UNITED STATES MARINE CORPS
HEADQUARTERS COMPANY
SECURITY BATTALION
2043 BARNETT AVENUE
QUANTICO, VIRGINIA 22134-5013

IN REPLY REFER TO:
1000
B 275
24 Jan 11

From: Chief Warrant Officer 4 James Averhart USMC, Brig Officer in Charge
To: Commanding Officer, MCB Quantico, Va
Via: (1) Commanding Officer, Security Battalion

Subj: RESPONSE TO REQUEST FOR REDRESS (ARTICLE 138, UCMJ) OF PFC BRADLEY MANNING DATED 19 JANUARY 2011

Ref: (a) SECNAVINST 1640.9C
(b) Brig Order P1640.1C (Prisoner Rules and Regulations)
(c) Article 138, UCMJ

Encl: (1) DD Forms 2710, 2711, Kuwait confinement documents
(2) C&A board Recommendations

1. In the performance of my duties as the Brig Officer, MCB Quantico, I am governed by references (a) through (c). I have been appointed and charged to perform my duties in a fair, firm and impartial manner, while ensuring the custody and safety of all personnel, be it prisoners, staff or visitors.

2. In response to the Article 138 complaint dated 19 January 2011, PFC Manning was initially confined at MCB Quantico Brig on 29 July 2010 and classified as a maximum custody detainee on suicide risk status. At the time of his initial confinement, I was the Brig Commander. I relinquished command on 24 January 20011 pursuant to PCS orders. During the initial interview, PFC Manning stated that he has had suicidal thoughts and did make a plan to commit suicide. PFC Manning also stated that he has been diagnosed with depression and anxiety disorder. During the initial reception phase, PFC Manning also stated to the counselor that he was a "woman". During this phase of confinement, PFC Manning completed a DD form 2710 (Inmate Background Summary) in which he wrote "always planning, never acting" where asked if he has ever considered suicide. See enclosure (1).

3. Prior to receiving PFC Manning, MCB Quantico Brig received documentation from the confinement facility in Kuwait stating that PFC Manning became unresponsive to staff and would have anxiety attacks at times. PFC Manning was placed on suicide watch while confined in Kuwait and was also found to have made a noose out of his bed sheet. PFC Manning was evaluated several times by mental health professionals while in Kuwait and found that he was a high risk harm to himself. It was further requested that PFC Manning be transferred to a facility with specialized resources for his mental state.

4. During the initial interview with his counselor in Quantico, PFC Manning was asked if he was currently suicidal to which PFC Manning replied "no". During the interview, PFC Manning was asked about the noose he made out of a bed sheet. PFC Manning stated that he made a noose out of sand bag ties, not a bed sheet. The discrepancy between the documentation received and PFC

APPELLATE EXHIBIT 440i | of 8
PAGE REFERENCED:
PAGE ___ OF ___ PAGES

Manning's statement raised the concern of PFC Manning's mental ability to differentiate between a bed sheet or sand bag ties, or if PFC Manning made multiple nooses. Due to the documentation provided, PFC Manning's verbal and written statements, and the act of making at least one item to commit suicide with, I decided that PFC Manning would remain on suicide watch. I also decided that PFC Manning would be classified as a maximum custody inmate.

5. Per SECNAVINST 1640.9C, inmates requiring immediate and continuous supervision or requiring special custodial supervision will be classified as a maximum custody detainee. Per SECNAVINST 1640.9C, inmates who have threatened suicide or have made a suicide gesture but are found fit for confinement may be placed within special quarters under continuous observation while in the category of suicide risk. The following are requirements stated in SECNAVINST 1640.9C:

(a) Supervision must be immediate and continuous. A DD 509, Inspection Record of Prisoner in Segregation, shall be posted by the cell door and appropriate entries made at least every 15 minutes.

(b) They shall not be assigned to work details outside the cell.

(c) They shall be assigned to the most secure quarters.

(d) Two or more staff members shall be present when maximum custody inmates are out of their cells.

