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June 18, 2014: "The Bergdahl Exchange: Implications for U.S. National Security and the Fight Against Terrorism"

Mr. Chairman, Madam Chairman, Ranking Member Sherman and Ranking Member Deutch and distinguished members of the Joint Subcommittee, thank you for the opportunity to appear before you to testify. Before I continue, I also wish to note that I am here as a Senior Advisor to the Truman National Security Project, and I am not here as a member of the Navy Reserve nor the Department of Defense, and my views do not represent those of either Department.

As someone who was in the Pentagon on September 11, 2001, the threat posed by terrorism is not lost on me. While I made the decision years before to devote myself to serving our nation, that day changed many of our lives forever. As a result I spent several years in Afghanistan – some as a Naval intelligence officer and some as a civilian advisor – and I am acutely aware of the danger that remains to Afghanistan. For all of us at the table the conflict in Afghanistan is personal and we all feel the impact of this war in a way most Americans do not.

I have been asked to address several issues pertinent to the Joint Committee's national security oversight responsibilities related to the potential risks incurred by exchanging SGT Bowe Bergdahl for five Afghan detainees held at Guantanamo Bay, Cuba and the potential precedent set by negotiating with terrorists or insurgents. In short, I believe that securing SGT Bergdahl's release was absolutely the right thing to do and was worth the potential risks.

One of the greatest commitments an American can make to their nation is to put on a uniform and take an oath as a member of the U.S. armed forces to "support and defend the Constitution of the United States." By taking this oath, these men and women – who are sons and daughters, fathers and mothers – make the selfless decision to put their country first. They do so knowing that they may one day be called to give what Abraham Lincoln called the "last full measure of devotion,"-- to give their lives for their comrades, their families, and their nation.

With each of these volunteers, the military makes its own promise to be there for those who have been captured. The commitment is simple: leave no man or woman behind; no exceptions. This obligation is something we owe to all who have served, are serving, and will serve. Some might suggest that we should not have risked lives or time to find and retrieve Bergdahl because of the potential circumstances surrounding his capture. But

this commitment to our captured soldiers is unequivocal and must take place regardless of the circumstances of their capture. The Chief of Staff of the Army General Raymond Odierno has promised a thorough and transparent investigation into the circumstances surrounding Bergdahl's capture, and the Chairman of the Joint Chiefs of Staff General Martin Dempsey has been clear that that leadership "will not look away from misconduct if it occurred." But the obligation to retrieve SGT Bergdahl and the circumstances of his capture should not be conflated. Indeed, if Bergdahl did act improperly, then it is even more important that he be held accountable in the military system for his actions.

To leave any soldier behind is not only unconscionable but would damage a sacred trust with our military personnel, lead some to question our nation's commitment to our troops, and could result in a tremendous propaganda victory for our enemies. Additionally, given the ongoing transition in Afghanistan it was better to do this deal now while we have military leverage. Indeed, there was also a tremendous risk of having a captured U.S. soldier being executed on video as happened with American businessman Nick Berg Iraq in 2004 and journalist Daniel Pearl in Pakistan in 2002 – acts which not only demonstrated the brutality of our enemy but could be used to foster the recruitment of extremists and spread extremism.

Some argue that the release of 5 detainees from Guantanamo is itself a propaganda victory. In the big picture, the effects of a Taliban propaganda campaign will be short-lived and pale in comparison to recent strategic changes in Afghanistan to include a transition to Afghan security's "self reliance" and two successful rounds of elections, each of which saw around 7 million Afghans vote – 40% of them women - in open defiance of the Taliban.

While there will always be some risk posed by the release of detainees from Guantanamo Bay, these risks also held true during the Bush Administration when 532 detainees were released from Guantanamo Bay between 2002-2009, some of whom have returned to the fight. Despite the potential risks of releasing detainees from Guantanamo, there are several reasons why we should temper our concerns:

First, these detainees will be held by Qatar for the next year and will be subject to specific security measures to limit their activities and potential to become threats. As Secretary of Defense Hagel testified to the House Armed Services Committee on June 11<sup>th</sup> of this year, the Qatari government recently signed a Memoranda of Understanding with the United States that included "specific risk mitigation measures and commitments from the Government of Qatar [including] travel restrictions, monitoring, information sharing and limitations on activities, as well as other significant measures." that the Department detailed in a closed portion of the Armed Services Committee hearing.<sup>1</sup> As the Secretary noted, President Obama also received a personal commitment from the Emir of Qatar to uphold and enforce the security agreements outlined in this agreement.

