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Jim Forsyth interviews Greg Rinckey on the Bergdahl affair.

Here's What Will Happen at Today's Bergdahl Hearing August 6th, 2014

After six weeks under a special Army re-integration plan, former Taliban prisoner Sgt. Bowe Bergdahl will face the next step in his return to the United States Wednesday, when he is questioned for the first time about the circumstances surrounding his capture in Afghanistan in 2009, according to Bergdahl's lawyer. "He is supposed to meet with Major General Dahl, a pretty high powered military investigator," attorney Eugene Fidell told News Radio 1200 WOAI. He said the meeting will take place at Ft. Sam Houston, where Bergdahl has been stationed for the past several weeks. The Army appointed Maj. Gen. Kenneth Dahl, who is an Afghanistan War veteran and the former deputy commander of the Tenth Mountain Division, to head the investigation into the facts and circumstances surrounding the disappearance and capture of Bergdahl from Combat Outpost Mest-Lalak in Paktika Province, Afghanistan," according to an Army statement. Bergdahl, 28, was released by the Taliban May 31st in a controversial exchange for five high ranking Taliban fighters. Bergdahl arrived at Ft. Sam Houston in mid June, and has since been undergoing a unique Army program designed to 're-integrate' Americans into society following traumatic events overseas. Fidell declined to speculate on what Bergdahl will say to the general. "He is looking forward to having all of this over and done with, and being able to move on to the next chapter of his life," he said. Greg Rinckey, a long time military attorney who has been involved in several hearings similar to this one, said the meeting will take place in a conference room, not in a courtroom, and he says it will be 'informal, not adversarial.' This two star general is going to be

talking to Sgt. Bergdahl, asking him several questions with his lawyer present," Rinckey said. "It is really not an interrogation, it's more of an interview." Rinckey, who is not involved in the Bergdahl case, told Newsradio 120 WOA the session is what is known in the military as a '15.6 hearing,' named after the section in the Uniform Code of Military Justice that covers issues like this. "Sgt. Bergdahl will be read his Article 31 rights where he will be told that he is a suspect in a crime, possibly the crime of desertion or some other crime," he said. "He has the right not to answer these questions." Fidell says his client intends to cooperate with the general. Rinckey says the length of the meeting is uncertain, based on how many factors, including whether Fidell chooses to contest the Army's claims or raise defense issues at the hearing. He said it could conceivably not be over until Thursday. At the conclusion of the hearing, Rinckey says Dahl will then decide what the next step should be, and report his findings to the Pentagon. "He types up a report, and then he'll make recommendations on what he believes the next step should be, if it should be referred for criminal prosecution, administrative action, separation action, and he will have a legal adviser provided to him as well, who can tell him about the legalities of what he is recommending." Some members of Bergdahl's former unit have indicated that he was absent without leave or may have deserted his post when he was captured by the Taliban. Two weeks ago, Bergdahl was returned to active duty in an administrative office at Ft. Sam Houston. But the fact that he was returned to duty, working shoulder to shoulder with decorated Iraq and Afghanistan veterans, has bothered some in the military. "Charges should have been already been brought against him," said Army Lt. Col. (retired) Jeff Addicott, a long time Army Judge Advocate. "He should be brought before a court martial and let the jury decide the facts and circumstances, and let them make a determination." Addicott says both being absent without leave and desertion are both serious crimes under the Uniform Code of Military Justice. The UCMJ defines 'absent without leave as 'that the accused absented himself or herself from his or her unit, organization, or required place of duty, and the absence was without authority from anyone competent to give him or her leave.' Punishment ranges from one month to six months in prison, depending on the length the jury rules the military member was absent without leave. Punishment can include a dishonorable or a less than honorable discharge. It can also include administrative

punishments, like being reduced in rank." He has a whole slew of options that he can recommend," Rinckey said. "He can also recommend that he go through a medical disability retirement. If he feels there are mental health issues here that somehow impacted him walking off of the fire base, he can recommend that he go through the disability retirement system as well." Under the UCMJ, if the military member "intends to remain away from his or her duties permanently," the crime is considered desertion. Desertion in the face of the enemy in wartime is punishment by death, but none of the experts who commented for this article expect the case to warrant anything close to that level of punishment. Rinckey said the Army demonstrated the importance of this case, when it appointed a Major General, a top ranking officer, to conduct the interview and make the recommendation. "It's not uncommon to have colonels, sometimes generals, conducting 15.6's," he said. "But to have a two star talking to an NCO, yeah, that's pretty unusual." But Addicott says a lot is riding on the outcome of this case, from morale inside the military to the way the public perceives the armed services. "Somehow, we have this idea that we leave no one behind," Addicott said. "But in my opinion, he left us behind."