

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

UNITED STATES

v.

BERGDAHL, ROBERT BOWDRIE
(BOWE)
SGT, U.S. Army
Headquarters and Headquarters
Company
Special Troops Battalion,
Fort Bragg, North Carolina 28310

§
§
§
§
§
§
§
§
§
§

THIRD DEFENSE
MOTION TO COMPEL
(UNLAWFUL COMMAND INFLUENCE)

30 June 2016

RELIEF SOUGHT

In accordance with RCM 701(g)(3) and 906(b)(7), the Defense moves to compel production of the matters referred to in our 26 May, and 8 and 14 June 2016 discovery requests.

BURDEN OF PROOF AND STANDARD OF PROOF

As the moving party, the burden of proof is on the Defense by a preponderance of the evidence. RCM 905(c)(1).

FACTS

This case is among the most politically charged courts-martial in Army history. Attuned to the public and political pressure, Army officials have treated this case differently from those of other similarly situated accused Soldiers. As a result, the Defense has a duty to investigate all actions that reflect or may constitute unlawful command influence (UCI). Among the matters that must be investigated as a matter of effective assistance of counsel are the following:

U.S. v. Robert Bowdrie Bergdahl
Third Defense Motion To Compel (UCI)

1. An AR 15-6 investigation in which the investigating officer was asked to make frequent updates to Army leadership, including the Director of the Army Staff, the Chief of Staff of the Army, and the Secretary of the Army;
2. Documented interest in the progress of the prosecution of the case expressed by both the House and Senate Committees on Armed Services (HASC and SASC) to Army and DoD leaders;
3. Statements by Senator John S. McCain, a person subject to the UCMJ as a retired regular officer, and Chairman of SASC, that his committee (which confirms presidential-level appointments and the assignments and promotions of the Army's most senior officers) would conduct a hearing if SGT Bergdahl does not receive punishment;
4. Actions by Army leaders to influence the court-martial by blocking a security clearance of the lead civilian defense counsel;
5. Actions by Army leaders to delay or refuse to rule on request for ethics opinion from the DA Professional Conduct Council on the release of information, including the non-recusal of the TJAG on such action;
6. Unexplained actions causing this case to be transferred from U.S. Army North to Forces Command, a command that bears no relationship to the accused and which to knowledge of the defense, has never before convened a general court-martial;
7. The central control of this case by the Department of the Army, including taking unauthorized personnel actions against SGT Bergdahl such as extending his enlistment by 11 years but not allowing him to view documents related to those actions;
8. Actions by senior Army leaders after being briefed on the findings and recommendations of the AR 15-6 Investigating Officer, including top-down directives to subordinates;
9. Army TJAG personally sending a JAGC Colonel to a conference in Prague three weeks after the preferral of charges in April 2015, with instruction to monitor and report back on any remarks made by lead civilian defense counsel as a presenter at the conference;
10. Actions to chill the cooperation of potential witnesses with the defense team by members of the prosecution and/or government appellate legal team;

11. Actions by Army JAG leadership and assignment personnel to assign a special prosecution team to FORSCOM well in advance of any decision by a commander that the case merited preferral of charges; and
12. A willingness to bear any cost to prosecute the accused and to treat his case as a higher priority than any other criminal case in the Army, including diminishing the ability of other FORSCOM installations to prosecute serious crimes by requiring them to make 10 JAGC officers specially available to FORSCOM headquarters to augment the Bergdahl prosecution team in October 2015.

EVIDENCE

1. Enclosure 1 – Defense Discovery Request Pertaining to Unlawful Command Influence dated 26 May 2016
2. Enclosure 2 – Defense First Supplemental Discovery Request Pertaining to Unlawful Command Influence dated 8 June 2016
3. Enclosure 3 – Government Response to Defense Discovery Request Pertaining to Unlawful Command Influence dated 14 June 2016
4. Enclosure 4 – Redacted E-mails received through Defense FOIA request

LEGAL AUTHORITY

Kansas v. Ventris, 556 U.S. 586, 590 (2009)
Kimmelman v. Morrison, 477 U.S. 365, 384 (1986)
Strickland v. Washington, 466 U.S. 468, 474 (1984)
House v. Balkcom, 725 F.2d 608, 618 (11th Cir. 1984)
Moore v. United States, 432 F.2d 730, 735 (3d Cir. 1970)
United States v. O'Connor, 2016 CAAF LEXIS 369, *1 (C.A.A.F. May 13, 2016)
United States v. Stellato, 74 MJ 473, 476 (C.A.A.F. 2015)
L.R.M. v. Kastenber, 72 M.J. 364, 368 (C.A.A.F. 2013)
United States v. Nealy, 71 M.J. 73, 78 (C.A.A.F. 2012)
United States v. Stoneman, 57 M.J. 35, 41 (C.A.A.F. 2002)
United States v. Alves, 53 M.J. 286 (C.A.A.F. 2000)
United States v. Alves, 53 M.J. 286 (C.A.A.F. 2000)
United States v. Williams, 50 M.J. 436, 439 (C.A.A.F. 1999)
United States v. Biagase, 50 M.J. 143, 150 (C.A.A.F. 1999)
United States v. Dresen, 47 M.J. 122, 124 (C.A.A.F. 1997)
United States v. Argo, 46 M.J. 454, 459 (C.A.A.F. 1997)
United States v. Allen, 33 M.J. 209, 212 (C.M.A. 1991)
United States v. Scott, 24 M.J. 186, 192 (C.M.A. 1987)
Hutson v. United States, 42 C.M.R. 39 (C.M.A. 1970)

Article 37(a), UCMJ
Article 46, UCMJ
RCM 701(a)(2)(A),
RCM 701(a)(6),
RCM 701(e)
RCM 701(g)(3)
RCM 703(f)(1) and 703(f)(4)
RCM 905(c)(1)
RCM 906(b)(7)
ABA's Defense Function, Standard 4, 4-1 Duty to Investigate (3d ed.
1993)

ARGUMENT

The Government has refused to produce correspondence, including emails, between key government and military officials from the time SGT Bergdahl went missing on 30 June 2009 to the present. During that time, SGT Bergdahl allegedly left his post and was held captive for nearly five years. Additionally, high-level negotiations were conducted securing his release in exchange for five Taliban members detained at Guantanamo Bay. Upon release, SGT Bergdahl completed re-integration and debriefings, was administratively investigated, had charges preferred and participated in an Article 32, UCMJ, preliminary hearing. Contrary to the recommendation of the preliminary hearing officer, the convening authority referred the case to a general court-martial. The Government's refusal to produce correspondence relating to SGT Bergdahl during the period in question between key government and military officials has materially interfered with the defense's investigative efforts, particularly with respect to UCI.

1. Defense Duty to Investigate

The defense duty to investigate the facts and potential defenses of a pending case starts with common sense. If counsel does not know what potential witnesses will

say, what evidence exists, and what defenses may be applicable, they cannot adequately advise their client with respect to any aspect of the trial, including how to plead, appropriate forum, whether to testify, which witnesses to call and what trial strategy to employ. This is reflected in the ABA's Defense Function, Standard 4, 4-1

Duty to Investigate:

Defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction. The investigation should include efforts to secure information in the possession of the prosecution and law enforcement authorities. The duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty.

The cases make it clear that defense investigation and pretrial preparation is perhaps the most important aspect of defending an accused. The Third Circuit acknowledged the importance of pretrial investigation in Moore v. United States, 432 F.2d 730, 735 (3d Cir. 1970):

Adequate preparation for trial often may be a more important element in the effective assistance of counsel to which a defendant is entitled than the forensic skill exhibited in the courtroom. The careful investigation of a case and the thoughtful analysis of the information it yields may disclose evidence of which even the defendant is unaware and may suggest issues and tactics at trial which would otherwise not emerge.

In United States v. Alves, 53 M.J. 286 (C.A.A.F. 2000), the accused was involved in multiple alcohol-related incidents stemming from night of drinking, but could not remember the most significant one: loading a gun and pointing it at another Marine's head. During his guilty plea, he relied on the written witness statements and the NCIS report. Defense counsel did not interview any victims or witnesses to alcohol-related incidents, and relied upon the "written statements provide by the victims and witnesses."

U.S. v. Robert Bowdrie Bergdahl
Third Defense Motion To Compel (UCI)

Finding ineffective assistance of counsel, the Court of Appeals for the Armed Forces explained:

Under the facts and circumstances of this case, the trial defense counsel's performance was deficient because he failed to interview any witnesses or conduct any investigation. See Kimmelman v. Morrison, 477 U.S. 365, 384, 91 L. Ed. 2d 305, 106 S. Ct. 2574 (1986) ("Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary."). Although it may be reasonable in the circumstances of a particular case for counsel, without making further investigation, to rely upon a client's recollection of events and the pretrial statements of eyewitnesses before advising the client how to plead, this is not such a case. In the present case, the finite number of witnesses, the role of alcohol in the incident, and appellant's inability to remember critical moments of the offense, underscore the responsibility of the defense counsel to interview the witnesses prior to advising his client whether to plead guilty to the charges. Trial defense counsel's actions fell below the standard that "defense counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction." ABA Standards for Criminal Justice, Standard 4-4.1 (3d ed. 1993).

Denial of access to correspondence (including emails) related to SGT Bergdahl between personnel involved in the decision to refer this case to a court-martial prevents the defense from conducting the requisite investigation. Additionally, the defense's pretrial investigation is focused on individuals who, by their duty positions and the dates they held those positions, likely received or sent correspondence related to SGT Beergdahl. The Government has the ability to run a query for "Bergdahl" on the archived email accounts for each of the potential witnesses without requiring them to search their emails manually. Identifying this correspondence is essential to defense investigation to determine whether UCI has occurred.

2. Failure to Adequately Investigate is Potentially Ineffective Assistance of Counsel

Defense failure to adequately investigate SGT Bergdahl's case is ineffective assistance of counsel. While Alves held that an affirmative decision not to investigate by the defense counsel must be assessed for reasonableness considering the totality of the circumstances, such is not the present case. Here, defense counsel know they must investigate UCI at all stages of the case, especially given the political debate the case has sparked. The Government has refused to explain its denial of the defense's UCI-related discovery requests.

Failure to investigate defenses is ineffective. In United States v. Scott, 24 M.J. 186, 192 (C.M.A. 1987), defense counsel failed to investigate an alibi witness, in part because he believed the case would not go to trial. The Court held:

Viewing [the defense counsel's] performance in light of the prevailing professional norms, we can only conclude that it falls far short of reasonable competence. A defense counsel has "the duty . . . to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction." ABA Standards, The Defense Function, Standard 4-4.1 (2d ed. 1979). In many cases, "[p]retrial investigation is . . . the most critical stage of a lawyer's preparation." House v. Balkcom, 725 F.2d 608, 618 (11th Cir. 1984).

The same failure to investigate potential Unlawful Command Influence would fall far short of reasonable competence. The Court of Appeals for the Armed Forces just last month ordered a DuBay hearing where the accused claimed his "trial defense counsel were ineffective in failing to investigate alleged unlawful command influence in the preferral process." United States v. O'Connor, 2016 CAAF LEXIS 369, *1 (C.A.A.F. May 13, 2016).

At the core of the Sixth Amendment right to counsel is the right to “consult with an attorney and have [that attorney] investigate the case and prepare a defense for trial.” Kansas v. Ventris, 556 U.S. 586, 590 (2009). For counsel to be considered constitutionally effective they must investigate their cases. “The proper standard for judging attorney performance is that of reasonably effective assistance, considering all circumstances . . . [including] counsel’s duty to investigate.” Strickland v. Washington, 466 U.S. 468, 474 (1984). Counsel’s “investigat[ion of] a case” is the mechanism by which counsel discovers the evidence that they will offer to a court-martial. L.R.M. v. Kastenberg, 72 M.J. 364, 368 (C.A.A.F. 2013).

3. Defense has Burden to Demonstrate Unlawful Command Influence, Requiring Production of Requested Correspondence

Article 37(a), UCMJ, states: “No person subject to [the UCMJ] may attempt to coerce or, by any unauthorized means, influence the action of a court-martial . . . or any member thereof, in reaching the findings or sentence in any case” The mere appearance of UCI may be “as devastating to the military justice system as the actual manipulation of any given trial.” United States v. Ayers, 54 M.J. 85, 94-95 (C.A.A.F. 2000) (quoting United States v. Allen, 33 M.J. 209, 212 (C.M.A. 1991)).

The accused bears the initial burden of raising UCI as an issue. The initial burden is low, but requires more than mere allegation or speculation. United States v. Stoneman, 57 M.J. 35, 41 (C.A.A.F. 2002). The accused must initially present “some evidence” of UCI. Id. (quoting United States v. Biagase, 50 M.J. 143, 150 (C.A.A.F. 1999)). The burden then shifts to the Government to rebut an allegation by persuading the court beyond a reasonable doubt that: (1) the predicate facts do not exist; (2) the

facts do not constitute UCI; or (3) the UCI will not affect the findings or sentence.

Biagase, 50 M.J. at 151.

The Government denial, combined with several potential witnesses unresponsiveness or unwillingness to be interviewed by the defense, is a complete barrier to the defense's ability to carry out its duty to investigation potential UCI.

4. Discovery is Now the Only Means to Investigate the Case, Including UCI

Prior to the recent legislative changes, Article 32 provided the defense's best tool to investigate the case. In Hutson v. United States, 42 C.M.R. 39 (C.M.A. 1970) the accused filed a writ to have two FBI investigators to assist his defense team's investigation of the My Lai Massacre, for which he faced court-martial. In denying the motion, the court held:

[I]t should be noted that the pretrial investigation to which these charges have been referred is the accused's only practicable means of discovering the case against him. As such, his counsel is certainly entitled to interview the witnesses prior to the [Article 32] investigation and to make such preliminary investigations in connection with their appearance and the defense's own case as will enable him properly to represent his client. We are certain that he will be afforded the opportunity to do so and that the United States, in accordance with the usual military practice, will make available to him the statements and reports of investigation which have been utilized in connection with this prosecution.

For better or worse, Section 1702 of the National Defense Authorization Act for Fiscal Year 2014 limited the scope of the Article 32 Investigation to prevent it from become a discovery tool and retitled it a "preliminary hearing" instead of an "investigation."

Now, discovery requests and Article 46, UCMJ, provide the only means to investigate. The Court of Appeals for the Armed Forces has described the military justice system as being "a leader with respect to open discovery and disclosure of

exculpatory information to the defense.” United States v. Williams, 50 M.J. 436, 439 (C.A.A.F. 1999). Article 46 provides that “[t]he trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the President may prescribe.” The Rules for Court-Martial define the trial counsel’s obligations under Article 46. In United States v. Stellato, 74 MJ 473, 476 (C.A.A.F. 2015), the Court of Appeals for the Armed Forces listed these obligations:

First, each party shall have equal opportunity to interview witnesses and inspect evidence. R.C.M. 701(e), Manual Courts-Martial. Second, trial counsel shall, as soon as practicable, disclose to the defense the existence of exculpatory evidence known to the trial counsel. R.C.M. 701(a)(6), Manual Courts-Martial. Third, the Government must permit the defense to inspect any books, papers, documents, photographs, tangible objects, or copies of portions thereof, which are within the possession, custody, or control of military authorities, and which are **material to the preparation of the defense**. R.C.M. 701(a)(2)(A), Manual Courts-Martial. These discovery rules ensure compliance with the equal-access-to-evidence mandate in Article 46. In doing so, the rules aid the preparation of the defense and enhance the orderly administration of military justice. The parties to a court-martial should evaluate pretrial discovery and disclosure issues in light of this liberal mandate (emphasis added).

The defense’s ability to investigate is hamstrung by the Government’s cramped interpretation of these discovery rules. Rather than cooperating and producing correspondence that is material to the preparation of the defense, including the request for emails that relate to SGT Bergdahl, the Government has denied virtually every defense request without meaningful explanation. Over 95% of the Government’s Response to the individual requests where denied for the following reason:

The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

The Government uses this 25-word mantra as a talisman to deny in a cursory manner virtually all defense requests for correspondence relating to SGT Bergdahl without further explanation. It is contrary to common sense that an email or document pertaining to SGT Bergdahl in the possession of the government or military witness “is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.”

First, the document itself is likely to be relevant to multiple issues in addition to investigating UCI, including notification of SGT Bergdahl’s disappearance, the search, his POW status, the prisoner swap, SGT Bergdahl’s repatriation and reintegration, SGT Bergdahl’s unit of assignment, the investigations and briefings, and the ultimate decision to refer the case.

Second, it is inconceivable that an email related to SGT Bergdahl would not likely lead to relevant evidence. Such documents would reveal the pre-preferred attitudes of the Government witnesses with respect to potential legal consequences and potential actions regarding SGT Bergdahl’s alleged misconduct. Instead, the Government would have the Court believe that emails in the witnesses’ possession relating to SGT Bergdahl somehow would not be material to the preparation of the defense and not be related to his disappearance, POW status, release, investigation and, in the end, referral. If the government and military senior leaders’ correspondence related to SGT Bergdahl is not discoverable in this case, then no email in any case would ever be discoverable.

Finally, since the Government has charged that SGT Bergdahl has “wrongfully cause[d] search and recovery operations,” independently from the UCI argument, any

correspondence, including emails, from or to senior government and military personnel relating to SGT Bergdahl during the period of time when there were “search and recovery operations” are *prima facie* relevant, in addition to being material to the preparation of the defense. To argue otherwise simply defies logic.

The Defense requests this Court compel the information in the attached discovery requests, which have been denied by the Government, on the basis that such requests are discoverable, reasonable, and material to the preparation of the Defense. Each request will be detailed below.

ANALYSIS OF SPECIFIC REQUESTS

1. **Secretary of Defense Robert Gates:** Correspondence between 30 June 2009 and 1 July 2011. Dr. Gates was Secretary of Defense from 18 December 2006 to 1 July 2011.
 - a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. **Defense Reply:** Secretary Gates has personal knowledge of issues surrounding the initial disappearance, capture, search and recovery operations, legal status and efforts to return SGT Bergdahl. He was Secretary of Defense when SGT Bergdahl went missing on 30 June 2009 until 1 July 2011. This includes the period of time when the initial search efforts were underway. See Appendix – Chronology. Secretary Gates’s correspondence related to SGT Bergdahl on these and other matters, including emails he received, sent, or was on the “cc line,” is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
2. **Secretary of Defense Leon Panetta:** Correspondence between 1 July 2011 and 27 February 2013. Mr. Panetta was Secretary of Defense from 1 July 2011 to 27 February 2013.
 - a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

- b. Defense Reply:** Secretary Panetta has personal knowledge of issues surrounding the continued search and recovery operations, legal status and efforts to return SGT Bergdahl. He was Secretary of Defense from 1 July 2011 to 27 February 2013. This includes the period of time of on-going search/return efforts. Secretary Panetta's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- 3. Secretary of Defense Chuck Hagel:** Correspondence between 27 February 2013 and 17 February 2015. Mr. Hagel was Secretary of Defense from 27 February 2013 to 17 February 2015.

 - a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. Defense Reply:** Secretary Hagel has personal knowledge of issues surrounding the search and recovery operations, legal status, efforts to return SGT Bergdahl, the "five for one" trade, reintegration and debriefing, and the initial investigations. He was Secretary of Defense from 27 February 2013 to 17 February 2015. This includes the period of time on-going search and recovery efforts. Secretary Hagel's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- 4. Secretary of Defense Ashton Carter:** Correspondence between 17 February 2015 and the date of this request. Dr. Carter has been Secretary of Defense since 17 February 2015.