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<sup>1</sup> Testimony of Secretary of Defense Chuck Hagel before the House Armed Services Committee, Wednesday June 11, 2014. Available at: <http://www.defense.gov/Speeches/Speech.aspx?SpeechID=1860>

Second, there is not a consensus that these five individuals will inevitably return to the battlefield. A quick review of publically available materials demonstrates that recidivism is not a certainty by any means, with a rate hovering at around 10%. Statistics provided in the September 2013 unclassified summary of the “Reengagement of Detainees Formerly Held at Guantanamo Bay, Cuba” report provided by the Director of National Intelligence to Congress note that the number of detainees confirmed in re-engaging on the battlefield had been about 16.6%. A closer look reveals that of the 532 detainees released before January 22, 2009, the “confirmed” recidivism rate was around 18% but of the 71 individuals released since 2009, only 4.2% were confirmed as having returned to the battlefield.<sup>2</sup> A similar drop in rates has been seen with those who are suspected, but not confirmed, to have re-engaged on the battlefield. According to the DNI figures, the United States has proven more successful in the past six years than during the time between 2002-2009 in reducing recidivism rates from about 30% to about 10%. Reporting by terrorism expert Peter Bergen at the New America Foundation reinforces the notion that recidivism rates are probably even lower at around 8.7%.<sup>3</sup>

Third, even in the event that they do return to the battlefield, the Afghanistan of 2015 – even 2014 – is not the Afghanistan from which they were captured. Average life expectancy in Afghanistan is now 60 years vs. 42 years in 2001. At the time of the fall of the Taliban, just under a million children went to school, nearly all male. Now over 9 million children are in Afghan schools, nearly 40% of them girls. Most importantly, there is new hope – especially amongst the youth – that they can live in an Afghanistan that is at peace. Taliban insurgent networks are shattered in many places, the Afghan National Security Forces are much more capable fighters, and as already noted, the political situation in Afghanistan demonstrates that for all the Taliban’s efforts, they cannot stop a peaceful transition of civilian power. The strength of the Taliban will not return because of the presence of these five individuals who have been off the battlefield for over a decade, and I am not entirely certain that they will be welcomed with open arms by their former colleagues who may not trust the fact that these individuals have been with the Americans for so long.

Furthermore, it is worth considering the potential opportunities that have been created by the completion of this exchange. Qatar has already proven an acceptable “neutral” location for the Taliban to send their representatives in search of an eventual peace within Afghanistan. We should continue to work with the Afghan government to leverage Qatari

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<sup>2</sup>Unclassified Summary of DNI report to Congress IAW Sec. 307 of the Intelligence Authorization Act of FY 2012. Available at: [http://www.dni.gov/files/documents/September\\_2013\\_GTMO\\_Reengagement\\_UNCLASS\\_Release\\_FINAL.pdf](http://www.dni.gov/files/documents/September_2013_GTMO_Reengagement_UNCLASS_Release_FINAL.pdf)

<sup>3</sup> See Peter Bergen and Bailey Cahall, “How Big a Terror Risk Are Former Guantanamo Prisoners,” June 8, 2014, at: [www.cnn.com/2014/06/05/opinion/bergen-guantanamo-risk-of-recidivist-terrorists/index.html](http://www.cnn.com/2014/06/05/opinion/bergen-guantanamo-risk-of-recidivist-terrorists/index.html) and Peter Bergen et al, “How Many Gitmo Alumni Take Up Arms,” January 11, 2011, available at [http://newamerica.net/publications/articles/2011/how\\_many\\_gitmo\\_alumni\\_take\\_up\\_arms\\_42737](http://newamerica.net/publications/articles/2011/how_many_gitmo_alumni_take_up_arms_42737)

credibility to help move talks towards an eventual peace agreement. Indeed, retired Marine Corps General James Mattis has even suggested a military advantage to the exchange, noting that Bergdahl's release has created a "military vulnerability" for the Taliban and the Haqqani network. In short, there is now freedom for the U.S. to operate against them now that they no longer hold a U.S. prisoner.<sup>4</sup>

