RECORD OF PRELIMINARY HEARING UNDER ARTICLE 32

BERGDAHL, ROBERT BOWDRIE

Sergeant

Headquarters and
Headquarters Company,
Special Troops Battalion,
U.S. Army Forces Command

U.S. Army Fort Bragg,

North Carolina 28310

Investigated at

on

Joint Base San Antonio, Texas

17 September 2015 and

18 September 2015

PERSONS PRESENT

LIEUTENANT COLONEL MARK VISGER, PRELIMINARY HEARING OFFICER;

MAJOR MARGARET KURZ, TRIAL COUNSEL;

LIEUTENANT COLONEL CHRISTIAN BEESE, ASSISTANT TRIAL COUNSEL;

CAPTAIN MICHAEL PETRUSIC, SECOND ASSISTANT TRIAL COUNSEL;

MR. EUGENE FIDELL, CIVILIAN DEFENSE COUNSEL;

LIEUTENANT COLONEL FRANKLIN ROSENBLATT, DEFENSE COUNSEL;

CAPTAIN ALFREDO FOSTER, ASSISTANT DEFENSE COUNSEL

SERGEANT ROBERT BOWDRIE BERGDAHL, THE ACCUSED;

MS. STACY CRAVER, COURT REPORTER;

MAJOR NATALIE KARELIS, LEGAL ADVISER;

MR. TIMOTHY MERSEREAU, SECURITY ADVISER TO PRELIMINARY HEARING

OFFICER;

MR. DAN THOMPSON, SECURITY ADVISER TO TRIAL COUNSEL;

MR. DON GARDNER, SECURITY ADVISER TO DEFENSE COUNSEL.

TESTIMONY				
Name of Witness (Last, First, Middle Initial)	RANK	Direct and Redirect	Cross and Recross	РНО
	PRO	SECUTION	1	1
BILLINGS, John P.	CPT	18	102	113
SILVINO, Silvino S.	MAJ	117, 181	172, 189	184
BAKER, Clinton J.	COL	191		219
DEFENSE				
LEATHERMAN, Gregory S.	CIV	232	240	
ABERLE, Curtis J.	CIV	248		258
DAHL, Kenneth R.	MG	262		
RUSSELL, Terrence D.	CIV	312		342

EXHIBITS					
NUMBER OR LETTER	DESCRIPTION				
	PROSECUTION EXHIBITS				
1	SGT Bergdahl - Sworn Statement, dtd 6 Aug 14 (373 pages)				
2	SGT Bergdahl - Attachment Orders to FORSCOM, dtd 9 Jan 15 (1 page)				
3	SGT Bergdahl - Deployment Orders, dtd 1 May 09 (2 pages)				
4	SGT Bergdahl - DA Form 4187 - Captured to Present for Duty, dtd 30 Mar 15 (2 pages)				
5	UNCLASSIFIED - Map of Afghanistan (1 page) (Demonstrative Aid)				
	DEFENSE EXHIBITS				
A	Letter from Mr. Fidell to General Milley (28 pages)				
В	Executive Summary by Major General Dahl (59 pages)				
С	Short Form Findings, dated 27 Jul 15 (2 pages)				
D	DA Form 3349 - Physical Profile, dated 25 Jun 15 (2 pages)				
Е	PowerPoint from Defense Closing (22 pages) (Demonstrative Aid)				

		PRELIMINARY	HEARING OFFICER EXHIBITS
	Date	From	Description
I			CLASSIFIED - Map of Paktika Province - RC East - Afghanistan
II			CLASSIFIED - Map of Mest - RC East - Afghanistan
III	17 Aug 15	Government	CLASSIFIED - Government memo dated 17 Aug 15 entitled "List of Classified Intelligence and Operational Reporting Viewed by Defense in the case of United States v. Robert Bowe (Bowdrie) Bergdahl" (152 pages)
IV	25 Mar 15	Government	DD 458 Charge Sheet (2 pages)
V	25 Mar 15	Convening Authority	Memorandum appointing LTC Washburn as the PHO setting the hearing date for 22 April (3 Pages)
VI	25 Mar 15	РНО	Notification of the hearing date to SGT Bergdahl with ERB and Charge Sheet (5 pages)
VII	30 Mar 15	Defense	Memorandum requesting delay from 22 April to 8 July (1 page)
VIII	31 Mar 15	Government	Memorandum providing notice of evidence the Government intended to introduce at the preliminary hearing (1 page)
IX	1 Apr 15	Convening Authority	Memorandum approving Defense delay request (1 page)
X	15 Apr 15	Government	Memorandum providing notice of Government witness list (1 page)
XI	12 May 15	Defense	Memorandum to PHO requesting investigative assistance (with attachments) (28 pages)
XII	13 May 15	Government	Memorandum responding to Defense request for evidence prior to the Article 32 hearing (5 pages)
XIII	14 May 15	Defense	Memorandum responding to Government's 13 May memorandum regarding investigative assistance (1 page)

XIV	15 May 15	РНО	E-mail from LTC Washburn requesting recusal as PHO: (2 pages)
XV	20 May 15	Convening Authority	Memorandum relieving LTC Washburn of duties as PHO (1 page)
XVI	20 May 15	Convening Authority	Memorandum appointing LTC Visger as the PHO setting the hearing date for 8 July (with attachments) (3 pages)
XVII	27 May 15	Defense	Delay request and RCM 706 request (7 pages)
XVIII	27 May 15	Defense	Memorandum requesting additional evidence (1 page)
XIX	29 May 15	Convening Authority	Memorandum granting Defense delay request (1 page)
XX	1 Jun 15	Government	Memorandum detailing Government position on Defense request for production of witnesses and evidence (2 pages)
XXI	2 Jun 15	Government	Memorandum providing response to the Defense request for evidence dated 27 May (1 page)
XXII	3 Jun 15	РНО	Memorandum providing a summary of the 2 June conference call between PHO and parties (3 pages)
XXIII	5 Jun 15	РНО	E-mail from LTC Visger detailing questions for conference call (2 pages)
XXIV	8 Jun 15	Defense	E-mail from LTC Rosenblatt detailing Defense position in advance of teleconference (including 2 attachments: OER and LTC Burke Protective Order) (13 pages)
XXV	9 Jun 15	Defense	E-mail from LTC Rosenblatt requesting a ruling on jurisdiction of the Convening Authority (11 pages)
XXVI	10 Jun 15	Government	Memorandum detailing Government response to the PHO request for additional information dated 5 June (2 pages)

	T		
XXVII	11 Jun 15	PHO	E-mail from LTC Visger regarding conference
			call on 12 June
			(1 page)
XXVIII	16 Jun 15	Government	E-mail from MAJ Kurz providing the
			Government position on the production of
			two Defense witnesses (Dr. Connell and Dr.
			Morgan)
			(2 pages)
XXIX	16 Jun 15	PHO	Memorandum regarding the Defense request
			for investigative assistance
			(2 pages)
XXX	17 Jun 15	PHO	Memorandum ruling on the Defense objection
			to jurisdiction of the Convening Authority
			(1 page)
XXXI	18 Jun 15	PHO	Memorandum regarding the Defense request
			for the production of witnesses and
			evidence
			(5 pages)
XXXII	22 Jun 15	PHO	Notification of the hearing date to SGT
			Bergdahl
			(1 page)
XXXIII	24 Jun 15	Government	E-mail from MAJ Kurz regarding classified
			recommendations in the AR 15-6
			investigation
			(1 page)
XXXIV	29 Jun 15	Defense	E-mail trail between PHO and LTC Rosenblatt
			regarding contact information for Mr. Full,
			the withdrawal of request to call LTG
			Wiggins as a witness, and requesting Mr.
			Sean Langan to be produced for testimony
			(3 pages)
XXXV	29 Jun 15	Government	Memorandum objecting to the PHO order to
			produce classified discovery
			(4 pages)
XXXVI	30 Jun 15	Defense	E-mail from LTC Rosenblatt responding to
			the Government's 29 June objection
			(5 pages)
XXXVII	1 Jul 15	PHO	E-mail from LTC Visger ruling on the
			Government's 29 June objection
			(5 pages)
XXXVII	1 Jul 15	Defense	E-mail from LTC Rosenblatt regarding the
I			production of Mr. Sean Langan as a witness
			(attaching Defense e-mail request and
			accompanying Government memo)
			(6 pages)
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XXXIX	1 Jul 15	Corrornment	Momorandum rognanding to Defence request
XXXTX	T OUT TO	Government	Memorandum responding to Defense request
			for production of Mr. Sean Langan as a witness
VT	8 Jul 15	Control in a	(1 page)
XL	8 Jul 15	Convening	Memorandum regarding protective order for
		Authority	classified information
	01 - 1 15	7	(6 pages)
XLI	21 Jul 15	PHO	Decision memorandum regarding the Defense
			request for Mr. Sean Langan as a witness
	00 - 1 45		(1 page)
XLII	22 Jul 15	Defense	E-mail from Mr. Fidell to the Convening
			Authority requesting a TS-SCI clearance
			(2 pages)
XLIII	29 Jul 15	Defense	E-mail from LTC Rosenblatt regarding
			Defense request for Mr. Curtis Aberle as a
			witness
			(1 page)
XLIV	3 Aug 15	Government	Memorandum responding to Defense request
			for Mr. Curtis Aberle as a witness
			(2 pages)
XLV	7 Aug 15	Defense	E-mail from LTC Rosenblatt regarding
			Defense request for consideration of
			classified exhibits as evidence and further
			detailing its positon on the need to obtain
			operational/intelligence reporting
			regarding SGT Bergdahl's whereabouts
			(2 pages)
XLVI	7 Aug 15	Defense	E-mail from LTC Rosenblatt regarding
			Defense's positon on Government's request
			for the production of the long-form RCM 706
			report
			(4 pages)
XLVII	10 Aug 15	Government	Memorandum responding to Defense request
			for Mr. Curtis Aberle as a witness
			(1 page)
XLVIII	13 Aug 15	Government	Memorandum regarding the Defense request
			for consideration of classified evidence
			(3 pages)
XLIX	17 Aug 15	Defense	E-mail from LTC Rosenblatt detailing the
			Defense position on the production of
			documents regarding
			operational/intelligence reporting on SGT
			Bergdahl's whereabouts
			(3 pages)
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L	17 Aug 15	PHO	Memorandum documenting teleconference of 14 August (3 pages)
LI	17 Aug 15	PHO	E-mail from LTC Visger regarding the scope of "wrongfully caused search and recovery operations", the Defense request for operational/intelligence reporting regarding SGT Bergdahl's whereabouts, and discovery issues (4 pages)
LII	20 Aug 15	Government	E-mail from LTC Beese regarding the status of Mr. Fidell's security clearance request (3 pages)
LIII	24 Aug 15	Government	Memorandum regarding reasonable efforts to procure behavioral health policies (1 page)
LIV	25 Aug 15	Government	E-mail from MAJ Kurz regarding DA G-2 action on Defense security clearance request (with attached memorandum from DA G-2) (2 pages)
LV	25 Aug 15	PHO	E-mail from LTC Visger regarding Defense security clearance request and Defense request for behavioral health policy letters (2 pages)
LVI	28 Aug 15	Government	E-mail from MAJ Kurz regarding the status of disclosure of classified documents to the Defense (1 page)
LVII	28 Aug 15	Defense	E-mail from LTC Rosenblatt detailing the status of Defense's request for operational/intelligence reporting regarding SGT Bergdahl's whereabouts (2 pages)
LVIII	28 Aug 15	PHO	E-mail from LTC Visger regarding the status of classified evidence on operational/intelligence reporting regarding SGT Bergdahl's whereabouts (2 pages)
LIX	31 Aug 15	PHO	E-mail from LTC Visger regarding legal issues to resolve in advance of conference call on 2 September (2 pages)

LX	2 Sep 15	Defense	E-mail from Mr. Fidell requesting a delay
עעד	7 DED 13	Detelipe	in the hearing
			(2 pages)
LXI	2 Sep 15	Defense	E-mail from LTC Rosenblatt requesting
<u> </u>	2 000 10	Detende	consideration of RCM 706 short form and FBI
			letter as Defense evidence with two
			attachments
			(5 pages)
LXII	2 Sep 15	Defense	E-mail from LTC Rosenblatt noting the
			Defense position regarding disclosure of
			classified documents in advance of the 3
			September conference call (with
			attachments)
			(7 pages)
LXIII	3 Sep 15	Defense	E-mail from LTC Rosenblatt providing
	_		reasons in support of Defense delay request
			(4 pages)
LXIV	3 Sep 15	Government	Memorandum opposing the Defense request for
	_		a delay
			(3 pages)
LXV	4 Sep 15	PHO	Memorandum detailing resolution of current
			outstanding issues
			(6 pages)
LXVI	4 Sep 15	Defense	E-mail from LTC Rosenblatt objecting to
			limitations placed on access to witnesses
			(with attachments)
			(6 pages)
LXVII	5 Sep 15	Defense	Memorandum to Convening Authority
			requesting delay of preliminary hearing
			(13 pages)
LXVIII	6 Sep 15	Convening	Memorandum denying Defense delay request
	0 7 1 -	Authority	(1 page)
LXIX	8 Sep 15	Government	Memorandum requesting closure of certain
			portions of the Article 32 hearing
T 3737	0 0 15	D C	(1 page)
LXX	8 Sep 15	Defense	E-mail from LTC Rosenblatt objecting to
			Government request for closure
TVVT	0 0 1 -	DIIO	(5 pages)
LXXI	8 Sep 15	PHO	E-mail from LTC Visger noting the Defense
			objections regarding access to witnesses
TVVTT	0 00- 15	DIIO	(3 pages)
LXXII	9 Sep 15	PHO	E-mail from LTC Visger setting a conference
			call for discussing closure of the hearing
			(4 pages)

LXXIII	10 Sep 15	РНО	E-mail from LTC Visger to LTC Rosenblatt regarding the defense request that closure hearing be on the record (6 pages)
LXXIV	14 Sep 15	Defense	E-mail from Mr. Fidell to Convening Authority regarding the Protective Order (1 page)
LXXV	21 Sep 15	РНО	E-mail from LTC Visger to convening authority requesting a delay to submit Article 32 report (1 page)
LXXVI	22 Sep 15	Convening Authority	Memorandum granting the extension to submit written report (1 page)

- 1 The Article 32 hearing was called to order at 0901,
- 2 17 September 2015, with the following parties present:
- 3 LIEUTENANT COLONEL MARK VISGER, PRELIMINARY HEARING OFFICER;
- 4 MAJOR MARGARET KURZ, TRIAL COUNSEL;
- 5 LIEUTENANT COLONEL CHRISTIAN BEESE, ASSISTANT TRIAL COUNSEL;
- 6 CAPTAIN MICHAEL PETRUSIC, SECOND ASSISTANT TRIAL COUNSEL;
- 7 MR. EUGENE FIDELL, CIVILIAN DEFENSE COUNSEL;
- 8 LIEUTENANT COLONEL FRANKLIN ROSENBLATT, DEFENSE COUNSEL;
- 9 CAPTAIN ALFREDO FOSTER, ASSISTANT DEFENSE COUNSEL
- 10 SERGEANT ROBERT BOWDRIE BERGDAHL, THE ACCUSED;
- MS. STACY CRAVER, COURT REPORTER;
- 12 MAJOR NATALIE KARELIS, LEGAL ADVISER;
- 13 MR. TIMOTHY MERSEREAU, SECURITY ADVISER TO PRELIMINARY HEARING
- 14 **OFFICER**;
- MR. DAN THOMPSON, SECURITY ADVISER TO TRIAL COUNSEL;
- MR. DON GARDNER, SECURITY ADVISER TO DEFENSE COUNSEL.

- 1 PHO: Let's go ahead and get started.
- 2 Sergeant Bergdahl, I am Lieutenant Colonel Mark A. Visger.
- 3 By order of Lieutenant Colonel Peter Q. Burke, I have been appointed
- 4 preliminary hearing officer under Article 32 of the Uniform Code of
- 5 Military Justice to inquire into certain charges against you. The
- 6 charges allege, in general:
- 7 One specification of desertion with intent to avoid
- 8 hazardous duty and shirk important service in violation of Article
- 9 85, UCMJ; and
- One specification of misbehavior before the enemy,
- 11 endangering the safety of the unit in violation of Article 99, UCMJ.
- 12 The name of the accuser is Lieutenant Colonel Peter Q.
- 13 Burke.
- 14 The names of the witnesses thus far known to me who will be
- 15 called to testify at this hearing are:
- 16 Colonel Clinton Baker,
- 17 Major Silvino Silvino,
- 18 Captain John Billings,
- 19 Major General Kenneth Dahl,
- Mr. Terrance Russell,
- 21 Mr. Greg Leatherman, and
- Mr. Curtis Eberle.

- 1 Sergeant Bergdahl, I am now going to advise you of your
- 2 rights at this preliminary hearing.
- 3 You have the right to be present throughout the taking of
- 4 evidence so long as your conduct is not disruptive. You will have
- 5 the right, at the proper time, to cross-examine the witnesses who
- 6 testify against you at the hearing, to present evidence in defense
- 7 and mitigation on your own behalf, to make a statement in any form at
- 8 the proper time, to remain silent, or to refuse to make any statement
- 9 regarding any offense you are accused or suspected of committing. In
- 10 addition, you are advised that any statement made by you might be
- 11 used as evidence against you in a trial by court-martial.
- Do you understand what I've said?
- 13 ACC: Yes, sir. I do.
- 14 PHO: As the preliminary hearing officer, it is my duty to
- 15 ascertain and impartially weigh the evidence presented in support of
- 16 the charges against you that are relevant to the limited scope and
- 17 purpose of this hearing. This preliminary hearing will include
- 18 inquiries as to whether there is probable cause to believe offenses
- 19 have been committed under the UCMJ and whether you committed the
- 20 offenses, whether a court-martial would have jurisdiction over the
- 21 offenses and you, the form of the charges, and to make a
- 22 recommendation as to the disposition of the charges.

- 1 You and your counsel will be given full opportunity to
- 2 cross-examine witnesses who testify against you at the preliminary
- 3 hearing and to present additional evidence either in defense or
- 4 mitigation relevant to the limited scope and purpose of the hearing.
- 5 I can recommend that the charges against you be referred
- 6 for trial to general court-martial or to a different type of
- 7 court-martial or that charges against you be dismissed or disposed of
- 8 other than trial by court-martial. It is not my purpose during this
- 9 preliminary hearing to act as a prosecutor but only as an impartial
- 10 fact finder.
- 11 Do you understand?
- 12 ACC: Yes, sir. I do.
- 13 PHO: Before I begin the preliminary hearing and examination of
- 14 any of the witnesses in this case, I must inform you that you have
- 15 the right to be represented at all times by legally qualified
- 16 counsel. This means that you have the right to be represented by a
- 17 civilian lawyer of your own choice but at no expense to the United
- 18 States, by military counsel of your own selection if that counsel is
- 19 reasonably available, or by counsel detailed by Trial Defense Service
- 20 to represent you at the preliminary hearing. There is no cost to you
- 21 for military counsel.
- Do you wish to be represented by counsel? If so, state the
- 23 type of counsel you want to represent you.

- 1 ACC: Civilian counsel and JA counsel.
- 2 PHO: Okay. At this point, Mr. Fidell, if you could just state
- 3 the names and qualifications of the defense for the record.
- 4 CDC: Yes, Your Honor [sic]. And is it acceptable if I remain
- 5 seated?
- 6 PHO: You may remain seated. I am not a judge, and this is not a
- 7 court-martial; so I will not require the parties to stand.
- 8 CDC: Force of habit. Eugene Fidell. I'm a member of the Bar of
- 9 Connecticut.
- 10 PHO: Okay. Go ahead and just state the names of the other
- 11 parties or the other parties can state their own names and
- 12 qualifications.
- 13 CDC: With me is Lieutenant Colonel Franklin Rosenblatt, who is a
- 14 member of the Judge Advocate General's Corps, who is certified in
- 15 accordance with the UCMJ as trial and defense counsel in general
- 16 courts-martial; and Captain Alfredo Foster, also Judge Advocate and
- 17 also certified and sworn.
- 18 PHO: Okay. Thank you.
- 19 Let's go ahead and open the formal investigation. This is
- 20 a formal preliminary hearing into certain charges against Sergeant
- 21 Robert "Bowe" Bowdrie Bergdahl, ordered pursuant to Article 32, UCMJ,
- 22 by Lieutenant Colonel Peter Q. Burke, commander of the Special Troops
- 23 Battalion, U.S. Army Forces Command.

- 1 Sergeant Bergdahl, on 22 June 2015 and earlier this
- 2 morning, I informed you of your right to be represented by civilian
- 3 counsel at no expense -- I'm not sure why we're doing this again but
- 4 I'll go ahead and do it because it's in the script -- at no expense
- 5 to the United States, military counsel of your own selection if
- 6 reasonably available, or military counsel detailed by the Trial
- 7 Defense Service.
- 8 You have present with you Mr. Fidell, Lieutenant Colonel
- 9 Rosenblatt, and Captain Foster.
- Do you want these three individuals to represent you at
- 11 this hearing?
- 12 ACC: Yes, sir. I do.
- 13 PHO: Okay. All right. Sergeant Bergdahl, I want to remind you
- 14 that my sole function as the Article 32 preliminary hearing officer
- 15 in this case is to determine all the relevant facts of this case, to
- 16 weigh and evaluate those facts, and to determine whether an offense
- 17 under the UCMJ has been committed and whether you committed it. I
- 18 shall also consider whether a court-martial would have jurisdiction
- 19 over the offenses and the form of the charges and make a
- 20 recommendation concerning the disposition of the charges that have
- 21 been preferred against you.
- I will now read the charges unless you choose to waive the
- 23 reading.

- 1 CDC: We'll waive the reading, Colonel.
- 2 PHO: Okay. Thank you.
- 3 All right. I will now show you the charges and
- 4 specifications. And have you seen this particular charge sheet?
- 5 ACC: Yes, sir. I have.
- 6 PHO: Okay. I advise you that you do not have to make any
- 7 statement regarding the offenses you are accused of and that any
- 8 statement you do make may be used as evidence against you in a trial
- 9 by court-martial. You have the right to remain silent concerning the
- 10 offenses with which you are charged. You may, however, make a
- 11 statement, either sworn or unsworn, and present evidence in defense
- 12 and mitigation so long as it is relevant to the limited scope and
- 13 purpose of this hearing. If you do make a statement, whatever you
- 14 say will be considered and weighed as evidence by me just like the
- 15 testimony of the other witnesses.
- You have been previously given a copy of the documents the
- 17 government intends to introduce in this case. I will not consider
- 18 any of this material in making my decisions unless I give you the
- 19 opportunity to object to it and I decide on the record to admit it
- 20 into evidence for this preliminary hearing.
- It is my understanding that the government intends to call
- 22 three witnesses at this preliminary hearing and their names are:
- 23 Colonel Clinton Baker, Major Silvino Silvino, and Captain John

- 1 Billings. After these three witnesses testify, you or your attorneys
- 2 will have the right to cross-examine them.
- 3 You also have the right to produce other evidence on your
- 4 behalf in defense or mitigation for the limited scope and purpose of
- 5 the hearing. I have coordinated through the government counsel for
- 6 the appearance of those witnesses previously requested by you that I
- 7 have determined to be relevant, not cumulative, and necessary to the
- 8 limited scope and purpose of the hearing.
- 9 Before proceeding any further, I now ask you whether you
- 10 have any questions concerning your right to remain silent, concerning
- 11 the offenses of which you are accused, your right to make a statement
- 12 either sworn or unsworn, the use that can be made of any statement
- 13 that you shall make, your right to cross-examine witnesses against
- 14 you, or your right to present evidence in your own behalf or defense
- 15 and mitigation. Do you have any questions at this point?
- 16 ACC: No, sir. I don't.
- 17 PHO: All right. Okay. And for members of the gallery: During
- 18 portions of this preliminary hearing, it may be necessary for me to
- 19 consider classified testimony from a witness or to discuss classified
- 20 evidence. If that occurs, I will conduct a short discussion with
- 21 counsel to determine whether the requirements to close the Article 32
- 22 preliminary hearing to spectators have been met in accordance with
- 23 Rule for Court-Martial 405(i)4. Per this rule, I may close portions

- 1 of the hearing to spectators if I determine that an overriding
- 2 interest exists that outweighs the value of an open preliminary
- 3 hearing, the closure is narrowly tailored to achieve that overriding
- 4 interest that justifies the closure, and no lesser method short of
- 5 closing the preliminary hearing can be used to protect the overriding
- 6 interest in this case.
- 7 If I decide to close a portion of this preliminary hearing
- 8 to spectators, I will first make findings of fact regarding the
- 9 necessity of closure and read those into the record for the members
- 10 of the public to hear. All personnel not previously cleared to hear
- 11 classified evidence will be directed to leave the hearing room area
- 12 and the closed-circuit television feed will be disconnected until the
- 13 hearing is reopened. All personnel in the hearing room will be
- 14 escorted to a waiting area and will be informed when the hearing has
- 15 been reopened. Please take all of your belongings with you before
- 16 leaving the hearing room. Or the other option that will probably
- 17 happen if this were to happen is the hearing will move to a secure
- 18 area approved for the handling and discussion of classified material
- 19 and only personnel previously approved to hear classified evidence
- 20 will be admitted to that room.
- 21 And then when the hearing does reopen to spectators, I
- 22 will, if possible, provide a brief, unclassified summary of what went
- 23 on during the classified proceedings.

- 1 All right. Are there any other preliminary matters that we
- 2 need to take up before we begin the substantive part of the hearing?
- 3 Defense?
- 4 CDC: I think you've covered the field, Colonel.
- 5 PHO: Okay. Government?
- 6 TC: Yes, sir.
- 7 PHO: All right. Does government counsel desire to make an
- 8 opening statement at this time?
- 9 TC: Yes, sir.
- 10 PHO: Proceed.
- 11 TC: Deliberate and knowing disregard. On 30 June 2009, the
- 12 accused acted with deliberate disregard for the consequences of his
- 13 actions when, under the cover of darkness, he snuck off Observation
- 14 Post Mest, Paktika, Afghanistan, to make the approximately
- 15 30 kilometer hike to FOB Sharana so he could draw enough attention to
- 16 himself to merit a personal audience with a general officer to air
- 17 his grievances with the Army. The facts themselves are
- 18 straightforward, and they are undisputed.
- Robert Bowdrie Bergdahl -- or Bowe Bergdahl as he wished to
- 20 be known enlisted in the Army on 12 June 2008. He completes basic
- 21 training and AIT at the end of October 2008 and reports to Blackfoot
- 22 Company, 1st of the 501st Parachute Infantry Regiment at Fort
- 23 Richardson, Alaska. Here he's assigned to 2nd Platoon. 2nd Platoon

- 1 is on its way to NTC -- or the National Training Center at Fort
- 2 Irwin, California, for training. After the exercise, 2nd Platoon and
- 3 the accused return home for Christmas and block leave; and in March
- 4 of 2009, 1st of the 501st deploys to Paktika Province in Afghanistan.
- 5 The accused deploys with his unit, although he's several weeks behind
- 6 the main body due to an infection in his heel. He arrives in
- 7 Afghanistan on 11 May 2009, and he joins his unit in the rotation
- 8 schedule between Forward Operating Base Sharana and Observation Post
- 9 Mest in Afghanistan.
- 10 Observation Post Mest was established in March or April of
- 11 2009 based on discussions between U.S. forces in the area and local
- 12 village leaders and elders. Observation Post Mest is located at a
- 13 crucial intersection in between the towns of Mest and Malak on the
- 14 two crucial routes in Paktika Province, one that runs north/south and
- 15 east/west. The observation post is designed to provide overwatch
- 16 over those two routes, to serve as a traffic control point, to stop
- 17 the flow of arms and fighters coming in from Pakistan; and it's part
- 18 of 2nd platoon's duty to build and man this remote outpost in
- 19 southeast Paktika.
- 20 I'd like to describe the observation post. It's very
- 21 austere. It consists simply of a flat area in front of a hill and
- 22 then the hill itself. On top of the hill are several bunkers. One
- 23 is manned by U.S. forces. Several others are manned by the Afghan

- 1 National Police that U.S. forces are partnering with at this
- 2 observation post. At the bottom of the hill, which is no bigger than
- 3 a football field, maybe a little smaller, U.S. forces align their
- 4 trucks in the vehicle marshalling area. It's very austere. It
- 5 consists really of nothing more than dirt, scrub, and rocks. There's
- 6 no trees, no plumbing, no electricity, no water, no shade.
- 7 Conditions are primitive. Soldiers sleep on cots or on the
- 8 ground on the side of their trucks. The latrine is merely a hole in
- 9 the side of the hill surrounded by a bunker. Food is MREs or the
- 10 occasional offerings from the Afghan National Police. And shade is
- 11 poncho liners only.
- 12 The duties of the Soldiers at Observation Post Mest are
- 13 construction of the OP. They spend their days filling sandbags;
- 14 laying concertina wire; building HESCOs; and building the bunkers;
- 15 and, at the bottom of the hill, manning guard positions on their
- 16 trucks, all while partnered with the ANP, the Afghan National Police.
- 17 They also conduct combat patrols in the surrounding towns
- 18 and villages. They man a TCP, searching traffic and vehicles coming
- 19 through the intersection. The assist with infrastructure development
- 20 in the villages; and they assist in building the local governments by
- 21 conducting KLEs, or key leader engagements, with village elders.
- 22 2nd Platoon and 3rd Platoon rotate about every 3 or 4 days
- 23 in between FOB Sharana and Observation Post Mest. And back at

- 1 Sharana, the platoons also have duties. They pull QRF duties and
- 2 also conduct refit and patrols.
- 3 I'd like to move forward to the end of June 2009. It's
- 4 29 June 2009. 2nd Platoon is at Observation Post Mest. The accused
- 5 is on his third rotation out to Observation Post Mest, and the
- 6 platoon is due to rotate back to FOB Sharana the next day on
- 7 30 June 2009. The platoon, for the most part, has completed its work
- 8 -- its construction work at Observation Post Mest; and the accused
- 9 believes that this is the last rotation his platoon will be doing at
- 10 Observation Post Mest. 3rd Platoon is coming out the next day to
- 11 relieve them. And after that, the accused believes the observation
- 12 post will turned over to the ANP and it will become their mission.
- However, on the morning of 30 June 2009, before daybreak,
- 14 PFC Austin Lanford completes his quard shift in the turret of MRAP 4
- 15 on the corner of Observation Post Mest. The accused is his
- 16 replacement, next on the guard duty rotation; but the accused does
- 17 not show up for his shift. A search ensues. The entire platoon
- 18 scours the OP, latrines, ANP bunkers, everywhere a Soldier might be
- 19 found. But the accused is not found.
- 20 His tent -- his sleeping area is in order, his gear lined
- 21 up carefully as the platoon sergeant has required. His weapon is
- 22 laid out in his tent. There are no signs of a scuffle inside the
- 23 tent or around it. The platoon leader, Second Lieutenant John

- 1 Billings, gathers and meets with his platoon sergeant and his NCOs --
- 2 his noncommissioned officers, his leaders. And Lieutenant Billings
- 3 makes the decision PFC Bergdahl is missing. He is DUSTWUN, Duty
- 4 Status and Whereabouts Unknown. Lieutenant Billings has to take a
- 5 moment to compose the words to send this message to his company.
- 6 He's never had to write a message like this before. On the morning
- 7 of June 30, 2009, he sends a message to his company CP, "I have a
- 8 missing Soldier."
- 9 The company commander, Captain Silvino, receives the
- 10 message immediately. He's already in his company command post
- 11 reviewing the morning traffic. He writes back, "Check again. This
- 12 must be a mistake." But Lieutenant Billings is already out,
- 13 searching again, going over those same spots on the tiny observation
- 14 post. He confirms back, "Not a mistake."
- Captain Silvino sends the DUSTWUN alert up. This triggers
- 16 search and recovery operations. The platoon begins to search.
- 17 Lieutenant Billings immediately kicks out an unplanned, 9-man foot
- 18 patrol outside the wire. That morning they scour the local villages
- 19 in the relentless heat looking for the accused -- a sign, a dropped
- 20 personal belonging, a body, anything. They ask the villagers for
- 21 intel. They do not find the accused.
- But this is just the beginning. Task-force-wide search and
- 23 recovery operations launch that day. COIN operations -- efforts to

- 1 win the hearts and minds of the people of Afghanistan -- cease
- 2 immediately. The military launches search and recovery operations.
- 3 And for 45 days the only U.S. forces operations in Paktika is out of
- 4 Task Force Yukon Recovery to find the accused. For 45 days,
- 5 thousands of Soldiers toil in the heat, dirt, misery and sweat with
- 6 almost no rest, little water, and little food to find the accused.
- 7 Fatigued and growing disheartened, they search for the accused
- 8 knowing he left deliberately.
- 9 It is the elections at the end of August 2009 that slow the
- 10 main search and recovery effort. Task Force Yukon must assist in
- 11 securing the democratic presidential nationwide elections or those
- 12 elections could fail.
- 13 On 30 June 2009, Lieutenant Billings did not find the
- 14 accused. He left deliberately and knowingly. And on that day he put
- 15 into action a plan weeks in the making. Weeks before, he mailed home
- 16 his computer, his Kindle, his journals. He e-mailed his godmother,
- 17 his girlfriend, his family, "Be prepared. Expect something. Stay
- 18 strong." He tried to divert his pay to his godmother so the Army
- 19 couldn't take it.
- 20 And then, on 30 June 2009, sometime after midnight, he
- 21 cleaned up his tent, and wearing only his Army pants, his t-shirt,
- 22 and carrying his water, compass, knives, snacks, a notebook, his
- 23 camera, Afghan national currency, and a local garment meant for a

- 1 disguise, he snuck out, leaving his sleeping area, creeping up the
- 2 hill over the top of the observation post and down the north side
- 3 into the village of Malak, intending to begin the northward hike to
- 4 FOB Sharana, intending to cause a DUSTWUN, intending to cause the
- 5 alert, to bring attention to himself so he could have a personal
- 6 audience with the general.
- 7 But that day he is captured and for 5 years he is held in
- 8 captivity by enemy forces until, on 31 May 2014, government
- 9 negotiations bring the accused home and back to military control.
- 10 These are the facts, and they are undisputed.
- In this hearing, you will hear from three witnesses from
- 12 the government. Captain John Billings, who in 2009 was the platoon
- 13 leader of 2nd Platoon, Bravo Company, Blackfoot Company, 1st of the
- 14 501st, and the accused's platoon leader. You will hear from Major
- 15 Silvino, who in 2009 was the company commander for Blackfoot Company,
- 16 1st of the 501st, and the accused's company commander. You will hear
- 17 from Colonel Clint Baker, who in 2009 was commander of the 1st of the
- 18 501st PIR and the accused's battalion commander in 2009. All of
- 19 these commanders were a part of the brigade, 4/25 or Task Force
- 20 Yukon. These witnesses will take you through the time encompassing
- 21 these charges.
- 22 And, sir, you will have as evidence the sworn statement of
- 23 the accused given to the investigating officer in August of 2014

- 1 after his return, admitting to these facts. You will have his
- 2 deployment orders to Afghanistan from 2009 and the orders assigning
- 3 him to FORSCOM in 2015 for the administration of military justice.
- 4 And you will have the DA Form 4187, the personnel action returning
- 5 him to Present for Duty on 31 May 2014.
- At the end of the government case, the evidence will show
- 7 probable cause that the accused deserted in violation of Article 85
- 8 and that he committed misbehavior before the enemy in violation of
- 9 Article 99.
- 10 Thank you.
- 11 CDC: Colonel, if we might have a moment to confer?
- 12 PHO: Certainly.
- 13 [Pause.]
- 14 CDC: Colonel, I previously indicated that I was going to waive
- 15 the opening statement. I want to make a one sentence opening
- 16 statement.
- 17 PHO: The floor is yours.
- 18 CDC: Thank you.
- 19 The government should make Sergeant Bergdahl's statement
- 20 available to the public and not just to you.
- 21 PHO: Thank you.
- Government, please call your first witness.
- 23 TC: The government calls Captain John Billings.

- 1 [Pause.]
- 2 PHO: How far away is the witness waiting room?
- 3 TC: It's at the other end of the building, sir.
- 4 PHO: Okay.
- 5 [Pause.]
- 6 PHO: You might want to check the door.
- 7 TC: The MPs should be out there.
- 8 [Pause.]
- 9 CAPTAIN JOHN P. BILLINGS, U.S. Army, was called as a witness for the
- 10 government, was sworn, and testified as follows:
- 11 DIRECT EXAMINATION
- 12 Questions by the trial counsel:
- Q. And, Captain Billings, I'd like to advise you that while
- 14 you are testifying if you are asked any question which you may
- 15 believe requires a response containing classified information, you
- 16 have a personal responsibility to notify the preliminary hearing
- 17 officer prior to answering. At no time should you disclose any
- 18 classified information while this hearing is in session. Do you
- 19 understand?
- A. Yes, ma'am. Yes, ma'am.
- 21 PHO: And before you proceed, is the microphone picking up Major
- 22 Kurz' voice?

- 1 [Audio-visual personnel in the back of the room indicated a negative
- 2 response.]
- 3 PHO: That's what I thought. From the members of the audience
- 4 here, I'm getting some no's in the back. So if you could either
- 5 adjust the microphones or adjust where you're standing so that you
- 6 can be heard. I think the court reporter is -- because I would have
- 7 heard from the court reporter, but I don't know if it's being picked
- 8 up by the members here in the audience.
- 9 TC: Roger, sir.
- 10 Captain Billings, could you please state your full name,
- 11 rank, and unit of assignment?
- 12 A. John Paul Billings, Captain. I'm currently assigned to the
- 13 41st Engineer Battalion, HHC Company Commander.
- Q. Do you have prior enlisted service?
- 15 A. Yes, ma'am. I do.
- 16 Q. How many years of prior enlisted service?
- 17 A. Just over 13 years, ma'am.
- 18 Q. How many times have you deployed?
- 19 A. Three times to Afghanistan and Iraq and then a couple
- 20 peacekeeping operations, ma'am.
- Q. When were you commissioned?
- 22 A. March 2008.

- 1 Q. I'd like to direct your attention back to 2008. Where were
- 2 you assigned after receiving your commission?
- 3 A. Yes, ma'am. In October of 2008, I received orders
- 4 assigning me to the 4th Brigade, 25th, at Fort Richardson, Alaska.
- 5 O. When was that?
- A. In October of 2008. And then I arrived shortly thereafter
- 7 upon getting those orders. I PCS'd straight from Fort Benning.
- 8 Q. And what company were you assigned to?
- 9 A. Originally, I started off in HHC, ma'am. I worked in the
- 10 S-3 shop as a targeting officer; and then subsequently -- later on, I
- 11 was assigned to Blackfoot Company on or about 14 April 2009.
- 12 Q. Did you deploy with the 1st of the 501st?
- 13 A. Yes, ma'am. I sure did. January 2009 after coming back
- 14 from block leave on the 17th of January, I deployed as part of the
- 15 ADVON for the brigade. They called it the Torch Element. So I was a
- 16 Container Control Officer for the brigade going in a few months
- 17 before everybody else got there.
- 18 Q. And that was part of your duties with the S-3 shop?
- 19 A. Yes, ma'am.
- Q. Where did you deploy to in Afghanistan?
- 21 A. Paktika Province, ma'am.
- Q. And what was the task force called when you deployed to
- 23 Afghanistan?

- 1 A. Task Force Yukon, ma'am.
- 2 Q. Did that consist of 4/25?
- 3 A. Yes, ma'am. There were some attached elements as well,
- 4 kind of a robust brigade going into that deployment to Afghanistan.
- 5 Q. So that was roughly a brigade-plus size element?
- A. Yes, ma'am.
- 7 Q. And at this time I'd like to bring up Prosecution Exhibit
- 8 Number 5.
- 9 [Prosecution Exhibit 5 was displayed next to the witness.]
- 10 Q. Captain Billings, if you could stand -- and the witness has
- 11 been presented with Prosecution Exhibit Number 5, which is a map of
- 12 Afghanistan.
- 13 [The witness did as directed.]
- Q. Captain Billings, could you show me where Paktika Province,
- 15 Afghanistan, is on that map?
- 16 A. Yes, ma'am. So, on the eastern side of Paktika Province
- 17 over by Pakistan, it comes up like this [pointing], wraps around like
- 18 this [pointing], and then it comes up like that [pointing], just
- 19 stopping short of Kabul and then coming back around.
- 20 Q. Okay.
- 21 A. Oh, I'm sorry. Right here [pointing]. Not all the way up.
- Q. And you said on the eastern border of Paktika is what
- 23 country?

- 1 A. Pakistan, ma'am.
- 2 Q. And to the south?
- 3 A. Pakistan as well.
- 4 Q. Where is Ghazni Province?
- 5 A. Just north of it, sir -- or ma'am. Or -- correction --
- 6 just to the northwest of Paktika Province is Ghazni.
- 7 Q. And where in Paktika were you located with FOB Sharana
- 8 approximately?
- 9 A. Approximately right here [pointing] where it's annotated by
- 10 the black dot and says "Sharana" on it.
- 11 Q. Okay. How many miles to the Pakistan border is it from FOB
- 12 Sharana as the crow flies?
- A. As the crow flies, I'd say probably 25 or 30 miles, ma'am.
- Q. Okay. Thank you. You can take your seat.
- 15 [The witness did as directed.]
- Q. Retrieving Prosecution Exhibit 5.
- 17 At some point you were assigned to 2nd Platoon?
- 18 A. Yes, ma'am.
- 19 O. When was that?
- 20 A. On or about 14 April 2009, I was notified by my battalion
- 21 commander that I was being given the opportunity to go be a platoon
- 22 leader down in Blackfoot Company.
- Q. And that's a prestigious assignment?

- 1 A. Absolutely, ma'am.
- 2 Q. How many Soldiers were in 2nd Platoon?
- 3 A. At the time deployed forward, I had 33 Soldiers.
- 4 Q. And generally, what was the mission of 2nd Platoon?
- 5 A. Generally, ma'am, we were there to increase the populace's
- 6 -- or correction, the host nation security forces' ability to conduct
- 7 their mission and bolster the local populace's confidence in those
- 8 forces to do that mission.
- 9 Q. Have you ever heard of the phrase, "winning the hearts and
- 10 minds"?
- 11 A. Yes, ma'am.
- 12 Q. Does that sort of encompass what your mission was?
- 13 A. It does. Absolutely.
- 14 O. And I'd like to talk a little bit about Observation Post
- 15 Mest. Was that part of your mission in 2nd Platoon?
- 16 A. It was. Yes, ma'am.
- 17 Q. How big is Observation Post Mest?
- 18 A. I don't know about its current state, ma'am; but at the
- 19 time when we first got there, its entire circumference would fit
- 20 within the parameters of, like, a football field -- not nearly as
- 21 long and not quite as wide but about the same dimensions as that.
- Q. Was it austere or developed?

- 1 A. Very austere, ma'am. We didn't have running water. There
- 2 was no AC or buildings to live in, sleep out of, stuff like that.
- 3 Q. Where was Observation Post Mest located in terms of roads?
- A. At the intersection of Route Audi and Dodge, ma'am, the two
- 5 major north/south running road and east/west running road that kind
- 6 of bisect Paktika Province.
- 7 Q. Were they located near any towns?
- 8 A. Yes, ma'am. You had the town of Malak that was on the
- 9 northern edge of it, and then the town of Mest which was the southern
- 10 edge of that intersection.
- 11 Q. What was the terrain of Observation Post Mest?
- 12 A. So in and around the immediate portion of Mest OP, on the
- 13 southern side you had obviously the village of Mest, so you had a
- 14 semi-urbanized built up area. Off to the east, you had some
- 15 irrigation and farm fields that kind of ran up to the north east
- 16 towards Sharana. Farther off to the east, you had some undulating
- 17 terrain and some mountain ranges. And then the eastern side of the
- 18 Mest OP -- or correction, the western side of the Mest OP was some
- 19 rolling terrain; and then they went up into some mountain ranges as
- 20 well.
- 21 Q. And within the boundaries of Observation Post Mest, what
- 22 did it consist of in terms of terrain?

- 1 A. Yes, ma'am. So the lower half, kind of where we staged our
- 2 vehicles building the actual OP for the ANP, very flat, usable
- 3 terrain that they could set up, you know, some sort of building or
- 4 structure to work out of; and then just to the north of that was a
- 5 hilltop that we occupied and created an OP or a bunker position
- 6 around.
- 7 Q. And that was with U.S. forces and Afghan National Police?
- 8 A. Yes, ma'am. It was.
- 9 Q. And did you have a partnership mission?
- 10 A. Yes, ma'am. We did.
- 11 Q. What was the purpose of Observation Post Mest?
- 12 A. Yes, ma'am. So Mest OP was established in order to put an
- 13 ANA or ANP or host nation security force presence there. The reason
- 14 why it was important is because of Route Audi and Dodge. So the two
- 15 routes -- Route Dodge ran east and west, and it cut all the way
- 16 through Paktika Province and ran to the border of Pakistan. It was a
- 17 known infiltration route for supplies, IEDs, weapons. It was the
- 18 route that the Taliban used to come in after the winter surge. Same
- 19 thing with the north running Route Audi. It completely ran the
- 20 entire perimeter of Paktika Province all the way down to the southern
- 21 border again into Pakistan. But more importantly, it fed up to north
- 22 allowing them to run supplies as far north as Kabul.

- 1 So it was key because we knew, based on what the ANP and
- 2 the local nationals were telling us was that those two routes were
- 3 used by the Taliban almost at free will. So the battalion, brigade -
- 4 whoever it was, decided to establish this OP, help the ANP build
- 5 it. And then we'd also train them and say, "Hey, this is how you
- 6 need to do this. This is how you do operations -- blah, blah, blah."
- 7 And so that's why we're building it there.
- 8 Q. So it was like an overwatch position?
- 9 A. Yes, ma'am.
- 10 Q. Were there enemy in the area when you moved into the
- 11 Observation Post Mest area?
- 12 A. I believe off to the east, yes, ma'am. In the town of
- 13 Malak there were some reports that there were a couple little areas
- 14 that may have had some insurgents locally living in that area but
- 15 nothing could be confirmed as well as Mest. On the farther eastern
- 16 side towards Yahya Khel and going into Omnah, there was absolutely
- 17 some Taliban presence there. But nothing could be solidified in the
- 18 immediate vicinity of Mest-Malak that we were getting.
- 19 Q. Did the observation post provide you overwatch -- physical
- 20 overwatch over these roads and these towns?
- 21 A. It did. Yes, ma'am.
- Q. And what did you gain by being able to see the roads and
- 23 the towns?

- 1 A. So, on the northern edge looking north, if you're sitting
- 2 at the OP, was the town of Malak. A few thousand meters out was an
- 3 IED hotspot, and the Taliban would travel from the far east and come
- 4 in using the wadis and low-lying terrain to infill and place IEDs
- 5 along that route on Route Audi.
- So, by putting an observation post up there, we were
- 7 allowed to observe almost the entire IED hotspot with the exception
- 8 of about 300 meters just because of the way the buildings did not
- 9 enable you to see that portion.
- 10 During that time period, I believe that the IEDs -- the
- 11 number of IEDs significantly decreased because of the overwatch that
- 12 we were able to provide. Obviously, they could still sneak in there,
- 13 but I think it definitely deterred them.
- 14 Q. Did you have a nickname for that IED hotspot?
- 15 A. IED alley, ma'am.
- 16 Q. I'd like to talk about the construction of the observation
- 17 post. When you arrived -- when Task Force Yukon arrived, had you
- 18 started the construction of the OP?
- 19 A. Say that again, ma'am?
- Q. When the task force arrived, had construction of the OP
- 21 begun yet?
- 22 A. No, ma'am. It did not begin -- initially when we got to
- 23 Afghanistan, we were doing local patrols around Sharana. The actual

- 1 construction of the Mest OP, I believe, didn't actually begin until
- 2 like mid-May. Something like that is when we started sending people
- 3 out there.
- Q. Okay. When you began building it, could you describe what
- 5 defensive measures you used and how you constructed the OP?
- 6 A. Yes, ma'am. So, based on where they wanted to establish
- 7 this OP, the battalion had gone through an MTMV process and
- 8 determined, hey, we'd really like to put some sort of bunker or
- 9 observation post on top of the hilltop. One, it'll allow us and
- 10 afford us an opportunity to oversee IED alley and the IED hotspots to
- 11 the north. In addition, too, it allowed us to overwatch Route Dodge
- 12 off to the east. That was really the only real piece of high terrain
- 13 that was in the immediate area of Mest OP that allowed us any
- 14 advantageous point from there.
- On the ground, you'd arrange your vehicles in a position to
- 16 where they could, as much as possible, cover each other; but it was
- 17 almost impossible to have interlocking sectors of fire based on the
- 18 range spans of the weapons that were mounted on them.
- 19 Q. So what -- and I'm sorry -- what construction measures did
- 20 you use? When you started building the OP, physically how did you
- 21 build it?
- 22 A. Yes, ma'am. So we went out there and we strung
- 23 single-strand concertina wire and then triple-strand concertina wire

- 1 for an inner perimeter. And it went all the way around the base
- 2 about halfway up on the northern side and around on that hilltop
- 3 where we had the bunker at. And then we moved out some containers or
- 4 -- for them to use at the ANP headquarters building. And then
- 5 eventually some HESCOs were brought out, and they started filling
- 6 HESCOs as well.
- 7 Q. How many bunkers were at the top of the hill?
- 8 A. Just the one initially, ma'am. At some point, we did push
- 9 out one a little bit farther. Again, it wasn't as dug in. And then
- 10 you had another ANP -- not really a bunker but a location or, you
- 11 know, guard post up there.
- 12 Q. Okay. What was the purpose of the bunker at the top of the
- 13 hill?
- 14 A. It afforded the guys who were up there, one, some shade to
- 15 get out of the immediate heat; and then in the event that they were
- 16 to take any sort of fire, they weren't exposed and had somewhere to
- 17 get in behind cover.
- 18 Q. How many Soldiers were in the bunker?
- 19 A. It ranged -- that time period, sometimes an actual guard
- 20 shift would be about three to four guys. Potentially you could have,
- 21 you know, five or six up there. If a team leader or squad leader
- 22 were up there -- like went up there to do a guard check and check on
- 23 their men or something like that.

- 1 O. And there were trucks at the base of the hill?
- 2 A. Yes, ma'am.
- 3 Q. How many trucks?
- A. Four to five trucks, just depending on the mission that day
- 5 and how many people we were taking out. You went out with no less
- 6 than four. Usually, we'd go out with about five though.
- 7 O. Trucks?
- 8 A. Yes, ma'am.
- 9 Q. And by trucks -- they weren't actually trucks. What kind
- 10 of vehicle were they?
- 11 A. The MRAP vehicles, ma'am. Mine-Resistant Armored [sic]
- 12 Protected vehicles.
- 13 Q. Now, you mentioned you went outside. Did you do patrols
- 14 from Observation Post Mest?
- 15 A. Yes, ma'am. We actually did. Moving north and south along
- 16 Route Audi or paralleling Route Audi, and then off to the east and
- 17 west up around Route Dodge as well. Primarily focused on the two
- 18 villages of Mest and Malak, getting the local populace to understand
- 19 why were there and that the U.S. -- you know, it wasn't the U.S.
- 20 mission to be there. So again, winning the hearts and minds and
- 21 getting them to understand, "Hey, we're here to help the ANP secure
- 22 your area. This is your land. All we're doing is helping them do
- 23 that."

- 1 Q. Did you treat these -- were these treated as presence
- 2 patrols? Combat patrols? How would you describe them?
- 3 A. Every mission outside the wire is a combat patrol, ma'am.
- 4 There is no such thing in my book as a presence patrol.
- 5 Q. So for every patrol did you do a briefing?
- A. Yes, ma'am.
- 7 Q. What did that briefing generally consist of?
- 8 A. So if we were moving out mounted, ma'am, you know, you'd do
- 9 a patrol brief, talk about the route.
- 10 Q. And by mounted, you mean on trucks?
- 11 A. On trucks, yes, ma'am. Dismounted, you'd do the same
- 12 thing. You would do a brief to your guys.
- Q. And dismounted is on foot?
- A. On foot, yes, ma'am.
- So you would do a brief letting the guys know, "Hey, this
- 16 is the route we're going to take. These are the checkpoints we're
- 17 going to take. This is the approximate time that it's going to
- 18 take." In addition to known enemy hotspots, places where other units
- 19 had taken contact from, actions to take on contact in the event that
- 20 we're engaged either by direct fire or we were to hit an IED.
- 21 And it's just -- all you're doing is it's not your --
- 22 you're just reiterating to those men so, you know, just prior to

- 1 going out of the wire it's the last thing they hear, "Hey, this is
- 2 what we need to do." I hope that -- I think that's...
- 3 Q. Now, you're out there for a 3 or 4-day rotation. During
- 4 those rotations, how many patrols did you try to do?
- 5 A. You generally plan on doing at least one during the day and
- 6 then one sometime that night period.
- 7 Q. And what was that dependent on?
- 8 A. It depended on the work cycle of the men. Obviously, I
- 9 wasn't going to have the guys out there filling sandbags and trying
- 10 to build HESCOs and doing work all day long and then, on top of that,
- 11 do a patrol in the blazing hunt -- you know, heat and sun and
- 12 everything else and then also, you know, piggyback on top of that one
- 13 and do another one at night.
- 14 Q. So weather, pace?
- 15 A. Absolutely everything. OPTEMPO, whatever was going on that
- 16 time period strictly played a role in whether we went on a patrol
- 17 that day.
- 18 Q. I'd like to talk a little bit more about the vehicles you
- 19 had staged at the bottom of the hill. How were they staged?
- 20 A. So we had them in a 360 perimeter, ma'am, with the weapons
- 21 and the engines facing out. The backs of the vehicles and the ramps
- 22 were facing towards the inner portion of the perimeter.
- Q. Why was that?

- 1 A. It afforded us two things: One, because the armored glass
- 2 -- a guy could sit behind the vehicle or sit behind and monitor the
- 3 radio and he still had the armored protected front, as well as the
- 4 vehicle weapons systems would be oriented out over the front edge of
- 5 the weapon. And then people could get into the vehicle from the back
- 6 side affording them cover from the vehicle towards the front.
- 7 Q. Did you have other defensive measures in addition to the
- 8 bunkers laid around Observation Post Mest?
- 9 A. Yes, ma'am. We had ran Claymores to cover our dead space
- 10 or spaces that we couldn't actually physically see at all times.
- 11 Q. And Claymores are?
- 12 A. It's a molded ----
- 13 Q. It's a mine?
- 14 A. Yes, ma'am, a molded mine -- anti-personnel mine.
- 15 Q. Did you have any outside assets for defense, or were you
- 16 working with what was within the platoon?
- 17 A. As always, we could always call up to our higher
- 18 headquarters in the event something was happening and they would push
- 19 something to us; but for planning purposes and just general
- 20 day-to-day operations, we -- I mean, we had what we had on the ground
- 21 with us to defend.
- 22 Q. So your assets at that point were your physical assets you
- 23 brought with you and your Soldiers?

- 1 A. Yes, ma'am.
- Q. What was the expectation that you had of your Soldiers if
- 3 the observation post was attacked?
- A. Absolutely that they would move to their positions, get
- 5 accountability, and then report as necessary.
- 6 Q. And defend the observation post?
- 7 A. And defend the observation post.
- 8 Q. Did you have a mission when you were back at FOB Sharana?
- 9 A. We did. Yes, ma'am.
- 10 O. What was that mission?
- 11 A. When we were back at FOB Sharana coming off the Mest OP --
- 12 so priority went to restaging the vehicles, getting everything
- 13 refitted in the vehicles, and then planning for any subsequent
- 14 patrols that may happen in and around Sharana. You know, it could be
- 15 an escort patrol going out with the battalion commander or just
- 16 something locally, going to engage one of the local imams or village
- 17 elders or something. But priority went to restaging those vehicles
- 18 and then getting everything else for the next patrol, whatever it may
- 19 be.
- 20 Q. Were you also on call for QRF or Quick Reaction Force duty?
- 21 A. Yes, ma'am. That was, again, strictly depending on the
- 22 number of patrols that were out and then the number of patrols that

- 1 we had back. Whether we immediately assumed that role or had a few
- 2 hours or even a day -- it just depended on the OPTEMPO.
- 3 Q. How long were your rotations out to Observation Post Mest?
- A. They varied, ma'am. In order to not set a pattern and let
- 5 the enemy identify that, "Hey, these guys are always going to the
- 6 same location every 3 days," we rotated out. I mean, you could go
- 7 out there for 2 days. You could go out there for 3 days. You could
- 8 go out there for 4 days. And it was a projected pattern for us, and
- 9 we'd know. But without letting the enemy know what we were doing
- 10 from day to day or every 2 days or every 3 days, that rotation
- 11 changed.
- 12 Q. Who did you share the rotation with?
- 13 A. 3rd platoon, ma'am.
- O. Of Blackfoot Company?
- 15 A. Of Blackfoot Company.
- Q. What was your combat posture during your movement in
- 17 between FOB Sharana and Observation Post Mest?
- 18 A. So combat posture was we had weapons mounted and they were
- 19 ready to go in the vehicles moving out. Obviously, the gunners were
- 20 more alert than everybody else because they were really the eyes and
- 21 ears of everything that's going on with the local populace. And then
- 22 gunners and -- drivers and TCs are also observing the natures of the
- 23 local populace, whatever they may be.

- 1 Q. So this was a tactical movement?
- 2 A. Yes, ma'am, absolutely.
- 3 Q. Why was that?
- A. Just like I said before, ma'am. Every patrol outside the
- 5 wire, to me, is a combat operation. So you need to plan for it
- 6 accordingly, establishing TCPs along the way, which are tactical or
- 7 traffic control points; checkpoints along the way so you can call
- 8 higher headquarters so that they can track your movement; as well as
- 9 establishing and identifying potential HLZs if you need to call in
- 10 for a MEDEVAC, extraction points, whatever it may be. But every
- 11 operation was a planned combat operation.
- 12 Q. Now, when you and the Soldiers were at Observation Post
- 13 Mest, they were -- I think you described some of the duties --
- 14 pulling quard, conducting patrols, building the bunkers and the
- 15 infrastructure. Did Soldiers keep busy?
- 16 A. It just -- again, it depended, ma'am, based on it -- but,
- 17 yes, they were -- on a day-to-day activity, you could say they put in
- 18 more than their fair share.
- 19 Q. I'd like to focus on the guard shifts. Soldiers had to
- 20 pull guard on the vehicles that you brought ----
- 21 A. Yes, ma'am.
- Q. --- and then up on the bunker? Could you describe -- how
- 23 did you arrange the guard shift?

