

Statement Concerning Charges Against Sergeant Bowe R. Bergdahl

March 25, 2015

Sgt. Bergdahl was handed a charge sheet today alleging offenses under Articles 85 and 99 of the Uniform Code of Military Justice. These charges have been referred to a preliminary hearing under Article 32 of the UCMJ.

Some time ago we requested the exhibits, legal advice, and final action on the investigation conducted by Major General Dahl. Our request was denied. We will request these documents again from the officer conducting the Article 32 hearing. Until now, all we have received is the executive summary of General Dahl's report.

Recent assertions that pressure has been brought on Sgt. Bergdahl or his attorneys are irresponsible and false. There have been no plea negotiations. Since the Army is releasing information about the charges, we are releasing the submission we made on March 2, 2015 to General Milley (less Privacy Act material). With reference to the last sentence of that submission, we have not been afforded an opportunity to meet with General Milley.

We ask that all Americans continue to withhold judgment until the facts of this case emerge. We also ask that government officials refrain from leaking information or engaging in other conduct that endangers our client's right to a fair trial.

Eugene R. Fidell
Lt. Col. Sean F. Mangan
Maj. (P) Franklin D. Rosenblatt
Cpt. Alfredo N. Foster

Defense Counsel



FELDESMAN
TUCKER
LEIFER
FIDELL LLP

March 2, 2015

General Mark A. Milley
Commanding General
U.S. Army Forces Command
4700 Knox Street
Ft. Bragg, NC 28310

Re: *Sergeant Bowe R. Bergdahl*

Dear General Milley:

Thank you for affording me and SGT Bergdahl's JAG Corps counsel¹ an opportunity to submit comments before you act on SGT Berhgдахl's case.

BLUF

Health issues preclude a disposition decision at this time. As indicated in the enclosed correspondence, Brooke Army Medical Center staff estimates that SGT Bergdahl's clinical response will be maximized no earlier than June 15, 2015. No disposition decision should be made until then. Between now and mid-June he can be receiving the "continuous physical therapy, medical and behavioral health appointments" that Brooke providers believe he requires.

In light of the nearly five years of harsh captivity SGT Bergdahl endured, the purpose of his leaving his unit, and his behavior while a prisoner, it would be unduly harsh to impose on him the lifetime stigma of a court-martial conviction or an Other Than Honorable discharge and to deny him veterans benefits. The existing Missing—Captured status determination should not be disturbed and his injuries in captivity should be deemed to have been incurred in the line of duty and not as a result of his own misconduct.

¹ LTC Sean F. Mangan, JA; MAJ(P) Franklin D. Rosenblatt, JA; CPT Alfredo N. Foster, JA. SGT Bergdahl is grateful for their assistance and that of Prof. Lawrence J. Fox, LtCol (Prof.) Gary D. Solis, USMC (Ret), and Emma Kaufman and Daniela Nogueira of the Yale Law School Veterans Legal Services Clinic.

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Preliminary Matters

We requested a copy of the exhibits to the AR 15-6 investigative report as well as the legal advice rendered in connection with that report and the appointing authority's final action. On February 26, 2015, the Administrative Law Division of the Office of The Judge Advocate General informed me that we would not be receiving those documents at this time. That denial, for which no reasoned explanation was provided, cannot be reconciled with Secretary McHugh's public statement the day before that the Army wants to be fair and protect SGT Bergdahl's rights. Because you have seen the exhibits and final action and we haven't, our ability to represent SGT Bergdahl in the preparation of these comments in the competent fashion demanded by Rule 1.1 of the Army Rules of Professional Conduct for Lawyers (AR 27-26) and comparable provisions of state bar rules to which we are subject has been materially compromised.

SGT Bergdahl will be eternally grateful to President Obama for having saved his life. Had President Obama not exerted himself, SGT Bergdahl would likely have been murdered. Anyone who has followed the news over the last few months knows that this is no exaggeration. SGT Bergdahl is also grateful for the work of the group of military professionals who carried out the plan to bring him home, and will never forget the caring attention he has received from military medical providers in Germany and at Fort Sam Houston. He is grateful as well not only for the support he has received from people all around the country, but also to those who have been willing to withhold judgment until the facts are known. Once the facts become known, perhaps those who were quick to condemn him will see him and his conduct in a different light.



Disciplinary Action

Rule for Courts-Martial 306(b) (Discussion) states that "[t]he goal [of a decision on the initial disposition of charges under the Uniform Code of Military Justice] should be a disposition that is warranted, appropriate, and fair." This letter will not walk through all of the factors identified in

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that provision, since the application of several of them is obvious and requires no elaboration. A few do.