All of us would like to see an end to the conflict in Afghanistan but this will bring with it questions about the final disposition of detainees still held at Guantanamo Bay. Part of this will have to do with how lawyers define the end of "hostilities" in Afghanistan. While I cannot speak to it as a legal issue, from a political perspective it is hard to envision any comprehensive peace agreement between the Government of the Islamic Republic of Afghanistan and the Taliban that does not involve the return of the remaining Afghans at Guantanamo to Afghan government control. Therefore, it would be wise for us to generate as much political value out of the Afghan detainees while we have them. Arguably this is what was done with the five recently released. As Secretary Hagel noted in his HASC testimony, none of those detainees had been "implicated in any attacks against the United States, and we had no basis to prosecute them in a federal court or military commission."<sup>5</sup> The alternative is to keep them in confinement forever without any charges.

Additionally, as history has shown, an exchange of prisoners does not have to wait until after a war ends but can happen as wars draw to a close, as part of potential or actual negotiations and before the final armistice or peace-treaties are completed. For example, while the Korean War armistice was not signed until the end of July 1953, both sides had already conducted Operation "Little Switch," (April 20 - May 3, 1953) where 684 U.N. sick and wounded troops (including 149 Americans) were exchanged for 1,030 Chinese and 5,194 Korean troops. Indeed, major fighting continued after this exchange of prisoners including the Battle of Pork Chop Hill, engagements in the Kumsong River Salient, as well as some of the largest U.S. Navy and Marine Corps air operations of the war. Even during the Second World War, there is a record of at least one exchange prior to the conclusion of hostilities, in this case, in November 1944, when A. Gerow Hodges, an International Red Cross worker detailed to the U.S. 94<sup>th</sup> Division, was able to convince German military authorities to swap 149 American POWs for a like number of German prisoners.<sup>6</sup>

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<sup>4</sup> General James Mattis on CNN's "State of the Union," June 8, 2014. Available at: <http://transcripts.cnn.com/TRANSCRIPTS/1406/08/sotu.01.html>

<sup>5</sup> Hagel testimony, <http://www.defense.gov/Speeches/Speech.aspx?SpeechID=1860>

<sup>6</sup> Then Senator Hillary Clinton made mention of this prisoner exchange during remarks on the Senate floor on Wednesday, November 7, 2007. See Congressional Record, Volume 153, Number 172, Wednesday, November 7, 2007 [Senate], Pages S14057-14058. <http://www.gpo.gov/fdsys/pkg/CREC-2007-11-07/html/CREC-2007-11-07-pt1-PgS14057-3.htm> For a more detailed news account of this event see Don Moore, "Jewish POWs Swapped By Germans in World War II," blog posting available at <http://donmooreswartales.com/2010/05/12/harry-glixon/>

Some question whether the recent prisoner exchange created a precedent that will engender the lives of U.S. personnel and has broken from past practice of not negotiating with terrorists. I think this assessment is too simple and in some cases disregards historical precedent. First, the threat of kidnapping to U.S. members of the armed forces, diplomats, and citizens has long been the case in Afghanistan, and our forces have been prepared for that throughout over a dozen years of conflict in Afghanistan. Indeed, I felt this was my own greatest threat during my military and civilian service in Afghanistan. There is no reason to think that this calculus will be altered by the recent exchange. In short, terrorists and insurgents with whom we are at war have wanted to kidnap Americans before and will most certainly keep trying to in the future.

The deal to retrieve SGT Bergdahl was a prisoner exchange, not a negotiation with terrorists. But that said it is important to note that the popular view that the United States does not negotiate with insurgents, terrorists, or even state sponsors of terrorism is not historically accurate. In terms of the Taliban alone, the United States has been talking and negotiating with the Taliban for some time in recognition that the war in Afghanistan cannot end without a political settlement.<sup>7</sup> A quick review of history illustrates that at particular times, the United States has found it necessary to negotiate with terrorists and state-sponsors of terrorism. In 1968, United States negotiated the North Korean government in 1968 to obtain the release of 83 American personnel on the *USS Pueblo* that had been boarded and captured by the North Koreans.<sup>8</sup> As former State Department official Mitchell Reiss has noted in his book *Negotiating with Evil*, President Nixon pressured allies, including Israel, to release prisoners as part of negotiations with the Popular Front for the Liberation of Palestine in order to resolve the hijacking of two hijacked airliners; the Iran hostage crisis of 1979-1981 was resolved in part by the agreement to unfreeze \$8 billion in frozen Iranian assets; and of course, there was the “arms for hostages” deal negotiated by the Reagan Administration as part of what eventually become the Iran-Contra affair.<sup>9</sup> Likewise, while the negotiations were rather one-sided, Ambassador Robert Oakley did meet with the late Somali Warlord, Mohammad Farah Aideed to secure the release of Chief Warrant Officer Michael Durant who was held in captivity after the Battle of Mogadishu in October 1993.<sup>10</sup>

