Trial Publicity.[1]" In 1991 the United States Supreme Court decided the case of *Gentile v. State Bar*, 501 U.S. 1030 (1991), declaring unconstitutional, as a violation of the First Amendment free speech clause, part of the original version of Rule 3.6. As a result, the ABA Standing Committee on Ethics and Professional Responsibility, the committee to which the definitive interpretation of and amendments to the rules are delegated, was required to revisit and revise Rule 3.6. The committee then consisted of a Chair and eight members, of which I was one, and because of my interest in the intersection of the rules of professional conduct and Constitutional principles, I played an active role in the drafting of the present model rule which I believe in all material respects (except as noted below) to be identical to the Army's Rule 3.6.

The Issue

Any rule-making that attempts to restrict free speech regarding pending matters faces a dilemma. On the one hand we are confronted with the First Amendment which provides Constitutional protection of free speech and the public's right to know. The Constitution, as we all recognize, as a result puts a very high burden on those who seek, by statute, rule or court order, to restrict what lawyers and litigants may say and when and how they may say it.

On the other hand, it is possible that free speech, unfettered free speech, could interfere with our system of justice and particularly a litigant's right to a fair adjudication based only on what occurs in court.

In *Gentile v. State Bar*, the Supreme Court balanced these two important values and determined that the ABA had gone too far in its then current version, restricting free speech by

[1] In the Army rules the title is "Tribunal Publicity."

the rule's categorical prohibitions. Thus the rewrite was intended to strike a balance that was decidedly in favor of the First Amendment, placing a bigger burden on any restrictions, while leaving the basic standard of the original rule in place. That standard, prohibiting tribunal publicity, is triggered if the "lawyer knows or reasonably should know that the statement will have a substantial likelihood of prejudicing an adjudicative proceeding or an official review process thereof."

Applying that standard, the ABA Committee identified the variables that the Standing Committee thought should be considered in adjudicating this issue. Among these were the content of the speech, the method of delivery, the timing of the speech, the audience that might be affected by the speech, and the speaker's need to reply to the speech of others. When each of these is considered in the present circumstances, one comes quickly to the conclusion that SGT Bergdahl's lawyer's request clearly deserves the First Amendment protection the Supreme Court has emphasized in its case law on the topic.

First, what is being released are documents that cannot be contradicted; a transcript of SGT Bergdahl's interrogation whose content is key to understand SGT Bergdahl's position in this matter and the Executive Summary of an investigative report by MG Dahl, to which the transcript is appended.

Second, the timing of the release would occur long before any trial of this matter, if that ever occurs, long before the fact-finders have even been identified. Unlike many cases, moreover, the ultimate fact finders themselves are particularly unlikely to be affected by any disclosure of this nature.

Third, documents that would be released are documents that are already before the presiding official at the preliminary hearing and the fact that they are released to the public will not change the effect the documents will have on that official.

Fourth, though the Army Rules of Professional Conduct do not explicitly adopt a right to reply to other pre-trial publicity, the ABA rule was amended to include a right to respond because the ABA Ethics Committee believed that such a right was constitutionally required. It is hard to imagine a litigant who has a greater right or need to respond than this applicant. Any review of the stream of publicity on television and the press that movant has endured cries out for a need to answer. And all the requester is seeking is clearance to share the most limited information with the press, when, in my view, SGT Bergdahl and his lawyers could conduct uncensored speeches and press conferences to respond to what government officials and others have uttered in a campaign to demonize him.

Conclusion

I consider it a privilege to be able to offer these observations. The issues presented by this request for guidance go to the heart of effective lawyering. Accordingly, it is without reservation that I urge that the permission sought be granted, and the rights of the accused to disseminate this information be approved.

I declare under penalty of perjury that the foregoing is true and correct.

Lawrence J. Fox

Executed on June 23, 2015
Philadelphia, PA

LAWRENCE J. FOX
One Logan Square, Suite 2000
Philadelphia, PA 19103-6996

Partner, Drinker Biddle & Reath (since 1976), specializing in corporate and securities litigation; Managing Partner - 1987-1989, 1991-1998; Former Chairman, Professional Responsibility Committee.

Professional Organizations

- Member, ABA House of Delegates, 1998-2001; 2002-present
- Member, ABA Commission on the Evaluation of the Rules of Professional Conduct (Ethics 2000) 1997-2002
- Chair, ABA Post Conviction Death Penalty Representation Project 1996-2004
- Chair, Section Officers Conference, American Bar Association 1996-1998
- Chair, ABA Standing Committee on Ethics and Professional Responsibility 1996-1997; Member, 1991-1996
- Chair, ABA Litigation Section, 1995-96
- Chair, ABA Day in Washington 1997-2001
- Member, ABA Law Firm Pro Bono Advisory Committee, 1997-2000
- Chair, National Conference on Professional Responsibility, 1996, 1997, 1998
- Member, Executive Committee of the Section Officers Conference, 1994-1996
- Member, ABA Center for Professional Responsibility Publications Board, 1994-1996; 2005-present
- Member, ABA Working Group on Lawyers Representation of Regulated Clients, 1992-1994
- Member, ABA Business Section Task Force on Joint and Several Liability Under Rule 10b-5, 1992-1997
- Member, ABA Task Force on Judicial Removal - 1992-1994
- Member, Council, Section of Litigation, American Bar Association 1983-1991; 1992-1999; 2002-present
- Chair, Section of Litigation Fall Meeting 1990
- Budget Officer, Section of Litigation, American Bar Association 1983-1988
- Member, ABA Section of Litigation, Task Force on Ancillary Business, 1987-1991.
- Member, American Law Institute, 1989-present
- Special Adviser to ALI Restatement of the Law Governing Lawyers 1988-2000
- Member, Board of Editors, ABA/BNA Manual on Lawyers' Professional Conduct 1988-1991
- Member, Philadelphia Bar Association Professional Responsibility Committee, 1978-present
- Member, House of Delegates, Pennsylvania Bar Association 1988-1991, 1992-2006.
- Member, Board of Editors, CPR Alternatives 1991-present
- Member, ABA Section of Litigation, Legal Services Project, 1997-present.
- Ide Commission (2006-2010)
- ABA Death Penalty Moratorium Project (2006-2010)

Exhibit A

- Member of the Board of Connecticut Bar Foundation, 2011-present

Teaching

- Lecturer on Ethics at Moscow State University, Moscow, Russia, April-May 2014
- George W. and Sadella D. Crawford Visiting Lecturer in Law, Yale Law School, 2009-present
- Supervising Lawyer at the Ethics Bureau at Yale Law School 2011-present
- Lecturer on Law, Harvard Law School, 2007-2010
- I. Grant Irey, Jr., Adjunct Professor, University of Pennsylvania Law School, Fall 2000-2008
- Visiting Professor, Cornell Law School, Fall 1999
- Instructor, 1986-1992, University of Pennsylvania Law School, The Legal Profession and Professional Responsibility
- Lectures at the law schools of Case Western Reserve University, Cornell University, Dickinson – Penn State, Duke University, Emory University, Fordham University, George Washington University, Georgetown University, Hofstra University, Mercer University, Northwestern University, Rutgers University (Camden), Seton Hall University, South Texas University, St. Johns University, Stetson University, Temple University, The College of William & Mary, Tulane University, University of Arizona, University of Chicago, University of Georgia, University of Houston, University of Miami, University of Minnesota, University of South Carolina, University of Toledo, University of Virginia, Villanova University, Wayne State University, William Mitchell College of Law, Yale University

Publications: Books

- Legal Tender: A Lawyer's Guide to Professional Dilemmas, published by ABA (1995).
- *Traversing the Ethical Minefield*, by Susan Martyn and Lawrence J. Fox, published by Aspen (First Edition 2004; Second Edition 2008, Third Edition 2013).
- *Red Flags: Legal Ethics for Lawyers*, by Lawrence J. Fox and Susan R. Martyn, published by American Law Institute (First Edition 2005, Second Edition 2010, Supplement 2009).
- *The Law Governing Lawyers: National Rules, Standards, Statutes, and State Lawyer Codes*, by Susan R. Martyn, Lawrence J. Fox, W. Bradley Wendel, published by Aspen (2006-2007 Edition, 2007-2008 Edition, 2008-2009 Edition, 2009-2010 Edition, 2010-2011 Edition, 2011-2012 Edition, 2012-2013 Edition, 2013-2014 Edition, 2014-2015 Edition, 2015-2016 Edition).
- *Your Lawyer, A User's Guide*, by Lawrence J. Fox and Susan R. Martyn, published by Lexis Nexis (2006).
- Raise the Bar: Real World Solutions for a Troubled Profession, edited by Lawrence J. Fox, published by ABA (2007).
- *How to Deal with Your Lawyer: Answers to Commonly Asked Questions*, by Lawrence J. Fox and Susan R. Martyn, published by Oxford University Press – Oceana (2008).

- *The Ethics of Representing Organizations: Legal Fictions for Clients*, by Lawrence J. Fox and Susan R. Martyn, published by Oxford University Press (2009).
- *A Century of Legal Ethics*, edited by Lawrence J. Fox, Susan R. Martyn and Andrew S. Polis, published by ABA (2009).

Publications: Book Chapters

- "Accounting Experts" in *Expert Witnesses*, edited by Faust Rossi, published by ABA (1991).
- "The Law of the Third Circuit" in *Sanctions*, published by ABA (1991).
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- "The ABA's Role in Writing Ethics Rules: A Sacred Trust, *A Century of Legal Ethics*, edited by Lawrence J. Fox, Susan R. Martyn and Andrew S. Polis, published by ABA (2009).
- "Professional Responsibility, Civility and Judicial Conduct," in Military Court Rules of the United States (2010 National Institute of Military Justice).

Publications: Articles

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- "CB&H Announces New Public Service Initiative," The Pennsylvania Lawyer (March 1991).
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- "Commentary—Loyalty by Contract: A Sad Reflection on Lawyer Ethics," The Professional Lawyer, Volume 22, Number 3, 2014.

Professional Appearances

- "Ethical Problems in Counseling," University of California, San Diego, Securities Regulation Institute, January, 1989.
- "Money Isn't Everything But It May Help: Settling Class Actions," ABA Annual Meeting, August, 1989.

- "ALI Restatement of Law Governing Lawyers", ABA Section of Litigation, January, 1990.
- "Ancillary Business, Pro and Con," ABA Division of Professional Liability, May, 1990.
- Hearing on Ancillary Business Proposed Rules, ABA Standing Committee on Ethics and Professional Responsibility, February, 1991.
- National Association of Law Firm Marketing, Ancillary Services Debate, April, 1991.
- "The Legal Profession v. The Legal Business," Philadelphia Bar Association, 1991.
- "Doing Business with Clients: The Practice and Professional Implications," American Bar Association, August, 1991.
- "Lawyers and Their Liabilities in the 1990's," ABA Standing Committee on Lawyers' Professional Liability, Santa Fe, New Mexico, September, 1991.
- "Lawyer Dissatisfaction, A View From The Bottom", Philadelphia Bar Association Bench-Bar Conference, November, 1991.
- Pennsylvania Bar Association, "Quality of Life for the Young Lawyer: A Forum", February, 1992.
- "An Introduction: The Legal Profession and Professional Responsibility," Rutgers University School of Law, Camden, February, 1992.
- "Let's Make A Deal: The Ethics of Negotiations," ABA 18th National Conference on Professional Responsibility, June, 1992.
- ABA Presidential Showcase Program, "Lawyers Serving on Clients' Boards/Financial Transactions with Clients: Merit or Mistake," ABA Annual Meeting, August, 1992.
- "After Kaye, Scholer Can We Still Represent our Clients Effectively?," ABA Litigation Section Fall Council Meeting, Pebble Beach, California, September, 1992.
- "Professionalism and Service: The Practical Side of Ethics Beyond the Code," ABA Annual Meeting, Phoenix, Arizona, November, 1992.
- "Ethical Concerns in Today's Practice," Pennsylvania Bar Institute, December, 1992.
- "Evolving Responsibilities and Liabilities of Counsel and Accountants," Twentieth Annual San Diego Securities Regulation Institute, January, 1993.
- "Ethics and Litigation Management: Your Road Map to the Minefield," Fourth Annual Litigation Management Supercourse, New York, New York, March 1993.
- "In-House - Outside Counsel Forum: In-House and Outside Counsel Square Off," Fourth Annual Litigation Management Supercourse, New York, New York, March 1993.
- "The Woman Advocate," Conference on the Woman Advocate, ABA Section of Litigation and Prentice Hall Law & Business, New York, March 1993.
- "Regulatory Residue: The Fallout from Kaye Scholer," 19th National Conference on Professional Responsibility, Chicago, Illinois, May 1993.
- Ethics Seminar, Aetna Institute, May, 1993.
- "Death Penalty Appeals: The End of Fairness," ABA Spring Council/Committee Chairs Meeting, Santa Fe, NM, June, 1993.
- "ABA Working Group Report on Lawyers' Representation Of Regulated Clients: 18 Months After OTS v. Kaye, Scholer," ABA Annual Meeting, New York, New York, August, 1993.

- "Blowing The Whistle: Should Regulatory Lawyers Be Required To Sound The Alarm: The Kaye, Scholer Story," Business Law Forum, Temple University School of Law, Fall 1993 Lecture Series.
- "Ethics of Negotiations," Berks County Bench-Bar Conference, Hershey, PA, October, 1993.
- "Ethics, Responsibility and ADR," Dispute Resolution Alternatives Supercourse, Practicing Law Institute, New York, October 1993
- "Don't Throw the Baby Out with the Bath Water - How Much Management Is Too Much Management... How Inside and Outside Counsel Must Communicate to Achieve the Proper Balance, A Litigator's TQM Survival Kit," The District of Columbia Bar/George Washington University, National Law Center CLE Program, Washington, DC, October 1993.
- "Representing Economic Competitors - Maritrans Revisited," Pennsylvania Bar Institute, Baltimore, Maryland, November, 1993.
- National ADR Institute for Federal Judges, Harvard Law School, Cambridge, Massachusetts, November, 1993.
- Conference on Ethical Problems in Representing the Elderly, Fordham University, New York, December, 1993.
- "Legal Ethics for the Corporate Counselor," ABA Committee on Corporate Counsel, February, 1994.
- "Revolutionary Changes in Practice under the New Federal Rules of Civil Procedure," ABA/Prentice Hall Law and Business, New York City, February 1994.
- "Lawyers at Risk: Lessons from the Savings and Loan Crisis," University of Pennsylvania Center on Professionalism, February, 1994.
- "Ethical Issues in Corporate Representation: 'The Seaside Resort' Case Study," University of Pennsylvania Center on Professionalism, March 1994.
- "Should the Legal Profession Adopt Stricter Controls on Lawyer Advertising?," The State University of New Jersey at Rutgers, March 1994.
- "Legal Ethics and the Rule of Law," The Federalist Society, Philadelphia, Pa., March, 1994.
- "Rule 26: A Trap for the Wary," Eighteenth Annual United States Judicial Conference for the District of New Jersey, April 1994.
- The Woman Advocate Conference, ABA and Prentice Hall, New York, April 1994.
- "Are the Model Rules Out of Date in the Modern Regulatory State?," Keck Foundation Fellow, Duke University, April 20, 1994.
- "Emerging Issues in Professional Responsibility and Malpractice", ABA Satellite Seminar, June, 1994.
- "Strange Bedfellows: Law Firm and Corporate Counsel: Can This Partnership Be Saved?," Business Law Section and CLE Committee of The Florida Bar, June, 1994.
- "Pre-Trial Practice in the 90s and Coping with New Rules of Civil Procedure and the Civil Justice Reform Act," ABA Annual Meeting, New Orleans, August 1994.
- "The Receipt of Inadvertent Transmissions," Philadelphia Bar Education Center, December, 1994.
- Professional Responsibility Issues, Twenty-Second Annual Securities Regulation Institute, Hotel del Coronado, Coronado, California, January, 1995.