Not in order of salience, let me first mention paragraph (H), “cooperation of the accused in the apprehension or conviction of others.” SGT Bergdahl has cooperated fully with the Federal Bureau of Investigation in the government’s efforts to identify, capture and bring to justice the Taliban fighters who captured him and with great cruelty held him against his will for nearly five years. I request that your legal staff communicate with the United States Attorney for the District of Columbia for confirmation.²

An especially broad and central factor is (I), the “appropriateness of the authorized punishment to the particular accused or offense.” In this connection, I know you will take into account the information presented in MG Dahl’s report regarding both SGT Bergdahl and the offense(s) of which he is suspected. Paragraph (I) also provides a rubric under which to consider the circumstances of his prolonged captivity. MG Dahl’s report does not go into this because it was beyond his charter, but those circumstances have been fully explored in the debriefings following SGT Bergdahl’s liberation. The enclosed statement in SGT Bergdahl’s own words will give you a sense of the facts, but I also request that, if they have not already been provided to you, you obtain the debriefing reports from cognizant authorities within and outside the Army so that you can be fully informed as to the conditions under which he was held. As President Obama stated on May 31, 2014, “Sergeant Bergdahl has missed birthdays and holidays and the simple moments with family and friends, which all of us take for granted.” That is the least of it, as a review of his account of the harsh treatment he received at the hands of his captors makes clear.³

While no longer specifically listed in the R.C.M. 306(b) Discussion, it is within your power and discretion to consider the character and military service of the accused. In this respect, I invite your attention to the many

² A February 5, 2015 letter from the François Stamm, Head of the Regional Delegation of the International Committee of the Red Cross in Washington, D.C. is enclosed, confirming SGT Bergdahl’s cooperation with the ICRC.

³ MG Dahl’s report, which we discuss below, reduces SGT Bergdahl’s five years’ captivity to a single eight-word sentence (page 30 at n.283): “Insurgents held PFC [*sic*] Bergdahl until 31 May 2014.”

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favorable comments in the report concerning SGT Bergdahl's character, service and honorable intentions. Despite the report's conclusion that his Army enlistment did not violate any service regulations, it is fair to say on the basis of the circumstances set forth in the investigative report that given the circumstances surrounding SGT Bergdahl's entry level separation from the U.S. Coast Guard, the Army's subsequent decision to enlist him with a waiver was improvident.

By the same token, nothing prevents you from considering the litigative prospects if SGT Bergdahl were taken to a court-martial. I encourage you to take into account whether members or a military judge would sentence him to confinement and, if there were a conviction and sentence to confinement, whether it would survive post-trial review and appellate and clemency processes. I also hope you will appreciate how the heavy pressures that have been put on the Army in this case are likely to lead to pretrial motions and discovery so that we can be confident that neither the investigation nor the disposition process has been tainted by actual or apparent unlawful command influence.

There can be no question that a trial would add to the stress SGT Bergdahl has experienced, and from which he is far from recovered.

Finally, let me mention factors that can play no role in the disposition, even though they have been widely discussed in the news media and blogosphere. These include whether President Obama should have insisted on different terms for the prisoner exchange that led to SGT Bergdahl's liberation; whether the prisoner-exchange was agreed upon or executed in violation of a statutory consultation requirement;⁴ whether the President should have announced the prisoner exchange in a ceremony at the Rose Garden with SGT Bergdahl's parents; whether SGT Bergdahl should have

⁴ The Government Accountability Office announced on August 21, 2014 that the prisoner swap violated a congressional notification requirement. GAO explicitly declined to address whether the legislation, either on its face or as applied, is constitutional or invades the President's commander-in-chief or foreign relations powers: "It is not our role or our practice to determine the constitutionality of duly enacted statutes." Whether the notification requirement is unconstitutional can be decided, in the final analysis, only by the federal courts.

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been described as a hero; whether the Army has already made an institutional decision that he should be prosecuted (prompting unequivocal and much-appreciated denials by RADM Kirby and MG Lewis); whether the President and his staff caused the Army to slow-roll the disposition of the case for political reasons; whether one or more of the exchanged Guantánamo detainees has attempted from Qatar to reconnect with the Taliban; and, most recently, whether the President's decision on the prisoner exchange emboldened ISIS and other ruthless actors to take hostages, make ever more extravagant ransom or exchange demands, and commit brutal murders when those demands are unmet.

SGT Bergdahl is fully aware of the charged environment that has surrounded his case and is appalled by the loss of innocent lives, but he has had no role in these contentious matters. To his credit, Sen. Lindsey Graham, a member of the Senate Armed Services Committee who has been skeptical of the prisoner swap both procedurally and on the merits, has stated: "I'm not going down the road of demeaning the young man," referring to SGT Bergdahl.

While these and similar factors are extraneous to the decision before you, there is another, not-unrelated question that does merit your attention: whether SGT Bergdahl can receive a fair trial. Because of intense and continuing media and blogger activity, as well as sustained congressional interest in the prisoner swap, it is fair to say that this case, which has been referred to as "Bergdahlgate," has generated more sustained publicity than any military justice case in at least the last quarter century.

A July 15-17 2014 survey reported by *Military Times* disclosed that 60% of military personnel thought SGT Bergdahl should be prosecuted. He has been called every name in the book, including by a retired field grade non-lawyer Army Reserve officer who insisted on a popular cable television show that SGT Bergdahl had given aid and comfort to the Taliban – "aid and comfort" being catchwords not only for a serious violation of the UCMJ, but also for treason, the gravest offense known to the Nation's system of law and the only one specifically provided for in the Constitution.

SGT Bergdahl has been vilified as a coward in the absence of a shred of evidence to support that description. There have been calls for him to be executed, a sentence that has not been carried out for any GI for

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any offense since 1961 or for any deserter since PVT Edward D. Slovik's execution in France 70 years ago, and that in any event is not authorized because this is not a "time of war" for UCMJ purposes. It has also been suggested that SGT Bergdahl should be sentenced, "at the very least," to life without parole.

