

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

UNITED STATES)	
)	
v.)	GOVERNMENT RESPONSE TO
)	DEFENSE MOTION TO DISMISS
BERGDAHL, ROBERT BOWDRIE)	
(BOWE))	
SGT, U.S. Army)	1 FEBRUARY 2017
HHC, Special Troops Battalion)	
U.S. Army Forces Command)	
Fort Bragg, North Carolina 28310)	

I. RELIEF SOUGHT

The Defense once again seeks an unprecedented remedy, the dismissal of charges on the basis of comments by a private citizen without any connection to the military. Contrary to the Defense position, however, such comments are not capable of constituting unlawful command influence. Even if they were, given the context of the statements, the status of President Trump at the time they were made, and their relative infrequency compared to the much larger coverage of the 2016 election, no objective observer would harbor any concerns about the fairness of the proceedings. While not explicitly styled as such, the Defense’s generic “pure due process” claim¹ is effectively a claim regarding unfair pretrial publicity,² which fails for similar reasons. Finally, relief at this stage, without even attempting *voir dire*, is premature. Consequently, the Government requests the Court deny the Defense Motion to Dismiss.

¹ The Defense offers no analysis of this claim, however unfair pretrial publicity is implicit in their arguments and, as discussed in section VI below, comments by members of the public have been analyzed under this rubric.

² As the Defense has limited their allegations to the comments made by Mr. Trump, the Government will not address the potential impact of the overall publicity surrounding this case. The Government notes, however, that any such claim would have to be viewed in light of the invited error doctrine, which “prevents a party from creating error and then taking advantage of a situation of his own making on appeal.” *United States v. Martin*, 75 M.J. 321, 325 (C.A.A.F. 2016) (internal citations omitted). Sergeant Bergdahl and his Defense Counsel have contributed significantly to the publicity surrounding this case, including SGT Bergdahl’s decision to participate in 25 hours of interviews with a film producer and then consenting to the use of that material in the popular *Serial* podcast, and the Defense’s decision to release the transcript of his statement to the AR 15-6 investigating officer. In both instances SGT Bergdahl effectively confessed. While courts have recognized in the pretrial publicity context that “the defendant’s own confession [is] probably the most probative and damaging evidence that can be admitted against him,” *Skilling v. United States*, 561 U.S. 358, 383 (2010) (internal citation omitted), a defendant who chooses to broadcast his own confession, which in turn results in pretrial publicity, can hardly then seek relief.

II. BURDEN OF PERSUASION AND BURDEN OF PROOF

The Accused, as the moving party, has the burden of persuasion in accordance with R.C.M. 905(c)(2), and the burden of proof is a preponderance of the evidence in accordance with RCM 905(c)(1).

III. FACTS

On 30 June 2009, the Accused deserted from his place of duty at Observation Post Mest, Afghanistan, while deployed as part of Task Force Yukon, Combined Joint Task Force-82/Regional Command East. As a result, a Duty Status-Whereabouts Unknown report was initiated, which resulted in a massive search and recovery operation in an attempt to find the Accused. The Accused was captured by the Taliban shortly after deserting the OP. On 31 May 2014 he was returned to U.S. military control in exchange for five Taliban detainees held at the Guantanamo Bay detention facility. The exchange, which was not reported in advance to Congress, generated controversy.³

After his release, numerous media outlets reported that six U.S. Soldiers had been killed while searching for the Accused.⁴ A number of former members of the Accused's unit asserted similar claims. The reported fatalities occurred during four missions between 26 August and 6 September 2009 in Paktika province, and all six Soldiers were members of Task Force Yukon.

IV. EVIDENCE

The Government reviewed the Defense Compendium, and has attached a responsive Government Compendium (Enclosure 1), which adds the entire length of the speeches made by Mr. Trump (when the speech could be located). While not conceding the relevance of any of the facts that Defense cites, the Government stipulates that the statements contained in the Defense Motion and Compendium, and the video clip compilation are accurate representations of what President Trump (as then-Candidate Trump) said during his campaign.⁵ The Government stipulates that neither President Trump nor anyone acting on his behalf has ever withdrawn or disavowed his statements. Although the Government will not stipulate that no Soldiers were killed searching for the Accused,⁶ the Government stipulates that the statement

³ There was significant news coverage of the controversy surrounding the exchange. See eg Missy Ryan, *Lawmakers accuse White House of concealment in Bowe Bergdahl prisoner swap*, The Washington Post, December 9, 2015, available at https://www.washingtonpost.com/news/checkpoint/wp/2015/12/09/lawmakers-accuse-white-house-of-elaborate-deception-in-bowe-bergdahl-prisoner-swap/?utm_term=.454e0781aecd.

⁴ See eg Mark Thompson, *The 6 U.S. Soldiers Who Died Searching for Bowe Bergdahl*, Time, June 2, 2014, available at <http://time.com/2809352/bowe-bergdahl-deserter-army-taliban/>

⁵ The only exception is the 18 July 2015 reference to comments made by Mr. Trump at the Family Leadership Summit. A review of the transcript and video of the event reveal no reference to SGT Bergdahl.

⁶ All four missions were investigated as required by Army regulation, however no formal investigation was conducted into the connection between SGT Bergdahl's misconduct and any fatalities. Thus, Secretary Hagel and MG Dahl's statements, while accurate reflections of what they understood at the time, are not

attributed to former Secretary of Defense Chuck Hagel on 11 June 2014 is accurate. The Government also stipulates that then-MG Kenneth Dahl, the Army Regulation (“AR”) 15-6 investigating officer, testified on 18 September 2015 that he concluded there were “no Soldiers killed who were deliberately looking and searching for” the Accused. Major General Dahl also testified, at the same hearing and in response to questions by Defense Counsel, that he was instructed not to investigate the question of whether any such fatalities occurred, because such investigation would be handled by CENTCOM. (Enclosure 2)

The Government, the Court and the public have all had the opportunity to review the Defense’s video compilation. The Government therefore objects to the Defense request to play the video exhibit during the hearing as being unnecessary to the resolution of the motion.⁷

Based on the Government’s stipulations, no additional evidence and no witnesses are necessary to adjudicate the motion.

V. LAW

a. Unlawful Command Influence

The prohibition against Unlawful Command Influence is found in Article 37, Uniform Code of Military Justice (“UCMJ”), which states

No authority convening a general, special, or summary court-martial, nor any other commanding officer, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his functions in the conduct of the proceeding. No person subject to this chapter may attempt to coerce or, by any unauthorized means, influence the action of a court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to his judicial acts.

The Court of Appeals for the Armed Forces has established a specific procedure to address allegations of UCI at trial. First, the Defense must “show facts which, if true,

dispositive of the question. The Government reviewed each investigation, interviewed members of the unit, and concluded that there was not a direct enough connection to satisfy the admissibility standards under the Military Rules of Evidence. That is not to say, however, that there is no evidence suggesting a connection. Whether SGT Bergdahl bears some moral responsibility for those deaths is a separate question from whether he bears legal responsibility, and the Rules of Evidence are not the standard by which the truth or falsity of a statement by a public figure are measured.

⁷ The request to play the video in court speaks to the inconsistency of the Defense position. While simultaneously complaining that the comments are inflammatory and may influence a potential panel, the Defense has gone out of its way to rebroadcast the material, both by placing their video compilation on YouTube and now by seeking to play it in court.

constitute unlawful command influence." *United States v. Biagase*, 50 M.J. 143, 150 (1999). Second, the Defense must show "that the alleged unlawful command influence has a logical connection to the court-martial, in terms of its potential to cause unfairness in the proceedings." *Id.* "The threshold for raising the issue at trial is low, but more than mere allegation or speculation." *Id.* The Defense is required to present "some evidence" of unlawful command influence. *Id.* (quoting *United States v. Ayala*, 43 M.J. 296, 300 (1995)). Third, if the Defense has made the requisite showing under the first two steps, the burden shifts to the Government to: (1) disprove "the predicate facts on which the allegation of unlawful command influence is based"; (2) persuade the military judge "that the facts do not constitute unlawful command influence"; or (3) prove at trial "that the unlawful command influence will not affect the proceedings." *Id.* at 151. "Whichever tactic the Government chooses, the quantum of proof is beyond a reasonable doubt." *United States v. Stoneman*, 57 M.J. 35, 41 (2002) (citing *Biagase*, 50 M.J. at 151).

Unlawful command influence can occur in two forms: actual or apparent. The question of whether there is apparent UCI is determined "objectively." *United States v. Lewis*, 63 MJ 405, 416 (2006). The test for apparent UCI is whether an "objective, disinterested observer fully informed of all the facts and circumstances would harbor a significant doubt about the fairness of the proceedings." *Id.*

Military courts "draw a distinction between the accusatorial process and the adjudicative stage, that is, the difference between preferral, forwarding, referral, and the adjudicative process, including interference with witnesses, judges, members, and counsel." *United States v. Weasler*, 43 M.J. 15, 17-18 (1995).

Military courts have also repeatedly recognized that an individual must have a "mantle of command authority" in order for a finding of UCI. *See United States v. Stombaugh*, 40 M.J. 208 (C.M.A . 1994); *see also United States v. Denier*, 47 M.J. 253 (1997) (finding no UCI where Appellant offered no evidence that anyone with the mantle of command authority attempted to influence the proceedings); *United States v. Avila*, 1998 CCA LEXIS 486 (N-M. Ct. Crim. App. Dec. 4, 1998) (finding no mantle of command authority for recommendations from a subordinate to a senior officer); *United States v. Loiacono*, 2014 CCA LEXIS 194 (N-M. Ct. Crim. App. Mar. 25, 2014) (finding no mantle of command authority for comments made by a civilian fiscal chief regarding the costs of Appellants court-martial).

b. Unfair Pretrial Publicity

Members of the armed forces are entitled to have their cases adjudicated by fair and impartial court-martial panels whose evaluation is based solely upon the evidence, and not upon prejudgment that may occur as a result of pretrial publicity. *United States v. Curtis*, 44 M.J. 106, 139 (1996), upon reconsideration, 46 M.J. 129 (1997) (findings affirmed and sentence reversed); *see Chandler v. Florida*, 449 U.S. 560, 574 (1981). The potential impact of statements by senior officials and the public has previously been

analyzed under the doctrine of pretrial publicity in military courts. As the Court in *United States v. Calley*, 22 C.M.R. 534 (C.M.A. 1973) explained,

Under our constitutional system of government and individual rights, the exercise of a constitutional right by one person can affect the constitutional right of another. Thus, the First Amendment guarantees to the public and the news media the right to comment on and discuss impending or pending criminal prosecutions. The content of the comments can pose a danger to the right of an accused to the fair trial assured by the Due Process clause of the Fifth Amendment.

Id. at 537.

While the concepts of UCI and unfair pretrial publicity are related and both “reflect a common interest in ensuring impartial treatment in the judicial process, they involve differing trial procedures and standards of review.” *United States v. Simpson*, 58 M.J. 368, 372 (2003).

The Defense may raise the issue of unfair pretrial publicity by demonstrating either actual prejudice or presumed prejudice. *Id.* “To establish actual prejudice, the defense must show that members of the court-martial panel had such fixed opinions that they could not judge impartially the guilt of the accused. Without such a showing, evidence that the members had knowledge of highly significant information or other incriminating matters is insufficient.” *Id.* at 372.

To establish presumed prejudice, the defense must show that the pretrial publicity (1) is prejudicial, (2) is inflammatory, and (3) has saturated the community. *Id.* “The presumed prejudice principle is rarely applicable, and is reserved for an extreme situation.” *United States v. Langford*, 647 F.3d 1309, 1333 (11th Cir. 2011). The Supreme Court has identified four factors relevant to presuming prejudice: the size and characteristics of the community, the nature of the publicity, the time between the media attention and the trial, and whether the jury's decision indicated bias. *Skilling v. United States*, 561 U.S. 358, 379, 382-84 (2010). “Depending on the circumstances of the case, the potential for prejudice may be ameliorated through measures such as a continuance, change of venue, sequestration, and regulation of public comment by counsel.” *Simpson* at 372.

