

**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
)	Proposed Instruction on Specific Intent
BERGDAHL, ROBERT BOWDRIE)	(Charge I) and Alternative Instruction
(BOWE))	on Intent
SGT, U.S Army)	
HHC, Special Troops Battalion)	28 July 2017
U.S. Army Forces Command)	
Fort Bragg, North Carolina 28310)	

I. RELIEF SOUGHT

The Government requests that the Court reject the Defense's Proposed Instruction on Specific Intent (Charge I), and proposes an alternative instruction for Charge I. The Defense's proposed instruction is an attempt to blur the lines between the concepts of intent and motive. On the other hand, the Government's proposed instruction appropriately differentiates between the two and clearly defines the burden with regard to Charge I.

II. BURDEN OF PERSUASION AND BURDEN OF PROOF

The Defense, as the moving party, has the burden to produce evidence and establish facts in support of the requested relief by a preponderance of the evidence. Rules for Courts-Martial ("RCM") 905(c)(1)-(2). The Government has the burden to produce evidence and establish facts in support of the requested relief by a preponderance of the evidence related to its proposed instruction. *Id.*

III. FACTS

On 30 June 2009, the Accused deserted from his place of duty at Observation Post (OP) Mest, Afghanistan, while deployed as part of Task Force Yukon, Combined Joint Task Force-82/Regional Command East. As a result, a Duty Status-Whereabouts Unknown (DUSTWUN) report was initiated, which resulted in a massive search and recovery operation in an attempt to find the Accused.

The Accused was captured by the Taliban hours after deserting OP Mest and remained in captivity until 31 May 2014 when the Accused was returned to U.S. military control as part of a prisoner exchange. The Accused subsequently made a statement

to then Major General (MG) Kenneth Dahl, the Army Regulation (AR) 15-6 investigating officer assigned to investigate the circumstances surrounding his departure.

The Accused planned his departure from OP Mest: "The idea was simple. The security at the TCP was crap. There was weak points everywhere. And nighttime was just, you know, I have been on guard shift at that place. Your visibility is like next to nothing on a good day. The whole setup to that thing was just--it was a joke. So, the theory was, what happens if somebody leaves the wire at the TCP, runs or moves to the FOB?" Enclosure (Encl), 120. The Accused then executed his plan, indicating he departed OP Mest "[s]ometime around midnight, probably after." Encl, 146.

The Accused knew he was scheduled for guard duty, and planned his departure intending to miss his next shift: "What happened was, I think I had finished my shift two hours before Corporal Gaughan's shift. So that left a gap before it came to be my turn again. I left a gap of--they wouldn't be calling for me until five or six the next morning. That left a gap of nobody knowing I was gone until that next morning." Encl, 167. When the Accused was asked by MG Dahl how he would be discovered missing, the Accused stated "I wouldn't show up--basically, the guy who is on guard would be like, 'Bergdahl's got to replace me,' and he would either be the one to go wake me up or he would call to someone and say to wake Bergdahl up because it was his turn for guard shift." Encl, 168.

The Accused offered a variety of explanations for his motivation, one of which was his desire to cause a DUSTWUN: "And I know--so, I knew that if DUSTWUN was called from a Soldier disappearing, that the call goes not only all the way up to the Army command, it goes to Air Force, it goes to Marines. It goes all the way back to the states. It goes to every high point and everybody finds out about it...What happens--if that happens when a Soldier disappears, then that can be utilized." Encl, 119. The Accused hoped the DUSTWUN would allow him to raise his concerns about his chain of command by gaining an audience with a general officer: "He is going to ask me, 'Why?' He is going to ask that person, 'Why?' That person is going to say, 'Sir, these people, the BC, the sergeant major, they are unfit for their positions from what I have seen. On multiple occasions, they have done this, this, this, and this. I am demanding, as a Soldier of this Army, that a psychological evaluation and an investigation be launched into this unit to remove anybody who is unfit for their duty and to reestablish the safe procedures and guidelines that a real leader, real officer, or real NCO should be emplacing in a military unit that is in the middle of a battlefield.'" Encl, 121-122.

The Accused also wished to improve his chances of joining Special Forces: "This was my chance to prove I wasn't just a failure. I wanted to go Special Forces. I didn't want to show up at the Q-course with some bullshit Article 15 and say, Well, I am here, just like all the other guys that want to be super cool Soldiers." Encl, 130.