- "Different Strokes for Different Folks: Methods for Handling Corporate Litigation," 13th Annual Mid-Winter Meeting, American Bar Association, Boca Raton, FL, February 1995.
- "Redefining Client Service: The Legal Tech Evolution," Philadelphia Bar Association, April 6, 1995.
- "Prospects and Likely Impact of Dodd-Domenici Legislation," ABA Annual Spring Meeting, San Antonio, Texas, March, 1995.
- The Woman Advocate Conference, ABA and Aspen Law and Business, San Francisco, April 1995.
- Hot Topics for Corporate Counsel, "Ethics and the Corporate Counselor: Recurring Ethical Tough Calls," The Corporate Counsel Committee of the ABA Section of Litigation and the ABA Center of Continuing Education, May 11-12, 1995, Atlanta, GA.
- Media Law Roundtable, "Access Leads to Understanding - Understanding Leads to Access," ABA Section of Litigation and the National Conference of Lawyers and Representatives of the Media, May 19, 1995, Washington, DC
- "Revolutionary New Changes in Civil Practice in the Federal Trial Courts," New York, May 22, 1995.
- "Contingency Fees: Is One Third of a Loaf Better Than None?," 21st National Conference on Professional Responsibility, San Diego, California, June 1-3, 1995.
- The Woman Advocate Conference, ABA and Aspen Law and Business, New York, June, 1995.
- "Securities Litigation Reform," Philadelphia Bar Education Center, October 11, 1995.
- "Discovery Abuse," Cornell Law School, October 25, 1995.
- "Practical Issues in the Practice of Environmental Law," Philadelphia Bar Association, November 1995.
- "The Six Most Frequently Asked Questions," Philadelphia Bar Education Center, December 15, 1995.
- Securities Regulation and Business Law Problems, Dallas, Texas, February 1996.
- "Legal Ethics: The Core Issues," Hofstra University School of Law, March, 10-12, 1996.
- Chief Justice's Ethics Seminar, Deer Valley, Park City, Utah, March 15, 1996.
- "Ethical Considerations of Representing Corporate Clients and Their Affiliates," Western Pennsylvania Chapter of the American Corporate Counsel Association, April 1, 1996.
- "Business Lawyers Under Fire, Liability and Ethical Risk Facing In-House and Outside Counsel," ALI/ABA Satellite Program, April 2, 1996.
- "Taking Care of Each Other," The Dickinson School of Law Senior Speaker Series Dinner, April 23, 1996.
- Third Annual Conference on Women in the Profession: "Unraveling the Mystery of Ethics," Pennsylvania Bar Institute, May, 1996.
- "Restatement of the Law Governing Lawyers: Its Effect on Lawyer Discipline," 22nd National Conference on Professional Responsibility, American Bar Association, June 1, 1996.

- "Improving the Profession," American Corporate Counsel Leadership Summit, June, 1996.
- "Lawyer as Director of A For-Profit Corporation, Philadelphia Bar Education Center, July 1996.
- "Lawyers Serving on Boards of Directors of Their Clients," ABA Annual Meeting, Orlando, Florida, August, 1996.
- "Ethics for Transactional Lawyers," Philadelphia Bar Education Center, September 9, 1996.
- "Ethical Issues for Corporate Counsel," The Price Waterhouse General Counsel Forum, September 19, 1996.
- "Testing the Ethical Limits: Should We Resurrect the Appearance of Impropriety," Yale Law School, October 8, 1996 and ABA Committee on Corporate Counsel, 1996 Northeast Regional Workshop, November 7, 1996.
- "Advertising, Solicitation and Professionalism—Do's and Don'ts," December Bench-Bar, Philadelphia Bar Association, December 3, 1996.
- "Recent Developments in Legal Ethics," 15th Annual Corporate Counsel Institute, December, 1996.
- "Conflicts of Interest in Corporate Transactions: The Leveraged Buyout of the Harris Chemical Company," Rhodes College Institute on the Profession of Law, January, 1997.
- 1997 Lawyers' Conference, PNC, February 12, 1997.
- "Litigators Under Fire," ALI-ABA Satellite Program, April 3, 1996.
- Third Annual Chief Justice's Ethics Symposium, "Lawyer/Client Conflicts You Never Knew You Had," April, 1997.
- Regulation of "Pay to Play": By Whom? For What? How Far?, Business Law Section, American Bar Association, Spring Meeting April 1997.
- National Association of Bond Lawyers' Washington Seminar, May 1997.
- "Seeking Common Ground II:" A Continuing Dialogue Between General Counsel and the American Bar Association Second Annual Conference on Corporate Counsel Issues, Ethics for In-house Counsel Washington, DC, May, 1997.
- "The Model Rules of Professional Conduct: Have We Lost our Professional Values?," 23rd National Conference on Professional Responsibility, Naples, FL, May, 1997.
- "Building Strategies for Better Corporate Client Services, 1997 Legal Leadership Summit, Dallas, TX, June, 1997.
- Keynote Address: "An Informal Conference on Relationships Between Judges and Lawyers," Maine Bench Bar Conference, June, 1997.
- "The Global Economy - Implications for Law and Legal Practice, Presidential Showcase Joint Program, ABA Annual Meeting, August 1997.
- "The Lawyer as Director of a Client," ABA Annual Meeting, August 1997.
- "Lawyers Serving on their Clients' Board: How to Avoid an Accident Waiting to Happen," ABA Annual Meeting, August 1997.
- "Pathways to Leadership: A Primer for Women and Men," ABA Annual Meeting, August 1997.
- "Ethics Issues for Transactional Lawyers," Philadelphia Bar Association Transact Conference, September 19, 1997.

- "A Debate: The Role of the American Bar Association, The Federalist Society for Law & Public Policy Studies," September 22, 1997.
- "Professional Issues in Complex Litigation," Seventh Circuit Judicial Conference and Seventh Circuit Bar Association Annual Meeting, September, 1997.
- "Resolving Litigation's Civil Wars: Negotiating a Ceasefire Among Plaintiff Lawyers, Defense Lawyers, and Judges," Institute of Continuing Legal Education in Georgia, October 10, 1997.
- "Mastering Time, Costs, Information & Technology, American Corporate Counsel Association's 1997 Annual Meeting, San Francisco, CA, October 22-24, 1997.
- "Dialogue on Professional Dilemmas," American Bar Association, Section of Litigation, October 25, 1997.
- "Ethics," Environmental Law Institute 1997 "Boot Camp" Course on Environmental Law, November 1997.
- "Corporate Compliance, Ethics and Preventive Law," Price Waterhouse General Counsel Forum, November 20, 1997.
- "Professionalism in Practice," University South Carolina Law School, South Carolina Bar CLE Division, November 21, 1997.
- "Tangled Loyalties: Conflicts of Interest in the Real World," Fellows of the American Bar Foundation Annual Meeting, January 31, 1998.
- "Litigation Management Toolbox for the 21st Century," ACCA Legal Leadership Summit, February, 1998.
- "The Future of Legal Services," The First Annual Arthur Liman Colloquium, March 5, 1998.
- "Professionalism in Class Action and Mass Tort Litigation," Sixth Annual Alvin B. Rubin Federal Symposium, New Orleans, April 2, 1998.
- "Conflicts of Interest in a Deregulated World," Edison Electric Institute, Spring Legal Conference, St. Pete Beach, FL, April, 1998.
- Legal Ethics: Access to Justice "Another Look at Corporate Family Conflicts," Hofstra 1998 Legal Ethics Conference, April 5-7, 1998.
- "Litigators Under Fire," ALI-ABA Satellite Program, April 9, 1998.
- "Legal Ethics in an Online World," Managing the Legal Risks of E-Commerce: Practical Legal Strategies, The Computer Law Association, April 16, 1998.
- "The Brave New World of Lawyers' Ethics," Twenty Fifth Annual Disciplinary Conference of the District of Columbia, April 21, 1998.
- "Multidisciplinary Partnerships: Accounting Firms and the Practice of Law," ABA 24th National Conference on Professional Responsibility, May, 1998.
- "Dual Professions," 1998 Masters Seminar on Ethics, Florida Bar
- CLE Committee and the Professional Ethics Committee, June 1998.
- Who Shall Live and Who Shall Die, Death Penalty Focus, June 3, 1998.
- Keynote Address, Virginia State Bar Disciplinary Conference, July 21, 1998.
- "The Eroding Borders Between Law and Accounting: Look Who's Eating Your Lunch," ABA 1998 Annual Meeting in Toronto, Ontario, August 3, 1998.
- "The ALI and Its New Projects," ABA 1998 Annual Meeting in Toronto, Ontario, August of 1998.

- "Ethics in the 21st Century," ABA Product Liability Seminar in Phoenix, Arizona, October 3, 1998.
- The Atlanta Bar Association, The "Presidential Showcase" CLE Program: The Millennial Lawyer in the 21st Century, "The Practice in the 21st Century", October 15, 1998.
- Association of American Law Schools, Workshop on Professional Responsibility, "The Ethics Professors: Enablers or High Priests," October 16, 1998.
- "Ethics in Environmental Law" Environmental Law Institute 1998 Boot Camp, November 13, 1998.
- "Political Contributions; Freedom of Speech or Pay to Play" 4th Annual New York Public Finance Conference, November 16-17, 1998.
- "Pay to Play: How We Got Here and Where We Might Be Going". Pennsylvania Bar Institute, Current Issues in Municipal Finance, November 19, 1998.
- "Can We Revive Professionalism?," ACCA Annual Meeting, November 12, 1998.
- "Death Penalty Representation," University of Pennsylvania Law School Public Service Form, November 17, 1998.
- "Ethical Problems for In-House Counsel," Western Pennsylvania Chapter American Corporate Counsel Association December 2, 1998.
- "Roundtable on Ethics," Western Pennsylvania Chapter of the American Corporate Counsel Association, December 7, 1998.
- "Professional Responsibility for Intellectual Property Practitioners," Patent & Trademark Office Day, December 9, 1998.
- "Cross-Examination," an ABA Section of Litigation Teleconference, December 15, 1998.
- "Ethics: Negotiating in Cyberspace," Practicing Law Institute 19th Annual Institute on Computer Law, March, 1999.
- "Preserving Professional Independence," ABA Winter Council Meeting, Aspen, CO, January, 1999.
- "What Firms Want and Need to Know About Representing a Death Row Prisoner," ABA Winter Council Meeting, Aspen, CO, January, 1999.
- "The Accountants are Coming! The Accountants are Coming! Ethical Dilemmas Facing Lawyers Practicing at CPA Firms," Los Angeles County Bar Taxation Section, Los Angeles County Bar Association, February 1999.
- "Florida Should Oppose Lawyers Working for Non-Lawyers," Florida All Bar Conference, February, 1999.
- "Ethical and Practical Challenges in Compliance Programs," Edison Electric Institute 1999 Spring Legal Conference, Charleston, S.C. April 1999.
- "Traversing the Ethical Minefield," ABA Section of Litigation Annual Meeting, April, 1999.
- "Is a Whole Generation Getting the Wrong Message on Ethics," ABA Section of Litigation Annual Meeting, April 1999.
- "Ethics for the In-House Lawyer," ACCA, April 22, 1999.
- "Ethical Dilemmas in the Triangular Relationship," Insurance Practice Institute, April 1999.

- "Intrusion Into the Profession," Pennsylvania Bar Association Annual Meeting, May 5, 1999.
- "The Challenge of Multidisciplinary Practice," New Jersey State Bar Association Annual Meeting, May 14, 1999.
- "Should the ABA Abolish Rule 5.4?," debate with John Aldock, ABA Section of Litigation, Cancun, Mexico, June 19, 1999.
- "Race in Your Case," National Conference for Minority Lawyers, ABA Section of Litigation, June 23, 1999.
- "Ethics 2000: Professional Responsibility in the New Millennium," 1999 Annual State Bar of Arizona Convention, June 25, 1999.
- "Intrusion Into the Profession or the Future of Law Practice? Multi-Disciplinary Practice," PBI-PBEC Education Center, Philadelphia, September 24, 1999.
- "MDP: Should In-House Counsel Care?," Corporate Counsel Committee of Business Law Section of the ABA, San Diego, October 25, 1999.
- "Multi-Disciplinary Practices, Ethics, and the Future of the Legal Profession," Cornell Law School, October 27, 1999.
- "Pro & Con: Should the PA Bar Embrace MDP?," PA House of Delegates, October 29, 1999.
- "New Roles, No Rules? Redefining Lawyers' Work," The Phyllis W. Beck Chair In Law Symposium, Temple University Beasley School of Law, November 12, 1999.
- "Current Issues In Professional Responsibility," First Year Professional Responsibility Lecture Series, Yale, December 1, 1999.
- "Multidisciplinary Practice, What it is and What it Means to the Vermont Practitioner," Vermont Bar Association, Young Lawyers Section, January 14, 2000.
- "Symposium on Multidisciplinary Practice," University of Minnesota Law School, Minnesota L. Rev., February 24-25, 2000.
- "Modifications to the ABA Model Rules of Professional Responsibility and Application to Environmental Practice," American Bar Association Section of Environment, Energy, and Resources' Conference on Environmental Law, Keystone, Colorado, March 12, 2000.
- "The Fifth Nearly Annual Ethics CLE & Ski," Park City Bar Association, Silver Lake Lodge, Deer Valley, Utah, March 31, 2000.
- The Question of Multi-Disciplinary Practice: Point – Counterpoint," National Academy of Elder Law Attorneys, Inc., Philadelphia, Pennsylvania, May 4, 2000.
- "Multidisciplinary Practice: Curse, Cure or Tempest In a Teapot," American Intellectual Properly Law Association, Pittsburgh, Pennsylvania, May 19, 2000.
- "Multi-Disciplinary Practices and Ethics 2000," American College of Trial Lawyers Regional Meeting, Short Hills, New Jersey, May 20, 2000.
- "Excessive Legal Fees: Protecting Unsophisticated Consumers, Class Action Members, and Taxpayers/Citizens," U.S. Chamber Institute For Legal Reform, et al., Washington, DC, May 25, 2000.
- "Ethics 2000," Delaware Bench & Bar Conference, June 7, 2000.
- "Legal Ethics in Cross-Border Practice," The International Law Briefing, New York, New York, June 8, 2000.