VI. ARGUMENT

a. Mr. Trump's comments in his capacity as a private citizen cannot constitute unlawful command influence

There is no support for the proposition that a private citizen running for office is capable of engaging in UCI. Article 37, UCMJ is a statutorily created protection that governs the conduct of a particular group of individuals. The language of Article 37, UCMJ restricts its application to those individuals who are acting as a convening

authority or other commanding officer,⁸ or individuals who are “subject to this chapter.” Persons “subject to this chapter” are defined by Article 2, UCMJ.

The Defense concedes, as they must, that Mr. Trump was not subject to Article 37 at the time of any of his comments. He was not a convening authority, and certainly was not the convening authority in this case. The list of persons subject to the code under Article 2 does not include private citizens with no connection to the military, and, more specifically to this issue, does not include candidates for President.

It is not even clear whether Article 37, UCMJ applies to the senior leadership of the Department of Defense or to the President when they are not acting as convening authorities, as they are not “subject to the [code].” The Navy-Marine Court of Criminal Appeals, for instance, has held that “[t]he Secretary of the Navy does not fall within the statutory ambit of Article 2, UCMJ, and the statutory interplay of Articles 2 and 37, UCMJ (10 U.S.C. 802 and 837), does not contemplate an actual UCI paradigm applicable to the secretariat or civilian leadership.” *United States v. Hutchins*, 2012 CCA LEXIS 93 (N-M. Ct. Crim. App. Mar. 20, 2012), *rev’d on other grounds*, 72 M.J. 294 (2013).⁹

As a result of the statutory constraints of Articles 2 and 37, UCMJ the vast majority of people in the United States simply cannot engage in UCI, notwithstanding the fact that some of them may have a public platform which they utilize to comment on matters relating to military justice. This is particularly true in cases which generate public interest. Journalists, for instance, frequently cover and often opine on high profile criminal cases. As the Court made clear, however, in *United States v. Johnson*, 54 M.J. 32 (2000) “[Article 37] prevents a convening authority or anyone else ‘subject to this chapter’ from unlawfully attempting to influence a court-martial. Press coverage does not constitute unlawful command influence.” *Id.* at n.6. At the time that he made all of the comments at issue, Mr. Trump fell squarely into the category of people incapable of engaging in UCI. Thus, at the time that he made the statements they were not, as a matter of law, UCI.

The Defense does not allege that any of Mr. Trump’s comments constitute actual UCI.¹⁰ Their argument, therefore, rests on the proposition that statements which were not UCI were transformed into apparent UCI upon Mr. Trump taking office as President. There is no support for the proposition that the actions or comments of an individual

⁸ A “commanding officer” includes only commissioned officers. Article 1, UCMJ.

⁹ The Court of Appeals for the Armed Forces reversed *Hutchins* on separate grounds, and the majority opinion did not discuss the issue of UCI. Chief Judge Baker did, however, admonish the majority for failing to address the issue and suggested that even if the plain language of the statute did not include civilian leadership, a due process right might nevertheless exist that would be analyzed under the *Biagase* framework. *Hutchins*, 72 M.J. 294, 303-318 (2013) (Baker, C.J., dissenting).

¹⁰ As noted above, military courts draw a distinction between the accusatorial phase and the adjudicative phase. The Defense had the opportunity to interview both the Accused and Special Court-Martial Convening Authority, LTC Peter Burke, and the opportunity to both interview and examine in an Article 39(a) session the General Court-Martial Convening Authority, GEN Robert Abrams. There is no evidence, and no allegation, that any of their actions were impacted in any way by the comments.

prior to assuming a position of command can form the basis for UCI. Such a conclusion would be a dramatic expansion of the reach of Article 37, UCMJ. In effect, the Defense seeks to add to the language of Article 37, UCMJ to read that “[n]o person subject to this chapter, *or who may become subject to this chapter in the future....*” The potential ramifications of this are apparent. An Accused could search for the prior comments of candidates for the presidency, nominees for civilian or military leadership positions, staff judge advocates, or anyone else who could arguably speak on behalf of a command, and then seek relief based on those comments.

Such an expansion would also not be appropriate in a case where a civilian with no affiliation to the government or military; with no knowledge of the detailed facts of the case, the doctrine of UCI, and the offenses at issue; and without the benefit of the advice of military lawyers, makes statements before entering public office. Mr. Trump was acting only as a commentator and a candidate, and not as a person with any role or legal authority over the adjudication of this case. No court has ever allowed such an expansive approach to a claim of UCI, and it is utterly unsupported by the rules.

The law is clear that the actions of a private citizen with no connection to the military cannot constitute UCI. *All* of the comments attributed to Mr. Trump were made while he was a candidate for office. Prior to assuming the presidency on 20 January 2017, Mr. Trump had never held any position in the government or the military. Mr. Trump was not a convening authority, he was not subject the code under the provisions of Article 2, UCMJ and he did not possess the mantle of command authority. To put it simply, as a matter of basic statutory interpretation, at the time that the statements were made they were not, and could not be, unlawful command influence. Therefore, the Defense has failed to "show facts which, if true, constitute unlawful command influence." *Biagase*, 50 M.J. at 150.

b. Even assuming that Mr. Trump’s comments are capable of constituting apparent UCI, no reasonable observer would harbor any doubts about the fairness of the proceedings given the context of the comments

Assuming *arguendo* that Mr. Trump’s comments as a candidate are even capable of constituting apparent UCI, no objective, disinterested observer could harbor significant doubts about the fairness of the proceedings when taking all of the facts into account.

First, any observer would be aware of Mr. Trump’s status at the time that he made the statements, and of the fact that he did not have any position within the government or the military. They would also be aware that Mr. Trump has not made any comment regarding SGT Bergdahl since August 2016, and specifically has not commented on SGT Bergdahl during his period as President-elect or since taking office as President.

As already noted, all of the statements that Mr. Trump made occurred during his campaign for the presidency. The comments were largely aimed at criticizing the trade

that President Obama authorized of five detainees in exchange for SGT Bergdahl, and were designed to attack President Obama and highlight Mr. Trump's ability to make better deals, a consistent theme of his campaign. Of the 65 comments listed in the Defense Compendium, 63 make reference to the trade, and often include Mr. Trump referring to "the five for one President" or "the five for one deal."

The nature of the statements themselves is also significant. 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. Although the Defense urges the Court to conclude that Mr. Trump's references to SGT Bergdahl as a "traitor" should be read as referring to the legal definition of treason, and cites in support of that conclusion *United States v. Barrazamartinez*, 58 M.J. 173, 176 (2003), there is a stark difference between the statement of a trial counsel, an attorney speaking in a legal proceeding, and comments made by Mr. Trump, who is not an attorney and was speaking in the context of a political campaign.

The Defense repeatedly claims that Mr. Trump's comments regarding potential fatalities as a result of SGT Bergdahl's misconduct are "false." As discussed in footnote 4 above, while there is not a sufficient connection between SGT Bergdahl's misconduct and the death of any Soldiers to satisfy the standards of the Military Rules of Evidence, there is evidence that suggests that his actions may have contributed to such fatalities. More to the point, as the claims regarded fatalities connected to SGT Bergdahl's misconduct were the subject of widespread coverage in multiple media outlets, Mr. Trump's reliance on the reports was not unreasonable and his comments cannot be said to be false.

Finally, with regard to his suggestions for particular penalties such statements clearly comprise campaign rhetoric. An objective observer would be aware that neither of the offenses that SGT Bergdahl is alleged to have committed are capital offenses as referred. It strains credulity to believe that Mr. Trump was seriously suggesting that SGT Bergdahl should be thrown out of an airplane. A reasonable observer in possession of all of the facts would recognize the statements for exactly what they were, "political posturing designed to embarrass a political opponent and gain some political advantage." Appellate Exhibit 19 at 8 (internal parenthetical omitted).

The combination of Mr. Trump's status at the time that he made the comments, the fact that the comments were made in the context of a political campaign (and almost exclusively limited to the primary campaign), and the nature of the comments themselves, all would result in an objective observer concluding that the comments have not resulted in any concerns about the fairness of these proceedings.

c. Exposure to pretrial publicity alone is not cause for dismissal

At the outset, it is important to note that the doctrine of unfair pretrial publicity "cannot be made to stand for the proposition that juror exposure to ... news accounts of the crime ... alone presumptively deprives the defendant of due process." *Id* at 380

(quoting *Murphy v. Florida*, 421 U.S. 794, 798-799. Moreover, “[p]rominence does not necessarily produce prejudice, and juror *impartiality* ... does not require ignorance.” *Patton v. Yount*, 467 U.S. 1025 (1984) (emphasis in original). See also *Irvin v. Dowd*, 366 U.S. 717, 722 (1961) (holding that jurors are not required to be “totally ignorant of the facts and issues involved” and that “scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case.”); *Reynolds v. United States*, 98 U.S. 145, 155-156 (1879) (“[E]very case of public interest is almost, as a matter of necessity, brought to the attention of all the intelligent people in the vicinity, and scarcely any one can be found among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion in respect to its merits.”))

The Court of Military Appeals has similarly noted that exposure to pretrial publicity alone is not sufficient to disqualify a panel member, writing,

As we construe the Supreme Court's decisions in this area, the trier of the facts, and more particularly, a juror, is not disqualified just because he has been exposed to pretrial publicity or even has formulated an opinion as to the guilt or innocence of an accused on the basis of his exposure. ‘[I]f the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court,’ he is qualified to serve.

Calley, 22 U.S.C.M.A at 537 (citing *Irvin v. Dowd*, 366 U.S. 717 (1961)).

As discussed above, the Defense has not alleged actual prejudice as a result of Mr. Trump’s comments. Thus, in order to establish either that the Government cannot prove that the unlawful command influence will not affect the proceedings under *Biagase*, or to establish a due process violation under an unfair pretrial publicity analysis, they would have to establish presumed prejudice to such a degree that no ameliorative efforts should even be attempted. Such a finding would be utterly unprecedented, and is not supported by the facts.

d. There is insufficient evidence to support a presumption of prejudice finding

Applying the *Skilling* factors, it is clear that Mr. Trump’s comments did not saturate the community, and as such, the Defense has failed to establish presumptive prejudice.

The size and characteristics of the “community” in this case weigh heavily against the possibility of presumed prejudice. As “community” is defined for these purposes as the area from which the members can be drawn, which in this case is all service members assigned to United States Army Forces Command, the pool of potential panel members is large, approximately 220,000 soldiers. Moreover, it is geographically diverse, with 11 locations reaching across the continental United States. As a result of this geographic diversity, prospective members necessarily obtain their news from a variety of sources. As the *Skilling* Court noted, “[g]iven [Houston’s] large,

diverse pool of potential jurors, the suggestion that 12 impartial individuals could not be empaneled is hard to sustain.” See also *In re Tsarnaev*, 780 F.3d 14, 18 (1st Cir. 2015) (finding no presumption of prejudice in Boston, which the Court described as a large, diverse metropolitan area whose residents obtain their news from a vast array of sources); *Mu’Min v. Virginia*, 500 U.S. 415, 429, 111 S. Ct. 1899, 114 L. Ed. 2d 493 (1991) (finding that the potential for prejudice was mitigated by the size of the metropolitan Washington, D.C. area); *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1044, 111 S. Ct. 2720, 115 L. Ed. 2d 888 (1991) (plurality opinion) (finding a reduced likelihood of prejudice where venire was drawn from a pool of over 600,000 individuals).

By contrast, the rare cases where a court has found presumed prejudice have involved insulated areas or comparatively small populations. For instance, in *Rideau v. Louisiana*, the community where the crime occurred had about 150,000 people. *Rideau*, 373 U.S. at 723, 724 (1963). The defendant’s confession to murder, robbery and kidnapping was broadcast to the community three times shortly before trial. *Id.* Approximately 24,000, 53,000, and 20,000 saw and heard each broadcast, respectively. *Id.* Three jurors had seen and heard the televised confession. *Id.* at 725. The Supreme Court noted that “the people of Calcasieu Parish had been exposed repeatedly and in depth to the spectacle of Rideau personally confessing in detail to the crimes with which he was later to be charged.” *Id.* at 726. Further, “to the tens of thousands of people who saw and heard it, in a very real sense [the confession] was Rideau’s trial — at which he pleaded guilty to murder.” *Id.* Similarly, in *United States v. Casellas-Toro*, 807 F.3d 380 (1st Cir. 2015), a federal murder trial held in Puerto Rico (which the court described as a “small island”) the defendant’s conviction for a state crime which was related to his murder charge was widely reported, and *voir dire* occurred only two months following his televised sentencing in the state case. *Id.* at 387-388.

