

**IN A GENERAL COURT-MARTIAL
IN THE SECOND JUDICIAL CIRCUIT, U.S. ARMY TRIAL JUDICIARY
FORT BRAGG, NORTH CAROLINA**

UNITED STATES)	
)	
v.)	Government Reply to Defense Response
)	to Government Notice Pursuant to R.C.M.
BERGDAHL, ROBERT BOWDRIE)	801(a)(6) for Appointment of Designee for
(BOWE))	MSG (Ret) Mark Allen
SGT, U.S. Army)	
HHC, Special Troops Battalion)	
U.S. Army Forces Command)	3 February 2016
Fort Bragg, North Carolina 28310)	

RELIEF SOUGHT

The Government requests that the Court appoint Mrs. Shannon Allen as the designee for MSG (Ret) Mark Allen to assume his rights as a victim under the Uniform Code of Military Justice [hereinafter "UCMJ"].

FACTS

On 30 June 2009, the Accused, an Infantryman (MOS 11B) deployed to Paktika Province, Afghanistan, as part of Task Force Yukon, Combined Joint Task Force-82/Regional Command-East, formulated a plan, and then deserted from his place of duty at Observation Post Mest [hereinafter "OP Mest"].

The Accused intended to cause a "crisis" and prompt a DUSTWUN designation (duty status-whereabouts unknown) and a search and recovery effort where "everybody is alerted....CIA is alerted....the Navy is alerted...the Marines are alerted....Air Force is alerted....not just Army." In doing so, the Accused hoped to prove to "the world" that he was "like...Jason Bourne...the real thing." [Encl 1, Statement of the Accused].

The Accused recognized he came up with a "fantastic plan" to cause a "DUSTWUN" where "an alert gets sent out. Actual event a couple of days later, or a day later, whatever it is, 24 hours or more, however long it would take me, the Soldier shows up at the FOB...And the Soldier says, 'I am not saying anything about what I did until I am talking to a general....' Well, suddenly, he has a reason to listen to me. Because if I am willing to risk leaving the wire at a defense point, in the middle of a war zone, that we have been attached at, that we have been blown up at, on multiple occasions, if this guy is willing to risk doing that, and then shows up again at the FOB, he is going to want to know why and he is going to listen to this guy....because....[h]e has risked his own personal safety." [Encl 2, Statement of the Accused].

The Accused was captured by enemy forces shortly after he departed OP Mest. Just as the Accused intended, he created a crisis where Task Force Yukon and other elements of the United States Armed Forces engaged in extensive search and recovery operations to recover the Accused.

Due to the Accused's actions, the counterinsurgency mission of Task Force Yukon came to a complete halt while leaders throughout Task Force Yukon focused only on search and recovery and logistical patrols. Resources were stretched thin to support dangerous and hasty missions to search for, and recover, the Accused. Leaders were forced to accept increased tactical risk in an effort to find the Accused before he was removed from the area of operations or killed by enemy forces.

Barely a week after the Accused deserted OP Mest, then CPT John Marx and then SFC Mark Allen, members of an Embedded Training Team (ETT) received a search and recovery mission from then LTC Robert Campbell, Commander of 1-40th CAV (part of Task Force Yukon). The mission required the ETT to link up with Afghan National Army elements and move to areas of Paktika province, that U.S. Forces had not patrolled in for over a year, in an effort to find the Accused. The planning-to-execution timeline was extremely condensed in order to support the recovery mission. Other than a search and recovery mission for the Accused, the ETT would not have conducted a mission to that part of Paktika province.

On 08 July 2009, SFC Mark Allen and the rest of the ETT team were attacked while conducting the search and recovery mission. SFC Allen received a gunshot wound to the head. SFC Allen underwent medical evacuation, suffered a traumatic brain injury stroke, endured multiple surgeries to remove portions of his brain, and completed extensive rehabilitation. Now MSG (Ret) Allen is confined to a wheelchair, unable to do basic tasks for himself, 100% dependent on others for daily living activities, and unable to communicate.

On 30 November 2010, MSG (Ret) Allen's wife, Mrs. Shannon Allen, was appointed MSG (Ret) Allen's legal guardian by the Circuit Court for Hillsborough County, Florida. At the time, MSG (Ret) Allen was in a treatment facility in Florida. On 11 October 2012, Mrs. Allen's guardianship was transferred to, and accepted by, the Walton County Probate Court in Georgia where the Allen family resides. [See Encls to G APP #8].