- "The Changing Practice of Law," DC Circuit Judicial Conference, Williamsburg, Virginia, June 15, 2000.
- "MultiDisciplinary Practices (MDPs): A New Paradigm For the Delivery of Legal Services?," 62nd Annual Meeting Virginia State Bar, Virginia Beach, Virginia, June 17, 2000.
- "May It Please The Court, I am from Arthur Price & Deloitte: MDP's, Should Trial Lawyers Care?," ABA Section of Litigation, New York, New York, July 8, 2000.
- "Successful Partnering Between Inside and Outside Counsel: Advice from the Experts," ABA Section of Business Law, New York, New York, July 9, 2000.
- "The Imposition Of The Death Penalty Is 'Fraught With Error': Where Do We Go From Here?," ABA Section of Litigation, New York, New York, July 10, 2000.
- "If Free Enterprise Has Its Way, Will We Still Need Rules of Professional Responsibility," Centennial Lecture, William Mitchell College of Law, St. Paul, Minnesota, October 4, 2000.
- "ABA Call to Action: A Moratorium On Executions," Atlanta, Georgia, October 11-12, 2000.
- "Negotiating the Ethical Minefield," Professional Education Group, Miami, Florida, October 13, 2000.
- "All's OK Between Consenting Adults: Enlightened Rule on Privacy; Obscene Rule on Ethics," Howard Lichtenstein Legal Ethics Lecture, Hofstra University School of Law, October 18, 2000.
- "Ethics in the Workplace," University of Pennsylvania, Philadelphia, Pennsylvania, October 25, 2000.
- "Ethical Issues in Corporate Practice Today; Compensation and Acquisitions," Corporate Governance Institute, Washington, DC, November 9, 2000.
- "Ethics in Environmental Law," Environmental Law Institute's Ninth Annual Boot Camp Course, Georgetown University, Washington, DC, November 13, 2000.
- "Proposed Revisions to the American Bar Association Model Rules," The Federal Council & Foundation, Princeton, New Jersey, November 18, 2000.
- "ABA Ethics 2000: What's New in the Proposed Model Rules," Louisiana State Bar Association, New Orleans, Louisiana, December 1, 2000.
- "Teleconference on Ethics," National Association of Bond Lawyers, Washington, DC, December 6, 2000.
- "Multi-Disciplinary Practice and the Fiduciary Lawyer," Pennsylvania Bar Institute, Philadelphia, Pennsylvania, December 12, 2000.
- "Multidisciplinary Practice: What it is and What it Means for Vermont Practitioners," Young Lawyers Section of the Vermont Bar Association, Montreal, Quebec, January 14, 2001.
- "Conference on Attorney Conduct Rules," Administrative Office of the United States Courts, Washington, DC, January 16, 2001.
- "Multidisciplinary Practices & Healthcare," American Bar Association, Health Law Section, Orlando, Florida, February 9, 2001.
- "The Death Penalty: A Bar Leadership Issue," National Conference of Bar Presidents, ABA Midyear Meeting, San Diego, California, February 17, 2001.

- Ethics 2000 Presentation: "What Every Lawyer Should Know About Ethics 2000 – Highlights of the Proposed Changes to the ABA Model Rules of Professional Conduct," Center for Professional Responsibility, ABA Midyear Meeting, February 18, 2001.
- "Ethics 2000: The Proposed Rules and Your Practice," American College of Trial Lawyers Spring Meeting, Boca Raton, Florida, March 30, 2001.
- "The American Bar Association's Ethics 2000 Commission: A Review of Proposed Changes in the ABA's Model Rules of Professional Conduct," The Board on Professional Responsibility, District Columbia Court of Appeals, Washington, DC, April 18, 2001.
- "The Role of Honesty in the ABA Ethics 2000 Report," The Fellows of the Wisconsin Law Foundation Symposium, Lake Geneva, Wisconsin, May 1, 2001.
- "Summer Associates' Day's Ethics Discussion," Philadelphia Volunteers for the Indigent Program, Philadelphia, Pennsylvania, June 4, 2001.
- "Legal Tender: Negotiating the Ethical Minefield," Kentucky Bar Association 2001 Annual Convention, Lexington, Kentucky, June 13, 2001.
- "Ethical Issues in Public Interest Law," 9th Annual Public Interest Law Day, Pennsylvania Bar Institute, Philadelphia, Pennsylvania, June 21, 2001.
- "Costs & Funding Forum," Personal Injuries Bar Association, Annual Conference 2001, St. Catherine's College, Oxford, June 30, 2001.
- "Ethics 2001: Are you ready for the challenge?," American Law Institute-American Bar Association Committee on Continuing Professional Education, Washington, DC, July 24, 2001.
- "Death Penalty Program," American Bar Association Annual Meeting, Chicago, Illinois, August 5, 2001.
- "Ethics 2000: Should Litigators Care? Should Clients Care?," American Bar Association Annual Meeting, Chicago, Illinois, August 5, 2001.
- "Ethical Dilemmas for Capital Post-Conviction Counsel," National Federal Habeas Corpus Seminar, Nashville, Tennessee, August 10, 2001.
- "Forget About Conflicts – If Citibar Has Its Way, We Can Have Just One Big Law Firm," Hofstra University School of Law, The 2001 Legal Ethics Conference, Legal Ethics: What Needs Fixing?, Hempstead, NY, September 10, 2001.
- "Trial Evidence in the Federal Courts: Problems and Solutions," American Law Institute-American Bar Association Committee On Continuing Professional Education, Philadelphia, PA, October 5, 2001.
- "Ethics and Professionalism", Pennsylvania Bar Institute, Philadelphia, PA, October 11, 2001.
- Vermont Bar Association Seminar, Burlington, Vermont, November 8, 2001.
- "Ethics in Capital Defense," Ninth Annual Capital Defense Workshop, The Virginia Bar Association, Richmond, VA, November 15-16, 2001.
- "Litigation Ethics," Section of Litigation and Young Lawyers Division, ABA Mid-year Meeting, Philadelphia, PA, February 2, 2002.
- Ethics Round Table, 2002 Winter Federal Bench Bar Council Conference, Puerto Rico, February 16, 2002.

- "The Future Structure and Regulation of the Law Practice," University of Arizona, James E. Rogers College of Law, Tucson, Arizona, February 22-23, 2002.
- "Litigation in a Free Society," Institute for Law & Economic Policy, Hollywood, Florida, March 15-16, 2002.
- "The Ethics 2000 Commission: The Adversary System and the Lawyer-Client Relationship," University of Tennessee College of Law's Center for Advocacy Dispute Resolution, Knoxville, Tennessee, April 4, 2002.
- "Ethics 2000 and Beyond: Reform or Professional Responsibility as Usual," Law Review Symposium sponsored by University of Illinois at Urbana-Champaign, Champaign, Illinois, April 5, 2002.
- "The Intersection of Lawyer Ethics and the Death Penalty," Yale Law School, April 8, 2002.
- "Ethics and Enron," 22nd Annual Ray Garrett, Jr., Corporate and Securities Law Institute, Northwestern University School of Law, Chicago, Illinois, April 12, 2002.
- "Planning for Disaster," PBI-CLE, Philadelphia, PA, April 22, 2002.
- "Ethical Issues in Corporate Practice Today," ALI-ABA Ninth Annual Corporate Governance Institute, Boston, MA, May 10, 2002.
- "Ethics Issues for the IP Practitioner," Philadelphia Intellectual Property Law Association, Philadelphia, PA, May 16, 2002.
- "Legal Tender," New Jersey Bar Association, Mt. Laurel, NJ, May 18, 2002.
- "Legal Tender," New Jersey Bar Association, Atlantic City, NJ, May 22, 2002.
- "Ethical Issues In Public Interest Practice," 10th Annual Public Interest Law Day, Philadelphia, PA, June 7, 2002.
- "Ethics for In-house Counsel," IBM, Armonk, NY, June 11, 2002.
- "Legal Tender," Louisville Bar Association, Louisville, KY, June 25, 2002.
- "The Fallout from Enron," ABA Section of Litigation, Banff, Alberta, Canada, June 22, 2002.
- "How to Improve the System of Justice through CLE," Association for Continuing Legal Education, Montreal, Canada, July 28, 2002.
- "Enron and its Aftermath," St. John's University School of Law, Jamaica, NY, September 20, 2002.
- "The Attorney-Client Privilege," PBI Workshop, Philadelphia, PA, October 16, 2002.
- "The Ethics of Litigation," South Texas L. Rev. Annual Ethics Symposium, Houston, TX, October 18, 2002.
- "Handling Professional Dilemmas," Maine Bar Association, Portland, ME, November 7, 2002.
- "Problems in Discovery and Professionalism," University of Georgia School of Law, Athens, Georgia, November 15, 2002.
- "The Role of the Corporate Attorney after Enron and the Sarbanes-Oxley Act," Fordham Center for Corporate, Securities and Financial Law, Fordham University School of Law, New York, NY, November 22, 2002.
- "Lawyer Regulation After Enron," Association of American Law Schools, Washington, DC, January 5, 2003.
- "A Matter of Corporate Responsibility: Where Are We Going From Here?," New York State Bar Association, New York, NY, January 22, 2003.

- "Ethics and Professionalism on the Big Screen," New York State Bar Association, New York, NY, January 23, 2003.
- "Trial Evidence in the Federal Courts," ALI-ABA, Coral Gables, FL, January 30, 2003.
- "Did Enron Create a Need for New Regulation of Lawyers?," Univ. of Houston, Houston, TX, February 3, 2003.
- "Bar Summit On Corporate Responsibility," (Sarbanes-Oxley panel) Association of the Federal Bar of the State of New Jersey 27th Annual United States District Court Judicial Conference, West Orange, NJ, March 6, 2003.
- "Legal Tender," The State Bar of New Mexico, Albuquerque, NM, March 13, 2003; Santa Fe, NM, March 14, 2003.
- "Insight for Inspired Practice: Dispute Resolution Ethics," ABA Section of Dispute Resolution, San Antonio, TX, March 21, 2003.
- "Ethics Issues in Dispute Resolution," 2003 Petroleum Marketing Attorneys' Meeting, Washington, DC, April 1, 2003.
- "The Brave New World of Lawyers' Ethics: Revised Rules and Bold Challenges," ALI-ABA Video Law Review, Washington, DC, April 4, 2003.
- "Ethics in the Media: The Ever-Growing Thirst for Information," ABA Litigation Section, New York, NY, June 5, 2003.
- "The Death Penalty: Race, Representation and Reform," ABA National Conference for the Minority Lawyer, Philadelphia, PA, June 5, 2003.
- "Corporate Governance After Sarbanes-Oxley," ALI-ABA Tenth Annual Corporate Governance Institute, Philadelphia, PA, June 6, 2003.
- "Legal Issues in a New World," Eighth Circuit Judicial Conference, Minneapolis, MN, July 17, 2003.
- "Judging Judges' Ethics," Hofstra University School of Law, Hempstead, NY, September 15, 2003.
- "You've Finished the Internal Investigation – Now What?," Association of General Counsel Fall Meeting, Washington, DC, October 10, 2003.
- "Settlement Strategies and Ethics," ABA-CLE TeleConference and Audio Webcast, October 14, 2003.
- "Strengthening the Guiding Hand of Counsel: Reforming Capital Defense Systems," Hofstra University School of Law, Hempstead, Long Island, NY, October 24, 2003.
- "Ethics and Professional Liability," American Board of Professional Liability Attorneys Convention, Philadelphia, PA, October 25, 2003.
- "Ethics in Environmental Law," Environmental Law Institute's Twelfth Annual Boot Camp Course, Georgetown University, Washington, DC, November 11, 2003.
- "Federalism & The Regulation of Attorneys," The Federalist Society, Washington, DC, November 15, 2003.
- "Advocacy & Ethics," ALI-ABA, Scottsdale, AZ, December 4-5, 2003.
- "Can Client Confidentiality Survive Enron, Arthur Andersen and the ABA?," Stetson University College of Law, Tampa, FL, January 28-30, 2004.
- "Supreme Court Judicial Recusals," The Federalist Society for Law and Public Policy Studies, Washington, DC, April 6, 2004.

- "Liars and the Lying Lawyers and Clients Who Tell Them," ABA Section of Litigation Annual Meeting, Scottsdale, AZ. May 6, 2004.
- "Beating the Rap: How to Protect Your Clients (and Yourself) from the Exposure of Criminal Violations in Bankruptcy Cases," Eastern District of Pennsylvania Bankruptcy Conference, Philadelphia, PA, May 17, 2004.
- "Lawyers' Ethical Challenges in the Office, Boardroom, and Beyond," ALI-ABA Video Law Review, Washington, DC, June 25, 2004.
- "Negotiation, Ethics & Mandatory Disclosures," Atlanta, GA, August 7, 2004.
- "The Decline of Confidentiality for the Corporate Attorney," Philadelphia, PA, August 25, 2004.
- "Ethics & Marketing – Learn How to Comply When You Communicate," Philadelphia, PA, September 22, 2004.
- "New Rules of Professional Conduct," Philadelphia Bar Association, Philadelphia, PA, September 29, 2004.
- "Negotiating the Ethical Minefield," Professional Education Group, Cary, NC, September 30, 2004.
- "Ethics of Contingent Fees," ABA Tort Insurance Practice Fall Council Meeting, Rockport, ME, October 8, 2004.
- "Ethics and the Law," CNL Leadership Forum on Integrity, Philadelphia, PA, October 25, 2004.
- "Private Equity and Venture Capital Financing," Philadelphia, PA, November 10, 2004.
- "Ethics in Environmental Law," Environmental Law Institute's Thirteenth Annual Boot Camp Course, Georgetown University, Washington, DC, November 11, 2004.
- "Amendments to Pennsylvania Rules of Professional Conduct," Philadelphia Association of Defense Counsel, Philadelphia, PA, November 16, 2004.
- "Corporate Governance After Sarbanes-Oxley," ALI-ABA Corporate Governance Institute, Washington, DC, December 3, 2004.
- "Eastern District of Pennsylvania Bankruptcy Conference," 16th Annual Forum, Plainsboro, NJ, January 29, 2005."
- "Valuation of Intellectual Property for Litigation, Business and Tax Purposes," Philadelphia Bar Institute, Philadelphia, PA, March 4, 2005.
- "Erosion of the Attorney-Client Privilege," Atlantic Legal Foundation, Washington, DC, March 10, 2005.
- "The New Pennsylvania Rules of Professional Conduct: What Do They Mean for Health Lawyers?", PBI – Annual Health Law Institute, Philadelphia, PA, March 15, 2005.
- "Professional Challenges in Large Firm Practices," Fordham University School of Law, New York, NY, April 15, 2005.
- "Death of Confidentiality: Not on Our Watch," Louisville, KY Bar Association, April 20, 2005.
- "Red Flags, Client Troubles, and the Ethics of Representation," ALI-ABA, Washington, DC, June 3, 2005.
- "Legal Ethics in a New Millennium: New Practice, New Rules, New Visions," AALS, Montreal, Canada, June 12-14, 2005.

- "Legal Tender – Wyoming State Bar Convention," Professional Education Group, Inc., Casper, Wyoming, September 9, 2005.
- "The Business Lawyers Institute 2005," Philadelphia Bar Institute, Philadelphia, PA, October 20, 2005.
- "Trial Evidence in the Federal Courts Problems and Solutions," ALI-ABA, Chicago, IL, October 21, 2005.
- "Professional Responsibility & Risk Management Conference," Hinshaw & Culbertson LLP, New York, NY, October 27, 2005.
- "Ethics Guidance for the Conflicted Lawyer," ABA TIPS Aviation and Space Law Committee, Washington, DC, November 10, 2005.
- "Working Both Sides: Conflicts Arising Out of Advance Waivers Where Law Firm Attempts to Represent Both Insurers and Insureds," ABA Section of Litigation, Insurance Coverage Litigation annual conference, Tucson, AZ, March 4, 2006.
- "Outreach Through Lawyering," University of Pennsylvania Law School, Latin American Law Students Association, Philadelphia, PA, March 17, 2006.
- "Gandhi: Ethical Legal Practice in the Modern Era," University of Pennsylvania Law School, South Asian Law Students Association, Philadelphia, PA, March 24, 2006.
- "ConocoPhillips Global Attorneys Meeting," Houston, TX, April 25, 2006.
- "Strategies for Avoiding Conflicts of Interest," Multi-Site Teleconference, May 17, 2006.
- "Ethics 2006: Accidental Clients, Red Flags, and Other Ethical Conundrums," ALI-ABA, Washington, DC, October 13, 2006.
- "Ethics 101 Conquering Ethical Dilemmas, 2006 Fall Conference Young Lawyers Division, American Bar Association, Baltimore, MD, October 20, 2006.
- "How the Law Schools Can Help," Rutgers Faculty Forum, Camden, NJ, November 6, 2006.
- Fourth National Seminar on Forensic Evidence and the Criminal Law, New Orleans, LA, January 20-21, 2007.
- "E-Ethics: Practical Considerations and Ethical Issues in Electronic Discovery," 1st Annual National Institute on E-Discovery, American Bar Association, Chicago, IL, March 9, 2007.
- "Trial Evidence in the Federal Courts: Problems and Solutions," ALI-ABA, New York, NY, March 22, 2007.
- "Enhanced Ethics & Professionalism: the Intersection of Legal and Business Concepts," Tulane University Law School, 19th Annual Corporate Law Institute, New Orleans, LA, March 30, 2007.
- "Institutional Investor Activism: the Evolving Role of Institutional Investors in Corporate Governance and Corporate Litigation," 13th Annual ILEP Conference, Cabo San Lucas, Mexico, April 19-20, 2007.
- "Electronic Information Storage: Ethical Considerations and Risk Issues," Nixon Peabody, Boston, MA, April 24, 2007.
- "Conflicts of Interest: Keys to Solving Your Toughest Problems," National Constitution Center audio conference, Philadelphia, PA, May 22, 2007.
- "Ethics for Bank Regulatory Attorneys," CLE Program, Office of the Chief Counsel, Comptroller of the Currency, Washington, DC, June 14, 2007.