All of the above cited cases share another common thread that is not present in this case: the crimes themselves occurred in the geographically distinct community where the trial took place, and in many cases had a significant adverse impact on that community. The *Skilling* case, for instance, dealt with the collapse of Enron, which had a significant negative impact on the Houston area. *Tsarnaev* dealt with the Boston Marathon bombing, which attracted worldwide attention and resulted in a “lockdown” of the Boston area during the ensuing manhunt. By contrast, the crimes for which the Accused is charged occurred outside of the United States, while the Accused was assigned to a unit garrisoned in Alaska. The lack of connection to a particular geographic area further reduces the likelihood of saturation, particularly when combined with a pool of panel members drawn from across the United States.

The time between the statements, the last of which was made by Mr. Trump in August 2016, and the currently scheduled trial date also weighs against a finding of presumed prejudice. This is particularly true when taking into consideration the tremendous volume of coverage relating to the 2016 elections that were unrelated to this case. The nature of the publicity also weighs against a finding of presumed prejudice. As discussed above, the members would certainly be able to understand that the comments made by Mr. Trump were made in the context of a campaign.

The comments are also not nearly as widespread as the Defense contends. Mr. Trump announced his candidacy on 16 June 2015, and was elected on 8 November 2016. In the 512 days that elapsed, Mr. Trump participated in hundreds of events, including rallies, fundraisers, interviews and debates. Additionally, his prolific use of the social media platform Twitter was frequently the subject of news coverage in and of itself. Yet the Defense can point to only 65 instances where Mr. Trump referenced SGT Bergdahl. In an effort to exaggerate the purported impact of Mr. Trump's statements, they have also created a 28-minute video compilation. As the Government's Compendium makes clear, the video clips that the Defense has selectively spliced together do not even constitute a prominent feature of any of Mr. Trump's speeches, which total more than 46 hours, let alone a prominent feature of his campaign. This does not, of course, take into account all of times (including the entire general election) where Mr. Trump never mentioned SGT Bergdahl at all.

Moreover, coverage of Mr. Trump's speeches and campaign events must be viewed against the backdrop of the overall election coverage, the overwhelming majority of which had nothing to do with this case. The 2016 election was covered by hundreds of network and cable news stations, both national and local, and countless print and online media sources. Mr. Trump devoted the vast majority of his time to his signature issues, including the construction of a wall on the U.S.-Mexico border, the renegotiation of trade deals, changes to immigration policy, and the repeal of the Affordable Care Act. Additionally, while SGT Bergdahl was the subject of 65 comments, Mr. Trump's most frequent subjects were his opponents: initially, 16 fellow Republicans during the primary campaign; then his general election opponent, former Secretary of State Hillary Clinton; and throughout the election cycle the incumbent, President Barack Obama.

According to the Defense's own assertions, Mr. Trump mentioned SGT Bergdahl only twice during the general election campaign, in August, shortly after becoming the Republican nominee. Mr. Trump has not mentioned SGT Bergdahl at all since, including at his arguably highest profile speeches: his convention acceptance speech (which lasted for over an hour and was viewed by an average of 32.3 million people), and his acceptance speech following Mrs. Clinton's concession on election night.

A search of the Lexis Nexis All English Language News database, which searches thousands of news sources, including both domestic and foreign publications, lends further support to this conclusion. A search for "Trump" together with "Bergdahl" for the entire period of Mr. Trump's campaign, a total of 512 days, results in 1506 references. By contrast, in the *fourteen days* prior to the election a search for "Trump" and "Benghazi" results in 1496 hits. In the *four days* prior to the election a search for "Trump" and "Obamacare" results in 1806 hits. Attempts to search for the latter two combinations beyond those short windows were unsuccessful, because they both resulted in more than 3000 hits. Additionally, a simple Google search for "Trump" and "Bergdahl" results in approximately 560,000 hits. By contrast, a search for "Trump" and "Benghazi" results in 5,370,000 hits; "Trump" and "Mexico Wall" results in 17,200,000;

“Trump” and “Obamacare” results in 26,300,000; and “Trump” and “China” results in 111,000,000.

The fact is that in an election season that lasted for nearly two years, and with as many as 20 candidates from the major political parties participating, the references to SGT Bergdahl constitute nothing more than a drop in the ocean of coverage. This, combined with a large and diverse pool of panel members, leads to the conclusion that prejudice cannot be presumed.

e. Dismissal is premature without *voir dire*

“[D]ismissal is a drastic remedy and courts must look to see whether alternative remedies are available.” *United States v. Lewis*, 63 M.J. 405, 416 (2006) (citing *United States v. Cooper*, 35 M.J. 417, 422 (C.M.A. 1992)). The use of *voir dire* has been repeatedly recognized as an appropriate method of ameliorating prejudice, both in the context of UCI and unfair pretrial publicity.

In the *Calley* case, both the Army Court of Military Review and the Court of Military Appeals examined the claim that statements made by the President, the Secretary of Defense, the Secretary of the Army, and the Chief of Staff of the Army, constituted either UCI or a generic due process violation. The necessity for *voir dire* was discussed by the Army Court, which wrote that “[i]nfluence in the air, so to speak, is a contradiction in terms. An object and effect upon the object must be identified for influence to exist. The *voir dire* facially suffices to rebut a claim of influence due to statements by higher officials.” *United States v. Calley*, 46 C.M.R. 1131, 1160 (A.C.M.R. 1973). After reviewing the relevant *voir dire* the Court concluded that the statements had no influence on the members. *Id.* at 1161.

The Court of Military Appeals did not examine the issue of the comments by senior officials under the rubric of UCI, but as a Fifth Amendment Due Process issue. The Court found no merit to the defense claim of a due process violation, writing

We have carefully examined the extensive *voir dire* of the court members in the light of the pretrial materials submitted to us and we are satisfied that none of the court members had formed unalterable opinions about Lieutenant Calley's guilt from the publicity to which they had been exposed and that the total impact of that publicity does not oppose the individual declaration by each member retained on the court that he could, fairly and impartially, decide whether Lieutenant Calley was guilty of any crime upon the evidence presented in open court.

Calley, 22 U.S.C.M.A. 534, 538 (C.M.A. 1973) (internal citation omitted).

The Court also noted that,

[N]either the trial judge nor government counsel ignored the potentially adverse effect of the extensive publicity. In pretrial proceedings, the prosecution labored jointly with the defense to minimize the effects of the publicity.¹¹ The military judge issued special orders to prospective witnesses to curb public discussion of the case and to insulate them from the influence of possible newspaper, magazine, radio and television reports of the case. At trial, the judge was exceedingly liberal in the scope of the *voir dire* of the court members and in bases for challenge for cause...

Id. at 538.

The application of extensive *voir dire*, including the use of pretrial questionnaires and individual *voir dire* of all potential jurors on the issue of publicity to prevent potential contamination, has been recognized by the Supreme Court and every Circuit Court as a means of ameliorating potential prejudice. See *Skilling* at 388-389; *United States v. McNeill*, 728 F.2d 5, 9-10 (1st Cir. 1984) (After rejecting a claim of presumed prejudice, the appeals court next reviewed the *voir dire* examination); *Application of Cohn*, 332 F.2d 976, 977 (2nd Cir. 1964) (In denying a Writ of Mandamus seeking change of venue or continuance the court held “the fact that there has been widespread publicity, that potential jurors read newspaper articles and listen to radio and television broadcasts does not establish such bias or prejudice as would call for disqualification. Only upon the *voir dire* of the prospective jurors can it be determined whether an impartial jury can be selected... Certainly, on the facts before us it would be premature to assume that such a jury cannot be empaneled.”); *Hetzel v. Lamas*, 2010 U.S. App. Lexis 6025 (3rd Cir. 2010) (After reviewing and rejecting a claim of presumed prejudice, the Court found *voir dire* sufficient to ensure *Hetzel’s* right to an impartial jury) (unpublished); *United States v. Baker*, 925 F.2d 728, 732 (4th Cir. 1991) (“A trial court customarily should take the second step of conducting a *voir dire* of prospective jurors to determine if actual prejudice exists”); *Wells v. Murray*, 831 F.2d 468, 472 (4th Cir. 1987) (A complaint of unfair pretrial publicity is “evaluated based on the pre-trial publicity complained of and on its impact, if any, on the jury, as developed through adequate *voir dire* examination of the jurors”); *United States v. Chagra*, 669 F.2d 241, 250 (5th Cir. 1982) (When examining a claim of actual prejudice, “proof of such prejudice is normally made by reliance upon the juror’s *voir dire* responses.”¹²); *Lackey v. Rose*, 698 F.2d 1221,

¹¹ Far from attempting to minimize the effects of publicity surrounding this case, the Defense and the Accused himself have been active participants in an attempt to raise the level of that publicity. As discussed in footnote 2, the Accused participated in 25 hours of interviews with a film producer and then agreed to the use of portions of those interviews as the basis for the popular *Serial* podcast. Civilian Defense Counsel has participated in numerous interviews, both televised and in print. Specific to the issue of Mr. Trump’s statements, the Defense wrote Mr. Trump a letter requesting an interview and then released it to the press. They condensed the very comments they contend may have improper influence into a 28-minute compilation video and posted it to both to their own website and to YouTube. Unquestionably, the Defense may do these things under the First Amendment. The potential impact of these actions, however, should not be ignored. A Defendant cannot fan the flames of pretrial publicity and then complain that it is too hot.

¹² The Fifth Circuit held in *Chagra*, that even where presumed prejudice exists, the Government may rebut the presumption by “demonstrating from the *voir dire* that an impartial jury was actually impaneled...If the

(6th Cir. 1982) (unpublished) (“The explicit inquiry by the judge directed to the element of pretrial publicity; combined with the fact that petitioner failed to exercise all his peremptory challenges, indicates that a fair jury was selected”); *Margoles v. United States* 407 F.2d 727 (7th Cir. 1969), cert. denied 396 U.S. 833 (1969) (holding that even assuming prejudicial pretrial publicity was present... “the procedures employed by the district court at the *voir dire* examination of prospective jurors were adequate to safeguard petitioner against the effect of prejudicial pre-trial publicity”); *Blumenfield v. United States*, 284 F.2d 46 (8th Cir. 1960) (When examining a claim of adverse publicity... “the ultimate question is whether it is possible to select a fair and impartial jury, and the proper occasion for such a determination is upon the *voir dire* examination.”); *Ignacio v. People of Territory of Guam* (9th Cir. 1969) 413 F.2d 513, 518, cert. denied 397 U.S. 943 (1970) (“It is not sufficient to simply allege adverse publicity without a showing that the jurors were biased thereby.”); *United States v. McVeigh*, 153 F.3d 1166, 1183 (10th Cir. 1998) (“In reviewing for actual prejudice, we examine the circumstances of the publicity and the *voir dire* and merely determine ‘whether the judge had a reasonable basis for concluding that the jurors selected could be impartial.’”) internal citations omitted; *United States v. Klacker*, 811 F.2d 555, 556 (11th Cir. 1987) (In rejecting a claim of actual prejudice the court examined the record of *voir dire*); *United States v. Haldeman*, 559 F.2d 31, 60 (D.C. Cir. 1976) (“A defendant who claims he was denied a fair trial because the jury was not sufficiently indifferent generally must sustain that claim not as a matter of speculation but as a demonstrable reality. This demonstration can be made only by reference to the *voir dire*.”) (internal citations omitted).

