


IN A GENERAL COURT-MARTIAL
SECOND JUDICIAL CIRCUIT, U.S. ARMY TRIAL JUDICIARY
FORT BRAGG, NORTH CAROLINA

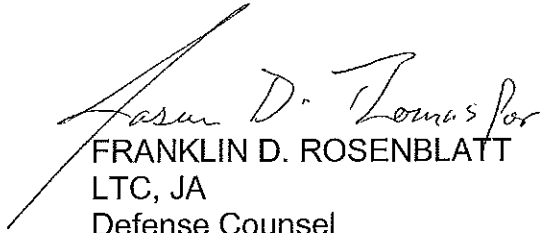
UNITED STATES)	Defense Reply to Government
)	Response to Motion to Dismiss and,
v.)	In any Event, to Limit the Sentence That
)	May be Adjudged to No Punishment
SGT Robert B. Bergdahl)	
HHC, Special Troops Battalion)	
U.S. Army Forces Command)	
Fort Bragg, North Carolina 28310)	3 August 2016

1. Sergeant Bergdahl's motion to dismiss stated that "[w]itnesses may be dispensed with if the government stipulates to the accuracy of the news accounts and the authenticity of the emails." D APP 27, at 9. The government responded that it would stipulate that we had accurately stated what the news accounts said, G APP 34, at 2, and this morning confirmed that (reserving its relevance objection) it is "not challenging the authenticity of the emails or the accuracy of the news reporting." We appreciate the prompt clarification and are attaching the exchange of emails for the record.

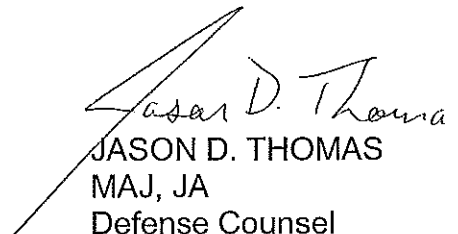
2. The government continues to treat as fact its contention that SGT Bergdahl deserted his post. G APP 34, at 1; see also G APPs 22, 24-25, 30. Whether he deserted remains to be seen. He is presumed innocent. Art. 51(c)(1), UCMJ; *United States v. Kaiser*, 58 M.J. 146, 150 (C.A.A.F. 2003).


EUGENE R. FIDELL
Civilian Defense Counsel


WILL M. HELIXON
Civilian Defense Counsel

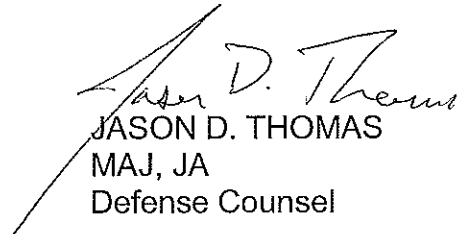

FRANKLIN D. ROSENBLATT
LTC, JA
Defense Counsel


OREN GLEICH
MAJ, JA
Defense Counsel


JASON D. THOMAS
MAJ, JA
Defense Counsel

CERTIFICATE OF SERVICE

I certify that I emailed the foregoing to Trial Counsel on 3 August 2016.


JASON D. THOMAS
MAJ, JA
Defense Counsel

RE: US v. Bergdahl G APP #34 - Subject: Government Response to Defense Motion to Dismiss and to Limit the Sentence That May Be Adjudged to No Punishment

Oshana, Justin C MAJ USARMY FORSCOM (US) <justin.c.oshana.mil@mail.mil>

Wed 8/3/2016 9:52 AM

To: Fidell, Eugene <eugene.fidell@yale.edu>;

Cc: Rosenblatt, Franklin D LTC USARMY (US) <franklin.d.rosenblatt.mil@mail.mil>; Thomas, Jason D MAJ USARMY XVIII ABN CORPS (US) <jason.d.thomas62.mil@mail.mil>; Gleich, Oren MAJ USARMY XVIII ABN CORPS (US) <oren.gleich.mil@mail.mil>; Banks, Nina S CPT USARMY 1 CD (US) <nina.s.banks.mil@mail.mil>; Fussnecker, Jerrod B MAJ USARMY FORSCOM (US) <jerrod.b.fussnecker.mil@mail.mil>; Whipple, Eileen C CPT USARMY 16 MP BDE (US) <eileen.c.whipple.mil@mail.mil>;