 - a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. Defense Reply:** Obviously, Dr. Carter has personal knowledge of issues surrounding the post-preferral, investigative, referral and post-referral matter related to SGT Bergdahl. He was appointed Secretary of Defense on 17 February 2015. Since then, this case has been in the investigative and prosecution stages. Secretary Carter's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

5. **Secretary of the Army Pete Geren:** Correspondence between 30 June 2009 and 21 September 2009. Mr. Geren was Secretary of the Army from 9 March 2007 and 21 September 2009.
 - a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. **Defense Reply:** Secretary Geren likely has personal knowledge of issues surrounding the disappearance, capture, and search and recovery operations for SGT Bergdahl. He was Secretary of the Army from 9 March 2007 to 21 September 2009. This includes the period of time when SGT Bergdahl went missing and early recovery efforts were underway. Secretary Geren's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

6. **Secretary of the Army John M. McHugh:** Correspondence 21 September 2009 and 1 November 2015. Mr. McHugh was Secretary of the Army from 21 September 2009 to 1 November 2015.
 - a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. **Defense Reply:** Secretary McHugh likely has personal knowledge of issues surrounding the disappearance, capture, search and recovery operations, legal status, efforts to return SGT Bergdahl, the "five for one" trade, reintegration and debriefing, the initial investigations, preferral and post-preferral matters. He was Secretary of the Army from 21 September 2009 to 1 November 2015. This includes the period of time from recovery efforts to preferral of charges. Secretary McHugh's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

7. **Secretary of the Army Eric Fanning:** Correspondence between 3 November 2015 and 11 January 2016, and from 17 May 2016 to the date of this Request. Secretary Fanning was the acting Secretary of the Army from 3 November 2015 to 11 January 2016. He was confirmed as Secretary of the Army on 17 May 2016.

- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. Defense Reply:** Secretary Fanning likely has personal knowledge of issues surrounding the investigations, referral of charges, and post-referral actions related to the case. He was the acting Secretary of the Army from 3 November 2015 to 11 January 2016. He was confirmed as Secretary of the Army on 17 May 2016. This includes the period of time from the pending investigations to post-referral actions. Secretary McHugh's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- 8. Acting Secretary of the Army Patrick Murphy:** Correspondence between 7 January 2016 and 18 May 2016. Mr. Murphy was acting Secretary of the Army from 7 January 2016 to 18 May 2016.

 - a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. Defense Reply:** Acting Secretary Murphy likely has personal knowledge of issues surrounding post-referral actions related to the case. He was the acting Secretary of the Army from 7 January 2016 to 18 May 2016. This includes the period of time involving post-referral actions. Secretary McHugh's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- 9. Director of Army Staff LTG William Grisoli:** Correspondence between 8 July 2013 and 7 July 2015, the time period that LTG Grisoli served in this position.

 - a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. Defense Reply:** LTG Grisoli likely has personal knowledge of issues surrounding search and recovery operations, legal status, efforts to return SGT Bergdahl, the "five for one" trade, reintegration and debriefing, the initial investigations and preferral and post-preferral matters. He was Director of the Army Staff from 8 July 2013 to 7 July 2015. This includes the period of time from search and recovery operations to preferral of charges and beyond. LTG Grisoli drafted the letter sending the case to

FORSCOM for adjudication. LTG Grisoli's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

10. Chairman of the Joint Chiefs of Staff ADM Michael Mullen:

Correspondence between 30 June 2009 and 30 September 2011. ADM Mullen was Chairman, Joint Chiefs of Staff, from 1 October 2007 to 30 September 2011.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: ADM Mullen likely has personal knowledge of issues surrounding the disappearance, capture, search and recovery operations, legal status, and efforts to return SGT Bergdahl. He was Chairman, Joint Chiefs of Staff, from 1 October 2007 to 30 September 2011. This includes the period of time from the initial disappearance to the search and recovery operations. ADM Mullen's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

11. Chairman of the Joint Chiefs of Staff Gen Martin Dempsey:

Correspondence between 1 October 2011 and 25 September 2015. GEN Dempsey was Chairman, Joint Chiefs of Staff, from 1 October 2011 to 25 September 2015.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: GEN Dempsey likely has personal knowledge of issues surrounding search and recovery operations, legal status, and efforts to return SGT Bergdahl, the "five for one" trade, reintegration and debriefing, the initial investigations, preferral and post-preferral matters. He was Chief of Staff of the Army from 11 April to 7 September 2011, and Chairman, Joint Chiefs of Staff, from 1 October 2011 to 25 September 2015. This includes the period of time from search and recovery operations near the time of the killing of Osama Bin Laden until post-preferral. GEN Dempsey's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

- c. **Defense Efforts:** On 17 June 2016 via e-mail, the Defense requested to interview GEN Dempsey and for him to provide e-mails related to SGT Bergdahl. On 27 June 2016, Defense received notice through trial counsel that GEN Dempsey's counsel notified them that GEN Dempsey declined the Defense interview request.

12. Chairman of the Joint Chiefs of Staff Gen Joseph Dunford:

Correspondence between 1 October 2015 and the date of this request. This search should also include emails that Gen Dunford received, sent or was a party to as the Commandant of the Marine Corps, in anticipation of his appointment as Chairman, Joint Chiefs of Staff. Gen Dunford was sworn in as Chairman, Joint Chiefs of Staff on 1 October 2015.

- a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. **Defense Reply:** Gen Dunford likely has personal knowledge of issues surrounding post-preferral matters, referral and post-referral matters. He was sworn in as Chairman, Joint Chiefs of Staff on 1 October 2015. This includes the period of time from post-preferral to present. Gen Dunford's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- c. **Defense Efforts:** On 16 June 2016 via e-mail, the Defense requested to interview Gen Dunford and for him to provide e-mails related to SGT Bergdahl. On 22 June 2016, Defense received notice from COL Michelle Ryan, Principal Deputy Legal Counsel, on behalf of the Chairman, that our request for an interview was declined.

13. Vice Chairman of the Joint Chiefs of Staff Gen James Cartwright:

Correspondence between 30 June 2009 and 3 August 2011. Gen Cartwright was Vice Chairman, Joint Chiefs of Staff, from 31 August 2007 to 3 August 2011.

- a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. **Defense Reply:** Gen Cartwright has personal knowledge of issues surrounding the disappearance, capture, search and recovery operations. He was Vice Chairman, Joint Chiefs of Staff, from 31 August 2007 to 3

August 2011. This includes the period of time from the initial disappearance through search and recovery operations. Gen Cartwright's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

- c. Defense Efforts:** On 16 June 2016 via e-mail, the Defense requested to interview Gen Cartwright and for him to provide e-mails related to SGT Bergdahl. On 28 June 2016, Defense interviewed Gen Cartwright with his counsel present. In that interview, Gen Cartwright indicated communications regarding SGT Bergdahl would have been done in person or by secured email via "red switch." Gen Cartwright was unable to recall if he sent or received any e-mails regarding SGT Bergdahl, but had no objection to the Government searching his archived e-mail accounts as long as he would have access to review the email and no classified materials were disclosed in a manner to damage national security.

14. Vice Chairman of the Joint Chiefs of Staff ADM James A. Winnefeld, Jr.: Correspondence between 4 August 2011 and 31 July 2015. ADM Winnefeld was Vice Chairman, Joint Chiefs of Staff, from 4 August 2011 to 31 July 2015.

- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. Defense Reply:** ADM Winnefeld has personal knowledge of issues surrounding the search and recovery operations, legal status, efforts to return SGT Bergdahl, the "five for one" trade, reintegration and debriefing, the initial investigations, preferral and post-preferral matters. He was Vice Chairman, Joint Chiefs of Staff, from 4 August 2011 to 31 July 2015. This includes the period of time from the search and recovery operations shortly after the killing of Osama Bin Laden through post-preferral matters. ADM Winnefeld's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- c. Defense Efforts:** On 28 June 2016 via e-mail, the Defense requested to interview ADM Winnefeld and for him to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.

15. Vice Chairman of the Joint Chiefs of Staff GEN Paul J. Selva: Correspondence between July 31, 2015 and the date of this Request. Gen Selva assumed duties as Vice Chairman, Joint Chiefs of Staff, on July 31, 2015.

- a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. **Defense Reply:** Gen Selva has personal knowledge of issues surrounding post-preferral matters, referral and post-referral matters. He assumed duties as Vice Chairman, Joint Chiefs of Staff, on July 31, 2015. This includes the period of time from post-preferral matters to present. Gen Selva's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- c. **Defense Efforts:** On 28 June 2016 via e-mail, the Defense requested to interview Gen Selva and for him to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.

16. Legal Advisor of the Joint Chiefs of Staff BG Richard C. Gross: Correspondence between 1 September 2011 until 30 September 2015. BG Gross served as Legal Advisor of the Joint Chiefs of Staff from about 1 September 2011 until about 30 September 2015.

- a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. **Defense Reply:** BG Gross has personal knowledge of issues surrounding the search and recovery operations, legal status, efforts to return SGT Bergdahl, the "five for one" trade, reintegration and debriefing, the initial investigations, referral and post-preferral matters. He served as Legal Advisor of the Joint Chiefs of Staff from about 1 September 2011 until about 30 September 2015. This includes the period of time from search and recovery operation a few months after the killing of Osama Bin Laden through post-preferral matters. BG Gross's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

17. Chief of Staff of the Army (CSA) GEN George Casey: Correspondence between 30 June 2009 and 10 April 2011. GEN Casey was CSA from 10 April 2007 to 10 April 2011.

- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. Defense Reply:** GEN Casey has personal knowledge of issues surrounding the search and recovery operations, legal status, and efforts to return SGT Bergdahl. He was CSA from 10 April 2007 to 10 April 2011. This includes the period of time from the initial disappearance through search and recovery operations. GEN Casey's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- 18. CSA GEN Martin Dempsey:** Correspondence between 30 June 2009 and 7 September 2011. This search should also include emails that GEN Dempsey received, sent or was a party to as the Commander, Training and Doctrine Command, in anticipation of his appointment as CSA. GEN Dempsey was CSA from 11 April to 7 September 2011.

See Item 11 above.
- 19. CSA GEN Raymond T. Odierno:** Correspondence between 7 September 2011 and 14 August 2015. This search should also include emails that GEN Odierno received, sent or was a party to as the Commander, U.S. Joint Forces Command, in anticipation of his appointment as CSA. GEN Odierno was CSA from 7 September 2011 to 14 August 2015.

 - a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. Defense Reply:** GEN Odierno has personal knowledge of issues surrounding the search and recovery operations, legal status, efforts to return SGT Bergdahl, the "five for one" trade, reintegration and debriefing, the initial investigations, preferral and post-preferral matters. He served as CSA from 7 September 2011 to 14 August 2015. This includes the period of time from search and recovery operation a few months after the killing of Osama Bin Laden through post-preferral matters. GEN Odierno's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- 20. CSA GEN Mark A. Milley:** Correspondence between 14 August 2015 and the date of this Request. GEN Milley assumed duties as CSA on 14 August 2015.

The Defense specifically requests all briefing materials provided to GEN Mark Milley concerning SGT Bergdahl's case in preparation for his confirmation hearing as CSA, and copies of any information exchanged between DoD officials and the SASC or any member of staffer thereof concerning SGT Bergdahl's case in advance of this confirmation hearing.

- a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. **Defense Reply:** GEN Milley has personal knowledge of issues surrounding the decision to have FORSCOM serve as the convening authority, both the AR 15-6 and Art. 32 investigations, preferral and post-preferral matters, referral and post-referral matters. He assumed duties as CSA on 14 August 2015, and prior GEN Milley was the Commander of FORSCOM from 15 August 2014 to 15 August 2015. This includes the period of time from the AR 15-6 investigation to the present. GEN Milley's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- c. **Defense Efforts:** On 16 June 2016 via e-mail, the Defense requested to interview GEN Milley and for him to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.

21. Vice Chief of Staff of the Army (VCSA) GEN Peter W. Chiarelli: Correspondence between 30 June 2009 and 31 January 2012. GEN Chiarelli was VCSA from 4 August 2008 to 31 January 2012.

- a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. **Defense Reply:** GEN Chiarelli has personal knowledge of issues surrounding the disappearance, capture, search and recovery operations. He served as VCSA from 4 August 2008 to 31 January 2012. This includes the period of time from the initial disappearance through search and recovery operations. GEN Chiarelli's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

22. VCSA GEN Lloyd J. Austin: Correspondence between 31 January 2012 and 8 March 2013. GEN Austin was VCSA from 31 January 2012 to 8 March 2013.

- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. Defense Reply:** GEN Austin has personal knowledge of issues surrounding the search and recovery operations, and the “five for one” trade. He was VSCA from 31 January 2012 to 8 March 2013. GEN Austin was also Commander, CENTCOM from 22 March 2013 to 30 March 2016. GEN Austin’s correspondence related to SGT Bergdahl, including emails he received, sent, or was on the “cc line,” regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
 - c. Defense Efforts:** On 16 June 2016 via e-mail, the Defense requested to interview GEN Austin and for him to provide e-mails related to SGT Bergdahl through the Corporate Secretary of United Technologies where he is a member of the board of directors. The firm’s Corporate Secretary noted he does not start his duties as a member of the board until September and noted no correspondence unrelated to the board will be forwarded.
- 23. VSCA GEN John F. Campbell:** Correspondence 8 March 2013 and 8 August 2014. GEN Campbell was VSCA from 8 March 2013 to 8 August 2014.

 - a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. Defense Reply:** GEN Campbell has personal knowledge of issues surrounding the search and recovery operations, the “five for one” trade, reintegration and debriefing, the initial investigation. He was VSCA from 8 March 2013 to 8 August 2014. Prior, he served as Commander, ISAF – RC(E), CJTF-101 (OEF XI) from 1 June 2010 to 31 May 2011. GEN Campbell’s correspondence related to SGT Bergdahl, including emails he received, sent, or was on the “cc line,” regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- 24. VSCA GEN Daniel B. Allyn:** Correspondence between 15 August 2014 and the date of this Request. GEN Allyn assumed the duties as VSCA on 15 August 2014.

 - a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

- b. Defense Reply:** GEN Allyn has personal knowledge of issues surrounding the search and recovery operations, the decision to have FORSCOM serve as the convening authority, the investigations, preferral and post-preferral matters, referral and post-referral matters. He assumed the duties as VCSA on 15 August 2014. Prior, GEN Allyn served as FORCSOM Commander from 10 May 2013 to 14 August 2014. Prior, GEN Allyn served Commander, ISAF – RC(E), CJTF-1 (OEF XII) from 1 May 2011 to 30 April 2012. GEN Allyn’s correspondence related to SGT Bergdahl, including emails he received, sent, or was on the “cc line,” regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- c. Defense Efforts:** On 16 June 2016 via e-mail, the Defense requested to interview GEN Allyn and for him to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.
- 25. Commander, U.S. Central Command (CENTCOM), GEN David H. Petraeus:** Correspondence between 30 June 2009 and 30 June 2010. GEN Petraeus was Commander, CENTCOM from 31 October 2008 to 30 June 2010.
- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. Defense Reply:** GEN Petraeus likely has personal knowledge of issues surrounding the initial disappearance, capture, search and recovery operations, legal status, and efforts to return SGT Bergdahl. He was Commander, CENTCOM from 31 October 2008 to 30 June 2010. This includes the period of time from disappearance through search and recovery operations near the time of the killing of Osama Bin Laden. GEN Petraeus’s correspondence related to SGT Bergdahl, including emails he received, sent, or was on the “cc line,” regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- 26. Acting Commander, CENTCOM, LtGen John R. Allen:** Correspondence between 30 June and 11 August 2010. LtGen Allen was *acting* Commander, CENTCOM from 30 June to 11 August 2010.
- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. Defense Reply:** LtGen Allen likely has personal knowledge of issues surrounding the search and recovery operations. He was the acting Commander, CENTCOM from 30 June to 11 August 2010. This includes

the period of time during search and recovery operations. LtGen Allen's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

27. Commander, CENTCOM, Gen James Mattis: Correspondence between 11 August 2010 and 22 March 2013. Gen Mattis was Commander, CENTCOM from 11 August 2010 to 22 March 2013.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: Gen Mattis likely has personal knowledge of issues surrounding the search and recovery operations. He was the Commander, CENTCOM from 11 August 2010 to 22 March 2013. This includes the period of time during search and recovery operations. Gen Mattis's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

28. Commander, CENTCOM, GEN Lloyd Austin: Correspondence 22 March 2013 and 1 June 2014. GEN Austin was Commander, CENTCOM from 22 March 2013 to 30 March 2016.

See Item 22 above.

29. Commander, ISAF – Regional Command East, CJTF-82 (OEF X), then-MG Curtis Scaparrotti: Correspondence between 30 June 2009 and 31 May 2010. Then-MG Scaparrotti was the Commander, ISAF – RC(E), CJTF-82 (OEF X) from 15 May 2009 to 31 May 2010.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: GEN Scaparrotti has personal knowledge of issues surrounding the initial disappearance, capture and search and recovery operations. He also has information regarding the decision to issue SGT Bergdahl a grant of immunity. He served as Commander, ISAF – RC(E), CJTF-82 (OEF X) from 15 May 2009 to 31 May 2010. GEN Allyn's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material

to the preparation of the defense, and likely calculated to lead to discoverable evidence.

c. Defense Efforts: In March 2016, GEN Scaparrotti agreed to be interviewed by the defense. There was confusion on timing, in part due to the time difference between the East Coast and Korea, and the interview did not happen as scheduled through no fault of GEN Scaparrotti. On 16 June 2016 via e-mail, the Defense again requested to interview GEN Scaparrotti and for him to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response, but expects that GEN Scaparrotti will again make himself available for an interview. In 2009, GEN Scaparrotti signed a grant of immunity related to this case, although it was not at the time delivered to SGT Bergdahl.

30. Commander, ISAF – Regional Command East, CJTF-101 (OEF XI), then-MG John F. Campbell: Correspondence between 1 June 2010 and 31 May 2011. Then-MG Campbell was Commander, ISAF – RC(E), CJTF-101 (OEF XI) from 1 June 2010 to 31 May 2011.

See Item 23 above.

31. Commander, ISAF – Regional Command East, CJTF-1 (OEF XII), then-MG Daniel B. Allyn: Correspondence between 1 May 2011 and 30 April 2012. Then-MG Allyn was Commander, ISAF – RC(E), CJTF-1 (OEF XII) from 1 May 2011 to 30 April 2012.

See Item 24 above.

32. Commander, ISAF – Regional Command East, CJTF-1 (OEF XII), then-MG William C. Mayville: Correspondence between 1 April 2012 and 31 March 2013. Then-MG Mayville was Commander, ISAF – RC(E), CJTF-1 (OEF XIII) from 1 April 2012 to about 31 March 2013.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: LTG Mayville has personal knowledge of issues surrounding the search and recovery operations. He served as Commander of ISAF – RC (E) from 1 April 2012 to about 31 March 2013. LTG Mayville's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

- c. Defense Efforts:** On 28 June 2016 via e-mail, the Defense requested to interview LTG Mayville and for him to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.
- 33. Commander, ISAF – Regional Command East, CJTF-101 (OEF XIV), then-MG James C. McConville:** Correspondence between 1 March 2013 and 28 February 2014. Then-MG McConville was Commander, ISAF – RC(E), CJTF-1 (OEF XIV) from 1 March 2013 and 28 February 2014.
- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. Defense Reply:** LTG McConville has personal knowledge of issues surrounding the search and recovery operations. He served as Commander of ISAF – RC (E) from 1 March 2013 to 28 February 2014. LTG Mayville’s correspondence related to SGT Bergdahl, including emails he received, sent, or was on the “cc line,” regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- c. Defense Efforts:** On 28 June 2016 via e-mail, the Defense requested to interview LTG McConville and for him to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.
- 34. Commander, ISAF – Regional Command East, CJTF-10 (OEF XV), then-MG Stephen J. Townsend:** Correspondence between 28 February 2014 and 1 June 2014. Then-MG Townsend was Commander, ISAF – RC(E), CJTF-10 (OEF XV) from 28 February and 4 November 2014, when CJTF and RC(E) inactivated.
- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. Defense Reply:** LTG Townsend has personal knowledge of issues surrounding the search and recovery operations and the “five for one” trade. He served as Commander of ISAF – RC (E) from 1 March 2013 to 28 February 2014. LTG Townsend’s correspondence related to SGT Bergdahl, including emails he received, sent, or was on the “cc line,” regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- c. Defense Efforts:** On 28 June 2016 via e-mail, the Defense requested to interview LTG Townsend and for him to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.