The Court of Appeals for the Armed Forces has similarly approved of the use of *voir dire* to ameliorate potential UCI. *United States v. Reed*, 65 M.J. 487 (2008) (holding that the Government had met its burden of demonstrating beyond a reasonable doubt that the fairness of the court-martial proceedings was not compromised by unlawful command influence in part by the allowance of extensive *voir dire*). In specifically considering the statements of the President and other senior leaders, military courts have again approved of the use of liberal *voir dire* as an adequate and appropriate curative measure. *United States v. Peterman*, 2016 CCA LEXIS 196 (A.F. Ct. Crim. App. Mar. 24, 2016) (finding no UCI regarding statements of the President, the Secretary of Defense and the Chief of Staff of the Air Force regarding sexual assault in part because of the use of extensive *voir dire*); *United States v. Oakley*, 2015 CCA LEXIS 154 (N-M. Ct. Crim. App. Apr. 21, 2015) (finding no UCI regarding the President’s comments regarding sexual assault in part because of “the military judge’s curative actions of liberal *voir dire*);

The Defense’s sole basis for claiming that *voir dire* would be insufficient is the claim that they must be allowed to ask potential panel members whether they voted for Mr. Trump. The Defense appropriately concludes that such a question would be impermissible, but claims that it would be the only way to “cut to the chase.” Quite the opposite, the only relevant questions on this issue would be whether a potential panel

government succeeds in doing so, the conviction will stand despite appellant's showing of adverse pretrial publicity” *Chagrai*, 669 F.2d at 250.

member was aware of Mr. Trump's comments and, if so, whether they would have any impact. There is nothing preventing the Defense from asking those questions. The notion, however, that they have a need to ask potential panel members who they voted for is irrational. It assumes that the act of voting for a candidate means that a voter is aware of, and supportive of, all of the positions that candidate takes. Such a position is clearly incorrect. A potential panel member who voted for Mr. Trump, but who was not aware of any of his statements regarding the Accused, would certainly not be subject to a challenge for cause based solely on their vote. Conversely, a potential panel member who voted for Mrs. Clinton, but who was aware of the comments and admitted to being impacted by them, would certainly not be saved from challenge based solely on their vote.

VII. CONCLUSION

All of the comments attributed to President Trump were made prior to his election, when he held no position of any kind relating to the government or the military. As a result, his comments are incapable of constituting UCI. Even assuming they could constitute apparent UCI, no objective observer, aware of the context of the comments, would harbor any concern about the fairness of the proceedings. For all of the reasons articulated above, the statements also do not rise to the level of presumptive prejudice that would give way to a due process violation under the unfair pretrial publicity doctrine. Finally, *voir dire* and the liberal grant mandate would ameliorate any concerns regarding the comments, and dismissal without attempting to utilize such methods is both inappropriate and premature. Accordingly, the Defense motion to dismiss should be denied.

// ORIGINAL SIGNED//
JUSTIN C. OSHANA
MAJ, JA
Trial Counsel

I certify that I have served or caused to be served a true copy of the above on the Defense Counsel on 1 February 2017.

// ORIGINAL SIGNED//
JUSTIN C. OSHANA
MAJ, JA
Trial Counsel

Number	Date	Location	Full Video Length	Speech begins	Bergdahl comment	Speech ends	Total Speech Time	Comment Concerning SGT Bergdahl	Video Link
1	2-Jun-14	Fox and Friends	N/A	N/A	N/A	N/A	N/A	"And unlike our traitor where we gave five killers, you know, five real enemies of the state. Uh, Bergdahl."	
2	15-Jul-14	Fox News	3m 33s	8s	18s	3m 8s	3m 16s	"I look at this five to one trade, we have a traitor, we have five killers that are looking to destroy this country and that's the kind of a trade we make for a traitor and now I just heard, Martha, you with 350,000 dollars in back pay he's going to get 350,000 dollars in back pay and he was a traitor. Evan (Buetow) sounds terrific, he uh, he said that he mailed all his stuff back home. And how is it possible that he and his other folks that were, you know, that knew this man so well and that knew exactly what happened weren't interviewed having to do with the investigation they weren't even talked to having to do. So I don't think the White House knew what they were doing when they made the deal, they didn't have their facts before- you know when you make a deal you have to have your facts, it's the first thing I tell people, to make a deal you have to have your facts, they didn't have the facts..." "So here we trade five killers that want to destroy us, that are already back in service, to try and knock us out and we trade five killers for one traitor and now we're going to give the traitor \$350,000 and we put him back to work like nothing happened and they don't investigate, and they don't call people like Evan (Buetow) that know exactly what happened. And then you have the weird thing that you just mentioned with the parents. I mean, the father was a pretty weird dude to start off with the way he acted, I thought when I first saw him I said, 'Woah Woah, that does not look like Duck Dynasty, there's a little bit of a difference there, there's uh, that look is a little different then Duck Dynasty. At first I wasn't exactly sure but I said, 'Woah'. And then I watched the father's action, I watched his statements, I watched his words and I said, 'this is a weird situation going on'. Now the guy gets released and he doesn't even want to talk to his parents"	http://video.foxnews.com/v/3675791826001/?#sp=show-clips
3	28-Jul-14	Fox News	1m 42s	1s	21s	1m 35s	1m 36s	<u>TRUMP: "I'm looking at this guy, did we do it for the right one, you know? It looks like maybe he was a deserter, was he a deserter? You tell me."</u> <u>FF: "Sounds like it. Almost all evidence does and evidently there might even be video of him leaving the base."</u> <u>TRUMP: "He doesn't even want to come back to the parents. The parents are saying he can't speak English now, we can't this, we can't get in touch with him, I mean, what's going on, but you know the, the interesting thing is when they released him, all of his comrades refused to clap, they refused to say anything, I mean they were very upset."</u> <u>FF: "You're referring to the Secretary Defense Hagel who addressed the troops at Bagram Air Base and to silence after he made the announcement."</u> <u>TRUMP: "Well I know nothing about Hagel other than at his confirmation hearing, I watched. It was the worst performance I had ever seen in the history of confirmations. I mean he was before the various folks that were asking him questions- I have never seen anyone do so poorly. He couldn't get a sentence out. He's our Secretary of Defense so..."</u> <u>FF: "He didn't do much better yesterday in explaining what went into it."</u> <u>TRUMP: "A terrible deal we made by the way. This is a terrible deal. Every soldier and every American is at risk right now that was a terrible deal. Now, on top of it, let's hope that's not so, but we're hearing lots of bad things about the person we took."</u> <u>FF: "It seems as though it's a systemic issue when it comes down to leadership here, you understand the art of negotiation and Susan Rice is saying 'We didn't negotiate with the Taliban here and the terrorists' but in fact would you say that we lost this negotiation?"</u> <u>TRUMMP: "Well this isn't even close, and this is a terrible precedent, I mean what we're doing is terrible. So now you have this soldier that's going to be looked in to and I think that's going to turn up being a disaster, and the father with the tweets, I don't know if you saw the father with the tweets but they were really like, anti-American. But I think it's going to turn out to be a catastrophe."</u>	http://mediamatters.org/embed/static/clips/2014/06/02/35474/fnc-ff-20140602-trumpbergdahal
4	27-Feb-15	CPAC Conference	26m 13s	1m 50s	7m 30s	26m 13s	24m 23s	"Now, we have a thinking...Bowe Bergdahl, we all know, Berg [sic] we sell, we make a deal, Bowe Bergdahl for five killers, five terrorists who are right now out there trying to kill us. This is the kind of thinking, and you don't even hear anything about it anymore, people forget. It's like the one week schedule, they forget. The Bowe Bergdahl deal is emblematic of what's going on in this country, all our deals are like that and we can't let it continue to happen."	https://www.c-span.org/video/?324558-11/donald-trump-remarks-cpac&start=455
5	9-Apr-15	Breitbart News Interview	N/A	N/A	N/A	N/A	N/A	"It's no different than the situation with Sergeant Bergdahl, which I call the five-for-one deal. That deal is emblematic of something. Who would give back one traitor for five killers that are now free and back in the service of killing people? Five-for-one and the one we got is a traitor. We should really give Sergeant Bergdahl back to them. The five-for-one-deal is emblematic of the way we negotiate."	http://www.breitbart.com/national-security/2015/04/09/exclusive-donald-trump-obama-totally-out-negotiated-by-iran-taliban-virtually-every-country-in-the-world/

Number	Date	Location	Full Video Length	Speech begins	Bergdahl comment	Speech ends	Total Speech Time	Comment Concerning SGT Bergdahl	Video Link
6	23-Apr-15	The John Fredericks Show, VA	19m 11s	48s	12m 13s	19m 10s	18m 22s	Donald Trump: "It's like Bergdahl. You know I use that as an example. Five for one. We get Bergdahl, they get five killers, leaders, who are now back on the- you know, trying to kill us all, right?" John Fredericks: "And we get a traitor." Donald Trump: "And we get a traitor. I'd send him back, I'd call- You know sometimes you renegotiate a deal, I'd send him back, even if we don't get their five guys back, they'll get 'em back anyway. But I'd send Bergdahl back, let them, we don't have to, we don't have to- you know in the old days you'd execute Bergdahl. You know when with this country was strong, and powerful, and meant something you would execute Bergdahl. Now he's being- They, they said, 'Oh well, he had some psychological problems.' And you know, the General that was there, these are not General Patton, these are not General Douglas McArthur the General that went there knew all about this! Before the trade! I figured maybe it slipped through, maybe they didn't know. They knew all about it, this General met with the five or six soldiers that told him the guy was a traitor! And we probably lost five lives and maybe now six lives of guys that went out looking for him and trying to get him back. So you know, as far as I'm concerned, send Bergdahl back, drop him right in the middle of those characters and they'll take care of him."	https://www.youtube.com/watch?v=pLm8fN5Cag
7	9-May-15	Freedom Summit, Greenville, NC	28m 31s	6s	20m 13s	28m 16s	28m 10s	"We got Bergdahl, they get five leaders, killers that want to kill us all. And they're all back on the battlefield, by the way, and we got this piece of garbage named Bergdahl. Who, years ago, (crowd cheers), who years ago we would've shot for treason and now they're saying, 'well, you know, he doesn't feel good, he had a hard life.' When I saw his father standing with Obama, I said, 'Woah, woah, woah! Woah!' (Crowd laughs) woah. I love the guys at Duck Dynasty, they stay at my luxury hotels, but this, this did not look like Duck Dynasty guys this was this."	https://www.youtube.com/watch?v=5wg7Y0xVXzc
8	16-Jun-15	Campaign Launch, NYC	N/A	N/A	N/A	N/A	N/A	"He's the one (President Obama) that did Bergdahl. We get Bergdahl, they get five killer terrorists that everybody wanted over there. We get Bergdahl. We get a traitor. We get a no-good traitor, and they get the five people that they wanted for years, and those people are now back on the battlefield trying to kill us. That's the negotiator we have."	http://www.washingtonpost.com/news/post-politics/wp/2015/06/16/full-text-donald-trump-announces-a-presidential-bid/
9	23-Jun-15	MDGOP Red, White, and Blue Dinner!	52m 10s	19s	21m 21s	52m 5s	51m 46s	"We save a Sergeant Bergdahl, who's a traitor, a no good traitor. We lose six lives over this guy. And yet James Foley is beheaded. We didn't fight for James Foley. He was this wonderful guy whose parents I got to know very well over the last few months. Actually, up in New Hampshire. We didn't fight for James Foley, he was beheaded and he was a wonderful young man. But we fought to get a traitor, who, when our country was strong, would've been executed for desertion. We lost six, great, young people trying to find him, and they all knew that he deserted and Obama knew that he deserted. And yet we took him back- I call him the five for one President- and we gave five killers, and leaders, who are now back on the battlefield trying to kill everybody, including us, by the way."	https://www.youtube.com/watch?v=ySP2tDgPoN4
10	23-Jun-15	MD GOP Dinner w/CNN	37s	1s	1s	35s	36s	"We get Bergdahl, right? We get Bergdahl, think of it, they get five killer leaders that are out there trying to kill everybody and behead everybody right now, and we get a traitor named Sergeant Bergdahl. Six people died trying to get this traitor. Six people. And yet James Foley, we gave up on him and he's beheaded. I want James Foley, I don't want Bergdahl, I want James Foley. So we have stupid people, we have people that don't know what they're doing. It's amateur hour"	https://www.youtube.com/watch?v=ibCf6ZuXD7E
11	11-Jul-15	Las Vegas, NV	29m 55s	4s	27m 50s	29m 50s	29m 46s	"I mean here's a guy- Sergeant Bergdahl. We get Bergdahl, a traitor, a no good traitor, who in the good old days would've been executed. We get Bergdahl, they get five killers that are right now back on the battlefield. The five people that they most wanted, they got them, and we got Bergdahl. That's like the way we deal."	https://www.youtube.com/watch?v=qXjz3qLufv8
12	11-Jul-15	Phoenix, AZ	1h 10m 45s	1m 31s	1h 3m 6s	1h 10m 09s	1h 9m 38s	"We have Sergeant Bergdahl, a traitor. (Crowd boos). So we negotiate for Sergeant Bergdahl, a no good traitor- six people were killed trying to find him. Six young, in this case men, went out to try and get him. Six of 'em never came back. Six people died, and we have Sergeant Bergdahl. And here's our deal, this is just like the stupid deal that we're making with Iran, on nuclear. This is just like everything else we do, the deals we went and made with China, the deals we make with Mexico. We don't know what we're doing. So we get Bergdahl, a no good traitor, and frankly, you know I renegotiate deals every once and awhile, not too often. But, I'd send him back, and if they don't want him, send him back anyway. I want to renegotiate that. They get- they get five killers that are right now back on the battlefield trying to kill everybody, including the people in this room. And these were the five people that they most wanted."	https://www.youtube.com/watch?v=ls3m7NUOqxs
13	14-Jul-15	CNN, VA	2m 8s	42s	1m 48s	2m 7s	1m 25s	"It's like Sergeant Bergdahl, we get a traitor named Sergeant Bergdahl and they get, look what they get- they get their five guys they most wanted anywhere in the world. Who makes deals like this? And by the way, with Bergdahl, six people died trying to get that traitor back. So we get Bergdahl, they get five guys that they wanted, that's not the way you deal."	https://www.youtube.com/watch?v=V60fBwrcObs
14	18-Jul-15	Family Leadership Summit, Fox News	N/A	N/A	N/A	N/A	N/A	A search of the transcript provided by the Federal News Service confirms that Mr. Trump did not reference SGT Bergdahl during this speech	https://www.cnn.com/2015/07/18/fox-family-leadership-summit/