- "Litigation Quiz Show," ABA 2007 Annual Meeting, San Francisco, CA, August 11, 2007.
- "Switch Hitting? Ethical Implications of Advance Conflict Waivers," ABA 2007 Annual Meeting, San Francisco, CA, August 11, 2007.
- "Fourth Annual Institute on Corporate, Securities, and Related Aspects of Mergers and Acquisitions," Co-sponsored by Penn State's Dickinson School of Law and the New York City Bar, New York, NY, October 16, 2007.
- "Ethics Update 2007 – Accidental Clients, Red Flags, and Other Ethical Conundrums," ALI-ABA Live Video Webcast, December 7, 2007.
- "Man the Barricades! Defend the Privilege!," The Lou Ashe Lecture, University of the Pacific, McGeorge School of Law, Sacramento, CA, March 12, 2008.
- "Ethics for the Corporate Law Firm," Shearman & Sterling LLP, New York, NY, March 20, 2008.
- "The Ethical Obligations of Lead Counsel," Institute for Law and Economic Policy (ILEP) Fourteenth Annual Conference, Co-sponsored by the University of Wisconsin Law School, Naples, FL, April 11, 2008.
- "The Ethics Centennial," ABA Litigation Section Annual Conference, Washington, DC, April 18-19, 2008.
- "Conflict of Interest – The Attorney/Client Relationship," LexisNexis Teleconference Series, May 22, 2008.
- "The Last Days of the Philadelphia Lawyer," Philadelphia Bar Association, Philadelphia, PA, July 1, 2008.
- NAACP Legal Defense & Educational Fund, Inc.'s 29th Annual Capital Punishment Training Conference., Warrenton, VA, July 11, 2008.
- "Confidentiality and Ethical Dilemmas in Jewish and American Law," Gratz CLE Series, Gladwyne, PA, July 30, 2008.
- "Harnessing the Winds of Change to Bring Balance and Meaning to the Workplace," American Bar Association Annual Meeting, New York, NY, August 9, 2008.
- "Hot Topics in the International Arena," Chicago Bar Association, London, England, October 5, 2008.
- "Ethics Update 2008: Control, Communication, and Competence," ALI-ABA, Philadelphia, PA, October 7, 2008.
- "Litigation Practice: Risks that Never Relent," 2008 Large Law Firm Symposium, Chicago, IL, October 15, 2008.
- "Judicial Ethics and the Lawyer's Role in the Process," Philadelphia Bar Institute – Thirteenth Annual Bankruptcy Institute, Philadelphia, PA, October 16, 2008.
- Clifton Kruse, Jr. Ethics Lecture, National Academy of Elder Law Attorneys, Inc., Kansas City, MO, October 24, 2008.
- "Ethical Considerations in Internal Investigations," Association of Corporate Counsel, Chicago, IL, October 30, 2008.
- "Leading Legal Innovation," University of Southern California, San Diego, CA, December 12-13, 2008.
- "Federal Practice in the District of Delaware: Ethical Issues in the Practice of Law," CLE program co-sponsored by the U.S. District Court and the Federal Bar Association, Wilmington, DE, March 11, 2009.

- "Ethical Duties in Mitigation Development," Imagining Future Mitigation: New Science, New Ideas, Fifth National Seminar on the Development and Integration of Mitigation Evidence, Philadelphia, PA, April 17, 2009.
- "When Trouble Walks Through the Door," ABA Litigation Section Annual Conference, Atlanta, GA, May 1, 2009.
- "Ethics in Appellate Practice," Third Circuit Judicial Conference, Philadelphia, PA, May 6, 2009.
- "Developments in Legal Ethics 2009: Using Screens in Private Practice," ALI-ABA, Washington, DC, May 17, 2009.
- "Ethics or No Ethics?" and "Changes and Unique Opportunities for Defenders in Today's Economic Crisis," 30th Annual Capital Punishment Training Conference, Warrenton, VA, July 10-11, 2009.
- "Litigation Fundamentals: Negotiations and Settlements including Ethics Issues," ABA Teleconference/Webcast, August 20, 2009.
- "The Ethics Quiz Show: Are You Ready to Be a Player," National Conference for the Minority Lawyer, Philadelphia, PA, September 24, 2009.
- "Ethics and Risk Management Seminar," Milwaukee, WI, October 15, 2009.
- "Drawing the Ethical Line: Controversial Cases, Zealous Advocacy and the Public Good," 10th Annual Legal Ethics & Professionalism Symposium, University of Georgia School of Law, Athens, GA, October 16, 2009.
- "Due Process," 7th Constitutional Law Conclave, Pennsylvania Bar Institute, Philadelphia, PA, October 30, 2009.
- "Legal and Government-Lawyer Ethics," ABA Senate Ethics 2010 CLE, Washington, D.C., April 8, 2010.
- "Arguing Crime/Fraud and Other Exceptions to Privilege: An Expert Demonstration," ABA Litigation Section Meeting, New York, NY, April, 2010.
- "Ethical Pitfalls – What Every Civil Practitioner Needs to Know About Criminal Issues in Civil Litigation," ABA Litigation Section Meeting, New York, NY, April 22, 2010.
- "The Assault on Client Loyalty: Of Prospective Waivers, Screening and Suing Your Client's Parent," ABA Litigation Section Meeting, New York, NY, April 22, 2010.
- "Arguing Crime Fraud and Other Exceptions to Privilege: An Expert Demonstration," ABA Litigation Section Meeting, New York, NY, April 23, 2010.
- "Ethical Dilemmas in Representing Organizations," Delaware State Bar Association, Wilmington, DE, April 29, 2010.
- "Multiple Clients, Multiple Headaches: Identifying and Resolving Ethical Red Flags, ALI-ABA, Washington, DC, May 16, 2010.
- National Institute on Contemporary Mediation, ABA Section of Litigation, Chicago, IL, June 10, 2010.
- "2010 Law Department Biennial Meeting," Office of the Comptroller of the Currency Ethics CLE, Washington, DC, June 15, 2010.
- "Ethics for Litigators: Conflicts, Confidentiality and Competence," ABA Section of Litigation Spring Leadership Meeting, Whistler, BC, June 19, 2010.
- "The Ethics of Disengagement Letters," Best of Sound Advice, ABA Section of Litigation, Chicago, IL, June 24, 2010.

- 31st Annual Capital Punishment Training Conference, Warrenton, VA, July 9, 2010.
- "Class Action Litigation Strategies," Practicing Law Institute, New York, NY, July 22, 2010.
- 15th Annual National Federal Habeas Corpus Seminar, Cleveland, OH, August 26, 2010.
- "ETHICS: What are the ethical implications for a capital trial attorney in a habeas proceeding?," Ohio Capital Habeas Seminar: Litigating Ineffective Assistance of Counsel, Cleveland, OH, February 4, 2011.
- "Ethical Applications of the New Illinois Rules of Evidence," Clifford Law Offices, Chicago, IL, February 17, 2011.
- "Ethical Considerations for Lawyers During the Financial Crisis," Symposium on the Status of the Legal Profession: Facing the Challenges of the 21st Century, American Inns of Court, Washington, DC, April 1, 2011.
- "Traversing the Ethical Minefield: Professional Responsibility Dilemmas in the Class Action Practice," Institute for Law & Economic Policy's 17th Annual Symposium, "Access to Justice," Manalapan, FL, April 8, 2011.
- "Ten Traps for the Wary," Atlanta General Counsel Forum, Atlanta, GA, May 10, 2011.
- "Lawyers' Websites, Blogs, and Other Social Media – Ethical Issues," PBI Ninth Annual Nonprofit Institute, Philadelphia, PA, May 24, 2011.
- "Legal Ethics," 2011 Law Department Biennial Meeting, Office of the Comptroller of the Currency Ethics CLE, Washington, DC, May 25, 2011.
- "Legal Ethics (Parts I and II)," CLE program for the Office of the Chief Counsel, Comptroller of the Currency, Biennial Meeting, Washington, D, May 25, 2011.
- "Reality Ethics: How to Avoid Getting Kicked Off the Island," G. Thomas VanBebber Twelfth Annual Ethics in Litigation Forum, Earl E. O'Connor American Inn of Court, Kansas City, MO, June 16, 2011.
- "Can We Make Ethical Violations a Basis for Relief on Death Row?" Airlie Center, Warrenton, VA, July 8, 2011.
- "Expert Life After Changes to Rule 26," American Bar Association Annual Meeting, Toronto, Canada, August 5, 2011.
- "Ethics for Defenders," Defender Summer School 2011, Orlando, FL, August 15, 2011.
- "Legal Ethics and Criminal Law: Resolving the Practitioner's Headaches When the Two Come Together," Federal Criminal Practice Seminar, Cleveland, OH, August 19, 2011.
- "Life Over Death," Florida Public Defender Association, Inc., Lake Buena Vista, FL, September 9, 2011.
- "Loyalty under Attack: The Pernicious Prospective Waiver," ABA Lit. Sec. Ethics & Professionalism, October 18, 2011.
- "So Someone Objects To Your New Client ...," ABA Administrative Law Conference, Washington, DC, November 17, 2011.
- "Traversing the Ethical Minefield," CLE program for Shearman & Sterling LLP, New York, NY, December 1, 2011.

- "Larry Fox and Susan Martyn on Ethics: Accidental Clients and Lawyers in the Job Market," ABA, Litigation Section Webinar, December 14, 2011.
- "Prosecutorial Accountability in the Post-*Connick v. Thompson* Era: Reforms and Solutions," ABA Midyear Meeting, New Orleans, LA, February 4, 2012.
- "Ethical Issues: Who Is The Client?" PBI-CLE Protecting Our Children, Philadelphia, PA, February 27, 2012.
- "Can This Profession Be Saved?" Northern Illinois University law lecture, DeKalb, IL, March 30, 2012.
- "Legal Representation of a Nonprofit Organization: Ethical Issues for Lawyer and Client," PBI 10th Annual Nonprofit Institute, Philadelphia, PA, May 23, 2012.
- "Capital Punishment," NYC Bar Habeas Corpus Training Program, New York, NY, July 11, 2012.
- 33rd Annual Capital Punishment Training Conference, Airlie Center, Warrenton, VA, July 13, 2012.
- "Breakfast Ethics," South Carolina Bar Convention, Myrtle Beach, SC, January 27, 2013.
- "Constitutional Considerations," Annual William P. (Bill) Redick, Jr. Capital Defense Seminar, Nashville, TN March 14, 2013.
- "Current and Emerging Issues in Ethics & Professional Responsibility, CLE Panel Discussion, University of Pennsylvania Law School, Philadelphia, PA, May 10, 2013.
- "Examining the Ethical Issues of Nonprofit Financial Failure: A Case Study of *In re Lemington Home for the Aged*," PBI 11th Annual Nonprofit Institute, Philadelphia, PA, May 22, 2013.
- "Traversing the Ethical Minefield," Kentucky Bar Association Annual Convention, Louisville, KY, June 20, 2013.
- "Traversing the Ethical Minefield: of Biased Judges, Turncoat Lawyers, Prying Prosecutors and Dwindling Budgets," 34th Annual Capital Punishment Training Conference, Airlie Center, Warrenton, VA, July 12, 2013.
- "For the Client or for the Lawyer?" The All New Litigation Ethics Quiz Show 2013, American Bar Association Annual Meeting, San Francisco, CA, August 8, 2013.
- "Legal Ethics in the News; 'Beauty Contest' and Screening," American Law Institute CLE, Video Webcast, December 17, 2013.
- "Who are They to Judge? Ethical and Professionalism Issues Facing the Bench," 14th Annual Georgia Symposium on Legal Ethics and Professionalism, Athens, Georgia, February 21, 2014.
- Tennessee Death Penalty Seminar 2014, Tennessee Association of Criminal Defense Lawyers, Nashville, TN, March 20, 2014.
- Eleventh National Seminar on the Development and Integration of Mitigation Evidence, Administrative Office of the U.S. Courts, *Defender Services Office, Training Division*, Philadelphia, PA, March 28, 2014.
- "Oops": Communicating about Mistakes with Clients and Others, ABA Litigation Section Annual CLE Conference, Phoenix, AZ, April 10, 2014.
- "Nonprofit Ethics Potpourri," PBI 12th Annual Nonprofit Institute, Philadelphia, PA, May 28, 2014.

- "Preparation vs. Perjury: Ethical Issues Involving Working with Witnesses," Webinar sponsored by the American Bar Association, May 29, 2014.
- "2014 Mart Vogel Lecture on Professionalism and Legal Ethics," University of North Dakota School of Law, Grand Forks, ND, June 13, 2014.
- "Ethical Jeopardy, eDiscovery Edition," American Bar Association Annual Meeting, Boston, MA, August 8, 2014.
- "Nineteenth Annual National Federal Habeas Corpus Seminar," Atlanta, GA, August 14, 2014.
- Keynote Address, Intercollegiate Moot Court Competition, Tufts University Law School, Boston, MA, November 15-16, 2014
- "33rd Annual Jay L. Westbrook Bankruptcy Conference," Austin, TX, November 21, 2014.
- "Don't Get Tangled in the Web," American Bar Association Winter Leadership Meeting, Laguna Beach, CA, January 10, 2015.
- "Law Professors as Expert Witnesses," Widener Law School, Wilmington, DE, April 24, 2015.
- "Ethics at the Movies," PBI 13th Annual Nonprofit Institute, Philadelphia, PA, May 27, 2015.
- "First Judicial District Law Clerk CLE – Ethics," Federal Courthouse, Philadelphia, PA, June 17, 2015.