35. Commander, U.S. Army Central Command, LTG William G. Webster:

Correspondence 30 June 2009 and 31 May 2011. LTG Webster was Commander, U.S. Army Central Command from May 2009 to May 2011.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: LTG Webster has personal knowledge of issues surrounding the initial disappearance, capture and search and recovery operations. He served as Commander, U.S. Army Central Command from May 2009 to May 2011. LTG Webster's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

36. Commander, U.S. Army Central Command, then-LTG Vincent K. Brooks:

Correspondence between 1 May 2009 and 30 June 2013. Then-LTG Brooks was Commander, U.S. Army Central Command from May 2011 to June 2013.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: GEN Brooks has personal knowledge of issues surrounding the search and recovery operations. He served as Commander, U.S. Army Central Command from May 2011 to June 2013. GEN Brooks's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

c. Defense Efforts: On 16 June 2016, Defense requested an interview to interview GEN Brooks and for him to provide e-mails related to SGT Bergdahl. On 20 June 2016, COL Meredith, on behalf of GEN Brooks, indicated that GEN Brooks had no material information relevant to the case. COL Meredith did invite further inquiry if the Defense believed otherwise. On 29 June 2016, the Defense inquired further about information GEN Brooks had about search and recovery operations as the Army component commander for the AOR where SGT Bergdahl was captive. As of filing, Defense has received no additional response.

37. Commander, U.S. Army Central Command, LTG James L. Terry:

Correspondence between 1 June 2013 and 31 May 2014. LTG Terry was Commander, U.S. Army Central Command from June 2013 to November 2015.

- a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. **Defense Reply:** LTG Terry has personal knowledge of issues surrounding the search and recovery operations. He served as Commander, U.S. Army Central Command from June 2013 to November 2015. GEN Terry's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

38. Commander, U.S. European Command, Gen Phillip M. Breedlove:

Correspondence between 31 May and 13 July 2014. Gen Breedlove was Commander, U.S. European Command from 10 May 2013 to 3 May 2016.

- a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. **Defense Reply:** Gen Breedlove likely has personal knowledge of issues surrounding the reintegration and debriefing of SGT Bergdahl while being treated at LRMC in Germany. He served as Commander, U.S. European Command from 10 May 2013 to 3 May 2016. Gen Breedlove's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- c. **Defense Efforts:** On 16 June 2016, Defense requested an interview to interview Gen Breedlove and for him to provide e-mails related to SGT Bergdahl. On 20 June 2016, Mr. Dan Froehlich, on behalf of Gen Breedlove, indicated the defense must coordinate its request to interview him through the "office responsible for managing the case." On 20 June 2016, as instructed, Defense requested the prosecutor to make Gen Breedlove available. On 21 June 2016, the prosecutor denied the defense request for both the emails and to make Gen Breedlove available for an interview.

- 39. Commander, U.S. Army Europe, LTG Donald M. Campbell, Jr.:**
Correspondence between 31 May and 13 July 2014. LTG Campbell was Commander, U.S. Army Europe from 1 December 2012 to 5 November 2014.
- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. Defense Reply:** LTG Campbell likely has personal knowledge of issues surrounding the reintegration and debriefing of SGT Bergdahl while being treated at LRMC in Germany. He served as Commander, U.S. Army Europe from 1 December 2012 to 5 November 2014. LTG Campbell's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- 40. Commander, Europe Regional Medical Command (ERMC), BG Norvell V. Coots:** Correspondence between 31 May and 13 July 2014. BG Coots assumed command of ERMC on 22 May 2014.
- BG Coots agreed to an interview, and the Defense is satisfied they have received all materials and information material to the preparation of the defense from this potential witness.
- 41. Commander, Landstuhl Regional Medical Center (LRMC), COL Judith Lee:**
Correspondence between 31 May and 13 July 2014. COL Lee was Commander of LRMC from 28 May 2013 to 28 May 2015.
- COL Lee agreed to an interview, and the Defense is satisfied they have received all materials and information material to the preparation of the defense from this potential witness.
- 42. Commander, U.S. Army Forces Command, GEN Daniel B. Allyn:**
Correspondence between 31 May and 13 July 2014. GEN Allyn was Commander of FORSCOM from 10 May 2013 to 14 August 2014.
- See Item 24 above.**
- 43. Commander, U.S. Army Forces Command, GEN Mark A. Milley:**
Correspondence between 31 May and 13 July 2014. GEN Milley was Commander of FORSCOM from 15 August 2014 to 15 August 2015.
- See Item 20 above.**

44. Commander, U.S. Army Forces Command, GEN Robert B. Abrams:

Correspondence between 31 May and 13 July 2014. GEN Abrams assumed command of FORSCOM on 15 August 2015. The Defense specifically requests any materials from any persons provided to GEN Abrams in advance of the referral decision with information about SGT Bergdahl, Serial podcast, victim impact, or whether a court-martial was warranted.

- a. Government Response:** Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial. Without waiving said objection, upon information and belief
- b. Defense Reply:** The Defense has not received any of the requested E-mails containing the search term "Bergdahl." GEN Abrams has personal knowledge of the preferal and post-prefferal process, and the referral and post-referral matters in this case as the convening authority. E-mails related to SGT Bergdahl are essential to the investigation of unlawful command influence. GEN Abrams's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- c. Defense Efforts:** On 16 June 2016 via e-mail, the Defense requested to interview GEN Abrams and for him to provide e-mails related to SGT Bergdahl. On 20 June 2016, Defense received notice from COL Vanessa Berry that GEN Abrams declined the defense interview.

45. Director, Defense Intelligence Agency, LTG Michael T. Flynn:

Correspondence between 30 June 2009 and 2 August 2014. LTG Flynn served as Director of DIA between 24 July 2012 and 2 August 2014. He was Assistant Director of National Intelligence (September 2011 to 24 July 2012), and Director of Intelligence, ISAF (June 2009 to October 2010). We also request contact information for this potential witness.

- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. Defense Reply:** LTG Flynn likely has personal knowledge of issues surrounding the disappearance, capture, and search and recovery operations as a direct result from his various intelligence posts during SGT Bergdahl's captivity and ultimate release. LTG Flynn's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

46. U.S. Army Judge Advocate General (TJAG), LTG Scott C. Black:

Correspondence between 30 June and 1 October 2009. LTG Black was TJAG from 1 October 2005 to 1 October 2009.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: LTG Black likely has personal knowledge of issues surrounding the disappearance, capture and search and recovery operations as his role as TJAG and member of the Army Staff. LTG Black's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence. If the Government claims any of the communications are privileged, the Defense requests that the Government create a privilege log describing the documents or other items withheld from production. Defense requests this privilege log to contain the following as a minimum: 1) type of document (i.e. memorandum, email, letter, presentation); 2) name of the document's author; 3) names of the document's recipients; 4) document date; 5) title or description of the document; 6) subject matter of the document, and 7) the privilege claimed.

47. U.S. Army TJAG, LTG Dana Chipman: Correspondence between 1 October 2009 and 3 September 2013. LTG Chipman was TJAG from 1 October 2009 to 3 September 2013.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: LTG Chipman likely has personal knowledge of issues surrounding the search and recovery operations as his role as TJAG and member of the Army Staff. LTG Chipman's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence. If the Government claims any of the communications are privileged, the Defense requests that the Government create a privilege log (as outlined in Item 46 above) describing the documents or other items withheld from production.

48. U.S. Army TJAG, LTG Flora D. Darpino: Correspondence between 4 September 2013 the date of this Request. Additionally, Defense requests all correspondence related to (a) the approval, delay or disapproval of the 2015 request of Eugene R. Fidell for a TS-SCI security clearance in connection with

the preliminary hearing, and (b) the Defense's June 2015 request for an ethics interpretation from the Professional Conduct Council. LTG Darpino assumed the duties as TJAG on 4 September 2013.

- a. **Government Response:** Denied. The request is prohibited in accordance with R.C.M. 701(f), M.R.E. 502 and AR 27-26, Appendix B, paras. 1.6 and 1.13.
- b. **Defense Reply:** Correspondence of a lawyer does not automatically protect that document under the doctrine of attorney client privilege. Before a privilege can apply, the communication must be 1) made between privileged persons, 2) in confidence, and 3) for the purpose of seeking, obtaining or providing legal assistance to the client. As an Army Staff Officer, only those advisory communications are potentially privileged. Not covered are informational communications, communications where legal advice is not sought or where legal advice is not given. There being no objection to the necessity of the request being material to the preparation of the defense, the Defense requests LTG Darpino's correspondence related to SGT Bergdahl, including emails she received, sent, or was on the "cc line," regarding any matters. If the Government claims any of the communications are privileged, the Defense requests that the Government create a privilege log (as outlined in Item 46 above) describing the documents or other items withheld from production. Further, communications that are evidence of unlawful command influence would not be protected even if in the form of legal advice. Such communications would be evidence of a potential violation of Article 98, UCMJ, noncompliance with procedural rules.
- c. **Defense Efforts:** On 28 June 2016 via e-mail, the Defense requested to interview LTG Darpino and for her to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.

49. **U.S. Army Deputy Judge Advocate General (DJAG), MG Daniel V. Wright:** Correspondence between 30 June and 1 October 2009. MG Wright served as DJAG from 1 October 2005 to 1 October 2009.

- a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. **Defense Reply:** MG Wright likely has personal knowledge of issues surrounding the initial disappearance, capture, and search and recovery operations as his role as DJAG and member of the Army Staff. MG Wright's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material

to the preparation of the defense, and likely calculated to lead to discoverable evidence. If the Government claims any of the communications are privileged, the Defense requests that the Government create a privilege log (as outlined in Item 46 above) describing the documents or other items withheld from production.

50. U.S. Army DJAG MG Clyde J. Tate II: Correspondence between 1 October 2009 and 1 October 2013. MG Tate served as DJAG from 1 October 2009 to 1 October 2013.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: MG Tate likely has personal knowledge of issues surrounding the search and recovery operations as his role as DJAG and member of the Army Staff. MG Tate's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence. If the Government claims any of the communications are privileged, the Defense requests that the Government create a privilege log (as outlined in Item 46 above) describing the documents or other items withheld from production.

51. U.S. Army DJAG, MG Thomas E. Ayres: Correspondence between 1 October 2013 and the date of this Request. MG Ayres assumed the duties as DJAG on 1 October 2013.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: MG Ayres likely has personal knowledge of issues surrounding the search and recovery operations, the "five for one" trade, reintegration and debriefing, the investigations, preferral and post-preferral matters, referral and post-referral matters, as his role as DJAG and member of the Army Staff. Additionally, MG Ayres served as AJAG-MLO from about 1 October 2009 to about 3 August 2011. MG Ayres's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence. If the Government claims any of the communications are privileged, the Defense requests that the Government create a privilege log (as outlined in Item 46 above) describing the documents or other items withheld from production.

c. Defense Efforts: On 28 June 2016 via e-mail, the Defense requested to interview MG Ayers and for him to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.

52. U.S. Army Assistant Judge Advocate General for Military Law and Operations (AJAG-MLO), BG Malinda E. Dunn: Correspondence between 30 June and 1 October 2009. BG Dunn served as AJAG-MLO from about 1 October 2007 to about 1 October 2009.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: BG Dunn agreed to an interview, and the Defense is satisfied they have received all materials and information material to the preparation of the defense from this potential witness.

c. Defense Efforts: On 28 June 2016 via e-mail, the Defense requested to interview BG Dunn and for her to provide e-mails related to SGT Bergdahl. Within an hour, BG Dunn agreed to an interview with the Defense, and was interviewed on 29 June 2016.

53. AJAG-MLO, then-BG Thomas E. Ayres: Correspondence between about 1 October 2009 and about 3 August 2011. Then-BG Ayres served as AJAG-MLO from about 1 October 2009 to about 3 August 2011.

See Item 51 above.

54. AJAG-MLO, BG John W. Miller II: Correspondence between about 3 August 2011 and about 1 October 2013. BG Miller served as AJAG-MLO from about 3 August 2011 to about 1 October 2013.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: BG Miller likely has personal knowledge of issues surrounding the search and recovery operations, as his role as AJAG-MLO and member of the Army Staff. BG Miller's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence. If the Government claims any of the communications are privileged, the Defense requests that the Government create a privilege log (as outlined in Item 46 above) describing the documents or other items withheld from production.

55. AJAG-MLO, BG Paul S. Wilson: Correspondence between about 1 October 2013 and about 19 March 2015. BG Wilson served as AJAG-MLO from about 1 October 2013 to 19 March 2015.

- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. Defense Reply:** BG Wilson likely has personal knowledge of issues surrounding the search and recovery operations, the “five for one” trade, reintegration and debriefing, pre-preferral and referral matters and the investigations, as his role as AJAG-MLO and member of the Army Staff. BG Wilson’s correspondence related to SGT Bergdahl, including emails he received, sent, or was on the “cc line,” regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence. If the Government claims any of the communications are privileged, the Defense requests that the Government create a privilege log (as outlined in Item 46 above) describing the documents or other items withheld from production.
- c. Defense Efforts:** On 28 June 2016 via e-mail, the Defense requested to interview BG Wilson and for him to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.

56. AJAG-MLO, BG Stuart W. Risch: Correspondence between about 19 March 2015 and the date of this Request. BG Risch assumed the duties of AJAG-MLO on or about 19 March 2015.

- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. Defense Reply:** BG Risch likely has personal knowledge of issues surrounding the referral and post-referral matters, as his role as AJAG-MLO and member of the Army Staff. BG Risch’s correspondence related to SGT Bergdahl, including emails he received, sent, or was on the “cc line,” regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence. If the Government claims any of the communications are privileged, the Defense requests that the Government create a privilege log (as outlined in Item 46 above) describing the documents or other items withheld from production.
- c. Defense Efforts:** On 28 June 2016 via e-mail, the Defense requested to interview BG Risch and for him to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.

57. Commander, Special Troops Battalion, U.S. Army Forces Command, LTC

Peter Q. Burke: Correspondence between 12 January and 15 December 2015. LTC Burke served as Commander, STB, FORSCOM, between 12 January and 15 December 2015.

- a. **Government Response:** Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial. Without waiving said objection, upon information and belief, all material responsive to this request has already been provided.
- b. **Defense Reply:** LTC Burke, as the accuser, has personal knowledge about the pre-preferral process and referral of this case. His correspondence related to SGT Bergdahl, including emails he received, sent, or was on the “cc line,” regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence. Despite its response, the Government has not provided emails from or to LTC Burke generated from the term search “Bergdahl.”
- c. **Defense Efforts:** On 29 June 2016, Defense requested a follow-up interview with LTC Burke. As of filing, Defense has not received a response.

58. Chief of Staff, U.S. Army Forces Command, MG Jimmie Jay Wells:

Correspondence between 31 May 2014 and 15 December 2015. MG Wells assumed duties as COS FORSCOM on about 1 June 2014 and served in that capacity beyond 15 December 2015.

- a. **Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. **Defense Reply:** MG Wells has personal knowledge of issues surrounding the decision to make the FORSCOM Commander the convening authority, the two investigations, referral and post-referral matters, and referral and post referral matters. He served as the COS FORSCOM from about 1 June 2014 beyond 15 December 2015. MG Wells’ correspondence related to SGT Bergdahl, including emails he received, sent, or was on the “cc line,” regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
- c. **Defense Efforts:** On 28 June 2016, Defense requested an interview to interview MG Wells and for him to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.

59. Deputy Chief of Staff, U.S. Army Forces Command, COL John King:

Correspondence between 31 May 2014 and 15 December 2015. COL King served as Deputy COS, FORSCOM between 31 May 2014 and 15 December 2015.

a. Government Response: The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: COL King has personal knowledge of issues surrounding the decision to make the FORSCOM Commander the convening authority, the two investigations, preferral and post-preferral matters, and referral and post referral matters. He served as the Deputy COS FORSCOM from about 31 May 2014 to beyond 15 December 2015. COL King's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

c. Defense Efforts: On 28 June 2016, Defense requested an interview to interview COL King and for him to provide e-mails related to SGT Bergdahl. On 29 June 2016, COL King, through the trial counsel, declined to be interviewed.

60. Chief, Public Affairs, U.S. Army Forces Command, COL Daniel J. King:

Correspondence between 31 May 2014 and 15 December 2015. COL King served as FORSCOM PAO Chief between 31 May 2014 and 15 December 2015.

a. Government Response: Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: COL King has personal knowledge of the FORSCOM media plan and press release distribution plan. COL King's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.

61. Article 32 UCMJ Preliminary Hearing Officer, LTC Mark Visger:

Correspondence between 21 May 2015 and the date of this Request. LTC Visger served as the Article 32 Preliminary Hearing Officer (PHO) from 21 May to 5 October 2015.

- a. Government Response:** The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
 - b. Defense Reply:** LTC Visger has personal knowledge of issues surrounding the preliminary hearing. He served as the PHO. LTC Visger's correspondence related to SGT Bergdahl, including emails he received, sent, or was on the "cc line," regarding these and other matters, is material to the preparation of the defense, and likely calculated to lead to discoverable evidence.
 - c. Defense Efforts:** LTC Visger has been interviewed by the defense. On 28 June 2016, the Defense requested a follow-up interview. As of filing, Defense has received no response, although it is expected that the witness will cooperate.
- 62. Staff Judge Advocate, COL Vanessa Berry:** Correspondence during her time as Staff Judge Advocate of FORSCOM. COL Berry has served as Staff Judge Advocate for FORSCOM from January 2013 until the filing of this Request.

 - a. Government Response:** Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial, and is prohibited in accordance with R.C.M. 701(f), M.R.E. 502 and AR 27-26, Appendix B, paras. 1.6 and 1.13.
 - b. Defense Reply:** COL Berry has personal knowledge related to the investigations, the preferral and post-preferral matters, and the referral and post-referral matters. Correspondence of a lawyer does not automatically protect that document under the doctrine of attorney client privilege. Before a privilege can apply, the communication must be 1) made between privileged persons, 2) in confidence, and 3) for the purpose of seeking, obtaining or providing legal assistance to the client. As FORSCOM staff officer, only those advisory communications are potentially privileged. Not covered are informational communications, communications where legal advice is not sought or where legal advice is not given. The Defense requests COL Berry's correspondence related to SGT Bergdahl, including emails she received, sent, or was on the "cc line," regarding any matters. If the Government claims any of the communications are privileged, the Defense requests that the Government create a privilege log (as outlined in Item 46 above) describing the documents or other items withheld from production. Further, communications that are evidence of unlawful command influence would not be protected even if in the form of legal advice. Such communications would be evidence of a potential violation of Article 98, UCMJ, noncompliance with procedural rules.

c. **Defense Efforts:** On 28 June 2016 via e-mail, the Defense requested to interview COL Berry and for her to provide e-mails related to SGT Bergdahl. As of filing, Defense has received no response.