Court-martial charges were preferred against the Accused on 25 March 2015. The case was referred to a General Court-Martial on 14 December 2015. The Accused is charged with one specification of desertion with intent to avoid hazardous duty or to shirk important service in violation of Article 85, UCMJ, and one specification of misbehavior before the enemy-endangering the safety of the unit in violation of Article 99, UCMJ.

BURDEN OF PERSUASION AND BURDEN OF PROOF

The Government as the moving party bears the burden of persuasion on any factual issue whose resolution is necessary to decide this motion. The burden of proof is a preponderance of the evidence. Rule for Courts-Martial [hereinafter "R.C.M."] 905(c).

WITNESSES/EVIDENCE

The Government incorporates herein evidence and argument enclosed in G APP #8 (Government Notice Pursuant to R.C.M. 801(a)(6) for Appointment of Designee for MSG (Ret) Mark Allen) and encloses the following additional documents and witnesses as evidence:

1. Statements of the Accused, Excerpt from Transcript of *Serial Podcast*, Episode 1 "DUSTWUN"
2. Statement of the Accused, 2014 Army Regulation 15-6 Investigation, pages 119-122
3. Witnesses the Government intends to call in the event of an Article 39(a) session on this issue:
 - a. COL Robert Campbell
 - b. MAJ John A. Marx
 - c. Mrs. Shannon Allen

LEGAL AUTHORITY AND ARGUMENT

MSG (Ret) Allen is a "victim of an offense under the UCMJ."

The discussion to R.C.M. 801(a)(6) states "the term 'victim of an offense under the UCMJ' means a person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ." As a new R.C.M., law addressing R.C.M. 801(a)(6) is scarce. However, the term "victim" is not new, and neither is the concept of a "direct harm." Both are used throughout the UCMJ, for various purposes.¹

¹ The following are examples of the use of "victim": "A crime victim is a person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense of which the accused was found guilty." R.C.M. 1105A (discussing a victim's right to submit a written statement to the convening authority prior to action taken under R.C.M. 1107); A crime victim is "an individual who has suffered direct physical, emotional, or pecuniary harm as the result of the commission of an offense of which the accused was found guilty." R.C.M. 1001A (discussing a victim's right to be heard at sentencing); "victim impact" is defined as "any financial, social, psychological, or medical impact on the victim directly relating to or arising from the offense of which the accused has been found guilty." R.C.M. 1001A(b)(2); " 'victim of an alleged offense' means a person who has suffered direct, physical, emotional, or pecuniary harm as a result of the commission of the offense under the UCMJ." Discussion to R.C.M. 305; "victim of an alleged offense" is defined as "a person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ." Discussion to R.C.M. 806.

A victim's rights under the UCMJ, including the right to be heard at sentencing (R.C.M. 801(a)(6) and 1001A), are unrelated to whether a party calls the victim as a witness during pre-sentencing. However, analysis for who qualifies as a victim under either R.C.M. 1001A or R.C.M. 1001(b)(4) are related.² Read in conjunction with case law, both R.C.M.s contemplate the victim as having suffered some impact as a result of the commission of an offense committed by the accused.³

The courts have not adopted narrow definitions of "victim." In *United States v. Grant*, a case involving orders violation and false official statement, the trial court permitted the ex-wife of the appellant to testify as a victim about the impact of the orders violation and corresponding adulterous relationship. In its unpublished decision, the United States Navy-Marine Corps Court of Criminal Appeals refused to adopt a narrow interpretation of "victim" under R.C.M. 1001(b)(4) saying "while we acknowledge that the abstract 'administration of justice in the case of the false official statement and 'good order and discipline' may be the actual 'victims' of the appellant's crimes, we decline to adopt so narrow a reading of the term 'victim' as the appellant proposes." *United States v. Grant*, 2011 CCA Lexis 702, 3-4 (N-M. Ct. Crim. App. 2011) (*citing by comparison United States v. Ashby*, 68 M.J.108, 117 (C.A.A.F. 2009) ("next-of-kin of persons killed in a gondola crash were permitted to testify about the impact on them of an obstruction of justice offense")); *see also United States v. Davis*, 2007 CCA Lexis 570, 5 (A.F. Ct. Crim. App. 2007) (unpublished) (Wife's testimony about financial and emotional impact as a result of appellant's desertion was proper aggravation evidence saying "appellant attempts to draw too broad a line between impact on the unit and impact on the family") (*citing United States v. Wilson*, 47 M.J. 152, 155 (C.A.A.F. 1997)).