While many Americans have taken a broader and more sympathetic view, the depth and breadth of the current hostility to SGT Bergdahl are extraordinary and have enveloped the case with a lynch mob atmosphere. The considered judgment of his Battalion Commander at U.S. Army North has been and remains that prudence requires that he be accompanied by at least two NCOs for all off-post activities, even when in civilian attire. I am informed that they are there not to prevent SGT Bergdahl from escaping but to prevent third parties from injuring him. This Soldier-specific force protection is eloquent testimony to the strong feelings SGT Bergdahl's case continues to generate.

Whatever physical danger SGT Bergdahl may face when he re-enters private life (and I fear he will), it would be very difficult to assemble an impartial court-martial panel.

In the months since July 14, 2014, when SGT Bergdahl's reintegration process ended and he was returned to normal duty, we have neither commented on the merits of the case nor sought to try it in the media beyond pushing back on attempts to use his case as a lever for partisan attacks on President Obama. We have also steered clear of the Army as much as humanly possible so that those responsible could perform their functions without needless distractions. While we have not received important supporting and related documents, we have seen MG Dahl's Executive Summary and have the following comments.

First, the report makes it clear that SGT Bergdahl is a truthful person, albeit a naïve and at times unrealistic one. (Many of his most vociferous and self-righteous detractors may be surprised to learn of the influence Ayn Rand (author of, among other works, *The Fountainhead* and *Atlas Shrugged*) has had on his worldview.) The record is clear that he did not act out of a bad motive. Although the motive behind an offense may not furnish a defense, as the report notes, it remains a pertinent consideration

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when a convening authority, exercising broad discretion, decides upon the proper disposition of charges.

While hedging its bets (n.347), the report basically concludes that SGT Bergdahl did not intend to remain away from the Army permanently, as classic “long” desertion requires. It also concludes that his specific intent was to bring what he thought were disturbing circumstances to the attention of the nearest general officer. MG Dahl correctly stressed SGT Bergdahl’s cooperation with a variety of investigative efforts, and found him credible.

The report properly dismisses a variety of contentions that have been made about SGT Bergdahl. No, he was not planning to walk to China or India. No, there is no evidence that any Soldier died searching for him. No, there is no evidence of misbehavior of any kind while he was held captive.⁵ Nor is there any credible evidence that SGT Bergdahl left in order to get in touch with the Taliban.

⁵ The report reproduces a harsh June 27, 2009 private email SGT Bergdahl sent to his parents, stating among other things that he was ashamed to be an American. MG Dahl wisely deemed this email irrelevant to the matter at hand and made nothing of it. The email having become public and being quoted in the report, I ask that, if you choose to consider it, you do so in light of SGT Bergdahl’s age at the time, the concerns (naïve and unwarranted though they may have been) he was feeling, the nearly-five-years’ captivity he suffered commencing so soon after he sent it, and ultimately, the moving conclusion of Edward Everett Hale’s 1863 short story, *The Man Without a Country*, <http://www.bartleby.com/310/6/1.html>:

“ . . . He bent me down over him and kissed me; and he said, ‘Look in my Bible, Danforth, when I am gone.’ And I went away.

“But I had no thought it was the end. I thought he was tired and would sleep. I knew he was happy, and I wanted him to be alone.

“But in an hour, when the doctor went in gently, he found Nolan had breathed his life away with a smile. He had

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Without undertaking a complete deconstruction of the report's analysis of potential charges, I will offer a few comments on both what is addressed in it – and what is not. I am gratified that it concluded that SGT Bergdahl did not harbor an intent to remain away permanently, and that the case sounds more in “avoidance of important service” at the outpost than “shirking hazardous duty.” After all, it would obviously be more dangerous to be alone without a gun outside the wire in hostile territory than to be fully armed, inside the wire.

The report's evaluation of potential defenses trains its fire on matters that no responsible attorney would consider worth raising based on the law and the known facts. It overlooks constructive condonation, a defense that is recognized in R.C.M. 907(b)(2)(D)(iii) and is fairly raised on

something pressed close to his lips. It was his father's badge of the Order of the Cincinnati.

“We looked in his Bible, and there was a slip of paper at the place where he had marked the text:—

“‘They desire a country, even a heavenly: wherefore God is not ashamed to be called their God: for He hath prepared for them a city.’

“On this slip of paper he had written:

“‘Bury me in the sea; it has been my home, and I love it. But will not some one set up a stone for my memory at Fort Adams or at Orleans, that my disgrace may not be more than I ought to bear? Say on it:—

‘In Memory of

PHILIP NOLAN,

Lieutenant in the Army of the United States.

HE LOVED HIS COUNTRY AS NO OTHER MAN HAS
LOVED HER; BUT NO MAN DESERVED LESS AT HER
HANDS.”

Private family communications such as this should never have been made public. I can report that the email emphatically does not reflect SGT Bergdahl's views today.

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the facts of the case. Cognizant GCMCAs have had ample reason to believe SGT Bergdahl had deserted by the time he resumed regular duty on July 14, 2014⁶ and certainly in the months since the report was submitted to LTG Grisoli and referred by him to you.