Prior Employment

- 1971-1972 Staff Attorney, Community Action for Legal Services, New York, NY
- 1969-1971 Reginald Heber Smith Community Lawyer Fellow, New York, NY
- 1968-1969 Clerk, Justice Samuel Roberts, Pennsylvania Supreme Court, Erie, PA

Honors and Awards

- Fellow, American College of Trial Lawyers
- Fellow, American Bar Foundation
- U.S. Speaker and Specialist, "Professional Ethics and Responsibility, and the Role of Standing Committees on Lawyers' Professional Conduct," Federal Capital Bar Association and the Professional Council of Economics, Buenos Aires, Argentina, August, 1997
- CPR/ADR Guest Lectu, rer: Development Lawyers Course, Institute for Law and Development, Rome, Italy, March 1997
- Keynote Address, Pennsylvania Legal Services 1996 Striving Towards Excellence Awards Banquet, Harrisburg, PA, March 12, 1997
- Keynote Address, The Georgetown Journal of Legal Ethics ,Tenth Anniversary, February 7, 1997
- Baccalaureate Speaker, Dickinson Law School, April 1996
- Robert Anderson Fellow of the Yale Law School for 1996-97
- Community Legal Services "Champion" Award, April 1996
- Philadelphia Bar Education Center Excellence in Legal Education Award, July 14, 1998

- Service Above Self Award, Lamokin Village Council, December 8, 1998
- Alumni Award of Merit, University of Pennsylvania Law School, May 14, 1999
- "The Rights and Responsibilities of Legal Professionals in the United States," U.S. State Department, The People's Republic of China, January 11-29, 2002
- Levy Award, New York State Bar Association, Committee on Professional Ethics, New York, NY, April 23, 2003
- Wachovia Fidelity Award, December 9, 2003
- Thomas A. O'Boyle Lecturer for Academic Year 2003-2004
- William Reece Smith, Jr. Distinguished Lecturer, 2004
- American Bar Association Pro Bono Publico Award, 2005
- Michael Franck Award, 2007
- 25-Year Life Member, The American Law Institute, 2013
- Lifetime Achievement Award, *The Legal* Intelligencer, 2013
- Howard Lesnick Pro Bono Award, The Law Alumni Society, University of Pennsylvania Law School, 2013.

Directorships

- Credit Suisse Asset Management Income Fund – 1988-present
- Credit Suisse Asset Management Strategic Global Income Fund – 1988-present
- Indonesia Fund – 2000-present
- Winthrop Trust Company – 2001-2009
- The Chile Fund, Inc. – 2006-present
- The First Israel Fund, Inc. – 2006-present
- The Latin America Equity Fund, Inc. – 2006-present
- Dynasil Corporation of America – 2011-present

Appearances

- "Inside the Law, Lawyers at a Crossroads," American Bar Association and Reliance National Production, New York, November 5, 1993
- "Inside the Law, Whatever Happened to Atticus Finch?" American Bar Association, March 12, 1996
- *CNN Crossfire*: "The Death Penalty," February 9, 1997
- *CNN Crossfire:* "Should Federal Judges Be Impeached," March 13, 1997
- "Inside the Law: Examining the Lawyer/Client Relationship," Public Television Series, April 9, 1997
- *Nightline:* "Ethics regarding tobacco industry lawsuits," May 29, 1997
- Testify before Congress regarding Contingent Fees, April 30, 1997
- *Today Show:* "Attorney-Client Privilege," December 1, 1997
- *Nightline:* "Attorney Client in the Tobacco Litigation," April 22, 1998
- *Today Show:* "Attorney-Client Privilege after Death," June 8, 1998
- *Nightline:* "Should this Privilege Survive Death?" June 8, 1998
- *MSNBC:* "Contingent Fees for Tobacco Lawyers," June 9, 1998
- *CNN:* "Impeachment of the President" September 14, 1998

- *CNN: Talk Back Live:* "Disbarring the President," March 15, 2000
- *MSNBC:* "Moratorium on the Death Penalty," July 10, 2000
- *CNN:* "The Death Penalty and the Presidential Election," July 30, 2000
- *WHYY/Delaware:* "Your Lawyer: A User's Guide," July 18 and July 25, 2006
- *WHYY/Delaware:* "Legal Lesson re: Product Liability Law" (spinach/E. coli outbreak), September 19, 2006
- *MSNBC MOST:* "Could Pres. Bush Decide to Pardon Lewis "Scooter" Libby?", March 7, 2007

Community Activities

- Member of the Board of Overseers of University of Pennsylvania School of Law and Associate Trustee of the University of Pennsylvania, 1992-1999
- Member, Board of Trustees, Friends Select School, 1982-1992
- Member, Board of Trustees, Beth Zion - Beth Israel Synagogue, 1988-present
- Former National Chairman, Annual Giving, University of Pennsylvania Law School 1987-89
- Member, Board of Advisors, United Way
- Lecturer, sailing, U.S. Coast Guard Auxiliary

Education

- University of Pennsylvania, The College, B.A. 1965
- University of Pennsylvania Law School, LL.B. cum laude 1968
- Managing Editor, University of Pennsylvania Law Review

Date of Birth

July 17, 1943

Home Address

468 Amity Road
Woodbridge, CT 06525

CASES IN WHICH LAWRENCE J. FOX
HAS TESTIFIED BY DEPOSITION OR TRIAL IN LAST FOUR YEARS

Johnson v. Buchanan Ingersoll & Rooney PC, Court of Common Pleas, Chester County, No. 09-07537

CoTherix, Inc., et al., Claimants, and **Bingham McCutchen LLP,** Respondent, In the Matter of an Arbitration Under the ICDR Arbitration Rules, No. 50 194 T 00749 10. (Under Seal)

Cruickshank-Wallace v. Klehr, Harrison, Harvey, Branzburg & Ellers LLP v. Cruickshank-Wallace, Court of Common Pleas, Philadelphia County, August Term, 2009, No. 003546

U.S. Bank National Association v. Verizon Communications Inc., et al., United States District Court, Northern District of Texas, Dallas Division, C.A. No. 10-CV-1842-G. (Under Seal)

Warrior Sports, Inc., v. Dickinson Wright, PLLC, United States District Court, Eastern District of Michigan, Southern Division, Case No. 09-12102. (Under Seal)

Federal Deposit Insurance Corporation v. Icard, Merrill, Cullis, Timm, Furen & Ginsburg, P.A., et al., United States District Court, Middle District of Florida, Tampa Division, Case No. 8:11CV2831t33MAP

Pawa Law Group, P.C. v. Sher Leff, LLP, Arbitration Before Judicial Arbitration and Mediation Services, Reference No. 1400014271. (Under Seal)

Mary Bucksbaum Scanlan v. Marshall Eisenberg, et al., United States District Court, Northern District of Illinois, Eastern Division, Case No. 1:09-cv-05026

Ferguson, et al. v. Stout, et al., Circuit Court of the 11th Judicial Circuit and for Miami-Dade County, Florida, Case No. 08-09767CA40

In re: Go Fig, et al.; Strauss, Trustee v. Helfrey, Neiers & Jones, P.C., United States District Court, Eastern District of Missouri, Eastern Division, Case No. 08-40116-705, Chapter 7

In re: 1H 1, Inc., et al., Bankruptcy No. 09-10982(PJW); **George L. Miller, Chapter 7 Trustee v. Kirkland & Ellis, LLP**, Adversary Proceeding No. 12-50713 (PJW)

Exhibit B

02 April 2015

MEMORANDUM FOR LTC Peter Q. Burke, Commander, Special Troops Battalion, United States Army Forces Command, Fort Bragg, North Carolina 28310

SUBJECT: United States v. SGT Bergdahl Request to Release the AR 15-6 Investigation

1. On 25 March 2015, U.S. Army Forces Command (FORSCOM) announced to a national audience that it was bringing charges of Desertion and Misbehavior Before the Enemy against Sergeant Bergdahl. This triggered a new round of public condemnation against him. The defense requests that FORSCOM publicly release the entire AR 15-6 investigation that served as the basis of those charges, minus necessary redactions.

2. I can be reached at 808-477-9981 or franklin.d.rosenblatt.mil@mail.mil

FRANKLIN D. ROSENBLATT
LTC, JA
Individual Military Counsel

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY FORCES COMMAND
4700 KNOX STREET
FORT BRAGG, NORTH CAROLINA 28310-5000

AFCG-JA

8 April 2015

MEMORANDUM FOR LTC Frank Rosenblatt, Individual Military Defense Counsel, Mr. Eugene Fidell, Civilian Defense Counsel, CPT Alfonso Foster, Detailed Military Defense Counsel, United States v. SGT Robert B. (Bowe) Bergdahl

SUBJECT: Request for FORSCOM to release AR 15-6 investigation concerning SGT Bergdahl

1. I have received your request dated 2 April 2015, requesting FORSCOM publically release the AR 15-6 investigation that served as the basis for the charges against SGT Bergdahl.

2. As the Commander, Special Troops Battalion, FORSCOM, and under Army Regulation 25-55, I do not have the authority to release this information.

3. POC is the undersigned.

PETER Q. BURKE
LTC, AG
Commanding

Protective Order ICO SGT Bergdahl

Fidell, Eugene

Sent: Monday, September 14, 2015 8:59 AM
To: peter.q.burke.mil@mail.mil
Cc: margaret.v.kurz.mil@mail.mil; christian.e.beese.mil@mail.mil; Karelis, Natalie J MAJ USARMY XVIII ABN CORPS (US) [natalie.j.karelis.mil@mail.mil]; mark.a.visger.mil@mail.mil; Rosenblatt, Franklin D LTC USARMY (US) [franklin.d.rosenblatt.mil@mail.mil]; alfredo.n.foster.mil@mail.mil

LTC Burke:

I request that the protective order in Sgt. Bergdahl's case be rescinded in whole or in part so I can disseminate MG Dahl's executive summary and Sgt. Bergdahl's statement.

This request is without prejudice to our positions that all unclassified evidence, pleadings and orders should be released upon submission/issuance and concerning your appointment as convening authority.

Please provide an up-or-down ruling by 1:00 p.m.

Sincerely,

Eugene R. Fidell

EXHIBIT E

NATIONAL SECURITY MARCH 25, 2015

Bergdahl faces desertion charge, but dodges capital punishment

HIGHLIGHTS

The Army on Wednesday charged Army Sgt. Bowe Bergdahl with desertion, but the former Taliban captive avoided the possibility of execution as punishment for his alleged crime.

By James Rosen and Adam Ashton - McClatchy Washington Bureau

The Army on Wednesday charged Army Sgt. Bowe Bergdahl with desertion, but the former Taliban captive avoided the possibility of execution as punishment for his alleged crime.

The Army also charged Bergdahl with improper conduct with the Taliban, who captured him shortly after he left his eastern Afghanistan post June 30, 2009, and then held him for almost five years.

A controversial deal approved by President Barack Obama freed Bergdahl on May 31 last year in exchange for five former senior Taliban commanders who were freed from the U.S. military detention center at Guantanamo Bay, Cuba.

Eugene Fidell, a Yale University military law professor who is representing Bergdahl, said the desertion charge did not surprise him, but acknowledged that he had not expected the charge of having misbehaved while in Taliban captivity.

“We are just heading into an Article 32 investigation,” Fidell told McClatchy. “The convening authority would still have to make a decision what to do based on the Article 32 report. So this is still a very preliminary juncture.”

Col. Daniel J.W. King, a spokesman for the U.S. Army Forces Command, did not take questions from reporters after announcing the charges in a short statement at Fort Bragg, N.C.

“Sergeant Bergdahl is charged under the Uniform Code of Military Justice with one count of Article 85, desertion with intent to shirk important or hazardous duty, and one count of Article 99, misbehavior before the enemy by endangering the safety of a command, unit or place,” King said.

The fact that Bergdahl is now part of a formal military criminal proceeding precluded him from taking questions from reporters or saying more about the case than his prepared statement.

Military critics of the prisoner exchange, among them former platoon mates of Bergdahl, have said that soldiers died searching for him after he left his remote post in Afghanistan’s Paktika province near the Pakistan border.

Mainly Republican members of Congress have accused Obama of negotiating with terrorists to secure the Idahoan’s release, and of violating a law requiring the president to give Congress at least 30 days’ notice before any Guantanamo detainees are freed.

The five Taliban released last year included the jihadist group’s former former deputy defense and intelligence ministers when it ruled Afghanistan before the October 2001 invasion.

Then-Defense Secretary Chuck Hagel and the nation's top military commanders defended the deal as fulfillment of a sacred commitment to leave no soldier captured or fallen behind enemy lines.

MORE NATIONAL SECURITY

COMMENTS

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EXHIBIT F

HEARST *corporation*

July 31, 2015

Diego Ibargüen
Counsel

VIA EMAIL (peter.q.burke.mil@mail.mil))

Lieutenant Colonel Peter Q. Burke
Special Court-Martial Convening Authority
Special Troops Battalion, U.S. Army Forces Command
4710 Knox Street
Fort Bragg, North Carolina 28310

Re: Access to Article 32 and Court-Martial Proceedings and Records in *United States v. Sergeant Bergdahl*

Dear Lieutenant Colonel Burke:

This office represents the San Antonio *Express-News*, a Hearst newspaper, and writes on behalf of the *Express-News* and the 11 news organizations listed below.[1]

We understand that in your role as special court-martial convening authority you are currently considering practices and procedures for upcoming proceedings in the United States' case against Sgt. Robert B. (Bowe) Bergdahl, including an Article 32 hearing scheduled for September 17, 2015 and a potential court-martial.

Accordingly, we write to request that, as part of those preparations, you implement measures that will ensure that journalists covering the case have full, contemporaneous access to the records and proceedings of the Article 32 hearing and any eventual court-martial. We write to you collectively to express our shared expectation that public and press access to these proceedings will comport with the requirements of the Constitution and other law, and we hope that by raising these issues with you now, we will be able to work with you to ensure complete access before the proceedings begin in earnest.

[1] Joining in this letter are The Associated Press, Bloomberg, BuzzFeed, First Look Media, Inc., Gannett Co., Inc., McClatchy Co., *The New York Times*, Reuters, *USA TODAY*, *The Wall Street Journal*, and *The Washington Post*.

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As you know, military law mandates a presumption of open and public Article 32 proceedings and courts-martial, except in limited circumstances based on specific findings that closure is necessary. Rules for Court-Martial 405(h)(3), 806. This presumptive openness is not just a default procedural rule—it is mandated by the First Amendment and federal common law in both civilian and military courts. The Court of Appeals for the Armed Forces has made clear that "trial by court-martial should resemble a criminal trial in a federal district court," *United States v. Valigura*, 54 M.J. 187, 191 (C.A.A.F. 2008). And the public's constitutional right of access to all phases of criminal trials is well-established. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) (trial); *Press-Enterprise Co. v. Superior Court (Press-Enterprise I)*, 464 U.S. 501 (1984) (jury *voir dire*); *Waller v. Georgia*, 467 U.S. 39 (1984) (suppression hearings)[2]; *Press-Enterprise Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1 (1986) (preliminary hearings).

Military courts have long applied and relied on these principles when considering public access to military court proceedings. Thus, the Court of Appeals for the Armed Forces has explicitly held that "absent 'cause shown that outweighs the value of openness'" the press has a right of access to Article 32 investigative hearings. *ABC, Inc. v. Powell*, 47 M.J. 363, 365 (C.A.A.F. 1997) (citing *Press-Enterprise I* and *Richmond Newspapers*). Similarly, military courts have found that public rights of access to criminal trials "appl[y] with the equal validity to trials by courts martial." *United States v. Scott*, 48 M.J. 663, 665 (A. Ct. Crim. App. 1998).

The public value of openness is considerable and is vital to the criminal process. Public and press scrutiny of criminal proceedings provides a "measure of accountability" and promotes "confidence in the administration of justice." *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995). In the military context, access "'effect[s] a fair result by ensuring that all parties perform their functions more responsibly, encouraging witnesses to come forward, and discouraging perjury.'" *San Antonio Express-News v. Morrow*, 44 M.J. 706, 710 (A. Ct. Crim. App. 1996) (quoting *United States v. Hershey*, 20 M.J. 433, 436 (CMA 1985)).

