

Daily Journal

www.dailyjournal.com

MONDAY, OCTOBER 19, 2015

PERSPECTIVE

Bowe Bergdahl has been punished enough already

By William Bruzzo

It was certainly unexpected that when Army Sergeant Bowe Bergdahl was traded last year for five Taliban detainees held at Guantanamo Bay in Cuba, it would unleash a firestorm directed at Bergdahl and President Barack Obama. The White House did itself no favors by declaring him a "hero," apparently unaware that he had voluntarily left his post without authorization, requiring a massive manhunt by the Army.

In the polarization of our national politics, it is no surprise that even the return of one of America's sons from five years of brutal Taliban custody, which has left Bergdahl permanently disabled, could be turned into a media circus demonizing this unfortunate young man. Most disturbingly, many right-wing commentators claimed that soldiers had died in attempting to locate Bergdahl; those claims were determined to be entirely false. Bergdahl is currently facing the possibility of criminal charges under the Uniform Code of Military Justice as well as incarceration if he is found guilty. As a military lawyer with over 20 years of experience, I do not believe the facts warrant such treatment of him.

First of all, it is a well-established tenant of the American Military that everyone comes home, even those who have committed misconduct. So it was imperative on the United States to bring him home.

A recently concluded investigation conducted by Major General Kenneth Dahl, which has not been fully released, shows that Bergdahl left his post without authorization leaving his weapon and other gear behind on June 30, 2009. Away without Leave, or AWOL, is among the most common of military law violations. Soldiers may be disciplined for being AWOL (also known as "Unauthorized Absence," or "UA") whether their absence is being 10 minutes late for work or for leaving their unit for 30 days or more without authorization because they have decided the military is not for them.

By the time Bergdahl left his unit, he had already served several months in a remote outpost called Mest. Mest was in a Taliban infested area of Afghanistan that no doubt required the soldiers who manned it to be on high alert much of the time. According to Dahl's testimony, Bergdahl did fairly well during his time there and had the respect of his peers and officers.

The most curious thing about Bergdahl's departure was the timing: Most military personnel who go AWOL do so to avoid something unpleasant, like deployment to a war zone or a training exercise.



New York Times

In an undated image provided by the Army, Sgt. Bowe Bergdahl.

Bergdahl left his post without permission the night before his unit was set to be rotated to a safer, less intense area for some rest. This is what makes no sense about Bergdahl's sudden departure: AWOL is a crime because a soldier is avoiding his duty by absenting himself. In Bergdahl's case, he absented himself after already completing the most difficult part of his duty. In addition, he put himself in all kinds of unnecessary danger by going unarmed into the Afghani countryside full of hostile Taliban.

Bergdahl's stated reason for leaving his post was that he questioned the leadership in his unit and sought to speak to a general about his concerns. Bergdahl was a low ranking soldier at the time of his departure, and for him to question his leadership let alone decide he needs to talk to a general about it is odd to say the least. It is so strange that it struck me that Bergdahl may have been suffering from some mental delusion or experiencing symptoms consistent with someone who has been in a combat zone for too long. Or perhaps Bergdahl is just an odd duck: He had previously been discharged from the U.S. Coast Guard after only 26 days apparently for psychological reasons. Not only did that, but the base he was headed to when he left his unit did not have a general officer. Why would Bergdahl not just rotate out with his unit to a new area and make his concerns known there?

Dahl led a 22-person investigative team looking into Bergdahl's situation, and he seems to accept that Bergdahl sincerely believed his unit had leadership issues requiring intervention by a general officer. Notably, the general and his team did not

discover any issues with the leadership in Bergdahl's unit to merit such concern from Bergdahl or anyone else.

Bergdahl definitely violated the letter of the law by leaving his post without permission in violation of Article 86 of the Uniform Code of Military Justice; also, although sincerely held, his reason for leaving does not amount to a defense to the charge. That being said, the investigation did not reveal that Bergdahl left because he was a coward or because he was shirking his duty. In fact, the opposite was the case; he deliberately subjected himself to a ruthless enemy without so much as a sling shot to defend himself for what he believed was a legitimate purpose. For these reasons presumably, Dahl determined that incarceration for Bergdahl would be "inappropriate." Similarly, it is inappropriate for opponents of Obama to use Bergdahl as a political football to be thrown around without any regard for how much this young man has already suffered. Dahl's report makes clear that Bergdahl's case is not a simple matter of his deserting his unit, but instead appears to show a confused and perhaps delusional young man who made a terrible decision and suffered the consequences for five years.

William Bruzzo is criminal defense lawyer in Orange County practicing civilian and military criminal law. He is a 1994 Graduate of the Naval Justice School and spent 7 years in the United States Marine Corps which included positions as a judge advocate, company commander and the executive officer of an H&S Company in the 4th Tank Battalion. He was honorably discharged as a major. He is also a mentor at the Veteran's Court in the Orange County Superior Court.



WILLIAM BRUZZO
Criminal Defense Lawyer