(e) Maximum custody prisoners shall wear restraints at all times when outside the maximum-security area and be escorted by at least two escorts.

(f) The Brig OIC may direct removal of clothing when deemed necessary.

(e) Inmates must be under observation of a supervisor of the same sex.

(f) Prisoner must be under observation of a supervisor of the same sex.

(g) Such prisoners shall be berthed in special quarters and physically checked every 5 minutes.

6. Per SECNAVINST 1640.9C, inmates in a maximum custody status require two escorts at all times while outside of their cell. While outside of the cell, maximum custody inmates will normally wear full restraints i.e. leg restraints, hand restraints and a restraint belt. The Brig OIC may authorize less form of restraint or additional escorts when necessary. Normally less form of restraint is authorized while showering, participating in recreational activities, medical exams or in a court room. While a maximum custody inmate is outside of a secured area, the facility will commence a lockdown until the inmate is returned to a secured area. No other inmates are allowed to move throughout the facility while a maximum custody inmate is outside of a secured area. At no time will two maximum custody inmates be outside of a secured area at any time. Due to this requirement, maximum custody inmates do not co-mingle with other inmates during recreation or group activities. Maximum custody inmates are not prohibited from speaking with inmates in other cells provided that it does not interfere with the good order and discipline of the facility.

7. On 30 July 2010, CAPT Hoctor, the Brig Psychiatrist, made his first assessment of PFC Manning and recommended PFC Manning remain on suicide

watch. The Brig Psychiatrist also stated that PFC Manning should not have access to bootlaces, trash bags, belts etc. One week later on 6 August 2010, the Brig Psychiatrist recommended that PFC Manning be removed from suicide watch and placed on prevention of injury. On 27 August 2010, the Brig Psychiatrist recommended PFC Manning be removed of all suicidal precautions because no suicidal thoughts were reported. The Brig Psychiatrist also noted that PFC Manning had an average toleration to frustration and stress. During following reviews made by the Brig Psychiatrist, it was noted that PFC Manning sometimes had a low toleration for frustration and stress and at other times PFC Manning had an average toleration for frustration and stress. Per SECNAVINST 1640.9C, a low toleration for frustration and stress is a factor for determining if maximum custody is warranted. Due to the short period of time since PFC Manning made a noose, PFC Manning's written and verbal statements on planning to harm himself, the short timeframe between the Brig Psychiatrists' recommendation for PFC Manning to be on suicide risk and removal of all precautions and the fluctuations of the Brig Psychiatrist's evaluations, it was determined that PFC Manning remain in a prevention of injury status for his own safety. He also remained in a maximum custody classification.

8. Per SECNAVINST 1640.9C, a Classification and Assignment (C&A) board shall be established and will be responsible for establishing the individual prisoner's program upon completion of orientation. This board shall be composed, at a minimum, of the next senior staff member to the Brig OIC, or designated representative, one senior staff member from security, one from programs, and any other members appointed by the Brig OIC. Representatives from outside the confinement facility, including staff specialists, such as a psychologist or chaplain, may be appointed to the board. Inmates may appear before this board to discuss their program or changes thereto if considered necessary. The C&A Board's recommendations shall be recorded and signed by the Brig OIC or designated representative as approving officer. When circumstances indicate necessity for immediate action, the Brig OIC or designated representative may make changes in custody, classification, etc., without board action. Changes shall be a part of the agenda of the next C&A board meeting.

Currently the C&A Board is comprised of the Programs Chief, Senior Counselor, Operations Chief, Admin Chief, Security Operations Chief or the Duty Brig Supervisor. The C&A Board consists of three voting members and a recorder. The C&A Board's recommendation is normally forwarded to the Brig OIC for approval. PFC Manning's classification and status is reviewed by the C&A Board weekly. An evaluation by the Brig Psychiatrist is normally conducted prior to the C&A Board's convening and his recommendation is forwarded to the C&A Board. I make a final determination regarding an inmate's classification and status based upon the C&A board's recommendation and my personal observations and experience. The proceedings of the C&A boards for PFC Manning are attached as enclosure (2).