The report briefly addresses the possibility of a charge of unauthorized absence, which is both an offense in itself and a lesser included offense of desertion. In this regard I encourage you to consult with counsel about the question of duration. If, for example, SGT Bergdahl was seized by the Taliban within a few hours, such an AWOL would have ended at that time. There is no case law squarely on point, but it would be preposterous to, in effect, penalize him for the fact that he was illegally held by the Taliban for nearly five years.⁷

On this analysis, the maximum punishment for an AWOL of not more than three days would apply: one month's confinement and forfeiture of two-thirds pay per month for one month. Such a punishment could be imposed by a summary court-martial or under Article 15, UCMJ. The President has directed in R.C.M. 306(b) that "[a]llegations of offenses should be disposed of . . . at the lowest appropriate level of disposition" among the permissible options.

Even if our view of the law on the duration of AWOL where the accused is the victim of an unlawful deprivation of liberty by third parties is mistaken, it would still be highly pertinent that, as the enclosed statement details, SGT Bergdahl immediately began a series of attempts to escape, as it was his duty to do under Article III of the Code of Conduct for Members of the Armed Forces of the United States, which states in pertinent part: "I

⁶ Army spokesperson Tatjana Christian advised the *Washington Post* that SGT Bergdahl "will now return to regular duty within the command where he can contribute to the mission." Don Manuszewski, a spokesman at Joint Base San Antonio-Fort Sam Houston, said: "He's currently going through in-processing, similar to when anybody else goes to a new job or new location, so he can start working and really get after it." He has done so, as indicated by his favorable NCOER Counseling and Support Form (DA Form 2166-8-1).

⁷ The United States considers those who held SGT Bergdahl captive to have acted criminally. That is why the FBI has interviewed him.

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will make every effort to escape” His first attempt to escape occurred within a few hours of his being taken prisoner. He made numerous other escape attempts, leading to ever harsher treatment by his captors. Given the duty reflected in the Code of Conduct, any AWOL would have been of less than one day’s duration, and hence well within the period for which the maximum punishment is noted in the paragraph immediately above.

From either perspective – instant of capture or time of initial escape attempt – the duration of any AWOL would be sufficiently short as to preclude a punitive discharge.

POW Status

The terms of reference set forth in the appointing order for the AR 15-6 investigation did not include whether the decision to deem SGT Bergdahl “Missing—Captured” should be reopened. We were unaware that issue was even on the table until we were furnished a copy of the Executive Summary. We do not know how, when, why, or by whom, this issue was injected. Since it has been, we will comment briefly.

The report recommends that the Army retroactively revoke its designation of SGT Bergdahl as Missing—Captured, an action that would strip him of a host of rights. Its stated reason for doing this is that the Army itself erred in so designating him. We believe it is far too late for this, and beyond that, the bases cited do not withstand scrutiny. For example, the report says that a Board of Inquiry (BOI) was required before SGT Bergdahl could be designated Missing—Captured. In fact, the Army’s own regulation specifically states that “an initial BOI is not always required.” The report proposes, however, that that decision be reopened based on a hyper-technical reading of authorities and a repudiation of the flexibility wisely found in the pertinent provision of the longstanding implementing Army Regulation, which remains in effect and binds the Army.⁸

⁸ The Army changed certain provisions of AR 600-8-19 in a revision that coincidentally took effect today. SGT Bergdahl’s promotions to his present and immediately prior pay grade were proper and there is no reason to revoke either of them. If nothing else, his behavior while in enemy hands, to include his escape attempts, was creditable and merits recognition. At

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In any event, an AR 15-6 investigation was conducted before SGT Bergdahl was designated Missing—Captured. That it wasn't labeled a BOI or that some of the attributes of a BOI were not observed is immaterial. And even if the Army (including two general officers, one of whom was the Secretary's delegate for these matters) did not dot its Is and cross its Ts, that is hardly SGT Bergdahl's fault. It would be unfair to seize on what the report belatedly claims was an error on the part of the service and responsible senior officers.

International Humanitarian Law does not distinguish between personnel who have deserted and personnel who have not, in either international or non-international armed conflicts. Until the report, everyone involved considered SGT Bergdahl a prisoner, to include, in addition to the general officers referred to above, SGT Bergdahl's captors, the International Committee of the Red Cross, SGT Bergdahl himself, then-Secretary Hagel (in his January 30, 2015 interview with CNN correspondent Barbara Starr),⁹ and, above all, the Commander-in-Chief. President Obama made the following remarks on the occasion of SGT Bergdahl's release from captivity:

As I said earlier this week, we're committed to winding down the war in Afghanistan, and we are committed to closing Gitmo. But we also made an ironclad commitment to bring our *prisoners of war* home. That's who we are as Americans. It's a profound obligation within our military, and today, at least in this instance, it's a promise we've been able to keep. [Emphasis added.]

To adopt, after the fact, a parsimonious reading that reopens a decision that was fair on its face, especially without affording the affected individual the due process to which he is entitled – and, to make matters worse, to embrace a reading that flies in the face of the understanding of

worst, his promotions should be recognized *de facto*. The report's references to SGT Bergdahl as a Private First Class were inappropriate.

⁹ Laura Koran, *Hagel: Gitmo transfers caused friction with some at White House*, Jan. 31, 2015, <http://www.cnn.com/2015/01/30/politics/hagel-guantanamo-bay-transfers-white-house-friction/>.

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all concerned, both friend and foe – would be vindictive and not in keeping with the highest traditions of the United States Army.