For the value of openness to be meaningfully preserved, the public and the press must also have access to court records, including written legal arguments, documentary evidence and written decisions of the presiding officer. Without access to such records—including, for example, any report of the Government's investigation of Sgt. Bergdahl that is submitted to the investigating officer or court-martial—the public will have difficulty understanding the in-court proceedings and be left in the dark on the full bases for the disposition. And if daily transcripts of

[2] While *Waller* concerned a Sixth Amendment challenge made by the defendant, the Court based its reasoning on First Amendment precedent and applied the *Press-Enterprise I* closure standard.

the in-court proceedings are not promptly made available, those who cannot fit in the hearing room will have no access to the proceedings at all. Put simply, the proceedings will remain closed for all practical purposes if the filings, evidence, and transcripts of the proceedings are not publicly available. For this reason, the First Amendment protects the public's broad right to freely access court records as well as the underlying proceedings. See, e.g., Washington Post Co. v. Robinson, 935 F.2d 282, 287 (D.C. Cir. 1991) ("The first amendment guarantees the press and the public a general right of access to court proceedings and court documents . . . ."); Hartford Courant Co. v. Pellegrino, 380 F.3d 83, 93, 96 (2d Cir. 2004) (observing that access rights to trials "would be merely theoretical if the information provided by docket sheets were inaccessible," and holding "that docket sheets enjoy a presumption of openness and that the public and the media possess a qualified First Amendment right to inspect them"); United States v. Antar, 38 F.3d 1348, 1359-60 (3d Cir. 1994) ("the right of access to voir dire examinations encompasses equally the live proceedings and the transcripts which document those proceedings"); In re New York Times Co., 828 F.2d 110, 114 (2d Cir. 1987) (qualified First Amendment public right of access to pretrial hearings extends to "written documents submitted in connection with judicial proceedings that themselves implicate the right of access"); United States v. Peters, 754 F.2d 753,763-64 (7th Cir. 1985) (recognizing presumption of access to trial exhibits "of constitutional magnitude through the first amendment"); Associated Press v. United States Dist. Court, 705 F.2d 1143, 1145 (9th Cir. 1983) ("the public and press have a first amendment right of access to pretrial documents in general").

The Constitution also requires that the public's access to both hearings and written records be contemporaneous with the actual proceedings. *See, e.g., Doe v. Public Citizen*, 749 F.3d 246, 272 (4th Cir. 2014) ("the public and press generally have a contemporaneous right of access to court documents and proceedings when the right applies"); *Robinson*, 935 F.2d at 287 (noting the "critical importance of *contemporaneous* access to plea agreements") (emphasis in original); *Matter of Cont'l Ill. Sec. Litig.*, 732 F.2d 1302, 1310 (7th Cir. 1984) (right of access "normally involves a right of *contemporaneous* access"); *Application of Nat'l Broad. Co., Inc.*, 635 F.2d 945, 952 (2d Cir. 1980) ("only the most compelling circumstances should prevent contemporaneous public access" to physical evidence used at trial). When disclosure is delayed, "the public benefits attendant with open proceedings are compromised." *Public Citizen*, 749 F.2d at 272; *see also Chicago Tribune Co. v. Ladd*, 162 F.3d 503, 506 (7th Cir. 1998) ("the values that animate the presumption in favor of access [to documents] require as a necessary corollary that ... access ought to be immediate and contemporaneous") (internal quotation marks and citation omitted). Even minimal delays are unacceptable. *See, e.g., Associated Press v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 705 F.2d 1143, 1147 (9th

Cir. 1983) (finding that even a 48-hour presumptive sealing period for documents violates the First Amendment right of public access).

Accordingly, closure or sealing for any length of time is permitted only when it "is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise I*, 464 U.S. at 510. First and foremost, a court must provide notice and an opportunity to be heard prior to closure. *Id.*; *Press-Enterprise II*, 478 U.S. at 9-10; *In re Application of The Herald Co.*, 734 F.2d 93, 102 (2d Cir. 1984) (observing that "it seems entirely inadequate to leave the vindication of a First Amendment right to the fortuitous presence in the courtroom of a public spirited citizen willing to complain about closure"); *In re Hearst Newspapers, L.L.C.*, 641 F.3d 168, 182-83 (5th Cir. 2011) (same); *United States v. Alcantara*, 396 F.3d 189, 199-200 (2d. Cir. 2005) (same). Second, access to both judicial records and hearings may only be denied where the Government establishes that closure is necessary to further a compelling government interest and is narrowly tailored to serve that interest, and the court makes specific findings on the record supporting the closure to aid review. *See Press-Enterprise I*, 464 U.S. at 513. Even where a military proceeding may reveal classified or security matters, the Government's "simple utilization of the terms 'security' or 'military necessity'" is not enough. *United States v. Grunden*, 2 M.J. 116, 121 (C.M.A. 1977). Rather, "[b]efore a trial judge can order the exclusion of the public on this basis, he must be satisfied from all the evidence and circumstances that there is a reasonable danger that presentation of these materials before the public will expose military matters which in the interest of national security should not be divulged." *Id.* at 122. And he must carefully determine, on the record, which specific portions of the proceeding will touch on classified matters, allowing public access to everything else. *Id.* at 123-24; *see also Denver Post Corp. v. United States*, No. ARMY MISC 20041215, 2005 WL 6519929, at *3 (A. Ct. Crim. App. Feb. 23, 2005).

In this case, openness is particularly important because Sgt. Bergdahl's case has been and continues to be a subject of intense public interest. The degree of public access to the proceedings and records of this case will affect public faith in the military justice system and its ability to oversee a fair trial for a soldier charged with desertion and misbehavior before the enemy, among the most serious military offenses. Since so many people are watching, "public confidence in matters of military justice would quickly erode" if access were arbitrarily limited. *United States v. Travers*, 25 M.J. 61, 62 (C.M.A. 1987).

Therefore, in the interests of ensuring that the public's First Amendment right of access to judicial proceedings and records is respected and given effect during Sgt. Bergdahl's Article 32 hearing and any subsequent court-martial, we collectively request that you implement the following procedures and practices:

- Provide public and press access to the hearing room during the Article 32 hearing and any resulting court-martial.

- Provide public and press access to daily sound recordings and/or transcripts of the Article 32 hearing and any subsequent court-martial as soon as practicable after the conclusion of each day of the proceedings, in the same form as they are provided to the parties. In the alternative, we request that you permit the use of a privately-hired stenographer at the proceedings to make an independent record.

- Provide contemporaneous public and press access to a record of any conferences held under R.C.M. 802 at which substantive matters are discussed, either by providing transcripts, recordings, or minutes of such conferences or by reciting minutes of such conferences in open court as expeditiously as possible.

- Provide public and press access to the records of the proceedings, including the court docket, party filings and court decisions (including procedural orders) in the Article 32 proceeding and any court-martial through an online "reading room" similar to that created by the Department of Defense in other high-profile military court proceedings. Filings and decisions that do not require a classification security review should be available within one business day after filing, and those requiring a security review should be posted promptly after completion of such review, which itself should be conducted as expeditiously as possible.

- Provide public and press access to any other unclassified materials submitted during the Article 32 hearing and any court-martial through the same online reading room. Materials that do not require a classification security review should be available within one business day after filing, and materials requiring a security review should be posted promptly after completion of such expeditious review.

- Before closing proceedings to the public, require that the military judge or presiding officer overseeing the proceedings provide notice and opportunity to be heard and make specific, on-the-record

findings that closure is necessary to further a compelling government interest and narrowly tailored to serve that interest.

- Require that if, after a classified security review, it is determined that a filing, decision, or material received into evidence is classified, the military judge or presiding officer overseeing the proceedings provide notice and opportunity to be heard before issuing a decision that the material will not be released to the public, announce that decision in open court and make specific, on-the-record findings that withholding is necessary to further a compelling government interest and narrowly tailored to serve that interest.

Many of these procedures are similar to 2011 reforms in regulations governing access to military commission proceedings held in Guantanamo Bay, *see* U.S. Dep't of Def., Regulation for Trial by Military Commission (2011 ed.) (providing for, *inter alia*, online posting of filings, decisions, and unofficial transcripts), and/or procedures that were ultimately implemented by the convening authority in the court-martial of Pfc. Bradley (now Chelsea) Manning, *see Ctr. for Constitutional Rights v. Lind*, 954 F. Supp. 2d 389, 403 (D. Md. 2013) (noting that the Army released documents filed in the court-martial of Pfc. Manning in an electronic "reading room").

We welcome the opportunity to discuss these requests with you by conference call or other means, and will be available at your convenience. We look forward to your prompt response.

Sincerely,

Diego Ibarguen
Jennifer D. Bishop

cc by email:
Lt. Col. Mark A. Visger (mark.a.visger.mil@mail.mil)
Maj. Margaret V. Kurz (Margaret.v.kurz.mil@mail.mil)
Eugene R. Fidell (efidell@feldesmantucker.com)
Lt. Col. Franklin D. Rosenblatt (franklin.d.rosenblatt.mil@mail.mil)

EXHIBIT G

DEPARTMENT OF THE ARMY
SPECIAL TROOPS BATTALION
UNITED STATES ARMY FORCES COMMAND-UNITED STATES ARMY RESERVE COMMAND
4745 KNOX STREET, BLDG 1-1460
FORT BRAGG, NORTH CAROLINA 28310-5000

August 6, 2015

Mr. Diego Ibarguen
Hearst Corporation
300 West 57th Street
New York, NY 10019-3792

Dear Mr. Ibarguen,

Thank you for your letter of July 31, 2015, concerning the Article 32 Preliminary Hearing in the case of Sergeant Bowe Bergdahl. The preliminary hearing will be conducted in accordance with Rule For Courts-Martial (RCM) 405, Manual For Courts-Martial 2012 (as updated in June 2015). Accordingly, public access will comply with RCM 405(i)(4), which explicitly states that a preliminary hearing is a public proceeding and will remain open to the public whenever possible. In the event the preliminary hearing must be closed, such as due to the presentation of classified evidence, this closure will be narrowly tailored balancing the Government's interest in protecting classified information and the public's right to be present at the preliminary hearing.

The Government is planning for media access, please have your news representative contact Mr. Paul Boyce, US Forces Command, Public Affairs, at john.p.boyce2.civ@mail.mil or (910) 570-7200 for information on the required procedures to attend the preliminary hearing.

Sincerely,

Peter Q. Burke
Lieutenant Colonel, U.S. Army
Commanding

EXHIBIT H

From:	Ibarguen, Diego
To:	Robert.b.abrams.mil@mail.mil
Cc:	"peter.g.burke.mil@mail.mil"; "mark.a.visger.mil@mail.mil"; "margaret.v.kurz.mil@mail.mil"; Fidell, Eugene R. (efidell@feldesmantucker.com); franklin.d.rosenblatt.mil@mail.mil; Bishop, Jennifer
Subject:	Press Access to Proceedings and Records in Prosecution of Sgt. Bergdahl
Date:	Saturday, September 12, 2015 10:31:00 PM
Attachments:	News OrganizationLetter to Lt Col Burke re Access to Bergdahl Proceeding....pdf S40MFP2-15081413230.pdf
Importance:	High

Dear Gen. Abrams:

We write on behalf of the San Antonio-Express News (the "Express News"), a Hearst newspaper. We understand that you recently succeeded Gen. Milley as commanding general of FORSCOM and as general court-martial convening authority in the United States' prosecution of Sgt. Robert ("Bowe") Bergdahl, and, accordingly, we write to you regarding press access to those proceedings and records related to Sgt. Bergdahl's case.

On July 31, 2015, we sent the attached letter to Lt. Col. Burke on behalf of the Express-News and 11 other media organizations requesting that procedures be implemented to ensure that the public receives constitutionally-mandated contemporaneous access to the hearings and records of Sgt. Bergdahl's Article 32 proceeding (scheduled to commence on September 17, 2015) and any court-martial of Sgt. Bergdahl, should there be one. On August 14, 2015, we received the attached response from Lt. Col. Burke confirming only that the Article 32 proceeding "will be conducted in accordance with the Rule For Courts-Martial (RCM) 405", which does not address procedures for access to evidence, filings, or other records of Article 32 proceedings or courts-martial. The Express-News has since raised its concerns with Mr. Paul Boyce in FORSCOM Public Affairs, but he has not provided any information about whether, when, and how the press will be able to access non-classified records in this case.
We are therefore concerned that there is no procedure for providing access to records, and that reporters covering this case will be unable to obtain materials that are critical to understanding and explaining the proceedings to the public, such as materials entered into evidence, briefs and other filings, and written orders by the investigating officer or military judge. We are particularly concerned that the press will not have access to written materials handed up to the investigating officer during the Article 32 proceeding, including the investigation report and any statements by Sgt. Bergdahl included therein.

As we are sure you can appreciate, the case of Sgt. Bergdahl is a subject of enormous public interest, discussion and debate, and the public expects, and is entitled, to be fully informed as his case makes its way through the military justice system. Accordingly, the press must know in advance if access to records will be denied so we can take appropriate steps to enforce the public's right of access. The First Amendment requires contemporaneous access to judicial proceedings and records, *see, e.g.*, *Doe v. Public Citizen*, 749 F.3d 246, 27 (4th Cir. 2014), and "each passing day" that access is denied "may constitute a separate and cognizable infringement of the First Amendment." *CBS, Inc. v. Davis*, 510 U.S. 1315, 1317 (1979) (Brennan, J., in chambers).

We therefore request that you inform us by close of business on September 15, 2015 whether and

how the press will be granted timely access to records in this case, including evidence, briefs, other party filings, and written orders.

Sincerely,

Diego Ibarguen

Diego Ibarguen
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(646) 280-2039 (fax)
dibarguen@hearst.com

HEARST *corporation*

July 31, 2015

Diego Ibargüen
Counsel

VIA EMAIL (peter.q.burke.mil@mail.mil))

Lieutenant Colonel Peter Q. Burke
Special Court-Martial Convening Authority
Special Troops Battalion, U.S. Army Forces Command
4710 Knox Street
Fort Bragg, North Carolina 28310

Re: Access to Article 32 and Court-Martial Proceedings and Records in *United States v. Sergeant Bergdahl*

Dear Lieutenant Colonel Burke:

This office represents the San Antonio *Express-News*, a Hearst newspaper, and writes on behalf of the *Express-News* and the 11 news organizations listed below.[1]

We understand that in your role as special court-martial convening authority you are currently considering practices and procedures for upcoming proceedings in the United States' case against Sgt. Robert B. (Bowe) Bergdahl, including an Article 32 hearing scheduled for September 17, 2015 and a potential court-martial.

Accordingly, we write to request that, as part of those preparations, you implement measures that will ensure that journalists covering the case have full, contemporaneous access to the records and proceedings of the Article 32 hearing and any eventual court-martial. We write to you collectively to express our shared expectation that public and press access to these proceedings will comport with the requirements of the Constitution and other law, and we hope that by raising these issues with you now, we will be able to work with you to ensure complete access before the proceedings begin in earnest.

[1] Joining in this letter are The Associated Press, Bloomberg, BuzzFeed, First Look Media, Inc., Gannett Co., Inc., McClatchy Co., *The New York Times*, Reuters, *USA TODAY*, *The Wall Street Journal*, and *The Washington Post*.

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As you know, military law mandates a presumption of open and public Article 32 proceedings and courts-martial, except in limited circumstances based on specific findings that closure is necessary. Rules for Court-Martial 405(h)(3), 806. This presumptive openness is not just a default procedural rule—it is mandated by the First Amendment and federal common law in both civilian and military courts. The Court of Appeals for the Armed Forces has made clear that "trial by court-martial should resemble a criminal trial in a federal district court," *United States v. Valigura*, 54 M.J. 187, 191 (C.A.A.F. 2008). And the public's constitutional right of access to all phases of criminal trials is well-established. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980) (trial); *Press-Enterprise Co. v. Superior Court (Press-Enterprise I)*, 464 U.S. 501 (1984) (jury *voir dire*); *Waller v. Georgia*, 467 U.S. 39 (1984) (suppression hearings)[2]; *Press-Enterprise Co. v. Superior Court (Press-Enterprise II)*, 478 U.S. 1 (1986) (preliminary hearings).