- 1 A. So running a guard shift or deciding on how long they go,
- 2 really it's kind of, like, the noncommissioned officer's role; but I
- 3 provided some insight and guidance on, like, what my expectations
- 4 were for that. So the vehicles were manned, and then we had the
- 5 bunker on top of the hill. My expectation was that no guy, you know,
- 6 goes in or around that little area by himself, you know, within it.
- But for the guard shifts themselves, I said, "Hey, you
- 8 know, during the day, in the heat of the day, let's not put a guy on
- 9 guard for like 5 or 6 hours. You know, let's be smart about this.
- 10 Put it in a 2- or 3-hour shift. Rotate it more often than not so
- 11 that way the guys can get out of the heat and get some shade,
- 12 rehydrate, and continue to do work on the OP or whatever it may be."
- 13 Obviously, if, for whatever reason, we weren't doing a lot of work on
- 14 that OP that day, we could rotate more guys more often and then
- 15 lengthen those guard shifts out a little bit more at nighttime when
- 16 it's a lot cooler.
- 17 Q. And physically down at the vehicles at the base of the
- 18 hill, what does a guard shift consist of? How many Soldiers and what
- 19 were they doing?
- 20 A. And so every vehicle would be manned with a gunner or
- 21 somebody manning the crew-served weapon on top. A crew-served
- 22 weapon, you know, is a 240, belt-fed weapon. The same thing with the
- 23 Mark 19. It's a grenade launcher, and it's belt fed.

- I considered those our crew-served weapons. So each one of
- 2 the vehicles had one of those on it, and those were our most
- 3 casualty-producing weapons. So those were the weapons that were
- 4 manned.
- 5 In addition to that, somebody in my vehicle -- the gunner
- 6 would be monitoring the radio for comms with the guys up on top of
- 7 the bunker. And then every hour as they're coming off guard, you
- 8 needed to check the Blue Force Tracker and ensure that there -- you
- 9 know, no messages came from battalion or company or whatever.
- 10 O. And Blue Force Tracker was the main method of communication
- 11 back and forth between your higher headquarters?
- 12 A. Yes, ma'am. It's a digital, satellite-based system that
- 13 basically sends and receives, you know, like mIRC chat texts.
- 14 Q. Messages?
- 15 A. Messages.
- Q. Did every vehicle change guard shifts at the same time?
- 17 A. They didn't, ma'am. It was staggered. So as the guys are
- 18 coming off one vehicle, you don't have all four guys, you know,
- 19 dropping security to come off a vehicle. So it was a one-for-one.
- 20 That guy would get changed out, and then the next vehicle would go
- 21 down. They would change out that guy who was on guard, and it would
- 22 make its way all the way around.

- 1 The guys on the bunker -- because you'd have three or four
- 2 guys up there, it was a matter of that guy waking up his next buddy,
- 3 "Hey, it's time for you to pull guard." He'd wake him up, make sure
- 4 he's awake, and then the rotation would continue on.
- 5 Q. How many times a day -- just generally, how many times a
- 6 day would a Soldier be pulling guard shift?
- 7 A. I'd say on average one, maybe two during the day; and then,
- 8 you know, if they're -- just depending on how the rotation went, you
- 9 know, you might have one that night, you might not. You know, it
- 10 just depends.
- 11 Q. So multiple times a day generally?
- 12 A. Absolutely.
- Q. And night shifts were longer because it was cooler?
- 14 A. Sometimes they were, yeah. It just depends, again, like on
- 15 the work/rest cycle, whatever that Soldier had during the day.
- Q. Did you also pull guard shifts?
- 17 A. Absolutely, ma'am.
- 18 Q. Why was the guard shift schedule and the work schedule
- 19 important to a Soldier on the observation post?
- 20 A. It provided them some predictability. So Soldiers, you
- 21 know, they want to know what's going on. And it's our responsibility
- 22 as leaders to keep them informed. So if I'm going to expect a
- 23 Soldier to, "Hey, you know, we're going to need you to pull 4 hours

- 1 of guard; but in those 4 hours of guard, you know -- know that after
- 2 that, I'm going to give you a couple hours to kind of like dress down
- 3 a little bit, kind of relax, get some water, not really think about
- 4 anything and just take some time for yourself." Without doing that,
- 5 I mean, you're going to mentally and physically just drain Soldiers.
- 6 Q. So who established the guard shifts?
- 7 A. It's the NCOs primarily. I just provided a little bit of
- 8 oversight and guidance as the platoon leader, saying, "Hey, these are
- 9 my expectations, you know, for guard." And then the NCOs establish
- 10 and post the guard shift.
- 11 Q. How are the Soldiers briefed on the guard shift?
- 12 A. So it trickles down. So the platoon sergeant sits down
- 13 with the squad leaders. They establish the guard shift for those
- 14 guys during that day because nobody knows how much those guys work
- 15 better than the NCOs in charge of them.
- Once that's done, then the NCOs -- the squad leaders, and
- 17 the team leaders would go back and brief their guys and say, "Hey,
- 18 this is the time period that you have guard." In addition to that,
- 19 the quard shift would be posted in the vehicle.
- Q. How often were guard shifts briefed?
- 21 A. At the beginning of the guard shift that night and then
- 22 usually -- or that following morning coming off or going into the
- 23 daylight operations, they would again brief the guard shift.

- Q. So at least twice a day by the noncommissioned officer ----
- 2 A. Yes, ma'am.
- 3 Q. ---- for that vehicle?
- 4 A. Yes, ma'am.
- 5 Q. Was it also written out?
- A. Yes, ma'am. It was written on a -- you know, whatever
- 7 piece of paper or write-in-the-rain piece of paper and posted in the
- 8 vehicle.
- 9 Q. So posted in the vehicle for every Soldier assigned to that
- 10 vehicle?
- 11 A. Yes, ma'am.
- 12 Q. Was it your observation that every Soldier knew his shift?
- 13 A. Yes, ma'am.
- 14 Q. I'd like you just to describe the sleeping arrangements
- 15 Soldiers had at the observation post?
- 16 A. They were less than favorable.
- 17 Q. Where were Soldiers directed to sleep?
- 18 A. When we initially got out there, Soldiers were sleeping,
- 19 you know, off to the left and right of the vehicles. I told the NCOs
- 20 -- I said, "Hey, look, the last thing we need is a guy sleeping
- 21 underneath, in front of, or behind a vehicle." I was like so, you
- 22 know, "To afford yourself some shade, you know, absolutely, tie a

- 1 poncho to the side of the vehicle. Sleep off to the sides of the
- 2 vehicle, but nothing under, behind, or in front of."
- 3 Q. Why is that?
- 4 A. Just because anything can happen with a vehicle. I mean,
- 5 if it rolls -- I mean, if a Soldier -- you know, more Soldiers are
- 6 killed every day from vehicles rolling over them than, you know, the
- 7 Army would probably like to have. So it's just not a smart thing to
- 8 do. It's not a smart practice. I mean, it just makes sense.
- 9 Q. Okay. So Soldiers were -- Soldiers slept close to their
- 10 vehicles that they were assigned to?
- 11 A. They did sleep close to them; but they did not sleep in
- 12 front of, behind, or underneath them.
- 13 O. Okay. Were Soldiers generally allowed to go set up a
- 14 sleeping area in some remote section of the OP, or were they required
- 15 to stay close?
- 16 A. No, ma'am. They were required to stay in proximity to
- 17 either their squad, their team, or the vehicle that they were
- 18 sleeping with.
- 19 Q. And what is proximity?
- 20 A. I mean within 3 to 5 feet, you know, hand-shot range where
- 21 a guy could physically grab a guy if he needed to and say, "Hey, are
- 22 you okay?" or whatever.
- Q. Why is that?

- 1 A. It's important. I mean, through my entire career I've
- 2 always grown up with the buddy concept. So everywhere you went, you
- 3 know, you had a buddy. And this kind of ties into that. You know, I
- 4 can't enforce that policy in saying, "Hey, you know, everywhere you
- 5 go you have a buddy," if guys are off doing their own thing, sleeping
- 6 by themselves, or whatever may be.
- 7 So it allows two things. It allows a team leader to look
- 8 at his men every day and say, "Hey, man, why is Billings more tired
- 9 than everybody else? Did he work longer today?" or whatever else.
- 10 And then it allows them to bond. It creates that cohesive bond by
- 11 sleeping right next to each other, building that esprit de corps that
- 12 everybody wants.
- 13 Q. But also a force protection measure?
- 14 A. Absolutely.
- 15 Q. Did you have a buddy rule while your platoon was at the
- 16 observation post?
- 17 A. Yes, ma'am. I did just like I talked about. Within the
- 18 internal perimeter of the bottom portion of the OP, it was absolutely
- 19 fine for a guy to walk from his vehicle and, you know, go use the
- 20 latrine or something like that. But if they were going to go engage
- 21 the ANA or ANP or move up to the top of the OP to the bunker, they
- 22 absolutely had to have a battle buddy with them. It was just the
- 23 right thing to do. Again, it enforces -- you know, every time I went

- 1 to go talk to my ANP counterpart, you know, I took somebody with me
- 2 to go talk to that guy.
- 3 Q. Why was that?
- A. Again, it's just a security thing. It's a force protection
- 5 thing. I can't have a guy going to talk to these guys or walking up,
- 6 you know, outside to the bunker position without a battle buddy going
- 7 with him.
- 8 Q. And generally, did Soldiers stay close to their trucks
- 9 either when they were off shift or reading or eating?
- 10 A. Yes, ma'am. Generally, they always stayed in the vicinity
- 11 of those vehicles.
- 12 Q. How often did you brief the buddy rule?
- 13 A. Every time we went out on a combat patrol, leaving Sharana
- 14 to Mest OP, it was briefed that the guys would go as a buddy team
- 15 everywhere they went during actions on at Mest OP.
- Q. What was the morale of the platoon before 30 June 2009?
- 17 A. I'd like to think it was pretty good, ma'am. I had no
- 18 inklings or belief to think otherwise.
- 19 TC: At this time, sir, we'd like to move into a classified
- 20 portion of the hearing.
- 21 PHO: Okay. Defense, do you need a few minutes to review your
- 22 documents for this argument as we discussed in the preliminary
- 23 discussion?

- DC: Well, the question is, as per our discussion before in the
- 2 sort of 802 conference that we had before, the question is whether
- 3 Major Kurz now wishes to demonstrate the need to close by testimony
- 4 from this witness. In other words, closure as to this witness by
- 5 testimony from this witness; and I guess that has to be done in a
- 6 closed session. But until we hear --
- 7 I guess what I'm asking, Colonel, is have we now heard
- 8 everything the government has to say about whether any testimony now
- 9 has to be in closed session?
- 10 PHO: Government?
- 11 TC: Sir, I'd be happy to run through the reasons of why we
- 12 asked to close this hearing.
- DC: No, I mean by way of evidence. I don't mean argument.
- 14 PHO: Let me go ahead and hear her argument, and then I will be
- 15 able to assess whether there is evidence to support it or whether
- 16 evidence needs to be brought forward. Go ahead.
- 17 TC: Certainly. Sir, as we discussed previously, we would like
- 18 to use this witness with two classified maps to show testimony
- 19 generally of the topography, the enemy situation, the routes, and
- 20 other defensive measures which are classified on that map. And as we
- 21 laid out in our proposed ----
- 22 PHO: And before -- you said topography. What were the others?
- 23 TC: As we laid out in our proposed findings of fact ----

- 1 PHO: Okay. Correct.
- 2 TC: The location of Observation Post Mest in relation to other
- 3 ISAF forces, villages ----
- 4 DC: Slow, please.
- 5 TC: ---- villages, main routes ----
- 6 DC: Hold. Location of OP Mest in relation to ----
- 7 TC: Sir, I'm just reading from the proposed findings of fact
- 8 that were provided to you this morning.
- 9 DC: Yeah, but other people don't have that so...
- 10 TC: The location of Observation Post Mest in relation to other
- 11 ISAF posts, local villages, main routes, the location of routes ----
- 12 CDC: Slow.
- 13 TC: --- and how they were used by insurgents.
- 14 DC: Hold on, please.
- 15 PHO: I'm still trying to write this as well. I mean, I've got
- 16 it but I'm also taking notes.
- 17 TC: Sure.
- 18 DC: In relation to other ----
- TC: Villages, main routes, how these routes were used by
- 20 insurgents, the topography of the area, areas of IEDs and other
- 21 significant enemy activities in relation to the observation post, the
- 22 observation lines and fields of fire from Observation Post Mest.
- 23 PHO: Okay. And can you provide me -- why is this necessary?

- 1 TC: Because we intend to use a classified map, sir. Now, when
- 2 you look at the standard ----
- 3 PHO: Okay. Why is it necessary to use a classified map?
- 4 TC: Because the classified map shows points related to
- 5 particular routes and location of U.S. forces which is classified
- 6 both in and of itself and on the map.
- 7 PHO: Okay.
- 8 TC: And as we demonstrated in our memo, there are no lesser
- 9 means because off the sheer character of that information.
- 10 PHO: Okay. And as you also mentioned in your memo, this map was
- 11 to be used as a demonstrative aid only.
- 12 TC: Yes.
- 13 PHO: In order to assist me as the fact finder in understanding
- 14 the situation.
- 15 TC: Yes, sir. The enemy situation and the geography and layout
- 16 are key facts that we would like the hearing -- to understand in this
- 17 case, and there is no better way to do that than using a map.
- 18 PHO: Okay. And so, if I feel that, based on what the witness is
- 19 saying and the witness's layout -- I guess my next question before I
- 20 get there is: Captain Billings has described some of the features of
- 21 OP Mest and its location and enemy lines of infiltration and other
- 22 TTPs -- tactics, techniques, and procedures. Are you going to go

- 1 into new areas, or are these going to be demonstrative of what
- 2 Captain Billings has previously testified to?
- 3 TC: There are going to be some new, but he's going to
- 4 demonstrate them using the map. And, again, this is subject to the
- 5 government exigencies of proof. So we believe this would far better
- 6 demonstrate to the hearing -- some of the elements of the offenses.
- 7 PHO: What particular elements? Again, understanding exigencies
- 8 of proof but also understanding, as I've been reminded many times,
- 9 that this is a probable cause hearing.
- 10 TC: Right. Roger, sir. So before the enemy, endangerment, and
- 11 then a little bit about the search and recovery operations.
- 12 PHO: Okay. And Captain Billings has testified as to the enemy
- 13 activity. Is that not enough right there to get to probable cause?
- TC: Well, I believe that's the government's call, sir. I mean,
- 15 if you feel that we've met our burden of proof in terms of presenting
- 16 probable cause in those elements, that's where we are. But I would
- 17 like to use this testimony. It is the government's burden, and this
- 18 is how we would like to demonstrate it for the hearing.
- 19 PHO: All right. Defense, I'm going to give you an opportunity
- 20 to comment on the government's argument.
- DC: Well, what I think we should do at that point -- it sounds
- 22 like the introduction of -- well, let me back up.

- 1 Counsel mentioned some new areas beyond the ones that this
- 2 witness has already testified about. And now is the time for us to
- 3 know about what those new areas are so that we can have an exhaustive
- 4 target here so we know what the reason is for this motion to close.
- 5 So if counsel can tell us what those new areas are, then we can
- 6 digest that and evaluate them. If counsel is unwilling or unable to
- 7 tell us what those areas are, then the record is closed on this.
- PHO: Okay. Here's what I'm going to do: At this point, I am
- 9 not going to close the hearing. Basically, what you've laid out for
- 10 me is that this is necessary as a demonstrative aid for my
- 11 understanding in order for me to determine probable cause.
- 12 Now, I am not making a final ruling at this point. I want
- 13 to hear the witness's testimony.
- 14 TC: Uh-huh [indicating an affirmative response].
- 15 PHO: I want to hear defense cross-examination. And if, at that
- 16 point, I feel that it is necessary for me as the fact finder to
- 17 understand and have a better situational awareness in order to make
- 18 the fact finding, I will make the requisite findings of fact to do
- 19 so. Otherwise, I will go ahead and also afford you an opportunity at
- 20 the close of questioning, if you think it's still necessary, to
- 21 re-present your motion to close the hearing so that he can review the
- 22 classified maps.

- But at this point, I'm tracking. I understand everything
- 2 that's going on. I've reviewed the maps yesterday so they are
- 3 roughly -- I'm tracking with everything the witness is saying. So I
- 4 don't see a need for me to have any demonstrative aids at this point.
- 5 Mr. Fidell?
- 6 DC: Just I think it's implicit in what you said, Colonel, but
- 7 we'll reserve the right to file proposed findings if the need arises.
- 8 PHO: Certainly.
- 9 DC: Thank you.
- 10 PHO: Okay.
- 11 TC: Thank you, sir.
- 12 PHO: Do you need a moment -- I know I mentioned earlier to be
- 13 prepared to go forward without closure. Do you need a moment to
- 14 review your notes, or are you ready to go?
- 15 TC: Negative, sir. I'm ready.
- 16 PHO: Okay.

17 Questions by the trial counsel continued:

- 18 Q. Captain Billings, I'd like to take a few moments to
- 19 describe -- to have you talk about the geography surrounding
- 20 FOB Sharana and Observation Post Mest. How far was it between
- 21 FOB Sharana and Observation Post Mest?
- 22 A. I recollect about 20 to 25 kilometers, ma'am.
- Q. Now, was that as the crow flies?

- 1 A. Straight line distance, yes, ma'am.
- Q. Well, what is the terrain like, though? Can you travel as
- 3 the crow flies?
- 4 A. You cannot, ma'am.
- 5 Q. Why?
- A. So you're going to be taking routes -- either a long route,
- 7 Audi, running northeast to southwest from Sharana to the Mest area;
- 8 or you're going to take some of the -- what we called rat lines or IV
- 9 lines.
- 10 O. What is an IV line?
- 11 A. It is a small micro-piece of terrain as the terrain kind of
- 12 rolls along and it allows you to get into those small little snippets
- 13 of terrain.
- 14 Q. Does that stand for intra-visibility?
- 15 A. Intra-visibility, yes, ma'am.
- 16 Q. Okay.
- 17 A. Or you'll take some of the unimproved farmer trails that
- 18 kind of parallel the more hardball packed surface of Route Audi to
- 19 get from Sharana to Mest OP. If you were to stay on Route Audi the
- 20 whole way, you know, without, you know, graciously beating the speed
- 21 limit, you know, you could probably make it there in under an hour.
- 22 But we're not afforded that based on the vehicles, the size, max

- 1 speed limit. And we never -- or hardly ever took Route Audi the
- 2 entire distance.
- 3 Q. Why is that?
- 4 A. Just because we stayed away from the culverts, which was
- 5 known for enemies to put in place IEDs ----
- 6 Q. Uh-huh [indicating an affirmative response].
- 7 A. And then I just didn't like it. It set too much of a
- 8 pattern. So we would take farmer trails as much as possible,
- 9 intercrossing Route Audi the whole way down to Mest OP.
- 10 Q. And to be clear, Route Audi -- is it paved or not paved?
- 11 A. There are portions of it that are paved. The majority of
- 12 it is paved or hard packed like gravel. Very few portions of it --
- 13 you know, in and around the IED hotspot where the gravel and the
- 14 pavement obviously get blown out -- get backfilled with dirt or sand
- 15 or whatever. So it's kind of potted in those areas.
- Q. So you couldn't just drive straight down Route Audi to get
- 17 to Observation Post Mest as if you were traveling from, say, JBSA to
- 18 Fort Hood?
- 19 A. You could, ma'am. I just chose not to because of the risk
- 20 to my men and the risk to my mission and my equipment. I didn't want
- 21 to take that risk.
- Q. Okay. Can you describe the village of Mest?

- 1 A. Yes, ma'am. A lot of farmers, a built up population of
- 2 about, you know, probably I'd say 90 percent farmers. There is a
- 3 huge marketplace that runs north and south on the main street of
- 4 Route Audi.
- 5 Q. And when you say population, are we talking thousands,
- 6 hundreds of thousands, dozens?
- 7 A. Thousands, ma'am, on the low end of the thousands.
- Q. Okay.
- 9 A. Mest and Malak, combined I think population-wise, maybe
- 10 5- or 6,000. Maybe a little bit more than that now if it's grown up
- 11 a little bit.
- 12 Q. And you mentioned the village of Yahya Khel. Why was that
- 13 significant to your platoon?
- 14 A. Yahya Khel was a known enemy safe haven and stronghold. So
- 15 they moved into Yahya Khel from the east coming out of Pakistan
- 16 during the spring runoff and in preparation for the fighting season,
- 17 which generally happens during the summer months.
- Q. Where was Yahya Khel in relation to the village of Mest and
- 19 Malak and the observation post?
- 20 A. It was off to the east, ma'am, about 5 -- 5 or 6 kilometers
- 21 or so.
- Q. So not far?
- A. Not far, ma'am.

- 1 Q. Was Yahya Khel also the district center?
- 2 A. Yes, ma'am.
- Q. Were there mountains in the area of the village of Malak?
- A. Yes, ma'am. There were some rolling hills just to the
- 5 north and south of Mest and Malak that kind of paralleled Route Audi.
- 6 And as you pushed more towards the west there was a more prominent
- 7 ridgeline of mountains.
- Q. Prior to 30 June 2009, had you ever taken a foot patrol or
- 9 a patrol into the village of Yahya Khel?
- 10 A. No, ma'am.
- 11 Q. 2nd Platoon had not gone in?
- 12 A. No, ma'am.
- 13 Q. Now, we've described Route Dodge and Route Audi, and they
- 14 were paved and not paved. And we talk about them in terms of being
- 15 main routes, but would you consider them a highway like we have in
- 16 the United States?
- 17 A. I wouldn't consider them a highway. No, ma'am. I mean,
- 18 it's a single lane, you know, single-car wide -- you know, at best
- 19 two-car wide in some locations. So definitely not highway standards
- 20 by any means.
- 21 Q. So very primitive?
- 22 A. Permissive but nonetheless still a very high-speed avenue
- 23 of approach for a motorcycle or a small compact car.

- 1 Q. What was the terrain like immediately surrounding the
- 2 observation post?
- 3 A. The terrain immediately surrounding it, ma'am, to the
- 4 north, you obviously had that major hilltop that we had the bunker
- 5 on. And then kind of rolling hills off of that that kind of spread
- 6 off to the northwest. And then off to the east immediately across
- 7 Route Audi, it goes right into some wadi systems, dried up riverbeds,
- 8 and irrigation that fed into some farm fields ----
- 9 Q. Now ----
- 10 A. ---- spreading all the way to the northeast.
- 11 Q. In May and June of 2009 were they dry, or did they have
- 12 water in them?
- 13 A. They were dry for the most part, ma'am.
- 14 Q. So dry riverbeds surrounding the observation post?
- 15 A. Yes, ma'am. As the spring runoff, any snowfall that year
- 16 kind of comes down, March-April time period. That eventually dries
- 17 off, you know, end of April to May time period and there is no more
- 18 water.
- 19 Q. What was the tactical significance of the wadis surrounding
- 20 the observation post?
- 21 A. Tactically, it was harder for us because we couldn't always
- 22 see or identify easy avenues of approach or areas for the enemy to
- 23 infill, whether it be to emplace an IED or construct a hasty attack.

- 1 For them, it afforded them an avenue to sneak in and out of
- 2 places almost undetected, and that was key for them as they used
- 3 those to their advantage a lot.
- Q. Do you know the accused, Sergeant Bergdahl?
- 5 A. Yes, ma'am. I do.
- 6 Q. How do you know him?
- 7 A. He was a member of my platoon in Blackfoot -- 2nd Platoon,
- 8 Blackfoot Company, ma'am.
- 9 O. When?
- 10 A. From the time I got there, 14 April 2009 until he went
- 11 missing, 30 June 2009, ma'am.
- 12 Q. What was your first impression of the accused?
- 13 A. Ma'am, great Soldier from all accounts. I men, had a great
- 14 PT score, always did everything he was asked to do, never complained.
- 15 For the most part, you know, he did every task that he was asked to
- 16 do and he took honor in doing that task and accomplishing it to the
- 17 best of his ability.
- 18 Q. Respectful?
- 19 A. Yes, ma'am.
- 20 O. No issues?
- A. No issues, ma'am.
- 22 Q. Do you see the person here in the hearing room that you
- 23 just described as PFC Bowe Bergdahl in the room today?

- 1 A. Yes, ma'am. I do.
- 2 Q. Could you point him out, please?
- A. Yes, ma'am. He's sitting right there, behind [pointing].
- 4 TC: The witness has identified the accused, Sergeant Bergdahl.
- 5 I'd like to take you to 29 June 2009, before the incident.
- 6 What was the state of Observation Post Mest on 29 June 2009?
- 7 A. 29 June, the state with respect to us or kind of us and the
- 8 ANP, ma'am?
- 9 Q. The construction state. It was somewhat built up at that
- 10 point?
- 11 A. Yes, ma'am. So, at this point, construction-wise, we had
- 12 moved in two containers that they were going to use -- the ANP were
- 13 going to use, one as a headquarters and the other one was going to be
- 14 used as a bed-down area for the Soldiers who were going to be working
- 15 out of that area. Constructed a portion of kind of like a
- 16 vehicle-borne IED ditch or a VBIED ditch. Had C-wire strung up; had
- 17 an entrance and an exit now so vehicles would come in one way and
- 18 exit through another way. HESCOs were starting to be filled at this
- 19 time to use as cover for those buildings and some of the positions in
- 20 and around Mest OP.
- 21 Q. And eventually when construction was finished, was the OP
- 22 going to be turned over to the ANP?

- 1 A. I don't think it ever actually got finished under my watch,
- 2 ma'am; but the intent was we would help them build this location, and
- 3 they lived there with us while we were building it. One, so they'd
- 4 take ownership in it instead of us just, like, building it for them
- 5 and then forcing them to go there. So they got to know the local
- 6 population. But the intent was, when it was all said and done, "Here
- 7 you go. Here's your outpost. Here's your OP. You guys occupy and
- 8 secure your populace."
- 9 Q. Now, on 29 June 2009, was the accused with you on this
- 10 rotation out to Observation Post Mest?
- 11 A. Yes, ma'am. He was.
- 12 Q. What truck was he assigned to?
- 13 A. I think he was in Sergeant Komes' truck for the movement
- 14 out.
- 15 Q. And was he pulling quard duty with you on your truck?
- 16 A. Yes, ma'am.
- 17 Q. What was going to happen in terms of rotation on
- 18 30 June 2009?
- 19 A. Originally, we were going to kick out a patrol that
- 20 following morning. That night prior, I had cancelled it based on the
- 21 heat and how much the guys had been working that day. It was a
- 22 really hot day, so we made the call that night to cancel that patrol
- 23 the next morning.

- Q. Were you expecting 3rd Platoon on 30 June?
- 2 A. Yes, ma'am. They were going to come out and rotate out
- 3 with us.
- 4 Q. And after they did the handover with you, would you go back
- 5 to FOB Sharana?
- 6 A. Yes, ma'am. So they would come out and their vehicles
- 7 would flow into the OP; and we'd rotate our vehicles out, stage on
- 8 the vehicle -- or on Route Audi for preparation for movement north.
- 9 And then that morning sometime -- I mean, you could plan but based on
- 10 travel times, whatever it may be -- you only had, like, a window
- 11 really. You didn't have an exact time of when they'd be up there.
- 12 Q. Did all the Soldiers in your platoon know that 3rd Platoon
- 13 was coming out that day?
- 14 A. I should hope so. Yes, ma'am.
- 15 Q. It was a big part of their day?
- 16 A. They looked forward to it. Yes, ma'am.
- 17 Q. And what preparations did you take on the 29th in
- 18 anticipation of relief from 3rd Platoon?
- 19 A. So we would obviously police up our areas, burn any trash
- 20 that we'd accumulated over the time period that we were out there in
- 21 addition to -- we'd reset the latrines.
- Q. And by reset the latrines, what do you really mean?

- A. We had the bottom half of a 50-gallon drum, ma'am; and we'd
- 2 pour diesel fuel into it and light it on fire and stir it up. And it
- 3 dissolved or disintegrated, you know, the remainder of whatever was
- 4 in there.
- 5 Q. So you had to burn latrine waste?
- A. Yes, ma'am.
- 7 Q. What did the Soldiers do with their personal items?
- 8 A. So this was where the guys would start packing up, you
- 9 know, any personal belongings they had, getting stuff ready, getting
- 10 the rucksacks strapped to the vehicles or staged inside. And all
- 11 that would be readily accessible -- well, obviously it would be their
- 12 combat kit or an assault pack with probably some chow and some water
- 13 in it. Everything else would be staged and ready to go. And that
- 14 would happen throughout the night going into the next morning.
- 15 Q. And you cleaned up the -- you said you were doing
- 16 construction. You cleaned up construction debris?
- 17 A. Yes, ma'am. So we had moved whatever was thrown in the
- 18 middle portion or laid around in the middle portion, whether it be
- 19 four-by-fours, concertina wire -- you name it. You know, we'd get
- 20 all that stuff staged and set aside. So it allowed the vehicles
- 21 freedom to maneuver in and around the OP to assume positions and swap
- 22 out vehicles.

- 1 Q. Now, is there something particular you remember doing on
- 2 the 29th in anticipation of the RIP in terms of -- because you
- 3 described your latrine duty. How do you remember the 29th?
- A. I was standing out, you know, burning poop with my medic.
- 5 And a good way to, like, get to know Soldiers and bond with them is,
- 6 you know, share a common bond, share something in common with them.
- 7 So Doc was burning -- doing his burn duty. And I went out there and
- 8 I was like, "Hey, Doc, let me get a smoke." And it was like one of
- 9 my last good memories of Doc was, you know, we were out there burning
- 10 crap and smoking a cigarette, you know.
- 11 Q. Now, on 29 June 2009, was the accused, Private Bergdahl,
- 12 present for duty?
- 13 A. Yes, ma'am.
- 14 O. Did you have a -- do you have a personnel report in your
- 15 platoon?
- 16 A. Yes, ma'am. It's required by higher headquarters that we
- 17 would send a Green Two report or a Green Up on personnel and
- 18 equipment, just meaning that you're good. You have all your
- 19 personnel, and you have all your equipment
- 20 O. So no issues on 29 June 2009?
- 21 A. No, ma'am.
- 22 Q. And do you actually remember seeing the accused on
- 23 29 June 2009?

- 1 A. I do. Yes, ma'am. I was walking across the OP to go
- 2 utilize the latrine, and I remember seeing Sergeant Bergdahl with
- 3 another member of the platoon. I don't remember who it was. But I
- 4 remember like waving hi to the boys as I was walking over to utilize
- 5 the latrine.
- 6 Q. I'd like to move forward to the early hours of
- 7 30 June 2009. Did you have guard duty that morning?
- 8 A. I did. Yes, ma'am.
- 9 Q. Do you recall the hours that you were pulling guard?
- 10 A. I think I had guard around about two or three o'clock to
- 11 that morning, probably around four or five.
- 12 O. Was it still dark out?
- 13 A. Starting to get light. You know, the sun wasn't all the
- 14 way up yet, but it was kind of cresting a little bit.
- 15 Q. So did you come off guard duty when the sun was about to
- 16 come up?
- 17 A. Yes, ma'am.
- 18 Q. And what did you do when you came off guard duty?
- 19 A. I looked at the driver of the vehicle and I said, "Hey, you
- 20 know" -- or the guy who was getting ready to come on guard and the
- 21 driver because he was now up and I said, "Hey, I'm going to lay down
- 22 for like an hour and get an hour of shuteye. Just make sure that I'm

- 1 up," you know no issues. And then I was going to go lay down in my
- 2 cot.
- 3 Q. Who was that Soldier that you talked to?
- A. I believe it was my driver -- man, I can't remember his
- 5 name, ma'am.
- Q. Was it Private Lanford?
- 7 A. Lanford, yes, ma'am. PFC Lanford.
- 8 Q. Did you, in fact, go try to get an hour of sleep?
- 9 A. I did. Yes, ma'am.
- 10 Q. And what is your next -- what happened next?
- 11 A. I was woken up, ma'am, by Soldiers who said, "Hey, sir, we
- 12 need you to get up. We can't find Bergdahl."
- Q. What was your initial reaction?
- 14 A. Initially, I was just, you know, kind of, shaking the
- 15 cobwebs. I'm like, "Well, what do you mean you can't find Bergdahl?"
- 16 Like, "Sir, we can't find him. He's missing."
- I said, "Okay."
- 18 Q. Did you think they were serious?
- 19 A. Not initially. You know, because as a young lieutenant
- 20 platoon leader, you expect the guys to kind of like, you know, rub
- 21 you a little bit, mess with you, and play games and stuff. So I
- 22 thought for about a half second or so, I'm like, "These guys are
- 23 messing with me. They just want to see me get all spazzed out, freak

- 1 out, you know, call higher headquarters." And that, you know, only
- 2 lasted a very short time period until I realized, hey -- as I got the
- 3 squad leaders together and platoon sergeant and we were talking, I
- 4 said, "Hey, this is what I want you to do. Systematically go search
- 5 the latrines, check all the vehicles, make sure he's not stuck under
- 6 a vehicle -- blah, blah -- whatever it may be. Send two guys
- 7 and a team to go on top of the bunker. Double check the bunker.
- 8 Check with our ANA counterparts." I went and talked to my
- 9 counterpart.
- 10 After we disseminated, dispersed, and had done those, we
- 11 came back. We all met back at my vehicle. That's when it was like,
- 12 it really sunk in. It was like, "Man, this is happening. You know,
- 13 he's not here."
- 14 Q. You gave direction, and did they search every part of the
- 15 observation post?
- 16 A. They did. Yes, ma'am.
- 17 Q. Did the accused have a tent or a sleeping area?
- 18 A. Yes, ma'am. The sleeping area in the vicinity of his
- 19 vehicle, which was mine at the time.
- 20 Q. Was everything in order in his sleeping area?
- 21 A. Yes, ma'am. It was.
- Q. Any signs of a disruption or a fight or anything?

- 1 A. No, ma'am. As I recall, his weapon and all his sensitive
- 2 items were laid out on top of his cot, ma'am.
- 3 Q. So they could be accounted for?
- 4 A. Yes, ma'am.
- 5 Q. After your leaders -- your NCOs reported back to you, what
- 6 did you do next?
- 7 A. I moved up into the TC -- or the passenger side of the
- 8 vehicle -- of my vehicle. And I began writing a BFT message to the
- 9 company, basically outlining the time line for that morning and then
- 10 advising them that we had a DUSTWUN and that one of our Soldiers was
- 11 missing.
- 12 O. And what is BFT?
- 13 A. Blue Force Tracker, ma'am.
- Q. Did you know immediately what to say, or what did you have
- 15 to do first?
- 16 A. I didn't really know what to say. You know, I just needed
- 17 to inform my higher headquarters that I had a Soldier that was
- 18 unaccounted for at this time period.
- 19 Q. What were you thinking at this time?
- 20 A. I was in shock, ma'am. In absolute, utter disbelief that,
- 21 you know, I couldn't find one of my own men. It's a hard thing to
- 22 swallow.
- Q. Were you with -- who was your platoon sergeant?

- 1 A. Sergeant First Class Larry Hein, ma'am.
- 2 Q. And what was his demeanor while you were conferring and
- 3 writing the message?
- A. So I was writing the message and, you know, in the back of
- 5 my mind, there's still, like, a little hope that like the guys are
- 6 just messing with me, you know. And so I looked over at Sergeant
- 7 Hein; and I said, "Hey, all right, I'm getting ready to send this
- 8 message. Is there anything else I need to say?"
- 9 And he goes, "Go ahead and send it, sir. You should have
- 10 sent it 10 minutes ago."
- 11 Q. How did you feel when he said that?
- 12 A. My heart absolutely just fell. It was, like, just -- the
- 13 realization that everything that you've talked about or been doing
- 14 for like the last 10-15 minutes or however long it was -- because it
- 15 just seemed like it never ended -- slapped you in the face. And it
- 16 was real. It was reality now. Even though you just lived it, it
- 17 didn't really hit in until he'd said those words to me.
- Q. Did you send the message?
- 19 A. I did. Yes, ma'am.
- 20 Q. What did you do after you sent the message?
- 21 A. This is where everything kind of runs together, ma'am. But
- 22 we had established a patrol and conducted a dismounted patrol locally
- 23 around the Mest OP.

- Q. So after you sent the message, did you gather your leaders?
- 2 A. I did. Yes, one more time, ma'am.
- 3 Q. And did you brief them about a patrol?
- A. I did. I pulled them together and I said, "Hey, this is
- 5 what we're going to do. I need to get a nine-man squad together to
- 6 go execute a patrol outside the wire, focusing, you know, in and
- 7 around the Mest OP. And then, you know, since there's a school up
- 8 there, maybe we can catch one of the schools or, off to the east,
- 9 catch one of the farmers. Maybe they saw something or heard
- 10 something."
- 11 Q. Had you planned this patrol?
- 12 A. Very hastily, yes, ma'am.
- Q. Was it the patrol that you had ----
- 14 A. No, ma'am. It is not the patrol that we had planned the
- 15 day before at all.
- 16 Q. The one that you had cancelled?
- 17 A. Yes, ma'am.
- 18 Q. Did you take that patrol out?
- 19 A. I did. Yes, ma'am.
- O. Was it on foot or in vehicles?
- 21 A. It was on foot, ma'am.
- Q. And could you describe where you went with the nine-man
- 23 patrol?

- 1 A. Yes, ma'am. We went up to the top portion of where the
- 2 bunker was at, walked down to the northeast, down the backside of
- 3 that hill, kind of skirted around the edge between Audi and the
- 4 rolling hills to the west of Route Audi, making our way up towards
- 5 what was a boys' school that was there in hopes that somebody saw
- 6 something or they could tell us something or anything at which point
- 7 we ran into a boy and we started talking to him about it.
- 8 Q. And what did you learn?
- 9 A. He had pointed to his watch and said, yeah, he'd seen an
- 10 American. And he gave a time, you know, 8:06 I think or something
- 11 like that. I can't remember the exact time. But he -- what stuck in
- 12 my head was -- I was like, "Well, how do you know the time?" And he
- 13 pulled up his sleeve; and he had, like, an American, like, Casio
- 14 watch on so...
- 15 Q. Is that unusual for a child to have a watch?
- 16 A. It's unusual for an Afghan to have a watch. I mean, they
- 17 just don't have those luxuries. So I found it weird that he had
- 18 that, but it was also kind of enlightening that, hey, this guy just
- 19 gave me a time and said he's seen an American. Whether it was true
- 20 or not, it was still, you know, in my eyes, some sort of hope.
- Q. Okay. Where did you go after that?
- 22 A. We circled back around, going off to the east and then came
- 23 through the farm fields to the northeast and then back down through

- 1 the wadi system that led to the intersection of Dodge and Audi,
- 2 taking us back up to the OP.
- 3 Q. Did you find any other sign of the accused during your
- 4 patrol?
- 5 A. No, ma'am.
- 6 Q. Do you recall was it daylight by now?
- 7 A. Yes, ma'am.
- 8 Q. What part of the morning was it?
- 9 A. Early morning, ma'am, before noon. It was starting to get
- 10 warm out, but it was that time period.
- 11 Q. And this was 30 June 2009?
- 12 A. Yes, ma'am.
- Q. Would you have conducted this dismounted patrol if the
- 14 accused had not left?
- 15 A. No, ma'am. This was strictly going to be -- that morning
- 16 was going to be a time for our guys to pull guard and kind of get a
- 17 little break from the day before because they had really busted their
- 18 butts on the OP, made significant, huge gains going forward. So that
- 19 morning was going to be strictly to just kind of rest up a little
- 20 bit, ensure that we had everything packed up, ready to roll, so the
- 21 transition with 3rd Platoon, when they came to relieve out with us,
- 22 would go seamlessly and we could get the boys back to Sharana.

- 1 Q. Did taking out that unplanned nine-man foot patrol decrease
- 2 your ability to defend Observation Post Mest?
- 3 A. It absolutely did. Yes, ma'am.
- Q. When you came back to the OP with your patrol, what
- 5 happened next?
- 6 A. This is really where everything kind of bleeds in. I
- 7 remember being talked and told to go occupy a blocking position off
- 8 to the east of Mest-Malak.
- 9 Q. And by this time, you were receiving directions and orders
- 10 from the company and the battalion?
- 11 A. Yes, ma'am. So we're getting BFT messages -- Blue Force
- 12 Tracker messages from the company saying, "Hey, you know, give us
- 13 updates. If you hear this, anything from this..." And then, at that
- 14 point, that's when they started directing us to go out and establish
- 15 these blocking positions.
- Q. Did you take your vehicles when you set up the blocking
- 17 positions?
- 18 A. Yes, ma'am. We did.
- 19 Q. How many vehicles did you leave back at Mest?
- 20 A. So this was a split operation. So I took three vehicles
- 21 off to the east going in the vicinity of the cemetery to the east of
- 22 Mest and Malak, and I left two vehicles back at the Mest OP or vice

- 1 versa. I can't remember the exact details of those, but it was two
- 2 and three. It was a split patrol, though.
- 3 Q. Would you normally leave just two vehicles back at the
- 4 observation post?
- 5 A. Absolutely not, ma'am.
- 6 Q. Why?
- 7 A. You can maneuver sets of vehicles -- you know, two vehicles
- 8 and three vehicles -- so they're mutually supporting each other. But
- 9 I would never in a million years just say, "Hey, here's two vehicles.
- 10 Go on your own," which is -- because of the space and we were close
- 11 enough -- I felt comfortable assuming a little risk and saying, hey,
- 12 if something happens, I can beat feet back down the road or one of
- 13 these trails and get back to them and mutually support them within a
- 14 minute or so. But anything farther than that, I absolutely would not
- 15 have left them by themselves.
- Q. Had the company started arriving at the OP with assets yet?
- 17 A. Not at this point, ma'am. While I was out there in the
- 18 blocking position to the east by the cemetery, I believe, is when the
- 19 vehicles and the helicopters started arriving on site.
- 20 Q. And those are vehicles from the company and the battalion?
- 21 A. The company and the battalion, yes, ma'am.
- Q. And your company commander at some point, Captain Silvino,
- 23 arrived?

- 1 A. Yes, ma'am. He either came by himself or rode with the
- 2 battalion staff -- the S-3, but he did show up on site. Yes, ma'am.
- 3 Q. So basically leadership from the task force started showing
- 4 up at your tiny OP?
- 5 A. Absolutely, yes, ma'am.
- 6 Q. And you mentioned other assets coming in. What assets
- 7 began arriving at the observation post?
- 8 A. At some point, you could hear helicopters coming in. And a
- 9 helicopter landed and a guy runs over to me, and he was from the
- 10 101st Pathfinders. You know, I don't know what rank he was; but he
- 11 came over and started talking to me and said, "Hey, we're going to be
- 12 going over here, doing this." I don't remember the specifics. I
- 13 mean, I could barely hear the guy. But then he ran back to his
- 14 helicopter and, like, flew away to do whatever he was going to go do.
- Q. Was it normal for a Pathfinder unit to arrive at your OP?
- 16 A. No, ma'am. Those are, like, division-directed assets that
- 17 are controlled by the CG. So interaction at my level is only when
- 18 something's going on.
- 19 Q. Had any assets like that -- the helicopters, the
- 20 Pathfinders -- had they ever been to Observation Post Mest before?
- 21 A. No, ma'am, not during my time period or that I can recall.
- Q. Were there communications platforms on the top of the --
- 23 did communications platforms arrive?

- 1 A. Yes, ma'am. We had these teams that would intercept radio
- 2 signals and translate those and let us know what the Taliban or
- 3 enemies in the area were talking about.
- 4 Q. Were those normally on your hilltop?
- 5 A. They were not. No, ma'am.
- 6 Q. Did you do a RIP or relief with 3rd Platoon that day?
- 7 A. Not a formal one, ma'am. By the time the battalion showed
- 8 up and then all their vehicles -- I mean, down at the base of this
- 9 hill, you know, you've got 10 vehicles. So as we pulled our vehicles
- 10 out in preparation to continue operations looking for Sergeant
- 11 Bergdahl, there was no formal RIP and/or relief in place of those
- 12 guys.
- 13 Q. Now, you're describing this very calmly. What was the tone
- 14 and tenor of what was going on at the observation post that day?
- 15 A. A little bit of, I would think, kind of internal
- 16 franticness for myself. I mean, I was absolutely emotional. You
- 17 know, here's one of my guys missing, and I don't know where he's at.
- 18 Q. And you had a lot of assets that you'd never seen before
- 19 ----
- A. Absolutely.
- 21 Q. ---- arriving suddenly?
- 22 A. Yes, ma'am.
- Q. Had you planned for this?

- 1 A. No, ma'am.
- 2 Q. What were your Soldiers -- were you able to observe what
- 3 your Soldiers were feeling?
- A. Some of them, yes, ma'am. You know, a lot of them -- just,
- 5 like, disbelief. Like, "Man, I can't believe this is happening."
- 6 And like, you know, "What's going on?" "Where's Bergdahl?"
- 7 You know, nobody knows, you know. Did he walk off? Did he
- 8 get kidnapped? I mean, nobody knows. I mean, everybody's got a
- 9 million things going through their head, their own little theories or
- 10 thoughts or ideas or anything. So all of these guys -- they're just
- 11 doing that. They're running it over.
- 12 Like the last time -- you know, for me, I just kept playing
- 13 the image of the last time I saw Bergdahl when I was walking to the
- 14 latrine. And, you know, it's, "Hey, what's up guys?" I mean, that
- 15 was, like, my last interaction with this guy.
- Q. And he seemed perfectly normal on 29 June when you saw him?
- 17 A. Yes, ma'am.
- 18 Q. So the Soldiers -- 30 June, the Soldiers are in complete
- 19 disbelief?
- A. Absolutely.
- 21 Q. Now, I'd like to break down -- the search went on from
- 22 30 June until about the end of August?
- 23 A. Yes, ma'am.

- 1 O. And I'd like to break that down into some blocks of time
- 2 just for ease. Three blocks of time. The first is 1 July -- or
- 3 30 June or 1 July up to 20 July.
- 4 A. Yes, ma'am.
- 5 Q. And why was 20 July a significant date for you?
- A. Because that was the first time we got to go back to FOB
- 7 Sharana.
- 8 Q. Okay. And then the second block of time would be 20 July
- 9 through 15 August?
- 10 A. Thereabouts, yes, ma'am.
- 11 Q. And then the week before the elections at the end of
- 12 August?
- 13 A. Yes, ma'am.
- 14 O. Let's move into the first block of time that you recall,
- 15 the beginning of July to about 20 July. What was your mission?
- 16 A. To find Bergdahl, ma'am.
- 17 Q. How did you accomplish that mission? What were some of the
- 18 tasks that you were sent out to do?
- 19 A. We got a myriad of associated tasks, you know, that
- 20 infantry companies and platoons do on a day-to-day basis,
- 21 establishing traffic control points with our ANA partners.
- Q. And what do you do at a traffic control point?

- 1 A. It's basically where you set up a barricade and a
- 2 serpentine so it slows the traffic so vehicles have to flow through,
- 3 have some sort of discussion with the ANP. And the ANP can say,
- 4 "Hey, this guy -- he's legit. He's good to go forward." Or, "Hey,
- 5 this guy, you know, seems kind of shady," and they can continue to
- 6 search his vehicle.
- 7 These were set up in the event that Bergdahl was being
- 8 smuggled in the trunk of a vehicle, whatever. Those guys would help
- 9 us intercept that vehicle, and then we'd find him.
- In addition to that, we'd go and set up blocking positions
- 11 as special operations guys were going in and hitting target areas or
- 12 just setting up a blocking position because that was a known enemy
- 13 infill route or ex-fill route going either to the east or the west,
- 14 in addition to conducting cordon-and-searches or cordon-and-knocks
- 15 with our ANP and ANA counterparts, you know, going to a village
- 16 and/or a galat and you -- you know, you secured the area. And then
- 17 what it is, is once the area is secured, then you do a call out. All
- 18 the military-aged males come to one side. You segregate the females
- 19 and the kids. And then you go in with the elder and the ANP and the
- 20 ANA counterparts, and you conduct a search of the -- you know, the
- 21 compound.
- 22 Q. And that's what you referred to as a cordon-and-search or a
- 23 cordon-and-knock?

- 1 A. Yes, ma'am.
- 2 Q. And what's a galat?
- 3 A. A qalat is a -- it's their form of a house. So it's -- you
- 4 know, it's a mud wall -- mud-based building with walls 2 or 3 feet
- 5 thick. And that's the actual house, and then you've got a wall
- 6 around it. And historically or traditionally, we just call them
- 7 compounds.
- 8 Q. And during this block of time, were you also conducting air
- 9 assaults?
- 10 A. Absolutely, yes, ma'am.
- 11 Q. Could you describe an air assault?
- 12 A. Some of them were a little bit more planned, in depth.
- 13 During this time period it was, "Hey, go here. Drive down to KKC to
- 14 a village down in the south where we had some embedded U.S. Army and
- 15 Navy trainers for the ANA and ANP." You know, we'd link up at KKC.
- 16 They would give us an element, whether it be ANA or ANP, sometimes
- 17 both. And we'd stage and go on the HLZ and get into PZ posture,
- 18 which is, you know, if I know I'm riding on this helicopter, I'm
- 19 staged in a line, getting ready to load this helicopter up. If I'm
- 20 in this helicopter, I'm staged in a line on this side. So all the
- 21 guys are over here ready to -- in PZ posture, ready for when the
- 22 helicopters land.

- 1 You would think that normally this would be a time period
- 2 where, you know, hey, you know, you'd get a little break waiting for
- 3 the helicopters. And that's true for, like, the lower guys -- the
- 4 lower-enlisted guys. But during this time period, you know, all the
- 5 leaders are, hey, you know, filling up MREs, making kicker boxes or
- 6 whatever to take along with us, making sure everybody's got enough
- 7 water, filling up CamelBaks so that way the guys that need the most
- 8 rest are getting the most rest, which is the Soldiers.
- 9 Q. Now, you get on a helicopter. The helicopter would fly
- 10 somewhere, and then what would happen?
- 11 A. Several things. Again, it goes back into any one of those
- 12 operations. We could end up moving to a hilltop or a piece of
- 13 terrain and establishing a blocking position ----
- 14 O. Uh-huh [indicating an affirmative response].
- 15 A. --- or a traffic control point with our counterparts,
- 16 moving to a village and doing a cordon-and-search or a
- 17 cordon-and-knock.
- Q. Why would you insert by helicopter as opposed to walking or
- 19 driving?
- 20 A. Based on distance and/or if the terrain was not navigable
- 21 by vehicles.
- 22 Q. So there's no other way to get in?
- 23 A. No other way to get in there.

- 1 Q. Now, normally you have a deliberate planning process when
- 2 you can brief your Soldiers. Briefly, prior to 30 June 2009, what
- 3 was that planning process?
- A. I would get the operation or the mission from the company.
- 5 You know, so I would know, hey, on 25 June, as an example date, we're
- 6 going to go do a movement to Mest OP. So, on or about sometime on
- 7 the 24th, the day prior, I'd give the guys the final operations order
- 8 or FRAGO and say, "Hey, we're going to Mest OP on the 25th. You guys
- 9 are already tracking. This is the time line for tomorrow morning.
- 10 This is where we're going to do SP. Here's kind of like some implied
- 11 tasks that I need you guys to make sure you accomplish. One squad, I
- 12 need you to make sure you have extra wire" -- blah, blah, blah --
- 13 whatever it may be. And that was done the day before, prior to the
- 14 execution of an operation.
- 15 Q. Did that change after 30 June 2009?
- 16 A. Yes, ma'am. It did.
- 17 Q. How did it change?
- 18 A. It changed -- instead of having, like, a more deliberate
- 19 process to plan -- at my level, you know, my process of planning
- 20 entails me being able to look at it, decipher some sort of enemy
- 21 situation, and then come up with a plan of, if something was to
- 22 happen, this is how I would do it or these are the actions that I

- 1 would take. And usually, I'm given some time to think about that and
- 2 develop a plan and then brief that to the subordinates.
- 3 After 30 June, you really didn't get a lot of time to think
- 4 about it. So it was a little bit of planning of the fly. "Hey, this
- 5 is where we're going to. This is the name of the objective we're
- 6 going to hit. Or, hey, this is the compound we're going to," giving
- 7 them a grid. Very implied. Very specific. "Hey, 1st Squad, you're
- 8 going to do this, this, and this." And then continue down on that
- 9 process. Sometimes briefing that plan right in PZ posture waiting
- 10 for a helicopter.
- 11 Q. You gave me an airborne analogy for this planning process.
- 12 What was that airborne analogy?
- 13 A. It's kind of like rigging and conducting JMPI in flight in
- 14 an aircraft.
- 15 DC: JMPI?
- 16 PHO: Yeah, you're going to have to explain.
- 17 A. Jumpmaster Pre-Inspection.
- 18 Q. And that's the safety checks, right?
- 19 A. The safety checks a jumpmaster of a helicopter -- when he's
- 20 got his Paratroopers in them, they do these checks on everybody to
- 21 make sure that all their gear is working properly.
- 22 So I said earlier, it was very similar to that because it
- 23 felt like we were getting ready to load the helicopters and, as we're

- 1 doing that, you know, I'm checking these guys and making sure that
- 2 they have everything that they need to do to operate safely during
- 3 this mission.
- 4 Q. And to be clear, on-board JMPI is very unusual?
- 5 A. It almost never happens that I know of, ma'am.
- 6 Q. Roger.
- 7 A. Combat operations only.
- 8 Q. Now, before 30 June 2009, you described the planning
- 9 process. You do a combat patrol. You do an engagement. Was this
- 10 particular OPTEMPO -- before 30 June 2009 with that planning process,
- 11 was that demanding or not demanding?
- 12 A. I don't think -- it was planning intensive. It required
- 13 myself to spend a little bit more time in the office thinking about
- 14 plans and routes and stuff like that, but it was not more demanding
- 15 physically for the Soldiers. No.
- 16 Q. Did the OPTEMPO increase after 30 June 2009?
- 17 A. Yes. It did, ma'am.
- 18 O. A little bit? A lot? Describe how it increased.
- 19 A. It increased from us doing, you know, maybe a patrol a day
- 20 to conducting several patrols a day. And what I mean by that is we
- 21 would move to -- you know, for instance, move to an established
- 22 blocking position on top of a hilltop or a piece of terrain ----
- 23 Q. And by move ----

- A. We could be mounted or dismounted at this time. I'm just,
- 2 as a scenario, "Hey, Lieutenant Billings, I need you to move to and
- 3 establish a blocking position."
- 4 Q. Uh-huh [indicating an affirmative response].
- 5 A. I could sit there with my men for as little as an hour, a
- 6 couple hours, or a day, and then immediately get the FRAGO to change.
- 7 So, "Hey, into whatever saying whatever -- we need you to move from
- 8 this block position and go establish two TCPs and, in addition to
- 9 that, while you have those two TCPs established, I want you to move
- 10 into this galat or engage the local elders in the vicinity of this
- 11 village and see if they've heard anything about Bergdahl."
- 12 And it would historically just go like that from one
- 13 mission to the next mission to the next mission where the only real
- 14 time that a guy had to re-set or re-think about the new mission was
- 15 when we were getting ready to go execute the next mission.
- Q. And by move -- if you're dismounted, move actually means
- 17 hike, right?
- 18 A. Absolutely, ma'am. You're walking on your feet going from
- 19 one point to the next.
- Q. Miles upon miles?
- 21 A. Absolutely, ma'am.
- Q. What kind of load was each Soldier carrying?

- 1 A. It varied between -- I mean, a guy could have 60 pounds to
- 2 all the way up to 100 pounds if he was, you know, a machine gunner or
- 3 a radio -- an RTO that had to carry extra batteries for the radio.
- 4 Q. And during this block of time, you're living completely
- 5 outside the wire?
- A. Yes, ma'am.
- 7 Q. And everything that the Soldier had, where does he carry
- 8 that?
- 9 A. He carried it either in the vehicle or on his person,
- 10 ma'am.
- 11 Q. How were you feeling during this first block of time?
- 12 A. I was exhausted, ma'am. Mentally and physically, I had --
- 13 you know, for the first time in my career that I'd ever lost
- 14 accountability of a Soldier. I didn't know if, you know, it was
- 15 something I did, if it was something I failed to do. I mean, there
- 16 were a myriad of emotions that were just crushing me inside because I
- 17 couldn't find my guy.
- But, I mean, during that first time period, you know, I'd
- 19 gotten a run of dysentery or something and, you know, with all other
- 20 terms, you know, I'd shit my pants. And I could not change that
- 21 uniform or out of another uniform because I didn't have one to change
- 22 into. So I ended up wearing that whole entire uniform during that
- 23 first 19-day period.

- 1 Q. And was that the same situation that your Soldiers had?
- 2 A. For the most part, yes, ma'am. I mean, you have a packing
- 3 list that you establish; and you go out with an extra set of uniforms
- 4 and everything else. But, you know, when you're working around
- 5 concertina wire, pickets, and stuff like that, things are going to
- 6 happen to those uniforms.
- 7 Specifically, in my situation, the reason I couldn't change
- 8 was concertina wire had grabbed a portion of my inside leg; and it
- 9 ripped it all the way up. So knowing that I was going to be going
- 10 out and talking to locals, potentially females and whatever, in
- 11 villages, I couldn't necessarily have an exposed region like that on
- 12 my pants. So I had to wear my dirty pants.
- Q. So you had one set of uniforms for this 20-day period?
- A. Yes, ma'am.
- 15 Q. Outside the wire the entire time?
- 16 A. Yes, ma'am.
- 17 Q. How hot was it in Afghanistan during this time period?
- 18 A. It was very hot, ma'am. Especially taking into
- 19 consideration with the weight and the body armor and everything else
- 20 on, it was very hot.
- Q. What is very hot?
- 22 A. 90, 95, 100 degrees some days. It just depends on if
- 23 you've got a little bit of shade to stand in or not.

- 1 Q. And you were living outside this entire time?
- 2 A. Yes, ma'am. We were.
- 3 Q. What happened to your -- what happened to the Soldiers'
- 4 socks and t-shirts during this period?
- 5 A. A lot of them got re-used, were falling apart. T-shirts
- 6 were ripping. We didn't have, you know, a store where we could go
- 7 buy toilet paper at. So some guys were cutting off the tops of their
- 8 socks, the bottoms of their t-shirts, to use as toilet paper as they
- 9 ran out of toilet paper, you know, from the MREs or whatever they
- 10 had.
- 11 Q. And the t-shirts ----
- 12 DC: Colonel, excuse me ----
- 13 PHO: Please stand by for a moment.
- DC: I think this would be a good time to take a break.
- 15 PHO: A comfort break?
- 16 DC: Yes, sir.
- 17 PHO: That's a good idea.
- 18 I've got 1045 by my clock. Ten or fifteen minutes?
- 19 DC: I would say eleven o'clock.
- 20 PHO: Yeah. Why don't we shoot for eleven o'clock?
- About how much longer do you have with your questions?
- TC: We still do have a fairly significant amount of time with
- 23 this witness.

- 1 PHO: Okay. And how long are we anticipating for cross?
- DC: I'd say 20 or 30 minutes.
- 3 PHO: All right. So let's go ahead and break. I'm going to work
- 4 off the clock in the back until 1100 hours.
- 5 [The Article 32 hearing recessed at 1045, 17 September 2015.]
- 6 [The Article 32 hearing was called to order at 1103,
- 7 **17 September 2015.**]
- 8 Pho All right. So the same parties that were present at the
- 9 recess are again present, to include Captain Billings, who is sitting
- 10 at the witness stand.
- 11 Major Kurz, you may continue.
- 12 The direct examination of Captain Billings continued by the trial
- 13 counsel:
- Q. Captain Billings, before we took a break, we had started
- 15 discussing the operations tempo, or OPTEMPO, before 30 June and
- 16 after ----
- 17 A. Yes, ma'am.
- 18 Q. ---- June -- after 30 June 2009.
- 19 A. Yes, ma'am.
- 20 Q. And you described some of the operations that you did
- 21 before 30 June 2009 with your platoon: guard duty, combat patrols,
- 22 QRFs. Was that a physically demanding schedule before 30 June 2009?

