

Statement of Facts 3

Pertinent Parts of the Record and Exhibits 4

Reasons for Granting the Writ 4

Jurisdiction 8

Conclusion 9

Certificate of Filing and Service 11

Table of Authorities

Cases:

ABC, Inc. v. Powell, 47 M.J. 363 (C.A.A.F. 1997) 5

Bergdahl v. Burke, Misc. No. 20150463 (Army Ct. Crim. App.),
denied without prejudice, 74 M.J. ___ (C.A.A.F. 2015) 1

Center for Constitutional Rights v. Lind, 954 F. Supp. 2d 389
(D. Md. 2013) 6

Center for Constitutional Rights v. United States, 72 M.J. 126
(C.A.A.F. 2013) 5, 6

Clinton v. Goldsmith, 526 U.S. 529 (1999) 6

F.T.C. v. Dean Foods Co., 384 U.S. 597 (1966) 8

LRM v. Kastenberg, 72 M.J. 364 (C.A.A.F. 2013) 8

United States v. Arness, 74 M.J. ___, 2015 CAAF LEXIS 720
(C.A.A.F. 2015) 8, 9

Statutes:

All Writs Act, 28 U.S.C. § 1651 (2012) 1, 8

Uniform Code of Military Justice, 10 U.S.C. §§ 801 *et seq.*:

 Art. 32, 10 U.S.C. § 832 1, 3, 6

 Art. 66(b)(1), 10 U.S.C. § 866(b)(1) 8

 Art. 85, 10 U.S.C. § 885 1

Art. 99(3), 10 U.S.C. § 899(3)	1
<i>Rules and Regulations:</i>	
Army Ct. Crim. App. Rules	
Rule 20	1
Rule 20.1	8
Army Regulation 15-6, <i>Boards, Commissions, and Committees:</i>	
<i>Procedures for Investigating Officers and Boards of</i>	
<i>Officers (2 Oct 2006)</i>	2
Army Regulation 27-26, <i>Legal Services: Rules of Professional</i>	
<i>Conduct for Lawyers (1 May 1992)</i>	2
Manual for Courts-Martial, United States (2012 ed.):	
R.C.M. 405(i)(4)	4
R.C.M. 802	1
¶ 9e	8
¶ 23e	8

Introduction

This petition, filed pursuant to the All Writs Act, 28 U.S.C. § 1651, and Rule 20 of the Court's Rules of Practice and Procedure, seeks an order concerning the availability to the public of unclassified documents that have been submitted in evidence in a public preliminary hearing conducted under Article 32, UCMJ.

History of the Case

The case concerns a preliminary hearing into charges under Articles 85 and 99(3), UCMJ that were sworn to by respondent Burke on 25 March 2015. The GCMCA is GEN Robert B. Abrams, Commander, U.S. Army Forces Command. The SPCMCA is respondent Burke, who is Commander, Special Troops Battalion, FORSCOM. LTC Burke issued a protective order on 25 March 2015.¹

The evidentiary hearing was conducted at Joint Base San Antonio on 17-18 September 2015. The preliminary hearing officer is LTC Mark A. Visger, JA. Except for brief conferences with counsel in the nature of R.C.M. 802 conferences, the entire preliminary hearing was conducted in public. Members of the public, including representatives of the news media, were present both

¹ For the reasons set forth in our submissions here and to the Court of Appeals in earlier litigation, respondent Burke should not be serving as SPCMCA. Nothing in this petition should be deemed a waiver of our objection to his doing so. The Court of Appeals denied our writ-appeal petition without prejudice. See *generally Bergdahl v. Burke*, Misc. No. 20150463 (Army Ct. Crim. App.), *denied without prejudice*, 74 M.J. ___ (C.A.A.F. 2015).

in the hearing room and in an overflow room to which the proceedings were piped both visually and aurally.

Among the documents received in evidence was the report of an AR 15-6 investigation conducted by MG Kenneth R. Dahl in 2014 and a 371-page transcript of MG Dahl's 6-7 August 2014 interview of petitioner. These documents are unclassified. They were repeatedly referred to in testimony in open court in the presence of spectators.

During the hearing counsel for petitioner asked the preliminary hearing officer if he would permit the release of these documents. As anticipated, LTC Visger indicated that he lacked authority to authorize their release.

MG Dahl testified that he had no objection to his report or the interview transcript being made public.

Petitioner wishes these documents to be made public. If the government refuses to make them public immediately, he wishes to make them public by his attorneys.

Petitioner's civilian defense counsel sought a ruling from the DA Professional Conduct Council on 24 June 2015 as to whether it would violate the Army Rules of Professional Conduct for the defense to make these documents public. After 82 days, the Council refused to rule, claiming that petitioner should ask respondent Burke. Petitioner had already done so, but did so once again, to no avail.

Issue Presented

ONCE AN UNCLASSIFIED DOCUMENT HAS BEEN ACCEPTED IN EVIDENCE IN A PRELIMINARY HEARING OPEN TO THE PUBLIC, MUST THE CONVENING AUTHORITY RELEASE IT AND PERMIT THE ACCUSED TO DO SO?

Relief Requested

Petitioner seeks a writ of mandamus directing respondents (1) to make public forthwith the unclassified exhibits that have been received in evidence in the accused's preliminary hearing and (2) to modify the protective order to permit the accused to make those exhibits public. In addition, the Court should address the larger issue of public access to and releasability of Article 32 documents, since it is inevitable that it will arise again when the unclassified transcript of the proceedings conducted in public on 17-18 September 2015 is completed.

Petitioner does not request a stay of the remaining steps in the Article 32 process. He does, however, request expedited consideration. Oral argument is unnecessary.

Statement of Facts

Petitioner is an active duty sergeant. He is currently stationed (and physically present) at Headquarters Support Company, U.S. Army North, Joint Base San Antonio. "[F]or the general administration of military justice" he is attached to Headquarters and Headquarters Company, Special Troops Battalion, U.S. Army

Forces Command (FORSCOM), Fort Bragg, by orders dated 9 January 2015, effective 12 January 2015.

Respondent Burke is Commander, Special Troops Battalion, FORSCOM.

The evidentiary hearing ended on 18 September 2015.

All other pertinent facts have already been stated.

Pertinent Parts of the Record and Exhibits

The transcript of the preliminary hearing is not yet available. There is therefore no "record" to submit other than the documents that are attached as exhibits.

Reasons for Granting the Writ

"Preliminary hearings are public proceedings and should remain open to the public whenever possible." R.C.M. 405(i)(4), 80 Fed. Reg. 35,798 (June 22, 2015). It makes an utter mockery of that rule if unclassified document introduced in evidence and referred to in the course of the hearing themselves remain inaccessible. This is a particularly appalling outcome given the stringent test (and requirement for particularized written factual findings) the President has prescribed for closing a hearing: there must be "an overriding interest . . . that outweighs the value of an open preliminary hearing." No such interest supports the effective sequestration of these public documents. After all, but for the interest in conserving valuable hearing time, the parties could literally have read them into the record

from cover to cover. The conservation of hearing time is not a basis for withholding documents from the public.

In *Center for Constitutional Rights v. United States*, 72 M.J. 126, 130 (C.A.A.F. 2013) (3-2 decision), the Court of Appeals held that the parties seeking relief had "failed to meet their burden of establishing that [C.A.A.F.] or the CCA has jurisdiction to grant [them] the relief they seek." Significantly, the accused there, PFC Manning, did not join the organizations seeking access to documents. Judge Stucky pointedly wrote for the majority:

Finally, this case differs in a very important respect from [*ABC, Inc. v. Powell*, 47 M.J. 363 (C.A.A.F. 1997)]. In that case, which dealt with the closure of an Article 32 investigation to the press and the public, the accused joined in the proceedings in order to vindicate his right to a public trial. *Id.* Here, the accused has steadfastly refused to join in the litigation, or, despite the Court's invitation, to file a brief on the questions presented. We thus are asked to adjudicate what amounts to a civil action, maintained by persons who are strangers to the court-martial, asking for relief -- expedited access to certain documents -- that has no bearing on any findings and sentence that may eventually be adjudged by the court-martial.

72 M.J. at 129. Equally tellingly, the Court observed:

More immediately, the accused in *Powell* joined the media as a party in seeking a writ of mandamus to vindicate his constitutional right to a public trial -- something which had immediate relevance to the potential findings and sentence of his court-martial. We are not foreclosing the accused from testing the scope of public access, but he has not done so here.

Id. at 129-30.

This petition presents the very situation the Court of Appeals found missing in *CCR* (a decision whose correctness we do not concede). SGT Bergdahl affirmatively wishes MG Dahl's report and his own interview to be made available to the public -- whether by the Army or by himself. Whatever the news media's rights may be (and we believe they too have a judicially enforceable real-time right to these and similar unclassified documents from an Article 32 preliminary hearing), his right to use and disseminate these documents -- of which he lawfully has copies -- as he wishes cannot be constrained by respondent Burke's protective order.

We respectfully submit that this dispute, growing directly out of a critical phase of the court-martial process, and pitting the accused against a convening authority, lies well within the scope of this Court's authority, and in no way implicates *Clinton v. Goldsmith*, 526 U.S. 529 (1999). We also note that even though the Army has long known that petitioner wished to have the documents at issue made available to the public one way or the other, it has wasted time by providing a non-answer to petitioner's request for an ethics ruling and has taken none of the transparency measures it belatedly took in the *Manning* case, as recounted in *Center for Constitutional Rights v. Lind*, 954 F. Supp. 2d 389, 403-04 (D. Md. 2013). The Army has no excuse for having failed to incorporate reading room arrangements in the

elaborate preparations for SGT Bergdahl's preliminary hearing. Given the effort and resources expended on building and hearing room security, it is a pity this important aspect of the administration of justice was disregarded.

Two salient prudential considerations bear on the exercise of the Court's All Writs Act authority.

First, failing to grant the relief requested at this time will defeat the President's clear directive that preliminary hearings be conducted in public. To permit massive amounts of relevant, material, unclassified information to remain unavailable to the public, even when the accused prefers that these materials be made available, blows a gaping hole in the public hearing requirement and is indefensible. The resulting opacity does not contribute to public confidence in the administration of military justice.

Second, it is perfectly obvious that SGT Bergdahl has been the subject of a record-shattering year-long campaign of vilification in parts of the media. That campaign seriously threatens both his reputation and his right to a fair trial if any charge is referred for trial. He thus has a compelling interest in making MG Dahl's report and his own statement available to those in American society who wish to inform themselves about what actually happened. Forcing him to wait until the military justice

process has run its course is unfair and this Court should not, by denying relief, ratify it.

Jurisdiction

To some extent we have already addressed the question of jurisdiction. See p. 6 *supra*. The jurisdictional basis for the relief sought is the Court's potential appellate jurisdiction under Article 66(b)(1), UCMJ, *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 603-04 (1966), since the authorized maximum punishment for the offenses with which petitioner has been charged qualifies for mandatory appellate review. MCM §§ 9e, 23e. The All Writs Act applies because the Court was established by Act of Congress. 28 U.S.C. § 1651(a). Together, the Code and the All Writs Act confer jurisdiction. *LRM v. Kastenberg*, 72 M.J. 364, 367 (C.A.A.F. 2013). The requested writ is in aid of the Court's appellate jurisdiction, as required by that Act and Rule 20.1.

United States v. Arness, 74 M.J. ___, 2015 CAAF LEXIS 720 (C.A.A.F. 2015), is no impediment to this Court's exercise of its All Writs Act power. There, the trial had already been conducted and a subjurisdictional sentence adjudged. Moreover, the Judge Advocate General had refused to refer the case to this Court. As a result, the case was no longer in the Court's potential appellate jurisdiction, even though it once had been, given the authorized maximum punishment.

Here, in sharp contrast, there has been no trial, much less a subjurisdictional sentence, and of course the Judge Advocate General has never had occasion to decide whether it should be referred here. *Arness* has no impact on a case in this posture, especially where the authorized maximum punishment remains sufficient to bring the case within the Court's normal appellate jurisdiction, without discretionary action by the Judge Advocate General to do so.

Failing to grant the relief requested at this time will defeat the President's clear directive that preliminary hearings be conducted in public. To permit massive amounts of relevant, material, unclassified information to remain unavailable to the public, even when the accused prefers that these materials be made available, blows a gaping hole in the public hearing requirement and is indefensible. The resulting opacity does not contribute to public confidence in the administration of military justice.

Conclusion

For the foregoing reasons, petitioner respectfully requests that the Court issue a writ of mandamus directing respondents (1) to make public forthwith the unclassified exhibits received in evidence in the preliminary hearing and (2) to modify the protective order to permit the accused to make those exhibits public.

Respectfully submitted,

Eugene R. Fidell

Eugene R. Fidell
Feldesman Tucker Leifer Fidell LLP
1129 20th Street, N.W., Ste. 400
Washington, DC 20036
(202) 256-8675 (cellphone)
efidell@ftlf.com

Civilian Defense Counsel

/s/ Franklin D. Rosenblatt
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Lieutenant Colonel, JA
U.S. Army Trial Defense Service
9275 Gunston Road, Suite 3100
Fort Belvoir, VA 22060
(703) 693-0283
franklin.d.rosenblatt.mil@mail.mil

Individual Military Counsel

/s/ Alfredo N. Foster, Jr.
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Captain, JA
U.S. Army Trial Defense Service
Ft. Sam Houston
Joint Base San Antonio, TX
alfredo.n.foster.mil@mail.mil
(210) 295-9742

Detailed Defense Counsel

/s/ Jonathan F. Potter
Jonathan F. Potter
Lieutenant Colonel, JA
Defense Appellate Division
jonathan.f.potter3.mil@mail.mil
(703) 695-9853

Appellate Defense Counsel

Certificate of Filing and Service

I certify that I have, this 21st day of September, 2015, filed and served the foregoing Petition for Writ of Mandamus by emailing copies to the Clerk of Court, respondent Burke, and the Government Appellate Division at the following email addresses:

usarmy.pentagon.hqda-otjag.mbx.us-army-clerk-of-court@mail.mil
usarmy.pentagon.hqda-otjag.mbx.usalsa-gad@mail.mil
peter.q.burke.mil@mail.mil


Eugene R. Fidell

Civilian Defense Counsel

Pet. Ex. 1



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY FORCES COMMAND
4700 KNOX STREET
FORT BRAGG, NORTH CAROLINA 28310-5000

AFCG-JA

15 September 2015

MEMORANDUM FOR LTC Franklin Rosenblatt, Defense Counsel

SUBJECT: Response to Defense Memorandum dated 13 September 2015

1. General Abrams acknowledges receipt of your memorandum dated 13 September 2015, concerning media access to the Article 32 Preliminary Hearing in the case of SGT Robert (Bowe) Bergdahl.
2. As Commander, Forces Command, General Abrams does not have the authority to release, in whole or in part, the documents contained in the 2014 AR 15-6 Investigation. The Article 32 Preliminary Hearing is convened by the Special Courts-Martial Convening Authority, LTC Peter Burke, who has previously addressed the issue of media access to the proceedings. [Enclosure].

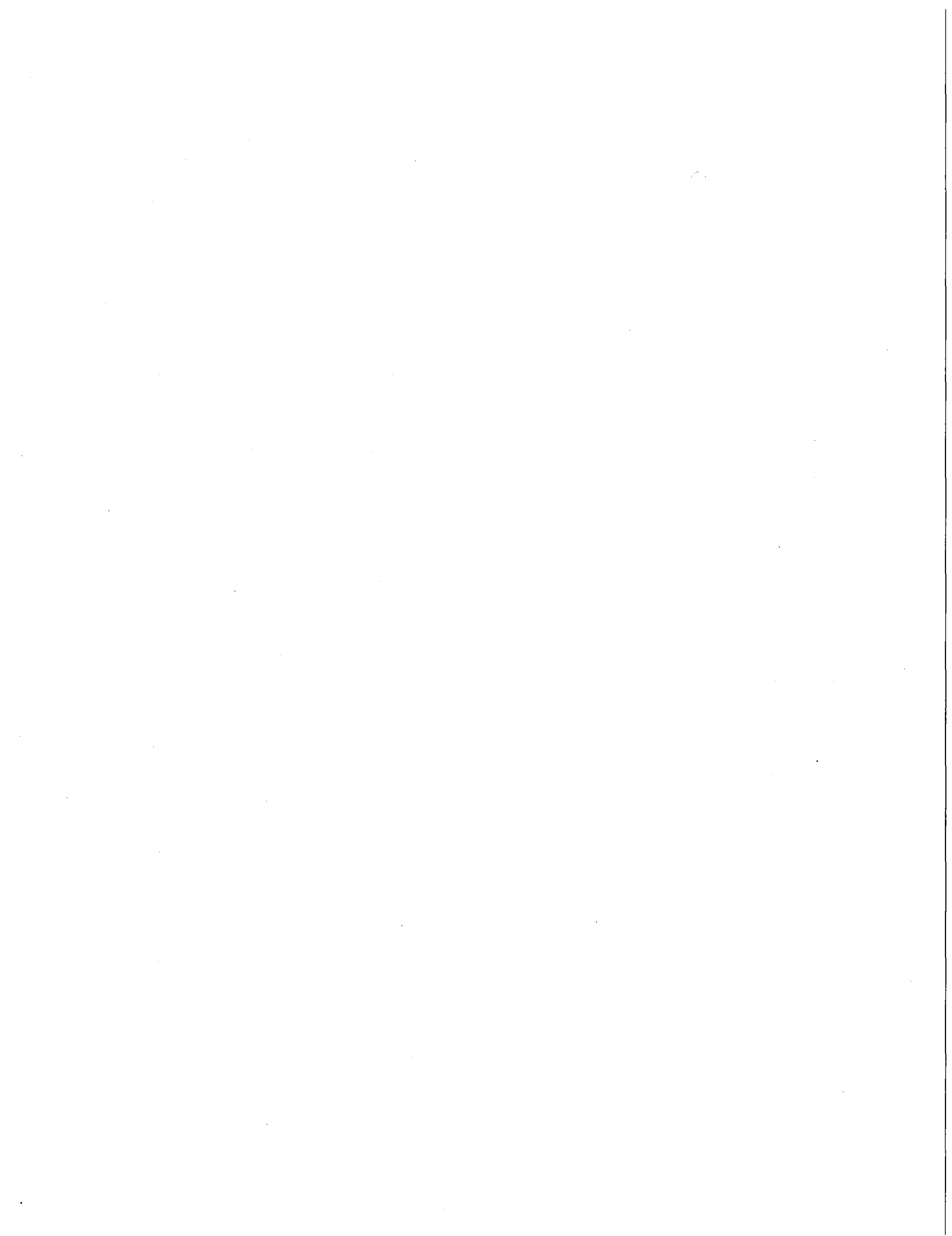
BERRY.VANESSA.AN
NA.1160118012

Digitally signed by
BERRY.VANESSA.ANNA.1160118012
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI,
ou=USA, cn=BERRY.VANESSA.ANNA.1160118012
Date: 2015.09.15 17:04:02 -04'00'

Encl:

VANESSA A. BERRY
COL, JA
Staff Judge Advocate

CF:
Military Defense Counsel
Civilian Defense Counsel
Government Trial Counsel





DEPARTMENT OF THE ARMY
SPECIAL TROOPS BATTALION
UNITED STATES ARMY FORCES COMMAND-UNITED STATES ARMY RESERVE COMMAND
4745 KNOX STREET, BLDG 1-1460
FORT BRAGG, NORTH CAROLINA 28310-5000

August 6, 2015

Mr. Diego Ibarguen
Hearst Corporation
300 West 57th Street
New York, NY 10019-3792

Dear Mr. Ibarguen,

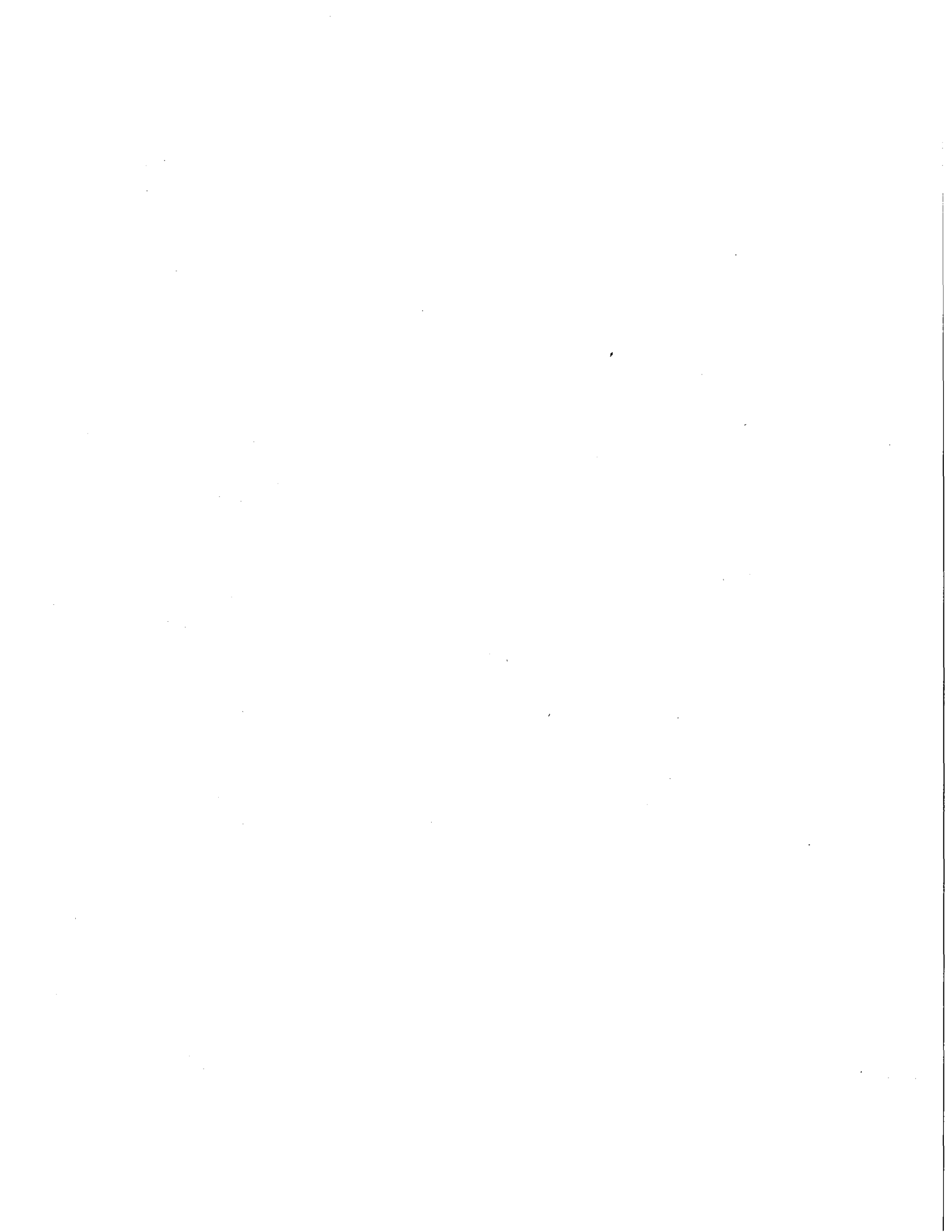
Thank you for your letter of July 31, 2015, concerning the Article 32 Preliminary Hearing in the case of Sergeant Bowe Bergdahl. The preliminary hearing will be conducted in accordance with Rule For Courts-Martial (RCM) 405, Manual For Courts-Martial 2012 (as updated in June 2015). Accordingly, public access will comply with RCM 405(i)(4), which explicitly states that a preliminary hearing is a public proceeding and will remain open to the public whenever possible. In the event the preliminary hearing must be closed, such as due to the presentation of classified evidence, this closure will be narrowly tailored balancing the Government's interest in protecting classified information and the public's right to be present at the preliminary hearing.

The Government is planning for media access, please have your news representative contact Mr. Paul Boyce, US Forces Command, Public Affairs, at john.p.boyce2.civ@mail.mil or (910) 570-7200 for information on the required procedures to attend the preliminary hearing.

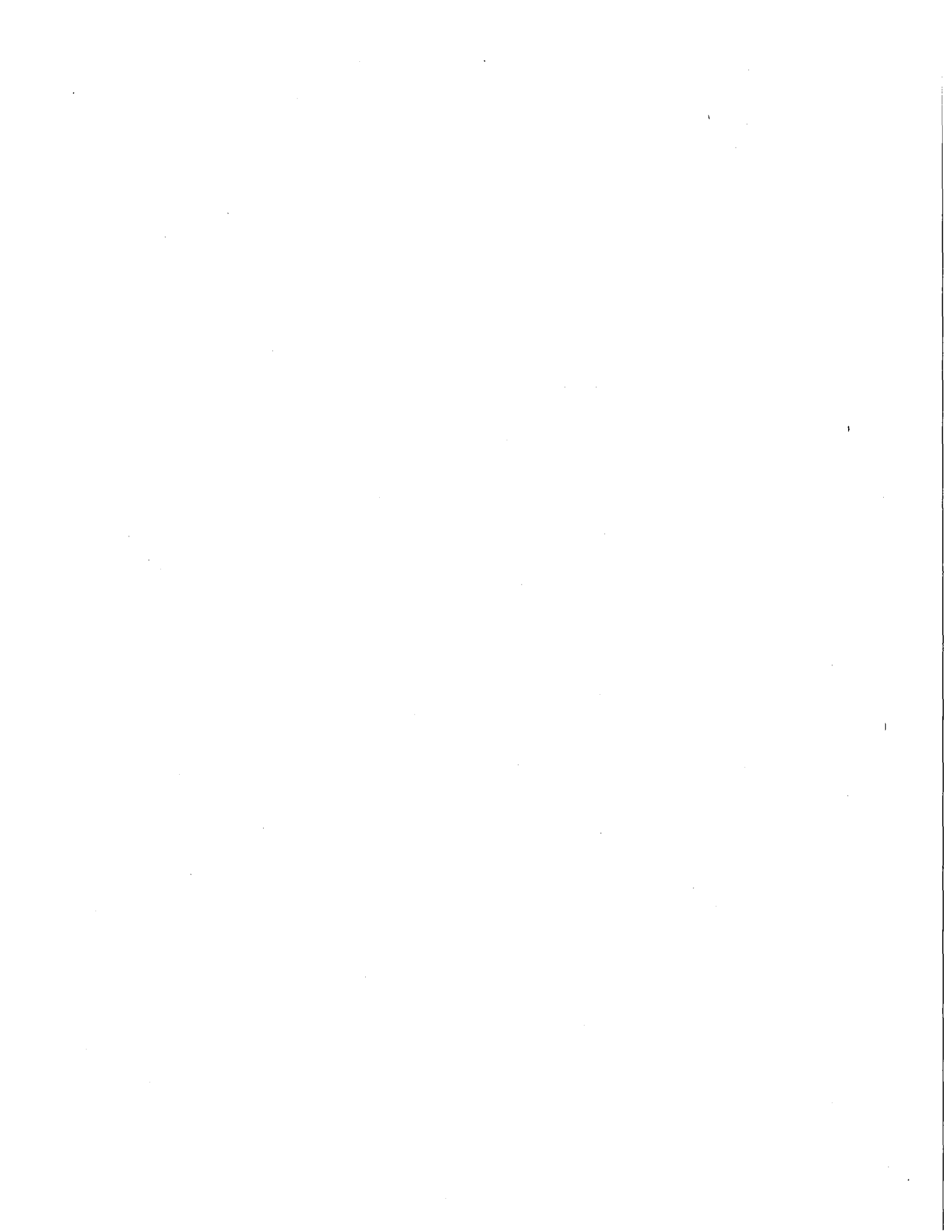
Sincerely,

A handwritten signature in black ink, appearing to read "P. Q. Burke".