Number	Date	Location	Full Video Length	Speech begins	Bergdahl comment	Speech ends	Total Speech Time	Comment Concerning SGT Bergdahl	Video Link
15	21-Jul-15	Bluffton, SC	42m 3s	Start of Video	31m 57s	41m 44s	41m 44s	"I've seen one sided deals before, this is like Sergeant Bergdahl. We get a traitor, a no-good, rotten traitor, like Bergdahl, and they get five killers that they most wanted in the whole world who are right now back on the battlefield trying to kill everybody, including us, okay? What kind of a deal is this? Not good, right? (Referring to audience member) I like that, stand up! Who said that? I like that. You're right, lousy, lousy deal. But we only make lousy deals. I call Obama the five-for-one President. We get Bergdahl, they got five guys they dream of, okay?"	https://www.youtube.com/watch?v=g0dre-LxWFs
16	6-Aug-15	GOP Debate I, Fox News, Cleveland, OH	N/A	N/A	N/A	N/A	11m 14s	"You look at Sergeant Bergdahl, we get Bergdahl, a traitor and they get five of the big great killers leaders that they want." * Total length of Mr. Trump's comments as reported by the New York Times was 11 minutes and 14 seconds. https://www.nytimes.com/live/republican-debate-election-2016-cleveland/a-final-count-of-candidate-speaking-time/	http://video.foxnews.com/v/4406746003001/watch-a-replay-of-fox-news-prime-time-presidential-debate/?#sp=show-clips
17	19-Aug-15	Derry, NH	1h 35m 16s	30s	17m 24s	1h 35m 16s	1h 34m 46s	"Take Sergeant Bergdahl, does anybody remember him? (Crowd boos). So, so this is the way we think. So we get a traitor named Bergdahl, a dirty, rotten traitor (crowd applauds), who by the way when he deserted, six young, beautiful people were killed trying to find him, right? And you don't even hear about him anymore! Somebody said the other day, 'Well he had some psychological problems.' You know, you know in the old days (mimics shooting a rifle), bong, bong! (Crowd cheers). When we were strong, when we were strong. So we get Bergdahl, a traitor, and they get five of the people that they most wanted anywhere in the world, five killers that are right now back on the battlefield doing a job. That's the kind of deals we make! That's the kind of deals we make, right? Am I right?"	https://www.youtube.com/watch?v=3thGigpuiRQ
18	21-Aug-15	Mobile, AL	53m 59s	22s	16m 22s	53m 52s	53m 30s	"Sergeant Bergdahl, has anybody heard of Sergeant Bergdahl, the traitor? (Crowd boos). No, no the traitor. I call President, I call President Obama the five for one President. We get Sergeant Bergdahl a traitor, who, by the way, six people, at least, that we know of, six people were killed trying to get this guy back. Six people, they went after him. They wanted to get him back. So we get Sergeant Bergdahl and they get five people that they desperately wanted for years that are right now back on the battlefield trying to kill everybody, including us."	https://www.youtube.com/watch?v=XLCDI3GAzE
19	27-Aug-15	Greenville, SC	51m 20s	5s	19m 51s	51m 0s	50m 55s	"Sergeant Bergdahl, right? We know Sergeant Bergdahl, a traitor. Six people died looking for him, he left! He deserted, went to the other side. He didn't realize the other side wasn't treating him so nice, you know they were not too nice to him. They roughed him up. But- he says good (points to audience member, crowd laughs). I agree, good! Drop him back, let's re-trade that deal. So we get Bergdahl a traitor- these are the same people that make our trade deals- we get Bergdahl, a traitor that we don't want. I don't want him, do you- does anybody want him? (Crowd boos). And they knew that he was a traitor because they had a General and a Colonel interviewing the guys and the people that were with him! So they knew he left! It wasn't like, oh they found out later. They knew before the deal was made. So we get a traitor named Bergdahl- six people died trying to find him we get him, they get five killers that they've wanted for ten years. They were released and now they're on the battlefield trying to kill everybody, including us. This is the kind of deals we make."	https://www.youtube.com/watch?v=kTMn49vZjxY
20	8-Oct-15	Las Vegas, NV	1h 7m 48s	4s	1h 6m 10s	1h 7m 10s	1h 7m 6s	"We're tired of Sergeant Bergdahl, who's a traitor. (Crowd cheers). He's a traitor, a no-good traitor, who should've been executed (crowd cheers). We get Sergeant Bergdahl and they get five of the biggest killers that they've wanted more than any people, more than any people, for years! They've been trying to get these five killers and they're all now back on the battlefield, and we've got Bergdahl, and yesterday I heard he probably won't even serve any time and 30 years ago he would've been shot! (Crowd boos)."	https://www.youtube.com/watch?v=QgtDZG08E50
21	11-Oct-15	Fox News Judge Jeanine	8m 29s	6s	14s	8m 25s	8m 19s	"Well I think it's a disgrace, he was a deserter 100%, I know you agree with this and he was a deserter 100% it's not like the old days, in the old days you deserted you were in big trouble. Today they want to find all sorts of excuses- I don't know what, it's crazy, it's just crazy what's going on with our country is absolutely insane. Five good, great soldiers, wonderful, young people and probably six were killed looking for him. And now what do we get? We get him, which you can have him, we get him, and they get, they get five of the great killers that they've wanted for ten years, they've wanted these people back. This is a typical trade with Obama, we get Bergdahl and they get five killers, no good."	http://video.foxnews.com/v/4550198667001/?#sp=show-clips
22	14-Oct-15	Richmond, VA	59m 12s	13s	50m	59m 12s	58m 59s	"That's like Sergeant Bergdahl. We got a guy (crowd boos), it's true, no it's true. We have a guy- six young people, great people, were killed looking for him. We get Bergdahl, they get five of the great killers that they've wanted for ten years, right? These are the deals that we make because we have leadership that doesn't know what the hell it's doing. (Crowd cheers). Now in the old days, with Bergdahl, who is a traitor, it was treason! You shoot him! He would get shot! (Crowd cheers). They think he won't even get jail time anymore! Well he had some psychological difficulty, they don't really know what happened, wasn't feeling so good. We are just heading in the wrong direction."	https://www.youtube.com/watch?v=S17AKGvfc

Number	Date	Location	Full Video Length	Speech begins	Bergdahl comment	Speech ends	Total Speech Time	Comment Concerning SGT Bergdahl	Video Link
23	16-Oct-15	Tyngsboro, MA	52m 1s	1s	27m 25s	52m 1s	52m 0s	"Sergeant Bergdahl, right? (Crowd boos). No, no, think of this guy. In the old days, he'd get shot for treason right? Right? These guys would tell you, they're too nice but they know, believe me, they know. But Sergeant Bergdahl. So we have Bergdahl. So we get Bergdahl, this is the way we trade, this is, like, emblematic of everything we do. We get Bergdahl, a rotten traitor who should be frankly, who negotiated with terrorists, who left, who six people died looking for him, who, by the way, the other night on every television! They said he won't even go to prison! (Crowd boos). Because think of it, did you hear this? Because well he might have psychological problems. He's not feeling so good. Can you believe it? So we get Bergdahl and they get five of the people that they most want, total killers, leaders who are now back fighting trying to kill everybody in their bed. That's what they get. They get the five people they most wanted and we get one traitor. I'll tell you what. Probably can't do it, but if I win I may just have him floating right in the middle of that place and drop him, boom. Right in the middle, let 'em have him! Let 'em have him. I mean that's cheaper than a bullet."	https://www.youtube.com/watch?v=9g5AU0Vebt0
24	23-Oct-15	Miami, FL	1h 4m 55s	2s	46m 10s	1hr 3m 56s	1 hr 3m 54s	"Think about Sergeant Bergdahl, a traitor (crowd boos), a traitor! Think of him. He's a dirty, rotten traitor. Six people died going after him, they died! Six young, incredible, brave people died. The deal is we get traitor Bergdahl, they get five of the best people that they have, that they've been after for ten years, they get five killers that are right now leading and back on the battlefield trying to kill everybody, including you, and we get Bergdahl, a traitor, okay? We get Bergdahl. And then, two days ago it came out, that Bergdahl! They don't want to put him in jail. You know in the old days (mimics shooting a rifle), boom. Firing squad. No, it's true (mimics shooting a rifle). I love the Second Amendment, I love the Second Amendment. (Crowd cheers). So two days ago, it comes out that Sergeant Bergdahl won't even have to go to jail. No, think of it. (Crowd boos). Where have we gone? Where have we gone? What's going on with our country? Okay? I'll tell you one thing; if I win, it's not going to be my most important job, not if, eh, we have to say if, hey look, look- (points to the audience) they're all going, 'Not if, when!.' Alright, alright. Okay, I have a- you know what the word should be if but you know what, they're going crazy up here, they're saying 'when, when, when', so when! Okay? When! When. And I hope so, because I'll tell you- we can make our country so great again, we'll make it so great. But I promise you, we will be reopening that Bergdahl disaster, we will be reopening it. It's going to be reopened. A lot of things are going to be reopened."	https://www.youtube.com/watch?v=ZvsVP_G30t4
25	26-Oct-15	Atkinson, NH	36m 50s	1s	17m 53s	36m 38s	36m 37s	"Sergeant Bergdahl, we get Bergdahl, a dirty rotten traitor, who's not even going to go to jail! He would've been shot 20 years ago. We get Bergdahl, think of it, we get Bergdahl and they get five killers that they've wanted for ten years that are right now back on the battlefield killing people. And believe me they want to kill everybody in this place too. That's the deal we made, that's emblematic of the deals we make."	https://www.youtube.com/watch?v=U06yfv8dfuo
26	27-Oct-15	MSNBC	1m	1s	8s	16s	59s	"Sergeant Bergdahl. We get Bergdahl, they get five of the killers that they've wanted for a long period of time. The whole things is just ridiculous."	https://archive.org/details/MSNBCW_20151027_1000_00_Morning_Joe?q=bergdahl+start/3960/end/4020
27	3-Nov-15	GMA, ABC, New York, NY	36m 9s	6s	1m 23s	35m 32s	35m 26s	"I always mention as an example Sergeant Bergdahl, a traitor. We get Sergeant Bergdahl and they get five of the people they wanted, and they wanted badly. And that's not the way it's going to work anymore. So we write about it in the book."	https://www.youtube.com/watch?v=ZSlXkOX6n3s
28	9-Nov-15	Springfield, IL	1h 8m 43s	5m 43s	51m 38s	1hr 6m 36s	1 hr 53s	"I always say Sergeant Bergdahl, that's military. But we get a dirty, rotten traitor, who I'd like to dump right back where we got him (crowd cheers). You know, he left! He left. Six people got killed looking for him, right? He left because he said, 'Oh.' When I looked at his father I said, 'Woah, woah, what have we here?' Right? I said, 'Woah what's this all about?' So, he left and he thought, 'Oh this is going to be wonderful,' and oh then they knocked the hell out of him. He didn't have a good time. I don't think he'll be going there anytime soon, right? But here's the amazing thing, in the old days when we were strong and wise, we shoot a guy like that. A traitor! He's a traitor. He's a traitor. (Crowd cheers). No, no, we shoot him! I don't care! In the old days, when we were strong, and wise, traitors were treated very, very harshly. If you look at what happened last week, they feel that he wasn't really 100% feeling well. Perhaps he should get no jail time whatsoever. No, do you believe this? This is what- okay, so here's the way we negotiate. I call Obama the five for one President. We get Bergdahl, they get five of their best, toughest, meanest killers that they've been trying to get out of there for nine years, right?"	https://www.youtube.com/watch?v=0euhRxQCNzs