63. Correspondence between all trial counsel, whether detailed or assisting on *United States v. Bergdahl*, including but not limited to the judge advocates listed below between the date of their assistance in this case and the date of this Request in the following limited circumstances: **IF ANY THIRD PARTY (NON-TRIAL COUNSEL OR PROSECUTION EXPERT OR PARALEGAL) RECEIVED A COPY OF THE DOCUMENT OR WAS ON THE “TO”, “CC”, OR “BCC” LINE OF THE EMAIL, TO INCLUDE THE SJA (COL VANESSA BERRY), THE DSJA (LTC LUISA SANTIAGO OR MICHAEL LARSON) AND THE XO (LTC LANCE TURLINGTON), OR IF THE EMAIL WAS FORWARDED TO ANY THIRD PARTY TO INCLUDE THE SJA, DSJA, AND/OR XO.** Defense specifically requests a search of all e-mail either “to” or “from” **ALL TRIAL COUNSEL** to anyone, or where **ANY TRIAL COUNSEL** was on the “cc” or “bcc” line on a communication between any persons that contains the word “Bergdahl.” **ONLY THOSE EMAILS MEETING THE CRITERIA IN BOLD ABOVE ARE REQUESTED. THE DEFENSE DOES NOT REQUEST DOCUMENTS OR EMAILS THAT WERE SOLELY BETWEEN OR AMONG TRIAL COUNSEL OR PROSECUTION EXPERTS OR PARALEGALS, OR GENERATED BY SOLELY TRIAL COUNSEL AND NOT SHARED WITH THIRD PARTIES OUTSIDE OF THE PROSECUTION TEAM (INCLUDING EXPERTS AND PARALEGALS).** The judge advocates presently known to the Defense who have served in the *de jure* or *de facto* role of trial counsel in some capacity in *United States v. Bergdahl* include, but are not limited to, the following:

- a. MAJ Justin C. Oshana
- b. LTC Christian Beese
- c. MAJ Margaret Kurz
- d. MAJ Jerrod Fussnecker
- e. CPT Juan Agueda
- f. CPT Paul Reynaga
- g. CPT Kate Sickendick
- h. CPT Joel King
- i. CPT Eileen Whipple
- j. CPT Michael Petrusic
- k. 1LT Ann Rutherford
- l. Unknown/undisclosed document reviewers including CPT Amy Stone and approximately 10 additional judge advocates whose names are currently not known to the Defense, and other JAs who augmented the prosecution.

- a. Government Response:** Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial, and is prohibited in accordance with R.C.M. 701(f), M.R.E. 502 and AR 27-26, Appendix B, paras. 1.6 and 1.13.
- b. Defense Reply:** The Government has ignored the language of the request. “Writings by the Government counsel that were read or disclosed to any SJA or convening authority are not protected. A memorandum prepared for (or provided to) a convening authority or the convening authority’s staff judge advocate is no longer the privileged work product of the trial counsel who produced it. Neither the convening authority nor the staff judge advocate is the trial counsel’s client, nor are they part of the prosecution team. To the contrary, the convening authority is a quasi-judicial decision maker, see United States v. Nealy, 71 M.J. 73, 78 (C.A.A.F. 2012) (Baker, C.J. concurring), and the disclosure of materials considered by the convening authority when making a referral decision is explicitly required by the Rules for Courts-Martial, see R.C.M. 701(a)(1)(A). Similarly, a staff judge advocate “is not a prosecutor.” United States v. Argo, 46 M.J. 454, 459 (C.A.A.F. 1997). See also Article 6(c) (“No person who has acted as . . . trial counsel, assistant trial counsel . . . in any case may later act as a staff judge advocate or legal officer to any reviewing authority upon the same case.”). This is uncontroversial, as it is undeniable that both convening authority and staff judge advocate must “be, and appear to be, objective.” United States v. Dresen, 47 M.J. 122, 124 (C.A.A.F. 1997).” These lawyers have personal knowledge related to the investigations, the preferral and post-preferral matters, and the referral and post-referral matters. Correspondence of a lawyer does not automatically protect that document under the doctrine of attorney client privilege. Before a privilege can apply, the communication must be 1) made between privileged persons, 2) in confidence, and 3) for the purpose of seeking, obtaining or providing legal assistance to the client. However, if these writings are shared with outside individuals, they are no longer confidential or privileged. As FORSCOM staff officer, only those advisory communications are potentially privileged. Not covered are informational communications, communications where legal advice is not sought or where legal advice is not given. The Defense requests listed counsel’s correspondence related to SGT Bergdahl, including emails she received, sent, or was on the “cc line,” regarding any matters. If the Government claims any of the communications are privileged, the Defense requests that the Government create a privilege log for correspondence for each counsel (as outlined in Item 46 above) describing the documents or other items withheld from production. Further, communications that are evidence of unlawful command influence would not be protected even if in the form of legal advice. Such communications

U.S. v. Robert Bowdrie Bergdahl
Third Defense Motion To Compel (UCI)

would be evidence of a potential violation of Article 98, UCMJ, noncompliance with procedural rules.

- 64.** Any materials from any persons provided to GEN Abrams in advance of the referral decision with information about SGT Bergdahl, Serial podcast, victim impact, or whether a court-martial was warranted.
- a. Government Response:** All information responsive to this request has been provided.
- b. Defense Reply:** At this time, the Defense believes the Government has complied with this request, although the Defense has not received any information about the Serial podcast or victim impact information
- 65.** Production of the following emails that are in the possession of Colonel Joseph Berger, JA, OCLL, who was on the "To: CC: or From:" line for each:
- a.** unredacted email from [redacted], Senate Armed Service Committee member, to [redacted], COL USARMY HQDA OCLL, subject: Bergdahl Brief to [redacted], December 22 2014 1:51:54 PM
- b.** unredacted email from [redacted], MAJ USARMY HQDA OCLL, to [redacted], Armed Services, subject: Bergdahl Update RFI, August 26, 2014 6:04:30 PM
- c.** unredacted email from [redacted], COL USARMY HQDA OCLL, to MG Laura Richardson, subject: CCIR - HASC RFIs re SGT B, December 19, 2014, 3:41:00 PM
- d.** unredacted email from [redacted], CIV USARMY HQDA OCLL, to MG Laura Richardson, subject: CCIR - Notification Complete, March 25, 2015 2:16:29 PM
- e.** unredacted email from [redacted], COL USARMY HQDA OCLL, to [redacted], Armed Services, subject: CSA"s Testimony, January 28, 2015, 8:01:00 AM
- f.** unredacted email from [redacted], CIV USARMY HQDA OCLL, to MG Laura Richardson, subject: FW: Bergdahl brief, January 07, 2015, 11:13:35 AM
- g.** unredacted email from [redacted], COL USARMY HQDA OCLL, to [redacted], Armed Services, subject: FW: SEN McCain on SUS v Bergdahl, October 13, 2015, 12:35:00 PM

U.S. v. Robert Bowdrie Bergdahl
Third Defense Motion To Compel (UCI)

- h. unredacted email from [redacted], Armed Services, to [redacted], COL USARMY HQDA OCLL, subject: RE: CSA's Testimony, January 28 2015 9:01:14 AM
 - i. unredacted email from [redacted], CIV USARMY HQDA OCLL, to [redacted], Armed Services, subject: Interesting, June 8, 2015 8:30:25 AM
 - j. unredacted email from [redacted], CIV USARMY HQDA OCLL, to [redacted], Armed Services, subject: RE: Bergdahl [redacted], May 07 2015 2:01:28 PM
 - k. unredacted email from [redacted], COL USARMY HQDA OCLL, to MG Laura Richardson, subject: SLD Reception Wrap Up, September 10 2015 7:35:00 PM
 - l. unredacted email from [redacted], COL USARMY HQDA OCLL, to [redacted], LTC USARMY HQDA OCLL, subject: Update on hi-viz military justice case, November 04 2015 9:58:18 AM
- a. **Government Response:** Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.
- b. **Defense Reply:** The unredacted versions of the emails listed above are material to the preparation of the defense. They contain correspondence between members of Congress, their counsel, and Army representatives. This information has a direct bearing on the investigation of UCI and the issues outlined in the Facts section above.
- c. **Defense Efforts:** Attached are the emails disclosed to the defense pursuant to a FOIA Request. (Enclosure 4 – Redacted E-mails received through Defense FOIA request.)
66. All correspondence about SGT Bergdahl between the Department of Defense (DoD) and any component or office thereof and (HASC, to include its members and staff. On 14 June 2014 Chairman Buck McKeon asked DoD for ongoing disclosure of all intelligence reports relating to SGT Bergdahl, all final recommendations of reports concerning SGT Bergdahl, and all non-disclosure agreements signed by members of the armed forces relating to SGT Bergdahl.
- a. **Government Response:** This request was denied on 29 April 2016.
- b. **Defense Reply:** The requested correspondence is material to preparation of the defense. Such correspondence is part of the mosaic that demonstrates this case is centrally controlled, under extreme scrutiny with

onerous reporting requirements and supervision of senior government and military authorities. The requested information is an essential part of the investigation of the defense into possible UCI as noted above.

67. On 12 October 2015, a SASC spokesman wrote to The New York Times concerning statements made by Chairman McCain concerning SGT Bergdahl. The spokesman referred to the committee's "longstanding oversight of the entire matter of Sergeant Bergdahl, not just his conduct." We request copies of all communications between the Army and the committee (to include the committee's leadership, members, staff and congressional fellows) from May 31, 2014 to the present that in any way relate to SGT Bergdahl, as well as any documents summarizing, memorializing or reflecting oral communications. We request that the following offices carefully search their files for responsive records: Office of the Secretary of the Army, The Army Staff, OTJAG (to include the Criminal Law division), FORSCOM, Army Public Affairs, Army Congressional Liaison, Army Congressional Fellows, and CENTCOM.

a. Government Response: This request was denied on 29 April 2016.

b. Defense Reply: The requested correspondence is material to preparation of the defense. Such correspondence is part of the mosaic that demonstrates this case is centrally controlled, under extreme scrutiny with onerous reporting requirements and supervision of senior government and military authorities. The requested information is an essential part of the investigation of the defense into possible UCI as noted above. Clearly, statements of Sen. McCain, a person subject to the Code, are potentially UCI, especially when directed at the convening authority considering whether to follow his preliminary hearing officer's advice. Further, if the SASC is exercising oversight of the SGT Bergdahl case, prudence requires the Defense to explore such "oversight" as a component of UCI and such oversight is not authorized by law or regulation with respect to pending individual cases.

68. All communications between any member, committee or staff member of either House of Congress and the Office of the Secretary of Defense (including but not limited to the Office of Legislative Affairs) from May 31, 2014 to present that relate in any way to SGT Bergdahl, as well as any documents summarizing, memorializing or reflecting oral communications.

a. Government Response: Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

b. Defense Reply: The requested correspondence is material to preparation of the defense. Such correspondence is part of the mosaic that

demonstrates this case is centrally controlled, under extreme scrutiny with onerous reporting requirements and supervision of senior government and military authorities. The requested information is an essential part of the investigation of the defense into possible UCI as noted above.

Communications between members of Congress or their staff influencing or attempting to influence members of the Secretary of Defense regarding the case is highly irregular and demands investigation by the defense. Further, if the HASC is exercising oversight of the SGT Bergdahl case, prudence requires the Defense to explore such "oversight" as a component of UCI and such oversight is not authorized by law or regulation with respect to pending individual cases.

- 69.** Name, rank, and contact information of any military personnel who worked at OCLL or as Congressional Fellows (including, but not limited to, JAG officers) who fielded congressional inquiries about SGT Bergdahl. Copies of all inquiries from Congress or any committee or member thereof about SGT Bergdahl from 2009 to present, and copies of all responses from the Department of Defense or any component or office thereof to these inquiries.

a. Government Response: This request was denied on 29 April 2016.

b. Defense Reply: The requested information and correspondence is material to the preparation of the defense. Charged with investigating UCI, including the improper influence of Congress over this case, such information is part of the mosaic of central control and management of this case. The requested information is an essential part of the investigation of the defense into possible UCI unlawful as noted above.

- 70.** Documents concerning the detailing of LTC Christian Beese and MAJ Margaret Kurz to this case and to FORSCOM before any convening authority had decided whether preferral of charges was warranted. Name(s) of person(s) who coordinated this detailing. The Defense specifically requests any correspondence from personnel at PP&TO, including but not limited to COL Mark Maxwell, involving the detailing or assignment to counsel to assist the Government in this case.

a. Government Response: This request was denied on 29 April 2016.

b. Defense Reply: The requested information and correspondence is material to the preparation of the defense. The detailing of a team of trial counsel before a decision to prosecute demonstrates a pre-determined to send the case to a GCM. Names, dates and coordination of detailing would demonstrate the DA-level central control of the case. Ordinarily, the SJA at the local installation would make these detailing decisions. The requested

information is an essential part of the investigation of the defense into possible UCI as noted above.

CONCLUSION

For the foregoing reasons, the Court should compel the requested discovery.



WILL M. HELIXON
Civilian Defense Counsel



EUGENE R. FIDELL
Civilian Defense Counsel



FRANKLIN D. ROSENBLATT
LTC, JA
Individual Military Counsel



NINA S. BANKS
CPT, JA
Defense Counsel

I certify that I have served or caused to be served a true copy of the above on the Trial Counsel on 30 June 2016.



WILL M. HELIXON
Civilian Defense Counsel

Appendix: Chronology of Events

- On 30 June 2009, SGT Bergdahl allegedly leaves post.
- Early indicators were that SGT Bergdahl was taken to Miram Shah Pakistan.
- On 2 July 2009, then-MG Scaparrotti issued a grant of immunity for SGT Bergdahl.
- On 18 July 2009, the Taliban release a video of SGT Bergdahl.
- In December 2009, President Obama announces a surge of troops and announces they will start coming home 18-months later.
- On Christmas Day, 2009, another video of SGT Bergdahl is released calling Afghanistan “another Vietnam.”
- In 2010, a Pentagon investigation determines that SGT Bergdahl “walked away” from his unit, leading the military to downgrade their search efforts, leaving the executive branch to lead those efforts.
- On 7 April 2010, another video of SGT Bergdahl is released.
- On or about 20 February 2011, Marc Grossman is announced as the new Special Representative to Afghanistan and Pakistan, replacing the recently deceased Richard Holbrook.
- On 2 May 2011, U.S. Special Forces kill Osama Bin Laden, reigniting discussions on how to bring back SGT Bergdahl.
- On 12 June 2011, SGT Bergdahl was promoted to E-5.
- It was reported on 7 July 2012, that the Special Representative to Afghanistan and Pakistan Marc Grossman was warned by opponents to President Obama against trading five Taliban prisoners for SGT Bergdahl during an election year.
- On 6 September 2012, the Haqqani network, which is holding SGT Bergdahl, is labeled a terrorist organization.
- In October 2012, U.S. Army Staff was tasked by the Vice Chief of Staff to assist in the recovery of SGT Bergdahl.
- In April 2013, a six month audit of the recovery effort was conducted identifying two lines of effort pre-April 2013 which included the decentralized “secret”

U.S. v. Robert Bowdrie Bergdahl
Third Defense Motion To Compel (UCI)

recovery efforts and the US CENTCOM led DoD reintegration plan with extensive oversight.

- Post-April 2013, the recovery efforts included four lines of effort 1) forcing the Taliban to the negotiating table, 2) developing an alternative to the “five for one” including an effort to return all Western hostages, 3) enabling U.S. Government and OSD action, and 4) managing friction between efforts of SOCOM, the U.S. Army and the Department of State.
- On 10 May 2013, Ambassador James Dobbins replaces Marc Grossman as the Special Representative to Afghanistan and Pakistan.
- On 4 January 2014, Secretary Hagel receives a letter from Senator Kelly Ayotte noting “this June will mark five years since Bowe Bergdahl was captured by the Taliban [and] [a]fter so long in captivity, DoD must redouble its efforts to find Sergeant Bergdahl and return him safely to his family.”
- On 18 February 2014, Senator Mike Crapo (Idaho) tells CNN that securing SGT Bergdahl’s release is “the highest priority that I have in my office.”
- On 23 February 2014, Senator Crapo expressed doubts about an exchange for SGT Bergdahl.
- On 3 March 2014, Representative Duncan Hunter comments “It’s hard to imagine any circumstance where his captivity won’t be viewed as time served. The first order of business is securing his release and I don’t think it does an ounce of good to begin contemplating that far ahead when the focus is on getting him home.”
- On 31 May 2014, SGT Bergdahl is recovered in a five for one swap with the Taliban.
- On 1 June 2014, SGT Bergdahl began receiving treatment at Landstuhl Regional Medical Center in Germany.
- On 3 June 2014, Senator John McCain stated “this decision to bring SGT Bergdahl home – and we applaud that he is home – is ill-founded...it is a mistake, and it is putting lives of American servicemen and woman at risk. And that to me is unacceptable.”
- Also on 3 June 2014, General Martin Dempsey, Chairman of the Joint Chiefs of Staff commented that “our U.S. Army’s leaders will not look away from misconduct if it occurred.”

U.S. v. Robert Bowdrie Bergdahl
Third Defense Motion To Compel (UCI)

- On 4 June 2014, there was a classified briefing with some Senators regarding the decision to make the trade, including the viewing of a video.
- Also on 4 June 2014, Representative Duncan Hunter stated “as John Kerry threw his medals over the White House fence and turned his back on all of his Vietnam brothers and sisters, that’s what Bergdahl did. Bergdahl walked away from his men and he left them in a bad spot.”
- On 11 June 2014, Secretary Hagel was invited to testify in front of the House Armed Services Committee about SGT Bergdahl.
- On 6 - 7 August 2014, SGT Bergdahl makes a statement to MG Dahl as part of the AR 15-6 investigation.
- On 21 August 2014, after being flagged, SGT Bergdahl is awarded the Good Conduct Medal for exemplary behavior in the active military service from 12 June 2011 to 11 June 2014.
- In December 2014, MG Dahl briefed senior leaders of the Army and Pentagon on his findings, including General Dempsey and Secretary Hagel.
- On 20 January 2015, General Milley forwards the AR 15-6 investigation to his subordinate commanders for recommendations as to disposition.
- On 25 March 2015, charges were preferred against SGT Bergdahl.
- On 27 July 2015, the RCM 706 board released its conclusions diagnosing SGT Bergdahl with PTSD and Schizotypal Personality Disorder.
- On 5 August 2015, GEN Milley was confirmed as the new Chief of Staff of the Army.
- On 17 - 18 September 2015, the Article 32 Preliminary Hearing is conducted, with the report finalized on 5 October 2015 recommending no confinement referral to a special court-martial.
- On 11 October 2015, Senator McCain comments “if it comes out that [SGT Bergdahl] has not punishment, we’re going to have a hearing in the Senate Armed Services Committee.”
- On 14 December 2015, four days after the Serial podcast begins, GEN Abrams refers the charges to a General Court-Martial contrary to the recommendations of the two investigations he reviewed.
- On 22 December 2015, SGT Bergdahl was arraigned at Fort Bragg, NC.

SECOND JUDICIAL CIRCUIT, UNITED STATES ARMY
FORT BRAGG, NORTH CAROLINA

UNITED STATES

v.

BERGDAHL, ROBERT BOWDRIE
SGT, U.S. Army
Headquarters and Headquarters Company
Special Troops Battalion
U.S. Army Forces Command
Fort Bragg, NC 28310

Defense Discovery Request
Pertaining to Unlawful Command
Influence

26 May 2016

This is the Defense's first Discovery Request for items pertaining to Unlawful Command Influence.

A. INSTRUCTIONS/DEFINITIONS

1. The Accused, by and through his defense attorneys, hereby requests that the Government provide the following information with:
 - a. A written response to this request within 15 days from the receipt of this request. The Defense acknowledges the Memorial Day Holiday is within this time period and requests the Government issue such written response by 13 June 2016; and
 - b. Production of the requested matters; and
 - c. Notice of an inability or intent not to comply.
2. This requested evidence is relevant and material to the preparation of the defense and/or is exculpatory. The accused cannot properly provide effective assistance of counsel nor prepare for trial without the production of the documents and items requests. Requested information is information known, or should, with the exercise of due diligence, be known to the United States or its agents.
3. Production includes the opportunity to inspect, photograph, and photocopy.
4. For the purpose of this request, "correspondence" means "all correspondence, regardless of classification, including but not limited to: letters, memoranda, directives, instructions, PowerPoint presentations, briefings, and/or electronic mail (e-mail) messages, to include attachments, that contains the word "Bergdahl" or otherwise relates to SGT Robert B. Bergdahl, between the individual listed below

and any other person or entity.” Defense specifically requests a search of all e-mail either “to” or “from” the individual identified in each numbered paragraph below to or from anyone, or in which the individual identified in the request was on the “cc” or “bcc” line on a communication. This includes the individual’s inbox, outbox, drafts, “sent mail,” archived mail, deleted items, junk mail, or trash bin, and specifically created folders regardless of how labeled.