Peter Q. Burke
Lieutenant Colonel, U.S. Army
Commanding



Pet. Ex. 2





**DEPARTMENT OF THE ARMY
OFFICE OF THE GENERAL COUNSEL
104 ARMY PENTAGON
WASHINGTON, DC 20310-0104**

September 14, 2015

Mr. Eugene R. Fidell
1129 20th Street, N.W., 4th Floor
Washington, DC 20036


Dear Mr. Fidell:

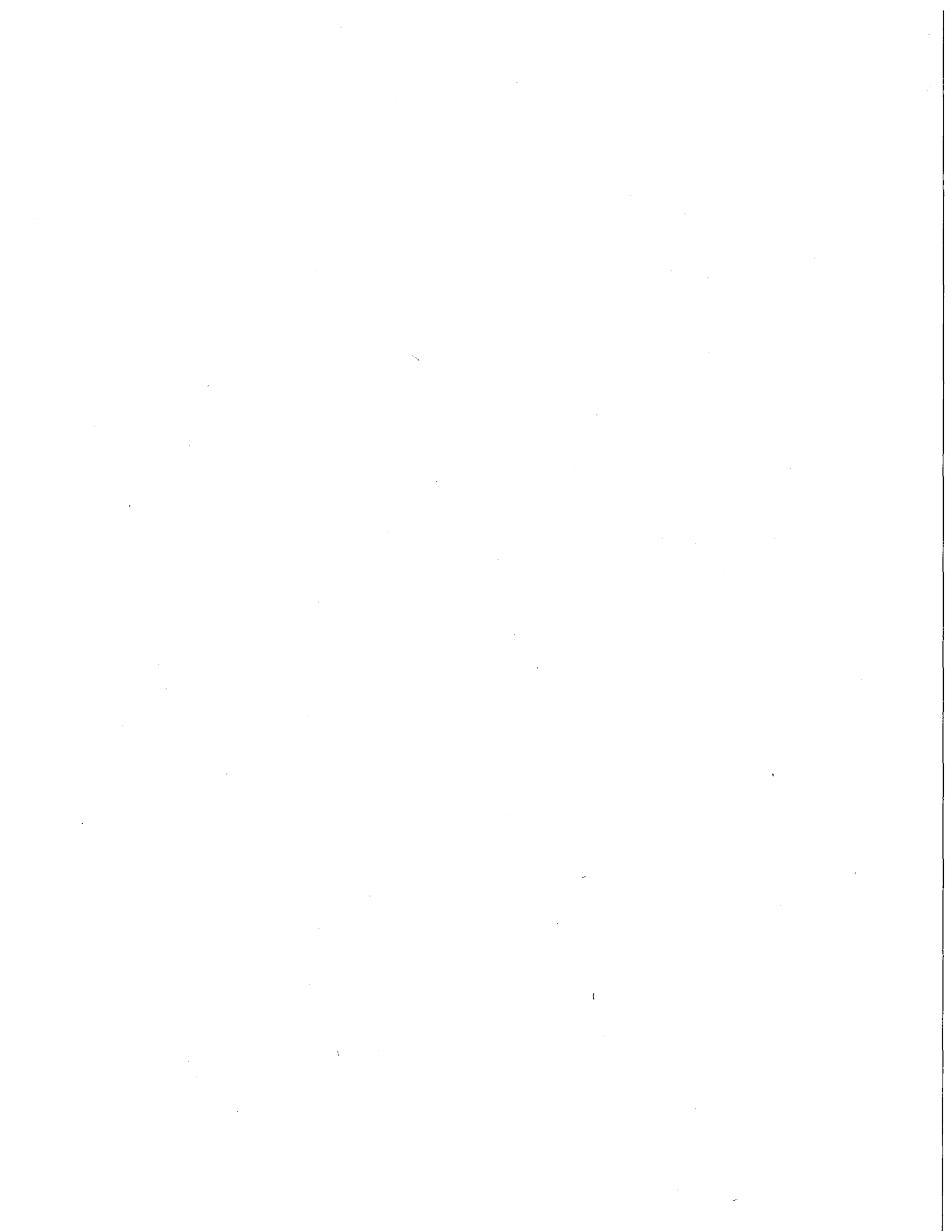
I have been asked to respond on behalf of the Department of the Army Professional Conduct Council to your request for an interpretation under Rule 9.1 of Army Regulation 27-26, Rules for the Professional Conduct for Lawyers (1 May 1992). You have asked whether it would violate the professional responsibility rules if you released certain information to the news media that you plan to offer into evidence at a preliminary hearing.

The Department of the Army Professional Conduct Council will not issue an advisory opinion regarding this matter. The applicable rules permit you to ask the convening authority to rescind or amend any protective order prohibiting release of the materials that you seek to release. Indeed, your request for an advisory opinion notes that you are already pursuing this remedy.

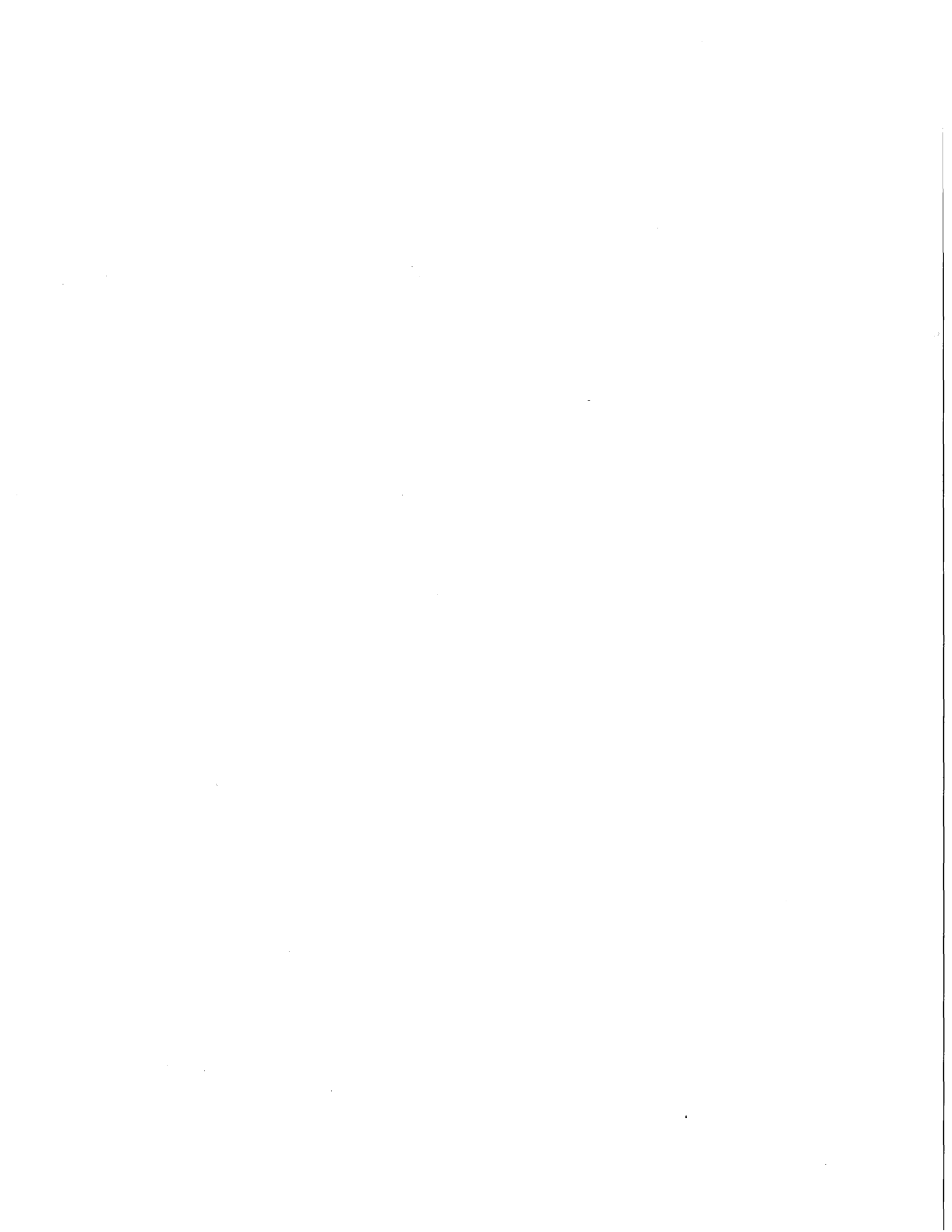
Thank you for request and for your zealous defense of your client.

Sincerely,


Daniel McCallum
Deputy General Counsel
(Operations and Personnel)



Pet. Ex. 3



RE: APCC Decision

Fidell, Eugene

Sent: Monday, September 14, 2015 8:21 AM

To: McCallum, Daniel F SES USARMY HQDA OGC (US) [daniel.f.mccallum.civ@mail.mil]

Thanks, Dan. I need to know who served on the Council for this matter and what the ruling was with respect to my request for recusal. May I have that information right away, please.

Gene

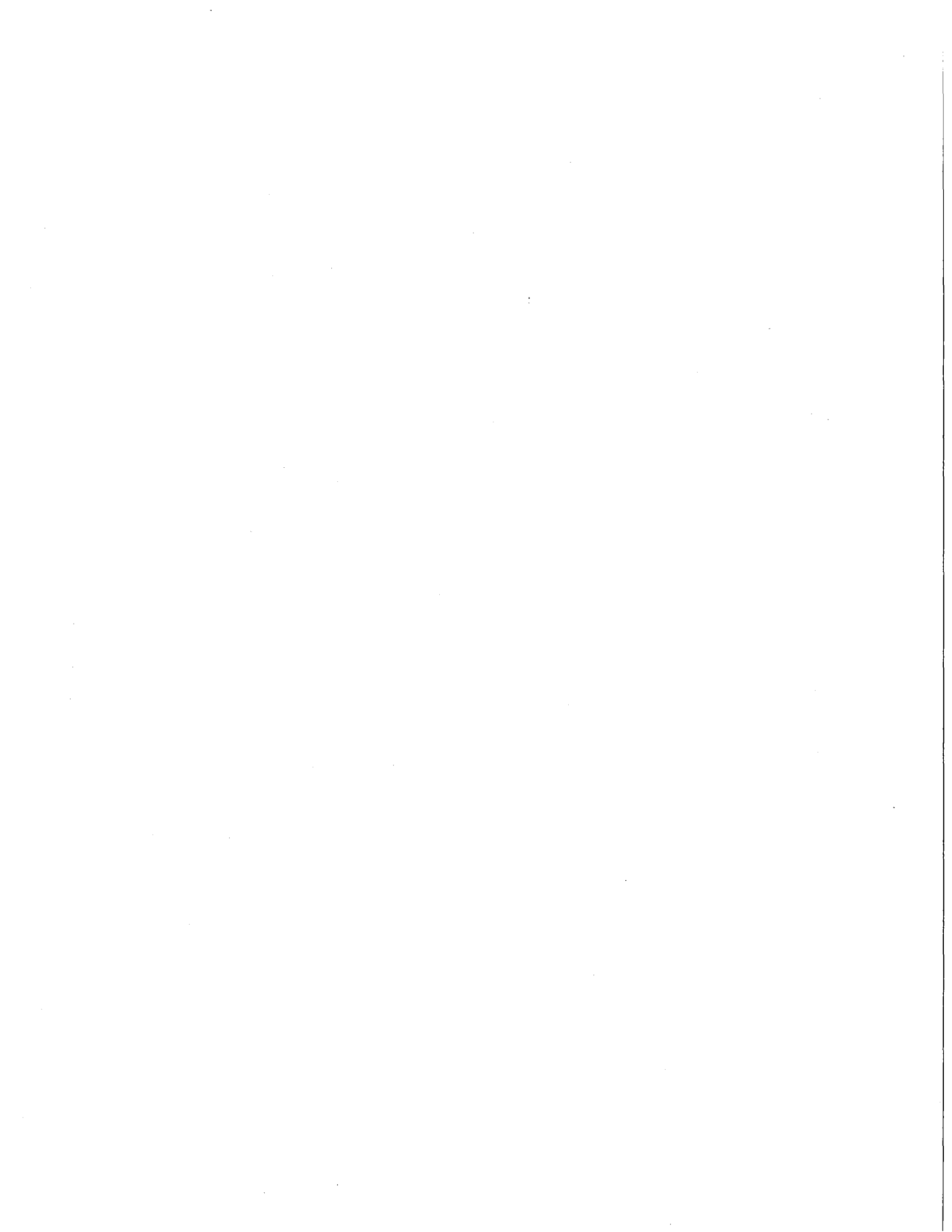
From: McCallum, Daniel F SES USARMY HQDA OGC (US) [daniel.f.mccallum.civ@mail.mil]

Sent: Monday, September 14, 2015 7:56 AM

To: Fidell, Eugene

Subject: APCC Decision

Gene, as requested. Apologize for the delay. v/r Dan



Pet. Ex. 4



APCC Decision - MOST URGENT

Fidell, Eugene

Sent: Monday, September 14, 2015 3:30 PM

To: McCallum, Daniel F SES USARMY HQDA OGC (US) [daniel.f.mccallum.civ@mail.mil]

Attachments: Comms with LTC Burke.pdf (178 KB)

Dan,

I am attaching three documents:

1. LTC Rosenblatt's April 2, 2015 memorandum to LTC Burke asking FORSCOM to release MG Dahl's AR 15-6 investigation.
2. LTC Burke's April 8, 2015 response indicating that he lacks authority to release it.
3. An email I sent at 8:59 a.m. today asking LTC Burke for an up-or-down ruling by 1:00 p.m. on whether he would rescind his protective order in whole or in part so as to permit the defense to disseminate MG Dahl's executive summary and SGT Bergdahl's own statement when they are submitted at the preliminary hearing. I have waited two and one-half hours beyond that but have have had no response of any kind to that very straightforward request.

Please immediately circulate this email and the attachments to the Professional Conduct Council. since the Council's stated reason does not justify its failure to answer my June 24, 2015 Request for Interpretation and the current situation is deeply unfair to SGT Bergdahl for the reasons set forth in that Request. Given the months the Council has had in which to study the matter and the impending hearing, I have to ask for a response to the merits of the Request by 10:00 a.m. tomorrow. I also still need to know who served on the Council and what the Council's ruling was with respect to recusal, as mentioned in my 8:21 a.m. email to you.

Thank you for your continuing courtesy and the kind words in the last paragraph of the letter you sent me this morning.

Sincerely,

Gene

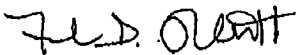


02 April 2015

MEMORANDUM FOR LTC Peter Q. Burke, Commander, Special Troops Battalion, United States Army Forces Command, Fort Bragg, North Carolina 28310

SUBJECT: United States v. SGT Bergdahl Request to Release the AR 15-6 Investigation

1. On 25 March 2015, U.S. Army Forces Command (FORSCOM) announced to a national audience that it was bringing charges of Desertion and Misbehavior Before the Enemy against Sergeant Bergdahl. This triggered a new round of public condemnation against him. The defense requests that FORSCOM publicly release the entire AR 15-6 investigation that served as the basis of those charges, minus necessary redactions.
2. I can be reached at 808-477-9981 or franklin.d.rosenblatt.mil@mail.mil


FRANKLIN D. ROSENBLATT
LTC, JA
Individual Military Counsel



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY FORCES COMMAND
4700 KNOX STREET
FORT BRAGG, NORTH CAROLINA 28310-6000

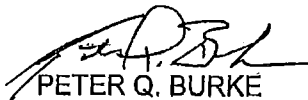
AFCG-JA

8 April 2015

MEMORANDUM FOR LTC Frank Rosenblatt, Individual Military Defense Counsel, Mr. Eugene Fidell, Civilian Defense Counsel, CPT Alfonso Foster, Detailed Military Defense Counsel, United States v. SGT Robert B. (Bowe) Bergdahl

SUBJECT: Request for FORSCOM to release AR 15-6 investigation concerning SGT Bergdahl

1. I have received your request dated 2 April 2015, requesting FORSCOM publically release the AR 15-6 investigation that served as the basis for the charges against SGT Bergdahl.
2. As the Commander, Special Troops Battalion, FORSCOM, and under Army Regulation 25-55, I do not have the authority to release this information.
3. POC is the undersigned.


PETER Q. BURKE
LTC, AG
Commanding

Protective Order ICO SGT Bergdahl

Fidell, Eugene

Sent: Monday, September 14, 2015 8:59 AM

To: peter.q.burke.mil@mail.mil

Cc: margaret.v.kurz.mil@mail.mil; christian.e.beese.mil@mail.mil; Karells, Natalie J MAJ USARMY XVIII ABN CORPS (US) [natalie.j.karells.mil@mail.mil]; mark.a.visger.mil@mail.mil; Rosenblatt, Franklin D LTC USARMY (US) [franklin.d.rosenblatt.mil@mail.mil]; alfredo.n.foster.mil@mail.mil

LTC Burke:

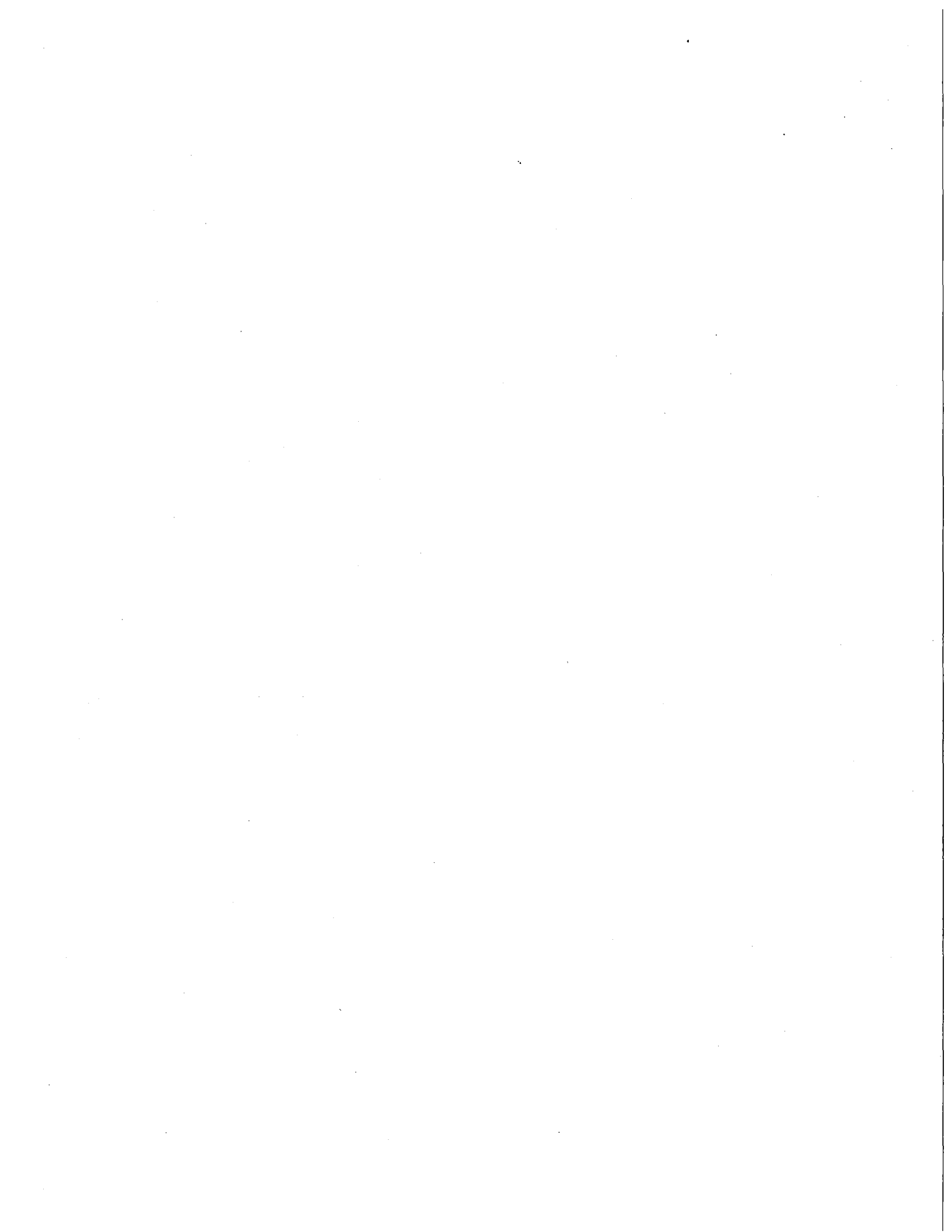
I request that the protective order in Sgt. Bergdahl's case be rescinded in whole or in part so I can disseminate MG Dahl's executive summary and Sgt. Bergdahl's statement.

This request is without prejudice to our positions that all unclassified evidence, pleadings and orders should be released upon submission/issuance and concerning your appointment as convening authority.

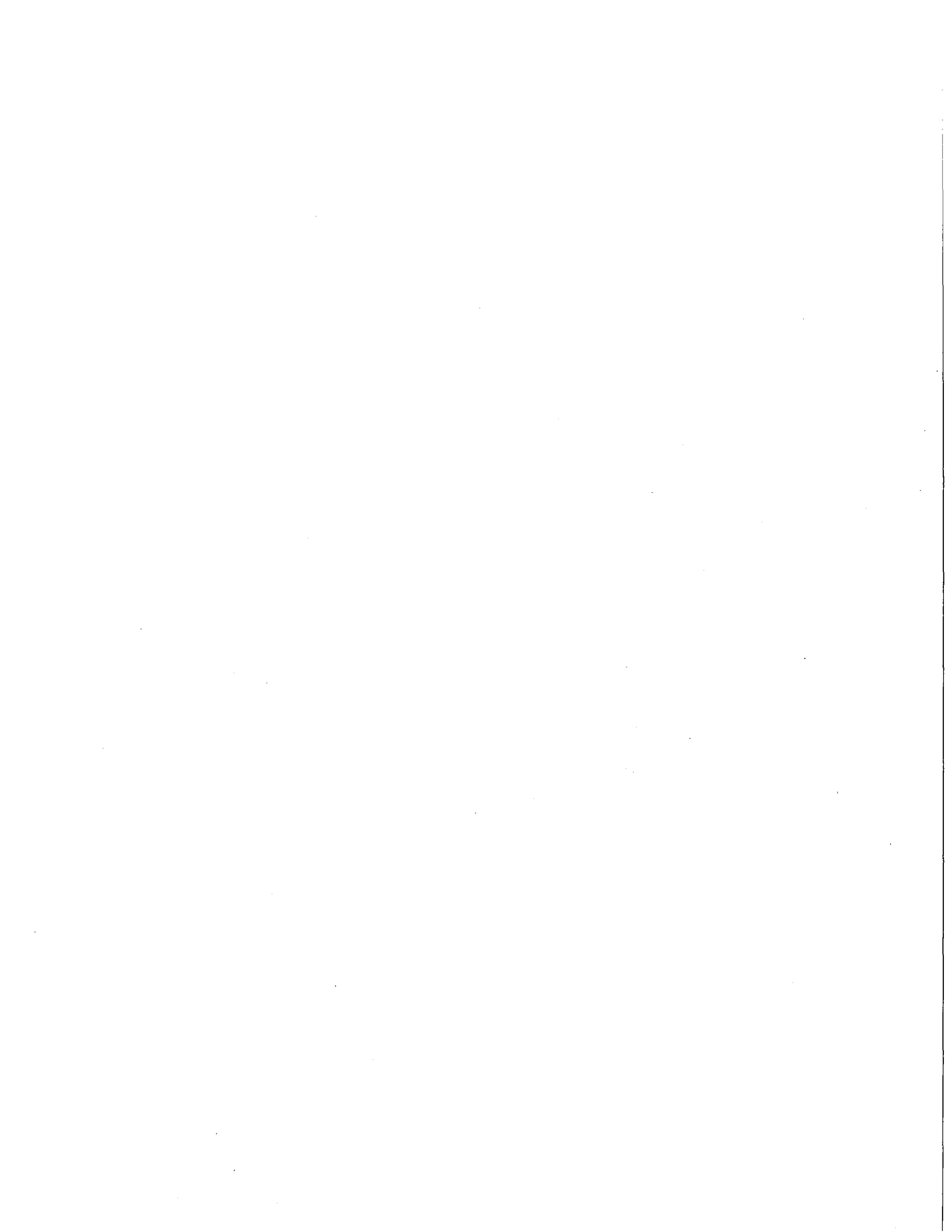
Please provide an up-or-down ruling by 1:00 p.m.