Overturning the prisoner status determination will set in motion a cascade of adverse administrative and legal consequences for SGT Bergdahl. These include pay and VA benefits eligibility questions and the application of AR 635-200 ¶ 4-5, which provides: “A Soldier being separated upon expiration of enlistment or fulfillment of service obligation will be awarded a character of service of honorable, unless the Soldier is in entry-level status and service is uncharacterized.” In addition to being illegal, denying SGT Bergdahl the benefit of this important regulation will prevent him from receiving (as President Obama said) “the care and support that he needs.” In this respect, please refer to the enclosed medical and psychological reports.¹⁰

Line of Duty/Misconduct

The report treats the injuries SGT Bergdahl sustained as not incurred in the line of duty. This is disturbing because he suffered these injuries because he was a U.S. Army Soldier. Military law has a strong presumption in favor of finding that Soldiers’ injuries have been incurred in the line of duty. The report reasons that SGT Bergdahl was AWOL and that the injuries inflicted on him by his captors were a foreseeable result of his own misconduct. This is contrary to the requirement that injuries may be disregarded only if they are the proximate result of misconduct. SGT Bergdahl’s injuries were not; they were the proximate result of criminal acts, and indeed, were inflicted by the Taliban for the very reason that he repeatedly attempted to escape, as was his duty as a Soldier. The report did not follow the requirements of the Army’s line of duty regulation for making an NLOD [Not in Line of Duty]/Misconduct finding. For all these reasons, the recommended NLOD/Misconduct finding should be disapproved. (Having been denied a copy of the final action on MG Dahl’s investigation, I have no way of knowing whether that finding has already been

¹⁰ These documents are protected by the Privacy Act and the Health Insurance Portability and Accountability Act (HIPAA) and should not be released to the public. This letter omits medical details in the interest of preserving SGT Bergdahl’s privacy.

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disapproved. If it has been, that action should be revisited and corrected by competent authority.)

Conclusion

As Secretary McHugh said last Wednesday, "we have the future of a Soldier in our hands." A disposition decision at this time would be premature in light of the Brooke medical status report. If a decision must, for some reason I am unaware of, without waiting for the results of the roughly 100 days of additional treatment and evaluation suggested by SGT Bergdahl's military health providers, then our views on the merits are as set forth above.

SGT Bergdahl and I request an opportunity to meet with you.

Very respectfully,



Eugene R. Fidell

Enclosures



DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
2200 ARMY PENTAGON
WASHINGTON, DC 20310-2200

Administrative Law Division

FEB 26 2015

Mr. Eugene R. Fidell
127 Wall Street
New Haven, CT 06511

Dear Mr. Fidell:

This letter responds to your January 22, 2015, request for a copy of the exhibits from an investigation conducted under the provisions of Army Regulation (AR) 15-6, *Procedures for Investigating Officers and Boards of Officers*, concerning your client, Private First Class (PFC) Bowe Bergdahl. It also responds to your February 8, 2015, request for the final action on this same investigation. We are unable to provide you with the information you seek at this time.

Paragraph 3-18 of AR 15-6 provides that "[n]o one will disclose, release, or cause to be published any part of the report, except as required in the normal course of forwarding and staffing the report or as authorized by law or regulation, without the approval of the appointing authority." Providing exhibits to this investigation to you is outside the normal course of staffing, and the appointing authority has not approved a deviation.

Should you have any questions concerning your request, you may contact Lieutenant Colonel John Hamner at [REDACTED]

Sincerely,

Jody M. Hehr
Colonel, U.S. Army
Chief, Administrative Law Division

CF: Captain Alfredo N. Foster

In the beginning of my captivity, after my first two escape attempts, for about three months I was chained to a bed spread-eagle and blindfolded. The blindfold was only taken off a few times a day to allow me to eat and use the latrine. It was not until after seeing I could barely walk from my body going through muscle atrophy, that they unchained one of my hands from above my head and chained it down by my side, allowing me to sit up in the bed. Because of the constant heat and sweat my body where it was in contact with the bed would become sore and raw, burning from the sweat and pressure. My eyelids from the continuous pressure of the blindfold would become raw and being unable to wipe the sweat out of my eyes and because the blindfold wouldn't allow the sweat to dry, my eyes were always burning and aching. Around my ankles where the chains were, I developed open wounds that looked like the STAPH infection I had had earlier that year. The infection also appeared on my forehead and side of head. It was also in the beginning of this that my body started a steady decline in constant internal sickness that would last through the final year. In the first three months they fed me elbow noodles or rice and very little of anything else, as well as two bottles of water a day. But because of the growing internal sickness it became more and more of a problem to eat. During these months some of the things they did was beat the bottoms of my feet and parts of my body with a copper cable. After the first three months they moved me. Though they never fully chained me to a bed again, the first year I spent in chains on both hands and feet, and more often than not, even in the locked room, they had my feet chained to a solid unmovable object either outside or inside the room. At this point, because of sickness, weather, and little food and water, hunger, and worse, dehydration my body continued a steady decline. In the beginning of the winter I was wearing summer clothing, and even though later towards the end of winter I was given an army PT windbreaker and a hat, because of the cold and the conditions of the room, my body was never able to warm up, adding to my sickness. The lowest point coming in the winter of the end of the first year. My body weight having dropped to the point that my ribs and joints protruded clearly, my skin losing all signs of fat and my muscles, from atrophy, reducing to thin tight cords or bumps that did barely to support me or keep my joints in place. After the first year they put me inside a cage. In there my hands were always handcuffed in front of me, being taken off only on the few times I would wash and change clothes, which came more often than in the first year when I would go 3 or 4 months without washing or changing clothes. In the cage my feet were usually chained to the cage at night, though they stopped doing this towards the middle of the second year, because of the acute pain my feet and legs were in, it was here that the most serious problems began with my feet and legs and, roughly, for the next year and a half I would feel acute burning "cobwebs" and have continuous bad swelling in my feet and legs. When this past it was replaced with the freezing numbness that continues to the present, as both feet have neuropathy. It was also during this time that I had between 8 and 12 open wounds on each wrist under the hand shackles. Not healing I would have to push the puss out of them daily. Then they moved the cage to another room over the top of plumbing that they had built into the dirt floor. After this, since they no longer had to take me out of the cage, they took all the chains off me. From this point for more or less, the conditions remained somewhat the same. Until going into the final two years, where things got better and my body was able to heal and gain some weight, the internal sickness lessened to a more manageable state. I was kept in constant isolation during the entire 5 years, with little to no understanding of time, through periods of constant darkness, periods of constant light, and periods of completely random flickering of light, and absolutely no understanding of anything that was happening beyond the door I was held