B. DOCUMENTS/TANGIBLE EVIDENCE

The Defense Requests the following correspondence:

1. **Secretary of Defense Robert Gates:** Correspondence between 30 June 2009 and 1 July 2011. Dr. Gates was Secretary of Defense from 18 December 2006 to 1 July 2011.
2. **Secretary of Defense Leon Panetta:** Correspondence between 1 July 2011 and 27 February 2013. Mr. Panetta was Secretary of Defense from 1 July 2011 to 27 February 2013.
3. **Secretary of Defense Chuck Hagel:** Correspondence between 27 February 2013 and 17 February 2015. Mr. Hagel was Secretary of Defense from 27 February 2013 to 17 February 2015.
4. **Secretary of Defense Ashton Carter:** Correspondence between 17 February 2015 and the date of this request. Dr. Carter has been Secretary of Defense since 17 February 2015.
5. **Secretary of the Army Pete Geren:** Correspondence between 30 June 2009 and 21 September 2009. Mr. Geren was Secretary of the Army from 9 March 2007 and 21 September 2009.
6. **Secretary of the Army John M. McHugh:** Correspondence 21 September 2009 and 1 November 2015. Mr. McHugh was Secretary of the Army from 21 September 2009 to 1 November 2015.
7. **Secretary of the Army Eric Fanning:** Correspondence between 3 November 2015 and 11 January 2016, and from 17 May 2016 to the date of this Request. Secretary Fanning was the acting Secretary of the Army from 3 November 2015 to 11 January 2016. He was confirmed as Secretary of the Army on 17 May 2016.
8. **Acting Secretary of the Army Patrick Murphy:** Correspondence between 7 January 2016 and 18 May 2016. Mr. Murphy was acting Secretary of the Army from 7 January 2016 to 18 May 2016.

9. **Director of Army Staff LTG William Grisoli:** Correspondence between 8 July 2013 and 7 July 2015, the time period that LTG Grisoli served in this position.
10. **Chairman of the Joint Chiefs of Staff ADM Michael Mullen:** Correspondence between 30 June 2009 and 30 September 2011. ADM Mullen was Chairman, Joint Chiefs of Staff, from 1 October 2007 to 30 September 2011.
11. **Chairman of the Joint Chiefs of Staff Gen Martin Dempsey:** Correspondence between 1 October 2011 and 25 September 2015. GEN Dempsey was Chairman, Joint Chiefs of Staff, from 1 October 2011 to 25 September 2015.
12. **Chairman of the Joint Chiefs of Staff Gen Joseph Dunford:** Correspondence between 1 October 2015 and the date of this request. This search should also include emails that Gen Dunford received, sent or was a party to as the Commandant of the Marine Corps, in anticipation of his appointment as Chairman, Joint Chiefs of Staff. Gen Dunford was sworn in as Chairman, Joint Chiefs of Staff on 1 October 2015.
13. **Vice Chairman of the Joint Chiefs of Staff GEN James Cartwright:** Correspondence between 30 June 2009 and 3 August 2011. Gen Cartwright was Vice Chairman, Joint Chiefs of Staff, from 31 August 2007 to 3 August 2011.
14. **Vice Chairman of the Joint Chiefs of Staff ADM James A. Winnefeld, Jr.:** Correspondence between 4 August 2011 and 31 July 2015. ADM Winnefeld was Vice Chairman, Joint Chiefs of Staff, from 4 August 2011 to 31 July 2015.
15. **Vice Chairman of the Joint Chiefs of Staff GEN Paul J. Selva:** Correspondence between July 31, 2015 and the date of this Request. Gen Selva assumed duties as Vice Chairman, Joint Chiefs of Staff, on July 31, 2015.
16. **Legal Advisor of the Joint Chiefs of Staff BG Richard C. Gross:** Correspondence between 1 September 2011 until 30 September 2015. BG Gross served as Legal Advisor of the Joint Chiefs of Staff from about 1 September 2011 until about 30 September 2015.
17. **Chief of Staff of the Army (CSA) GEN George Casey:** Correspondence between 30 June 2009 and 10 April 2011. GEN Casey was CSA from 10 April 2007 to 10 April 2011.
18. **CSA GEN Martin Dempsey:** Correspondence between 30 June 2009 and 7 September 2011. This search should also include emails that GEN Dempsey received, sent or was a party to as the Commander, Training and Doctrine

Command, in anticipation of his appointment as CSA. GEN Dempsey was CSA from 11 April to 7 September 2011.

19. **CSA GEN Raymond T. Odierno:** Correspondence between 7 September 2011 and 14 August 2015. This search should also include emails that GEN Odierno received, sent or was a party to as the Commander, U.S. Joint Forces Command, in anticipation of his appointment as CSA. GEN Odierno was CSA from 7 September 2011 to 14 August 2015.
20. **CSA GEN Mark A. Milley:** Correspondence between 14 August 2015 and the date of this Request. GEN Milley assumed duties as CSA on 14 August 2015. The Defense specifically requests all briefing materials provided to GEN Mark Milley concerning SGT Bergdahl's case in preparation for his confirmation hearing as Chief of Staff of the Army, and copies of any information exchanged between DoD officials and the SASC or any member of staffer thereof concerning SGT Bergdahl's case in advance of this confirmation hearing.
21. **Vice Chief of Staff of the Army (VCSA) GEN Peter W. Chiarelli:** Correspondence between 30 June 2009 and 31 January 2012. GEN Chiarelli was VCSA from 4 August 2008 to 31 January 2012.
22. **VCSA GEN Lloyd J. Austin:** Correspondence between 31 January 2012 and 8 March 2013. GEN Austin was VCSA from 31 January 2012 to 8 March 2013.
23. **VCSA GEN John F. Campbell:** Correspondence 8 March 2013 and 8 August 2014. GEN Campbell was VCSA from 8 March 2013 to 8 August 2014.
24. **VCSA GEN Daniel B. Allyn:** Correspondence between 15 August 2014 and the date of this Request. GEN Allyn assumed the duties as VCSA on 15 August 2014.
25. **Commander, U.S. Central Command (CENTCOM), GEN David H. Petraeus:** Correspondence between 30 June 2009 and 30 June 2010. GEN Petraeus was Commander, CENTCOM from 31 October 2008 to 30 June 2010.
26. **Acting Commander, CENTCOM, LtGen John R. Allen:** Correspondence between 30 June and 11 August 2010. LtGen Allen was *acting* Commander, CENTCOM from 30 June to 11 August 2010.
27. **Commander, CENTCOM, Gen James Mattis:** Correspondence between 11 August 2010 and 22 March 2013. Gen Mattis was Commander, CENTCOM from 11 August 2010 to 22 March 2013.
28. **Commander, CENTCOM, GEN Lloyd Austin:** Correspondence 22 March 2013 and 1 June 2014. GEN Austin was Commander, CENTCOM from 22 March 2013 to 30 March 2016.

29. **Commander, ISAF – Regional Command East, CJTF-82 (OEF X), then-MG Curtis Scaparrotti:** Correspondence between 30 June 2009 and 31 May 2010. Then-MG Scaparrotti was the Commander, ISAF – RC(E), CJTF-82 (OEF X) from 15 May 2009 to 31 May 2010.
30. **Commander, ISAF – Regional Command East, CJTF-101 (OEF XI), then-MG John F. Campbell:** Correspondence between 1 June 2010 and 31 May 2011. Then-MG Campbell was Commander, ISAF – RC(E), CJTF-101 (OEF XI) from 1 June 2010 to 31 May 2011.
31. **Commander, ISAF – Regional Command East, CJTF-1 (OEF XII), then-MG Daniel B. Allyn:** Correspondence between 1 May 2011 and 30 April 2012. Then-MG Allyn was Commander, ISAF – RC(E), CJTF-1 (OEF XII) from 1 May 2011 to 30 April 2012.
32. **Commander, ISAF – Regional Command East, CJTF-1 (OEF XII), then-MG William C. Mayville:** Correspondence between 1 April 2012 and 31 March 2013. Then-MG Mayville was Commander, ISAF – RC(E), CJTF-1 (OEF XIII) from 1 April 2012 to about 31 March 2013.
33. **Commander, ISAF – Regional Command East, CJTF-101 (OEF XIV), then-MG James C. McConville:** Correspondence between 1 March 2013 and 28 February 2014. Then-MG McConville was Commander, ISAF – RC(E), CJTF-1 (OEF XIV) from 1 March 2013 and 28 February 2014.
34. **Commander, ISAF – Regional Command East, CJTF-10 (OEF XV), then-MG Stephen J. Townsend:** Correspondence between 28 February 2014 and 1 June 2014. Then-MG Townsend was Commander, ISAF – RC(E), CJTF-10 (OEF XV) from 28 February and 4 November 2014, when CJTF and RC(E) inactivated.
35. **Commander, U.S. Army Central Command, LTG William G. Webster:** Correspondence 30 June 2009 and 31 May 2011. LTG Webster was Commander, U.S. Army Central Command from May 2009 to May 2011.
36. **Commander, U.S. Army Central Command, LTG Vincent K. Brooks:** Correspondence between 1 May 2009 and 30 June 2013. LTG Brooks was Commander, U.S. Army Central Command from May 2011 to June 2013.
37. **Commander, U.S. Army Central Command, LTG James L. Terry:** Correspondence between 1 June 2013 and 31 May 2014. LTG Terry was Commander, U.S. Army Central Command from June 2013 to November 2015.

38. **Commander, U.S. European Command, Gen Phillip M. Breedlove:**
Correspondence between 31 May and 13 July 2014. Gen Breedlove was Commander, U.S. European Command from 10 May 2013 to 3 May 2016.
39. **Commander, U.S. Army Europe, then-LTG Donald M. Campbell, Jr.:**
Correspondence between 31 May and 13 July 2014. Then-LTG Campbell was Commander, U.S. Army Europe from 1 December 2012 to 5 November 2014.
40. **Commander, Europe Regional Medical Command (ERMC), BG Norvell V. Coots:** Correspondence between 31 May and 13 July 2014. BG Coots assumed command of ERMC on 22 May 2014.
41. **Commander, Landstuhl Regional Medical Center (LRMC), COL Judith Lee:**
Correspondence between 31 May and 13 July 2014. COL Lee was Commander of LRMC from 28 May 2013 to 28 May 2015.
42. **Commander, U.S. Army Forces Command, GEN Daniel B. Allyn:**
Correspondence between 31 May and 13 July 2014. GEN Allyn was Commander of FORSCOM from 10 May 2013 to 14 August 2014.
43. **Commander, U.S. Army Forces Command, GEN Mark A. Milley:**
Correspondence between 31 May and 13 July 2014. GEN Milley was Commander of FORSCOM from 15 August 2014 to 15 August 2015.
44. **Commander, U.S. Army Forces Command, GEN Robert B. Abrams:**
Correspondence between 31 May and 13 July 2014. GEN Abrams assumed command of FORSCOM on 15 August 2015. The Defense specifically requests any materials from any persons provided to GEN Abrams in advance of the referral decision with information about SGT Bergdahl, Serial, victim impact, or whether a court-martial was warranted.
45. **Director, Defense Intelligence Agency, LTG Michael T. Flynn:**
Correspondence between 30 June 2009 and 2 August 2014. LTG Flynn served as Director of DIA between 24 July 2012 and 2 August 2014. He was Assistant Director of National Intelligence (September 2011 to 24 July 2012), and Director of Intelligence, ISAF (June 2009 to October 2010). We also request contact information for this potential witness.
46. **U.S. Army Judge Advocate General (TJAG), LTG Scott C. Black:**
Correspondence between 30 June and 1 October 2009. LTG Black was TJAG from 1 October 2005 to 1 October 2009.
47. **U.S. Army TJAG, LTG Dana Chipman:** Correspondence between 1 October 2009 and 3 September 2013. LTG Chipman was TJAG from 1 October 2009 to 3 September 2013.

48. **U.S. Army TJAG, LTG Flora D. Darpino:** Correspondence between 4 September 2013 the date of this Request. Additionally, Defense requests all correspondence related to (a) the approval, delay or disapproval of the 2015 request of Eugene R. Fidell for a TS-SCI security clearance in connection with the preliminary hearing, and (b) the Defense's June 2015 request for an ethics interpretation from the Professional Conduct Council. LTG Darpino assumed the duties as TJAG on 4 September 2013.
49. **U.S. Army Deputy Judge Advocate General (DJAG), MG Daniel V. Wright:** Correspondence between 30 June and 1 October 2009. MG Wright served as DJAG from 1 October 2005 to 1 October 2009.
50. **U.S. Army DJAG MG Clyde J. Tate II:** Correspondence between 1 October 2009 and 1 October 2013. MG Tate served as DJAG from 1 October 2009 to 1 October 2013.
51. **U.S. Army DJAG, MG Thomas E. Ayers:** Correspondence between 1 October 2013 and the date of this Request. MG Ayers assumed the duties as DJAG on 1 October 2013.
52. **U.S. Army Assistant Judge Advocate General for Military Law and Operations (AJAG-MLO), BG Malinda E. Dunn:** Correspondence between 30 June and 1 October 2009. BG Dunn served as AJAG-MLO from about 1 October 2007 to about 1 October 2009.
53. **AJAG-MLO, then-BG Thomas E. Ayers:** Correspondence between about 1 October 2009 and about 3 August 2011. Then-BG Ayers served as AJAG-MLO from about 1 October 2009 to about 3 August 2011.
54. **AJAG-MLO, BG John W. Miller II:** Correspondence between about 3 August 2011 and about 1 October 2013. BG Miller served as AJAG-MLO from about 3 August 2011 to about 1 October 2013.
55. **AJAG-MLO, BG Paul S. Wilson:** Correspondence between about 1 October 2013 and about 19 March 2015. BG Wilson served as AJAG-MLO from about 1 October 2013 to 19 March 2015.
56. **AJAG-MLO, BG Stuart W. Risch:** Correspondence between about 19 March 2015 and the date of this Request. BG Risch assumed the duties of AJAG-MLO on or about 19 March 2015.
57. **Commander, Special Troops Battalion, U.S. Army Forces Command, LTC Peter Q. Burke:** Correspondence between 12 January and 15 December 2015. LTC Burke served as Commander, STB, FORSCOM, between 12 January and 15 December 2015.

58. **Chief of Staff, U.S. Army Forces Command, MG Jimmie Jaye Wells:**
Correspondence between 31 May 2014 and 15 December 2015. MG Wells assumed duties as COS FORSCOM on about 1 June 2014 and served in that capacity beyond 15 December 2015.
59. **Deputy Chief of Staff, U.S. Army Forces Command, COL John King:**
Correspondence between 31 May 2014 and 15 December 2015. COL King served as Deputy COS, FORSCOM between 31 May 2014 and 15 December 2015.
60. **Chief, Public Affairs, U.S. Army Forces Command, COL Daniel J. King:**
Correspondence between 31 May 2014 and 15 December 2015. COL King served as FORSCOM PAO Chief between 31 May 2014 and 15 December 2015.
61. **Article 32 UCMJ Preliminary Hearing Officer, LTC Mark Visger:**
Correspondence between 21 May 2015 and the date of this Request. LTC Visger served as the Article 32 Preliminary Hearing Officer from 21 May to 5 October 2015.
62. **Staff Judge Advocate, COL Vanessa Berry:** Correspondence during her time as Staff Judge Advocate of FORSCOM. COL Berry has served as the Staff Judge Advocate from FORSCOM from January 2013 until the filing of this Request.
63. Correspondence between all trial counsel, whether detailed or assisting on *United States v. Bergdahl*, including but not limited to the judge advocates listed below between the date of their assistance in this case and the date of this Request in the following limited circumstances: **IF ANY THIRD PARTY (NON-TRIAL COUNSEL OR PROSECUTION EXPERT OR PARALEGAL) RECEIVED A COPY OF THE DOCUMENT OR WAS ON THE "TO", "CC", OR "BCC" LINE OF THE EMAIL, TO INCLUDE THE SJA (COL VANESSA BERRY), THE DSJA (LTC LUISA SANTIAGO OR MICHAEL LARSON) AND THE XO (LTC LANCE TURLINGTON), OR IF THE EMAIL WAS FORWARDED TO ANY THIRD PARTY TO INCLUDE THE SJA, DSJA, AND/OR XO.** Defense specifically requests a search of all e-mail either "to" or "from" **ALL TRIAL COUNSEL** to anyone, or where **ANY TRIAL COUNSEL** was on the "cc" or "bcc" line on a communication between any persons that contains the word "Bergdahl." **ONLY THOSE EMAILS MEETING THE CRITERIA IN BOLD ABOVE ARE REQUESTED. THE DEFENSE DOES NOT REQUEST DOCUMENTS OR EMAILS THAT WERE SOLELY BETWEEN OR AMONG TRIAL COUNSEL OR PROSECUTION EXPERTS OR PARALEGALS, OR GENERATED BY SOLELY TRIAL COUNSEL AND NOT SHARED WITH THIRD PARTIES OUTSIDE OF THE PROSECUTION TEAM (INCLUDING EXPERTS AND PARALEGALS).** The judge advocates presently known to the Defense who have served in the *de jure* or *de facto* role of trial counsel in some

capacity in *United States v. Bergdahl* include, but are not limited to, the following:

- a. MAJ Justin C. Oshana
 - b. LTC Christian Beese
 - c. MAJ Margaret Kurz
 - d. MAJ Jerrod Fussnecker
 - e. CPT Juan Agueda
 - f. CPT Paul Reynaga
 - g. CPT Kate Sickendick
 - h. CPT Joel King
 - i. CPT Eileen Whipple
 - j. CPT Michael Petrusic
 - k. 1LT Ann Rutherford
 - l. Unknown/undisclosed document reviewers including CPT Amy Stone and approximately 10 additional judge advocates whose names are currently not known to the Defense, and other JAs who augmented the prosecution.
64. Any materials from any persons provided to GEN Abrams in advance of the referral decision with information about SGT Bergdahl, Serial, victim impact, or whether a court-martial was warranted.
65. Production of the following emails that are in the possession of Colonel Joseph Berger, JA, OCLL, who was on the "To: CC: or From:" line for each:
- a. unredacted email from [redacted], Senate Armed Service Committee member, to [redacted], COL USARMY HQDA OCLL, subject: Bergdahl Brief to [redacted], December 22 2014 1:51:54 PM
 - b. unredacted email from [redacted], MAJ USARMY HQDA OCLL, to [redacted], Armed Services, subject: Bergdahl Update RFI, August 26, 2014 6:04:30 PM
 - c. unredacted email from [redacted], COL USARMY HQDA OCLL, to MG Laura Richardson, subject: CCIR - HASC RFIs re SGT B, December 19, 2014, 3:41:00 PM
 - d. unredacted email from [redacted], CIV USARMY HQDA OCLL, to MG Laura Richardson, subject: CCIR - Notification Complete, March 25, 2015 2:16:29 PM
 - e. unredacted email from [redacted], COL USARMY HQDA OCLL, to [redacted], Armed Services, subject: CSA's Testimony, January 28, 2015, 8:01:00 AM

- f. unredacted email from [redacted], CIV USARMY HQDA OCLL, to MG Laura Richardson, subject: FW: Bergdahl brief, January 07, 2015, 11:13:35 AM
 - g. unredacted email from [redacted], COL USARMY HQDA OCLL, to [redacted], Armed Services, subject: FW: SEN McCain on SUS v Bergdahl, October 13, 2015, 12:35:00 PM
 - h. unredacted email from [redacted], Armed Services, to [redacted], COL USARMY HQDA OCLL, subject: RE: CSA's Testimony, January 28 2015 9:01:14 AM
 - i. unredacted email from [redacted], CIV USARMY HQDA OCLL, to [redacted], Armed Services, subject: Interesting, June 8, 2015 8:30:25 AM
 - j. unredacted email from [redacted], CIV USARMY HQDA OCLL, to [redacted], Armed Services, subject: RE: Bergdahl [redacted], May 07 2015 2:01:28 PM
 - k. unredacted email from [redacted], COL USARMY HQDA OCLL, to MG Laura Richardson, subject: SLD Reception Wrap Up, September 10 2015 7:35:00 PM
 - l. unredacted email from [redacted], COL USARMY HQDA OCLL, to [redacted], LTC USARMY HQDA OCLL, subject: Update on hi-viz military justice case, November 04 2015 9:58:18 AM
66. All correspondence about SGT Bergdahl between the Department of Defense (DoD) and any component or office thereof and the House Armed Services Committee (HASC), to include its members and staff. On 14 June 2014 the Chairman Buck McKeon asked DoD for ongoing disclosure of all intelligence reports relating to SGT Bergdahl, all final recommendations of reports concerning SGT Bergdahl, and all non-disclosure agreements signed by members of the armed forces relating to SGT Bergdahl.
67. On 12 October 2015, a spokesman for the Senate Armed Services Committee wrote to The New York Times concerning statements made by Chairman John McCain concerning SGT Bergdahl. The spokesman referred to the committee's "longstanding oversight of the entire matter of Sergeant Bergdahl, not just his conduct." We request copies of all communications between the Army and the committee (to include the committee's leadership, members, staff and congressional fellows) from May 31, 2014 to present that in any way relate to SGT Bergdahl, as well as any documents summarizing, memorializing or reflecting oral communications. We request that the following offices carefully search their files for responsive records: Office of the Secretary of the Army, The Army Staff, OTJAG (to include the Criminal Law division), FORSCOM,

Army Public Affairs, Army Congressional Liaison, Army Congressional Fellows, and CENTCOM.

