The New York Times interviews Kastenberg on the history of the military charge: misbehavior before the enemy

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Sgt. Bowe Bergdahl arrives for his sentencing hearing Wednesday. He faces life in prison on a rarely used charge that he endangered others when he deserted his post.

Sentencing Hearing Begins With Wounded Navy SEAL

By RICHARD A. OPPEL Jr.
FORT BRAGG, N.C. — The sentencing hearing for Sgt. Bowe Bergdahl, who walked away from his post in Afghanistan in 2009, began on Wednesday with an ex-Navy SEAL’s assertion that he knew the military operation to find the missing soldier would be dangerous.

"Somebody's going to get killed or hurt trying to get that kid," Jimmy Hatch recalled telling another member of his task force before setting off on a mission to find Sergeant Bergdahl. Mr. Hatch was shot in the leg during the rescue effort and had surgery 18 times.

The judge later found that some were things considered pro-German, their troops at risk.

He received a bad-conduct discharge — one notch above a dishonorable discharge — and was demoted to private.

In another case, a Marine refused to leave on a mission off base, saying he feared death. He was sentenced to one year in jail. A third service member, this one in the Air Force, used hashish, violated a no-contact order and engaged in sexual activity while on post. He served five months in jail. Both received bad-conduct discharges.

What does that mean for Sergeant Bergdahl?

The first of the three cases, the Army case, was cited in some back-and-forth over whether Sergeant Bergdahl was unfairly hit with two charges: desertion and misbehavior, for one act, leaving his post.

In the earlier Army case, the staff sergeant was also given two charges: leaving his appointed place of duty and misbehavior.

But the defense has argued that unlike Sergeant Bergdahl, the staff sergeant actually committed two separate offenses: abandoning his post during a firefight, and going inside the tent to engage "in an act that did not conform to the standard of behavior required by a soldier engaging the enemy in combat."