- 1 A. It is. Yes, ma'am. I mean, you're taking a guy who's, you
- 2 know, working in the blazing heat, you know, doing whatever may be --
- 3 and then you're asking him to put on an additional 70 to 100 pounds
- 4 worth of gear, conduct a dismounted patrol for 3 to 4 hours, and then
- 5 come back to the OP, and go -- potentially go back on another guard
- 6 shift before that nighttime even hits, and then go into another
- 7 nighttime guard rotation. That was pre-30 June. So I mean, it was
- 8 still very physically demanding. It takes wear and tear on the body
- 9 as you go, progress throughout; but as leaders, we can kind of offset
- 10 that, you know, and hopefully tailor it a little bit.
- 11 Q. After 30 June 2009, how did the OPTEMPO change -- if any?
- 12 A. It changed significantly, ma'am, and what I mean ----
- Q. And by "significantly," what do you mean?
- 14 A. What I mean by that is: Operations just continued to -- it
- 15 seemed like it just never ended. So, emotionally, the guys are
- 16 getting worn down. They have no idea where one of their comrades are
- 17 at ----
- 18 CDC: Uhm ----
- 19 A. ---- it's a Soldier ----
- 20 CDC: Mr. Presiding Officer, could we have an 802 conference
- 21 or whatever it's ----
- 22 PHO: An informal ----
- 23 CDC: An "informal, informal."

- 1 PHO: Okay. Can we do it here, or do we need to step ----
- 2 CDC: It may be ----
- 3 PHO: --- into the side room?
- 4 CDC: ---- easier if those who have to be at that step out rather
- 5 than annoy everybody else. Or we can just do it at your place.
- 6 PHO: Let's go ahead and step out. The parties can remain in
- 7 place. It should be no longer than ----
- 8 CDC: Correct.
- 9 PHO: ---- 5 ----
- 10 CDC: Oh, if that.
- 11 PHO: --- 5 minutes, if that. Okay. So we're just going to
- 12 step out, and then we'll be back to continue.
- 13 [The Article 32 hearing recessed at 1105, 17 September 2015.]
- 14 [The Article 32 hearing was called to order at 1108,
- 15 **17 September 2015.**]
- 16 PHO: Okay. Before we begin, I will just note that the parties
- 17 are again present. The same parties who were present when we went
- 18 into an informal hearing are again present.
- 19 Just for the record: I would note that during the --
- 20 during the informal conference, defense objected to the repetitive
- 21 nature of questioning and the length of time that it took. And I
- 22 noted that objection but did not issue a formal ruling at this point.
- You may continue, Major Kurz.

- 1 TC: Thank you.
- 2 The direct examination of Captain Billings continued by the trial
- 3 counsel:
- Q. Captain Billings, I'd like to sum up this first block of
- 5 time that you described. Was the operations tempo slower or faster
- 6 than prior to 30 June 2009?
- 7 A. Much faster, ma'am. It's -- one day bled into the next
- 8 day. I mean, from a Soldier's perspective who's down at the user
- 9 level executing these tasks every day, you know, he's getting very
- 10 little information. You know, like I said before, Soldiers like to
- 11 be informed. So, if you can give them a little bit of predictability
- 12 as to what they're going to be doing, they can plan some downtime and
- 13 kind of recuperate. During this time period, they didn't have
- 14 downtime. I mean, they were continuously going. We afforded them
- 15 some opportunity to get a little bit a rest or downtime, you know,
- 16 sitting in PZ posture when the leaders did things like filling up
- 17 their CamelBaks with water.
- But I mean, continuously during this whole time period,
- 19 emotionally and physically they're getting drained. Emotionally,
- 20 because they have -- you know, intelligence is telling them to go
- 21 here, telling us to go there, telling us to go do this, telling us to
- 22 go do that -- just one thing after another to another to
- 23 another. And at some point, these guys had to look at themselves and

- 1 says, "When is it going to end?" Because I know I did. I mean, I
- 2 absolutely was like, "Man, you know -- you know, are we going to find
- 3 this guy or what? I mean, we're going and going and going and going.
- 4 Is it ever going to end, or is the cycle just going to continue to go
- 5 this entire deployment?"
- And then physically, because you're not getting sleep or
- 7 what sleep you are getting, you know, is in the back of an MRAP or on
- 8 the ground out in the middle of the desert somewhere -- you know, you
- 9 don't have a sleeping bag, you don't have anything to help keep
- 10 yourself warm or cool during the day when you're walking in
- 11 100-degree temperatures carrying 100 pounds of gear. So physically
- 12 and mentally demanding much more so than it was prior to that.
- 13 Q. Thank you.
- Now, on 20 July 2009, you recall a break at Sharana. Why
- 15 were you called back to FOB Sharana?
- 16 A. I believe we went back, ma'am, to do some sworn statements
- 17 and answer some questions during that time period.
- 18 Q. Initially, how long did you anticipate your period of refit
- 19 at Sharana to be?
- 20 A. I was anticipating a day, if not hopefully 2 days.
- 21 Q. How long did you actually get?
- A. A couple hours, ma'am. I think it was about 4 or 5 hours.
- 23 It was very short.

- 1 Q. Were you able to clean up at this point?
- 2 A. We were able to shower, ma'am -- yes, ma'am -- and change
- 3 uniforms. We didn't get guite the refit that we would have liked to
- 4 have gotten, you know. Obviously, we would have liked to have got
- 5 the guys on the beds, get some sleep for good solid hours, you know,
- 6 get them some hot chow, restock on some of the necessities, tobacco
- 7 -- you know, lickies and chewies and stuff like that.
- 8 Q. I'd like to move into the second block of time,
- 9 approximately 20 July to middle of August.
- 10 A. Yes, ma'am.
- 11 Q. On 20 July, you completed a few hours of refit at Sharana.
- 12 Did you receive a mission after that?
- 13 A. Yes, ma'am. We were going to go back out and again support
- 14 operations of looking for Sergeant Bergdahl. It came, you know, like
- 15 I said, very, very soon. I was not expecting to go out immediately
- 16 after that.
- Q. And what were the -- again what were the -- were the types
- 18 of operations you were conducting during the second block of time the
- 19 same or different than the types of operations you were conducting
- 20 during the first block of time?
- 21 A. From our -- I mean, tactically, they were the still the
- 22 same operations. The execution time lines, you know, from day to day
- 23 to day, as you progress and get farther away from 30 June --

- 1 obviously planning time lines get a little bit more lengthened. But
- 2 during that time period, even still, you know, immediately after the
- 3 4 hours, your planning time line is still restricted and condensed as
- 4 they, you know, are action-ing this intelligence as quickly as
- 5 possible. So they're getting boots on the ground as quickly as
- 6 possible.
- 7 Q. Was the operations tempo during the second block of time
- 8 the same or different than the first block of time?
- 9 A. It was different. It slowed down just a little bit at
- 10 points. It was not continuous, you know, just beat you down -- go,
- 11 go, go ----
- 12 Q. Okay ----
- 13 A. --- as bad as the first block of time.
- 14 O. How were your noncommissioned officers feeling during this
- 15 period of time?
- 16 A. The NCOs are absolutely are -- they beared [sic] the weight
- 17 of the platoon. I mean, they were the ones who went without sleep,
- 18 who went without water, or went without chow in order for their
- 19 Soldiers to be able to eat, sleep, and drink water if that be the
- 20 case during the time period. You know, not every day was that the
- 21 case. But they absolutely were the ones that, you know, would pick
- 22 up an extra guard shift so a Soldier who, you know, looked tired and
- 23 wore out and beaten up -- because you could see it in their faces --

- 1 an NCO would, you know, be the guy who would step in there and let
- 2 that guy get some sleep when he needed it, knowing that, you know,
- 3 the guys who should be getting some sleep themselves are the leaders
- 4 because they're the ones that need to make those key decisions in a
- 5 record [sic] of time.
- Q. During this block of time, how are your Soldiers feeling?
- 7 A. Again, they're still beat down physically and mentally, you
- 8 know ----
- 9 Q. Describe that for me.
- 10 A. So we went back for a 4-hour break, and the guys thought,
- 11 hey, you know, at this time, I'm going to get an opportunity to buy
- 12 tobacco, buy, you know, Copenhagen, lickies and chewies -- whatever
- 13 it may be. We gave them some tasks. We refit the vehicles, and then
- 14 immediately, bam, you're thrown back into it. "All right, guys.
- 15 Let's go." So now, I've taken what was or should have been a
- 16 morale-building event for them -- some time to R&R, recoup, sleep,
- 17 eat -- and now, I've just told them, hey, in 4 hours -- 3 hours,
- 18 we're getting ready to get back in the vehicles and we'll go right
- 19 back after it.
- 20 And they were -- I mean, emotionally busted. I mean, think
- 21 about it: We just spent 19 -- 20 days going 20 -- 19 to 20 hours a
- 22 day, continuous operations from all hours -- daylight, nighttime --
- 23 from one mission to the next, with ANA, with ANP, without either one

- 1 of them. Continuous operations damn near every day. Come back for a
- 2 4-hour refit, "Hey, you guys get a break." And then it's only 4
- 3 hours long, and you have to go right back into the hornet's nest, and
- 4 they have no idea why.
- 5 They're like, "Hey, sir, why?" Like, "Why are we getting
- 6 screwed over on this?"
- 7 And I had to pull them aside and -- I had to pull the NCOs
- 8 aside, and say "Hey, look, I need you guys to make -- you know,
- 9 articulate to the men that it is absolutely our responsibility to go
- 10 out and exhaust all means and do everything we have to do to find
- 11 Sergeant Bergdahl. Everything. And I got it, man. I know you guys
- 12 are tired. I didn't get to sleep on the 4-hour break." Lots of my
- 13 NCOs and lots of my leaders didn't get to sleep at all. I mean, I
- 14 got it. But I told them, I was like, "I need you to go back there
- 15 and talk to the boys and get them to understand that this is
- 16 absolutely the most important thing that they'll probably ever do in
- 17 their entire lives."
- 18 Q. Could you physically describe what the -- what your
- 19 Soldiers looked like at the end of this block of time, their skin and
- 20 their appearance?
- 21 CDC: I'm going to object.
- 22 PHO: Yeah, I think we can move on to the next question. I think
- 23 we understand.

- Q. What was your state by the end of this block of time?
- 2 CDC: Same objection.
- 3 PHO: The end of which block of time?
- 4 TC: The second block of time, sir.
- 5 PHO: By the end?
- 6 TC: By the middle of August 2009.
- 7 The witness has talked about his state at the beginning of
- 8 the search. They've gone through 45 days. This is my last question
- 9 concerning this block of time. I'd like him to describe for the
- 10 hearing how he was feeling as the platoon leader at the end of this
- 11 block of time.
- 12 PHO: Okay. Let me make sure I understand this. Let me ask a
- 13 question. So this second block of time goes through, roughly,
- 15 WIT: Yes, sir.
- 16 PHO: And what was the break? What changed that you would say
- 17 that there is a break at this point?
- 18 WIT: At that time period, sir, is when we kind of began to
- 19 transition and get ready for the elections. So that's why ----
- 20 PHO: Okay. So you had a change of mission?
- 21 WIT: Yes, sir.
- 22 PHO: Okay. And did you go back to FOB Sharana?
- 23 WIT: Yes, sir. We did.

- 1 PHO: Okay. So as you were going back to FOB Sharana, then -- I
- 2 will allow that question in terms of "What was your state of mind as
- 3 you were finishing that second block?"
- 4 WIT: So as we were beginning -- finishing up that second time
- 5 period, we got the change of mission, obviously, to transition and
- 6 begin preparations for the upcoming elections. You know, I can't
- 7 speak for everybody else. For me, I was defeated. You know, for the
- 8 first time in my military career I'd ever [sic] lost a Soldier and I
- 9 didn't know where he was at; and that's a hard pill to swallow. You
- 10 know, was it something that I had done? Was it something I failed to
- 11 do? Was it a decision I didn't make? Was it -- you know, you just
- 12 don't know. You know, so physically and mentally, I was defeated
- 13 inside. You know, was I worthy to be a leader in the United States
- 14 Army because I had lost one of my Soldiers? All these questions are
- 15 running in my head. I mean, I don't know. I mean, nobody knows
- 16 anything -- you know, I mean, why he did what he did. But for me,
- 17 you know, dealing with it --
- And then we get the change of mission and we're heading
- 19 back to go to elections and, you know, I remember thinking to myself
- 20 and talking to the platoon sergeant, I said -- you know what -- when
- 21 we got the change of mission, I'd felt almost as if I had failed the
- 22 men, because we didn't bring one of our boys home.
- Q. Were you proud of your Soldiers?

- 1 A. Absolutely, ma'am.
- Q. I'd like to talk about the elections period. Elections
- 3 happened on or about 20 August 2009.
- 4 A. Yes, ma'am.
- 5 Q. What did you do for the week before the elections?
- 6 A. We moved to an ANA station base or OP where they worked out
- 7 of, ma'am, and we staged at that OP. So the directive that was given
- 8 to us was we were the local QRF for any of the local polling sites in
- 9 the event that a spectacular attack happened -- so a VBIED or attack
- 10 on a polling site. We would be the U.S. forces that immediately
- 11 reinforced those areas. However, what they didn't want is they
- 12 didn't want to put an American face on any portion of the election.
- 13 So we were supposed to stay out of sight, out of sound, away from
- 14 these areas as far as possible but still be able to reinforce them if
- 15 necessary.
- So we were given this ANA COP to go live at and stage for a
- 17 week. In that time period, in order to also keep the U.S. presence
- 18 down, my guys only had sporadic guard shifts up in the towers; and we
- 19 only did it at night, because we knew that the enemy had limited
- 20 capability with NVGs. So my guys could go up in the towers and pull
- 21 guard at night when I felt it was probably the most dangerous for us.
- 22 But during the daytime, we did not have any presence up in the
- 23 towers.

- 1 Q. Did they get a little bit of rest during this period?
- 2 A. They absolutely did, ma'am. This was, I mean, a huge
- 3 relief for the guys at this time period. Dealing with, you know, the
- 4 burden of not having found Bergdahl but knowing that, hey, finally
- 5 there's, like, a reprieve. You know, we're going into elections, it
- 6 should be a good event; you know, hopefully it's eventless. And it
- 7 was absolutely a time period for them to, you know, get underneath
- 8 some shade and get some sleep and catch up on some much needed rest
- 9 and recovery.
- 10 Q. After the elections, just briefly, did you receive a
- 11 follow-on mission?
- 12 A. Yes, ma'am.
- 13 O. And where was that?
- 14 A. We were to move to the northern portion of Mota Khan and
- 15 establish a combined outpost with the ANP there.
- Q. After you moved to Mota Khan, did intel collection -- or
- 17 finding intelligence on the location of the accused, did that
- 18 continue to be one of your tasks?
- 19 A. Yes, ma'am. It was pushed down from higher headquarters
- 20 all the way down to the battalion and the company and then,
- 21 subsequently, down to the Soldiers within my platoon.
- Q. How long did that continue?
- 23 A. Until we left, ma'am.

- 1 Q. You described briefly what the platoon was like before
- 2 30 June 2009. Did they ever get back to that state before you
- 3 redeployed?
- A. I don't think you can ever get back to a state of where you
- 5 were at before, having lived what they lived through. I just think
- 6 it's impossible. You know, without actually going to an objective
- 7 somewhere or finding Bergdahl alive and bringing him home -- that
- 8 would be the only thing that would probably get them close to that.
- 9 Were they close to that? Absolutely. I mean, we went to
- 10 Mota Khan and were hugely successful up there, and it was a tribute
- 11 to all those guys' hard work.
- 12 Q. During this whole period, did you get to talk to your
- 13 family?
- 14 CDC: Objection.
- 15 PHO: Yeah, I'm going to go ahead and sustain.
- Q. Was the accused present for duty on 29 June 2009?
- 17 CDC: Objection, asked and answered.
- 18 PHO: I'll allow it.
- 19 A. No [sic], ma'am.
- 20 O. 29 June 2009?
- 21 A. Or -- yes, ma'am. He was. I'm sorry.
- 22 Q. Was he present on 30 June 2009?
- A. No, ma'am. He was not.

- 1 Q. Did he report for his guard shift on the morning of
- 2 30 June 2009?
- 3 A. No ----
- 4 CDC: Objection, asked and answered.
- 5 PHO: I'll allow it.
- A. No. He did not, ma'am.
- 7 Q. Did he return to OP Mest or Sharana to your knowledge on
- 8 30 June 2009?
- 9 A. Not that I know of, no, ma'am.
- 10 Q. Did he have your authority or any person in the chain of
- 11 command that you're aware of to leave Observation Post Mest alone on
- 12 30 June 2009?
- 13 A. No, ma'am.
- Q. Did any Soldier have the authority to leave Observation
- 15 Post Mest alone?
- 16 CDC: Objection, irrelevant.
- 17 PHO: Sustained.
- 18 Q. When did you redeploy?
- 19 CDC: Objection, irrelevant.
- 20 PHO: I'll allow it.
- Q. When did you redeploy?
- 22 A. March two thousand -- I can't remember the month [sic] now.
- 23 PHO: Ten?

- 1 Q. March of 2010?
- 2 A. Yeah. March of 2010. I'm sorry, ma'am.
- 3 Q. To your knowledge, did the accused return to your unit,
- 4 Mest, Sharana, or U.S. military control before that date?
- 5 A. No, ma'am.
- 6 Q. When did you PCS or leave Fort Richardson?
- 7 CDC: Objection, irrelevant.
- 8 TC: I'm laying a foundation, sir.
- 9 PHO: Overruled.
- 10 A. I left out April of 2010, ma'am, to head to RTB.
- 11 Q. Did the accused return to Fort Richardson or military
- 12 control before you left Fort Richardson?
- 13 A. No, ma'am.
- Q. Have you followed the news in this case since 2009?
- 15 CDC: Objection, irrelevant.
- 16 TC: I'm laying the foundation ----
- 17 PHO: Overruled.
- 18 A. Yes, ma'am. I have.
- 19 Q. To your knowledge, did the accused return to military --
- 20 when did the accused return to military control?
- 21 A. I believe it was 31 May 2015, ma'am.
- Q. How did you become aware of this?
- 23 CDC: Objection, irrelevant.

- 1 PHO: I'll allow it for what it's worth.
- 2 A. I received a message from my wife to get on the news,
- 3 because they had found Bergdahl.
- 4 Q. How did you feel?
- 5 CDC: Objection, irrelevant.
- 6 PHO: Sustained.
- 7 TC: Thank you. No further questions.
- 8 PHO: Defense?

9 CROSS-EXAMINATION

10 Questions by the defense counsel:

- 11 Q. Captain Billings, you were scheduled to leave Mest on
- 12 June 30th, correct?
- 13 A. Yes, sir. I believe so.
- 14 Q. And that would eventually be handed over to the Afghan
- 15 National Security Forces?
- 16 A. The OP? Yes, sir. It would be.
- 17 Q. Your platoon wasn't going back there?
- 18 A. That's to be -- undetermined, whether the amount of work
- 19 that 3rd Platoon could get accomplished during that time period to
- 20 finish it up would really be the foundation of whether they could
- 21 turn it over or not.
- Q. Okay. And you were scheduled to head back to FOB Sharana
- 23 on the 30th, correct?

- 1 A. Yes, sir.
- 2 Q. FOB Sharana has MWR, internet, buildings, basketball
- 3 courts, Burger King, Pizza Hut, a 24-hour dining facility?
- 4 A. I believe so. Yes, sir.
- 5 Q. COP Mest was never attacked while you were there, correct?
- A. Not while we were there. No, sir -- 2nd Platoon.
- 7 Q. And while at COP Mest, your platoon was never in a tactical
- 8 engagement before the enemy, correct?
- 9 A. Not located at Mest, no, sir.
- 10 O. How many Soldiers were there at Mest on the 29th of June?
- 11 A. I believe 33, sir.
- 12 Q. How many Afghan National Police?
- 13 A. It varied in number, sir. We had an ANA counterpart and an
- 14 ANP counterpart. The ANP were tasked to give us the equal numbers of
- 15 about 30, or a platoon-sized element; and then we had about 15 ANA
- 16 that rotated in, because they were from the local villages.
- 17 Q. Thank you.
- 18 Is there a personnel report for 29 June, for example,
- 19 something that shows the number of Soldiers who were present, who
- 20 were on leave, who were sick, who were detailed to other duties?
- 21 A. Yes, sir.
- Q. Do you have that report?
- A. I don't physically have it on me. No, sir.

- 1 Q. Has that been turned over to the government?
- 2 A. I don't know what you're asking me ----
- 3 O. Do we know if this still exists?
- 4 A. I don't, sir. I have no idea.
- 5 Q. And because sometimes you would have to account for
- 6 different Soldiers who weren't present for duty. For example, at one
- 7 point, you -- there was a Soldier in your platoon who shot himself in
- 8 the foot, and he was out of commission for a while, right?
- 9 A. Yes, sir.
- 10 Q. Around COP Mest, that was covered in concertina, at one
- 11 point, there was a plywood board that would stay generally
- 12 permanently fixed over part of the plywood [sic], right?
- 13 A. Yes, sir.
- 14 Q. And ----
- 15 CDC: You mean over the concertina wire?
- 16 DC: Yes, over the concertina wire.
- And so that would allow your Soldiers, as long as they were
- 18 traveling in buddy teams, to go outside the wire; and they could walk
- 19 up to duty on the bunker or go socialize with the Afghans there
- 20 nearby?
- 21 A. Yeah. So they weren't necessarily outside the wire. The
- 22 way the perimeter was set up was: We had the main concertina around
- 23 the lower portion of the hill, and then there was another portion of

- 1 concertina wire that went around the OP or where the bunker was at.
- 2 So the concertina wire was set over a single strand -- or the board
- 3 was set over a piece of single-strand concertina wire that went from
- 4 the lower OP right behind the ANP location. That allowed the guys to
- 5 go up the hilltop right there. In the event that we were overrun or
- 6 whatever coming from the hilltop, which was the least likely avenue
- 7 of approach, we could just simply pull back that piece of wood and
- 8 then close it up. But it did stay there almost permanently during
- 9 that time period to allow the guys to traverse back and forth.
- 10 Q. So that actual platoon position -- the Soldiers could leave
- 11 that for limited purposes if they stayed in buddy teams? They could
- 12 go outside that wire?
- 13 A. It wasn't "the wire" though. I mean, when you say "go
- 14 outside the wire, "I'm thinking, like, outside the wire, like on a
- 15 combat patrol.
- There was a piece of concertina wire that dissected our
- 17 little outpost; but when they went across to, like, the bunker, that
- 18 wasn't "outside the wire" in my eyes. They were still within the
- 19 defensive perimeter of the bunker and the vehicle. So there was
- 20 vehicles and/or a posture that allowed them to be defended
- 21 accordingly based on the weapons systems in place.
- 22 Q. Okay. Thank you. Sergeant Bergdahl's job at COP Mest was
- 23 to help construct the site and pull security?

- 1 A. Yes, sir.
- Q. When dismounted patrols did go outside from COP Mest, they
- 3 never encountered any enemy contact?
- 4 A. Not that I can remember, no, sir.
- 5 Q. You had just arrived to COP Mest on about the 28th of June,
- 6 I think is right, correct?
- 7 A. Yes, sir.
- 8 Q. You had just returned from the States where you had been on
- 9 leave?
- 10 A. Yes, sir. I got back on or about, like, the 25th,
- 11 somewhere in there -- the 26th -- and then linked up with my platoon
- 12 and went out to Mest OP.
- 13 O. You remember Sergeant Bergdahl being somewhat frustrated
- 14 and bored with the mission? That he wanted to be really more kicking
- 15 in doors and pursuing the Taliban?
- 16 A. I don't personally remember that, sir. Some of the stories
- 17 that the guys had told me, you know, after the fact of Bergdahl going
- 18 missing, was that, yeah, he very much, you know, had these ideas of
- 19 what he would be doing in Afghanistan and his image of what he would
- 20 be doing wasn't necessarily what it was.
- 21 Q. You remember that he was really wanting to specifically get
- 22 after the guys who were planting the IEDs in the road?
- 23 A. I don't recall specifically. No, sir.

- 1 Q. Sergeant Bergdahl never gave you any disciplinary issues?
- 2 A. Not while I was the platoon leader, no, sir.
- 3 Q. Never had any alcohol or drug issues?
- A. Not while I was the platoon leader, no, sir.
- 5 Q. Safe to say he was dedicated to the mission?
- 6 A. Absolutely, sir. And like I said before, he was -- you
- 7 know, I had no reason to think otherwise. You know, he was a good
- 8 performer.
- 9 Q. Would you say he had an outstanding record of performance
- 10 in the time he served with you?
- 11 A. Up until 30 June, yes, sir.
- 12 Q. Moving on to the searches you conducted: Your platoon was
- 13 effective, and you accomplished the mission under your leadership,
- 14 right?
- 15 A. I don't think it was necessarily my leadership but their
- 16 ability to accomplish huge tasks in a short amount of time given
- 17 limited assets and resources.
- 18 Q. But your platoon was able to pursue the Taliban and
- 19 eventually form some successful partnerships with Afghan units
- 20 and ----
- 21 A. Absolutely, yes, sir.

- 1 Q. --- it's not every platoon leader that gets visited by
- 2 four stars; but, you know, towards the end of your platoon's mission,
- 3 you were doing very well. Tell us some of the VIPs who came down to
- 4 check on your good work.
- 5 A. So, at Mota Khan, sir, we went into this thing that was
- 6 called CAP or Combined Action Platoon. It was a philosophy that was
- 7 developed during the Vietnam War where U.S. forces or Soldiers would
- 8 cohabitate with the host nation's security forces, a concept that
- 9 they said, hey, it may or may not work. And now it's the foundation
- 10 of what a lot of special operations do today.
- 11 But we moved up to Mota Khan. Not a lot there for
- 12 infrastructure other than, you know, a building. So the guys
- 13 immediately got after it, started back-filling the towers, building
- 14 the towers, putting a cover on, moving rice so we could move in,
- 15 building bunkbeds so the guys had a place to live. We had a guy who
- 16 was very good at plumber work and went in and helped, you know, fix
- 17 up the latrine.
- And partnership-wise, I mean, my guys were doing PT every
- 19 day with the ANP, you know, so we had a squad out there dedicated
- 20 with them; squad doing PT, squad training and ----
- 21 Q. And General McChrystal came ----
- 22 A. ---- ultimately ----

- 1 Q. --- and checked on you?
- 2 A. --- yeah, it ended up leading to, like, you know, Major
- 3 General Scaparrotti came out and visited us. Admiral Mullen came to
- 4 visit us, and ----
- 5 Q. The Chairman of the Joint Chiefs?
- 6 A. Chairman of the Joint Chiefs of Staff.
- 7 And then General Stanley McChrystal came out and visited
- 8 and served chow to the guys, you know, on Thanksgiving Day.
- 9 Q. Three days ago, a national news network mentioned to a
- 10 national audience that seven Soldiers from your platoon died looking
- 11 for Sergeant Bergdahl. Is that news to you?
- 12 A. From my platoon?
- 13 Q. Yes.
- 14 A. Yeah. None of my men physically died looking for Sergeant
- 15 Bergdahl.
- Q. Okay. I'd like to talk briefly about leadership. We had a
- 17 good talk the other day about this.
- 18 How important is it for an Army leader to know and
- 19 understand the problems or issues that are going on with their
- 20 Soldiers?
- 21 A. I think it's what we get paid to do. So, as a leader, you
- 22 know, like I talked about earlier with the -- having a cigarette with
- 23 one of my guys by the burn pit -- so, traditionally, Soldiers are

- 1 naturally going to be -- they're going to put up a barrier, you know.
- 2 Not many times do they get an opportunity to talk to their platoon
- 3 leader one on one. Not many times do they get to talk to their
- 4 company commander on a one-on-one basis. So, in order to get those
- 5 guys to kind of drop their guard and feel comfortable, you know, I'll
- 6 go out there and have a cigarette with them or, you know, a cigar
- 7 now, because I'm a big cigar smoker. But it allows them to kind of
- 8 drop their guard, and you can get to know them. And you'd be
- 9 surprised some of the things you can find out from these Soldiers
- 10 just by having a conversation with them in an environment where they
- 11 feel comfortable.
- 12 Q. And, you know, that's a good way to get that; but how
- 13 important is it for an Army leader to know about the red flags of
- 14 Soldiers who show up to their unit?
- 15 A. I think it's very important. I mean, we use a myriad of
- 16 tools to help us make assessments. As a company commander, you know,
- 17 I go on the Company Commander's Risk Reduction Dashboard, and it will
- 18 tell me if a Soldier's ever done anything bad. It allows me to make
- 19 a formulated decision based on past risk that he potentially showed
- 20 and say, "Hey, do I really want to sign this guy's leave form or pass
- 21 form or whatever to send him on leave?" So -- but that's --

- 1 Q. How -- in your experience during that time, how effective
- 2 is the Army at really giving commanders and platoon leaders the
- 3 information they need to properly supervise their folks?
- A. Well, there's lots of tools out there. I think the problem
- 5 is that there's so many tools that none of them kind of feed into one
- 6 place where a guy can get a single outlet to get all that
- 7 information.
- 8 Q. Okay. So, for example, when Sergeant Bergdahl shows up,
- 9 what you noticed was, you know, a pretty good Soldier who listened to
- 10 orders and, you know, was a good 11 Bravo, right?
- 11 A. Yes, sir.
- 12 Q. When he showed up, you were not aware that the U.S.
- 13 Army [sic] Coast Guard had discharged him for a psychological
- 14 discharge?
- 15 A. No idea, sir.
- Q. And when he showed up, you were not aware that the Army
- 17 waived their enlistment standards for mental health in order for him
- 18 to come in?
- 19 A. No, sir.
- 20 Q. And at the time back then, you were not aware that -- you
- 21 know, what a neutral Army psychiatry board has now concluded that
- 22 back in June 2009 that Sergeant Bergdahl possessed a severe mental
- 23 disease or defect?

- 1 A. No, sir.
- Q. Had you known those things about Sergeant Bergdahl, how
- 3 would you have handled him differently?
- A. Well, I mean, I guess you have to look at it in two
- 5 contexts. You know, if I was in a leadership position prior to
- 6 deploying, I probably would have made an assessment and said, hey,
- 7 you know, I know these things. And I would send him off to a
- 8 specialist who deals with that, because I'm not a psychiatrist. So
- 9 I'd absolutely make a recommendation through the chain of command
- 10 that, hey, we probably need to get this guy looked at.
- 11 Post-deployment, I mean, there's a myriad of tools now
- 12 where, as guys develop these symptoms, you know, you can send them to
- 13 behavioral health or you can send them to a psychologist. There's
- 14 all these tools that are available for even platoon leaders now that
- 15 I didn't have back when I was a platoon leader. But you send them to
- 16 the guys who that's their job, you know, not an infantry lieutenant
- or company commander who makes a decision on whether a guy's mentally
- 18 stable or not. You send him off and make a referral for him to go
- 19 see the right specialist.
- 20 Q. Thank you, Captain Billings.
- 21 How did you end up at Fort Drum after your last assignment?

- 1 A. I was by-name requested by General Milley, who was then the
- 2 10th Mountain Division CG.
- 3 Q. Is the same General Milley who's now the Chief of Staff of
- 4 the Army?
- 5 A. Yes, sir.
- 6 Q. And the same General Milley who just before this was the
- 7 Commander of FORSCOM?
- 8 A. Yes, sir.
- 9 DC: No more questions.
- 10 PHO: Government, do you have any redirect?
- 11 TC: No redirect.
- 12 PHO: I have two questions.

13 EXAMINATION BY THE PRELIMINARY HEARING OFFICER

14 Questions by the preliminary hearing officer:

- 15 Q. You mentioned while you were doing burn duty with Doc, you
- 16 said -- your words were those were your last good memories of Doc.
- 17 Can you explain what you mean by that?
- 18 A. Yes, sir. I had explained this to the prosecution earlier,
- 19 too. It's not that it was a good memory. It was, like, one of my --
- 20 the last time I really enjoyed, like, having -- you know, enjoyed my
- 21 time. As with any deployment, like, deployments to Afghanistan and
- 22 Iraq, you have good times and bad times.

- 1 Q. Sure.
- 2 A. So that was one of the last times where I really enjoyed or
- 3 remembered, like, enjoying myself. And it was ironic that we
- 4 happened to be burning shit while doing it.
- 5 Q. Okay. Thank you.
- The other question I had was: You mentioned that when you
- 7 -- when it was reported to you that Sergeant Bergdahl was missing,
- 8 that his weapon and his sensitive items were laid out. Can you,
- 9 please, describe that in greater detail for me?
- 10 A. Yes, sir. So, I never physically saw the layout, but the
- 11 way it was described was on top of his cot was his weapon, his NODs,
- 12 and then I think a ----
- 13 CDC: NODs?
- 14 Q. His night vision goggles?
- 15 A. Night observation devices or night vision goggles. You
- 16 mount them at night so you can see at night.
- 17 Q. Mr. Fidell keeps us straight on the acronym alert.
- 18 A. Yes, sir. I apologize.
- 19 Q. No. That's okay. It was my fault, too.
- 20 A. But -- so his sensitive items -- you know, his weapon and
- 21 those things were laid out on top of his cot.
- Q. And would it be similar to what you would expect during a
- 23 layout -- a sensitive items layout inspection?

- 1 A. It would be similar in the fact that while you're -- you
- 2 know, so you don't ever, like, untie your NODs unless you're actually
- 3 mounting them to your helmet ----
- 4 O. I understand.
- 5 A. --- so having them not attached or tied down is not how
- 6 we did things in our platoon. It wasn't part of our SOP so ----
- 7 Q. I see.
- 8 A. Out for the layout; you know, the team leader comes and
- 9 looks at it. He gets hands-on. He reads the serial number, and then
- 10 it immediately goes right back in the pouch, whether it be on your
- 11 kit or in the assault pack.
- 12 PHO: I Understand.
- 13 All right. I don't have any further questions. Any
- 14 questions based on mine?
- 15 TC: No, sir.
- 16 PHO: Okay. Anything from the defense?
- 17 DC: None.
- 18 PHO: Okay. Is it -- can we temporarily or permanently excuse
- 19 the witness?
- 20 TC: Temporarily, sir.
- 21 [The witness was temporarily excused, duly warned, and withdrew.]

- 1 PHO: Mr. Fidell?
- 2 CDC: Well, currently looking at my watch, I'm going to recommend
- 3 that we break at this point. It's a little bit earlier but ----
- 4 PHO: It is a little bit early.
- 5 CDC: But I think, you know, to start another witness, knowing
- 6 that, you know, we want to break within half an hour, I don't think
- 7 makes sense so ----
- 8 PHO: Are you good with that, Major Kurz?
- 9 TC: Yes, sir.
- 10 PHO: Okay. I've got 1138. Actually, on the back clock it looks
- 11 closer to 1140. Although, I think the clock's been set back an hour.
- 12 So anyway, let's shoot for -- we will go back on the record at 1245.
- Major Kurz, be ready with your next witness.
- 14 TC: Roger, sir.
- 15 PHO: Okay. We're in recess.
- 16 [The Article 32 hearing recessed at 1139, 17 September 2015.]
- 17 [The Article 32 hearing was called to order at 1246,
- 18 **17 September 2015.**]
- 19 PHO: The hearing is called back to order. The same parties
- 20 present at the lunch recess are again present.
- 21 Government, go ahead and call your next witness.
- 22 [Pause.]
- 23 PHO: I saw him standing by instead of -- good call.

- 1 [Pause.]
- 2 MAJOR SILVINO S. SILVINO, U.S. Army, was called as a witness for the
- 3 government, was sworn, and testified as follows:
- 4 DIRECT EXAMINATION
- 5 Questions by the trial counsel:
- 6 Q. And before I begin, Major Silvino, I need to give you a
- 7 caution: Please be advised that while you are testifying, if you are
- 8 asked any question that you believe may require a response containing
- 9 classified information, you have a personal responsibility to notify
- 10 the preliminary hearing officer prior to answering. At no time
- 11 should you disclose any classified information while this hearing is
- in an open session. Do you understand?
- 13 A. I do.
- Q. Could you, please, state your full name, rank, and unit of
- 15 assignment?
- A. Silvino S. Silvino; Major. I'm with HHB -- or HH Battalion
- 17 -- Headquarters and Headquarters Battalion, U.S. Army Pacific,
- 18 Honolulu, Hawaii -- or Fort Shafter, Hawaii.
- 19 Q. What is your current duty position?
- 20 A. I am a Southeast Asia foreign area officer.
- 21 Q. And, very briefly, what do the duties of a foreign area
- 22 officer, or a FAO, involve?

- 1 A. Well, my primary duties is to manage portfolios for our
- 2 Southeast Asian partners, primarily Vietnam, Philippines, Thailand,
- 3 Malaysia. That so, we work with our counterpart militaries and work
- 4 bilateral engagements, visits, staff talks, and anything that we can
- 5 further our cooperation with our partners in the Pacific.
- Q. I'd like to direct your attention back to 2007 to 2009.
- 7 What unit were you assigned to back in 2007?
- 8 A. I was with Blackfoot Company, 1st of the 501st.
- 9 Q. Parachute Infantry Regiment?
- 10 A. Correct, Parachute Infantry Regiment.
- 11 Q. What location were they based out of?
- 12 A. We were from Fort Richardson, Alaska.
- 13 O. What was your duty position within Blackfoot Company?
- 14 A. I was their company commander.
- 15 Q. When did you take command?
- 16 A. It was September 24th, 2007.
- 17 Q. Where did you take command?
- 18 A. I took command at -- well, it's Iskandiriyah, Iraq, just
- 19 south of Baghdad.
- Q. Was your company already deployed to Iraq when you took
- 21 command?
- 22 A. Yes.
- Q. How many months did you stay in Iraq as company commander?

- 1 A. Three months after I took command.
- 2 Q. And how many months -- how long were you in command total
- 3 of Blackfoot Company?
- 4 A. About 33-34 months.
- 5 Q. So almost 3 years?
- 6 A. Almost.
- 7 Q. When did you leave command?
- 8 A. I left command July, I believe, in 2010.
- 9 Q. Now, the Iraq deployment in 2007, was that your first
- 10 deployment?
- 11 A. No, ma'am.
- 12 Q. Do you have a prior deployment?
- 13 A. I have -- I've had ----
- 14 CDC: Objection, irrelevant.
- 15 PHO: It's background. I'll allow it.
- 16 A. I was deployed with 3rd Battalion, 21st Infantry, at Mosul,
- 17 Iraq, in 2004 and 2005.
- 18 Q. And did you have the occasion to go on a second deployment
- 19 with Blackfoot Company?
- 20 A. I did. I was able to deploy with Blackfoot Company to
- 21 Afghanistan in 2008-2009 -- or 2009-2010.
- Q. Was that your deployment to Paktika Province?
- 23 A. Yes.

- Q. What was the company mission in Paktika, Afghanistan?
- 2 A. Our mission was to partner with the Afghanistan National
- 3 Security Forces -- primarily, at the time, it was the Army -- to
- 4 conduct security stability operations in support of the government of
- 5 Afghanistan.
- 6 Q. And how did you -- how did you conduct this mission?
- 7 A. Well, we were able to position ourselves at FOB Sharana --
- 8 initially working off of FOB Sharana. And we partnered with our ANSF
- 9 partners from a base right outside of FOB Sharana. We conducted
- 10 these patrols. We conducted HADR. We conducted ----
- 11 CDC: HADR?
- 12 A. Humanitarian Assistance Disaster Relief.
- 13 Q. Thank you.
- 14 A. And we worked really security operations for the provincial
- 15 capital and the areas close to FOB Sharana.
- Q. And you mentioned ANSF. Do you know what that stands for?
- 17 A. Afghanistan National Security Forces.
- 18 Q. So their army and police?
- 19 A. Yes.
- Q. Could you describe Blackfoot Company's area of operation in
- 21 Paktika?
- 22 A. Well, Blackfoot Company -- we were -- we were, again,
- 23 situated in FOB Sharana. We had five districts that we were

- 1 responsible for -- that I was responsible for. They were Mota Khan,
- 2 Yahya Khel, Yousef Khel, Omnah, and Sarhowsa.
- 3 Q. Do you know approximately the square mileage or footprint?
- 4 Was this a small area or a large area?
- 5 A. It was a very large area.
- 6 Q. Were these district centers fairly spread out?
- 7 A. Yes. They were fairly spread out all across northern
- 8 Paktika.
- 9 Q. And how many observation posts do you recall having in your
- 10 area of operation?
- 11 A. The one we have is Mest -- OP Mest.
- 12 Q. And what was the purpose for creating Observation Post
- 13 Mest?
- 14 CDC: Objection, cumulative.
- 15 PHO: Overruled.
- 16 A. Observation Post Mest is supposed to -- well, it was with
- 17 the Afghan National Security Forces -- with the police at the time.
- 18 Our main job is to -- or main purpose at that OP is to overwatch an
- 19 intersection vicinity of that location. It's the -- I can't speak of
- 20 the route; but it's pretty much overwatching this intersection that
- 21 is a high-traffic area for weapons, IEDs, and insurgent activities,
- 22 coming from Pakistan going through and up and down Paktika and
- 23 through Ghazni.

- 1 Q. Thank you. Was your company responsible for the
- 2 construction of Observation Post Mest?
- 3 A. Yes.
- 4 Q. I'd like to talk a little bit about the structure of
- 5 Blackfoot Company. How many platoons did Blackfoot Company have
- 6 prior to June 2009?
- 7 A. We had three organic platoons, 1st, 2nd, and 3rd; and we
- 8 also had a headquarters section.
- 9 Q. Just a section?
- 10 A. Just a section.
- 11 Q. Now, what happened to 1st Platoon when you deployed?
- 12 A. Once we arrived in Sharana, I received an order from my
- 13 battalion that I am to re-task 1st Platoon -- or a platoon to move
- 14 over to conduct operations for the brigade at FOB Salerno in Khost
- 15 Province in support of force -- targeting force operations.
- Q. So did -- was 1st Platoon detached from Blackfoot Company?
- 17 A. Yes.
- 18 Q. So it was gone?
- 19 A. Yes.
- 20 Q. Now, you said you had a headquarters element. What did you
- 21 do with that headquarters element after 1st Platoon was detached?
- 22 A. Well, with the large area that I was responsible for, I
- 23 created a platoon -- meaning, I conducted -- or I re-trained my commo

- 1 NCO, my senior medic, my RTO for myself and my first sergeant, and
- 2 our company intel support team, which is about four personnel, my
- 3 armorer. And we were able to put together an ad hoc platoon in order
- 4 to support the company. That platoon was working primarily the
- 5 Sharana area -- the Sharana proper area.
- 6 Q. So before June of -- so you created a platoon out of hide
- 7 so to speak?
- 8 A. Yes, I did.
- 9 TC: Sir, at this time, the government would like to move into a
- 10 classified session to have the witness testify from a classified map.
- 11 PHO: All right. Can you explain to me the reasons why you
- 12 believe this witness -- it's necessary to testify from a classified
- 13 map?
- 14 TC: Yes, sir. Using a classified map, I would like the witness
- 15 to describe the unit's area of operations before and after
- 16 30 June 2009, specifically related back to classified routes, and do
- 17 it district by district ----
- 18 CDC: Slow down. I'm taking notes.
- 19 Area of operations?
- 20 TC: Yes, before or after 30 June -- before and after
- 21 30 June 2009, specifically related to routes, markings of which are
- 22 classified. And I would like the witness to do a

- 1 district-by-district description of the enemy situation in the unit's
- 2 area of operation.
- 3 CDC: Hold on. Enemy operations where?
- 4 TC: In his area of operation.
- 5 PHO: Okay. So area of operations specifically relating to
- 6 routes?
- 7 TC: And the enemy situation in each of his district centers.
- 8 PHO: Okay. I'm going to go ahead and ask my -- I'm going to
- 9 consult with my security manager. I think I'm going to go ahead and
- 10 do that on the record and -- just to make sure that I understand
- 11 classification.
- 12 My question specifically to Mr. Mersereau is: Can the
- 13 witness describe the area of operations specifically relating to
- 14 routes? If he were to do it with a classified map, that would
- 15 obviously be classified. If he were to speak of the routes and
- 16 generally of that, without reference to a classified map, would that
- 17 be classified?
- MR. MERSEREAU: Sir, as long as we keep it in general ----
- 19 CDC: Can't hear you.
- 20 PHO: Why don't you step up to the ----
- 21 MR. MERSEREAU: As long as we keep it in general terms, then
- 22 that's okay.
- 23 PHO: And when you say "general terms," what do you mean by that?

- 1 MR. MERSEREAU: A general direction, not specific about where it
- 2 goes from, where it goes to, and the broader scope of what it's used
- 3 for.
- 4 PHO: Okay. Next question: Is the witness -- the other thing
- 5 that Major Kurz mentioned was a district-by-district description of
- 6 the enemy situation, enemy activity.
- 7 I guess my first question is: It seems to me that he could
- 8 do that without reference to a map, but is that description
- 9 classified?
- 10 MR. MERSEREAU: Sir, if that information is derived from
- 11 classified reports, then certainly it would be classified.
- 12 PHO: Okay. To your knowledge, is that -- is that the case?
- 13 WIT: Yes, sir.
- 14 PHO: Okay. Thank you. You can --
- 15 [Mr. Mersereau resumed his seat.]
- 16 PHO: Defense, your position?
- 17 CDC: We object to this closure as we objected to the last
- 18 closure. I think the hearing officer has to have a -- well, let me
- 19 back up. And this is without prejudice to our submitting formal ----
- 20 PHO: Potentially ----
- 21 CDC: ---- on this if we need to.
- The test -- the onus is on the government to demonstrate a
- 23 need for closure. The onus is on the government to show it is

- 1 necessary in light of the standard that governs this entire
- 2 proceeding, which his merely probable cause. And I think we are a
- 3 very far distance from that kind of demonstration.
- 4 PHO: Okay. Major Kurz, explain to me ----
- 5 CDC: And, of course, alternatives also. That's part of the
- 6 analysis, exploration of alternatives.
- 7 PHO: What alternatives do you see as feasible here?
- 8 CDC: Well, I think -- what I think is the government should
- 9 demonstrate an absence of alternatives. But it occurs to me that
- 10 things like screening so that you wouldn't have to refer to these
- 11 maps or at least the maps wouldn't have to be seen by anybody.
- 12 PHO: Okay. Major Kurz, you mentioned that in your ----
- 13 [The trial counsel stood.]
- 14 PHO: And you don't have to stand up, Major Kurz.
- 15 TC: Habit, sir.
- 16 PHO: I know it's probably habit, and that's fine.
- What about with the maps? Why doesn't screening work?
- 18 TC: Well, sir, I'd actually like to not respond but take you
- 19 through the standard found in 405(i) rather than just
- 20 addressing specific ----
- 21 PHO: Okay. Go ahead. Explain to me your position.
- 22 TC: If you read 405(i), sir, the standard is this: an
- 23 overriding interest that outweighs the value of an open hearing. The

- 1 closure must be narrowly tailored, and no lesser means -- which I
- 2 will address defense counsel's position -- exists. An overriding
- 3 interest does exist, and that is the protection of classified
- 4 information.
- 5 PHO: Okay. But you also have to establish that it's necessary
- 6 to present classified information in this forum in order to ----
- 7 TC: Absolutely.
- 8 PHO: --- accomplish some purpose.
- 9 TC: Absolutely. One of the elements here has to do with
- 10 "before the enemy" and "endangerment of the unit." Major Silvino is
- 11 going to explain exactly where the enemy was in terms of the element
- 12 of "before the enemy." He will describe where the enemy was in his
- 13 area of operations.
- This closure is going to be narrowly tailored. We've
- 15 detailed the three specific areas where he's going to testify. It
- 16 will be narrowly tailored to those specific areas of classified
- 17 information.
- 18 We have attempted, as you know, to obtain lesser means.
- 19 We've attempted declassification of the maps, which we could not
- 20 obtain. We do not believe -- it is the information, per se, that is
- 21 classified. Once you attach a route location to a point on the map,
- 22 a troop position to a point on the map, that is what becomes

- 1 classified. So even if we had an unclassified map, once he began
- 2 describing routes, that information itself is classified.
- 3 PHO: Okay. But that, in fact, could be displayed in such a way
- 4 that is it not visible to the public, and the routes could be
- 5 discussed; and the route names themselves, in fact, are not
- 6 classified?
- 7 TC: They are not. Once you tie them back to a map, they become
- 8 classified.
- 9 PHO: But again, let's say we put up a screen, you know, so that
- 10 members of the public cannot see and that the cameras cannot pick up,
- 11 all the parties here can see, the witness can see and refer to -- how
- 12 is that not an adequate substitute?
- 13 TC: This lesser means can usually only be used where there is
- 14 no oral discussion of the classified contents of the document. This
- 15 lesser means would not be sufficient where a witness had to testify
- 16 as to the classified contents of the document or counsel sought to
- 17 argue based on the classified contents of the document.
- 18 PHO: Go ahead, Mr. Fidell.
- 19 CDC: Colonel, it seems to me that -- unless I'm very mistaken,
- 20 Colonel Silvino ----
- 21 WIT: Major Silvino.
- 22 PHO: Major Silvino.
- 23 CDC: Excuse me.

- 1 WIT: Major. Thank you for the promotion, though.
- 2 CDC: Hold on to that. You never know; it might happen.
- 3 It seems to me that the witness could testify how far OP
- 4 Mest was from the enemy.
- 5 TC: But that -- that ----
- 6 CDC: What is -- what ---- I mean, the government is creating a
- 7 problem that is unnecessary. And, you know, it's nice that they have
- 8 these maps that they presumably spent some of the taxpayer's money
- 9 on; but, in all seriousness, this is not necessary.
- 10 PHO: Well, one of my questions for the government is this
- 11 district-by-district description -- do you intend to use a map for
- 12 that? Or it sounds like you could very well not use a map for that
- 13 and just say: In "X" Province, this was happening; in "Y" Province,
- 14 this was happening. Would that information -- it sounds like, from
- 15 my security manager that, in fact, would be classified. So that's
- 16 not actually a map issue. It's a classification issue.
- Is that -- explain to me what I'm missing here. So if
- 18 Major Silvino was to say: In "X" Province, this was the enemy
- 19 activity ----
- 20 TC: Uh-huh [indicating an affirmative response].
- 21 PHO: He doesn't need a map do to that because ----
- 22 TC: Correct.

- 1 MJ: ---- he's just saying that, in "X" Province, that is
- 2 something that can be referred to outside of this context -- either
- 3 myself or a member of the public can see that and refer to the map
- 4 and understand what district or what province is being discussed. So
- 5 really, it's not a classification issue related to the map; it's a
- 6 classification issue related to the enemy activity ----
- 7 TC: Uh-huh [indicating an affirmative response].
- 8 PHO: --- and the classification sources that -- from which he
- 9 derived that information.
- 10 TC: Right.
- 11 PHO: Okay. So do we have any information regarding your
- 12 attempts to declassify that, to do all the steps like you did for
- 13 Major General Garrett, the original classification authority for
- 14 CENTCOM? And this memo that I have here relates only to the maps.
- 15 TC: Right.
- 16 PHO: It sounds like we have new classified information that's
- 17 been brought into the mix.
- 18 TC: No, sir. There are ways to describe the enemy situation,
- 19 but it's the government's exigencies of proof, which we believe will
- 20 be most clear in describing the enemy situation using the
- 21 point-by-point analysis on the map.
- 22 PHO: Okay. So you want to be able to refer to the map, not ----
- 23 TC: Yes.

- 1 PHO: --- not just district by district, but point-by-point ----
- 2 TC: Yes, sir.
- 3 PHO: --- and say, "At this point, this was going on. At this
- 4 point, that was going on." But it's not just the map then that's
- 5 classified, it's also the very fact that at Point "X," this was
- 6 happening; at Point "Y," this was happening."
- 7 TC: There might be some of that. Yes, sir.
- 8 PHO: And do we have any indications that the government's taken
- 9 steps along the lines that they have with the maps? I'll let you
- 10 consult.
- 11 [Pause.]
- 12 TC: Sir, I think it's apples and oranges. We can have the
- 13 witness describe the enemy situation in a general manner, but our
- 14 analysis is tied to having the witness explain it with the map.
- The map is intended as a demonstrative exhibit so that you
- 16 can see the company area of operation and the enemy situation tied to
- 17 location, and that's what makes the information classified. I mean,
- 18 he can be very -- you know, he can be very general and say, "Well,
- 19 there were some IEDs in this area." That's not classified.
- 20 PHO: Correct.
- 21 TC: However ----
- 22 CDC: I'm not sure that -- is that correct? I thought that your
- 23 security manager had a different take on that.

- 1 MR. MERSEREAU: Sir, things that happened directly to the unit
- 2 and which the witness has direct knowledge of, that's fine. What
- 3 we're concerned about on the classified side is information that was
- 4 derived from intelligence reporting.
- 5 PHO: Okay. I'll let -- Major Kurz, go ahead and finish your
- 6 statement.
- 7 TC: And Major Silvino will not be relaying intelligence
- 8 reporting to the hearing.
- 9 PHO: Okay.
- 10 TC: It's his personal experience in his company area of
- 11 operation and the enemy situation in June of 2009.
- 12 PHO: Okay. Major Silvino, can you confirm that back? That this
- 13 will be based on personal experience and personal knowledge and it's
- 14 not -- discussions of enemy activity is not derived from classified
- 15 information?
- 16 WIT: From my own experience, sir.
- 17 PHO: Okay.
- 18 WIT: My Blackfoot Company's experience.
- 19 PHO: Okay. So then what Mr. Mersereau said earlier is it does
- 20 not necessarily pertain -- if it's due to -- if the information is
- 21 derived from Major Silvino's experience ----
- 22 TC: Uh-huh [indicating an affirmative response].

- 1 PHO: --- and his knowledge as company commander, then putting
- 2 that to a map would then, in fact, be classified.
- 3 TC: Yes. And we believe the map will more fully explain to the
- 4 hearing the evidence we're presenting.
- 5 PHO: Okay.
- 6 CDC: May I be heard on that?
- 7 PHO: You may.
- 8 CDC: To say that it would more fully explain does not -- that is
- 9 not the test. The test is what's necessary.
- 10 And also an exploration of -- you know, the government may
- 11 want to have the perfect proof beyond a reasonable doubt and so on.
- 12 That's not what's going on in this hearing room as I understand it.
- 13 And it's not a question of, you know, perfect proof. The question
- 14 is: Can the gist of this be done in a way that respects the public's
- 15 right to observe these proceedings in what Congress, by the way, now
- 16 calls a hearing rather than an investigation.
- 17 PHO: Well, the one problem with that position is that you're
- 18 associate counsel, at the last witness, cross-examined the witness on
- 19 specific instances of enemy activity in the vicinity of OP Mest. So,
- 20 once he's done that, does he not start to undermine and attack the
- 21 government's burden of proof here and their proof to probable cause,
- 22 thus allowing them to have some additional leeway in explaining the

- 1 particulars of the enemy activity such that they can meet their
- 2 burden of proof?
- 3 CDC: Well, number one, in our view, this is entirely cumulative.
- 4 And this is going to happen again, because they're pulling three
- 5 witnesses at, you know, higher and higher levels of the pay table for
- 6 essentially the same proposition. The test that you have to apply
- 7 under the Manual is witness by witness. And I don't this as a
- 8 question of having opened the door or anything like that.
- 9 The government still only has to show probable cause, and
- 10 the fact that they would like to prove something else or prove it to
- 11 a higher level is a matter of no moment, particularly when it's
- 12 balanced against the constitutional right to a public hearing.
- 13 PHO: Okay. Just let me take a look at the government's proposed
- 14 writings here.
- 15 [Pause.]
- 16 PHO: Okay. Here's what I'm going to do -- and again, this goes
- 17 back to what was discussed with the previous witness, and that was
- 18 that this is a visual aid only. It's not considered evidence, and
- 19 it's for myself as the fact finder to help fully understand the
- 20 situation and make an appropriate decision based on my
- 21 understanding -- a complete and thorough understanding of the
- 22 evidence.

- 1 So I think, you know, along the terms of the formulation of
- 2 lesser forms of the testimony or of the evidence have to be proven
- 3 inadequate, what I want to see here is: I want to hear the witness
- 4 answer the questions and engage in this dialogue in an unclassified
- 5 manner. And if, at the end of that dialogue, I am confused or
- 6 otherwise feel that I don't have a good understanding of the
- 7 circumstances, then I will, myself, indicate that I think it's
- 8 necessary to do so. I'll do that on my own motion.
- 9 And certainly, Government, you may re-open if you believe
- 10 that you have been unable to adequately get your point across to me.
- So for that reason, I'm going to go ahead and deny your
- 12 motion at this point, subject to hearing the questions and answers.
- 13 And based on that, I'll decide whether or not we need to go into
- 14 closed session.
- 15 TC: Thank you, sir.
- 16 CDC: Colonel, as in the last incident in which this question
- 17 arose, I'd like to reserve the right to prepare formal proposed
- 18 findings and conclusions on this, because we've actually analyzed
- 19 this, including the government's evidence in support of this motion.
- 20 But it's not -- you know, if you shut them down on it, that's fine,
- 21 then we can just move on. But if you're disposed to, you know,
- 22 really entertain their proposal then, if you would alert us of it, we
- 23 can get you a formal submission.

- 1 PHO: I will allow the opportunity for the defense to make its
- 2 case.
- 3 CDC: Thank you.
- 4 PHO: Go ahead.
- 5 The direct examination of Major Silvino continued by the trial
- 6 counsel:
- 7 Q. Major Silvino, we touched briefly on your company's area of
- 8 operations in June of 2009. Do you recall exactly how many square
- 9 miles or square kilometers your area of operations was in Paktika
- 10 Province before 30 June 2009?
- 11 A. It's an approximate -- around 1,200 square miles.
- 12 Q. So big?
- 13 A. Very big.
- 14 PHO: Excuse me just a moment. Can you just -- yeah, you're
- 15 getting a little bit too close to the microphone so the court
- 16 reporter is not able to pick up what you're saying. So not a
- 17 problem. These are very sensitive microphones so ----
- 18 WIT: Yes, sir.
- 19 PHO: ---- you're good.
- 20 WIT: I'll just use my indoor voice.
- 21 PHO: Super. And can you repeat your answer? How many square
- 22 miles was that?