Military courts have long applied and relied on these principles when considering public access to military court proceedings. Thus, the Court of Appeals for the Armed Forces has explicitly held that "absent 'cause shown that outweighs the value of openness'" the press has a right of access to Article 32 investigative hearings. *ABC, Inc. v. Powell*, 47 M.J. 363, 365 (C.A.A.F. 1997) (citing *Press-Enterprise I* and *Richmond Newspapers*). Similarly, military courts have found that public rights of access to criminal trials "appl[y] with the equal validity to trials by courts martial." *United States v. Scott*, 48 M.J. 663, 665 (A. Ct. Crim. App. 1998).

The public value of openness is considerable and is vital to the criminal process. Public and press scrutiny of criminal proceedings provides a "measure of accountability" and promotes "confidence in the administration of justice." *United States v. Amodeo*, 71 F.3d 1044, 1048 (2d Cir. 1995). In the military context, access "'effect[s] a fair result by ensuring that all parties perform their functions more responsibly, encouraging witnesses to come forward, and discouraging perjury.'" *San Antonio Express-News v. Morrow*, 44 M.J. 706, 710 (A. Ct. Crim. App. 1996) (quoting *United States v. Hershey*, 20 M.J. 433, 436 (CMA 1985)).

For the value of openness to be meaningfully preserved, the public and the press must also have access to court records, including written legal arguments, documentary evidence and written decisions of the presiding officer. Without access to such records—including, for example, any report of the Government's investigation of Sgt. Bergdahl that is submitted to the investigating officer or court-martial—the public will have difficulty understanding the in-court proceedings and be left in the dark on the full bases for the disposition. And if daily transcripts of

[2] While *Waller* concerned a Sixth Amendment challenge made by the defendant, the Court based its reasoning on First Amendment precedent and applied the *Press-Enterprise I* closure standard.

the in-court proceedings are not promptly made available, those who cannot fit in the hearing room will have no access to the proceedings at all. Put simply, the proceedings will remain closed for all practical purposes if the filings, evidence, and transcripts of the proceedings are not publicly available. For this reason, the First Amendment protects the public's broad right to freely access court records as well as the underlying proceedings. See, e.g., Washington Post Co. v. Robinson, 935 F.2d 282, 287 (D.C. Cir. 1991) ("The first amendment guarantees the press and the public a general right of access to court proceedings and court documents . . . ."); Hartford Courant Co. v. Pellegrino, 380 F.3d 83, 93, 96 (2d Cir. 2004) (observing that access rights to trials "would be merely theoretical if the information provided by docket sheets were inaccessible," and holding "that docket sheets enjoy a presumption of openness and that the public and the media possess a qualified First Amendment right to inspect them"); United States v. Antar, 38 F.3d 1348, 1359-60 (3d Cir. 1994) ("the right of access to voir dire examinations encompasses equally the live proceedings and the transcripts which document those proceedings"); In re New York Times Co., 828 F.2d 110, 114 (2d Cir. 1987) (qualified First Amendment public right of access to pretrial hearings extends to "written documents submitted in connection with judicial proceedings that themselves implicate the right of access"); United States v. Peters, 754 F.2d 753,763-64 (7th Cir. 1985) (recognizing presumption of access to trial exhibits "of constitutional magnitude through the first amendment"); Associated Press v. United States Dist. Court, 705 F.2d 1143, 1145 (9th Cir. 1983) ("the public and press have a first amendment right of access to pretrial documents in general").

The Constitution also requires that the public's access to both hearings and written records be contemporaneous with the actual proceedings. *See, e.g., Doe v. Public Citizen*, 749 F.3d 246, 272 (4th Cir. 2014) ("the public and press generally have a contemporaneous right of access to court documents and proceedings when the right applies"); *Robinson*, 935 F.2d at 287 (noting the "critical importance of *contemporaneous* access to plea agreements") (emphasis in original); *Matter of Cont'l Ill. Sec. Litig.*, 732 F.2d 1302, 1310 (7th Cir. 1984) (right of access "normally involves a right of *contemporaneous* access"); *Application of Nat'l Broad. Co., Inc.*, 635 F.2d 945, 952 (2d Cir. 1980) ("only the most compelling circumstances should prevent contemporaneous public access" to physical evidence used at trial). When disclosure is delayed, "the public benefits attendant with open proceedings are compromised." *Public Citizen*, 749 F.2d at 272; *see also Chicago Tribune Co. v. Ladd*, 162 F.3d 503, 506 (7th Cir. 1998) ("the values that animate the presumption in favor of access [to documents] require as a necessary corollary that ... access ought to be immediate and contemporaneous") (internal quotation marks and citation omitted). Even minimal delays are unacceptable. *See, e.g., Associated Press v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 705 F.2d 1143, 1147 (9th

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Accordingly, closure or sealing for any length of time is permitted only when it "is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise I*, 464 U.S. at 510. First and foremost, a court must provide notice and an opportunity to be heard prior to closure. *Id.*; *Press-Enterprise II*, 478 U.S. at 9-10; *In re Application of The Herald Co.*, 734 F.2d 93, 102 (2d Cir. 1984) (observing that "it seems entirely inadequate to leave the vindication of a First Amendment right to the fortuitous presence in the courtroom of a public spirited citizen willing to complain about closure"); *In re Hearst Newspapers, L.L.C.*, 641 F.3d 168, 182-83 (5th Cir. 2011) (same); *United States v. Alcantara*, 396 F.3d 189, 199-200 (2d. Cir. 2005) (same). Second, access to both judicial records and hearings may only be denied where the Government establishes that closure is necessary to further a compelling government interest and is narrowly tailored to serve that interest, and the court makes specific findings on the record supporting the closure to aid review. *See Press-Enterprise I*, 464 U.S. at 513. Even where a military proceeding may reveal classified or security matters, the Government's "simple utilization of the terms 'security' or 'military necessity'" is not enough. *United States v. Grunden*, 2 M.J. 116, 121 (C.M.A. 1977). Rather, "[b]efore a trial judge can order the exclusion of the public on this basis, he must be satisfied from all the evidence and circumstances that there is a reasonable danger that presentation of these materials before the public will expose military matters which in the interest of national security should not be divulged." *Id.* at 122. And he must carefully determine, on the record, which specific portions of the proceeding will touch on classified matters, allowing public access to everything else. *Id.* at 123-24; *see also Denver Post Corp. v. United States*, No. ARMY MISC 20041215, 2005 WL 6519929, at *3 (A. Ct. Crim. App. Feb. 23, 2005).

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Therefore, in the interests of ensuring that the public's First Amendment right of access to judicial proceedings and records is respected and given effect during Sgt. Bergdahl's Article 32 hearing and any subsequent court-martial, we collectively request that you implement the following procedures and practices:

- Provide public and press access to the hearing room during the Article 32 hearing and any resulting court-martial.

- Provide public and press access to daily sound recordings and/or transcripts of the Article 32 hearing and any subsequent court-martial as soon as practicable after the conclusion of each day of the proceedings, in the same form as they are provided to the parties. In the alternative, we request that you permit the use of a privately-hired stenographer at the proceedings to make an independent record.

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findings that closure is necessary to further a compelling government interest and narrowly tailored to serve that interest.

- Require that if, after a classified security review, it is determined that a filing, decision, or material received into evidence is classified, the military judge or presiding officer overseeing the proceedings provide notice and opportunity to be heard before issuing a decision that the material will not be released to the public, announce that decision in open court and make specific, on-the-record findings that withholding is necessary to further a compelling government interest and narrowly tailored to serve that interest.

Many of these procedures are similar to 2011 reforms in regulations governing access to military commission proceedings held in Guantanamo Bay, *see* U.S. Dep't of Def., Regulation for Trial by Military Commission (2011 ed.) (providing for, *inter alia*, online posting of filings, decisions, and unofficial transcripts), and/or procedures that were ultimately implemented by the convening authority in the court-martial of Pfc. Bradley (now Chelsea) Manning, *see Ctr. for Constitutional Rights v. Lind*, 954 F. Supp. 2d 389, 403 (D. Md. 2013) (noting that the Army released documents filed in the court-martial of Pfc. Manning in an electronic "reading room").

We welcome the opportunity to discuss these requests with you by conference call or other means, and will be available at your convenience. We look forward to your prompt response.

Sincerely,

Diego Ibarguen
Jennifer D. Bishop

cc by email:
Lt. Col. Mark A. Visger (mark.a.visger.mil@mail.mil)
Maj. Margaret V. Kurz (Margaret.v.kurz.mil@mail.mil)
Eugene R. Fidell (efidell@feldesmantucker.com)
Lt. Col. Franklin D. Rosenblatt (franklin.d.rosenblatt.mil@mail.mil)

DEPARTMENT OF THE ARMY
SPECIAL TROOPS BATTALION
UNITED STATES ARMY FORCES COMMAND-UNITED STATES ARMY RESERVE COMMAND
4745 KNOX STREET, BLDG 1-1460
FORT BRAGG, NORTH CAROLINA 28310-5000

August 6, 2015

Mr. Diego Ibarguen
Hearst Corporation
300 West 57th Street
New York, NY 10019-3792

Dear Mr. Ibarguen,

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The Government is planning for media access, please have your news representative contact Mr. Paul Boyce, US Forces Command, Public Affairs, at john.p.boyce2.civ@mail.mil or (910) 570-7200 for information on the required procedures to attend the preliminary hearing.

Sincerely,

Peter Q. Burke
Lieutenant Colonel, U.S. Army
Commanding

EXHIBIT I

From:	Kurz, Margaret V MAJ USARMY FORSCOM (US)
To:	Ibarguen, Diego
Cc:	Beese, Christian E LTC USARMY HQDA TJAGLCS (US)
Subject:	RE: Press Access to Proceedings and Records in Prosecution of Sgt. Bergdahl
Date:	Tuesday, September 15, 2015 5:48:09 PM
Attachments:	Letter Response to Hearst Corporation 15 Sept 15 MK.pdf

---

Sir,

See attached.

V/R
MAJ Margaret Kurz

-----Original Message-----
From: Ibarguen, Diego [mailto:dibarguen@hearst.com]
Sent: Saturday, September 12, 2015 9:31 PM
To: Abrams, Robert B GEN USARMY FORSCOM (US)
Cc: Burke, Peter Q LTC USARMY FORSCOM (US); Visger, Mark A LTC USARMY FIRST ARMY DIVWEST (US); Kurz, Margaret V MAJ USARMY FORSCOM (US); Fidell, Eugene R. (efidell@feldesmantucker.com); Rosenblatt, Franklin D LTC USARMY (US); Bishop, Jennifer
Subject: Press Access to Proceedings and Records in Prosecution of Sgt. Bergdahl
Importance: High

Dear Gen. Abrams:

We write on behalf of the San Antonio-Express News (the "Express News"), a Hearst newspaper. We understand that you recently succeeded Gen. Milley as commanding general of FORSCOM and as general court-martial convening authority in the United States' prosecution of Sgt. Robert ("Bowe") Bergdahl, and, accordingly, we write to you regarding press access to those proceedings and records related to Sgt. Bergdahl's case.

On July 31, 2015, we sent the attached letter to Lt. Col. Burke on behalf of the Express-News and 11 other media organizations requesting that procedures be implemented to ensure that the public receives constitutionally-mandated contemporaneous access to the hearings and records of Sgt. Bergdahl's Article 32 proceeding (scheduled to commence on September 17, 2015) and any court-martial of Sgt. Bergdahl, should there be one. On August 14, 2015, we received the attached response from Lt. Col. Burke confirming only that the Article 32 proceeding "will be conducted in accordance with the Rule For Courts-Martial (RCM) 405", which does not address procedures for access to evidence, filings, or other records of Article 32 proceedings or courts-martial. The Express-News has since raised its concerns with Mr. Paul Boyce in FORSCOM Public Affairs, but he has not provided any information about whether, when, and how the press will be able to access non-classified records in this case.
We are therefore concerned that there is no procedure for providing access to records, and that reporters covering this case will be unable to obtain materials that are critical to understanding and explaining the proceedings to the public, such as materials entered into evidence, briefs and other filings, and written orders by the investigating officer or military judge. We are particularly concerned that the press will not have access to written materials handed up to the investigating officer during the Article 32 proceeding, including the investigation report and any statements by Sgt. Bergdahl included therein.

As we are sure you can appreciate, the case of Sgt. Bergdahl is a subject of enormous public interest, discussion and debate, and the public expects, and is entitled, to be fully informed as his case makes its way through the military justice system. Accordingly, the press must know in advance if access to records will be denied so we can take appropriate steps to enforce the public's right of access. The First Amendment requires contemporaneous access to judicial proceedings and records, see, e.g., Doe v. Public Citizen, 749 F.3d 246, 27 (4th Cir. 2014), and "each passing day" that access is denied "may

constitute a separate and cognizable infringement of the First Amendment." CBS, Inc. v. Davis, 510 U.S. 1315, 1317 (1979) (Brennan, J., in chambers).

We therefore request that you inform us by close of business on September 15, 2015 whether and how the press will be granted timely access to records in this case, including evidence, briefs, other party filings, and written orders.

Sincerely,

Diego Ibarguen

Diego Ibarguen
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(212) 649-2039 (tel)
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dibarguen@hearst.com<mailto:dibarguen@hearst.com>

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY FORCES COMMAND
4700 KNOX STREET
FORT BRAGG, NORTH CAROLINA 28310-5000

September 15, 2015

Mr. Diego Ibarguen
Hearst Corporation
300 West 57th Street
New York, NY 10019-3792

Dear Mr. Ibarguen,

General Abrams acknowledges receipt of your email dated 12 September 2015.

The Special Courts-Martial Convening Authority, LTC Peter Burke, has already addressed the issue of media access to the Article 32 Preliminary Hearing in his letter to the Hearst Corporation dated 6 August 2015, and will conduct the hearing in compliance with Rule for Courts-Martial (RCM) 405.

Sincerely,

Margaret V. Kurz
Major, U.S. Army
Trial Counsel

EXHIBIT J

From:	Ibarguen, Diego
To:	"Robert.b.abrams.mil@mail.mil"; "peter.q.burke.mil@mail.mil"
Cc:	"mark.a.visger.mil@mail.mil"; "margaret.v.kurz.mil@mail.mil"; "Fidell, Eugene R. (efidell@feldesmantucker.com)"; "franklin.d.rosenblatt.mil@mail.mil"; Bishop, Jennifer
Subject:	RE: Press Access to Proceedings and Records in Prosecution of Sgt. Bergdahl
Date:	Friday, September 18, 2015 5:17:00 PM

Dear Gen. Abrams and Lt. Col. Burke:

As you know, we write on behalf of the San Antonio Express-News (the "Express-News"), a Hearst newspaper, and write regarding the Article 32 proceedings for Sgt. Bergdahl, which are on-going.

We have been informed by our client that following the admission into evidence on Sept. 17, 2015, of the transcript of an interview conducted by Maj. Gen. Dahl of Sgt. Bergdahl, the Express-News made a formal request for access to that document. Today, the Express-News was denied access to the document by Col. Daniel King.

As we have previously indicated in our correspondence with you, the public's right of access to the Bergdahl proceedings extends to judicial records, including materials entered into evidence. Accordingly, we respectfully request that you direct the public release of the document. If you will not direct the release of the document, we ask that you promptly confirm the Army's legal basis for withholding the document from the public.

