

Wrath of UCMJ: Against Crushing Bowe Bergdahl

Americans have become jaded by injustice. Wealthy and elitist citizens like Robert Durst and John du Pont bully, rape, and kill their way through life like Godzillas, law enforcement seemingly powerless to stop or even slow them. Meanwhile, poverty-stricken communities are treated like hostile territory, and then get to watch as their citizens are routinely treated worse than we treated Afghan Taliban sympathizers on combat patrols. It goes beyond simple racism, too—the recent hit series [Making a Murderer](#) features an impoverished white man systematically framed and—frankly—fucked over by both the local law enforcement community and its criminal justice system. And the success of podcast *Serial*'s first season owed as much to its producers' skill as to a boundless cultural appetite for true crime stories where the criminal is the justice system. Enter the case of Bowe Bergdahl.

In late December, 2015, the Army announced that Bowe Bergdahl would face charges of desertion and “misbehavior in the face of the enemy” during a Court-Martial. The stakes are high—Bergdahl faces Dishonorable Discharge (loss of money and benefits) and a lot of prison time. Is hanging Bergdahl up by his toes the right move? While I believe he's guilty, and think he's a snake who deserved the misery he endured when he chose to walk off-post in 2009, I don't believe the Uniformed Code of Military Justice (UCMJ) should destroy Bergdahl. Actually, although every time he speaks on *Serial* I hope the Court-Martial panel finds him guilty and maxes his punishment, upon reflection, and considering the broader situation with how justice works in the military and society, I conclude that the court should go easy on Bergdahl. Justice and mercy are rarely the same. There's precedent for military mercy, though,

and in an unusual place for an institution dedicated to enforcing strict standards for its leaders: General Officers.



I was a fan of General David Petraeus, and have positive personal feelings toward him as a leader. His punishment for divulging sensitive information was either a great precedent for mercy or a travesty of justice

What happened in March of 2015 is the most prominent example of this phenomenon that I can remember. General (retired) David Petraeus was offered a plea-deal to avoid prison time for [allowing his biographer unfettered and unauthorized access to classified material](#) (in espionage terms, a potential “honey pot” scheme). Whether one respects Petraeus, the work he did in the military and afterward as Director of the CIA, it’s difficult to see how his crime could warrant such light punishment, especially given the sentence delivered to Chelsea Manning. Petraeus received what was, by all accounts, a slap on the wrist. This type of approach is normal when it comes to higher ranking officers found guilty of misconduct.

Views on Bergdahl and his legal predicament metastasized in 2014, mostly for political reasons. For conservatives, the trading of five Taliban was tantamount to Chamberlain ceding the Sudetenland to Hitler. To Progressives, getting Bergdahl back was an act of mercy. Then, [members of Bergdahl's unit](#) (veterans and active duty) broke their silence, condemning him as a traitor and deserter, and the discussion focused on the deaths and injuries Bergdahl's act caused. Obama walked away from what he thought had been a political triumph with egg on his face, while an angry lynch mob clamored for the firing squad or the hangman.

A couple years ago my old Brigade Commander in the 173rd, then-Colonel James H. Johnson, III, [lost a rank and was forced to retire \(keeping all of his benefits\)](#) after furnishing his Iraqi lover's father with tens of thousands of dollars of contracts, engaging in bigamy, and some [other hanky-panky](#) that would actually be hilarious if it hadn't happened in real life.

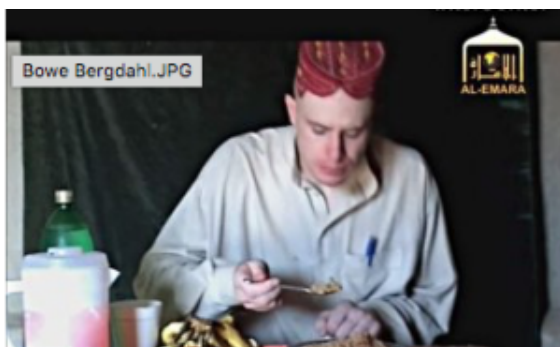
Because the argument over what should or shouldn't happen to Bergdahl has become intensely politicized if you're a non-vet, and personal if you're a veteran of Afghanistan (and the closer you get in time and in space to the corner of Paktika Province, where Bergdahl deserted, the more personal and emotional it becomes), it might seem like this is one of those scenarios where there is no answer – perfectly suited for adjudication by justice. But there is an answer, and a solution. Here's how this needs to go down.

To begin with – it was good to get Bergdahl back. Regardless of his actions, he's an American soldier, and the military doesn't (and shouldn't) let its members languish in prison – Afghan, Iranian, Mexican, wherever. Trading five or five hundred Taliban to get Bergdahl back was worth it. By the numbers, [we've been absolutely destroying the Taliban since 2001](#) – I can confirm that this is what I saw on both of my

deployments to Afghanistan, 2007-08 to Paktika Province, and 2010-11 to Kunduz Province, Taliban getting bombed, shelled, mortared, and machinegunned when they stupidly came close enough to one of our forts, blundered into one of our ambushes, or blunderingly ambushed us when we had jets, artillery, or helicopters close by (as good commanders almost always did).