Charges were preferred against the Accused on 25 March 2015. The case was referred to a General Court-Martial on 14 December 2015. The Accused is charged with one specification of desertion with intent to avoid hazardous duty and to shirk

important service in violation of Article 85, Uniform Code of Military Justice (UCMJ) and one specification of misbehavior before the enemy-endangering the safety of the unit in violation of Article 99, UCMJ.

IV. EVIDENCE

Enclosure. Excerpts from the sworn statement of the Accused to then MG Dahl, the AR 15-16 investigating officer, 6 August 2014.

V. LAW AND ARGUMENT

It is well established that, while related, there is a distinction between the concepts of intent and motive. As the Court of Appeals for the Armed Forces observed:

A person often acts with two or more intentions. These intentions may consist of an immediate intention (intent) and an ulterior one (motive), as where the actor takes another's money intending to steal it and intending then to use it to buy food for his need family ... It may be said that, so long as the defendant has the intention required by the definition of the crime, it is immaterial that he may also have had some other intention.

The 'ultimate end sought ... is more properly labeled a 'motive.'"

United States v. Huet-Vaughn, 43 M.J. 105 (CAAF 1995)(quoting *W. LaFave and A. Scott*, 1 Substantive Criminal Law § 3.6 (1986) and *United States v. Kabat*, 797 F.2d 5180, 587 (8th Cir. 1986).

In *United States v. Shull*, 2 C.M.R. 83 (C.M.A. 1952), the appellant volunteered for overseas duty with the Far East Command and was informed he had been selected for the requested duty. *Id.* at 84. Appellant then requested a three-day pass to go home to take care of a family difficulty, citing the imminence of his departure from his old company. *Id.* The pass was approved, appellant traveled from Kentucky to his home in Illinois, advised his command the day before his pass was to expire that he was unable to meet the return hour of his pass, but would rejoin his organization on the terminal date. *Id.* Thirteen days later, the appellant was apprehended at his home in Illinois. *Id.* at 85. The court held that the intent to stay away, combined with the appellant's knowledge that he was missing important service by remaining absent, was enough to establish his intent to shirk important service.¹ *Id.* Any peripheral reasons to remain absent were motives, and motives cannot negate intent. The court explicitly stated that it did not intend to enumerate a rule requiring that an accused's primary motive must have been to avoid the important service or the hazardous duty. *Id.* The court went on to say:

¹ The Government acknowledges it must separately prove the element related to hazardous duty and important service.

It is enough, we hold, that in a case of this nature a court-martial determine on the basis of substantial evidence that the duty was imminent, and that as a consequence of his unauthorized absence the accused in fact avoided it or had reasonable cause to know that he would do so. Since one in the position of such an accused will be deemed to have intended the natural and probable consequences of his actions, we cannot in propriety complain if the court-martial regards primacy among motives as unimportant.

Id. at 88-89.

A variety of other cases also support the conclusion that motive and intent are separate concepts. For example, in *Huet-Vaughn* the accused, an Army physician who vehemently opposed American action in the Persian Gulf, decided not to support Desert Shield stateside, in Europe, or in the Middle East, and absented herself from her unit before it was to deploy. 43 M.J. 105 (C.A.A.F. 1995). CAAF dismissed her reasons for going AWOL as irrelevant after CPT Huet-Vaughn did not contest the fact she intentionally quit her unit with knowledge that it was about to deploy. *Id.* The issue at trial was whether she left her unit with intent to avoid hazardous duty or to shirk important service. *Id.* The court found that to be relevant, the proffered evidence of motive must have tended to make her "intent to avoid hazardous duty or to shirk important service" more or less probable. *Id.* at 113. If it did not tend to negate the required specific intent, it was not relevant to the defense case. *Id.* "To the extent that CPT Huet-Vaughn quit her unit as a gesture of protest, her motive for protesting was irrelevant...[i]f she chose to quit her unit in protest, her reasons for quitting would tend to prove rather than disprove the requisite intent." *Id.* at 114.

In *United States v. Kim*, 35 M.J. 553 (1992), the appellant was a soldier stationed in Germany whose unit was to deploy in support of Operation Desert Shield. SPC Kim was aware of his unit's deployment alert, and left his unit without permission and went to Korea. *Id.* SPC Kim offered several reasons for leaving his unit, to include visiting his dying grandmother and resolving a problem regarding his citizenship. *Id.* at 554-555. The court found his "actual motivation for leaving his unit is unimportant, if as a consequence of that unauthorized absence appellant had reasonable cause to know that he would avoid service." *United States v. Kim*, 35 M.J. 553, 1992 (citing *United States v. Shull*, 2 C.M.R. 83, 88-89 (C.M.A. 1952)).

