

'Hurt Locker' Writer Says Gov't Can't Have Bergdahl Tapes

By **Shayna Posses**

Law360, New York (July 21, 2016, 7:03 PM EDT) -- The screenwriter behind "The Hurt Locker" and "Zero Dark Thirty" sued the federal government Wednesday, urging a California federal court to keep his interviews with U.S. Army Sgt. Bowe Bergdahl, featured in the popular podcast "Serial," out of the accused deserter's court-martial.

Mark Boal names the United States, President Barack Obama and other government officials in his suit over a threat to subpoena more than 25 hours of recorded conversations he had with Bergdahl in preparation for a project about the sergeant's disappearance from his post in Afghanistan, interviews that Army prosecutor Maj. Justin Oshana has set his sights on after they were featured on the second season of "Serial."

Bergdahl is facing a court-martial in Fort Bragg, North Carolina, for allegedly deserting an Army outpost in Afghanistan. The Taliban captured, tortured and held him for five years before he was released in May 2014 in a highly publicized exchange for detainees from Guantanamo Bay.

Oshana, the trial counsel for Bergdahl's court-martial, has made it clear he intends to issue a subpoena Friday for all of Boal's recorded interviews with the sergeant, but the filmmaker contends the request would step on his First Amendment right to gather and publish newsworthy material.

The reporter and filmmaker asked the court to step in to protect the confidential information and sources included on the recordings, blasting the military in a Thursday statement for taking the "nearly unprecedented" step of trying to force a private citizen into military court to give up protected materials.

"I support the Army, but this particular military prosecutor's tactics contradict and undermine the stated principles and policies of the commander-in-chief and the attorney general to protect First Amendment rights," he said. "It's Orwellian, and it's bizarre."

The suit says that issuing and enforcing the subpoena would force Boal to choose between risking contempt in military and federal court or sacrificing his common-law rights and becoming "the arm of a military prosecutor."

"The threatened subpoena is unlawful and inconsistent with the First Amendment, the common law, Department of Justice guidelines for the issuance of subpoenas to reporters and state protections for reporters," the complaint says.

Army Forces Command spokesman Paul Boyce said in a Thursday email, "We continue to maintain careful respect for the military-judicial process, the rights of the accused, and ensuring the case's fairness and impartiality during this ongoing legal case."

The next hearing in Bergdahl's court-martial is scheduled for Aug. 22, according to Boyce.

Boal is an award-winning journalist, filmmaker and producer who has been covering stories about the military and national security since 2011, according to the complaint. Based on his experiences as a reporter during the war in Iraq, he wrote "The Hurt Locker," which went on to win several Oscars,

including the award for best picture, the suit says.

He started looking into Bergdahl soon after the sergeant's release and teamed up with reporters at "Serial" last year to co-produce a 10-hour podcast about the accused deserter's story, the complaint says.

"Serial" shot to fame after its first season, which told the story of Adnan Syed, who was sentenced to life in prison following his conviction for the 1999 murder of his former girlfriend and Woodlawn High School classmate Hae Min Lee.

The podcast, which broadcast in 2014, raised questions about Syed's guilt and, in June, a Maryland state judge vacated his conviction and granted him a new trial.

Boal is represented by Jean-Paul Jassy, Kevin L. Vick, Duffy Carolan and Sunny K. Lu of Jassy Vick Carolan LLP, and retired U.S. Marine Corps Lt. Col. Colby C. Vokey.

Counsel information for the government wasn't immediately available Thursday.

The suit is Mark Boal et al. v. United States of America et al., case number 2:16-cv-05407, in the U.S. District Court for the Central District of California.

--Additional reporting by Aebra Coe. Editing by Aaron Pelc.