behind. I was continuously shown Taliban videos. Told I was going to be executed. Told I was never going back. Told I would leave the next day, and the next day told I would be there for 30 years. Told I was going to die there. Told to kill myself. Told I would have my ears and nose cut off, as well as other parts of my body. I was told anything they could think of, whether it was through sign language, broken English, or fluent English. My first escape attempt was within the first few hours of being captured. The Taliban stopped in a village. Pulling me off the back of the motorcycle and put me on my knees and threw a blanket over my head (even though I was also blindfolded), a few moments later one of the guys that had captured me pulled the blanket off and took the blindfold off. I saw that he had come back with a younger guy and had squatted down, the older one in front and the younger one to my right. From my peripheral vision I could see a few other young guys standing behind them. At this point the older guy had pulled out his cell phone and the younger one began asking a question, and after evading his questions he would hit me in the face. This was repeated, but I evaded answering his question and after awhile they put the blindfold back on and threw the blanket over my head. Some moments after that I believed I had a chance to run for it and did. I was brought down towards the edge of the village by a large group of men, on the ground I felt many blows from fists, and one from the butt stock of an AK that broke it off the weapon. After that in all my efforts to escape I had made it twice in escaping the buildings where I was held. The first being in the first week of being captured, and because of the populated area and time that I had managed to do it, I had only managed to get a short distance before being spotted, and because of the terrain I had no place to hide and no terrain to use to evade. This escape lasted approximately 10-15 minutes and after recapturing me and putting chains back on they took turns beating me with a length of thick robber hose. Afterwards they added more chain to my hands and feet and seeing what I had been able to do they increased the guards and moved me to a more heavily secured compound where I would spend roughly the next three months. The second one where I had made it out of the buildings was around the end of the first year. Lasting close to 9 days without food and only putrid water to drink, my body failed on top of a short mountain close to evening, and some moments after I came to in the dying grey light of the evening, I was found by a large Taliban searching group. After recapturing me again a few hit me and one tried to rip my beard and hair out, but from what I could sense they were more worried about getting me out of that area as quickly as they could. This is the time that my body reached the worst point of condition and for approximately the next year and a half I would not recover from it, but instead have to deal with specific problems getting more severe. During the five years I unsuccessfully tried to escape approximately 12 times.