68. All communications between any member, committee or staff member of either House of Congress and the Office of the Secretary of Defense (including but not limited to the Office of Legislative Affairs) from May 31, 2014 to present that relate in any way to SGT Bergdahl, as well as any documents summarizing, memorializing or reflecting oral communications
69. Name, rank, and contact information of any military personnel who worked at OCLL or as Congressional Fellows (including, but not limited to, JAG officers) who fielded congressional inquiries about SGT Bergdahl. Copies of all inquiries from Congress or any committee or member thereof about SGT Bergdahl from 2009 to present, and copies of all responses from Department of Defense or any component or office thereof to these inquiries.
70. Documents concerning the detailing of LTC Christian Beese and MAJ Margaret Kurz to this case and to FORSCOM before any convening authority had decided whether preferral of charges was warranted. Name(s) of person(s) who coordinated this detailing. The Defense specifically requests any correspondence from personnel at PP&TO including but not limited to COL Mark Maxwell involving the detailing or assignment to counsel to assist the Government in this case.

C. CONCLUSION

The discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discovery is served upon the Government. Immediate notification is requested on all items the Government is unable or unwilling to produce. The Defense reserves the right to make additional and continuing discovery requests pertaining to Unlawful Command Influence.



WILL M. HELIXON
Civilian Defense Counsel



EUGENE R. FIDELL *for*
Civilian Defense Counsel



FRANKLIN D. ROSENBLATT *for*
LTC, JA
Individual Military Counsel



NINA S. BANKS *for*
CPT, JA
Defense Counsel

I certify that I have served or caused to be served a true copy of the above on the Trial Counsel on 26 MAY 2016.

A handwritten signature in black ink, appearing to read 'NINA S. BANKS', written in a cursive style.

NINA S. BANKS
CPT, JA
Defense Counsel

SECOND JUDICIAL CIRCUIT, UNITED STATES ARMY
FORT BRAGG, NORTH CAROLINA

UNITED STATES

v.

BERGDAHL, ROBERT BOWDRIE
SGT, U.S. Army
Headquarters and Headquarters Company
Special Troops Battalion
U.S. Army Forces Command
Fort Bragg, NC 28310

Defense First Supplemental
Discovery Request Pertaining to
Unlawful Command Influence

8 June 2016

This is the Defense's First Supplemental Discovery Request for items pertaining to Unlawful Command Influence.

A. INSTRUCTIONS/DEFINITIONS

1. The Accused, by and through his defense attorneys, hereby requests that the Government provide the following information with:
 - a. A written response to this request within 7 days from the receipt of this request; and
 - b. Production of the requested matters; and
 - c. Notice of an inability or intent not to comply.
2. This requested evidence is relevant and material to the preparation of the defense and/or is exculpatory. The accused cannot properly provide effective assistance of counsel nor prepare for trial without the production of the documents and items requests. Requested information is information known, or should, with the exercise of due diligence, be known to the United States or its agents.
3. Production includes the opportunity to inspect, photograph, and photocopy.
4. For the purpose of this request, "correspondence" means "all correspondence, regardless of classification, including but not limited to: letters, memoranda, directives, instructions, PowerPoint presentations, briefings, and/or electronic mail (e-mail) messages, to include attachments, that contains the word "Bergdahl" or otherwise relates to SGT Robert B. Bergdahl, between the individual listed below and any other person or entity." Defense specifically requests a search of all e-mail either "to" or "from" the individual identified in each numbered paragraph below to or

from anyone, or in which the individual identified in the request was on the “cc” or “bcc” line on a communication. This includes the individual’s inbox, outbox, drafts, “sent mail,” archived mail, deleted items, junk mail, or trash bin, and specifically created folders regardless of how labeled.

B. DOCUMENTS/TANGIBLE EVIDENCE

The Defense Requests the following correspondence:

1. **LTC Lawrence (Larry) Edell** – Any emails, correspondence or written communications concerning Bergdahl to or from LTC Lawrence (Larry) Edell, Deputy Legal Counsel, Office of the Chairman of the Joint Chiefs of Staff, from 02 Feb 2016 – present.
2. **COL Mark Sydenham** – Any emails, correspondence or written communications concerning Bergdahl to or from COL Mark Sydenham, Government Appellate Division, from 02 Feb 2016 to present.
3. **CPT Jihan Walker** – Any emails, correspondence or written communications concerning Bergdahl to or from CPT Jihan Walker, Government Appellate Division, from 02 Feb 2016 to present.
4. **CPT Carling Dunham** – Any emails, correspondence or written communications concerning Bergdahl to or from CPT Carling Dunham, Government Appellate Division, from 02 Feb 2016 to present.
5. **Lt. Col. Darryl Insley** – Any emails, correspondence or written communications concerning Bergdahl to or from Lt Col Darryl Insley, USAF, from 09 Sept 2015 to present.
6. **MAJ Keith Sandoval** – Any emails, correspondence or written communications concerning Bergdahl to or from MAJ Keith Sandoval, U.S. Army, from 09 Sept 2015 to present.

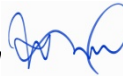
C. CONCLUSION

The discovery request is continuing and shall apply to any additional charges or specifications that may be preferred after this request for discovery is served upon the Government. Immediate notification is requested on all items the Government is unable or unwilling to produce. The Defense reserves the right to make additional and

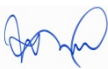
continuing discovery requests pertaining to Unlawful Command Influence as it discovers additional witnesses.




WILL M. HELIXON
Civilian Defense Counsel

///Signed for/// 

EUGENE R. FIDELL
Civilian Defense Counsel

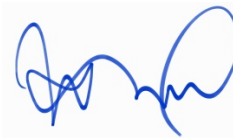
////Signed for/// 

FRANKLIN D. ROSENBLATT
LTC, JA
Individual Military Counsel

////signed for/// 

NINA S. BANKS
CPT, JA
Defense Counsel

I certify that I have served or caused to be served a true copy of the above on the Trial Counsel on 8 June 2016.



WILL M. HELIXON
Civilian Defense Counsel

**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 Discovery Request
BERGDAHL, ROBERT BOWDRIE)	Pertaining to Unlawful Command
(BOWE))	Influence
SGT, U.S Army)	
HHC, Special Troops Battalion)	14 June 2016
U.S. Army Forces Command)	
Fort Bragg, North Carolina 28310)	

The Government responds as follows to the Defense's Discovery Request Pertaining to Unlawful Command Influence, dated 26 May 2016. The organization and paragraph numbers correspond to the Defense requests.

B. DOCUMENTS/TANGIBLE EVIDENCE

1-43. Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

44. Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial. Without waiving said objection, upon information and belief, all material responsive to this request has already been provided.

45-47. Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

48. Denied. The request is prohibited in accordance with R.C.M. 701(f), M.R.E. 502 and AR 27-26, Appendix B, paras. 1.6 and 1.13.

49-56. Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

57. Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial. Without waiving said objection, upon information and belief, all material responsive to this request has already been provided.

58-61. Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

62. Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial, and is prohibited in accordance with R.C.M. 701(f), M.R.E. 502 and AR 27-26, Appendix B, paras. 1.6 and 1.13.

63. Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial, and is prohibited in accordance with R.C.M. 701(f), M.R.E. 502 and AR 27-26, Appendix B, paras. 1.6 and 1.13.

64. All information responsive to the request has been provided.

65. Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

66. This request was previously denied on 29 April 2016.

67. This request was previously denied on 29 April 2016.

68. Denied. The request is not reasonably calculated to lead to the discovery of documents or information concerning any relevant issue or matter in the pending court-martial.

69. This request was previously denied on 29 April 2016.

70. This request was previously denied on 29 April 2016.

The Government recognizes its continuing duty to disclose and will comply with the Rules for Court Martial and the Pretrial Order.



EILEEN C. WHIPPLE
CPT, JA
Assistant Trial Counsel

I certify that I have served or caused to be served a true copy of the above on the Defense Counsel on 14 June 2016.

A handwritten signature in black ink, appearing to read "E. Whipple".

EILEEN C. WHIPPLE
CPT, JA
Assistant Trial Counsel

From: (b) (6) (Armed Services)
To: (b) (6) COL USARMY HQDA OCLL (US)
Cc: (b) (6) LTC USARMY HQDA OCLL (US)
Subject: [Non-DoD Source] Re: Update on hi-viz military justice cases (UNCLASSIFIED)
Date: Thursday, November 05, 2015 9:26:00 AM

Thanks for the update.

(b) (6)
General Counsel
Committee on Armed Services
United States Senate
(b) (6)

Sent from my iPhone

> On Nov 5, 2015, at 8:46 AM, (b) (6) COL USARMY HQDA OCLL (US)
(b) (6) @mail.mil> wrote:

>
> CLASSIFICATION: UNCLASSIFIED

>
> (b) (6) -

> (1) [REDACTED]

NON-RESPONSIVE

>
> (2) Recommendations from the Preliminary Hearing Officer (Art 32) in US v
> Bergdahl are working their way through the chain of command (i.e., from the
> SPCMCA to the GCMCA). No hard timeline on when we expect a decision on
> referral, but I am working on the planning timeline of before the first of
> the year.

>
> v/r
> (b) (6)

>
> (b) (6)
> Division Chief, Investigations and Legislation (I&L)
> Army Office of Chief Legislative Liaison (OCLL)
> (b) (6) Pentagon
> O (b) (6)
> BB (b) (6)
> C (b) (6)
> (b) (6) @mail.mil

>
>
> -----Original Message-----
> From: (b) (6) (Armed Services)
> [mailto:(b) (6) @armed-services.senate.gov]
> Sent: Wednesday, November 04, 2015 9:55 AM
> To: (b) (6) COL USARMY HQDA OCLL (US)
> (b) (6) @mail.mil>
> Subject: [Non-DoD Source] Update on hi-viz military justice cases
>
> (b) (6),
>

From: (b) (6) [\(Armed Services\)](#)
To: (b) (6) [COL USARMY HQDA OCLL \(US\)](#)
Subject: [Non-DoD Source] Update on hi-viz military justice cases
Date: Wednesday, November 04, 2015 9:55:12 AM

(b)

What is the current status on Bergdahl and

NON-RESPONSIVE

Thanks,

(b)

(b) (6)

General Counsel

Committee on Armed Services

United States Senate

(b) (6)

From: (b) (6) (Armed Services)
To: (b) (6) COL USARMY HQDA OCLL (US)
Subject: Automatic reply: SEN McCain on SUS v Bergdahl (UNCLASSIFIED)
Date: Tuesday, October 13, 2015 12:37:24 PM

I am out of office until October 16th. I will have limited email connectivity.

From: (b) (6) (Armed Services)
To: (b) (6) .CIV USARMY HQDA OCLL (US); (b) (6) .COL USARMY HQDA OCLL (US)
Subject: Berdgahl
Date: Monday, March 23, 2015 1:26:36 PM

Can I get info by COB on when FORSCOM will announce? Trying to manage Chairman's desire to make a statement but need info.

(b) (6)
(6)

[Redacted]

General Counsel
Senate Armed Services Committee

(b) (6)
(b) (6) @armed-services.senate.gov

From: (b) (6) (Armed Services)
To: (b) (6) III COL USARMY HQDA OCLL (US); (b) (6) CIV USARMY HQDA OCLL (US)
Subject: Bergdahl
Date: Tuesday, May 05, 2015 7:17:51 PM

NON-RESPONSIVE

Gentlemen.

Is the Bergdahl 32 still on for 8 July?

(b) (6) **NON-RESPONSIVE**

Thanks,

(b) (6)

(b) (6)
General Counsel

Committee on Armed Services

United States Senate

(b) (6)

From: (b) (6) (Armed Services)
To: (b) (6) .CIV USARMY HQDA OCLL (US); (b) (6) .COL USARMY HQDA OCLL (US)
Cc: [Ingold, B P \(Bernie\) SES USARMY HQDA OCLL \(US\)](#)
Subject: Bergdahl Brief to (b) (6)
Date: Monday, December 22, 2014 1:51:54 PM
Importance: High

(b) (6) was in the Pentagon today and was told Army is briefing the WH on Bergdahl tomorrow. We should all anticipate immediate leaks. Therefore, to ensure appropriate notification (b) (6)

(b) (6). We do not want this briefer travelling on Christmas Eve or Christmas day. I have a 930 tomorrow. (b) (6) has nothing on his calendar. What can we do to pull this off tomorrow?

Also, (b) (6) is our incoming majority staff director. We would like to include him if the Army does not object. Please advise.

I am in the office if you would like to discuss.

Thanks,

(b) (6)

(b) (6)

Minority Counsel

Committee on Armed Services

United States Senate

(b) (6)

From: (b) (6) COL USARMY HODA OCLL (US)
To: (b) (6) (Armed Services); (b) (6) (Armed Services)
Bcc: (b) (6) CIV USARMY HODA OCLL (US); Ingold, B P (Bernie) SES USARMY HODA OCLL (US); (b) (6) LTC USARMY HODA OCLL (US); (b) (6) MAJ USARMY HODA OCLL (US); (b) (6) LTC USARMY HODA OCLL (US)
Subject: Bergdahl Update (UNCLASSIFIED)
Date: Friday, December 19, 2014 5:21:00 PM

Classification: UNCLASSIFIED

Caveats: NONE

(b) (6) -

Received your query from (b) (6) about the status of the Bergdahl investigation. The Army is working a notification that we expect to make next week. More to follow.

Happy Holidays-

Joe

Colonel (b) (6)
Division Chief, Investigations and Legislation
Army Office of Chief Legislative Liaison

(b) (6) Pentagon

O (b) (6)

BB (b) (6)

C (b) (6)

v/r

(b) (6)

Colonel (b) (6)
Division Chief, Investigations and Legislation
Army Office of Chief Legislative Liaison

(b) (6) Pentagon

O (b) (6)

BB (b) (6)

C (b) (6)

Classification: UNCLASSIFIED

Caveats: NONE

From: (b) (6) MAJ USARMY HQDA OCLL (US)
To: (b) (6) (Armed Services)
Cc: (b) (6) COL USARMY HQDA OCLL (US); (b) (6) CIV USARMY HQDA OCLL (US);
Ingold, B P (Bernie) SES USARMY HQDA OCLL (US); (b) (6) MAJ USARMY HQDA OCLL (US)
Subject: Bergdahl Update RFI (UNCLASSIFIED)
Date: Tuesday, August 26, 2014 6:04:30 PM

Classification: UNCLASSIFIED

Caveats: NONE

Sir:

Good evening.

(b) (5), (b) (7)(C)

A large rectangular area of the document is completely redacted with a solid black fill. The redaction covers approximately the middle third of the page's vertical space.A second large rectangular area of the document is completely redacted with a solid black fill, similar in size and position to the first redacted block.

Respectfully,

(b)

MAJ (b) (6)

Legislative Counsel

Investigations & Legislative Division

Army Legislative Liaison (OCLL)

The Pentagon, Room (b)

O: (b) (6)

BB: (b) (6)

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

From: (b) (6) (Armed Services)

[mailto:(b) (6)@armed-services.senate.gov <mailto:(b) (6)@armed-services.senate.gov>
<mailto:(b) (6)@armed-services.senate.gov%20%3cmailto:(b) (6)@armed-
services.senate.gov%3e%20>]

Sent: Monday, August 25, 2014 1:13 PM

To: Ingold, B P (Bernie) SES USARMY HQDA OCLL (US); (b) (6)

COL USARMY HQDA OCLL (US)

Subject: Bergdahl Update

Bernie, (b) (6):

Can I get an update on the 15-6 concerning Bergdahl as well as his current pay status? I understand on the pay side there were some problems caused, in part, by his bank treating his account as dormant. I would like to get a snap shot of his various pay and entitlements related to his captivity as well as any determinations made concerning per diem or similar pay. It could be that captivity related pay is pending the results of the 15-6 and, if so, that would be good to know before the Members return..

Thanks,

(b)

(b) (6)

Committee on Armed Services

United States Senate

(b) (6)

Classification: UNCLASSIFIED

Caveats: NONE

Classification: UNCLASSIFIED

Caveats: NONE

Classification: UNCLASSIFIED

Caveats: NONE

From: (b) (6) (Armed Services)
To: [Ingold, B P \(Bernie\) SES USARMY HQDA OCLL \(US\)](#); (b) (6) [COL USARMY HQDA OCLL \(US\)](#)
Subject: Bergdahl Update
Date: Monday, August 25, 2014 1:13:21 PM

Bernie, (b) :

Can I get an update on the 15-6 concerning Bergdahl as well as his current pay status? I understand on the pay side there were some problems caused, in part, by his bank treating his account as dormant. I would like to get a snapshot of his various pay and entitlements related to his captivity as well as any determinations made concerning per diem or similar pay. It could be that captivity related pay is pending the results of the 15-6 and, if so, that would be good to know before the Members return..

Thanks,

(b)

(b) (6)

Minority Counsel

Committee on Armed Services

United States Senate

(b) (6)

From: (b) (6) COL USARMY HQDA OCLL (US)
To: [Richardson, Laura J MG USARMY HQDA OCLL \(US\)](#)
Cc: [Ingold, B P \(Bernie\) SES USARMY HQDA OCLL \(US\)](#); (b) (6) [CIV USARMY HQDA OCLL \(US\)](#);
(b) (6) [COL USARMY HQDA SECARMY \(US\)](#)
Subject: CCIR - HASC RFIs re SGT B (UNCLASSIFIED)
Date: Friday, December 19, 2014 3:41:00 PM

Classification: UNCLASSIFIED
Caveats: NONE

Ma'am -

JS-LA just forwarded a query from (b) (6) (HASC), sent to (b) (6) (OSD-LA):

(b) (5)
[Redacted]

<http://www.stripes.com/news/us/results-of-bergdahl-probe-could-end-with-desertion-charge-or-300k-back-pay-1.320202>

Thanks and happy holidays!!

(b) (6)

This is in addition to the earlier RFI from (b) (6) (made to (b) (6)).