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29	11-Nov-15	Manchester, NH	45m	1s	28m 58s	43m 48s	43m 47s	"We don't have victories with Sergeant Bergdahl. With this traitor, this dirty, rotten traitor. (Crowd applauds). He gets no jail time, he gets no jail time. No, think of it. Right? Twenty-five, fifty years ago, thirty years ago, what would they have done? Bing (mimics handgun firing with his hand). Right? (Points to Audience member). He just said it, I didn't have to say it, I'm just imitating him, bing (mimics handgun firing with his hand). No, he's going to get no jail time, nothing! They say, 'Well he wasn't feeling so-.' Six people died going out looking for him. So we make a deal. I call him the five for one President. This is the way we deal. Whether it's economics or military. He makes a deal, five of their best, most wanted people. We get Bergdahl, they get five killers that are right now back on the battlefield looking to kill everybody, including us. This is the deal we make. And they knew he was a traitor before they made the deal. I figured well maybe they got snookered, maybe they didn't know. They had a General and a Colonel seeing everybody in that division, and they're all saying, 'No he left, he's a traitor.' So they knew it was, you know, they're dealing with a traitor. If I heard he was a traitor I'd say, 'That's okay, no deal, you can keep him.' I would say we never want him back (pointing to audience member), right Steve? We don't want him back."	https://www.youtube.com/watch?v=H4c3c8qdNDM
30	12-Nov-15	Fort Dodge, IA	1h 41m 2s	5m 48s	23m 18s	1hr 40m 33s	1hr 34m 45s	"I see Sergeant Bergdahl, a traitor, a no good, dirty, rotten traitor (crowd cheers). And we knew he was a traitor before we made the deal. They had a General and they had a Colonel talking to all of the young people that were with him as soldiers. And what happened? Six people went out looking for him, six people were killed. So six people were lost looking for him. And what happens now? In the old days he would've been shot for being a traitor. He's going to get nothing! I heard the other day, I was watching- they've recommending no jail time, no nothing. I mean seriously, in the old days, when you were a young guy (Trump points to audience member), right? When I was, they would've, they would've... it's gone! When we were strong and when we were smart. You're a traitor, you're shot! So he went out, he left! He deserted, he left, and they recommended nothing. But here's the thing, so we knew he was a traitor and we made the deal anyway, I wouldn't have made the deal. I would've said, oh he's a traitor? That's okay, they can have him for the rest of his life. (Crowd cheers). No, I would've done it! I wouldn't even want him, you know, frankly they're so brutal that's not a good life. See it turned out to be a little tougher than he thought. He thought he'd go over, 'Hey babe how you doin'? How you guys doin'?' Boom, boom, boom (mimics punching), they beat the crap out of him, which is fine. That's fine. I'm happy about that (crowd laughs). I don't think he's going there for a vacation, you know he thought he was going to go and say hello to the enemy and talk to the enemy. But what happens is, he came out and now what we did, knowing he was a traitor, we gave them, I call Obama the five for one president, we gave them five of the best killers that they most desperately wanted, and they wanted them for nine years. We gave them five people that are right now back on the battlefield doing all sorts of damage, wanting to kill everybody, including you, and that's our deal. I call him five for one. And the one's no good. Frankly I'd take the one and drop him right back where the hell he came from, you know, if you want to know the truth. (Crowd cheers). I really would."	https://www.youtube.com/watch?v=apaToLjRp4
31	16-Nov-15	Knoxville, TN	1h 16m 19s	17m 9s	30m	1hr 15m 22s	58m 13s	"The worst to me was Bergdahl. We get Bergdahl, they get five killers they've wanted for nine years! And we get Sergeant Bergdahl, a dirty, rotten traitor (crowd cheers)."	https://www.youtube.com/watch?v=eHqB6q2FDq0
32	18-Nov-15	Worcester, MA	1h 2m 26s	3m 45s	44m 47s	1h 1m 55s	58m 10s	"I use it all the time, it's not a financial deal although you could say it's even financial, but we can get Sergeant Bergdahl, a dirty, rotten traitor (crowd boos), and give them, and give them five of the greatest killers on Earth that they've been after for nine years. But that's the deal. So we get Bergdahl, a traitor, and we knew he was a traitor, and six people, six young, great people were killed going after this bum. Six people! Now in the old days- there's my man (points to audience member), stand up. What do we do with Sergeant Bergdahl 50 years ago? That's right. Boom (mimics a handgun firing with his hand). Boom! A great veteran. Boom! He's gone! He's gone! Six people killed looking for Bergdahl, and we give five people to get him back. And we knew he was a traitor because we had a General and a Colonel go and interview all of the soldiers that he dealt with and that he was with. They said he deserted. So they knew. You know it's one thing they made a mistake, but they knew! We can't do things like that anymore. And by the way, on Bergdahl, I see the other day, no time! They don't want to give him any time! They're letting him out! They're not only going to not shoot him (crowd boos), they let him out! They said, 'Well, he's been through a lot, oh yeah, been through a lot.' Six young great people died looking for him. And he's recommended to get nothing! Zero! And we can't let that happen anymore."	https://www.youtube.com/watch?v=BPJqv6Cb00c
33	23-Nov-15	Columbus, OH	1h 31m 24s	30m 20s	1h 7m 40s	1h 30m 10s	59m 50s	"Sergeant Bergdahl, the worst, the worst! He's a traitor, he's a dirty, rotten traitor (crowd cheers). And I always say, we get Bergdahl, a horrible traitor who deserted! In the old days you get shot! (Mimics a handgun firing with his hand). We get Bergdahl, and this is the way we negotiate, they get five of the greatest killers that they know, they've been after them for nine years! So they get these five guys that are now back on the battlefield trying to kill everybody including all of us. We just don't have a clue."	https://www.youtube.com/watch?v=reBkHeQdiy4

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34	24-Nov-15	Time Magazine	NA	NA	NA	NA	NA	TIME: I have never heard a politician sort of celebrate the extrajudicial punishment of someone. And this goes back to that mean tough talk thing that we were talking about before. TRUMP: Well I think Bergdahl is a very bad person who killed six people, who went after him, you know, six people went after him. And the amazing thing is that the government knew that he was a traitor before they made the deal. Because they had a general and a colonel interviewing all of the people that he was with in his group.	NO SOURCE FOUND
35	3-Dec-15	Republican Jewish Coalition Presidential Forum, Washington, DC	38m 6s	3m 45s	17m 10s	37m 10s	33m 25s	"Sergeant Bergdahl, alright? Sergeant Bergdahl. We get a traitor they get five of the greatest killers that they've wanted for nine years, you know the deal was five for one. And they knew he was a traitor before we made the deal, you know about Sergeant Bergdahl. He deserted. Six people were killed trying to get him back. They were looking for him. A General and a Colonel went to see all those people, they said, 'No he deserted, he was a traitor.' And we still made the deal! So we get a traitor- we can give him back, do you want to renegotiate deals, some of us renegotiate deals. I would say about 99.9- is there anybody that doesn't renegotiate deals in this room? This room negotiates- I want to rene- this room. Perhaps more than any room I've ever spoken to. Maybe more. It's okay, I've been called a nut a couple of times too. But the fact is I want to renegotiate that deal. I want to drop him right smack in the middle of where he came from. The hell, they can have him! Even if we don't get the five guys back because that's not going to happen, because you know where they are right now? They're right now all back on the battlefield fighting us, and trying to kill us and killing anybody that gets near 'em. So they get their five guys that they wanted, for nine years they've wanted 'em! And we get a dirty, rotten traitor."	https://www.youtube.com/watch?v=PQYOVmWgjo
36	5-Dec-15	Davenport, IA	1h 30m 24s	30m	1h 26m 15s	1h 30m	1h	"We have a Sergeant Bergdahl who is a dirty, rotten traitor (crowd cheers). Six people were killed, six people, going out trying to get him back. Six young, great people. I watched the mothers and the fathers talking about it. They knew he was a traitor when they made the deal, and yet Obama and his geniuses made a deal. Sergeant Bergdahl a dirty, rotten traitor, for five guys that they've tried to get for the last nine years out of Gitmo. They've tried to get them for the last nine years, and now they have them. And they're back out on the battlefield trying to kill everybody, and if they get the chance they'll be trying to kill you, and all of us."	https://www.youtube.com/watch?v=mm9BDH77r00
37	5-Dec-15	Spencer, IA	1h 11m 38s	2m 55s	13m 15s	1h 11m 10s	1h 8m 15s	"Whether it's Sergeant Bergdahl where we get a dirty, rotten traitor. Six people were killed looking for him, and now he's not even going to get a sentence it looks like, can you believe it? You know 25 years ago he's shot. Fifty years ago they don't even wait a week. Seventy years ago they do it the first hour, right? He knows (pointing to audience member). Today they announce probably he'll be receiving no punishment, can you believe it? Six young, great people, soldiers, killed looking for him. He deserted! So here's our deals; and these are the same deals we make with Iran, the same deals we make economically with China, Japan, Mexico. We get Bergdahl a dirty, rotten traitor who's no good, and they get five of the biggest, worst killers that they have in that part of the world, and those guys are all back now on the battlefield trying to kill everybody, and us, and that's what we get. That's the way we negotiate. And we knew, I said, 'Well they must've made a mistake, they probably didn't know he was a deserter.' I mean he's a dirty, rotten traitor and they knew because they had a General and a Colonel interviewing his people that he worked with and he was with! And they said 'no, he deserted.' So they knew before we made, and they made the deal anyway. I don't know what's with these people. I don't want him. Maybe we can send him back. Let's fly him over, we'll dump him right in the middle, throw him out of the plane. Should we give him a parachute, or not? I say no! No, don't give him a parachute. I don't, why, why would we want to waste a parachute? See, see we don't run our country actually with love. We're not, we're not treating our country right. We're not treating the people of our country right. When you do things like that you're running it not with love, you're running it with stupidity but you're running almost, there's a certain hatred, you're just doing the wrong thing. And the way we negotiate is ju- I use Bergdahl as an example sometimes because while it's not an economic thing, although it actually is to a certain extent, that's the deals we make."	https://www.youtube.com/watch?v=4rWYQM-E8Aw