The military judge has broad discretion in determining whether to admit evidence under R.C.M. 1001(b)(4). *United States v. Rust*, 41 M.J. 472, 478 (C.A.A.F. 1995). When analyzing whether or not a consequence is "direct" enough for proper aggravation evidence, the Courts have never required that a consequence or impact be totally void of other influences. Therefore, while an accused is not "responsible for a never-ending chain of causes and effects," he is responsible for the "natural and probable consequences of the offenses of which an accused has been found guilty." *United*

² In presentencing R.C.M. 1001(b)(4) allows trial counsel to present evidence "as to **any** aggravating circumstances directly relating to or resulting from the offenses of which the accused has been found guilty" (emphasis added). While the discussion on specific impacts to victims is one example of potential evidence in aggravation, MSG (Ret) Allen's injuries (and the dangers to and injuries of other Servicemembers) would also be admissible as an adverse impact on the command or more generally a "circumstance directly relating to or resulting from the offenses of which the accused has been found guilty."

³ In presentencing, R.C.M. 1001(b)(4) allows trial counsel to present evidence "as to any aggravating circumstances directly relating to or resulting from the offenses of which the accused has been found guilty. Evidence in aggravation includes, but is not limited to, evidence of financial, social, psychological, and medical impact on or cost to any person or entity who was the victim of an offense committed by the accused and evidence of significant adverse impact on the mission, discipline, or efficiency of the command directly and immediately resulting from the accused's offense."

States v. Stapp, 60 M.J. 795, 800 (C.A.A.F. 2004) citing *United States v. Rust*, 41 M.J. 472, 478 (C.A.A.F. 1995) and *United States v. Witt*, 21 M.J. 637, 640 (A.C.M.R. 1985).

Government evidence in aggravation is proper when:

The evidence sought to be admitted [establishes] that the offense of which appellant has been found guilty contributed to those effects which the government is trying to introduce in evidence. Moreover, appellant's offense must play a material role in bringing about the effect at issue; the military judge should not admit evidence of an alleged consequence if an independent, intervening event played the **only** important part in bringing about the effect. *Stapp* at 801-802 (internal quotations omitted) citing *Wit*, 21 M.J. at 641 and *Rust*, 41 M.J. at 478 (emphasis added).

It is necessary then to examine both the Accused's actions and the offenses under the UCMJ that the Accused committed.

In pertinent part, Charge II (violation of Article 99) alleges that SGT Bergdahl "before the enemy, endanger[ed] the safety of Observation Post Mest and Task Force Yukon, which it was his duty to defend, by intentional misconduct in that he left Observation Post Mest alone; and left without authority; and wrongfully caused search and recovery operations." ⁴ For a finding of guilty on Charge II, the Government is not required to prove actual harm. See *generally*, Article 99, UCMJ. However, a natural and probable consequence of the Accused endangering his unit and wrongfully causing search and recovery operations in a combat zone, is that the Accused's unit will in fact be harmed. MSG (Ret) Allen is an example of one, of many, actual harms Task Force Yukon suffered as a result of the Accused's intentional misconduct. The Accused intended to cause a "crisis" and search by various agencies. A Servicemember injured during the resulting crisis and search – which the Accused intentionally caused – is a circumstance directly relating to and resulting from the offense.

The Defense alleges that MSG (Ret) Allen's "unit was sent into harm's way without anything even remotely approximating the necessary planning, preparation, coordination, threat analysis, risk assessment, communications, maps, equipment, and intelligence." [D APP #6]. Defense Counsel alleges that these are intervening causes that "precludes the required finding of 'direct' harm." [D APP 6, page 1]. To the extent Defense's assertions are accurate, the atmospherics surrounding the mission were directly necessitated by the "crisis" intentionally created by the Accused.