Until 18 January 2011, CAPT William Hocter was assigned as the Brig Psychiatrist. Colonel Ricky Malone, an Army psychiatrist, had been consulted by CAPT Hocter. Col Malone did not make a recommendation to the C&A Board, as he is not a member of the Brig staff and only a consultant of CAPT Hoctor.

During CAPT Hocter's tenure, he has also consulted CAPT Brian Moore, who the defense has now identified as a member of PFC Manning's defense team. This information was not provided to the correction facility previously and is, in my opinion, a conflict of interest. It cannot be determined to what extent

CAPT Moore's opinions affected CAPT Hoctor's recommendations. However, I feel it is important that this relationship be highlighted for the record.

9. Upon PFC Manning's initial confinement in Quantico, he was placed on suicide risk status until 11 August 2010, when he was placed on prevention of injury status. Both SR and POI status require maximum security custody. Inmates on SR or POI status are not denied any privileges or rights. For the purpose of safety and security, the Brig OIC may restrict certain privileges for inmates in SR or POI status.

a. Clothing.

(1) Inmates on SR status are normally clothed in only underwear and shower shoes and provided with one tear proof security blanket. A second blanket is provided after taps.

(2) Inmates on POI status are normally clothed in seasonal PT gear and shower shoes and provided with one security blanket. During hours after taps, the inmate is clothed in only underwear and given one additional security blanket.

b. Bedding.

(1) Inmates on SR or POI status are not provided with bed sheets or a pillow, but are provided with the same type of mattress as all other inmates.

(2) Due to the extended amount of time PFC Manning has been placed on POI status, a safety mattress was acquired from the Rappahannock County Jail. This is a is a one piece mattress with a built in pillow.

c. Personal effects/hygiene items.

(1) During daylight hours, inmates on SR or POI status maintain all personal items in an adjacent cell, with the exception of the clothing being worn, one book and one copy of rules and regulations. Hygiene items, to include toilet paper, are only given to the inmate during hygiene call or as needed. No inmate, regardless of custody or classification, is authorized to maintain shoes or boots while inside of his cell. Inmates are only given razors at reveille and they are returned to the Special Quarters supervisor immediately after shaving.

d. Correspondence time/phone calls.

(1) Inmates on SR or POI status are not denied correspondence or phone privileges. Inmates, regardless of custody or classification, are only allowed to make phone calls or write letters during free time as outlined in the plan of the day (POD). The only restriction to an inmate on SR or POI status concerning correspondence material is the length of time.

(2) Until 27 October 2010, inmates on SR or POI status received correspondence material for one hour daily during free time. Due to the extended duration of PFC Manning's POI status, I authorized this time to be extended by one hour. All inmates are afforded the same opportunity and duration to make personal phone calls.

(3) All inmates are afforded the same opportunity to speak with their parent command or attorney via government phone. Inmates are required to

submit a DD 510 to their counselor stating the nature of their request. Their counselor or designated staff member will normally respond to their request within three business days and make every attempt to get the inmate in contact with the requested party. PFC Manning is routinely placed on the phone with his attorney approximately two times a week for approximately 45 minutes.

e. Visitation.

(1) All inmates, regardless of custody or classification, are required to receive a command visit weekly. If this requirement is not met, a staff member from the Programs section makes liaison with the inmates command and informs them of their deficiency.

(2) All inmates, regardless of custody, are allowed to receive personal visits on weekends or holidays as the POD states. The only inmates denied personal visits are those in a disciplinary segregation or loss of privileges status. The only limitation placed on maximum custody inmates is that they must meet with their visitors in a non-contact booth. This limitation is only due to the requirement of a facility lockdown while a maximum custody inmate is outside of a secured area.

(3) All inmates are allowed to receive legal visits during normal business hours. Exceptions to these hours may be made upon prior request of the visiting party. All legal visits are conducted in a non-contact booth.

f. Television/recreation.