I have responded to neither.

v/r

(b) (6)

Colonel (b) (6)
Division Chief, Investigations and Legislation
Army Office of Chief Legislative Liaison

(b) (6) Pentagon

O (b) (6)

BB (b) (6)

C (b) (6)

Classification: UNCLASSIFIED
Caveats: NONE

From: (b) (6) CIV USARMY HQDA OCLL (US)
To: Richardson, Laura J MG USARMY HQDA OCLL (US)
Cc: Ingold, B P (Bernie) SES USARMY HQDA OCLL (US); (b) (6) COL USARMY HQDA OCLL (US); (b) (6) LTC USARMY HQDA OCLL (US); (b) (6) COL USARMY (US); (b) (6) COL USARMY HQDA OCLL (US); (b) (6) USARMY HQDA SECARMY (US)
Subject: CCIR - Notification Complete (UNCLASSIFIED)
Date: Wednesday, March 25, 2015 2:16:29 PM

Classification: UNCLASSIFIED
Caveats: NONE

Ma'am,

(b) (5)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

I&L (phonecalls) -

(b) (5)

[Redacted]

[Redacted]

V/r, (b) (6)

Deputy Chief, Investigations and Legislation
Army Office of Chief Legislative Liaison
(b) [redacted] Pentagon
(O) (b) (6) [redacted]
(BB) (b) (6) [redacted]

Classification: UNCLASSIFIED
Caveats: NONE

From: (b) (6) COL USARMY HODA OCLL (US)
To: (b) (6) "(Armed Services)"
Cc: (b) (6) CIV USARMY HODA OCLL (US)
Subject: CSA's Testimony (UNCLASSIFIED)
Date: Wednesday, January 28, 2015 8:01:00 AM

Classification: UNCLASSIFIED
Caveats: NONE

(b) (6)

(b) (5), (b) (7)(C)

Thanks-

(b)

Colonel (b) (6)
Division Chief, Investigations and Legislation
Army Office of Chief Legislative Liaison
(b) Pentagon
O (b) (6)
BB (b) (6)
C (b) (6)

Classification: UNCLASSIFIED
Caveats: NONE

From: (b) (6) .CIV USARMY HQDA OCLL (US)
To: Richardson, Laura J MG USARMY HQDA OCLL (US)
Cc: Ingold, B P (Bernie) SES USARMY HQDA OCLL (US); (b) (6) COL USARMY HQDA OCLL (US)
Subject: FW: Bergdahl brief (UNCLASSIFIED)
Date: Wednesday, January 07, 2015 11:13:35 AM

Classification: UNCLASSIFIED

Caveats: NONE

Ma'am,

I expect to hear from the HASC in short order.

V/r,

(b) (6)

(b) (6)

Deputy Chief, Investigations and Legislation

Army Office of Chief Legislative Liaison

(b) (6) Pentagon

(O) (b) (6)

(BB) (b) (6)

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

From: (b) (6) (Armed Services)
[mailto:(b) (6)@armed-services.senate.gov]

Sent: Wednesday, January 07, 2015 11:07 AM

To: (b) (6)s@mail.house.gov'

Cc: (b) (6) .CIV USARMY HQDA OCLL (US)

Subject: Bergdahl brief

(b) (6), for coordination on the 15-6 brief I recommend working with (b) (6)

Steve

(b) (6)

General Counsel

Senate Armed Services Committee

(b) (6)

@armed-services.senate.gov

Classification: UNCLASSIFIED

Caveats: NONE

From: (b) (6) III COL USARMY HQDA OCLL (US)
To: (b) (6) "(Armed Services)"
Subject: FW: SEN McCain on SUS v Bergdahl (UNCLASSIFIED)
Date: Tuesday, October 13, 2015 12:35:00 PM

CLASSIFICATION: UNCLASSIFIED

ATTORNEY WORK PRODUCT // ~~FOR OFFICIAL~~ / COMMITTEE USE ONLY

(b) -

(b) (5)

[Redacted]

[Redacted]

Respectfully,

(b)

Colonel (b) (6)
Division Chief, Investigations and Legislation (I&L)
Army Office of Chief Legislative Liaison (OCLL)

(b) (6) Pentagon

O (b) (6)

BB (b) (6)

C (b) (6)

(b) (6) l@mail.mil

ATTORNEY WORK PRODUCT // ~~FOR OFFICIAL~~ / COMMITTEE USE ONLY

CLASSIFICATION: UNCLASSIFIED

From: (b) (6) COL USARMY HQDA OCLL (US)
To: (b) (6) (Armed Services); (b) (6) (Armed Services)"
Cc: (b) (6) LTC USARMY HQDA OCLL (US); (b) (6) CIV USARMY HQDA OCLL (US)
Subject: Inaccurate Headline re SGT Bergdahl (UNCLASSIFIED)
Date: Wednesday, February 25, 2015 2:25:00 PM

Classification: UNCLASSIFIED
Caveats: NONE

Gentlemen -

There was no update or decision from the Convening Authority to trigger the headline now running through social media, prompted by The Hill article "Army Secretary: Bergdahl Decision Coming Soon." Article came out of the SecArmy's roundtable this morning with the Defense Writers' Group. The second paragraph captures what the SecArmy actually said; the title is misleading.

<http://thehill.com/policy/defense/army/233793-army-secretary-bergdahl-decision-coming-in-near-future#.VO4JU20TG0I.facebook>

Text of article:

Army Secretary John McHugh said Wednesday that a decision on whether former prisoner of war Army Sgt. Bowe Bergdahl deserted his post in Afghanistan would be coming in the "near future."

"I would think that we could reasonably expect to see something in the relatively near future," McHugh told reporters at a briefing in Washington. "The range extends from on one end of the spectrum - from no further action to the other end of the spectrum, potential court-martial."

Although the Army's second fact-finding investigation of Bergdahl was concluded in December, McHugh said no decision has been reached on charges because of the number of documents that needed to be reviewed and the "complexity" of the case.

"It has been a lengthy investigation, and I think if you look at both the time involved from Sgt. Bergdahl's disappearance to his recovery to this point in time in large measure, that's understandable," he said.

v/r

(b)

Colonel (b) (6)
Division Chief, Investigations and Legislation
Army Office of Chief Legislative Liaison

(b) Pentagon

O (b) (6)

BB (b) (6)

C (b) (6)

Classification: UNCLASSIFIED
Caveats: NONE

From: (b) (6) CIV USARMY HODA OCLL (US)
To: (b) (6) (Armed Services)
Cc: (b) (6) COL USARMY HODA OCLL (US)
Subject: Interesting (UNCLASSIFIED)
Date: Monday, June 08, 2015 8:30:25 AM

Classification: UNCLASSIFIED
Caveats: NONE

Sen. John McCain: [Sgt. Bowe Bergdahl on Friday asked a federal appeals court to disqualify the Army general overseeing the case against the Hailey native on charges of desertion and misbehavior before the enemy. Bergdahl attorney Eugene Fidell filed a writ with the U.S. Court of Appeals for the Armed Forces seeking to disqualify Army Gen. Mark Milley from the case. The request, filed with the court in Washington D.C., said Milley should be replaced because of his pending nomination to become Army chief of staff. . . . Sen. John McCain, chairman of the Senate Armed Services Committee, has been one of the top critics of the Obama administration's trade of Bergdahl for five Taliban leaders. McCain said Congress should have been notified of the plan ahead of time. McCain has said he plans to grill Milley about Bergdahl's release. Fidell said that could increase pressure on the Army to pursue charges against Bergdahl rather than settle the case. Because of Milley's interest in getting confirmed by the Senate as chief of staff, he should not be allowed to continue with Bergdahl's case, Fidell wrote.]-June 5, 2015; Idaho Statesman (Boise, ID)
<http://www.idahostatesman.com/2015/06/05/3837837/bergdahl-seeks-removal-of-general.html>

(b) (6)

(b) (5)

(b) (6)

(6)

Deputy Chief, Investigations and Legislation
Army Office of Chief Legislative Liaison

(b) (6) Pentagon

(O) (b) (6)

(BB) (b) (6)

Classification: UNCLASSIFIED
Caveats: NONE

From: (b) (6) COL USARMY HODA OCLL (US)
To: (b) (6) (Armed Services)"
Cc: (b) (6) LTC USARMY HODA OCLL (US) (b) (6) @mail.mil
Subject: NYT Editorial on SEN McCain Bergdahl Comments (UNCLASSIFIED)
Date: Thursday, October 15, 2015 9:09:00 AM

CLASSIFICATION: UNCLASSIFIED

(b) (6) -
FYI.
v/r
(b) (6)

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

Sent: Thursday, October 15, 2015 8:29 AM
Subject: NYT Editorial on SEN McCain Bergdahl Comments

NYT Editorial
Mr. McCain's Irresponsible Remarks About Sgt. Bergdahl

Two military officers who have conducted lengthy reviews of the circumstances that led to the abduction of Sgt. Bowe Bergdahl in Afghanistan in 2009 have concluded that he should not face jail time for having left his base.

Senator John McCain, the chairman of the Armed Services Committee, however, seems to think he knows better. Mr. McCain, a Navy pilot who was held captive for five years during the Vietnam War and tortured, told The Boston Herald that Sergeant Bergdahl is "clearly a deserter," and threatened to hold a congressional hearing into the case "if it comes out that he has no punishment."

The Army's decision to prosecute Sergeant Bergdahl for desertion and for violating rules that endangered his comrades was questionable, considering the abuse he suffered in captivity and the military's failure to recognize that he was not mentally fit to be deployed to a war zone. During his five years as a Taliban hostage, Sergeant Bergdahl was beaten with chains and endured severe chronic diarrhea that went untreated.

While much of the nation was relieved to see Sergeant Bergdahl return home last year, Republicans have exploited the case to criticize President Obama for the prisoner swap he authorized to secure the soldier's release. In exchange for his freedom, the Obama administration freed five Taliban prisoners who were being held at Guantánamo Bay, Cuba.

Mr. McCain is certainly not the first politician to have spoken irresponsibly about the case. Donald Trump, the leading Republican presidential candidate, said recently that Sergeant Bergdahl is a "traitor" who should have "been executed." But Mr. McCain's remarks are particularly troubling because Gen. Robert Abrams, the top commander at Fort Bragg, N.C., who will make the final decision on the Bergdahl case, will most likely appear before Mr. McCain's committee for confirmation should he be promoted to a higher post in the future.

General Abrams is expected to decide soon whether the case should go before a court-martial now that the military equivalent of a grand jury proceeding has concluded. He could decide to impose nonjudicial punishment or simply discharge him from the Army.

Mr. Bergdahl's lawyer, Eugene Fidell, rightly protested that Mr. McCain's remarks could constitute unlawful meddling by the legislative branch over a military prosecution. The senator should make it clear to General Abrams that he will respect his decision.

The Army, meanwhile, should waste no time in bringing this matter to a close, forgoing a court-martial, and allow Sergeant Bergdahl to get on with his life.

CLASSIFICATION: UNCLASSIFIED

From: (b) (6) [redacted] <[redacted]@CIV_USARMY_HQDA_OCLL_US>
To: (b) (6) [redacted] <[redacted]@Armed_Services>
Cc: (b) (6) [redacted] <[redacted]@III_COL_USARMY_HQDA_OCLL_US>
Subject: RE: Bergdahl [redacted] (UNCLASSIFIED)
Date: Thursday, May 07, 2015 2:01:28 PM

NON-RESPONSIVE

Classification: UNCLASSIFIED
Caveats: NONE

(b) [redacted] thank you for the opportunity to provide our thoughts on this very important issue.

(b) (5), (b) (7)(C) [redacted]

Best,
(b) [redacted]
(6) [redacted]
Deputy Chief, Investigations and Legislation
Army Office of Chief Legislative Liaison
(b) [redacted] Pentagon
(O) (b) (6) [redacted]
(BB) (b) (6) [redacted]

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

From: (b) (6) [redacted] (Armed Services) [mailto:(b) (6) [redacted]@armed-services.senate.gov]
Sent: Tuesday, May 05, 2015 7:32 PM
To: (b) (6) [redacted] COL USARMY HQDA OCLL (US); (b) (6) [redacted] . CIV USARMY HQDA OCLL (US)
Subject: RE: Bergdahl [redacted] **NON-RESPONSIVE**

(b) (5), (b) (7)(C) [redacted]

Thanks,

(b) (6)

From: (b) (6) COL USARMY HQDA OCLL (US) (b) (6) @mail.mil
Sent: Tuesday, May 05, 2015 7:25 PM
To: (b) (6) (Armed Services); (b) (6) . CIV USARMY HQDA OCLL (US)
Subject: Re: Bergdahl (b) (6)

NON-RESPONSIVE

(b) (6)

Yes on Bergdahl; (b) (6) NON-RESPONSIVE
V/R

(b) (6)

COL (b) (6)

Chief, Investigations and Legislative Division

Office of the Chief,
Legislative Liaison

(b) (6) Office
(b) (6) BB
(b) (6) Cell

From: (b) (6) (Armed Services) [mailto:(b) (6) @armed-services.senate.gov]
Sent: Tuesday, May 05, 2015 07:17 PM
To: (b) (6) COL USARMY HQDA OCLL (US); (b) (6) . CIV USARMY HQDA
OCLL (US)
Subject: Bergdahl (b) (6) NON-RESPONSIVE

Gentlemen.

Is the Bergdahl 32 still on for 8 July?

(b) (6)

NON-RESPONSIVE

Thanks,

(b)

(b) (6)

General Counsel

Committee on Armed Services

United States Senate

(b) (6)

Classification: UNCLASSIFIED

Caveats: NONE

From: (b) (6) (Armed Services)
To: (b) (6) COL USARMY HQDA OCLL (US)
Cc: (b) (6) CIV USARMY HQDA OCLL (US)
Subject: RE: CSA's Testimony (UNCLASSIFIED)
Date: Wednesday, January 28, 2015 9:01:14 AM

Got it, thanks (b) (6)

(b) (6)

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

From: (b) (6) COL USARMY HQDA OCLL (US) (b) (6) @mail.mil
Sent: Wednesday, January 28, 2015 8:02 AM
To: (b) (6) (Armed Services)
Cc: (b) (6) CIV USARMY HQDA OCLL (US)
Subject: CSA's Testimony (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

(b) (6)

(b) (5), (b) (7)(C)

[Redacted]

[Redacted]

[Redacted]

Thanks-

(b) (6)

Colonel (b) (6)
Division Chief, Investigations and Legislation
Army Office of Chief Legislative Liaison

(b) (6) Pentagon

O (b) (6)
BB (b) (6)
C (b) (6)

Classification: UNCLASSIFIED
Caveats: NONE

From: (b) (6) (Armed Services)
To: (b) (6) COL USARMY HQDA OCLL (US); (b) (6) (Armed Services)
Cc: (b) (6) LTC USARMY HQDA OCLL (US); (b) (6) CIV USARMY HQDA OCLL (US)
Subject: Re: Inaccurate Headline re SGT Bergdahl (UNCLASSIFIED)
Date: Wednesday, February 25, 2015 2:47:18 PM

Thanks.

(b) (6)

(b) (6)
General Counsel
Senate Armed Services Committee

(b) (6)
@armed-services.senate.gov

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

From: (b) (6) COL USARMY HQDA OCLL (US) (b) (6) @mail.mil
Sent: Wednesday, February 25, 2015 02:25 PM Eastern Standard Time
To: (b) (6) (Armed Services); (b) (6) (Armed Services)
Cc: (b) (6) LTC USARMY HQDA OCLL (US) (b) (6) @mail.mil>; (b) (6) CIV USARMY HQDA OCLL (US) (b) (6) @mail.mil>
Subject: Inaccurate Headline re SGT Bergdahl (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Gentlemen -

There was no update or decision from the Convening Authority to trigger the headline now running through social media, prompted by The Hill article "Army Secretary: Bergdahl Decision Coming Soon." Article came out of the SecArmy's roundtable this morning with the Defense Writers' Group. The second paragraph captures what the SecArmy actually said; the title is misleading.

<http://thehill.com/policy/defense/army/233793-army-secretary-bergdahl-decision-coming-in-near-future#.VO4JU20TG0I.facebook>

Text of article:

Army Secretary John McHugh said Wednesday that a decision on whether former prisoner of war Army Sgt. Bowe Bergdahl deserted his post in Afghanistan would be coming in the "near future."

"I would think that we could reasonably expect to see something in the relatively near future," McHugh told reporters at a briefing in Washington. "The range extends from on one end of the spectrum - from no further action to the other end of the spectrum, potential court-martial."

Although the Army's second fact-finding investigation of Bergdahl was concluded in December, McHugh said no decision has been reached on charges because of the number of documents that needed to be reviewed and the

"complexity" of the case.

"It has been a lengthy investigation, and I think if you look at both the time involved from Sgt. Bergdahl's disappearance to his recovery to this point in time in large measure, that's understandable," he said.

v/r

(b)

Colonel (b) (6)
Division Chief, Investigations and Legislation
Army Office of Chief Legislative Liaison

(b) Pentagon

O

(b) (6)

BB

(b) (6)

C

(b) (6)

Classification: UNCLASSIFIED

Caveats: NONE

From: (b) (6) (Armed Services)
To: (b) (6) CIV USARMY HQDA OCLL (US)
Cc: (b) (6) COL USARMY HQDA OCLL (US)
Subject: RE: Interesting (UNCLASSIFIED)
Date: Monday, June 08, 2015 9:15:38 AM

Thanks, (b) (6) . Welcome to my world.

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

From: (b) (6) CIV USARMY HQDA OCLL (US) (b) (6) @mail.mil]
Sent: Monday, June 08, 2015 8:30 AM
To: (b) (6) (Armed Services)
Cc: (b) (6) COL USARMY HQDA OCLL (US)
Subject: Interesting (UNCLASSIFIED)

Classification: UNCLASSIFIED
Caveats: NONE

Sen. John McCain: [Sgt. Bowe Bergdahl on Friday asked a federal appeals court to disqualify the Army general overseeing the case against the Hailey native on charges of desertion and misbehavior before the enemy. Bergdahl attorney Eugene Fidell filed a writ with the U.S. Court of Appeals for the Armed Forces seeking to disqualify Army Gen. Mark Milley from the case. The request, filed with the court in Washington D.C., said Milley should be replaced because of his pending nomination to become Army chief of staff. . . . Sen. John McCain, chairman of the Senate Armed Services Committee, has been one of the top critics of the Obama administration's trade of Bergdahl for five Taliban leaders. McCain said Congress should have been notified of the plan ahead of time. McCain has said he plans to grill Milley about Bergdahl's release. Fidell said that could increase pressure on the Army to pursue charges against Bergdahl rather than settle the case. Because of Milley's interest in getting confirmed by the Senate as chief of staff, he should not be allowed to continue with Bergdahl's case, Fidell wrote.]-June 5, 2015; Idaho Statesman (Boise, ID)
<http://www.idahostatesman.com/2015/06/05/3837837/bergdahl-seeks-removal-of-general.html>

(b) (6)

(b) (5)

(b) (6)

(6)

Deputy Chief, Investigations and Legislation
Army Office of Chief Legislative Liaison

(b) (6) Pentagon

(O) (b) (6)

(BB) (b) (6)

Classification: UNCLASSIFIED

Caveats: NONE

From: (b) (6) (Armed Services)
To: (b) (6) COL USARMY HQDA OCLL (US)
Cc: (b) (6) LTC USARMY HQDA OCLL (US)
Subject: Re: NYT Editorial on SEN McCain Bergdahl Comments (UNCLASSIFIED)
Date: Thursday, October 15, 2015 2:08:54 PM

Thanks, (b) (6). We saw it.