Even if the circumstances surrounding the mission were independent and intervening events, the law is clear that such events should only bar evidence of a consequence of the accused's action when the intervening event was the "**only** important part in bringing about the effect." *Stapp*, 60 M.J. at 800-801 (emphasis

⁴ At the appropriate time in any presentencing case, the Government would also argue that MSG (Ret) Allen is also a victim of the Accused's desertion. Regardless of his status as a victim for either offense, MSG Allen's injuries are admissible at sentencing on additional grounds.

added). Here, the atmospherics surrounding the mission are not the only important event that brought about MSG (Ret) Allen's injuries. If anything, the alleged intervening causes highlight how the Accused's behavior directly endangered the lives of scores of Servicemembers involved in search and recovery operation. The DUSTWUN required MSG (Ret) Allen, the rest of the ETT, and scores of other U.S. Forces, to conduct dangerous search and recovery operations "in a war zone."

The appellate Courts have demonstrated that "direct" harms encompasses a wide range of natural and probable consequences **even** where there may be a number of events that also contributed.⁵ The accused should not be held accountable for completely unrelated events, but he should also not be absolved from the consequences of his actions simply because he caused such a dangerous situation that commanders in the search and recovery were forced to accept unprecedented tactical risk.

The Government wholly agrees with Defense that, MSG (Ret) Allen "suffered terrible injuries at the hands of the enemy." [D APP #6, page 3]. The law, however, has recognized that the harm suffered by a victim does not need to be at the hands of the Accused. Rather, the law only requires a direct harm **as a consequence of the commission of the offense**. The evidence is clear that MSG (Ret) Allen's injuries were a direct result of the commission of an offense by the Accused. Just as an individual

⁵ The service courts have routinely held the accused can be accountable for the "natural and probable consequences of the offense of which an accused has been found guilty." *Stapp*, at 800 (citing *United States v. Rust*, 41 M.J. 472, 478 (C.A.A.F. 1995) and *United States v. Witt*, 21 M.J. 637, 640 (A.C.M.R. 1985). See also *United States v. Lawson*, 33 M.J. 946, 959-960 (N.M.C.M.R. 1991) (holding that evidence regarding the costs and extent of a search for a missing Marine and the death certificate of that Marine, were admissible as evidence in aggravation in the court-martial of an officer who was derelict in the performance of his duties by failing to properly set out road guard), *aff'd*, 36 M.J. 415 (C.M.A. 1993); *United States v. Chapman*, 2007 CCA Lexis 243 (N-M. Ct. Crim. App 2007)(unpublished) (in a missing movement case a witness testified that another Marine had a short notice deployment, and was also allowed to testify about injuries received on the deployment; the court held "the type of danger the appellant was attempting to avoid, including the potential for injury, was directly related to the charged offense); *United States v. Bungert*, 62 M.J. 346 (C.A.A.F. 2006)(in a drug use case military judge allowed testimony and argument that the accused made "baseless allegations" regarding others involved in a drug ring "that took time and resources in an attempt to garner favorable treatment for himself" finding that was a direct result of the commission of the drug offense. (Court did not address whether it was error, finding instead that the accused was not prejudiced)); *United States v. Jones*, 44 M.J. 103 (C.A.A.F. 1996) (holding it was proper for a military judge to consider accused's HIV and failure to inform the woman he engaged in adultery with as directly related to the offense and further holding that the evidence was "essential to the understanding of the circumstances surrounding that offense or its repercussions" (internal citations omitted)); *United States v. Curran*, 2009 CCA Lexis 29 (A.F. Ct. Crim. App 2009) (holding that aggravation evidence regarding the impact of an investigating officer being unable to perform her normal duties (because she was investigating the accused) was a sufficiently direct and immediate result of the accused's offenses); *United States v. Thornton*, 32 M.J. 112, 113 (C.M.A. 1991) (holding that impact on the unit as a result of accused no longer being able to perform his duties was proper aggravation evidence); *United States v. Stephens*, 66 M.J. 520, 528 (A.F. Ct. Crim. App. 2008) (holding that impact on victim having to testify on multiple occasions was proper aggravation evidence); *United States v. Key*, 55 M.J. 537, 538-39 (A.F. Ct. Crim. App. 2001) (holding that evidence regarding the accused's section being left "short-handed and heavily tasked," which resulted in "reduced efficiency, and lowered morale" was proper aggravation evidence), *aff'd*, 57 M.J. 246 (C.A.A.F. 2002);

who sets fire to a building which results in the death of a firefighter is not absolved from criminal responsibility on a claim that "the fire killed him," the Accused cannot escape responsibility for the direct consequences of intentionally causing a DUSTWUN search and recovery in "the middle of a war zone" simply because the Taliban pulled the trigger.⁶ [Encl 2, Statement of the Accused].