- 1 WIT: Approximately 1,200 square miles.
- 2 Am I too loud?
- 3 PHO: You're good.
- 4 Q. And you named the five districts that your Blackfoot
- 5 Company was responsible for covering. And in an unclassified manner,
- 6 based on your personal observation and experience, could you describe
- 7 the enemy situation in those -- throughout your AO? What sort of
- 8 threats did you face?
- 9 A. Threats were primarily IEDs and small arms harassing fire.
- 10 Every now and then we would receive indirect fire -- mortars,
- 11 rockets; but those were very seldom. So the IEDs were the primary
- 12 danger. And in the event of certain locations, it would be ambushes
- 13 that we encounter.
- Q. And this was throughout your area of operation?
- 15 A. Yes. You could, pretty much, find that all over.
- 16 Q. Now, there was an engagement in the Omnah area in, I
- 17 believe, May of 2009. Could you briefly describe that engagement?
- 18 A. As I recall, that engagement was with a recon platoon
- 19 conducing patrols with the ANSF; specifically at that location, the
- 20 police. There's only about two places you can go through to get to
- 21 Omnah, and that's through certain routes -- can I name the routes?
- 22 Q. Yeah.
- 23 A. Either ----

- 1 Q. I apologize. Yes, you can name the routes. You just can't
- 2 mark them on a place on the map.
- 3 Correct, sir?
- 4 PHO: Is this okay?
- 5 MR. MERSEREAU: Yes, sir.
- 6 A. Okay. It comes across from -- location from Sharana would
- 7 be Route Cutlass, and then coming across from where OP Mest was is
- 8 Route Dodge. That then works through the mountain; and it's
- 9 switchback, very, very treacherous. And you have to make it
- 10 primarily in the center of the road or risk sliding off to the side
- 11 with your -- with our MRAPs. So those are the two locations or two
- 12 -- two places -- or two routes we could possibly take.
- 13 Q. Did your -- did an element of your company come under a
- 14 complex attack in Omnah?
- 15 A. Well, the -- thank you. The recon platoon was there to
- 16 conduct this patrol with the ANSF. As they were moving through the
- 17 mountain, through Omnah, they encountered an IED strike. That IED
- 18 strike then disabled one of their vehicles. It is fairly close to
- 19 the district center but still part of the -- it's the hilly section
- 20 of Omnah.
- 21 They conducted their "5 and 25s", which is the manner of
- 22 how we clear an area prior -- or after an IED strike; and they
- 23 realized that this vehicle was very extensively damaged, cannot be

- 1 moved. And we did everything we could -- or they did everything they
- 2 could to actually move the vehicle to the district center.
- 3 That said, we requested assistance, perhaps a lowboy or
- 4 some kind of recovery asset, to come from Sharana and assist with
- 5 recon platoon, which is the Mohawk Platoon. That was then escorted
- 6 by Delta Company, 4th Platoon, also called Sioux Platoon.
- 7 So Sioux moves out with the recovery assets -- the wrecker,
- 8 the mechanics, and everybody else that needs to be taken. And
- 9 they're moving out, and they hit an IED lower down the hill at the
- 10 base.
- 11 So now we have two broken down vehicles. We have this
- 12 danger all around us because, again, they could mass on you at any
- 13 location at any point. And this is very mountainous, and this is
- 14 their terrain. The insurgents know this area very, very well. So we
- 15 did the best we could.
- 16 At that point, I realized that 4th Platoon and Mohawk
- 17 Platoon -- Sioux Platoon and Mohawk Platoon needed further
- 18 assistance, because they're requesting it from battalion. I was then
- 19 alerted. I provided support with that with my 2nd Platoon, which was
- 20 the QRF platoon at the time. And they moved out again to assist.
- 21 Sioux Platoon at the base -- at the bottom of the hill, and you have
- 22 Mohawk Platoon at the top of the hill.

- 1 This is supposed to be a two -- well, technically, it's
- 2 supposed to be a mission out and back. That was not so.
- 3 Q. Did they come under attack?
- 4 A. They did.
- 5 So we managed to break down the vehicles. So we couldn't
- 6 get -- we couldn't get authorization to burn the vehicles down at
- 7 these two locations. We ended up breaking the vehicle down piece by
- 8 piece and hauling it down the hill -- hauling it down the mountain.
- 9 Then that vehicle would then be recovered back to Sharana. We didn't
- 10 want to leave any piece of equipment there for any type of IO for the
- 11 insurgents.
- 2nd Platoon had the unfortunate task of escorting these
- 13 vehicles back. As they already moved into one location at Route
- 14 Dodge, they did not want to go back the same route as they came in.
- 15 They moved back through a different location, through a different --
- 16 Route Cutlass. This is where they ended up receiving multiple
- 17 attacks, where I believe at one point their own vehicle was on fire;
- 18 and Lieutenant Billings and the platoon had to do what they had to do
- 19 to come back home -- to be able to come back to the FOB. Very
- 20 dangerous, ended up becoming multi-day.
- 21 Q. Uh-huh [indicating an affirmative response].
- 22 A. When they left, they were only were bringing ammunition,
- 23 enough MREs, no change of gear, because it's a day-mission.

- 1 Q. Uh-huh [indicating an affirmative response].
- 2 A. Not so. They were there for about 3 to 4 days, I believe.
- 3 By the time they came back, they had a small five o'clock shadow,
- 4 hadn't shaved -- because again, that was one of the things that we
- 5 didn't bring -- they didn't bring, because they didn't think that
- 6 they were going to be stuck out there for 3 to 4 to 5 days.
- 7 Q. And I want to be clear: When you say they came under
- 8 attack, what kind of weapons systems were used against them if you
- 9 recall?
- 10 A. I believe there was an IED, some small arms. I think at
- 11 one point they said maybe possibly an RPG in there. It's a whole mix
- 12 of different weapons that was utilized.
- Q. And Omnah -- the town and district of Omnah, is that just
- 14 east of Observation Post Mest and FOB Sharana?
- 15 A. It's the hilltop. Directly east from Omnah is Yahya Khel.
- 16 Further east towards the mountains, towards Pakistan, would be Omnah.
- Q. And do you know: What is the distance between FOB Sharana
- 18 and Observation Post Mest?
- 19 A. Straight-line distance 30 kilometers -- 35 kilometers.
- 20 Q. When did the accused, Sergeant Bergdahl, arrive at Bravo
- 21 Company?
- 22 A. He arrived at our NTC location -- we were at the National
- 23 Training Center in November -- I believe, November 2008.

- 1 Q. And was he -- he was assigned to your company?
- 2 A. Yes.
- Q. Was he present for the entire -- what portion of NTC was he
- 4 present for?
- 5 A. He arrived just in time for the STX training, which is
- 6 "the box" training.
- 7 Q. And could you explain "box?"
- 8 A. "The box" is where we actually move from the containment
- 9 area -- cantonment area, and we move out to the training site.
- 10 Q. Uh-huh [indicating an affirmative response].
- 11 A. In this case, we were at a COP, similar to what we were
- 12 working off of in Afghanistan ----
- CDC: COP -- COP? What does that acronym stand for?
- 14 WIT: Combat outpost, sir.
- 15 PHO: Just try to make sure you get all your acronyms. You've
- 16 got a lot of ----
- 17 WIT: I apologize.
- 18 PHO: That's okay.
- 19 WIT: I apologize.
- 20 PHO: That's why we have Mr. Fidell here.
- 21 CDC: [Laughing.]
- 22 WIT: I've got to break it down here. Okay.
- 23 Combat outpost.

- 1 Q. When did the accused -- or did the accused deploy to
- 2 Afghanistan with Blackfoot Company?
- 3 A. No.
- Q. Did he -- sorry. Did he deploy to Afghanistan with you in
- 5 2009?
- 6 A. He arrived -- he joined us in Afghanistan.
- 7 Q. Okay.
- 8 A. Yes, ma'am.
- 9 Q. And do you know why he was late?
- 10 A. He had some medical issues that we had to work through. I
- 11 believe it was some kind of infection, either an arm, foot ----
- 12 Q. Okay.
- 13 A. ---- to that effect.
- Q. Do you see the person that you just detailed as PFC Bowe
- 15 Bergdahl in the courtroom -- in the hearing room today?
- 16 [The witness pointed to the accused.]
- 17 Q. Let the record reflect the witness has indicated the
- 18 accused.
- 19 I'd like to direct your attention to 30 June 2009. Where
- 20 were you that morning?
- 21 A. 30 June? I was back at my CP ----
- Q. What is CP?
- 23 A. Oh, command post.

- 1 Q. Okay. And where was that?
- 2 A. FOB Sharana.
- 3 Q. In Paktika, Afghanistan?
- 4 A. Oh, Paktika Province, Afghanistan.
- 5 Q. And earlier that morning, what were you doing in your CP?
- 6 A. Well, every morning, I checked what my platoon -- my
- 7 platoon statuses are if I have a platoon out in sector. I conduct
- 8 personnel accountability through what we call our PERSTAT. I'm
- 9 drinking my cup of coffee, hovering over my radio-telephone operator,
- 10 and we have our, what we call our CPOF machine, which is an
- 11 imagery-type machine that was getting feed from our Blue Force
- 12 Tracker.
- 13 O. And CPOF is Command Post of the Future?
- 14 A. Yes, ma'am.
- 15 Q. Did you receive a message concerning the accused?
- 16 A. I did.
- 17 Q. Could you describe -- how did you receive the message?
- 18 A. I received it from -- emergency message, in a message that
- 19 was directly to me from Lieutenant Billings. It was a message from
- 20 the CPOF machine that we were talking about -- the BFT.
- 21 CDC: What?
- 22 A. I'm sorry. Not the CPOF, the Blue Force Tracker.

- 1 Q. BFT. Blue Force Tracker.
- 2 Did your RTO point it out to you?
- 3 A. Yes.
- 4 CDC: RTO?
- 5 A. Radio ----
- 6 CDC: I'm sorry ----
- 7 A. --- telephone operator.
- 8 CDC: I'm sorry. My military service was in a different branch.
- 9 We had our own acronyms. So I appreciate your ----
- 10 PHO: Let me -- let me -- I'll catch ----
- 11 CDC: ---- patience with me.
- 12 PHO: --- I'll catch those to make sure that we have them,
- 13 especially for the members of the public as well. So if you can,
- 14 just let me catch those, and you catch my eye, and I will ----
- 15 CDC: It's a deal.
- 16 PHO: --- make sure.
- 17 TC: Thank you, sir.
- 18 A. Radio-telephone operator.
- 19 Q. Did he bring something to your attention?
- 20 A. Yes. He pointed at it, and he goes, "Sir, you've got to
- 21 take a look at this thing."
- Q. What did the message say?

- 1 A. "Currently looking for one more person. We're not up,"
- 2 meaning, we are not 100 percent accounted for.
- 3 O. Was that unusual?
- 4 A. No.
- 5 O. Was that unusual?
- A. Oh, yes. Very unusual. Very unusual. That means, "What's
- 7 going on? We need to -- we need to look further, harder."
- 8 Q. How did you initially feel when you received this message?
- 9 [Pause.]
- 10 A. I felt sick. I felt sick to my stomach. I did not know
- 11 what was going to come after that. I just knew that I -- I was not
- 12 -- meaning, not physically sick but emotionally sick inside. There
- 13 was something that was -- it was gut wrenching.
- Q. What did you do next after you received that alert? What
- 15 did you tell Lieutenant Billings?
- 16 A. He needs to look again. I told him -- I instructed him to
- 17 go look at every possible location at the OP, around the OP, at the
- 18 latrine, at the burn pit, with the Afghans, with the trucks, with the
- 19 gunners, with the drivers. I instructed him to go look high and low,
- 20 everywhere he could possibly look. I said that's something that is
- 21 -- that doesn't happen.
- Q. Did Lieutenant Billing confirm back after he continued the
- 23 search?

- A. He did. He confirmed; and he said, "Sir, he's not here."
- 2 Q. Okay.
- 3 A. And I later found out who it was through a battle roster
- 4 number.
- 5 Q. And who was that person that was missing?
- 6 A. That is Sergeant Bergdahl.
- 7 Q. What did you do after you got that confirmation back from
- 8 Lieutenant Billings? Did you send an alert up higher?
- 9 A. I did. I personally walked -- as soon as I found out from
- 10 Lieutenant Billings, I called my Headquarters Platoon, I called my
- 11 first sergeant, and I called the 3rd Platoon leader. We all had a
- 12 quick meeting. I gave them the initial warning order, alerting them
- 13 that we are going back out -- everybody in the company is going back
- 14 out and we're going to go back to OP Mest.
- 15 After that, I walked directly to battalion and spoke to my
- 16 battalion -- or my battalion XO. He looked me in the eye, and he
- 17 said, "You better be damned sure that this I what you're saying it
- 18 is." I said, "Sir, it is. Unfortunately, I'm going to go out there;
- 19 unfortunately this is happening. We're going to go look for him."
- 20 Q. Who did you leave in your command post?
- 21 A. It was roughly -- well, maybe four or five personnel left.
- 22 I left my supply sergeant, my XO, my ----
- 23 PHO: Just for clarity's sake, XO is your executive ----

- 1 WIT: My executive officer ----
- 2 PHO: ---- officer, your number two in command?
- 3 WIT: Yes, sir. Yes, sir.
- A. My executive officer, my supply sergeant, my fire support
- 5 officer, an RTO ----
- 6 PHO: That's your radio operator.
- 7 A. --- my radio-telephone -- one of the radio-telephone
- 8 operators, and I believe one of the company intel support team
- 9 personnel. And I took everybody else with me.
- 10 Q. And those personnel were to run the 24-hour operations in
- 11 the CP?
- 12 A. Correct.
- Q. Command post?
- 14 A. Correct.
- 15 Q. How many were normally in the command post?
- 16 A. We have somewhere between 12 to maybe 10 people in there on
- 17 any given rotation, depending on -- like I said, I beefed up my
- 18 company's headquarters. If my company Headquarters Platoon was not
- 19 conducting patrols, we were working in the TOC -- or our CP or
- 20 command post.
- 21 Q. And how long did those five to six individuals have to run
- the command post?
- 23 A. Twenty-four hours a day.

- 1 Q. For how long? How many days?
- 2 A. For as long as it took us to search and look and until we
- 3 could get everybody back to FOB Sharana.
- 4 Q. So for the entire 45-day period?
- 5 A. Yes.
- Q. I'd like to break this down into blocks of time as you
- 7 remember it. The first block of time would be the first couple of
- 8 days, 30 June through 3 July. Do you remember that block of time?
- 9 A. I do.
- 10 Q. And then the second block of time, as you described it to
- 11 me, was 3 July through the middle of July -- about 15 July? Do you
- 12 remember that as a block of time?
- 13 A. I do.
- 14 O. And then the third block of time, which was 15 July --
- 15 middle of July to the end of July?
- 16 A. I do.
- Q. And then finally, 30 July to 15 August -- or end of July to
- 18 approximately the elections?
- 19 A. Uh-huh [indicating an affirmative response].
- 20 Q. And I'd like ----
- 21 PHO: That's four blocks.
- 22 TC: Yes, sir.
- 23 PHO: Okay. I just wanted to make sure my math was right.

- 1 Q. I'd like to take you through those blocks of time and the
- 2 activities of your company. During those first few days, where did
- 3 you operate out of?
- 4 A. OP Mest.
- 5 Q. Describe for me what you did in the first 72 hours?
- A. As soon as we got the information -- the report that
- 7 Sergeant Bergdahl was not present, I gave the instructions to
- 8 Lieutenant Billings to conduct a dismounted patrol right outside of
- 9 the OP and start looking for any clues. I then instructed my
- 10 Headquarters Platoon and my 3rd Platoon that we were going to go out
- 11 to OP Mest to conduct search operations. I instructed Lieutenant
- 12 Billings that we were going to meet somewhere in the vicinity
- 13 adjacent of -- just west of Yahya Khel and then make our way into OP
- 14 Mest.
- I instructed 3rd Platoon -- so I was -- I was going --
- 16 moving with my Headquarters Platoon. I instructed 3rd Platoon to
- 17 conduct movement from Sharana through Route Cutlass and go
- 18 vicinity [sic] where -- at the very base of the mountain, going
- 19 towards Omnah, to conduct blocking positions -- that is, to search
- 20 vehicles, any type of activity, or look at any type of activity
- 21 regarding the search.

- I made my way down on Route Audi. Lieutenant Billings
- 2 moved through, and I believe that's when he ran into a few kids --
- 3 that personnel.
- We conducted the search, and then -- the initial search.
- 5 So we went out just to look at any clue that we can. There was no --
- 6 there was no -- no evidence whatsoever; but we had to go and do
- 7 something, and that was what we had to go with. We were looking --
- 8 we were searching for anything. We were looking for straws.
- 9 Q. You described for me a grid-by-grid search of Yahya Khel.
- 10 Could you tell me a little bit about that?
- 11 A. Okay. So soon after we did that movement out, I created a
- 12 grid, pretty much, separating every single location or every -- a
- 13 grid square of Yahya Khel -- or the grid area of Yahya Khel -- the
- 14 map. I broke it down by square grid of how we're going to search --
- 15 deliberately, piece by piece, galat by galat, home to home, and be
- 16 able to find any clues whatsoever we can get.
- 17 Q. What ----
- 18 A. That took ----
- 19 O. Go ahead.
- 20 A. That took 3 or 4 days, I believe.
- Q. Why Yahya Khel?
- 22 A. It was the biggest village in that area, and ----
- 23 [Pause.]

- 1 A. And I feared the worst. I feared that he was either
- 2 captured already -- Sergeant Bergdahl was captured already and that
- 3 they were going to make a run for it, meaning that the insurgents
- 4 were going to try and move him towards Pakistan, towards that
- 5 direction. But then I had no reporting about this; it was just all
- 6 gut instinct.
- 7 Q. So you chose Yahya Khel?
- 8 A. I chose Yahya Khel, because if anything, there may be some
- 9 kind of clue, somebody ----
- 10 Q. Okay.
- 11 A. --- from that location that may give us any type of
- 12 information whatsoever.
- 13 Q. Did you get any additional manpower or platoons attached to
- 14 your company during those first 72 hours?
- 15 A. The first 72 hours was all Blackfoot.
- 16 Q. Okay.
- 17 A. Then after that, after of course the battalion reported to
- 18 brigade, the brigade reported to division, two platoons came to me
- 19 as reinforcements. I had received 4th Platoon -- Sioux Platoon from
- 20 Delaware Company ----
- Q. Uh-huh [indicating an affirmative response].

- 1 A. That was also attached to the battalion but directly in my
- 2 control; and then I also received Mohawk Platoon, which is the recon
- 3 platoon directly under my control.
- 4 Q. Because before, they had not been attached to you for
- 5 operational control?
- 6 A. No.
- 7 Q. Now you control them?
- 8 A. Now I do.
- 9 Q. I'd like to move on to the second block of time that you
- 10 recall: 3 July through the middle of July. What type of operations
- 11 did you begin doing during this approximately 2-week period?
- 12 A. Well, we started out with blocking positions from point A,
- 13 point B, point C, point D -- anywhere all over the map. Anything
- 14 that we could possibly find or any type of information that we got
- 15 regarding any -- anything.
- 16 Q. Uh-huh [indicating an affirmative response].
- 17 A. We went blocking position by blocking position on all these
- 18 locations. And then we soon transitioned into air assault
- 19 operations, and then that's when we were able to move from -- again,
- 20 by helicopter from location to location to location, non-stop for the
- 21 next 10 -- 10-plus days. And we were conducting the searching
- 22 through any type of intelligence, any type of information that we can
- 23 get.

- 1 Q. So the whole company was conducting air assault operations?
- 2 A. Well, minus the ones that are still remaining at Mest OP.
- 3 Q. Uh-huh [indicating an affirmative response].
- A. So I left bare bones in -- I mean, what I'm saying -- when
- 5 I left security at OP Mest, I'm talking about skeleton crew itself.
- 6 Q. Okay.
- 7 A. Normally, you have a platoon there. I can't afford a
- 8 platoon there. I had to put -- I had to take risks -- tactical risks
- 9 in manning that. So I cut it in half. I had about 12 personnel
- 10 manning all the gun trucks ----
- 11 Q. Uh-huh [indicating an affirmative response].
- 12 A. --- conducting all these -- work with the ANSF or the ANP.
- 13 Q. Uh-huh [indicating an affirmative response].
- 14 A. And then I took the rest of the platoons and all the rest
- 15 of the -- either they're in blocking positions, or they're moving
- 16 with me on an air assault, going from point A, point B, point C, all
- 17 over.
- 18 Q. Okay. And during this second block of time, those 2 weeks,
- 19 they were -- the Soldiers were with you outside the wire, moving from
- 20 town to town?
- 21 A. Correct.
- Q. Did they ever get a chance to go back to Sharana during
- 23 those 2 weeks?

- 1 A. No.
- Q. Was there any refit time?
- 3 A. No.
- 4 Q. How did you receive resupply?
- 5 A. It was either through LOGPAC that's coming through, or ----
- 6 PHO: Can you explain ----
- 7 A. ---- by -- oh, correction ----
- 8 PHO: That's okay.
- 9 A. Logistics patrol. Logistics.
- 10 PHO: Okay. So just the logistics ----
- 11 A. Logistics ----
- 12 PHO: ---- convoy that comes ----
- 13 A. ---- convoy, sir, that would ----
- 14 PHO: --- out to resupply you, correct?
- 15 A. Yes, sir.
- And then I would either receive that or -- that or aerial
- 17 resupply, meaning coming from either helicopter or one of the -- one
- 18 of the -- I call them the Russian pilots" that would fly these --
- 19 "Jingle Air," and they would drop these supplies to us at our
- 20 location by parachute. We're talking about not really -- with
- 21 put-together parachutes. We're talking about the canvas ones -- the
- 22 plastic ones, not the silk. So they're all over the map; they're all
- 23 over the place.

- 1 Q. Were Soldiers in your company getting much sleep during
- 2 this period?
- 3 A. No.
- 4 Q. Were they sleeping indoors or outdoors?
- 5 A. Outdoors in dirt.
- 6 Q. How cold was it at night? Do you recall?
- 7 A. Sixty degrees.
- 8 Q. How does that feel when contrasted with daytime
- 9 temperatures of 90s and 100?
- 10 CDC: Objection.
- 11 PHO: Overruled.
- 12 A. It is miserable. It's -- it's bone-chilling to some
- 13 degree. Yes. 130 degrees during the day and dropping down to 60
- 14 degrees, that's a -- somewhere about between a 45- to 50-degree
- 15 change. Yeah. It's --
- 16 Q. Feels a lot ----
- 17 A. It's nasty.
- 18 Q. Feels a lot colder?
- 19 A. Oh, it's -- we had to get together. We had to huddle
- 20 together. The men had to come together and go, "Hey, you know,
- 21 you've got to do what you've got to do."
- 22 Q. Okay.
- 23 A. So they would literally -- I'll call it "spoon."

- 1 Q. During this block of time, how were your Soldiers feeling
- 2 that you could observe?
- 3 A. The initial -- the initial push out -- I'll do it by phase.
- 4 The initial push out, when we found out that Sergeant Bergdahl was
- 5 missing, there was no doubt in our minds: We need to go and look
- 6 right now. Everybody, lottie dottie; get up and go.
- 7 So we moved to where we thought he was. They were
- 8 motivated. I mean, we got -- we were -- we've got to get him back.
- 9 Right, wrong -- I mean, at this point, we had no idea what's going
- 10 on. We were confused as hell.
- 11 And then the confusion -- that confusion became a little
- 12 bit more elevated because then, after we got to OP Mest, we realized
- 13 what happened, what took place. So we started asking ourselves, what
- 14 -- "Who would do this? What's going on? Anybody see anything?" And
- 15 then that added more to the confusion.
- I tried to keep them all focused. I know that there was a
- 17 few times when they would -- I would hear them behind, after I
- 18 conducted a brief and talked to the platoons -- because I personally
- 19 was out there. I was talking to them daily. Anytime that they came
- 20 back to get more ammunition, to get more water, to get more MREs, I
- 21 would go out and -- if I was there, I would physically go and talk to
- 22 them and go, "What's going on, fellas? How are you all doing? How's
- 23 the feet? How's the back?"

- 1 You know, and they would say, "Oh, sir, we're hanging in
- 2 there."
- And I could hear, well, you know, mumbling, mumbling,
- 4 grumbling, grumbling, expletives; blah, blah, blah."
- I would turn around and go -- this is where the elevated
- 6 confusion comes from -- I would tell them, "We are doing what we're
- 7 doing because he's one of us. He is our brother. We need to get him
- 8 back. We don't know if he's safe or not."
- 9 Q. Thank you.
- 10 A. And they were confused about that.
- 11 Q. Let's move forward to the third block of time: 15 July to
- 12 30 June [sic]. What types of operations are you conducting
- 13 throughout this period?
- 14 A. More blocking positions at this point. It became more
- 15 relevant [sic] to us that whatever information that we're getting is
- 16 sporadic. It's just all over the place.
- 17 Q. Okay.
- 18 A. So we did the best we could in managing the patrols -- I
- 19 did the best I could in managing the patrols. So I would split it
- 20 into different, like, quadrants. I would say, you know, "2nd
- 21 Platoon, you're up there in the vicinity -- Sharana area to the
- 22 West." "3rd Platoon, you're over here by Omnah, because you know
- 23 Omnah very well," and I'm moving them there.

- 1 And then, from there, we would rotate or move somewhere
- 2 close by to where I could think that -- possibly any leads that could
- 3 come through.
- 4 Q. And you're still conducting air assault operations?
- 5 A. Air assault and blocking positions in both.
- 6 Q. What type of contact are you taking?
- 7 A. Mostly IEDs.
- 8 Q. Do you recall the frequency?
- 9 A. Well, we would hit them -- well, IED strikes would happen
- 10 -- maybe 2 to 3 days in between each other, right; but the issue that
- 11 I had, though, is 3rd Platoon, for one instance, they struck three
- 12 IEDs in a row in the same road.
- 13 Q. In one day?
- 14 A. In one day. That then brought up concerns, right,
- 15 regarding personnel -- concussion, other damages happening here. I
- 16 had one Soldier -- I believe it was Sergeant Rice -- God bless him.
- 17 He was on all three of them right down the road. I had to -- I had
- 18 to take the measure of moving Sergeant Rice and putting him at
- 19 Sharana and giving him help because the fact that if I would -- if he
- 20 would have been hit with one more IED, he would have been out of the
- 21 theater. I'd have to evac him out. But he did so under protest.
- Q. He didn't want to go?

- 1 A. No, ma'am. He did not want to go. He knew where he wanted
- 2 to be. We all knew where we wanted to be. We were all there as
- 3 miserable as it was, as crappy as it was.
- Q. Let's move forward to the fourth block of time: 30 July to
- 5 the middle of August to the elections. You're still conducting
- 6 search operations at this point, but what else are you doing in
- 7 preparation for the elections?
- 8 A. We were -- we were working pulling site surveys. We were
- 9 working patrols with the ANSF. Everything that we did during that
- 10 time from start to finish was with the ANSF -- with the Afghan
- 11 National Security Forces and with the -- specifically the Afghan
- 12 National Police.
- We visited them by either air assaulting in or by
- 14 conducting movement with trucks. Or in some cases -- well, like
- 15 Omnah, we walked in. We walked in from the vicinity of Route
- 16 Cutlass. We got dropped off down the hill, and we walked all the way
- 17 up to the hill -- up the mountain, the safest way we can go without
- 18 hitting any IEDs on the road.
- 19 Q. Did you feel like the search was winding down?
- 20 A. It did. It began to wind down because of lack of
- 21 information that we're getting either from the patrols that we were
- 22 doing ----
- Q. Uh-huh [indicating an affirmative response].

- 1 A. --- what we were generating.
- 2 At some point, they had to pull us all back eventually, but
- 3 we did so by retrograding back slowly. And I'm not talking about,
- 4 you know, everybody go back in at once.
- 5 Q. Okay.
- A. I'm talking about, you know, one platoon will go in for,
- 7 like, a day or two just to get stuff or equipment or supplies, and
- 8 then come right back out. And I would then do that for the next
- 9 platoon until -- when I get that platoon back.
- 10 Q. Did the Soldiers know that the search was starting to wind
- 11 down?
- 12 A. They had a feeling, yes. They're very, very keen.
- 13 Q. Now, during this fourth block of time, were you able to
- 14 observe how your Soldiers in your company were feeling?
- 15 A. They were worn out. They were -- for lack of a better --
- 16 beat down.
- 17 Q. Physically, how were they?
- 18 A. There were -- there were injuries. There was -- you know,
- 19 from the IEDs, that took its toll.
- 20 The majority of the -- I think the majority of the issues,
- 21 though, was just anger. Morale was -- well, I mean, their morale was
- 22 high; but at the same time, you can tell that there was -- there was
- 23 something there that they wanted to talk about, but they couldn't

- 1 express it properly. So they would, you know, kind of get at each
- 2 other. But then I would hear them, and I'd come back in into the mix
- 3 and I'd tell them, "Hey, stop that. That's not what's going on right
- 4 now. We're here. We're a unit. We work together, and we push
- 5 through this." And ----
- 6 Q. What were some of the physical effects that you were able
- 7 to observe on Soldiers being out for 45 days?
- 8 A. Well, physically, their feet, their skin ----
- 9 Q. Uh-huh [indicating an affirmative response].
- 10 A. --- it was just nasty. I mean, nobody showered.
- 11 Q. Uh-huh [indicating an affirmative response].
- 12 A. I mean, if we did, we were using, you know, baby wipes and
- 13 bottled water.
- 14 O. Uh-huh [indicating an affirmative response].
- 15 A. T-shirts were ripping apart. Socks had to be brought in.
- 16 At one point, they were resupplying me with socks in one of my -- in
- one of the air drops that we were receiving. T-shirts, you know.
- 18 My platoon sergeant -- or my supply Sergeant had to go out
- 19 to the other battalions and start collecting other t-shirts and socks
- 20 and amongst -- baby wipes was big.
- 21 Q. Uh-huh [indicating an affirmative response].

- 1 A. I think the PX ran out of baby wipes. So they had to go
- 2 and ask for all these different types of assistance from everybody
- 3 else, and they were able to put things together for us.
- 4 So the -- mentally, they were exhausted. Physically, they
- 5 were worn out. But they pushed. They pushed as hard as they could.
- 6 Q. I'd like to talk some metrics here. What is a -- what is
- 7 an MRAP?
- 8 A. Mine Resistant Armored [sic] Protection [sic] Vehicle.
- 9 Q. How many MRAPs did you start with in your company prior --
- 10 at the start of the deployment?
- 11 A. Let me do some math here -- and I'm using my toes.
- 12 [Pause.]
- 13 A. I had about 16 or 17 MRAPs, to include myself -- my MRAP,
- 14 and First Sergeant's MRAP.
- Q. At the end of this 45-day search period, how many -- what
- 16 was the state of all of your 16 to 17 MRAPs?
- 17 A. They'd been swapped out. Meaning, we conducted controlled
- 18 substitution.
- 19 Q. That sounds very clinical. What happened?
- 20 A. What happened is: After we hit an IED, either the font end
- 21 or the back end or the middle part of the vehicle would be destroyed.
- 22 The mechanics had to conduct either putting the back end of another
- 23 vehicle or the front end of another vehicle and making a whole MRAP

- 1 so that we could continue our operation or had to go and get other
- 2 parts from other companies or battalions in the FOB -- the ones that
- 3 are not using them -- and be able to put together a vehicle that we
- 4 can use.
- 5 Q. So at the end of the 45-day search period, had that
- 6 happened to all of your vehicles?
- 7 A. About 80 percent of them to some extent, either by IED or
- 8 just sheer, you know, driving them and having mechanical issues.
- 9 Q. What is a mine roller?
- 10 A. A mine roller is a device emplaced in front of the MRAP,
- 11 and it is to -- utilized to strike pressure plates on the ground in
- 12 order to take the blast ----
- 13 Q. Uh-huh [indicating an affirmative response].
- 14 A. --- so that the MRAP or the passengers or the actual
- 15 vehicle itself stays intact.
- 16 Q. It's actually pretty big?
- 17 A. Oh, it's very big.
- 18 Q. How long is it?
- 19 A. 20 feet, maybe -- 15 to 20 feet long, about 12 feet wide.
- 20 No, I'm sorry. No, not true. About 10 feet wide. It's enough to
- 21 place into a lane so that you can have that surface covered.
- Q. How many mine rollers did you start with on your books at
- 23 the beginning of the deployment?

- 1 A. I believe I had one for every platoon.
- 2 Q. So how many was that?
- 3 A. Four.
- 4 Q. Four.
- 5 How many did you have at the end of the search period?
- A. No more. I had to go borrow other people's mine rollers.
- 7 Q. So all four of those were destroyed?
- 8 A. All of them were destroyed. I had to get other ones from
- 9 the other battalions, my supply sergeant, through the battalion ----
- 10 Q. Uh-huh [indicating an affirmative response].
- 11 A. --- supply NCOIC or officer. Yes, we utilized -- we had a
- 12 monopoly on all the mine rollers in Sharana.
- 13 Q. Now, just before the elections, were you still in the
- 14 field, outside the wire?
- 15 A. We were coming in and out of FOB Sharana at this point.
- Q. After the elections, did your mission change?
- 17 A. Yes. We received a change of mission. We conducted one
- 18 more operation, Operation Geronimo Durao, and then we transitioned to
- 19 combined action.
- 20 Q. Okay. Now, during ----
- 21 PHO: When you say "combined action," can you explain what that
- 22 is? That's combined with the Afghan National Security Forces?

- 1 WIT: Yes, sir. It's combined with the Afghan National Security
- 2 Forces, and we're not just talking about going patrolling. We're
- 3 actually moving to the district center where they're co-located; and
- 4 we're living with them 24 hours a day, 7 days a week.
- 5 PHO: Okay.
- 6 Q. I'd like to talk about your area of operations. You've
- 7 described your area of operations prior to 30 June 2009. During this
- 8 entire search period that you just described, did that area of
- 9 operations change?
- 10 [Pause.]
- 11 Q. Did it expand?
- 12 A. Absolutely. It went from my normal area that I described
- 13 to other provinces. We made it to Gardeyz, which is Paktiya. We
- 14 made it to Ghazni, which is adjacent next to Paktika.
- Our 1st Platoon that was conducting the operations for the
- 16 brigade was all over the place. They were -- they were in -- in
- 17 Khost, Gardeyz, Paktiya, Paktika.
- My 3rd Platoon, my 2nd Platoon, the remaining of them, they
- 19 were all up and down the roads either by air assault or by driving.
- 20 Q. Were you familiar with these areas before you moved into
- 21 them?
- 22 A. No.

- 1 Q. What risk does that entail when you move in to an area
- 2 quickly that you're not familiar with?
- 3 A. It's very risky.
- 4 O. How so?
- 5 A. It takes -- well, you've got to do the analysis on the
- 6 terrain and then the enemy. I've always believed that the enemy has
- 7 a vote. The enemy conducts what's best for him just like we do
- 8 what's best for us -- how to protect ourselves. So we didn't have
- 9 any of these intelligence reports or anything like that as far as
- 10 what other provinces are currently experiencing.
- 11 Like, for instance, Ghazni. Ghazni is with the Polish Army
- 12 -- the Polish team. God bless them. They don't report like we do.
- 13 We don't know what was going on in their area; and when we would try
- 14 to get information from them, the best that they could tell me was
- 15 "Oh, it's dangerous."
- "Okay, can you elaborate?"
- "Oh, it's very dangerous. I wouldn't go there."
- 18 But we did.
- 19 Q. Okay. Now, your normal planning cycle for an operation, I
- 20 think you related, was 3 to 4 days. Did that shorten during the
- 21 search period?
- 22 A. Absolutely. The -- normally, we go into a cycle of: I
- 23 receive the mission. I conduct the mission analysis. I take

- 1 one-thirds/two-thirds -- the "one-thirds/two-thirds" rule. I take
- 2 about one-third, which is roughly about, maybe a day, if even that --
- 3 half a day. I give the instructions to my platoons, and then they
- 4 receive that information. They have a chance to provide their own
- 5 OPORD and then go in through a whole course of action type of -- say,
- 6 assessment.
- 7 After that, then they conduct back-briefs to me, and then
- 8 we go into the whole rehearsals of concept ----
- 9 Q. Uh-huh [indicating an affirmative response].
- 10 A. --- rock drill. We go step by step, line by line,
- 11 phase-line by phase-line, task and purpose. Provide me, "What is it
- 12 that the enemy is going to do to you, and what are you going to do to
- 13 the enemy if this happens?"
- 14 O. Uh-huh [indicating an affirmative response].
- 15 A. That was the normal time line until we get to the point
- 16 where we get extracted or we come back to FOB Sharana or we go into
- 17 another mission.
- During this 45 days that we're talking about, the OPTEMPO
- 19 was so high, I'd get a mission. I'd receive a message from the
- 20 battalion regarding a possible location -- possible. I would turn
- 21 around and create an order. Within hours, we're moving out to that
- 22 location. We didn't have time to sit there and to conduct, you

- 1 know -- and when we did the very hasty rehearsal, we would get an
- 2 imagery of some type of target description from a radio. And if you
- 3 ever talked on a radio when you're trying to get a description of a
- 4 qalat, it doesn't work so well. Or even different messages, right,
- 5 from your -- from your Blue Force Tracker messages.
- 6 So I did the best I can in drawing out these galat areas.
- 7 How big is the location approximately by width and length? And I
- 8 would break it down to my platoons and ----
- 9 Q. And to be clear: You're doing this either from a truck or
- 10 on the ground?
- 11 A. On the ground. Primarily on the ground. If I get the
- 12 information from the truck, then we would talk -- huddle around the
- 13 Blue Force Tracker. But I like to draw it out on the ground, conduct
- 14 terrain model; and then be able to talk it through. Now, that is
- 15 hasty. It's very quick, didn't have time to sit there and conduct
- 16 the full-on -- full-blown rehearsals like we did because time is of
- 17 the essence. Everything was time -- everything -- we had to take
- 18 certain risks, and we did that. I did that.
- 19 Q. Have you ever had -- gone through a hasty planning process
- 20 like this other than that 45-day period?
- 21 A. No. No.
- 22 Q. I'd like to talk about battlefield circulation. What is
- 23 battlefield circulation by a company commander?

- 1 A. So Blackwood's a little bit different from the rest of the
- 2 platoons or the rest of the battalion. I created a Headquarters
- 3 Platoon so that I can get around. That Headquarters Platoon was able
- 4 to move to area to area to area.
- 5 In some cases, if my Headquarters Platoon cannot go and
- 6 conduct this patrol, I would latch myself -- or I would attach myself
- 7 to one of the platoons to conduct these operations.
- 8 Q. Uh-huh [indicating an affirmative response].
- 9 A. So then I would be with them for the duration of 3 to 4
- 10 days. In this case, I was out there with them for a majority of -- a
- 11 good long period.
- 12 Q. And that's the company commander checking on his troops?
- 13 A. Correct. I conduct operations with the men.
- 14 O. Prior to 30 June, how often did you do battlefield
- 15 circulation?
- 16 A. I would go with a platoon for 3 or 4 days on their patrol,
- 17 and then I would return back to Sharana when that platoon returns
- 18 back to Sharana and conduct business there as a company commander and
- 19 run the company. So that would be 3 days out, maybe 4 days, 5 days
- 20 back; and then I would rotate again to another platoon and do the
- 21 same thing all over again.
- 22 Q. During the search period, how often did you come back to
- 23 FOB Sharana?

- 1 A. I didn't come back until about 28 days after we pushed out.
- 2 And then, when I did return, I returned just -- enough to get more
- 3 ammunition, more water, more equipment ----
- 4 Q. Uh-huh [indicating an affirmative response].
- 5 A. --- and then I'd turn right back around and left again.
- 6 Q. How did you feel during this entire -- as company
- 7 commander, how did you feel during this entire search period?
- 8 A. I was worried -- worried for my men.
- 9 Q. Were you proud of what they were doing?
- 10 A. Absolutely. I don't think -- I think lesser men would have
- 11 caved, I would say. But these men, they hung in there. They were --
- 12 they were extraordinary.
- 13 Q. How were they extraordinary?
- A. Well, with their emotions and everything else that they
- 15 were feeling, not having been able to talk to their families
- 16 themselves -- we were all not talking to our families. Nobody was.
- 17 They were confused. They're tired, hungry, miserable; but they did
- 18 what they had to do, even though they know -- part of them is telling
- 19 them, "This is -- this is so wrong." But they did it because of the
- 20 brotherhood. They did it because I kept going back and telling them
- 21 and reiterating to them, "Look, one of us is out there, and we don't
- 22 know where the heck he's at, what they're doing to him. If that was

- 1 you, I'd go after you, too. I would go find you. I would exhaust
- 2 everything I could possibly do to get you back." And they knew that.
- 3 TC: Thank you. No further questions.
- 4 PHO: Defense?

5 CROSS-EXAMINATION

6 Questions by the defense counsel:

- 7 Q. Back when you knew him, Sergeant Bergdahl was a good
- 8 Soldier?
- 9 A. Yes.
- 10 Q. He never gave you any trouble?
- 11 A. No.
- 12 Q. On the Rear-D, I think, as a company commander, you're
- 13 often trying to get those guys to come forward. Do you remember that
- 14 Sergeant Bergdahl was one who was actually trying to get himself
- 15 ready to deploy?
- 16 A. I think we were all trying to get ourselves to deploy.
- Q. Do you -- you worked closely with First Sergeant Jimenez?
- 18 A. I did. He was my first sergeant, sir.
- 19 Q. Did First Sergeant Jimenez -- he never came and told you
- 20 that some Soldiers who worked with Bergdahl were concerned about his
- 21 mental health once he had shown up on the deployment and that they
- 22 were recommending that something happen to him? You never found out
- 23 about that?

- 1 A. I did not.
- Q. And First Sergeant Jimenez never told you that?
- 3 A. He never -- that never came up to me.
- Q. And if he had told you that one of the Soldiers -- that the
- 5 Soldiers are concerned about his mental health on the deployment, how
- 6 would you have handled that Soldier differently?
- 7 A. From my experience, having these issues before -- whether
- 8 it was a mental health issue coming from Iraq when we were first
- 9 returned back from Iraq -- I would take the Soldier myself, and I
- 10 would get appointments for him, get him squared away, get him -- get
- 11 him the mental health or the assistance that he needed, sir.
- 12 Q. Because you found out that -- that never happened as far as
- 13 you're aware?
- 14 A. I did not know.
- Q. Right. What did -- they were supposed to leave Mest on the
- 16 30th of June and go back to Sharana? 2nd Platoon?
- 17 A. Yes, sir. That was the rotation.
- 18 Q. And you described at length, when Major Kurz was asking
- 19 you, about a combat operation that 2nd Platoon had that took place in
- 20 a place called Omnah, and that was very in-detail. But I just want
- 21 to, you know, make sure that the point is clear that Omnah is not the
- 22 same location as COP Mest. It's a different district, right?
- Q. Well, it's different. Yes, sir.

- 1 A. Okay. And now I want to -- beyond combat patrols, I want
- 2 to talk to you about something that's even more exciting, and that is
- 3 paperwork and the responsibilities of a company commander.
- Would you say it's important as a company commander --
- 5 you've got over a hundred guys, and the Army's got their paperwork
- 6 procedures for tracking their Soldiers and their duty status, their
- 7 moves and schools and awards. Is that one of your things that you do
- 8 as a commander?
- 9 A. Well, I -- I'm the approving authority from the command or
- 10 from the company perspective; but the majority of the work that's
- 11 being done, I don't, per se, type it all. My training room does.
- 12 Q. Sure. You've got a training room to help you; you've got
- 13 First Sergeant looking over it; your platoon leaders and platoon
- 14 sergeants are assisting you in your responsibilities to make sure
- 15 that, you know, paperwork is helping the Army keep track of
- 16 everything with all of our Soldiers?
- 17 A. Certain paperwork, sir.
- 18 Q. Okay. And a Soldier's duty status is recorded on a form
- 19 called a Department of Army Form 4187?
- 20 A. Yes, sir.
- 21 Q. You're familiar with that form?

- 1 A. I am.
- 2 Q. I'm sure you've signed hundreds of them?
- 3 A. Yes.
- 4 Q. These are signed and approved by the company commander? It
- 5 can't be done lower than you?
- A. Well, it has to be initiated from my level.
- 7 Q. Uh-huh [indicating an affirmative response].
- A. Again, that's typed up by my training room, and then that
- 9 gets pushed on to the battalion staff or the battalion personnel
- 10 office, the S-1.
- 11 Q. All right. When a Soldier is present for duty, their duty
- 12 status is, with the Army, listed as PDY or -- which means present for
- 13 duty, right?
- 14 A. Correct.
- 15 Q. And when -- if a Soldier is AWOL or if a Soldier is a
- 16 deserter, there is a different duty status that reflects that because
- 17 we don't want them listed as present for duty if, in fact, they're
- 18 AWOL or a deserter, right?
- 19 A. Correct.
- Q. And you're aware that administratively, Sergeant Bergdahl's
- 21 paperwork never changed to reflect a status of AWOL, and it never
- 22 changed to reflect a status of desertion? You're aware of that?

- 1 A. You informed me of that about -- a couple days ago.
- Q. Right. So you weren't aware that nothing had ever changed
- 3 before then?
- A. Well, what I knew, sir, was the paperwork was initiated at
- 5 my level.
- 6 Q. Uh-huh [indicating an affirmative response].
- 7 A. We pushed it up to battalion. Now, after it moved to
- 8 battalion -- that is at, again, that level. It could have been
- 9 either processed or changed to a different one. But what I did is
- 10 initiate the paperwork. And I know that my first sergeant and
- 11 everybody else was working on that with my training room, with the
- 12 battalion S-1. So after it left our -- my company, it's at that
- 13 level.
- 14 O. Well -- and there's no fingers being pointed here, but what
- 15 I want to get at is, I guess, that for the last 5 years that Sergeant
- 16 Bergdahl was not listed administratively by the Army as AWOL or a
- 17 deserter? I guess you're aware of that now?
- 18 A. I am.
- 19 Q. Okay. Your company was pretty well manned. It wasn't
- 20 100 percent; but, you know, it was normal for that time -- you said
- 21 -- I think you said it was about 90 percent of ----

- 1 A. Correct.
- 2 Q. --- normal strength?
- 3 A. Yes, sir.
- 4 Q. And 90 percent for that type of deployment is pretty
- 5 normal, correct?
- 6 A. That's pretty -- that's across the board for everybody.
- 7 Q. And that was able to -- to reflect changes in what's going
- 8 on? For example, at one point, one of your Soldiers shot himself in
- 9 the foot, out of action for a bit, a few weeks, but you had the
- 10 manning to be able to still accomplish the mission?
- 11 A. Correct. We were able to rotate personnel through.
- 12 Q. And in fact, there was even -- since it was a yearlong
- 13 deployment, there was a mid-tour leave policy that was in effect
- 14 for all of the Soldiers of your company as long as they were going to
- 15 be out for the entire deployment, right?
- 16 A. Yes, sir.
- 17 Q. That was about 2 weeks -- 15 days that they could get off
- 18 on leave?
- 19 A. Yes, sir.
- Q. And during that period, they could -- if they want to, they
- 21 could go back to the States and go to Disneyland?
- 22 A. Whatever they ----

- 1 Q. They could go hiking in New Zealand, you know ----
- 2 A. As long as ----
- 3 Q. --- whatever they want ----
- A. --- they got that 15 days, sir, they can -- they can do
- 5 what -- as long as it's within reason of safety and, you know,
- 6 they're not breaking any laws.
- 7 CDC: Can we consult for a moment?
- 8 PHO: Certainly.
- 9 [Pause.]
- 10 Q. And it was even worldwide? If someone wanted to go, you
- 11 know, cruise around Australia, they could do that within that leave
- 12 period?
- 13 A. Well, it's got to be done through the right, proper ----
- 14 Q. Yeah, you've got procedures ----
- 15 A. Yes, sir.
- 16 Q. ---- going in and out of the combat zone?
- 17 A. Yes, sir.
- 18 Q. And this was staggered, the leave policy, so that not a,
- 19 you know, big chunk of your combat power is all taking their 15 days
- 20 of leave all at the same time, right?
- 21 A. Yes, sir.

- 1 Q. And so your Soldiers were still allowed to take their 2
- 2 weeks -- 15 days of leave, even in July and August, while these
- 3 search efforts that you were talking about were going on, right?
- A. We were able to rotate some personnel through. But I think
- 5 what happened was, sir -- is things had to shift a little bit to the
- 6 left and to the right. What we ended up doing is maximizing the
- 7 boots on the ground and not to deny leave, but we asked the Soldier
- 8 if they could move their leave either to the left or to the right of
- 9 the dates that we were currently working off of because we don't know
- 10 when it was going to end, but they gladly did so.
- 11 Q. Sure. That makes sense. You would say that some of those
- 12 leave plans were hard and fast; but others, the Soldiers hadn't
- 13 really come up with a plan and, if they had to move left or right,
- 14 that some of them were willing to do that?
- 15 A. Yes, sir.
- Q. Okay. During the -- after Sergeant Bergdahl went missing,
- 17 your forces increased their operational pace, including increasing
- 18 the partnerships that you had with the Afghan forces?
- 19 A. Yes, sir. We would -- like I said, they were there with
- 20 us.
- 21 Q. You said then, you know, as you guys went up and went
- 22 through this together, your company gelled together to accomplish the
- 23 assigned mission?

- 1 A. We did what we had to do to get Bergdahl back, sir.
- 2 Q. At the end of the tour, your mission was successful?
- 3 [Pause.]
- 4 A. More so, yes.
- 5 Q. Within a few days of Sergeant Bergdahl leaving, are you
- 6 aware of the negotiations that took place with Major Crapo and some
- 7 Taliban leaders who wanted to deliver him back to U.S. forces?
- 8 A. There was -- Major Crapo -- Major Crapo was there at Mest
- 9 OP. He did have some meetings. I believe that was something that
- 10 they did discuss.
- 11 Q. And you're aware that this negotiation broke down because
- 12 the American forces put forth an offer of boxes of MREs and supplies,
- 13 but -- and that wasn't good enough for the captors? Are you aware of
- 14 that?
- 15 A. No, sir. I didn't know -- like I said, I knew about the
- 16 meeting. I know Major Crapo was there on the ground with me. I was
- 17 focused on putting out the patrols, moving personnel from point A to
- 18 point B. Major Crapo was there and was talking to -- it was like a
- 19 shurah; he had a meeting. I didn't know the details of that meeting,
- 20 though.
- 21 Q. Did you know the purpose and the agenda of that meeting?
- 22 A. I think it was because of exactly what you described. We
- 23 were all trying to find any information from anybody as far as where

- 1 his whereabouts were. Major Crapo took it -- he was directed by the
- 2 battalion, I think, to come down and talk to -- talk to the
- 3 leadership about that, or the local village elders talk about that.
- 4 And again, we're appealing to, "Hey, you know, we just want our -- we
- 5 want our Soldier back. We want him safe. We would like to work with
- 6 you with that." And I think that was -- I think that was the
- 7 messaging [sic] that he was pushing out. And as far as what I was
- 8 concerned, I was not privy. I was not at that meeting. Again, I had
- 9 a company to run. I had to put platoons out and patrols out, and I
- 10 was focused on that.
- 11 DC: Okay. No further questions.
- 12 PHO: Government, any redirect?
- 13 TC: Yes, sir.

14 REDIRECT EXAMINATION

15 Questions by the trial counsel:

- Q. Defense alluded to the position of Omnah and the village of
- 17 Omnah and the mountains of Omnah, and it was some distance from
- 18 Observation Post Mest. What was the enemy situation around
- 19 Observation Post Mest?
- 20 A. Not getting into the routes -- like I said, it was a
- 21 high-traffic area for weapons and IED materials, explosives. So
- 22 there's always a high-threat area -- that's always a high-threat
- 23 area. In the vicinity of that, you had the village of Yahya Khel;

- 1 and north of that, you had Yousef Khel. Those two villages had enemy
- 2 insurgents -- had insurgents. Primarily in Yahya Khel, there's a lot
- 3 of -- from my experience, what I've looked at and talked to people
- 4 about, they've always mentioned that there's a high sense of
- 5 leadership of the insurgency there. Not naming who, not pointing
- 6 them out but they've always alluded to that; and to talk about that
- 7 would be detrimental to them, but then they will -- always hinted at
- 8 us and would say, "Yeah, there's some people here that you should go
- 9 and see and meet and arrest."
- But again, the -- the high-threat area is all around us in
- 11 that -- that vicinity. Again, high-traffic; high-IED area. You can
- 12 always hear some small arms fire going off in the background; but not
- 13 directly to us, but it's in the area.
- Q. Okay. And, Major Silvino, why did you hesitate when
- 15 Colonel Rosenblatt asked you if you thought your mission, your
- 16 yearlong deployment, was successful? Why did you hesitate? What was
- 17 your other thought?
- 18 A. Well, by intents -- well, all purposes, the mission was a
- 19 success. Success because we were able to accomplish the things -- or
- 20 the missions that we did from counterinsurgency to DUSTWUN
- 21 operations; to conduct polling sites supporting the election; to be
- 22 able to conduct combined action, moving out to the district centers
- 23 with our platoons 24 hours a day, 7 days a week, living and working

- 1 with the Afghan Security Forces. I think that overall -- that whole
- 2 process, those things that I just mentioned, success. True.
- 3 But I hesitated because I know that deep down and what I
- 4 know -- what my feeling is, my fellow brothers, my fellow company
- 5 commanders, my fellow Geronimos -- not even just Geronimos, the whole
- 6 Spartan Brigade, the whole 82nd Task Force, I know that they --
- 7 behind closed doors they always talk about and say, "Don't be
- 8 Blackfoot Company. They lose people." That hurts. That's a sting.
- 9 It's a mark. And to say that and to hear that from people -- and
- 10 I've heard it, but I didn't confront anybody about it. I let it roll
- 11 off my back. They don't know what we did. They don't know what we
- 12 went through. Unless you were there on the ground, walking those
- 13 days every day, living, sleeping, eating dirt -- they have no room to
- 14 talk. But I had nothing else to say about -- regarding -- or even
- 15 respond to that, because that's their initial feeling, and my feeling
- 16 is, "I got it. They talk about us. I got it. We have a mark."
- 17 TC: Thank you.
- 18 PHO: Any recross?
- 19 DC: Could we ----
- 20 CDC: If we -- let us just ----
- 21 PHO: I have some ----
- 22 CDC: ---- consult ----
- 23 PHO: ---- questions as well, so I'll let you all go first.

- 1 CDC: Just one second.
- 2 [Pause.]
- 3 CDC: Thanks very much, Colonel.
- 4 PHO: Okay. I have a few questions, Major Silvino.
- 5 WIT: Yes, sir.

6 EXAMINATION BY THE PRELIMINARY HEARING OFFICER

7 Questions by the preliminary hearing officer:

- Q. Can you tell me -- I'll run this by my security manager for
- 9 clearance -- but the straight-line -- you know, as-the-crow-flies
- 10 distance from Yahya Khel to the village of Mest -- so from the
- 11 village of Yahya Khel to the village of Mest approximately what is
- 12 that straight-line distance?
- 13 A. About 6K, sir.
- O. Six -- six kilometers?
- 15 A. Six kilometers, sir.
- Q. All right. You mentioned a 4187. Did your company put
- 17 forward a DA Form 4187 to change the status of Sergeant Bergdahl?
- 18 A. To my understanding, yes, sir. It did.
- 19 Q. Okay. Well, you would have signed it as the company
- 20 commander?
- 21 A. Correct.

- 1 Q. Okay ----
- 2 A. But again, sir, that's ----
- 3 Q. Understand ----
- 4 A. ---- 6 years ago ----
- 5 Q. Lack of sleep and 6 years and OPTEMPO. Do you know
- 6 approximately when that was pushed forward?
- 7 A. It was roughly about the first 5 days, sir, because I
- 8 remember there was a few other personnel that came down. Paralegals
- 9 came down, lawyers came -- I mean, everybody was looking at us.
- 10 Q. Certainly.
- 11 A. So we had different investigators trying to talk to us, and
- 12 one of -- the paperwork, I believe, it was one of those things that
- 13 we had to sign -- I had to sign.
- Q. All right. And it was changing his status from present for
- 15 duty to AWOL, again to your recollection?
- 16 A. Yes, sir, to that -- to that.
- Q. But you don't know the status of what happened to that at
- 18 higher?
- 19 A. Yes, sir.
- 20 Q. You pushed it out to your headquarters, and then it was
- 21 outside of your control, and you weren't -- no one spoke to you about
- 22 that ----

- 1 A. No, sir.
- Q. ---- ever since? Okay.
- 3 You mentioned that your area of operations significantly
- 4 expanded after 30 June. Can you -- earlier you said it was, I
- 5 believe, 1,200 ----
- 6 A. Square miles.
- 7 Q. --- square miles. Can you give me a rough square mileage
- 8 of your post-30 June operations?
- 9 A. It's going to be at least, sir, double that. We gained
- 10 areas -- vicinity, again to -- not knowing -- not giving out routes
- 11 or anything ----
- 12 O. I understand.
- 13 A. ---- or location, we ----
- 14 Q. No, that ----
- 15 A. ---- gained areas ----
- 16 Q. ---- that helped. "Roughly double" is a ----
- 17 A. Yes, sir.
- 18 Q. ---- helpful answer.
- 19 A. Yes, sir. Sir, though, when I say double, that's just my
- 20 area. There's other people out there looking.
- Q. Certainly. Certainly. But this is where your company was
- 22 operating; and at this point, you had two additional platoons
- 23 attached to you as well?

- 1 A. Yes, sir.
- Q. Okay. You mentioned the MRAPs. You said you had 16 or 17
- 3 at the beginning of the deployment. Is that roughly the same number
- 4 you had on 29 June?
- 5 A. Yes, sir.
- Q. And you said 80 percent had some kind of damage or required
- 7 some kind of maintenance. Roughly, what's the breakdown of problems
- 8 due to mechanical issues and problems due to IEDs?
- 9 A. I'd say 50 percent of that 80 percent, sir, was from the
- 10 IEDs -- a good portion of that, 50 to 60 percent of that.
- 11 Q. Okay.
- 12 A. Then the remaining parts would be, you know, just the wear
- 13 and tear of the vehicles.
- 14 Q. If my math is right, about 30 percent?
- 15 A. Correct.
- 16 Q. You mentioned Sergeant Rice who had taken three IED hits.
- 17 And again, I'll loop in Mr. Mersereau. You said that if there had
- 18 been another one, what would have needed to happen? What was the
- 19 policy?
- 20 A. He would have been evac'd, sir, out of the theater ----
- 21 Q. Okay.

- 1 A. --- meaning he would have been sent back to Rear
- 2 Detachment.
- 3 Q. And that's outside of your control as the commander? That
- 4 was a requirement in the theater?
- 5 A. Yes, sir. That was something that -- that was pushed down
- 6 to us. Now, that said, he would not return back. He would be done
- 7 for the deployment.
- 8 Q. Okay. But he was not -- it sounds like, because you pulled
- 9 him under protest, he was not physically injured?
- 10 A. Well, he -- he had some kind of ----
- 11 Q. He had his bell rung?
- 12 A. Yes.
- 13 Q. But he was not ----
- A. And at that point, concussion, sir, was ----
- 15 Q. Certainly.
- 16 A. ---- a high -- a high probability that that was going on;
- 17 but we needed to pull him out of the line and get him back to Sharana
- 18 to get him some rest and recuperation at least to refocus and then be
- 19 able to again after, I think, about a week or a week and a half, we
- 20 were able to push him back to 3rd Platoon again and rejoin the
- 21 platoon.
- 22 Q. Okay. Did Sergeant Rice receive a Purple Heart or other
- 23 commendation?

