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Prosecutors: Bergdahl to (http://wtop.com) get fair trial despite Trump jabs

AP By The Associated Press (<http://wtop.com/author/the-associated-press/>)
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FILE - In this Jan. 12, 2016, file photo, Army Sgt. Bowe Bergdahl arrives for a pretrial hearing at Fort Bragg, N.C. President Donald Trump's campaign-trail condemnation of Bergdahl, the army sergeant charged with desertion while serving in Afghanistan, won't prevent the...

APPELLATE EXHIBIT 33
Pg 183

RALEIGH, N.C. (AP) — President Donald Trump's campaign-trail condemnation of Bowe Bergdahl — the army sergeant charged with desertion while serving in Afghanistan — won't prevent the soldier from getting a fair trial, according to military prosecutors.

Prosecutors are seeking to rebuff Bergdahl's assertion that Trump violated his constitutional rights to due process when, as a presidential contender, Trump called Bergdahl a "traitor" and made other disparaging remarks. Bergdahl will be tried in April on charges alleging that he put the lives of his fellow soldiers in jeopardy when he walked off his post in Afghanistan in 2009.

Even though Trump repeatedly suggested that Bergdahl should face stiff punishment, including being thrown out of a plane, prosecutors said in a court filing last week that any reasonable observer would understand that comments by the then-Republican contender amounted to campaign rhetoric and should not be taken literally.

"With regards to Mr. Trump's comments that SGT Bergdahl is a 'traitor' or committed 'treason,' such comments were clearly intended to be understood by their colloquial meaning," the prosecutors wrote in the Feb. 1 filing.

"It strains credulity to believe that Mr. Trump was seriously suggesting that SGT. Bergdahl should be thrown out of an airplane," prosecutors wrote.

An email seeking comment from a White House spokesman wasn't immediately returned.

Prosecutors also argue that the statements can't constitute unlawful command influence because they were made before Trump became president and because they were spread out among other campaign coverage.

However, Eric Carpenter, a former Army lawyer who teaches law at Florida International University, said that potential military jurors could be influenced by Trump's comments even if he made them before becoming president.

"The prosecution is in a tough spot. These statements are really indefensible, and they have the job of defending them," he said. "No one in the administration has disavowed those comments, so the comments still have life."

Defense attorneys have asked that charges be dismissed because of the Trump comments. Their motion, filed shortly after Trump was sworn in as president on Jan. 20, cites more than 40 instances of Trump's criticism at public appearances and media interviews through August 2016.

Defense attorneys argue that potential jurors may feel obligated to agree with their new leader and would have a hard time ignoring the criticism.

"The government does not dispute that he made those statements, and while some of them may have been outlandish, taken as a whole they clearly indicate his view that the harshest possible penalties should be imposed," defense attorneys wrote in a legal filing Monday.

Bergdahl will be tried at Fort Bragg on charges of desertion and misbehavior before the enemy. The latter carries a maximum penalty of life in prison.

Bergdahl, who is from Idaho, has said he walked off his post to cause an alarm and draw attention to what he saw as problems with his unit.

He was held captive by the Taliban and its allies for five years. The Obama administration's decision in May 2014 to exchange Bergdahl for five Taliban prisoners prompted some Republicans to accuse Obama of jeopardizing the nation's safety.

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