Sincerely,

Eugene R. Fidell



Pet. Ex. 5





DEPARTMENT OF THE ARMY
UNITED STATES ARMY TRIAL DEFENSE SERVICE
9275 GUNSTON ROAD
FORT BELVOIR, VIRGINIA 22060

13 September 2015

MEMORANDUM THRU Colonel Vanessa Berry, Staff Judge Advocate, United States Army Forces Command, Fort Bragg, North Carolina 28310-5000

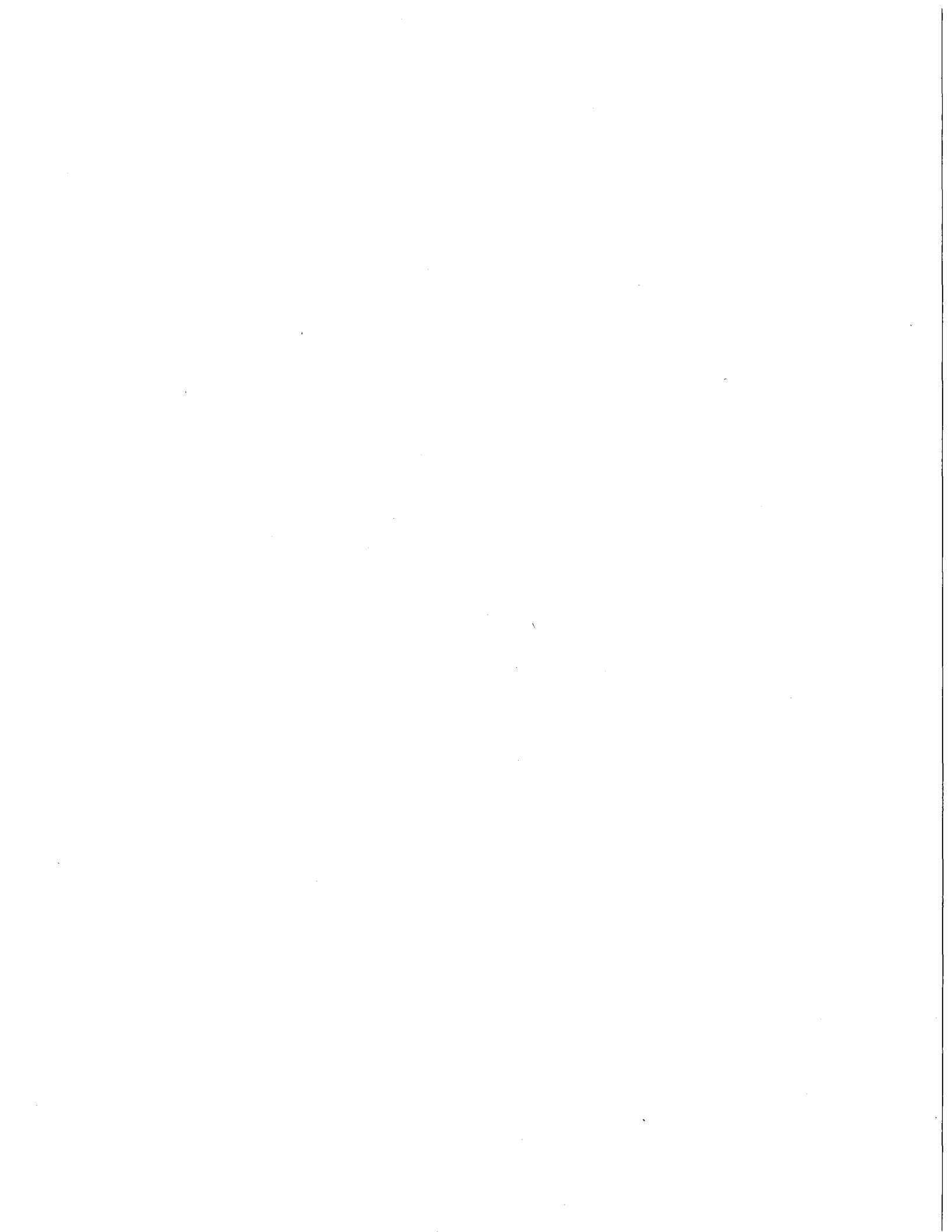
FOR General Robert B. Abrams, Commander, United States Army Forces Command, Fort Bragg, North Carolina 28310-5000

SUBJECT: Media Access to Article 32 Proceedings and Records in United States v. Bergdahl

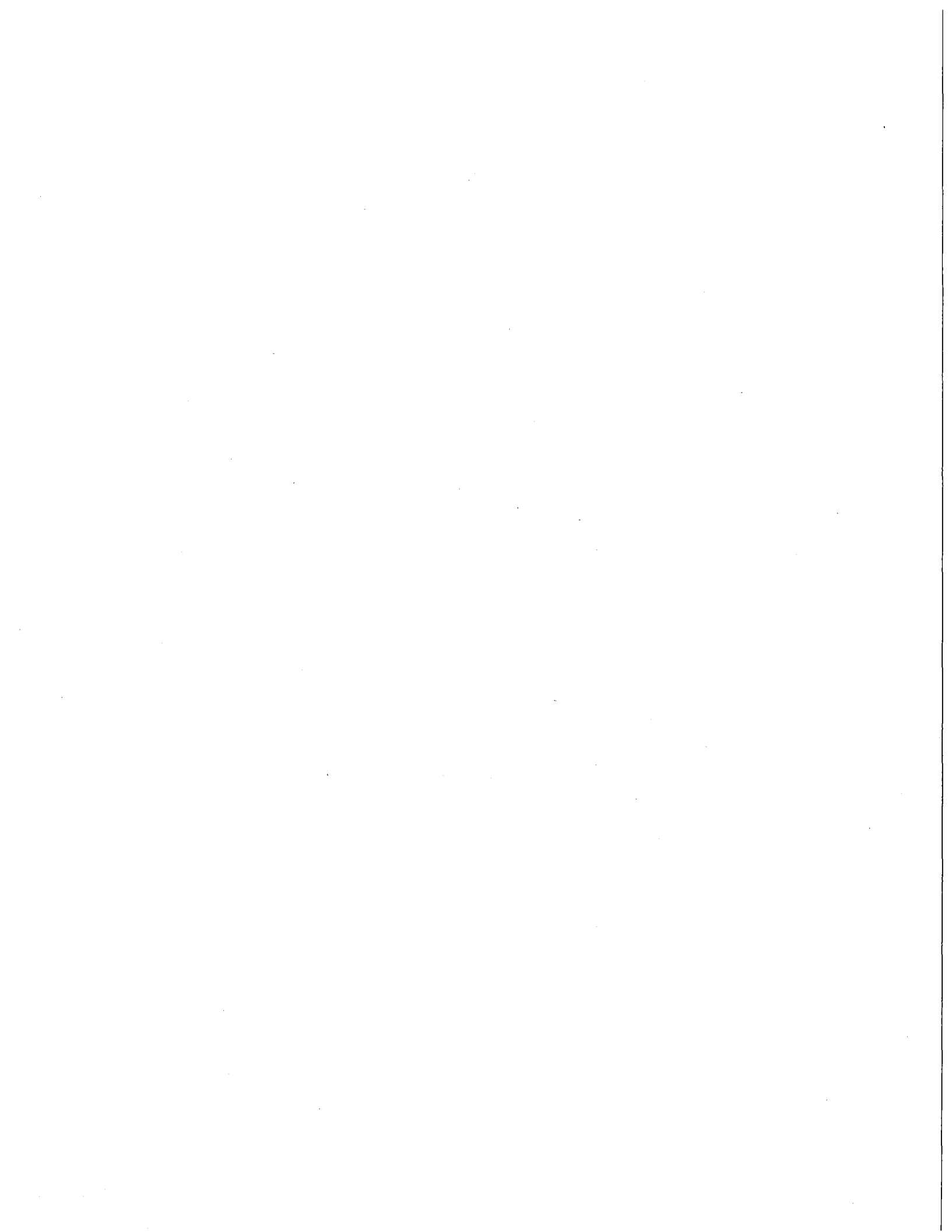
1. Sergeant Bergdahl, through counsel, agrees with and hereby joins in the San Antonio Express-News's request that the media be afforded contemporaneous access to unclassified evidence, briefs, other party filings, and written orders. Permitting such documents to be withheld after they have been submitted by or issued to the parties circumvents Sergeant Bergdahl's right to a public hearing as provided in R.C.M. 405(i)(4) and case law. It also does not contribute to public understanding of and confidence in the administration of military justice.
2. Without prejudice to the general issue of media access, we particularly believe the news media should have access to the executive summary of Major General Dahl's 2014 AR 15-6 investigation and the transcript of his interview with SGT Bergdahl no later than the moment they are formally received by the preliminary hearing officer, and we ask that as GCMCA you so direct. If someone else in the Army must give approval in order for this to happen, we request that you direct your staff to coordinate with the cognizant official(s) and forward this memo as necessary so there can be a decision on this important matter by the time indicated in Mr. Ibarquen's email.

A handwritten signature in black ink, appearing to read "Frank D. Rosenblatt", is located below the text.

FRANKLIN D. ROSENBLATT
LTC, JA
Individual Military Counsel



Pet. Ex. 6



BEFORE THE
DEPARTMENT OF THE ARMY
PROFESSIONAL CONDUCT COUNCIL

Request for Interpretation

Introduction

This is a request for an interpretation under Rule 9.1(e) of AR 27-26, *Legal Services: Rules of Professional Conduct for Lawyers* (1 May 1992), at 31. That rule provides that “[a]ny lawyer subject to [the Army] Rules may request an opinion from the [DA Professional Conduct] Council.” This request includes the required description of the factual situation that is the subject of contention, a discussion of the relevant law, and the requester’s opinion as to the correct interpretation.

Expedited consideration is requested.

Request for Recusal

Charges against SGT Bowe R. Bergdahl are the subject of an Article 32, UCMJ, preliminary hearing and related extraordinary writ litigation before the U.S. Army Court of Criminal Appeals and the U.S. Court of Appeals for the Armed Forces. I request that no one who has participated in, advised with respect to, or reviewed either those matters or the AR 15-6 investigation conducted in 2014 by MG Kenneth R. Dahl play any role in the consideration of this request for a Professional Conduct Council interpretation.

Procedural Setting and Facts of the Case

SGT Bergdahl is an active duty noncommissioned officer. He is represented by three attorneys: Eugene R. Fidell (civilian defense counsel, admitted in the District of Columbia and Connecticut), LTC Franklin D. Rosenblatt, JA (individual military counsel, admitted in Colorado), and CPT Alfredo N. Foster, Jr., JA (detailed defense counsel, admitted in Oregon).

SGT Bergdahl was held prisoner by the Taliban-affiliated Haqqani network for nearly five years until he was exchanged for five Guantánamo detainees on 31 May 2014. On 25 March 2015 he was charged with violations of Articles 85 (desertion) and 99(3) (misbehavior before the enemy), UCMJ. These charges carry very serious penalties. MCM ¶¶ 10e(1), 23e. They will be considered by a field grade judge advocate serving as preliminary hearing officer at a hearing to be convened in San Antonio, Texas, on 17 September 2015 in accordance with Article 32, UCMJ.

The purposes of a preliminary hearing are to determine whether there is probable cause to believe an offense has been committed and that the accused committed it; whether a court-martial would have jurisdiction; whether the charges are in proper form; and to make a recommendation as to how the charges should be disposed of. Unless there has been such a hearing (or the accused waives it), no charge can be referred to a general court-martial for trial. The defense has the right to introduce matters going to probable cause, matters in defense, and matters in mitigation.

It is an understatement to observe that SGT Bergdahl's case has been and continues to be the subject of intense and highly politicized media interest. Much of this interest—greater than in any court-martial case in several decades—has been stoked by a variety of shows on such media as Fox News Channel, which has a sizable audience—both military and civilian—around the country. Fox "analysts" (including a retired Army Reserve field grade officer) have repeatedly gone on the air with information said to have been leaked by government officials. In one instance it appeared that classified information had been compromised by such an "analyst." In several instances persons appearing on Fox have disseminated demonstrably false information, leading Department of Defense and Army public affairs at one point to issue strong public denials.

Among Fox's latest sources is a retired CIA employee who claimed on the air that SGT Bergdahl had been high on drugs when he allegedly left his duty station in Afghanistan. Fox spared its many viewers the fact that that retiree had been indicted on seven counts of perjury and false statements in connection with the notorious Iran-Contra scandal but was pardoned by President George H.W. Bush before his scheduled trial in federal district court.

An entire Facebook page has been established by persons unknown with the title "Bergdahl is a Traitor." One of the numerous candidates for the Republican nomination for President of the United States has publicly branded him a traitor, as did at least one Fox show host. The retired field grade officer referred to above also asserted on Fox that SGT Bergdahl had given aid and comfort to the enemy. The *Army Times* Facebook page immediately spawned a deluge of hostile comments following a recent op-ed about SGT Bergdahl's case by a respected retired Air Force judge advocate. A printout of these is attached. More comments in the same ugly vein have certainly been added since it was generated.

The media and Internet echo chamber have repeated highly inflammatory claims that at least six Soldiers died searching for SGT Bergdahl and that he deserted to the Taliban. These claims are false, as witness the fact that on 10 June 2015 government counsel advised the preliminary hearing officer that "[t]he Government does not intend to produce evidence at the Article 32 hearing that service

members were killed or wounded during the search for SGT Bergdahl, or that SGT Bergdahl intended to desert to the enemy.”

The amount of venom with which the Internet seethes concerning SGT Bergdahl is beyond description. Matters are even worse in the blogosphere, which has become a veritable cesspool of hatred and abuse. The reader is encouraged to use any popular search engine and the search term “Bergdahl” to test these propositions.

In short, it has been “open season” on SGT Bergdahl. His immediate commander believes he is in physical danger, and therefore has required since last year that he be accompanied by NCOs whenever he leaves Fort Sam Houston. Even on the installation, there is a high risk of confrontation simply by his visiting Brooke Army Medical Center.

Links to examples of hostile and inflammatory commentary are provided in the first attachment to this request. An exhaustive catalogue would consume many more pages.

There is increasingly strong reason to doubt whether SGT Bergdahl can receive a fair trial given the prolonged barrage of opprobrium that has been heaped upon him over the last year.

Governing Law for the Preliminary Hearing

The Sixth Amendment confers a right to a public trial. U.S. Const. amend. 6. Article 32 hearings are subject to the Sixth Amendment right to a public trial. *ABC, Inc. v. Powell*, 47 M.J. 363, 365 (C.A.A.F. 1997).

The *Manual for Courts-Martial, United States* (2012 ed.) is the governing regulation. As amended on June 17, 2015, see Exec. Order No. 13696, 80 Fed. Reg. 35,783, 35,798-99 (2015), the *Manual* provides in Rule for Courts-Martial 405(i)(4):

(4) *Access by spectators.* Preliminary hearings are public proceedings and should remain open to the public whenever possible. The convening authority who directed the preliminary hearing or the preliminary hearing officer may restrict or foreclose access by spectators to all or part of the proceedings if an overriding interest exists that outweighs the value of an open preliminary hearing. Examples of overriding interests may include: preventing psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety or privacy of a witness or alleged victim, protecting classified material, and receiving evidence where a witness is incapable of testifying in an open setting. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Convening

authorities or preliminary hearing officers must conclude that no lesser methods short of closing the preliminary hearing can be used to protect the overriding interest in the case. Convening authorities or preliminary hearing officers must conduct a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. If a convening authority or preliminary hearing officer believes closing the preliminary hearing is necessary, the convening authority or preliminary hearing officer must make specific findings of fact in writing that support the closure. The written findings of fact must be included in the report of preliminary hearing.

The 2015 *Manual* amendments supersede AD 2015-09 (24 Feb 2015), Procedures for the Implementation of Section 1702 of the National Defense Authorization Act for Fiscal Year 2014, ¶ 10 of which provided:

d. *Spectator Access.* Access by spectators to all or part of the proceedings may be restricted or foreclosed at the discretion of the convening authority who directed the preliminary hearing or the preliminary hearing officer. Preliminary hearings are public proceedings and should remain open to the public whenever possible. When an overriding interest exists that outweighs the value of an open preliminary hearing, the preliminary hearing may be closed to spectators. Any closure must be narrowly tailored to achieve the overriding interest that justified the closure. Convening authorities or preliminary hearing officers must conclude that no lesser methods short of closing the preliminary hearing can be used to protect the overriding interest in the case. Convening authorities or preliminary hearing officers must conduct a case-by-case, witness-by-witness, circumstance-by-circumstance analysis of whether closure is necessary. If a convening authority or preliminary hearing officer believes closing the preliminary hearing is necessary, the convening authority or preliminary hearing officer must make specific findings of fact in writing that support the closure. The written findings of fact must be included in the report of preliminary hearing. Examples of overriding interests may include preventing psychological harm or trauma to a child witness or an alleged victim of a sexual crime, protecting the safety or privacy of a witness or alleged victim, protecting classified materials and receiving evidence where a witness is incapable of testifying in an open setting.

None of the examples cited in R.C.M. 405(i)(4) or AD 2015-09 ¶ 10d as “overriding interests” are relevant to the documents the defense wishes to be able to disseminate, as explained more fully below.

Need for an Interpretation

In accordance with R.C.M. 405 and AD 2015-09, government and defense counsel have exchanged lists of the evidence they intend to offer and the witnesses they plan to call. Government counsel have indicated that they plan to call live witnesses concerning SGT Bergdahl's alleged conduct and its alleged consequences in order to show probable cause and presumably why the charges should be disposed of by court-martial rather than other available means. Among other documents, government counsel have indicated that they plan to offer into evidence the transcript of MG Dahl's lengthy interrogation of SGT Bergdahl. Neither that transcript nor the executive summary of MG Dahl's AR 15-6 report have been made public. Neither one is classified.

The convening authority who appointed the preliminary hearing officer issued a protective order preventing the defense from disseminating case documents that contain sensitive but unclassified information. A copy is attached. The defense is asking the convening authority to clarify or modify the protective order to permit the defense to disseminate unclassified case documents such as the transcript of SGT Bergdahl's interrogation and MG Dahl's executive summary. The defense wishes to be able to disseminate both of those documents at such time as they are marked in evidence by the preliminary hearing officer. This is important as a matter of affording SGT Bergdahl a fair hearing in the court of public opinion, since the government's live witnesses' testimony will be heard by the numerous news media representatives who are expected to attend the preliminary hearing, whereas mere documentary evidence will not be accessible by them or other new media in real time. In effect, the public will have only the government's side of the story, but not the defense's, as part of the critical news cycle.

Government counsel sent the defense the following email on 15 June 2015:

The 25 March 2015 protective order issued by LTC Burke in his capacity as the convening authority was intended to highlight to the parties their responsibility to protect the privacy interests of the individuals mentioned in the documents, and to protect the due process of the current proceedings. Paramount within that due process concern was the accused's right to a fair trial.

The protective order does not affect the preliminary hearing proceedings since the disclosure of information during those proceedings would not be considered an unauthorized disclosure as contemplated within the order. Accordingly, the defense should present evidence, conduct direct and cross examination, and present their arguments at those proceedings as they would if there was not a protective order in place.

Due to the national interest in the case, the protective order focused on the importance of protecting individuals' privacy rights—personally identifiable information (PII)—that will be implicated if PII is released in violation of the Privacy Act. Further, sensitive information as contemplated by the protective order is again defined as information that contains PII in accordance with AR 380-5, paragraph 5-19.

Independent of, and unrelated to the protective order, the Defense has been provided government owned documents and information for the limited purpose of preparing for the Article 32 preliminary hearing—not for release to the media or other third parties unrelated to Defense's preparation of their case. If the Defense desires to make such releases they must go to the appropriate official—in the case of the AR 15-6 Investigation, it is the Director of the Army Staff—and request the appropriate release of the relevant documents. Trial counsel do not have the authority to authorize release of the documents to third parties, or assist or approve redactions within documents.

The Government's release of information is bound by the Freedom of Information Act and the Privacy Act, and the Government cannot authorize or condone the release of information outside of those official procedures. Further, the attorneys representing the Government must comply with Army Regulation 27-26, Rule 3.6 Tribunal Publicity. The rule recognizes the potential risk that the release of information to a public forum could have a substantial likelihood of materially prejudicing an adjudicative proceeding. Defense counsel should ensure that any contemplated release of information complies with their similar local bar rules governing the release of information.

The Prosecution will continue to abide by the rules protecting privacy interests of individuals, the right of the accused to have a fair trial, and the public's right to attend public proceedings, e.g., the preliminary hearing. The release of documents by the Defense to the public that either does not have PII or has the PII redacted only risks impacting the rights of the accused.

Question Presented

The meaning of government counsel's email is less than clear, but it appears, among other things, to caution SGT Bergdahl's defense team about our professional responsibility obligations. I therefore request an opinion on the following question:

WOULD IT VIOLATE RULE 3.6 FOR THE DEFENSE IN *UNITED STATES V. BERGDAHL* TO MAKE AVAILABLE TO THE NEWS MEDIA COPIES OF MG DAHL'S EXECUTIVE SUMMARY AND THE TRANSCRIPT OF SGT BERGDAHL'S INTERROGATION ONCE THOSE DOCUMENTS ARE OFFERED IN EVIDENCE AT THE PRELIMINARY HEARING, PROVIDED PERSONAL IDENTIFYING INFORMATION HAS BEEN REDACTED?

Requester's Opinion as to Correct Interpretation

The answer to the Question Presented is No.

The course of action described in the Question Presented lies outside the ambit of Rule 3.6(a).^{*} Dissemination of case exhibits is not "a statement" within the meaning of the rule, and even if it were, it would not "have a substantial likelihood of materially prejudicing an adjudicative proceeding or an official review process thereof" since those exhibits will be available to both the preliminary hearing officer and those officials who will thereafter review that officer's report. Because a preliminary hearing generates only a recommendation that binds neither the CA nor anyone else, it does not constitute "an adjudicative proceeding" within the meaning of Rule 3.6(a). While the term "adjudicative proceeding" is not defined in the Army Rules, it is defined in Rule 1.0(m) of the ABA Model Rules of Professional Conduct, which provides in pertinent part that a "body acts in an adjudicative capacity when a neutral official, after presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter." A report submitted under Article 32, UCMJ, simply does not fall within that definition. It follows that subsequent review processes also lie outside the sweep of Rule 3.6(a).

The proposed course of action could not adversely affect the preliminary hearing because the documents will be (indeed, *already are*) in the hands of the preliminary hearing officer.

^{*} Government counsel's email suggested, presumably on the basis of Rule 8.5(f), that SGT Bergdahl's defense counsel "should ensure that any contemplated release of information complies with their similar local bar rules governing the release of information." I am admitted to practice in the District of Columbia and Connecticut, each of which has a tribunal-type choice-of-law provision that makes the Army Rules the governing standard for conduct subject to those rules. Conn. Rules of Prof'l Conduct R. 8.5(b) & Commentary, 2015 CONN. PRACTICE BOOK 65; D.C. Rules of Prof'l Conduct R. 8.5(b)(1); *see also* Colo. Rules of Prof'l Conduct R. 8.5(b)(1); Or. Rules of Prof'l Conduct R. 8.5(b)(1).

If the focus is not the preliminary hearing but a potential court-martial or non-judicial punishment proceeding somewhere down the road, then there still can be no objection to the proposed course of action since there is no reason to believe dissemination of either document would materially prejudice any such proceeding. I know of no basis for fearing that public knowledge of either document would harm the government's interests in any such disciplinary action, and if the concern is that such knowledge would be inimical to SGT Bergdahl's interests, I can represent that the pros and cons of such dissemination have been discussed with him and he approves the proposed course of action.

Rule 3.6(b)(1) indicates that a statement relating to "the expected testimony of a party or witness" "ordinarily is likely to" materially prejudice a covered proceeding, but that has no bearing on SGT Bergdahl's own statement since he has already given that statement under oath; it is not "expected testimony"—especially once government counsel offers it at the preliminary hearing.

Similarly, Rule 3.6(b)(2) refers in the same vein to "any confession, admission, or statement given by an accused or suspect." That language was obviously written to cover situations where the accused or suspect objects to the extra judicial statement. Here, however, the accused affirmatively wishes his interrogation to be made available to the public. It would pervert the clear intent of the rule to turn what was meant to be a shield for the accused into a sword for the government.

Rule 3.6(b)(4) indicates that a statement relating to "any opinion as to the guilt or innocence of an accused or suspect" "ordinarily is likely to" materially prejudice a covered proceeding, but to the extent that MG Dahl's executive summary expresses such an opinion, SGT Bergdahl is content to have it known to the public through the media.

Rule 3.6(c)(2) permits "a lawyer involved in the investigation or litigation of a matter [to] state without elaboration . . . the information contained in a public record." I do not intend to elaborate on the contents of these documents when making them available to the media (assuming the Council agrees that the answer to the Question Presented is No); rather, I need to know whether the defense can, without fear of professional discipline, disseminate the documents themselves, letting the public in our democratic society make of them what it will.

In this connection, I invite the Council's attention to the Comment to Rule 3.6, which recites that "there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. . . . [T]he subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy." The pertinence of these considerations to this case, which has garnered worldwide attention, is obvious.

In view of Army Rule 8.5(e), which provides that “[t]hese Rules should be interpreted and applied in light of the similar rules and commentary thereon contained in the” the ABA Rules, the Council should take into account Comment [7] to ABA Model Rule 3.6. It is not reflected in the Comment to Army Rule 3.6, having been adopted in 1994 by the ABA House of Delegates in response to *Gentile v. State Bar of Nevada*, 510 U.S. 1030 (1991), two years after the Army Rules were issued. See ABA CENTER FOR PROF’L RESPONSIBILITY, A LEGISLATIVE HISTORY: THE DEVELOPMENT OF THE ABA MODEL RULES OF PROFESSIONAL CONDUCT 1982-2013, 508, 510-11 (Art Garwin ed. 2013)).

Comment [7] provides that

extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by . . . third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer’s client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

Given the Niagara of adverse publicity that has washed over SGT Bergdahl for many months to and including the present (and shows no sign of abating), Comment [7] is squarely applicable. See also RESTATEMENT (THIRD), THE LAW GOVERNING LAWYERS § 109(1) (“lawyer may . . . make a statement that is reasonably necessary to mitigate the impact on the lawyer’s client of substantial, undue, and prejudicial publicity recently initiated by one other than the lawyer or the lawyer’s client”). SGT Bergdahl has been called every name in the book; there have been demands for his execution (a penalty to which he is not subject). Metaphorically and (I fear) actually, it is as if he had a target painted on him. It is preposterous for him not to be able to defend himself in the court of public opinion by disseminating, if he so chooses, his own statement given under oath in the course of a government interrogation and the executive summary of an AR 15-6 investigation conducted by a respected General Officer, neither of which is classified and both of which will be offered in evidence at a public proceeding.

An expert opinion from Professor Lawrence J. Fox of Yale Law School, one of the nation’s leading experts on professional responsibility, is attached.

If the Council concludes that the answer to the Question Presented is Yes, then I request that the matter be promptly referred to the Secretary of the Army or the General Counsel, as his designee, for an exception, as provided AR 27-26 ¶ 5.

Request for Expedited Consideration

Expedited consideration is respectfully requested so that I and SGT Bergdahl's detailed and individual counsel can ensure that we do not inadvertently violate any ethical duty. A definitive response is needed before the preliminary hearing commences on 17 September 2015 since the live testimony to be presented by the government will be known immediately to the media and it would be extremely unfair for the defense's hands to be tied while awaiting an ethics ruling.

Please contact me if any additional information is required.