- 1 A. That was under works, sir, at the time. Again, the high
- 2 OPTEMPO, it's not like we could just ----
- 3 Q. Right.
- A. It was -- we annotated, we wrote it down. The medics knew
- 5 about it, and then it was processed.
- 6 Q. Okay.
- 7 A. We had -- there was a high percentage of the company that
- 8 actually had Purple Hearts.
- 9 Q. From the overall deployment?
- 10 A. Overall deployment, sir, and, you know, just the amount of
- 11 IEDs that we were hitting, and just the significant danger that we
- 12 were at. I mean, it's already dangerous; but then, you know, you
- 13 couple that with more patrols -- double the patrols, triple the
- 14 patrols, it becomes a little bit more significant, yes.
- 15 PHO: I don't have any further questions.
- 16 Defense?

17 RECROSS-EXAMINATION

18 Questions by the defense counsel:

- 19 Q. Major Silvino, how confident are you that you signed the
- 20 paperwork to change him from present for duty to AWOL?
- 21 A. Like I said, it was 6 years ago. There was a ton of
- 22 paperwork that I had to do. And we spoke about this off to the side.
- 23 I'll say 30 percent, sir.

- 1 DC: Nothing further.
- 2 PHO: All right. Government?
- 3 TC: No further questions.
- 4 PHO: All right. Temporary or permanent excusal?
- 5 TC: Temporary, sir.
- 6 [The witness was temporarily excused, duly warned, and withdrew.]
- 7 TC: Sir, would now be an appropriate time for a break?
- 8 PHO: I think that would be good. Why don't we shoot for -- I've
- 9 got 1423.
- 10 CDC: Twenty of?
- 11 PHO: How about a quarter 'til.
- 12 CDC: Quarter of.
- 13 PHO: So 1445. That way it gives -- with the screening process,
- 14 I want to build some extra time in for the people attending.
- So thank you. You're free to go.
- 16 [The Article 32 hearing recessed at 1423, 17 September 2015.]
- 17 [The Article 32 hearing was called to order at 1447,
- 18 **17 September 2015.**
- 19 PHO: We are back on the record. The same parties who were
- 20 present at the recess are again present, to include the accused.
- 21 Government, call your next witness.
- 22 ATC: Colonel Clint Baker.

- 1 COLONEL CLINT J. BAKER, U.S. Army, was called as a witness for the
- 2 prosecution, was sworn, and testified as follows:
- 3 DIRECT EXAMINATION
- 4 Questions by the assistant trial counsel:
- 5 ATC: Sir, I want to advise you while testifying if you are asked
- 6 any question that you believe may require a response containing
- 7 classified information, it's your personal responsibility to notify
- 8 the preliminary hearing officer, Lieutenant Colonel Visger, prior to
- 9 answering. At no time should you disclose any classified information
- 10 while this hearing is in open session.
- Do you understand that, sir?
- 12 WIT: Yes, I do.
- 13 Q. And please state your full name for the record.
- 14 A. Clinton J. Baker.
- 15 Q. And what's your current duty position?
- 16 A. My current duty position is the G-3/5/7 of U.S. Army
- 17 Alaska.
- 18 Q. And how many years have you been in the Army?
- 19 PHO: Before you proceed with your questioning, sir, just let me
- 20 advise you that we do have a lot of non-military personnel watching,
- 21 and so we are trying to be careful of use of acronyms so that they
- 22 understand. So, during the questioning, I my interrupt just to ask

- 1 you to explain what those acronyms are so that the people watching
- 2 are able to understand.
- 3 WIT: Understood.
- 4 PHO: Okay. Thank you, sir.
- 5 Q. And so how many years do you have in the Army?
- 6 A. Twenty-four years in the Army.
- 7 Q. And, in that time, how many deployments have you had?
- 8 A. I've had two combat deployments and, most recently, a
- 9 peacekeeping deployment.
- 10 Q. And what positions did you deploy in?
- 11 A. I have deployed as the battalion operations officer in Iraq
- 12 and then I deployed as a battalion commander in Afghanistan, and as a
- 13 NATO battle group commander in Kosovo.
- Q. And when you were the battalion commander in Afghanistan,
- 15 what was the battalion that you were in command of?
- 16 A. 1st Battalion, 501st Infantry.
- 17 Q. And what were the dates of that command?
- 18 A. I commanded from May of 2008 to June of 2010.
- 19 Q. And when did your battalion deploy to Afghanistan?
- 20 A. We deployed in March of 2009.
- Q. And when did you return?
- 22 A. March 2010.

- 1 Q. And the battalion was assigned to what task force while you
- 2 were in the theater?
- 3 A. We were assigned to our organic brigade called Task Force
- 4 Yukon.
- 5 Q. And what is that organic brigade?
- A. It's 4th Brigade, 25th Infantry.
- 7 Q. And you were also currently assigned to Alaska -- U.S. Army
- 8 in Alaska?
- 9 A. That's correct.
- 10 Q. Okay. And how do you know the accused?
- 11 A. Sergeant Bergdahl was a Soldier in the Blackfoot -- one of
- 12 my companies in my battalion in Afghanistan.
- Q. Okay. And so before you deployed, what was the approach
- 14 that the unit was going to -- was going to take to accomplish the
- 15 mission in Paktika Province?
- 16 A. Well, we were -- we were going to really do doctrinally
- 17 correct counterinsurgency operations. As you might remember, the
- 18 Army had recently updated the counterinsurgency doctrine, so we were
- 19 studying that very hard.
- And so we had a very good strategy and a program, I think,
- 21 going into our deployment that we were able to start well in advance;
- 22 and we did a lot of training with that doctrine in mind. And of

- 1 course, there is a great deal of details that go along with that; but
- 2 in general, that was the approach.
- 3 Q. Well what was the -- basically, I mean, what was the focus
- 4 of how you were going to fight this fight in Afghanistan? The
- 5 populace, kinetic operations...
- A. Obviously the population is, generally speaking, considered
- 7 the center of gravity for counterinsurgency operations. But what we
- 8 did is there was pretty good continuity in the area we were taking
- 9 over for the unit preceding. And actually, several years prior to
- 10 that there was good continuity in terms of the strategy. And simply
- 11 put, the approach was separate the insurgents from the population,
- 12 step one. Step two: Achieve effects with the population to connect
- 13 them with their government. And then, step three is: Transform the
- 14 environment so that the insurgency is no longer a viable option for
- 15 the population. That sums up sort of the brigade strategy. And,
- 16 again, it came from the unit that was, you know, prior -- there prior
- 17 to us and had evolved over several years.
- 18 Q. And do you think Paratroopers in your battalion understood
- 19 that?
- 20 A. I do.
- Q. Okay. And why do you think that?
- 22 A. Because we spent a great deal of time and effort training
- 23 and making sure that they understood it. And I would venture to say

- 1 -- like I can still recite it, you know, verbatim. And I would
- 2 venture to say many of them would be in the same boat. I mean, we
- 3 just drilled it and trained it over and over again. So I am
- 4 confident that a large majority understood that.
- 5 Q. And did you have any specialized training prior to
- 6 deploying?
- 7 A. Sure. We did a lot of specialized training. But I think
- 8 in this case we benefitted more than I had in my prior deployment
- 9 because we knew where we were going pretty early on, and so I think
- 10 the difference in this train-up was that we were able to be very
- 11 specific in our approach, and I think that was helpful. So we really
- 12 got down into the details and the particulars of how we were going to
- 13 -- you know, we were going to actually employ that strategy.
- And the other thing is, I think, we put way more emphasis
- 15 than any other unit I have ever been in on leader training to make
- 16 sure the leaders, you know, inculcated that strategy and that
- 17 doctrine and understood it in depth; really, some tough academic-type
- 18 training for our leaders.
- And just not to be too longwinded, but the other thing we
- 20 were able to do is cultural training and language training for the
- 21 Soldiers so they understood it. And I remember my sergeant major and
- 22 I discussing that just having the leaders understand it is not good
- 23 enough. And so we made a big push and Sergeant Major Wolf was key in

- 1 that particular regard in making sure that, all the way down to the
- 2 Soldier level, that they understood it and really, you know, took on
- 3 that strategy.
- Q. And as part of that train-up, did you ever exercise or
- 5 conduct training on DUSTWUN situations, where a Soldier was missing?
- A. Absolutely. As a matter of fact, I remember in our
- 7 culminating training exercise, which was at the National Training
- 8 Center at Fort Irwin, California, one of the scenarios there, and
- 9 it's a peer -- you know, a near-peer environment. And in this case,
- 10 they do a fabulous job of replicating the exact environment that you
- 11 are going to go into, in Paktika in my case. But they had a scenario
- 12 in which the brigade had to execute DUSTWUN operations to recover a
- 13 DUSTWUN. And so as a result of that, you know, we had battle drills
- 14 and had procedures in place. Should that occur, speed is of the
- 15 essence; and so that's the reason for that training. The more times
- 16 you can work it, the faster that you can get.
- 17 Q. Now, you mentioned, right, that you were -- early on you
- 18 knew you were going to Paktika Province. In that initial period of
- 19 time -- I'm talking March to June -- what was the battalion focused
- 20 on for operations in the Paktika Province? What were your
- 21 Paratroopers doing?
- 22 A. Well, we were -- what we wanted to do as best we could is
- 23 balance our efforts across our four lines of effort, those being:

- 1 security, development, governance, and information operations. So
- 2 within each one of those functional categories, we had milestones and
- 3 strategies for how we improve capacity or increase capacity,
- 4 particularly for the Afghan government.
- 5 So ideally for things to work out, I used to tell my guys
- 6 that all the pistons are firing if things are working right. In
- 7 other words, your effort is about the same on each of those lines of
- 8 effort, and they all complement one another. So you never want to be
- 9 all security and no information operations for instance. And so you
- 10 want to balance those across, and that's the way we approached it.
- 11 Q. And as part of that, can you describe that operational
- 12 tempo in those initial months?
- 13 A. It's unpredictable over there, the OPTEMPO. So you have
- 14 your busy times, your sort of manic times. But you also have your
- 15 slower times. But it's manageable.
- 16 What you don't want to do in that environment is set a
- 17 pattern. So you try to -- you actually try to not develop a routine.
- 18 That said, human nature is that we develop a routine that we can --
- 19 that we have the endurance to be able to get through. So I would
- 20 say, in terms of OPTEMPO, it was busy but sustainable.
- 21 Q. Okay. And when you say, sustainable and endurance to get
- 22 through this 1-year deployment, you know, was rest and refit a part
- 23 of that?

- 1 A. Absolutely.
- 2 Q. And can you kind of describe why rest and refit is
- 3 important?
- A. Well, you've got to maintain your fitness and your fighting
- 5 capability. If you don't rest, you can't do that. If you don't have
- 6 a decent diet and if you don't exercise -- so you try to work all of
- 7 those things in as best you can to maintain the fitness of your
- 8 force, the fighting capacity of your force if you will.
- 9 Q. And so down at the platoon level, what were your kind of --
- 10 your expectations during that time period as far as how much you
- 11 wanted those platoons out in the field versus the time they were
- 12 spending back on the FOB getting rest and refit?
- 13 A. Well there is a balance there. There is a balance between
- 14 how much you want to be out in the field and off the FOB and how much
- 15 you are going to sustain the force if you will. My preference was --
- 16 and this is what I told them, "I want you to stay off the FOB as much
- 17 as you can," because that's where -- that's where you actually
- 18 accomplish those things that are in your counterinsurgency program or
- 19 your strategy. You don't accomplish anything on the FOB except for
- 20 the sustainment aspects of it. So there is a balance, and so -- I
- 21 don't know that I can articulate a number that goes along with that
- 22 or anything like that; but I think it was pretty common knowledge
- 23 that my expectation was you get the rest and the refit and do the

- 1 maintenance that's required to make you ready to fight, because we
- 2 were in some fights. So there was no question it could happen any
- 3 time, and you've got to be ready. So that means you've got to be
- 4 rested; you've got to be well-maintained, et cetera. And that's what
- 5 I expected. At the same time, I want you to maximize your -- the
- 6 amount of time you spend out actually accomplishing the mission.
- 7 Like I said, there is a balance there. And I think we struck it
- 8 pretty well to begin with.
- 9 Q. Okay. I want to go to OP Mest. Can you kind of describe
- 10 why you built OP Mest, what was the purpose for it, and kind of the
- 11 interaction that you had with the Afghans in deciding to build OP
- 12 Mest?
- 13 A. Sure.
- 14 CDC: I am going to object on the grounds that it's cumulative.
- 15 This will be number three on the reasons for OP Mest.
- 16 PHO: I am going to overrule it. It just simply provides a
- 17 different perspective from different levels of the command, so I'll
- 18 go ahead and allow it.
- 19 A. So, as soon as we got on the ground and I began forming
- 20 partnerships with the different Afghan governmental officials,
- 21 security officials, they had a pretty standard -- I think it was a
- 22 weekly or biweekly security meeting where we would all get together
- 23 and we would discuss the security of the province. The very first

- 1 thing they brought up to me is that they had been wanting to build an
- 2 out -- an ANP outpost in the Malak area for some time. And the
- 3 purpose was twofold. It was, one, because they needed a stronger
- 4 presence down there to demonstrate to the people that they could
- 5 protect them from the insurgents. But, two, they were having a lot
- 6 of IED strikes along the route there that runs into Malak from
- 7 Sharana; and a lot of innocents were being -- they had a lot of
- 8 innocents that were killed as a result of IEDs. And so there was
- 9 some pressure on the government by the population, "We need some help
- 10 here." So they came to me with this proposal -- the very first
- 11 thing, and they were very adamant about it. But initially, I held
- 12 off. I didn't commit to anything.
- Q. And why was that?
- A. Well, because once you get into something like that, it's
- 15 difficult to get out without the insurgents taking advantage in the
- 16 information operations realm. So I didn't want to get into something
- 17 and have to get out of it and lose information operations and lose
- 18 credibility with the government and so forth. So I wanted to first
- 19 make sure that they were committed to it and I could depend on them
- 20 to do what they said they were going to do.
- Q. And "they" being who, sir, just to be clear?
- 22 A. Afghan National Police for the most part under the
- 23 direction of the Afghan Governor. But I wanted to make sure that

- 1 they were committed to it before I -- you know, I started assisting
- 2 them with that.
- 3 The other thing is I had to get approval from my higher
- 4 headquarters. So it took several months to start -- to get that
- 5 approval and work through the process, find where we were going to
- 6 put it. So it took a little bit of time, but they brought that to me
- 7 immediately.
- 8 And I have to say that they understood the situation in
- 9 terms of the insurgency probably better than I did at that point on
- 10 the ground. I was a little bit -- I was not confident that it was
- 11 going to achieve the effects that they thought it was going to
- 12 achieve. As it turned out, it did. It worked better than I
- 13 initially thought because they understood the situation better than I
- 14 did at that point. But it wound up working just as they thought it
- 15 would. In fact, probably better, and they wound up on their own
- 16 putting another ANP outpost just south of Mest, you know, sort of on
- 17 their own.
- 18 Q. So who picked that corner -- that intersection? I mean,
- 19 was it the Afghans, was it us, or who did that?
- 20 A. It was a combined effort. In fact, we all went out
- 21 together. It was one of the first things we did. We all went, and
- 22 we took a lot -- took a look at a lot of different areas. And that

- 1 was clearly -- I mean, if you could see it, you would understand,
- 2 it's a pretty dominating terrain for that area.
- 3 Q. And from your perspective as the Battalion Commander, how
- 4 does the crossroads at OP Mest and Yahya Khel -- how does that all
- 5 kind of connect together with that route that runs along there from
- 6 your perspective as far as the enemy situation?
- 7 A. Right. Well, there is two ways really to travel from East
- 8 Paktika -- or really from Pakistan to East Paktika, through West
- 9 Paktika and then into Ghazni and Highway 1. You can go through
- 10 Sharana -- Orgun and Sharana in the north, which is a little bit
- 11 better road, but it's also controlled by the legitimate government
- 12 and, therefore, has Afghan security forces on it. Or you can use a
- 13 very unimproved road that runs from East Paktika through -- on down
- 14 through Yahya Khel and then across the -- right through Mest-Malak
- 15 and then into Ghazni. That's a very highly-trafficked route, not
- 16 just by insurgents but by everybody, because a lot of times it's just
- 17 easier to use than it is to go through Sharana and that route. But
- 18 there is only -- there is really only a couple of choices where most
- 19 of the traffic was through there.
- 20 Yahya Khel in particular has the largest bazaar in the area
- 21 -- in Paktika Province. So and that's important to people and that's
- 22 where they go to get their supplies and their food and so forth. So
- 23 it's a thoroughfare if you will.

- 1 And the people in Mest-Malak were subject to a lot of
- 2 harassment. A lot of times insurgents come in there at night, and
- 3 they almost expect that they can just stop and stay in a home and
- 4 that they are going to feed them and so forth and so on. And
- 5 typically they are. Sometimes they are welcomed; but a lot of times
- 6 if they are not, they just kind of force themselves. And the
- 7 population -- they just get tired of that. And that's kind of what
- 8 was going on in Malak, I think, and Yahya Khel, too.
- 9 Q. I want to direct your attention to 30 June 2009 in
- 10 Afghanistan. Where were you located?
- 11 A. I got the report that Sergeant Bergdahl was missing in my
- 12 tactical command post, which was out on a -- really covering the
- 13 security of a wadi down near Kushamond in a place called -- I think
- 14 it was near Shakilabad -- the Shakilabad District so down south
- 15 around Kushamond.
- Q. And why were you down there on that day?
- 17 A. We were pushing a combat logistics patrol down to
- 18 Kushamond, which was another one of our outposts, because we had to
- 19 get a bunch of gravel pushed down there and a lot of other supplies
- 20 so to keep the logistics and the sustainment aspect up for Kushamond.
- Q. And that takes a battalion commander to do that? Why were
- 22 you there, sir?

- 1 A. Well, in this case we had done a prior combat logistics
- 2 patrol down to Kushamond and then further even down to Wazi Kwah when
- 3 we first got there, and we made a lot of mistakes. We had 37 IED
- 4 strikes on that particular operation, and it was just a sheer wonder
- 5 that we didn't lose anyone. And so we learned a lot of hard lessons.
- It was important at this time that we were going to do this
- 7 that we incorporated those lessons learned and we got it right.
- 8 Because it was so dangerous and we had had some challenges on a
- 9 previous experience, I felt it was important to be out there on the
- 10 ground and make sure that it all went correctly.
- 11 The other part of that is we -- everything we did, we
- 12 integrated the Afghan National Army and Police into the operation as
- 13 best we could. It's helpful to get their support. At that point, it
- 14 was helpful for me to be out there and working with them.
- 15 Q. So you get the report that the accused is missing, and what
- 16 happens next for you?
- 17 A. Well, for me I immediately, of course, checked in with my
- 18 headquarters and we went -- we moved from Kushamond back to a place
- 19 called Khayr Khot Castle. And I, again, got commo with my TOC -- my
- 20 headquarters -- excuse me -- and I got a helicopter ride from Khayr
- 21 Khot Castle right back to my TOC, which was at Sharana so that we
- 22 could start.

- In fact, by the time I got there, like I said before, the
- 2 brigade was pretty prepared for such a -- you know, such a thing to
- 3 happen. And things happened very quickly. So, as soon as the report
- 4 went up, things started happening automatically. So, by the time I
- 5 got back to the TOC, my XO in conjunction with the Brigade S-3 and
- 6 folks really had the initial isolation almost completed. I mean,
- 7 they had everything moving in there. They had it fairly well
- 8 isolated at that point. So they did a really good job, and it was
- 9 extremely fast.
- 10 Q. So how quickly are forces outside of your battalion coming
- 11 into your battle space?
- 12 A. Hours. It was within hours.
- Q. Okay. So you go from how many platoons to -- or if you
- 14 want to go companies -- however you want to -- you know, in your
- 15 mind, how much additional combat power was coming in in those hours?
- 16 A. It's hard to say with any real accuracy. But just scale --
- 17 you know, a general scale, we had 13 combat platoons prior to. That
- 18 easily increased by -- almost immediately by five, and then
- 19 subsequently by as much as eight.
- 20 And then it increased to such a point that my ability to
- 21 mission command all of those different units -- it exceeded or span
- 22 of control. And when the brigade commander realized that, he brought
- 23 another battalion commander in who took part of my AO just to help

- 1 because of the saturation of different units and the saturation on
- 2 the mission command part of it.
- 3 Q. And I am going to try to do this without a map. So I need
- 4 you to describe, sir, if you can, how -- you know, the Paktika
- 5 Province, right, that's your Battalion AO -- how you kind of sliced
- 6 that out if you could in words to the battalion -- and what -- well,
- 7 first of all, what battalion commander came in? Who was that?
- 8 A. It was the Commander of the 1st of the 40th Cavalry
- 9 Squadron. His name is then-Lieutenant Colonel Robert Campbell.
- 10 Q. And was this a sister battalion of yours?
- 11 A. Yes. They were -- their AO is Paktiya. So just north of
- 12 us. He had the Khost-Gardeyz Pass, and that was his normal AO.
- 13 Q. So he comes in, and kind of describe what happens to your
- 14 battalion battle space? What's going on from the C-2 span of control
- 15 perspective?
- 16 A. Well, like I said, you have all of these disparate platoons
- 17 coming in with no command -- really a lot of them didn't have company
- 18 command headquarters. So what wound up happening is you have a lot
- 19 of platoons out there doing operations all reporting in to the TOC,
- 20 which quickly becomes somewhat an -- because they all need re-supply.
- 21 They all need instructions, you know, you name it. So it quickly
- 22 overwhelms a battalion TOC.

- 1 So in the south our southern border ran, you know, all the
- 2 way south of Wazi Kwah and War Mammay on the border of Badakhshan and
- 3 Pakistan. So we split that southern part and that was what Colonel
- 4 Campbell took. And it -- I can't remember exactly the northern
- 5 boundary where we did that, but it was somewhere between Khayr Khot
- 6 Castle and Kushamond because as I recall, we kept Khayr Khot Castle;
- 7 but he had my Charlie Company at that point because they were at
- 8 Kushamond. So he had all of that into the south all the way down to
- 9 the border of Pakistan.
- I then had everything north as normal and then we expanded.
- 11 In the west we expanded out approximately halfway into the Ghazni
- 12 Province. So we took -- in Ghazni, we took the eastern-most
- 13 districts of Ghazni. So the -- you know, they are sort of like one
- 14 east and one west all the way down through Ghazni; and we took all of
- 15 those eastern districts in Ghazni. And I don't remember the timing
- 16 of that. But that generally speaking -- so my AO spread out to the
- 17 west, and Colonel Campbell then took that part in the south.
- 18 Q. So you got ----
- 19 PHO: If I could just interrupt for clarification.
- 20 So when the 40th -- the 1st of the 40th Cav Squadron came
- 21 in, did they bring their companies as well or was he assuming command
- 22 and control of units already on the ground?

- 1 WIT: Both. He brought some that was with him. He took some of
- 2 my elements. He had other elements from other battalions, so it was
- 3 -- it was really an ad hoc ----
- 4 PHO: Throw it together as you can?
- 5 WIT: ---- fast.
- 6 PHO: Yes, sir.
- 7 WIT: And it happened pretty fast.

8 Questions by the assistant trial counsel continued as follows:

- 9 Q. And so from your perspective as the battalion commander, I
- 10 mean, is their risk in that? Is their tactical and operational risk?
- 11 Can you describe that?
- 12 A. Well, absolutely. I mean, you don't have to be a scientist
- 13 to figure out that if you've got units that are not used to working
- 14 with one another, not normal reporting channels, not normal SOPs, and
- 15 all of those things, you know, that causes a great deal of rift.
- And operating in an area you don't know -- anyone that has
- 17 deployed will tell you the most dangerous time in a deployment is
- 18 when you don't understand your environment probably usually about the
- 19 first 60 to 90 days of your deployment. That's when it's very
- 20 dangerous. Well, that's given that you stay generally in the same
- 21 area of operation; but once you move to a new area, again, that's the
- 22 most dangerous time. It just goes without saying almost.

- 1 Q. Let's switch gears. So, once the accused goes missing,
- 2 what's the focus of the battalion? What are your Paratroopers doing?
- 3 A. The entire battle was in the field operating actively,
- 4 searching for -- either collecting intelligence or physically
- 5 searching to try to rescue Sergeant Bergdahl.
- 6 Q. Are they doing any other -- you know, you talked about your
- 7 four lines of effort. Are they focused on any of those?
- 8 A. No.
- 9 Q. And when you say the entire battalion is in the field, can
- 10 you give me a flavor for that? I mean, somebody has got to be back
- 11 quarding the FOBs, right, and stuff like that?
- 12 A. We -- and there is another place where we took a lot of
- 13 risk. We cut -- you know, cut back on the FOBs in terms of manning
- 14 to absolutely the bare minimum. You know, we had like cooks -- you
- 15 name it, that's who was guarding the FOBs. And so we cut back to
- 16 almost nothing. Luckily, we didn't have any mishaps.
- But when I say everybody was operating off of the FOBs, in
- 18 the area of operations, 24 and 7 nonstop, with emergency re-supply
- 19 for the most part because it was real spontaneous. And it was almost
- 20 -- you know, minus the people you needed for mission command, it was
- 21 almost the entire battalion out there. And they would only get
- 22 refits as we could cut them loose, which was rare.

- 1 Q. So, from your perspective as the battalion commander, what
- 2 platoon was out the longest during this period of time?
- 3 A. Well, I couldn't say for sure what platoon was out the
- 4 longest. The one I remember most was a platoon from Charlie Company
- 5 because I remember we gave them a real short -- they got spun up
- 6 really short -- you know, short on time. And we said, "Hey, get in
- 7 your vehicles and just move to this location, and we will give you
- 8 further instructions," or something to that effect. "We don't think
- 9 you're going to be gone very long," kind of thing. So I think they
- 10 went with -- and we said, "You've got to be moved in, like, 30
- 11 minutes," so they went with, like, assault packs or something.
- 12 They went to the location and one thing led to another.
- 13 The next thing is, you know, they are on different missions. We
- 14 eventually told them, "Leave your vehicles in a certain place. We
- 15 will secure them for you," and we air assaulted them to another
- 16 location. From there, they air assaulted to -- the bottom line is,
- 17 they were gone for 37 days straight with no refit, nothing but
- 18 emergency resupply. I remember because we flew an emergency resupply
- 19 of socks and shirts out to them because they literally rotted off of
- 20 them. They had been out, you know, so long in the field looking.
- Q. Okay. So what was the battle rhythm of the battalion
- 22 during that 45-day period, 30 June to 15 August?

- 1 A. There was no battle rhythm. It was just go as hard as you
- 2 can all of the time.
- Q. And so, you know, you described it as just go all of the
- 4 time. So, I mean, how often is the battalion contacted in this
- 5 period of time?
- 6 A. We were -- there were small -- at least, you know -- there
- 7 were troops in contact multiple every day. There were IED strikes
- 8 every day.
- 9 Q. And, like, you know, the platoon 37 days in the field, is
- 10 that something that Paratroopers normally are expected to do?
- 11 A. Well, yeah, I think they are certainly expected to be able
- 12 to do it. That's what Paratroopers do. You know, we drop them
- 13 behind enemy lines and they are usually, you know, surrounded and
- 14 they are supposed to be able to get by. Now, that said, they don't
- 15 have the sustainment capability organic to them, you know, typically
- 16 to stay more than a few days at a time without resupply or some sort
- 17 of sustainment package. But it's clearly within their capability if
- 18 they can get the supplies they need to do that.
- 19 Q. Well, I mean, how difficult is this compared to, like,
- 20 Ranger School? How difficult was what you asked your men to do
- 21 compared to that for example?
- 22 A. I guess I would say this particular -- these missions and
- 23 this Operation Yukon Recovery, that's the reason we send people to

- 1 Ranger School because it's to prepare them for something that is
- 2 actually much harder. So we have heard a lot recently in the media
- 3 about Ranger School and so forth. This was much tougher. This was
- 4 what -- whereas at Ranger School, for instance, you get -- you go to
- 5 the field for 10 days and you are exposed to the elements and are
- 6 tough missions, no doubt about it; but then you get a short break and
- 7 you get to kind of reset yourself, and then you go back out. We
- 8 didn't -- we didn't have that luxury. The bigger difference is the
- 9 whole time you were doing it or my guys were doing it -- it was --
- 10 you know, somebody was trying to kill them the whole time. So that's
- 11 the big difference is that there is an adversary out there, and he
- 12 gets a vote. So it's not -- it's not quite, you know, on par. So it
- 13 was -- it was challenging.
- Q. Now earlier you mentioned air assault missions. Did you do
- 15 any of those in the daylight during this time period?
- 16 A. We did. We did some daylight air assaults, which is, you
- 17 know, pretty high risk. I remember at least two I would say, and
- 18 then I know Colonel Campbell down south -- he actually -- they got
- 19 approval to do a daylight vehicle interdiction with helicopters,
- 20 which is considered very high risk. And we had helicopters, you
- 21 know, shot on occasion. On a couple of occasions we had small arms,
- 22 you know, shooting aircraft with troops. So there was high risk.

- 1 It's as high risk as any operation I ever -- I have ever seen or been
- 2 a part of in the Army.
- 3 Q. Were there any other areas where you were assuming more
- 4 risk due to the operations during that 45 days?
- 5 A. Well, risk to the force, to the men, risk to the mission
- 6 like we talked about. I mean, we, you know, completely stopped, you
- 7 know, working in terms of counterinsurgency; and we focused
- 8 completely on recovery of Sergeant Bergdahl. And we accepted a great
- 9 deal of risk in our partnerships. Even though, you know, the Afghan
- 10 security forces, they came to us. And they were willing to help, and
- 11 they did help. They did everything they could.
- 12 But the leadership was so busy with Operation Yukon
- 13 Recovery that the partnerships that we should have been working on
- 14 and working with them in a combined way, that probably suffered as
- 15 well. So the -- I tell you, a lot of risk to the men, a lot of risk
- 16 to the mission.
- Q. Well, was that 2-month period beneficial to your overall
- 18 accomplishing the mission point? Or was it something that you just
- 19 continued on path and just kind of shifted focus, or was it
- 20 completely different?
- 21 A. I think that is a complicated question and one that is very
- 22 difficult to answer. You will hear arguments that the way we
- 23 operated during Yukon Recovery caused us to lose momentum, and I

- 1 think you could -- a smart person could legitimately argue that. I
- 2 think you will hear others argue that the way we conducted Operation
- 3 Yukon Recovery created unprecedented -- I remember the verbiage,
- 4 "unprecedented disruption of the Taliban," and I think a smart person
- 5 can make a legitimate argument as to that as well.
- 6 My view is that there are so many factors involved and it's
- 7 such a complex situation that the reality of it is it's very
- 8 difficult to say one way or the other with any amount of certainty.
- 9 I mean, look, it's not an "X+Y=Z." It's -- there is so many factors
- 10 out there. Fifty percent of those factors have to do with the
- 11 adversary, and that's why we say the adversary gets a vote. And we
- 12 have a saying that, you know, the best plan never survives first
- 13 contact. So this is an adapting and changing situation; and to say
- 14 that one factor, you know, led to "X" consequences is a little bit of
- 15 a stretch.
- My view personally, for what it's worth, is that there's
- 17 some or both of that, depending on where you were in the province,
- 18 but overall it equaled out fairly neutral in a way that we were able
- 19 to overcome any sort of, you know, setback. So I think those are
- 20 both legitimate. I think it just depends on where you are talking
- 21 specifically within the province.
- 22 Q. Well, you guys kind of switched from key leader engagements
- 23 to raids, for example, right?

- 1 A. Right.
- 2 CDC: To?
- 3 ATC: Key leader engagements to raids, sir?
- 4 PHO: Raids.
- 5 CDC: Raids?
- 6 ATC: Raids?
- 7 Q. And so is a raid -- doing raids every night, is that a way
- 8 to win the counterinsurgency fight?
- 9 A. Well, I mean, let's be clear that it is a part of winning a
- 10 counterinsurgency, that's in the security line of effort. So there
- 11 is this -- sometimes a misconception that you don't have to kill
- 12 insurgents to win a counterinsurgency; that is not true. You do have
- 13 to kill and capture insurgents, and you have to do it enough to
- 14 enable you to achieve things on those other lines of effort. By
- 15 itself, it cannot win a counterinsurgency. But some of that is
- 16 necessary to enable you to do the things that will allow you to
- 17 succeed in a counterinsurgency. Does that make sense?
- Q. Well, before June 30th, how often were you doing raids?
- 19 A. Very infrequently. We did some, and we did some after
- 20 Yukon Recovery. But I was very selective and it ----
- 21 Q. Why is that? Why were you selective, sir?
- 22 A. Well, because I had done a lot of it in Iraq and learned
- 23 some tough lessons for one, and I wanted to make sure that the bang

- 1 was worth a buck and that it was contributing to the overall
- 2 strategy. If it's -- if you kill or capture an insurgent because you
- 3 feel good about it but it doesn't help your mission or worse yet,
- 4 it's counter to your mission and it makes the population -- it
- 5 alienates you from the population, or if it ruins the credibility of
- 6 the Afghan security forces, then you're going the wrong -- then
- 7 you've done the wrong thing. So what we tried to do was we tried to
- 8 be very careful in our selection of our targets and so forth when we
- 9 did that, and make sure that it nested with all of those others lines
- 10 of effort. And if it was counter to any of them, we would say,
- 11 "We'll let them -- you know, let them go. We will get them another
- 12 day."
- Q. And did that change after June 30th -- how you selected
- 14 targets to go take -- to go conduct raids?
- A. Well, it did; but it was a different focus. I mean, we
- 16 weren't focused on the counterinsurgents at that point. We were
- 17 focused on rescuing our Soldier -- finding and rescuing our Soldier.
- 18 That's a different thing completely. So you -- yeah, you're going to
- 19 -- I'm going to take a lot more risk if I can find and rescue a
- 20 Soldier.
- 21 Q. So what did you personally observe your Paratroopers doing
- 22 during the search and recovery efforts? Right? Did you see them
- 23 come back from the missions?

- 1 A. I did. I -- you know, it's tough to sit and watch your
- 2 Soldiers do something like that; and I was really -- I could not
- 3 afford to be out there with them like I would have liked to because I
- 4 had to be back in the TOC for the most part conducting mission
- 5 command and/or trying to collect intelligence from the local Afghans
- 6 that might help. So it's hard to watch them go out there and just
- 7 really lay it on the line day in and day out and come in and just be
- 8 wrecked. And those guys would come in and just be completely filthy,
- 9 just exhausted. They were -- you know, they were just burned because
- 10 in Paktika there is not a lot of shade, and it's very difficult to
- 11 get in the shade unless your rent a galat or something like that, but
- 12 they were out there just exposed to the elements. And you could tell
- 13 it -- I mean, you know, they are coming in and they -- you know,
- 14 their face is a mess. There are just sores all over them. And we
- 15 would tell them, "Hey, repack and get ready to go again." And it's
- 16 hard -- it's hard. It's hard to do that, you know.
- Q. So, as a battalion commander, sir, what were you worried
- 18 about when it came to your men and overall, you know, morale, the
- 19 ability to accomplish the mission?
- 20 A. Well, they are Paratroopers, so they are tough and they can
- 21 handle it. And I thought they could handle it. I never had any
- 22 doubt about it. It doesn't mean, you know, it's not kind of tough to
- 23 watch sometimes. But I wasn't worried about the morale. That was a

- 1 tough -- it was tough on morale; but, I mean, physically and mentally
- 2 they could handle it.
- 3 The morale though unit-wide -- that's a hard thing to take;
- 4 and it's a hard thing to sort of be able to choke down, you know,
- 5 that one of your Soldiers is a captive of the adversary. That's just
- 6 hard to swallow. And so it was hard for the Soldiers to swallow, I
- 7 think, and some morale suffered. And I worried that, you know, we
- 8 didn't know what had happened, and that's the unknown. And we didn't
- 9 know when it was going to end either. So there is no endpoint to
- 10 what you are doing, and everything has sort of changed. The mission
- 11 completely changed, and you don't have an endpoint that you know of.
- 12 And, you know, you just -- the only way you can succeed is to find
- 13 Sergeant Bergdahl and get him back.
- 14 And as that long -- and as time went by and that didn't
- 15 happen, you know, that starts to wear on the troops and that worried
- 16 me. And, I mean, frankly I felt a bit at a loss on, you know, what
- 17 to do. You know, it was just tough to deal with. And I have to say,
- 18 you know, in my entire time in the Army, I can't think of a time
- 19 where I felt that kind of adversity, just period, and really did not
- 20 -- you know, wasn't able to overcome it. And that's part of it. You
- 21 know, Soldiers, Paratroopers were used to, if it's hard, just bear
- 22 down and you can overcome it. You can be successful. And that's

- 1 what we expect. We're going to -- we're going to bear down and get
- 2 the job done. We couldn't do that in this case, and that's tough.
- 3 ATC: Sir, I have no further questions.
- 4 PHO: All right, defense?
- 5 DC: No questions from the defense.
- 6 MJ: I do have one clarifying question.

7 EXAMINATION BY THE PRELIMINARY HEARING OFFICER

8 Questions by the preliminary hearing officer:

- 9 Q. Sir, you mentioned the frequency of troops in contact and
- 10 IED strikes after the 30th of June. How does that compare with the
- 11 frequency of attacks before the 30th of June?
- 12 A. That's a good question. It was significantly higher.
- 13 However, there -- it's not as if -- it's hard to explain. I wouldn't
- 14 want anyone to think that it didn't happen prior to, because it
- 15 certainly did. We had -- like I said, on that one operation we had
- 16 35 IED strikes or something like that.
- 17 Q. Certainly.
- 18 A. So it certainly happened but not nearly on the scale. So
- 19 maybe -- I don't know -- troops in contact once a week maybe. IEDs
- 20 two or three times a week maybe. That's just a ballpark but ----
- 21 Q. Roughly.

- 1 A. ---- I'll just give you a rough scale. So, yeah, it
- 2 didn't go from 0 to 100 for sure. That's not the case. So it went
- 3 from like 50 to 100, yeah, for instance.
- Q. Okay. And then to the extent that you can answer this
- 5 question in an unclassified environment: To what did you attribute
- 6 that spike in attacks? Was it due to the fact that your men were in
- 7 the field with the increased OPTEMPO so there were greater numbers of
- 8 opportunities for the enemy to attack? Or was it some other reason
- 9 -- that the enemy knew that you were desperate to find your man and
- 10 were going to do whatever they could to hinder that?
- 11 A. Well, I don't -- that's a good question. I don't think it
- 12 was the last part -- the latter. The reason I say that is because I
- 13 think the group that originally captured Sergeant Bergdahl was not a
- 14 large enough force to -- and coherent and organized enough to pull
- 15 something like that off right up front.
- 16 Q. I see.
- 17 A. So they are connected loosely with, for instance, let's say
- 18 the Haqqani Network, and they would not have had the ability to
- 19 organize and direct a large group like that.
- 20 O. I see.
- 21 A. So I do think it's probably more of the prior. And that
- 22 is, you know, just having more people out there doing more
- 23 operations, you're going to get a lot more contact.

- 1 The other part is, for instance, in IEDs, we were putting
- 2 people into places where, you know, nobody routinely went and making
- 3 them -- and directing them to drive down roads where typically nobody
- 4 drove. And we did not -- you know, didn't -- you couldn't cover the
- 5 whole area in terms of route clearance, so we were taking some risks
- 6 in terms of sending people on some routes and knowing that, you know,
- 7 there's some high risk in that.
- 8 PHO: Okay. All right. Any questions from either side based on
- 9 mine?
- 10 DC: No, sir.
- 11 ATC: None.
- 12 PHO: All right. Permanent or temporary excusal?
- 13 ATC: Temporary, sir.
- 14 [The witness was temporarily excused, duly warned, and withdrew.]
- 15 PHO: Government?
- 16 TC: The government has no further witnesses at this time.
- 17 PHO: Okay. Do you have any documentary or written evidence that
- 18 you -- or other evidence that you wish to present for my
- 19 consideration?
- 20 TC: We do.
- 21 PHO: Okay.
- 22 TC: We have had previously marked Prosecution Exhibits 1
- 23 through 4, which are with the court reporter.

- 1 PHO: Okay.
- 2 [The court reporter handed Prosecution Exhibits 1, 2, 3, and 4 to the
- 3 preliminary hearing officer.]
- 4 PHO: All right. So this binder is all four of them?
- 5 TC: Yes, sir.
- 6 PHO: Okay. So this is ----
- 7 TC: And I will take out the extra papers which are in the
- 8 front.
- 9 PHO: Okay. So Prosecution Exhibit 1 is a DA Form 3881, which is
- 10 a rights warning waiver, purportedly signed by Sergeant Bergdahl.
- 11 And then, accompanying that, is a 371-page basically verbatim
- 12 transcript of the accused's statement -- his interview by Major
- 13 General Dahl.
- Prosecution Exhibit 2 is attachment orders assigning
- 15 Sergeant Bergdahl to Headquarters, U.S. Army FORSCOM, Fort Bragg,
- 16 North Carolina. That is a one-page document.
- 17 Prosecution Exhibit 3 is a temporary change of ----
- 18 CDC: So 4 -- wasn't 3 the orders?
- 19 PHO: No, 2 was the orders. 1 was both the 3881, as well as
- 20 the ----
- 21 CDC: Okay. Got it.
- 22 PHO: --- sworn transcript of the statement.
- 23 CDC: Thank you.

- 1 PHO: 3 is the temporary change of station orders directing
- 2 Sergeant -- then-PFC Bergdahl to deploy to Afghanistan in support of
- 3 Operation Enduring Freedom. That is also one page.
- 4 And then I have a -- Prosecution Exhibit 4 is a two-page
- 5 document. It is a DA Form 4187, which is a personnel action form
- 6 changing Sergeant Bergdahl's status from captured to present for duty
- 7 effective 1745 hours, 31 May 2014. And, it was verified by the
- 8 battalion commander then, at the time, Lieutenant Colonel Condrey --
- 9 Jason Condrey. And, this is a two-page document.
- 10 I have also Prosecution Exhibit 5. That is the
- 11 unclassified map. Is that for demonstrative purposes only and not
- 12 being submitted as evidence?
- 13 TC: Yes, sir.
- 14 PHO: Okay.
- 15 CDC: Which -- which?
- 16 TC: That's the unclassified ----
- 17 PHO: That is the unclassified map that was presented to the
- 18 first witness, Captain ----
- 19 CDC: Oh, the one -- yeah, okay. Thank you.
- 20 PHO: Right. All right. Defense, have you had a chance to take
- 21 a look at these documents?
- 22 CDC: Yes.
- 23 PHO: Okay. Is there an objection from the defense?

- 1 CDC: Let me consult, if you don't mind, with co-counsel.
- 2 PHO: No problem.
- 3 [Pause.]
- 4 CDC: Colonel, there is a rights waiver. The rights waiver does
- 5 not include a cleansing warning. My client was extensively
- 6 interrogated in the course of debriefings. The absence of a
- 7 cleansing warning in the warning on the DA 3881 -- the first page of
- 8 Prosecution Exhibit 1, does not address this. And, to that extent,
- 9 we have an objection. I don't know if it is within your authority to
- 10 rule on that, but I want to flag that and ensure that that objection
- 11 is in no way waived by your accepting this document.
- 12 PHO: All right. Government, I'll give you a moment to speak to
- 13 that issue, the lack of a cleansing warning.
- 14 TC: Sir, that is not even an issue for an Article 32. The
- 15 government has proffered a piece of evidence. There is no
- 16 admissibility requirement here.
- 17 PHO: Okay. However, certainly if there are admissibility
- 18 issues, I think it would be incumbent on me to note those to the
- 19 convening authority for the convening authority to consider in
- 20 deciding on an ultimate disposition. And, certainly if probably one
- 21 of the larger pieces of evidence that the government has in terms of
- 22 just sheer volume is possibly not admissible at trial, I think it's
- 23 incumbent upon me to at least note that.

- 1 TC: Absolutely, sir. You can note it in your report, and it is
- 2 an issue for trial.
- 3 PHO: Okay. Defense?
- 4 CDC: You have answered my question. And, what you've said, Your
- 5 Honor, is consistent with R.C.M. 306 -- the discussion to R.C.M.
- 6 306(b).
- 7 PHO: Okay.
- 8 CDC: I just wanted to make sure that we weren't inadvertently
- 9 waiving a valid objection.
- 10 PHO: Okay. Just so that I am clear: So there is not an
- 11 objection to me considering it here; however, you are not waiving any
- 12 objection at trial and certainly noting that there will likely be an
- 13 objection at trial?
- 14 CDC: Yes, on the assumption that your considering it does not
- 15 waive any objection to its use at trial.
- 16 PHO: Okay.
- 17 CDC: I am being a little bit lawyerly about this, but this is
- 18 the time to be lawyerly.
- 19 PHO: This is the time to be lawyerly.
- On that particular point, Government, do you have a
- 21 position that -- if I do consider it, does that waive any defense
- 22 objection to its consideration at trial as Mr. Fidell noted that
- 23 concern?

- 1 TC: No.
- 2 PHO: Okay. All right. So, basically, you are agreeing with the
- 3 defense position that this does not waive any defense
- 4 consideration [sic] at trial?
- 5 TC: Yes, sir. It's apples and oranges.
- 6 PHO: I'm sorry -- defense objection at trial?
- 7 TC: Yes, sir. Apples and oranges.
- 8 PHO: Apples and oranges. Okay.
- 9 Before I make a final decision, I'm going to take a look at
- 10 the issue, review the case law and other legal resources this
- 11 evening; and I will note that issue and kind of close it out before
- 12 we proceed.
- So any other -- go ahead ----
- 14 ATC: So just so that I'm clear ----
- 15 PHO: ---- Lieutenant Colonel Beese.
- 16 ATC: ---- sir, you are saying -- are you accepting into
- 17 evidence 2, 3, and 4?
- 18 PHO: That is just what I was getting to.
- 19 ATC: Okay. Sorry.
- 20 PHO: Yes. So there being no objection to Prosecution
- 21 Exhibits 2, 3, and 4, I will go ahead and consider those. And right
- 22 now, I'm not hearing an objection to the consideration unless it were
- 23 somehow determined that that waives the issue at trial, which I don't

- 1 think it does either. But in an abundance of caution, I'm going to
- 2 consult with my legal advisor. If anyone has any case law that they
- 3 would want to cite me to or other authorities, I would be willing to
- 4 consider those as well; but I am not going to jump off and make a
- 5 decision here without at least having reviewed the authorities
- 6 personally.
- 7 ATC: And then first thing tomorrow morning this will be the
- 8 first issue that we discuss?
- 9 PHO: The first order of business is I will take care of that
- 10 issue.
- 11 ATC: Okay.
- 12 PHO: Okay. So the discussion previously between the parties is
- 13 we will be done with witnesses for today, and then we will be kicking
- 14 off first thing tomorrow morning.
- 15 Mr. Fidell?
- 16 CDC: Yes. That's correct. And Prosecution Exhibit 5, which is
- 17 not really an exhibit -- it is, but it isn't. That's the map.
- 18 PHO: A demonstrative aid.
- 19 CDC: So it is what it is, and we haven't registered an objection
- 20 to it.
- 21 PHO: Okay.
- 22 CDC: I don't even know if we get to register an objection to a
- 23 demonstrative aid. It's not misleading or anything so it is fine.

- 1 PHO: Okay.
- 2 CDC: I do have this question: It is my understanding -- and
- 3 this relates to the interview. It is my understanding that the
- 4 preliminary hearing officer does not rule on things like public
- 5 access to that document.
- 6 PHO: That is correct. That is outside of my authority as I've
- 7 noted earlier to the parties in informal conversations.
- 8 CDC: So out of an abundance of caution and to ensure that in
- 9 some other forum somebody doesn't say you failed to ask the
- 10 preliminary hearing officer to authorize public release of the
- 11 document, I am going to ask you to authorize it. I know the answer,
- 12 but it is helpful to me in terms of exhausting the remedy if you
- 13 could so indicate.
- 14 PHO: I understand, and I will so indicate that I am not
- 15 authorized to release that to the public.
- 16 CDC: Thank you.
- 17 PHO: No problem.
- 18 All right. This hearing is adjourned until 0900 -- or in
- 19 recess -- I'm not a military judge for a reason -- is in recess until
- 20 0900 tomorrow morning.
- 21 [The Article 32 hearing recessed at 1544, 17 September 2015.]
- [END OF PAGE]

- 1 [The Article 32 hearing was called to order at 0901,
- 2 **18 September 2015.**]
- 3 PHO: Let's go ahead and get started. Good morning, everybody.
- 4 Prior to going on the record, the parties held an informal
- 5 conference, and three points I would like to summarize coming out of
- 6 that conference for the record:
- First, when we closed the hearing -- when we recessed the
- 8 hearing yesterday evening, there was a question as to the status of
- 9 Prosecution Exhibit 1, which is the statement by the accused
- 10 accompanied by the rights waiver form. To be clear, there is no
- 11 objection to that particular document by the defense, and so I will
- 12 consider it as evidence. However, the defense specified and the
- 13 government concurs that the defense does not waive any possible
- 14 objection that it has at trial. And, in fact, Military Rule of
- 15 Evidence 304(f)(1) specifically states the time frame for the defense
- 16 to object to statements or confessions, and that is prior to the
- 17 entry of pleas. And, obviously, we are not at that point at an
- 18 Article 32 hearing. And while Military Rule of Evidence 304 does not
- 19 apply at an Article 32, it does specify the process for objecting.
- 20 So all parties are in agreement that no waiver has taken place here.
- 21 Any supplementation or additional information that the
- 22 parties would like placed on the record with ----
- 23 TC: No, sir.

- 1 PHO: --- that issue?
- 2 CDC: No. That accurately summarizes what we discussed.
- 3 PHO: Okay. Second, there were two documents -- I do not believe
- 4 they were referenced in the hearing yesterday, but two documents
- 5 marked as prosecution exhibits. And those were Prosecution Exhibits
- 6 6 and 7. These were classified maps submitted to me for
- 7 consideration, first, in support of the government's motion to close
- 8 the hearing to consider classified information. And then, secondly,
- 9 I considered -- reviewed those as visual aids both prior to the
- 10 witnesses' testimony and after their testimony. I did not consider
- 11 them substantively as evidence, but I reviewed them for purposes of
- 12 understanding the witnesses' testimony and for that purpose alone.
- 13 So, they are not evidence. I will not consider them substantively,
- 14 and so they will no longer be marked as prosecution exhibits. They
- 15 will be marked as preliminary hearing officer exhibits or what is
- 16 commonly called appellate exhibits in a trial.
- 17 [The maps were later remarked as PHO Exhibits I and II.]
- 18 PHO: Any other questions or issues based on that from either of
- 19 the parties?
- 20 CDC: No, sir.
- 21 PHO: Okay. Third, prior to the hearing, it was represented to
- 22 me by the government, that the government would not be introducing
- 23 evidence that any Soldier was killed or wounded during the alleged

- 1 search and recovery operations. As a result, to the extent that
- 2 Major Silvino or any other government witness testified that there
- 3 were injuries suffered by U.S. forces during the alleged search and
- 4 recovery operations, I will not consider this as evidence. The
- 5 defense and government concur with this position.
- Is there any supplementation or addition requested by the
- 7 parties?
- 8 CDC: That accurately states our discussion.
- 9 PHO: All right. So I will not be considering evidence -- any
- 10 evidence that any Soldiers were killed or wounded during the alleged
- 11 search and recovery operations.
- 12 Okay. That summarizes the informal conference that was
- 13 held earlier this morning.
- 14 Government, is your case -- do you rest?
- 15 TC: Correct, sir. The government rests.
- 16 PHO: Okay. Sergeant Bergdahl, the government has now called all
- 17 its witnesses and has revealed to you all evidence I intend to
- 18 consider in this preliminary hearing. As I have previously advised
- 19 you, you may now present evidence in defense or mitigation so long as
- 20 it is relevant to the limited scope and purpose of this preliminary
- 21 hearing.
- Do you have any witnesses to testify in your defense or in
- 23 mitigation? If so, you may call them at this time.

- 1 And I understand, Mr. Fidell, you have a brief opening
- 2 statement.
- 3 CDC: I do.
- 4 PHO: And seeing how you were very brief yesterday, I will allow
- 5 you to go ahead and make a second statement.
- 6 CDC: Thank you.
- 7 Sergeant Bergdahl -- having previously given a 371-page
- 8 sworn statement concerning this case to Major General Dahl, we see no
- 9 need for him to take the stand. He will not be taking the stand in
- 10 this proceeding. We will, however, be presenting a number of
- 11 witnesses today; and I am going to ask Colonel Rosenblatt to proceed
- 12 with examination of the witnesses.
- DC: The defense calls Mr. Greg Leatherman.
- 14 GREGORY R. LEATHERMAN, civilian, was called as a witness for the
- defense, was sworn, and testified as follows:
- 16 DIRECT EXAMINATION
- 17 Questions by the assistant trial counsel:
- 18 Q. Mr. Leatherman, I just want to advise you that, while you
- 19 are testifying, if you are asked any questions that you think you
- 20 believe may require a response containing classified information, you
- 21 have a personal responsibility to notify the preliminary hearing
- 22 officer prior to answering. At no time should you disclose any
- 23 classified information while this hearing is in regular session.

- 1 Do you understand that?
- 2 A. Yes, sir.
- 3 Q. Please state your full name for the record.
- 4 A. Gregory Richard Leatherman.
- 5 Q. And where are you from?
- 6 A. Lake Kiowa, Texas.
- 7 ATC: Thank you.
- 8 Lieutenant Colonel Rosenblatt?

9 Questions by the defense counsel:

- 10 Q. Mr. Leatherman, good morning. Could you, please, explain
- 11 to Lieutenant Colonel Visger, the hearing officer, how you know
- 12 Sergeant Bergdahl?
- 13 A. Sir, I know Sergeant Bergdahl from -- he was stationed in
- 14 our -- or he was assigned to our unit. And he was with us for a
- 15 short period before we deployed and conducted train up, and went on
- 16 the deployment with us. And then he was -- I was in charge of him
- 17 for a short amount of time at the OP before what took place.
- 18 Q. What role did you play in his platoon?
- 19 A. I was the Weapon's Squad Leader, and Sergeant Bergdahl was
- 20 assigned to a different squad; but I was in charge of him due to a
- 21 detail that was placed under my control.

- 1 Q. And based on working with him in the same platoon in
- 2 Afghanistan, what did you notice about Sergeant Bergdahl's
- 3 performance as a Soldier?
- A. He was a great Soldier. He was a, you know, "right place,
- 5 right time, right uniform" guy. You know, he was the SAW gunner that
- 6 everybody wanted in his squad. Everybody wanted him in his fire
- 7 team. Not a lot of complaining, kept his head down, did his job; and
- 8 you know, that is what we are always looking for.
- 9 Q. Tell us about the mock drafts that you guys would do when
- 10 you were chatting in idle time.
- 11 A. Okay. A mock draft -- I think it is kind of infantry-wide.
- 12 I think everyone sort of does it. You know, the leadership that is
- 13 there -- we all kind of put together sort of our super squad. You
- 14 know, if we could pick guys from anywhere in the company or anywhere
- in the platoon and put together the best squad that we ever could,
- 16 you know, who would we have. And first pick -- you know, Sergeant
- 17 Bergdahl was going to be the first pick for everyone almost every
- 18 time. He was, you know, a great Soldier. Everybody likes that.
- 19 Q. What was his view of the Taliban and, you know, getting
- 20 after the enemy?
- 21 A. He wanted to take the fight to the enemy, you know, just
- 22 like everybody else did. He was passionate about it. And, you know,
- 23 I think that was one of the things that I think separated him from a

- 1 lot of guys was that he wanted to go fight the kinetic fight that we
- 2 had in Iraq beforehand and I think that we had talked about within --
- 3 you know, he is hearing, you know, Sergeant Buetow and I telling each
- 4 other stories. And, you know, he signed up for the Army seeing all
- 5 these posters, and he wanted to go to that fight just like we all
- 6 did.
- 7 Q. What view did he have towards wanting to help the Afghan
- 8 people?
- 9 A. I think he just wanted -- you know, I think he just wanted
- 10 to see the people not being ruled with an iron fist. He wanted to
- 11 see the people -- you know, wanted to see improvement in Afghanistan.
- 12 And, you know, thought the best way about it was not the
- 13 hearts-and-minds fight but to go out and actually improve security.
- 14 O. You notice this model Soldier, but you -- it sounds like
- 15 you got to know him well enough to -- that there might be something
- 16 else there beyond the image of the model Soldier. Tell us about
- 17 that.
- 18 A. Yes, sir. It -- I think over the month or so that I had
- 19 interactions with Sergeant Bergdahl, it started to kind of feel that
- 20 he wasn't adjusting to the deployment like the rest of the guys were.
- 21 He wasn't -- you know, not that he wasn't making friends; but you
- 22 know, we are all a very outgoing group of guys. And, you know, we
- 23 are always talking back and forth, always chatting with each other,

- 1 and, you know, like I said, telling stories. And, you know, he was
- 2 kind of -- you know, he is an introverted guy. He was quiet and
- 3 didn't want to go out and do a lot of things with the rest of the
- 4 guys.
- 5 And so that started -- you know, I started to notice that.
- 6 And from my experience on my first deployment, I felt like -- that
- 7 that might be something that was showing that he might not be
- 8 adjusting quite right to the deployment at that time.
- 9 Q. Are you a psychologist or a psychiatrist?
- 10 A. No, sir.
- 11 Q. Okay. Well, tell us about -- was this a red flag for you,
- 12 this -- how he was interacting?
- 13 A. It was not something that I was, you know, incredibly
- 14 alarmed about; but it was certainly something that I felt needed to
- 15 be addressed. And I certainly would have talked, you know, to
- 16 Sergeant Bergdahl -- or to Sergeant Buetow, Sergeant Gerleve, guys
- 17 like that, beforehand and, you know, had a chat with them about it.
- Q. What is the relationship between the squad leader, which
- 19 was your role, and the company first sergeant?
- 20 A. He is echelons above me. And, you know, he is -- it is --
- 21 I assume it is Army-wide; but in the infantry I know for sure that
- 22 it's -- you know, he is not the kind of guy that you would just walk
- 23 up to, you know, "Good morning, First Sergeant." You know, it is not

- 1 really that kind of thing where we are on a personal level. You
- 2 know, he -- in my mind, he might as well be God. I am not going to
- 3 go talk to him for any reason unless someone tells me to.
- 4 Q. And what is it about -- what you noticed with Sergeant
- 5 Bergdahl, did you take these concerns to your leadership?
- 6 A. I did. We were on a mounted patrol somewhere southeast of
- 7 Sharana. I can't remember where. And First Sergeant happened to be
- 8 sitting in the back of the truck with me. And after, you know, going
- 9 on a long patrol; and, you know, we sit in the back and we talk for a
- 10 while. I finally decided, "Well, I am not really concerned about if
- 11 people get mad at me about this. This is something that I think I
- 12 can just say and just get it out there." And so, I told First
- 13 Sergeant that, you know, I thought that Sergeant Bergdahl should chat
- 14 with somebody, you know, whether it be Combat Stress, or a chaplain,
- or even if it were just, you know, the company commander just sit
- 16 down and, "Hey, man, how is everything going," you know, something to
- 17 just try to kind of integrate him into the deployment and into the
- 18 mission and make him feel welcome there.
- 19 Q. What response did you get when you raised this to the first
- 20 sergeant?
- 21 A. First Sergeant said that he didn't want to -- he didn't
- 22 want one of his guys to tell him what was wrong in his company. So

- 1 it was not my place to tell him if he had problems inside of his
- 2 company.
- 3 Q. I think when we interviewed you, you had even more colorful
- 4 language of what he said.
- 5 A. Yes, sir.
- 6 Q. Could you tell us that?
- 7 A. Sure. He said, "Fuck off." He said, "Shut the fuck up.
- 8 No one needs to hear what a fucking E-5 has to say about a guy in my
- 9 company."
- 10 And I said, "Roger, First Sergeant."
- 11 Q. If there were options for Combat Stress or something else,
- 12 what options were available, say back on FOB Sharana?
- 13 A. Sure. We had a chaplain, obviously, a battalion chaplain
- 14 and a chaplain's assistant. The problem is when we would have had to
- 15 time, you know, when Sergeant Bergdahl would have been back on
- 16 Sharana and the chaplain being there, because he has duty, you know,
- 17 rotating around to the different companies and, you know, seeing
- 18 those guys for extended periods of time. And so he may only be on
- 19 the FOB for a very short period of time and that just happens to be
- 20 perfectly timed with, you know, Sergeant Bergdahl being back.
- 21 And then we had Combat Stress. And, you know, those guys
- 22 are great. They do great things. And the problem is -- that I see
- 23 is actually going to those things.

