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Hillary Clinton misled Congress on Bowe Bergdahl swap

By [Rowan Scarborough](#) - *The Washington Times* - Sunday, December 13, 2015

When Republican members of Congress learned in November 2011 that the Obama administration was contemplating a swap — Taliban terrorists for captured Army Sgt. Bowe Bergdahl — they wrote to then-Secretary of State Hillary Clinton of their fears.

Mrs. Clinton wrote back that they had nothing to worry about. The White House would follow the law requiring a 30-day heads-up.

"I want to make clear that any transfer from Guantanamo will be undertaken after consultation with Congress and pursuant to all legal requirements for transfers, including those spelled out in the FY2012 [National] Defense Authorization Act," she said of the law signed by President Obama that December requiring that he notify Congress ahead of time.

Fewer than three years later, Mr. Obama freed five hard-line Taliban commanders from the prison at Guantanamo Bay. As the five left Cuba, U.S. special forces troops rendezvoused with the Taliban on May 31, 2014, at a remote location in Afghanistan to pick up Sgt. Bergdahl. The Army would later charge him with desertion.

The White House neither consulted with Congress nor gave proper notification for the "illegal transfer."

Those are the conclusions in a new report by the House Armed Services Committee, issued over the dissent of panel Democrats. The role of Mrs. Clinton, the Democratic Party presidential front-runner, is described in the report's detailed chronology, gleaned from secret testimony from some of the players and classified documents.

The Clinton letter remains secret to this day. The committee could only disclose the sentence that ended up in a nonclassified letter from then-Sen. Saxby Chambliss, who led the intelligence committee and is one of those who sounded the alarm on any swap back in 2011.

The behind-the-scenes House probe came up with four major findings. The key one: Mr.

Obama flatly violated the law on prison transfer notification to Congress. It matches the same conclusion from the nonpartisan Government Accountability Office (GAO).

The report also accuses the White House, Pentagon and State Department of a conscious campaign to mislead defense leaders in Congress when they made further inquiries. One example: White House press secretary Jay Carney told reporters "as we have long said we would not make any decision about the transfer of any detainees without consulting Congress and without doing so in accordance with U.S. law."

In another finding, the White House, during negotiations with Qatar, an intermediary with the Taliban, excluded officials knowledgeable about the "Taliban Five," including the Pentagon's then-top intelligence officer, Michael Vickers.

He was locked out of interagency meetings. "I didn't participate in any [meetings] and nobody told me about them," he told the committee.

In its final finding, the committee said the administration failed to put any one person in charge of monitoring the Taliban Five once they arrived in Qatar for a year's confined stay to ensure they did not participate in terror from afar.

Republicans believed they had good reason to worry. Mr. Obama, who made a campaign promise to close Guantanamo as a way, he said, to reduce terrorism, appointed a task force to weed out those who could be released and those who required lifetime imprisonment. All members of the Taliban 5 were on the 2010 list of 48 deemed "too dangerous to transfer."

An undercurrent in the entire negotiating dance was a suspicion by Republicans that Mr. Obama would release inmates to fulfill his campaign promise.

A select group of Obama officials engaged in a scurry of activity in the months leading up to the prisoner exchange, including trips to Doha, Qatar, to hammer out a memorandum of understanding (MOU).

Then came the pomp. On May 12 U.S. and Qatari officials celebrated the signing at a secret ceremony in the Executive Office building adjacent to the White House. Later, they toasted the MOU at a dinner at the swank Metropolitan Club.

All the while, congressional defense leaders were kept in the dark despite a law saying they should be briefed.

"The Administration did not communicate any of the specifics or contemplated courses of action to the Committee, and the information it did convey was misleading and obfuscatory,"

the report says. "It did so without properly informing Congress or even communicating the fact that the plan was being developed, despite a legal requirement and specific pledges to do precisely the opposite. This is deeply disturbing."

Stephen W. Preston, the Pentagon general counsel at the time, and who did much of the negotiating in 2013-14, wrote a memo that suggests the brushoff was calculated. He warned that telling Congress might result in leaks that would scuttle the nearly completed deal.

"There is great concern all around about possible leaks," he wrote on May 2. "This concern is exacerbated by the prospect of notification to our overseers [congressional military committees] and/or the As [Afghans]."

Howard "Buck" McKeon, then the House Armed Services chairman, finally got an administration phone call on the exchange — two hours before the Taliban Five U.S. cargo jet left Guantanamo headed for Qatar on May 31.

The release was so rushed the five were not interviewed by the FBI, the normal protocol as the prison population has shrunk from a 790 peak to 107 today.

During the flight, Mr. Obama released an official announcement that Sgt. Bergdahl, held for nearly five years, was freed. His statement omitted any reference to a prisoner exchange.

"A slightly bizarre statement," wrote a detainee policy official at the Pentagon.

The administration then ran damage control with Congress by asserting the president, as commander in chief, had constitutional powers to win the release of a soldier that overrode the law. The Justice Department issued an opinion agreeing with him.

That argument was rejected by Committee Chairman Mac Thornberry, Texas Republican.

"It is irresponsible to put these terrorists that much closer to the battlefield to settle a campaign promise and unconscionable to mislead Congress in the process," he said.

Navy Cmdr. Gary Ross, a Pentagon spokesman, said, "We have an unwavering commitment and patriotic duty to leave no man or woman in uniform behind on the battlefield. We had a near-term opportunity to save Sgt. Bergdahl's life, and we were committed to using every tool at our disposal to secure his safe return. Our policy is clear: We will not transfer any detainee from Guantanamo unless the threat the detainee may pose to the United States or U.S. persons or interests will be substantially mitigated. We determined that this standard has been satisfied here."

Ranking Committee Democrats Adam Smith of Washington and Jackie Speier of California issued a statement dissenting from the committee's conclusions.

"This report is an unbalanced, partisan, and needless attempt to justify a predetermined position regarding the transfer of five Guantanamo detainees in exchange for the release of Sergeant Bowe Bergdahl from enemy captivity. The report struggles to prove its assertions, yet it excoriates the Administration over the means by which Sgt. Bergdahl's release was secured. In our view, the report is more advocative and speculative than determinative, and we disagree with a preponderance of its assertions."

At the insistence of the White House, the Taliban 5 remain in Qatar, exceeding the one-year stay stipulated in the MOU.

As for Sgt. Bergdahl, he is relegated to a desk job at a base in San Antonio while the top brass decides whether to court-martial him.

The Army charged him with desertion.

Sgt. Bergdahl himself told investigators he left his forward operating base to report poor leadership in his unit that endangered soldiers.

Now he has a second reason: He left that June 2009 night to collect intelligence on the Taliban. He projected his low-ranking infantryman status into movieland's Jason Bourne, the renegade CIA operative.

Sgt. Bergdahl-as-Bourne emerged in the current podcast episode of "Serial," a series that tells various true-life stories. He was interviewed by phone, sporadically over 25 hours, by Hollywood producer Mark Boal, who wrote the screenplay for "Zero Dark Thirty," about the mission to kill Osama bin Laden. He's making a new movie on Sgt. Bergdahl, says "Serial" narrator Sarah Koenig.

"Doing what I did is me saying I am like, I don't know, Jason Bourne," Sgt. Bergdahl said, according to CNN. "I had this fantastic idea that I was going to prove to the world that I was the real thing. You know, I could be what it is that all those guys out there that go to the movies and watch those movies — they all want to be that — but I wanted to prove that I was that."

Sgt. Bergdahl characterized his walk-off, which has propelled him into one of the major storylines in the long Afghanistan war, as "gutsy but real stupid."

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