NCOER COUNSELING AND SUPPORT FORM For use of this form, see AR 623-3; the proponent agency is DCS, G-1.				FOR OFFICIAL USE ONLY (FOUO) SEE PRIVACY ACT STATEMENT IN AR 623-3.	
PART I - ADMINISTRATIVE DATA					
a. NAME (Last, First, Middle Initial) BERGDAHL, BOWE R.		b. SSN XXX-X	c. RANK SGT	d. DATE OF RANK 20110612	e. PMOSC 11B20
f. UNIT, ORG., STATION, ZIP CODE OR APO, MAJOR COMMAND HSC, USARNORTH, Fort Sam Houston, TX 78234 FIFTH ARMY		STATUS CODE	g. RATED NCO'S EMAIL ADDRESS (gov or .mil) [REDACTED]	m. UIC W6ED24	n. CMD CODE SE o. PSB CODE HR01
PART II - AUTHENTICATION					
a. NAME OF RATER (Last, First, Middle Initial) GULLEY, YVONNE		SSN	INITIAL <i>YV</i> 20140808	LATER <i>YV</i> 20141113	LATER
RANK, PMOSC/BRANCH, ORGANIZATION, DUTY ASSIGNMENT SFC, 42A40, HQ, USARNORTH, SENIOR EXECUTIVE ADMINISTRATIVE NCOIC			RATER'S APO EMAIL ADDRESS (gov. or .mil) [REDACTED]		
b. NAME OF SENIOR RATER (Last, First, Middle Initial) MCKNIGHT, WILLIAM J.		SSN	INITIAL <i>WJ</i> 20140808	LATER <i>WJ</i> 20141113	LATER
RANK, PMOSC/BRANCH, ORGANIZATION, DUTY ASSIGNMENT LTC, GS, HQ, USARNORTH, SECRETARY OF THE GENERAL STAFF OIC			SENIOR RATER'S APO EMAIL ADDRESS (gov. or .mil) [REDACTED]		
c. NAME OF REVIEWER (Last, First, Middle Initial) DEIWILER, KEITH A.		SSN	INITIAL	LATER	LATER
RANK, PMOSC/BRANCH, ORGANIZATION, DUTY ASSIGNMENT COL, GS, HQ, USARNORTH, CHIEF OF STAFF			REVIEWER'S APO EMAIL ADDRESS (gov. or .mil) [REDACTED]		
d. RATED NCO's INITIAL's		INITIAL <i>BRB</i> 2014 AUG 8	LATER <i>BRB</i> 2014-11-13	LATER	LATER
PART III - DUTY DESCRIPTION (Rater)					
a. PRINCIPAL DUTY TITLE Executive Administrative NCO			b. DUTY MOSC 42A20		
c. DAILY DUTIES AND SCOPE (To include, as appropriate, people, equipment, facilities and dollars) Serves as a Human Resource NCO in the Office of the Secretary of the General Staff (SGS) for a Three Star Army Service Component Command consisting of 839 military and civilian personnel; processes and tracks staff actions for the command section; reviews administrative actions, consolidated reports, prepares reports and data; advises the SGS and other staff members on administrative activities. Responsible for distribution of supplies, office equipment and the operation and maintenance of the Main Conference Room and the Commanding General's Conference Room.					
d. AREAS OF SPECIAL EMPHASIS Telephone Control (TC), Information Technology Operator, Video-teleconferences					
e. APPOINTED DUTIES					
f. PHYSICAL FITNESS & MILITARY BEARING APFT PROFILE APFT DATE 20140908 HEIGHT/WEIGHT 72 169 YES					
PART IV - ARMY VALUES/ATTRIBUTES/SKILLS/ACTIONS (Rater)					
LOYALTY, DUTY, RESPECT/EO/EEO, SELFLESS-SERVICE, HONOR, INTEGRITY, PERSONAL					
TASK/ACTIONS: o motivated Soldier striving for excellence, always displays a positive demeanor; team player o always places the mission first; dedicated to duty and the Army o exhibits sound judgment and professional discipline			PERFORMANCE SUMMARY: o totally committed to mission accomplishment; works until the mission is complete o constantly sets a professional attitude; honest and trustworthy o can be relied on to successfully complete all assignments		

RATED NCO'S NAME (Last, First, Middle Initial) BERGDAHL, BOWE R.		SSN XXX-X
b. COMPETENCE: ☐ Duty proficiency; MOS competency ☐ Sound judgment ☐ Accomplishing tasks to the fullest capacity; committed to excellence ☐ Technical & tactical; knowledge, skills, and abilities ☐ Seeking self-improvement; always learning		
TASK/ACTIONS: ☐ constantly seeks ways to learn, grow and improve ☐ works diligently to accomplish the mission ☐ a decision maker; expected to make timely and accurate decisions	PERFORMANCE SUMMARY: ☐ possessed the ability to make sound decisions with accuracy ☐ focused and well organized; accepted all obstacles and challenges	
c. PHYSICAL FITNESS & MILITARY BEARING: ☐ Mental and physical toughness ☐ Displaying confidence and enthusiasm; looks like a soldier ☐ Endurance and stamina to go the distance		
TASK/ACTIONS: ☐ maintains physical fitness ☐ displays a strong confident manner ☐ maintains impeccable military bearing appearance and mental toughness	PERFORMANCE SUMMARY: ☐ mentally resilient; a mature, level-headed NCO who does not overreact to challenges ☐ stays calm and collected in the most stressful situations	
d. LEADERSHIP: ☐ Mission first ☐ Instilling the spirit to achieve and win ☐ Genuine concern for soldiers ☐ Setting the example; Be, Know, Do		
TASK/ACTIONS: ☐ leads by example ☐ projects an image of self-confidence and enthusiasm ☐ applies fully and consistently to ever assigned tasks	PERFORMANCE SUMMARY: ☐ has what an NCO must BE, KNOW, DO ☐ placed mission first; totally devoted to duty and a real team player	
e. TRAINING: ☐ Individual and team ☐ Teaching soldiers how; common tasks, duty-related skills ☐ Mission focused; performance oriented ☐ Sharing knowledge and experience to fight, survive and win		
TASK/ACTIONS: ☐ eager to share knowledge and insight ☐ ensures mission accomplishment is a team effort ☐ dedicated to the betterment of all mission facets through Soldier development	PERFORMANCE SUMMARY: ☐ his vast knowledge and impeccable attention to detail make him an asset to the team ☐ has an extensive knowledge base and shared his experiences	
f. RESPONSIBILITY & ACCOUNTABILITY: ☐ Care and maintenance of equipment/facilities ☐ Conservation of supplies and funds ☐ Responsible for good, bad, right & wrong ☐ Soldier and equipment safety ☐ Encouraging soldiers to learn and grow		
TASK/ACTIONS: ☐ always concerned with safety ☐ take responsibility for all actions ☐ view challenging tasks as opportunity for growth	PERFORMANCE SUMMARY: ☐ ensured in the success of a safety free environment for the office along with his daily responsibilities ☐ maintained SGS office supplies and equipment	