- 1 Q. Tell us -- 11 Bravo, Infantryman -- what is going to happen
- 2 if an 11 Bravo, Infantryman, back in your unit in 2009 went and
- 3 sought help?
- 4 A. There was certainly a stigma involved with going. You
- 5 know, I -- you know, now having been out of the military, you know, I
- 6 have gone and talked to them. But it is something that I -- it would
- 7 have taken a lot of convincing for me to go to it personally. And
- 8 it's -- you know, I would feel like if I went to see the chaplain or
- 9 the chaplain's assistant, I would feel like my first sergeant would
- 10 know immediately and he would get in trouble. And, you know, knowing
- 11 how I feel about First Sergeant and about, you know, how many
- 12 echelons above me he is, I am not going to try and get him in
- 13 trouble.
- 14 Q. How do you feel your peers would react to you if you or
- 15 Sergeant Bergdahl or someone back then went and sought help?
- 16 A. It is going to be -- you know, as much as we hate to say
- 17 it, it is going to be taken as a sign of weakness. That is -- it is
- 18 -- you know, and I guess that can be attributed to Infantryman being,
- 19 you know, a bunch of tough guys and we are all, you know, battle
- 20 hardened and nobody wants to go seek help. But it certainly has a
- 21 stigma involved with it, and guys are going to know. And, you know,
- 22 that is something that -- you know, when I think back, if I did

- 1 another mock draft, if a guy had went and seen combat stress, that is
- 2 something that I would think about.
- 3 DC: No further questions.
- 4 PHO: Government?
- 5 ATC: Yes, sir.
- 6 CROSS-EXAMINATION

7 Questions by the assistant trial counsel:

- Q. I kind of want to back up, Mr. Leatherman, to when you were
- 9 in Alaska. All right?
- 10 A. Yes, sir.
- 11 Q. So you were in the -- you were the weapon's squad leader,
- 12 right?
- 13 A. Yes, sir.
- Q. And Sergeant Buetow is your best friend, right?
- 15 A. Yes, sir.
- Q. So the accused is in Sergeant Buetow's fire team? Would
- 17 that be the right term?
- 18 A. Yes, sir.
- 19 Q. Okay. So you didn't have that much interaction with
- 20 him ----
- 21 A. No.
- 22 Q. ---- because he wasn't under your control?
- 23 A. Right, sir.

- 1 Q. But you kind of got to know him a little bit, right?
- 2 A. Yes, sir.
- 3 Q. He was a member of the platoon, so you kind of had a sense
- 4 of what he was as a person, right?
- 5 A. Yes, sir.
- Q. And he wasn't your average Private First Class Infantryman,
- 7 was he?
- 8 A. No, sir.
- 9 Q. Right. I mean, when the guys were going out on the town on
- 10 the weekend, the accused was back in his room, you know, listening to
- 11 Rosetta Stone, reading books. And it isn't that that is bad; it is
- 12 just that it is different, right?
- 13 A. Right, sir. It is not -- in no way does it make him a bad
- 14 Soldier. In fact, it probably makes him a good -- a better Soldier.
- 15 I mean, the guy -- you know, instead of going out with us or going
- 16 out with his friends, you know, he is studying. He is trying to
- 17 become a better Soldier. That is -- you know, that is what we want.
- 18 That is what everybody looks for.
- 19 Q. But the guys in the platoon were kind of looking at him
- 20 going, "Well, that's different. Why isn't he coming out with us,"
- 21 right?
- 22 A. Sure. Yeah. You know, a lot of these guys are coming out
- 23 of high school; and you know, they're alpha males in their high

- 1 school. And, you know, these guys were all-star quarterbacks and
- 2 that kind of thing. And they are showing up to the platoon, and they
- 3 feel like everybody else should be like them. Why isn't everybody
- 4 else an extrovert? Why isn't everybody else so outgoing? And,
- 5 specifically, you know, why isn't Sergeant Bergdahl going out and
- 6 doing all these things with us? You know, and so that is something I
- 7 certainly noticed.
- 8 Q. And then you talked about an outgoing group of guys, but he
- 9 is an introvert. So, again, it is not that it is bad; it is
- 10 different?
- 11 A. Yes, sir.
- 12 Q. But, in your mind, right -- "Okay. This guy is a little
- 13 different than everyone else," right?
- 14 A. Uh-huh [indicating an affirmative response].
- Q. And so -- and then when you get to know him on the OP,
- 16 right, it is almost immediately his complaints about the mission,
- 17 right? We should be going down and killing bad guys and kicking in
- 18 doors and stuff like that, right?
- 19 A. Yes, sir.
- Q. And it just kind of continued, didn't it?
- 21 A. Yeah. I mean, I think atmospherically, the way that the
- 22 mission was inside the platoon and the mission for the battalion and
- 23 the brigade, I think a lot of guys were unhappy with it. I know, I

- 1 personally -- I thought -- I wanted to go to the mission that we had
- 2 done before. You know, that's just what I felt like I had trained to
- 3 do; and I think he felt the same way.
- Q. Sure. And so, when you -- when these complaints came and
- 5 so you are concerned. This was a red flag for you. He wasn't
- 6 adjusting in your words, right?
- 7 A. Right.
- 8 Q. But, again, it was the guy who was reading the Ranger
- 9 Handbook all the time. It made him a little bit different from
- 10 everyone else who was, like, watching movies, right?
- 11 A. Uh-huh [indicating an affirmative response].
- 12 Q. Again, just different. He was different, right? When you
- 13 would engage in stories and talk about, "Hey, who is hotter? This
- 14 celebrity or this celebrity?" the accused isn't in that conversation,
- 15 right?
- 16 A. No, not usually, sir.
- 17 Q. Right. So, again, he is different, right ----
- 18 A. Yes, sir.
- 19 Q. ---- from the average Infantryman? So you had this
- 20 concern he wasn't adjusting with the deployment. But you also talked
- 21 about this mock draft, right?
- 22 A. Uh-huh [indicating an affirmative response].
- Q. He is your go-to guy, right?

- 1 A. Uh-huh [indicating an affirmative response].
- Q. In the fantasy mock draft, the fire team leaders, the top
- 3 one through five picks, right, he is the number one SAW gunner
- 4 somewhere in there, right?
- 5 A. Yes, sir.
- Q. And so your concern was he is not adjusting, right? He is
- 7 not finding fulfillment in the mission, right?
- 8 A. Uh-huh [indicating an affirmative response].
- 9 Q. And so who can I send him to, to make him understand this
- 10 COIN thing ----
- 11 A. Yes, sir.
- 12 Q. ---- so he can find fulfillment?
- 13 A. Yes, sir.
- Q. And, in fact, you went to Iraq in 2007, right?
- 15 A. 2006 through 2008, yes, sir.
- 16 Q. And that deployment was kinetic?
- 17 A. Very.
- Q. Okay. And can you kind of give just a small flavor, three
- 19 or four sentences, of how you would describe that?
- 20 A. I can shorten it even more than that. We kicked doors down
- 21 and shot people, sir. I mean, that is essentially what the mission
- 22 was.

- 1 Q. Okay. And so, with those same complaints and red flags
- 2 about the accused, you know, this is the perfect guy for that Iraq
- 3 deployment, right?
- A. Right. He would have fit in perfectly. It would have been
- 5 a great place for him.
- 6 Q. So you wouldn't have had any concerns at that time about
- 7 the complaints?
- 8 A. No, sir. It's -- I think, you know, as the level of
- 9 security drops, your concerns about things beyond security sort of
- 10 kind of go downhill. We don't -- you know, if we are -- if all I am
- 11 worried about is keeping Sergeant Bergdahl alive -- if that is the
- 12 most important thing to me, well, then I have a lot less time to
- 13 worry about is he integrating with the guys. I am worried about, did
- 14 he duct tape the pin on his hand grenade so he doesn't kill everyone.
- 15 Q. Okay. Fair enough.
- And so, the key was getting someone to adjust and
- 17 understand the ----
- 18 A. Yes, sir.
- 19 Q. ---- COIN mission in Afghanistan, what we were doing at
- 20 that time, right, so he could get something and feel like he is
- 21 fulfilling his ----
- 22 A. Exactly, sir. Yes.

- Q. And this whole time, right, he continues to be great at his
- 2 job?
- 3 A. Uh-huh [indicating an affirmative response].
- Q. Right. Continues to show up in the proper uniform, right
- 5 motivation. "Hey, Sergeant Leatherman, what do I need to do today?"
- 6 and get after it for you, right?
- 7 A. Yes, sir.
- 8 Q. And that whole time, you were giving him guidance and he
- 9 seemed to understand what you wanted him to do, right?
- 10 A. Yes, sir.
- 11 Q. And those back briefs to you were very coherent and clear
- 12 that he understood what he needed to do, right?
- 13 A. Yes, sir. I mean, it was made clear by him -- you know,
- 14 just like it was made clear by the other guys -- that that is not the
- 15 fight that he personally and they felt that was the best way to go
- 16 about winning a war.
- 17 Q. But he was certainly doing the stuff that you told him to
- 18 do, right?
- 19 A. Oh, absolutely. On a day to day level, you know, if it is,
- 20 "Hey, Bergdahl, run down and grab some ammo for the 16 and bring it
- 21 back."
- 22 "Roger, Sergeant."

- 1 And he would go down there and be back faster than you
- 2 would expect, I'm sure.
- 3 Q. Okay. I want to switch gears, Mr. Leatherman. So I want
- 4 you to -- if you could briefly describe the enemy activity around OP
- 5 Mest when you were up on that bunker.
- 6 CDC: We are going to object. We had a very limited direct.
- 7 PHO: Yeah, I am going to scope this. Keep it within the scope
- 8 of what the defense questioning was.
- 9 ATC: I think the only scope here is whether or not it is
- 10 relevant to the limited scope and purpose of this hearing. And the
- 11 limited scope and purpose is whether or not he, before the enemy,
- 12 commits misconduct.
- 13 CDC: Then you should have called him as a witness. You didn't
- 14 have him on your list.
- 15 PHO: I am going to sustain the objection.
- 16 ATC: Okay. No further questions. Thank you.
- 17 PHO: Any government -- or I am sorry.
- Defense, redirect?
- 19 DC: Nothing further.
- 20 PHO: All right. Let me take a look at my notes real quick.
- 21 [Pause.]
- 22 PHO: I don't have any further questions.
- 23 Permanent or temporary excusal?

- 1 DC: He can take off. Permanent.
- 2 PHO: Okay.
- 3 [The witness was permanently excused, duly warned, and withdrew.]
- 4 PHO: Next witness?
- 5 DC: The defense calls Mr. Curtis Aberle.
- 6 CURTIS ABERLE, civilian, was called as a witness for the defense, was
- 7 sworn, and testified as follows:
- 8 DIRECT EXAMINATION
- 9 Questions by the trial counsel:
- 10 Q. Sir, before we proceed, I need to give you a caution.
- 11 Please be advised that, while you are testifying if you are asked any
- 12 question that you believe may require a response containing
- 13 classified information, you have a personal responsibility to notify
- 14 the preliminary hearing officer prior to answering. At no time
- 15 should you disclose any classified information while this hearing is
- 16 in open session. Do you understand?
- 17 A. I do.
- 18 Q. Please state your full name and current duty station.
- 19 A. My name is Curtis James Aberle. I am a family nurse
- 20 practitioner and Chief of McWethy Troop Medical Clinic part of Brooke
- 21 Army Medical Center here on Fort Sam Houston.
- TC: Thank you.
- 23 Defense?

1 Questions by the defense counsel:

- 2 Q. Good morning, Mr. Abele.
- 3 A. Good morning.
- 4 Q. We will have you speak up so that everyone can hear you.
- 5 A. Okay.
- 6 Q. Could you, please, describe to Lieutenant Colonel Visger
- 7 your military experience?
- 8 A. Certainly. I have been associated with the military for
- 9 over 32 years. I served 26 years in the military; 12 years enlisted,
- 10 14 years as an officer -- as an Army Nurse Corps Officer. I have
- 11 been a civilian for the past 7 years. My role was a combat medic for
- 12 the first 12 years and then a family nurse practitioner for the last
- 13 13.
- Q. What role do you play on Fort Sam Houston with regards to
- 15 preparing physical profiles for Soldiers?
- 16 A. I am considered the subject matter expert for the Fort Sam
- 17 Houston for profiling. I train new providers, company commanders,
- 18 first sergeants; and I guide my staff on how to prepare DA 3349s.
- 19 Q. How long have you known Sergeant Bergdahl?
- 20 A. Approximately 15 months.
- 21 Q. How did you come to get to know him?
- 22 A. I was assigned to be his primary care manager by the Brooke
- 23 Army Medical Center Command.

- 1 Q. And what other information did you have about him to deal
- 2 with him as a patient?
- 3 A. I was able to review his records, both inpatient and
- 4 outpatient, prior to him being released from an -- as an inpatient
- 5 from BAMC.
- 6 Q. Could you, please, describe some of the medical conditions
- 7 that he was facing when you first came to know him back in about June
- 8 2014?
- 9 A. Yes, sir. Sergeant Bergdahl suffers from -- both of his
- 10 lower legs -- I am going to try and put this in layman's terms -- in
- 11 both of his lower legs, he suffers from nerve damage -- muscular
- 12 nerve damage. We call it peripheral neuropathy. He has injured his
- 13 lower back and has some degenerative disc disease in his lower back;
- 14 and his left shoulder has been injured, and he suffers from decreased
- 15 range of motion from that.
- Q. When you were looking at these conditions, what was the
- 17 cause of them?
- 18 A. According to the record and according to Sergeant Bergdahl,
- 19 during captivity, he was held in a position -- in a crouch position,
- 20 that would have compressed the muscles and nerves from the knees and
- 21 down below for an extended period of time, causing the nerve and
- 22 muscular damage.
- 23 Q. How long was he in captivity?

- 1 A. Five -- I guess, five years.
- Q. Were you able to consider whether the medical problems that
- 3 he had when you first saw him, were -- existed before he was in
- 4 captivity?
- 5 A. It is my understanding he had a clean bill of health prior
- 6 to captivity and all these injuries were suffered during his
- 7 captivity.
- 8 Q. Okay. The form that you are the subject matter expert on -
- 9 the Department of the Army Form 3349, what is the philosophy behind
- 10 the permanent profile or the profile form?
- 11 A. The philosophy behind that is that, as a primary care
- 12 manager, we want to ensure that our patients don't injure themselves
- 13 further, that we apply the appropriate duty-limiting conditions to
- 14 them but also apply the regulation, AR 40-501, and as far as
- 15 retention standards go from Chapter 3, and then also be a good
- 16 steward of the Army's resources. So it is up to the primary care
- 17 manager, like myself, to determine if an injury, illness, or disease
- 18 meets those retention standards in Chapter 3; and then, if they
- 19 don't, we refer our patients to the medical evaluation board.
- 20 Q. And when do you initiate a permanent physical profile?
- 21 A. A permanent profile is issued when a disease, condition, or
- 22 illness meets what we call the medical retention determination point.
- 23 This can be -- it is individually based. So we look at each

- 1 individual disease, injury, or illness; and we determine whether the
- 2 condition is at a stable state or needs further workup. If it is at
- 3 a stable state and there is a permanent disability and the Soldier
- 4 can no longer do their military duties, then we would say that they
- 5 meet -- that they're at the medical retention determination point,
- 6 and we would refer them to the MEB.
- 7 Q. Did you issue Sergeant Bergdahl a permanent profile?
- 8 A. I did.
- 9 Q. When did you do that?
- 10 A. I don't remember the exact date, but it was approximately
- 11 12 months from the time that he started medical treatment.
- 12 Q. Why 12 months?
- 13 A. According to Army Regulation 40-501, 12 months is the
- 14 determination point when someone has an injury, illness, or disease
- 15 that has met the MRDP, the medical retention determination point,
- 16 they must either get a permanent profile or be sent to the MEB.
- 17 Q. I am now going to hand you what our court reporter has
- 18 marked as Defense Exhibit Delta. And I am going to keep that there
- 19 with you one second.
- 20 Mr. Aberle, do you recognize that form?
- 21 A. I do.
- Q. What is it?
- 23 A. This is a DA Form 3349.

- 1 Q. And who is it in relation to?
- 2 A. Sergeant Bowe Bergdahl.
- 3 Q. Who signed that form?
- A. I did and my immediate supervisor, Colonel Kevin Moore,
- 5 did.
- Q. Okay. Now, let's talk about this. Could you, please, read
- 7 for everybody what you wrote in block 8 of the form?
- 8 A. In block 8, which is the functional limitations and
- 9 capabilities and other comments, I wrote, the Soldier is
- 10 non-deployable; no standing in formation longer than 10 minutes; run
- 11 at own pace and distance; upper body exercise at own pace and
- 12 distance and resistance; no lifting over 40 pounds; this profile will
- 13 be adjusted at the completion of the MEB/PEB process.
- 14 Q. Thank you. Now, I would like to look up that the top of
- 15 this form. I see six letters written. P-U-L-H-E-S. Could you,
- 16 please, go down those one by one?
- 17 A. Certainly. The "P" stands for general physical. This
- 18 indicates to commanders and HR folks and medical staff that this is
- 19 the -- kind of the metabolic disorders if you will that someone may
- 20 have an injury or illness such as heart disease, diabetes, Crohn's
- 21 disease.
- 22 "U" stands for upper extremities.
- Q. Why don't we take them one by one?

- 1 A. Okay.
- 2 Q. That might be easier for everyone to understand.
- 3 Under the "P" block you wrote 3. Can you tell us why you
- 4 did that and what it means?
- 5 A. Yes, sir. So, under the "P," general psychical, it
- 6 coincides with "J" in block 5, living in an austere environment
- 7 without worsening a medical condition. With Sergeant Bergdahl's --
- 8 particularly in regard to his lower-extremity injuries, he would not
- 9 be able to live in an austere environment without worsening that
- 10 medical condition. Therefore, the "P" would end up being a 3.
- 11 Q. Describe his ----
- 12 PHO: Before you go on, what does 3 signify?
- WIT: Sir, 3 signifies that there is significant limitations to
- 14 the Soldier's duty in accordance with their MOS.
- 15 PHO: I apologize. Go ahead.
- 16 Q. Thank you. I appreciate that.
- In "U," you also wrote 3. Describe was "U" is and why you
- 18 wrote 3 for Sergeant Bergdahl.
- 19 A. "U" is for the upper extremities. His limitations of his
- 20 left shoulder would indicate a level of 3 since he is no longer able
- 21 to sustain or heavy lifting overhead or do pushups.
- Q. In the block "L" you also wrote 3. Tell us what that is
- 23 and why it applies to Sergeant Bergdahl.

- 1 A. "L" stands for lower extremities. And this is where the 3
- 2 would equate to his inability to be able to run, and also it ties in
- 3 his lower back injury.
- Q. In "H" you wrote 1. What does that mean?
- 5 A. "H" is for hearing. And there are no deficits with his
- 6 hearing; so he would be a 1, which means that there are no deficits.
- 7 Q. In the fifth block, "E," you also wrote 1. What does that
- 8 mean?
- 9 A. "E" is for eyes. And, again, he has no deficits that would
- 10 be a duty-limiting condition, so he would be a 1.
- 11 Q. In "S" you also -- in "S" you wrote 3. What does that mean
- 12 and why did you write it for Sergeant Bergdahl?
- 13 A. "S" stands for psychological conditions; and with his
- 14 diagnosis of PTSD and due to the nature of his captivity, I decided
- 15 to put that as a 3.
- Q. What information did you base that on in concluding that it
- 17 was a 3?
- 18 A. I based that on collaborating with his treating
- 19 psychologist and the record.
- 20 Q. Now, I would like to take this to a real-world example. A
- 21 few months ago, Sergeant Bergdahl took a modified version of the
- 22 Army's physical fitness test. Could you tell us what happened when
- 23 he tried to take the physical fitness test?

- 1 A. Sergeant Bergdahl presented to me several hours after the
- 2 physical fitness test with swollen legs without pitting edema, but he
- 3 did have edema, meaning his legs were swollen, to the point where he
- 4 could not wear Army boots and he was limping.
- 5 Q. And how long was he out of commission after taking this PT
- 6 test?
- 7 A. I believe we put him on no boots for several days and,
- 8 obviously, no running or walking around for about 7 to 10 days if I
- 9 remember right.
- 10 Q. What event during the physical fitness test triggered this?
- 11 A. According to Sergeant Bergdahl, he had tried to walk the
- 12 APFT, which is a 2-and-a-half-mile walk.
- 13 Q. So, walking 2-and-a-half miles caused him to be laid up for
- 14 a week?
- 15 A. Yes, sir.
- Q. Are you trained to identify Soldiers who come to you
- 17 seeking to exaggerate their conditions?
- 18 A. Yes, sir.
- 19 Q. Did you notice any of that with Sergeant Bergdahl?
- A. Not at all.
- Q. What is your opinion about whether he is medically
- 22 qualified, not just for the duties of an 11 Bravo but to remain in
- 23 the military?

- 1 A. I don't believe -- it is my opinion that Sergeant Bergdahl
- 2 does not meet retention standards and should not remain in the
- 3 military.
- 4 Q. Knowing about his captivity and his diagnoses, would you
- 5 recommend that he be deployed again?
- 6 A. No, sir.
- 7 Q. What was your recommendation for whether he should go to a
- 8 medical evaluation board?
- 9 A. I recommend that he goes through a medical evaluation
- 10 board. Can you clarify that, please?
- 11 Q. You recommended that he go through a medical evaluation
- 12 board. What would that mean for him if he did get an MEB?
- 13 A. What it would mean for him would be that he would be able
- 14 to go through the integrated disability evaluation system, the
- 15 Congressionally mandated VA/DoD system that would illustrate fully
- 16 his disabilities and allow him to receive VA benefits as well as
- 17 determine whether he his fit or unfit for service.
- 18 Q. How will an MEB assist Sergeant Bergdahl?
- 19 A. It would assist him by establishing this DA 3349 as it
- 20 being permanent, you know, as adjudicated by the physical evaluation
- 21 board, the PEB. And it would benefit him by allowing him to get VA
- 22 benefits for his injuries and also possibly medical retirement from
- 23 the military.

- 1 Q. Based on the medical conditions he experienced in
- 2 captivity, how much ongoing care will he require?
- 3 A. He'll require lifetime care.
- 4 Q. How will his work and life opportunities be limited by his
- 5 medical conditions?
- A. I believe he will not be able to run or hike an extended
- 7 period of time. He will not be able to walk extended distances. His
- 8 ability to lift over 40 pounds will be very limited. His ability to
- 9 use his upper body for overhead lifting will be very limited.
- 10 Q. A purpose of this Article 32 is to recommend a disposition
- 11 of the charges. If you had to recommend between a medical evaluation
- 12 board or a court-martial, what would you recommend?
- 13 A. As a health care provider, I would recommend he go through
- 14 the MEB.
- 15 DC: Nothing further.
- 16 PHO: Government?
- 17 TC: No questions.
- 18 PHO: All right. I have a follow-on question, and I will wait
- 19 for a defense objection or a government objection for that matter.
- 20 EXAMINATION BY THE PRELIMINARY HEARING OFFICER
- 21 Questions by the preliminary hearing officer:
- Q. You mentioned the MEB process. What impact would a finding
- 23 of "not in the line of duty" have upon that process?

- 1 Is there an objection from either side?
- 2 TC: This is beyond the limited scope and purpose of this
- 3 hearing, sir.
- 4 PHO: I think it goes to disposition.
- 5 TC: That would not be a disposition within your purview to
- 6 recommend, sir.
- 7 PHO: No, but it is a disposition that I should consider in the
- 8 overall total picture -- you know, the 306(b) factors -- that I
- 9 should consider in making a disposition recommendation.
- 10 TC: Does the defense object to that question?
- 11 PHO: Is there a defense objection?
- 12 CDC: Can we confer for a minute, Your Honor -- or Colonel?
- 13 Excuse me.
- 14 PHO: Certainly.
- 15 [Pause.]
- 16 CDC: Could you re-state the question just so we can focus
- 17 clearly on ----
- 18 PHO: I believe I can do that.
- 19 What impact would a finding of "not in the line of duty" --
- 20 if the injuries were incurred not in the line of duty -- would it
- 21 have upon the MEB process and receiving of care after Sergeant
- 22 Bergdahl leaves the military.
- DC: No objection to your question.

- 1 PHO: Government? Do you stand on your previous ----
- 2 TC: Right.
- 3 PHO: I am going to go ahead and overrule your objection. I will
- 4 hear the question [sic].
- 5 The questions by the preliminary hearing officer continued as
- 6 follows:
- 7 A. Sir, the line of duty investigation would be separate from
- 8 the MEB. The MEB would go forward, and the PEB would consider the
- 9 line of duty investigation, which his initiated by the command, in
- 10 determining the applicability to Sergeant Bergdahl's disposition as
- 11 far as receiving military or VA benefits.
- 12 Q. So it is a factor in consideration. It is not a -- the
- 13 command will decide whether or not he should be receiving benefits?
- 14 A. Correct, sir.
- Okay. But it's not -- if it is not in the line of duty, no
- 16 benefits -- it would be the commander's decision?
- 17 A. It would be the PEB's decision.
- 18 Q. PEB's.
- 19 A. The MEB process -- the IDES process would continue. And it
- 20 is my understanding that the line of duty investigation, yes or no,
- 21 goes to the PEB for final adjudication.
- Q. And do you happen to know what criteria they apply in
- 23 deciding whether -- in deciding how to consider that line of duty?

- 1 A. I don't.
- 2 PHO: All right. Any questions based on mine?
- 3 TC: No, sir.
- 4 DC: None.
- 5 PHO: Permanent or temporary excusal?
- 6 DC: Permanent.
- 7 PHO: Okay.
- 8 [The witness was permanently excused, duly warned, and withdrew.]
- 9 PHO: Defense?
- 10 DC: We request a 10-minute break before the next witness.
- 11 PHO: Okay. I will make it 15. We will go until --
- Government, do you have something?
- 13 ATC: Are we going to -- so we can have the witness lined up, who
- 14 will that next witness be?
- 15 CDC: It is Major General Dahl.
- 16 ATC: Okay.
- 17 PHO: So we will have him standing by, lined up, ready to go at
- 18 1000 hours.
- 19 [The Article 32 hearing recessed at 0944, 18 September 2015.]
- 20 [The Article 32 hearing was called to order at 1000,
- 21 **18 September 2015.**]
- 22 PHO: All right. The hearing is again called to order. The
- 23 parties who were present at the last recess are again present.

- 1 Defense, please call your next witness.
- 2 CDC: Yes. Please call Major General Kenneth R. Dahl.
- 3 MAJOR GENERAL KENNETH R. DAHL, U.S. Army, was called as a witness for
- 4 the defense, was sworn, and testified as follows:
- 5 DIRECT EXAMINATION
- 6 Questions by the trial counsel:
- 7 Q. Sir, I need to read you a caution. Please be advised that,
- 8 while you are testifying if you are asked any questions that you
- 9 believe may require a response containing classified information, you
- 10 have a personal responsibility to notify the preliminary hearing
- 11 officer prior to answering. At no time should you disclose any
- 12 classified information while this hearing is in open session.
- Do you understand?
- 14 A. I do.
- 15 Q. Sir, could you, please, state your full name, rank, and
- 16 unit of assignment?
- 17 A. Kenneth Robert Dahl, Major General, United States Army. I
- 18 am most recently assigned as the Deputy Commanding General of I Corps
- 19 at Joint Base Lewis-McChord.
- 20 TC: Thank you.
- 21 Defense?
- 22 Questions by the civilian defense counsel:
- Q. Good morning, General.

- 1 A. Good morning.
- 2 Q. Can you -- you know Sergeant Bergdahl -- you have met
- 3 Sergeant Bergdahl?
- 4 A. I have.
- 5 Q. And you know that he is sitting to my right, down a couple
- 6 of seats. Can you state for Colonel Visger how you became involved -
- 7 or how you came to be involved with Sergeant Bergdahl?
- 8 A. Yes, I can. While I was serving at Joint Base
- 9 Lewis-McChord as the deputy commanding general there was a --
- 10 shortly, if I recall, it was a week or so after Sergeant Bergdahl was
- 11 recovered -- there was a tasker that went out from the Headquarters,
- 12 Department of the Army, I believe, to the major commands in the Army
- 13 asking for an officer -- a candidate -- nominees to potentially serve
- 14 as the investigating officer for an Article 15-6.
- The criteria as I recall them were, we wanted a major
- 16 general. We wanted somebody who was from the operational side of the
- 17 Army, somebody who had recent Afghanistan experience. And they were
- 18 going to be -- needed to be available almost immediately and probably
- 19 for a period of about 60 days.
- So, as the DCG, I saw that traffic on the tasker, and I
- 21 counted them up. And I recognized that there were probably about
- 22 three of us; so I began to advocate of the other two, but I failed.

- 1 And I received notice a day or two later that I was going to be the
- 2 investigating officer, which I understood why.
- 3 Q. Certainly.
- A. And I sort of saw it coming. I said, really, this tasker
- 5 is kind of made for me but -- so that is how it happened.
- 6 Q. What is it that made you think the tasker was tailor made
- 7 for you?
- 8 A. Well, given those criteria, there were only a couple others
- 9 that really met that criteria. And, frankly, they were in positions
- 10 where it would have much more difficult for them to depart their core
- 11 responsibilities and be gone for 60 days than mine. I mean, I Corps
- 12 is a very large organization. I was the deputy, not the commander.
- 13 So my absence would have been a lot easier to back fill than the
- 14 others, so I pretty much saw it coming.
- 15 Q. And did you proceed, in fact, to perform the duty of
- 16 AR 15-6 investing officer?
- 17 A. I did. I think a couple of days went by before I received
- 18 a phone from the Vice Chief of Staff of the Army telling me that, of
- 19 the nominees, I was selected. I believe it was the next day I flew
- 20 to Washington D.C. to get my appointment orders from Lieutenant
- 21 General Grisoli, the Director of the Army Staff.
- Q. Did you have any help on this project?

- 1 A. I did. I had a great deal of help. When I first arrived
- 2 in Washington D.C., I was offered the opportunity, frankly, to
- 3 conduct my investigation in Washington D.C. And I think that there
- 4 actually may have even been an assumption that that is what I was
- 5 going to do. And that was not my assumption, so I explained to them
- 6 that I was going to return back to Washington State and conduct my
- 7 investigation from there. I really didn't see much value in doing it
- 8 in Washington D.C. versus Washington State. Again, Joint Base
- 9 Lewis-McChord is a very large installation. So, of the experts that
- 10 I would need -- subject matter experts, technical experts -- we have
- 11 an abundance of that kind of talent, you know, at Joint Base
- 12 Lewis-McChord. So I thought that it would be better to go back, you
- 13 know, sort of separate ourselves from the noise and work with a team
- 14 of people that -- I already knew many of them.
- So I did, and we went back to -- the only thing I asked for
- 16 from outside of Joint Base Lewis-McChord was a couple of lawyers to
- 17 help me on the legal aspects of things. And that is because I work
- 18 quite a lot with the lawyers at Joint Base Lewis-McChord, and we keep
- 19 them pretty busy. And I didn't want to distract them from the work I
- 20 was already giving them to do. So, other than that, I assembled a
- 21 team at Joint Base Lewis-McChord.
- 22 Q. How many people were on your team?

- 1 A. I believe it was 22. It was a very diverse group of
- 2 people. It sort of was diverse, you know, not necessarily
- 3 deliberately; but it just turned out that way.
- 4 As I was returning to Joint Base Lewis-McChord -- as I was
- 5 flying back, you know, at that time I thought to myself, I don't know
- 6 Sergeant Bergdahl. I don't know if he is going to want to speak to
- 7 me at all. Really, what I needed to do was to understand the intent.
- 8 What was going through the mind of a private first class at the time,
- 9 you know, on a platoon combat outpost in Afghanistan; and I am a 55
- 10 year old major general. So I thought, "I need a platoon sergeant. I
- 11 need an infantry platoon sergeant," who is going to be a lot more --
- 12 closer to, you know, being able to provide me some input from that
- 13 small unit leader perspective. So the first person identified was an
- 14 infantry -- sergeant first class infantry platoon sergeant.
- And then, I knew I would need some intelligence analyst,
- 16 some people who are familiar with conducting, you know, good
- 17 investigations. Some -- a communications person to help me when we
- 18 were traveling. A psychologist, a psychiatrist, financial experts.
- 19 So we ended up pulling together about 22 folks. Generally speaking,
- 20 I think it was -- I want to say we had 9 officers, 11 enlisted, and 2
- 21 civilians. The two doctors were both civilians. And it was pretty
- 22 evenly split I think gender-wise and then ethnic backgrounds was
- 23 also, you know, widely represented.

- 1 And I only point that out to you because that led me --
- 2 later, when I recognized -- when we would sit around the table and
- 3 have conversations at the end of the day -- and it was fairly open
- 4 and good dialogue going on amongst everybody -- it occurred to me
- 5 that this is the kind of group of people that would provide a good
- 6 deal of confidence, you know, at the end of the day, you know, that
- 7 we have found the truth.
- 8 Q. And I'm hearing you to say that you really got your hands
- 9 dirty on this?
- 10 A. I did.
- 11 Q. This was not supervising. You were hands on
- 12 investigating ----
- 13 A. Yeah, absolutely. Absolutely. Yeah, I wasn't doing
- 14 anything else but this.
- 15 O. This was it?
- 16 A. This was it. I was not doing anything else but this.
- Q. Was your staff and the available time adequate to the task?
- 18 A. Yes. I think in hindsight it was. I was offered the
- 19 opportunity to have access to military air when it was available. It
- 20 is available on an as-needed basis; and I didn't think that I was
- 21 going to have the priority, and sometimes I didn't. But when it was
- 22 available, I did get it. And that was very helpful in us meeting our
- 23 time line. Because we could fly to, you know, Tampa; and we could

- 1 work the whole way there on the plane which you can't do, you know,
- 2 on a commercial aircraft when you are changing planes and checking
- 3 baggage and all that. So that was a very efficient use of that.
- 4 That allowed us to stick with our time line.
- 5 And yeah, so I think I had -- frankly, by the time we
- 6 wrapped up, we really didn't have too much more that we had hoped to
- 7 accomplish or pursue or additional leads. I was a little late in
- 8 interviewing Sergeant Bergdahl as you'll recall. Other than that, it
- 9 went, pretty much, the way we had hoped.
- 10 Q. So how long did the investigation take from start to ----
- 11 A. Yeah. I'll say 59 days. There were 60 days -- my orders
- 12 said 60 days. And I had told the group -- I said, you know, "I would
- 13 like to be done in 60 days. I think we can be done in 60 days. We
- 14 have a lot of talent here." We had uninterrupted -- I mean, everyone
- on my team was completely distraction-less. This was your -- you are
- 16 committed to this until we are done.
- So with that amount of talent and 60 days; and probably the
- 18 only thing that really facilitated us, I think, was the mil air. And
- 19 we did a lot of -- a lot of interviews and things we did, we did over
- 20 the telephone. It was fine. People were very happy to do telephonic
- 21 interviews. So we didn't have to travel that much and turn all those
- 22 into sworn statements. So I think we did a good job.

- I mean, when we started to get bogged down, you know, we
- 2 added more people. That is how we ended up with 22. At first, I
- 3 started with one paralegal. I ended up with two or three paralegals
- 4 and a court reporter. And that is just because they just couldn't
- 5 keep up with the interviews. We were doing three, four, five a day;
- 6 and we were wearing them out. So we started to pull in some
- 7 additional help.
- 8 Q. Roughly, how many people were interviewed?
- 9 A. I think it was 57 if I'm not mistaken.
- 10 Q. You generated a report?
- 11 A. I did.
- 12 Q. Have you had a chance in preparation for today to look back
- 13 at it?
- 14 A. I have.
- 15 Q. And I am referring mostly but not exclusively to the
- 16 executive summary.
- 17 A. Right.
- 18 Q. A small point perhaps, but I will ask it anyway.
- 19 A. Uh-huh [indicating an affirmative response].
- 20 Q. There are two dates on the executive summary.
- 21 A. Uh-huh [indicating an affirmative response].
- Q. I don't know -- do you need to see it? Would it help
- 23 you ----

- 1 A. No. I have it right here [pointing to his head].
- Q. I imagined that was the case. So why are there two dates
- 3 on the executive summary?
- 4 A. Sure.
- 5 Q. Just to put that to rest.
- 6 A. No. Sure. I mean, I was very well aware from the very
- 7 beginning that this was a high-profile case, which is one of the
- 8 reasons -- another one of the reasons why I thought it was important
- 9 for us to finish in 60 days. I mean, my orders said 60 days; and I
- 10 wanted to finish in 60 days. I didn't want anyone to -- if I were to
- 11 finish early, you know, accuse me of doing that for some particular
- 12 reason; or if I were to finish late, accuse me of doing that for some
- 13 particular reason. So I said the best thing for us to do is to do
- 14 our job and do it in 60 days. If I can't do it in 60 days, then I
- 15 will ask for an extension. And I think you will recall, I almost
- 16 considered that, because my interview for Sergeant Bergdahl came
- 17 quite late, and I thought I might need to. But in the end, I did not
- 18 need to. So, on day 59, you know, I flew back to Washington D.C. and
- 19 presented my recommendations and findings.
- So my investigation at that point was complete. I had
- 21 gathered all the facts. I gathered all the information that I was
- 22 going to gather. You know, we had separated fact from fiction. You

- 1 know, I believe we found the truth; and then based on the truth, we
- 2 made our findings and recommendations.
- I asked, at that point, for additional time to write the
- 4 report because I thought that, as you know, there is 300-plus pages
- 5 of sworn testimony of Sergeant Bergdahl that came at the end. And I
- 6 thought it was necessary for me to tie his testimony -- his sworn
- 7 statement to all the information that I had gathered previously as
- 8 best as I could to corroborate it so it didn't just have to stand,
- 9 you know, on its own. Me and the team saw the connections, but that
- 10 wouldn't have been obvious to people who weren't as intimate with the
- 11 effort as we were. So I asked for the additional time.
- 12 That is why I want to say it was the 14th of August, which
- 13 was about day 59, when I briefed the findings. And then 45 days
- 14 later is when I turned in the report, and that was the additional
- 15 time I asked for to do the writing. I, for the most part, released
- 16 my team back to do their work because we were done investigating.
- 17 And I only kept a small number of people to help me with the actual -
- 18 the paralegals doing the footnotes, you know, creating the actual
- 19 document itself. I turned that in on the 24th of September or
- 20 whatever the date is there on the top right of the front page.
- 21 Q. 28th.
- 22 A. 28 September. Okay. So it's not exactly right
- 23 here [pointing to his head].

- 1 Q. Close.
- 2 A. I think that is 45 days after I had asked for the time.
- 3 And I turned it in, and I dated it. And then I didn't sign it
- 4 because it still had to go through legal review, and that's typical.
- 5 I mean, that is typical. The difference between the date on the
- 6 front and the date next to my signature at the very end, you know, is
- 7 the amount of time that it took to do the legal review back in
- 8 Headquarters, Department of the Army.
- 9 Q. For purposes -- you are obviously aware of what the purpose
- 10 of this investigation is?
- 11 A. Sure.
- 12 Q. Of this hearing -- for those purposes, were there any
- 13 material changes between your report as it stood ----
- 14 A. No.
- 15 Q. ---- before the legal review and after the legal review?
- 16 A. No. No. No.
- 17 Q. Great. Okay.
- 18 A. Absolutely not. I mean, I would like to elaborate on that
- 19 to say I was very comfortable with all of the changes -- all of the
- 20 things that were changed during that period of time between those
- 21 dates. They all were done in consultation with me. Some of them I
- 22 said, "Nope, we are leaving that in." A lot of them I said, "Yeah.

- 1 Okay. I am comfortable taking that out. It doesn't really change
- 2 anything." And so the answer to your question is no.
- 3 Q. You indicated that you did, ultimately, have an opportunity
- 4 to interview Sergeant Bergdahl?
- 5 A. I did.
- 6 Q. That interview was delayed a little bit, was it not?
- 7 A. It was.
- 8 Q. Do you remember the reason for that?
- 9 A. I sure do.
- 10 O. What was it?
- 11 A. The first reason I delayed was I was waiting for the early
- 12 phases of Sergeant Bergdahl's reintegration to be completed, which I
- 13 thought was important.
- 14 At the time I was appointed as the investigating officer --
- 15 again, you have to put this into context. The first priority for
- 16 everyone at that time was Sergeant Bergdahl's physical health, you
- 17 know, and his mental and emotional health, you know, having just come
- 18 back from captivity.
- 19 There was also an interest in learning as much as we could
- 20 from him -- the Army learning as much as we could from him about his
- 21 -- the circumstances of his captivity and his capture so that they
- 22 could learn from an intelligence perspective, you know, what might be
- 23 useful.

- There was also an effort to learn from him as much as could
- 2 be learned from him from the experts who were involved in survival,
- 3 you know, evasion ----
- 4 Q. The SERE?
- 5 A. The SERE folks.
- 6 O. S-E-R-E?
- 7 A. That is right. Survival, escape, resistance, and evasion
- 8 folks. Anything that he had that was valuable, you want to very
- 9 quickly get that, you know, back into the force because, if a week
- 10 later someone is captured, you want to be able to benefit from that.
- 11 So those were all very high priorities.
- There was also an FBI criminal investigation that I
- 13 understood was ongoing for kidnapping.
- 14 O. That is not of him; that is of someone else?
- 15 A. That is correct. That is correct. Not of him. I think it
- 16 was the Haqqani network.
- I was not personally involved in any of that, but I was
- 18 very aware that all of that was taking place. I also was aware that,
- 19 in the early stages, Sergeant Bergdahl didn't have a great deal of
- 20 stamina. You know, he had just -- he needed some time to recover.
- 21 So, with all of those competing demands on his time, he still was
- 22 only able to give -- reasonably give, short periods of time in the

- 1 morning and then in the afternoon. And then, over time, he was able
- 2 to spend a lot more time with those de-briefers and folks.
- 3 So I wanted all of that to run its course for a number of
- 4 reasons. One, I thought those were a higher priority. Two, I
- 5 thought, once I start talking to him about the circumstances of his
- 6 departure from the COP, it could completely derail any cooperation he
- 7 might offer in all those other areas. And that seems reasonable to
- 8 me. So I wanted to avoid interfering with any of that.
- 9 The second -- so, when I understood that he had completed
- 10 his reintegration, and that was the time when he actually left Army
- 11 South and went to Army North because that is the completion of their
- 12 responsibilities -- that is when I flew down here to San Antonio to
- 13 interview him.
- 14 We -- that is when we first learned that he had you to
- 15 represent him. And then you and I had a conversation that you did
- 16 not want me to speak to him until you could be, you know, present.
- 17 Q. That was by telephone.
- 18 A. That was by telephone. Yeah, we talked on the phone. In
- 19 fact, John -- John Hamner, my SJA, had advised me that you -- I don't
- 20 know that the two of you had spoken; but he had been informed one way
- 21 or another that you were representing him and that you didn't want us
- 22 to speak. And we were already on our way here or may have already
- 23 been here at the time. So I -- again, wanting to stay in the time

- 1 line, said, "Well, you know, we can work -- this team can work from
- 2 anywhere. We just need office space and connectivity." So we began
- 3 to work from here in hopes that, you know, in a few days you would
- 4 come out. You had said you wanted to read the 15-6 investigation,
- 5 the original 15-6 from 2009. So I offered to get you a rapid
- 6 reinstitution [sic] of a security clearance and have a sergeant first
- 7 class on the team bring the 15-6 out to Yale and meet with you, and
- 8 then come on out. But I understood, you know, in your academic
- 9 field, you know, your time off is between semesters and you had
- 10 already planned a vacation to Mexico with your wife. And so we
- 11 weren't going to get that opportunity.
- 12 At that point, it was important to me -- and, again, you
- 13 and I over the phone negotiated an accommodation. I thought it was
- 14 very important at that point -- frankly, I was thinking about
- 15 Sergeant Bergdahl. I was thinking this is a Soldier who wants to
- 16 tell his story. Tis is -- you know, I want to hear his story. At
- 17 the time -- again, to put it in context -- I was taking a beating,
- 18 you know, out in the media, not necessarily from the media but from
- 19 other folks because I had not interviewed them. And I didn't want to
- 20 interview anybody until I had talked to Sergeant Bergdahl.
- 21 Again, in the context, the original 15-6 had sworn
- 22 statements, you know, from most of the people that I later

- 1 interviewed. So I had sworn statements already, you know, that were
- 2 taken shortly after.
- 3 Q. So was Sergeant Bergdahl under a duty to speak with you?
- A. He was not. He was not. You know, I did -- you said, "I
- 5 would prefer you not do this." I said, "Well, you can't keep me from
- 6 going to see him"; but if I go see him, all he is going to do is
- 7 invoke his rights and that is not very helpful. I mean, we are
- 8 trying to develop a relationship here so we can get to the truth."
- 9 And so I didn't want to do that. So, no, he was not under an
- 10 obligation to do that. Well, he would have been had I gone; and then
- 11 he would have had to invoke his rights.
- 12 Q. Right. But it didn't play out that way?
- 13 A. It did not play out that way.
- 14 O. Did he, in fact, submit to an interview with you?
- 15 A. At the end of the investigation, 2 weeks later, yes,
- 16 absolutely.
- 17 Q. Right. Where was that?
- 18 A. That was done here at the Joint Base San Antonio, Fort Sam
- 19 Houston.
- Q. How long did it last?
- 21 A. About a day and a half. The first day, you know, I think
- 22 we went from 7:30 in the morning until five o'clock or so. I mean,
- 23 we barely broke. You know, we took a couple comfort breaks and a

- 1 short lunch. Other than that, you know, we went all day long from
- 2 about, you know, 7:30 in the morning until about 1730 or so.
- 3 Q. Resulting in a transcript of 371 pages?
- A. That is correct. We picked it up the next morning, and the
- 5 next morning we went for -- until about lunchtime if I recall
- 6 correctly -- right before lunch I think.
- And, frankly, at the end of that, I had no more questions
- 8 to ask him and he had more story to tell me. So we exhausted each
- 9 other, and we were done.
- 10 Q. In the process, did he execute a waiver of his right to
- 11 silence?
- 12 A. He did in the very beginning.
- Q. And I take it, in addition to being physically exhausted,
- 14 he also exhausted your list of guestions?
- 15 A. He did. He did.
- Q. Did your ability to interview Sergeant Bergdahl help you
- 17 complete your assigned duty as investigating officer?
- 18 A. Yeah, absolutely.
- 19 Q. Do you have an opinion as to whether he was truthful to
- 20 you, based on your interaction with him and your investigation?
- 21 A. I do. I think he was truthful.
- Q. Did you speak with enough people to know his reputation for
- 23 truthfulness?

- 1 A. I did.
- 2 Q. And what did you learn?
- 3 A. I learned from the vast majority of them -- I specifically
- 4 asked them, "What do you think he is going to tell me?" And the vast
- 5 majority of them said, "He is going to tell you the truth."
- 6 Q. What did you find, in the course of your investigation,
- 7 about his experience in the United States Coast Guard?
- 8 A. It was brief; 28 days I believe -- 23 days. He joined the
- 9 Coast Guard, you know, looking for some adventure. He was interested
- 10 in the seas. He was interested in saving lives, you know, doing
- 11 something really worthwhile. So he enlisted. I don't believe he
- 12 told his parents until afterwards. I don't think he told Ms.
- 13 Dellacorva until afterwards either, but I am not sure. She might
- 14 have known ahead of time.
- And then he went to the MEPs station in Boise, Idaho. He
- 16 went to Cape May, I believe, for the Coast Guard basic training. And
- 17 then it just -- he wasn't ready for it. I mean, he became
- 18 overwhelmed and then found himself in the hospital and then was
- 19 released.
- 20 Q. But was he -- do you recall what kind of separation he
- 21 received?
- 22 A. I don't recall the codes or the names, but it is the
- 23 equivalent of an early entry, you know, separation.

- 1 Q. Entry-level separation?
- 2 A. Entry-level separation.
- 3 O. Does that sound ----
- 4 A. Yeah, entry-level separation.
- 5 Q. And can you put any flesh on what the facts were
- 6 surrounding his crashing and burning at boot camp?
- 7 A. Right. I think it just -- I mean, my impression from
- 8 having spoken with him in his interview and also from whatever access
- 9 we had to Coast Guard records was that it is not atypical. You know,
- 10 a certain percentage of recruits, I believe, in all the services
- 11 enter basic training and find out it wasn't such a good idea; that
- 12 they weren't ready for it. And, you know, in that environment with a
- 13 lot of discipline, a lot of focus, a lot of drill sergeants and
- 14 drill-sergeant-type folks, you know, in your face and challenging you
- 15 -- I think it just overwhelmed him. And after a few weeks, he
- 16 couldn't take it anymore.
- I believe he was found in the barracks, sitting on the
- 18 floor. He had, you know, some blood on his hands; but I believe the
- 19 blood had to do with a bloody nose. It didn't have to do with
- 20 anything else. And I think that is what the -- if I recall
- 21 correctly, that is what the doctor's, you know, concluded -- that
- 22 this was an entry-level separation. This is a Soldier who is -- he
- 23 is not ready for this.

- 1 Q. Was it -- to your understanding, was this -- was the
- 2 gravamen of the problem a mental health or mental hygiene issue?
- 3 A. I don't believe so. I don't believe so. I think it was --
- 4 again, fell within that range of expectation. You bring a certain
- 5 number of Soldiers, Sailors, Airman, Marines, Coast Guardsmen into
- 6 your basic training, and a certain number of them are going to wash
- 7 out for a verity of reasons. And one of those reasons is that they
- 8 come in and just find out it is not exactly what I expected; this is
- 9 a little bit overwhelming to me.
- 10 Q. Do you remember what the Coast Guard paperwork said?
- 11 A. I don't.
- 12 Q. I might get back to that.
- 13 A. Sure.
- 14 Q. Colonel Rosenblatt I think is going to pick a page.
- Thereafter, Sergeant Bergdahl enlisted in the Army.
- 16 A. Uh-huh [indicating an affirmative response].
- 17 Q. Is it correct that he required a waiver ----
- 18 A. It is.
- 19 O. ---- in order to enlist?
- 20 A. It is correct that he required a ----
- Q. What was the -- yeah. Can I approach the witness?
- 22 PHO: Certainly.
- 23 Q. Just to -- the boot camp.

- 1 PHO: And you are showing the witness the ----
- 2 CDC: This is Exhibit B -- Defense Exhibit B.
- 3 PHO: Is it the executive summary or the actual ----
- 4 CDC: It is the executive summary.
- 5 PHO: Okay.
- 6 Q. General, just take a second and look at it.
- 7 A. Sure.
- 8 [The witness reviewed Defense Exhibit B.]
- 9 Q. Does that refresh your recollection?
- 10 A. It does. Yeah.
- 11 Q. So now that you -- do you want to hold onto that?
- 12 A. No, that is fine.
- 13 O. Any further thought on whether there was a psychological
- 14 component to Sergeant Bergdahl's ----
- 15 A. Not really. I mean, I changed -- you know, there is some
- 16 medical technical language in there to describe what I believe is the
- 17 typical response of, you know, a certain percentage, you know, of
- 18 young people who join the military and find out it is not right. So,
- 19 you know, minor pre-existing, you know, disorder or adjustment
- 20 problem or something like that. I mean, I think when someone washes
- 21 out, you are not going to say, "Well, they just washed out." There
- 22 has to be some -- a little bit more rigor and technical explanation
- 23 for that. And I think that that provides that. But I did not

- 1 interpret that as, you know, someone who has a mental health issue or
- 2 a behavioral health issue.
- 3 Q. I was asking you about whether Sergeant Bergdahl required a
- 4 waiver ----
- 5 A. Right.
- 6 O. ---- in order to become a Soldier.
- 7 A. Correct.
- 8 Q. Why did he require a waiver?
- 9 A. For the technical language there. It says for ----
- 10 Q. Referring now to the Coast Guard entry-level separation?
- 11 A. Yeah, again. I am going to put this in layman's terms so -
- 12 you know, I am not a recruiter, you know, or a doctor or a lawyer.
- 13 You know, in order for someone who has washed out, you know, for
- 14 those reasons, to come back in, you know, there needs to be a waiver,
- 15 and an interview to ensure that those -- ostensibly, you know, the
- 16 intent would be that those conditions don't exist and the same thing
- 17 is not going to repeat itself. So it did require, you know, a
- 18 waiver; and Sergeant Bergdahl did receive a waiver, you know, at the
- 19 appropriate levels and he entered the Army.
- 20 Q. As I recall -- and correct me if I am wrong -- actually,
- 21 let me phrase this as a proper legal question.
- 22 Were you able to locate anything that explained why the
- 23 waiver was approved?

- 1 [Pause.]
- 2 Q. Do you remember?
- 3 A. No. No, I don't -- no, I don't recall.
- 4 Q. How does -- changing subjects a little bit.
- 5 A. Uh-huh [indicating an affirmative response].
- Q. Did you look into how Sergeant Bergdahl related to other
- 7 people? Was that part of ----
- 8 A. Sure.
- 9 Q. ---- your investigation?
- 10 A. It certainly came up, you know, during the course of the
- 11 investigation.
- 12 Q. What did you learn?
- 13 A. Sergeant Bergdahl was someone who, in the balance of time,
- 14 with other people and alone -- he spends, you know, the balance of it
- 15 alone rather than with other people; but that's really more out of
- 16 choice than, you know, than any other reason. He has friends, not a
- 17 huge number of friends but a smaller group of friends. He seems to
- 18 be motivated, you know, to help other people and also motivated to
- 19 present himself in a favorable light, give a favorable impression to
- 20 other people as well.
- Q. Would it be fair to say that -- well, again, I will try to
- 22 frame this as a proper legal question.
- 23 How effective is he at forming interpersonal relationships?

- 1 A. I think he is a little challenged in that regard.
- 2 Q. We are talking about ----
- 3 A. Yeah. Yeah. Not now.
- 4 Q. But then?
- 5 A. Sure. I mean, really we are talking about 5 or 6 years ago
- 6 -- 6 years ago really and before.
- 7 A little bit challenged in that regard. I mean, I think a
- 8 lot of it had to do with the circumstances of his, you know, growing
- 9 up. I mean, he just did not grow up around large groups of people,
- 10 around a lot of his peers and so a little bit challenged in that.
- 11 But I think he also had the courage, you know, as he got older, to
- 12 recognize that and to pursue, you know, social relationships,
- 13 recognizing that it was going to be a challenge and to kind of get
- 14 through those. He is very selective about who he chooses to spend
- 15 his time with. He has very high standards and a very idealistic view
- 16 of people. So, if you don't measure up, you are probably not going
- 17 to get, you know, a second meeting.
- 18 Q. Just going back a little bit, you looked into his
- 19 upbringing.
- 20 A. I did.
- 21 Q. In a nutshell, what are the salient characteristics that
- 22 stand out in his -- the family structure and his young life?

- 1 A. Sure. Yeah. The most important salient aspects -- and
- 2 they are salient because they think they help to understand his
- 3 motive -- is that he is very idealistic. And I think -- again he, as
- 4 I understand it as we were able to discover, grew up not entirely off
- 5 of the grid but, you know, in a fairly unusual ----
- 6 Q. At the edge of the grid?
- 7 A. At the edge of the grid. A fairly unusual amount of
- 8 separation let's say -- not isolation but separation. And, you know,
- 9 so not a lot of social interaction, you know, early on during his
- 10 developmental years. That is something that I think would be beyond
- 11 a normal amount of social interaction.
- 12 Q. How about school?
- 13 A. Schooling was done at home. I think mainly by his mom, but
- 14 I am not entirely sure about that; but I believe so, because I think
- 15 his dad was working. So his mom schooled both he and his sister.
- 16 And I did not think that homeschooling was such a huge issue. A lot
- 17 of people are homeschooled and don't have, you know, social
- 18 interaction challenges; but I think it was a combination of
- 19 homeschooling, you know, and sort of being on the edge of the grid
- 20 that denied him, frankly, some normal social development
- 21 opportunities that would have made social interactions and making
- 22 friends, you know, a little bit easier for him.

- I think they also -- during that time frame, he did a lot
- 2 of reading. I, frankly, find Sergeant Bergdahl to be very bright and
- 3 very well read. And I think that, in his reading, you know, he
- 4 internalized quite a bit of what he read. And I think that is also -
- 5 there is an aspect of growing up in his family where it is -- there
- 6 is a fair amount of discipline and focus and moral and ethical
- 7 standards are very high. So I think, as he went through his
- 8 readings, you know, he attended quite a bit to those kinds of things
- 9 and internalized them; and it caused him to be someone who, you know,
- 10 had very idealistic -- unrealistically idealistic, you know,
- 11 standards and expectations of other people.
- 12 Q. We will get to that.
- 13 A. Uh-huh [indicating an affirmative response].
- Q. Did you get a sense, again in a nutshell, of what kind of
- 15 Soldier Sergeant Bergdahl proved to be?
- 16 A. I did.
- 17 Q. What was that?
- 18 A. He was -- well, up until the point that he departed COP
- 19 Mest, he was a very good Soldier. And, you know, that comes from
- 20 testimony from the broad range of people in his own unit. You know,
- 21 it is not unanimous, you know, but it is not a weak generalization.
- 22 It is a pretty strong generalization that the people in his platoon
- 23 saw him as a good Soldier, one of the best privates in the platoon.