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38	7-Dec-15	Mt. Pleasant, SC	57m 30s	28s	26m 25s	55m 20s	54m 52s	"Our President makes a deal for Sergeant Bergdahl a dirty, rotten, no good traitor. (Crowd boos). Who, think of it, they knew he was a traitor because a General and a Colonel went to see his group. Six people were killed looking for him, okay? Six people were killed, young, unbelievable, I watched the parents on television. I've seen the parents. But I watched the parents on television. Devastated. Will never be the same. They left to try and bring him back. He left! He deserted. You know, in the old days when we were a strong country, it would be (mimics firing a rifle) boom, gone. No it's called desertion! Now the other day I heard they won't even do anything to him. Can you believe it? They think he's going to get away with nothing, he's going to have nothing. So he left, oh they treated him pretty rough though. He said, 'Oh I shouldn't have done this. This isn't working out the way, this isn't working out the way I thought.' Anyway, so we get him back and here's the deal we make, we get a dirty, no good traitor, six people killed trying to find him, they get five of their greatest killers that they've been after, after! Think of it, for six years, in fact I hear nine years. So they get these total-right now they've gone, they're out on the battlefield trying to kill everybody in front of 'em, including you folks, I hate to tell you. So we get Bergdahl and they get five of the killers they've wanted for many years."	https://www.c-span.org/video/?401762-1/presidential-candidate-donald-trump-rally-mount-pleasant-south-carolina
39	11-Dec-15	Pennsylvania Society, Plaza Hotel, NYC, MC	N/A	N/A	N/A	N/A	N/A	Several people who attended Trump's speech — including protesters who paid for tickets but lost their seats when they tried to interrupt Trump — said he bragged about his poll numbers, took pops at President Obama and Democratic candidate Hillary Clinton and suggested that Army deserter Bowe Bergdahl should be shot. Trump's appearance, sponsored by the Commonwealth PAC, was	http://www.app.com/story/news/politics/2015/12/12/things-get-violent-pa-society-nyc-77214106/
40	11-Dec-15	Des Moines, IA	1h 12m 30s	30s	57m 48s	1h 11m 50s	42m 30s	"The decisions that are made. Bergdahl. Where we get Bergdahl and they get five killers. We get this horrible, dirty, rotten sp- this horrible traitor. We get this horrible, terrible traitor and they get five killers that they've wanted for nine years. The worst killers and they're all back on the battlefield."	https://www.c-span.org/video/?401735-1/donald-trump-campaign-rally-des-moines-iowa
41	14-Dec-15	Westgate Las Vegas Resort & Casino, Las Vegas, NV	1h 27m 8s	20m 15s	21m 25s	1h 23m 55s	1h 3m 40s	"Now I hear Bergdahl, no jail time for Bergdahl. I mean, no jail time! (Crowd boos). We have a man there who left. He's a traitor. He left. Five people killed looking for him and what happens? Like, for years he's been under the same thing. And I hear there's not going to be jail time, it's incredible. You know, 50 years ago, what would have happened? Boom (Mimics shooting a rifle, the crowd cheers). Twentyfive years ago, probably the same thing but it would've taken longer; ten years ago, jail time; five years ago, a couple of years; now, he's going to get nothing. He's going to get nothing (crowd boos). Well I'll tell you what, I'm just thinking of it now for the first time, if I get in, we will review his case. I promise you."	https://www.youtube.com/watch?v=VuVmBqR5mlY
42	19-Dec-15	Cedar Rapids, IA	1h 17m 7s	Start of Video	16m 10s	1h 15m 10s	1h 15m 10s	"I look at a Sergeant Bergdahl, I call him the five for one, where he's a traitor, a dirty rotten traitor. Where, no, when you think about it, where, where we lose, where we lose five people, probably six... dead! Great young people. I see the mothers and fathers on television talking about how great their son was etcetera in this case sons. But I watch the people they're like, they're like devastated, their lives are a disaster it's just horrible. Talking about how great, drawn pictures. Killed looking for this guy that we don't, that we shouldn't even want. Now when we made the deal we knew he was a traitor because they had a General and a Colonel there talking to everybody that knew him. And they knew he left, and that he was a traitor. So we lose five or six people and we make a deal. We knew this. So we give them five of the worst killers that are right now all back on the battlefield, you've been seeing it. Five of the people they've wanted for nine years, we release them and give them back for one dirty rotten traitor that I'd like to make sure this guy, frankly, I'd drop him right back in the middle of the area that we took him from, you wanna know the truth (crowd cheers). I'd love that! But... and now I'm hearing he may not get any prison time, can you believe it? So I always say this; 50 years ago he gets a bullet (mimics holding a rifle) right? Twenty-five years ago we started getting a little weaker, probably doesn't get a bullet, probably gets a hell of a long time in jail though, maybe even the rest of his life. Ten years ago started getting a little weaker, probably 10-15 years. And today we're talking about, oh well he didn't feel good, he decided he didn't want to do this, you know, he had a headache, and he's really regretted his decision. I don't know if you saw him, he didn't like the orders he was given. Can you believe how stupid and weak and ineffective our country is being? So it's... it's very sad. So I call him the five for one, I mean he's a five for one president. He makes these horrible deals. He doesn't know. See, that's a deal. I mean it's people but it's a deal. We get Bergdahl and they get five people that they want."	https://www.youtube.com/watch?v=RSVbjs57R_Q
43	21-Dec-15	Grand Rapids, MI	1h 3m 47s	40s	12m 10s	1h 3m	1h 2m 20s	"We have guys like Bergdahl who get caught, I mean, he left, he was a deserter, he was a deserter. He was a dirty, rotten deserter and we lost five and maybe six young, great, brilliant, wonderful people trying to bring him back. They were killed, right? So he deserts, now, sixty years ago they would've been shot within a very short period of time, right? Twenty-five years ago, probably shot! Ten years ago, long term in prison. Now, I hear he's going to get off scot-free! Why? (Crowd boos). No, no, think of it. And then we traded this guy who as far as I'm concerned we can take him and drop him right back in the middle. We traded..."	https://www.youtube.com/watch?v=hXeFmOeckKk

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44	10-Jan-16	Meet the Press	24m 10s	Start of Video	15m 35s	23m 55s	23m 55s	"I always bring up Bergdahl. We get a traitor, they get five people that they've wanted for nine years, and they're back on the battlefield, trying to kill everybody, including us. And we get a dirty, rotten traitor."	https://www.youtube.com/watch?v=VBVizibJKLq
45	13-Jan-16	Pensacola Bay Center, Pensacola, FL	1h 59m 11s	48m	1h 26m 25s	1h 54m 50s	1h 6m 50s	"I always bring this up, I always bring this up. We get a dirty, rotten, no-good traitor named Bergdahl. Sergeant Bergdahl. And they get, they get, five of the greatest people that they know. The biggest killers and believe me they're back out there and the President says 'Oh they're not back in the battle,' but believe me folks, they're back on the battlefield and they want to kill everybody here and they want to kill everybody there. So we get this dirty, rotten, no-good traitor who 20 years ago would've been shot, who 40 years ago they would've done it within the first hour, and who now might not, maybe nothing's going to happen. Don't forget, with Bergdahl we lost at least five people and I watched the parents on television, I've seen the parents, I've met one of the parents, who're devastated, ruined, destroyed. And they were killed going out to try and bring him back, and they lost five people, probably six, by the way. But at least five people. And we knew that he was a traitor because we had a Colonel and a General go and do the interviews before we made the deal. And everybody in the platoon, everybody was saying he walked off, he's a traitor. They said he's a whack job but we made this deal knowing. Now I would've said 'Oh really? He's a traitor? Pass! Let 'em have him, he's done.' Frankly, frankly, I would take that son of a bitch, I'd fly him back, I'd drop him right over the top, I'm telling you. I'm telling you."	https://www.youtube.com/watch?v=SV0B3uCW-EU
46	18-Jan	Liberty University, Lynchburg, VA	1h 4m 44s	15m	38m 5s	1h 4m 15s	49m 15s	"Sergeant Bergdahl! Anybody ever hear of Sergeant Bergdahl? We get Sergeant Bergdahl, a dirty, rotten traitor, six people died going after him. Six people died going after Sergeant Bergdahl. We get Bergdahl, they get five of the great killers that they wanted for the last nine years. So we get Bergdahl, a traitor and we knew he was a traitor before the deal because they had a General and a Colonel talking to the people that he was with. So we knew that he was a traitor. Who would make deals like this? Who does it?"	https://www.youtube.com/watch?v=E3Z2Pa4LgkM
47	20-Jan-16	Tulsa, OK	2hr 23m 13s	1h 17m 35s	2h 1m 15s	2h 16m 5s	58m 30s	"We have Sergeant Bergdahl, a dirty, rotten traitor, right? (Crowd boos). A dirty, rotten, no good traitor. Five people were killed. Five people looking for Bergdahl, and probably six, but five people at a minimum were killed looking for Sergeant Bergdahl, right? We make a deal knowing, because you had a General and a Colonel there talking to the people that knew him. You had a General and a Colonel that knew he was a dirty traitor. And what happened? We give them five people that they most wanted for nine years that are now back on the battlefield, don't believe the press, and if they're not now, they will be soon. So we give them five people and we get this dirty, rotten traitor. No good folks. We don't make deals like that anymore. We don't make deals like that. As far as I'm concerned, we take him, we fly him over to the area, nice heavily densed area loaded up with ISIS and before we bomb the hell out of ISIS we drop Bergdahl right in the middle of 'em. (Crowd cheers). Amazing. Amazing. Amazing!"	https://www.youtube.com/watch?v=2lx5D8FissM
48	2-Feb-16	Mildford, NH	1h 4m 12s	9m 35s	1h 1m 15s	1h 4m	50m 29s	"But we can no longer be the stupid country, we can no longer be the country that's led by incompetent people, we can no longer be the country that takes Sergeant Bergdahl, a traitor, a dirty rotten traitor, and take him, and take him, and swap him for five of the biggest killers that they have in the Middle East, that they've coveted and wanted for a period of at least nine years. So think of it, we get Bergdahl and they get these five killers that are already back in the battlefield trying to kill everything in front of them, including us. We're not making deals like that anymore folks. We're not making deals like that anymore."	https://www.c-span.org/video/?404064-1/donald-trump-campaign-rally-milford-new-hampshire&start=3678
49	4-Feb-16	Exeter, NH	55m 31s	13m 10s	50m 40s	51m 10s	38m	"We're not going to take a Sergeant Bergdahl, who is a dirty rotten traitor, and trade where we get Bergdahl, and they get five of the people they've most coveted for nine years, and they are now back on the battle field killing people and wanting to kill you."	https://www.youtube.com/watch?v=WCp_ANllftg
50	5-Feb-16	Florence, SC	1h 21m 29s	23m 25s	1h 25s	1h 20m 45s	57m 20s	"Sergeant Bergdahl, a traitor. Right? He's a traitor. He's a dirty, rotten traitor by the way. So Sergeant Bergdahl, he's a traitor. He left. He walked. He thought he was going to have a wonderful life, you know, celebrating whatever they celebrate. So, he leaves, we lose six people- get killed, great, young, beautiful soldiers. I see their parents. Great, young, beautiful soldiers, get killed, they go out, and they're looking and they're looking, and they get killed. Probably viciously killed. They're dead, right? We get Bergdahl back now we had a General and a Colonel and they were interviewing everybody. They knew he was a traitor. It wasn't like, oh they made a mistake, you know you can see that. You would like that! How can you be that stupid, but this is far worse. We knew he was a traitor. So our deal is, we get Bergdahl and they get five killers that they've coveted, that they've wanted for nine years. And they're now, all out back on the battlefield trying to kill us all."	https://www.youtube.com/watch?v=8DatCiaEUDs

