

US deserter Bowe Bergdahl spared prison time

Required Annotations	Student-Created Annotations	Summary / Questions / Reflection
----------------------	-----------------------------	----------------------------------

Student-created	Stems: de (opposite, from, away); uni (one); cap, capt (take, seize)	Required (bold)
-----------------	---	-----------------

U.S. Army Sgt. Bowe Bergdahl will not serve any prison time for deserting his post in Afghanistan in 2009, a military judge ruled Friday.

The judge, Col. Jeffrey Nance, sentenced Bergdahl to a reduction in rank to private, a payment of \$1,000 per month for 10 months and a dishonorable discharge, according to multiple reports.

Nance made no other comments, according to The Associated Press. [Bergdahl had chosen to be tried by a military judge instead of a jury, believing he had a better chance for a lighter sentence.]

Bergdahl, 31, pleaded guilty last month to charges of desertion and misbehavior before the enemy. He faced a maximum sentence of life in prison. ...

Prosecutors had recommended a sentence of 14 years in prison. Defense attorneys, meanwhile, asked for no prison time, citing Bergdahl's time in Taliban captivity (and instead asked the judge to give him a dishonorable discharge.) Following the sentencing, however, Bergdahl's lead defense attorney Eugene Fidell told reporters outside the courtroom that he'll appeal the dishonorable discharge.

"Dishonorable discharge is a lifetime **stigma**, and it **deprives** him of substantial benefits, which he badly needs," Fidell said. "Beyond that, if you feel something fundamentally unfair has happened — and I am talking about President Trump's [comments] here...then you appeal."

Bergdahl abandoned his post in Afghanistan in 2009 and was caught and held captive by the Taliban until 2014 when President Obama made a controversial prisoner swap [exchanging Bergdahl for five Guantanamo Bay terrorist detainees. Bergdahl claimed he deserted his post because he wanted to travel to a larger base to report "a critical problem in my chain of command," though he never specified what the problem was.]

Bergdahl's defense lawyers twice tried to have the case dismissed over comments from the campaign trail, when Trump repeatedly called Bergdahl a traitor who should be executed.

"We're tired of Sgt. Bergdahl, who's a traitor, a no-good traitor, who should have been executed," Trump said at an October 2015 rally... "Thirty years ago, he would have been shot," he added.

Nance ruled Bergdahl can get a fair trial despite Trump's comments, but said he would consider them as a **mitigating** factor in the sentencing.

In an emotional sentencing hearing over the past week, prosecutors called soldiers who were seriously injured in the search for Bergdahl. Among those who testified was the wife of a soldier who was shot in the head and suffered a traumatic brain injury that left him unable to speak.

Bergdahl also...took the stand and offered a tearful apology for his decision to walk off his post.... "My words can't take away what people have been through," Bergdahl said last week. "I am admitting I made a horrible mistake."

[In the beginning of the trial, Bergdahl was the first witness called by the defense and spoke for two hours telling his side of the story, giving an unsworn statement¹ that can't be cross-examined by the prosecution.]

Background: Definition of desertion (from wikipedia)

In military terminology, desertion is the abandonment of a duty or post without permission (a pass, liberty or leave) and is done with the intention of not returning. (In contrast, unauthorized absence (UA) or absence without leave (AWOL) refers to a

¹ An unsworn statement is a statement made by an accused person, setting out the accused's version of the facts, but which is not on oath and not subject to cross-examination. Retention of the right to make an unsworn statement continues to be a matter of considerable controversy.

temporary absence.)

Penalty for desertion

- In the United States, before the Civil War, deserters from the Army were flogged
- After 1861, tattoos or branding were also used
- The maximum U.S. penalty for desertion in wartime remains death, although this punishment was last applied to Eddie Slovik in 1945.
- No U.S. serviceman has received more than 24 months imprisonment for desertion or missing movement post-September 11, 2001.

A U.S. service member who is AWOL/UA may be punished with non-judicial punishment (NJP) or by court martial under Article 86 of the UCMJ for repeat or more severe offenses. Many AWOL/UA service members are also given a discharge **in lieu of** court-martial.

The 2012 edition of the United States Manual for Courts-Martial states that:

Any person found guilty of desertion or attempt to desert shall be punished, if the offense is committed in time of war, by death or such other punishment as a court-martial may direct, but if the desertion or attempt to desert occurs at any other time, by such punishment, other than death, as a court-martial may direct.

Definition of Misbehavior before the enemy (10 U.S. Code § 899 - Art. 99) from Cornell Law School

Any member of the armed forces who before or in the presence of the enemy—

1. runs away;
2. shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is his duty to defend;
3. through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;
4. casts away his arms or ammunition;
5. is guilty of cowardly conduct;
6. quits his place of duty to **plunder** or **pillage**;
7. causes false alarms in any command, unit, or place under control of the armed forces;
8. willfully fails to do his utmost to encounter, engage, capture, or destroy any enemy troops, **combatants**, vessels, aircraft, or any other thing, which it is his duty so to encounter, engage, capture, or destroy; or
9. does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies when engaged in battle;

Misbehavior before the enemy shall be punished by death or such other punishment as a court-martial may direct.

Questions

1. a) What charges were brought against Bowe Bergdahl? b) How did he plead?
2. a) What maximum sentence did Bergdahl face? b) What sentence did prosecutors recommend?
3. What sentence did Bergdahl's lawyers ask the judge for?
4. What sentence did Bergdahl receive from the judge, Col. Jeffrey Nance?
5. a) Define desertion and misbehavior before the enemy. b) What is the punishment for these actions in the military? c) Bergdahl pleaded guilty to the charges against him. Considering the military punishment for these actions, do you think Bowe Bergdahl's sentence is correct? Explain your answer.
6. Write a summary of the article that is no longer than five sentences.