In *United States v. Fazo*, 63 M.J. 730 (NMCCA 2006), the appellant was assigned to duty on a patrol boat in Bahrain and was granted leave to return to the United States to assist his wife, but failed to return at the conclusion of leave and remained absent for three weeks. While recognizing that the specific intent to shirk important service meant that "an unauthorized absence with knowledge that the unit was to perform important service does not automatically satisfy the intent element," the Court also held that "this element goes to the accused's immediate intent, not his ultimate goal." *Id.* at 733. The court went on to write that:

If the accused had the required specific intent to avoid a certain duty or shirk important service, then it does not matter if she also ultimately intended to perform a legal, or even noble, act. The ultimate goal, also sometimes called an ulterior intent, is more properly labeled a motive. This motive, no matter how compelling, cannot negate the accused's immediate intent.

Id. (citing *Huet-Vaughn*).

In *United States v. Apple*, 10 C.M.R. 90 (1953), the appellant left his unit in Korea after spending approximately thirteen months on the main line of resistance to go to the rear to inquire about rotation points. The appellant in *Apple* believed he had discharged his duty after being on the front line for thirteen months and was eligible for rotation out of the combat zone. The issue in *Apple* was the failure to instruct on the lesser included offense of absence without leave after the accused raised an alternative explanation for his absence. *Id.* at 91-92. The *Apple* court, in determining that the lesser included offense instruction should have been given, nevertheless recognized that “[o]ur holding here in no sense involves a failure to recognize fully the distinction between ‘intent’ and ‘motive’ – traditional in the common law of crimes.” *Id.* at 92.²

The Defense’s reliance on *United States v. Gonzalez*, 42 M.J. 469 (C.A.A.F. 1995), while accurate, fails to make reference to the ultimate holding. *Gonzalez* appealed, in part, on the basis that he did not *actually* shirk important service because his unit never embarked for the Arabian Peninsula during his absence. *Id.* at 472. His conviction was upheld after the court found that “proof of the actual occurrence of important service by an accused’s unit during his absence is not necessary for conviction of this form of desertion.” *Id.* at 471. The court found no actual performance requirement in the language of the charge; “rather there is only a requirement of reasonable expectation that this service will be performed.” *United States v. Gonzalez*. 42 M.J. 469 (C.A.A.F. 1995) (citing *United States v. Shull*, 2 C.M.R. at 88 (C.M.A. 1952)). It is notable that *Gonzalez* relied favorably on the holding in *Shull*.

Rather than distinguish between the concepts of intent and motive, as clearly required by the wealth of authority cited above, the Defense’s instruction seeks to blur the concepts by proposing to define “specific intent” as the Accused’s:

actual, subjective *purpose* in acting as he did, regardless of whether that purpose was naïve or unrealistic. SGT Bergdahl’s mental processes are relevant to that determination. In weighing the evidence of those mental processes, you should consider whether he believed circumstances in the

² *Huet-Vaughn* distinguished its holding from *Apple*, stating “[u]nlike CPT Huet-Vaughn, PVT Apple did not testify that he would refuse to support the war effort whether his rotation points were correctly computed and entered in his records. Unlike PVT Apple’s case, CPT Huet-Vaughn’s intent was submitted to the trier of fact with appropriate instructions.” *United States v. Huet-Vaughn*, 43 M.J. 105, 116 (C.A.A.F. 1995).

unit were such that higher echelons should be made aware of them so corrective action could be taken.

D App 86 at 1 (emphasis added). The use of the word "purpose" in this context is inappropriate, as it fails to delineate between motive and intent, which as explained in every case cited above, is a critical distinction. Moreover, the Defense proposed instruction ignores the fact that "[a] person frequently has multiple purposes for committing an offense. The specific intent the law requires need not be the primary or predominate reason." *United States v. Lanier*, 2009 CCA LEXIS 174 (ACCA 2009)(citing *Shull*). The fact that an individual may have multiple purposes in engaging in a particular act is made clear by the accused's own statements. It is noteworthy that the Defense proposed instruction cherry picks the Accused's desire to report problems with his command as the single purpose that the Government must establish, ignoring his additional desire to improve his chances of joining the Special Forces. Both fall squarely within the definition of motive, and neither negate the accused's clear intent to avoid his guard duty.