Number	Date	Location	Full Video Length	Speech begins	Bergdahl comment	Speech ends	Total Speech Time	Comment Concerning SGT Bergdahl	Video Link
51	8-Feb-16	Manchester, NH	49m 11s	15s	15m 40s	48m 45s	48m 30s	"We're angry when we make a Sergeant Bergdahl deal, who's a dirty, rotten traitor, where six people were killed looking for him and trying to bring him back, killed! Six young, great people, killed, looking for Sergeant Bergdahl and we make this swap knowing that he was a traitor. They had a Colonel and a General talking to these people, and talking to the people that worked with him; they knew he was a traitor. They knew it! And we make a deal, Sergeant Bergdahl, we get, and they get five of the worst killers that they've coveted, they've coveted, for the last nine years, okay? We're tired of deals like this."	https://www.youtube.com/watch?v=bVnn2cYrQJo
52	8-Feb-16	Londonderry, NH	1h 3s	5m 45s	52m 33s	53m 15s	47m 30s	"When we see Sergeant Bergdahl, where we get Bergdahl, a traitor, who six people got killed looking for him, and they get five killers that are back on the battlefield or soon will be. That's not what we want."	https://www.youtube.com/watch?v=SPBX_vQoDUA
53	17-Feb-16	Bluffton, SC	58m 42s	16m 10s	29m 30s	49m 10s	33m	"We take Bergdahl, Sergeant Bergdahl, we- you know he's a traitor. So, we get Bergdahl, six people died looking for Sergeant Bergdahl, right? We get Bergdahl, they get five of the greatest killers that they wanted and coveted for nine years. We get one, they get five. He's a traitor, they're the best they have. And they're now out on the fields or soon will be, killing people again. I don't get it, I don't get it. I say, 'where do these people come from? Where do they come from?' And we knew that he was a traitor when we made the deal because we had a General and a Colonel go interview all the people that knew him. You know, from his platoon. And we knew that he was a traitor. So why would we make a deal? Let 'em keep him, I would've said keep him! You can have him. I'd give him back. I'd actually give him back. I'd fly over, drop him right on top. You know, just, (makes airplane flight motion with his hand), bing! (Crowd cheers)."	https://www.youtube.com/watch?v=rrEpea-2Sa0
54	22-Feb-16	Las Vegas, NV	57m 18s	1m 15s	24m 30s	46m 28s	45m 13s	"Every trade deal we make is stupid. Whether it's Sergeant Bergdahl where it's five for one and five or six people got killed looking for him. So we get a traitor and they get five killers that they've coveted for years, for nine years. We get one, they get five, ours is no good, let's send him back drop him right in the middle of the damn thing. (Crowd gives applause). Boom fly over. Fly over! Fly over! Drop him, maybe you give him a parachute maybe you don't, I don't know. Depends if we have an extra parachute. Probably, probably we give him a parachute if we have an extra one around. But it wouldn't help him. He went out into that world he didn't find it too comfortable folks, you know? They slapped him around pretty good. He thought he was going to go out, he'd be treated wonderfully. I think they slapped him around pretty good. He came back, he couldn't get back fast enough. Five, maybe six, probably six people were killed looking for him. We had a general and a Colonel that went to see his platoon and went to see his group and they all said he deserted. And we knew he deserted when we made the deal. Now why would you make a deal for a deserter and give up five people who they most want that are out trying to kill everybody, including us. Why would we give up, why would we give up five killers, why? For one dirty, rotten traitor."	https://www.youtube.com/watch?v=9hbUr0Y09cw
55	24-Feb-16	Virginia Beach, VA Regent University	48m 6s	39s	16m 55s	47m 45s	47m 6s	"Were gonna be the smart country, instead of the dummies that everyone laughs at. They laugh at us, because we have people that don't know what they're doing. Like Sergeant Bergdahl, we get Bergdahl, a traitor, they get five killers that they've coveted, they've wanted for nine years. And those five killers are back on the battlefield or soon will be. But these are the ones they wanted, these five. So we knew he was a traitor before we made the deal because we had a General and a Colonel interviewing all of the people that he worked with in the military. They knew he left. Six people died looking for him, five definitely, probably six. Died, they went out looking for him. They tried to get him back. He left. And we get, that's the way we negotiate. We get Bergdahl, they get five great killers for them, the people that they want. Not going to happen anymore."	https://www.c-span.org/video/?405439-1/donald-trump-regent-university-presidential-candidate-forum&start=1012
56	5-Mar-16	Orlando, FL	1h 35m 47s	58s	42m 25s	1h 12m 30s	1h 11m 32s	"You're going to feel so proud of your country again, you're not going to be embarrassed with Sergeant Bergdahl. We get Bergdahl, we get Bergdahl, right? We get a dirty, rotten, traitor, six people, five people, probably six people died trying to find him so we get Bergdahl and they get five of the biggest killers that they've been coveting and that they've wanted for years. I call him the one for five President, that's no trade folks."	https://www.c-span.org/video/?406060-1/donald-trump-campaign-rally-orlando-florida
57	19-Mar-16	Fountain Hills, Arizona	1h 59s	34m 45s	52m 30s	1h 22s	25m 37s	"Sergeant Bergdahl, five for one, right? We get Bergdahl, they get five, who's a traitor (referring to Bergdahl) we get Bergdahl they get five of the great killers they've coveted for a period of nine years, and they got 'em. And those guys are now back on the battlefield trying to kill us all and we got a traitor. Big deal. And by the way, a traitor that supposedly...supposedly five or six young beautiful soldiers were killed trying to find him and get him back."	https://www.youtube.com/watch?v=ZL5dVEYLFiQ

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58	4-Apr-16	Milwaukee, WI	55m 11s	2m 40s	41m 33s	51m 49s	49m 9s	"We have Sergeant Bergdahl, right? We get Bergdahl, a traitor (crowd boos), no, no! Think of it, this is a same- this is a negotiation! We get Bergdahl, and they get, what do they get? Five of their most coveted killers that have been in jail for eight years in Gitmo, which we're not closing down, by the way, okay? We're going to run it a lot better (crowd cheers). So we get Bergdahl, a traitor, who five or six, probably six people were killed going out to try and get him back. He left, he's a traitor. So we get Bergdahl, and that's what we get, and they get five people that are right now back on the battlefield or soon to be back on the battlefield trying to kill everybody in sight, including us (points to crowd), okay?"	https://www.youtube.com/watch?v=oegg2phZhDY
59	10-Apr-16	Rochester, New York	1h 9m 7s	25s	35m 10s	53m 9s	52m 44s	"I talk about Sergeant Bergdahl. We get Bergdahl, a traitor, you know? We get a traitor, who by the way six people- at least, but six people, five known, but six people were killed looking for him. So we get Bergdahl and they get five of the people that they most coveted in Gitmo which we're keeping open by the way, 100%, then we'll fill it up. So they get five killers that they most coveted that they most wanted of anything, alright."	https://www.youtube.com/watch?v=NqRMaD3HWHo&t=2108s
60	3-Jun-16	Redding, CA	1h 7m 48s	1m 41s	38m 35s	47m 52s	46m 11s	"Sergeant Bergdahl, we get Bergdahl, they get five of the greatest killers that they have. They've been after them for nine years. I call him the five for one president."	https://www.c-span.org/video/?410524-1/donald-trump-campaigns-redding-california&start=2315
61	10-Jun-16	Richmond, VA	1h 34s	55s	21m 30s	45m 55s	45m	"Sergeant Bergdahl, we get Bergdahl, a traitor (crowd boos). We get Bergdahl, we get one, they get five of the greatest killers that they have in the world and those five people are back out there now trying to kill all of us and anybody else that walks near 'em. What the hell kind of a deal? That's a five for one President, we have a President that doesn't know what the hell he's doing, folks, I'm telling you."	https://www.youtube.com/watch?v=3qXEh8eQ7n8
62	14-Jun-16	Greensboro, NC	1h 32m 14s	30m 40s	1h 15m 10s	1h 23m 58s	53m 18s	"We don't win anymore. We don't win with Sergeant Bergdahl. Remember Sergeant Bergdahl? Remember? We get Bergdahl- this is a typical Obama trade, I call him the five-for-one president- we get Bergdahl and they get five of the worst killers that they wanted for nine years who are now back on the battlefield trying to kill everybody including this group right here (referring to those at the rally). I'm not gonna let it happen. We're not going to let it. This is the deal we make. And by the way, probably five and maybe six people, wonderful, young military people were killed looking for Bergdahl after he deserted, okay? Think of it. Now in the old days, you know what would have happened to him, right? Quickly. (Makes shooting rifle gesture) In the old days. Ten years ago, it wouldn't have been pretty but he would've lived. And today they're talking about maybe nothing's gonna happen to him. Because this is where we've come, this is where we've come to. We cannot continue to be politically correct we cannot continue with what's happening in our country is devastating, folks."	https://www.youtube.com/watch?v=IT3wG_Wz0Ho
63	12-Jul-16	Westfield, IN	1h 4m 44s	6m 28s	31m 40s	57m 15s	50m 47s	"I call Obama the five-for-one President. So we have a traitor named Sergeant Bergdahl. So Sergeant Bergdahl thinks he likes their way of life, obviously, 'Oh they have a wonderful way of life'. So one day he leaves we lose five and maybe six but five at least people looking for him. They were killed. They were killed by the enemy. They go out they're looking for him. They knew he left. Everybody with him they knew he left because he was all whacked out and a believer in them and not us. So they knew he left. So knowing that, in fact I think they had a Colonel and I believe a General talking to the people that knew him! And they told the Colonel and the General that he left, he deserted! Remember the old days? A deserter, what happened? (makes shooting rifle gesture) Bang. Twenty years ago it was (makes shooting rifle gesture) bang but slowly. Ten years ago it was long prison but today they're probably talking about nothing. That's where we've come. But I call him the five-for-one so we get Bergdahl, right, a traitor. They get five of the most vicious killers that they have that they've been after for nine years to get him out and they bring him and they're back on the battlefield trying to kill everybody including us."	https://www.youtube.com/watch?v=fsl2JvhHoqk
64	5-Aug-16	Green Bay, WI	1h 23m 24s	13m 49s	1h 16m 25s	1h 22m 17s	1h 8m 28s	"You tell me who makes these deals? It's like Sergeant Bergdahl, right? So we trade a dirty rotten traitor, where five or maybe even six people were killed when he deserted and we knew that they were killed and we knew he was a traitor. We trade for five of the greatest killers, the greatest killers in the Middle East. The five people that they wanted the most. That's our deal. So we get a traitor, and they get five people that are right now, most of them, already back on the battlefields trying to kill everybody including us. No more folks. It's called the five for one President right?"	https://www.c-span.org/video/?413593-1/donald-trump-endorses-speaker-ryan-ahead-primary&transcriptQuery=bergdahl&start=4582
65	9-Aug-16	Wilmington, NC	52m 27s	1m 34s	6m 15s	50m 22s	48m 48s	"Whether it's Sergeant Bergdahl where we get Bergdahl who was a traitor and they get five of the greatest killers they wanted for eight years. We get Bergdahl. I call it the five for one trade."	https://www.youtube.com/watch?v=alm_gtrdC_M
							TOTAL SPEECH TIME	46 HOURS 18 MINUTES 33 SECONDS	

1 protect that, so he sent it back to the folks who could be trusted to
2 take care of it for him.

3 Q. Now, a very sensitive and important subject.

4 A. Uh-huh [indicating an affirmative response]. They have all
5 been so far.

6 Q. You were not -- your appointment did not call for you to
7 look into the question of whether anyone died looking for Sergeant
8 Bergdahl, then-PFC Bergdahl, correct?

9 A. That is correct.

10 Q. Did you, in fact, look into that?

11 A. I did.

12 Q. Why?

13 A. I didn't deliberately look into it. I encountered, you
14 know, quite a bit of discussion about that during my interviews. You
15 know, there has been an awful lot that has been said about that in
16 the open-source press, allegations one way or another. A lot of his
17 platoon-mates and others, you know, were making those kinds of
18 allegations as well.

19 I had asked the appointing authority, you know, should I
20 investigate this because, really, this is something that, at the end
21 of the day, is going to have to be answered. I mean, if I was a
22 parent, I would want to know. Everybody should want to know. We
23 really ought to close that out. I was told, "No, you don't need to

1 do that, because Central Command is going to take care of that." So
2 I did not pursue finding information, deliberately asking and looking
3 for information along those lines, but a whole bunch of it came to me
4 just in the course of my investigation. My conclusion is that there
5 were no Soldiers killed who were deliberately looking and searching
6 for -- in an effort to deliberately search and look for Sergeant
7 Bergdahl. I did not find any evidence of that.

8 CDC: Colonel, I think that this would be a good break point that
9 will permit me to review my notes -- everybody could perhaps take a
10 comfort break -- and conclude my direct examination.

11 PHO: Okay. How much time do you need?

12 CDC: Oh, should we say, just 10 minutes?

13 PHO: Ten minutes will be fine.

14 CDC: Great.

15 PHO: We are in recess until 1120 by the clock up there again.

16 **[The Article 32 hearing recessed at 1108, 18 September 2015.]**

17 **[The Article 32 hearing was called to order at 1121, 18 September**
18 **2015.]**

19 PHO: All right. We are back on the record. The parties who
20 were present when the court [sic] was last in recess are again
21 present, to include the witness, Major General Dahl.

22 Mr. Fidell, you may proceed.