Respectfully submitted,

Eugene R. Fidell

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Attorney for Sergeant Bergdahl

24 June 2015

Atch: Examples of Hostile Coverage
Army Times Facebook Page Comments
Protective Order
Declaration of Prof. Lawrence J. Fox

Examples of Hostile Coverage

<https://www.facebook.com/pages/Bowe-Bergdahl-is-a-Traitor/232609076949303>

<http://www.foxnews.com/politics/2015/06/16/trump-announces-white-house-bid-joins-crowded-gop-field/>

<http://www.newsmax.com/Newsfront/Carl-Higbie-Bowe-Bergdahl-death-traitor/2015/03/26/id/634761/>

<http://www.foxnews.com/politics/2015/04/07/ncis-report-on-bowe-bergdahl-raises-new-questions/>

<http://www.foxnews.com/politics/2015/06/15/former-cia-operative-bergdahl-was-high-when-captured-in-afghanistan/>

<http://www.newsmax.com/Newsfront/Tony-Shaffer-Bowe-Bergdahl-plead-charge/2015/03/18/id/631046/>

<http://www.newsmax.com/Newsfront/Bowe-Bergdahl-Taliban-Russian-Mob-Tony-Shaffer/2015/04/06/id/636811/>

<http://www.newsmax.com/Newsfront/Tony-Shaffer-Bowe-Bergdahl-desertion-White-House/2015/03/26/id/634751/>

<http://www.foxnews.com/politics/2015/01/28/bergdahl-to-be-charged-with-desertion-ex-military-intel-officer-says/>

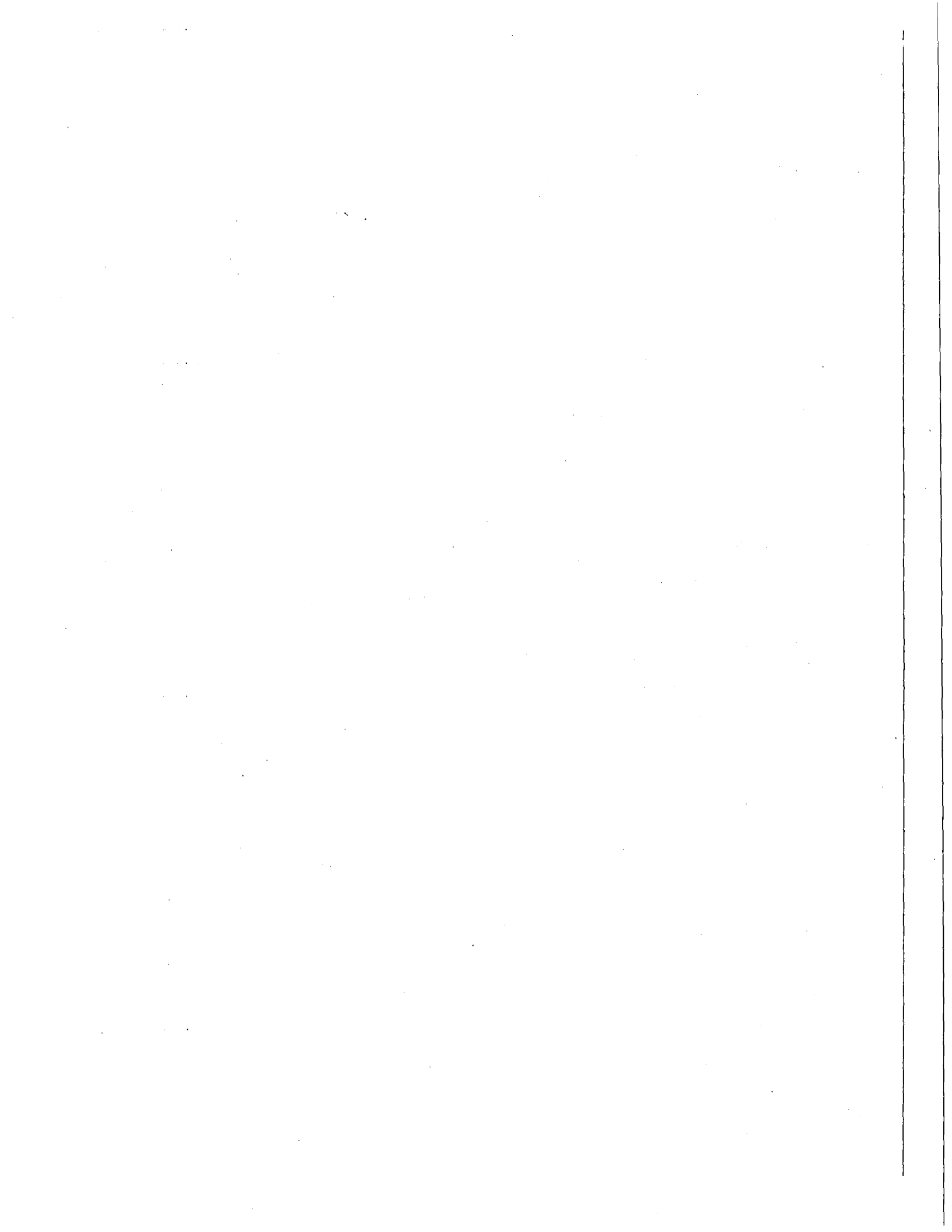
<http://www.foxnews.com/us/2015/03/19/white-house-trying-to-get-bergdahl-to-cop-to-deal/>

<http://www.mediaite.com/tv/the-guys-a-traitor-bolling-oreilly-guest-battle-over-bergdahl-charges/>

<http://nation.foxnews.com/2015/01/27/retired-officer-oreilly-bergdahl-be-charged-desertion>

<http://www.breitbart.com/video/2015/01/26/report-bergdahl-to-be-charged-with-desertion/>

<http://www.hollywoodreporter.com/live-feed/megyn-kelly-scores-rare-ratings-710470>
<http://insider.foxnews.com/2015/03/25/man-who-led-search-bergdahl-soldiers-died-looking-him>



Army Times

June 21 at 1:15pm ·

The case of Sgt. Bowe Bergdahl raises questions about the role of commanders in the military justice system, says a former military lawyer. <http://ow.ly/OAFe8>



Commentary: Bowe Bergdahl and imbalance in military justice system

Editor's note: Rachel VanLandingham is an associate professor of law at Southwestern Law School and served as an active-duty judge advocate in the ARMYTIMES.COM

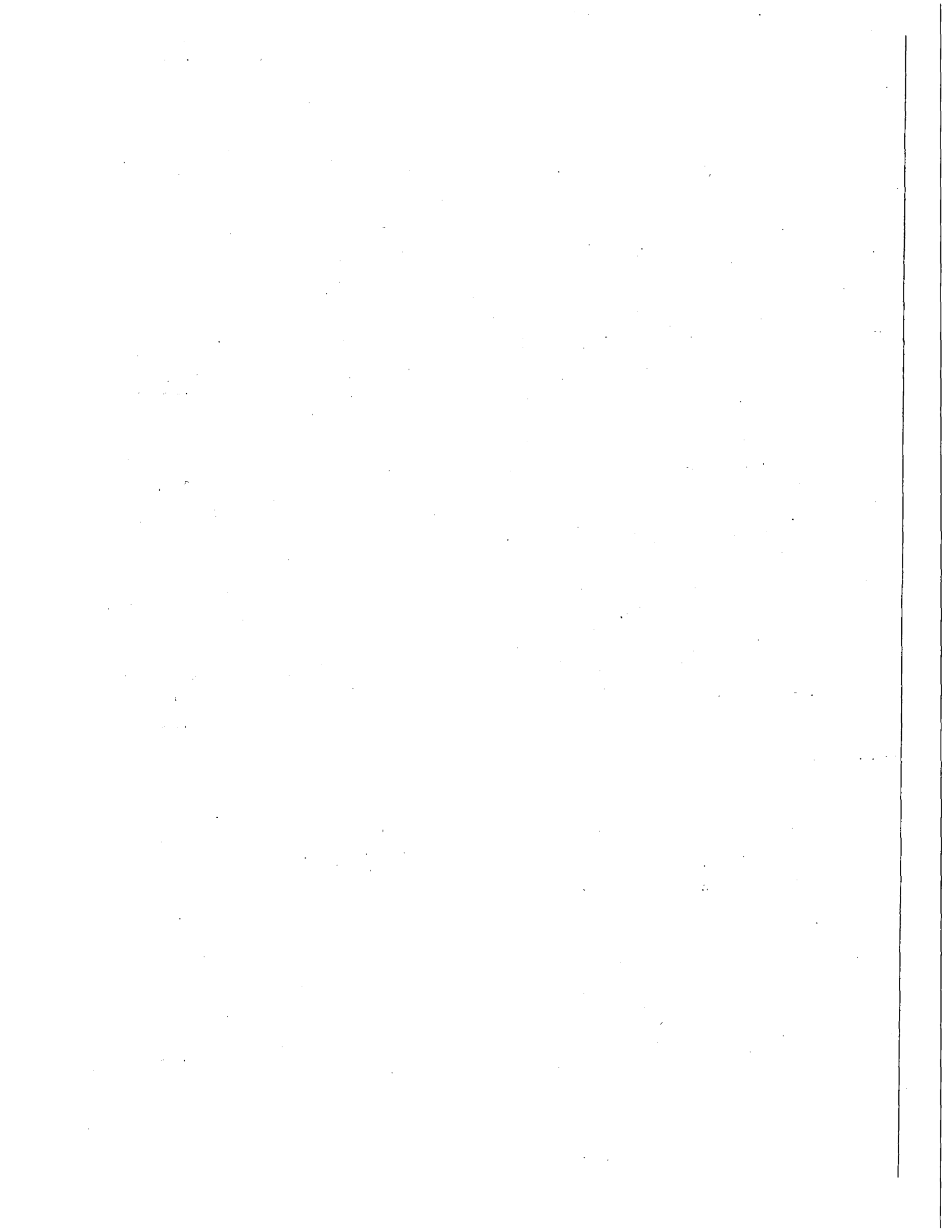
Like · Comment ·
Share

Most Relevant 1,162 people like this.

178 shares



Write a comment...





Remove Deputy Tank The military justice system is SUPPOSED to be a tool for commanders to enforce discipline. THAT'S why there are no lawyers at NJP level and the burden is "more likely than not". We're trying to turn military courts martial into civilian courts with civilian standards, and they just don't fit. Like · Reply · 104 · June 21 at 1:23pm

9 Replies



Remove Marlon Yarger-Ricketts Please stop portraying this traitor as an American soldier. He is a disgrace to our military! If you must post a picture of him post it out of uniform. Thank you! Like · Reply · 82 · June 21 at 2:00pm

6 Replies



Remove Shane Willis This is just a power grab by the judicial branch over the military. And someone tell this pig of a lawyer not to trumpet American Service Members while making excuses for a traitor, Service Members do indeed deserve better than being equated to terrorists and traitors. Like · Reply · 45 · June 21 at 1:34pm

7 Replies



Remove Veronica Oconnor Screw a plea bargain....HE ABANDONED HIS POST!!!!!! Like · Reply · 57 · June 21 at 1:20pm

1 Reply



Remove Beau H Deacon I agree commanders need to be removed from the sexual assault cases. There is an extreme conflict of interest on the part of the commanders which causes them to try and disappear incidents instead of see prosecutions and convictions.

I disagree howev...See More Like · Reply · 30 · June 21 at 2:16pm



Remove Daniel Baum I've learned that justice is usually seen as unfair by those who have committed crimes no matter if it is a civilian court or the military's. The only ones who truly get a better shake are those with big money and influence. Like · Reply · 18 · June 21 at 1:43pm



Remove Jonathan Bettendorff If their having issues in the justice system... Declare Marshall law on his ass put him in front of a firing squad.... I volunteer myself, my rifle, and the ammo if that's an issue tooLike · Reply · 8 · June 21 at 2:09pm

1 Reply



Remove Auntray Jones Oh no the Military a Justice System got it right on this one! Because of his actions many others were killed or seriously injured and families were put in unspeakable pain. He must and will be held accountable for his actionsLike · Reply · 9 · June 21 at 1:49pm



Remove Deb Evans Deciding a Soldiers' fate is the role of Army Commander's everyday!

All Commander's have oversight, whether it's the Commander they report to or a Senate Oversight Committee. ...See MoreLike · Reply · 8 · June 21 at 2:24pm



Remove Vincent Ferraro This lawyer does not know what he is talking about. Bergdahl was a political decision. We also do not see a better job outside the military on the assault and rape problem.Like · Reply · 3 · June 21 at 4:09pm



Remove Jenny Tracz Alexander This is the most biased and garbage article I've ever seen Army Times post. Get your facts right and reengage, you clearly have no idea how UCMJ works in the military.Like · Reply · 11 · June 21 at 2:34pm



Remove Charlie Motz I have never seen our military justice system operate this slowly. The traitor left his position and his comrades in arms without permission in a combat environment. There is no reasonable excuse or reason. This is not a civilian court. Try the...See MoreLike · Reply · 5 · Yesterday at 2:55am



Remove Chad Pilkington Since when does Army Times take sides on

debates?

"Apparently assuming that five brutal years as a prisoner of the Haqqani Network (cohorts of the Taliban) wasn't sufficient punishment, the Army recently decided to initiate criminal proceedings against Sgt.

Sergeant Bergdahl for improperly leaving his post in a warzone." ...See MoreLike · Reply · 7 · June 21 at 3:08pm

1 Reply



Remove Charles Miller This is what happens when a Commander in Chief politicizes a legal decision so as not to embarrass himself - even though it hasn't worked. Unfortunately, the GO in this case, has had his hands tied by the Commander in Chief because his poolitical agenda is more important than military justice for the soldiers who were killed looking for this jerk. Like · Reply · 1 · Yesterday at 9:35am



Remove Anthony Lancaster Who paid Army times to post this ridiculous and apparently biased article? Gen Milley will be a great choice and if he isn't afraid to step down because of what the Senate might do, then it only makes his nomination and selection that much more reason... See MoreLike · Reply · Yesterday at 1:11pm



Remove Jose Bilyeu I understand some of the points made but as far as that traitor he may have been held prisoner for five years doesn't wipe out his actions of leaving his gear and weapon behind and walking out on his post and battle buddies. This man Bowe Bergdahl is at best a deserter and at worse a traitor.

The person who wrote this article needs to stay in her lane when it comes to the Bergdahl matter. Like · Reply · 3 · Yesterday at 5:14am



Remove James Yount Yeah, because the lawyers have not screwed the civilian system into the dirt... Like · Reply · 1 · June 21 at 4:25pm



Remove Elena Rooney We have military lawyers, use them. Commanders should not approve or disapprove anything bc they don't have legal training. It's should automatically go to legal, have a top attorney there in each post to determine either its going to a court-martial or not. Do not use civilians bc they don't know the military system. Like · Reply · 1 · June 21 at 4:22pm

4 Replies



RemoveJosh Ua Commanders also listen to their lawyers, that's why they go to their Attorneys for advice. Plus, when it comes to a court-martial, the defendant is seen by an actual Judge. Commanders aren't abusing anything, it's just Bergdahl's attorney trying to take the heat off of himself. Like · Reply · 4 · June 21 at 2:55pm



RemoveColby Troxell Are you insinuating that he is not a deserter Army Times??? Like · Reply · 3 · June 21 at 7:04pm



RemoveJohn Penree He deserted his post and sought to join with the enemy during a time of war. Being held captive and treated like a chi-boy for 5 years instead of being welcomed with open arms to join in the jihad by the enemy, does not constitute a punishment or ...See More Like · Reply · 3 · June 21 at 7:11pm · Edited



RemoveMike Girres Don't waste anymore time HANG THAT COWARD ! Girres Michael A. PV- E2 U.S. Army Retired (DAV) Like · Reply · 3 · June 21 at 4:47pm

1 Reply



RemoveKevin Mills "Imbalance" describes the entire military 'justice' system, period. I've yet to see actual justice done by it. Like · Reply · June 21 at 2:22pm



RemoveRobert May GOOD soldiers died looking for this asshat. Firing squad.. That is all. Like · Reply · 4 · June 21 at 5:48pm

1 Reply



RemoveDavid Rannikko General George Washington would have just hung him. The military justice system was never meant to be that of the civilian system. When you join you know what's expected of you and the circumstances when you don't meet those expectations. Like · Reply · 4 · June 21 at 2:07pm



Remove James Whitten He is a piece of sh**. Don't blame army. Remember the soldier that died looking for him. Hang POS. Like · Reply · 4 · June 21 at 2:47pm



Remove Ralph Humphrey Time wasted court Martial the traitor then the firing squad! Like · Reply · 4 · June 21 at 1:56pm



Remove Sonny Lucas When POTUS arranged this trade the who do you think is stopping justice for this traitor?! Like · Reply · Yesterday at 9:07am



Remove Marilyn Porod He is a disgrace to the Military. Like · Reply · 21 hrs



Remove Grant Sulham I'm willing to bet that this lawyer has no military experience. Additionally, her bias shows by stating Bergdahl's captivity is enough punishment. Last she has such little faith in commanders that she believes one will sell out to get selected. Like · Reply · 5 · June 21 at 2:04pm



Remove Frank W. Walker Jr. So Army Times is now defending deserters. Like · Reply · 20 hrs



Remove Kyle Pflager Been saying this since day one, when I was an MP and arrested people, it's a joke. Commanders have way to much power for criminal cases. Like · Reply · 1 · June 21 at 5:12pm



Remove Carl Crittendon This article is nothing but a rant by a ignorant civilian lawyer who doesn't understand the subject. Like · Reply · June 21 at 7:58pm



Remove Steve Maloy Non-judicial punishment means instead of going to a court-martial the incident is handled locally. The offender can lose

money, rank, off-time, and freedom of movement. It saves time and money. If the commander can lose his/her position of authority because a subordinate does something wrong then they should have the power to punish too. Like · Reply · 1 · June 21 at 5:44pm



Remove **Don Fritz** I am astonished that a writer for this paper supports a traitor to the Military - where are the writers coming from these days - would not have happened in my day - proud member of the USMA Class of 74. Like · Reply · Yesterday at 2:49pm



Remove **Kyle Loyd McKinney** Seems that army times isn't a neutral party in this instead of just the facts they want us to believe we are the only one that feels it should go to military trial and be fully punished up to hanging by the neck if found guilty of desertion. Like · Reply · 1 · Yesterday at 6:09am



Remove **Nancy Lynn Smith** Please stop portraying him as an American soldier. Good soldiers were killed looking for him. He abandoned his post. Like · Reply · June 21 at 6:34pm



Remove **Thomas Sutherland** Death by musketry is the prescribed method. Nothing will happen to this scumbag until Obama leaves office. They must protect the Emperor. Like · Reply · 2 · June 21 at 2:42pm



Remove **Todd Griffin** Another lawyer saying anybody but them is unable to be just and execute the law, what BS. Also, Bergdahl was not a POW, he was a deserter that was held captive; BIG DIFFERENCE. Like · Reply · 22 hrs



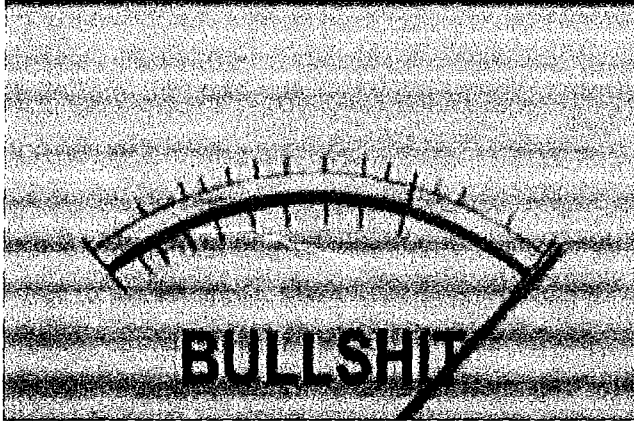
Remove **David Copeland** He is a TRAITOR!! Burn this p.o.s. Like · Reply · 2 · June 21 at 3:49pm



Remove **Sean Newton** Love how the pathetic writers of this page keep trying to pass this POS off as anything but filth.. The military has gotten weak with this liberal BS. Like · Reply · June 21 at 9:39pm



Remove **Shawn Anderson** This case is nothing but BS!! he left his post during a war and Soldiers died trying to locate him!



Like · Reply · 19 · June 21 at 1:32pm



Remove **J.d. Spearhead** Put that dirt bag traitor in front of a FIRING SQUAD! Like · Reply · Yesterday at 7:23am



Remove **Earl Jones** Traitor, coward, deserter should face the firing squad. Like · Reply · June 21 at 8:28pm



Remove **Jim Parisian** Bergdahl should be in Ft. Leavenworth. Like · Reply · Yesterday at 11:31am



Remove **Red Seewun** the only thing wrong with the military justice system is that this scumbag isn't dead yet. Like · Reply · 4 · June 21 at 2:53pm



Remove **John Concepcion** It's all in the name. Uniformed Code of Military Justice. It's as archaic as our country and should remain so. The difference between right and wrong and maintaining good order and discipline isn't something lawyers excel at. Like · Reply · Yesterday at 10:22am



Remove **Jay Crain** If I am not mistaken what he is charged with is

desertion and giving aid to the enemy. I went back and looked up desertion in time of war and giving aid and comfort to the enemy are both capital crimes under the MCM. Either one could land him in Ft. Le...See MoreLike · Reply · June 21 at 10:21pm



Remove**Randell Pittman** Why hasn't this traitor been put in front of a firing squad?Like · Reply · Yesterday at 10:02am



Remove**Joel Heernandez** You should get him home or executed by firing squadLike · Reply · June 21 at 10:27pm



Remove**Ernie Stokes** This idiot is a traitor. Keep civilians out of the military courts.Like · Reply · Yesterday at 11:05am



Remove**Alvin Burk** STOP TRYING TO BLAME THE ARMY FOR THIS SOLDIER THAT WENT AWOL DURING WAR !!!Like · Reply · 4 · June 21 at 1:58pm · Edited



Remove**Judy Northrup Bernard** STOP addressing him with rank pleaseLike · Reply · 9 · June 21 at 1:28pm
2 Replies



Remove**John Sanders** Military judicial system. a total joke. you are guilty no matter what. they will try you numerous times until they get the guilty verdict that they want. just google past high profile cases. my point will be proven. and this is coming from someone who retired from the army. oif vet.Like · Reply · 11 · June 21 at 1:28pm
1 Reply



Remove**J Aileen LS** Set an example. Firing squad for traitors.Like · Reply · 9 · June 21 at 2:23pm · Edited



Remove**Frank Cannon** We have a lawyer who has more than likely never been in combat units or operations and does not understand the responsibilities that commanders have telling us how it should be done.

We have a soldier who deserted his post in a combat area, putting hi...See MoreLike · Reply · June 21 at 4:11pm · Edited



Remove**Christine Murphy** The military justice system worked fine until civilians got involved.Like · Reply · 23 hrs



Remove**Thomas Zeller** How is a civilian lawyer without a day in uniform let alone a JAG have any valid opinions on how the Uniform Code of Military Justice works? It's something we all willingly subscribe to the moment we put up our right hands and swear our oath of service...See MoreLike · Reply · June 21 at 5:37pm · Edited



Remove**David Sigmon** The only question it raises in my mind is the availability of rope in the supply chain.Like · Reply · 8 · June 21 at 1:23pm



Remove**Jamie Kay Stone** Just when I feel the Army Times is beginning to redeem itself, it turns around and pulls this crock of shit. He's a traitor. Criminals and wrongdoers always feel like they're being treated unfairly when presented with discipline and justice. Thanks for...See MoreLike · Reply · Yesterday at 6:47am



Remove**Russell Nordan** For the writer of this article to have been a military JAG officer and never learned that the UCMJ exist to ensure the maintenance of good order and discipline in the Armed Forces is unbelievable. This officer's training during her service must have b...See MoreLike · Reply · 1 · June 21 at 5:23pm

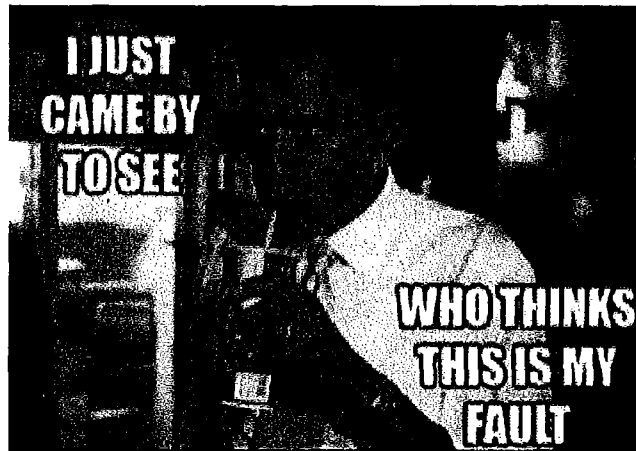


Remove**James Sullivan** I don't know about other officers' commissioning programs, but in my ROTC, we had training on the UCMJ. And while I was on active and reserve duty, we had OPD about it as well. And the multiple times I was an investigating officer, I reread the artic...See MoreLike · Reply · 1 · June 21 at 5:11pm · Edited



Remove□□□□□□□□ □□□□□□□□ with all due respect to the writer and eminent deference to her technical knowledge, nothing about commander's court martial authority is about the technicalities of civilian

law enforcement practices. the commander's authority exists for wartimes not... See More Like · Reply · June 21 at 4:23pm · Edited



Remove **John DeBose**

Like · Reply · 7 · June 21 at 1:30pm

57 Replies



Remove **Buck Foley** What a bunch of horse shit The military system works just fine, It supports discipline. I think there should be requirement in the good old USA for anyone who wants to be in the government first serve a term in the military. That way they would know what they are talking about. As for Bergdahl, he is a deserter and a collaborator and should be shot. Like · Reply · 1 · June 21 at 2:28pm



Remove **Talon Herbison** The whole UCMJ prosses needs to be scraped and rebuilt from the ground up. The Commander has to much influence with no repercussions to bad decisions rendered. The appeals process is a terrible joke were nothing is ever over turned except is the very w... See More Like · Reply · 2 · June 21 at 9:53pm

1 Reply



Remove **Bradley Blair** He betrayed his entire country and his brothers. Fry that asshole. Like · Reply · 6 · June 21 at 1:28pm



Remove **Donald Devaney** Bergdahl did not dessert - He did what many soldiers always do, he went to town and then smoked some dope with his Afghan Army buddies and lo and behold was captured. this case should

not be more than an Article 15 in my 60 year Army opinion. Like · Reply · Yesterday at 2:12am



RemoveGlen E Coleman The writer of this article is disloyal, arrogant treason loving clown. I was over searching for this piece of shit, Bergdahl. He deserted his post and should have to pay for his actions in the form of a firing squad. The decay of our military continues... Like · Reply · June 21 at 5:23pm



RemoveSherry Reilly If this traitor doesn't die by firing squad, then military justice has failed... Like · Reply · 1 · June 21 at 1:52pm



RemoveChristopher David Knox Kill that tool. Deserter and traitor. Like · Reply · 1 · June 21 at 4:04pm



RemoveKathy Kerr They need to stop wasting the military's time and strip him of all rank and send his traitor ass to Leavenworth Kansas Like · Reply · June 21 at 6:14pm



RemoveTerrie McCormick Dodd How much did the American people pay for

Him. Like · Reply · 5 · June 21 at 1:23pm

3 Replies



RemoveCleveland Robinson stop calling him Sgt and stop showing that piece of shit with our flag Like · Reply · 7 · June 21 at 1:34pm



RemoveMike Taylor Quit trying to search for a "Big Army" problem when this is a coward who abandoned his post.