Compare the instant case to *United States v. Lawson*, cited above. In *Lawson*, a Marine Corps Lieutenant was charged with dereliction of duty when he failed to properly set out and account for road guards for a night time mounted battalion march in the desert. In its decision, the United States Navy-Marine Corps Court of Military Review identified a host of events that contributed to the death of a road guard who was ultimately left behind. In addition to the Lieutenant's misconduct, for example; the vehicle picking up road guards reported an incorrect number of guards picked up, the battalion as a whole failed to get full accountability, when someone realized the Marine's weapon card had not been exchanged there was a misunderstanding about a duty he was on, and his unit failed to report him missing for over a day. *Lawson*, 33 M.J. 946, 959-960.

Despite the numerous errors that contributed to the Marine's death, the Court found it was proper to admit the death certificate of the deceased Marine and cost of the search and recovery operations during presentencing saying:

Common sense had to tell [the appellant] that without a roster in the hands of the recovery detail and without proper guide posting, recovery operations would be haphazard and uncontrolled. No one was in a position to verify who was posted and who was recovered....The record of trial and the preceding portions of our opinion make clear that the appellant committed derelictions in the performance of his duties that were key links in a direct chain of many events that tragically resulted in [the Marine's] death. The search and death were directly related to, and resulted from, the appellant's dereliction and orders offenses." *Id.*; see also *United States v. Dezotell*, 58 M.J. 517 (N-M. Ct. Crim. App. 2003)(allowing testimony that unauthorized absence and missing movement adversely affected ship's mission during a critical inspection period was proper stating "all that is required is a "direct logical connection or relation between the offence and evidence offered.

In the instant case, the link between the offenses charged and the victim's injuries is logical, clear, and direct. The Accused, intending to cause a crisis and DUSTWUN, deserted OP Mest wrongfully causing a search and recovery operation. The Accused

⁶ See generally Article 118, UCMJ (Murder), allowing an accused to be held criminally liable for the murder of a human being when an accused "is engaged in an act that is inherently dangerous to another and evinces a wanted disregard of human life." The discussion to Article 118 UCMJ further makes it clear that even when an accused has the specific desire not to kill someone, he can still be held liable when the act shows "wanton disregard of human life. Such disregard is characterized by heedlessness of the probable consequences of the act."

was counting on the resulting crisis so that his eventual return would provide him the standing he desired, so that everyone would know he was "the real thing." The Accused recognized the risk to his own personal safety, but the Accused's behavior also endangered his unit and resulted in direct physical harm to MSG (Ret) Allen. MSG (Ret) Allen suffered "direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the UCMJ." Therefore, he qualifies as a victim as defined in R.C.M 801(a)(6).

CONCLUSION

The Defense does not seem to dispute that MSG (Ret) Allen's injuries render him incapable to assert his own rights, or that Mrs. Allen is the appropriate individual to be appointed as designee. Therefore, on those points, the Government relies on the evidence and argument in its previously filed notice. Based on the above, the Government respectfully requests that the Court appoint Mrs. Allen as the designee for MSG (Ret) Mark Allen under R.C.M. 801(a)(6).



EILEEN C. WHIPPLE
CPT, JA
Trial Counsel

Certificate of Service

I certify that I have served or caused to be served a true copy of the above Government Reply to Defense Response to Government Notice Pursuant to R.C.M. 801(a)(6) for Appointment of Designee for MSG (Ret) Mark Allen to Defense Counsel via email on 3 February 2016.



EILEEN C. WHIPPLE
CPT, JA
Trial Counsel

Bowe's platoon leader said there was an IED hotspot about 1,000 meters out along Route Audi. The Afghan National Police had their own little outpost further up the hill there as well. The American soldiers had strung all this concertina wire around the place. And their job was really just to be there, in the middle of nowhere, making their presence felt. Keeping a lookout for suspicious vehicles, watching the rooftops of Mest for snipers.