DEPARTMENT OF THE ARMY
U.S. ARMY HUMAN RESOURCES COMMAND
1600 SPEARHEAD DIVISION AVENUE DEPT 470
FORT KNOX, KY 40122-5407

ORDERS 138-100

18 May 2011

The Secretary of the Army has reposed special trust and confidence in the patriotism, valor, fidelity, and professional excellence of Bowe R. Bergdahl. In view of these qualities and his demonstrated leadership potential and dedicated service to the U.S. Army, he is therefore, promoted from Specialist to Sergeant. MOS 11B2O is **awarded as his primary MOS effective 12 June 2011**. Promotion is effective 12 June 2011 with a DOR of 12 June 2011. The promotion is not valid and this order will be revoked if he is not in a promotable status on the effective date of promotion. The authority for this promotion is AR 600-8-19, Para 1-18.

Format: 302

FOR THE COMMANDER:



Debra J. Sturdivant
Sergeant Major, USA
Chief, Enlisted Promotions
Promotions Branch

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CERTIFICATE OF PROMOTION

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:

Know Ye, that reposing special trust and confidence in the fidelity and abilities of

BOWE R. BERGDAHL

I do promote him to

Sergeant

in the

UNITED STATES ARMY

to grade as such from the twelfth day of
June two thousand and eleven

You will discharge carefully and diligently the duties of the grade to which promoted and uphold the traditions and standards of the Army.

Soldiers of lesser grade are required to obey your lawful orders. Accordingly you accept responsibility for their actions. As a noncommissioned officer you are charged to observe and follow the orders and directions given by superiors acting according to the laws, articles and rules governing the discipline of the Army, and to correct conditions detrimental to the readiness thereof. In so doing, you fulfill your greatest obligation as a leader and thereby confirm your status as a Noncommissioned Officer in the United States Army.




GINA S. FARRISEE

Major General, USA
Commanding



DEPARTMENT OF THE ARMY
U.S. ARMY HUMAN RESOURCES COMMAND
1600 SPEARHEAD DIVISION AVENUE, DEPARTMENT 480
FORT KNOX, KY 40122-5408

AHRC-PDP-A

JUN 02 2014

MEMORANDUM FOR SERVICE MEMBER'S RECORD

SUBJECT: Awards and Decorations for SGT BERGDAHL, BOWE R. XXX-X

1. We have determined that SGT Bergdahl is entitled to the National Defense Service Medal, Afghanistan Campaign Medal with one Bronze Service Star, Global War on Terrorism Service Medal and Army Service Ribbon.
2. Potentially, SGT Bergdahl is eligible for the Army Good Conduct Medal with Bronze Clasp with two Loops, Prisoner of War Medal and Overseas Service Ribbon.
3. Please direct inquiries pertaining to this action to

FOR THE COMMANDER:


ELISA M. ROBINSON
CW4 AG
Chief, Awards and Decorations Branch

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY NORTH (FIFTH ARMY)
MILITARY PERSONNEL DIVISION
JBSA FORT SAM HOUSTON, TEXAS 78234-5018

PERMANENT ORDERS 233-900

21 AUG 2014

BERGDAHL BOWER

SGT

WJMH 0000HQ HSC AR NORTH (WJMH0) FORT SAM HOUSTON, TX 78234

ANNOUNCEMENT IS MADE OF THE FOLLOWING ORDER.

AWARD: GOOD CONDUCT MEDAL (2ND AWARD)

DATE(S) OR PERIOD OF SERVICE: 12 JUN 2011 TO 11 JUN 2014

AUTHORITY: PARAGRAPH 4-6, AR 600-8-22

REASON: FOR EXEMPLARY BEHAVIOR, EFFICIENCY AND FIDELITY IN ACTIVE
FEDERAL MILITARY SERVICE.

FORMAT: 320

FOR THE COMMANDER:

* OFFICIAL *

JBSA 502 MPD

EARNEST C. BRIDGES

CHIEF, MIL PERS DIV

DISTRIBUTION:

IMSW-SMH-HRM-E(ENLISTED RECORDS) (1)

SGT BERGDAHL BOWER (1)

WJMH 0000HQ HSC AR NORTH FORT SAM HOUSTON, TX 78234 (1)

CDR, USAEREC, ATTN: PCRE-RF, INDIANAPOLIS 46249-5100 (1)



Washington, 5 February 2015
WAS 15/00057

Sir,

At the request of the International Committee of the Red Cross (ICRC), Sgt Bergdahl agreed to meet with two ICRC representatives on Tuesday, 16 December 2014.

In its efforts to facilitate the re-establishment of links between persons deprived of freedom and their families during armed conflict settings and other situations of violence, the ICRC was interested to learn to what extent its intermediary role between Sgt Bergdahl and his family had been successful, and to determine what lessons could be learned from the experience for similar cases in the future.

The ICRC was grateful for Sgt Bergdahl's willingness to share his personal experience and views regarding the ICRC efforts to maintain contact between him and his family during his captivity.

Yours sincerely,

François Stamm
Head of Regional Delegation

Mr. Eugene R. Fidell
Senior Research Scholar in Law and
Florence Rogatz Visiting Lecturer in Law
Yale Law School
P.O. Box 208215
New Haven, CT 06520