(1) Inmates are only allowed to watch television during free time as prescribed in the POD. There is one television in the recreation room located in the housing area and another on a cart. The television in the day room is used by all general population inmates. The television on the cart is used by all maximum custody inmates. The cart is rolled in front of the inmate's cell during authorized television viewing hours. The viewing time is dependent upon the number of maximum custody inmates being housed at one time. PFC Manning is currently the only maximum custody inmate and may view television from his cell during free time. There are no viewing restrictions placed on maximum custody inmates. The only exception to this was when it was reported on the news that PFC Manning had committed suicide. When this was reported, PFC Manning was not allowed to view the news. The duration of TV time may fluctuate depending on how many maximum custody inmates are present. If more than one is present, they share the TV on the cart.

(2) All inmates are authorized one hour of recreation call daily. Maximum custody inmates conduct recreation call individually in a secured area inside the recreation yard. While in this secured area, the inmate's restraints are removed. During inclement weather or when the temperature is below 32 degrees, recreation call is conducted indoors.

(3) Because the indoor recreation area is not a secured area, restraints are not normally removed from maximum custody inmates. All inmates, unless in a SR, POI or disciplinary status are allowed to exercise while in their cells provided that it does not disrupt the good order and discipline of the facility. Due to the extended period of time that PFC Manning has been in a SR or POI status, and not allowed to exercise within his cell, I authorized PFC Manning's restraints to be removed while conducting recreation call inside although he is not in a secured area.

Within this recreation area, there are stationary bicycles, elliptical machines, weight training equipment, treadmills and stair masters. There is a foosball table and ping pong tables that may be set up so he does not need another inmate to participate. PFC Manning is allowed to choose his activity but chooses to walk in circles or figure eights on his own free will. He will occasionally do push-ups, crunches and sit-ups on a mat that is provided. On several occasions he has requested that his recreation call be secured early and that he be returned to his cell. When he makes this request, he is escorted back to his cell and asked to provide a written statement saying that he chose to have his recreation call secured early. PFC Manning has provided a couple of these statements but has also refused as well.

10. Per SECNAVINST 1640.9C, there must be periodic bed checks of all inmates at night. Per prisoner rules and regulations, inmates are not authorized to cover their entire face with blankets while sleeping. Inmates are not to be awakened for the purpose of bed checks, however positive identification must be made if no part of an inmate is visible. The only way for this to be possible is to either awaken the inmate or instruct him to uncover his face or have the cell opened, enter and uncover the inmate which is a risk to staff safety and not authorized.

11. Recent Incidents: On 18 January 2011, PFC Manning had what appeared as an anxiety attack in the recreation room as his restraints were being removed. PFC Manning fell to the floor and was caught by two staff members which softened his fall. PFC Manning then pulled away from the staff members and ran behind an exercise machine appearing to cry. After PFC Manning gained his composure he was allowed to continue his recreation call after speaking with the operations chief who authorized the continued recreation call. Later the same date, PFC Manning became agitated when speaking to the Brig Supervisor and the Brig OIC. While I was conducting my daily rounds in Special Quarters, I spoke to PFC Manning as always while observing his actions. Initially he appeared to be physically okay. I asked him how he was doing and he replied "fine sir". I then asked PFC Manning was he sure? He said "yes sir". I questioned detainee Manning regarding reports from Brig Staff in which detainee Manning became anxious and exhibited labored breathing during recreation call. I then asked PFC Manning about the incident of falling while at recreation call. PFC Manning stated that he became light headed. I again asked him how was he feeling and he began yelling, stuttering, and flailing his arms. PFC Manning began to yell out that he wanted to go home. He asked, "Why did all those Marines show up". He also yelled out "why are you psycho-analyzing me?" PFC Manning also said "Why are you staring at me?" He then said "stop yelling at me". I instructed PFC Manning to relax and calm down. I also instructed him to sit down on the rack and breathe. PFC Manning said he wanted to go home and began physically striking himself in the head very violently and aggressively. Due to PFC Manning's actions, which caused an immediate concern, I directed the Brig Supervisor to "special move" PFC Manning's status and ordered that he be placed back in a suicide risk status. After PFC Manning's outburst, and physical contact to himself, the Brig Psychiatrist was contacted and asked to meet with PFC Manning. After PFC Manning was informed that he was going to be placed in a suicide risk status, PFC Manning began to attempt to negotiate to not be placed on this status and delayed in giving the requested clothing items. He was initially non-compliant and refused to give the clothing items to the Brig Supervisor when asked. When I noticed that PFC Manning was being noncompliant I ordered the dialogue and actions to be videotaped. Once PFC Manning noticed that he was being videotaped, he immediately became compliant