- 1 You know, always on time, always in the right uniform, always with a
- 2 clean weapon, always sharpening his knives. Willing to help other
- 3 people, volunteering for extra duty. One of the sergeants, I
- 4 believe, described him as the PFC that every sergeant wanted to have.
- 5 And I think -- oh, sorry.
- 6 Q. Did you get a chance -- and I think maybe you were driving
- 7 in this direction. Did you get a chance to get a fix on his
- 8 philosophy -- his philosophy of life?
- 9 A. I did. There is two, you know, when I presented my
- 10 findings and recommendations, I thought it was important to elaborate
- 11 on his interests in Ayn Rand and Atlas Shrugged and particularly the
- 12 character John Galt. I didn't get the impression that he was all
- 13 that interested in the politics of the book. He was much more
- 14 interested in the character, you know, John Galt, who is, again, very
- 15 idealistic and is willing to put himself out front and sacrifice
- 16 himself, you know, for a cause to stop the machine, stop the system,
- 17 you know, whatever it might be. And it occurred to me, you know, in
- 18 interviews with his brother-in-law, his sister, and other folks, and
- 19 some of his own writings -- and then during our interview that that
- 20 particular piece and that particular character had a great deal of
- 21 impact on how he saw himself and perhaps his role.
- I also thought that his fascination with Asian culture -- I
- 23 thought that he had exhibited quite a bit -- in fact, I did not know

- 1 much about the Bushido Samurai Warrior Code until I heard that
- 2 Sergeant Bergdahl was interested in it. So I tried to learn more
- 3 about that, me and my team. There's a couple of aspects about that
- 4 that are fairly consistent with what I -- you know, what I know of
- 5 his conduct and behavior. One, being that if you see a moral, what
- 6 you perceive to be a moral wrong, that you are motivated to act
- 7 immediately, you know, to do something about that and that you do so
- 8 without any regard to your personal consequences to you or even
- 9 without any regard to whether or not you are going to succeed or
- 10 fail. You just move out and you do something smartly when you see --
- 11 when you perceive, you know, a moral wrong.
- 12 Q. Do you see a connection between that world view and the way
- 13 events unfolded in this case?
- 14 A. I do. I certainly do. And I see a connection, not only
- 15 for that final event which -- the one we are here about -- but also
- 16 in previous things. I mean, joining the Coast Guard perhaps, you
- 17 know, before he is -- before is ready, wanting to join the French
- 18 Foreign Legion before he is ready. You know, doing a number of
- 19 things that just sort of don't work out because he hasn't been
- 20 patient, taken the time to sort of think them through but, you know,
- 21 is motivated to take some action.
- 22 Q. Did you find out anything concerning his willingness to
- 23 deploy to Afghanistan? Was he a bit reluctant?

- 1 A. No, not at all. In fact, he was very motivated to deploy.
- 2 Q. And did you learn anything about his attitude toward the
- 3 military mission and fighting the Taliban?
- A. I did. You know, there was a lot of discussion, you know,
- 5 back and forth. Frankly, a lot of -- again, in the first 30 days or
- 6 so before we interviewed anybody, you know, we were subject to a lot
- 7 of what was going on that had been written over the previous few
- 8 years some of which, you know, portrayed Sergeant Bergdahl as
- 9 frustrated with the mission, didn't agree with the mission, you know,
- 10 sympathetic to the other side -- you know, all those kinds of things.
- 11 I did not find any evidence to corroborate any of that during any of
- 12 my interviews or investigations with other agencies.
- 13 What I found was, you know, a Soldier who was: motivated
- 14 to go and serve in Afghanistan; that was frustrated because he, as a
- 15 PFC, was not getting to play a much larger role. I think he had
- 16 outsized impressions of his own capabilities, which again, I think is
- 17 consistent with what I have heard from people who grew up around him.
- 18 So that led to a frustration. "Why aren't I being able to carry, you
- 19 know, a sidearm in addition to my squad automatic weapon? Why can't
- 20 I do combatives? Why aren't we out there kicking in doors and
- 21 helping the Taliban [sic] to do more of this?" There were folks
- 22 doing those kinds of things, but it wasn't a PFC in a light infantry
- 23 platoon.

- 1 Q. Did you find any evidence that he was disposed to go over
- 2 to the other side?
- 3 A. No.
- 4 Q. Or assist the enemy?
- 5 A. No.
- 6 Q. Did you have occasion to get Sergeant Bergdahl's
- 7 explanation for leaving OP Mest?
- 8 A. I did.
- 9 Q. What was his explanation?
- 10 A. His explanation was very clearly detailed in the sworn
- 11 statement that he did during our interview, but Sergeant Bergdahl
- 12 perceived that there was a problem with the leadership in his unit.
- 13 And the leadership of that unit -- the problem with that leadership
- 14 in his unit was so severe, you know, that his platoon was in danger.
- 15 And he felt that it was his responsibility to do something to
- 16 intervene before something dangerous or something negative happened,
- 17 you know, to his platoon.
- So his motivation was to have an audience with a general
- 19 officer so that he could explain, you know, his perceptions, you
- 20 know, to a general officer. He recognized that, as a PFC, he wasn't
- 21 going to have many of those opportunities. He was familiar with the
- 22 open-door policy and some of the opportunities that are there; but he
- 23 thought that the way to do this was to create a personnel recovery

- 1 event -- a DUSTWUN personnel recovery event, because he understood
- 2 that when a Soldier goes missing, an Airman, Marine -- when a service
- 3 member goes missing, then all the bells and whistles go off and we
- 4 really lean in to get that Soldier back. And this is going to go all
- 5 the way up to the top. And so he wanted to create, you know, that
- 6 event.
- 7 He was going to run from COP Mest, the platoon COP, to FOB
- 8 Sharana, which is about 31 kilometers; and he believed that he was
- 9 capable of running that, you know, during a period of darkness. He
- 10 understood that he was going to create this PR event, but then when
- 11 he got to COP Mest [sic] he would present himself and say, "I am the
- 12 guy you are looking for, and I am not saying anything until I can
- 13 talk to a General and tell him about this platoon."
- Q. Do you remember any of the specifics that he referenced
- 15 when you interviewed him about why he thought conditions were in need
- 16 of repair in the unit?
- 17 A. I do. As he, himself, tells the story, it started, you
- 18 know, before he even joined the Army again, which goes back to
- 19 understanding the character development and being very idealistic.
- When he describes his experience in basic training,
- 21 everyone in basic training is a disappointment except for Sergeant
- 22 First Class Olivera, who was a drill sergeant, and measures up. The
- 23 drill sergeant measures up to the ideal. Everybody else is a

- 1 disappointment; and this becomes, you know, very frustrating for him.
- 2 And he begins to draw parallels and generalizations from that that
- 3 other platoons are that way in basic training. And if basic training
- 4 is this way, then the Army is this way.
- 5 He moves to Alaska and when he is in Alaska he is
- 6 disappointed because, you know, again folks are saying things like,
- 7 you know, "Don't leave your wall locker unlocked," you know, and he
- 8 doesn't understand why you have to lock your wall locker because
- 9 these are people that we are going to be going to war with. You
- 10 know, "Why do we have to lock our wall locker? Are we worried about
- 11 them stealing from each other?" You know, that just doesn't measure
- 12 up with the ideal standard.
- He was very disappointed in all of the exposure in the
- 14 National Training Center, which is one of premier war fighting
- 15 training organizations and facilities.
- 16 Q. What was the disappointment there?
- 17 A. He thought that the pre-deployment training was lame, I
- 18 think he might have described it as or, you know, as they were pogues
- 19 -- or I am not quite exactly sure but ----
- 20 O. Wasted time?
- 21 A. Wasted time. I think, in his mind, he was expecting a much
- 22 more -- I think his expectations of training at the National Training

- 1 Center were more along the lines of what you would see form our
- 2 special operations units and not from a conventional military unit.
- I asked him -- I recall in the interview, I asked him,
- 4 "Wasn't there anything or anyone that measured up?" And he said no,
- 5 which is, you know ----
- 6 Q. Then comes Afghanistan?
- 7 A. Right.
- 8 Q. So what got his goat in Afghanistan?
- 9 A. Yeah. It even starts before Afghanistan. So, when they
- 10 get back to Alaska, you know, they are having an inspection, a layout
- 11 of the platoon. And the platoon sergeant -- I'm sorry -- the
- 12 battalion commander and the battalion command sergeant major come
- down to inspect the platoon, which frankly I find very impressive.
- 14 It is an excellent example of very strong leadership, not poor
- 15 leadership. But, you know, they called for the inspection. They
- 16 came down. They personally did it. They ensured that the standards
- 17 were met. And then they gave some remarks and some guidance to the
- 18 Soldiers who were getting ready to deploy.
- 19 You know, again, to put it in context, this was a unit that
- 20 had previously been in Iraq, a very kinetic environment. They were
- 21 home for 12 months, and then they were going to a new environment in
- 22 Afghanistan. The missions were going to be very different. The
- 23 Afghanistan mission was going to be much more counterinsurgency based

- 1 and not kinetic. There was going to be a lot more -- a lot less
- 2 shooting and fighting, a lot more assisting and advising and enabling
- 3 the Afghans and the international force.
- 4 Sergeant Major said, you know, "Look heroes, I know you all
- 5 joined the Army to rape, kill, pillage, plunder and you know, do all
- 6 that kind of stuff. You know, so did I. You know, and Iraq was
- 7 that way, but that is not what we are doing here. We are going over
- 8 there to assist the Afghans." And Sergeant Bergdahl, consistent with
- 9 what I knew about him, took that quite literally and said, "My
- 10 sergeant major joined the Army to be a rapist, to be a murderer, and
- 11 you know, and to be a thief," which, of course, is not at all what
- 12 the sergeant major was getting at. And I talked to all the other
- 13 guys in the platoon, and none of them took it that way. Most of them
- 14 recall him saying that. They put it in the proper context as to the
- 15 point that he was trying to make.
- Q. Was that actually what he took away from that? That is
- 17 your understanding?
- 18 A. Yeah, it is. Yeah. I mean, it's what he said in his
- 19 interview that he thought, "I got a failure" -- and that's important
- 20 because this is the battalion command sergeant major. It is the
- 21 battalion command sergeant major who has an impeccable record, you
- 22 know, who has a great reputation. And yet, Sergeant Bergdahl's
- 23 perception of him was completely off the mark.

- In Afghanistan, you know, again, he was only there 5 weeks.
- 2 I mean, you have got to realize, he wasn't in Afghanistan for a long
- 3 time. It was about 5 weeks. But very rapidly, you know, the
- 4 frustrations and disappointments continued to mount.
- 5 Q. Any specifics there that come to mind?
- 6 A. Probably the most important ones had to do with the
- 7 battalion commander at the time, Lieutenant Colonel Clint Baker.
- 8 Sergeant Bergdahl believed that was the wrong guy, you know, for his
- 9 job. He saw him on one occasion trying to discipline the Soldiers.
- 10 They were up on -- this had to with the incident where there was a
- 11 reporter from The Guardian who had been out there interviewing some
- 12 of the Soldiers, some of this footage or photographs were posted to
- 13 the internet. They weren't in the proper uniform, and then some of
- 14 those Soldiers were disciplined for that.
- 15 Q. The colonel got on their case?
- 16 A. Correct. And he -- when the colonel went up to discipline
- 17 these Soldiers, he actually was driving by. He saw them, you know,
- 18 out of uniform and exposed in a very dangerous environment; stopped,
- 19 ran up to the hill, and really got in their case quite a bit.
- 20 Something that he is not naturally good at, frankly. And he didn't
- 21 have his command sergeant major with him, who would have been, you
- 22 know, the better person in that particular team of leaders to do it.
- 23 But he knew it needed to be done. And again, in my view, an example

- 1 of leader who is going to do what needs to be done even though he may
- 2 not necessarily be comfortable doing it. And he probably wished he
- 3 had his sergeant major with him, but he didn't. But he didn't allow
- 4 it to continue. He went up, and he kicked rocks; and he, you know,
- 5 went into a tirade to make sure that his point was being made.
- 6 Q. The rocks were -- was there something special about the
- 7 rocks?
- 8 A. Sargent Bergdahl believed that the rocks were on graves.
- 9 Afghan ----
- 10 Q. It was a burial ----
- 11 A. It was a cemetery up on top of this hill where they had
- 12 built this OP, and Sergeant Bergdahl believed that he kicked an
- 13 Afghan grave when he kicked one of the rocks. And I was not able to
- 14 corroborate that with any of the other people that I interviewed.
- 15 They do recall the battalion commander going off on them. They said
- 16 they understood exactly what he was getting at. They knew he wasn't
- 17 very good at it, but they knew that they deserved it. And they
- 18 recall the rock, but they don't recall the cemetery.
- 19 Q. But these -- these events and his take on those ----
- 20 A. Uh-huh [indicating an affirmative response].
- 21 Q. "Him" in this context being Sergeant Bergdahl?
- 22 A. Yes.

- 1 Q. Did you conclude that you were getting an accurate account
- 2 of his understanding of these events?
- 3 A. I did.
- 4 Q. And did you have an occasion to form an opinion as to the
- 5 sincerity of his beliefs, be they ever so naïve or misinformed?
- A. Yeah. No, I think he absolutely believed that the things
- 7 that he was perceiving were true. And I equally believe that he was
- 8 completely wrong in that, which is just, you know, the sad irony of
- 9 it. But certainly, in his mind, there wasn't any doubt. I think
- 10 there wasn't any doubt in his mind.
- And I also have to add, you know, again, it is the
- 12 universality of it. You know, I said -- if you recall, during the
- 13 interview, I asked Sergeant Bergdahl, "Why did you have to go to FOB
- 14 Sharana and find a General? I mean, what about your -- you know, in
- 15 the Army, you have a team leader. You have a squad leader. You have
- 16 a platoon sergeant. You have a platoon leader, a company commander,
- 17 an XO, a first sergeant, a battalion commander, a battalion command
- 18 sergeant major, a brigade commander, brigade command sergeant major.
- 19 Could you not go to any of these people with your grievances, with
- 20 your concerns about the leadership?" And he went almost to the man
- 21 and gave me a reason why that was not possible. You know, because
- 22 all of them were, you know, pretty much, unfit to lead and didn't
- 23 have the right perspective; and they were only in it for the money or

- 1 they were only in it for the rank or they were only going to protect
- 2 themselves. They weren't going to rock the boat. You know, they
- 3 weren't strong enough to go against the battalion commander and so
- 4 ----
- 5 Q. Would I be correct to summarize that piece of your take on
- 6 things ----
- 7 A. Uh-huh [indicating an affirmative response].
- 8 Q. ---- that on the merits his perspective was unwarranted,
- 9 but it was genuinely held by him?
- 10 A. That is correct.
- 11 Q. Was there some intervening event that prevented him from
- 12 actually getting to a General at Sharana? There was a General at
- 13 Sharana, I assume?
- 14 A. No, there was not. And I pointed that out to him, but he
- 15 didn't know that.
- 16 Q. He didn't know that?
- 17 A. He did not know that. He did not know that.
- 18 He probably would have gotten to speak -- spoken to a
- 19 General at he made it to FOB Sharana, though.
- 20 Q. Right. But was there some cause that prevented him from
- 21 completing the ----
- 22 A. Sure. He was captured ----
- 23 Q. --- march that he ----

- 1 A. --- captured by the Taliban.
- 2 Q. And do you have an understanding of how long it was between
- 3 the time he departed OP Mest and the time he fell into the hands of
- 4 the Taliban or Taliban allies?
- 5 A. Right. Yeah. It is very hard to nail that down precisely;
- 6 but I can say, we believe that he departed the wire and stepped
- 7 outside the wire of COP Mest between 2200 and 2400. So between 10:00
- 8 p.m. and midnight. And we believe that he encountered the Taliban
- 9 between eight o'clock in the morning and ten o'clock in the morning
- 10 the next day. So it was 10 or 12 hours. And we tried very, very
- 11 hard to nail down more precision in there, but that is where -- we
- 12 were able to conclude that much.
- Q. Did your investigation address whether he had made escape
- 14 attempts after he was kidnapped or captured? Well, in a
- 15 nutshell ----
- 16 A. Yes.
- 17 Q. --- what did you learn?
- 18 A. Well, by Sergeant Bergdahl's accounts -- and those are the
- 19 only ones that we have -- is that he tried to escape. Well, let me
- 20 first say that my investigation -- I was very careful not to -- the
- 21 scope of my investigation did not require me to look into his
- 22 captivity. And, frankly, to separate my efforts from, you know,
- 23 other efforts, we deliberately kept a gap in time between the ending

- 1 of the time that I was interested in and the beginning of, you know,
- 2 those other debriefs and what have you. But in my conversations with
- 3 Sergeant Bergdahl, he did describe that he tried to escape, you know,
- 4 even in that very first day that -- you know, I think when the
- 5 Taliban rolled up on him, you know, he got beat up a little bit.
- 6 They drove him around on some motorcycles. They drove him around on
- 7 some trucks. They kept moving. Frankly, I got the impression they
- 8 didn't know what the heck to do with him. And during that time, he
- 9 got roughed up a little bit; but then I think he also made an effort,
- 10 at least on one occasion, to run and to get away. And he was
- 11 unsuccessful, and he got roughed up a little bit more.
- 12 Q. Did your investigation uncover a shurah held in the Mest
- 13 area shortly after Sergeant Bergdahl had fallen into the wrong
- 14 hands ----
- 15 A. No. No.
- Q. --- at which some steps towards a negotiated release were
- 17 explored?
- 18 A. No. First time I've heard that.
- 19 Q. Was it dangerous to leave OP Mest ----
- A. Absolutely.
- 21 Q. ---- without a weapon?
- 22 A. Absolutely. With a weapon, especially without one.
- Q. With or without a weapon?

- 1 A. Yeah.
- Q. Was it more dangerous to leave without a weapon than with a
- 3 weapon?
- A. Absolutely. It may be less provocative but, you know ----
- 5 Q. He didn't take his weapon with him, did he?
- 6 A. He did not.
- 7 O. His firearm?
- 8 A. He did not.
- 9 Q. Did you look into that with him?
- 10 A. I did. I asked him why.
- 11 O. Visit with him on that?
- 12 A. I did. I asked him why. And he did not -- he wanted to
- 13 remain inconspicuous. You know, he, one, again, thought he was going
- 14 to run 31 kilometers to FOB Sharana. Instead of running with a squad
- 15 automatic weapon, which would make that a lot more -- harder. So he
- 16 wanted to be light and lean.
- He also, you know, though through, in his mind, you know,
- 18 through a couple of contingencies and had he not made it, you know,
- 19 during daylight, you know, then he would be exposed. And if he was
- 20 carrying a squad automatic weapon, that would have made it pretty
- 21 clear, you know, that he was not your average Afghan walking across
- 22 the desert.
- 23 Q. Did he have an outer garment ----

- 1 A. He did. He explained ----
- 2 Q. --- that would permit him to pass?
- 3 A. Yeah. Sergeant Bergdahl explained to me that he had bought
- 4 an Afghan male outer garment and headgear, I believe, from one of the
- 5 bazaars on FOB Sharana that he had it in his cargo pocket of his
- 6 pants. Had he not made it, he was either going to go to ground and
- 7 stay until darkness the following night, or he was just going to put
- 8 that on, you know, and continue and try to look like and blend in as
- 9 one of the Afghans.
- 10 Q. Did the question come up of a conversation he had with a
- 11 platoon-mate about what would happen if a weapon went missing?
- 12 A. Yes.
- 13 Q. What did you learn ----
- 14 A. Yeah. Sergeant Bergdahl -- I think he desired to take a
- 9-mil, a 9-millimeter pistol with him, which would have been much
- 16 easier to conceal and be less conspicuous.
- 17 And, again, Sergeant Bergdahl has high expectations of his
- 18 own capabilities. You know, so I think he actually believed that, if
- 19 he had had the weapon and five Taliban rolled up on him, that he
- 20 probably could have taken care of all of them with his pistol if he
- 21 had had it with him.
- But, in any case, before he departed, he considered taking
- 23 a 9-millimeter with him. He was not assigned one. He asked some of

- 1 the Soldiers who were assigned them; and I believe -- and I can't
- 2 recall the Soldiers name but there was one who I believe did man the
- 3 240 Bravo, which is a machine gun, that requires -- it is the only
- 4 weapon you are going to have, so he was issued a 9-millimeter.
- 5 And Sergeant Bergdahl asked him, you know, "Hey, what
- 6 happens if you lose your weapon? What happens if it comes up
- 7 missing?"
- And they said, "Well, I would get in a lot of trouble if I
- 9 lose my weapon."
- And then he said, "Well, what if you don't lose it? What
- 11 if it just shows up missing?"
- 12 And he said, "I am still going to get in trouble. I am
- 13 accountable for it."
- Q. So did you infer from this that he was concerned not to get
- 15 a platoon-mate in trouble for a missing weapon?
- 16 A. He said so. And I inferred that, and I believe that to be
- 17 true.
- 18 Q. Did you discuss with him whether he had contemplated
- 19 walking to the People's Republic of China or India?
- 20 A. I asked him those things only because I had read about
- 21 them.
- Q. And what did he say?
- 23 A. He never considered that.

- 1 Q. Do you credit that denial?
- 2 A. I believe he was honest when he said he never intended to
- 3 do that. I also believe he probably said those things in
- 4 conversation with the other Privates, because when Privates are
- 5 sitting around with a little bit of extra time on their hands, they
- 6 say all kinds of stuff. So that is well within range of Private
- 7 talk.
- 8 Q. Did the question of ----
- 9 A. I love these guys. That's why they're so much fun to be
- 10 around.
- 11 Q. Did the question of Sergeant Bergdahl's personal computer
- 12 come up in your conversation with him?
- 13 A. It did. I had asked him about his computer. I asked him
- 14 why he mailed his computer home, because we were able to identify --
- 15 well, we had heard that he had mailed his computer home. We then, in
- 16 our interviews, learned that he had mailed his computer home. We
- 17 actually were able to nail down, you know, the date of that because
- 18 we were able to get, you know, the finance transaction and the postal
- 19 transaction, I believe, to confirm that that had happened.
- 20 It was important because a lot of the -- what we had been
- 21 reading in the open press was making inferences about, you know, that
- 22 seems to indicate a preparation for a permanent absence and -- which
- 23 it frankly -- it's pretty specifically stated in the Manual for

- 1 Courts-Martial, you know, under a different aspect of desertion for
- 2 permanent departure, that you sort of divest yourself of your wealth
- 3 and those kinds of things. We asked him about that.
- 4 Q. What did he say?
- 5 A. That was not his intention. He knew, "I am going to get
- 6 into a bucket load of trouble when I get to Sharana, and I don't know
- 7 what is going to happen to my stuff." You know, I think he even
- 8 imagined, "I might go to jail. I don't know what is going to happen.
- 9 I don't know what they are going to with me, you know, once I make it
- 10 to Sharana, but I want to take care of my personal things." So he
- 11 sent them home to people who could care for them for him so that he
- 12 wouldn't lose them.
- 13 Q. And was that consistent with the concern that he had
- 14 previously expressed that it was too bad that people had to have
- 15 lockers when he was still in the U.S. to protect their stuff or was
- 16 it just ----
- 17 A. I didn't take it that way. I did not take it that way. I
- 18 thought ----
- 19 Q. Just simply something would happen ----
- 20 A. I think that these were not, necessarily, material wealth
- 21 but this was -- I mean, it is your computer. So you have got a lot
- 22 of files on it. You know, there is a lot of, not necessarily,
- 23 material value there but personal value. And I think he wanted to

- 1 protect that, so he sent it back to the folks who could be trusted to
- 2 take care of it for him.
- 3 Q. Now, a very sensitive and important subject.
- 4 A. Uh-huh [indicating an affirmative response]. They have all
- 5 been so far.
- 6 Q. You were not -- your appointment did not call for you to
- 7 look into the question of whether anyone died looking for Sergeant
- 8 Bergdahl, then-PFC Bergdahl, correct?
- 9 A. That is correct.
- 10 Q. Did you, in fact, look into that?
- 11 A. I did.
- 12 Q. Why?
- 13 A. I didn't deliberately look into it. I encountered, you
- 14 know, quite a bit of discussion about that during my interviews. You
- 15 know, there has been an awful lot that has been said about that in
- 16 the open-source press, allegations one way or another. A lot of his
- 17 platoon-mates and others, you know, were making those kinds of
- 18 allegations as well.
- I had asked the appointing authority, you know, should I
- 20 investigate this because, really, this is something that, at the end
- 21 of the day, is going to have to be answered. I mean, if I was a
- 22 parent, I would want to know. Everybody should want to know. We
- 23 really ought to close that out. I was told, "No, you don't need to

- 1 do that, because Central Command is going to take care of that." So
- 2 I did not pursue finding information, deliberately asking and looking
- 3 for information along those lines, but a whole bunch of it came to me
- 4 just in the course of my investigation. My conclusion is that there
- 5 were no Soldiers killed who were deliberately looking and searching
- 6 for -- in an effort to deliberately search and look for Sergeant
- 7 Bergdahl. I did not find any evidence of that.
- 8 CDC: Colonel, I think that this would be a good break point that
- 9 will permit me to review my notes -- everybody could perhaps take a
- 10 comfort break -- and conclude my direct examination.
- 11 PHO: Okay. How much time do you need?
- 12 CDC: Oh, should we say, just 10 minutes?
- 13 PHO: Ten minutes will be fine.
- 14 CDC: Great.
- 15 PHO: We are in recess until 1120 by the clock up there again.
- 16 [The Article 32 hearing recessed at 1108, 18 September 2015.]
- 17 [The Article 32 hearing was called to order at 1121, 18 September
- 18 **2015.**]
- 19 PHO: All right. We are back on the record. The parties who
- 20 were present when the court [sic] was last in recess are again
- 21 present, to include the witness, Major General Dahl.
- 22 Mr. Fidell, you may proceed.

- 1 CDC: Thank you, Colonel.
- 2 The direct examination of Major General Kenneth R. Dahl by the
- 3 civilian defense counsel continued as follows:
- Q. General, do you -- I referred before to your executive
- 5 summary and to Sergeant Bergdahl's 370-something interview -- the
- 6 page interview. Do you personally have any objection to those
- 7 documents being made public?
- 8 A. No.
- 9 Q. In the course of your interview with Sergeant Bergdahl,
- 10 were you able to form an opinion as to whether he is remorseful?
- 11 A. Yes.
- 12 Q. What is that opinion?
- 13 A. Yeah, I believe that he is remorseful. I believe that, in
- 14 hindsight -- 5 years' hindsight, you know, he sees himself
- 15 differently. I think he recognizes -- and he even said so that he
- 16 was young and naïve and inexperienced. And, frankly, I recall, as he
- 17 was relaying this during the interview, you know, a display of
- 18 emotion, you know, that anything bad might have happened to anybody
- 19 in the unit or any individuals. And he hoped that that did not
- 20 happen.
- 21 Q. The preliminary hearing officer, Colonel Visger, and I will
- 22 say, over our objection, Colonel Burke, the little convening

- 1 authority in this case, get to make recommendations on the
- 2 disposition of this case.
- 3 A. Right.
- 4 Q. Do you have an opinion about whether the interests of
- 5 justice require a jail sentence in this case?
- 6 A. I do have an opinion. Can I share that?
- 7 PHO: Is there a government objection?
- 8 TC: No, sir. No objection.
- 9 PHO: Okay. Then proceed.
- 10 A. I do not believe that there is a jail sentence ----
- 11 CDC: No further questions.
- 12 A. ---- as a result of this.
- 13 CDC: I am sorry. I stepped on your line.
- 14 A. No, sir. I do not believe that there is a jail sentence
- 15 that is -- at the end of this procedure -- at the end of this
- 16 process. I think it would be inappropriate.
- 17 CDC: No further questions.
- 18 PHO: Government, do you have cross-examination?
- 19 TC: No questions.
- 20 PHO: Let me just take a look at my notes here and make sure I
- 21 don't have any questions.
- 22 [Pause.]

- 1 PHO: All right. Permanent or temporary excusal?
- 2 CDC: Permanent as far as we are concerned, sir.
- 3 [The witness was permanently excused, duly warned, and withdrew.]
- 4 PHO: Okay. So, at this point, I think it would be appropriate
- 5 to -- my understanding is that the next witness will be somewhat --
- 6 of roughly the same time frame, so I think it would be appropriate to
- 7 take a short -- a slightly early lunch. And do we want to do the
- 8 same as yesterday, shoot for a 1245 for start time?
- 9 CDC: Yes, sir.
- 10 PHO: That gives an hour and 20 minutes for security and
- 11 everything.
- 12 CDC: Yes, sir.
- 13 PHO: At 1245, we will gather again; and we will be in recess
- 14 until that point.
- 15 [The Article 32 hearing recessed at 1126, 18 September 2015.]
- 16 [The Article 32 hearing was called to order at 1247,
- 17 **18 September 2015.**]
- 18 PHO: We are back on the record, and the parties present at the
- 19 last -- at the lunch recess are again present.
- 20 Defense, please call your next witness.
- 21 DC: The defense calls Mr. Terrence Russell.
- 22 PHO: Mr. Russell, please stand in front of the witness table and
- 23 face the trial counsel.

- 1 TERRENCE D. RUSSELL, civilian, was called as a witness for the
- 2 defense, was sworn, and testified as follows:
- 3 DIRECT EXAMINATION
- 4 Questions by the assistant trial counsel:
- 5 Q. Mr. Russell, I just want to advise you that, while you are
- 6 testifying if you are asked any question that you believe may require
- 7 a response that contains classified information, you have a personal
- 8 responsibility to notify the preliminary hearing officer prior to
- 9 answering and at no time should you disclose any classified
- 10 information while this hearing in in open session.
- 11 Do you understand that?
- 12 A. Yes, sir.
- 13 Q. Please state your full name for the record.
- 14 A. Terrence Dean Russell.
- 15 Q. And where are you currently assigned to work?
- 16 A. I am assigned to the Joint Personnel Recovery Agency at the
- 17 Personnel Recovery Academy in Spokane, Washington, at Fairchild Air
- 18 Force Base.
- 19 TC: Thank you.
- 20 Lieutenant Colonel Rosenblatt.
- 21 Questions by the defense counsel:
- 22 Q. Good afternoon, Mr. Russell.

- 1 The Joint Personnel Recovery Agency, JPRA, I'm predicting
- 2 that a lot of people here have never heard of. Tell us what it is
- 3 that JPRA does and how it ties into our national military effort.
- 4 A. JPRA is -- first of all, it is aligned under the Joint
- 5 Staff, the J-7. We are what's called a Chairman's-Controlled
- 6 Activity. We are the office of primary responsibility for personnel
- 7 recovery, less policy. We engage in analysis; technology, research,
- 8 and integration; training and education; and support to the
- 9 components to enhance their capabilities at conducting personnel
- 10 recovery.
- 11 Q. What is your job?
- 12 A. My job specifically, I am a Senior Program Manager at the
- 13 Personnel Recovery Academy, PRA, in Spokane. Specifically, I am a
- 14 division chief that conducts research and product development. My
- 15 division develops lessons learned, products, country studies that
- 16 identify threats to isolated persons. We conduct research on the
- 17 captivity environment relative to the isolated person so that we can
- 18 better gain lessons learned and develop training and education and
- 19 operational support products to mitigate the risk of isolation and to
- 20 help those that may become isolated.
- 21 Q. How much ----

- 1 A. Currently, my division has about 350 products that we have
- 2 developed over the last number of years that are all available on the
- 3 JPRA SIPRNET portal site.
- 4 Q. How much experience do you have in this field of personnel
- 5 recovery and dealing with persons in captivity?
- A. Well, I enlisted in the Air Force in 1977; and I served
- 7 until 1999 when I retired from active duty. I, very soon after that,
- 8 was hired as a civilian Department of Defense employee. My job
- 9 specialty in the Air Force was that of a survival instructor --
- 10 Survival SERE Specialist -- Survival, Evasion, Resistance, and
- 11 Escape. I taught at the Air Force SERE School from 1977 until 1993.
- 12 In '93, I was assigned to the Joint Services SERE Agency,
- 13 which is a predecessor to JPRA. At that time, I started conducting
- 14 research. One of my first tasks was to -- to review all of the
- 15 debriefing materials relative to the Gulf -- Desert Storm POWs.
- 16 Following that analysis and helping with the lessons-learned product
- 17 that was developed, I started looking at other isolation cases. I
- 18 started getting involved in debriefing and analysis and writing the
- 19 analysis reports on those specific cases, starting with Mike Durant
- 20 from Mogadishu, Bobby Hall from North Korea, Scott O'Grady from
- 21 Kosovo.
- Q. What about Jessica Lynch in Iraq?

- 1 A. Jessica Lynch, I was her debriefer -- specifically her
- 2 debriefer. I -- after we got done with Jessica Lynch, about a week
- 3 later, all of the other POWs came out of OIF, Operation Iraqi
- 4 Freedom. I was the senior debriefer. I managed the debriefing --
- 5 the SERE debriefing team. There was five, six -- seven Army, Air
- 6 Force -- a joint team of debriefers. I was the senior debriefer and
- 7 managed all of those activities.
- 8 Since then, I was the debriefer for Edmond Pope, who was a
- 9 retired Navy 0-6 who was detained in Moscow by the Russian Secret
- 10 Service.
- I was the debriefer for -- I'm sure there's many others.
- 12 In total, I've debriefed or interviewed about 125 prisoners of war,
- 13 isolated persons, and detainees.
- Q. And of those 125, I guess, how would your experience in
- 15 dealing in this field compare to other -- other somewhat experts
- 16 within the Department of Defense?
- 17 A. Well, I do not believe that there is anybody in the
- 18 Department of Defense who has interviewed, debriefed more isolated
- 19 persons than myself. I don't believe that there is anybody in the
- 20 United States government who has debriefed more isolated prisoners,
- 21 hostages than myself. There might be some academic somewhere who's
- 22 done more, but I've done about 125 personally. The division -- the
- 23 employees of my division, they've done another hundred. We are the

- 1 central repository for that kind of information, and I think that I
- 2 have more experience than anybody that I know in this regard.
- 3 Q. And with so much experience, is it safe to say that you've
- 4 seen both good and bad behavior in captivity?
- 5 A. Generally, your -- you'd be surprised at how well even
- 6 untrained persons do in captivity. They understand what their
- 7 obligations are. Have I seen behavior that we wish hadn't been
- 8 conducted? Yes. But by and large, people do the right thing.
- 9 Obviously in wars past, the Korean War, the War in
- 10 Southeast Asia, there were individuals that engaged in conduct
- 11 detrimental to our national interests; but those are, by far, the
- 12 minority experience.
- Q. All right. Well, let's focus in now on Sergeant Bergdahl,
- 14 which is why we are here.
- How long has JPRA and you been involved with this case?
- 16 A. Well, as soon as any service member goes missing, JPRA gets
- 17 involved to one degree or another. Certainly in this case, the Joint
- 18 Personnel Recovery Centers in theater would be at the front of
- 19 leading the effort to identify, locate, support, and recover the
- 20 isolated person.
- 21 JPRA, being that we are the DoD OPR for personnel recovery
- 22 matters, we would be involved in a consultation phase. My personal
- 23 involvement with this -- Sergeant Bergdahl's case began early, and I

- 1 maintained contact with the case throughout its duration. We would
- 2 collect information knowing that at some point -- or expecting at
- 3 some point we would be involved in the debriefing and the
- 4 reintegration aspects of this. So we would collect material relative
- 5 to the case.
- 6 Q. And ----
- 7 A. During that time, I visited with Mr. and Mrs. Bergdahl in
- 8 Hailey, Idaho four or five times to gather information about Sergeant
- 9 Bergdahl initially.
- 10 Later, I was helping CENTCOM with some very specific
- 11 support aspects that I'd rather not get into specifically, but I
- 12 supported CENTCOM in their efforts. We supported the Army Public
- 13 Affairs Office when the -- when Mr. and Mrs. Bergdahl were being
- 14 prepped for public appearances at the Rolling Thunder events in
- 15 Washington, D.C., on Memorial Days.
- 16 Q. Is it safe to say that in your years of working on this
- 17 case, that you've had access to both unclassified and classified
- 18 evidence ----
- 19 A. Yeah.
- 20 Q. ---- or information?
- 21 A. Yes, sir. That would be very fair to say.
- Q. What SERE training, if you are aware, did Sergeant Bergdahl
- 23 have back in 2009?

- 1 A. In 2009, SERE training was divided into three categories;
- 2 and we call it Level A, Level B, and Level C. Level A is the
- 3 training that is provided to the general purpose forces, and that's
- 4 where Sergeant Bergdahl -- that's what he would have gotten. Level B
- 5 is service related; they might give a select population groups
- 6 additional training. Level C, that is what you -- that is what the
- 7 traditional service survival, evasion, resistance, escape -- SERE
- 8 courses. The Army, I think at the time, certainly had the one at
- 9 Fort Bragg. They might have had the one at Fort Rucker. The Air
- 10 Force has one. The Navy has two.
- 11 Sergeant Bergdahl would have received Level A training.
- 12 Level A training, specifically at that time, was: Here is
- 13 the Code of Conduct. Here are the six articles of the Code of
- 14 Conduct. This is what the six articles of the Code of Conduct mean,
- 15 and have a good day.
- 16 Q. So this was before the computer ----
- 17 A. Yes, sir.
- 18 Q. Okay.
- 19 A. And by the way, my office developed that, along with Joint
- 20 -- JKO. So you can blame me for having to get that and that 8-hours
- 21 of misery.
- Q. And the computer bugs?

- 1 A. Yes, sir. Yes, sir.
- 2 But that program, which by the way over the course --
- 3 current lifespan of 5 years, has trained 1.5 million Soldiers,
- 4 Sailors, Airmen, and Marines very successfully.
- 5 At the time, Sergeant Bergdahl wouldn't have had that.
- 6 That went online 1 September 2010. So Level A at the time of his
- 7 deployment was: Here's the Code of Conduct.
- 8 Q. After Sergeant Bergdahl came back, how long did JPRA spend
- 9 debriefing him?
- 10 A. The debriefing of Sergeant Bergdahl was broken down into
- 11 three phases. The phase -- the first phase was conducted by CENTCOM
- 12 in theater, and I don't have a lot of details that I recollect about
- 13 that.
- 14 Within a few days he would have been transferred to Phase
- 15 II. Normally, Phase II would also be the responsibility of the
- 16 combatant command. In this particular case, Sergeant Bergdahl was
- 17 determined that he needed medical attention and was transferred to
- 18 Landstuhl Regional Medical Center, and then it became the
- 19 responsibility of European Command, EUCOM.
- 20 EUCOM then started conducting Phase II reintegration, which
- 21 included the Phase II intelligence and SERE debriefings. That,
- 22 again, was the responsibility of EUCOM. They had intelligence
- 23 debriefers. They had SERE debriefers.

- It was then determined, at the end of Phase II, that
- 2 Sergeant Bergdahl required additional support; and he was transferred
- 3 to what's called Phase III Reintegration. And that was conducted at
- 4 Fort Sam Houston by the U.S. Army. The U.S. Army uses U.S. Army
- 5 South, USARSO, as their office of responsibility to conduct Army
- 6 Phase III Reintegration. So he was transferred to Fort Sam Houston.
- 7 It was at that time that JPRA got directly involved in the
- 8 reintegration support and debriefing. USARSO asked specifically for
- 9 reintegration support. They identified an FBI intelligence analyst
- 10 that was detailed to JPRA to come down. They identified a SERE
- 11 psychologist, an Army 0-6 that is on our staff at JPRA, to come down
- 12 to provide support to the two Army SERE psychologists that were
- 13 working directly with Sergeant Bergdahl. And they required or
- 14 requested a SERE debriefer, specifically me, to come down.
- I was familiar with USARSO because I had supported them
- 16 during the reintegration debriefing of the SOUTHCOM Reconnaissance
- 17 Systems, the SRS crew, that had been held in Columbia for 5 years. I
- 18 was the senior debriefer for that event working with USARSO. They
- 19 were familiar with me. They were comfortable with me coming down.
- 20 JPRA sent down those three individuals to support the reintegration
- 21 task.
- 22 Q. About how long was the debriefing period?
- 23 A. In Phase II, I'd have to ----

- 1 Q. Could you give a swag -- a total number of weeks that ----
- 2 A. Well, at ----
- 3 Q. ---- you spent debriefing?
- 4 A. Yeah. At Phase II, which I wasn't involved in, I think he
- 5 was there for approximately 3 weeks.
- 6 Then they sent him to Fort Sam Houston. I was -- I don't
- 7 remember the specific dates. I was down here for about 2-and-a-half
- 8 weeks. Once I was complete with my SERE debriefing, the intelligence
- 9 debriefing continued and that continued on for another 12 days or so,
- 10 something like that.
- 11 Q. During these debriefings, was Sergeant Bergdahl read his
- 12 rights?
- 13 A. No, he was never read his rights.
- 14 Q. Okay.
- 15 A. Interestingly -- and this was my first experience
- 16 specifically with this -- was we had lawyers present to make sure
- 17 that the debriefing team did not cross a line that would require
- 18 Sergeant Bergdahl to have his rights read. The lawyer -- well there
- 19 were two. They overlapped for a day or so. But the lawyers worked
- 20 with the debriefing teams. When we were planning what the debriefing
- 21 session was to include, they were very specific about what we could
- 22 ask and what we could not ask, where was our starting point for
- 23 asking questions, and to ensure that we were not going to violate his

- 1 rights and require his rights to be read to him. The lawyers --
- 2 again they were one at a time; they overlapped for a day or two. But
- 3 the lawyer was always present during the debriefing.
- 4 The way the debriefing was set up, you had a room where you
- 5 would have Sergeant Bergdahl sitting in a chair with a table in front
- 6 of him -- a coffee table; two chairs for the debriefers. One was
- 7 leading the debriefing; the other would be taking notes and operating
- 8 the recording. And then the fourth person in the room was the SERE
- 9 psychologist. The Army sent down two SERE psychologists. One would
- 10 operate the morning sessions; one would operate the afternoon
- 11 sessions.
- 12 Q. Were these debriefings recorded?
- 13 A. The debriefings were audio recorded, and JPRA has
- 14 possession of all of those recordings because that is one of our
- 15 responsibilities.
- 16 Q. Okay.
- 17 A. But at the time, the debriefings were videoed in that there
- 18 was video monitoring in a nearby adjacent room. And in that room
- 19 there, was a number of people, including the lawyer, watching and
- 20 witnessing the debriefing at all times.
- 21 Q. Is it possible -- you've got a lot of experience with this
- 22 -- when people are being debriefed that they might not be telling the
- 23 truth or are trying to mislead you?

- 1 A. Certainly, that's a possibility. In the hundred or so
- 2 cases that I have been engaged in, I have listened to individuals --
- 3 I could count them with one or two fingers -- that I did not believe
- 4 were telling me the truth, that they were telling me a tale.
- 5 Q. Was there ever anything about Sergeant Bergdahl's
- 6 interviews that led you to believe that he was not telling you the
- 7 truth?
- 8 A. There was absolutely nothing that indicated that Sergeant
- 9 Bergdahl was giving us anything but the truth and what he was
- 10 relating -- his experiences.
- 11 Q. And if you know, what was the sense of the other debriefers
- 12 about whether what he was telling them ----
- 13 A. Right.
- 14 O. --- was -- he was being truthful to them?
- 15 A. It was not just my opinion. The other debriefers -- the
- 16 intelligence debriefers, the SERE psychologists, the FBI agents, the
- 17 other PR debriefers -- everybody, remarked on the quality of
- 18 information that Sergeant Bergdahl was providing, the ability that
- 19 Sergeant Bergdahl had to recall the information and to provide it to
- 20 us in a coherent manner. There was remarked -- expressions of their
- 21 high satisfaction with the quality of information. There was never a
- 22 discussion of, "Is he telling the truth? Are these indicators of
- 23 falsehood?" There was no discussion of that. I do not know and

- 1 nobody ever mentioned in my presence that they doubted what Sergeant
- 2 Bergdahl was providing to us.
- 3 Q. Okay. What can you tell us about the Haqqani group that
- 4 captured Sergeant Bergdahl and held him?
- 5 A. Based on what Sergeant Bergdahl described to us, I would
- 6 call them psychopath, sadistic, terrorist group. And I say that
- 7 because of what they did to him.
- 8 Q. Could you start by giving us an account of what you know of
- 9 his captivity? Is there a helpful way to break this down and
- 10 describe it?
- 11 A. Yes. And keep in mind that we could not ask about anything
- 12 -- any event, prior to the 19th of July 2009, and that was about 20
- 13 days post-isolation. So if Sergeant Bergdahl left the FOB on
- 14 30 June, give or take, we couldn't ask about anything that occurred
- 15 until the 19th of July; and that's based on Sergeant Bergdahl's first
- 16 appearance on a video that they were able to specifically identify.
- 17 So what he described was 20 days post-isolation -- what I would call
- 18 post-isolation -- and then continued on for the 4 years, 11 months.
- 19 You can generally break down his experience into three
- 20 phases. The first page was absolute torture and horror. It included
- 21 being beaten with a rubber hose. They would have him blindfolded.
- 22 This was after he escaped. After 2 days, he escaped. He escaped for
- 23 10 minutes. So on the 21st of July, 2 days after, you know, we are

- 1 first introduced to this case, he escapes. He escaped for 10
- 2 minutes. He gets out of the compound. He gets away for 10 minutes,
- 3 and he is recaptured.
- 4 They bring him back and they blindfold him, and they take a
- 5 rubber hose. And they start asking him questions, and they start
- 6 beating him, concentrating on his feet and his ankles and his legs.
- 7 They twirl -- as they ask the questions, they twirl; and he can hear
- 8 the whistling of the rubber tube and, bam, they hit him. They do
- 9 this repeatedly and continually. Then, they take him out and they
- 10 make a video. To show the humane treatment of the Hagganis, they set
- 11 him down and they provide a buffet of food.
- 12 And once they are done with that show, they take him to a
- 13 new holding location for the next 3 months, and they secure his feet
- 14 and his hands spread eagle on this metal bedframe; and they continue
- 15 to beat him. But, this time, they use a copper cable. He is left in
- 16 that position for 3 months with food twice a day, bathroom breaks
- 17 maybe twice a day. Purposefully to atrophy his muscles. They were
- 18 not going to risk him escaping again. They beat him with a copper
- 19 cable for 3 months.
- 20 Then, the next period -- and they start routing him through
- 21 a variety of holding locations, holding locations 3, 4, 5, and 6.
- 22 They make videos at holding location number 3. He related that they

- 1 made approximately 18 in the -- in the time that he was there. We
- 2 haven't seen all of those videos by the way.
- But they -- this next period of time, which is about 9
- 4 months, this second phase, is typified by what I would call
- 5 maintenance abuse, torment, conditions of horrid captivity. The
- 6 women and the children are given the responsibility to care for him,
- 7 because he, at this time, starts to have uncontrollable diarrhea. He
- 8 suffers from uncontrollable diarrhea for 3-and-a-half years. The
- 9 women and children are given the responsibility because it is beneath
- 10 the man to care for such a dirty animal. It is the women and
- 11 children who did.
- 12 So what do the women and children do? They take him to the
- 13 toilet twice a day. They trip him. They hit him. The children, one
- 14 of them, Mullah Sangeen's son, has a chain and he beats Sergeant
- 15 Bergdahl with the chain on the way to the toilet and back. They
- 16 spill his food. They spit in his food. They put dirt in his food.
- 17 They do everything that they can to make his life absolutely
- 18 miserable because they hated him. He was filthy. They couldn't
- 19 stand the fact that they had to be near or to touch such a filthy
- 20 person.
- 21 Then the third phase begins, and it begins after Sergeant
- 22 Bergdahl has another escape. He escaped after 2 days. Okay. Again,
- 23 we are starting with the time line of 19 July. He escapes on the

- 1 21st. A year later, give or take, he makes his second escape; and
- 2 this is after he has been beaten. His muscles are atrophied. He
- 3 then is able to start walking in his holding locations to build up
- 4 his strength.
- 5 And in holding locations 3, 4, 5 and 6 he is attempting
- 6 multiple escape activities. He is climbing up to the window. He is
- 7 trying to get out of the ceiling. He is trying to dig through the
- 8 wall; trying to dig under the wall. He's manipulating the locks on
- 9 his restraints so that he can get out. And he gets out, and he tries
- 10 to climb the wall. All of these are what we would call unsuccessful
- 11 or short-term escapes. But he persistently engages in escape
- 12 activities at holding locations 4 and 5 specifically. At 5, he makes
- 13 multiple escapes to get out of his room, to start seeing what the
- 14 other security that he had to deal with -- what he was up against.
- They transfer him to holding location 6, called the Taliban
- 16 Prison. For 20 days, he collects information on what the obstacles
- 17 are, and he makes another escape. This time, he successfully defeats
- 18 his restraints. He gets out of his cell. He climbs down using a
- 19 makeshift rope; and he hits the ground, and he starts running. And
- 20 he is gone for 8-and-a-half days. I think he describes it as 9.
- 21 When we kind of laid out the time line, we think it's about
- 22 8-and-a-half days.

- During those 8-and-a-half days, he's heading for the
- 2 southeast, avoiding people, avoiding recapture. He has a little bit
- 3 of clothing. He has a water bottle and not much else. To survive,
- 4 he drinks what water he can find. To eat, he eats grass. He
- 5 continues to evade. He stumbles the first night, injures his left
- 6 leg and left hip. He gets re-caught. He gets captured after
- 7 8-and-a-half days.
- 8 So they bring him back. You know, at the point of
- 9 recapture, you know, they smack him around a little bit. They bring
- 10 him back to the holding location, and the guy that was responsible
- 11 for him hits him. I asked him very specifically, "All right. If
- 12 they beat you with rubber hoses and copper cables the first time you
- 13 escaped, what did they do to you the second time you escaped?" And
- 14 he said, they pulled his shirt, and they saw skin over bones. He was
- 15 already in the midst of suffering diarrhea for a year -- 9 months at
- 16 that point. Starving. He's evading for 8-and-a-half days, living on
- 17 grass and water. He is nothing but skin and bones. And he says, the
- 18 captor didn't do anything to him because they knew that if they
- 19 started beating him again, they would kill him. They took him back
- 20 to his holding location, kept him there for, I don't know, a couple -
- 21 3 weeks.
- 22 And then we begin the third phase. The third phase is -- I
- 23 would characterize it as, solitary confinement, isolation, and

- 1 neglect. They had made -- to make sure that Sergeant Bergdahl did
- 2 not escape a third time, they made a cage. This metal cage that was
- 3 collapsible was about 7 feet -- 6 feet tall, 6 feet wide -- maybe a
- 4 little bit bigger but about a 7 foot cube let's call it and angle
- 5 iron. They could take it apart. They secured it. They could move
- 6 it from one place to another, which they did. When they moved him to
- 7 holding location 8 and 9, they moved this cage along with him. He
- 8 spent about 3 years inside this cage. This cage, a metal frame,
- 9 probably angle iron around the sides, and then it had rebar welded to
- 10 each side, one way and then the other. It was like a honeycomb, you
- 11 know. Any individual hole in that honeycomb, you could put your fist
- 12 through, typically. But that was his home for the next 3 years,
- 13 3-and-a-half years.
- 14 They required him to be blindfolded, they left him in that
- 15 cage, and they neglected him. They'd give him the minimal amount of
- 16 food, water, and toilet breaks; but typically they just kept him
- 17 there.
- You know, after a while they put something on the floor of
- 19 his cage so that he could stand on it. When he was moved from
- 20 holding location 8 and 9, his last place, the cage was moved with
- 21 him. And they gave him a plywood -- like a plywood board to stand
- 22 on, so that gave him a little bit more structure.

- 1 Towards the end, I'll say the last 6 months or so, they
- 2 understood that the endgame was coming on. They had -- he had gotten
- 3 to the point -- but prior to that, he had gotten to the point that
- 4 his physical condition was so horrendous that he was passing out.
- 5 They took him to a doctor once, if you could probably call this guy a
- 6 doctor. God knows what he was. But he provided Sergeant Bergdahl
- 7 with some antibiotics, some recommended treatment which included,
- 8 you've got to give this guy some food, including eggs and milk. They
- 9 improved his diet towards the endgame. Some months prior to his
- 10 release, they gave him a collapsible treadmill that he could start
- 11 exercising on, and they improved his diet because they knew that they
- 12 were going to release him.
- So those were the three phases: torture, abuse, neglect.
- Q. Do you know how many times he tried to escape?
- 15 A. Well, we know that he got out of the compound twice -- or
- 16 he relates getting out of the compound twice. He engaged in
- 17 significant levels of escape activity. Even -- even the first day
- 18 after the -- you know, on the 19th of September with this video, he
- 19 had met Mullah Sangeen. And they had brought him down to his holding
- 20 location, and he had attempted and he was successful in getting out
- 21 of the door but saw that there was too many people around, so he got
- 22 back. He counts that as an escape. I would characterize it as
- 23 escape activity.

- 1 Q. Did ----
- 2 A. Then he had had his -- what we call a 10-minute escape,
- 3 where he got out of his room. He got out of the house -- the hut
- 4 that he was being held in; and he got to a neighboring house where he
- 5 climbed to the ceiling and hid himself in a mud puddle and was
- 6 recaptured after about 10 minutes.
- 7 Q. Did he ever give up trying to escape?
- 8 A. No, he never gave up. Because you move him to holding
- 9 locations 3, 4, 5 and 6 and as his strength -- as he regained his
- 10 strength, he started engaging in increased escape activities to
- 11 include trying to -- to pound the ceiling, dig through the walls, dig
- 12 through the floors, get outside the door, manipulate his restraints,
- 13 manipulate the locks on the doors to get out of -- trying to use
- 14 means available to get over the compound wall. And he continued to
- do that at holding locations, especially at 4 and 5.
- And then they moved him to location 6, from which he had
- 17 his 8-and-a-half day escape. Once they recaptured him, once they put
- 18 him into this collapsible metal cage, the escape activities stopped.
- 19 Not that he didn't think about it, but he saw the conditions of
- 20 captivity. The security that they imposed was too great an obstacle.
- Q. And how did he resist his captors?

- 1 A. So what do captors do? They want information. They will
- 2 exploit somebody for propaganda, typically videotapes or recordings
- 3 or photographs and that sort of thing.
- 4 You know, we asked him specifically about the exploitation.
- 5 We asked about interrogation. And, you know, after the first escape,
- 6 they wanted to know ridiculous things like: Who was the woman that
- 7 was helping him? Who was the man that was helping him? And they
- 8 would beat him for questions that he had no answer for; and so all he
- 9 could say is that he had no help, but that didn't preclude them from
- 10 beating him.
- I asked him about "What did they want to know about what
- 12 you could tell them?" You know, specifically, I asked that because
- 13 there had been some speculation that, you know, the Hagganis had a
- 14 disinformation campaign that was pretty remarkable. They would say
- 15 that, oh, on one hand, you know, he's living this high life in this
- 16 villa and he was working with the children, playing badminton with
- 17 the children, going to the market. And then you would have other
- 18 disinformation saying that Sergeant Bergdahl was teaching small
- 19 weapons tactics. He was teaching patrolling methodology. He was
- 20 helping the Haqqanis develop improvised explosive devices. You'd
- 21 have misinformation: Oh, he's sick. He's at death's doorstep. You
- 22 know, so you -- this wide range.

- So I asked him, "What did the Haqqanis want to know? Did
- 2 they ask you specifically about small weapons tactics? The
- 3 patrolling TTP for Soldiers? Asking about IEDs?"
- 4 And his response was actually pretty remarkable. "The
- 5 Haqqanis held the U.S. Soldier in absolute contempt. They had no
- 6 respect or no regard for the United States Soldier. These are the
- 7 same people that fought the Soviets -- same family, same tribe. They
- 8 fought the Soviets. There was nothing about the U.S. Soldier that
- 9 they could learn about because they didn't have any respect for the
- 10 U.S. Soldier." So they never asked about it. They never
- 11 interrogated him over that kind of stuff.
- 12 Q. Did Sergeant Bergdahl's resistance to his captors get
- 13 better or worse with time?
- 14 A. You know, you have to probably take a look at the range of
- 15 videotapes that came out of captivity and, you know, the images. You
- 16 know, on the first videotape, he's sitting behind this table; and,
- 17 you know, he's being fed all of this stuff; and, you know, he does
- 18 what he has to do. I asked him about resistance to the videos, and
- 19 he said that he tried to appear compliant. He tried to minimize any
- 20 propaganda value, but he tried to appear cooperative. And so,
- 21 largely, that is what you will see. Yes, he said things. He
- 22 demonstrated his ability to do four push-ups. And, by the way, that

- 1 was about his maximum amount of push-ups he said he could do at the
- 2 time. You saw some other -- some other videos.
- 3 But the one that is remarkable to me was the last video
- 4 that came out in December of '13, and I asked him about that one
- 5 specifically. And, you know, he said he had had it up to here
- 6 [pointing to his forehead] with them. He was sick, freezing. He had
- 7 been blindfolded. His eyes were having a hard time adjusting. They
- 8 were in a hurry to produce the videotape, and he was just going to do
- 9 the bare minimum to get it done with and be done with them. He was
- 10 sick of it, and that was effective resistance.
- In all of those cases, his resistance -- his resistance did get
- 12 better from what you saw in the first videotapes to what you saw on
- 13 the last videotape. He learned to resist and, largely, it was
- 14 because he hated these people. He was sick of what they were doing
- 15 to him. They were extremely abusive.
- Q. Did you consider any evidence or possibility that his
- 17 captors were using chemical restraints?
- 18 A. We asked about drugs because, you know, who knows? The use
- 19 of drugs by a captor is very rare. We know of a couple of cases.
- 20 There was one Desert Storm POW that was interrogated under the use of
- 21 chemicals; and he describes that, and he just -- Cliff Acree -- and
- 22 he describes it in his book.

- 1 So we know on rare occasions -- we know that occasionally
- 2 captors may use some kind of inhalant or something to subdue a
- 3 prisoner to make them easier to transport. I wanted to know if, in
- 4 fact, Sergeant Bergdahl had been -- drugs had been applied to him
- 5 because, you know, was it because -- did he appear in such a way that
- 6 -- because he was under some kind of influence of drugs? Well, we
- 7 asked -- anyways, we asked him about it. And he goes, "No,
- 8 absolutely not. They never did that."
- 9 They did -- there was one guy -- I don't remember what the
- 10 name that Sergeant Bergdahl called him, but there was one
- 11 particularly nasty man who came in with some -- it was a clay pot.
- 12 And he would come into his cell -- his room, and put this clay pot
- 13 and fire -- burn some kind of chemical. And it would produce a blue
- 14 smoke, and Sergeant Bergdahl felt -- he described it in his
- 15 debriefing as some kind of opiate or something like that. But it
- 16 produced a blue smoke; and he said that, within two or three breaths,
- 17 he would have an altered state where he couldn't determine time.
- 18 "Time was skipping." These are some of the terms that he was using.
- 19 So I asked him, "Was there any exploitation associated with
- 20 the use of this chemical, drug, smoke, device?"
- "No, nothing at all. It was just torment."

