

## **Military: Bergdahl may face life in prison if convicted**

By ALLEN G. BREED and LOLITA C. BALDOR, Associated Press

FORT BRAGG, N.C. (AP) — Army Sgt. Bowe Bergdahl, who abandoned his post in Afghanistan and was held captive by the Taliban, was charged Wednesday by the U.S. military with desertion and misbehavior before the enemy and could get life in prison if convicted.

Misbehavior before the enemy, which carries a maximum sentence of up to life in prison. Desertion carries a maximum of five years. Bergdahl could also face a dishonorable discharge, reduction in rank and forfeiture of all his pay if convicted.

The case now goes to an Article 32 hearing to be held at Fort Sam Houston in San Antonio, where Bergdahl has been performing administrative duties as he awaits the conclusion of the case. That proceeding is similar to a grand jury. From there, it could be referred to a court-martial and go to trial.

A date for that hearing was not announced.

The charges are the latest development in a long and bitter debate over Bergdahl's case. They also underscore the military and political ramifications of his decision on June 30, 2009, to leave his post after expressing misgivings about the U.S. military's role, as well as his own, in the Afghanistan war.

After leaving his post, Bergdahl was captured by the Taliban and held by members of the Haqqani network, an insurgent group tied to the Taliban that operates both in Pakistan and Afghanistan.

Last May 31, Bergdahl was handed over to U.S. special forces in Afghanistan as part of an exchange for five Taliban commanders who were imprisoned at Guantanamo Bay, Cuba.

The exchange set off a debate over whether the U.S. should have released the five Taliban members. Little is known about what the five have been doing in Qatar, where they are being monitored by the government. Some lawmakers have predicted that the five would return to the battlefield.

Sen. Lindsey Graham has said that he received information that one of the five has been in touch with members of the Haqqani network. On the flip side, Afghanistan's peace council in 2011 requested the release of one of the five, Khairullah Khairkhwa, from Guantanamo because it thought he might be able to help foster reconciliation talks with the Taliban.

Sen. Roger Wicker, R-Miss., a member of the Armed Services Committee, was asked by reporter Wednesday whether the charges raised doubts about the initial trade of Bergdahl for the Taliban members.

"I would think that it would raise doubts in the mind of the average American if those doubts weren't raised already," Wicker said.

Daniel Conway, a military defense lawyer and the author of a forthcoming book on military crimes, said he wouldn't expect the Army to seek much prison time for Bergdahl because of his time as a Taliban captive.

However, military brass needed to prosecute the case because a conviction would mean Bergdahl cannot collect special compensation as a prisoner of war, Conway said.

"He did spend X number of years as a prisoner of the Taliban - that certainly mitigates the need for him to be locked up. But as a political matter, I don't think we can stomach the possibility that he deserted his post and could receive \$300,000 in back pay for it."

Misbehavior before the enemy is a rarely brought charge, typically reserved for shameful or cowardly conduct, Conway said.

The desertion charge does not require that prosecutors prove Bergdahl had no intention of returning to his unit, a key element for more serious desertion charges. However, it could be a tough case to make, said former Army lawyer Greg Rinckey.

"It's tough to prove beyond a reasonable doubt, especially if you have someone that's been gone for five years and potentially may have some mental health issues at the time that the defense is going to bring up," Rinckey said.

Maj. Gen. Kenneth R. Dahl investigated the Bergdahl case and spent months interviewing unit members and commanders, and meeting with Bergdahl and his attorney, Eugene Fidell, a military justice expert who is also a visiting lecturer at Yale Law School.

The case was referred to Gen. Mark Milley, head of U.S. Army Forces Command at Fort Bragg. He reviewed the case for months and had a broad range of legal options.

Milley could have decided not to charge Bergdahl at all, recommend administrative action or convene a court-martial on more serious offenses.

Some within the military have suggested that Bergdahl's long capture was punishment enough, but others, including members of his former unit, have called for serious punishment, saying that other service members risked their lives — and several died — searching for him.

A major consideration was whether military officials would be able to prove that Bergdahl had no intention of returning to his unit — a key element in the more serious desertion charges.

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Baldor reported from Washington. Associated Press writers Donna Cassata, Erica Werner and Sagar Meghani contributed to this report from Washington.