and provided the clothing item as requested. He also calmed down but continued to comment about not wanting to be on SR and POI.

12. Prior to the arrival of Dr. Hoctor, I directed that PFC Manning remain in this status until 20 January 2011 and, provided that PFC Manning's actions do not continue, that he be reviewed by the C&A board at that time. CAPT Hocter and CAPT Moore met with PFC Manning on the same date and recommended that PFC Manning be placed on a 24 hour POI status. PFC Manning was removed from SR status on 20 January 2011 and assigned on POI status.

13. On 21 January 2011, I received a DD 510 from PFC Manning requesting that he be taken off of maximum custody and POI status. This request was dated 7 January 2011. PFC Manning was reviewed by the C&A Board on 21 January 2011 and was allowed to appear before the board. The C&A Board recommended that PFC Manning remain classified as a maximum custody inmate in prevention of injury status due to previous written and verbal statements, suicidal ideations and statements that he made to the members of the C&A Board. Although PFC Manning denied any suicidal thoughts or feelings, PFC Manning also implied that he may not be completely truthful. When asked about the date of 7 January 2011 as the date of submission on the DD510, PFC Manning just looked at me and stated that it is possible for his dates to be off and provided no further explanation. I denied his request that he taken off maximum custody and POI status. This is the only time he has formally requested that I take such action through the DD 510 process. This is the grievance that PFC Manning identifies in paragraph 6 of his complaint.

14. Since initial confinement, PFC Manning has displayed unusual behavior causing me concern. There has been unusual behavior such as waking up and licking the cell bars, sleep walking, sword fighting, playing peek-a-boo in the mirror, waking up at night talking, simulated lifting weights, talking, mumbling and giggling at himself, beating on his chest, and rock star head banging simulation. Since confinement, PFC Manning has also violated prisoner rules and regulations by not following instructions. He has received a negative hard card entry for disobedience and several counseling for failure to follow instructions. Although minor in nature, all prisoners are required to follow the rules and regulations of the facility. I have not imposed any disciplinary segregation, but these incidents do cause me continuing concern regarding his safety and intentions.

15. In this facility, all prisoners and detainees are berthed in Special Quarters. A living area comprised of 30 individual cells with each cell dimension size of 6x8x8. Each cell has one toilet, rack, sink and water faucet. The Quantico base pretrial confinement facility does not have solitary confinement. It does have a disciplinary segregation unit. Since confinement PFC Manning has been berthed in Special Quarters in cell #192.

16. As the Brig OIC with over 20 years of correction experience, I understand the duties and responsibilities of the billet which I am assigned. I am charged with the security, custody and control of all inmates in my custody while remaining firm, fair and impartial. At no time have I acted out of the scope of my duties or abused the authority given to me per the directives that govern my decisions regarding PFC Manning. Due to PFC Manning's continuous, sporadic, unusual behavior, written and verbal statements, past suicidal ideations and gestures, it is my professional opinion that prevention of injury status is currently necessary to ensure PFC Manning's personal safety, as well as the safety of other prisoners and staff. Further, it is my professional opinion that PFC Manning's maximum

custody classification s justified based upon his charges, national security concerns and his behavior while in the facility. At all times my decisions have been guided by recommendations from the Brig staff, the C&A board, and mental health providers and also through interactions with PFC Manning. However, I must make the final determination based upon my judgment and experience and have continued to do so.

J. T. AVERHART JR