Some of the guys I talked to said that occasionally someone would shoot at them and they'd shoot back, but none of them said there was much action there. They didn't discover anyone transporting weapons or bombs. Mostly it was just fruit vendors or farmers or families passing through.

Bowe's platoon would go to the OP for three or four or five days at a stretch, sometimes doing patrols into Mest or the other nearby town, Malak, or pulling around-the-clock guard duty, either from the trucks or from the hilltop up near the cemetery, where they'd dug out a small foxhole bunker. There were long, long stretches of boring, of wondering what the hell they were doing there.

All of the soldiers I talked to said they just hated being at Mest. The OP was about 20 miles southwest of FOB Sharana. So Bowe's idea was that he'd sneak away from Mest—which Bowe refers to as a TCP, for traffic control point—and run all the way back to the FOB. He says he figured he could make it to Sharana in maybe 24 hours or so. Here's Bowe again.

Bowe Bergdahl A man disappears from a TCP, and a few days later, after DUSTWUN is called up, he reappears at a FOB? Suddenly, because of the DUSTWUN, everybody is alerted. CIA is alerted. The navy is alerted. The marines are alerted. Air force is alerted. Not just army.

Sarah Koenig Which means that when he reappears, it'll be such a big deal. There'll be such a commotion. Everyone will want to know why he left and why he's back. And so he'll be able to get an audience with whomever he wants—a general, even—and they won't be able to ignore his complaints.

Mark Boal Weren't you afraid they were going to, like, throw you in the jail or whatever?

Bowe Bergdahl

However, a person with a traditional ... like a local dress on, and a local headscarf wrapped around his head, that's not going to draw as much attention.

Sarah Koenig He also took out \$300 from his bank account in U.S. and Afghani money, just in case he'd need to bribe someone. At the end of June, 2009, Bowe's platoon was on its very last rotation at OP Mest. The company was getting ready to hand the place over to the Afghans, which really just means they were going to take their trucks and leave.

In any case, this would be Bowe's last chance to execute his plan. And this plan—it's risky, obviously. It's difficult, and it's dangerous. But, technically, it's not impossible to do it. Physically, Bowe was capable. He was a good runner. He'd run similar distances before, plus he was used to running in high altitudes in Idaho. He did well in the heat.

When he talks about it now, he'll sometimes acknowledge the wrongheadedness of it—that he overestimated his ability, that he wasn't aware of the other ways he could have registered concerns about leadership. But there was this other idea Bowe was testing out: Yes, he says, he wanted to bring attention to the plight of his platoon. But he also admits that his plan was part crucible.

Bowe Bergdahl I was trying to prove to myself—I was trying to prove to the world, to anybody who used to know me—that I was capable of being that person.

Mark Boal Like a super-soldier, you mean.

Bowe Bergdahl Yeah. I was capable of being what I appeared to be. Like, doing what I did was me saying, I am—

Mark Boal Right.

Bowe Bergdahl —like I don't know, Jason Bourne.

Mark Boal Right. A character in a book or whatever. A character.

Bowe Bergdahl

1 instead of giving them that [reasons not to trust us], then we should be
2 doing what we are telling these guys that we are here to do, then we should
3 go out and do it.

4 Q. Okay.

5 A. And as a private first class, from where I was standing, I
6 wasn't seeing that. And as a private first class, where I was
7 standing, I was seeing around me all this just stupid bullshit. And
8 I was seeing things heading in a very dangerous direction. So, I had
9 to do something. It had to be me doing it. And so I came up, happily
10 with my ignorance of a young--from a young man's mind and my
11 imagination, I came up with a fantastic plan.