- 1 It was just to cause him more difficulty, and they did it
- 2 to him twice. But there was never any use of drugs for exploitation
- 3 purposes involved with Sergeant Bergdahl.
- 4 Q. Did Sergeant Bergdahl provide any classified information to
- 5 his captors or any other information that could harm U.S. forces?
- A. We asked him that specifically, again, because you know, if
- 7 there's this speculation in the press about Sergeant Bergdahl doing
- 8 this or that, we wanted to know. And that's typically a question
- 9 that we will ask a returnee: "Did you" -- "What kind of information
- 10 did you provide? Did you provide any classified information?"
- We ask that very specifically and the answer was very
- 12 clear-cut, "No, I did not provide anything classified," because, in
- 13 this case, they didn't care. They didn't want to know anything.
- 14 That wasn't the purpose of them holding Sergeant Bergdahl for
- 15 information.
- 16 And I -- I would be shocked if Sergeant Bergdahl had any
- 17 classified information that he would have been privy to anyways.
- 18 Q. What was Sergeant Bergdahl's will to survive?
- 19 A. Well, he certainly had will to survive. You have to
- 20 remember what's happening to this young man. The first photograph
- 21 that we see of him -- and we see this later after the 19 September
- 22 video. We see this later. He has a large mark, I think it was on
- 23 the left side underneath his cheek so it was probably -- bam

- 1 [gesturing] -- a butt stroke to his face, you know, with a rifle
- 2 butt. So he's already -- you know, they take him up to this. And
- 3 he's chained; he's secured. You know, he escapes; he's beaten. He
- 4 has this uncontrollable diarrhea.
- 5 You know, I don't know about you, sir, but if I have
- 6 diarrhea more than a couple or 3 days, I'm thinking there's something
- 7 seriously wrong with me and I want to get some treatment. And you
- 8 and I have the luxury of using toilet paper. But Sergeant Bergdahl
- 9 was held in conditions that if it were a dog, you'd be thrown in jail
- 10 for pet abuse.
- The conditions of captivity are as horrible as you can
- 12 possibly imagine; but he continues to resist. He continues to
- 13 escape. He continues to collect information because he states to us
- 14 during the debriefing that he knew that he would be an important
- 15 source of information for the intelligence community and for special
- 16 operations forces with the information that he was able to collect.
- 17 He continued to fight.
- 18 You know, when you are cleaning yourself of diarrhea and
- 19 your clothing is soiled, your bedding is soiled, you are cleaning
- 20 yourself with your hands and the only way to clean your hands is to
- 21 rub your hands in dirt to get the fecal matter off and the only water
- 22 that you have available to clean your mud-covered hands is your own
- 23 urine -- that's what Sergeant Bergdahl had to do.

- But he didn't -- he didn't give in. Did he resist? Yeah,
- 2 he continued to resist. He continued to escape. He continued to
- 3 plot for escapes. He continued to fight. Did he give into the
- 4 captor and provide them the propaganda, the statements that they
- 5 wanted on the videotape? No, he minimized the value of the
- 6 statements. He screwed it up as best he could at the same time
- 7 avoiding continual abuse and beatings and neglect.
- 8 You know, you judge somebody -- you know, the Code of
- 9 Conduct says that you will resist to your utmost. What's your
- 10 utmost? What's my utmost? I don't know.
- I've asked this question of many POWs. "Did you do your
- 12 best?" And all you can do is look at yourself in the mirror and say
- 13 to yourself -- to yourself -- "I did the best job I could do." I
- 14 think Sergeant Bergdahl did that. He did the best job that he could
- 15 do, and I respect him for it.
- Q. On whole and based on everything that you've, you know,
- 17 read about and your debriefings, what grade would you give him for
- 18 his conduct in captivity?
- 19 A. What grade would I give him? I don't know. You know, one
- 20 of the responsibilities of the SERE debriefer is to give feedback to
- 21 the returnee at the end of the debriefing. And that's one of the
- 22 responsibilities that we have, and so I did that with Sergeant
- 23 Bergdahl. And, you know, my philosophy about this is to provide

- 1 pretty candid feedback. You know, you take into consideration the
- 2 level of training or the level of non-training; and you take a look
- 3 at the conditions of captivity and the captor, what they are seeking,
- 4 what they are trying to do. And you judge him against or you grade
- 5 him against, you evaluate him against the Code of Conduct. And the
- 6 Code of Conduct says that: I will escape. I will aid others to
- 7 escape. I will take neither parole nor special favors from the
- 8 enemy. That's Article III.
- 9 Article IV [sic] says: If I am questioned, I will continue
- 10 to resist. I will provide name, rank, service number, and date of
- 11 birth, and I will evade to the utmost of my ability further
- 12 questions.
- We know how he did with escape. We know how he did with
- 14 questioning and providing information.
- "If I am senior, I will take command." He's an Army of
- 16 one. He is senior. He will take command.
- 17 Q. And ----
- 18 A. Yes, I'm sorry.
- 19 Q. What is the difference between being a sole captive versus
- 20 being with a group as we understand the ----
- 21 A. Right.
- 22 Q. ---- Vietnam experience?

- 1 A. It's crazy how much more difficult being an isolated,
- 2 single person, will be versus having the support of a POW network.
- In North Vietnam you had isolation. The prisoners, in
- 4 order to overcome and mitigate that condition of captivity, would
- 5 organize and communicate. It was paramount for that organization to
- 6 establish communications with all parts of the camp; and they devised
- 7 any number of ways to do that, including the use of the tap code,
- 8 tapping on the wall, and using abbreviated words and sentences. You
- 9 cannot under -- you cannot overestimate the value of organization and
- 10 communication.
- I will give you a story. It comes out of Desert Storm. A POW
- 12 is being interrogated, and he's being asked to do a videotape. And
- 13 they torture him, and it involves the use of electricity. And the
- 14 POW says, "Fine. I'll make the tape." They take him in; they make
- 15 the tape. And he tries to figure out how he's going to resist, and
- 16 he mimics the sing-song accent of the guy asking the questions. He
- 17 uses the accent. He does what he can do to the utmost of his ability
- 18 to resist the exploitation, but yet he feels that he has let himself
- 19 and his comrades and his country down. And he's thrown out in the
- 20 hallway, and he sits there blindfolded. And he hears a voice down
- 21 the hall "Don't worry, mate. We all made the tape." He says, at
- 22 that point, the will to resist grows. He knows he is not alone. He
- 23 knows that he has the support -- although he cannot see them, he

- 1 cannot touch them, he cannot talk to them -- he knows that he has the
- 2 support of an organization.
- 3 Sergeant Bergdahl didn't have any of that. He was an
- 4 organization of one. He had to fight the enemy alone for 4 years and
- 5 11 months.
- 6 Q. Mr. Russell ----
- 7 A. You can't underestimate how difficult that is, and we are
- 8 talking about the conditions of captivity that he had to suffer. He
- 9 was starving. He was dehydrated. He tried drinking his own urine
- 10 one time to -- because he was so -- he says the pain of dehydration
- 11 is greatly more difficult than starvation.
- 12 Q. Okay. Just three more questions.
- 13 A. Sure.
- 14 O. We will talk about the public. How important is it for --
- 15 for us to keep faith with captured Soldiers?
- 16 A. Our Code of Conduct tells us to.
- Q. What have you noticed about public efforts to smear the
- 18 reputations of Soldiers who are captured?
- 19 A. You know there's always situations where, you know,
- 20 Soldiers may be -- and I'm using Soldiers as a generic term -- that
- 21 individuals, isolated persons may not be -- may not have done what we
- 22 expect them to do, in rare occasions.

- But, you know, in this case it's been crazy. Bowe Bergdahl
- 2 has been accused of many, many things; but what you cannot accuse him
- 3 of is his lack of resistance, his willingness to serve his country
- 4 with honor in captivity, to do what he had to do to maintain his
- 5 dignity and to return.
- I think the level of -- of widely inaccurate speculation is
- 7 outrageous. They don't know what the facts are and -- you know,
- 8 because the facts haven't come out and, you know, for various
- 9 reasons. Nobody knows Sergeant Bergdahl's story. There's been
- 10 snippets that have come out. But nobody knows Sergeant Bergdahl's
- 11 story, and I hope that someday the world gets to understand how
- 12 difficult Sergeant Bergdahl had it for 4 years and 11 months in
- 13 captivity.
- 14 [Pause.]
- DC: No further questions.
- 16 PHO: Government, cross-examination?
- 17 ATC: The government has no questions, sir.
- 18 PHO: Okay. I have one question.
- 19 WIT: Yes, sir.
- 20 EXAMINATION BY THE PRELIMINARY HEARING OFFICER
- 21 Questions by the preliminary hearing officer:
- 22 Q. You mentioned his conditions of captivity and, obviously,
- 23 you have seen a broad spectrum of different conditions of captivity.

- 1 If you could express in terms of a percentile of, you know, who --
- 2 how many percentiles you have seen are worse and how many are better?
- 3 If you could express it in the terms of a percentile, that would be
- 4 helpful.
- 5 A. Certainly, you know, there's been -- you know, I don't know
- 6 how far back you want to go.
- 7 Q. Well, based on your experience ----
- 8 A. Certainly, he had ----
- 9 Q. ---- and what you've ----
- 10 A. ---- he had it harder than the OIF prisoners, absolutely.
- 11 He had it more difficult than the Desert Storm POWs. He had it more
- 12 difficult than Bobby Hall, Mike Durant.
- You would have to go back to North Vietnam and the jungle
- 14 camps of South Vietnam to have any comparables to that. In South
- 15 Vietnam you had horrible conditions of captivity. You had, you know,
- 16 the longest held American POWs spending 5 years of solitary; 9 years
- 17 of captivity, 5 years of solitary in the jungle camps of South
- 18 Vietnam; that's a comparable. You had guys tortured in North
- 19 Vietnam; those are comparable.
- 20 But Sergeant Bergdahl's experience -- and I don't know,
- 21 sir, that I can give you a percentage. But his experience ranks at
- 22 the -- at the same echelon of the most horrible conditions of
- 23 captivity that we've seen in the last 60 years.

- 1 PHO: Okay. Any questions based on mine?
- 2 ATC: No, sir.
- 3 DC: None.
- 4 PHO: Okay. Temporary or permanent excusal?
- 5 DC: Permanent.
- 6 [The witness was permanently excused, duly warned, and withdrew.]
- 7 PHO: Okay. Defense, do you have any further witnesses?
- 8 DC: No further witnesses.
- 9 PHO: All right, Sergeant Bergdahl, earlier -- are you good?
- 10 ACC: Yes, sir.
- 11 PHO: Earlier in this preliminary hearing ----
- 12 CDC: Excuse me.
- 13 PHO: Yes, if you need a moment.
- 14 [Pause.]
- 15 CDC: Thank you, Colonel.
- 16 PHO: Okay. Sergeant Bergdahl, earlier in this preliminary
- 17 hearing, I advised you of your rights to make a statement or to
- 18 remain silent. Would you like for me to repeat this advice?
- 19 ACC: No, sir. I'm good.
- 20 PHO: Would you like to -- do you desire to make a statement in
- 21 any form?
- 22 ACC: No, sir.
- 23 PHO: Okay.

- 1 All right, Defense Counsel, I will now consider any
- 2 evidence other than testimony. Do you have any such evidence to
- 3 offer for my consideration?
- DC: Yes, we do. We have what's marked as Defense Exhibit A.
- 5 Defense Exhibit A is a submission from Mr. Eugene Fidell and the
- 6 defense team to General Mark Milley, on March 2nd, 2015, consisting
- 7 of a 13-page letter and several attachments.
- 8 Defense Exhibit B, which is ----
- 9 PHO: Okay. Why don't we start with that one ----
- 10 DC: Okay.
- 11 PHO: --- and we will do it one by one.
- 12 [Pause.]
- 13 PHO: All right. Government, I have right now Defense Exhibit
- 14 Alpha. It said it was 13 pages; but plus attachments, it is a total
- of 28 pages. Have you had an opportunity to review this document?
- 16 TC: Yes, sir.
- 17 PHO: Do you have any objections?
- 18 TC: No, sir.
- 19 PHO: Okay. I will consider Defense Exhibit Alpha as evidence.
- 20 All right. Go ahead with Defense Exhibit B.
- 21 DC: Defense Exhibit B is the executive summary and the findings
- 22 and recommendations memorandum from Major General Kenneth Dahl from

- 1 his Army 15-6 investigation. It consists of a 2-page executive
- 2 summary and a 56-page memo of findings and recommendations.
- 3 PHO: Okay. So the 2 pages are the executive summary and then
- 4 the following 50-some-odd pages are the actual findings?
- 5 DC: That's right.
- 6 PHO: Okay. And this is for a total of 59 pages.
- Government, have you seen this document, and do you have
- 8 any objections?
- 9 TC: Yes, sir. And we've seen Defense Exhibits Alpha through
- 10 Delta, and we do not have any objection.
- 11 PHO: Alpha through Delta?
- 12 TC: Roger.
- 13 PHO: Okay. Why don't you go ahead and describe the remaining
- 14 two ----
- 15 DC: Yes.
- 16 PHO: --- for the record.
- DC: Defense Exhibit Charlie is a two-page memorandum from
- 18 27 July 2015 and it is the two-page R.C.M. -- or Rule for
- 19 Courts Martial 706 Sanity Board Evaluation, conclusions only,
- 20 ICO Bowdrie Bergdahl, Sergeant. And this is the memorandum
- 21 concerning his severe mental disease or defect.
- 22 PHO: Okay. You can move on to the next one.

- DC: Defense Exhibit Delta is Department of the Army Form 3349,
- 2 physical profile -- the permanent profile signed by the defense
- 3 witness Curtis Aberle.
- 4 PHO: Okay. I will consider all four of those documents as
- 5 evidence. Do you have any further evidence?
- 6 DC: None.
- 7 PHO: Okay.
- 8 Government, do you have any evidence in rebuttal?
- 9 TC: No, sir.
- 10 PHO: Okay. What we are going to do for administrative purposes
- 11 -- I quess the first question is: What additional information does
- 12 the court reporter need for administrative purposes?
- 13 [The court reporter indicated a negative response.]
- 14 PHO: Okay. Nothing, she's good. She's limited in her ability
- 15 to speak.
- Okay. So what we are going to do is, let's plan on hearing
- 17 closing arguments at 1430. That is approximately 40 minutes from
- 18 now. I will -- I have the finishing touches for the preliminary
- 19 hearing officer exhibits that I will prepare a printout to; I will
- 20 provide it to both parties so you can review and make sure that all
- 21 relevant documentation is in there. And we will address that on the
- 22 record before we launch into closing arguments.
- 23 Any questions?

- 1 DC: No.
- 2 PHO: All right. We are in recess until 1430.
- 3 [The Article 32 hearing recessed at 1349, 18 September 2015.]
- 4 [The Article 32 hearing was called to order at 1434,
- 5 **18 September 2015.**]
- 6 PHO: We are back on the record. All parties present at the last
- 7 recess are again present.
- 8 We are at the close of evidence. So does government
- 9 counsel desire to make a closing statement?
- 10 TC: Yes, sir.
- 11 PHO: All right. You may proceed.
- 12 TC: Deliberate and knowing disregard. On 30 June 2009, the
- 13 accused acted with deliberate disregard for the consequences of his
- 14 actions when, under the cover of darkness, he snuck off Observation
- 15 Post Mest in Paktika to make the approximately 30-kilometer hike to
- 16 FOB Sharana so he could get enough attention to merit a personal
- 17 audience with a general officer to air his grievances with the Army.
- The government has been repeating often the limited scope
- 19 and purpose of an Article 32 preliminary hearing, and that standard
- 20 is here for a reason. And the government would like to make sure we
- 21 focus on what the regulation and the Manual for Courts-Marital
- 22 require that we focus on, and that's four reasons -- four reasons why
- 23 we are here:

- 1 First, to consider the form -- whether the form of the
- 2 charges is proper;
- 3 Two, whether a court-martial would have jurisdiction over
- 4 the offenses and the accused;
- 5 Three, to determine probable cause. And probable cause is
- 6 reasonable grounds to suspect that a person has committed a crime;
- 7 and
- 8 Fourth, to make a recommendation as to disposition of the
- 9 charges or what level of adjudication they should receive.
- 10 And the government wants to stay focused on those four
- 11 questions. They don't want to lose focus.
- 12 First and briefly, a court-martial does have jurisdiction
- 13 over the accused and the offenses. He is in the military. He was at
- 14 the time of the offenses. Both of these offenses are military
- 15 offenses found in the Manual for Courts-Martial. And you have, for
- 16 your consideration, his deployment orders from 2009 and his orders
- 17 from 2015 attaching him to FORSCOM.
- 18 Second and briefly, the form of the charges is proper. The
- 19 government has followed the model specification and you, as a judge
- 20 advocate, know what they should look like.
- 21 More importantly, the government's burden here is to
- 22 present probable cause on each and every element of both charges; and
- 23 to that end, you have as evidence the testimony of three key

- 1 witnesses, Captain Billings, Major Silvino, and Colonel Baker. And
- 2 you have as evidence the accused's own statement, his two sets of
- 3 orders, and a DA 4187. Probable cause: The government has presented
- 4 probable cause in each of the charges both through the evidence of
- 5 witnesses and the accused's own words. And I'd like to take a few
- 6 minutes here to break down the evidence for each element, both the
- 7 supporting facts and the accused's own words admitting to those
- 8 offenses.
- 9 Article 85, Desertion: First -- the first element is that
- 10 the accused quit Observation Post Mest on 30 June 2009. Meaning
- 11 simply, that he was present on 29 June and gone without authority on
- 12 30 June 2009.
- The facts: Captain Billings vividly recalls seeing him
- 14 present on 29 June 2009; and then, on 30 June, he recalls how he was
- 15 woken with the news and then the brutal search that followed. And
- 16 the accused's own words confirming that he left on 30 June 2009,
- 17 "Sometime around midnight, possibly after."
- Major Silvino, who told you on the morning of the 30th,
- 19 standing in his company CP, coffee cup in hand, reviewing the morning
- 20 traffic, read a message that made him sick. He recounted the brutal
- 21 search that followed; rallying his men day after day for almost 2
- 22 months; and,

- 1 Colonel Baker, who remembered that on 30 June 2009, he was
- 2 on a convoy headed south and he had to fly back to his command post
- 3 to take charge of the recovery operations.
- 4 The second element of desertion is with the intent to avoid
- 5 hazardous duty or shirk important service. And this simply means,
- 6 the accused intended to be gone at a time when these duties would
- 7 occur.
- 8 The facts: He planned to be gone. He left deliberately
- 9 under the cover of darkness. His own words, confirming he planned to
- 10 be gone, "At least 24 hours, probably a couple of days," during
- 11 which, he knew he was expected for a guard shift, a convoy, and a
- 12 ORF.
- 13 He mailed home his laptop, Kindle, journals -- the most
- 14 important belongings for a PFC. His own words saying, "Yep, I mailed
- 15 home my laptop, journal, a couple of books, and my Kindle."
- 16 He purchased local national currency. "I got some Afghani
- 17 cash for bribes."
- 18 He purchased a disguise, a local national garment. "So
- 19 what I did was at the little local shop on the FOB, the guy had
- 20 clothes. The jammie that they would wear. The idea was that if I
- 21 put that on over my clothes and put on a typical head wrap on my
- 22 head, at a distance, any of the locals would see an average guy
- 23 walking through the desert."

- 1 He e-mailed his girlfriend, his family, his friends, Kim.
- 2 He confirmed that. And when he left the facts were, he left his
- 3 weapon, his NODs; and he took only knives, water, food, a journal,
- 4 Afghan currency, and his disguise when he snuck across the top of the
- 5 hill, sneaking away from his fellow Soldiers, deliberately evading
- 6 detection and into the darkness northwards toward Malak. He planned.
- Now, the law says it is not enough that an accused is
- 8 motivated by a desire to skip the hazardous duty. He doesn't have to
- 9 be scared. It is enough that his absence is intentional and he had
- 10 knowledge of the hazardous duty to be performed. The case law also
- 11 says, if an accused knew of his duties and their hazardous character
- 12 and there is evidence that he intentionally failed to perform those
- 13 duties, that is sufficient. Everything about the time and manner the
- 14 accused left was intentional. He intended to be gone, and he would
- 15 be gone long enough to miss those duties.
- The third element of desertion is that the duty performed
- 17 was hazardous and important. And all three of these duties are
- 18 hazardous, both factually and by case law. Major Silvino told you
- 19 that guard duty is hazardous. They were in a remote area of Paktika,
- 20 at a key intersection designed to stop the flow of arms and fighters
- 21 in from Pakistan. The OP was within sight of IED alley. Combat
- 22 operations were hazardous. They performed QRF duties from Sharana.
- 23 Major Silvino recounts of the Omnah mission and the complex attack.

- 1 The accused's own words said, "I was in a combat situation. A patrol
- 2 -- a platoon in an area known for IED attacks." He knew that as
- 3 well. And combat patrols are hazardous. Dismounted, moving into
- 4 villages, always moving tactically. Captain Billings described
- 5 those.
- Now, sir, case law and the benchbook says, "Important
- 7 service is service that is more important than ordinary everyday
- 8 service of Soldiers," and those certainly were. The benchbook also
- 9 tells you, "Hazardous duty is a duty that involves danger, risk, or
- 10 peril to the individual performing that duty." And I would proffer
- 11 as an example, icebreaking -- according to the case law icebreaking
- 12 in the Coast Guard is an important service.
- 13 The fourth element: The accused knew that he would be
- 14 required for three things: combat operations, guard duty, and combat
- 15 patrols. This is as simple as the accused knowing of his upcoming
- 16 duties which would occur when he was gone. He knew specifically he
- 17 was assigned to a guard shift. He was supposed to be on the convoy
- 18 back; and as a member of the platoon, he would be called upon for QRF
- 19 duty.
- Captain Billings told you guard shifts were 1 to 4 hours
- 21 long. Shifts were briefed daily. They were posted in writing in the
- 22 turret of the MRAP. The schedule is really important on the
- 23 observation post. Soldiers need to know when they would be working

- 1 and when they'd have some down time. It was an important fixture in
- 2 their lives. And the accused -- his own words said, "So that left a
- 3 gap before it came to be my turn again. I left a gap of -- they
- 4 wouldn't be calling for me until 5:00 or 6:00 the next morning. That
- 5 left a gap of nobody knowing I was gone until that morning." He knew
- 6 his shift.
- 7 Captain Billings also told you the platoon knew they were
- 8 going on a convoy back to Sharana that day, 30 June. They'd spent
- 9 the day before cleaning up the construction debris around the
- 10 observation post, packing up their living areas, packing their rucks,
- 11 loading up the vehicles. They were ready to roll out on the 30th
- 12 when third platoon came in. The accused's own words, "I chose that
- 13 particular time because that should have been the last day we were on
- 14 the TCP -- Mest, which meant that 3rd Platoon would have been
- 15 prepared to come out."
- And that he remained absent -- the fifth element is that he
- 17 remained absent until 31 May 2014. You have the testimony of
- 18 witnesses and the personnel action documenting that date.
- Now, sir, with regard to desertion, the government has not
- 20 charged desertion with the intent to remain away permanently.
- 21 Desertion with the intent to remain away permanently is a different
- 22 offense. The accused committed desertion with the intent to avoid
- 23 hazardous duty and shirk important service. He committed this the

- 1 minute he crept out of the boundaries of Observation Post Mest, on 30
- 2 June 2009, knowing he would miss his duties. He knew of the duties,
- 3 he knew of their nature, and he intended to miss them.
- 4 The government would remind the hearing officer that the
- 5 accused's motive, while interesting, is legally irrelevant. The
- 6 defense wants you to look at this shiny light over here. We ask you
- 7 to focus on the law. Case law has properly and clearly distinguished
- 8 between motive and intent for decades. Motive, or the underlying
- 9 reason for doing something, is not relevant on the merits and does
- 10 not constitute a defense.
- 11 PHO: It's not relevant on the merits, but it is mitigating,
- 12 correct?
- 13 TC: It is a matter for sentencing, sir.
- 14 PHO: Potentially mitigating or aggravating, depending on the
- 15 circumstances?
- 16 TC: Roger, sir.
- 17 His intent is what matters. And his intent was to walk off
- 18 the observation post, knowing that in walking off he would miss his
- 19 duties. He knew that his desertion naturally and probably would
- 20 result in him missing his duties. He specifically admits this in his
- 21 statement. He intended to be missing long enough that his absence
- 22 from those duties would raise an alarm. One simply does not walk off

- 1 through the Afghan wilderness and then return to duty as if nothing
- 2 happened.
- 3 The accused is also charged with Article 99, Misbehavior
- 4 before the Enemy, and that has four elements:
- 5 First, he had a duty to defend Observation Post Mest and
- 6 Task Force Yukon. He was a Soldier of 2nd Platoon. His duty -- the
- 7 essence of why he was on Observation Post Mest was to defend it, to
- 8 pull guard, to watch out for his duty [sic], to build bunkers,
- 9 defensive positions. Colonel Baker told you, platoons were the main
- 10 action unit in this type of conflict. You have Captain Billings'
- 11 testimony about how they designed and constructed the observation
- 12 post, and Major Silvino told you the purpose.
- But the duty doesn't stop there. The accused was part of a
- 14 larger unit, a larger task force, and that of Task Force Yukon of
- 15 which he played a part. And that observation post was part of the
- 16 larger fabric or mesh of the task force, and we all know the duty of
- 17 each Soldier is to defense his fellow Soldier. Each person must
- 18 fulfill his duties at this level for the next level to function and
- 19 so on.
- Two, the accused committed intentional misconduct. The
- 21 government has alleged three types of intentional misconduct: that
- 22 he left alone; that he left without authority; and he wrongfully
- 23 caused search and recovery operations.

- 1 The facts are clear that he left the observation post
- 2 alone. He snuck away. He knew it was wrong because Captain Billings
- 3 briefed, almost every day, the buddy rule. "Let a buddy know you are
- 4 going to the latrine." "Never walk up the hill by yourself."
- 5 "Always be with a buddy." Every patrol brief, "Stay together. Stay
- 6 with the team. Move tactically."
- 7 In the accused's own words he described how he left by
- 8 himself. And, remember, intentional misconduct is conduct with a
- 9 wrongful intention, not just negligence. His misconduct was
- 10 intentional. He left without authority. That's undisputed. He had
- 11 no authority from his platoon leader, his company commander, or his
- 12 battalion commander to leave.
- 13 And he wrongfully caused search and recovery operations.
- 14 Search and recovery operations are meant to recover Soldiers or items
- 15 that are lost. It's not a tool to be used to gain personal
- 16 notoriety. He wrongfully triggered search and recovery operations to
- 17 gain attention to himself. He wasn't accidentally lost. His own
- 18 words, "I knew that if a DUSTWUN was called from a Soldier
- 19 disappearing, that call goes not only all the way up to the Army
- 20 command, it goes to the Air Force. It goes to the Marines. It goes
- 21 all the way to the States. It goes to every high point and everybody
- 22 finds out about it." No one knows what happened to him. That call
- 23 goes out. It hits every command. "If I go DUSTWUN, I am going to

- 1 get my chance to talk to a General." He deliberately left and
- 2 intended to be gone long enough to trigger search and recovery
- 3 operations.
- 4 The third element is, that he endangered the safety of Task
- 5 Force -- of Task Force Yukon and Observation Post Mest. Now, to
- 6 endanger is to subject one to a reasonable probability of harm --
- 7 reasonable probability. And it is understated, sir, to say that the
- 8 Soldiers in Task Force Yukon were subjected to a reasonable
- 9 probability of harm. They were exponentially endangered by the
- 10 accused's actions. They were exposed to harm. Starting with that
- 11 unplanned nine-man patrol of fatigued Soldiers. He endangered the
- 12 observation post because Captain Billings had to leave behind only a
- 13 skeleton crew and take out an unplanned patrol. Moving all the way
- 14 up to task-force-wide recovery operations, endangering the task
- 15 force. Months of grueling fatigue; little water; almost no sleep;
- 16 always moving; always short on food; working in the brutal Afghan
- 17 heat during the day and freezing at night; vastly increased IED
- 18 exposure; taking fire and hits with IEDs; increased air assaults.
- 19 The task force moved into places it had never gone before, moving
- 20 down un-cleared routes.
- 21 But the accused knew this would happen. He knew troops
- 22 would be called out for DUSTWUN. "An alert would go out." "I chose
- 23 that particular time because that should have been the last day we

- 1 were on the TCP and 3rd Platoon would have been prepared to come out
- 2 and would have been that support."
- 3 Sir, this element is complete when Lieutenant Billings
- 4 takes out that nine-man patrol, but the facts are more than that. He
- 5 endangered the entire task force.
- And fourth, the act occurred before the enemy. Facts:
- 7 Afghanistan is a combat zone. Observation Post Mest is one of the
- 8 most remote OPs in Pakistan [sic]. It is at a critical intersection,
- 9 one designed to stop the flow of arms and fighters coming in from
- 10 Pakistan, right down the road from IED alley, within sight. The
- 11 observation post was set up as a defensive position, bunkers,
- 12 claymores, MRAPs arrayed tactically covering sectors of fire. The
- 13 definition of before the enemy.
- 14 And the accused's own words acknowledged this. He
- 15 acknowledged that on the Omnah mission he was involved in a complex
- 16 attack with small arms and RPGs. "Here I am, a Private First Class,
- 17 standing in Afghanistan, a war zone. We've been blown up. We've
- 18 been shot at."
- Now, sir, the benchbook tells you, "before the enemy" is
- 20 not measured in distance and certainly doesn't require a face to face
- 21 with the enemy for the offense to be complete. "Before the enemy" is
- 22 a term of art that encompasses a tactical relationship between an
- 23 accused and the enemy and is specifically not a question of distance.

- 1 The base does not have to be under attack in order for an offense to
- 2 be before the enemy. If a unit is postured, ready to participate in
- 3 either an offensive or defensive battle, and its weapons are capable
- 4 of delivering fire on the enemy and, in turn, are so situated that
- 5 they are with effective range of enemy weapons, that unit is before
- 6 the enemy. Claymores, tactically arrayed trucks. And the accused
- 7 went face to face with the enemy, point blank, when he encountered
- 8 and was taken captive by Taliban elements.
- 9 I'd like to take a few minutes and address some of the
- 10 things the defense has presented. The government is certainly not
- 11 disagreeing that the accused has injuries and that he has suffered.
- 12 Indeed, he has suffered greatly. But I'd like to use an analogy
- 13 here. If a person goes out and robs a bank and gets away. He gets
- 14 in his car, drives away and, while fleeing the bank robbery he is
- 15 involved in a horrific crash -- injures himself, loses his leq. He's
- 16 not then allowed to say, I shouldn't be punished for robbing the bank
- 17 because I was injured, because I lost my leg. He still committed a
- 18 crime, and he still needs to be held responsible and face those
- 19 consequences.
- The defense also tried to imply some things about mental
- 21 health, but let's take a look at the actual evidence. The testimony
- 22 is that the accused is very intelligent, well read, bright; but he
- 23 was just the kind of guy who didn't like to go out drinking and

- 1 carousing with other infantry Soldiers. He wasn't really into joking
- 2 about women or that kind of stuff. He was a little different. He
- 3 wanted to kick in doors instead of maybe doing or understanding a
- 4 hearts-and-minds mission. Was he immature? Yes.
- 5 The defense has submitted for your consideration a form by
- 6 Dr. Lange, one of the top Army forensic psychologists. And I'd like
- 7 to point out, sir, the rest of what the form actually says. Dr.
- 8 Lange says that in 2009, at the time of the alleged criminal
- 9 misconduct, the accused was able to appreciate the nature and quality
- 10 and wrongfulness of his conduct. And he also says, the accused is
- 11 able to understand the nature of the proceedings against him and to
- 12 conduct or cooperate intelligently in his defense. He knew the
- 13 nature and quality of his actions, and he can cooperate
- 14 intelligently.
- 15 PHO: That's true to the affirmative defense, but we also have a
- 16 specific-intent crime here.
- 17 TC: Um-hmm [indicating an affirmative response.]
- 18 PHO: Were you going to address that?
- 19 TC: No, sir.
- 20 PHO: Okay.
- 21 TC: And the last purpose as to why we are here, and that's a
- 22 recommendation as to disposition. We know that there is probable
- 23 cause that he committed desertion and misbehavior before the enemy.

- 1 Those charges and the facts supporting them, are the essence of what
- 2 charges belong in front of a general court-martial. And if there is
- 3 anyone who doubts that these charges are serious, know this: The
- 4 military is a profession of arms, and the keyword here is
- 5 "profession." Order, discipline, and -- yes -- rank structure, and
- 6 obedience to orders matter. His actions were the antithesis of that
- 7 profession. His actions on 30 June 2009, a Private First Class
- 8 deliberately, single-handedly, and knowingly changed the mission of
- 9 the United States forces in Afghanistan. In a structured system such
- 10 as our military, the tail cannot wag the dog. With his deliberate
- 11 disregard for the consequences by knowingly and deliberately setting
- 12 out to desert his post, leave his fellow Soldiers behind, cause a
- 13 DUSTWUN and search and recovery operation, he did just that. There
- 14 was nothing accidental about what he did. He created the
- 15 circumstances that brought him here. There are consequences to those
- 16 actions and those consequences should be a general court-martial.
- The defense may argue that he's suffered enough and that
- 18 you should just let him go home. The government would argue that
- 19 this is narrow minded and more appropriately a matter for sentencing
- 20 at a general court-martial.
- 21 But, also, to end the deliberation there ignores the larger
- 22 purpose and heart of why we are here at a preliminary hearing. A
- 23 court-martial is about the accused and his misconduct, but it is also

- 1 about more than that. It's about his victims. In this case, the
- 2 unit, the Soldiers, the task force who searched for him for months in
- 3 the heat, and dirt, and sweat, and misery of Afghanistan in July and
- 4 August 2009. And it's about the Army as a whole and the leaders who
- 5 carried on for 5 years seeking him.
- The bottom line is that a general court-martial will make
- 7 available the full range of punishments to the fact finder. The
- 8 government doesn't believe that this misconduct is appropriate for a
- 9 special court-martial or a misdemeanor level offense. It's more than
- 10 mere bad conduct. Thousands of lives were affected and he
- 11 singlehandedly shaped our mission in Afghanistan. The accused needs
- 12 to square himself with the military for what he did and the
- 13 appropriate forum for that is a general court-martial.
- 14 Thank you.
- 15 PHO: One clarification. You mentioned a special court-martial
- 16 is not appropriate because it would be roughly equivalent to a
- 17 misdemeanor level offense ----
- 18 TC: Yes, sir.
- 19 PHO: --- and I presume by saying that -- that because the
- 20 maximum jurisdictional punishment of a special court-martial is 1
- 21 year, that it would be a misdemeanor level. That said, it's still --
- 22 if the crimes for which he's alleged to have committed -- if he's

- 1 found guilty at a special court-martial, that would be -- he would be
- 2 considered a convicted felon at that point; correct?
- 3 TC: He would have a federal conviction.
- 4 PHO: He would have a federal felony conviction?
- 5 TC: No, sir. Misdemeanor crimes usually carry up to 1 year in
- 6 the civilian sector, that's why we compare it to the special
- 7 court-martial.
- 8 PHO: Okay. We'll have to disagree on that one.
- 9 TC: Roger, sir.
- 10 PHO: I will review the law just to make sure, but we'll have to
- 11 disagree.
- 12 Defense?
- 13 [The civilian defense counsel displayed slices from Defense Exhibit E
- 14 throughout his closing statement.]
- 15 CDC: Thank you, Colonel.
- And as I begin, I'd like to employ a PowerPoint. I'm not a
- 17 PowerPoint guy, so please be patient. There we go. Thank you. And
- 18 I apologize to the -- because of the layout you may ----
- 19 PHO: It's okay.
- 20 CDC: --- get a neck-ache out of this, but the medical
- 21 evaluation board can fix you right up on that.
- 22 As I begin this, I would like to -- this will only take a
- 23 few minutes by the way. I would like to note for the record that my

- 1 client is deeply grateful to President Obama for saving his life.
- 2 He's also deeply grateful for the people who exerted themselves to
- 3 rescue him.
- Now, let's -- that's a picture we've seen before. Let me
- 5 walk through this fairly quickly, and let's see if I can help focus
- 6 the conversation. These are what I think are the basic issues. The
- 7 primary issue is probable cause, obviously. Defense has come into
- 8 the picture by their mitigating factors as prescribed in the Manual,
- 9 that's one of the considerations to be taken into account.
- 10 You have to make a recommendation. So it's -- one would
- 11 want to consider what are the -- what is the range of possible
- 12 recommendations and then the sort of bottom line, what course of
- 13 action should be recommended.
- So, on probable cause -- and I'm not going to argue a lot
- of law with you because you're -- I'm sure you're going to be going
- 16 back and hitting the books and all that. But just a few brief
- 17 remarks. I have read with interest a case from 1995 called *United*
- 18 States against Gonzalez, 42 MJ 469 (1995) which, by the way, is the
- 19 subject of an article by Colonel Lietzau. It's a comment that
- 20 appeared in the Naval Law Review in 1997, the citation is 44 Naval
- 21 Law Review 287, the title is Shirking Important Service that Isn't:
- 22 Desertion under United States against Gonzalez, and the point that
- 23 Colonel Lietzau -- who is known to any military justice practitioner

- 1 as well as law of war people -- is that in that case the Court of
- 2 Military Appeals -- or, I guess, maybe they had become the Court of
- 3 Appeals for the Armed Forces by that point -- distinguishes between
- 4 the intent part -- the first and the second parts of Article 85 of
- 5 what I'll call short desertions of either category. And as I read
- 6 the case the test for the first part is subjective, and it would be
- 7 unfair to you to go into greater detail and have an elaborate
- 8 conversation about it because you haven't perhaps studied it. So I'm
- 9 just going to invite that to your attention.
- 10 As far as the second charge, the benchbook does have a
- 11 discussion of "before the enemy." We think that there is a
- 12 substantial question, at the very least, as to whether Sergeant
- 13 Bergdahl's conduct was before the enemy ----
- 14 PHO: Could you elaborate on that?
- 15 CDC: Yes, because it's a fact-intensive issue. And to declare
- 16 that the entire country of Afghanistan or an entire province is
- 17 before the enemy is a dramatic inflation of the reach of that
- 18 statute. The benchbook says what it says. The cases say what they
- 19 say. But that's -- from our perspective, Colonel, that is a disputed
- 20 point.
- 21 The other thing that I would like to do is -- it's
- 22 sometimes useful to actually go back and read the statute again even
- 23 though -- and, particularly, let me say, in the case of relatively

- 1 obscure provisions of the punitive articles and Article 99(3) is as
- 2 obscure as they get, aside from maybe the provision on dueling. And
- 3 the word that I would like to invite your attention to in Article
- 4 99(3) is the word "such." Again, this is not the place to have a --
- 5 you know, a lawyer's conversation about, you know, teasing things out
- 6 of the statute. That's not a good use of hearing time. But the
- 7 answer -- the point that I think emerges if you read the actual text
- 8 of 99(3) is the reference to "such command, unit, place, or military
- 9 property." If you look at it, you say, "Ah, well what is the work
- 10 that the word 'such' is doing there?" And the answer is it's a
- 11 reference to the immediately preceding subsection of Article 99,
- 12 which makes it clear that it has to be a command, unit, place, or
- 13 military property, which it is the individual's duty to defend. And
- 14 I'm here to tell you that the only possible reference that could have
- 15 been intended in this case is OP Mest and not some larger command.
- 16 End of comment on that.
- 17 As you know, the Manual affords us the opportunity and, I
- 18 guess, it imposes on you the duty to at least consider defenses. And
- 19 let me just speak on this. We have indicated a defense of
- 20 condonation of desertion, later in the -- shortly -- very soon in
- 21 this presentation, I'll give you the R.C.M. reference for this, but
- 22 returning a Soldier to regular duty knowing of a -- knowing or having
- 23 reason to believe that the Soldier has committed desertion

- 1 constitutes condonation. And in this case Sergeant Bergdahl was
- 2 restored to regular active duty. The Department of Defense and, I
- 3 think, the Army Public Affairs people at Fort Sam made this very
- 4 clear back in July of 2014, and he's been there ever since.
- 5 The second ----
- 6 PHO: Do you have any case law on that?
- 7 CDC: No. There isn't any case law on it. This is a very
- 8 obscure part of the forest. I recognize that. And yet it's there in
- 9 the Manual, and I'll give you the reference in a minute.
- 10 PHO: Well, no, and I have actually reviewed that reference. And
- 11 the reason I ask is I note in your letter to General Milley regarding
- 12 disposition, you suggest that the time was not yet ripe to make a
- 13 disposition because of your client's health. So, you know, it seems
- 14 to me that, you know, do we possibly not have condonation here where
- 15 defense is suggesting that he's not ready and that the case is not
- 16 ripe yet for a decision.
- 17 CDC: I'm going to disagree with that because the fact is the
- 18 Army had him in a job. And he was not a basket case, he was not in -
- 19 on sick duty. He was in a job. That's -- and the Army said, "He's
- 20 been returned to regular duty."
- Now, the second point is -- and again it's a -- it's an
- 22 obscure point. And I'm looking at your legal advisor as I say this.
- 23 I'm sure you'll have an interesting time as you drill down into that,

- 1 but here you have an absence terminated by -- not apprehension, not
- 2 surrender but by the criminal act of third parties. And our view,
- 3 obviously, is that that criminal act of third parties terminated the
- 4 absence. And obviously there is a question of impossibility to
- 5 return after he was kidnapped, and we heard in depth about that
- 6 today.
- 7 Charge II: Let me briefly -- and again I'm pulling the
- 8 statute in front of me. Charge II is a charge that emerged from some
- 9 source other than General Dahl's report. General Dahl had legal
- 10 advice, and Charge II is entirely missing. Talk about missing --
- 11 that's missing from his report. And what I can say is, I think it's
- 12 a grave abuse of Article 99(3) to treat this as a -- to treat the
- 13 facts and circumstances about which you've heard as a 99(3). An
- 14 effort, I imagine, to ratchet up my client's exposure, maybe to --
- 15 well, I'll just leave it at that -- to ratchet up my client's
- 16 exposure.
- And may I have the charge sheet? Do we have that handy?
- 18 March 25th.
- 19 [Pause.]
- 20 Or if the court reporter -- does the court reporter have it
- 21 handy?
- 22 [The court reporter indicated a negative response.]
- 23 CDC: No. Okay.

- 1 [Pause.]
- 2 CDC: So I'm referring to the charge sheet executed by the
- 3 special court-martial convening authority, and I'll have more to say
- 4 about his viability as a special court-martial convening authority
- 5 since he's the Type I accuser in this case in a few minutes. But
- 6 Charge II, I'm looking towards the end. As I indicated before, it
- 7 expands inappropriately the -- the reach of this by going beyond OP
- 8 Mest. And the last clause which, you know, does the work, reads as
- 9 follows: "...by intentional misconduct in that he left OP Mest alone,"
- 10 now, that's an AWOL; "he left without authority," that's an AWOL;
- 11 "and he wrongfully caused search and rescue operations." And I
- 12 believe that that is absolutely not what the drafters of Article
- 13 99(3) contemplated. I don't think Article 99(3) was intended to
- 14 provide a mini-replica of Article 134, and I think it's an abuse of
- 15 the Code. And it's certainly multiplicious; but, in any event, a
- 16 distortion and a distention of the reach of this criminal statute.
- 17 That's all, I think, I want to say on that subject.
- Now, with respect to desertion, you've -- probably more has
- 19 been said about desertion in the last 2 days than has been said on
- 20 the subject in the sum total of Article 85 cases tried under the UCMJ
- 21 in the last 5 years. So I'm not going to go into great detail.

- I'm going to look at the third bullet. It was obviously
- 2 far more dangerous outside the wire alone and unarmed than it was
- 3 inside and armed.
- 4 And I also -- as you can see from this slide, this is
- 5 charged in the spec as a 5-year desertion, but Sergeant Bergdahl was
- 6 captured within hours.
- Now, on condonation, here's the reference, Colonel, all the
- 8 way at the bottom, and what you can see are factors that we think are
- 9 pertinent. And I believe my letter to General Milley, which has been
- 10 admitted in evidence, gives citations to the statements on behalf of
- 11 the service, on behalf of the government, that he had been restored
- 12 to full duty in July 2014.
- Now, R.C.M. 306 is sort of the -- even though it, in direct
- 14 terms, speaks to the decision of the convening authority, necessarily
- 15 since you all have to make a recommendation to a convening authority,
- 16 whoever that may be, it sort of -- it has to be considered here
- 17 because it's going to apply later on. And these are things that, it
- 18 seems to me, are particularly salient.
- The first bullet is probably the most fundamental
- 20 proposition of disposition policy that the president has prescribed.
- 21 Obviously, mitigating and extenuating circumstances have to be taken
- 22 into account, the character of the accused, cooperation and the

- 1 apprehension of others, admissibility, and other likely issues. This
- 2 is just the framework. Let's see what specifics we can talk about.
- 3 Mitigation: There was powerful evidence with respect to
- 4 the duration of Sergeant Bergdahl's captivity. His treatment in
- 5 captivity. His escape attempts. His conduct in captivity. There
- 6 was evidence of -- powerful evidence of innocent motivation. There
- 7 was extensive evidence of his cooperation with authorities. It's --
- 8 we didn't like, you know, beat this to death; but in the record
- 9 you'll find a letter from the Washington Delegation of the
- 10 International Committee of the Red Cross indicating Sergeant
- 11 Bergdahl's cooperation there. The record reveals that he cooperated
- 12 with the Federal Bureau of Investigation, which is trying to bring
- 13 his kidnappers to justice in our country. Obviously, Sergeant
- 14 Bergdahl cooperated extensively with General Dahl. And as General
- 15 Dahl indicated, Sergeant Bergdahl was under absolutely no duty -- and
- 16 we all know this -- he was absolutely under no duty to give a
- 17 statement, much less a statement that took, I think, General Dahl
- 18 estimated a day-and-a-half, answering every single question.
- The mitigation includes the permanent profile report about
- 20 which Colonel Rosenblatt interrogated the witness; the psychological
- 21 diagnosis that's before you; and the need for continuing medical and
- 22 psychiatric or psychological care. This is totally undisputed.

- 1 I'm going to leave this [pointing to the slide] up there
- 2 for a second because I think it's probably the single most potent
- 3 factor before you and through you and the officials higher in the
- 4 chain of authority for this matter. I hope my math is correct. I
- 5 actually double checked it. I'm not a math whiz. But my little
- 6 calculator produced a total of 1,797 days over 2 -- 4 -- nearly 5
- 7 years. That's all I have to say about that slide. It literally
- 8 speaks for itself.
- 9 I think one of the witnesses referred to this image.
- 10 Somebody's having a good time in this picture, and it's not my
- 11 client. The image -- the individual, whose arm only is shown is, I
- 12 think, holding a dog tag?
- 13 [The accused indicated an affirmative response.]
- 14 CDC: Yes.
- Behavior in captivity: This is -- you just heard this
- 16 testimony, so I'm just going to quickly flash by this. You don't
- 17 need to have me dwell on it. It's utterly unrebutted. And to his
- 18 credit the witness, Mr. Russell, spoke, I think, impressively about
- 19 the really unfair assertions that have been made about my client in
- 20 our country's media. We're -- at this table we're big about the
- 21 First Amendment. People can do that, but it's not fair.
- Consequences of captivity: I think you've heard powerful
- 23 evidence on these subjects.

- 1 The fourth one there is, I guess, it's by -- it's tied, I
- 2 guess, to the physical limitations but probably also the
- 3 psychological evidence that you heard that's unrebutted.
- I really don't know where the path leads based on -- for my
- 5 client, based on what we've heard in terms of his future. I'd like
- 6 to see him go to college. He'd like to go to college. But, you
- 7 know, as a practical matter, I see a quite rocky path for viability
- 8 in our world, the world of the workplace and so forth -- and the
- 9 medical and other needs.
- This is an interesting issue. I touched on this with
- 11 General Dahl. This is -- this is what the document says from the
- 12 Coast Guard. This is unrebutted. This is not -- you know, needless
- 13 to say, we were extremely gratified that General Dahl was willing to
- 14 testify, which he did at some inconvenience to himself and entirely
- 15 voluntarily. But I will say this is a somewhat different account,
- 16 and this is the official account of what was going on at Training
- 17 Center Cape May.
- With regard to the unexplained waiver by Army recruiting,
- 19 General Dahl addresses this matter in his executive summary.
- 20 Unfortunately, it's where -- it's not yet public, but I'm hoping that
- 21 ACCA will fix that. It -- to a -- a reasonable -- withdrawn. A
- 22 reasonable observer would, I think, have grounds for believing this
- 23 was an improvident enlistment. You know, I'm not here to hit the

- 1 Army over the head about this. In candor, General Dahl, if you read
- 2 his entire executive summary, concluded that it wasn't an improvident
- 3 enlistment. It was, you know, it unfolded in a way that everyone
- 4 here would obviously prefer hadn't happened. But I think a
- 5 reasonable observer, nonetheless, would wonder why the Army would've
- 6 taken a person who, within the relatively recent past, had
- 7 bilged [sic] out of Coast Guard recruit training -- boot camp for
- 8 this kind of reason. And this is pertinent also to the testimony of
- 9 ex-Sergeant Leatherman and other witnesses as to whether this would
- 10 have been -- whether it would have been useful information to Army
- 11 authorities, Army commands, even low down commands to know this in
- 12 dealing with the other indicators that Sergeant Bergdahl presented,
- 13 then-PFC Bergdahl.
- 14 Innocent motivation: General Dahl had an excellent
- 15 opportunity to investigate this, and my hat is off to the Army for
- 16 dedicating the resources they did. They spared no effort and got a
- 17 general officer to run a, you know, a not -- it's unbelievable
- 18 actually -- nonstop, put everything else aside, straight ahead with a
- 19 substantial staff to stand up basically a whole unit, just to
- 20 investigate this. Having done that, this is where General Dahl, who
- 21 is, I think -- you know, whose strengths are utterly apparent based
- 22 on his testimony -- that led General Dahl to conclude that while
- 23 Sergeant Bergdahl's concerns may have been naïve and unrealistic,

- 1 they were sincerely held. And I think that comes through loud and
- 2 clear repeatedly, not only in General -- explicitly in his statement
- 3 -- in his executive summary -- excuse me -- or in his report but also
- 4 on the witness stand.
- 5 The last bullet has to do with the point about leaving his
- 6 weapon behind and not wanting -- not taking the weapon, the taking of
- 7 which would have gotten somebody else in trouble.
- 8 Moving right along, I already mentioned most of these, SERE
- 9 -- the SERE program has benefited from this debriefing. The hostage
- 10 recovery program. I mentioned the others. You've already heard
- 11 that. Moving along.
- Now, one of the things that you should do is alert the
- 13 recipients of your report to potential legal and other issues that
- 14 could emerge down the road. And just to mention a few of these as
- 15 I've had occasion to say in the past: I believe the Niagara of abuse
- 16 that's been directed to my -- at my client for over a year raises a -
- 17 a grave threat to his right to have a fair trial in the event this
- 18 case were to be referred to a court-martial. Yes, I know all about
- 19 voir dire; but I'm here to say that the amount of abuse and
- 20 vilification that continues to this instant is without precedent.
- 21 I've been involved with military justice since 1969, and I cannot
- 22 think of a case that engendered the kind of hostility and hostile
- 23 coverage, to be perfectly blunt, as this one.

- 1 Not to burden you because this is -- this is not your
- 2 function. I mean, you've had been appointed by somebody to be --
- 3 you're not a statutory preliminary hearing officer. You've been --
- 4 this is an ad hoc appointment for you; however, -- and, therefore,
- 5 you don't have anything to rule on in terms of manipulation of the
- 6 selection of a general court-martial convening authority or, for that
- 7 matter, the violation the Secretary's non-delegation directive as to
- 8 who should be the ultimate decision maker or as to the legality of
- 9 the condition that General Milley put on Lieutenant Colonel Burke's
- 10 authority as ostensible convening authority. But those -- you know,
- 11 somebody is eventually going to have to address those.
- 12 As you may be aware -- I don't recall whether this is in
- 13 the record; but it's a fact there were two extraordinary writ
- 14 petitions that were presented to the Army Court of Criminal Appeals
- 15 and then the Court of Appeals for the Armed Forces. The Court of
- 16 Appeals for the Armed Forces denied both of them without prejudice to
- 17 presentment in the presentation in the ordinary course of appellate
- 18 review if there is a court-martial and a conviction. Those are
- 19 issues that are going to arise. They are going to travel with this
- 20 case and are not unlikely to require another Article 32.
- 21 We have a grave problem with Lieutenant Colonel Burke
- 22 serving in any capacity because he is a Type I accuser. He signed
- 23 the charge sheet, and we cited authority for this and, you know,

- 1 that's in the case. We've asked General Abrams to modify the
- 2 referral document to fix this problem, and it hasn't been fixed. I'm
- 3 just saying it's an issue that's in the case.
- As you know, The Judge Advocate General of the Army blocked
- 5 consideration by -- is it Army G-2 -- of our request that I be
- 6 afforded a top-secret SCI clearance, and that will be an issue in the
- 7 case. And if we gain traction on that, as I believe we should, we'll
- 8 be back here again at another Article 32 hearing.
- 9 PHO: All right. And, you know, just to make sure the record is
- 10 clear, I've never seen the memo. So I don't know who blocked the
- 11 security clearance ----
- 12 CDC: Yeah.
- 13 PHO: ---- request, but ----
- 14 CDC: There's so much paper, Colonel, in this case that I can't
- 15 always keep track of what we've burdened you with and what we haven't
- 16 burdened you with, as you -- but as you intuited, there are aspects
- 17 to the case that, you know, are in other peoples' part of the forest.
- 18 PHO: Correct.
- 19 CDC: But I'll just represent to you that that's certainly going
- 20 to be an issue.
- 21 PHO: Certainly. I understand that you have been denied a
- 22 top-secret security clearance for purposes of the hearing.

- 1 CDC: No. Actually what I've -- what I've been denied is even a
- 2 decision ----
- 3 PHO: You're right.
- 4 CDC: ---- by G-2 on whether I'm ----
- 5 PHO: I stand corrected.
- 6 CDC: Yeah. Yeah. Sorry to be lawyerly -- picky.
- 7 PHO: That's okay. That's your job.
- 8 CDC: We still haven't gotten an investigator. And this is
- 9 unbelievable; but in all the time that we've been waiting, we still
- 10 haven't gotten investigative assistance.
- And this is as good a time as any for me to mention with
- 12 great appreciation the work of Captain Foster, as well as Lieutenant
- 13 Colonel Rosenblatt. The three of us have had to take time from our
- 14 legal functions to perform what otherwise would have been the work of
- 15 investigators. And that's not right, and it's not fair.
- 16 There is in the case a HIPAA violation, and it's there.
- 17 You know, where the path leads for that remains to be seen.
- 18 As you know from our conversation about the statement that
- 19 my client gave to General Dahl, we have an objection on the ground
- 20 that the no cleansing warning was given. That's an issue in the
- 21 case.
- The other bullets, I think, are self-explanatory with the
- 23 exception of the last one. As I believe you -- I believe you are

- 1 aware -- and correct me if I am mistaken on this -- my client is not
- 2 permitted to go off this reservation without being accompanied by one
- 3 or two NCOs. And although that has been -- we have been told that
- 4 the purpose of that is what I'll call force -- one-man force
- 5 protection -- mainly for the physical protection of my client against
- 6 injury -- it also qualifies as a pretrial restriction. And there
- 7 have been instances in which his requests for leave or liberty have
- 8 been denied.
- 9 So what are the possible recommendations? I'm getting to
- 10 the home -- I'm in the homestretch, Colonel. Obviously to permit the
- 11 MEB to proceed as was recommended in the profile report. Many people
- 12 leave the Army with administrative separations. These can be
- 13 stigmatizing or non-stigmatizing. Obviously, nonjudicial punishment
- 14 is a possible form of disciplinary action. The rest we're all
- 15 familiar with.
- 16 So what should be recommended? Our recommendation is that
- 17 you recommend that the medical evaluation board process should be
- 18 permitted to go forward. And in terms of the basic matter at hand,
- 19 we are willing to note that the record provides probable cause for a
- 20 1-day AWOL, in violation of Article 86.
- Thank you.
- 22 PHO: Okay. All right, before we close I just want to take a
- 23 moment to be sure that we are on the same page for the exhibits that

- 1 I will be considering. So, right now, I've got the court reporter
- 2 worksheet -- exhibit worksheet. So I just want to go over it to make
- 3 sure that we're on the record for what we have.
- 4 So for prosecution exhibits:
- 5 Prosecution Exhibit 1, the sworn statement of Sergeant
- 6 Bergdahl, dated 6 August 2014; 373 pages long;
- 7 Prosecution Exhibit 2, Sergeant Bergdahl's attachment
- 8 orders to FORSCOM, dated 9 January 2015;
- 9 Prosecution Exhibit 3, Sergeant Bergdahl's deployment
- 10 orders, dated 1 May 2009. And that is a two-page document; and
- 11 Prosecution Exhibit 4 is Sergeant Bergdahl's DA Form 4187,
- 12 changing his status from captured to present for duty, dated 30 March
- 13 2015. And that is a two-page document.
- 14 In addition I have, as demonstrative evidence only, the
- 15 unclassified map of Afghanistan that was displayed to one of the
- 16 witnesses.
- 17 Is that a complete and accurate accounting of the
- 18 government evidence?
- 19 TC: Yes, sir.
- 20 PHO: Okay. For the defense, I have four exhibits plus, now, one
- 21 demonstrative exhibit.
- The first is Mr. Fidell's letter to General Milley, and I
- 23 don't have the total number of pages here -- I believe it's 28;

- I have the executive summary of Major General Dahl's report
- 2 -- not just the executive summary -- his actual report of
- 3 investigation into this matter, 59 pages;
- 4 I have a -- the short-form Rule for Court-Martial 706
- 5 sanity board findings, and that is dated 27 July 2015; and
- 6 Then I've got the DA Form 3349, the physical profile, dated
- 7 25 June 2015; and
- 8 Then lastly we have the -- we're going to have the printout
- 9 of the ----
- 10 CDC: I've handed it to the court reporter.
- 11 PHO: Okay. We're on top of it. That will be, again, a
- 12 demonstrative aid. It will not be considered substantively but will
- 13 be marked as Defense Exhibit E.
- 14 Is that a complete and accurate statement of the ----
- 15 CDC: Yes. It is.
- 16 PHO: Okay. And any objections from the government?
- 17 TC: No, sir.
- 18 PHO: Okay. Finally, we have a number of hearing exhibits or
- 19 what I'm saying is -- or my exhibits as the pretrial hearing officer.
- 20 I provided a draft list to the parties, and we will meet in an
- 21 informal session to make sure that all the documentation leading up
- 22 to this hearing is appended properly to the record. And we will go

- 1 over that just make sure that there are no missing documents, but
- 2 that doesn't need to be done on the record.
- 3 With that, that concludes the hearing. I would like to
- 4 just take a moment to thank the parties, both the government counsel
- 5 and defense counsel, for their professionalism. I thank all the
- 6 support staff. I know there was a whole lot of hard work going on
- 7 behind the scenes between paralegals, court reporters, security
- 8 managers, military police support; and I do appreciate and recognize
- 9 everyone's support.
- 10 So with that, this hearing is closed.
- 11 [The Article 32 hearing adjourned at 1535, 18 September 2015.]
- 12 [END OF PAGE]