Or, were you also in RC-East in 2009? I was in the Korengal at the time with B/2-12, and the brief was that he ran off on his own and may be a combatant. ...See More Like · Reply · 7 · June 21 at 2:18pm



RemoveTravis Meharry He should be fucking dead. I am ashamed of

army upper leadership and the definitive lack of courage displayed by the senior officers of this administrations military. Like · Reply · 1 · June 21 at 2:51pm



Remove **Lestant Jacob Mary Deutsch** Execution by firing squad! Like · Reply · 3 · June 21 at 1:26pm



Remove **Charlie Brown Gamino** Not even a Sgt. How did he earn the rank. Like · Reply · June 21 at 3:55pm



Remove **Joseph Holyk** And he still is not a Sergeant. He's a fucking private. Like · Reply · June 21 at 8:29pm



Remove **Nwazaion Nonso** did military justice confirm me a terrorist that my punishment be the death of my father? how can my father be killed by government for my offence? Like · Reply · June 21 at 1:38pm



Remove **Ted Heath** The Author of this article is a seriously misinformed dumb ass. smile emoticon Like · Reply · 1 · June 21 at 3:45pm



Remove **Andrew Keeler** Kill the bastard Like · Reply · 8 · June 21 at 1:16pm



Remove **Stephen Finnegan** Put him in the U.S. Disciplinary Barracks for life, where he belongs. He got soldiers killed looking for his traitorous ass. Like · Reply · 3 · June 21 at 11:29pm



Remove **Kevin Ramsdale** I think we should stop calling him sgt Like · Reply · 2 · Yesterday at 12:25am



Remove **Dennis Fulton** HES A DESERTER AND A TRAITOR SHOOT HIS TREASONOUS STUPID ASS !! ☐☐ Like · Reply · 1 · June 21 at 1:58pm



RemoveMatthew Jacobsen This article brings up good points on conflict of interest. Though the Berghdal case is quite different from sexual assault cases, especially in matters of national interest and politics. Like · Reply · 2 · June 21 at 1:26pm



RemoveJohn John Kew sent the guy home. give him a pension. blame George Bush for sending him to Iraq. young men must fight and die for older man s game. crazy. There was a same incident during the Viernam war. I blame George Bush. Bush belong in jail not Sgt Bergdahl. Gave Bergdahl the medal of honour. american hero. Like · Reply · 1 · Yesterday at 2:50am



RemoveRobert Buckner Court martial and prison is where this guy need to be to leave your post in a time of war is punishable by the death penalty Like · Reply · 2 · June 21 at 6:52pm



RemoveLaurance Sorrentino The Army is covering their own butts in the Bergdahl case. His immediate command structure covered for him being AWOL/Deserter. They moved him around on the Morning Report from one catagory to another to reflect his time away as "Good Time." Like · Reply · Yesterday at 1:50am



RemoveArt Stringer Screw Bergdhal. By the way he is no longer a SGT. Like · Reply · 2 · Yesterday at 1:36am



RemoveFrank Humpal Ideally the system should work but like so many things with out checks and balances small people abuse the power and it's usually the enlisted people get the short end of the stick. Anyone who has not been in the service would be surprise at the abuses that the system tolerates Like · Reply · Yesterday at 9:25am



RemoveDaniel Brown They need to get on with this case AND STOP THE NONSENSE. Like · Reply · June 21 at 3:50pm



Remove **Douglas Knudsen** I will wait to hear the full story before making accusations. Last story I heard was that he was high when he was captured Like · Reply · 1 · June 21 at 1:22pm

4 Replies



Remove **Theresa McLendon** Plea bargain? Absolutely not! Prison for life! Like · Reply · 1 · June 21 at 1:36pm



Remove **David L C Fuller** He is not a Sgt. Quit calling him one Like · Reply · 1 · June 21 at 4:56pm



Remove **Barry Needham** Why is he still called sgt ?! Like · Reply · 1 · June 21 at 1:29pm

2 Replies



Remove **Brian Auggie Augustyniak** Fry his ass..any soldier that has deployed knows you dont leave your weapon without purposely leaving it Like · Reply · 1 · Yesterday at 1:39am

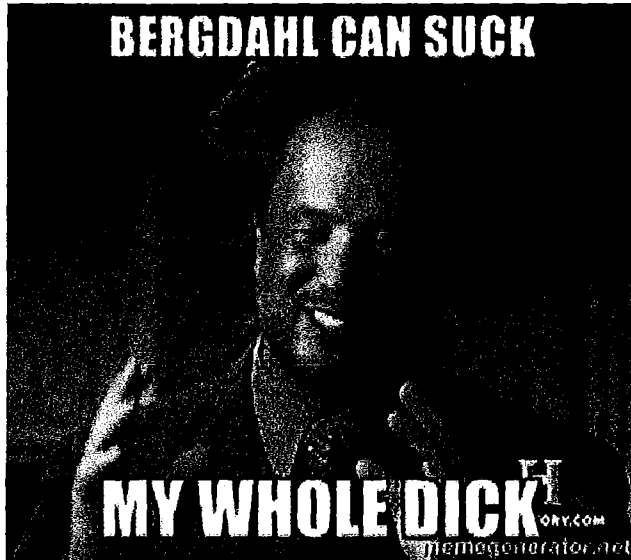


Remove **Ryan Hammerfist** supposed pow. Like · Reply · 1 · June 21 at 2:10pm



Remove **Rebecca Sanford**

Like · Reply · 1 · June 21 at 1:50pm



Remove **PJ Laszar** Like ·

Reply · 1 · June 21 at 1:57pm

1 Reply



Remove **Charles Bishop** He is scum that left his post to join the enemy and got good men killed not to mention if he participated in any attacks Like · Reply · 1 · June 21 at 1:47pm



Remove **Micheal Robert Dunkin** The left wingdings know he will be found guilty under the UCMJ. Like · Reply · June 21 at 8:22pm



Remove **Vincent Rogers** He is a traitor kill him and stop wasting tax payers money. Like · Reply · Yesterday at 12:35am



Remove **Gilbert San Roman** Bergdahl against the wall...wink emoticon Like · Reply · Yesterday at 2:48pm





Remove **Katie Mussack**

Like · Reply · June 21 at 2:25pm



Remove **Robert Smith** He should have Beed shoot by now. A traitor Like · Reply · June 21 at 5:16pm



Remove **Judi Glisson Green** Please stop showing him in uniform with that beret. Like · Reply · June 21 at 3:56pm



Remove **Dawn Rodgers** Hes going to say anything to be able to walk, if he does walk than theres something wrong with our govt! Hes not a soldier damn sure no hero hes a towel head lover! This POS needs to rot in hell for what he did and to the true heroes that lost there lives for this POS! He chose to be with the towel heads, he was treated good by his new family! POW my ass thats a joke, he was a cry baby cause he wanted to go home! Like · Reply · June 21 at 7:03pm · Edited





RemoveAlexis Lopez

Like · Reply · June 21 at 7:22pm



RemoveChris Christlaw



Like · Reply · June 21 at 7:37pm



RemoveGail Parker He went A.W.O.L.!!! He's a TRAITOR !!!

Imprisonment,there's NO OTHER choice!!! Except execution. What's so hard to decide???Like · Reply · June 21 at 5:26pm





Remove **Veteran From Hell**

Like · Reply · Yesterday at 1:03am



Remove **Artourus Barbari E Lupi** even though this piece of fucking shit is a fucking traitor....everyone is entitled to rights...wtf... because the overwhelming inculpatory evidence should have been enough to secure a conviction against him... we all have rights... not a fucking power...See More

Like · Reply · June 21 at 3:59pm



Remove **Hermelinda Rippstine-Rippy** Just court martial him and put him on the electric chair

Like · Reply · June 21 at 1:44pm



Remove **James A. Mathias** He was found Guilty. Burn him down.

Like · Reply · June 21 at 10:31pm



Remove **Randy Harrington** Piece of crap he should hang himself with his bed sheet

Like · Reply · June 21 at 3:49pm



Remove **Jim Collier** Execute him.

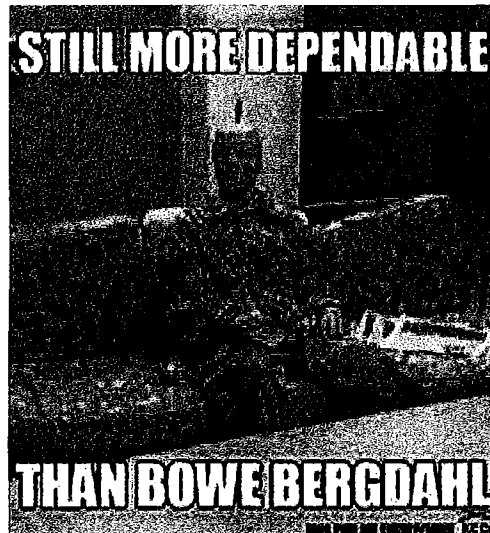
Like · Reply · Yesterday at 10:17am



Remove **Deborah Curclo-Rangel** Is he kidding? He stands a better chance with them than NCO's. Let him have it.

They'll let destroy him as they should.

Like · Reply · June 21 at 3:12pm



Remove **David Cecil Patch**
Like · Reply · June 21 at 2:20pm



Remove **James Morrison** he should be shot for desertion Like · Reply ·
Yesterday at 12:18am



Remove **Leon Just** This is such bullshit he's a god damn traitor and he
needs to be treated as one Like · Reply · 22 hrs



Remove **Gary Sinclair** He's a deserter and because of him good men died.
Why is this even a discussion? Like · Reply · June 21 at 1:46pm



Remove **Ernie Smith** If it cant be handled in house then you have shitty
leadership this pussy brigade military bullshit people who cant run a
shower leading soldiers in battle is a fucking disgrace to those who served
before us who but boots in asses and squared away this... See More Like ·
Reply · Yesterday at 12:22am · Edited



Remove **Steve Parisian** I realize this is not 100 years ago, but he should
still be hung for what he did to his own unit. He's lower than scum. Worst
person ever, right up there with out POTUS! Like · Reply · Yesterday at
11:49am



Remove **Calvon D Hinson Anthony** hmmm.

Non lawyers practicing law to save e7's and above Like · Reply · June 21 at 2:31pm



Remove **Penny Cline** F R Y. B O W E I Like · Reply · June 21 at 6:38pm



Remove **Daniel Grimes** Fry is sorry worthless traitor ass.. death shod be his real punishment Like · Reply · June 21 at 4:15pm



Remove **Michael Barthelemy** I also love the part where this dumb writer says he was exchanged for 5 "former" GTMO detainees. They were only "former" because of the exchange. I'm in serious doubt of this writer having ever completed a single college course. Like · Reply · Yesterday at 6:08am



Remove **Daniel Victor Fontanella** I say "death by firing squad" or leatheal injection just to see that little bitch suffer Like · Reply · June 21 at 5:30pm · Edited



Remove **Ron Portillo** Why is he still a sgt Like · Reply · Yesterday at 1:53am



Remove **Hank Wortman** He Definetly does not deserve the title of Sergeant....he didn t earn it Like · Reply · June 21 at 8:33pm



Remove **Janet M. Kell** Wish traitors still faced the firing line! Like · Reply · June 21 at 7:48pm



Remove **Bobby Johnson** Get a pic out of my uniform. He does not deserve to be seen wearing this Like · Reply · Yesterday at 6:04am



Remove **Korey Kilburn** Just shoot the traitor already and quit talking about him. Like · Reply · 23 hrs



Remove **Daniel N Celina Romero** Dudes a bum behead him now Like · Reply · June 21 at 5:16pm



Remove **Joshua Bailey** Shoot that traitorous piece of shit fucker in the face. Like · Reply · June 21 at 5:36pm



Remove **Stuart Phillips** Simple answer: follow the lead of many allied countries, and have charging decisions made by JAG. Currently, they advise only. Like · Reply · June 21 at 2:07pm



Remove **Matthew Petri** He should have been shot for desertion. UCMJ *frag out* POS Like · Reply · June 21 at 4:34pm



Remove **Carlos Villate** Truth Like · Reply · June 21 at 2:00pm



Remove **Lee Oscar** He should be executed. Like · Reply · June 21 at 7:13pm



Remove **Terrie McCormick Dodd** Time to kiss your ass is over Like · Reply · June 21 at 1:40pm



Remove **Dante Vonnegut** "Id love to spit Beechnut in that dudes eye and shoot him with my old .45" Like · Reply · June 21 at 3:25pm





Remove **Tim Walz**

Like · Reply

· Yesterday at 12:52am



Remove **Billie Hill** Did any of you read the article to the end? The authors point is it is a conflict of interest for the general to be deciding on the case, when he is awaiting Congress' approval to have the top job in the Army, assuming many voting congressman will weigh... See More Like · Reply · June 21 at 4:03pm · Edited



Remove **Mike Pulos** When will this traitor be formally charged and go to Courts Martial? Like · Reply · June 21 at 3:49pm



Remove **Betty Shaw Elwell** Send him back. Like · Reply · June 21 at 7:53pm



Remove **Manuel Gilliam** That has nothing to do with that. He left own his own. Like · Reply · June 21 at 5:51pm



Remove **Isaiah Fisher** Why is he still a Sgt not a prisoner should be cell mate with buddy Obama Like · Reply · June 21 at 5:46pm



Remove **Anthony Ratzburg** What does sexual harassment have to do with this sorry fuck deserting his post ? I will tell you NONE !!!!! Like ·

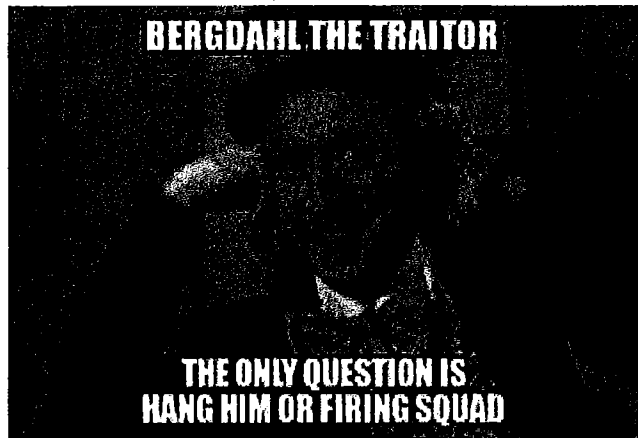
Reply · June 21 at 1:35pm



Remove **Paul Bergeron** USMJ works fine, I wish Congress could work as good, for getting stuff done, they surely know when to vote for a PAYRAISE!!!!!! Like · Reply · June 21 at 11:12pm



Remove **Frank C. Irons** Bedrgdahl is a Traitor. Obama just about portrayed him as a hero. I have never heard of a cout marshal to take as many year as this joke has. in the Rose Garden with Bregdahl's family. Then instead of thrown into the stockaid waiting for trial, given a job while being investiaged. Yet Chris Kyle was a hero. When he was "MURDERED", his widow never got a call nor a letter of condolence from the President. Like · Reply · 22 hrs · Edited



Remove **Scott Willis**

Like · Reply · June 21 at 6:21pm



Remove **Wuod Okuyu** Ave been following closely waiting for the verdict, burden of proof lies to the prosecuter Like · Reply · June 21 at 1:35pm



Remove **Shirley Temple** I think he's innocent. Like · Reply · Yesterday at 1:56am



Remove **Drew Scafidi** Commanders consult extensively with their lawyers before making charging decisions and throughout the entire ucmj

process.Like · Reply · Yesterday at 7:45am



Remove Arthur Deich He left his post during wartime and I don't care how you put in how you look at it that is treason during wartime you were to be taken out to the field by your superiors and we shot in the head how come he wasn't done that wayLike · Reply · June 21 at 7:45pm



Remove Joseph Holyk Imbalance as in officers get away with murder?Like · Reply · June 21 at 8:27pm



Remove Ben Woyvodich He got captured while deserting. The punishment for the crime hasn't been administered. His capture is what is likely to occur if you wander around enemy territory alone and unarmed.Like · Reply · June 21 at 3:38pm



Remove Brent Anthony Hames He gave up the title of "SOLDIER" when he broke the FIRST GENERAL ORDER.Like · Reply · June 21 at 2:47pm



Remove Rick-Sharon Ferrer! The government keeps laggingLike · Reply · June 21 at 11:48pm



Remove Gracielea Mezta Vidal this ia a PUNK ASS BITCHLike · Reply · June 21 at 6:43pm



Remove Debbie Etchison Culver Traitor. Fireing squadLike · Reply · June 21 at 4:06pm



Remove Eric Cogger Pure horse-crap. We read about judges all the time in the civilian side that sentence sex offenders and other serious criminals to very short or very long sentences. There will always be disparities. And there should be. Congress should stop looking so...See MoreLike · Reply · Yesterday at 12:03am



RemoveGene Harding I'll admit there are some flaws in the military system like in any other, but this time and in this case, yeah we got this one. This worm isn't getting off the hook.Like · Reply · June 21 at 7:10pm



RemoveMarvin Haylett He needs to face a courts martial. We the Soldiers and family who served and lost friends and loved ones deserve the truth. No plea bargens or deals. If proven beyond a doubt that he deserted his post he should be officially labeled a deserter and face...See MoreLike · Reply · June 21 at 2:03pm



RemoveJonathan Andrew Shockey Fuck him he can go to hellLike · Reply · June 21 at 10:37pm



RemoveJosh Kosanovich The relationship you're trying to draw between the two shows how little you know about an oath to your brothers in combat. You dragged bergdahls name and face into this to get clicks. FTA! All for my comrades! You stir burning shit in jp8 with a stick so you don't get it on your hands. You mam are the stick.Like · Reply · June 21 at 9:33pm



RemoveMatthew Ursery Now, it is not necessary to off this guy although by the book he should be. What I find offensive is that they still call this poor excuse for an American SGT. He did not earn those stripes. They were given to him because he did something tremendously ...See MoreLike · Reply · June 21 at 8:53pm



RemoveDeb Evans Geez people, The article is about Commander's making legal decisions without legal degrees.Like · Reply · June 21 at 3:00pm



RemoveBrandon Selles De Jesus Just shoot him in the head and go on with your lives.....Like · Reply · 20 hrs



RemoveLee S Burnett Deserter in war zone... Death... O wait promote.. Give back pay.. Pow pay... Hang his ass!!!!!!!Like · Reply · Yesterday at 11:55am



Remove **John Dodd** General Milley will do what obama tells him. He was/is not a POW, he is a Muzzie deserter. Hang him high. Like · Reply · June 21 at 8:35pm



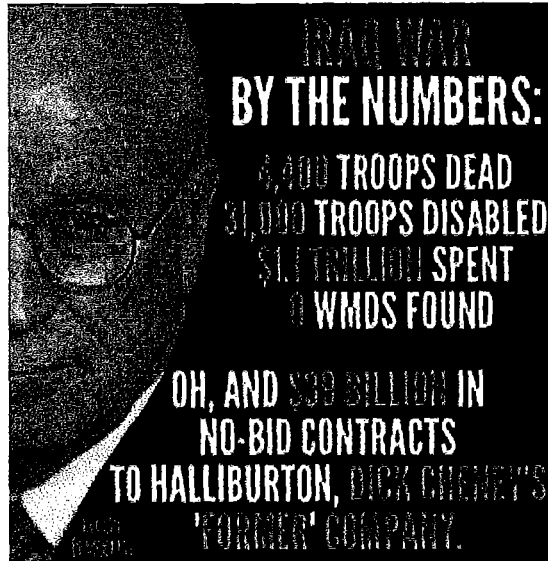
Remove **Donald Devaney** He did not desert - sorry about that error. Like · Reply · Yesterday at 2:13am



Remove **Brendan Flynn** Execute the traitor. Like · Reply · 4 · June 21 at 1:27pm

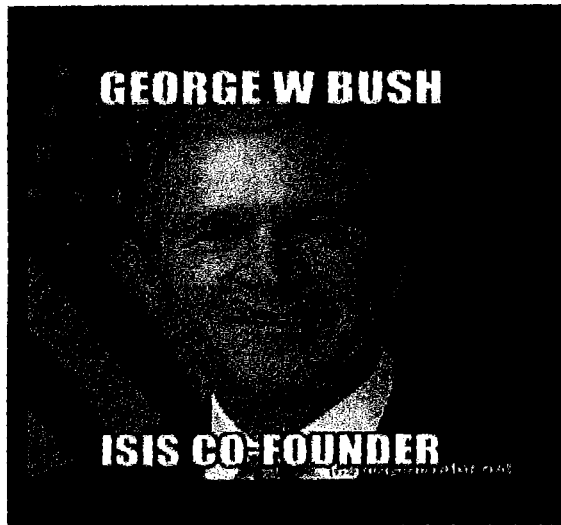


Remove **Tom Bowers** Last sentence of the article: "Our service men and women deserve better." This may be true, but Bergdahl doesn't. He deserves to be hung by the neck until dead. Like · Reply · 22 hrs



Remove **Lisa M Wood** Like · Reply · June 21 at 8:08pm





Remove Lisa M Wood

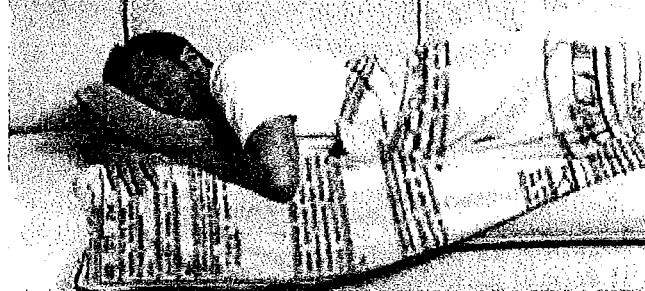
Like ·

Reply · June 21 at 8:08pm



Remove Kobie Johnson

THANK GOD FOR MY PRECIOUS DD214 BLANKET



IT PROTECTS ME FROM THIS KIND OF BULLSHIT

Like · Reply · June 21 at 3:56pm



Remove Chuck Griffiths "Are you a pussy and kiss-ass? Then here's your star" Like · Reply · 1 · June 21 at 1:26pm



Remove Walt Clark Obama and his disgusting bunch will hobble anything that should happen to this lying piece of garbage. Like · Reply · June 21 at 3:37pm



Remove Tracy Usry What do you call it? Like · Reply · Yesterday at 12:42pm



Remove Jon Davis The army times is a joke. Like · Reply · June 21 at 2:49pm



Remove Darla Kuboi He is a should be shot that was what this country use to do with people who deserted their post and command Like · Reply · June 21 at 6:17pm



Remove Dwayne Perry ...and STILL we wait !!! Like · Reply · June 21 at 5:42pm



Remove Jarvis Russette Just shoot that fuc'er Like · Reply · June 21 at 2:48pm



Remove Silvio Pilgrim The guy is guilty of many things, but it will not be heard for PR and friendly psyops reasons. Like · Reply · June 21 at 3:06pm · Edited



Remove Holly Lynn Hinds He shouldn't even have the title "SGT". So...anything else this article speaks of is really irrelevant. Like · Reply · June 21 at 5:00pm



Remove Jean Huber Angulo Agree Like · Reply · June 21 at 10:14pm



Remove Robin Mccord Kill him already get on with it Like · Reply · June 21 at 9:27pm



Remove Earl Mallick This guy is a joke he is no hero just a stupid man that what he is. Do the trial and make him spend some more time and forget about him. Like · Reply · Yesterday at 11:58am



Remove Nathaniel Walker



Like · Reply · June 21 at

1:35pm



Remove **Robbie Reaves** You mean, " Private McFuckstick"!
Like · Reply · June 21 at 4:23pm



Remove **David Kelly** My theory is. He was a spy for us. Pretty sure I'm right.
Like · Reply · June 21 at 8:00pm



Remove **Malachias Gaskin** Hang him from the neck until dead.
Like · Reply · June 21 at 8:41pm



Remove **Michele Frost** tired of hearing bout' this coward b*stard too.. hang him.. and bring Obama and The Butcher too.. we need to start making examples of anyone who betrays us.. and OUR country..
Like · Reply · June 21 at 10:42pm



Remove **Adem Nimani** Forever US ARMY
Like · Reply · June 21 at 1:30pm



Remove **John Castaneda** How's it imbalanced , the court was forced by the white house to do what they did.
Like · Reply · Yesterday at 10:38am



Remove **Joe Becerra** Fuck the military justice system. Nobody wanted to deal with this fuck to begin with. We should of never of traded the 5 ass hates for this fuck! Let's think big here. I'll give you a clue. He's in the

White House and doesn't like any of us! Like · Reply · June 21 at 3:10pm



Remove **Richard Dickson** http://lexch.com/.../article_c62835f4-b00d-11e1-bf70... Shooting of suspect at Offutt raises

questions How did the driver manage to break into the Air Force base? LEXCH.COM Like · Reply · June 21 at 1:51pm



Remove **Luke A Francis** Agreed. Like · Reply · June 21 at 2:55pm



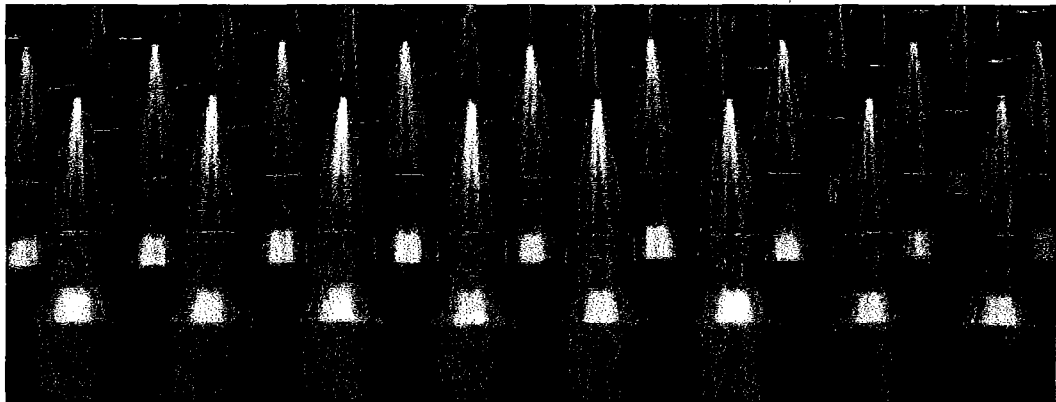
Remove **Steven Montavon** He walked away! Not a soldier not a man! Like · Reply · June 21 at 9:00pm



Remove **Bill Ferguson** You know they are gonna let him go. The Army is too kind and gentle. Maybe someone could pay him a visit when he is a civilian. The second he gets out he will get a book deal and a movie contract laughing at us all driving his Ferrari. That's the f*ed up part! Like · Reply · June 21 at 4:40pm · Edited



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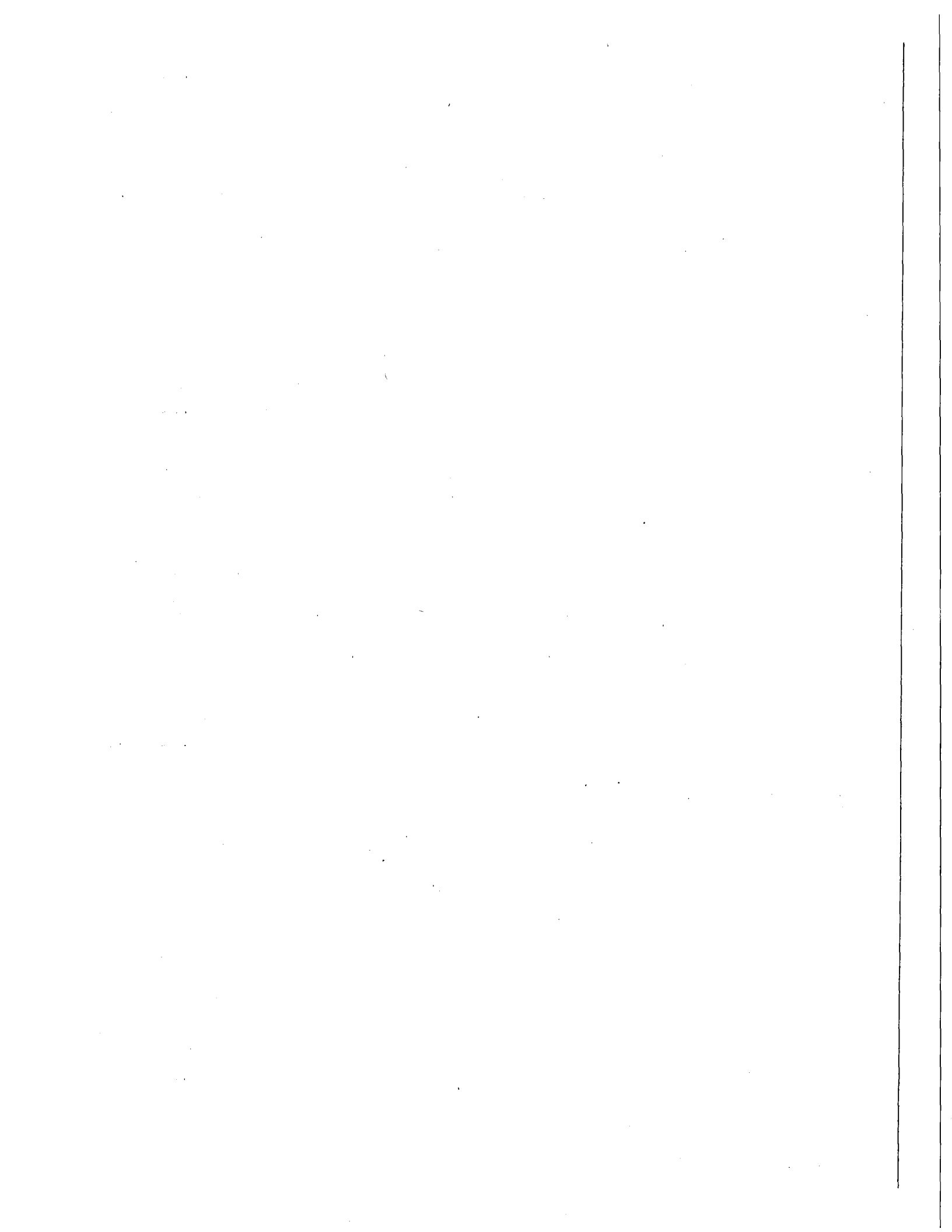
I PREACH ABOUT HOW TO GET TO HEAVEN THROUGH JESUS



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DEPARTMENT OF THE ARMY
UNITED STATES ARMY FORCES COMMAND
4700 KNOX STREET
FORT BRAGG, NC 28310-6000

AFCS-STB-BC

25 March 2015

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Protective Order for Personally Identifiable Information (PII) and Sensitive Information - United States v. Sergeant Bergdahl

1. References.

- a. 5 U.S. Code § 522a, "The Privacy Act" as amended .
- b. AR 340-21 (The Army Privacy Program), 5 July 1985.
- c. AR 25-2 (Information Assurance), 24 October 2007.
- d. AR 380-5 (Department of the Army Information Security Program), 29 September 2000.