I sympathize with people who expressed fear that the 5 released Taliban would join up with ISIS or the Taliban or some other rag-tag group of fighters that could not withstand a single day against the concentrated power of America's military. The Taliban and ISIS *seem* scary, and do horrible things in places that are far away. To those [conservatives](#) who live in constant terror that one of these anally fed five early-2001 former Taliban commanders, hungry for vengeance, will track them down and wage jihad on their patio: don't worry! Those Taliban are way more scared of you than you are of them. They're horrible shots. And if we ever want to kill them, we can. The trade to get Bergdahl back is not more reason to hate the soldier, even if it seems [we could have got him back for less](#).

It was good for us to retrieve Bergdahl. But the military has placed itself in a bind. If Bergdahl doesn't receive serious punishment, some say, his trial risks turning UCMJ into farce.



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As painful as it will be for veterans to hear, especially those personally invested in his adjudication, he should be allowed to separate with benefits, owing to the unusual and special nature of his case, and the fact that he's quite clearly out of his mind and always has been. The most important jury—the jury that really matters (members of the military community) already *knows* that Bergdahl's a deserter, a coward, and a man with no honor. That is already a fact, based on the facts as reported in venues like *The New York Times* as well as Bergdahl's own testimony on *Serial's* second season (although subsequent episodes reveal that Sarah Koenig believes that Bergdahl's attempts to escape from the Taliban are exculpatory and mean that he was heroic rather than cowardly, this well-intentioned but ultimately hypothetical argument is not compelling). Bergdahl admits (to an opportunistic Hollywood producer) during *Serial's* first episode that part of his motivation in leaving OP Mest was to indulge a narcissistic fantasy with himself as a cinematic protagonist on par with Jason Bourne. Bergdahl wasn't a posturing intellectual who (as it turned out) created far more problems than he resolved—he was crazy. And the military never should have let him wear a uniform.

Bergdahl should keep his benefits, lose his rank (he is not a sergeant, and his appearing as such dishonors all non-commissioned officers), and face a fine and reprimand, as did [Brigadier General Jeff Sinclair](#) (who admitted to having mistreated a subordinate with whom he claimed he was having a consensual sexual relationship). This will be bad for Bergdahl, but good for the military. After all, he's immediately recognizable to almost everyone in the military-veteran community—every time he were to enter a VA clinic or hospital, he'd face a stony silence and turned backs. He is a pariah. The best thing that the military can do is make that most powerful of gestures—conditional mercy. *Something* must be done, nobody who's served would argue that he should be released from his choice scot-free, this is an absurd and

childish claim. But what? Given the way the military handles high-ranking officer misbehavior, what should be done with Bergdahl isn't much.

The military of today uses rules that were designed for a draft military, where desertion was (and remains – see Afghanistan's military's problems with desertion) a major issue. For America's volunteer military, composed of ([mostly](#)) healthy young men and women, the problem with many young soldiers is keeping them engaged while they're *not* in dangerous areas. Restraining action is very different from *compelling* it – and the stories that infantrymen tell themselves and each other are how to get the Medal of Honor, not how to shirk or avoid the mad minute. I don't know about Iraq, I was never there, but in Afghanistan, it was all about getting out and after the enemy as much as possible. Our military should not feel threatened by desertion – the idea of honorable service among soldiers is sufficient to compel good behavior. In other words, people serve because they want to, not because they're afraid of punishment, as they were in the past. Unless, of course, those soldiers are unhinged, as Bergdahl clearly was (and is).

Apart from the military not needing to enforce this archaic rule about desertion and misbehavior (although it seems prudent to keep the rules on the books) because soldiers and veterans will enforce it anyway as a matter of course, the best reason not to punish Bergdahl severely is the one I've been making throughout, which is that the military rarely does so in a meaningful way when it comes to its officer leadership. A great deal has been made of how Bergdahl may have been responsible for the deaths of those searching for him, and for endangering the mission in Afghanistan. So let's take the case of the Air Force Major General Carey, in charge of 450 ground nuclear missiles, or about 100 times what it would take to kick World War III off in style. What happened when (I could not make this up if I wanted to) he started

drinking heavily, fraternized with two “suspicious women,” and ended up on a [three-day bender](#) while on an official trip to Moscow in 2012? What happened to the guy who was casual around the apocalypse?

He was removed from his position, reprimanded, and moved to other positions of responsibility. No loss of rank, no fine. Just—a little hangover.

If we want to be real about justice in the military, in America, it's time to stop jumping at every opportunity to squash people whose lives are already miserable, and can only be made marginally worse. It's time to treat ourselves more seriously, and use the rules equally—not to pretend that money or power or influence can keep us from that ultimate justice, which is death in a casual and uncaring universe. Bergdahl has already suffered enough, and will suffer more without the military lifting a finger. He's a marked man, now—he will never be able to live a life free of fear that one of his comrades won't track him down and beat him, or worse. Moreover, a brotherhood of which he desperately wanted to be a part has forever turned its back on him. Why rub salt in the wound? Give him an OTH discharge, treat him for the wounds he incurred in Taliban captivity, tighten up recruiting standards, and be done with it. That's essentially what's already been done with so many General Officers. Time to show a little mercy to the common man, even if the common man happens to be a one-of-a-kind nut-job like Bowe Bergdahl.