Sincerely,
Diego Ibarguen
Jennifer D. Bishop

Diego Ibarguen
Counsel
Hearst Corporation
Office of General Counsel
300 W. 57th Street
New York, NY 10019
(212) 649-2039 (tel)
(646) 280-2039 (fax)
dibarguen@hearst.com

From: Ibarguen, Diego
Sent: Saturday, September 12, 2015 10:31 PM
To: Robert.b.abrams.mil@mail.mil
Cc: 'peter.q.burke.mil@mail.mil'; 'mark.a.visger.mil@mail.mil'; 'margaret.v.kurz.mil@mail.mil'; Fidell, Eugene R. (efidell@feldesmantucker.com); franklin.d.rosenblatt.mil@mail.mil; Bishop, Jennifer

Subject: Press Access to Proceedings and Records in Prosecution of Sgt. Bergdahl
Importance: High

Dear Gen. Abrams:

We write on behalf of the San Antonio-Express News (the "Express News"), a Hearst newspaper. We understand that you recently succeeded Gen. Milley as commanding general of FORSCOM and as general court-martial convening authority in the United States' prosecution of Sgt. Robert ("Bowe") Bergdahl, and, accordingly, we write to you regarding press access to those proceedings and records related to Sgt. Bergdahl's case.

On July 31, 2015, we sent the attached letter to Lt. Col. Burke on behalf of the Express-News and 11 other media organizations requesting that procedures be implemented to ensure that the public receives constitutionally-mandated contemporaneous access to the hearings and records of Sgt. Bergdahl's Article 32 proceeding (scheduled to commence on September 17, 2015) and any court-martial of Sgt. Bergdahl, should there be one. On August 14, 2015, we received the attached response from Lt. Col. Burke confirming only that the Article 32 proceeding "will be conducted in accordance with the Rule For Courts-Martial (RCM) 405", which does not address procedures for access to evidence, filings, or other records of Article 32 proceedings or courts-martial. The Express-News has since raised its concerns with Mr. Paul Boyce in FORSCOM Public Affairs, but he has not provided any information about whether, when, and how the press will be able to access non-classified records in this case.

We are therefore concerned that there is no procedure for providing access to records, and that reporters covering this case will be unable to obtain materials that are critical to understanding and explaining the proceedings to the public, such as materials entered into evidence, briefs and other filings, and written orders by the investigating officer or military judge. We are particularly concerned that the press will not have access to written materials handed up to the investigating officer during the Article 32 proceeding, including the investigation report and any statements by Sgt. Bergdahl included therein.

As we are sure you can appreciate, the case of Sgt. Bergdahl is a subject of enormous public interest, discussion and debate, and the public expects, and is entitled, to be fully informed as his case makes its way through the military justice system. Accordingly, the press must know in advance if access to records will be denied so we can take appropriate steps to enforce the public's right of access. The First Amendment requires contemporaneous access to judicial proceedings and records, *see, e.g.*, *Doe v. Public Citizen*, 749 F.3d 246, 27 (4th Cir. 2014), and "each passing day" that access is denied "may constitute a separate and cognizable infringement of the First Amendment." *CBS, Inc. v. Davis*, 510 U.S. 1315, 1317 (1979) (Brennan, J., in chambers).

We therefore request that you inform us by close of business on September 15, 2015 whether and how the press will be granted timely access to records in this case, including evidence, briefs, other party filings, and written orders.

Sincerely,

Diego Ibarguen

Diego Ibarguen
Counsel
Hearst Corporation
Office of General Counsel
300 W. 57th Street
New York, NY 10019
(212) 649-2039 (tel)
(646) 280-2039 (fax)
dibarguen@hearst.com

EXHIBIT K

From:	Kurz, Margaret V MAJ USARMY FORSCOM (US)
To:	Ibarguen, Diego
Cc:	Beese, Christian E LTC USARMY HQDA TJAGLCS (US); Berry, Vanessa A COL USARMY FORSCOM (US)
Subject:	RE: Press Access to Proceedings and Records in Prosecution of Sgt. Bergdahl
Date:	Friday, September 25, 2015 5:20:48 PM
Attachments:	Response 25 Sept 15.pdf Govt Letter SJA Response to Hearst Corporation email to Abrams 25 Sept 1....pdf

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Sir,

Responses to your inquiry are attached.

MAJ Margaret Kurz

-----Original Message-----
From: Ibarguen, Diego [mailto:dibarguen@hearst.com]
Sent: Friday, September 18, 2015 5:18 PM
To: Abrams, Robert B GEN USARMY FORSCOM (US) <robert.b.abrams.mil@mail.mil>; Burke, Peter Q LTC USARMY FORSCOM (US) <peter.q.burke.mil@mail.mil>
Cc: Visger, Mark A LTC USARMY FIRST ARMY DIVWEST (US) <mark.a.visger.mil@mail.mil>; Kurz, Margaret V MAJ USARMY FORSCOM (US) <margaret.v.kurz.mil@mail.mil>; Fidell, Eugene R. <efidell@feldesmantucker.com>; Rosenblatt, Franklin D LTC USARMY (US) <franklin.d.rosenblatt.mil@mail.mil>; Bishop, Jennifer <jbishop@hearst.com>
Subject: RE: Press Access to Proceedings and Records in Prosecution of Sgt. Bergdahl

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Sincerely,
Diego Ibarguen
Jennifer D. Bishop

Diego Ibarguen
Counsel
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To: Robert.b.abrams.mil@mail.mil
Cc: 'peter.q.burke.mil@mail.mil'; 'mark.a.visger.mil@mail.mil'; 'margaret.v.kurz.mil@mail.mil'; Fidell, Eugene R. (efidell@feldesmantucker.com); franklin.d.rosenblatt.mil@mail.mil; Bishop, Jennifer
Subject: Press Access to Proceedings and Records in Prosecution of Sgt. Bergdahl
Importance: High

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We write on behalf of the San Antonio-Express News (the "Express News"), a Hearst newspaper. We understand that you recently succeeded Gen. Milley as commanding general of FORSCOM and as general court-martial convening authority in the United States' prosecution of Sgt. Robert ("Bowe") Bergdahl, and, accordingly, we write to you regarding press access to those proceedings and records related to Sgt. Bergdahl's case.

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Sincerely,

Diego Ibarguen

Diego Ibarguen
Counsel
Hearst Corporation
Office of General Counsel

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DEPARTMENT OF THE ARMY
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4700 KNOX STREET
FORT BRAGG, NORTH CAROLINA 28310-5000

September 25, 2015

Mr. Diego Ibarguen
Hearst Corporation
300 West 57th Street
New York, NY 10019-3792

Dear Mr. Ibarguen,

On behalf of LTC Peter Burke, I acknowledge receipt of your email dated 18 September 2015.

As the Special Courts-Martial Convening Authority, LTC Burke is not the proper channel for public release of documents from an Article 32 Preliminary Hearing.

Sincerely,

Margaret V. Kurz
Major, Judge Advocate
Trial Counsel

DEPARTMENT OF THE ARMY
UNITED STATES ARMY FORCES COMMAND
4700 KNOX STREET
FORT BRAGG, NORTH CAROLINA 28310-5000

September 25, 2015

Mr. Diego Ibarguen
Hearst Corporation
300 West 57th Street
New York, NY 10019-3792

Dear Mr. Ibarguen,

On behalf of General Robert Abrams, I acknowledge receipt of your email dated 18 September 2015.

As the General Courts-Martial Convening Authority of Forces Command, General Abrams has not received any documents from the Article 32 Preliminary Hearing pertaining to SGT Robert (Bowe) Bergdahl.

Sincerely,

Vanessa A. Berry
Colonel, Judge Advocate
Staff Judge Advocate

EXHIBIT L

http://www.mysanantonio.com/news/local/article/Witness-says-he-tried-to-alert-higher-ups-about-6513837.php

Witness says Bergdahl's plan was to run 20 miles to another base

By Sig Christenson Updated 12:40 pm, Friday, September 18, 2015

IMAGE 1 OF 9

Click through the gallery to see what we learned at Bergdahl's hearing today.

An Army general Friday said Sgt. Bowe Bergdahl left his combat outpost in eastern Afghanistan late on the night of June 29, 2009, intending to run nearly 20 miles to another base in hopes of telling a top commander there about leadership problems in his platoon.

Maj. Gen. Kenneth Dahl, who led the Army's investigation in the case, said Bergdahl believed the intensive search that resulted from his disappearance would bring attention to him, allowing him to meet with a general when he reached Forward Operating Base Sharana.

Instead, he was captured by the Taliban eight to 10 hours after he left Observation Post Mest and held five years before beind released in a prisoner swap.

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Dahl was called as a witness by Bergdahl's defense attorneys on the second day of a hearing at Joint Base San Antonio-Fort Sam Houston that will decide if he faces a court martial on charges of desertion and misbehavior before the enemy.

The latter charge contains a possible life sentence, but Dahl said he did not believe Bergdahl, 29, of Hailey, Idaho should receive any jail time.

"Sergeant Bergdahl perceived there was a problem with the leadership in (his platoon) and the problem with that leadership was so severe that his platoon was in danger," Dahl said. "So he wanted to create that event. He was going to run" from Mest to Sharana.

Bergdahl was highly unlikely to get an audience with a general there, said Dahl, deputy commanding general of 1st Corps at Joint Base Lewis-McChord, Washington.

Dahl spent two days last year interviewing Bergdahl at Fort Sam and came to believe that Bergdahl was highly idealistic, ready to act on a moral issue no matter the cost, he said.

Another defense witness, a former Army sergeant named Gregory Richard Letterman, earlier Friday testified Bergdahl was so widely admired as a gunner that fellow troops rated him at the top of their mock drafts.

Letterman called him “a great soldier, right place, right time,” but said he had concerns about his remote, aloof behavior. When he tried to relay his concerns to a first sergeant, however, the higher-ranking NCO abruptly ended the conversation, Letterman said.

“He said, ‘Shut the (expletive) up,’” Letterman recalled.

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sigc@express-news.net

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U.S.

Bowe Bergdahl Should Not Be Imprisoned, Army Investigator Says

By **RICHARD A. OPPEL Jr.** SEPT. 18, 2015

SAN ANTONIO — The general who led the Army's investigation into the disappearance of Sgt. Bowe Bergdahl from his remote outpost in Afghanistan in 2009 said on Friday that sentencing the sergeant to prison would be "inappropriate."

Maj. Gen. Kenneth R. Dahl, who interviewed 57 witnesses during his 59-day investigation, testified that Sergeant Bergdahl had unreasonable, or even delusional, expectations about his deployment to Afghanistan and about the soldiers in his unit and his command.

But General Dahl testified that he found Sergeant Bergdahl truthful during the day and a half he spent interviewing him as part of the investigation. General Dahl also said that Sergeant Bergdahl had shown remorse about how his decision to leave his base could have endangered others in his platoon.

"I do not believe there is a jail sentence at the end of this procedure," General Dahl said. "I think it would be inappropriate."

His testimony came on the second day of a preliminary hearing here. Another defense witness, one of the military's top debriefers of prisoners of war, suggested that Sergeant Bergdahl's captivity was the worst any American had endured since the Vietnam War.

The hearing will help determine whether Sergeant Bergdahl will be court-martialed for desertion and for endangering the troops who searched for him. Sergeant Bergdahl, now 29, faces the possibility of life imprisonment on the endangerment charge — formally known as misbehavior before the enemy — and a maximum five-year sentence if convicted of desertion.

Held in a windowless basement room at Joint Base San Antonio-Fort Sam Houston, the hearing was adjourned Friday afternoon. The hearing officer, Lt. Col. Mark Visger, will now make a recommendation on whether there is probable cause for a court-martial, the most serious option available to the Army officers who will decide how to pursue the case.

But the unequivocal statement by General Dahl, which was elicited during questioning by Sergeant Bergdahl's lead defense lawyer, Eugene R. Fidell, could play a significant role going forward. If the Army officers responsible for prosecuting Sergeant Bergdahl were to decide later to seek prison time, they would contradict General Dahl, whose investigation forms the basis for the case.

In his testimony, the first time he has spoken publicly about his investigation, General Dahl also impeached much of the news coverage of Sergeant Bergdahl since President Obama approved exchanging him for five Taliban detainees at Guantánamo Bay, Cuba, in May 2014.

For example, despite claims that a half-dozen soldiers died in the search for Sergeant Bergdahl, General Dahl testified that he had found no evidence that any soldiers had been killed while specifically engaged in the effort. And Sergeant Bergdahl did not intend to walk to China or India, as some other soldiers had suggested. Instead, the general said that while Sergeant Bergdahl might have made the comment, it was simply typical idle chatter among privates with time to kill on a lonely combat outpost.

Nor, he said, did Sergeant Bergdahl ever intend to desert and join the Taliban. When he mailed his computer home, it was not because he intended to permanently flee, the general said, but because he knew that he might be imprisoned once he left his post, and he wanted his personal items to be in good hands.

The general, who was not cross-examined, laid out the reasons that he said Sergeant Bergdahl — who was then a private first class — decided to leave his base, leading to a manhunt involving thousands of troops across thousands of square miles of rugged eastern Afghanistan.

General Dahl testified that Sergeant Bergdahl had grossly unrealistic and idealistic expectations of others, and even identified with John Galt, the hero in Ayn Rand's novel "Atlas Shrugged." From the earliest stages of his Army career, General Dahl said, Sergeant Bergdahl felt that nearly everyone he came into contact with fell far short of his expectations. He said, Sergeant Bergdahl often found nefarious intent in the actions taken by his commanders, decisions that other soldiers viewed differently.

"He absolutely believed that the things he was perceiving were true," General Dahl said of Sergeant Bergdahl, describing those beliefs as "unwarranted but genuinely held."

So, at the end of June 2009, Sergeant Bergdahl left his base between 10 p.m. and midnight, with the intention of walking about 18 miles to a larger American base, known as Forward Operating Base Sharana. There, he planned to tell a general about what he believed were serious leadership problems within his unit, General Dahl testified. He believed the "problems were so severe that his platoon was in danger," General Dahl said.

Sergeant Bergdahl realized that simply showing up at the other base as part of a scheduled rotation would not get him a meeting with such a senior officer. But he knew that leaving his outpost without permission, and setting off a huge reaction, would probably get him that meeting, General Dahl testified.

"He wanted to create that event," General Dahl testified in explaining why Sergeant Bergdahl set off alone.

General Dahl said that he believed that Sergeant Bergdahl walked for 10 to 12 hours before he was captured, and that he had also tried to escape on the first day of captivity.

"He probably could have gotten to speak to a general, if he had made it to F.O.B. Sharana," General Dahl added.

After his capture, Sergeant Bergdahl endured the worst time in captivity of any American since the Vietnam War, said Terrence Russell, who debriefed him as a senior official at the Joint Personnel Recovery Agency, the principal Defense Department agency responsible for recovering service members.

"His conditions in captivity were as horrible as you could imagine," Mr. Russell said, including beatings with rubber hoses and copper cables. He also said Sergeant Bergdahl suffered from uncontrollable diarrhea for more than three of the five years he was held captive.

Anyone who treated a dog the way Sergeant Bergdahl was treated, he said, "would be thrown in jail for pet abuse."

Mr. Russell, whom prosecutors declined to cross-examine, also condemned much of the criticism of Sergeant Bergdahl since his release last year, saying "the level of wildly inaccurate speculation is outrageous."

In captivity, "He did the best job he could do, and I respect him for it," Mr. Russell added, pausing as he choked up.

A version of this article appears in print on September 19, 2015, on page A1 of the New York edition with the headline: General Wants No Jail Time for Bergdahl.