2. PURPOSE. The purpose of this Protective Order is to facilitate discovery and to prevent the unauthorized disclosure or dissemination of personally identifiable information and sensitive information. This Protective Order covers all information and documents previously available to the accused in the course of his employment with the United States Government or which have been, or will be, reviewed or made available to the accused, defense counsel, and other recipients of information in this case.

3. APPLICABILITY. "Persons subject to this Protective Order" include the following:

- a. The Accused;
- b. Military and Civilian Defense Counsel and Detailed Military Paralegals;
- c. Members of the Defense Team IAW M.R.E. 502 and U.S. v. Toledo, 25 M.J. 270 (C.M.A. 1987);
- d. Security Officers;
- e. Members of a Rule for Courts-Martial 706 Inquiry Board (if one is conducted); and
- f. Behavioral Health Providers for the Accused.

AFCS-STB-BC

SUBJECT: Protective Order for Personally Identifiable Information (PII) and Sensitive Information - United States v. Sergeant Bergdahl

4. ORDER:

a. The inadvertent or unintentional failure to identify PII and/or designated discovery materials sensitive but unclassified shall not be deemed a waiver in whole or in part of a party's or the United States' claim of confidential treatment under the terms of this Order.


b. If a document or item is produced for which the designation of personally identifiable information (PII) or sensitive information is lacking but should have appeared, the producing party or the United States may restrict future disclosure of the document or item in accordance with this Order by notifying the receiving party in writing of the change in or addition to such restrictive designation with respect to the document or item.

c. The receiving party shall then take reasonable steps to prevent any further disclosure of such newly designated information, except as permitted by this Order.

d. A producing party also may downgrade or remove any designation under this Order by so notifying the receiving party in writing.

e. If a party determines that a previously produced document inadvertently was not identified as containing protected information, the producing party shall give notice in writing that the document is to be treated as protected, and thereafter the designated document shall be treated in accordance with this Protective Order.

f. If a party receives documents containing personally identifying information (PII) they will notify the producing party, and give that party the opportunity to replace said documents with and properly redacted version. Personally identifying information is information that identifies, links, relates, is unique to, or describes the individual, such as name¹, SSN, date and place of birth, mother's maiden name, biometric records, home phone numbers, other demographic, personnel, medical, and financial information, or any other PII which is linked or linkable to a specific individual. This definition of PII is not anchored to any single category of information or technology. Non-PII can become PII when information is publicly available and when combined could identify an individual. Documents that contain PII are prohibited from further use or distribution.


PETER Q. BURKE
LTC, AG
Commanding

¹ Names of relevant parties to this case are excluded from this definition.

BERGDAHL EXPERT DECLARATION

Declaration of Lawrence J. Fox

I am a lawyer duly admitted to practice in the Supreme Court of the Commonwealth of Pennsylvania, the Appellate Division, Second Department of the Supreme Court of New York, the Supreme Court of Connecticut, the United States Supreme Court, and numerous federal circuit courts of appeal and district courts. Currently, I am the George W. and Sadella D. Crawford Visiting Lecturer in Law at Yale Law School teaching legal ethics and professional responsibility. I am also the Supervising Lawyer of the Ethics Bureau at Yale, a pro bono endeavor to provide ethics advice, counseling and support to those who cannot afford such services. I am a partner and former managing partner of Drinker Biddle & Reath LLP, a general practice law firm of approximately 650 lawyers with a principal office in Philadelphia and branch offices in New Jersey, New York, California, Delaware, the District of Columbia, Illinois and Wisconsin.

I have been asked by counsel for SGT Bowe R. Bergdahl whether it is permissible under the rules of professional conduct of the Army for counsel to disclose to the public two items at the time these items are introduced at the preliminary hearing of SGT Bergdahl's matter: the transcript of MG Dahl's interrogation of SGT Bergdahl and MG Dahl's executive summary. I have concluded, to a reasonable degree of professional certainty, that such disclosure could not possibly prejudice, let alone materially prejudice, an adjudicative proceeding, nor could disclosure implicate any of the reasons for the applicable rule's limitations on free speech. In the author's view, SGT Bergdahl's seeking an interpretation from the Professional Conduct Council reflects a level of conscientiousness and decorum that goes well beyond anything that was required.

I have regularly been consulted and testified about the ethics and professional responsibility of lawyers in various proceedings in both state and federal courts throughout the United States. I have spent my entire career as a trial lawyer, first at Community Action for Legal Services in New York City and, since 1972, at Drinker Biddle & Reath LLP. My specialties are general commercial litigation and the representation of and consultation with lawyers regarding their professional responsibilities.

I was a lecturer on law at Harvard Law School, teaching legal ethics and professional responsibility from 2007 through 2010. I was the I. Grant Ireby, Jr. Adjunct Professor of Law at the University of Pennsylvania Law School from 2000 through 2008, teaching the same topic. I have lectured on legal ethics at more than 35 law schools throughout the country, have been a visiting professor at Cornell University Law School, and was the Robert Anderson Fellow at the Yale Law School in 1997. I have also lectured abroad on legal ethics and professional responsibility.

I have produced and participated in more than 200 continuing legal education seminars, and I have written extensively in the professional responsibility field. I am the author of *Legal Tender: A Lawyer's Guide to Professional Dilemmas* (American Bar Association 1995); co-author (with Professor Susan Martyn) of *Traversing the Ethical Minefield* (Aspen 1st ed. 2004; 2d ed. 2008; 3d ed. 2012), a casebook on professional responsibility; *Red Flags: Legal Ethics for Lawyers* (ALI-ABA, 1st ed. 2005, 2d ed. 2010, Supplement 2009); and *Your Lawyer, A User's Guide* (LexisNexis 2006); co-author (with Professors Susan Martyn and W. Bradley Wendel) of *The Law Governing Lawyers: National Rules, Standards, Statutes, and State Lawyer Codes* (Aspen 2006-2007 ed., 2007-2008 ed., 2008-2009 ed., 2009-2010 ed., 2010-2011 ed., 2011-2012 ed., 2012-2013 ed., 2013-2014 ed., 2014-2015 ed., 2015-2016 ed.); co-author (with Professor

Susan Martyn) of *The Ethics of Representing Organizations: Legal Fictions for Clients* (Oxford University Press 2009); and author of almost 100 articles on legal ethics and related topics and several book chapters. I am the editor and contributing author of *Raise the Bar: Real World Solutions for a Troubled Profession* (2007) and *Ethics Centennial* (2009), both published by the American Bar Association (“ABA”).

I am a former member and Chair of the ABA Standing Committee on Ethics and Professional Responsibility and a former Chair of the ABA Section of Litigation, the largest section of the ABA representing almost 60,000 trial lawyers. I was an advisor to the American Law Institute’s 12-year project, *The Restatement of the Law Governing Lawyers*. I am a Fellow of the American College of Trial Lawyers, and I was the founder and a member of *Ethics 2000*, the ABA Commission established to rewrite the Model Rules of Professional Conduct. Currently, I am also a member of the Board of the Connecticut Bar Foundation.

In the last decade I have turned my attention to professional responsibility matters relating to the military. I wrote the Introduction to Chapter 4, “Professional Responsibility, Civility, and Judicial Conduct” in the publication *Military Court Rules of the United States* (LexisNexis 2d ed. 2014). I have filed a number of amicus briefs in military court proceedings where issues of both professional responsibility and judicial canons of ethics were implicated. And I have counseled a number of military lawyers in connection with ethical questions for which they sought guidance.

My résumé, including my publications, is annexed hereto as Exhibit A. The list of cases in which I have testified in the last four years is annexed hereto as Exhibit B.

Introduction

The Council ought to know my professional relationship to this particular question. As the Council is undoubtedly aware, the rule at issue here, indeed the entirety of the Army Rules of

Professional Conduct for Lawyers, like the rules of every jurisdiction in the United States except California, is premised on the American Bar Association's Model Rules of Professional Conduct, first adopted by the ABA House of Delegates in the early 1980's. The adopted rules included an earlier version of Rule 3.6, "Trial Publicity."¹ In 1991 the United States Supreme Court decided the case of *Gentile v. State Bar*, 501 U.S. 1030 (1991), declaring unconstitutional, as a violation of the First Amendment free speech clause, part of the original version of Rule 3.6. As a result, the ABA Standing Committee on Ethics and Professional Responsibility, the committee to which the definitive interpretation of and amendments to the rules are delegated, was required to revisit and revise Rule 3.6. The committee then consisted of a Chair and eight members, of which I was one, and because of my interest in the intersection of the rules of professional conduct and Constitutional principles, I played an active role in the drafting of the present model rule which I believe in all material respects (except as noted below) to be identical to the Army's Rule 3.6.

The Issue

Any rule-making that attempts to restrict free speech regarding pending matters faces a dilemma. On the one hand we are confronted with the First Amendment which provides Constitutional protection of free speech and the public's right to know. The Constitution, as we all recognize, as a result puts a very high burden on those who seek, by statute, rule or court order, to restrict what lawyers and litigants may say and when and how they may say it.

On the other hand, it is possible that free speech, unfettered free speech, could interfere with our system of justice and particularly a litigant's right to a fair adjudication based only on what occurs in court.

In *Gentile v. State Bar*, the Supreme Court balanced these two important values and determined that the ABA had gone too far in its then current version, restricting free speech by

¹ In the Army rules the title is "Tribunal Publicity."

the rule's categorical prohibitions. Thus the rewrite was intended to strike a balance that was decidedly in favor of the First Amendment, placing a bigger burden on any restrictions, while leaving the basic standard of the original rule in place. That standard, prohibiting tribunal publicity, is triggered if the "lawyer knows or reasonably should know that the statement will have a substantial likelihood of prejudicing an adjudicative proceeding or an official review process thereof."

Applying that standard, the ABA Committee identified the variables that the Standing Committee thought should be considered in adjudicating this issue. Among these were the content of the speech, the method of delivery, the timing of the speech, the audience that might be affected by the speech, and the speaker's need to reply to the speech of others. When each of these is considered in the present circumstances, one comes quickly to the conclusion that SGT Bergdahl's lawyer's request clearly deserves the First Amendment protection the Supreme Court has emphasized in its case law on the topic.

First, what is being released are documents that cannot be contradicted; a transcript of SGT Bergdahl's interrogation whose content is key to understand SGT Bergdahl's position in this matter and the Executive Summary of an investigative report by MG Dahl, to which the transcript is appended.

Second, the timing of the release would occur long before any trial of this matter, if that ever occurs, long before the fact-finders have even been identified. Unlike many cases, moreover, the ultimate fact finders themselves are particularly unlikely to be affected by any disclosure of this nature.


Third, documents that would be released are documents that are already before the presiding official at the preliminary hearing and the fact that they are released to the public will not change the effect the documents will have on that official.

Fourth, though the Army Rules of Professional Conduct do not explicitly adopt a right to reply to other pre-trial publicity, the ABA rule was amended to include a right to respond because the ABA Ethics Committee believed that such a right was constitutionally required. It is hard to imagine a litigant who has a greater right or need to respond than this applicant. Any review of the stream of publicity on television and the press that movant has endured cries out for a need to answer. And all the requester is seeking is clearance to share the most limited information with the press, when, in my view, SGT Bergdahl and his lawyers could conduct uncensored speeches and press conferences to respond to what government officials and others have uttered in a campaign to demonize him.

Conclusion

I consider it a privilege to be able to offer these observations. The issues presented by this request for guidance go to the heart of effective lawyering. Accordingly, it is without reservation that I urge that the permission sought be granted, and the rights of the accused to disseminate this information be approved.

I declare under penalty of perjury that the foregoing is true and correct.


Lawrence J. Fox

Executed on June 23, 2015
Philadelphia, PA

LAWRENCE J. FOX
One Logan Square, Suite 2000
Philadelphia, PA 19103-6996

Partner, Drinker Biddle & Reath (since 1976), specializing in corporate and securities litigation; Managing Partner - 1987-1989, 1991-1998; Former Chairman, Professional Responsibility Committee.

Professional Organizations

- Member, ABA House of Delegates, 1998-2001; 2002-present
- Member, ABA Commission on the Evaluation of the Rules of Professional Conduct (Ethics 2000) 1997-2002
- Chair, ABA Post Conviction Death Penalty Representation Project 1996-2004
- Chair, Section Officers Conference, American Bar Association 1996-1998
- Chair, ABA Standing Committee on Ethics and Professional Responsibility 1996-1997; Member, 1991-1996
- Chair, ABA Litigation Section, 1995-96
- Chair, ABA Day in Washington 1997-2001
- Member, ABA Law Firm Pro Bono Advisory Committee, 1997-2000
- Chair, National Conference on Professional Responsibility, 1996, 1997, 1998
- Member, Executive Committee of the Section Officers Conference, 1994-1996
- Member, ABA Center for Professional Responsibility Publications Board, 1994-1996; 2005-present
- Member, ABA Working Group on Lawyers Representation of Regulated Clients, 1992-1994
- Member, ABA Business Section Task Force on Joint and Several Liability Under Rule 10b-5, 1992-1997
- Member, ABA Task Force on Judicial Removal - 1992-1994
- Member, Council, Section of Litigation, American Bar Association 1983-1991; 1992-1999; 2002-present
- Chair, Section of Litigation Fall Meeting 1990
- Budget Officer, Section of Litigation, American Bar Association 1983-1988
- Member, ABA Section of Litigation, Task Force on Ancillary Business, 1987-1991.
- Member, American Law Institute, 1989-present
- Special Adviser to ALI Restatement of the Law Governing Lawyers 1988-2000
- Member, Board of Editors, ABA/BNA Manual on Lawyers' Professional Conduct 1988-1991
- Member, Philadelphia Bar Association Professional Responsibility Committee, 1978-present
- Member, House of Delegates, Pennsylvania Bar Association 1988-1991, 1992-2006.
- Member, Board of Editors, CPR Alternatives 1991-present
- Member, ABA Section of Litigation, Legal Services Project, 1997-present.
- Ide Commission (2006-2010)
- ABA Death Penalty Moratorium Project (2006-2010)

Exhibit A

- Member of the Board of Connecticut Bar Foundation, 2011-present

Teaching

- Lecturer on Ethics at Moscow State University, Moscow, Russia, April-May 2014
- George W. and Sadella D. Crawford Visiting Lecturer in Law, Yale Law School, 2009-present
- Supervising Lawyer at the Ethics Bureau at Yale Law School 2011-present
- Lecturer on Law, Harvard Law School, 2007-2010
- I. Grant Irely, Jr., Adjunct Professor, University of Pennsylvania Law School, Fall 2000-2008
- Visiting Professor, Cornell Law School, Fall 1999
- Instructor, 1986-1992, University of Pennsylvania Law School, The Legal Profession and Professional Responsibility
- Lectures at the law schools of Case Western Reserve University, Cornell University, Dickinson – Penn State, Duke University, Emory University, Fordham University, George Washington University, Georgetown University, Hofstra University, Mercer University, Northwestern University, Rutgers University (Camden), Seton Hall University, South Texas University, St. Johns University, Stetson University, Temple University, The College of William & Mary, Tulane University, University of Arizona, University of Chicago, University of Georgia, University of Houston, University of Miami, University of Minnesota, University of South Carolina, University of Toledo, University of Virginia, Villanova University, Wayne State University, William Mitchell College of Law, Yale University

Publications: Books

- *Legal Tender: A Lawyer's Guide to Professional Dilemmas*, published by ABA (1995).
- *Traversing the Ethical Minefield*, by Susan Martyn and Lawrence J. Fox, published by Aspen (First Edition 2004; Second Edition 2008, Third Edition 2013).
- *Red Flags: Legal Ethics for Lawyers*, by Lawrence J. Fox and Susan R. Martyn, published by American Law Institute (First Edition 2005, Second Edition 2010, Supplement 2009).
- *The Law Governing Lawyers: National Rules, Standards, Statutes, and State Lawyer Codes*, by Susan R. Martyn, Lawrence J. Fox, W. Bradley Wendel, published by Aspen (2006-2007 Edition, 2007-2008 Edition, 2008-2009 Edition, 2009-2010 Edition, 2010-2011 Edition, 2011-2012 Edition, 2012-2013 Edition, 2013-2014 Edition, 2014-2015 Edition, 2015-2016 Edition).
- *Your Lawyer, A User's Guide*, by Lawrence J. Fox and Susan R. Martyn, published by Lexis Nexis (2006).
- *Raise the Bar: Real World Solutions for a Troubled Profession*, edited by Lawrence J. Fox, published by ABA (2007).
- *How to Deal with Your Lawyer: Answers to Commonly Asked Questions*, by Lawrence J. Fox and Susan R. Martyn, published by Oxford University Press – Oceana (2008).

- *The Ethics of Representing Organizations: Legal Fictions for Clients*, by Lawrence J. Fox and Susan R. Martyn, published by Oxford University Press (2009).
- *A Century of Legal Ethics*, edited by Lawrence J. Fox, Susan R. Martyn and Andrew S. Polis, published by ABA (2009).

Publications: Book Chapters

- "Accounting Experts" in *Expert Witnesses*, edited by Faust Rossi, published by ABA (1991).
- "The Law of the Third Circuit" in *Sanctions*, published by ABA (1991).
- "The Special Litigation Committee Investigation: No Undertaking for the Faint of Heart," edited by Brad D. Brian and Barry F. McNeil, published by ABA (1992) (rev'd 2002).
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Publications: Articles

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- “Those Unpublished Opinions: An Appropriate Expedience or an Abdication of Responsibility?,” Hofstra L. Rev., Volume 32, No. 4, Summer 2004.
- “Can Client Confidentiality Survive Enron, Arthur Andersen, and the ABA?,” Stetson L. Rev., Volume 34, Number 1, Fall 2004.
- “No Ethics for Capital Defendants,” The Professional Lawyer, Volume 16, Issue Number 1, 2005.
- “The End of Partnership,” Fordham Urban Law Journal, Volume 33, No. 1, November 2005.
- “Should We Mandate Doing Well by Doing Good,” Fordham Urban Law Journal, Volume 33, No. 1, November 2005.
- “End Billable Hour Goals ... Now,” The Professional Lawyer, Volume 17, Issue Number 3, 2006.
- “Capital Guidelines and Ethical Duties: Mutually Reinforcing Responsibilities,” Hofstra L. Rev., Volume 36, No. 3, Spring 2008.
- “Screening? Consider The Clients,” co-authored with Susan R. Martyn, The Practical Litigator, ALL-ABA, July 2008.
- “Non-Engaging, Engaging, and Disengaging Clients,” ABA J. SEC. LITIG, 4 (2010).
- “How to Help Yourself: Researching the Law Governing Lawyers,” co-authored with Susan R. Martyn, The Practical Lawyer, October 2010.
- “The Assault on Client Loyalty: A Dialogue about Prospective Waivers, Screening, and Suing Your Client’s Parent,” 37 ABA J. SEC. LITIG, 2, (2011).
- “The Gang of Thirty-Three: Taking the Wrecking Ball to Client Loyalty,” 121 Yale L.J. ONLINE 567 (2012), <http://yalelawjournal.org/2012/03/27/fox.html>.
- “Ethics Bureau at Yale: Combining Pro Bono Professional Responsibility Advice with Ethics Education,” Journal of Legal Education, Vol. 62, No. 4 (May 2013).
- “Commentary—Loyalty by Contract: A Sad Reflection on Lawyer Ethics,” The Professional Lawyer, Volume 22, Number 3, 2014.

Professional Appearances

- “Ethical Problems in Counseling,” University of California, San Diego, Securities Regulation Institute, January, 1989.
- “Money Isn’t Everything But It May Help: Settling Class Actions,” ABA Annual Meeting, August, 1989.

- "ALI Restatement of Law Governing Lawyers", ABA Section of Litigation, January, 1990.
- "Ancillary Business, Pro and Con," ABA Division of Professional Liability, May, 1990.
- Hearing on Ancillary Business Proposed Rules, ABA Standing Committee on Ethics and Professional Responsibility, February, 1991.
- National Association of Law Firm Marketing, Ancillary Services Debate, April, 1991.
- "The Legal Profession v. The Legal Business," Philadelphia Bar Association, 1991.
- "Doing Business with Clients: The Practice and Professional Implications," American Bar Association, August, 1991.
- "Lawyers and Their Liabilities in the 1990's," ABA Standing Committee on Lawyers' Professional Liability, Santa Fe, New Mexico, September, 1991.
- "Lawyer Dissatisfaction, A View From The Bottom", Philadelphia Bar Association Bench-Bar Conference, November, 1991.
- Pennsylvania Bar Association, "Quality of Life for the Young Lawyer: A Forum", February, 1992.
- "An Introduction: The Legal Profession and Professional Responsibility," Rutgers University School of Law, Camden, February, 1992.
- "Let's Make A Deal: The Ethics of Negotiations," ABA 18th National Conference on Professional Responsibility, June, 1992.
- ABA Presidential Showcase Program, "Lawyers Serving on Clients' Boards/Financial Transactions with Clients: Merit or Mistake," ABA Annual Meeting, August, 1992.
- "After Kaye, Scholer Can We Still Represent our Clients Effectively?," ABA Litigation Section Fall Council Meeting, Pebble Beach, California, September, 1992.
- "Professionalism and Service: The Practical Side of Ethics Beyond the Code," ABA Annual Meeting, Phoenix, Arizona, November, 1992.
- "Ethical Concerns in Today's Practice," Pennsylvania Bar Institute, December, 1992.
- "Evolving Responsibilities and Liabilities of Counsel and Accountants," Twentieth Annual San Diego Securities Regulation Institute, January, 1993.
- "Ethics and Litigation Management: Your Road Map to the Minefield," Fourth Annual Litigation Management Supercourse, New York, New York, March 1993.
- "In-House - Outside Counsel Forum: In-House and Outside Counsel Square Off," Fourth Annual Litigation Management Supercourse, New York, New York, March 1993.
- "The Woman Advocate," Conference on the Woman Advocate, ABA Section of Litigation and Prentice Hall Law & Business, New York, March 1993.
- "Regulatory Residue: The Fallout from Kaye Scholer," 19th National Conference on Professional Responsibility, Chicago, Illinois, May 1993.
- Ethics Seminar, Aetna Institute, May, 1993.
- "Death Penalty Appeals: The End of Fairness," ABA Spring Council/Committee Chairs Meeting, Santa Fe, NM, June, 1993.
- "ABA Working Group Report on Lawyers' Representation Of Regulated Clients: 18 Months After OTS v. Kaye, Scholer," ABA Annual Meeting, New York, New York, August, 1993.

- "Blowing The Whistle: Should Regulatory Lawyers Be Required To Sound The Alarm: The Kaye, Scholer Story," Business Law Forum, Temple University School of Law, Fall 1993 Lecture Series.
- "Ethics of Negotiations," Berks County Bench-Bar Conference, Hershey, PA, October, 1993.
- "Ethics, Responsibility and ADR," Dispute Resolution Alternatives Supercourse, Practicing Law Institute, New York, October 1993
- "Don't Throw the Baby Out with the Bath Water - How Much Management Is Too Much Management... How Inside and Outside Counsel Must Communicate to Achieve the Proper Balance, A Litigator's TQM Survival Kit," The District of Columbia Bar/George Washington University, National Law Center CLE Program, Washington, DC, October 1993.
- "Representing Economic Competitors - Maritrans Revisited," Pennsylvania Bar Institute, Baltimore, Maryland, November, 1993.
- National ADR Institute for Federal Judges, Harvard Law School, Cambridge, Massachusetts, November, 1993.
- Conference on Ethical Problems in Representing the Elderly, Fordham University, New York, December, 1993.
- "Legal Ethics for the Corporate Counselor," ABA Committee on Corporate Counsel, February, 1994.
- "Revolutionary Changes in Practice under the New Federal Rules of Civil Procedure," ABA/Prentice Hall Law and Business, New York City, February 1994.
- "Lawyers at Risk: Lessons from the Savings and Loan Crisis," University of Pennsylvania Center on Professionalism, February, 1994.
- "Ethical Issues in Corporate Representation: 'The Seaside Resort' Case Study," University of Pennsylvania Center on Professionalism, March 1994.
- "Should the Legal Profession Adopt Stricter Controls on Lawyer Advertising?," The State University of New Jersey at Rutgers, March 1994.
- "Legal Ethics and the Rule of Law," The Federalist Society, Philadelphia, Pa., March, 1994.
- "Rule 26: A Trap for the Wary," Eighteenth Annual United States Judicial Conference for the District of New Jersey, April 1994.
- The Woman Advocate Conference, ABA and Prentice Hall, New York, April 1994.
- "Are the Model Rules Out of Date in the Modern Regulatory State?," Keck Foundation Fellow, Duke University, April 20, 1994.
- "Emerging Issues in Professional Responsibility and Malpractice", ABA Satellite Seminar, June, 1994.
- "Strange Bedfellows: Law Firm and Corporate Counsel: Can This Partnership Be Saved?," Business Law Section and CLE Committee of The Florida Bar, June, 1994.
- "Pre-Trial Practice in the 90s and Coping with New Rules of Civil Procedure and the Civil Justice Reform Act," ABA Annual Meeting, New Orleans, August 1994.
- "The Receipt of Inadvertent Transmissions," Philadelphia Bar Education Center, December, 1994.
- Professional Responsibility Issues, Twenty-Second Annual Securities Regulation Institute, Hotel del Coronado, Coronado, California, January, 1995.

- "Different Strokes for Different Folks: Methods for Handling Corporate Litigation," 13th Annual Mid-Winter Meeting, American Bar Association, Boca Raton, FL, February 1995.
- "Redefining Client Service: The Legal Tech Evolution," Philadelphia Bar Association, April 6, 1995.
- "Prospects and Likely Impact of Dodd-Domenici Legislation," ABA Annual Spring Meeting, San Antonio, Texas, March, 1995.
- The Woman Advocate Conference, ABA and Aspen Law and Business, San Francisco, April 1995.
- Hot Topics for Corporate Counsel, "Ethics and the Corporate Counselor: Recurring Ethical Tough Calls," The Corporate Counsel Committee of the ABA Section of Litigation and the ABA Center of Continuing Education, May 11-12, 1995, Atlanta, GA.
- Media Law Roundtable, "Access Leads to Understanding - Understanding Leads to Access," ABA Section of Litigation and the National Conference of Lawyers and Representatives of the Media, May 19, 1995, Washington, DC
- "Revolutionary New Changes in Civil Practice in the Federal Trial Courts," New York, May 22, 1995.
- "Contingency Fees: Is One Third of a Loaf Better Than None?," 21st National Conference on Professional Responsibility, San Diego, California, June 1-3, 1995.
- The Woman Advocate Conference, ABA and Aspen Law and Business, New York, June, 1995.
- "Securities Litigation Reform," Philadelphia Bar Education Center, October 11, 1995.
- "Discovery Abuse," Cornell Law School, October 25, 1995.
- "Practical Issues in the Practice of Environmental Law," Philadelphia Bar Association, November 1995.
- "The Six Most Frequently Asked Questions," Philadelphia Bar Education Center, December 15, 1995.
- Securities Regulation and Business Law Problems, Dallas, Texas, February 1996.
- "Legal Ethics: The Core Issues," Hofstra University School of Law, March, 10-12, 1996.
- Chief Justice's Ethics Seminar, Deer Valley, Park City, Utah, March 15, 1996.
- "Ethical Considerations of Representing Corporate Clients and Their Affiliates," Western Pennsylvania Chapter of the American Corporate Counsel Association, April 1, 1996.
- "Business Lawyers Under Fire, Liability and Ethical Risk Facing In-House and Outside Counsel," ALI/ABA Satellite Program, April 2, 1996.
- "Taking Care of Each Other," The Dickinson School of Law Senior Speaker Series Dinner, April 23, 1996.
- Third Annual Conference on Women in the Profession: "Unraveling the Mystery of Ethics," Pennsylvania Bar Institute, May, 1996.
- "Restatement of the Law Governing Lawyers: Its Effect on Lawyer Discipline," 22nd National Conference on Professional Responsibility, American Bar Association, June 1, 1996.