12 One of the things that I talked about with one of the guys
13 was "DUSTWUN" because I saw it written somewhere and I said, "What is
14 DUSTWUN" because I didn't know what DUSTWUN was. And he said,
15 "DUSTWUN is what is called out when a Soldier is taken or when a
16 Soldier disappears or is taken." And I knew--so, I knew that if
17 DUSTWUN was called from a Soldier disappearing, that call goes not [only]
18 all the way up to Army command, it goes to Air Force, it goes to
19 Marines. It goes all the way back to the states. It goes to every
20 high point and everybody finds out about it. So, the idea was--the
21 question--the theory started out like this: What happens--if that
22 happens when a Soldier disappears, then that can be utilized.
23 Because I was looking at an environment. We were 10 to 20 miles

1 away. This TCP [COP Mest] was 10 to 20 miles away from the FOB
2 [Sharana]. It was flat ground. I grew up on high altitudes. So,
3 high altitude doesn't affect me. I can run at high altitude. I can
4 cover ground. You know, I had the PT down. I was going to go
5 Special Forces. So, I had the physical ability. So, I was looking
6 at the environment. Flat ground all the way to the FOB. The idea
7 was simple. The security at the TCP was crap. There was weak points
8 everywhere. And nighttime was just, you know, I have been on guard
9 shift at that place. Your visibility is like next to nothing on a
10 good day. The whole setup to that thing was just--it was a joke.

11 So, the theory was, what happens if somebody leaves the
12 wire at the TCP, runs or moves to the FOB? Well, during that time
13 DUSTWUN is going to be called up. Something is going to happen,
14 right? That guy disappears. No one knows what happened to him.
15 That call goes out. It hits every command. Everybody goes, what has
16 happened? Nobody knows what has happened. People come up with all
17 their theories and people happily use their imaginations to fill in
18 all the blanks. But, what is going to happen--what, you know, what
19 is going to lead the situation is actual events. The actual events
20 would be, a Soldier disappears. And then a couple of days later,
21 actual events. DUSTWUN gets called up. An alert gets sent out.
22 Actual event a couple of days later, or a day later, whatever it is,
23 24 hours or more, however long it would take me, the Soldier shows up

1 at the FOB. From TCP to FOB. People get that guy. He shows up at
2 the gate. People recognize him. They ID him. They go, "What did
3 you just do?" And that Soldier says, "I am not saying anything about
4 what I did until I am talking to a general." Then that Soldier, you
5 know, gets taken to the general or general--because general wants to
6 know what is going on, because this guy just left the fort--he just
7 left the wire by himself. DUSTWUN gets called up because of it. He
8 wants to know what is going on. And suddenly, this private shows up
9 and he is demanding to see a general. So, a pretty good guess that
10 the general is probably going to be curious and want to talk to this
11 guy. Especially open door policy, this private is demanding open
12 door policy. "I want to see the general." Go talk to the general,
13 the general goes, "What did you do?" Well, suddenly, he has a reason
14 to listen to me. Because if I am willing to risk leaving the wire at
15 a defense point, in the middle of a war zone, that we have been
16 attacked at, that we have been blown up at, on multiple occasions, if
17 this guy is willing to risk doing that, and then shows up again at
18 the FOB, he is going to want to know why and he is going to want to
19 listen to this guy. And he has a reason to do it, because this guy
20 has gone out of his way. He has risked his own personal safety. He
21 has to have a good reason for it. He is going to ask me, "Why?" He
22 is going to ask that person, "Why?" That person is going to say,
23 "Sir, these people, the BC, the sergeant major, they are unfit for

1 their positions from what I have seen. On multiple occasions, they
2 have done this, this, this, and this. I am demanding, as a Soldier
3 of this Army, that a psychological evaluation and an investigation be
4 launched into this unit to remove anybody who is unfit for their duty
5 and to reestablish the safe procedures and guidelines that a real
6 leader, real officer, or real NCO should be emplacing in a military
7 unit that is in the middle of a battlefield." Suddenly he has a
8 reason to understand. Suddenly he has a reason to believe that he
9 should be listening to what this guy is saying. Because if he thinks
10 that the threat that is coming down from above, if he thinks that
11 there is a threat big enough around here, that he is willing to do
12 something like that.

13 All right, now everyone is going to say, "I am on"--
14 obviously, I have heard--you know, you read out the charges. People
15 have talked about desertion. People have talked about treason or
16 whatever it is that they want to talk about. They want to talk
17 about, "Oh, he was a sympathizer of the Taliban." All right. You
18 look at their ideology and what they are doing and you look at my
19 character. And you want to ask me questions about that, I will
20 happily talk all day about the joke of what they are [the Taliban].

21 All right. I am, for lack of a better word, a feminist. I
22 fully believe in women's equality. You have met Kim Harrison. I
23 call her my "God mother" because that is the type of person that I