Gene,

Yes, reserving our same objection to the relevance of any of it, we are not challenging the authenticity of the emails or the accuracy of the news reporting.

v/r,

Justin

-----Original Message-----

From: Fidell, Eugene [<mailto:eugene.fidell@yale.edu>]

Sent: Tuesday, August 02, 2016 6:42 PM

To: Oshana, Justin C MAJ USARMY FORSCOM (US) <justin.c.oshana.mil@mail.mil>

Cc: Rosenblatt, Franklin D LTC USARMY (US) <franklin.d.rosenblatt.mil@mail.mil>; Thomas, Jason D MAJ USARMY XVIII ABN CORPS (US) <jason.d.thomas62.mil@mail.mil>; Gleich, Oren MAJ USARMY XVIII ABN CORPS (US) <oren.gleich.mil@mail.mil>; Banks, Nina S CPT USARMY 1 CD (US) <nina.s.banks.mil@mail.mil>; Fussnecker, Jerrod B MAJ USARMY FORSCOM (US)

<jerrod.b.fussnecker.mil@mail.mil>; Whipple, Eileen C CPT USARMY 16 MP BDE (US) <eileen.c.whipple.mil@mail.mil>

Subject: [Non-DoD Source] Re: US v. Bergdahl G APP #34 - Subject: Government Response to Defense Motion to Dismiss and to Limit the Sentence That May Be Adjudged to No Punishment

Corrected text. Please let me hear from you at your earliest opportunity.

From: Fidell, Eugene

Sent: Tuesday, August 2, 2016 6:07 PM

To: Oshana, Justin C MAJ USARMY FORSCOM (US)

Cc: Rosenblatt, Franklin D LTC USARMY (US); Thomas, Jason D MAJ USARMY XVIII ABN CORPS (US); Gleich, Oren MAJ USARMY XVIII ABN CORPS (US); Banks, Nina S CPT USARMY 1 CD (US); Fussnecker, Jerrod B MAJ USARMY FORSCOM (US); Whipple, Eileen C CPT USARMY 16 MP BDE (US)

Subject: Re: US v. Bergdahl G APP #34 - Subject: Government Response to Defense Motion to Dismiss and to Limit the Sentence That May Be Adjudged to No Punishment

MAJ Oshana:

Your filing (at 2) "stipulates that the news articles are accurately quoted" in our Motion to Dismiss. What we asked, however, as the alternative to calling witnesses (at 9) was that you stipulate "to the accuracy of the news accounts and the authenticity of the emails," which are different from what you have stipulated to. Do you stipulate to the news accounts' accuracy and the emails' authenticity?

v/r

Gene Fidell

From: Oshana, Justin C MAJ USARMY FORSCOM (US) <justin.c.oshana.mil@mail.mil>

Sent: Tuesday, August 2, 2016 5:37 PM

To: Nance, Jeffery R COL USARMY HQDA (US)

Cc: Fidell, Eugene; Rosenblatt, Franklin D LTC USARMY (US); Thomas, Jason D MAJ USARMY XVIII ABN CORPS (US); Gleich, Oren MAJ USARMY XVIII ABN CORPS (US); Banks, Nina S CPT USARMY 1 CD (US); Fussnecker, Jerrod B MAJ USARMY FORSCOM (US); Whipple, Eileen C CPT USARMY 16 MP BDE (US); Craver, Stacy C CIV (US)

Subject: US v. Bergdahl G APP #34 - Subject: Government Response to Defense Motion to Dismiss and to Limit the Sentence That May Be Adjudged to No Punishment

Your Honor,

Attached is G APP #34, the Government Response to the Defense Motion to Dismiss and to Limit Sentence.

v/r,

Justin C. Oshana

MAJ, JA

Trial Counsel

US Army Forces Command

Fort Bragg, NC

(910) 570-5922

justin.c.oshana.mil@mail.mil

justin.c.oshana.mil@mail.smil.mil

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