- "Improving the Profession," American Corporate Counsel Leadership Summit, June, 1996.
- "Lawyer as Director of A For-Profit Corporation, Philadelphia Bar Education Center, July 1996.
- "Lawyers Serving on Boards of Directors of Their Clients," ABA Annual Meeting, Orlando, Florida, August, 1996.
- "Ethics for Transactional Lawyers," Philadelphia Bar Education Center, September 9, 1996.
- "Ethical Issues for Corporate Counsel," The Price Waterhouse General Counsel Forum, September 19, 1996.
- "Testing the Ethical Limits: Should We Resurrect the Appearance of Impropriety," Yale Law School, October 8, 1996 and ABA Committee on Corporate Counsel, 1996 Northeast Regional Workshop, November 7, 1996.
- "Advertising, Solicitation and Professionalism—Do's and Don'ts," December Bench-Bar, Philadelphia Bar Association, December 3, 1996.
- "Recent Developments in Legal Ethics," 15th Annual Corporate Counsel Institute, December, 1996.
- "Conflicts of Interest in Corporate Transactions: The Leveraged Buyout of the Harris Chemical Company," Rhodes College Institute on the Profession of Law, January, 1997.
- 1997 Lawyers' Conference, PNC, February 12, 1997.
- "Litigators Under Fire," ALI-ABA Satellite Program, April 3, 1996.
- Third Annual Chief Justice's Ethics Symposium, "Lawyer/Client Conflicts You Never Knew You Had," April, 1997.
- Regulation of "Pay to Play": By Whom? For What? How Far?, Business Law Section, American Bar Association, Spring Meeting April 1997.
- National Association of Bond Lawyers' Washington Seminar, May 1997.
- "Seeking Common Ground II:" A Continuing Dialogue Between General Counsel and the American Bar Association Second Annual Conference on Corporate Counsel Issues, Ethics for In-house Counsel Washington, DC, May, 1997.
- "The Model Rules of Professional Conduct: Have We Lost our Professional Values?," 23rd National Conference on Professional Responsibility, Naples, FL, May, 1997.
- "Building Strategies for Better Corporate Client Services, 1997 Legal Leadership Summit, Dallas, TX, June, 1997.
- Keynote Address: "An Informal Conference on Relationships Between Judges and Lawyers," Maine Bench Bar Conference, June, 1997.
- "The Global Economy - Implications for Law and Legal Practice, Presidential Showcase Joint Program, ABA Annual Meeting, August 1997.
- "The Lawyer as Director of a Client," ABA Annual Meeting, August 1997.
- "Lawyers Serving on their Clients' Board: How to Avoid an Accident Waiting to Happen," ABA Annual Meeting, August 1997.
- "Pathways to Leadership: A Primer for Women and Men," ABA Annual Meeting, August 1997.
- "Ethics Issues for Transactional Lawyers," Philadelphia Bar Association Transact Conference, September 19, 1997.

- "A Debate: The Role of the American Bar Association, The Federalist Society for Law & Public Policy Studies," September 22, 1997.
- "Professional Issues in Complex Litigation," Seventh Circuit Judicial Conference and Seventh Circuit Bar Association Annual Meeting, September, 1997.
- "Resolving Litigation's Civil Wars: Negotiating a Ceasefire Among Plaintiff Lawyers, Defense Lawyers, and Judges," Institute of Continuing Legal Education in Georgia, October 10, 1997.
- "Mastering Time, Costs, Information & Technology, American Corporate Counsel Association's 1997 Annual Meeting, San Francisco, CA, October 22-24, 1997.
- "Dialogue on Professional Dilemmas," American Bar Association, Section of Litigation, October 25, 1997.
- "Ethics," Environmental Law Institute 1997 "Boot Camp" Course on Environmental Law, November 1997.
- "Corporate Compliance, Ethics and Preventive Law," Price Waterhouse General Counsel Forum, November 20, 1997.
- "Professionalism in Practice," University South Carolina Law School, South Carolina Bar CLE Division, November 21, 1997.
- "Tangled Loyalties: Conflicts of Interest in the Real World," Fellows of the American Bar Foundation Annual Meeting, January 31, 1998.
- "Litigation Management Toolbox for the 21st Century," ACCA Legal Leadership Summit, February, 1998.
- "The Future of Legal Services," The First Annual Arthur Liman Colloquium, March 5, 1998.
- "Professionalism in Class Action and Mass Tort Litigation," Sixth Annual Alvin B. Rubin Federal Symposium, New Orleans, April 2, 1998.
- "Conflicts of Interest in a Deregulated World," Edison Electric Institute, Spring Legal Conference, St. Pete Beach, FL, April, 1998.
- Legal Ethics: Access to Justice "Another Look at Corporate Family Conflicts," Hofstra 1998 Legal Ethics Conference, April 5-7, 1998.
- "Litigators Under Fire," ALI-ABA Satellite Program, April 9, 1998.
- "Legal Ethics in an Online World," Managing the Legal Risks of E-Commerce: Practical Legal Strategies, The Computer Law Association, April 16, 1998.
- "The Brave New World of Lawyers' Ethics," Twenty Fifth Annual Disciplinary Conference of the District of Columbia, April 21, 1998.
- "Multidisciplinary Partnerships: Accounting Firms and the Practice of Law," ABA 24th National Conference on Professional Responsibility, May, 1998.
- "Dual Professions," 1998 Masters Seminar on Ethics, Florida Bar CLE Committee and the Professional Ethics Committee, June 1998.
- Who Shall Live and Who Shall Die, Death Penalty Focus, June 3, 1998.
- Keynote Address, Virginia State Bar Disciplinary Conference, July 21, 1998.
- "The Eroding Borders Between Law and Accounting: Look Who's Eating Your Lunch," ABA 1998 Annual Meeting in Toronto, Ontario, August 3, 1998.
- "The ALI and Its New Projects," ABA 1998 Annual Meeting in Toronto, Ontario, August of 1998.

- "Ethics in the 21st Century," ABA Product Liability Seminar in Phoenix, Arizona, October 3, 1998.
- The Atlanta Bar Association, The "Presidential Showcase" CLE Program: The Millennial Lawyer in the 21st Century, "The Practice in the 21st Century", October 15, 1998.
- Association of American Law Schools, Workshop on Professional Responsibility, "The Ethics Professors: Enablers or High Priests," October 16, 1998.
- "Ethics in Environmental Law" Environmental Law Institute 1998 Boot Camp, November 13, 1998.
- "Political Contributions; Freedom of Speech or Pay to Play" 4th Annual New York Public Finance Conference, November 16-17, 1998.
- "Pay to Play: How We Got Here and Where We Might Be Going". Pennsylvania Bar Institute, Current Issues in Municipal Finance, November 19, 1998.
- "Can We Revive Professionalism?," ACCA Annual Meeting, November 12, 1998.
- "Death Penalty Representation," University of Pennsylvania Law School Public Service Form, November 17, 1998.
- "Ethical Problems for In-House Counsel," Western Pennsylvania Chapter American Corporate Counsel Association December 2, 1998.
- "Roundtable on Ethics," Western Pennsylvania Chapter of the American Corporate Counsel Association, December 7, 1998.
- "Professional Responsibility for Intellectual Property Practitioners," Patent & Trademark Office Day, December 9, 1998.
- "Cross-Examination," an ABA Section of Litigation Teleconference, December 15, 1998.
- "Ethics: Negotiating in Cyberspace," Practising Law Institute 19th Annual Institute on Computer Law, March, 1999.
- "Preserving Professional Independence," ABA Winter Council Meeting, Aspen, CO, January, 1999.
- "What Firms Want and Need to Know About Representing a Death Row Prisoner," ABA Winter Council Meeting, Aspen, CO, January, 1999.
- "The Accountants are Coming! The Accountants are Coming! Ethical Dilemmas Facing Lawyers Practicing at CPA Firms," Los Angeles County Bar Taxation Section, Los Angeles County Bar Association, February 1999.
- "Florida Should Oppose Lawyers Working for Non-Lawyers," Florida All Bar Conference, February, 1999.
- "Ethical and Practical Challenges in Compliance Programs," Edison Electric Institute 1999 Spring Legal Conference, Charleston, S.C. April 1999.
- "Traversing the Ethical Minefield," ABA Section of Litigation Annual Meeting, April, 1999.
- "Is a Whole Generation Getting the Wrong Message on Ethics," ABA Section of Litigation Annual Meeting, April 1999.
- "Ethics for the In-House Lawyer," ACCA, April 22, 1999.
- "Ethical Dilemmas in the Triangular Relationship," Insurance Practice Institute, April 1999.

- "Intrusion Into the Profession," Pennsylvania Bar Association Annual Meeting, May 5, 1999.
- "The Challenge of Multidisciplinary Practice," New Jersey State Bar Association Annual Meeting, May 14, 1999.
- "Should the ABA Abolish Rule 5.4?," debate with John Aldock, ABA Section of Litigation, Cancun, Mexico, June 19, 1999.
- "Race in Your Case," National Conference for Minority Lawyers, ABA Section of Litigation, June 23, 1999.
- "Ethics 2000: Professional Responsibility in the New Millennium," 1999 Annual State Bar of Arizona Convention, June 25, 1999.
- "Intrusion Into the Profession or the Future of Law Practice? Multi-Disciplinary Practice," PBI-PBEC Education Center, Philadelphia, September 24, 1999.
- "MDP: Should In-House Counsel Care?," Corporate Counsel Committee of Business Law Section of the ABA, San Diego, October 25, 1999.
- "Multi-Disciplinary Practices, Ethics, and the Future of the Legal Profession," Cornell Law School, October 27, 1999.
- "Pro & Con: Should the PA Bar Embrace MDP?," PA House of Delegates, October 29, 1999.
- "New Roles, No Rules? Redefining Lawyers' Work," The Phyllis W. Beck Chair In Law Symposium, Temple University Beasley School of Law, November 12, 1999.
- "Current Issues In Professional Responsibility," First Year Professional Responsibility Lecture Series, Yale, December 1, 1999.
- "Multidisciplinary Practice, What it is and What it Means to the Vermont Practitioner," Vermont Bar Association, Young Lawyers Section, January 14, 2000.
- "Symposium on Multidisciplinary Practice," University of Minnesota Law School, Minnesota L. Rev., February 24-25, 2000.
- "Modifications to the ABA Model Rules of Professional Responsibility and Application to Environmental Practice," American Bar Association Section of Environment, Energy, and Resources' Conference on Environmental Law, Keystone, Colorado, March 12, 2000.
- "The Fifth Nearly Annual Ethics CL&Ski," Park City Bar Association, Silver Lake Lodge, Deer Valley, Utah, March 31, 2000.
- "The Question of Multi-Disciplinary Practice: Point – Counterpoint," National Academy of Elder Law Attorneys, Inc., Philadelphia, Pennsylvania, May 4, 2000.
- "Multidisciplinary Practice: Curse, Cure or Tempest In a Teapot," American Intellectual Property Law Association, Pittsburgh, Pennsylvania, May 19, 2000.
- "Multi-Disciplinary Practices and Ethics 2000," American College of Trial Lawyers Regional Meeting, Short Hills, New Jersey, May 20, 2000.
- "Excessive Legal Fees: Protecting Unsophisticated Consumers, Class Action Members, and Taxpayers/Citizens," U.S. Chamber Institute For Legal Reform, et al., Washington, DC, May 25, 2000.
- "Ethics 2000," Delaware Bench & Bar Conference, June 7, 2000.
- "Legal Ethics in Cross-Border Practice," The International Law Briefing, New York, New York, June 8, 2000.

- "The Changing Practice of Law," DC Circuit Judicial Conference, Williamsburg, Virginia, June 15, 2000.
- "MultiDisciplinary Practices (MDPs): A New Paradigm For the Delivery of Legal Services?," 62nd Annual Meeting Virginia State Bar, Virginia Beach, Virginia, June 17, 2000.
- "May It Please The Court, I am from Arthur Price & Deloitte: MDP's, Should Trial Lawyers Care?," ABA Section of Litigation, New York, New York, July 8, 2000.
- "Successful Partnering Between Inside and Outside Counsel: Advice from the Experts," ABA Section of Business Law, New York, New York, July 9, 2000.
- "The Imposition Of The Death Penalty Is 'Fraught With Error': Where Do We Go From Here?," ABA Section of Litigation, New York, New York, July 10, 2000.
- "If Free Enterprise Has Its Way, Will We Still Need Rules of Professional Responsibility," Centennial Lecture, William Mitchell College of Law, St. Paul, Minnesota, October 4, 2000.
- "ABA Call to Action: A Moratorium On Executions," Atlanta, Georgia, October 11-12, 2000.
- "Negotiating the Ethical Minefield," Professional Education Group, Miami, Florida, October 13, 2000.
- "All's OK Between Consenting Adults: Enlightened Rule on Privacy; Obscene Rule on Ethics," Howard Lichtenstein Legal Ethics Lecture, Hofstra University School of Law, October 18, 2000.
- "Ethics in the Workplace," University of Pennsylvania, Philadelphia, Pennsylvania, October 25, 2000.
- "Ethical Issues in Corporate Practice Today; Compensation and Acquisitions," Corporate Governance Institute, Washington, DC, November 9, 2000.
- "Ethics in Environmental Law," Environmental Law Institute's Ninth Annual Boot Camp Course, Georgetown University, Washington, DC, November 13, 2000.
- "Proposed Revisions to the American Bar Association Model Rules," The Federal Council & Foundation, Princeton, New Jersey, November 18, 2000.
- "ABA Ethics 2000: What's New in the Proposed Model Rules," Louisiana State Bar Association, New Orleans, Louisiana, December 1, 2000.
- "Teleconference on Ethics," National Association of Bond Lawyers, Washington, DC, December 6, 2000.
- "Multi-Disciplinary Practice and the Fiduciary Lawyer," Pennsylvania Bar Institute, Philadelphia, Pennsylvania, December 12, 2000.
- "Multidisciplinary Practice: What it is and What it Means for Vermont Practitioners," Young Lawyers Section of the Vermont Bar Association, Montreal, Quebec, January 14, 2001.
- "Conference on Attorney Conduct Rules," Administrative Office of the United States Courts, Washington, DC, January 16, 2001.
- "Multidisciplinary Practices & Healthcare," American Bar Association, Health Law Section, Orlando, Florida, February 9, 2001.
- "The Death Penalty: A Bar Leadership Issue," National Conference of Bar Presidents, ABA Midyear Meeting, San Diego, California, February 17, 2001.

- Ethics 2000 Presentation: "What Every Lawyer Should Know About Ethics 2000 – Highlights of the Proposed Changes to the ABA Model Rules of Professional Conduct," Center for Professional Responsibility, ABA Midyear Meeting, February 18, 2001.
- "Ethics 2000: The Proposed Rules and Your Practice," American College of Trial Lawyers Spring Meeting, Boca Raton, Florida, March 30, 2001.
- "The American Bar Association's Ethics 2000 Commission: A Review of Proposed Changes in the ABA's Model Rules of Professional Conduct," The Board on Professional Responsibility, District Columbia Court of Appeals, Washington, DC, April 18, 2001.
- "The Role of Honesty in the ABA Ethics 2000 Report," The Fellows of the Wisconsin Law Foundation Symposium, Lake Geneva, Wisconsin, May 1, 2001.
- "Summer Associates' Day's Ethics Discussion," Philadelphia Volunteers for the Indigent Program, Philadelphia, Pennsylvania, June 4, 2001.
- "Legal Tender: Negotiating the Ethical Minefield," Kentucky Bar Association 2001 Annual Convention, Lexington, Kentucky, June 13, 2001.
- "Ethical Issues in Public Interest Law," 9th Annual Public Interest Law Day, Pennsylvania Bar Institute, Philadelphia, Pennsylvania, June 21, 2001.
- "Costs & Funding Forum," Personal Injuries Bar Association, Annual Conference 2001, St. Catherine's College, Oxford, June 30, 2001.
- "Ethics 2001: Are you ready for the challenge?," American Law Institute-American Bar Association Committee on Continuing Professional Education, Washington, DC, July 24, 2001.
- "Death Penalty Program," American Bar Association Annual Meeting, Chicago, Illinois, August 5, 2001.
- "Ethics 2000: Should Litigators Care? Should Clients Care?," American Bar Association Annual Meeting, Chicago, Illinois, August 5, 2001.
- "Ethical Dilemmas for Capital Post-Conviction Counsel," National Federal Habeas Corpus Seminar, Nashville, Tennessee, August 10, 2001.
- "Forget About Conflicts – If Citibar Has Its Way, We Can Have Just One Big Law Firm," Hofstra University School of Law, The 2001 Legal Ethics Conference, Legal Ethics: What Needs Fixing?, Hempstead, NY, September 10, 2001.
- "Trial Evidence in the Federal Courts: Problems and Solutions," American Law Institute-American Bar Association Committee On Continuing Professional Education, Philadelphia, PA, October 5, 2001.
- "Ethics and Professionalism", Pennsylvania Bar Institute, Philadelphia, PA, October 11, 2001.
- Vermont Bar Association Seminar, Burlington, Vermont, November 8, 2001.
- "Ethics in Capital Defense," Ninth Annual Capital Defense Workshop, The Virginia Bar Association, Richmond, VA, November 15-16, 2001.
- "Litigation Ethics," Section of Litigation and Young Lawyers Division, ABA Mid-year Meeting, Philadelphia, PA, February 2, 2002.
- Ethics Round Table, 2002 Winter Federal Bench Bar Council Conference, Puerto Rico, February 16, 2002.

- "The Future Structure and Regulation of the Law Practice," University of Arizona, James E. Rogers College of Law, Tucson, Arizona, February 22-23, 2002.
- "Litigation in a Free Society," Institute for Law & Economic Policy, Hollywood, Florida, March 15-16, 2002.
- "The Ethics 2000 Commission: The Adversary System and the Lawyer-Client Relationship," University of Tennessee College of Law's Center for Advocacy Dispute Resolution, Knoxville, Tennessee, April 4, 2002.
- "Ethics 2000 and Beyond: Reform or Professional Responsibility as Usual," Law Review Symposium sponsored by University of Illinois at Urbana-Champaign, Champaign, Illinois, April 5, 2002.
- "The Intersection of Lawyer Ethics and the Death Penalty," Yale Law School, April 8, 2002.
- "Ethics and Enron," 22nd Annual Ray Garrett, Jr., Corporate and Securities Law Institute, Northwestern University School of Law, Chicago, Illinois, April 12, 2002.
- "Planning for Disaster," PBI-CLE, Philadelphia, PA, April 22, 2002.
- "Ethical Issues in Corporate Practice Today," ALI-ABA Ninth Annual Corporate Governance Institute, Boston, MA, May 10, 2002.
- "Ethics Issues for the IP Practitioner," Philadelphia Intellectual Property Law Association, Philadelphia, PA, May 16, 2002.
- "Legal Tender," New Jersey Bar Association, Mt. Laurel, NJ, May 18, 2002.
- "Legal Tender," New Jersey Bar Association, Atlantic City, NJ, May 22, 2002.
- "Ethical Issues In Public Interest Practice," 10th Annual Public Interest Law Day, Philadelphia, PA, June 7, 2002.
- "Ethics for In-house Counsel," IBM, Armonk, NY, June 11, 2002.
- "Legal Tender," Louisville Bar Association, Louisville, KY, June 25, 2002.
- "The Fallout from Enron," ABA Section of Litigation, Banff, Alberta, Canada, June 22, 2002.
- "How to Improve the System of Justice through CLE," Association for Continuing Legal Education, Montreal, Canada, July 28, 2002.
- "Enron and its Aftermath," St. John's University School of Law, Jamaica, NY, September 20, 2002.
- "The Attorney-Client Privilege," PBI Workshop, Philadelphia, PA, October 16, 2002.
- "The Ethics of Litigation," South Texas L. Rev. Annual Ethics Symposium, Houston, TX, October 18, 2002.
- "Handling Professional Dilemmas," Maine Bar Association, Portland, ME, November 7, 2002.
- "Problems in Discovery and Professionalism," University of Georgia School of Law, Athens, Georgia, November 15, 2002.
- "The Role of the Corporate Attorney after Enron and the Sarbanes-Oxley Act," Fordham Center for Corporate, Securities and Financial Law, Fordham University School of Law, New York, NY, November 22, 2002.
- "Lawyer Regulation After Enron," Association of American Law Schools, Washington, DC, January 5, 2003.
- "A Matter of Corporate Responsibility: Where Are We Going From Here?," New York State Bar Association, New York, NY, January 22, 2003.

- “Ethics and Professionalism on the Big Screen,” New York State Bar Association, New York, NY, January 23, 2003.
- “Trial Evidence in the Federal Courts,” ALI-ABA, Coral Gables, FL, January 30, 2003.
- “Did Enron Create a Need for New Regulation of Lawyers?,” Univ. of Houston, Houston, TX, February 3, 2003.
- “Bar Summit On Corporate Responsibility,” (Sarbanes-Oxley panel) Association of the Federal Bar of the State of New Jersey 27th Annual United States District Court Judicial Conference, West Orange, NJ, March 6, 2003.
- “Legal Tender,” The State Bar of New Mexico, Albuquerque, NM, March 13, 2003; Santa Fe, NM, March 14, 2003.
- “Insight for Inspired Practice: Dispute Resolution Ethics,” ABA Section of Dispute Resolution, San Antonio, TX, March 21, 2003.
- “Ethics Issues in Dispute Resolution,” 2003 Petroleum Marketing Attorneys’ Meeting, Washington, DC, April 1, 2003.
- “The Brave New World of Lawyers’ Ethics: Revised Rules and Bold Challenges,” ALI-ABA Video Law Review, Washington, DC, April 4, 2003.
- “Ethics in the Media: The Ever-Growing Thirst for Information,” ABA Litigation Section, New York, NY, June 5, 2003.
- “The Death Penalty: Race, Representation and Reform,” ABA National Conference for the Minority Lawyer, Philadelphia, PA, June 5, 2003.
- “Corporate Governance After Sarbanes-Oxley,” ALI-ABA Tenth Annual Corporate Governance Institute, Philadelphia, PA, June 6, 2003.
- “Legal Issues in a New World,” Eighth Circuit Judicial Conference, Minneapolis, MN, July 17, 2003.
- “Judging Judges’ Ethics,” Hofstra University School of Law, Hempstead, NY, September 15, 2003.
- “You’ve Finished the Internal Investigation – Now What?,” Association of General Counsel Fall Meeting, Washington, DC, October 10, 2003.
- “Settlement Strategies and Ethics,” ABA-CLE TeleConference and Audio Webcast, October 14, 2003.
- “Strengthening the Guiding Hand of Counsel: Reforming Capital Defense Systems,” Hofstra University School of Law, Hempstead, Long Island, NY, October 24, 2003.
- “Ethics and Professional Liability,” American Board of Professional Liability Attorneys Convention, Philadelphia, PA, October 25, 2003.
- “Ethics in Environmental Law,” Environmental Law Institute’s Twelfth Annual Boot Camp Course, Georgetown University, Washington, DC, November 11, 2003.
- “Federalism & The Regulation of Attorneys,” The Federalist Society, Washington, DC, November 15, 2003.
- “Advocacy & Ethics,” ALI-ABA, Scottsdale, AZ, December 4-5, 2003.
- “Can Client Confidentiality Survive Enron, Arthur Andersen and the ABA?,” Stetson University College of Law, Tampa, FL, January 28-30, 2004.
- “Supreme Court Judicial Recusals,” The Federalist Society for Law and Public Policy Studies, Washington, DC, April 6, 2004.

- "Liars and the Lying Lawyers and Clients Who Tell Them," ABA Section of Litigation Annual Meeting, Scottsdale, AZ, May 6, 2004.
- "Beating the Rap: How to Protect Your Clients (and Yourself) from the Exposure of Criminal Violations in Bankruptcy Cases," Eastern District of Pennsylvania Bankruptcy Conference, Philadelphia, PA, May 17, 2004.
- "Lawyers' Ethical Challenges in the Office, Boardroom, and Beyond," ALI-ABA Video Law Review, Washington, DC, June 25, 2004.
- "Negotiation, Ethics & Mandatory Disclosures," Atlanta, GA, August 7, 2004.
- "The Decline of Confidentiality for the Corporate Attorney," Philadelphia, PA, August 25, 2004.
- "Ethics & Marketing – Learn How to Comply When You Communicate," Philadelphia, PA, September 22, 2004.
- "New Rules of Professional Conduct," Philadelphia Bar Association, Philadelphia, PA, September 29, 2004.
- "Negotiating the Ethical Minefield," Professional Education Group, Cary, NC, September 30, 2004.
- "Ethics of Contingent Fees," ABA Tort Insurance Practice Fall Council Meeting, Rockport, ME, October 8, 2004.
- "Ethics and the Law," CNL Leadership Forum on Integrity, Philadelphia, PA, October 25, 2004.
- "Private Equity and Venture Capital Financing," Philadelphia, PA, November 10, 2004.
- "Ethics in Environmental Law," Environmental Law Institute's Thirteenth Annual Boot Camp Course, Georgetown University, Washington, DC, November 11, 2004.
- "Amendments to Pennsylvania Rules of Professional Conduct," Philadelphia Association of Defense Counsel, Philadelphia, PA, November 16, 2004.
- "Corporate Governance After Sarbanes-Oxley," ALI-ABA Corporate Governance Institute, Washington, DC, December 3, 2004.
- "Eastern District of Pennsylvania Bankruptcy Conference," 16th Annual Forum, Plainsboro, NJ, January 29, 2005."
- "Valuation of Intellectual Property for Litigation, Business and Tax Purposes," Philadelphia Bar Institute, Philadelphia, PA, March 4, 2005.
- "Erosion of the Attorney-Client Privilege," Atlantic Legal Foundation, Washington, DC, March 10, 2005.
- "The New Pennsylvania Rules of Professional Conduct: What Do They Mean for Health Lawyers?", PBI – Annual Health Law Institute, Philadelphia, PA, March 15, 2005.
- "Professional Challenges in Large Firm Practices," Fordham University School of Law, New York, NY, April 15, 2005.
- "Death of Confidentiality: Not on Our Watch," Louisville, KY Bar Association, April 20, 2005.
- "Red Flags, Client Troubles, and the Ethics of Representation," ALI-ABA, Washington, DC, June 3, 2005.
- "Legal Ethics in a New Millennium: New Practice, New Rules, New Visions," AALS, Montreal, Canada, June 12-14, 2005.