Here, while the Accused has stated several reasons for why he quit his combat outpost, his *immediate intention* was to avoid his guard shift. His *ulterior* motives, on the other hand, was to report what he believed to be problems with his chain of command and prove his status as worthy of Special Forces. This is precisely the type of distinction that was found in both *Huet-Vaughn* and *Kim*. Each had the immediate intent to avoid service in the Persian Gulf based on ulterior motives: CPT Huet-Vaughn's aversion to Operation Desert Storm and SPC Kim's desire to visit his family. Further support for this conclusion is the related nature of SGT Bergdahl's stated reasons for his actions. Intentionally missing his guard shift thereby causing the DUSTWUN was the mechanism by which the Accused was attempting to achieve his ulterior motive of speaking to a General Officer and raising concerns.

VI. PROPOSED INSTRUCTION

Intent refers to the state of mind of the accused at the time an act is done. To prove the intent element of this offense, the government must prove that the accused reasonably knew as a consequence of quitting his place of duty that he would avoid hazardous duty and shirk important service.

Motive, on the other hand, is the underlying reason which prompts a person to act. Motive, however, is not an element of any charged offense in this case. The government is not required to prove a motive for the commission of the charged offenses.

Furthermore, good motive alone is not a defense where the act done or omitted is a crime. If the accused commits a criminal act, his general good motive is immaterial. An accused's motive is only relevant to the extent that it may establish a recognized defense, or is circumstantial evidence of intent.

I will instruct you separately on any defenses that have been raised by the evidence.

A person may act with multiple intents and motives. The specific intent the law requires need not be the primary or predominant reason. Whether the accused may have had some other intention or motive to quit his duties is immaterial so long as you are satisfied beyond a reasonable doubt that the accused knew as a consequence of quitting his place of duty that he would avoid hazardous duty and shirk important service.

Basis: *United States v. Kim*, 35 M.J. 553, 554-55 (A.C.M.R. 1992); *United States v. Huet-Vaughn*, 43 M.J. 105, 113-15 (C.A.A.F. 1995); *United States v. Fazo*, 63 M.J. 730, 733-34 (C.G. Ct. Crim. App. 2006); *United States v. Lanier*, 2009 WL 6843586 at *3 (Army Ct. Crim. App. Feb. 4, 2009).

VII. CONCLUSION

SGT Bergdahl's statement makes clear that he intentionally missed his guard duty in an effort to cause an event which would later facilitate his ultimate motive, a meeting with a General Officer. The Government respectfully requests the Court reject the Defense's proposed instruction, which inappropriately attempts to blur the lines between the two concepts, and incorrectly requires the Government to establish that the Accused had only a single intent. Instead, the Court should instruct the Members using the Government's proposed instruction.


ANN S. RUTHERFORD
CPT, JA
Trial Counsel

CERTIFICATE OF SERVICE

I certify that I have served or caused to be served a true copy of the above on the Defense Counsel on 28 July 2017.


ANN S. RUTHERFORD
CPT, JA
Trial Counsel

1 instead of giving them that [reasons not to trust us], then we should be
2 doing what we are telling these guys that we are here to do, then we should
3 go out and do it.

4 Q. Okay.

5 A. And as a private first class, from where I was standing, I
6 wasn't seeing that. And as a private first class, where I was
7 standing, I was seeing around me all this just stupid bullshit. And
8 I was seeing things heading in a very dangerous direction. So, I had
9 to do something. It had to be me doing it. And so I came up, happily
10 with my ignorance of a young--from a young man's mind and my
11 imagination, I came up with a fantastic plan.

12 One of the things that I talked about with one of the guys
13 was "DUSTWUN" because I saw it written somewhere and I said, "What is
14 DUSTWUN" because I didn't know what DUSTWUN was. And he said,
15 "DUSTWUN is what is called out when a Soldier is taken or when a
16 Soldier disappears or is taken." And I knew--so, I knew that if
17 DUSTWUN was called from a Soldier disappearing, that call goes not [only]
18 all the way up to Army command, it goes to Air Force, it goes to
19 Marines. It goes all the way back to the states. It goes to every
20 high point and everybody finds out about it. So, the idea was--the
21 question--the theory started out like this: What happens--if that
22 happens when a Soldier disappears, then that can be utilized.
23 Because I was looking at an environment. We were 10 to 20 miles