(b) (6)
General Counsel
Committee on Armed Services
United States Senate
(b) (6)

Sent from my iPhone

> On Oct 15, 2015, at 2:10 PM, (b) (6) COL USARMY HQDA OCLL (US)
(b) (6) @mail.mil> wrote:

>
> CLASSIFICATION: UNCLASSIFIED
>
> (b) (6)
> FYI.
> v/r
> (b) (6)
>
>
> -----Original Message-----
> Sent: Thursday, October 15, 2015 8:29 AM
> Subject: NYT Editorial on SEN McCain Bergdahl Comments
>
> NYT Editorial
> Mr. McCain's Irresponsible Remarks About Sgt. Bergdahl
>
> Two military officers who have conducted lengthy reviews of the
> circumstances that led to the abduction of Sgt. Bowe Bergdahl in Afghanistan
> in 2009 have concluded that he should not face jail time for having left his
> base.
>
> Senator John McCain, the chairman of the Armed Services Committee, however,
> seems to think he knows better. Mr. McCain, a Navy pilot who was held
> captive for five years during the Vietnam War and tortured, told The Boston
> Herald that Sergeant Bergdahl is "clearly a deserter," and threatened to
> hold a congressional hearing into the case "if it comes out that he has no
> punishment."
>
> The Army's decision to prosecute Sergeant Bergdahl for desertion and for
> violating rules that endangered his comrades was questionable, considering
> the abuse he suffered in captivity and the military's failure to recognize
> that he was not mentally fit to be deployed to a war zone. During his five
> years as a Taliban hostage, Sergeant Bergdahl was beaten with chains and
> endured severe chronic diarrhea that went untreated.
>
> While much of the nation was relieved to see Sergeant Bergdahl return home
> last year, Republicans have exploited the case to criticize President Obama

> for the prisoner swap he authorized to secure the soldier's release. In
> exchange for his freedom, the Obama administration freed five Taliban
> prisoners who were being held at Guantánamo Bay, Cuba.
>
> Mr. McCain is certainly not the first politician to have spoken
> irresponsibly about the case. Donald Trump, the leading Republican
> presidential candidate, said recently that Sergeant Bergdahl is a "traitor"
> who should have "been executed." But Mr. McCain's remarks are particularly
> troubling because Gen. Robert Abrams, the top commander at Fort Bragg, N.C.,
> who will make the final decision on the Bergdahl case, will most likely
> appear before Mr. McCain's committee for confirmation should he be promoted
> to a higher post in the future.
>
> General Abrams is expected to decide soon whether the case should go before
> a court-martial now that the military equivalent of a grand jury proceeding
> has concluded. He could decide to impose nonjudicial punishment or simply
> discharge him from the Army.
>
> Mr. Bergdahl's lawyer, Eugene Fidell, rightly protested that Mr. McCain's
> remarks could constitute unlawful meddling by the legislative branch over a
> military prosecution. The senator should make it clear to General Abrams
> that he will respect his decision.
>
> The Army, meanwhile, should waste no time in bringing this matter to a
> close, forgoing a court-martial, and allow Sergeant Bergdahl to get on with
> his life.
>
>
>
>
>
>
> CLASSIFICATION: UNCLASSIFIED

From: (b) (6) (Armed Services)
To: (b) (6) COL USARMY HQDA OCLL (US)
Subject: Re: SEN McCain on SUS v Bergdahl (UNCLASSIFIED)
Date: Tuesday, October 13, 2015 1:31:45 PM

Thanks, (b) (6). We will consider options.

(b) (6)
General Counsel
Committee on Armed Services
United States Senate
(b) (6)

Sent from my iPhone

> On Oct 13, 2015, at 7:36 PM, (b) (6) COL USARMY HQDA OCLL (US) (b) (6) @mail.mil> wrote:

>
> CLASSIFICATION: UNCLASSIFIED
>
> ATTORNEY WORK PRODUCT // ~~FOR OFFICIAL~~ / COMMITTEE USE ONLY
>

> (b) (6) -

> (b) (5) [Redacted]

> Respectfully,

> (b) (6)

> Colonel (b) (6)
> Division Chief, Investigations and Legislation (I&L)
> Army Office of Chief Legislative Liaison (OCLL)
> (b) (6) Pentagon
> O (b) (6)
> BB (b) (6)
> C (b) (6)
> (b) (6) @mail.mil

>
> ATTORNEY WORK PRODUCT // ~~FOR OFFICIAL~~ / COMMITTEE USE ONLY
>
>
> CLASSIFICATION: UNCLASSIFIED

From: (b) (6) COL USARMY HQDA OCLL (US)
To: (b) (6) (Armed Services)"
Cc: (b) (6) USARMY HQDA OCLL (US) (b) (6) @mail.mil
Subject: RE: Update on hi-viz military justice cases (UNCLASSIFIED)
Date: Thursday, November 05, 2015 8:46:00 AM

CLASSIFICATION: UNCLASSIFIED

(b) (6)

(1)

NON-RESPONSIVE

(2) Recommendations from the Preliminary Hearing Officer (Art 32) in US v Bergdahl are working their way through the chain of command (i.e., from the SPCMCA to the GCMCA). No hard timeline on when we expect a decision on referral, but I am working on the planning timeline of before the first of the year.

v/r

(b) (6)

Colonel (b) (6)
Division Chief, Investigations and Legislation (I&L)
Army Office of Chief Legislative Liaison (OCLL)
(b) (6) Pentagon
O (b) (6)
BB (b) (6)
C (b) (6)
(b) (6) @mail.mil

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

From: (b) (6) (Armed Services)
[\[mailto:\(b\) \(6\)@armed-services.senate.gov\]](mailto:(b) (6)@armed-services.senate.gov)
Sent: Wednesday, November 04, 2015 9:55 AM
To: (b) (6) COL USARMY HQDA OCLL (US)
(b) (6) @mail.mil
Subject: [Non-DoD Source] Update on hi-viz military justice cases

(b) (6)

What is the current status on Bergdahl and (b) (6)

NON-RESPONSIVE

Thanks,

(b) (6)

(b) (6)

General Counsel

Committee on Armed Services

United States Senate

(b) (6)

CLASSIFICATION: UNCLASSIFIED

From: (b) (6) MAJ USARMY HQDA OCLL (US)
To: (b) (6) CIV USARMY HQDA OCLL (US); (b) (6) COL USARMY HQDA SECARMY (US)
Subject: (b) (6) RFIs re. SGT Bergdahl (UNCLASSIFIED)
Date: Wednesday, July 16, 2014 9:17:22 AM
Attachments: (b) (5)

Classification: UNCLASSIFIED

Caveats: NONE

Sir

This is what I found in the J Drive in terms of responses to Mr. (b) (6) RFIs.

Respectfully,

(b) (6)

Classification: UNCLASSIFIED

Caveats: NONE

From: (b) (6) COL USARMY HODA OCLL (US)
To: Richardson, Laura J MG USARMY HODA OCLL (US); (b) (6) @mail.mil
Cc: Ingold, B.P. (Bernie) SES USARMY HODA OCLL (US); (b) (6) @mail.mil; (b) (6) .CIV
USARMY HODA OCLL (US); (b) (6) @mail.mil; (b) (6) LTC USARMY HODA OCLL (US)
(b) (6) @mail.mil; (b) (6) LTC USARMY HODA OCLL (US)
Bcc: (b) (6) COL USARMY HODA OCLL (US)
Subject: SLD Reception Wrap Up
Date: Thursday, September 10, 2015 7:35:00 PM

Ma'am -

(b) (5)

(b) (5)

(b) (5)

Respectfully,

COL (b) (6)

Colonel (b) (6)
Division Chief, Investigations and Legislation (I&L)
Army Office of Chief Legislative Liaison (OCLL)
(b) (6) Pentagon
O (b) (6)
BB (b) (6)
C (b) (6)
(b) (6) @mail.mil

From: (b) (6) COL USARMY HQDA OCLL (US)
To: (b) (6) LTC USARMY HQDA OCLL (US)
Subject: Update on hi-viz military justice cases
Date: Wednesday, November 04, 2015 9:58:18 AM

(b) (6) - headed to tow lot to release the car to the insurance company and then I will be in.

Pls see (b) (6) note below. Bergdahl I'm tracking from my last conversation w COL (b) (6); (b) (6), not sure.
V/R

(b) (6)

COL (b) (6)

Chief, Investigations and Legislative Division

Office of the Chief,
Legislative Liaison

(b) (6) Office
(b) (6) BB
(b) (6) Cell

From: (b) (6) (Armed Services) [mailto:(b) (6)@armed-services.senate.gov]
Sent: Wednesday, November 04, 2015 09:54 AM
To: (b) (6) COL USARMY HQDA OCLL (US)
Subject: [Non-DoD Source] Update on hi-viz military justice cases

(b) (6)

What is the current status on Bergdahl and (b) (6)

NON-RESPONSIVE

Thanks,

(b) (6)

(b) (6)

General Counsel

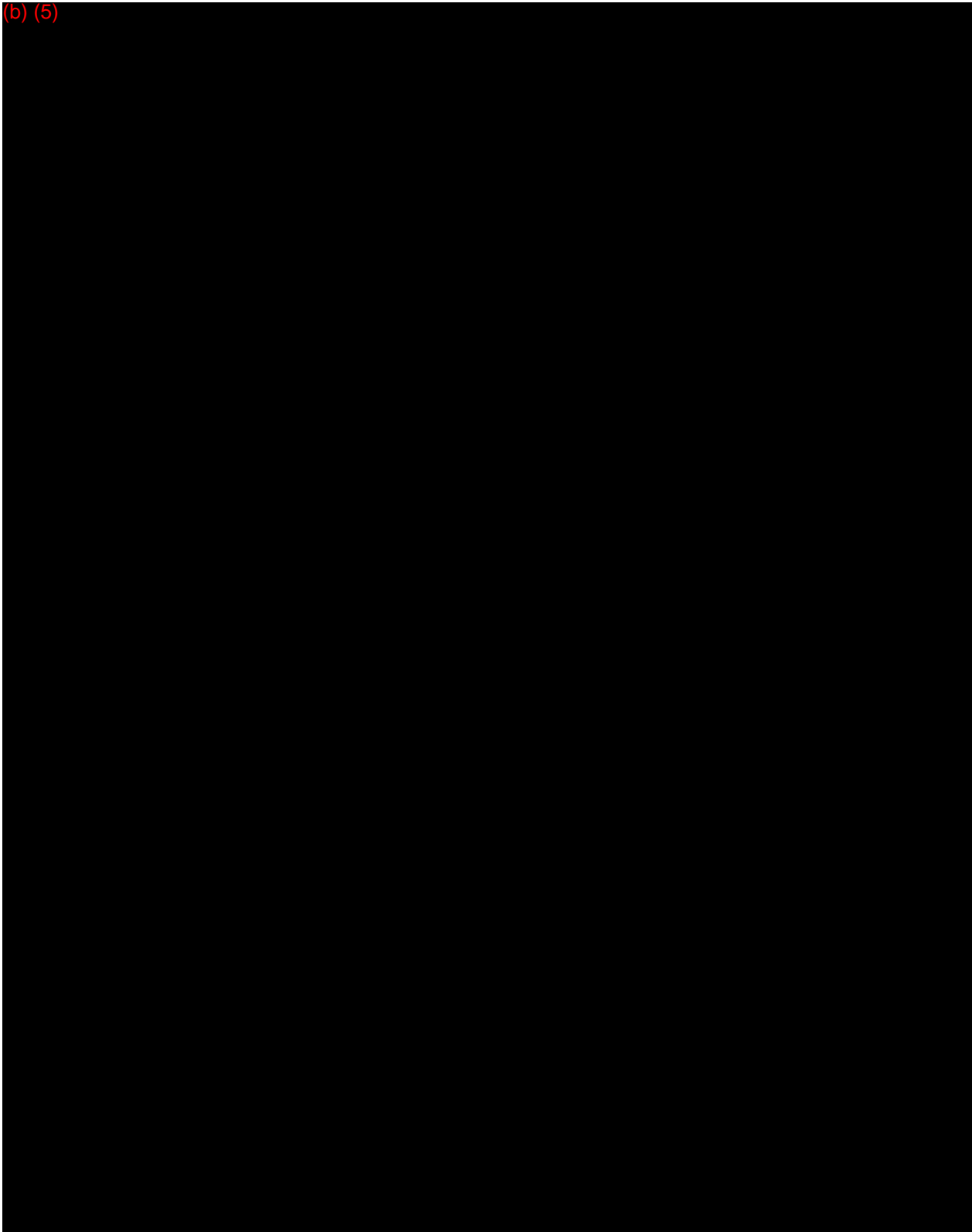
Committee on Armed Services

United States Senate

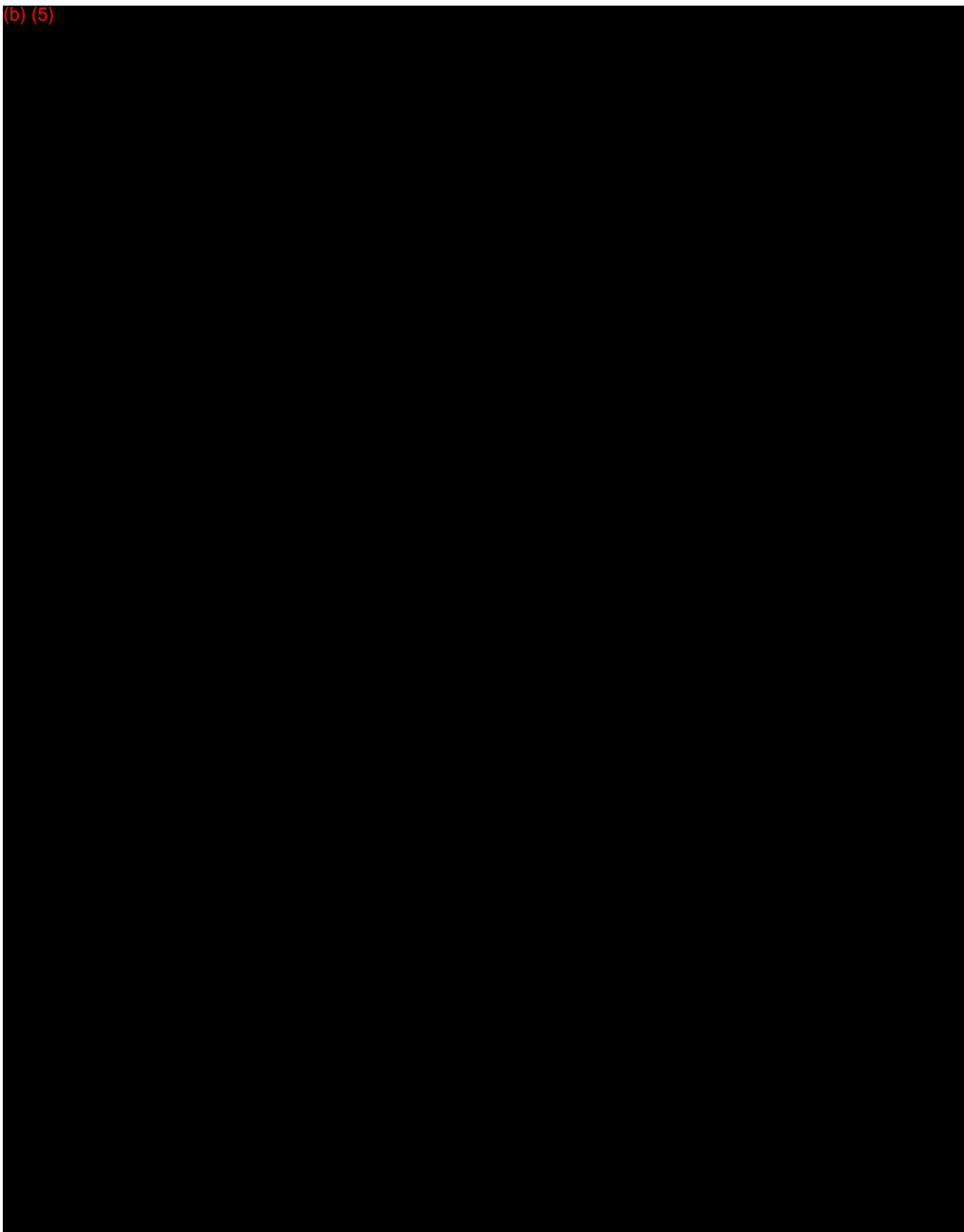
(b) (6)

(b) (5)

(b) (5)



(b) (5)



(b) (5)



(b) (5)





SECRETARY OF THE ARMY
WASHINGTON

FEB 18 2015

The Honorable Jason Chaffetz
Chairman, Committee on Oversight
and Government Reform
United States House of Representatives
Washington, DC 20515

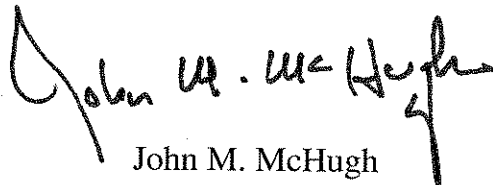
Dear Mr. Chairman:

Secretary of Defense Chuck Hagel asked me to respond on his behalf to your January 29, 2015 letter concerning your request for documents, and a briefing regarding the final disposition of the Army Regulation 15-6 investigation into the 2009 disappearance and subsequent capture of Sergeant Bowe Bergdahl in Afghanistan. I have directed my Legislative Liaison staff to work closely with yours to appropriately address your requests, including helping the Committee understand the investigative and disposition process.

I greatly appreciate the willingness of the Committee to respect the integrity of the military justice process, and refrain from any action that might infringe on the statutory requirement that any commander making a disciplinary decision be free from any outside interference or pressure that would potentially interfere with the exercise of that discretionary authority. By avoiding unlawful command influence, we protect the integrity of the process for the Army, the commander, and most importantly, the Soldier concerned.

Thank you for all that you and the members of the Committee do for our Soldiers, their Families and our Army Civilians.

Sincerely,

A handwritten signature in black ink that reads "John M. McHugh". The signature is written in a cursive style with a large initial "J" and a stylized "H".

John M. McHugh



SECRETARY OF THE ARMY
WASHINGTON

FEB 18 2015

The Honorable Ron DeSantis
Chairman, Subcommittee on National Security
Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

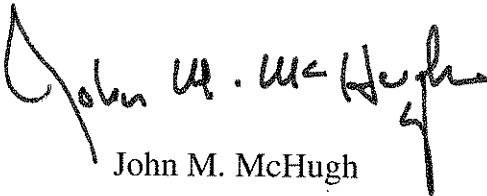
Dear Mr. Chairman:

Secretary of Defense Chuck Hagel asked me to respond on his behalf to your January 29, 2015 letter concerning your request for documents and a briefing regarding the final disposition of the Army Regulation 15-6 investigation into the 2009 disappearance and subsequent capture of Sergeant Bowe Bergdahl in Afghanistan. I have directed my Legislative Liaison staff to work closely with yours to appropriately address your requests, including helping the Committee understand the investigative and disposition process.

I greatly appreciate the willingness of the Committee to respect the integrity of the military justice process, and refrain from any action that might infringe on the statutory requirement that any commander making a disciplinary decision be free from any outside interference or pressure that would potentially interfere with the exercise of that discretionary authority. By avoiding unlawful command influence, we protect the integrity of the process for the Army, the commander, and most importantly, the Soldier concerned.

Thank you for all that you and the members of the committee do for our Soldiers, their Families and our Army Civilians.

Sincerely,


John M. McHugh



SECRETARY OF THE ARMY
WASHINGTON
JUN 27 2014

The Honorable Joe Wilson
United States House of Representatives
Washington, DC 20515

Dear Representative Wilson:

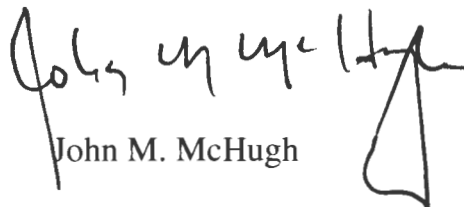
Thank you for your June 4, 2014 letter concerning Sergeant Bowe Bergdahl and your request for an investigation into the circumstances of his disappearance on June 30, 2009. I can assure you that the Army shares both your relief that Sergeant Bergdahl was safely recovered and your belief in the importance of fully understanding the facts of this case.

As you may know, Sergeant Bergdahl is currently receiving outpatient care for his recovery and reintegration. Concurrently, the Army has initiated an investigation into the circumstances surrounding Sergeant Bergdahl's disappearance. Part of this investigation will necessarily include interviews of Sergeant Bergdahl, which will be conducted after the conclusion of his debriefing and reintegration.

Of course, upon completion of this process, the Army is prepared to provide the information compiled to the appropriate Congressional oversight committees.

Thank you for your inquiry into this matter and for your continued support of our Soldiers and their Families.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. McHugh".
John M. McHugh