- “Legal Tender – Wyoming State Bar Convention,” Professional Education Group, Inc., Casper, Wyoming, September 9, 2005.
- “The Business Lawyers Institute 2005,” Philadelphia Bar Institute, Philadelphia, PA, October 20, 2005.
- “Trial Evidence in the Federal Courts Problems and Solutions,” ALI-ABA, Chicago, IL, October 21, 2005.
- “Professional Responsibility & Risk Management Conference,” Hinshaw & Culbertson LLP, New York, NY, October 27, 2005.
- “Ethics Guidance for the Conflicted Lawyer,” ABA TIPS Aviation and Space Law Committee, Washington, DC, November 10, 2005.
- “Working Both Sides: Conflicts Arising Out of Advance Waivers Where Law Firm Attempts to Represent Both Insurers and Insureds,” ABA Section of Litigation, Insurance Coverage Litigation annual conference, Tucson, AZ, March 4, 2006.
- “Outreach Through Lawyering,” University of Pennsylvania Law School, Latin American Law Students Association, Philadelphia, PA, March 17, 2006.
- “Gandhi: Ethical Legal Practice in the Modern Era,” University of Pennsylvania Law School, South Asian Law Students Association, Philadelphia, PA, March 24, 2006.
- “ConocoPhillips Global Attorneys Meeting,” Houston, TX, April 25, 2006.
- “Strategies for Avoiding Conflicts of Interest,” Multi-Site Teleconference, May 17, 2006.
- “Ethics 2006: Accidental Clients, Red Flags, and Other Ethical Conundrums,” ALI-ABA, Washington, DC, October 13, 2006.
- “Ethics 101 Conquering Ethical Dilemmas, 2006 Fall Conference Young Lawyers Division, American Bar Association, Baltimore, MD, October 20, 2006.
- “How the Law Schools Can Help,” Rutgers Faculty Forum, Camden, NJ, November 6, 2006.
- Fourth National Seminar on Forensic Evidence and the Criminal Law, New Orleans, LA, January 20-21, 2007.
- “E-Ethics: Practical Considerations and Ethical Issues in Electronic Discovery,” 1st Annual National Institute on E-Discovery, American Bar Association, Chicago, IL, March 9, 2007.
- “Trial Evidence in the Federal Courts: Problems and Solutions,” ALI-ABA, New York, NY, March 22, 2007.
- “Enhanced Ethics & Professionalism: the Intersection of Legal and Business Concepts,” Tulane University Law School, 19th Annual Corporate Law Institute, New Orleans, LA, March 30, 2007.
- “Institutional Investor Activism: the Evolving Role of Institutional Investors in Corporate Governance and Corporate Litigation,” 13th Annual ILEP Conference, Cabo San Lucas, Mexico, April 19-20, 2007.
- “Electronic Information Storage: Ethical Considerations and Risk Issues,” Nixon Peabody, Boston, MA, April 24, 2007.
- “Conflicts of Interest: Keys to Solving Your Toughest Problems,” National Constitution Center audio conference, Philadelphia, PA, May 22, 2007.
- “Ethics for Bank Regulatory Attorneys,” CLE Program, Office of the Chief Counsel, Comptroller of the Currency, Washington, DC, June 14, 2007.

- "Litigation Quiz Show," ABA 2007 Annual Meeting, San Francisco, CA, August 11, 2007.
- "Switch Hitting? Ethical Implications of Advance Conflict Waivers," ABA 2007 Annual Meeting, San Francisco, CA, August 11, 2007.
- "Fourth Annual Institute on Corporate, Securities, and Related Aspects of Mergers and Acquisitions," Co-sponsored by Penn State's Dickinson School of Law and the New York City Bar, New York, NY, October 16, 2007.
- "Ethics Update 2007 – Accidental Clients, Red Flags, and Other Ethical Conundrums," ALI-ABA Live Video Webcast, December 7, 2007.
- "Man the Barricades! Defend the Privilege!," The Lou Ashe Lecture, University of the Pacific, McGeorge School of Law, Sacramento, CA, March 12, 2008.
- "Ethics for the Corporate Law Firm," Shearman & Sterling LLP, New York, NY, March 20, 2008.
- "The Ethical Obligations of Lead Counsel," Institute for Law and Economic Policy (ILEP) Fourteenth Annual Conference, Co-sponsored by the University of Wisconsin Law School, Naples, FL, April 11, 2008.
- "The Ethics Centennial," ABA Litigation Section Annual Conference, Washington, DC, April 18-19, 2008.
- "Conflict of Interest – The Attorney/Client Relationship," LexisNexis Teleconference Series, May 22, 2008.
- "The Last Days of the Philadelphia Lawyer," Philadelphia Bar Association, Philadelphia, PA, July 1, 2008.
- NAACP Legal Defense & Educational Fund, Inc.'s 29th Annual Capital Punishment Training Conference., Warrenton, VA, July 11, 2008.
- "Confidentiality and Ethical Dilemmas in Jewish and American Law," Gratz CLE Series, Gladwyne, PA, July 30, 2008.
- "Harnessing the Winds of Change to Bring Balance and Meaning to the Workplace," American Bar Association Annual Meeting, New York, NY, August 9, 2008.
- "Hot Topics in the International Arena," Chicago Bar Association, London, England, October 5, 2008.
- "Ethics Update 2008: Control, Communication, and Competence," ALI-ABA, Philadelphia, PA, October 7, 2008.
- "Litigation Practice: Risks that Never Relent," 2008 Large Law Firm Symposium, Chicago, IL, October 15, 2008.
- "Judicial Ethics and the Lawyer's Role in the Process," Philadelphia Bar Institute – Thirteenth Annual Bankruptcy Institute, Philadelphia, PA, October 16, 2008.
- Clifton Kruse, Jr. Ethics Lecture, National Academy of Elder Law Attorneys, Inc., Kansas City, MO, October 24, 2008.
- "Ethical Considerations in Internal Investigations," Association of Corporate Counsel, Chicago, IL, October 30, 2008.
- "Leading Legal Innovation," University of Southern California, San Diego, CA, December 12-13, 2008.
- "Federal Practice in the District of Delaware: Ethical Issues in the Practice of Law," CLE program co-sponsored by the U.S. District Court and the Federal Bar Association, Wilmington, DE, March 11, 2009.

- “Ethical Duties in Mitigation Development,” Imagining Future Mitigation: New Science, New Ideas, Fifth National Seminar on the Development and Integration of Mitigation Evidence, Philadelphia, PA, April 17, 2009.
- “When Trouble Walks Through the Door,” ABA Litigation Section Annual Conference, Atlanta, GA, May 1, 2009.
- “Ethics in Appellate Practice,” Third Circuit Judicial Conference, Philadelphia, PA, May 6, 2009.
- “Developments in Legal Ethics 2009: Using Screens in Private Practice,” ALI-ABA, Washington, DC, May 17, 2009.
- “Ethics or No Ethics?” and “Changes and Unique Opportunities for Defenders in Today’s Economic Crisis,” 30th Annual Capital Punishment Training Conference, Warrenton, VA, July 10-11, 2009.
- “Litigation Fundamentals: Negotiations and Settlements including Ethics Issues,” ABA Teleconference/Webcast, August 20, 2009.
- “The Ethics Quiz Show: Are You Ready to Be a Player,” National Conference for the Minority Lawyer, Philadelphia, PA, September 24, 2009.
- “Ethics and Risk Management Seminar,” Milwaukee, WI, October 15, 2009.
- “Drawing the Ethical Line: Controversial Cases, Zealous Advocacy and the Public Good,” 10th Annual Legal Ethics & Professionalism Symposium, University of Georgia School of Law, Athens, GA, October 16, 2009.
- “Due Process,” 7th Constitutional Law Conclave, Pennsylvania Bar Institute, Philadelphia, PA, October 30, 2009.
- “Legal and Government-Lawyer Ethics,” ABA Senate Ethics 2010 CLE, Washington, D.C., April 8, 2010.
- “Arguing Crime/Fraud and Other Exceptions to Privilege: An Expert Demonstration,” ABA Litigation Section Meeting, New York, NY, April, 2010.
- “Ethical Pitfalls – What Every Civil Practitioner Needs to Know About Criminal Issues in Civil Litigation,” ABA Litigation Section Meeting, New York, NY, April 22, 2010.
- “The Assault on Client Loyalty: Of Prospective Waivers, Screening and Suing Your Client’s Parent,” ABA Litigation Section Meeting, New York, NY, April 22, 2010.
- “Arguing Crime Fraud and Other Exceptions to Privilege: An Expert Demonstration,” ABA Litigation Section Meeting, New York, NY, April 23, 2010.
- “Ethical Dilemmas in Representing Organizations,” Delaware State Bar Association, Wilmington, DE, April 29, 2010.
- “Multiple Clients, Multiple Headaches: Identifying and Resolving Ethical Red Flags, ALI-ABA, Washington, DC, May 16, 2010.
- National Institute on Contemporary Mediation, ABA Section of Litigation, Chicago, IL, June 10, 2010.
- “2010 Law Department Biennial Meeting,” Office of the Comptroller of the Currency Ethics CLE, Washington, DC, June 15, 2010.
- “Ethics for Litigators: Conflicts, Confidentiality and Competence,” ABA Section of Litigation Spring Leadership Meeting, Whistler, BC, June 19, 2010.
- “The Ethics of Disengagement Letters,” Best of Sound Advice, ABA Section of Litigation, Chicago, IL, June 24, 2010.

- 31st Annual Capital Punishment Training Conference, Warrenton, VA, July 9, 2010.
- "Class Action Litigation Strategies," Practising Law Institute, New York, NY, July 22, 2010.
- 15th Annual National Federal Habeas Corpus Seminar, Cleveland, OH, August 26, 2010.
- "ETHICS: What are the ethical implications for a capital trial attorney in a habeas proceeding?," Ohio Capital Habeas Seminar: Litigating Ineffective Assistance of Counsel, Cleveland, OH, February 4, 2011.
- "Ethical Applications of the New Illinois Rules of Evidence," Clifford Law Offices, Chicago, IL, February 17, 2011.
- "Ethical Considerations for Lawyers During the Financial Crisis," Symposium on the Status of the Legal Profession: Facing the Challenges of the 21st Century, American Inns of Court, Washington, DC, April 1, 2011.
- "Traversing the Ethical Minefield: Professional Responsibility Dilemmas in the Class Action Practice," Institute for Law & Economic Policy's 17th Annual Symposium, "Access to Justice," Manalapan, FL, April 8, 2011.
- "Ten Traps for the Wary," Atlanta General Counsel Forum, Atlanta, GA, May 10, 2011.
- "Lawyers' Websites, Blogs, and Other Social Media – Ethical Issues," PBI Ninth Annual Nonprofit Institute, Philadelphia, PA, May 24, 2011.
- "Legal Ethics," 2011 Law Department Biennial Meeting, Office of the Comptroller of the Currency Ethics CLE, Washington, DC, May 25, 2011.
- "Legal Ethics (Parts I and II)," CLE program for the Office of the Chief Counsel, Comptroller of the Currency, Biennial Meeting, Washington, D, May 25, 2011.
- "Reality Ethics: How to Avoid Getting Kicked Off the Island," G. Thomas VanBebber Twelfth Annual Ethics in Litigation Forum, Earl E. O'Connor American Inn of Court, Kansas City, MO, June 16, 2011.
- "Can We Make Ethical Violations a Basis for Relief on Death Row?" Airlie Center, Warrenton, VA, July 8, 2011.
- "Expert Life After Changes to Rule 26," American Bar Association Annual Meeting, Toronto, Canada, August 5, 2011.
- "Ethics for Defenders," Defender Summer School 2011, Orlando, FL, August 15, 2011.
- "Legal Ethics and Criminal Law: Resolving the Practitioner's Headaches When the Two Come Together," Federal Criminal Practice Seminar, Cleveland, OH, August 19, 2011.
- "Life Over Death," Florida Public Defender Association, Inc., Lake Buena Vista, FL, September 9, 2011.
- "Loyalty under Attack: The Pernicious Prospective Waiver," ABA Lit. Sec. Ethics & Professionalism, October 18, 2011.
- "So Someone Objects To Your New Client ...," ABA Administrative Law Conference, Washington, DC, November 17, 2011.
- "Traversing the Ethical Minefield," CLE program for Shearman & Sterling LLP, New York, NY, December 1, 2011.

- “Larry Fox and Susan Martyn on Ethics: Accidental Clients and Lawyers in the Job Market,” ABA, Litigation Section Webinar, December 14, 2011.
- “Prosecutorial Accountability in the Post-*Connick v. Thompson* Era: Reforms and Solutions,” ABA Midyear Meeting, New Orleans, LA, February 4, 2012.
- “Ethical Issues: Who Is The Client?” PBI-CLE Protecting Our Children, Philadelphia, PA, February 27, 2012.
- “Can This Profession Be Saved?” Northern Illinois University law lecture, DeKalb, IL, March 30, 2012.
- “Legal Representation of a Nonprofit Organization: Ethical Issues for Lawyer and Client,” PBI 10th Annual Nonprofit Institute, Philadelphia, PA, May 23, 2012.
- “Capital Punishment,” NYC Bar Habeas Corpus Training Program, New York, NY, July 11, 2012.
- 33rd Annual Capital Punishment Training Conference, Airlie Center, Warrenton, VA, July 13, 2012.
- “Breakfast Ethics,” South Carolina Bar Convention, Myrtle Beach, SC, January 27, 2013.
- “Constitutional Considerations,” Annual William P. (Bill) Redick, Jr. Capital Defense Seminar, Nashville, TN March 14, 2013.
- “Current and Emerging Issues in Ethics & Professional Responsibility, CLE Panel Discussion, University of Pennsylvania Law School, Philadelphia, PA, May 10, 2013.
- “Examining the Ethical Issues of Nonprofit Financial Failure: A Case Study of *In re Lemington Home for the Aged*,” PBI 11th Annual Nonprofit Institute, Philadelphia, PA, May 22, 2013.
- “Traversing the Ethical Minefield,” Kentucky Bar Association Annual Convention, Louisville, KY, June 20, 2013.
- “Traversing the Ethical Minefield: of Biased Judges, Turncoat Lawyers, Prying Prosecutors and Dwindling Budgets,” 34th Annual Capital Punishment Training Conference, Airlie Center, Warrenton, VA, July 12, 2013.
- “For the Client or for the Lawyer?” The All New Litigation Ethics Quiz Show 2013, American Bar Association Annual Meeting, San Francisco, CA, August 8, 2013.
- “Legal Ethics in the News; ‘Beauty Contest’ and Screening,” American Law Institute CLE, Video Webcast, December 17, 2013.
- “Who are They to Judge? Ethical and Professionalism Issues Facing the Bench,” 14th Annual Georgia Symposium on Legal Ethics and Professionalism, Athens, Georgia, February 21, 2014.
- Tennessee Death Penalty Seminar 2014, Tennessee Association of Criminal Defense Lawyers, Nashville, TN, March 20, 2014.
- Eleventh National Seminar on the Development and Integration of Mitigation Evidence, Administrative Office of the U.S. Courts, *Defender Services Office, Training Division*, Philadelphia, PA, March 28, 2014.
- “Oops”: Communicating about Mistakes with Clients and Others, ABA Litigation Section Annual CLE Conference, Phoenix, AZ, April 10, 2014.
- “Nonprofit Ethics Potpourri,” PBI 12th Annual Nonprofit Institute, Philadelphia, PA, May 28, 2014.

- "Preparation vs. Perjury: Ethical Issues Involving Working with Witnesses," Webinar sponsored by the American Bar Association, May 29, 2014.
- "2014 Mart Vogel Lecture on Professionalism and Legal Ethics," University of North Dakota School of Law, Grand Forks, ND, June 13, 2014.
- "Ethical Jeopardy, eDiscovery Edition," American Bar Association Annual Meeting, Boston, MA, August 8, 2014.
- "Nineteenth Annual National Federal Habeas Corpus Seminar," Atlanta, GA, August 14, 2014.
- Keynote Address, Intercollegiate Moot Court Competition, Tufts University Law School, Boston, MA, November 15-16, 2014
- "33rd Annual Jay L. Westbrook Bankruptcy Conference," Austin, TX, November 21, 2014.
- "Don't Get Tangled in the Web," American Bar Association Winter Leadership Meeting, Laguna Beach, CA, January 10, 2015.
- "Law Professors as Expert Witnesses," Widener Law School, Wilmington, DE, April 24, 2015.
- "Ethics at the Movies," PBI 13th Annual Nonprofit Institute, Philadelphia, PA, May 27, 2015.
- "First Judicial District Law Clerk CLE – Ethics," Federal Courthouse, Philadelphia, PA, June 17, 2015.

Prior Employment

- 1971-1972 Staff Attorney, Community Action for Legal Services, New York, NY
- 1969-1971 Reginald Heber Smith Community Lawyer Fellow, New York, NY
- 1968-1969 Clerk, Justice Samuel Roberts, Pennsylvania Supreme Court, Erie, PA

Honors and Awards

- Fellow, American College of Trial Lawyers
- Fellow, American Bar Foundation
- U.S. Speaker and Specialist, "Professional Ethics and Responsibility, and the Role of Standing Committees on Lawyers' Professional Conduct," Federal Capital Bar Association and the Professional Council of Economics, Buenos Aires, Argentina, August, 1997
- CPR/ADR Guest Lectu, rer: Development Lawyers Course, Institute for Law and Development, Rome, Italy, March 1997
- Keynote Address, Pennsylvania Legal Services 1996 Striving Towards Excellence Awards Banquet, Harrisburg, PA, March 12, 1997
- Keynote Address, The Georgetown Journal of Legal Ethics, Tenth Anniversary, February 7, 1997
- Baccalaureate Speaker, Dickinson Law School, April 1996
- Robert Anderson Fellow of the Yale Law School for 1996-97
- Community Legal Services "Champion" Award, April 1996
- Philadelphia Bar Education Center Excellence in Legal Education Award, July 14, 1998

- Service Above Self Award, Lamokin Village Council, December 8, 1998
- Alumni Award of Merit, University of Pennsylvania Law School, May 14, 1999
- "The Rights and Responsibilities of Legal Professionals in the United States," U.S. State Department, The People's Republic of China, January 11-29, 2002
- Levy Award, New York State Bar Association, Committee on Professional Ethics, New York, NY, April 23, 2003
- Wachovia Fidelity Award, December 9, 2003
- Thomas A. O'Boyle Lecturer for Academic Year 2003-2004
- William Reece Smith, Jr. Distinguished Lecturer, 2004
- American Bar Association Pro Bono Publico Award, 2005
- Michael Franck Award, 2007
- 25-Year Life Member, The American Law Institute, 2013
- Lifetime Achievement Award, *The Legal Intelligencer*, 2013
- Howard Lesnick Pro Bono Award, The Law Alumni Society, University of Pennsylvania Law School, 2013.

Directorships

- Credit Suisse Asset Management Income Fund – 1988-present
- Credit Suisse Asset Management Strategic Global Income Fund – 1988-present
- Indonesia Fund – 2000-present
- Winthrop Trust Company – 2001-2009
- The Chile Fund, Inc. – 2006-present
- The First Israel Fund, Inc. – 2006-present
- The Latin America Equity Fund, Inc. – 2006-present
- Dynasil Corporation of America – 2011-present

Appearances

- "Inside the Law, Lawyers at a Crossroads," American Bar Association and Reliance National Production, New York, November 5, 1993
- "Inside the Law, Whatever Happened to Atticus Finch?" American Bar Association, March 12, 1996
- *CNN Crossfire*: "The Death Penalty," February 9, 1997
- *CNN Crossfire*: "Should Federal Judges Be Impeached," March 13, 1997
- "Inside the Law: Examining the Lawyer/Client Relationship," Public Television Series, April 9, 1997
- *Nightline*: "Ethics regarding tobacco industry lawsuits," May 29, 1997
- Testify before Congress regarding Contingent Fees, April 30, 1997
- *Today Show*: "Attorney-Client Privilege," December 1, 1997
- *Nightline*: "Attorney Client in the Tobacco Litigation," April 22, 1998
- *Today Show*: "Attorney-Client Privilege after Death," June 8, 1998
- *Nightline*: "Should this Privilege Survive Death?" June 8, 1998
- *MSNBC*: "Contingent Fees for Tobacco Lawyers," June 9, 1998
- *CNN*: "Impeachment of the President" September 14, 1998

- *CNN: Talk Back Live*: "Disbarring the President," March 15, 2000
- *MSNBC*: "Moratorium on the Death Penalty," July 10, 2000
- *CNN*: "The Death Penalty and the Presidential Election," July 30, 2000
- *WHYY/Delaware*: "Your Lawyer: A User's Guide," July 18 and July 25, 2006
- *WHYY/Delaware*: "Legal Lesson re: Product Liability Law" (spinach/E. coli outbreak), September 19, 2006
- *MSNBC MOST*: "Could Pres. Bush Decide to Pardon Lewis "Scooter" Libby?", March 7, 2007

Community Activities

- Member of the Board of Overseers of University of Pennsylvania School of Law and Associate Trustee of the University of Pennsylvania, 1992-1999
- Member, Board of Trustees, Friends Select School, 1982-1992
- Member, Board of Trustees, Beth Zion - Beth Israel Synagogue, 1988-present
- Former National Chairman, Annual Giving, University of Pennsylvania Law School 1987-89
- Member, Board of Advisors, United Way
- Lecturer, sailing, U.S. Coast Guard Auxiliary

Education

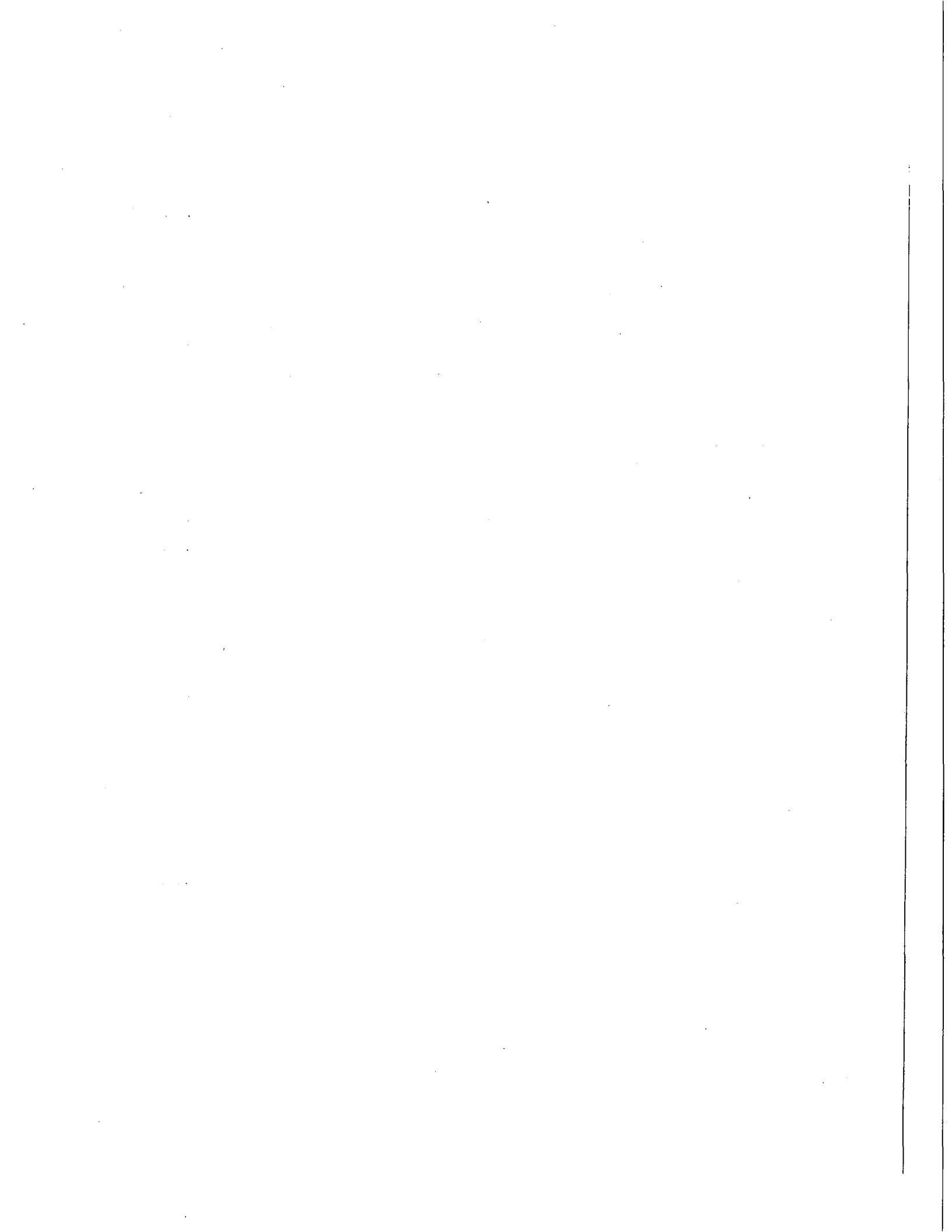
- University of Pennsylvania, The College, B.A. 1965
- University of Pennsylvania Law School, LL.B. cum laude 1968
- Managing Editor, University of Pennsylvania Law Review

Date of Birth

July 17, 1943

Home Address

468 Amity Road
Woodbridge, CT 06525



**CASES IN WHICH LAWRENCE J. FOX
HAS TESTIFIED BY DEPOSITION OR TRIAL IN LAST FOUR YEARS**

Johnson v. Buchanan Ingersoll & Rooney PC, Court of Common Pleas, Chester County,
No. 09-07537

CoTherix, Inc., et al., Claimants, and **Bingham McCutchen LLP**, Respondent, In the Matter of
an Arbitration Under the ICDR Arbitration Rules, No. 50 194 T 00749 10. (Under Seal)

**Cruickshank-Wallace v. Klehr, Harrison, Harvey, Branzburg & Ellers LLP v.
Cruickshank-Wallace**, Court of Common Pleas, Philadelphia County, August Term, 2009, No.
003546

U.S. Bank National Association v. Verizon Communications Inc., et al., United States
District Court, Northern District of Texas, Dallas Division, C.A. No. 10-CV-1842-G. (Under
Seal)

Warrior Sports, Inc., v. Dickinson Wright, PLLC, United States District Court, Eastern
District of Michigan, Southern Division, Case No. 09-12102. (Under Seal)

**Federal Deposit Insurance Corporation v. Icard, Merrill, Cullis, Timm, Furen & Ginsburg,
P.A., et al.**, United States District Court, Middle District of Florida, Tampa Division, Case No.
8:11CV2831t33MAP

Pawa Law Group, P.C. v. Sher Leff, LLP, Arbitration Before Judicial Arbitration and
Mediation Services, Reference No. 1400014271. (Under Seal)

Mary Bucksbaum Scanlan v. Marshall Eisenberg, et al., United States District Court,
Northern District of Illinois, Eastern Division, Case No. 1:09-cv-05026

Ferguson, et al. v. Stout, et al., Circuit Court of the 11th Judicial Circuit and for Miami-Dade
County, Florida, Case No. 08-09767CA40

In re: Go Fig, et al.; Strauss, Trustee v. Helfrey, Neiers & Jones, P.C., United States District
Court, Eastern District of Missouri, Eastern Division, Case No. 08-40116-705, Chapter 7

In re: 1H 1, Inc., et al., Bankruptcy No. 09-10982(PJW); **George L. Miller, Chapter 7 Trustee
v. Kirkland & Ellis, LLP**, Adversary Proceeding No. 12-50713 (PJW)

Exhibit B

