

Charges for Army Sgt. Bowe Bergdahl should wait until the facts come out according to Managing Partner Greg T. Rinckey, Esq.

Administration mum on Bowe Bergdahl discipline

By Rowan Scarborough

Monday, June 2, 2014

His former war buddies call him a deserter, but initial statements from President Obama and his aides indicate they don't want a criminal case against Army Sgt. Bowe Bergdahl. One clue: Mr. Obama brought the sergeant's parents to the White House for a photo op and referred to the newly freed soldier as "Bowe." "I was honored to call his parents to express our joy that they can expect his safe return," the president said Saturday. To retired Army officer Robert Maginnis, Mr. Obama is sending a signal to the Pentagon that he wants a happy ending. "The kid's parents were standing next to the president," said Mr. Maginnis, a military analyst for the Family Research Council. "That is a message in itself and may already be enough command influence." Meanwhile, Defense Secretary Chuck Hagel has deflected questions about any disciplinary process awaiting the ex-POW. "Sgt. Bergdahl is a member of the United States Army," Mr. Hagel said. "He's a sergeant in the United States Army. Our first priority is assuring his well-being and his health and getting him reunited with his family. Other circumstances that may develop and questions, those will be dealt with later." Sgt. Bergdahl's former platoon members say he deserted by walking away from their forward operating base on June 30, 2009, in eastern Afghanistan. He headed toward Pakistan and ended up in the hands of the violent Haqqani network, a U.S.-designated terrorist group that operates freely across the border. But the Army never listed him as AWOL or as a deserter. His official classification was "missing/captured" — in other words, a prison of war. The Army promoted him to sergeant, which is required by law when POWs reach a certain anniversary date. It intends to turn over back pay for his nearly five years as a POW. "If the Army went to all this trouble to get him released, is the Army now going to turn around and court-martial him?" said Greg Rinckey, a defense lawyer and former Army judge advocate. "I don't believe the Army is going to court-martial this soldier." "If he had been AWOL or a deserter, they wouldn't have promoted him," Mr. Rinckey said. "We don't know why he walked off. Did he suffer a mental breakdown at the time? How did he walk off? Was he in civilian clothes? Was he in a uniform and walked off? Did he throw his weapon down and walk off? We don't have those facts." In the end, Mr. Rinckey believes it's likely the sergeant will be separated from the Army, perhaps on a medical disability. Mr. Maginnis said the Army should look at collecting evidence for a

charge of desertion, a conviction for which brings a dishonorable discharge and a maximum prison sentence of five years. "Now that he is freed, the Army should re-evaluate the circumstances of his capture and, should it find personal negligence, then the command must conduct a hearing," he said. "However, I'm concerned that the Army will defer to Obama's statements, which could amount to unlawful command influence." Charles Gittins, who represented scores of military clients as a defense attorney, said if eyewitness reports are correct, then Sgt. Bergdahl "walked away from his unit in a combat situation, and he faces unauthorized absence and/or desertion charges, at a minimum. Intent is the key, obviously." The Army did an investigation following Sgt. Bergdahl's disappearance but has not issued a report. Trained military intelligence interrogators certainly will question the sergeant at some point about how he was captured and his observations of the Haqqani network and its actors. The Army has the option of launching what is called an "AR 15-6" investigation, in which one officer is appointed to determine the facts and submit a report up the chain of command, in this case U.S. Central Command. "Our focus right now is on providing him the best possible care," said Navy Cmdr. Elissa Smith, a Pentagon spokeswoman. "There will be time later to look into the circumstances of his disappearance." Said attorney Mr. Rinckey: "We have to wait for what the investigation reveals. There has been no indication other than hearsay from anything I've heard that he should be charged with anything."