1 away. This TCP [COP Mest] was 10 to 20 miles away from the FOB
2 [Sharana]. It was flat ground. I grew up on high altitudes. So,
3 high altitude doesn't affect me. I can run at high altitude. I can
4 cover ground. You know, I had the PT down. I was going to go
5 Special Forces. So, I had the physical ability. So, I was looking
6 at the environment. Flat ground all the way to the FOB. The idea
7 was simple. The security at the TCP was crap. There was weak points
8 everywhere. And nighttime was just, you know, I have been on guard
9 shift at that place. Your visibility is like next to nothing on a
10 good day. The whole setup to that thing was just--it was a joke.

11 So, the theory was, what happens if somebody leaves the
12 wire at the TCP, runs or moves to the FOB? Well, during that time
13 DUSTWUN is going to be called up. Something is going to happen,
14 right? That guy disappears. No one knows what happened to him.
15 That call goes out. It hits every command. Everybody goes, what has
16 happened? Nobody knows what has happened. People come up with all
17 their theories and people happily use their imaginations to fill in
18 all the blanks. But, what is going to happen--what, you know, what
19 is going to lead the situation is actual events. The actual events
20 would be, a Soldier disappears. And then a couple of days later,
21 actual events. DUSTWUN gets called up. An alert gets sent out.
22 Actual event a couple of days later, or a day later, whatever it is,
23 24 hours or more, however long it would take me, the Soldier shows up

1 at the FOB. From TCP to FOB. People get that guy. He shows up at
2 the gate. People recognize him. They ID him. They go, "What did
3 you just do?" And that Soldier says, "I am not saying anything about
4 what I did until I am talking to a general." Then that Soldier, you
5 know, gets taken to the general or general--because general wants to
6 know what is going on, because this guy just left the fort--he just
7 left the wire by himself. DUSTWUN gets called up because of it. He
8 wants to know what is going on. And suddenly, this private shows up
9 and he is demanding to see a general. So, a pretty good guess that
10 the general is probably going to be curious and want to talk to this
11 guy. Especially open door policy, this private is demanding open
12 door policy. "I want to see the general." Go talk to the general,
13 the general goes, "What did you do?" Well, suddenly, he has a reason
14 to listen to me. Because if I am willing to risk leaving the wire at
15 a defense point, in the middle of a war zone, that we have been
16 attacked at, that we have been blown up at, on multiple occasions, if
17 this guy is willing to risk doing that, and then shows up again at
18 the FOB, he is going to want to know why and he is going to want to
19 listen to this guy. And he has a reason to do it, because this guy
20 has gone out of his way. He has risked his own personal safety. He
21 has to have a good reason for it. He is going to ask me, "Why?" He
22 is going to ask that person, "Why?" That person is going to say,
23 "Sir, these people, the BC, the sergeant major, they are unfit for

1 their positions from what I have seen. On multiple occasions, they
2 have done this, this, this, and this. I am demanding, as a Soldier
3 of this Army, that a psychological evaluation and an investigation be
4 launched into this unit to remove anybody who is unfit for their duty
5 and to reestablish the safe procedures and guidelines that a real
6 leader, real officer, or real NCO should be emplacing in a military
7 unit that is in the middle of a battlefield." Suddenly he has a
8 reason to understand. Suddenly he has a reason to believe that he
9 should be listening to what this guy is saying. Because if he thinks
10 that the threat that is coming down from above, if he thinks that
11 there is a threat big enough around here, that he is willing to do
12 something like that.

13 All right, now everyone is going to say, "I am on"--
14 obviously, I have heard--you know, you read out the charges. People
15 have talked about desertion. People have talked about treason or
16 whatever it is that they want to talk about. They want to talk
17 about, "Oh, he was a sympathizer of the Taliban." All right. You
18 look at their ideology and what they are doing and you look at my
19 character. And you want to ask me questions about that, I will
20 happily talk all day about the joke of what they are [the Taliban].

21 All right. I am, for lack of a better word, a feminist. I
22 fully believe in women's equality. You have met Kim Harrison. I
23 call her my "God mother" because that is the type of person that I

1 was built on. Special Forces took those guys that were capable of
2 doing that and they condensed them into a unit, into a team, into a
3 body so that they could do what they were doing more efficiently.
4 You know, instead of leaving them in their units, and leaving them to
5 basically be engulfed by the regular Joe, the regular people that
6 were there, you were taking that talent, you were taking that ability
7 you were condensing it and utilizing it for what it was. That was
8 what Special Forces was built from. And that was their mission.
9 That is why it is called Special Forces.