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<sup>7</sup> See Ambassador Marc Grossman, “Talking to the Taliban 2010-2011 – A Reflection,” PRISM, Volume 4, Number 4, Center for Complex Operations, National Defense University, Washington DC. Available at: [http://cco.dodlive.mil/files/2014/04/Talking\\_To\\_the\\_Taliban.pdf](http://cco.dodlive.mil/files/2014/04/Talking_To_the_Taliban.pdf)

<sup>8</sup> For a short review of the experiences of the crew of the *USS Pueblo* in captivity see. CAPT Raymond C. Spaulding, “Some Experiences Reported by the Crew of the *USS Pueblo* and American Prisoners of War from Vietnam,” January 1975. Available at <http://www.history.navy.mil/library/special/pueblo.htm>

<sup>9</sup> See Alan Gomez, “Is it Ever Right to Negotiate With Terrorists,” USA Today, June 2<sup>nd</sup> 2014. Available at: <http://www.usatoday.com/story/news/world/2014/06/01/bergdahl-release-taliban-prisoner-trade/9835759/>

<sup>10</sup> See Dan Lamothe, “Why Black Hawk Down Prisoner Release is Different Than Bowe Bergdahl’s,” *Washington Post*, June 11, 2014.

Other nations have done this as well – Margaret Thatcher negotiated secretly with the Irish Republican Army and while Israel has at times famously said it will not negotiate with terrorists, we know that successive Israeli administrations have made prisoner exchanges – at times trading a thousand prisoners for just a few Israeli soldiers. But in all these cases it is important to distinguish between those situations more akin to what is expected in war – e.g. a prisoner exchange, part of a complex series of counterinsurgency initiatives, . In other words, negotiating with a terrorist group or a state-sponsor of terrorism does not necessarily equate to paying ransom for hostages.

I understand the disappointment we feel in the stories coming out about Sergeant Bowe Bergdahl, and I understand the anger felt by some of his comrades who feel that he deliberately left his post. If I were them, I might feel the same way. But the truth is that we do not know the truth. Unfortunately, the process to determine it is impacted by all the speculation in a public setting. In our nation of laws the presumption of innocence is sacrosanct, an age old principal that demands, even if we believe with all our being otherwise, that people are innocent until proven guilty. Now that the Department of Defense has announced its intent to have Maj. General Dahl lead an investigation of the facts and circumstances surrounding Sergeant Berghdal’s disappearance and capture, it is imperative to preserve the integrity of that investigation – it must be thorough and allowed to take place without politics or partisanship.<sup>11</sup> Without it we are unlikely to ever have accountability.

We may not like it, but in the end, foreign affairs and national security policy are often about juggling bad options and finding the least worst of these options; there are rarely simple solutions. The decision to exchange Sergeant Bergdahl may be imperfect, but in my mind, it represented the right approach to balancing national security security needs and does not in any way prevent the United States from continuing to prosecute a war with our Afghan partners against the Taliban nor does it appreciably increase the risk of new threats. We have been negotiating with the Taliban to find a solution in Afghanistan and we have precedents for negotiating with groups such as the Taliban for prisoner exchanges. The potential threat posed by these detainees must be looked at within the context of the Afghanistan to which they will return. Regardless, we never leave our soldiers behind.

Thank you again Mr. Chairman and Madam Chairwoman for inviting me to testify today and I am pleased to answer any questions you may have.

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<http://www.washingtonpost.com/news/checkpoint/wp/2014/06/11/why-the-black-hawk-down-prisoner-release-is-different-than-bowe-bergdahls/>

<sup>11</sup> Department of Defense Press Release, June 16, 2014.  
<http://www.defense.gov/Releases/Release.aspx?ReleaseID=16776>