10 So, stupid actions, yes. Stupid young man who wanted--I
11 had always been a failure. The Army was--I knew the Army. I knew
12 weapons. I knew Soldiers. I knew how to do that. This was my
13 chance to prove I wasn't just a failure. I wanted to go Special
14 Forces. I didn't want to show up at the Q-course with some bullshit
15 Article 15 and say, "Well, I am here, just like all the other guys
16 that want to be super cool Soldiers." I wanted to show up at the Q-
17 course saying, "I deserve to be here because I have proven myself
18 already that I am capable of doing not what Special Forces does now,
19 but what the real founders, the real guys back in the day did then."
20 Those guys had no support. They had no maps. They had no
21 technology. Alls they had was their common sense and their own
22 skills.

1 possible. Because I knew the dangers of being out there and I
2 specifically--nighttime was the cover. Once daytime came----

3 Q. Roughly, what time did you--do you have any idea what time
4 you departed?

5 A. Sometime around midnight, probably after.

6 Q. So you figured you had a few hours in the cover of
7 darkness.

8 A. A few hours of cover. The idea was to make as much--to
9 cover as much ground as possible. However, I knew what I had set
10 myself up for. Definitely, fear is a very general word. I had mixed
11 feelings about what I was doing. Of course, there was going to be
12 fear of doing it and there was going to be all these--my mind is
13 always going to question what I was doing because I knew how
14 dangerous it was. And I knew, basically, by that point, it was too
15 late to return because I knew I wasn't going to try to get back on.

16 Q. Right. You committed?

17 A. Yeah, I committed. So knowing what was waiting for me,
18 basically, it was going to be a very uneasy feeling because I
19 basically just pitted myself against the entire military higher rank.
20 The idea was I knew that the area was being--had IEDs placed in it
21 and I'm going to correct--no, not correct, but I'm just going to
22 explain clearer what I was thinking.

1 A. I believe that truck had a .240 mount. It was either a
2 .240 or a .50 cal. We didn't have a .203 up there.

3 Q. Do you recall when your last shift was? You remember
4 leaving around midnight or so. How soon after your last shift was it
5 that you made your way up over the--through the--over the hill?

6 A. I think I finished my shift. It was Corporal Gaughan on
7 shift, about the time his shift was ending. It was after that ending
8 that the next person went up that I had left. What happened was, I
9 think I had finished my shift two hours before Corporal Gaughan's
10 shift. So that left a gap before it came to be my turn again. I
11 left a gap of--they wouldn't be calling for me until five or six the
12 next morning. That left a gap of nobody knowing I was gone until
13 that next morning.

14 Q. So you were on shift, Gaughan replaced you, Gaughan came
15 off shift, somebody replaced him, and that's about when you departed
16 and you would have had a good six or eight hours before anyone was
17 going to come looking for you for your next shift. It probably would
18 have been daylight by then. They wouldn't have seen you absent
19 because everybody would have been sleeping, or doing their own thing.
20 So we know when you were on guard.

21 You don't recall when your next shift was?

22 A. It was just the next morning.

23 Q. 0600? 0800? Something like that?

1 A. I think it was like five or six, possibly.

2 Q. Just to go back to the whole--you mentioned DUSTWUN
3 earlier. While you were putting together your plan and thinking all
4 the things you were thinking, you're also, I don't want to put words
5 in your mouth, but you're thinking at some point they are going to
6 know you are missing. You are expecting that point to come about the
7 time you are coming on guard shift.

8 How would they discover you are missing?

9 A. I wouldn't show up--basically, the guy who is on guard
10 would be like, "Bergdahl's got to replace me," and he would either be
11 the one to go wake me up or he would call to someone and say to wake
12 Bergdahl up because it was his turn for guard shift.

13 CDC: Just bear with me, when did the unit realize you weren't
14 there? Because that would disclose when the shift was.

15 I/O: Right.

16 CDC: I forget, we quickly looked at the AR 15-6----

17 Q. If you read the 15-6, you got a variety of answers and
18 that's because when they were asked the question it was like 11 days
19 later. In that 11 days, they had a very high OPTEMPO. So, when the
20 investigating officer was asking them, it was everywhere between 0630
21 and 0830.

22 A. That's about the right time.